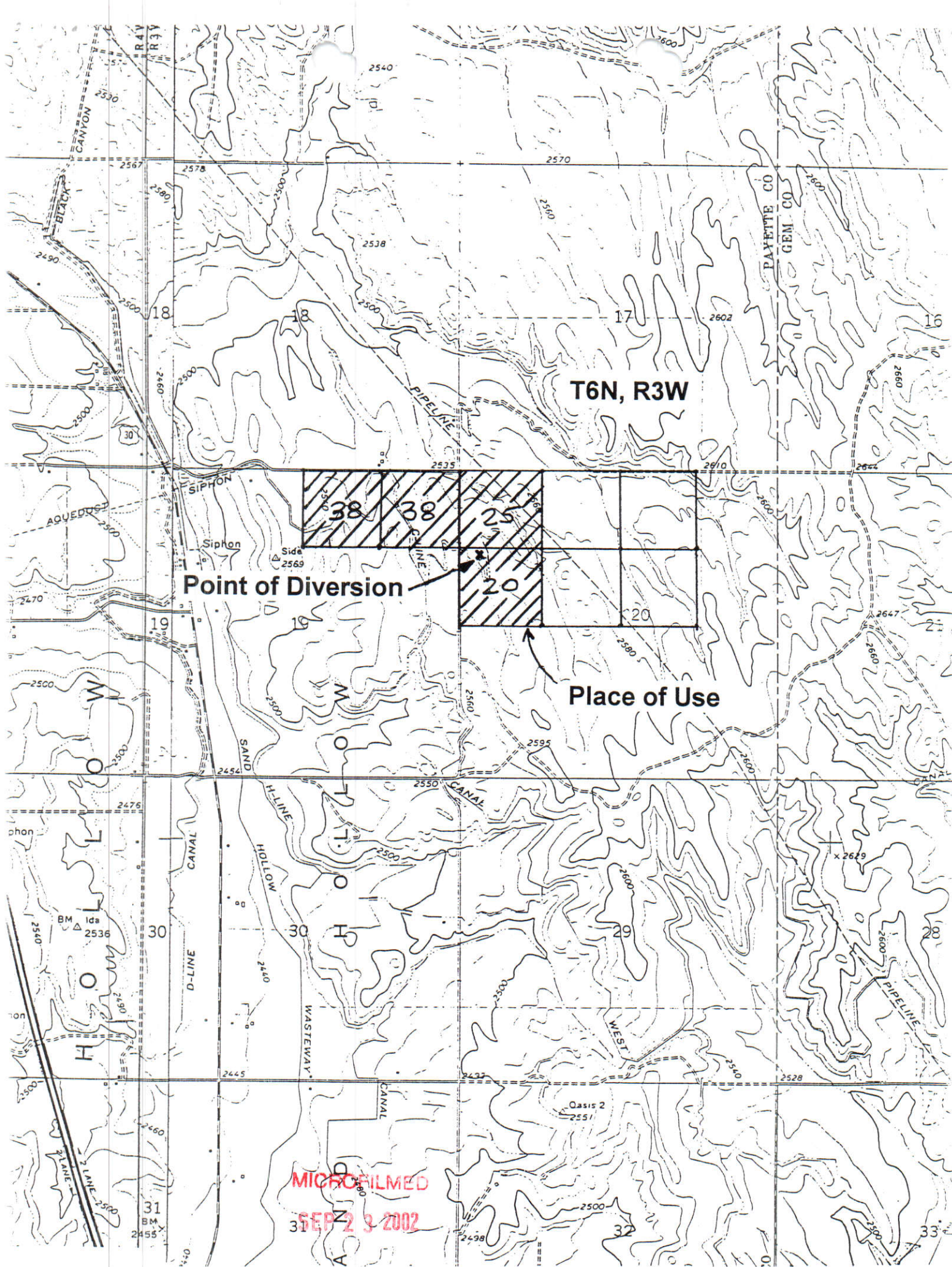




T6N, R3W

Point of Diversion

Place of Use

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WELL LOG: ALLH →															
Filter Export Plot Options															
Township	Well Number	1st Use	2nd Use	Method Drilled	Total Depth	Well Open	# of W/Ls	Well Test	Lith Log	Completion Date	Firm No	LSD Elev	Elev Accy	Well Location	Location Verified
06N03W	01BCC1	Dome		Cable	45	1	2	Bailer	8	04/05/1979	14	2287	<11 ft	43°53'16"/116°39'04"	USGS
06N03W	04DAD1	Dome		Cable	60	1	1	Bailer	4	10/24/1986		2300	<11 ft	43°53'04"/116°41'30"	USGS
06N03W	04DAD2	Dome		Cable	140	1	1			05/28/1997		2300	<11 ft	43°53'04"/116°41'30"	USGS
06N03W	09BCD1	Dome		Cable	282	1	1			08/25/1973		2598	<11 ft	43°52'22"/116°42'29"	USGS
06N03W	10BAA1	Dome		Cable	88	1	1			07/26/1986		2303	<11 ft	43°52'45"/116°40'54"	USGS
06N03W	12CDC1	Unusu		Cable	56	2	115			06/01/1968		2315	<11 ft	43°52'00"/116°38'47"	USGS
06N03W	18DDA1	Dome		Cable	300		6					2530	<11 ft	43°51'11"/116°43'56"	USGS
06N03W	22CBB1	Dome			235		8		11	06/08/1990		2570	<11 ft	43°50'32"/116°41'28"	USGS
06N03W	27CC1	Irrigat		Revers	255	3	1		21	07/09/1991	213	2522	11-20	43°49'25"/116°41'21"	Driller
06N03W	30AD1	Dome		Air	238	1	1	Bailer	11	08/03/1972	18	2495	11-20	43°49'51"/116°44'04"	Driller
06N03W	30DCC1	Dome		Other	216	1	7	Bailer	12	07/30/1960		2440	<11 ft	43°49'20"/116°44'27"	USGS
06N03W	31CBD1	Dome			90		1			09/29/1992		2450	<11 ft	43°48'41"/116°44'50"	USGS
06N03W	32CDD1	Dome		Cable	175		3	Air	9	03/07/1979	333	2460	<11 ft	43°48'29"/116°43'19"	USGS
06N03W	33CBA1	Dome			152		7		8	10/05/1978		2480	<11 ft	43°48'45"/116°42'29"	USGS
06N04W	01ADB1	Dome					1					2460	<11 ft	43°53'26"/116°45'15"	USGS
06N04W	10ABA1	Stock			371	1	1			09/28/1959		2498	<11 ft	43°52'47"/116°47'55"	USGS
06N04W	28CDC1	Irrigat		Revers	705	4	4	Other	46	08/13/1976	213	2630	<11 ft	43°49'22"/116°49'33"	USGS
06N04W	34ACB1	Irrigat		Revers	311	1	1			03/17/1970		2495	<11 ft	43°49'03"/116°48'04"	USGS
06N04W	34ddb1	Dome		Cable	147	1	50		8	07/05/1971	2	2480	<11 ft	43°48'35"/116°47'43"	USGS
06N04W	35ADC1	Dome		Cable	362	1	7		16	04/22/1980	273	2620	<11 ft	43°48'58"/116°46'34"	USGS
ALLH															
					# 13 of 20 wells			Hydrograph Years: 1967 - 2000				Hydrograph Scale: 1 in = 7.4 ft			Exclude

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Figure 4 – Treasure Valley Hydrologic Study Boundary Map

(point of diversion locations added by Scanlan)

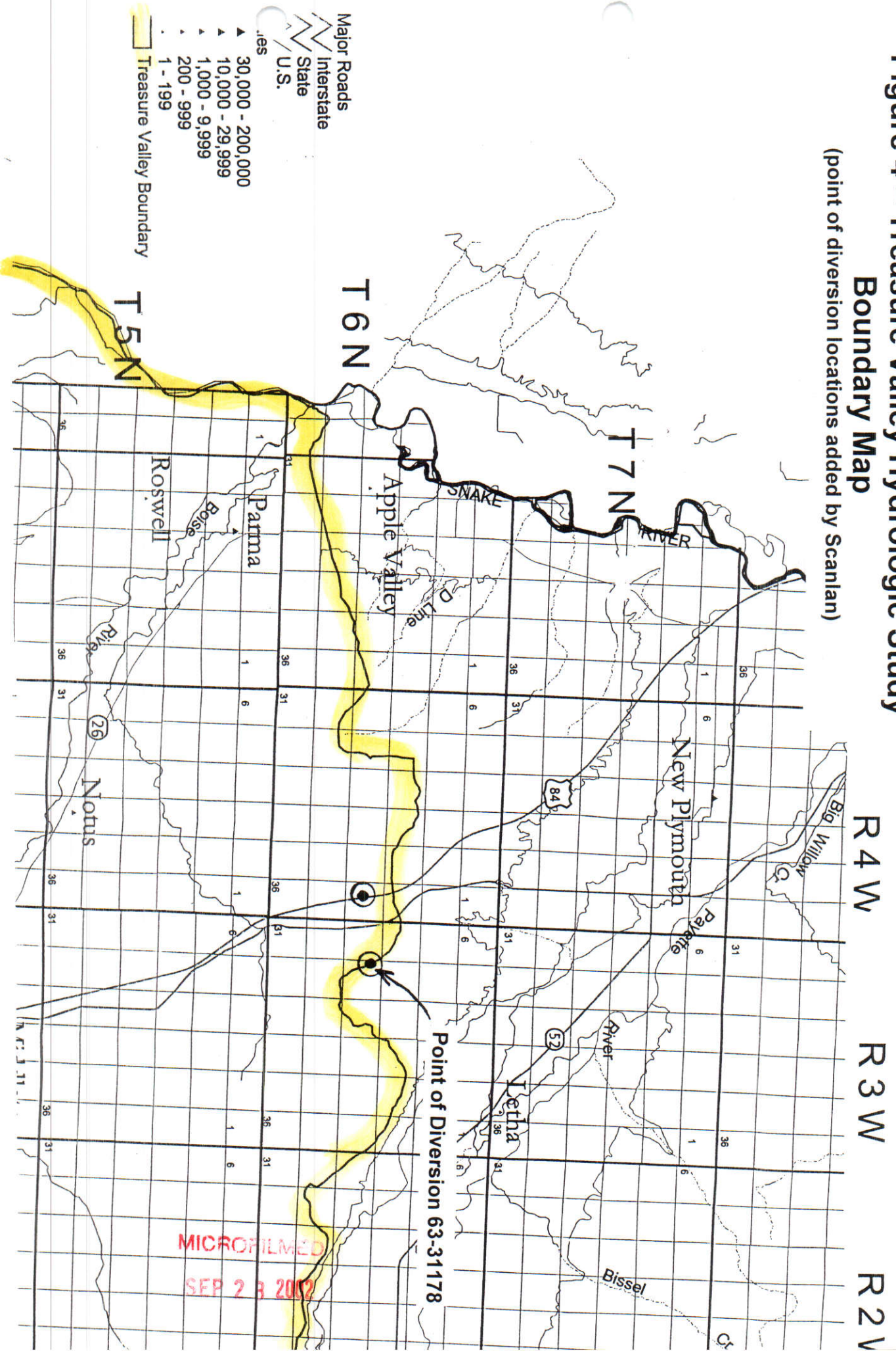
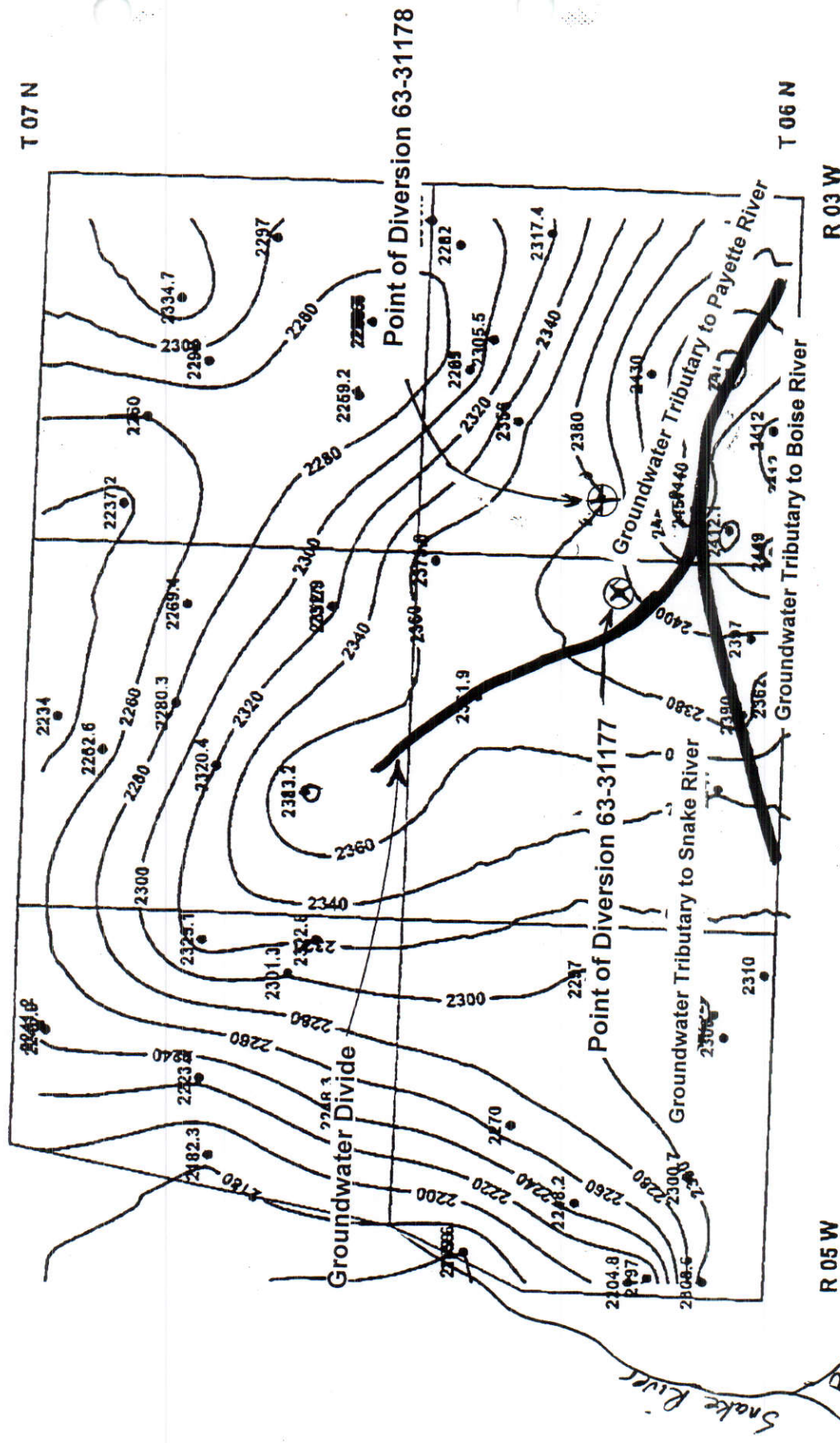


Figure 3 – IDWR Water Table Contour Map
 (computer generated by IDWR from water level data base; point of diversion locations and groundwater divides added by Scanlan)

Ground Water Levels
Township 6 North, Ranges 3, 4 and 5 West



Ground water levels compiled from unsorted data. All wells with water levels included, without any sorting of spring or fall measurements. If well had multiple measurements, only the first measurement is plotted.

Map Scale (in miles)



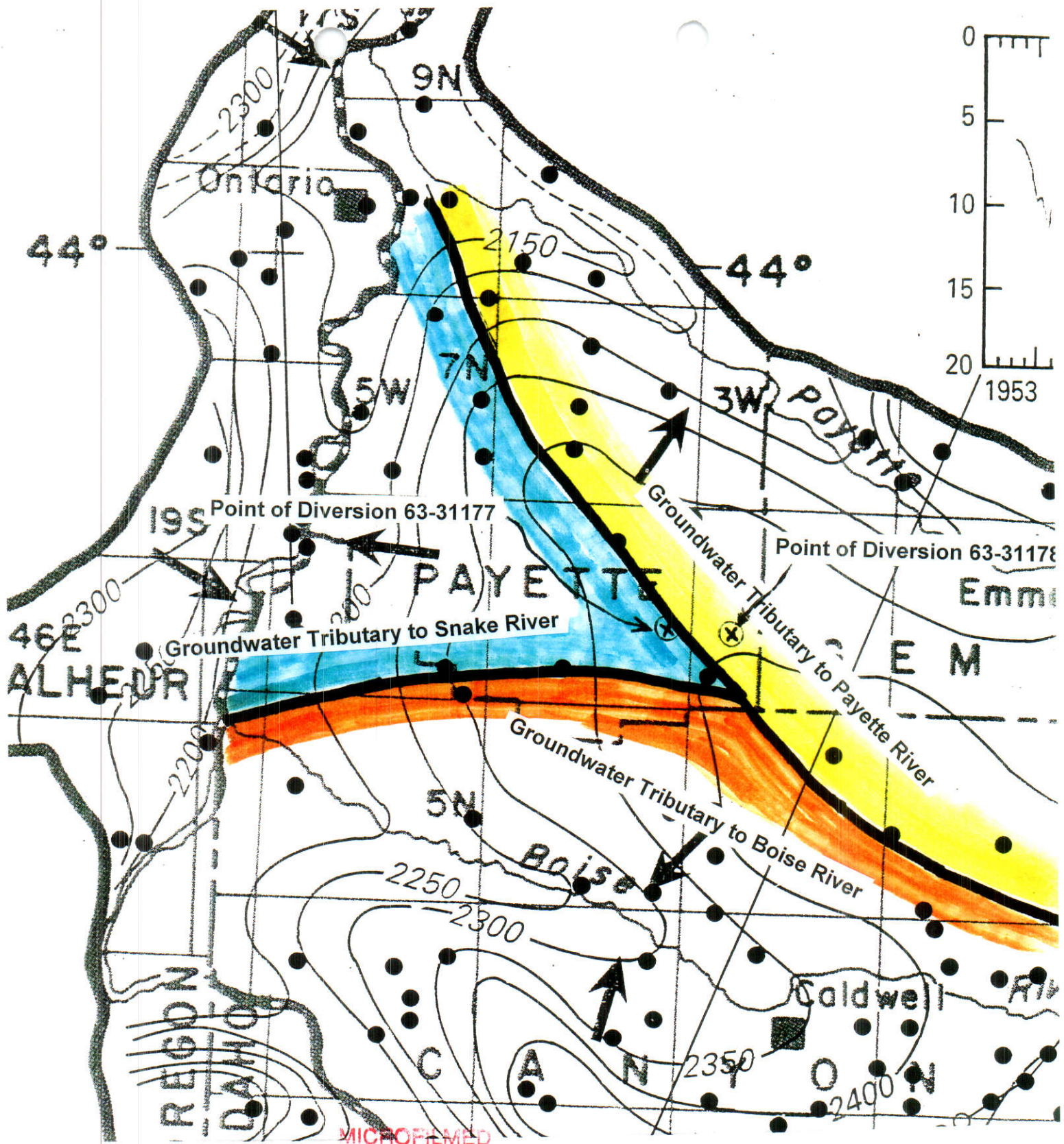


Figure 2 – USGS Water Table Contour Map
(points of diversion location and groundwater divides added by Scanlan)

Source: "Configuration of the Water Table and Depth to Water, Spring 1980, Water-Level Fluctuations, and Water Movement in the Snake River Plain Regional Aquifer System, Idaho and Eastern Oregon", by G.F. Lindholm and others (USGS Hydrologic Atlas HA-703, 1988).

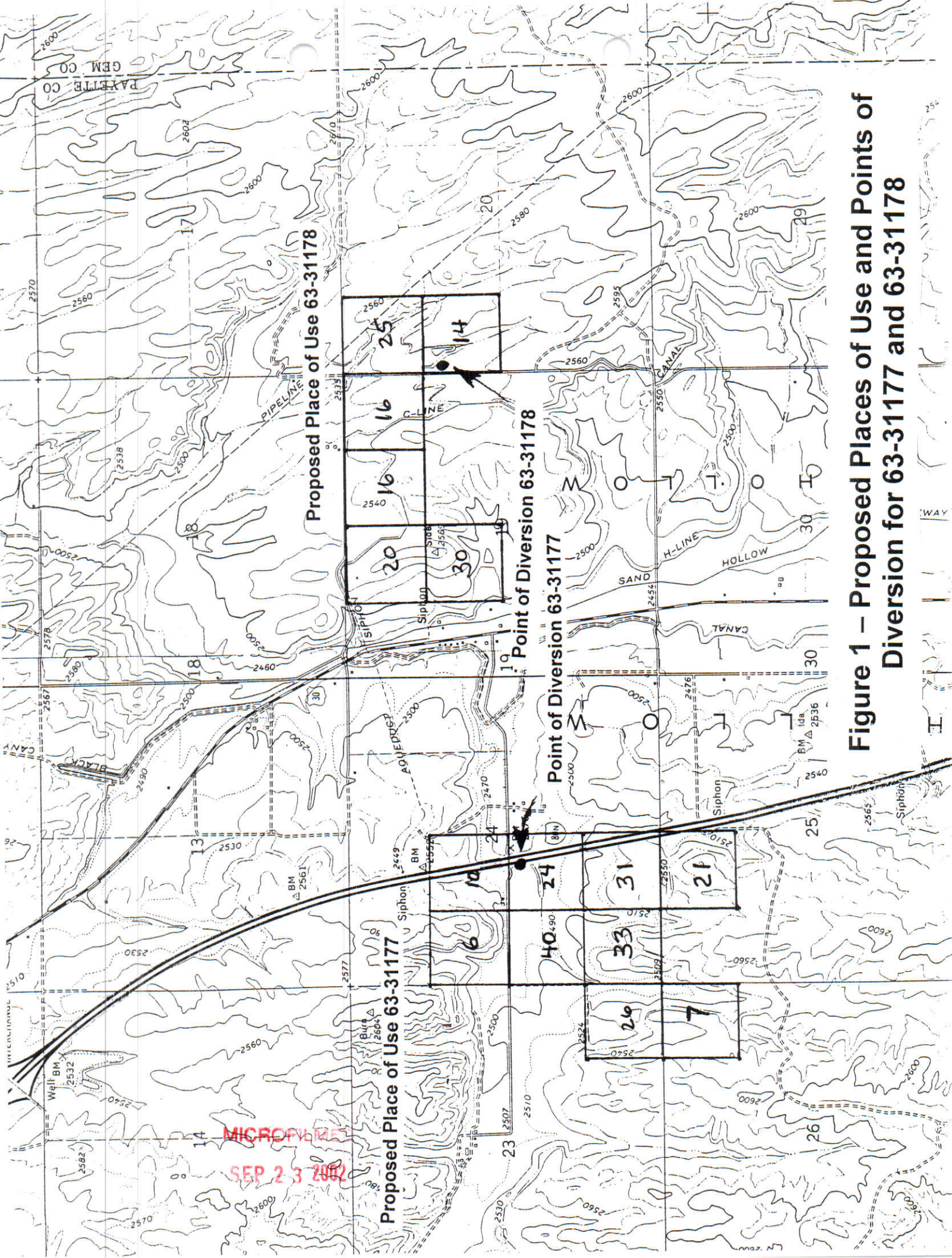
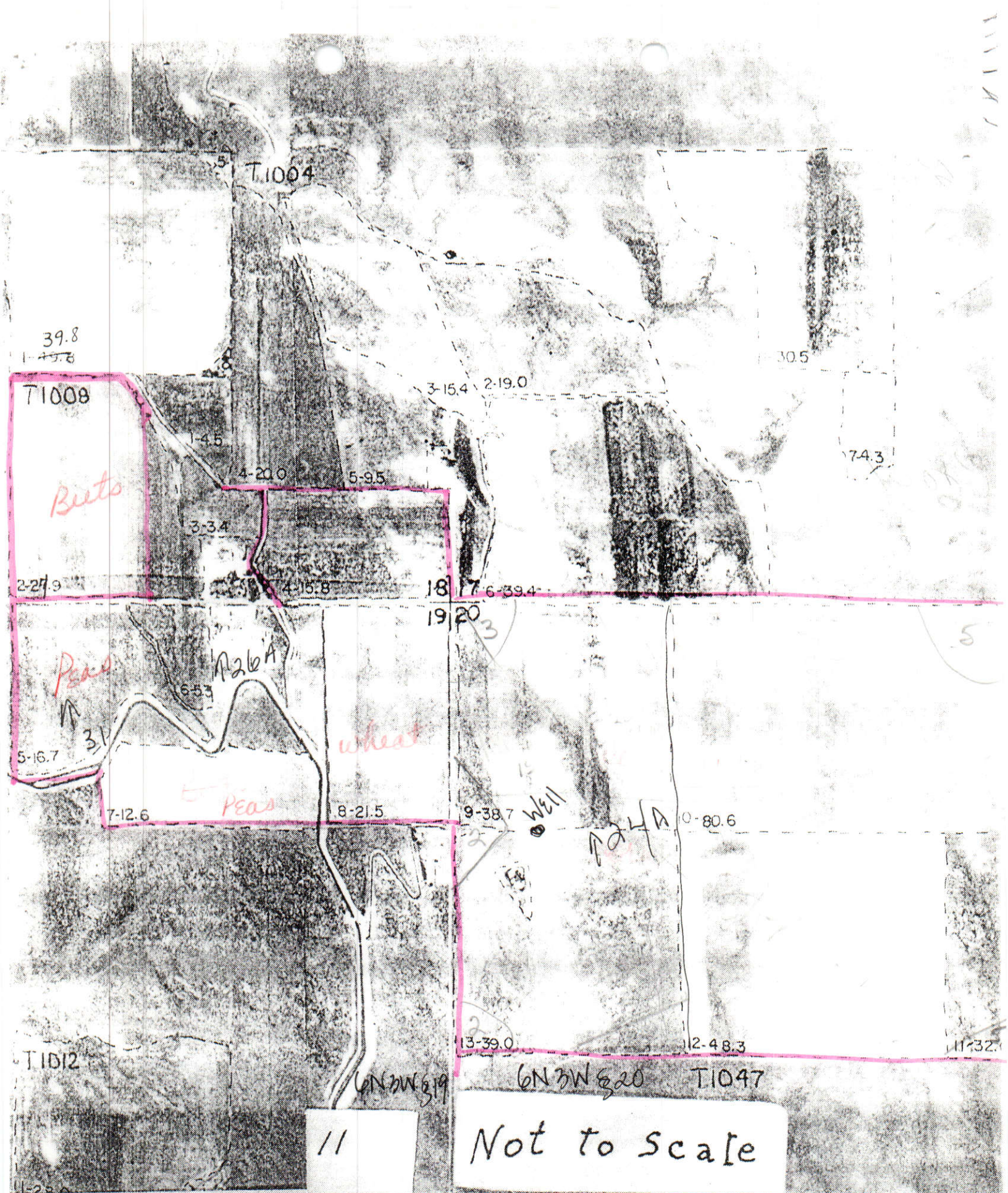


**Figure 1 – Proposed Places of Use and Points of
Diversion for 63-31177 and 63-31178**

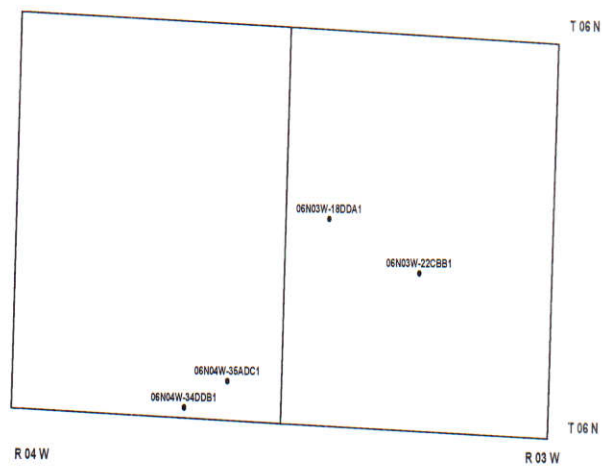
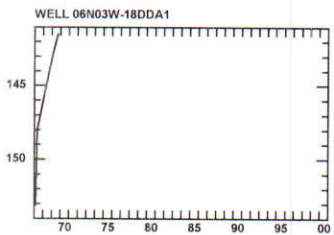
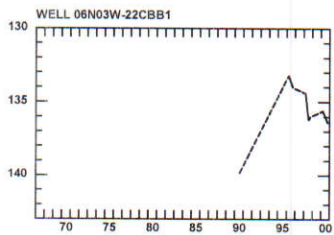
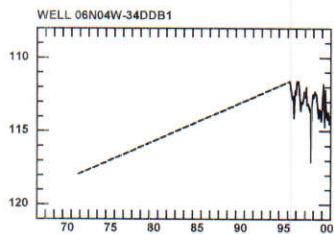
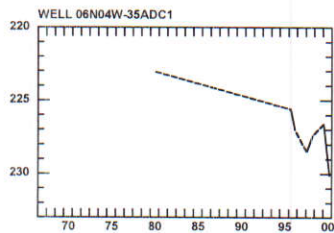


11

Not to Scale

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Project for Requests
Hydrographs of Observation Well Network



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State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31178

Priority: 03/29/2001

Maximum Diversion Rate: 2.42 CFS

This is to certify, that ROD & MAUREEN FRISBY FAMILY LTD PARTNERSHIP
6208 S E 8TH AVE
CALDWELL ID 83605

has applied for a permit to appropriate water from:

Source: GROUND WATER

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>
IRRIGATION	03/01 to 11/15	2.42 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SW 1/4 NW 1/4 Sec. 20, Twp 06N, Rge 03W, B.M. PAYETTE County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N 03W 19	38.0	38.0															76.0
06N 03W 20						25.0	20.0										45.0

Total Acres: 121

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before July 1, 2007.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
6. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

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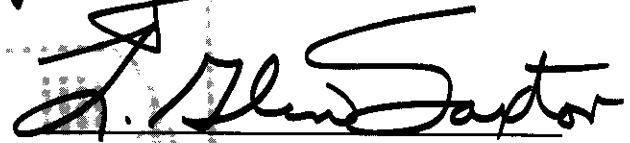
State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-31178

CONDITIONS OF APPROVAL

7. The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted for irrigation purposes under this right.
8. If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
9. Use of water under this right may be affected by an agreement between the protestant and the right holder.
10. This permit is for the use of ground water and is subject to administration as a water right from connected sources in the Snake River Basin in accordance with applicable law.
11. This permit for the use of ground water shall be junior to, and subject to, the water rights of the United States Bureau of Reclamation heretofore appropriated, including, as authorized by applicable law, re-use of water under such water rights.
12. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
13. Water bearing zone to be appropriated is 200 to 450 feet.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 10th day of July, 2002


for
KARL J DREHER, Director

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SEP 23 2002

****AMENDED****

Ident. No. 63-31178

RECEIVED

MAY 06 2002

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED

JUL - 8 2002

Department of Water Resources

208-459-0875

1. Name of Applicant Rod & Maureen Frisby Family LTD Partnership Phone

Mailing address 6208 S.E. 8th Avenue, Caldwell, ID 83607

2. Source of water supply ground water which is a tributary of NA

3. Location of point of diversion is Township 6N Range 3W Sec. 20 in the 1/4
SW 1/4, NW 1/4, Govt. Lot , B.M., Payette County;

additional points of diversion if any:

4. Water will be used for the following purposes:

Amount 2.42 for irrigation purposes from 3/1 to 11/15 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

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

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

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

5. Total quantity to be appropriated is (a) 2.42 and/or (b)
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source existing well, new or upgraded
pump system

b. Height of storage dam feet; active reservoir capacity acre-feet; total
reservoir capacity acre-feet

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

d. Is ground water with a temperature of greater than 85°F being sought? no

e. If well is already drilled, when? 1978?; Drilling firm

Well was drilled for (well owner) Harmon Hughes; Drilling Permit No.

7. Time required for completion of works and application of water to proposed beneficial use is 5 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.

AMENDED

MICROFILMED
JUL 23 2002

9. Description of place of use:

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

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6N	3W	19	38	38															76
		20						25	20										45

Total number of acres to be irrigated 121

10. Describe any other water rights used for the same purposes as described above. 63-10785

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: This amended application seeks to revise the place of use proposed for irrigation under 63-31178.

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

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

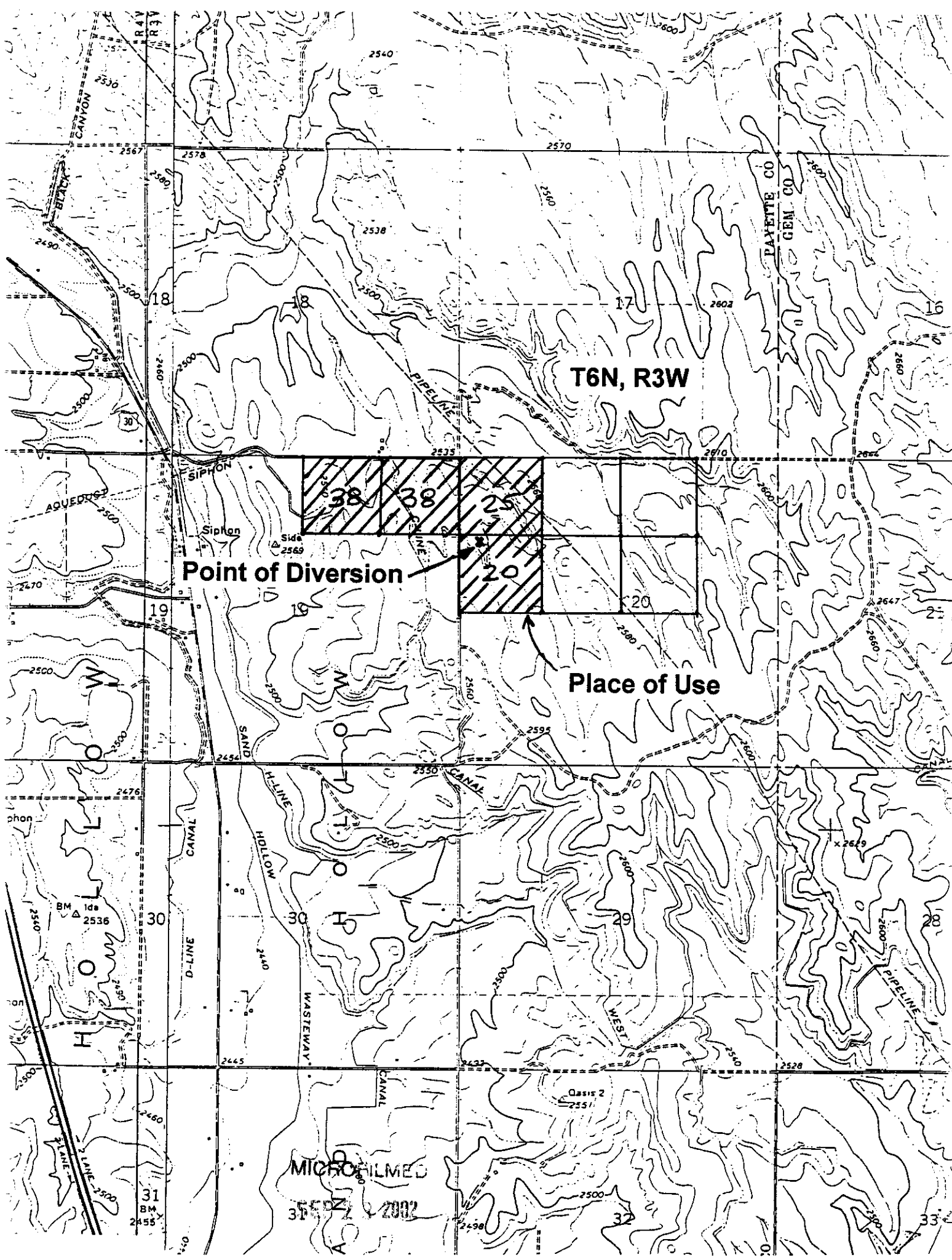
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Haween M. Trisky
Signature of Applicant (and title, if applicable)

Received by LM Date 5/6/02 Time 4:40 Preliminary check by ly
Fee \$ _____ Received by LM # W027381 Date 2/20/01
Publication prepared by ST Date 11/7/14 Published in Indep. Enterprise
Publication approved ST Date 11/29/01

no need to re-adv + W027502 paid 3/12/01
no fee required for amendment



T6N, R3W

Point of Diversion

Place of Use

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3550Z 2002

RECEIVED

FEB 20 2001

FORM 202
12/99WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Ident. No. 63-31178*Charger to app
approved 3/29/01
NT*1. Name of Applicant Rod and Maureen Frisby Family Limited Partnership 208-459-0875
Mailing address 6208 South East 8th Ave., Caldwell, ID 836052. Source of water supply groundwater which is a tributary of Payette River3. Location of point of diversion is Township 6N Range 3W Sec. 20 in the SW $\frac{1}{4}$,
NW $\frac{1}{4}$, Govt. Lot _____, B.M., _____ County;

additional points of diversion if any: _____

4. Water will be used for the following purposes:

NT Amount 0.48-2.42 for irrigation purposes from 3/1 to 11/15 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

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

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

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

5. Total quantity to be appropriated is (a) 2.42-48 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source use of existing well; any
modifications necessary to appropriate the water claimed herein.b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet

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

d. Is ground water with a temperature of greater than 85°F being sought? noe. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. NT7. Time required for completion of works and application of water to proposed beneficial use is 5± 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. _____

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SEP 23 2002

3. Description of place of use:

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

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6N	3W	19	16	16			20			30									82
6N	3W	20					25	14											39

Total number of acres to be irrigated 121

10. Describe any other water rights used for the same purposes as described above. 63-10785 (same well)

63-31176 (wastewater appl), BCID water

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: Water bearing zone to be appropriated is 200 to 450 feet.

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

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

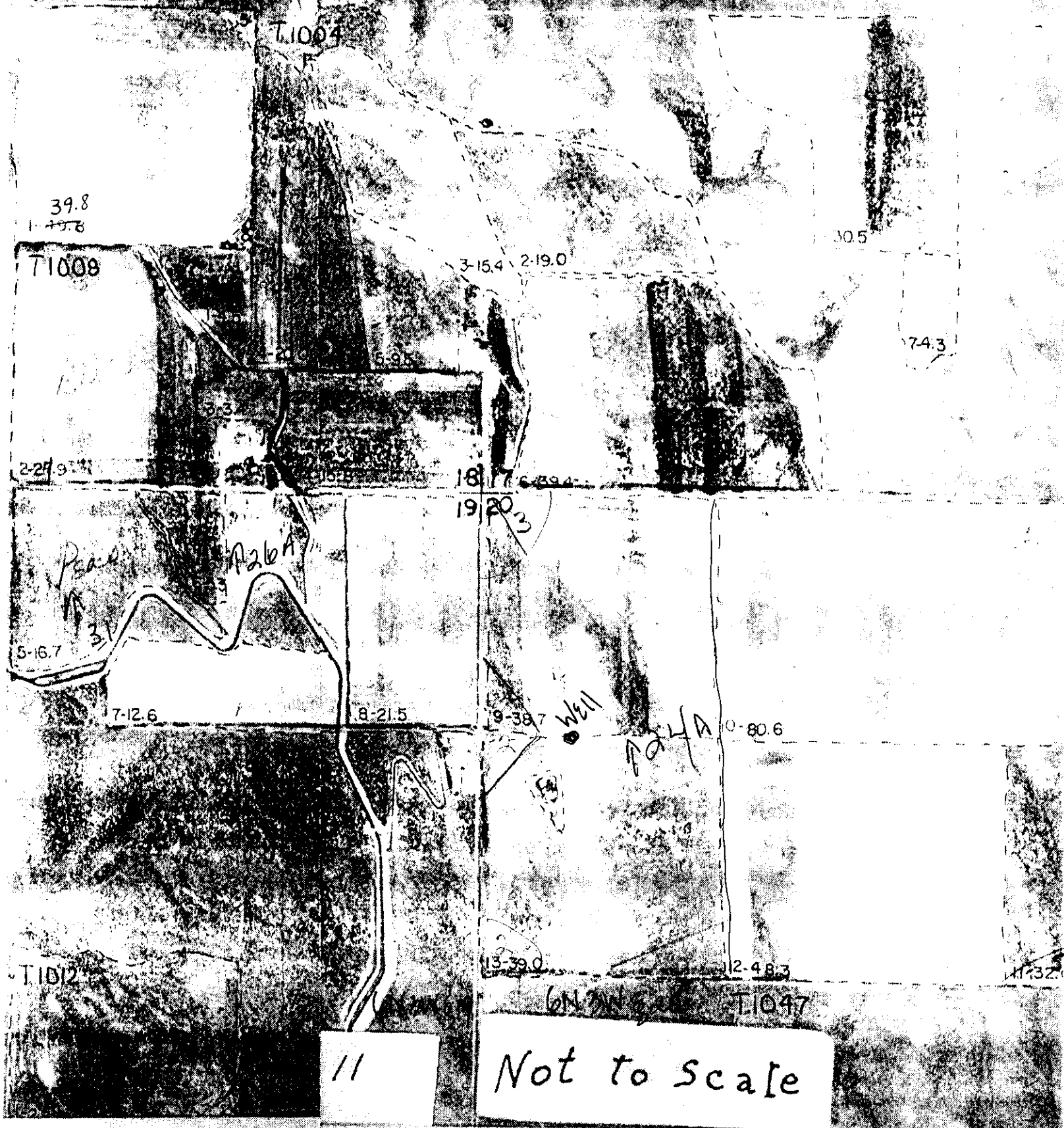
Bob Jones Maureen Truby
 Signature of Applicant (and title, if applicable)

+ W027502 paid 3/29/01

Received by LM Date 2-20-01 Time 4:40 Preliminary check by g
 Fee \$ 250.00 Received by LM # W027386 INDEPENDENT ENTERPRISE
 Publication prepared by AT Date 11-7-14-01 Published in AT
 Publication approved AT Date 11-29-01

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SEP 23 2002



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SEP 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 11, 2002

ROD & MAUREEN FRISBY FAMILY LTD PARTNERSHIP
6208 S E 8TH AVE
CALDWELL ID 83605

RE: Permit No. 63-31178

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

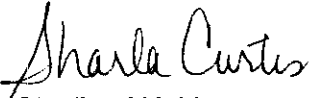
The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7946.

Sincerely,


for Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure(s)

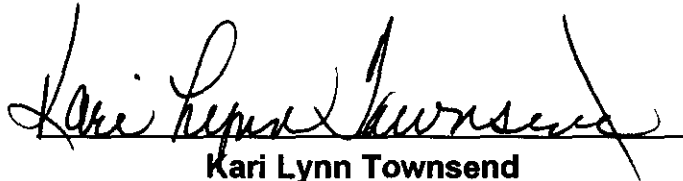
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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2002 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 63-31178

**ROD & MAUREEN FRISBY FAMILY LTD PARTNERSHIP
6208 S E 8TH AVE
CALDWELL ID 83605**


**Kari Lynn Townsend
Secretary**

**MICROFILMED
SEP 23 2002**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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SEP 23 2002

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

APPLICATION FOR PERMIT
STATE OFFICE ANALYSIS
Reviewed by Sharla Curtis on 7/9/02

No. 63-31178 Name: Friskay Corp. Officers N/A Ad ok ✓ Govt Lots

AREA OF CONCERN: No/Yes Moratorium GWMA TRUST/NON-TRUST

GROUNDWATER: (✓Flow Chart)

DRILLING PERMIT

All wells - **046**
Basin 34 - 084 (if necessary)
WMD - North/East/West
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 067
~~WMD~~
Supp irr (irr = only use) - **065-104**
Supp irr (+ other uses) - 100-105
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M

edit for partial overlap

LOCATION:

Boise Front LoGeo - 058 (<85 GW)
Mitigation - 121

Trust - 051 (consumptive uses)
Non-Trust - 048 (consumptive uses or non-cons. > 1.0 cfs)

USES:

~~STORAGE~~ - 18C-01H-01P-18B-NA
IRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac - R62/R63/R64/R65 (0.02 cfs/ac)
STOCKWATER - R37 (BLM/FS)-111 (instream stock)
MINING - 054-106
HEAT/COOL - R07 (injection well)
FIRE PROT - 077
COMMERCIAL/
INDUSTRIAL - 106-R07
DAIRY - 082-WD8
POWER - 17H or 17K (+uses)-17G (under FERC)
or 17M (not FERC regulated)
025-027-R22-08A

SURFACE WATER: (✓Flow Chart)

F&G contacted - Yes/No Response
In/Above MSF - WB9

PLANNING REVIEW/RESPONSE

WD - R04 (WD#)
≤ 0.20 cfs/others - 01H, 01P or No MD
> 0.20 cfs - 01J

SPRINGS/SINK, INACTIVE WD or WD

≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M or No MD

RIVER BASINS: (SW special considerations)

Snake R (01) - W23, N/A
(02,03) - 007 (w/ remark WB9 if above Weiser)
Payette R (65) - W23, 047 (Payette Lake)
Salmon R (70's) - 029 (fish screens)
Weiser R (67) - 086-087

USES:

MUNICIPAL
Restricted area - 022,075
Irr., GW supp to SW - 102
Future needs - 007,109
FISH PROP - 029 (70's only)-007-122-106
DOMESTIC
Surface water - WB5 (Big Wood/Boise above Star Bridge)
- 27A (Payette R)
> 1 in restricted area - 070-071-075 (no parks/common areas)
Irr separate or none allowed - WB5
GW w/irrigation from SW evident - 065-104
Moratorium approvable - W03 (2500 gpd - meets domestic def
i.e. D/convenience store)

BENEFICIAL USE DUE: 7/01/2007

MISC CONDITIONS/REMARKS: ~~Spec~~

Protested - 020-W19
Development Period
> 1 yr - 26A
Ownership - 004
Non-consumptive - 027
Water Quality - 106-R07

Multiple pd's per 1/4 - W32
Subd lot desc (pd) - W59
Subd lot desc (pu) - W60
Use definitions - W02 example - S/50 range
Pre-1987 development - 068-074 (allow 120 days for proof due)
Single pd intended - 076

IRRIGATION SEASON 3/1 - 11/15 (Per updated map)

IRR VOLUME/ACRE 4.5

OTHER CONDITIONS/REMARKS

WB zone 200-450 ft.

COMMENTS

Spec cond from stipulation

63-10785 overlap

this app adds water/acres

January 2001

II DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: 6 DATE: 3/6/01 APPLICATION: 63-31178

REQUIRED INFORMATION

- ☒ Name: (If applicant is a corporation or partnership, names and addresses for the director, officers, and other partners must be included.)
- ☒ Address:
- ☒ Source: (See USGS Quad for names of water sources)
- ☒ Point of Diversion: (10 acres for spring, lot & block descriptions for Subdivisions, local name)
- ☒ 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: (show T, R, S, QQ &/or QQQ)
- ☒ Subdivision plat: (for > 1 home in restricted area. $\geq$ 5 homes in non-restricted area)
- ☒ Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)
- ☒ Correct fee paid

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Gov't. Lots:

JUL - 8 2002

P/D

P/U

Department of Water Resources

TYPICALLY:

WATER BEARING ZONE AND
FUTURE MITIGATION

ADDITIONAL INFORMATION

☒ ADVERTISE REMARK(S) (Reviewer identify which remarks)

YES NO "PROCESSING DELAYED PENDING
BACKLOG REDUCTION." $\rightarrow$ COMMENT ADDED

- ☒ Overlapping place of use: (Describe source & relationship to present application on next page.)
- ☒ Overlapping point of diversion.
- ☒ Critical groundwater area:
- ☒ Groundwater management area:
- ☒ 1992 moratorium: $\leftarrow$ DELAY LETTER SENT DATE _____
- ☒ Surface water source, IDFG letter needed.
- ☒ Protected river or minimum flow reach, notify water planning bureau.
- ☒ E-mail to SCA staff: (perennial stream, non-pump diversion &/or any mining).
- ☒ E-mail to Dam Safety staff: (for any storage)
- ☒ Mitigation plan: Check any that apply.
- ☐ immediate = acceptable plan required and submitted.
- ☒ future = open areas, acceptance of condition of approval is in file.
- ☒ Send power requirement letter &/or fish farm requirement letter.
- ☒ Power residency affidavit:
- ☒ Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres: (If yes, attach Large Diversion supplementary analysis sheet.)
- ☒ *REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT

amounts, season of use, P/U correction
request to process + water bearing zone

Date Requested 2/23/01 Date Response Received 2/26/01

PROCESSING

APP. NO. 1-31178

YES NO

☒ ☐ In form for advertising:
☒ ☐ Statewide advertising: (> 10 cfs &/or 1000 af)
☒ ☐ Fee amount, receipt number and date recorded on application:

SEND COPIES TO: NOTE IF E-MAIL COMMENT LETTER USED.

YES NO

☐ ☒ I.D. Health & Welfare
☐ ☒ I.D. District Health
☐ ☒ I.D. Fish & Game
☐ ☒ I.D. Lands

YES NO

☐ ☒ U.S. BLM
☐ ☒ U.S. Forest Service
☐ ☒ Water Dist. # _____
☐ ☒ Water Planning Bureau
☐ ☒ Other _____

FINAL REGIONAL PROCESSING REVIEW:

YES NO

☒ ☐ Affidavit of publication received:
☒ ☐ Application published correctly: If not, record action taken.

☒ ☐ Publication dates and paper recorded on application:

☐ ☒ Final date for protest 11-26-01

☐ ☒ Protests received.

☐ ☒ Recommendations attached:

☐ ☒ Measuring device required:

☐ ☒ Water delivered by water master? District # _____

☒ ☐ Special conditions of approval or cover letter: 046, 121, Two conditions contained on page 2 in stipulation signed by the parties on May 24, 2002 to resolve the protest must be included as part of the approval. See also memo by Lori Graves dated 6/14/02.

See below for additional information

Recommended Date or Priority 2/20/02Recommended by: Chy S Date: 7/6/02

ADDITIONAL INFORMATION:

overlaps - BCIID water
A63-10785 - this app includes
the 63 expanded
acres listed on
the claim

MEMORANDUM

DATE: 6/14/2002

FROM: Lori Graves 

TO: Gary Spackman

RE: Frisby Applications 63-31176, 63-31177, 63-31178

Applicants filed the above applications as a result of policy changes enacted by BCID regarding water spreading.

The first obstacle the applicants encountered regarding ground water applications 63-31177 and 63-31178 was the fact that they are located in basin 63 and therefore subject to the to the Boise River basin administrative hold. Terry Scanlan submitted supporting documentation that indicated that ground water flow at the existing and proposed well sites is towards the Snake River and Payette River where water is available for appropriation.

The second obstacle the applicants encountered was an objection filed by the US Bureau of Reclamation (USBOR). After much negotiation, a stipulation was filed to resolve the protests in which the applicants, USBOR and BCID agreed to inclusion of specific conditions on **any permit or license** that is issued to applicants by the Department in connection with the applications.

Obviously the parties involved were aware that an amendment to application no. 63-31178, new application 63-31505, and new application for transfer on license 63-10785 were in the works. The Department received these three new filings from the applicants May 6, 2002. The new filings were filed to consolidate ground water use from the existing well to lands not irrigated with BCID water. In combination, the three applications propose a total diversion rate of 6.04 cfs from the existing well for 302 acres irrigation.

Amended application no. 63-31178 did not require re-advertising because none of the application components were changed. The acres were consolidated to quarters that were part of the original advertised p/u. No increase in total acres or flow rate was proposed.

Applicants agreed to withdraw wastewater application 63-31176 because USBOR plans to retain control of said wastewater.

Both ground water applications 63-31177 and 63-31178 should be approved as filed and conditioned in accordance with the stipulation.

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Application 63-31505 and transfer 69956 have been submitted to advertising. A copy of the stipulation was included in those files. Both these applications should also be conditioned in accordance with the stipulation.

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SEP 23 2002

Michael C. Creamer (Idaho State Bar #4030)
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
Telephone: (208) 388-1200
Facsimile: (208) 388-1300
S:\clients\63271\Stipulation.doc

Attorneys for Applicant Frisby Family Limited Partnership

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

**IN THE MATTER OF APPLICATION
FOR PERMIT NOS. 63-31177 AND 63-
31178 IN THE NAME OF FRISBY
FAMILY LIMITED PARTNERSHIP**

STIPULATION

Applicant Frisby Family Limited Partnership ("Frisby") through its attorneys Givens Pursley LLP, Protestant United States Bureau of Reclamation, through J. William McDonald, Regional Director, Pacific Northwest Region ("USBOR"), and Intervenor Black Canyon Irrigation District ("BCID"), through its attorneys McDevitt & Miller, LLP (collectively the "Parties") stipulate as follows:

1. Frisby has filed the above-captioned applications for permit ("Applications") to appropriate ground water to supply water for irrigation use. The intended place of use of such water includes lands within the boundaries of the BCID.

2. USBOR delivers water for irrigation of lands within the boundaries of BCID pursuant to contract with BCID.

3. USBOR has protested ("Protests") the Applications.
4. BCID has intervened in the contested case resulting from the USBOR Protests.
5. To resolve the Protests Frisby, USBOR and BCID agree to inclusion of the following conditions in any permit or license that may be issued to Frisby by the Department in connection with the Applications:
 - a) This [permit/license] is for the use of ground water and is subject to administration as a water right from connected sources in the Snake River Basin in accordance with applicable law.
 - b) This [permit/license] for the use of ground water shall be junior to, and subject to, the water rights of the United States Bureau of Reclamation heretofore appropriated, including, as authorized by applicable law, reuse of water under such water rights.
6. Provided the Department will incorporate the above conditions in the form set forth herein in any permit or license issued in connection with the Applications, USBOR agrees to withdraw its Protests, and USBOR and BCID agree to the Department's further processing of the Applications without a hearing.
7. The Parties understand that the Department may include additional conditions in any permit or license as it deems appropriate, and provided such additional conditions are not inconsistent with the above conditions, they shall not negate the withdrawal of Protests effected by this Stipulation.
8. This Stipulation is the result of negotiations, and these negotiations involved written and oral communications between and among the Parties and their

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SEP 23 2002

attorneys. The Parties agree that all preceding and contemporaneous oral and written statements, understandings, representations, warranties, and promises of any kind whether consistent or inconsistent herewith, are agreed to be of no force or effect for any purpose whatsoever except as may be expressly stated in this Stipulation. This Stipulation represents the complete and final agreement of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous consistent and inconsistent statements, representations, warranties, understandings, negotiations, and agreements, if any among the Parties hereto. This Stipulation may not be supplemented, modified or amended by evidence, either oral or written, of any such matters or by course of dealing, but only by the written agreement of the Parties executed with the same formality of this Stipulation. The Parties hereto hereby acknowledge that the provisions contained in this Stipulation were expressly bargained for and that the plain meaning of those provisions memorializes the intent of the Parties hereto.

[End of text]

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DATED this 24th day of May, 2002.

GIVENS PURSLEY LLP

BY: 

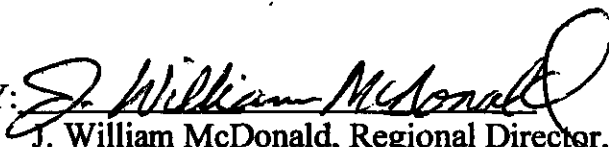
Michael C. Creamer
Attorney for Applicant Frisby Family
Limited Partnership

MCDEVITT & MILLER, LLP

BY: 

Charles F. McDevitt
Attorney for Intervenor Black Canyon
Irrigation District

UNITED STATES DEPARTMENT OF
INTERIOR, BUREAU OF RECLAMATION

BY: 

J. William McDonald, Regional Director,
Pacific Northwest Region

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CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of May, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

☐ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☒ Hand Delivery

Gary Spackman
Western Regional Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

☐ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☒ Hand Delivery

Kathleen M. Carr
U.S. Department of the Interior
Office of the Field Solicitor
550 West Fort Street, MSC 020
Boise, ID 83724-0020

☐ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☒ Hand Delivery

Charles F. McDevitt
McDevitt & Miller, LLP
420 West Bannock Street
P.O. Box 2564
Boise, ID 83702

☐ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☒ Hand Delivery

Michael C. Creamer
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720

☐ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☒ Hand Delivery

Kathleen M. Carr

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SCANLAN ENGINEERING

Groundwater and Environmental Engineering

RECEIVED

May 8, 2002

MAY 10 2002

WATER RESOURCES
WESTERN REGION

Lori Graves
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Fees for Water Right Applications – Frisby Family Limited Partnership

Dear Lori:

As a follow-up to our telephone conversation today, I have enclosed a check for \$540 to cover the filing fees for two of the three water right applications that I submitted to your office on behalf of the Frisby Family Limited Partnership on April 30, 2002. I understand that you determined the following.

- The filing fee for Application for Transfer of Water Right 63-10875 is \$250. In my April 30 letter, I did not include a filing fee for the transfer because the application does not propose irrigation in any $\frac{1}{4}$ $\frac{1}{4}$ sections that were not previously licensed under this water right. Since no other changes to the license are proposed, we assumed that the change could be accomplished administratively without legal notice. I understand that your office has determined that legal notice is required, and therefore a filing fee is necessary. — For 52 acres affected by transfer (.30 cfs)
- The filing fee for the new Application for Permit is \$290 rather than \$330 submitted with my letter of April 30. I understand that you are returning the \$330 check to me.
- The third application that I submitted was an amendment of Application for Permit 63-31178. I understand that the proposed changes to the application can be made administratively and that no filing fee is required.

Thanks for your help on this matter. Please contact me if you have any additional questions or comments.

Sincerely,



Terry M. Scanlan, P.E., P.G.

Cc: Mike Creamer
Rod & Maureen Frisby

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600 East River Park Lane, Suite 105
Boise, Idaho 83706

SEP 23 2002

Telephone (208) 383-4140
Facsimile (208) 383-4156

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

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MAY 06 2002

WATER RESOURCES
WESTERN REGION

April 30, 2002

Gary Spackman
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Water Right Applications – Frisby Family Limited Partnership

Dear Gary:

On behalf of Frisby Family Limited Partnership, Scanlan Engineering is pleased to submit the following three water right applications.

- (1) Application for Transfer of Water Right 63-10785, which is intended to clarify the distribution of irrigated acres within the currently described place of use for this licensed water right. The diversion rate of 1.70 cfs for irrigation of 292 acres (the licensed diversion rate and total acres) will not be changed.
- (2) Amended Application for Permit 63-31178, which is intended to clarify the distribution of irrigated acres within the same $\frac{1}{4}$ $\frac{1}{4}$ s proposed in the original Application for Permit. The original request for a diversion rate of 2.42 cfs for irrigation of 121 acres has not been changed. The 121 acres proposed for irrigation under 63-31178 will overlap lands irrigated by 63-10785.
- (3) A new Application for Permit proposes diversion of 1.92 cfs for irrigation of 302 acres. This application seeks to appropriate supplemental water for the 292 acres of land irrigated under 63-10785 and 63-31178, and a primary supply for up to 10 acres of additional irrigated area.

In combination, the three water rights propose a total diversion rate of 6.04 cfs (2,711 gpm). This combined diversion rate will provide no more than 0.02 cfs/acre (9 gpm/acre) over the 302-acre irrigated area. The applications have been prepared to allow the Frisby's to continue to irrigate their farm following recent changes in policy by the US Bureau of Reclamation and the Black Canyon Irrigation District that now require them to separate their lands that are irrigated with groundwater from their lands that are irrigated with surface water supplied by the Bureau and Black Canyon Irrigation District.

I have enclosed a \$330.00 check for the filing fee associated with the new application for permit.

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600 East River Park Lane, Suite 105
Boise, Idaho 83706

MAY 23 2002

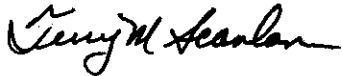
Telephone (208) 383-4140
Facsimile (208) 383-4156

Because the Amended Application for Permit 63-31178 does not propose irrigation in any $\frac{1}{4}$ $\frac{1}{4}$ sections that were not previously listed on the original application, and does not propose changes to the quantity, point of diversion, purpose or season of use originally applied for, we have assumed that this amendment can be accomplished administratively without the need for an additional filing fee or further legal notice. Thus, I have not included a filing fee with the application for to amend application for permit 63-31178.

Similarly, the Application for Transfer of water right 63-10785 does not propose irrigation in any $\frac{1}{4}$ $\frac{1}{4}$ sections that were not previously licensed under this water right. Since no other changes to the license are proposed, we assume that the change can be accomplished administratively without legal notice. Thus, I have not included a filing fee with the application for transfer.

Please contact me if you disagree with our assumptions or if you have any questions concerning these applications.

Sincerely,



Terry M. Scanlan, P.E., P.G.

Cc: Mike Creamer
Rod & Maureen Frisby

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SEP 23 2002

GIVENS PURSLEY LLP

RECEIVED

MAY 10 2002

WATER RESOURCES
WESTERN REGION

LAW OFFICES

277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Jeffrey A. DeVoe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Elguren
Timothy P. Fearnside
Jeffrey C. Fereday
Karl T. Klein
Deborah K. Kristensen
Anne C. Kunkel

Franklin G. Lee
David R. Lombardi
D. David Lorelio, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller

Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

Via Facsimile and U.S. Mail

May 9, 2002

Kathleen Marion Carr
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street
Boise, ID 83724

Re: Application for Permit Nos. 63-31177 and 63-31178 in the Name of Frisby
Family Limited Partnership
Our File No. 6327-1

Dear Kathleen:

I had the opportunity to speak with Karl Dreher and Phil Rassier yesterday concerning the language you forwarded as a "counter offer - Reclamation final language" on May 6, 2002. I hope that the door is not closed to further consideration of this since Mr. Dreher has suggested very minor changes that I have included in redline form near the end of this letter.

Frankly, I feel that the Director's comments are good ones, in that they account for the Department's responsibility to make new appropriations subject to all prior rights, not just those of a particular protestant. They also minimize potential ambiguity involved in, for example, the use of the words "waste" or "return flow," which as you know are legal terms of art that can have different legal significance in different settings. For example, I could argue confidently in the Idaho and U.S. Supreme Courts that the Bureau has no legal right to "waste" water, let alone reuse such "waste." On the other hand, I'll stand up with you at the podium and argue that one can appropriate "waste water," subject to the upstream appropriator's right to cease "wasting" it.

Similarly, the term "return flows" typically applies to that portion of the diverted water that has been placed to beneficial use without waste, that percolates below the root zone (in the irrigation setting) and has returned to the public supply where it is again

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SEP 23 2002

Kathleen Marion Carr

May 9, 2002

Page 2

subject to appropriation by others (I'm not making this up, the case law bears me out). However, I expect that the Bureau, in drafting its contract with BCID, looked at "return flow" in a different and more limited context, otherwise in the Boise River, the Bureau presumably would be staking claim to all the water in the Boise River below the Star Bridge during the months of July, August and September.

The Director's comments do not preclude reuse, and they do not prejudice the extent to which reuse of various "sources" such as waste, seepage or return flow is permitted or prohibited in any given circumstance. Instead, that is left, as with the Bureau's proposed language, to determination at the appropriate time under "applicable law."

I think that by now we all are revolving in extremely tight orbits around the same point in space. I find the legal issues fascinating, which probably explains why I have been so involved in water law for the past 18 years, and so I could come up with ways to tweak this language a little bit too. But, the expense and significant economic impact that further abstract discussion about the nature and extent of the Bureau's water right will produce in this proceeding concerning the Frisbys' application for an admittedly junior appropriation seems unjustified.

The following incorporates the Director's comments:

1. This [permit/license] is for the use of ground water and is subject to administration as a water right from connected sources in the Snake River Basin in accordance with applicable law.
2. This [permit/license] for the use of ground water shall be junior to, and subject to, all prior water rights including, but not limited to, the water rights of the United States Bureau of Reclamation heretofore appropriated, including, reuse of water under such water rights as authorized may be determined by applicable law the right to reuse project waste, seepage, and return flows.

The Bureau's primary concern here seems to be to establish as a condition in the Frisbys' water right permit and license, a description of the Bureau's water rights that becomes precedent on that issue in future administrative proceedings. As we discussed previously, the Frisbys do not have a problem with that provided the Bureau's rights can

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SEP 23 2002

Kathleen Marion Carr
May 9, 2002
Page 3

be described. But, until the Bureau's rights have been adjudicated in the SRBA, a precise description is not possible. I had proposed to you that since any permit issued in this matter likely would include a five-year period within which to prove up on their beneficial use and obtain a license, the Frisbys could stipulate now to inclusion of a condition in their license making their water right subject to the Bureau's rights as they ultimately are determined in the SRBA. I would go so far as to suggest that we could agree now to attach a copy of the Bureau's partial decree to the license provided the Bureau would agree to allow the permit to be issued.

I would very much appreciate it if you could discuss this with Bill McDonald as soon as possible and get back to me to advise where we are in these discussions.

Sincerely,



Michael C. Creamer

cc: Rod and Maureen Frisby
Charles McDevitt
Karl Dreher
Phil Rassier
Gary Spackman

MCC:kdt

S:\Clients\6327\1\Corr\2002-05-09 MCC Ltr to K. Carr re 05-08-02 IDWR Comments.doc

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SEP 23 2002



IN REPLY
REFER TO:
PN-3110
WTR-1.10

United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234

RECEIVED

APR 25 2002

WATER RESOURCES
WESTERN REGION

April 23, 2002

FOR SETTLEMENT PURPOSES ONLY

Mr. Gary Spackman
Hearing Master
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Re: Bureau of Reclamation Protests of Rod and Maureen Frisby's
Applications Nos. 63-31177 and 63-31178

Dear Mr. Spackman:

We are in receipt of IDWR's counter proposal to the language that Reclamation and the Frisby's worked out to settle Reclamation's protest to the subject water right applications. The purpose of this letter is to share with you an alternative settlement proposal that will, hopefully, alleviate concerns that IDWR may have had with the earlier proposal, and at least explain our rationale for our new proposal.

Thus, our suggested counter to your language is as follows:

1. This ground water [permit/license] will be administered from connected sources of water in the Snake River Basin in accordance with applicable laws and doctrines.

We recognize that you included *Idaho's prior appropriation doctrine* in the above paragraph in place of the last phrase, but the United States was unable to concur to that language in the SRBA (Basin Wide 5), and for the same reason we cannot agree to it now. We believe if we agreed to your language that a future court may preclude the Bureau of Reclamation from asserting a claim or defense it would have otherwise had under federal law pursuant to the Supreme Court's decision in California v. United States. We believe that the state court would likely interpret our concurrence to your phrase as a waiver of a Congressionally authorized directive, and as such, we have no authority to make that waiver. Therefore, our more general language as provided above protects the status quo of whatever rights Congress has given to Reclamation, and how that claim or defense may or may not be interpreted by a court.

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SEP 23 2002

A Century of Water for the West
1902-2002

The second provision we are providing for IDWR's consideration is as follows:

2. Use of ground water under this [permit/license] is subject and subordinate to (a) present and future authorized uses of any existing water rights of the United States Bureau of Reclamation, and which authorized uses include recapture and reuse of project waste, seepage and return flows in project facilities and (b) similar authorized uses of any other existing connected water rights.

We have narrowed the project water universe we are protecting to that which is utilized and found within project facilities. However, again, if Congress were to authorize a *future* project use, we need to protect that right. This may or may not occur, but if it did, it is likely that Congress would only do so pursuant to state law.

If you have any concerns, please let me know.

Sincerely,



E. Gail McGarry
Program Manager, Water Rights & Acquisition

cc: Mr. Charles McDevitt
Attorney at Law
PO Box 2564-83701
Boise ID 83702

Mr. Mike Creamer
Givens Pursley LLP
PO Box 2720
Boise ID 83701

MICROFILMED

SEP 23 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

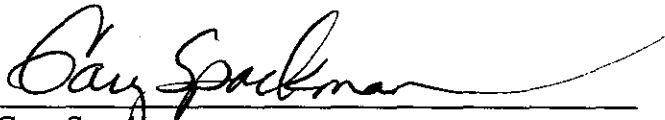
IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 63-31177 AND)
63-31178 IN THE NAME OF ROD AND)
MAUREEN FRISBY FAMILY)
LIMITED PARTNERSHIP)

**NOTICE OF SECOND
PREHEARING CONFERENCE**

On February 20, 2001, Rod & Maureen Frisby filed with the Idaho Department of Water Resources (IDWR) two applications for permit to appropriate the public waters of the State of Idaho nos. 63-31177 and 63-31178. The applications were protested by the Bureau of Reclamation. The prehearing conference held on March 5, 2002 did not solve the matter of protest.

IDWR has scheduled a second prehearing conference for the protests to be held at the Western Regional Office of IDWR, 2735 Airport Way, Boise, Idaho on Friday, March 15, 2002, at 9:00 a.m. Parties can participate by telephone. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

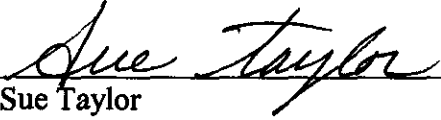
Dated this 8th day of March 2002.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 8TH day of March 2002, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference those listed:


Sue Taylor
Senior Secretary

FRISBY, ROD & MAUREEN FAMILY
LIMITED
6208 S E 8TH AVE
CALDWELL ID 83605

MICHAEL C CREAMER
GIVENS PURSLEY LLC
PO BOX 2720
BOISE ID 83701-2720

KATHLEEN CARR
BOR OFFICE OF THE FIELD SOL
FEDERAL BLDG RM 365
550 W FORT ST
BOISE ID 83724

CHAS MCDEVITT
MCDEVITT & MILLER
PO BOX 2564-83701
BOISE ID 83702

E GAIL MCGARRY
BOR PACIFIC NW REGIONAL OFFICE
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

NOTICE OF PREHEARING CONFERENCE 2

MICROFILMED

SEP 23 2002

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

**IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 63-31177 AND) ORDER GRANTING INTERVENTION
63-31178 IN THE NAME OF ROD)
& MAUREEN FRISBY)**
_____)

The Idaho Department of Water Resources (IDWR) received a petition to intervene from Chas F. McDevitt, representing Black Canyon Irrigation District, in the above contested matter. Having shown good cause for intervening into the matter, and, upon a conclusion that the applicant will not be injured by the participation of the prospective intervenor:

IT IS HEREBY ORDERED that the petition to intervene filed by Chas F. McDevitt, representing Black Canyon Irrigation District, is **GRANTED** and the intervenor shall have the right to participate in the contested matter as a full party.

Dated this 8th day of March 2000.



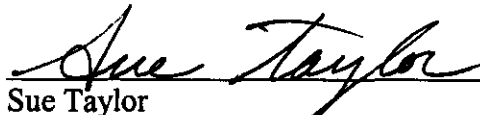
Gary Spackman

MICROFILMED

SEP 23 2002

CERTIFICATE OF MAILING

I hereby certify that on this 8TH day of March 2000, I mailed a true and correct copy, postage prepaid, of an Order Granting Intervention to those listed below:


Sue Taylor
Senior Secretary

FRISBY, ROD & MAUREEN FAMILY
LIMITED
6208 S E 8TH AVE
CALDWELL ID 83605

MICHAEL C CREAMER
GIVENS PURSLEY LLC
PO BOX 2720
BOISE ID 83701-2720

KATHLEEN CARR
BOR OFFICE OF THE FIELD SOL
FEDERAL BLDG RM 365
550 W FORT ST
BOISE ID 83724

CHAS MCDEVITT
MCDEVITT & MILLER
PO BOX 2564-83701
BOISE ID 83702

E GAIL MCGARRY
BOR PACIFIC NW REGIONAL OFFICE
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

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SEP 23 2002

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES 2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Permit No. 63-31177 and 63-31178 in the Name of Rod &/or
Maureen Frisby

Place: IDWR Western Region, 2735 Airport Wy, Boise, Idaho 83705

Date: March 5, 2002

Conducted by: Gary Spackman

NAME

ADDRESS

RUTH PAGE	PN Regional Office - Boise
Michael Creamer	P.O. Box 2720 - Boise 83701 Attorney for Frisby Farms
Terry Scanlan	600 E. River Park Lane #105 Boise, ID 83706
Gail Frisby	6205 SE 8th Ave Caldwell ID 83607
Maureen Frisby	6205 SE 8th Ave Caldwell 83607
Gail McGarry	PN Regional Office Boise
G. McQuinn	P.O. Box 2564 Boise 83701
Kathleen W. Call	DOT - 550 W. Fort St. Boise ID 83724

MICROFILMED

SEP 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 21, 2002

BLACK CANYON IRRIG DIST
C/O CHAS MCDEVITT
PO BOX 2564-83701
BOISE ID 83702

Re: Application for Permit Nos. 63-31177 and 63-31178 in the Name of Rod &/or Maureen Frisby

Dear Mr. McDevitt:

The Idaho Department of Water Resources (IDWR) received your request for intervention. A petition to intervene must be accompanied by a \$25.00 filing fee. You did not submit the required fee with the petition. IDWR will not consider your petition until the fee is paid.

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

Sincerely,



Gary Spackman

GS:st

CC:

Rod &/or Maureen Frisby
Kathleen Carr, Attorney
E. Gail McGarry
Michael C. Creamer, Attorney

MICROFILMED

SEP 23 2002

Michael C. Creamer (Idaho State Bar # 4030)
GIVENS PURSLEY LLP
P.O. Box 2720
277 N. 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

RECEIVED

FEB 20 2002

WATER RESOURCES
WESTERN REGION

Attorneys for Applicant Frisby Family Limited Partnership

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

IN THE MATTER OF APPLICATION
FOR PERMIT NOS. 63-31177 AND
63-31178 IN THE NAME OF FRISBY
FAMILY LIMITED PARTNERSHIP

NOTICE OF APPEARANCE

Michael C. Creamer of the law firm of Givens Pursley LLP, hereby enters his appearance in the above-captioned matter on behalf of Frisby Family Limited Partnership. All correspondence, notices, and pleadings should hereafter be served on the Applicant at the above address.

DATED this 12th day of February, 2002.

GIVENS PURSLEY LLP

BY:



Michael C. Creamer
Attorneys for Applicant Frisby
Farms Limited Partnership

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SEP 23 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

 X U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Gary Spackman
Western Regional Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

 X U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Kathleen Carr
U.S. Department of the Interior
Office of the Field Solicitor
550 West Fort Street, MSC 020
Boise, ID 83724-0020

 X U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery

Charles McDevitt, Counsel
Black Canyon Irrigation District
P.O. Box 2564
Boise, ID 83701

 X U.S. Mail
 Facsimile
 Overnight Mail
 Hand Delivery


Michael C. Creamer

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NOS. 63-31177 AND)
63-31178 IN THE NAME OF ROD AND)
MAUREEN FRISBY FAMILY)
LIMITED PARTNERSHIP)

**NOTICE OF PREHEARING
CONFERENCE**

On February 20, 2001, Rod & Maureen Frisby filed with the Idaho Department of Water Resources (IDWR) two applications for permit to appropriate the public waters of the State of Idaho nos. 63-31177 and 63-31178. The applications were protested by the Bureau of Reclamation.

IDWR has scheduled a prehearing conference for the protests to be held on **Monday, January 7, 2002, at 11:00 a.m. at the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise IDWR within (10) days prior to the conference.

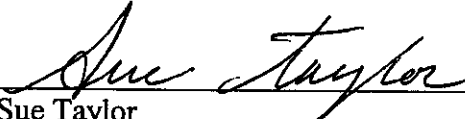
Dated this 3rd day of December, 2001.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of December, 2001, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference those listed:


Sue Taylor
Senior Secretary

FRISBY, ROD & MAUREEN FAMILY LIMITED
6208 S E 8TH AVE
CALDWELL ID 83605

KATHLEEN CARR
BOR OFFICE OF THE FIELD SOL
FEDERAL BLDG RM 365
550 W FORT ST
BOISE ID 83724

E GAIL MCGARRY
BOR PACIFIC NW REGIONAL OFFICE
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

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CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

- 1) Will the proposed appropriation injure other water rights?
- 2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?
- 3) Was the application made in good faith or for delay or speculative purposes?
- 4) Does the applicant have sufficient financial resources with which to complete the proposed project?
- 5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

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SEP 23 2002

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

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SEP 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 3, 2001

E GAIL MCGARRY
BOR PACIFIC NW REGIONAL OFFICE
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

KATHLEEN CARR
BOR OFFICE OF THE FIELD SOL
FEDERAL BLDG RM 365
550 W FORT ST
BOISE ID. 83724

Re: Application for Permit Nos. 63-31177 and 63-31178 in the Name of Rod &/or
Maureen Frisby Family Limited Partnership

Dear Protestant:

This office acknowledges receipt of your protests to the issuance of a permit pursuant to the above referenced applications.

The following are the criteria the department must consider in either approving or denying an application for permit (Section 42-203A, Idaho Code):

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

Enclosed is a Notice of Prehearing Conference scheduled for January 7, 2002 at the Idaho Department of Water Resources, Western Region. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

The department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest prior to the prehearing conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

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SEP 23 2002

US BOR
12-3-01
Page -2-

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

Sincerely,



Gary Spackman

GS:st

Encl: Copy of Application
Notice of Prehearing Conference

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SEP 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

December 3, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

ROD &/OR MAUREEN FRISBY FAMILY LIMITED PARTNERSHIP
6208 S E 8TH AVE
CALDWELL ID 83605

Re: Application for Permit Nos. 63-31177 and 63-31178

Dear Applicant:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to the above-referenced applications.

The following are the criteria the department must consider in either approving or denying an application for permit (per Section 42-203A, Idaho Code):

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

Enclosed is a Notice of Prehearing Conference scheduled for January 7, 2002 at the Idaho Department of Water Resources, Western Region. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

The department suggests you contact the protestant(s) directly in an effort to determine what is in dispute in the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

Please contact this office if you have questions regarding this procedure.

Sincerely,



Gary Spackman

GS:st

Enclosure: Copy of protest(s)
Notice of Prehearing Conference

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SEP 23 2002

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NOV 26 2001

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under section 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all the necessary information.

1. Matter being protested Application for Permit No. 63-31178 in the name of Rod and Maureen Frisby 6208 Southeast 8th Avenue Caldwell, ID 83605
2. Name of protestant United States Department of Interior acting through the Bureau of Reclamation
3. Protestant's Representative for service (If different than protestant)
E. Gail McGarry, Manager Water Rights and Acquisition, Pacific Northwest Region, Bureau of Reclamation
Kathleen Carr, Attorney, Office of the Boise Field Solicitor, United States Department of Interior
4. Service mailing address
E. Gail McGarry, PN-3100, Bureau of Reclamation, 1150 N. Curtis Road, Suite 100, Boise, ID 83706-1234
Kathleen Carr, Office of the Field Solicitor, Federal Building, Rm 365, 550 West Fort St. Boise, ID 83724
5. Service telephone no. E. Gail McGarry (208) 378-5306; Kathleen Carr (208) 334-1911
6. Basis of protest (including statement of facts and law upon which the protest is based)
Injury to Reclamation project water rights. There is no way to measure or determine whether or not Reclamation project water is being used on non-project lands since the delivery system for both sources is the same. Furthermore, Reclamation project water co-mingled with well water is not permitted without Federal approval.
7. What would resolve your protest? Exclusive system for project and non-project water precluding application of Reclamation project water to non-project lands or comingling of water. Applicant must demonstrate water to be appropriated is not waste seepage or return flows from the Reclamation project.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 26th day of Nov., 2001.

United States

Protestant

E. Gail McGarry
Protestant's Representative

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SEP 23 2002

Affidavit or Publication

STATE OF IDAHO,
COUNTY OF PAYETTE

ss.

Copy of Notice
(First Copy)

Notice of Application for Water Right
TITLE OF PUBLICATION

Idaho Dept. of Water Resource
SPONSOR OF PLAINTIFF
PLAINTIFF OR LEGAL AGENT

I, Viola M Hawkins, being
duly sworn, deposes and says:

That *she* is the *principal clerk* of

THE INDEPENDENT-ENTERPRISE, a weekly newspaper published at Payette, in the County of Payette and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Payette; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for *two* consecutive weeks in the regular and entire issue of said paper during the period and time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with *Nov. 7, 2001*, and ending with the issue of *Nov. 14, 2001*.

STATE OF IDAHO
COUNTY OF

On this *15th* day of *Nov*, in the year of *2001*, before me, a Notary Public, personally appeared *Viola Hawkins*, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that *he executed the same*.

Viola Hawkins
Notary Public for Idaho

Residing at *Payette*

My commission expires: *12-1-04*

STATEMENT

Independent-Enterprise
PAYETTE, IDAHO

Number of Lines *25 lines*

Number of Insertions *(2) two*

25 Lines @ *2.38* . . . \$ *59.50*

25 Lines @ *2.04* . . . \$ *51.00*

TOTAL COST
WILL BE \$ *110.50*

RECEIVED

NOV 16 2001

WATER RESOURCES
WESTERN REGION

Nº 907

NOTICE OF APPLICATION FOR WATER RIGHT

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-31178

ROD & MAUREEN FRISBEE FAMILY LTD PARTNERSHIP

6208 S E 8TH AVE.

CALDWELL, ID 83605

Point(s) of Diversion SWNW S20 T06N R03W PAYETTE County Source GROUND WATER

Use: IRRIGATION 03/01 To 11/15 2.42 CFS

Total Diversion: 2.42 CFS

Date Filed: 03/29/2001

Place of Use: IRRIGATION

T06N R03W S19

NENE NWNE NENW SENW

T06N R03W S20

NWNW SWNW

Number of Acres 121

Remarks: Applicant agrees to mitigate consumptive use in the future as needed.

Water bearing zone to be appropriated is from 200 to 240 feet.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705, together with a protest fee of \$25.00 for each application on or before 11/26/2001.. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

No.907

Nov. 7, 14

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

Lori Graves -
Let's process -
8/4/01

RECEIVED

AUG 02 2001

WATER RESOURCES
WESTERN REGION

August 1, 2001

Gary Spackman
Regional Manager
Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Water Right Applications 63-31177 and 63-31178
(Rod & Maureen Frisby Family Ltd Partnership)

Dear Gary:

On behalf of Rod and Maureen Frisby, I have investigated groundwater flow direction and water availability in relation to water right applications 63-31177 and 63-31178. The water rights are described below.

- Water right application 63-31177 proposes a diversion rate of 3.96 cfs for irrigation of 196 acres located 3 miles north-northwest of Sand Hollow in Payette County. All of the acres proposed for irrigation by this application were irrigated prior to the 2001 irrigation season with water obtained from the Black Canyon Irrigation District (BCID). However, only half of these lands had recorded rights with BCID, and BCID has required that irrigation cease using BCID water on the approximately 100 acres without recorded water rights. Thus, the application is proposing use of groundwater as a primary source on approximately 100 acres, and as a supplemental source on the remaining 96 acres.
- Water right application 63-31178 proposes a diversion rate of 2.42 cfs for irrigation of 121 acres located 3 miles north-northeast of Sand Hollow in Payette County. Approximately 40 acres of new irrigation are proposed. The remaining 81 acres currently are irrigated, with approximately 63 acres irrigated with groundwater under claim A63-10785, and 18 acres irrigated with surface water from BCID. The groundwater use under claim A63-10785 was expanded from the licensed amount under 63-10785. Therefore, application 63-31178 would provide primary irrigation on approximately 40 acres of new land, supplemental irrigation on approximately 18 acres of BCID, and would be an "overfile" on acres claimed in the SRBA under A63-10785.

The places of use and points of diversion proposed by each of these water right applications are shown on Figure 1. The proposed points of diversion are located in Basin 63 (Boise River Basin). As you know, applications for new irrigation water rights from groundwater sources in Basin 63 are subject to IDWR's "administrative hold" until completion of the Treasure Valley Hydrologic

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SEP 23 2002

600 East River Park Lane, Suite 105
Boise, Idaho 83706

Telephone (208) 383-4140
Facsimile (208) 383-4156

Project. However, we understand that IDWR has exempted some applications from the administrative hold if hydrologic conditions suggest that a proposed water right will have no significant detrimental impact to surface water or groundwater in the Boise River Basin. We propose that applications 63-31177 and 63-31178 be exempted from the administrative hold for the following reasons.

- (1) The groundwater flow at the proposed points of diversion is not towards the Boise River. Instead, groundwater flow is toward the Snake River (Basin 03) and Payette River (Basin 65) where water is available for appropriation.
- (2) Nearly all of the lands proposed for irrigation have been irrigated for more than 10 years. Therefore, approval of the applications should not result in a significant increase in the consumptive use within Basin 63.
- (3) The point of diversion proposed by application 63-31178 is on the boundary of the Treasure Valley Hydrologic Project (TVHP) area. The TVHP might not provide meaningful information relative to the groundwater resource at this boundary location.
- (4) There are no reported problems with water-level decline in the aquifers proposed for appropriation. Thus, the groundwater supply is sufficient for the proposed purposes.
- (5) The well sites are not located in areas where depletions to surface water sources are likely to injure senior Boise River water rights.

Supporting information related to the five points described above follows.

Groundwater Flow Direction. As shown on Figures 2 and 3, the proposed well sites are located near the crest of a groundwater "mound" between the Boise, Snake, and Payette Rivers.

- Figure 2 is a water table contour map from USGS Hydrologic Atlas HA-703. Interpretation of the contours suggests that flow direction at the point of diversion for 63-31177 is probably west or northwest toward the Snake River, or north toward the Payette River. Flow direction at the point of diversion for 63-31178 is north, toward the Payette River.
- Figure 3 is a computer generated water table contour map obtained from IDWR staff. This map suggests that groundwater flow directions are north (toward the Payette River) at the diversion points for 63-31177 and 63-31178.

Neither map suggests a southerly flow component toward the Boise River from the proposed diversion points.

Consumptive Use. The approximately 100 acres that are proposed for primary irrigation by application 63-31177 have been irrigated since 1989 or earlier. The source of irrigation water was the BCID. Therefore, the consumptive use proposed by application 63-31177 replaces consumptive use of surface water that has been ongoing since prior to the start of both the original Basin 63 moratorium and the more recent Basin 63 administrative hold.

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The approximately 96 acres of land with BCID water rights generally do not require significant supplementation from groundwater. BCID water supplies are relatively dependable and are typically deliverable throughout most of the irrigation season. As a result, the annual diversion volume for supplemental irrigation (and associated consumptive use of the supplemental irrigation volume) on the approximately 96 acres with BCID water will be a small percentage of the annual irrigation requirement for the 96 acres.

The irrigation proposed by application 63-31178 will occur on (1) 40 acres of new land, (2) approximately 18 acres irrigated with BCID water, and (3) approximately 63 acres that have been irrigated from groundwater since the 1980s due to expansion under water right 63-10785.

- The increase in consumptive use associated with the 40 new acres will be approximately 100 acre feet per year (40 acres x 2.5 af/ac). The applicants are willing to eliminate these 40 acres from the application if the Department is concerned about the increase in consumptive use associated with new lands.
- There will be only a slight increase in consumptive use for supplemental irrigation of 18 acres irrigated with water from BCID.
- There should be no change in consumptive use associated with the 63 acres currently irrigated with groundwater through expansion of 63-10785.

Thus, although 63-31177 and 63-31178 propose irrigation of 196 acres and 121 acres, respectively, the net increase in consumptive use within Basin 63 associated with the proposed water rights will be relatively small.

Treasure Valley Hydrologic Project Boundary. As shown on Figure 4, the well site proposed for 63-31178 is located on the Treasure Valley Hydrologic Project boundary. Therefore, the TVHP might not be useful in determining the impact of a new groundwater appropriation at that location on the water resources within the Boise River Basin.

Sufficiency of Water Supply. I am not aware of any long-term groundwater-level declines in the project area.

The closest USGS-monitored observation well with a long-term record (7N3W34ABD) is located about four miles northeast of the proposed well site. There has been no significant water level decline at that well site since monitoring began in 1968. Although well 7N3W34ABD is too far away to provide significant data for the proposed well site, the lack of nearby USGS monitoring wells might be an indication that significant water-level decline problems have not occurred in the project vicinity.

The TVHP has been monitoring wells in the area. Their monitoring does not indicate any problems with water-level decline. Data are provided as Attachment 1.

Impact on Boise River Water Rights. As discussed previously, groundwater flow directions at the proposed points of diversion are toward the Snake and Payette Rivers. Therefore, the potential for pumping under the proposed water rights to deplete flows in the Boise River is low.

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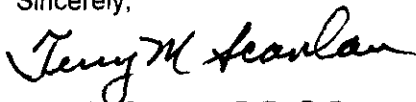
However, even if there were some depletion, is unlikely that senior Boise River water rights would be injured for two reasons.

- First, the effected river reach would probably be below Notus Bridge. The Boise River Watermaster's Annual Report (1993 edition) states, "This section of the river is operated without any regulation what so ever, but it is measured and recorded the same as Section 1 [above Star] and 2 [Star to Notus]. The return flow to Section 3 [below Notus] was sufficient to take care of all rights in this section during most of the season, and therefore no regulations were required. In fact, during all the years on record on the distribution of the water of the Boise River, beginning with 1914, there has been only one year -1931- during which it was necessary to regulate diversion from this section of the river, and during that year it was not necessary to run water past the Notus Bridge to supply the rights below."
- Second, Sand Hollow Creek is the surface water drain in the vicinity of the proposed water right applications. Sand Hollow Creek flows into the Snake River, below the mouth of the Boise River. Any depletion to Sand Hollow Creek would be unlikely to significantly effect flow in the Boise River.

Based on the information discussed above, I believe that there is sufficient reason to determine that water right applications 63-31177 and 63-31178 should be exempt from the administrative hold on processing of new groundwater applications in the Boise River Basin.

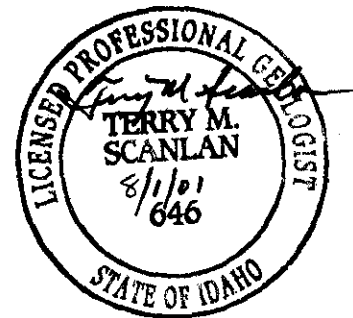
Please contact me with any questions.

Sincerely,



Terry M. Scanlan, P.E., P.G.
Engineer/Hydrogeologist

Cc: Rod and Maureen Frisby



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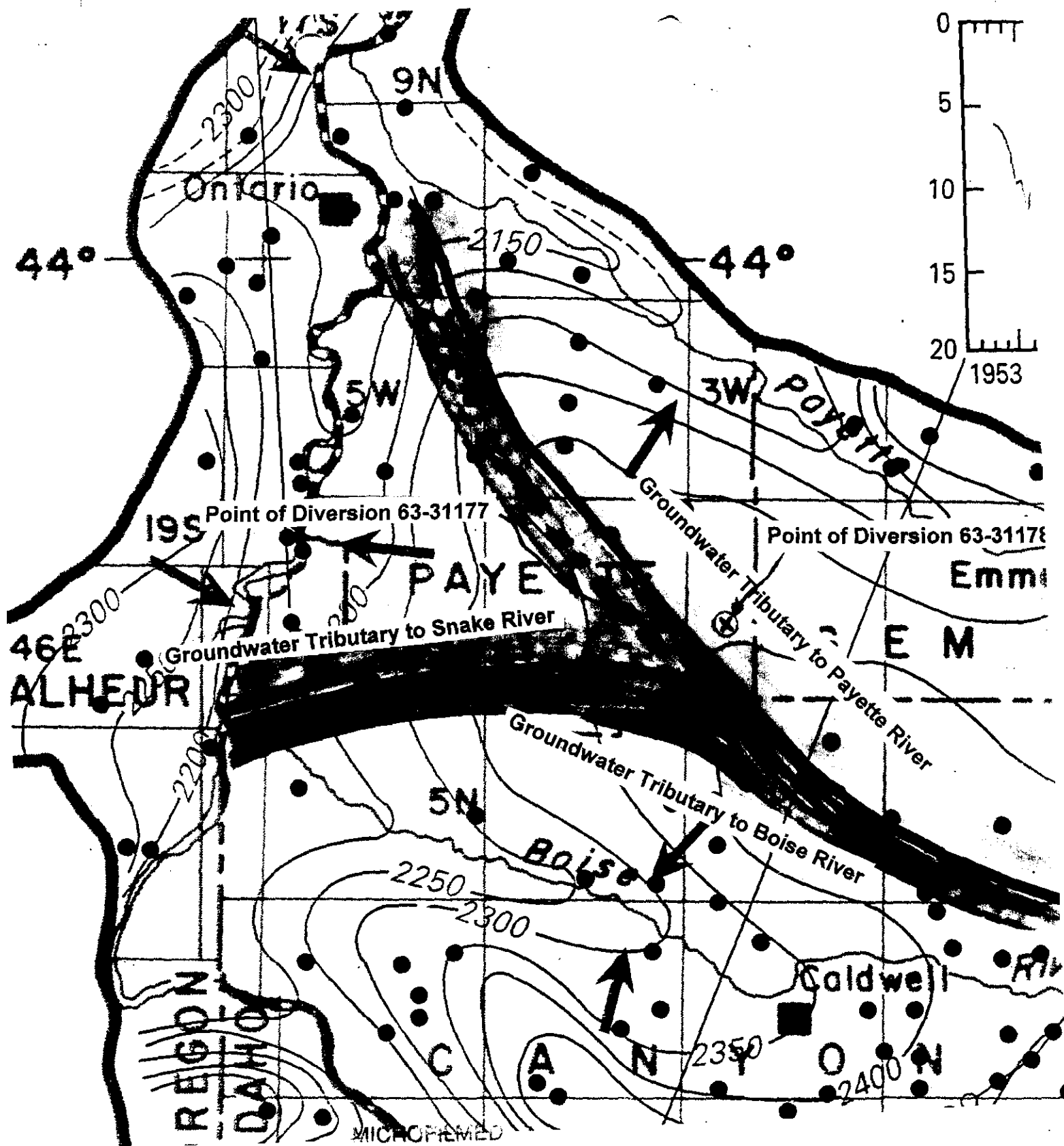


Figure 2 – USGS Water Table Contour Map
(points of diversion location and groundwater divides added by Scanlan)

Source: "Configuration of the Water Table and Depth to Water, Spring 1980, Water-Level Fluctuations, and Water Movement in the Snake River Plain Regional Aquifer System, Idaho and Eastern Oregon", by G.F. Lindholm and others (USGS Hydrologic Atlas HA-703, 1988).

Figure 3 – IDWR Water Table Contour Map
(computer generated by IDWR from water level data base; point of diversion locations and groundwater divides added by Scanlan)

Ground Water Levels
Township 6 North, Ranges 3, 4 and 5 West

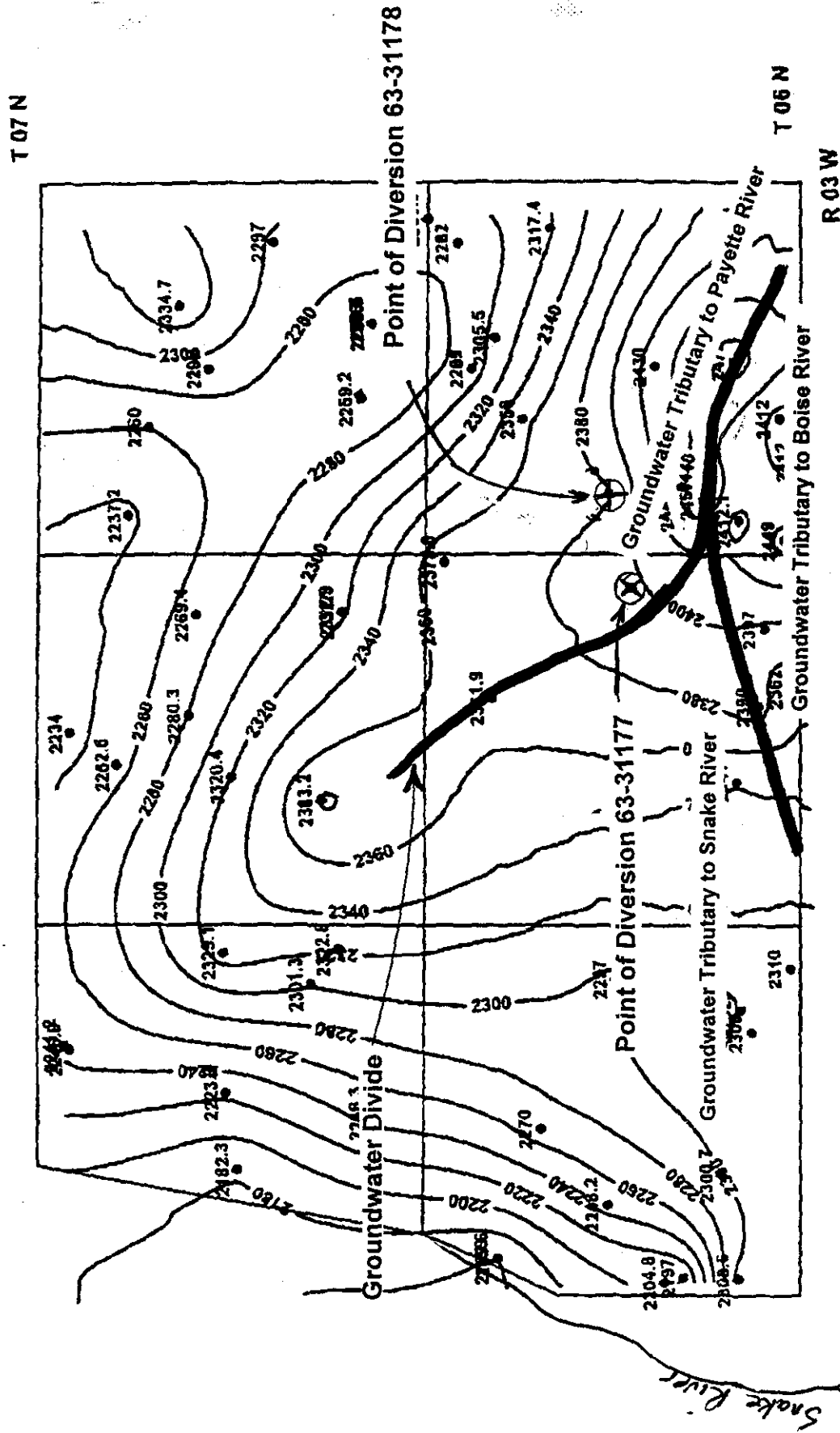


Figure 4 – Treasure Valley Hydrologic Study Boundary Map

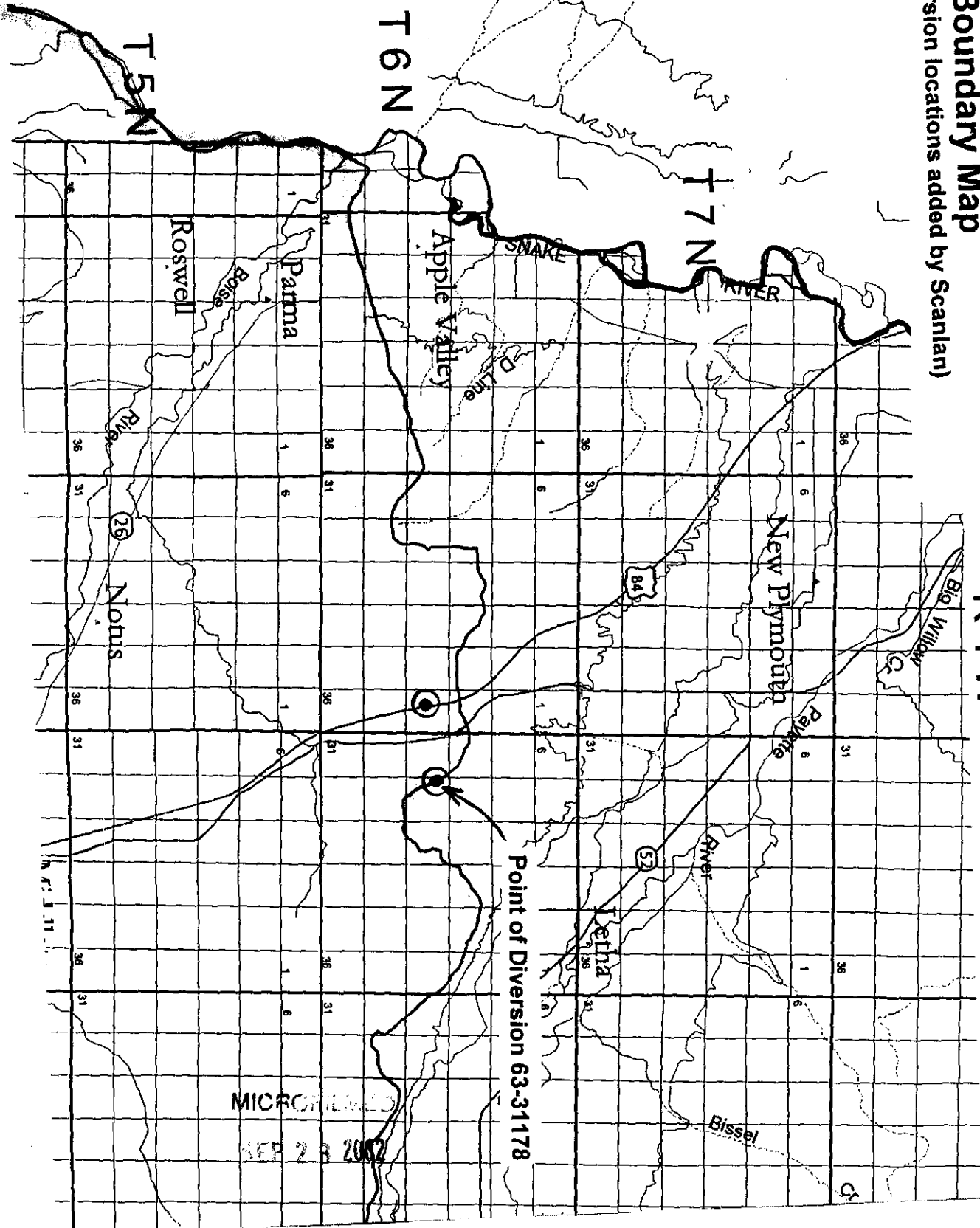
(point of diversion locations added by Scanlan)

R 4 W

R 3 W

R 2 W

- Major Roads
- Interstate
- State
- U.S.
- Acres
 - 30,000 - 200,000
 - 10,000 - 29,999
 - 1,000 - 9,999
 - 200 - 999
 - 1 - 199
- Treasure Valley Boundary



ATTACHMENT 1

OBSERVATION WELL HYDROGRAPHS

01/10/2011

1/10/2011

SCANLAN ENGINEERING
600 EAST RIVER PARK LANE, SUITE 105
BOISE, IDAHO 83706

Hydrographs of Water Levels in Observation Wells in Idaho, 1944-93

U.S. GEOLOGICAL SURVEY
Open-File Report 95-458

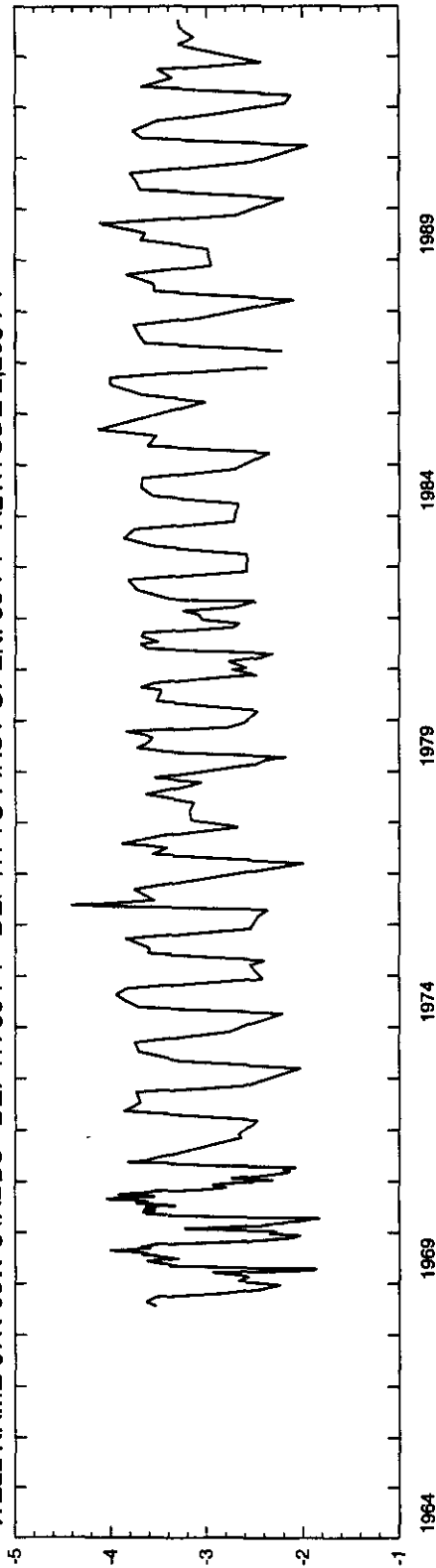


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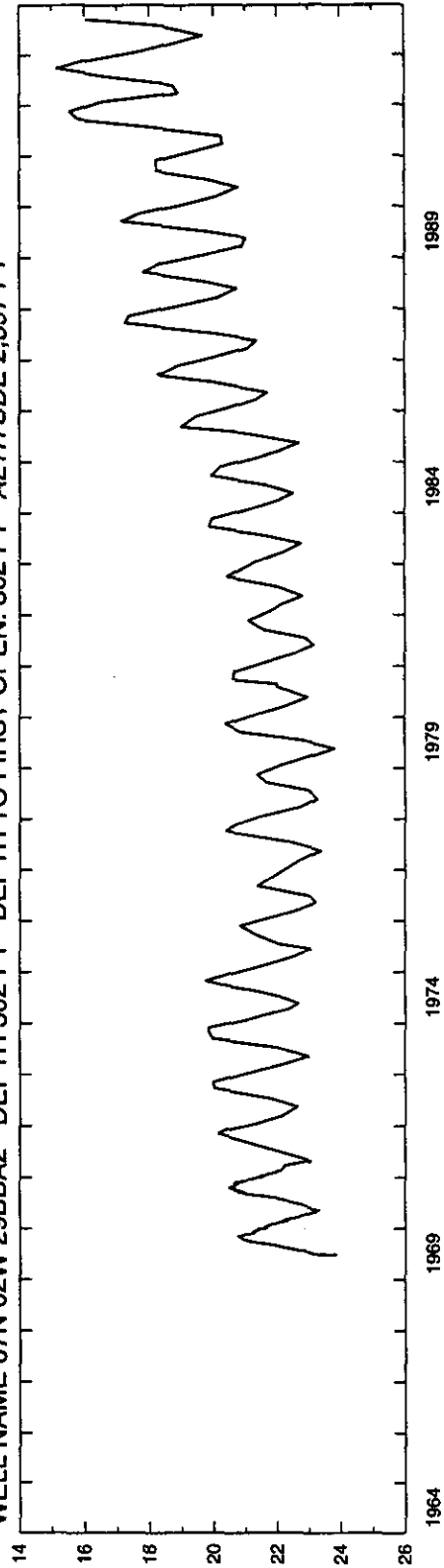
SEP 23 2002

GEM COUNTY

WELL NAME 07N 03W 34ABD3 DEPTH 86 FT DEPTH TO FIRST OPEN. 80 FT ALTITUDE 2,268 FT

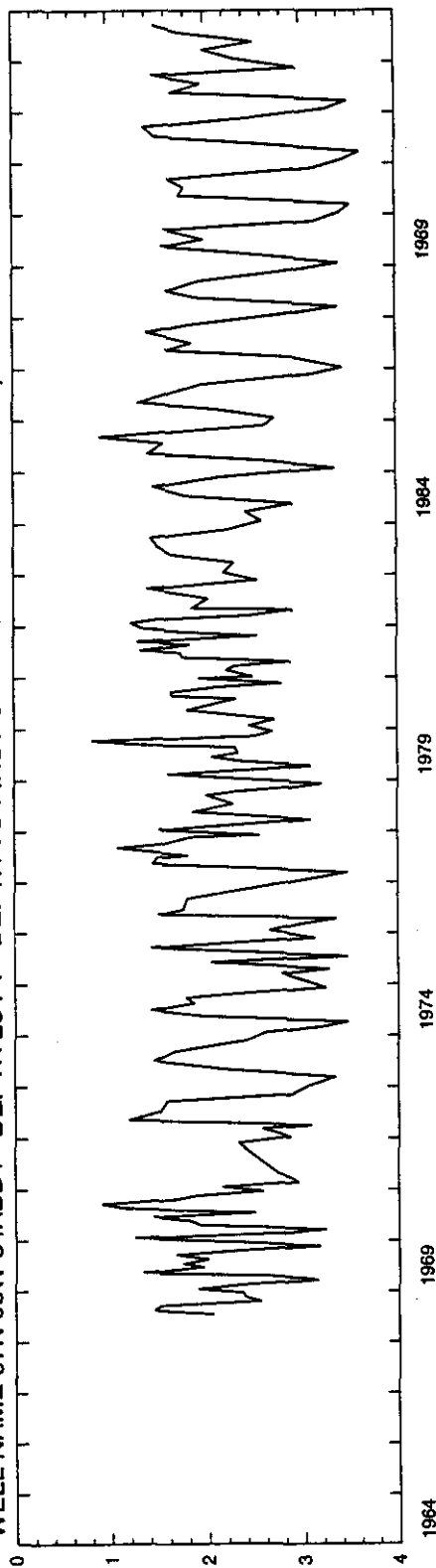


WELL NAME 07N 02W 29BBA2 DEPTH 302 FT DEPTH TO FIRST OPEN. 302 FT ALTITUDE 2,397 FT

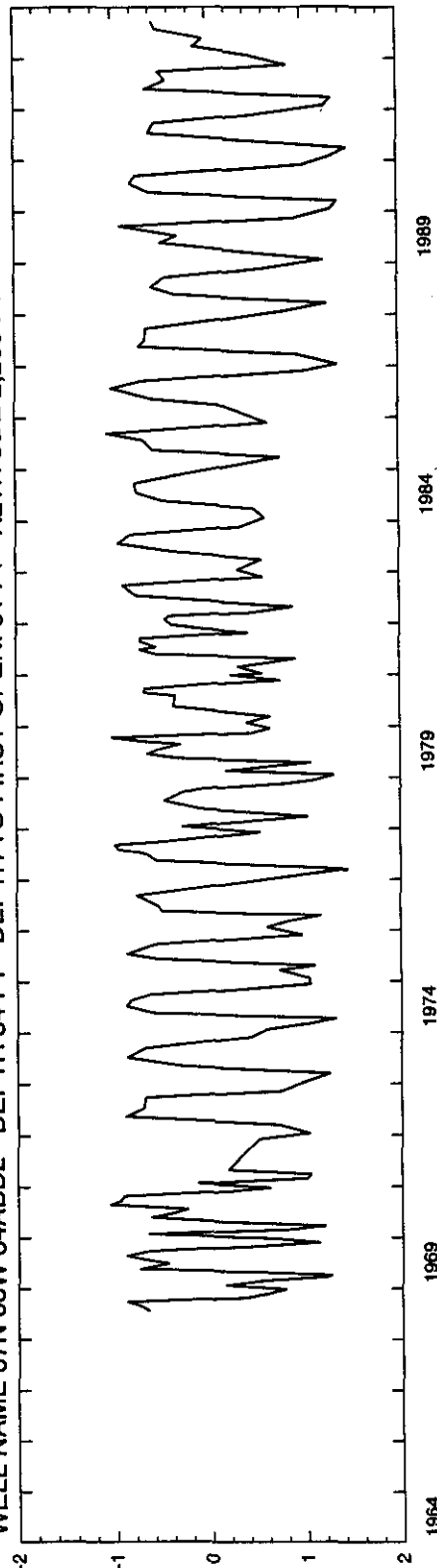


GEM COUNTY

WELL NAME 07N 03W 34ABD1 DEPTH 23 FT DEPTH TO FIRST OPEN. 18 FT ALTITUDE 2,268 FT



WELL NAME 07N 03W 34ABD2 DEPTH 54 FT DEPTH TO FIRST OPEN. 51 FT ALTITUDE 2,268 FT



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211

SEP 23 2002

Subj: **RE: Hydrograph Request**
Date: 07/27/2001 11:28:33 AM Mountain Daylight Time
From: HHARRING@idwr.state.id.us (Harrington, Helen)
To: TMSCANLAN@aol.com ('TMSCANLAN@aol.com')

File: Hydrographs.zip (31538 bytes)
DL Time (28400 bps): < 1 minute

Hello, Terry. Here are some hydrographs for wells nearest the sections you requested.

I have also attached an image of all the wells in our database in T6N R3W and 4W. If you would like hydrographs for any other wells, just let us know and we can provide them to you.

Helen Harrington
327-7950

-----Original Message-----

From: TMSCANLAN@aol.com [mailto:TMSCANLAN@aol.com]
Sent: Thursday, July 26, 2001 5:36 PM
To: GWlevels@idwr.state.id.us
Subject: Hydrograph Request

Could you send me one or more hydrographs for any observation wells nearest to the following locations T6N, R4W, Section 24 and T6N, R3W, Section 20? I

am trying to determine if there is any evidence of significant groundwater declines in that area. Thanks in advance.

Terry Scanlan

----- Headers -----

Return-Path: <HHARRING@idwr.state.id.us>
Received: from rly-xb02.mx.aol.com (rly-xb02.mail.aol.com [172.20.105.103]) by air-xb04.mail.aol.com (v79.27) with ESMTP id MAILINXB43-0727132833; Fri, 27 Jul 2001 13:28:33 -0400
Received: from a003.idwr.state.id.us (idwr.state.id.us [164.165.17.15]) by rly-xb02.mx.aol.com (v79.20) with ESMTP id MAILRELAYINXB23-0727132724; Fri, 27 Jul 2001 13:27:24 -0400
Received: by A003 with Internet Mail Service (5.5.2650.21) id <PX6ZQZDJ>; Fri, 27 Jul 2001 11:27:02 -0600
Message-ID: <88F16F9EA188D3119BCA00A0C9DD62C301818EA1@A003>
From: "Harrington, Helen" <HHARRING@idwr.state.id.us>
To: "'TMSCANLAN@aol.com'" <TMSCANLAN@aol.com>
Subject: RE: Hydrograph Request
Date: Fri, 27 Jul 2001 11:26:53 -0600
MIME-Version: 1.0
X-Mailer: Internet Mail Service (5.5.2650.21)
Content-Type: multipart/mixed;
boundary="====_NextPart_000_01C116C1.540BE750"

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SEP 23 2002

Friday, July 27, 2001 America Online: TM SCANLAN

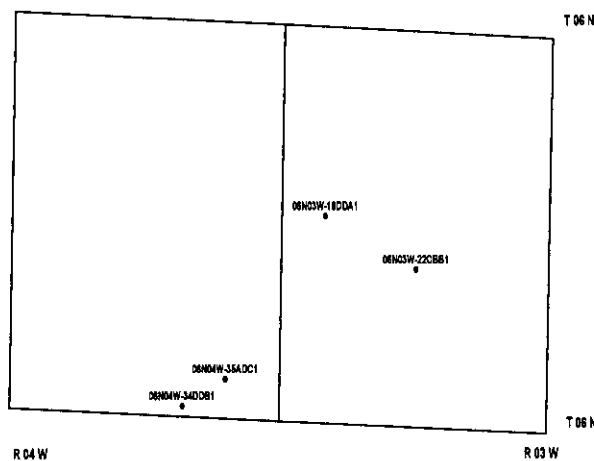
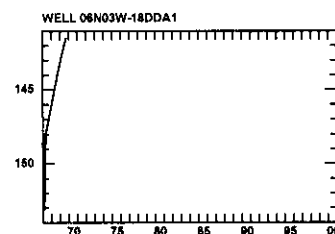
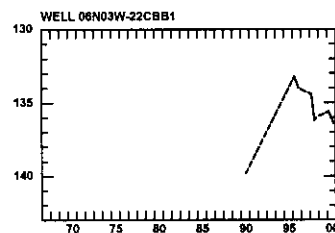
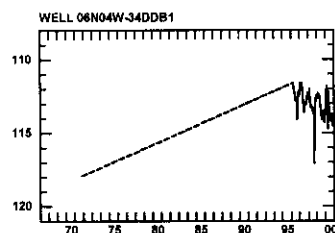
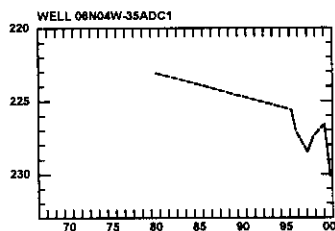
Page: 1

WELL LOG ALPH																
File Path: P:\Data																
Township	Well Number	1st Use	2nd Use	Method Drilled	Total Depth	Water Open	# of W/Ls	Well Test	Lab Log	Completion Date	Form No.	USD Elev	Elev Accy	Well Location	Location Verified	
06N03W	01BCC1	Dome		Cable	45	1	2	Bailer	8	04/05/1979	14	2287	<11 ft	43°53'16"/116°39'04"	USGS	
06N03W	04DAD1	Dome		Cable	60	1	1	Bailer	4	10/24/1986		2300	<11 ft	43°53'04"/116°41'30"	USGS	
06N03W	04DAD2	Dome		Cable	140	1	1			05/28/1997		2300	<11 ft	43°53'04"/116°41'30"	USGS	
06N03W	09BCD1	Dome		Cable	282	1	1			08/25/1973		2598	<11 ft	43°52'22"/116°42'29"	USGS	
06N03W	10BAA1	Dome		Cable	88	1	1			07/26/1986		2303	<11 ft	43°52'45"/116°40'54"	USGS	
06N03W	12CDC1	Unus		Cable	56	2	115			06/01/1968		2315	<11 ft	43°52'00"/116°38'47"	USGS	
06N03W	18DDA1	Dome		Cable	300		6					2530	<11 ft	43°51'11"/116°43'56"	USGS	
06N03W	22CBB1	Dome			235		8		11	06/08/1990		2570	<11 ft	43°50'32"/116°41'28"	USGS	
06N03W	27CC1	Irrigat		Reversi	255	3	1		21	07/09/1991	213	2522	11-20	43°49'25"/116°41'21"	Driller	
06N03W	30AD1	Dome		Air	238	1	1	Bailer	11	08/03/1972	18	2495	11-20	43°49'51"/116°44'04"	Driller	
06N03W	30DCC1	Dome		Other	216	1	7	Bailer	12	07/30/1960		2440	<11 ft	43°49'20"/116°44'27"	USGS	
06N03W	31CBD1	Dome			90		1			09/29/1992		2450	<11 ft	43°48'41"/116°44'50"	USGS	
06N03W	33CBA1	Dome		Cable	152		7		8	10/05/1978		2480	<11 ft	43°48'45"/116°42'29"	USGS	
06N04W	01ADB1	Dome					1					2460	<11 ft	43°53'26"/116°45'15"	USGS	
06N04W	10ABA1	Stock			371	1	1			09/28/1959		2498	<11 ft	43°52'47"/116°47'55"	USGS	
06N04W	28CDC1	Irrigat		Reversi	705	4	4	Other	46	08/13/1976	213	2630	<11 ft	43°49'22"/116°49'33"	USGS	
06N04W	34ACB1	Irrigat		Reversi	311	1	1			03/17/1970		2495	<11 ft	43°49'03"/116°48'04"	USGS	
06N04W	34DDB1	Dome		Cable	147	1	50		8	07/05/1971	2	2480	<11 ft	43°48'35"/116°47'43"	USGS	
06N04W	35ADC1	Dome		Cable	362	1	7		16	04/22/1980	273	2620	<11 ft	43°48'58"/116°46'34"	USGS	
ALPH																
13 of 20 wells					Hydrograph Years: 1967 - 2000					Hydrograph Scale: 1 in = 7.4 ft					Exclude	

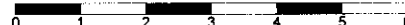
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Project for Requests
Hydrographs of Observation Well Network



Map Scale (in miles)



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SEP 23 2002

10-24-2001

DATA ENTRY WORKSHEET / APPLICATION FOR PERMIT

DATA ENTRY STEP

APPLICANT TAB

Water Right Number 63-31178

More than one name, Correspondence = Yes for Rod and Maureen Frisby Limited

Family Partnership

(others = No)

REMARKS/STATUS TAB

Mitigation Plan Attached: Yes ☐ No ☒

Received Date = Proposed Priority Date = 3/29/01

PREPUBLICATION CHECKLIST STEP

REVIEW WATER USES TAB

ADD'L INFORMATION ITEM	N/A	ATTACHED	REQUEST
Residency affidavit for hydropower development	☒	☐	☐
Additional hydropower project information	☒	☐	☐
Additional fish propagation project information	☒	☐	☐
Appropriation Rule 40.05.c-g info (large diversion)	☒	☐	☐
Mitigation plan or acceptance form	☐	☒	☐
Evidence of pre-1987 development	☒	☐	☐

Note: click "*BUILD NOTES*" where "request" is checked.

BUILD NOTES

COMMENT/ANALYSIS TAB

Legal Notice Remarks:

☒ Applicant agrees to mitigate consumptive use in the future as needed.

☐ Development completed by November 1987.

☐ Domestic use is for _____ homes (and) (or) yards in _____ Subdivision.
Homes, yards or both?

☐ Mitigation is proposed for consumptive use.

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☐ Municipal use is for applicants service area.

☒ Water bearing zone to be appropriated is from 200 to 450 feet.

Enter Special Legal Notice Remark here:

Source appears to be tributary to the Snake and Payette Rivers.

Enter Comments/Analysis here:

40 acres of new irrigation are proposed. The remaining 81 acres are currently irrigated; 63 expanded acres under ground water claim A63-10785 and 18 under BCID surface water. Right 63-10785 was licensed for only 252 acres but claimed for 355 acres. This application proposes to supplement the 81 acres currently irrigated and provide primary irrigation on the 40 acres of new land. Terry Scanlan submitted the attached report that provides sufficient reasoning as to why this ground water application in basin 63 should be exempt from the Boise River processing hold. The proposed well appears tributary to the Snake and Payette River Basins rather than the Boise River Basin.

LEGAL NOTICE REVIEW TAB

☒ YES to assign legal notice to publication scheduler.

☒ Save Legal Notices.

Okay to Publish: ☒ Yes ☐ No

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SEP 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

FAX NUMBER (208) 334-2348

DATE: 10/31/2001

TO: RUTH Paige
Bureau of Reclamation

FROM: M. Minicucci
IDWR

FAX: 378 5305

DOCUMENT DESCRIPTION/NOTES: Applications for Permit -
Nos 63-31177, 63-31178

TOTAL PAGES SENT: 8 + COVER SHEET

CONTACT: MARIA Minicucci 334 2190

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SEP 23 2002

November 02, 2001

Legal Notice Department
Independent Enterprise
PO Box 520
Payette ID 83661

RE: Application for Permit No. 63-31178

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). 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. Please send the affidavit and bill to this office before 11/26/2001. Your cooperation is appreciated.

Sincerely

Sue Taylor
Senior Secretary

MICROFILMED
SEP 23 2002

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-31178

ROD & MAUREEN FRISBY FAMILY LTD PARTNERSHIP

6208 S E 8TH AVE

CALDWELL ID 83605

Point(s) of Diversion SWNW S20 T06N R03W PAYETTE County Source GROUND WATER

Use: IRRIGATION 03/01 To 11/15 2.42 CFS

Total Diversion: 2.42 CFS

Date Filed: 03/29/2001

Place Of Use: IRRIGATION

T06N R03W S19 NENE NWNE NENW SENW

T06N R03W S20 NWNW SWNW

Number of Acres 121

Remark: Applicant agrees to mitigate consumptive use in the future as needed.
Water bearing zone to be appropriated is from 200 to 450 feet.

~~Applicant has been previously irrigated with surface water that is not being consumptive.~~
~~Applicant agrees to mitigate consumptive use in the future as needed.~~
~~Water bearing zone to be appropriated is from 200 to 450 feet.~~

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 11/26/2001. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Independent Enterprise on November 7 and 14, 2001.

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SEP 23 2002

REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE
THREE ALTERNATIVES BELOW

Name of Applicant ROD + MAUREEN FRISBY
Mailing Address 6208 S East 8th Ave
Caldwell ID 83605
Application No. _____
(if known)

☐ IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

☐ PROPOSE MITIGATION NOW

Yes, I want my application processed and before it is advertised, I will amend my application to include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

☒ WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature

Maureen Frisby

Date

2/26/01

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

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SEP 23 2002