June 15, 1983 From Dept. of Water Resources River @ 9,700 cfs.

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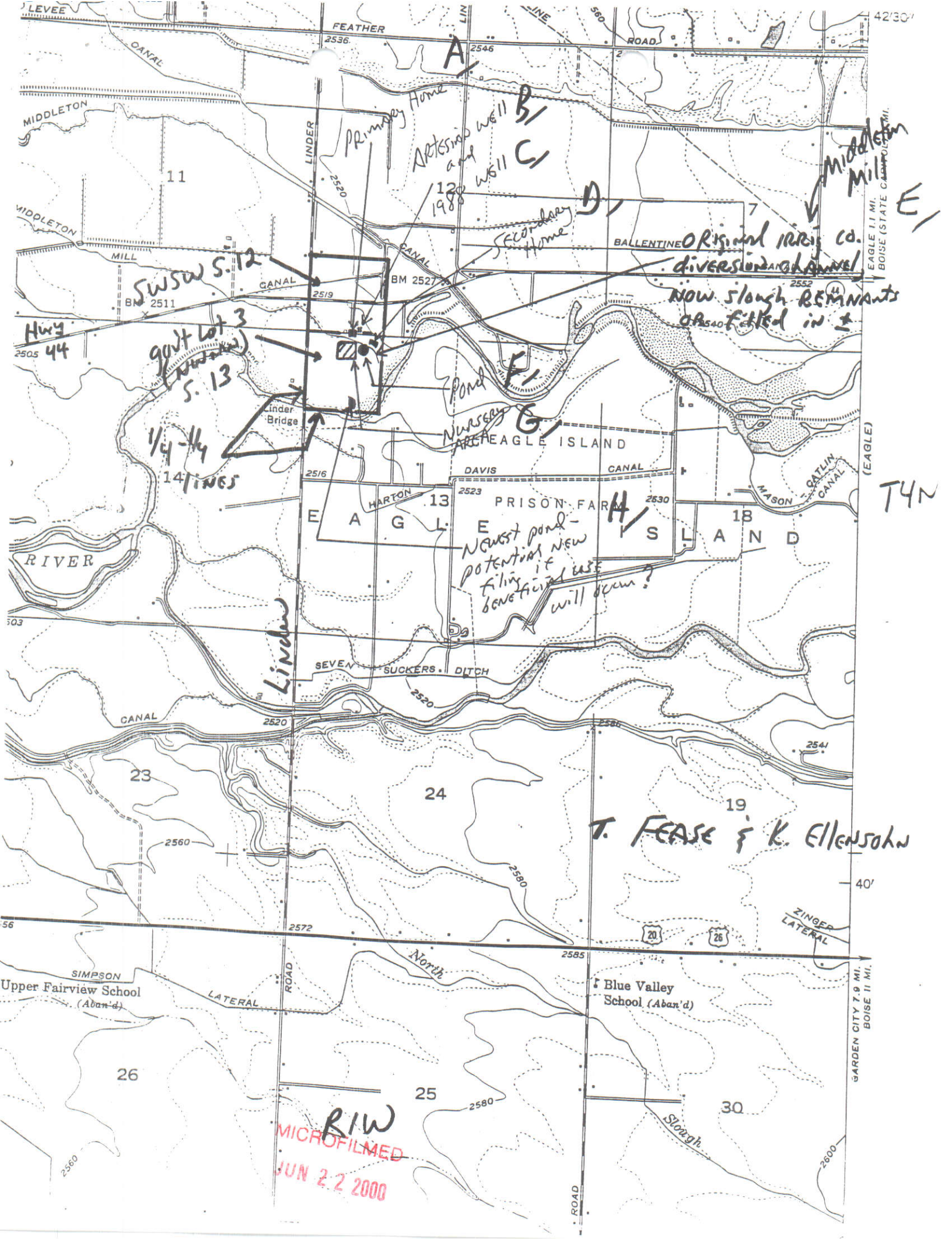
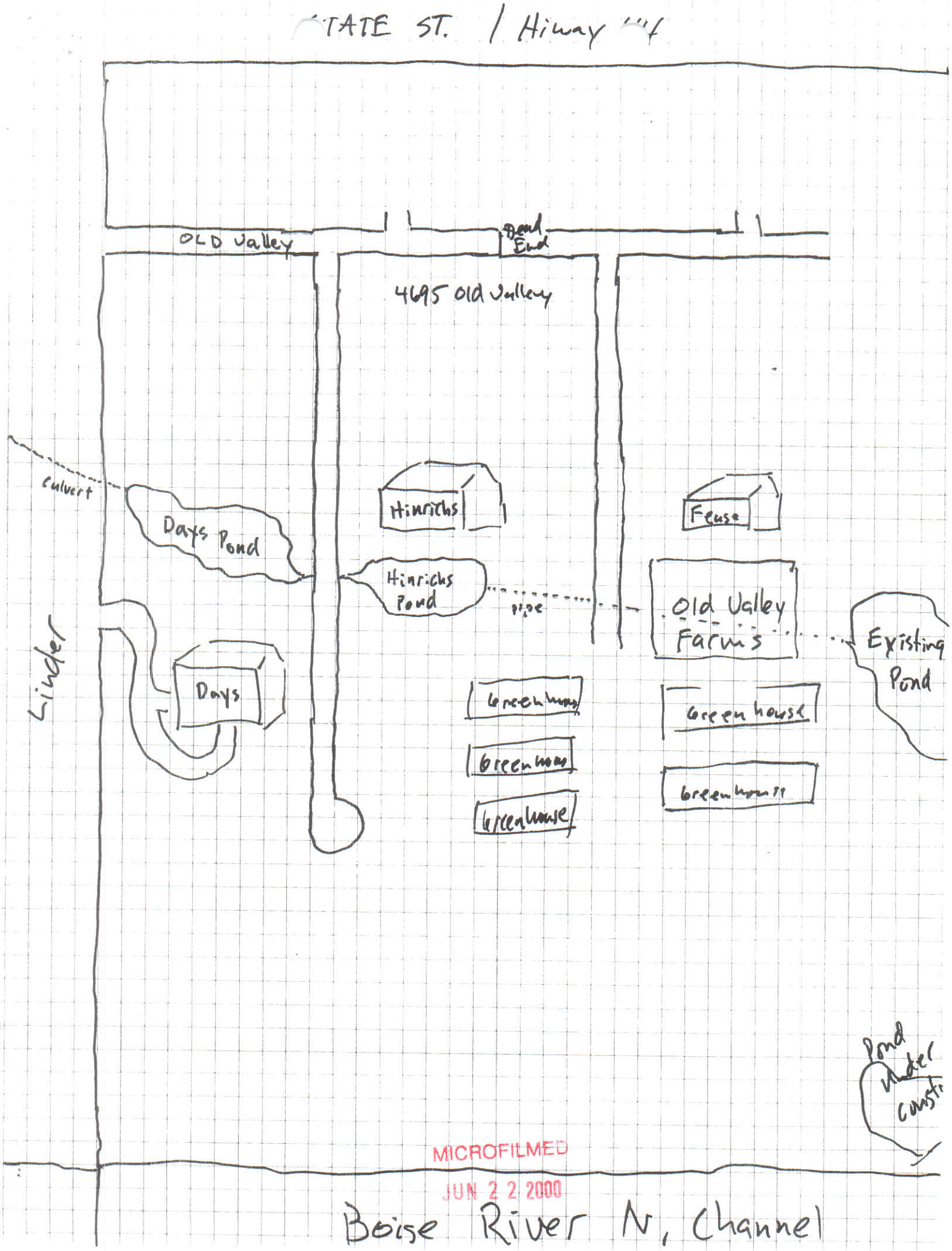
JUN 2 2 2000

EXHIBIT A


LEVEE
FEATHER
ROAD
CANAL
MIDDLETON
MILL
LINDER
ROAD
A
B
C
D
E
F
G
H
Primary Home
Artesian well and well 1988
Middleton Mill
Secondary Home
BALLENTINE
Original IRRIG. Co. diversion channel
Now slough remnants filled in ±
SWSW S. 12
Hwy 44
govt lot 3 (NWNW) S. 13
1/4-1/4 14 lines
Linder Bridge
Pond
Nursery
EAGLE ISLAND
DAVIS
CANAL
HARTON
PRISON FARM
EAGLE ISLAND
MASON
CATLIN CANAL
(EAGLE)
T4N
RIVER
Newest pond - potential new filing if beneficial use will occur?
Linder
SEVEN SUCKERS DITCH
CANAL
23
24
19
T. FEASE & K. ELLENSOHN
ZINGER LATERAL
SIMPSON
LATERAL
North
Upper Fairview School (Aban'd)
Blue Valley School (Aban'd)
26
25
30
Slough
R1W
MICROFILMED
JUN 22 2000
EAGLE 1.1 MI.
BOISE (STATE CAPITOL) 11 MI.
GARDEN CITY 7.9 MI.
BOISE 11 MI.



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JUN 2 2 2000

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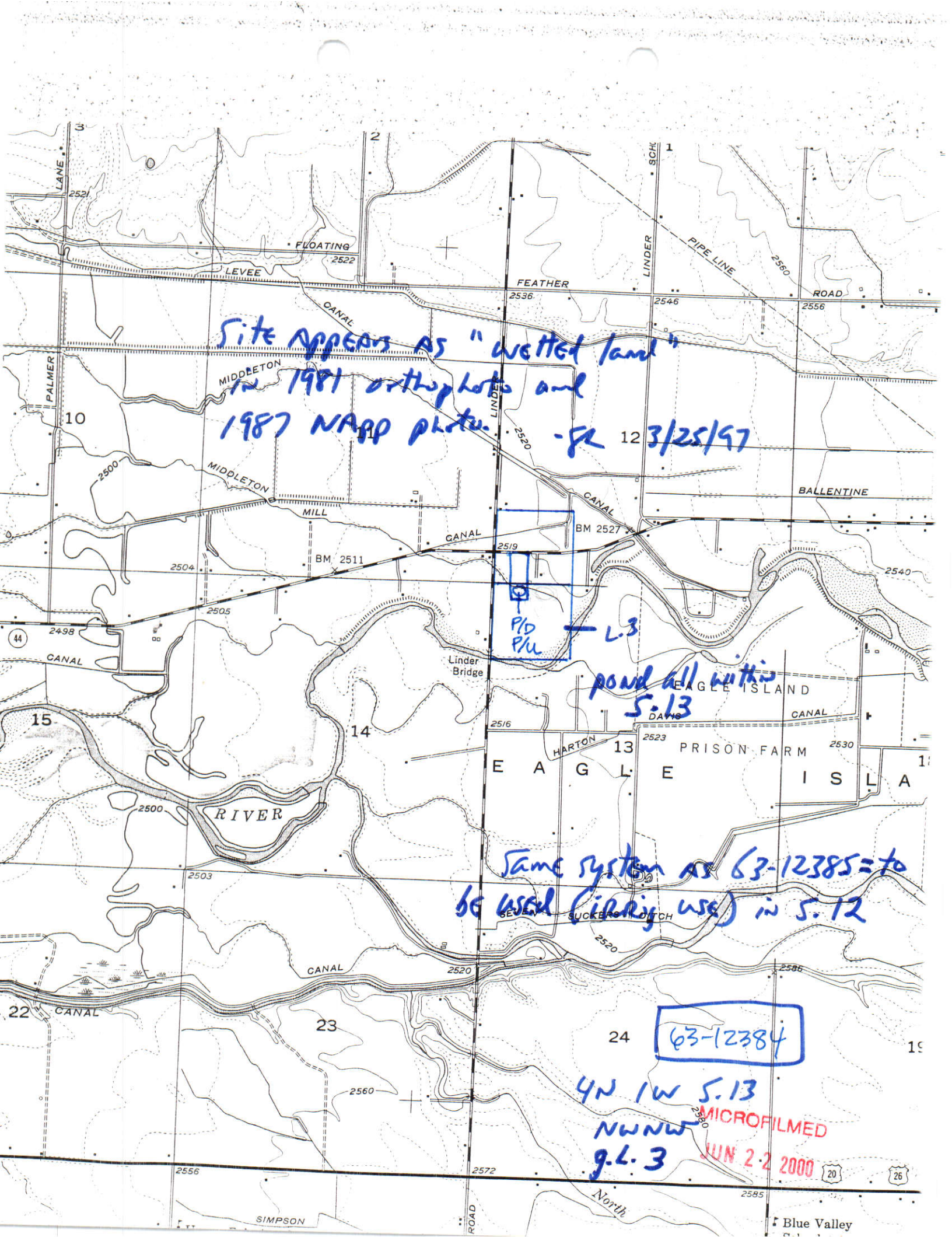
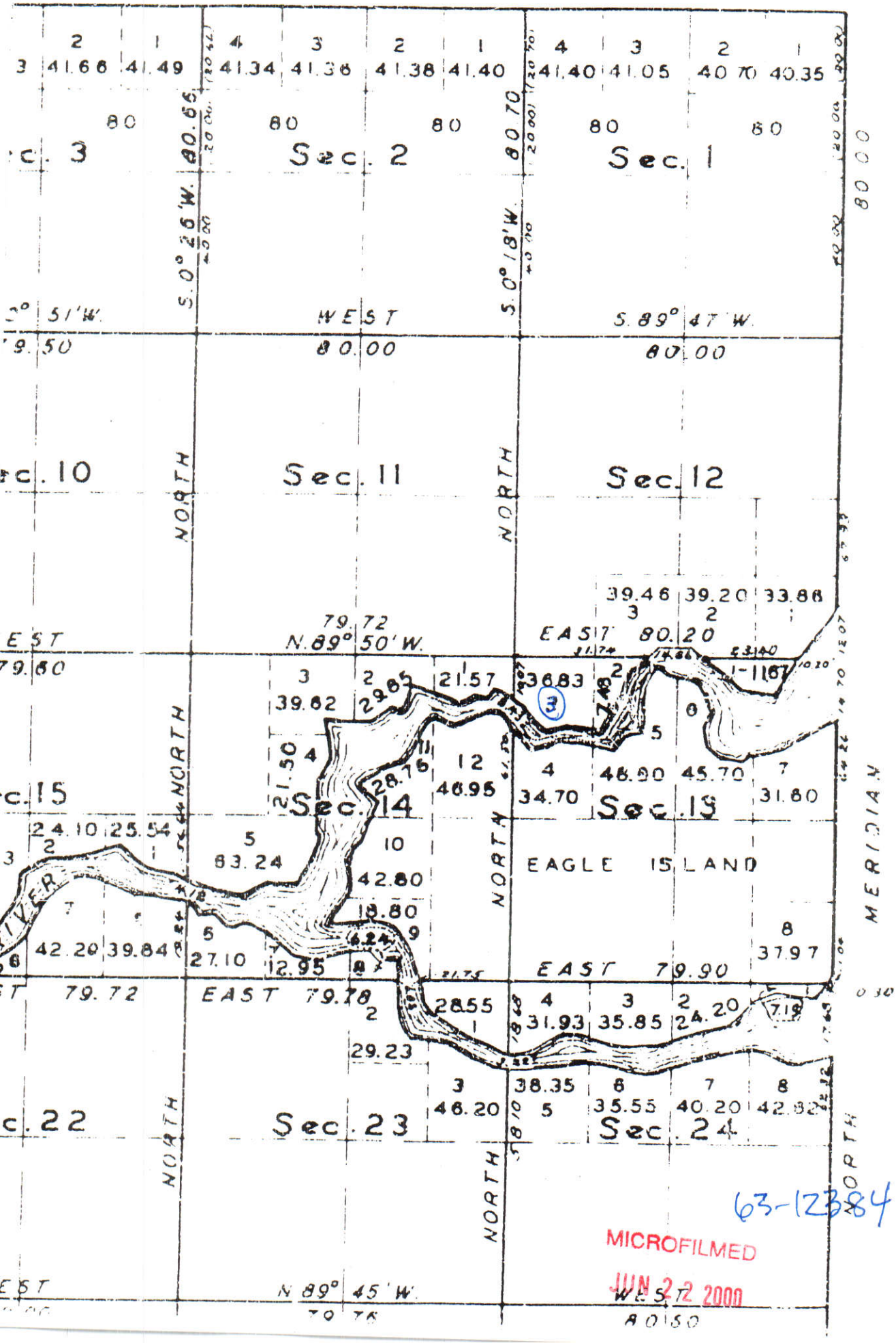
APR 1 7 1997

WATER RESOURCES
WESTERN REGION

MICROFILMED
JUN 2 2 2000


Site appears as "wetted land"
in 1981 orthophotos and
1987 NAPP photo. -SR 3/25/97
P/D
P/U
L.3
pond fill within
5.13
Same system as 63-12385 = to
be used (piping used) in 5.12
63-12384
4N 1W 5.13
NWNW
g.L.3
MICROFILMED
JUN 22 2000
FLOATING
LEVEE
FEATHER
ROAD
LINDER
PIPE LINE
CANAL
MIDDLETON
MILL
PALMER
LANE
BALLENTINE
BM 2527
BM 2511
Linder Bridge
EAGLE ISLAND
PRISON FARM
HARTON
DAVIS
RIVER
SEVEN SUCKERS DITCH
SIMPSON
North
Blue Valley



63-12384

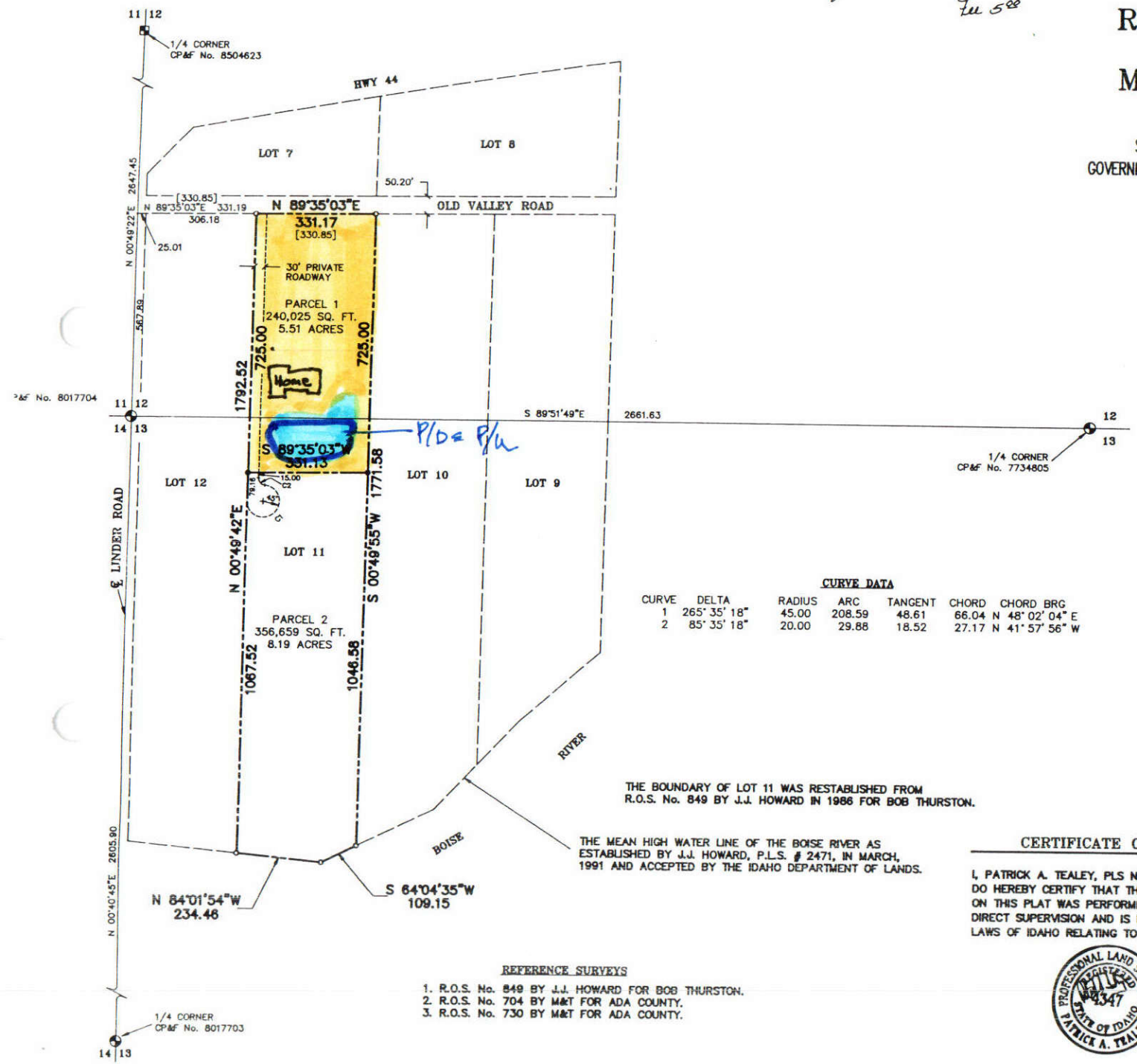
MICROFILMED
JUN 22 2000

Ok'd for rec. page 9 o'clock A M. this 17 day of July 1991
J. DAVID NAVARRO, Recorder
By Jacobson Deputy
Fee 5.00

INSTRUMENT NO. 7158101
BOOK G PAGE 1918

RECORD OF SURVEY
FOR
MARK BRIDGEWATER

LOT 11 OF COMPTON ANDREWS TRACT
SITUATED IN THE SW 1/4 OF SECTION 12 AND
GOVERNMENT LOT 3 AND ACCRETION GROUND IN SECTION 13,
T.4N., R.1W., B.M.
ADA COUNTY, IDAHO
APRIL, 1991



SCALE: 1" = 100'

MICROFILMED 12384
JUN 22 2000

LEGEND

———	BOUNDARY LINE
— — —	LOT BOUNDARY
- - - -	EASEMENT BOUNDARY
—x—x—	EXISTING FENCELINE
⊕	FOUND BRASS CAP
⊠	FOUND ALUMINUM CAP
○	FOUND 1/2" IRON PIN
●	SET 1/2" x 24" IRON PIN w/CAP
△	CALCULATED POINT
(1320.00)	DATA OF RECORD
[691.4]	PLATTED DIMENSION

CURVE DATA

CURVE	DELTA	RADIUS	ARC	TANGENT	CHORD	CHORD BRG
1	265° 35' 18"	45.00	208.59	48.61	66.04	N 48° 02' 04" E
2	85° 35' 18"	20.00	29.88	18.52	27.17	N 41° 57' 56" W

THE BOUNDARY OF LOT 11 WAS RESTABLISHED FROM R.O.S. No. 849 BY J.J. HOWARD IN 1986 FOR BOB THURSTON.

THE MEAN HIGH WATER LINE OF THE BOISE RIVER AS ESTABLISHED BY J.J. HOWARD, P.L.S. # 2471, IN MARCH, 1991 AND ACCEPTED BY THE IDAHO DEPARTMENT OF LANDS.

CERTIFICATE OF SURVEYOR

I, PATRICK A. TEALEY, PLS NO. 4347, STATE OF IDAHO, DO HEREBY CERTIFY THAT THE SURVEY REPRESENTED ON THIS PLAT WAS PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS IN ACCORDANCE WITH THE LAWS OF IDAHO RELATING TO SURVEYS.

PROFESSIONAL LAND SURVEYOR REGISTERED #4347 STATE OF IDAHO PATRICK A. TEALEY 4/5/91

REFERENCE SURVEYS

1. R.O.S. No. 849 BY J.J. HOWARD FOR BOB THURSTON.
2. R.O.S. No. 704 BY M&T FOR ADA COUNTY.
3. R.O.S. No. 730 BY M&T FOR ADA COUNTY.

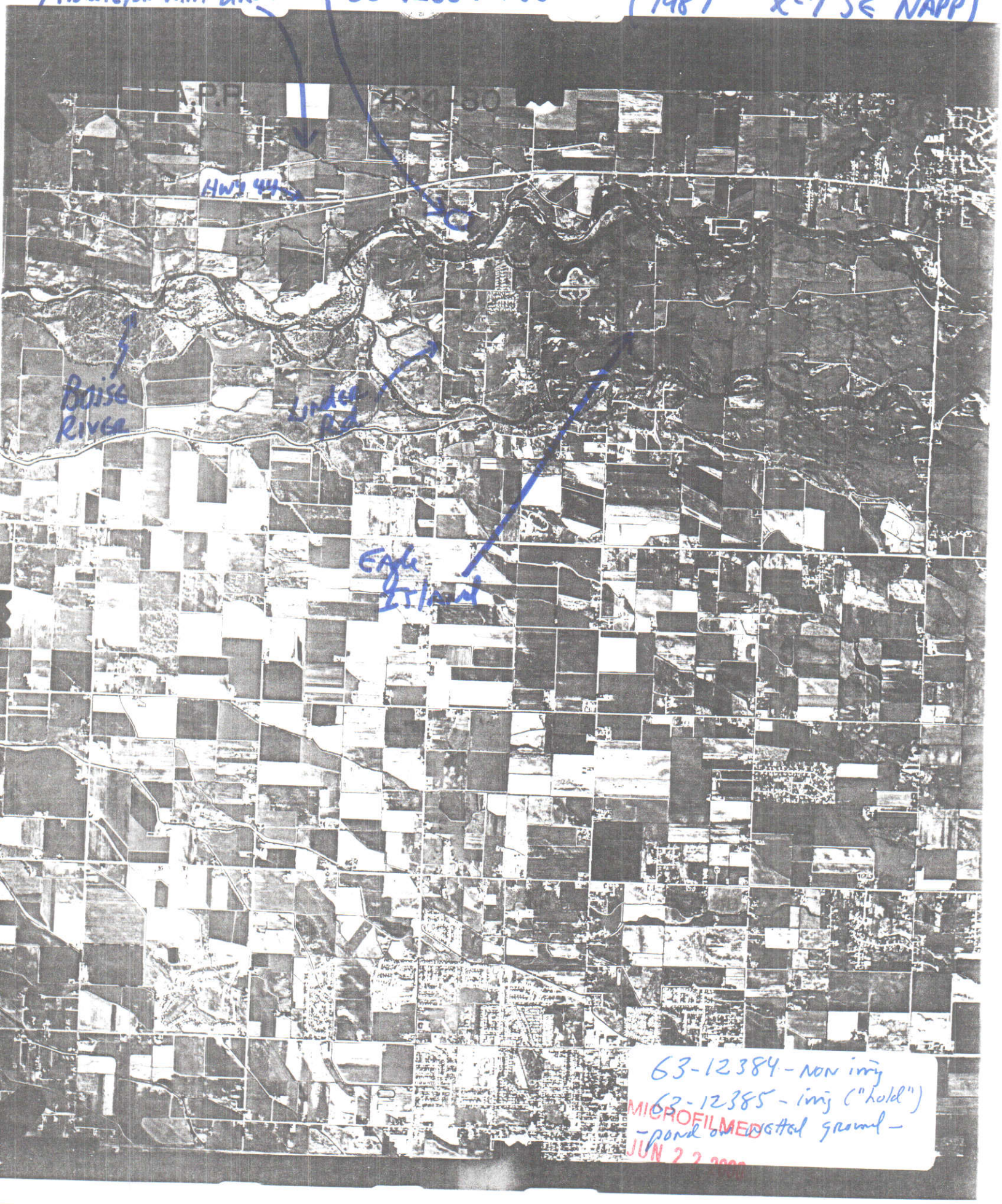
RECORDING INDEX No. 414-12-3-3-0-05-223
414-13-4-4-0-05-223

DWG\771-BNDY

TEALEY'S LAND SURVEYING
470 MAIN ST. • 208-385-0636 • BOISE, IDAHO

DATE:	DRAWING NO.:
APRIL, 1991	771

Middleton Mill drain 63-12384 & 85 (1987 X-7 5E NAPP)



63-12384 - non irrig
63-12385 - irrig ("hold")
- pond on gravel -

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JUN 2 2 2000

For Correspondence after the date of February 26, 1998 please see folder 2.

MICROFILMED
JUN 2 2 2009

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

RECEIVED
FEB 27 1998
Department of Water Resources

February 26, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Reset of Amended Notice of Taking Deposition Duces Tecum of Protestant Kathy Ellensohn, together with a copy of same for filing in the above-referenced matter. Please conform and return the copy to me in the enclosed postage paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Donna Everitt

Donna Everitt
Assistant to Susan E. Buxton

:de
Enclosures

MICROFILMED
JUN 22 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
FEB 27 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	RESET OF AMENDED NOTICE
Applicants,	)	OF TAKING DEPOSITION
	)	DUCES TECUM OF PROTESTANT
	)	KATHY ELLENSOHN
	)	

TO: Protestants Tim Fease and Kathy Ellensohn, and their attorney of record, Richard B. Burleigh; and Intervenors David and Beverly Pillott

PLEASE TAKE NOTICE that the deposition of Kathy Ellensohn previously scheduled for February 24, 1998 at 5:30 p.m. is hereby **reset for the 4th day of March, 1998 at 3:30 p.m.,** before a court reporter and notary public for the State of Idaho, on said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring the following documents and correspondence regarding the real property owned by Protestants and Applicants, Intervenors, and neighboring real property, including but not limited to: drainage plans; drainage permits; construction plans; surveys;

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JUN 22 2000

licenses; deeds; wells; easements; maps; cease and desist orders; stop work orders; road plans, easements and permits; construction permits; excavation plans; excavation permits; water licenses; water permits; water shares; drain district interests; plats; easements for conveyance of irrigation and/or drain/waste water; plans and surveys for the construction of ponds; hydrologic and engineering plans and surveys relating to ponds before and after ponds' construction; hydrologic and engineering surveys and plans related to drainage and irrigation before, during, and after improvements made for Protestants commercial greenhouse operation, including roads; video tapes; audio tapes; telephone messages; e-mail; pictures; and any documents and/or correspondence which support, or relate to, the protest of the above-entitled Application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 26th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorneys for Applicants

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616
Intervenors

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
1301 N. Orchard
Boise, Idaho 83706

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

MICROFILMED
JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
FEB 27 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	RESET OF AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF PROTESTANT KATHY ELLENSOHN

TO: Protestants Tim Fease and Kathy Ellensohn, and their attorney of record, Richard B. Burleigh; and Intervenors David and Beverly Pillott

PLEASE TAKE NOTICE that the deposition of Kathy Ellensohn previously scheduled for February 24, 1998 at 5:30 p.m. is hereby **reset for the 4th day of March, 1998 at 3:30 p.m.**, before a court reporter and notary public for the State of Idaho, on said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

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JUN 22 2000

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This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 26th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorneys for Applicants

MICROFILMED
JUN 2 2 2000

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Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616
Intervenors

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
1301 N. Orchard
Boise, Idaho 83706

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

for
Susan E. Buxton

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JUN 22 2000

RECEIVED
FEB 2 6 1998
Department of Water Resources

Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 PROTESTANT TIM FEASE'S MOTION TO RECONSIDER ORDER VACATING HEARING

Tim Fease ("Protestant") by and through his attorneys of record Hawley Troxell Ennis & Hawley LLP, moves the Hearing Officer to reconsider his February 23, 1998, Order Vacating Hearing. Protestant's request is based on his Opposition to Petition for Continuance, filed on February 24, 1998, and the following.

On Friday, February 20, 1998, Applicants filed with the Hearing Officer a Petition for Continuance, Expedited Hearing. The Petition included eight (8) number paragraphs which purport to justify Applicants' request to continue this matter to some undetermined date. The Petition was hand delivered to Protestant's counsel on the same day, February 20, 1998. Upon

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receiving the Petition, Protestant's counsel faxed the Petition to Protestant and discussed the Petition with Protestant that afternoon. On Monday, February 23, 1998, Protestant's counsel prepared an Opposition to Petition for Continuance and served it on the other parties that same day by U.S. Mail. The following day, Tuesday February 24, 1998, the Opposition was hand delivered to the Hearing Officer. However, by this time the Hearing Officer has already issued an order vacating the hearing. The Order did not reschedule the hearing.

Protestant submits that the reasons for continuing the hearing as set forth in the Petition were insufficient to warrant the Hearing Officer granting the decision. Protestant's Opposition, a copy of which is attached hereto, sets forth the basis for this position and should be given due consideration by the Hearing Officer.

The only rational that may have warranted continuing this matter if more information had been provided was the stated health of the Applicants' counsel (*see* ¶ 3 of Petition). Based on recent events, however, this in not a valid basis for continuing this matter. In particular, Applicants took the deposition of Protestant on Tuesday, February 24, 1996. At that time Applicants were represented by two lawyers, Susan Buxton and Larry Westberg, both of who engaged in the examination of Protestant for purposes limited to this matter. There is no stated reason why Applicants' second lawyer, Mr. Westberg, cannot

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proceed with this matter in a timely fashion in the event Ms. Buxton's health prevents her from doing so.

As previously noted, this matter concerns Applicants' construction of a pond in the historic Middleton Mill slough which resulted in their blocking the historical drainage from Protestant's property. As a result of Applicants' actions, Protestant's property is at risk of flooding. If the flooding occurs, it could result in substantial damage to both Protestant's property and business. Since no party, including the Department of Water Resources, can predict future water and weather conditions there is no basis for placing Protestant in such a predicament by delaying the decision on this matter. Such damage could be avoided merely by conditioning Applicants' permit to require, *inter alia,* that Applicants provide for the historic drainage from Protestant's property. Applicants have not stated any reason why this cannot occur in a timely manner.

This matter should go forward as previously scheduled. Protestant request that the Hearing Officer reconsider his Order Vacating the Hearing and place this matter back on the calendar for hearing on March 17, 1998.

DATED THIS 26th day of February, 1998.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Richard B. Burleigh

MICROFILMED
MAR 2 2 2000

G:\CLIENT\07333\001\RECONSID.MOT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 1998, I caused to be served a true copy of the foregoing PROTESTANT TIM FEASE'S MOTION TO RECONSIDER ORDER VACATING HEARING by the method indicated below, and addressed to each of the following:

Susan E. Buxton Moore & McFadden, Chartered 999 Main Street, Suite 910 Boise, ID 83702 (Attorneys for Applicant)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
David and Beverly Pillot 903 Briarwood Nampa, ID 83651 (Proposed Intervenors)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
L. Glen Saxton Hearing Officer State of Idaho Department of Water Resources 1301 N. Orchard Boise, ID 83706	___ U.S. Mail, Postage Prepaid ✓ Hand Delivered ___ Overnight Mail ___ Telecopy

Richard B. Burleigh

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JUN 22 2000

RECEIVED
FEB 24 1998
Department of Water Resources

Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 PROTESTANT'S OPPOSITION TO PETITION FOR CONTINUANCE

COMES NOW Protestant, Tim Fease, by and through his attorney of record, Hawley Troxell Ennis & Hawley LLP, and objects to Applicants' Petition for Continuance of the hearing set in the above-entitled matter for March 17, 1998 at 9:00 o'clock a.m. The reasons set forth by Applicants for continuing this proceeding insufficient, irrelevant or inaccurate and do not justify a continuance of this matter. The following addresses each of the numbered paragraphs included in Applicants' Petition for Continuance.

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JUN 22 2000

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1. Applicants first request a continuance because of a criminal matter pending against Kenley Hinrichs. Applicants assert that the criminal matter contains the same or similar factual matters as this proceeding and raise serious criminal legal questions. Applicants also assert that the factual matters relate to the present case may not be fully developed by the March 17, 1998 hearing. The criminal matter does not however, directly relate to this proceeding

The principal issue of concern in the present matter is the drainage in and around the area of Applicants' pond. This matter is not at issue in any fashion in the criminal matter. The other principal issue is the blocking of an intended right-of-way for an irrigation line. The criminal matter concerns the alleged theft of irrigation pipe. Although this pipe was intended to provide irrigation water to Intervenors on Protestant's property, its alleged theft does not directly affect any condition applicable to the permit for Applicants' pond.

Next, Applicants fail to explain why the factual matters related to the present case will not be fully developed by the March 17, 1998 hearing. They are currently involved in discovery, have served interrogatories on the Applicants and the Intervenors, and have noticed several depositions. Protestant has also served interrogatories and requests for production. motions to quash or suspend discovery have been made. All

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JUN 2 2 2000

G:\CLIENT\07333\001\CONTINUE.RES

pending discovery will be finished before March 10, as required by the Department. There is, therefore, no reason why discovery will not be finished. There is no reason given by Applicant why any facts obtained in this proceeding should have any prejudicial effect on Applicants in the criminal proceeding or vice versa. This matter should proceed notwithstanding the criminal matter.

2. Applicants state that the parties are attempting to enter into settlement negotiations. It is true that the Protestant submitted to Applicants a settlement offer. It is Applicants, however, who have placed this matter on hold during the pendency of the criminal case. Protestant would prefer to either settle this matter or proceed forward and resolve the issue of drainage for his property immediately.

3. Applicants' third reason for continuance concerns the health and welfare of their legal counsel. Protestant does not object to a continuance on this basis if the Applicants' legal counsel is scheduled for surgery prior to or near the March 17 hearing date. However, based on the information provided by Applicants' Petition, Protestant submits that there is insufficient information available for the Department to continue this proceeding on this basis. If necessary, Applicants should consider obtaining alternative legal counsel.

4. Applicants state that the Department should determine if permits are required for a pond such as Applicants'

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JUN 2 2 2009

G:\CLIENT\07333\001\CONTINUE.RES

before proceeding on this matter. In support of this argument, Applicants cite to Rule 230.01.c. This Rule concerns petitions for an action that will lead to the issuance of an order or rule. Protestant is unaware of any petition requesting that the Department issue an order or rule regarding whether or not nonconsumptive pond storage permits are required. Furthermore, it is Protestant's understanding that it is the policy of the Department to permit these ponds if a permit application is filed but that otherwise, they do not require permitting. Since Applicants have chosen to submit this permit application, it is presumed that Applicants have determined that a permit application is necessary for their ponds. Therefore, this argument does not constitute a basis for a continuance of this matter.

5. Applicants reference the use of domestic water wells by Protestant for commercial irrigation as a reason for continuing this matter. First, Applicants' statement regarding the domestic water wells is inaccurate. Second, Applicants' reference to Protestant's domestic water wells is irrelevant to their permit application. Third, Protestant is aware of no petition under Rule 230.01.b requesting an order or rule regarding, in any fashion, Protestant's domestic water wells. For these reasons, Applicants have not stated a basis for continuing this matter.

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JUN 22 2000

G:\CLIENT\07333\001\CONTINUE.RES

6. Paragraph 6 of Applicants' Petition references discovery but does not appear to concern Applicants' Petition for Continuance.

7. Paragraph 7 concerns Susan Buxton, legal counsel for Applicants, discussing this Petition for Continuance with Richard Burleigh, counsel for Protestant. For clarification of the record, Mr. Burleigh does not represent the Intervenors, Mr. and Mrs. Pillots, for all purposes in this matter, but has agreed to represent them at their deposition to be taken by Ms. Buxton on March 3, 1998. Furthermore, Mr. Burleigh told Ms. Buxton that, in all likelihood, this Petition would be opposed.

8. Applicants request a hearing the latter part of April 1998. Applicants have, however, failed to justify delaying this matter. This matter concerns drainage from Protestant's property into the natural drainage for the area, the Middleton Mill drain. Depending on weather and water conditions, it may become necessary prior to April of 1998 to utilize this drainage. As this matter stands, the drainage has been completely blocked by the Applicants. This creates an immediate and imminent threat to Protestant's property. The Department should continue with the March 17, 1998 hearing pursuant to its previous Order.

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JUN 22 2000

DATED THIS 23rd day of February, 1998.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Richard B. Burleigh
Attorneys for Protestant
Tim Fease

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 1998, I caused to be served a true copy of the foregoing PROTESTATN'S OPPOSITION TO PETITION FOR CONTINUANCE by the method indicated below, and addressed to each of the following:

Susan E. Buxton Moore & McFadden, Chartered 999 Main Street, Suite 910 Boise, ID 83702 (Attorneys for Applicant)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
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L. Glen Saxton Hearing Officer State of Idaho Department of Water Resources 1301 N. Orchard Boise, ID 83706	___ U.S. Mail, Postage Prepaid ✓ Hand Delivered (on 2-24-98) ___ Overnight Mail ___ Telecopy

_____
Richard B. Burleigh

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JUN 22 2000

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FEB 24 1998
Department of Water Resources

Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 PROTESTANT'S OPPOSITION TO PETITION FOR CONTINUANCE

COMES NOW Protestant, Tim Fease, by and through his attorney of record, Hawley Troxell Ennis & Hawley LLP, and objects to Applicants' Petition for Continuance of the hearing set in the above-entitled matter for March 17, 1998 at 9:00 o'clock a.m. The reasons set forth by Applicants for continuing this proceeding insufficient, irrelevant or inaccurate and do not justify a continuance of this matter. The following addresses each of the numbered paragraphs included in Applicants' Petition for Continuance.

MICROFILMED
JUN 22 2000

G:\CLIENT\07333\001\CONTINUE.RES

1. Applicants first request a continuance because of a criminal matter pending against Kenley Hinrichs. Applicants assert that the criminal matter contains the same or similar factual matters as this proceeding and raise serious criminal legal questions. Applicants also assert that the factual matters relate to the present case may not be fully developed by the March 17, 1998 hearing. The criminal matter does not however, directly relate to this proceeding

The principal issue of concern in the present matter is the drainage in and around the area of Applicants' pond. This matter is not at issue in any fashion in the criminal matter. The other principal issue is the blocking of an intended right-of-way for an irrigation line. The criminal matter concerns the alleged theft of irrigation pipe. Although this pipe was intended to provide irrigation water to Intervenors on Protestant's property, its alleged theft does not directly affect any condition applicable to the permit for Applicants' pond.

Next, Applicants fail to explain why the factual matters related to the present case will not be fully developed by the March 17, 1998 hearing. They are currently involved in discovery, have served interrogatories on the Applicants and the Intervenors, and have noticed several depositions. Protestant has also served interrogatories and requests for production. motions to quash or suspend discovery have been made. All

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pending discovery will be finished before March 10, as required by the Department. There is, therefore, no reason why discovery will not be finished. There is no reason given by Applicant why any facts obtained in this proceeding should have any prejudicial effect on Applicants in the criminal proceeding or vice versa. This matter should proceed notwithstanding the criminal matter.

2. Applicants state that the parties are attempting to enter into settlement negotiations. It is true that the Protestant submitted to Applicants a settlement offer. It is Applicants, however, who have placed this matter on hold during the pendency of the criminal case. Protestant would prefer to either settle this matter or proceed forward and resolve the issue of drainage for his property immediately.

3. Applicants' third reason for continuance concerns the health and welfare of their legal counsel. Protestant does not object to a continuance on this basis if the Applicants' legal counsel is scheduled for surgery prior to or near the March 17 hearing date. However, based on the information provided by Applicants' Petition, Protestant submits that there is insufficient information available for the Department to continue this proceeding on this basis. If necessary, Applicants should consider obtaining alternative legal counsel.

4. Applicants state that the Department should determine if permits are required and such as Applicants'

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before proceeding on this matter. In support of this argument, Applicants cite to Rule 230.01.c. This Rule concerns petitions for an action that will lead to the issuance of an order or rule. Protestant is unaware of any petition requesting that the Department issue an order or rule regarding whether or not nonconsumptive pond storage permits are required. Furthermore, it is Protestant's understanding that it is the policy of the Department to permit these ponds if a permit application is filed but that otherwise, they do not require permitting. Since Applicants have chosen to submit this permit application, it is presumed that Applicants have determined that a permit application is necessary for their ponds. Therefore, this argument does not constitute a basis for a continuance of this matter.

5. Applicants reference the use of domestic water wells by Protestant for commercial irrigation as a reason for continuing this matter. First, Applicants' statement regarding the domestic water wells is inaccurate. Second, Applicants' reference to Protestant's domestic water wells is irrelevant to their permit application. Third, Protestant is aware of no petition under Rule 230.01.b requesting an order or rule regarding, in any fashion, Protestant's domestic water wells. For these reasons, Applicants have not stated a basis for continuing this matter.

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6. Paragraph 6 of Applicants' Petition references discovery but does not appear to concern Applicants' Petition for Continuance.

7. Paragraph 7 concerns Susan Buxton, legal counsel for Applicants, discussing this Petition for Continuance with Richard Burleigh, counsel for Protestant. For clarification of the record, Mr. Burleigh does not represent the Intervenors, Mr. and Mrs. Pillots, for all purposes in this matter, but has agreed to represent them at their deposition to be taken by Ms. Buxton on March 3, 1998. Furthermore, Mr. Burleigh told Ms. Buxton that, in all likelihood, this Petition would be opposed.

8. Applicants request a hearing the latter part of April 1998. Applicants have, however, failed to justify delaying this matter. This matter concerns drainage from Protestant's property into the natural drainage for the area, the Middleton Mill drain. Depending on weather and water conditions, it may become necessary prior to April of 1998 to utilize this drainage. As this matter stands, the drainage has been completely blocked by the Applicants. This creates an immediate and imminent threat to Protestant's property. The Department should continue with the March 17, 1998 hearing pursuant to its previous Order.

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DATED THIS 23rd day of February, 1998.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Richard B. Burleigh
Attorneys for Protestant
Tim Fease

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 1998, I caused to be served a true copy of the foregoing PROTESTATN'S OPPOSITION TO PETITION FOR CONTINUANCE by the method indicated below, and addressed to each of the following:

Susan E. Buxton Moore & McFadden, Chartered 999 Main Street, Suite 910 Boise, ID 83702 (Attorneys for Applicant)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
David and Beverly Pillot 903 Briarwood Nampa, ID 83651 (Proposed Intervenors)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
L. Glen Saxton Hearing Officer State of Idaho Department of Water Resources 1301 N. Orchard Boise, ID 83706	___ U.S. Mail, Postage Prepaid ✓ Hand Delivered (on 2-24-98) ___ Overnight Mail ___ Telecopy

_____
Richard B. Burleigh

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JUN 2 2 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY J. HINRICHS AND LISA K. O'TOOLE	)	**ORDER VACATING HEARING**

The Department of Water Resources (department) has scheduled a hearing in the above captioned matter to be held on March 17, 1998 in Boise, Idaho.

On February 20, 1998, the applicant filed a Petition for Continuance with the department seeking to continue the scheduled hearing to some presently undetermined future date.

ORDER

IT IS HEREBY ORDERED that the Petition for Continuance seeking to delay the hearing scheduled in connection with the above referenced matter is **GRANTED.**

IT IS FURTHER ORDERED that the hearing scheduled for March 17, 1998 in the above captioned matter is **CANCELLED.**

Dated this 23rd day of February, 1998.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 23rd day of February, 1998, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Susan E Buxton
MOORE AND MCFADDEN CHARTERED
999 Main St STE 910
Boise ID 83702

Richard B Burleigh
HAWLEY TROXELL ENNIS
AND HAWLEY
877 W Main St STE 1000
Boise ID 83702

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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JUN 2 2 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY J. HINRICHS AND LISA K. O'TOOLE	)	**ORDER AUTHORIZING DISCOVERY**

On February 4, 1998, Kenley Hinrichs and Lisa O'Toole by and through their attorney of record, Susan E. Buxton, by motion requested the department to issue an order authorizing discovery in connection with the above captioned matter.

The department hereby authorizes the parties to engage in discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing in this matter which has been tentatively scheduled on March 17, 1998. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

DATED this 9th day of February, 1998.

L. GLEN SAXTON
Hearing Officer

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 9th day of February, 1998, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Kenley J Hinrich
Lisa K Otoole
4695 Old Valley Rd
Eagle ID 83616

Tim Fease
4557 Old Valley Rd
Eagle ID 83616

David and Beverly Pillott
903 Briarwood Dr
Nampa ID 83651

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 23, 1998

RE: In the Matter of Application for Permit No. 63-12384 in the name of Kenley J. Henrichs and Lisa O'Toole

Dear Interested Parties:

I have enclosed a copy of the Order Vacating Hearing issued in connection with the above referenced water right permit.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

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JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
FEB 20 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	PETITION FOR CONTINUANCE
Applicants,	)	
	)	EXPEDITED CONSIDERATION
	)	
	)	

COMES NOW, Applicants, by and through their counsel of record, and hereby petitions the Idaho Department of Water Resources for its Order continuing the Hearing set in the above entitled matter on March 17, 1998 at 9:00 a.m., until such time that the matters as described below, are resolved, pursuant to Rules of Procedure for the Idaho Department of Water Resources ("Department Rules") 230(.01)(a).

This petition is made upon the following reasons:

1. There is currently a criminal matter pending involving Applicant, Kenley Hinrichs, Protestants Tim Fease and Kathy Ellensohn, and Intervenor Beverly Pillott which relates to the subject matter of this proceeding. The preliminary hearing involving the parties to this matter is currently scheduled for February 27, 1998. (See, attached Exhibit A, notice

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of hearing.) The criminal matter contains the same and similar factual matters that raise serious criminal legal questions. Accordingly, those factual matters related to the present case may not be fully developed at the March 17, 1998 hearing. It is likely, therefore, that the criminal matter will not be resolved by March 17, 1998 which would necessitate a continuance.

2. The parties are attempting to enter into settlement negotiations in this matter which have been put on hold during the pendency of the criminal case.

3. Legal counsel for Applicants is currently undergoing treatment for a recently diagnosed heart condition and the need for surgical procedures is being evaluated at this time by physicians in Boise and Atlanta, Georgia.

4. The Department does not currently require non-consumptive pond storage permits and all parties to this action have non-permitted ponds. A decision whether such permits are required should first be made by the Department before Applicants and the other parties to this proceeding incur further costs. Department Rule 230(.01)(b).

5. Protestants Tim Fease and Kathy Ellensohn utilize domestic water wells for commercial irrigation which appear to have a direct hydrologic effect on the water level of Applicants' pond. Such commercial use is not currently permitted, a fact which has been acknowledged previously by the Department. The Department must address this issue prior to this proceeding going forward as it is materially related to this Application. Department Rule 230(.01)(b).

6. Discovery on this matter should continue while keeping in mind those separate legal issues arising out of the criminal case may affect such discovery until after its resolution.

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7. Susan Buxton, legal counsel for Applicants, has discussed the continuance with Richard Burleigh who informed her this morning that he represents both Protestants and Intervenors. Mr. Burleigh indicated that he will discuss the continuance with his clients. Ms. Buxton raised the issue concerning the continuance in a letter to the Intervenors prior to information of Mr. Burleigh's representation.

8. Applicants expect that the hearing could be rescheduled by the latter part of April 1998 depending upon the resolution of the criminal case. Applicants will keep the Department and the parties informed of the progress on the criminal case and dates of expected surgery.

Respectfully submitted this 20th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorney for Applicants

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JUN 2 2 2000
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants and Intervenors

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Susan E. Buxton

Susan E. Buxton

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JUN 2 2 2000

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs. Kenley Henricks

Defendant.

Case No. M9715291

NOTICE OF:

____ FURTHER PROCEEDINGS BEFORE JUDGE _____

____ TRIAL SET COURT/JURY BEFORE JUDGE _____

1 PRELIMINARY HEARING RESET BEFORE JUDGE Hunter

____ DISTRICT COURT ARRAIGNMENT BEFORE JUDGE _____

NOTICE IS HEREBY GIVEN to the above named Defendant that proceedings in this case have been continued until 1:30 .m. o'clock on the 27 day of Feb, 1998, in the courtroom at the

____ CITY/COUNTY TRAFFIC COURT, 7180 BARRISTER DRIVE, BOISE or

X ADA COUNTY COURTHOUSE, 514 WEST JEFFERSON, BOISE

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

J. DAVID NAVARRO, Clerk

DATED Jan 30, 1998

By: Marilyn Edwards
Deputy Clerk

I hereby certify that copies of the above notice were served as follows on this date:

X Defendant: ____ Hand Delivered ____ Mailed to:

X Private Counsel: Terry Westberg

Prosecutor: Interdepartmental Mail ____ Hand delivered X

Public Defender: Interdepartmental Mail ____ Hand delivered ____

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JAN 2 2 2006

EXHIBIT A

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

RECEIVED

FEB 20 1998

Department of Water Resources

February 20, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Petition for Continuance and four original Amended Notices of Taking Deposition Duces Tecum, together with copies of same for filing in the above-referenced matter. Please conform and return the copies to me in the enclosed postage paid envelope.

Also enclosed is one copy each of Applicants First Set of Interrogatories and Request for Production of Documents to Protestants and Intervenors. The Amended Notices of Deposition and Requests for Discovery were served on Richard B. Burleigh, counsel for Protestants and Intervenors on February 20, 1998.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

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JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
FEB 20 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF INTERVENOR BEVERLY PILLOTT

TO: Protestants Tim Fease and Kathy Ellensohn; Intervenors David and Beverly Pillott, and their attorney of record, Richard B. Burleigh

PLEASE TAKE NOTICE that that the deposition of Beverly Pillott previously scheduled for February 25, 1998 at 9:00 a.m. is hereby vacated **and reset for the 3rd day of March, 1998 at 2:00 p.m.**, before a court reporter and notary public for the State of Idaho, of said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring all documents and correspondence regarding the real property owned by Intervenors, Protestants, Applicants, and neighboring real property, including but not limited to the following: site, pond(s), and residence construction plans; deeds; road

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JUN 22 2000

plans; easements; permits; excavation plans and permits; engineering and/or hydrological studies; correspondence; documents; maps; water right licenses, shares and/or permits; contracts and/or conveyance documents regarding water rights, water licenses, shares in any ditch company or water delivery organization; irrigation equipment, pipe, irrigation ditches, and maintenance records and correspondence; pictures; surveys; audio and video recordings which support or relate to, your protest and intervention in of the above-entitled application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 20th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorneys for Applicants

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants and Intervenors

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

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JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
FEB 20 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF INTERVENOR DAVID PILLOTT

TO: Protestants Tim Fease and Kathy Ellensohn; Intervenors David and Beverly Pillott, and their attorney of record, Richard B. Burleigh

PLEASE TAKE NOTICE that that the deposition of David Pillott previously scheduled for February 25, 1998 at 11:00 a.m. is hereby vacated **and reset for the 3rd day of March, 1998 at 4:00 p.m.**, before a court reporter and notary public for the State of Idaho, of said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring all documents and correspondence regarding the real property owned by Intervenors, Protestants, Applicants, and neighboring real property, including but not limited to the following: site, pond(s), and residence construction plans; deeds; road

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JUN 22 2000

plans; easements; permits; excavation plans and permits; engineering and/or hydrological studies; correspondence; documents; maps; water right licenses, shares and/or permits; contracts and/or conveyance documents regarding water rights, water licenses, shares in any ditch company or water delivery organization; irrigation equipment, pipe, irrigation ditches, and maintenance records and correspondence; pictures; surveys; audio and video recordings which support or relate to, your protest and intervention in of the above-entitled application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 20th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorneys for Applicants

MICROFILMED
JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants and Intervenors

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

_____
Susan E. Buxton

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JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
FEB 20 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	AMENDED NOTICE OF
Applicants,	)	TAKING DEPOSITION
	)	DUCES TECUM OF PROTESTANT
	)	KATHY ELLENSOHN
	)	

TO: Protestants Tim Fease and Kathy Ellensohn; Intervenors David and Beverly Pillott, and their attorney of record, Richard B. Burleigh

PLEASE TAKE NOTICE that the deposition of Kathy Ellensohn previously scheduled for February 24, 1998 at 3:30 p.m. is hereby vacated **and reset for the 24th day of February, 1998 at 5:30 p.m.**, before a court reporter and notary public for the State of Idaho, on said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring the following documents and correspondence regarding the real property owned by Protestants and Applicants, Intervenors, and neighboring real property, including but not limited to: drainage plans; drainage permits; construction plans; surveys;

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JUN 2 2 2000

licenses; deeds; wells; easements; maps; cease and desist orders; stop work orders; road plans, easements and permits; construction permits; excavation plans; excavation permits; water licenses; water permits; water shares; drain district interests; plats; easements for conveyance of irrigation and/or drain/waste water; plans and surveys for the construction of ponds; hydrologic and engineering plans and surveys relating to ponds before and after ponds' construction; hydrologic and engineering surveys and plans related to drainage and irrigation before, during, and after improvements made for Protestants commercial greenhouse operation, including roads; video tapes; audio tapes; telephone messages; e-mail; pictures; and any documents and/or correspondence which support, or relate to, the protest of the above-entitled Application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 20th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorneys for Applicants

MICROFILMED
JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants and Intervenors

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

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JUN 2 2 2000

RECEIVED
FEB 20 1998
Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF PROTESTANT TIM FEASE
Applicants,	)	
	)	
	)	
	)	

TO: Protestants Tim Fease and Kathy Ellensohn; Intervenors David and Beverly Pillott, and their attorney of record, Richard B. Burleigh

PLEASE TAKE NOTICE that the deposition of Tim Fease previously scheduled for February 24, 1998 at 10:00 a.m. is hereby vacated **and reset for the 24th day of February, 1998 at 3:30 p.m.**, before a court reporter and notary public for the State of Idaho, on said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring the following documents and correspondence regarding the real property owned by Protestants and Applicants, Intervenors, and neighboring real property,

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JUN 2 2 2000

including but not limited to: drainage plans; drainage permits; construction plans; surveys; licenses; deeds; wells; easements; maps; cease and desist orders; stop work orders; road plans, easements and permits; construction permits; excavation plans; excavation permits; water licenses; water permits; water shares; drain district interests; plats; easements for conveyance of irrigation and/or drain/waste water; plans and surveys for the construction of ponds; hydrologic and engineering plans and surveys relating to ponds before and after ponds' construction; hydrologic and engineering surveys and plans related to drainage and irrigation before, during, and after improvements made for Protestants commercial greenhouse operation, including roads; video tapes; audio tapes; telephone messages; e-mail; pictures; and any documents and/or correspondence which support, or relate to, the protest of the above-entitled Application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 20th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorneys for Applicants

MICROFILMED
JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants and Intervenors

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

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State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

MICROFILMED
JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

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FEB 20 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
Applicants,	)	APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO PROTESTANTS

TO: Tim Fease and Kathy Ellensohn, Protestants, and their attorney of record, Richard B. Burleigh:

COMES NOW, Applicants, by and through their counsel of record, pursuant to IDWR Rule 524 and Rules 33 and 34 of the Idaho Rules of Civil Procedure, propounds the following Interrogatories and Request for Production of Documents to Protestants, to be answered within fifteen (15) days from the date of receipt hereof.

In answering these discovery requests you are required by law to furnish all information that is available to you or subject to our reasonable inquiry, including information in the possession of your attorneys, accountants, advisors or other persons directly or

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indirectly employed by or connected with you or your attorneys and anyone else otherwise subject to your control.

In answering these discovery requests, you must make a diligent search of all your records, files, documents, and materials in your possession or available to you or your representative. If a discovery request has subparts, answer each part separately and in full and do not limit your answer to the request as a whole. If a request cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion. With respect to each discovery request, in addition to supplying the information requested and identifying the specific documents referred to, identify and describe all documents to which you refer in preparing your answers. These discovery requests are continuing and the answers thereto must be supplemented to the maximum extent authorized by law and Rule 26(e), Idaho Rules of Civil Procedure.

DEFINITIONS: Unless otherwise indicated, the following definitions apply to these Interrogatories and Requests for Production of Documents:

(a) "Document" means any material whatsoever which contains information recorded through the use of letters, numbers or their equivalent, whether recorded by photographic or any other means of recording, and including without limitation all letters or other correspondence, memoranda, notes, reports, minutes, or other writings, accounts, books and ledgers, invoices, receipts, photographs, photonegatives, tape recordings, video recordings, computer printouts, records, plats, deeds, easements, and any other form of data

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compilation. Document also means any duplicates, copies or facsimiles of originals, summaries of documents, and substitutes for documents. In each instance wherein you are asked to identify or describe a document, your description should include but not be limited to the following:

1. The name, address, telephone number, occupation, job title and employer of the custodian of the document;

2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

(b) "Knowledge" includes first hand knowledge and information derived from any source whatsoever, including but not limited to hearsay sources.

(c) "Person" shall mean and include a natural person or legal entity and its partners, directors, officers, agents or employees, and contractors (independent or otherwise). In each instance wherein you are asked to identify a person or the identity of a person, state with respect to each such person his or her name and last known residence address, business address, residence telephone number and business telephone number.

(d) "You" and "Your" means the Protestants and their counsel, consultants, experts, investigators, agents, employees, officers, authorized representatives, or any other persons acting on your behalf.

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INTERROGATORIES

INTERROGATORY NO. 1: Please identify the name, address and telephone number of all persons who you intend to call as a witness at the hearing in this matter.

INTERROGATORY NO 2: With regard to each witness you have identified, please state, in detail, the substance of their expected testimony.

INTERROGATORY NO. 3: Please identify the name, address and telephone number of persons you intend to call as expert witnesses at the hearing in this matter.

INTERROGATORY NO. 4: With regard to each expert witness you have identified, please state, in detail, the substance of their expected testimony.

INTERROGATORY NO. 5: Please identify each exhibit you intend to submit at the hearing in this matter and state what you expect each exhibit to demonstrate.

INTERROGATORY NO. 6: Please identify all persons, including your current and former employees, who may have knowledge related to this application for permit, irrigation of your property, and the drainage of surface water onto and from Protestants', Applicants', and Intervenors' real property.

INTERROGATORY NO. 7: Please identify in detail any plans for the sale, subdivision and/or development, including access, irrigation and drainage easements, on your existing real property.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents identified in your answers to these interrogatories.

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REQUEST FOR PRODUCTION NO. 2: Please produce any and all photographs of the Protestants' ponds and drainages depicting construction of said ponds and drainages, or site of said ponds prior to construction, including all aerial photographs.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all invoices, bills, cease and desist orders, and stop work orders associated with the excavation and removal of overburden and gravel from the location of the ponds and drainages on Protestants' property.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all correspondence with the Ada County Developmental Services and Idaho Department of Water Resources concerning excavation, construction, and/or use of the ponds, drainages, and wells on Protestants' property.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all correspondence with any contractor concerning the excavation, construction, and/or maintenance of the ponds, drains, wells, and berms on Protestants' property.

REQUEST FOR PRODUCTION NO. 6: Please produce any and all documents, including but not limited to correspondence, e-mails, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, the ponds, drainages, wells, and berms on Protestants' property.

REQUEST FOR PRODUCTION NO. 7: Please produce any and all well drilling and engineering surveys or reports, and hydrological reports, concerning the ponds, drainages, wells, and berms located on Protestants' property. This includes, but is not limited to, the construction of, sources of water for, and drainage from the ponds.

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REQUEST FOR PRODUCTION NO. 8: Please produce any and all documents, including but not limited to correspondence, e-mails, telephone messages, memoranda, property surveys, notes, deeds, easements, licenses and permits which have not previously been produced and which concern, in any manner, Protestants; excavation, construction, and/or use of the ponds, drainages, wells, and berms on Protestants' property.

REQUEST FOR PRODUCTION NO. 9: Please produce any and all photographs of the Applicants' pond, construction of the pond, site of the pond prior to construction, and/or berms, including all aerial photographs.

REQUEST FOR PRODUCTION NO. 10: Please produce any and all correspondence with the Ada County Developmental Services and/or any other governing bodies concerning excavation and/or construction of the pond and removal of materials from Applicants' property.

REQUEST FOR PRODUCTION NO. 11: Please produce any and all correspondence with all persons and contractors concerning the excavation of the pond on Applicants' property including deeds, surveys and easements which have not previously been produced and which concern, in any manner, Applicants' excavation and/or construction of the pond on Applicants' property.

REQUEST FOR PRODUCTION NO. 12: Please produce all engineering surveys and/or reports, and hydrological reports concerning the pond located on Applicants' property and/or any other ponds located on neighboring properties, including the Days and/or the

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Pillotts. This includes, but is not limited to, the construction of, sources of water for, and drainage from the ponds of Applicants, Days and Pillotts.

REQUEST FOR PRODUCTION NO. 13: Please produce any and all documents, including but not limited to correspondence, e-mails, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, Applicants' excavation and/or construction of the pond, drainages and berms on Applicants' property.

REQUEST FOR PRODUCTION NO. 14: Please produce any and all photographs of the Protestants' wholesale nursery operation, construction of the nursery, or site of the nursery prior to construction, including all aerial photographs.

REQUEST FOR PRODUCTION NO. 15: Please produce any and all engineering and/or hydrological reports concerning construction, operation and drainage of the commercial nursery operation located on Protestants' property.

REQUEST FOR PRODUCTION NO. 16: Please produce any and all documents, including deeds, easements, applications for, requirements of, and conditions of approval relating to all permits and/or licenses to construct and operate the commercial nursery operation on Protestants' property.

REQUEST FOR PRODUCTION NO. 17: Please produce any and all documents pertaining to the sources of, methods of delivery, and disposal of drain and/or waste water from the Protestants' property before and after the construction of the nursery operation, the

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JUN 2 2 2000

ponds, and filling of the Old Middleton Mill Canal and any lateral irrigation ditches on Protestants' property.

REQUEST FOR PRODUCTION NO. 18: Please produce any documents pertaining to the sources of, methods of delivery, and disposal of drain or waste water on the Applicants' property before and after the construction of the nursery operation, the ponds, and filling of the Old Middleton Mill Canal and any lateral irrigation ditches on Protestants' property.

REQUEST FOR PRODUCTION NO. 19: Please produce any and all documents, including applications for, requirements of, and conditions of approval relating to all permits to use, store, and apply chemicals (herbicides, pesticides, fertilizers, etc.) in the operation of the commercial nursery operation.

REQUEST FOR PRODUCTION NO. 20: Please produce any and all correspondence with the Ada County Developmental Services and/or any other local, state of federal agencies concerning the construction of, requirements for and operation of the commercial nursery operation, including information related to irrigation and disposal of drain and/or waste water from said operation.

REQUEST FOR PRODUCTION NO. 21: Please produce any and all documents, including but not limited to, correspondence, e-mails, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, Protestants' commercial nursery operation and/or construction and operation of the nursery on Protestants' property.

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REQUEST FOR PRODUCTION NO. 22: Please produce any and all engineering surveys and/or hydrological reports concerning the construction of the roads on Protestants' property and the private road located on Applicants' property.

REQUEST FOR PRODUCTION NO. 23: Please produce any and all correspondence with the Ada County Developmental Services and/or any other local, state or federal agency concerning the excavation and/or construction of the roads on Protestants' property and the private road on Applicants' property.

REQUEST FOR PRODUCTION NO. 24: Please produce any and all documents, including but not limited to, correspondence, e-mail, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, the construction of the roads on Protestants' property and private road on Applicants' property.

REQUEST FOR PRODUCTION NO. 25: Please produce any and all documents pertaining to Protestants' water rights, water shares, or other interests in the use of the waters of the State of Idaho.

REQUEST FOR PRODUCTION NO. 26: Please produce any and all engineering, surveys, and/or hydrological reports concerning the delivery or irrigation water to Applicants', Protestants', and Intervenors' real property.

REQUEST FOR PRODUCTION NO. 27: Please produce any and all documents and correspondence with Ada County Developmental Services, Idaho Department of Water Resources and/or any other local, state or federal agencies concerning the delivery of irrigation

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water and removal of drain and/or waste water from Applicants', Protestants', and Intervenors' properties.

REQUEST FOR PRODUCTION NO. 28: Please produce any and all documents related to costs attributed to obtaining irrigation water, including but not limited to, all bills, maintenance activities, maintenance costs, repairs, and improvements of laterals not maintained by the Ballentyne Ditch Company.

REQUEST FOR PRODUCTION NO. 29: Please produce any and all documents, including but not limited to, correspondence, e-mail, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, the delivery of irrigation water to and removal of drain and/or waste water from Applicants', Protestants', and Intervenors' properties.

REQUEST FOR PRODUCTION NO. 30: Please produce any and all documents, including but not limited to, plats, surveys, engineering plans, and land use applications to any local state or federal agency, of or related to the sale, subdivision and/or development of any portion of Protestants', Intervenors', and Applicants' property.

DATED this 20th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorney for Applicants

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JUN 2 2 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants and Intervenors

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Susan E. Buxton

Susan E. Buxton

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JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

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FEB 20 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO INTERVENORS

TO: David Pillott and Beverly Pillott, Intervenors, and their attorney of record, Richard B. Burleigh:

COMES NOW, Applicants, by and through their counsel of record, pursuant to IDWR Rule 524 and Rules 33 and 34 of the Idaho Rules of Civil Procedure, propounds the following Interrogatories and Request for Production of Documents to Intervenors, to be answered within fifteen (15) days from the date of receipt hereof.

In answering these discovery requests you are required by law to furnish all information that is available to you or subject to our reasonable inquiry, including information in the possession of your attorneys, accountants, advisors or other persons directly or

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indirectly employed by or connected with you or your attorneys and anyone else otherwise subject to your control.

In answering these discovery requests, you must make a diligent search of all your records, files, documents, and materials in your possession or available to you or your representative. If a discovery request has subparts, answer each part separately and in full and do not limit your answer to the request as a whole. If a request cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion. With respect to each discovery request, in addition to supplying the information requested and identifying the specific documents referred to, identify and describe all documents to which you refer in preparing your answers. These discovery requests are continuing and the answers thereto must be supplemented to the maximum extent authorized by law and Rule 26(e), Idaho Rules of Civil Procedure.

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compilation. Document also means any duplicates, copies or facsimiles of originals, summaries of documents, and substitutes for documents. In each instance wherein you are asked to identify or describe a document, your description should include but not be limited to the following:

1. The name, address, telephone number, occupation, job title and employer of the custodian of the document;

2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

(b) "Knowledge" includes first hand knowledge and information derived from any source whatsoever, including but not limited to hearsay sources.

(c) "Person" shall mean and include a natural person or legal entity and its partners, directors, officers, agents, employees, and/or contractors (independent or otherwise). In each instance wherein you are asked to identify a person or the identity of a person, state with respect to each such person his or her name and last known residence address, business address, residence telephone number and business telephone number.

(d) "You" and "Your" means the Intervenors and their counsel, consultants, experts, investigators, agents, employees, officers, authorized representatives, or any other persons acting on your behalf.

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INTERROGATORIES

INTERROGATORY NO. 1: Please identify the name, address and telephone number of all persons who you intend to call as a witness at the hearing in this matter.

INTERROGATORY NO 2: With regard to each witness you have identified, please state, in detail, the substance of their expected testimony.

INTERROGATORY NO. 3: Please identify the name, address and telephone number of persons you intend to call as expert witnesses at the hearing in this matter.

INTERROGATORY NO. 4: With regard to each expert witness you have identified, please state, in detail, the substance of their expected testimony.

INTERROGATORY NO. 5: Please identify each exhibit you intend to submit at the hearing in this matter and state what you expect each exhibit to demonstrate.

INTERROGATORY NO. 6: Please identify all persons who may have knowledge related to this application for permit of the irrigation and the drainage of surface water onto and from Protestants', Applicants', and Intervenors' real property.

INTERROGATORY NO. 7: Please identify in detail any plans for the development, including berms, ponds, access, irrigation and drainage easements, on your existing real property.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce any and all photographs and documents identified in your answers to these interrogatories.

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REQUEST FOR PRODUCTION NO. 2: Please produce any and all photographs and documents, engineering and hydrological reports of Intervenors' and Protestants' properties, including but not limited to, the nursery, berms, roads, ponds and drainages depicting construction of said nursery, berms, roads, ponds and drainages, or site of said ponds, roads, berms and drainages prior to and after the construction, including all aerial photographs.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all invoices, bills, documents, cease and desist orders, and stop work orders associated with the excavation and removal of overburden and gravel from the nursery, roads, ponds and drainages on Intervenors' and Protestants' property.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all correspondence with the Ada County Developmental Services, Idaho Department of Water Resources, or other agencies, concerning excavation, construction, and/or use of the ponds, drainages, nursery, berms, roads, and wells on Intervenors' and Protestants' property.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all correspondence with any person(s) concerning the excavation, construction, and/or maintenance of the nursery, berms, roads, ponds, drains, wells, and berms on Intervenors' and Protestants' property.

REQUEST FOR PRODUCTION NO. 6: Please produce any and all documents, including, but not limited to, correspondence, e-mails, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, the nursery, roads, ponds, drainages, wells, and berms on Intervenors' and Protestants' property.

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REQUEST FOR PRODUCTION NO. 7: Please produce any and all well drilling, engineering surveys or reports, and hydrological reports, concerning or related to Intervenors' and Protestants' property. This includes, but is not limited to, the construction of, sources of water for, and drainage from the ponds and nursery.

REQUEST FOR PRODUCTION NO. 8: Please produce any and all photographs of the Applicants' pond, construction of the pond, site of the pond prior to construction, and/or berms, including all aerial photographs.

REQUEST FOR PRODUCTION NO. 9: Please produce any and all documents and correspondence with the Ada County Developmental Services and/or any other local, state or federal agencies related to, in any manner, the excavation and/or construction of the pond and removal of materials, including personal property, from Applicants' property.

REQUEST FOR PRODUCTION NO. 10: Please produce any and all documents concerning, in any manner, the excavation of the pond and berms on Applicants' property including deeds, surveys and easements which have not previously been produced and which relate to Applicants' excavation and/or construction of the pond and road on Applicants' property.

REQUEST FOR PRODUCTION NO. 11: Please produce all engineering surveys and/or reports, and hydrological reports concerning the pond located on Applicants' property and/or any other ponds located on neighboring properties, including the Days. This includes, but is not limited to, the construction of, sources of water for, and drainage from the ponds of Applicants and/or Days.

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REQUEST FOR PRODUCTION NO. 12: Please produce any and all documents, including but not limited to correspondence, e-mails, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, the excavation and/or construction of the pond, drainages and berms on Intervenors' and any neighboring properties.

REQUEST FOR PRODUCTION NO. 13: Please produce any and all documents pertaining to the sources of, methods of delivery, and disposal of irrigation, drain and/or waste water from the Intervenors' and Protestants' property before and after the construction of the nursery operation, the ponds, and filling of the Old Middleton Mill Canal and any lateral irrigation ditches on Protestants' and/or Intervenors' property.

REQUEST FOR PRODUCTION NO. 14: Please produce any documents (including easements) pertaining to the sources of, methods of delivery, and disposal of irrigation, drain or waste water on the Applicants' property before and after the construction of the nursery operation, the ponds, berms, roads, and filling of the Old Middleton Mill Canal and any lateral irrigation ditches on Protestants' property.

REQUEST FOR PRODUCTION NO. 15: Please produce any and all engineering surveys and/or hydrological reports concerning the construction of the roads on Protestants' property and the private road located on Applicants', Protestants' and Intervenors' properties.

REQUEST FOR PRODUCTION NO. 16: Please produce any and all documents and correspondence with the Ada County Developmental Services and/or any other local, state or

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federal agency concerning the excavation and/or construction of the roads on Protestants' property and the private road on Applicants' property.

REQUEST FOR PRODUCTION NO. 17: Please produce any and all documents, including but not limited to, correspondence, e-mail, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, the construction of the roads on Protestants' property and private road on Applicants', Protestants' and Intervenors' property.

REQUEST FOR PRODUCTION NO. 18: Please produce any and all documents pertaining to Intervenors' water rights, water shares, delivery of water, ownership of water delivery systems (fixtures and personal property), or other interests in the use of the waters of the State of Idaho.

REQUEST FOR PRODUCTION NO. 19: Please produce any and all engineering, surveys, and/or hydrological reports concerning the delivery or irrigation water to Applicants', Protestants', and Intervenors' real property.

REQUEST FOR PRODUCTION NO. 20: Please produce any and all documents and correspondence with Ada County Developmental Services, Idaho Department of Water Resources and/or any other local, state or federal agencies concerning the delivery of irrigation water and removal of drain and/or waste water from Applicants', Protestants', and Intervenors' properties.

REQUEST FOR PRODUCTION NO. 21: Please produce any and all documents related to costs attributed to obtaining irrigation water, including but not limited to, all bills,

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maintenance activities, maintenance costs, repairs, and improvements of laterals not maintained by the Ballentyne Ditch Company.

REQUEST FOR PRODUCTION NO. 22: Please produce any and all documents, including but not limited to, correspondence, e-mail, telephone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, the delivery of irrigation water to and removal of drain and/or waste water to or across Applicants', Protestants', and Intervenors' properties.

REQUEST FOR PRODUCTION NO. 23: Please produce any and all documents, including but not limited to, plats, surveys, engineering plans, and land use applications submitted to any local state or federal agency, of or related to the development of any portion of Protestants', Intervenors', and Applicants' property.

REQUEST FOR PRODUCTION NO. 24: Please produce any and all documents and photographs of the Intervenors' property existing prior to, during, and after construction of residential home, outbuildings, and berms. This includes, but not limited to, all surveys, plats, deeds, contracts, bills of sale, hydrological and engineering reports, and site plans.

DATED this 20th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorney for Applicants

JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants and Intervenors

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Susan E. Buxton

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JUN 2 2 2003

vault file

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

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Department of Water Resources

February 17, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Done

Enclosed is are four original Notice of Depositions, together with copies of same for filing in the above-referenced matter. Please conform and return the copies to me in the enclosed postage paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

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JUN 2 2 2009

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

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Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	NOTICE OF TAKING DEPOSITION DUCES TECUM OF INTERVENOR DAVID PILLOTT

TO: Protestants Tim Fease and Kathy Ellensohn, and their attorney of record, Richard B. Burleigh and Intervenors David and Beverly Pillott:

PLEASE TAKE NOTICE that Applicants will take the testimony on oral examination of Intervenor David Pillott, before a court reporter and notary public for the State of Idaho, on the 25th day of February, 1998, commencing at 11:00 a.m. of said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring the following: All documents; letters; water licenses shares and/or permits; contracts and/or conveyance documents regarding water rights, water licenses, shares in any ditch company or water delivery organization, irrigation equipment; pictures;

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audio and video recording which support or relate to, your protest and intervention in of the above-entitled application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 17th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorneys for Applicants

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

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SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

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Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	NOTICE OF TAKING DEPOSITION DUCES TECUM OF INTERVENOR BEVERLY PILLOTT

TO: Protestants Tim Fease and Kathy Ellensohn, and their attorney of record, Richard B. Burleigh and Intervenors David and Beverly Pillott:

PLEASE TAKE NOTICE that Applicants will take the testimony on oral examination of Intervenor Beverly Pillott, before a court reporter and notary public for the State of Idaho, on the 25th day of February, 1998, commencing at 9:00 a.m. of said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring the following: All documents; letters; water licenses shares and/or permits; contracts and/or conveyance documents regarding water rights, water licenses, shares in any ditch company or water delivery organization, irrigation equipment; pictures;

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JUN 2 2 2000

audio and video recording which support or relate to, your protest of and intervention in the above-entitled application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 17th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorneys for Applicants

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

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JUN 2 2 2009

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
FEB 18 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	NOTICE OF TAKING DEPOSITION DUCES TECUM OF PROTESTANT TIM FEASE

TO: Protestants Tim Fease and Kathy Ellensohn, and their attorney of record, Richard B. Burleigh and Intervenors David and Beverly Pillott:

PLEASE TAKE NOTICE that Applicants will take the testimony on oral examination of Protestant Tim Fease, before a court reporter and notary public for the State of Idaho, on the 24th day of February, 1998, commencing at 10:00 a.m. of said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring the following: All documents regarding the real property owned by this Protestant including drainage plans, drainage permits, construction plans, construction permits, excavation plans, excavation permits, water licenses, water permits,

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JUN 22 2000

water shares, drain district interests, plats, easements for conveyance of irrigation and/or drain/waste water; video tapes, audio tapes, pictures and any documents and/or letters which support, or relate to, the protest of the above-entitled Application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 17th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorneys for Applicants

MICROFILMED

JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

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FEB 18 1998
Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	NOTICE OF TAKING DEPOSITION DUCES TECUM OF PROTESTANT KATHY ELLENSOHN

TO: Protestants Tim Fease and Kathy Ellensohn, and their attorney of record, Richard B. Burleigh and Intervenors David and Beverly Pillott:

PLEASE TAKE NOTICE that Applicants will take the testimony on oral examination of Protestant Kathy Ellensohn, before a court reporter and notary public for the State of Idaho, on the 24th day of February, 1998, commencing at 3:30 p.m. of said day, and thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910, Boise, Idaho.

Said deponent shall bring the following: All documents regarding the real property owned by this Protestant including drainage plans, drainage permits, construction plans, construction permits, excavation plans, excavation permits, water licenses, water permits,

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JUN 22 2000

water shares, drain district interests, plats, easements for conveyance of irrigation and/or drain/waste water; video tapes, audio tapes, pictures and any documents and/or letters which support, or relate to, the protest of the above-entitled Application.

This deposition shall be taken under and pursuant to the Idaho Rules of Civil Procedure.

DATED this 17th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorneys for Applicants

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JUN 2 2 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

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JUN 2 2 2000

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FEB 06 1998
WATER RESOURCES
WESTERN REGION

MOORE & McFADDEN, CHARTERED
ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON *
JOHN J. MCFADDEN *†
MICHAEL C. MOORE †
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

RECEIVED
FEB 09 1998
Department of Water Resources

February 5, 1998

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, Idaho 83701

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Rich:

We are in receipt of your Interrogatories and Request for Production of Documents in the above-entitled matter. As we discussed, we will treat your discovery requests as served on the date we receive the Order from the Idaho Department of Water Resources allowing discovery pursuant to IDAPA 37.01.01521. Further, I will discuss with my clients your request for an onsite inspection on February 10, 1998.

Very truly yours,

Susan

Susan E. Buxton

SEB:de
cc: Gary Spackman, State of Idaho Dept. of Water Resources
Kenley Hinrichs and Lisa O'Toole

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WATER RESOURCES
WESTERN REGION

Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 INTERROGATORIES AND REQUESTS FOR PRODUCTION ON THE APPLICANT

TO: KENLEY J. HINRICHS AND LISA K. O'TOOLE, APPLICANTS AND THEIR ATTORNEY OF RECORD, SUSAN BUXTON

Protestant, by and through his counsel of record, Hawley Troxell Ennis & Hawley LLP, and pursuant to IDWR Rule 524 and Rules 33 and 34 of the Idaho Rules of Civil Procedure, hereby requests that you answer the following interrogatories, under oath, within fifteen (15) days after service hereof and serve a written response to the following Request for Production of Documents within fifteen (15) days from the date of service hereof.

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PRELIMINARY STATEMENT

A. When responding to the following Interrogatories and Requests for Production, you are requested to furnish all information available to you, including information in the possession of your attorneys, investigators, employees, agents, representatives, or any other person or persons acting on your behalf, and not merely such information as is known by you on personal knowledge.

B. If you cannot answer any of the following interrogatories in full after exercising due diligence to secure the information to do so, so state and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portions.

C. Each Interrogatory, Request for Production and Request for Admission is intended to and does, request that each and every, all and singular, and the particulars and parts thereof, be answered with the same force and effect as if each part and particular were the subject of and were asked by a separate Interrogatory or Request for Production.

D. These Interrogatories are deemed continuing and your answers thereto are to be supplemented, as additional information and knowledge becomes available or known to you.

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E. Protestant hereby requests that you serve answers to these Interrogatories within fifteen (15) days of the date of the service hereof. Protestant further requests that you serve responses to these Requests for Production and produce each of the documents requested, or in the alternative provide copies of the documents requested, at the office of Hawley Troxell Ennis & Hawley LLP, Suite 1000, First Interstate Center, 877 West Main Street, Boise, Idaho within fifteen (15) days of the date of the service hereof.

F. All of the Requests for Production herein are deemed continuing. If, after responding to this request, you acquire any document requested herein, or any information related to any document herein which is not reflected by any documents produced or any response to this Request for Production, you must file a supplemental response or indicate to counsel for Plaintiffs the existence of such documents. Such supplementation is requested herein in addition to any supplementation required by the Idaho Rules of Civil Procedure.

G. If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection or copying, please fully identify such document or portion thereof in your response, and fully state in your response the reason it is or will be withheld. In addition, if any document is practically impossible of production, inspection

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or copying, please fully identify such document and the reason for the practical impossibility.

DEFINITIONS

As used throughout these Interrogatories and Requests for Production:

1. The term "documents" shall mean and include any and all:

(a) Tangible things or items, whether handwritten, typed, printed, tape recorded, electronically recorded, videotape recorded, visually reproduced, stenographically reproduced or reproduced in any other manner;

(b) Originals and all copies of any and all communications;

(c) Writings of any kind or type whatsoever;

(d) Books and pamphlets;

(e) Microtape, microfilm, photographs, movies, records, recordings, tape recordings, computer disks, and videotape recordings, stenographically or otherwise reproduced;

(f) Diaries and appointment books;

(g) Cables, wires, memoranda, reports, notes, minutes and inter-office communications;

(h) Letters and correspondence;

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(i) Drawings, blueprints, sketches and charts;

(j) Contracts or agreements;

(k) Other legal instruments or official documents;

(l) Published material of any kind;

(m) Vouchers, receipts, invoices, bills, orders, billings and checks;

(n) Investigation or incident reports;

(o) Files and records;

(p) Notes or summaries of conferences, meetings, discussions, interviews or telephone conversations or messages;

(q) Drafts or draft copies of any of the above.

2. The term "identify" when referring to an individual, corporation or other entity, shall mean to set forth:

(a) The name.

(b) Present or last known address.

(c) If a corporation, the principal place of business.

3. The term "identify" when referring to a conversation means to state with respect to that conversation the date, the participants, the place and the substance of the conversation.

4. The term "identify" when referring to a document shall mean to set forth:

(a) The name of the document.

(b) The contents of the document.

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(c) The author of the document.

(d) The date of the document.

(e) The document's present location and the name of its custodian.

(f) The nature and substance of the document with sufficient particularity to enable it to be subpoenaed;

(g) Whether it will be voluntarily made available for inspection and copying.

In lieu of the identification required by sub-parts (a)-(f) above, you may attach a legible copy of the document to your answers to these interrogatories if your answer to the particular interrogatory and sub-part thereof: (i) is sufficient to enable a reader thereof to determine which document or documents are referred to by your answer, and (ii) contains all information requested by sub-parts (a)-(f) above not contained in the document itself.

5. The term "you" and "your" means Kenley J. Hinrichs and/or Lisa K. O'Toole and all or any of their affiliated or associated companies, agents, representatives, employees, attorneys, parent and subsidiary companies, and every person acting or purporting to act, or who has ever acted or purported to act on their behalf. "You" means also the person or persons responding to these requests and "your" refers to the same persons to which "you" refers.

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6. "Tangible things" means any object, property or thing of a corporeal nature which is not otherwise subsumed and included under the term "documents" as hereinabove defined.

7. "Persons" means and includes any natural person, partnership, corporation, joint venture, unincorporated association, governmental entity (or agency or board thereof), quasi-public entity or other form of entity, and any combinations thereof.

8. Masculine pronouns shall not connote any particular gender but shall be taken to mean masculine, feminine or neuter gender, as the appropriate case may be.

All requests for documents assume that the documents are either in your possession or control as the term "you" and "your" is defined.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all individuals who you intend to call as a witness at the hearing in this matter.

INTERROGATORY NO. 2: With regard to each witness you have identified, please state, in detail, the substance of their expected testimony.

INTERROGATORY NO. 3: Please identify all expert witnesses you intend to call at the hearing in this matter.

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JUN 2 2 2000

INTERROGATORY NO. 4: With regard to each expert witness you have identified, please state, in detail, the substance of their expected testimony.

INTERROGATORY NO. 5: Please identify each exhibit you intend to submit at the hearing in this matter and state what you expect each exhibit to demonstrate.

INTERROGATORY NO. 6: Please identify all individuals who may have knowledge related to the application for permit or the drainage of surface water from the Protestant's adjacent land.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents identified in your answers to these interrogatories.

REQUEST FOR PRODUCTION NO. 2: Please produce all photographs of the Applicants' pond, construction of the pond, or site of the pond prior to construction, including all aerial photographs.

REQUEST FOR PRODUCTION NO. 3: Please produce all invoices and/or bills associated with the excavation and removal of overburden and gravel from the location of the pond on Applicants' property.

REQUEST FOR PRODUCTION NO. 4: Please produce all correspondence with the Ada County Developmental Services

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concerning excavation and/or construction of the pond on Applicants' property.

REQUEST FOR PRODUCTION NO. 5: Please produce all correspondence with any contractor concerning the excavation of the pond on Applicants' property.

REQUEST FOR PRODUCTION NO. 7: Please produce all engineering and/or hydrological reports concerning the pond located on Applicants' property, any pond located on Protestant's property and/or any other neighboring property, including the Days and/or the Pillotts.

REQUEST FOR PRODUCTION NO. 6: Please produce any documents, including but not limited to correspondence, e-mails, phone messages, memoranda, or notes which have not previously been produced and which concern, in any manner, Applicants' excavation and/or construction of the pond on Applicants' property.

DATED THIS 4th day of February, 1998.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Richard B. Burleigh
Attorneys for Protestant
Tim Fease

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of February, 1998, I caused to be served a true copy of the foregoing INTERROGATORIES AND REQUESTS FOR PRODUCTION ON THE APPLICANT by the method indicated below, and addressed to each of the following:

Susan E. Buxton Moore & McFadden, Chartered 999 Main Street, Suite 910 Boise, ID 83702 (Attorneys for Applicant)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
David and Beverly Pillot 903 Briarwood Nampa, ID 83651 (Proposed Intervenors)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
Gary Spackman State of Idaho Department of Water Resources Western Region 2735 Airport Way Boise, ID 83705-5082	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy

Richard B. Burleigh

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JUN 2 2 2000

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FEB 05 1998
WATER RESOURCES
WESTERN REGION

MOORE & McFADDEN, CHARTERED
ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON *
JOHN J. MCFADDEN *†
MICHAEL C. MOORE †
PAUL A. TURCKE

MONA DOBARAN MACK
Of Counsel

*Also Admitted in Oregon
† Also Admitted in Washington

February 4, 1998

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, Idaho 83701

David and Beverly Pillott
903 Briarwood Dr.
Nampa, Idaho 83651

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Rich, David and Beverly:

We will need to take the depositions of Tim Fease, Kathy Ellensohn, David and Beverly Pillott with regard to the above-referenced matter. We would prefer to take the depositions during the week of February 23, 1998. Please let our office know what dates and times you would be available. Once we receive the discovery order from the Department of Water Resources we will send out the necessary notices. We are providing this as a courtesy in order to best accommodate everyone's schedules.

Very truly yours,

Susan E. Buxton

SEB:de
cc: Gary Spackman, State of Idaho Dept. of Water Resources
Kenley Hinrichs and Lisa O'Toole

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JUN 2 2 2000

COPY

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 9, 1998

RE: In the Matter of Application for Permit No. 63-12384 in the name of Kenley J. Hinrichs and Lisa K. O'Toole

Dear Interested Parties:

I have enclosed a copy of the Order Authorizing Discovery issued in connection with the above referenced water right permit.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

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JUN 2 2 2000

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Department of Water Resources

MOORE & McFADDEN, CHARTERED
ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

February 4, 1998

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FEB 0 4 1998
WATER RESOURCES
WESTERN REGION

Gary Spackman
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Spackman:

Enclosed is an original Petition to Conduct Discovery, together with a copy of same for filing in the above-referenced matter. Please conform and return the copy to me in the enclosed postage paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

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JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

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FEB 04 1998
WATER RESOURCES
WESTERN REGION

RECEIVED
FEB 06 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	PETITION TO CONDUCT DISCOVERY
Applicants,	)	
	)	
	)	EXPEDITED CONSIDERATION REQUESTED
	)	

COMES NOW, Applicants, by and through their counsel of record, and moves the Department for an order allowing the parties to conduct discovery in this matter. Applicants anticipate discovery to include depositions, requests for admission, requests for production of documents, interrogatories, and subpoenas, if necessary. Applicants have left telephone messages with Protestants' attorney, Richard Burleigh, and Intervenors last known legal counsel, Michael Spink, regarding whether an agreement could be reached regarding discovery as Intervenors' last known telephone number appears to no longer be in service.

This Motion is brought pursuant to IDAPA 37.01.01.521.

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JUN 22 2000

Respectfully submitted this 4th day of February, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorney for Applicants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Gary Spackman
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, Idaho 83701

David and Beverly Pillott
903 Briarwood Dr.
Nampa, Idaho 83651

Susan E. Buxton

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JUN 2 2 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION) **FOR PERMIT OF WATER RIGHT NO.)** **63-12384 IN THE NAME OF KENLEY)** **J. HINRICH &/OR LISA K. O'TOOLE.)** **)**	**NOTICE OF HEARING**

On March 18, 1997, Kenley J. Hinrich &/or Lisa K. O'Toole filed with the Idaho Department of Water Resources (IDWR) application for permit no. 63-12384. The application was protested by Tim Fease and David &/or Beverly Pillott were granted intervention. The pre-hearing conference held by IDWR on Wednesday, December 10, 1997, did not resolve the matter of protest.

The Department has scheduled the matter for hearing on Tuesday, March 17, 1998, at 9:00 a.m. at the Department of Water Resources, upstairs conference room, 1301 N. Orchard, Boise, Idaho 83706. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of the Department. A copy of the rules may be obtained from the IDWR upon request. The presiding officer at the hearing will be Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01.606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which 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 (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 6th day of January, 1998.

Gary Spackman

GARY SPACKMAN

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JUN 2 2 2000

I hereby certifiy that on the 7th day of January, 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor

Sue Taylor
Senior Secretary

CERTIFIED MAIL

KENLEY HINRICH &/OR
LISA O'TOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

DAVID &/OR BEVERLY PILLOTT
903 BRIARWOOD DR
NAMPA ID 83651

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JUN 2 2 2000

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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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 a petition for reconsideration, 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

The hearing will be conducted in a facility which satisfies 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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MEMO

To: Glen Saxton
From: Gary Spackman Gary
Subject: File History of Application for Permit No. 63-12384, in the Name of Kenley J. Hinrich &/or Lisa K. O'Toole
Date: December 31, 1997

Some time in January or February of 1997, I received a telephone call from a landowner named Tim Fease who owns land near the southeast corner of Linder Road and State Street. He was complaining that one of his adjoining neighbors, Kenley Hinrich, had obstructed a natural drainage and was backing water up into some greenhouse buildings. He apparently resolved the flooding by pumping the water out to the borrow pit along State Street. I was told, however that Hinrich then reported the inundation ot the borrow pit to Ada County Highway District or some other entity which investigated what Fease was doing.

I next recall a visit with Kenley Hinrich, perhaps as an office visit. Hinrich informed me he had constructed a pond in what was once a natural drain that ran through his property. He also indicated that Fease had constructed a pond upstream from his location. He stated that Fease was operating a commercial business (the greenhouses) in violation of an Ada County conditional use permit, and that the runoff from the greenhouses and other agricultural waste was discharging into his pond. He expressed concern about chemicals being applied in the greenhouses and stated the chemical might pollute his pond. We discussed a pipe connecting the two ponds together and Hinrich also told me that other land owners in the area had also constructed ponds. I recall discussing with him whether a water right was required for recreational ponds that are dug and filled with groundwater. I also recall discussing with him whether water could be diverted to the ponds from wells or from surface water sources with irrigation water rights. I recall telling Hinrich that he could protect his use of water by obtaining an approval from the Idaho Department of Water Resources (IDWR), and Hinrich decided to file an application for a water right for his pond.

The two conversations discussed above were the beginning of extensive discussions with both Hinrich and Fease regarding the use of water in the Fease pond, the Hinrich pond, and use of water in the Fease greenhouses as well as diversion of surface water and ground water to both the Fease and the Henrich ponds. The file contains complaints and responses from both parties.

I told the parties that I would not threaten them with cease and desist orders for the ponds that are already in place but not represented by a water right. I informed Fease that he cannot divert water to the greenhouses after the end or before the beginning of the irrigation season because the irrigation of the greenhouse plants is not authorized by any water right. If Fease begins diverting water earlier than the irrigation season or before his surface water is available, IDWR may need to issue a cease and desist order.

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At the pre-hearing conference, the parties all stated that they were in favor of construction of ponds. This is not surprising because all the parties have constructed ponds without water rights. The main issues as I see them are injury to other water users and public interest. Hinrich's construction of the pond may have blocked the delivery of irrigation water to at least one land owner. The construction of the pond may also be blocking the natural flow of drainage water both in the natural drain and on the land surface. Hinrich may also be diverting water to the pond to maintain its water level. This additional diversion of water may be causing damage to at least one nearby homeowner. Tim Fease alleges that any blockage or raising of the pond surface without a free flow will impound water above where it should be impounded and will impact his greenhouse operation and his pond.

Thank you for helping me with this matter.

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JUN 2 2 2000

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WATER RESOURCES
WESTERN REGION

Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 PROTESTANT'S RESPONSE TO APPLICANTS' OPPOSITION TO REQUEST FOR INTERVENTION

Protestant Tim Fease submits this response to the Applicants' opposition to request for intervention by David and Beverly Pillott. Protestant does not object to the intervention of David and Beverly Pillott. The Pillotts are property owners within the immediate vicinity of the pond which the Applicants are attempting to permit. Their interests are part of the local public interests which are affected by the pond. The issue of whether the berm around Applicants' pond impedes or does not impede the flow from the headgate to irrigate a portion of the

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Pillotts' and Protestant's property is an issue properly before the Department of Water Resources. The Applicants are not prejudiced by the late intervention of David and Beverly Pillott. They have had notice of the Pillotts' interest in this matter since at least August of 1997. *See* Exhibit B to the Affidavit of Susan E. Buxton. To ensure that all points of view are adequately examined by the Department prior to deciding whether to issue the permit for the Applicants' pond and the appropriate conditions on such permit, the Department should permit the intervention of David and Beverly Pillott.

Protestant further objects to the conclusions reached by Applicants' Supplement Petition in Opposition to Request for Intervention by David and Beverly Pillott. Protestant objects to the implied conclusion that the surrounding property does not drain into the slough. Applicants attached a photocopy of an aerial photo presumably dated June 15, 1993. The photocopy itself is a poor reproduction of a photograph. There is no authentication of the photograph, and the photograph does not show a comprehensive history of the irrigation of the parcel of property at issue. The conclusions which Applicants are attempting to reach should be reserved for a determination before the Hearing Officer in this matter.

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Protestant also objects to paragraph 5 of the Applicants' Supplemental Petition. Therein, Applicants conclude without basis that all gated pipe located on the real property was purchased by the Applicants. Applicants support this by referencing an Addendum No. 1 and Counteroffer No. 1 attached as Exhibit C to the Affidavit of Susan Buxton. A review of Addendum No. 1 and Counteroffer No. 1 indicates no such condition to the sale of the property. In fact, there is no reference to gated pipe at all in either the Addendum No. 1 or Counteroffer No. 1. The actual sale included the irrigation system as described by Mark Bridgewater in a December 8, 1997 letter to the Pillotts. *See* Exhibit One attached hereto. Applicants' conclusions to the contrary should be disregarded.

In conclusion, the Department of Water Resources should permit the late intervention of David and Beverly Pillott. No party is prejudiced and this will allow all concerns to be heard before the Hearing Officer.

DATED THIS 30th day of December, 1997.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Richard B. Burleigh
Attorneys for Protestant

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JUN 2 2 2000

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 1997, I caused to be served a true copy of the foregoing PROTESTANT'S RESPONSE TO APPLICANTS' OPPOSITION TO REQUEST FOR INTERVENTION by the method indicated below, and addressed to each of the following:

Susan E. Buxton Moore & McFadden, Chartered 999 Main Street, Suite 910 Boise, ID 83702 (Attorneys for Applicant)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
David and Beverly Pillott 903 Briarwood Nampa, ID 83651 (Proposed Intervenors)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
Gary Spackman State of Idaho Department of Water Resources Western Region 2735 Airport Way Boise, ID 83705-5082	___ U.S. Mail, Postage Prepaid ✓ Hand Delivered ___ Overnight Mail ___ Telecopy

Richard B. Burleigh

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JUN 2 2 2000

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DAVID & BEVERLY PILLOTT 12-8-97
903 BRYARWOOD DR
NAMPA, ID 83651

DEAR MR & MRS PILLOTT:

IN REGARDS TO YOUR CONCERN OVER THE IRRIGATION RIGHTS TO YOUR PROPERTY. STATEMENT OF FACTS:

** 4-3-92 420FT OF 8" PVC GATED 38AP WAS PURCHASED FOR THE IRRIGATION LINE TO IRRIGATE PARCEL 2 OF LOT 11 COMPTON ANDREWS TRACT FOR THE SUM OF $862.90

** 4-3-92 390FT OF 6" PVC GATED PIPE WAS PURCHASED FOR THE IRRIGATION LINE TO IRRIGATE PARCEL 1 OF LOT 11 COMPTON ANDREWS TRACT FOR THE SUM OF $622.87 .

** 4-4-92 1 8" GATED PIPE VALVE WAS PURCHASED SPECIFICALLY FOR IRRIGATION TO PARCEL 2 OF LOT 11 COMPTON ANDREWS TRACT FOR THE SUM OF $103.96.

** AT THE ORIGINAL VIEWING OF PARCEL 1 LOT 11 AND AT TIME OF EXCEPTANCE OF THE ERNEST MONEY AGGREMENT, MR. KENLEY HINRICHS WAS INFORMED OF THE IRRIGATION AND HOW IT WORKED FOR PARCEL 1 AND PARCEL 2 OF LOT 11. THE 390FT OF 6" PVC PIPE WAS SPECIFICALLY FOR IRRIGATING PARCEL 1 OF LOT 11 . THE 420FT OF 8" PVC PIPE WAS TO SUPPLY IRRIGATION WATER TO PARCEL 2 OF LOT 11 . 8" PIPE TO ORIGINATE AT DISPERSION BOX LOCATED ON THE WEST SIDE OF PARCEL 1 LOT 11 SOUTH TO SOUTH EAST CORNER OF PARCEL 1. THEN TO EXTEND INTO THE NORTH EAST CORNER OF PARCEL 2 AND TERMINATE WITH A 8"GATED PIPE VALVE. MR. HENRICHS UNDERSTOOD ALL OF THE ABOVE AND WAS IN FULL AGREEMENT. THIS WAS A CONDITION OF THE SALE, EVEN IF NOT STATED IN THE SALE AGREEMENT, BUT BY A HANDSHAKE.

SINCERELY,

Mk Bridge

MARK BRIDGEWATER
1685 W. BRANDT LN
MERIDIAN, ID. 83642
887-7755

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JUN 22 2007

EXHIBIT 1

TO: Gary Spackman

FROM: Beverly Pillott
December 29, 1997

For your information I still own the remainder of parcel 2 and still require irrigation water delivered and intended by the county's requirement of Mark Bridgewater when he split the property. Attached is Mark Bridgewater's statement.

Sincerely,

Beverly Pillott

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JUN 2 2 2000

DAVID & BEVERLY PILLOTT
903 BRYARWOOD DR
NAMPA, ID 83651

12-8-97

DEAR MR & MRS PILLOTT:

IN REGARDS TO YOUR CONCERN OVER THE IRRIGATION RIGHTS TO YOUR PROPERTY. STATEMENT OF FACTS:

** 4-3-92 420FT OF 8" PVC GATED 38AP WAS PURCHASED FOR THE IRRIGATION LINE TO IRRIGATE PARCEL 2 OF LOT 11 COMPTON ANDREWS TRACT FOR THE SUM OF $862.90

** 4-3-92 390FT OF 6" PVC GATED PIPE WAS PURCHASED FOR THE IRRIGATION LINE TO IRRIGATE PARCEL 1 OF LOT 11 COMPTON ANDREWS TRACT FOR THE SUM OF $622.87 .

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SINCERELY,

MARK BRIDGEWATER
1685 W. BRANDT LN
MERIDIAN, ID. 83642
887-7755

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JUN 2 2 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME KENLEY J. HINRICH &/OR LISA K. O'TOOLE.	))))	**ORDER GRANTING INTERVENTION**

Kenley J. &/or Lisa K. O'Toole filed application for permit no. 63-12384 seeking 15 acre feet of storage from groundwater for recreation and aesthetic storage. The application was filed on March 18, 1997 and revised on March 24, 1997. After publication of the application, it was protested by Tim Fease. A pre-hearing conference was scheduled and conducted on December 10, 1997.

Approximately one week before the pre-hearing conference, David and Beverly Pillott petitioned the Idaho Department of Water Resources (IDWR) to intervene in the protested water proceedings. The petition to intervene was not distributed to the parties until the pre-hearing conference.

The applicants timely filed an objection to the request for intervention by David and Beverly Pillott. The applicants argued that the application was not filed at least fourteen (14) days prior to the date set for pre-hearing conference as required by the administrative rules. The applicants further argued that the petition did not satisfy the rules because it did not contain the petitioner's address, and alleged criminal violations and other activities not relevant to the proceedings.

IDWR has granted intervention liberally except in those cases where intervention would cause undue prejudice to one of the parties. In this case, the hearing had not been set prior to the petition for intervention having been received, and served on the parties. The issues being raised by the petitioners are issues that are closely related to those issues raised by Fease. The petitioners have a legitimate interest in the outcome in this matter. Denial of the petition to intervene would frustrate a full airing of the facts that might affect the outcome of the application. Granting the petition to intervene would not cause undue prejudice to the applicants.

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ORDER

IT IS HEREBY ORDERED, that the petition to intervene filed by David and Beverly Pillott is GRANTED. David and Beverly Pillott are entitled to participate in this matter as full parties.

DATED this 23rd day of December, 1997.

Gary Spackman
Western Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on this 29th day of December, 1997, I mailed a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Sue Taylor
Senior Secretary

KENLEY J HINRICH &/OR
LISA K. O'TOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

DAVID &/OR BEVERLY PILLOTT
903 BRIARWOOD DR
NAMPA ID 83651

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JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants Kenley J. Hinrichs
and Lisa K. O'Toole

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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	APPLICANTS' SUPPLEMENTAL PETITION IN OPPOSITION TO REQUEST FOR INTERVENTION BY DAVID AND BEVERLY PILLOTT

Applicants Kenley J. Hinrichs and Lisa K. O'Toole ("Applicants") hereby supplement their Opposition to Request for Intervention by David and Beverly Pillott ("Proposed-Intervenors") as new information was obtained pertaining to this matter since filing their original application on December 17, 1997. See Affidavit of Susan E. Buxton filed concurrently herewith and incorporated by reference herein. Accordingly, the Applicants' supplement their opposition to include the following clarification and information:

1. Proposed-Intervenors do not own property adjacent to Applicants. As admitted at the prehearing conference on December 10, 1997, the Proposed-Intervenors have completed a lot

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split conveying the adjacent property to Protestants. Applicants have no knowledge whether Proposed-Intervenors reserved an irrigation easement over said property subject to the lot split and the Petition did not establish a property conveyance addressing such irrigation easement.

2. The previous owner of the Proposed-Intervenors' real property, Mark Bridgewater, did not irrigate that parcel from the headgate in question. The headgate in question, however, is designed to provide flow sufficient to utilize a 10 inch irrigation pipe to the southern portion of Applicants' property. Accordingly, the berm around the pond on Applicants' property, the subject of this proceeding, does not impede the flow from the headgate to irrigate the portion of property south of the pond, which could include the adjacent southern property if appropriate irrigation easement and transfer of the point of diversion for delivery of said irrigation water are properly established in the future. An unrecorded conveyance[1] is void against subsequent purchasors and an intent to convey property is not evidence of conveyance absent perfection of the same. Idaho Code 55- 812 and 813. Proposed-Intervenors have not filed an application to change their point of diversion for their irrigation shares to the headgate in question with either the Idaho Department of Water Resources or the Ballentyne Ditch Company;

3. A copy of the June 15, 1983 aerial photo showing the corrugates and flooding is attached to Affidavit of Susan E. Buxton as Exhibit "A." Therein, the Proposed-Intervenors' real property appears to have been irrigated from the south-east.

---

[1] At the prehearing conference on December 10, 1997, Mark Bridgewater admitted that no irrigation easements were recorded on either Applicants or Proposed-Intervenors' property as he had intended prior to his sale of said parcels.

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4. The Proposed-Intervenors knew of the pending Application as of August 16, 1997 since they admit reading the filings in this matter and meeting with the Idaho Department of Water Resources. See Affidavit of Susan E. Buxton at Exhibit "B." Accordingly, Proposed-Intervenors do not excuse their failure to timely file their petition to intervene.

5. Addendum #1 and Counteroffer #1 of the Applicants' escrow agreement indicate that all gated pipe located on the real property purchased by Applicants is included in the sale and does not reserve any pipe to the Seller (Mark Bridgewater) or subsequent purchasers of Seller's remaining property. See Affidavit of Susan E. Buxton at Exhibit "C."

The Department should, based on the information submitted by Applicants, deny the Petition to Intervene by Beverly and David Pillott.

Respectfully this 23rd day of December, 1997.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorney for Applicants

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of December, 1997, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, Idaho 83701

David and Beverly Pillott
903 Briarwood
Nampa, Idaho 83651

and

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Gary Spackman
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Susan E. Buxton

MICROFILMED
JAN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants Kenley J. Hinrichs
and Lisa K. O'Toole

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DEC 24 1997
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants.	)	AFFIDAVIT OF SUSAN E. BUXTON IN SUPPORT OF APPLICANTS' SUPPLEMENTAL PETITION IN OPPOSITION TO REQUEST FOR INTERVENTION BY DAVID AND BEVERLY PILLOTT

STATE OF IDAHO)
: ss.
County of Ada)

SUSAN E. BUXTON, upon personal knowledge, being first duly sworn upon oath, deposes and says:

1. That your Affiant is counsel of record for Applicants in the above-entitled matter.

2. That due to a death in your Affiant's family, Applicants were unable to confer with and deliver applicable documentation to legal counsel regarding the petition for intervention by David and Beverly Pillott, until the evening of December 19, 1997.

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3. That attached hereto and incorporated herein by reference as Exhibit "A" is a true and correct copy of the June 15, 1983 aerial photo originally obtained form the Idaho Department of Water Resources by Kenley J. Hinrichs.

4. That attached hereto and incorporated herein by reference as Exhibit "B" is a true and correct copy of a letter to Applicants, Kenley J. Hinrichs and Lisa K. O'Toole, from the Pillott Family, dated August 16, 1997.

5. That attached hereto and incorporated herein by reference as Exhibit "C" is a true and correct copy of Addendum #1 and Counteroffer #1 of the Applicant's escrow agreement.

Further, Your Affiant saith not.

DATED this 23rd day of December, 1997.

Susan E. Buxton

SUBSCRIBED AND SWORN to before me this 23rd day of December, 1997.

Donna Evans
Notary Public for Idaho
Residing at: Burley ID
My Commission Expires: 8-24-2002

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JUN 22 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of December, 1997, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, Idaho 83701

David and Beverly Pillott
903 Briarwood
Nampa, Idaho 83651

and

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Gary Spackman
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Susan E. Buxton

Susan E. Buxton

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JUN 2 2 2000

June 15, 1983 From Dept. of Water Resources River @ 9,700 cfs.

JUN 2 2 2000 EXHIBIT A

August 16, 1997

Ken & Lisa,

My, you have been busy! I have read all of your protests and complaints to the Department of Water Resources and Ada County Development Services over the past several months. I am surprised at the time and effort you devote.

I spent some time with Gary Spackman, Regional Manager of the Department of Water Resources regarding the irrigation water to my land. He informed me that the Idaho Code, Book 8, Chapter 11, 42-1101 through 42-1108 gave me the right to bring a backhoe onto your property to dig a ditch through it to my property for irrigation water. I am not certain of the exact time that the backhoe operator will be out there, but I am notifying the sheriff's office in advance so that there will be no problems.

We will be digging a ditch parallel to your east property line as close to the fence as possible so as to not cause any damage or unsightly work on your property and to minimize the impact to you.

Your neighbors,

P.S. Mr. Spackman also told me that the non-use of irrigation for five years does not apply to my situation and he assurred me that as long as I pay the irrigation fees to the ditch company my shares and rights were protected.

The Pillott Family

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JUN 22 2000

EXHIBIT B

H&W COMPUTER SYSTEMS, INC.

Adendum #1 of 1

To do

1. Fine grade / finish with barns
2. bedroom finished with mods
   - A – No oak border
   - B. – see Thru fireplace (gas)
   - C. – bathroom
   - D. – Add window to bath
   - E. – all trim as "wood/oak" finish
   - F. – wall-to-wall carpeting match rest of
3. Vent in garage for heat
4. lattice trim under front deck (natural redwood)
5. clear out/widen pond.
6. tile pieces changed
7. remove hanging lamp in dining room
8. Automatic garage door opener on double door
9. corner pins ~~[illegible]~~ renumbered
10. touch-up painting
11. window seats in upstairs rooms + shelves/etc.
12. irrigation piping completed

Drop

1. decks
2. sprinklers
3. sodding
4. Driveway improvements
5. stove
6. painting front deck
7. No window coverings
8. No carpet cleaning
9. No insulation in garage
10. No stereo speakers
11. refridgerator

Added to sales price

1. materials for deck
2. { asphalt / black top driveway / concrete
3. materials for barn
4. materials for fencing

Want

1. plat map
2. copies of lien releases
3. Ag zoning
4. warranty
5. walk thru
6. place to store firewood / rocks

Buyers — [signature]

7/13/92

Sellers — See Counter offer #1

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JUN 22 2000

EXHIBIT C

P.O. Box 15190
Boise, Idaho 83715-0190

1-800-338-6692
FAX: (208) 342-5219

Telephone: (208) 385-0336
Telex: 469261

COUNTER OFFER # 1

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS, CAREFULLY, BEFORE SIGNING. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY BEFORE SIGNING.

This is a COUNTER OFFER to the Real Estate Purchase and Sale Agreement and Receipt for

Earnest Money Dated: 7-13, 19 92 ID # 045218.

ADDRESS: Also Addendum #1 4495 Old Valley Rd. Eagle, Id.

BUYER(S): Kenley Hinrichs and Lisa O'Tool H+W

SELLER(S): Mark P. Bridgewater and Lori Bridgewater H+W

Seller accepts all of the terms and conditions in the above designated agreement with the following changes or amendments:

Addendum #1 Changes on -
To Do - #2-B - Fireplace To Be Okayed By Sellers
#2-C - Extra Costs To Be Paid By Buyer 2-D - To Match other Windows in Bath. 3 - Heat Vent in Garage if Possible without Excessive Cost. 5 - If No Cost To Sellers 7 - Seller wants To Keep Light Fixture. 11 - Painted Window Seats. / Wants - 3 - Buyer will Have To Apply For Agriculture Zoning. 4 - Warranty - 6 Months on Main Part of House, and One Year on Master Bdrm. Addition. All other Items on Sales Agreement and Addendum #1 to Remain the Same as written Except For Seller To Retain Dishwasher, Stove and Refrigerator. Also Sale Price To Be Changed To $176,000. This Price To Include Materials For Deck and Fencing. Deck + Fencing Not To Exceed $6000. For Material.
Also - Closing Date To Be Changed to Be - No Later Than Aug 27th 1992.

The herein agreement, upon its execution by both parties, is made an integral part of the aforementioned Agreement.

OTHER TERMS: All other terms and conditions to remain the same.

RIGHT TO ACCEPT OTHER OFFERS: Seller reserves the right to accept any other offer prior to Buyer's written acceptance of this counter offer. Acceptance shall not be effective until a copy of this Counter Offer, dated and signed by Buyer, is personally received by the Seller or Seller's agent.

EXPIRATION: This counter offer shall expire unless a copy hereof with Buyers written acceptance is delivered to Seller or Seller's agent on or before _____ o'clock ☐ A.M. ☐ P.M., on

_____, 19 ____

Dated 7-15 19 92 Seller Mark Bridgewater

Time 6:_____ AM/PM Seller Lori Bridgewater

The undersigned Buyer(s) accepts the above counter offer.

Dated 7/15/92 19 ____ Buyer Kenley Hinrichs

Time 7:30 AM/PM Buyer Lisa O'Tool

MICROFILMED
JUN 22 2000

COUNTER OFFER # _____

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DEC 18 1997
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WESTERN REGION

MOORE & McFADDEN, CHARTERED
ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON *
JOHN J. MCFADDEN *†
MICHAEL C. MOORE †
PAUL A. TURCKE

MONA DOBARAN MACK
Of Counsel

*Also Admitted in Oregon
† Also Admitted in Washington

December 17, 1997

Gary Spackman
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Spackman:

Enclosed is the original Applicants' Opposition to Request for Intervention by David and Beverly Pillott, together with a copy of same for filing in the above-referenced matter. This document was ~~faxed to you on December~~ 17, 1997. Please conform and return the copy to me in the enclosed postage paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

MICROFILMED
JUN 22 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Kenley Hinrichs

RECEIVED
DEC 18 1997
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
Applicants,	)	APPLICANTS' OPPOSITION TO REQUEST FOR INTERVENTION BY DAVID AND BEVERLY PILLOTT

During the prehearing conference held December 10, 1997 at the State office of the Idaho Department of Water Resources, the petition for intervention in this matter from David and Beverly Pillott was delivered to the Applicants herein. Pursuant to the Administrative Rules of the Idaho Department of Water Resources:

> Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay....

IDAPA 37.01.01,352. Further, the intervention petition must state the name and address of the petitioners and the proposed-intervenors' direct and substantial interest in the proceeding. IDAPA

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37.01.01,351. The proposed-intervenors failed to provide reasons for delay or their address. We have used other means to locate the proposed-intervenors' address in order to serve this document. Proposed-intervenors own property adjacent to the Applicants.

The Applicants filed their application for permit on March 18, 1997. The Protestant, Tim Fease, filed his protest on April 16, 1997. Proposed-intervenors provide no justification for their delay in requesting intervention. The request for intervention was received by the Department on December 5, 1997, clearly outside the time frame by the Department. This is especially vexing given the fact they are in regular contact with Protestants and have actual notice of the pending application. Unreasonable delay in seeking intervention status should not be rewarded in this matter.

Not only do proposed-intervenors fail to discuss their reasons for failing to meet the deadline. In reviewing their petition, it appears that they are trying to include other issues, in particular, alleged criminal violations by the Applicants. With regard to such accusations, the headbox to which the proposed-intervenors are referring has never been used to divert water for irrigation on the parcels owned by the proposed-intervenors. In fact, the parcel, when irrigated, was irrigated from the south as demonstrated by the corrugates from aerial photos obtained by the Department of Water Resources. Additionally, the prior owner to the parcel owned by the proposed-intervenors, Mark Bridgewater, who was also present at the conference, did not use the headgate in question to irrigate the parcel. Further, the "interests" cited appear to include unrelated allegations regarding conditions for the sale of real property to Applicants from Mr. Bridgewater.

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Accordingly, the motion to intervene should be denied as failing to provide the Department with required information and the proposed-intervenors could participate in the matter as interested persons as provided by IDAPA 37.01.01,158.

The proposed-intervenors' interests, as relates to delivery to irrigation water and drainage will be adequately represented by the parties to this proceeding. The Applicants, as was discussed in the conference, fully intend to address the issue raised regarding the headgate in question, therefore, the proposed-intervenors' participation is not necessary as the Department must already review such issues.

Respectfully this 17th day of December, 1997.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorney for Applicants

JUN 2 2 2000
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of December, 1997, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Gary Spackman
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, Idaho 83701

David and Beverly Pillott
903 Briarwood
Notus, Idaho 83651-2112

and

VIA FACSIMILE TRANSMISSION TO:

Gary Spackman
State of Idaho, Department of Water Resources
Western Region
Facsimle: (208) 334-2348

Susan E. Buxton

FILMED
JUN 2 2 2000

Water Resources Board
Ada County
State of Idaho

Dear Sirs:

We wish to be included in the people protesting the permit for a pond by Ken Henrich scheduled for Wednesday, December 10, 1997. It is our desire to be heard on our concerns listed below.

The reason for our protest is due to the fact that Ken Henrich has sought to prevent us from using our water from the canal that we have paid yearly assessments for. He has indicated that if we came onto his land he would have us arrested for trespassing.

He has also sold the pipe that was left for our property for the conveyance of the water through Ken Henrich's property. Mark Bridgewater, the developer, had instructed Ken Henrich that the pipe was for this reason and we were supposed to have access for this. The pipe was a requirement for the sub division of the property by Ada County.

In building his pond he has altered the drainage and flow of irrigation water to our property. Ken Henrich has built up a berm around his pond that has made it impossible for the irrigation water to flow. It is our understanding that we have a right to make a trench to enable us to have access to our water and would like to get this settled at this meeting. Ken Henrich has also altered the head gate and the exit for our water he elevated so as to make it impossible for us to obtain water.

We would like to know if Ken Henrich can deny us our water and if he indeed, cannot, we would like to know what we can legally do about this situation. We are in the process of building our house and will depend upon our irrigation water for the future needs of our property.

Sincerely,

David & Beverly Pillott

P.S. We believe that there has been a violation of the statute 18-4305 (Interference with headgate), Statute 18-4306 (Injuries to ditches and appurtenances), Statute 18-4308 (Changing of Lateral Ditch), Statute 18-4309 (Unauthorized tampering). "Every person who shall wilfully waste water for irrigation, or who shall wilfully open, close, **change or disturb, or interfere with,** and headgate or water box or valve or measuring or regulating device, without authority, shall be guilty of a misdemeanor.

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JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 12/2/97

TO: Tim FEASE

fax 939-2484

FROM: Steve Lester

DOCUMENT DESCRIPTION: 12/10/97 Conference 63-12384:
NON-protestant interested parties can attend but do not have standing. They can be observers & may have chance for limited Q&A at end of meeting. Testimony is not solicited so they will not be testifying. They can elect to intervene as "late protestants" by filing a written "Request to intervene"* along with $25 filing fee. If such a request is granted, they will then have standing as intervenors & will then be parties to all procedures related to this application.

This office will notify the applicant that other non-protestant neighbors might attend the meeting next week as observers.

TOTAL PAGES SENT: Ø + COVER SHEET

CONTACT:

* Should explain their reasons why want to intervene

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JUN 2 2 2000

SUCCESS STEPS FOR USING THE "QUEST FOR HEALTH" VIDEO

Step 1. Prospect: Give the video to anyone that will commit to watching it in the next 48 hours. Tell them that you want their opinion and that you will be calling them back to see what they thought of the blood screen. You will want to give them the letter "**America's # 1 killer" along with the product brochures** to go with the video.

Step 2. Follow up: Telephone call with conference call capabilities, make sure that you have someone in your upline that knows how to sell on your three-way follow up call. **Let the upline do the selling and teaching the new distributor at the same time**.

Step 3. Introduce: They need to understand the marketing plan and explain that you want to help them make some money, perhaps some serious money.

Step 4. Help them: Sit down with them and make up a list of their warm market people. This is a very important step in our program. Tell them that they will **not have to sell.** All they have to do is hand out the video and three-way with you and you will do all the selling.

Step 5. Distribute: Have them get at least ten videos out to their warm market and do three way calls to you now that you are trained from doing calls to your upline.

The new distributor will stay around if he is making money. It is up to you to give him a duplicatable method. Many distributors are getting a 40% - 60% closing ratio. This means if your new distributor gets ten videos out to his warm market, he should have at least four new distributors. If all four give out ten each they should have four on their first level, which means up to sixteen or more on his second level. Now your new distributor is making money and is not looking for another "deal." At this point you have trained your new distributor by the use of the three-way calls and will be able to do the same for his downline. This can often happen in the first 30 - 60 days. Now your new distributor is getting a substantial check and you can now put more time into training instead of recruiting. The main goal to have every customer become a business builder through the use of the video marketing system.

THE ONLY WAY THAT YOU CAN POSSIBLY FAIL IS TO GIVE UP. NO MATTER HOW LONG IT TAKES, NEVER, NEVER, NEVER GIVE UP.

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JUN 2 7 2000

ROSTER OF ATTENDANCE

IDAHO DEPARMENT OF WATER RESOURCES
2735 Airport Way, Boise, ID 83705

Re: Application No. 63-12384 in the Name of Kenley Hinrich &/or Lisa K. Otoole

Place: IDWR, 1301 N. Orchard, Boise, Idaho 83706

Date: Wednesday, December 10, 1997

Conducted by: Gary Spackman (SR also present)

NAME	ADDRESS
Lisa O'Toole	4695 Old Valley Rd., Eagle, ID 83616
Kenley Hinrichs	" " " " " " "
Susan Buxton	999 Main St, Suite 910 Boise, ID 83702
Jerry Olson	8077 Linden Rd Eagle, Id 83616
Beverly Pollock	903 Briarwood Dr. Nampa, Id. 83651
[illegible]	" " " " " "
Richard Burleigh	~~305~~ PO Box 1617 Boise ID 83701
Kathy Ellenschm	4557 Old Valley Rd Eagle Id 83616
Tom Fess	" "
Mel Bangerter	1685 West Brandon Meridian 83642
Joe C Bingsworth	1143 E. Beacolight Rd Eagle 83616

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JUN 2 2 2000

CONVERSATION MEMORANDUM

DATE 12/2/97

FILE 63-12384

NAME OF PARTY Kenley Hinrich

EMPLOYEE fr

RE: 12/10/97 Conference

Called Kenley to let him know e info I faxed to Tim Fease regarding interested parties (non-protestants) attending.

He has no objection to that but is concerned that dept. keep the meeting on track by sticking to pertinent w.r. issues only.

We also discussed the possibility that some parties might file request to intervene.

INFO REGARDING OTHER PARTIES attending 12/10 conf. ("NO standing" for other parties).

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JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

SENT ✓

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 12/2/97

TO: Tim FEASE

fax 939-2484

FROM: Steve Lester

DOCUMENT DESCRIPTION: 12/10/97 Conference 63-12384: NON-protestant interested parties can attend but do not have standing. They can be observers & may have chance for limited Q&A at end of meeting. Testimony is not solicited so they will not be testifying. They can elect to intervene as "late protestants" by filing a written "Request to intervene"* along with $25 filing fee. If such a request is granted, they will then have standing as intervenors & will then be parties to all procedures related to this application.

This office will notify the Applicant that other non-protestant neighbors might attend the meeting next week as observers.

TOTAL PAGES SENT: Ø + COVER SHEET

CONTACT:

* should explain their reasons why want to intervene

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JUN 2 2 2000

CONVERSATION MEMORANDUM

DATE 12/1/97

FILE 63-12384

NAME OF PARTY Tim Fease

EMPLOYEE RL

RE: 12/10/97 Conference

Tim called to ask if non-protestant interested parties can attend.

We discussed lots of issues & that I told him that probably ok provided that limited role is maintained. Also discussed possible requests to intervene.

Told him I would discuss with mayor & then get back to Tim tomorrow.

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JUN 22 2000

November 10, 1997

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Dear Mr. Lester,

This letter is a response to your letter of October 31, 1997, regarding a complaint from Lisa O'Toole and Kenley Hinrichs. The complaint alleges that 1) we are using water illegally to irrigate our nursery and 2) our irrigation practices are causing the level of their pond to drop.

In the matter of illegal water use, it was our understanding, after consulting with IDWR over this past year, that we could divert our irrigation water from the Ballentyne ditch to our pond and use it to sprinkle irrigate the nursery during the irrigation season. It was also our understanding that we could use up to 2,500 gallons per day from our pond beyond the irrigation season without a permit. We had planned our nursery production for this year based on that information and are surprised to find out now that it was not correct. We recognize that this was only intended to be a temporary solution to the irrigation needs for our nursery and have been working with IDWR on a permanent solution.

The allegation that our irrigation practices for the nursery are causing the O'Toole/Hinrichs pond to drop a foot or so every time the sprinklers in our nursery come on is completely unfounded. During the irrigation season, we added water to the pond every 10 days -our rotation on the Ballentyne ditch- and monitored it with a gauge in the pond. Sprinkling the nursery had no affect on the water level whatsoever, but by the end of the 10 days the extra water had usually seeped away and the pond was back to its normal level. If our pond had any influence on the O'Toole/Hinrichs pond, it would have been raising their water level, not lowering it.

The O'Toole/Hinrichs pond is about 50 feet from our property and we walk by it several times a day, but somehow did not see the alleged drops in level they are claiming. Just to make certain, I checked with Jerry Day, whose property is about 75 feet west of the O'Toole/Hinrichs pond and he concurred with our observations. He offered to speak with someone from IDWR about this matter if necessary.

This Fall, a 10 inch drain pipe was installed between the O'Toole/Hinrichs pond and their irrigation ditch. On September 16, they began filling their pond with ditch water and raised the level about a foot or so higher than normal. They continued this practice throughout the irrigation season and each time it would drop back down to its normal level within a few days. I believe their allegation that we somehow affected the level of their pond while they were trying to maintain it artificially high is completely irresponsible.

We regret the error over water use beyond the irrigation season and hope we can resolve this problem with IDWR soon. Any additional information you might need in this matter we will be happy to provide. In an effort to expedite a solution to our situation, I have employed Scanlon Engineering to help us sort through the regulations and fill out the appropriate applications.

Thank you,

Tim Fease

Richard Burleigh is attorney for

11/21/97 update: FEASE's consultant (Scanlon) working on AJ-WR filings to cover everything.

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JUN 2 2 2000

-SR

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 31, 1997

MR TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

RE: USE OF GROUND WATER FOR IRRIGATION PURPOSES

Dear Mr. Fease:

Enclosed is a copy of a complaint received at this office on October 29, 1997 regarding irrigation at your nursery. The complaint refers to the Idaho Department of Water Resources (IDWR) letter dated August 7, 1997 in which the parties were informed that IDWR will not allow irrigation without a valid water right after the ditch company ceases delivering water.

Today's letter confirms that you have remained in contact with this office regarding this subject in an effort to document what you believe to be a beneficial use ("grandfather") irrigation right(s) using ground water as a source. Furthermore, it appears that you are working on other solutions to your overall water use situation, e.g. transfer application to import water from another irrigation right(s) to cover any water right deficit that might exist for your land. No filings have been submitted to this office for irrigation from ground water for your property.

I recognize that some of the delay in filing the appropriate water right documents has been due to my delay in responding to your requests for technical information. These delays by IDWR have been regrettable but unavoidable.

Now, however, IDWR must require you to show that continuing irrigation is authorized by a water right. Specifically, please provide documentation within ten (10) days of receipt of this letter to verify whether or not you have adequate water rights to allow irrigation after the surface water is not available. Without authorized water right protection, IDWR will be obligated to issue a cease and desist order to curtail continued irrigation.

Please contact this office if you need more information.

Sincerely,

Steve Lester
Water Rights Supervisor

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JUN 2 2 2000

Enclosure: copy of complaint
c: Lisa O'Toole and Kenley Hinrichs

fax rec'd 10/29/97

To: Steve Lester, Dept. of Water Resources
From: Lisa O'Toole and Kenley Hinrichs
4695 Old Valley Rd.
Eagle, ID 83616
939-0762
Date: 10/29/97
Subject: Old Valley Farms' continued illegal, commercial use of water.

We am writing to formally complain about illegal water use by Old Valley Farms, a wholesale nursery operation and our neighbor. On both October 25 and 26, 1997 we observed Old Valley Farms irrigating (via a large sprinkler system) nursery plants, by pumping the water out of their pond. Ballentyne Ditch Company, who delivers surface water to Old Valley Farms, ceased delivering water on October 15, 1997.

In an August 7, 1997 letter, signed by Gary Spackman, IDWR informed both us and Old Valley Farms that "IDWR will not allow the diversion of water after the irrigation company's ditches are not delivering surface water."

We suspect that, although Old Valley Farms has been using their surface water all summer, they have been using additional water from their pond. Every time their nursery sprinklers come on, our pond drops a foot or so. Because of this, we have been forced to add some of our surface irrigation water to our pond just to keep it full. Since the effective end of the irrigation season, our pond is being progressively drawn down by Old Valley Farms illegal water use, and we have no way to refill it.

We are aware that Old Valley Farms uses water year-round (to maintain heated greenhouses, at the minimum), and that, to date, Old Valley Farms has not made any application for commercial water use, although they have been in business for at least 6 years. We very much want IDWR to put a stop to this abuse of Idaho's water at best, and the abuse of neighboring properties, at least.

Thank you.

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JUN 2 2 2000

10/20/97

FEASE/ELLENSOHN WATER RIGHTS & ADJUDICATION NOTES [1]

EXISTING FACILITIES

2 wells, 2 homes, 1 pond & nursery area. Also other on-site acres irrigated with Ballentyne Ditch Company shares (about 24 shares for about 18 acres).

ADJUDICATION CLAIMS

Update 2 domestic claims A63-17846 & A63-17848 to show that both wells serve both homes. The artesian well has not been replaced, rather it has been augmented with a newer well. A 3rd domestic claim can be filed to explain this arrangement since it is not feasible to claim a post-1987 diversion for a pre-1987 use. Third claim ($25) to clarify this is easier & less expensive than "transfer application" ($100) to modify the older domestic claim.

Explore option of filing a "grandfather" claim to record supplemental irrigation ($50 plus $1 per irrigated acre) from the artesian well assuming that such use originated prior to March, 1963 (cutoff date for grandfather filings from ground water source). Possible, that artesian well supplemented ditch water when ditch deliveries were in use and that well may have served as primary supply for short periods of irrigation season in some years when ditch water was not available &/or not usable for one reason or another. Also see transfer of water rights, below.

Claimants may have information summarizing how artesian well water was routed (as waste water) at least in part to slough area now occupied by pond and if well was used as primary irrigation source at times, e.g. dry years. Pond has been expanded & re-oriented since claimants purchased land in early 1986. Thus it is conceivable that pond & artesian well with irrigation component might represent a re-configuration of older water uses on the site without being considered an expansion of use.

ESTABLISHING NEW WATER RIGHTS

File an Application for Permit ($50 for up to .20 cfs &/or 20 af of storage) for year around non-irrigation pond storage similar to neighbor's recent application (63-12384, now protested by Fease). Might include artesian well to extent well use does not exceed mandatory permit threshold (up to .04 cfs not to exceed 2500 gallons/day from well). Basis of application is similar to 63-12384: pond on wetted area, no new consumptive use etc.

---

[1]October 20 ,1997 summary of field and office notes by Steve Lester of IDWR based on information attributed in part to Tim Fease. These are not necessarily statements of fact, and should be considered valid only to the extent that additional documentation can be found.

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JUN 2 2 2000

Consider filing another Application for Permit to cover pond and artesian well for irrigation use (probably also $50 fee). This would be similar to neighbor's application 63-12385: filing would be held pending changes in irrigation application processing in local area. This might be considered a back up approach to next step, transfer of water rights.

TRANSFERRING WATER RIGHTS

Instead of (or in addition to?) a new permit to cover irrigation use related to the pond and artesian well, might cover this by changing existing water rights &/or adjudication claims by filing an Application for Transfer of Water Rights. The idea is to decrease use under an existing right(s) to cover applicant's existing &/or proposed uses. No net increase in water use would occur. A transfer application might supplement a grandfather adjudication claim regarding irrigation via well water.

Consider transferring use from an existing artesian well that is protected by valid irrigation right(s). If the artesian well right to be transferred has been a supplemental right, applicant would need to document extent of use of water right and how original well right will be reduced to allow applicant's well use to be protected. It is possible that a portion of the right to be transferred can be retired and moved to applicant's site for irrigation season use and that another portion of right to be transferred can be retired and moved to applicant's site for irrigation use outside of the local maximum season of March 15-November 15 and/or to cover times when ditch water is not available. Complications about transferring water from a supplemental artesian well could be addressed by showing that primary water supply use will also decrease at site of right being transferred: propose to dry up X number of acres at site of right to be changed.

Possibly consider another option. File a transfer application to change use of some ditch shares to store water during the irrigation season in a larger pond that would provide adequate irrigation water for the nursery. Include a request to use a minor amount of this water slightly outside of the irrigation season to cover unusual weather and/or nursery demand. This would include diversion to storage and irrigation storage only when ditch water is available but use from storage would be for a longer period. Such a request would include retiring an appropriate number of acres now served by ditch water to free that water for pond role and nursery use.

The main challenge in the nursery operation is to provide coverage of the artesian well use via pond for nursery irrigation. It would help to know the typical rate of flow and daily volume of artesian well water used in the nursery for any of the choices discussed here - new rights or changing old rights.

All transfer applications include a $100 filing fee. See the enclosed handout for more information about the transfer process.

It is recommended that the water users consult with qualified legal and/or technical resources beyond IDWR to make the best filing choices to cover irrigation use from the pond and artesian well. IDWR staff must remain neutral in this controversy and therefore cannot recommend the best course of action for a water user in this situation.

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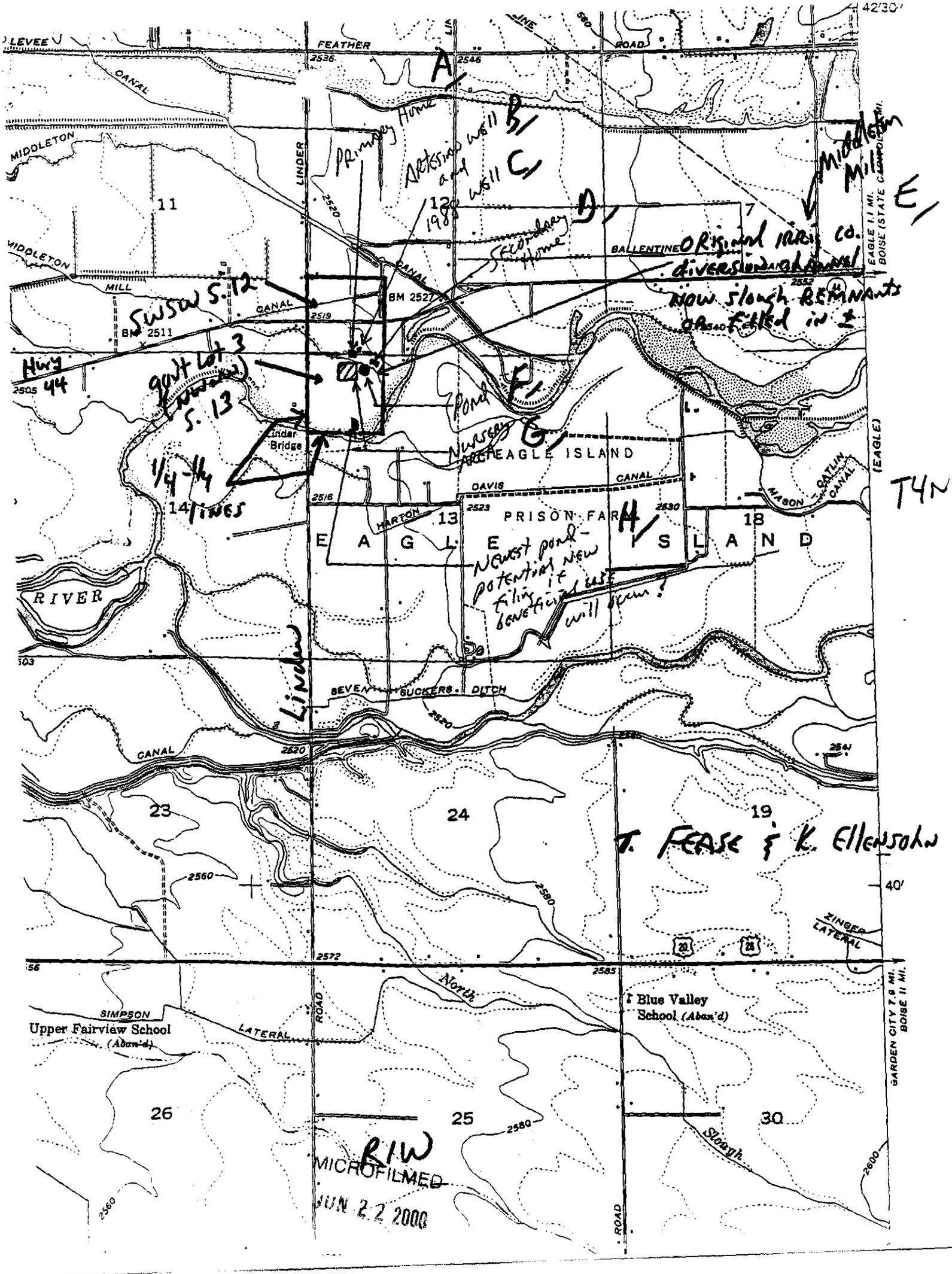
JUN 2 2 2000


LEVEE
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BM 2527
BM 2511
Hwy 44
Linder Bridge
EAGLE ISLAND
DAVIS
CANAL
HARTON
13
PRISON FARM
18
EAGLE ISLAND
RIVER
SEVEN SUCKERS DITCH
CANAL
23
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19
ZINGER LATERAL
North
SIMPSON
LATERAL
ROAD
Upper Fairview School (Aban'd)
Blue Valley School (Aban'd)
26
25
30
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BOISE (STATE CAPITOL) 11 MI.
GARDEN CITY 7.9 MI.
BOISE 11 MI.
(EAGLE)
42'30"
40'
Primary Home
Artesian well B
and well C
1988
Secondary Home
D
Middleton Mill
E
Original irrig. co. diversion channel
Now slough REMNANTS or filled in ±
SWSW S.12
govt Lot 3 (Nursery) S.13
Pond F
Nursery G
1/4-1/4 14 lines
Newest pond - potential new filing if beneficial use will occur?
H
Linder
T4N
T. FEASE & K. Ellensohn
R1W
MICROFILMED
JUN 22 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

October 9, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

K HINRICH & L OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

RE: COPIES OF RECORDS

Dear Kenley and Lisa:

As you requested, enclosed are copies of the records regarding your well and the Fease/Ellensohn wells. Specifically, the following copies are included.

1. Your well log (originally Bridgewater) for a domestic well drilled in 1991. A well log is identified as a "well driller's report".

2. Fease/Ellensohn well log for a domestic well drilled in 1988.

3. Fease/Ellensohn Snake River Basin Adjudication (SRBA) claim no. A63-17846 dating to 1888 for well water for what appears to be the original home on the site, now their current dwelling.

4. Fease/Ellensohn SRBA claim no. A63-17848 dating to 1988 for a well drilled in that year for a second home on the site.

A well log cannot be found in department records for the artesian well. That is not unusual for older wells.

The drilling permit issued for the 1988 well was not a replacement ("replacement" implies abandonment of original well) drilling permit, instead it was for a new well. This means that both wells are to be used for domestic purposes as needed. The SRBA claims can be clarified by the claimants to remove any confusion that might be suggested by the remarks shown on both claims.

As we discussed earlier, the notice of violation regarding the newer pond by the river is not an Idaho Department of Water Resources notice but instead is a county matter as far as I can determine. Of course, that pond can be part of any discussion that ensues between the interested parties and this department.

Sincerely,

Steve Lester
Water Rights Supervisor

c: T. Fease & K. Ellensohn

MICROFILMED
JUN 2 2 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY J. HINRICH &/OR LISA K. OTOOLE	)))))	**NOTICE OF CONFERENCE**

On March 18, 1997, Kenley J. Hinrich &/or Lisa K. Otoole filed with the Department of Water Resources (department) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by the Tim Fease.

The department has scheduled a conference for the protest to be held on Wednesday, December 10, 1997, at 3:00 p.m. in conference room D of the Department of Water Resources, 1301 N. Orchard, Boise Idaho. 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 Practice of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility which 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 the department within (10) days prior to the conference.

Dated this 13th day of November, 1997.

Gary Spackman

Gary Spackman

NOTICE OF CONFERENCE

MICROFILMED
JUN 2 2 2000

I hereby certify that on the 14th day of November, 1997, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Senior Secretary

KENLEY J. HINRICH
&/OR LISA K. OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

TIM FEASE
4557 OLD VALLEY RD
4557 OLD VALLEY RD
EAGLE ID 83616

NOTICE OF CONFERENCE

MICROFILMED
JUN 2 2 2000

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.

MICROFILMED

JUN 2 2 2000

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 a petition for reconsideration, 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

The hearing will be conducted in a facility which satisfies 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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JUN 2 2 2000

CONVERSATION MEMORANDUM

DATE 8/20/97

FILE 63-12384

NAME OF PARTY Kenton Hinrich 396-4970 work # = best way to reach him

EMPLOYEE [illegible]

RE: Site Visit APPT.

Meet at his place Wed 8:30 8/27/97 to inventory his water uses.

Also - check dimensions FEASE's new pond closest to river

- " " " old " @ company

- check "file history" @ cause/design that new pond

\ w/ 95 + 99 @ that

Eventually - what @ Day's pond? = closest to Linden Rd.

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JUN 22 2000

State o. daho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 7, 1997

KINLEY HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

Re: Various Water Right Issues:

Gentlemen:

Both of you have visited our office and written correspondence defending your positions in a dispute that is contentious. I have listened to both of you present your respective sides of the story and your descriptions of the behavior and demeanor of the other person. Each of you describe the activities of the other with some indignation. The facts described by each of you don't seem to match up well. Nonetheless, I will attempt to recite facts that I think are not in dispute with respect to the use of water:

1. Each of you has a pond that is hydrologically connected to the other. It appears that both of the ponds were constructed in a natural drainage area that may once have been a part of the Middleton Mill Ditch. The Fease pond is hydrologically upstream of the Hinrich pond.

2. A pond was or is presently being constructed by Fease near the Boise River on his property. The purpose of the construction is unknown at the present time.

3. Surface water rights are delivered from the Boise River to both the Fease and Hinrich properties. The surface water rights irrigate the Fease and Hinrich properties.

4. Fease operates a nursery business on a portion of his property. Both the nursery and the residual Fease property are irrigated by the surface water from the Boise River. In addition, water from the pond and water delivered from one or two artesian wells irrigate plants of the nursery. The nursery plants are irrigated beyond the normal delivery of the surface water rights.

5. No water rights authorize irrigation by Fease beyond the normal irrigation season when water is delivered from the Boise River.

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JUN 2 2 2000

6. Hinrich filed two applications for permit for use of water in his pond. One application, now advertised and protested by Fease, proposes diversion of water for storage and aesthetic storage. Another application proposes irrigation from the pond, but is being held until the department begins processing applications.

7. Fease has not filed any water right applications to authorize storage in either of his two ponds. Furthermore, no water rights are on file authorizing diversion from ground water for irrigation by Fease.

The Idaho Department of Water Resources (IDWR) has not required every owner of a recreational storage pond on the Boise River to obtain a water right for the storage. If a dispute about the use of water arises, however, a water user can protect himself by obtaining a water right for his use. I understand that Hinrich filed his water right applications according to this understanding. IDWR has not yet regulated the use of water in recreational ponds. This policy may change in the future, however, if the use of water along the Boise River is more highly scrutinized. Your dispute is forcing IDWR to look at the use of water in your ponds in greater detail.

If the facts I have represented above are correct, you should adhere to the following instructions:

1. IDWR has not required a water right for storage of water already diverted if the reservoir stores and the water stored is released from the reservoir with a 24 hour period. Again, we have not enforced this rule strictly. IDWR will not regulate the diversion of ditch water to your reservoirs if water is being continuously diverted to the reservoir, and you are regularly diverting water from the reservoir in quantities not exceeding what was diverted into the reservoir. In other words, the level of the reservoir should remain relatively constant. The reservoir should not be drawn down significantly.

2. Any irrigation beyond the time when Boise River water is not being delivered without a water right is a violation of the law, IDWR will not allow the diversion of water after the irrigation company's ditches are not delivering surface water.

Fease represented to me that September is not a good time for a conference. Hinrich indicated that the last two weeks of October are not a good time for a conference. I will schedule a conference the first two weeks of November. By then, the water should be turned out of the ditches and any irrigation without a water right should cease.

Sincerely,

Gary Spackman

Gary Spackman

MICROFILMED
JUN 2 2 2000

GS:st

RECEIVED
JUL 18 1997
WATER RESOURCES
WESTERN REGION

July 18, 1997

To whom it concerns,

On July 17, 1997, when I arrived home from work, I noticed that our pond's water level was down several inches from what it had been the previous day. We believe that the cause of the drop is due to the construction of a new, upstream pond next to the Boise river or because of the use of another upstream pond for irrigation purposes, or both. We would like the Department of Water Resources to investigate the cause of the drop in the water level in our pond.

We have applied for two water rights with your agency. The first permit, a permit to use our pond for irrigation purposes, has been accepted, but we were told it would not be processed until the completion of a state wide study. The second, permit No. 63-12384, was for a water right to store the water in our pond. This application was advertised in the Idaho Statesman. On April 22, 1997, we received a letter from Gary Spackman containing a copy of a protest filed against the issuance of the water right. In that letter and in subsequent phone conversations with Gene, we were told that a conference would be scheduled to resolve the matter. This conference has not been held. We would also like this matter resolved as soon as possible.

The people who filled the protest against #63-12384 are Tim Fease and Kathy Ellensohn, owners of a property adjacent to ours. They run a wholesale greenhouse operation on their property called Old Valley Farms. They are also the owners of the ponds mentioned in the first paragraph. They are currently using their existing pond to water their greenhouse operation. They have also used this pond to irrigate their hay fields. We also believe that they may be using their domestic well to water their greenhouse operation.

My wife and I both have visited your office on several, separate occasions asking for assistance on water use related issues. According to your records, Old Valley Farms, Tim Fease, nor Kathy Ellensohn do not have any existing water rights nor any outstanding applications to obtain a water right. Why are they being permitted to use their existing pond for irrigation purposes without a water right?

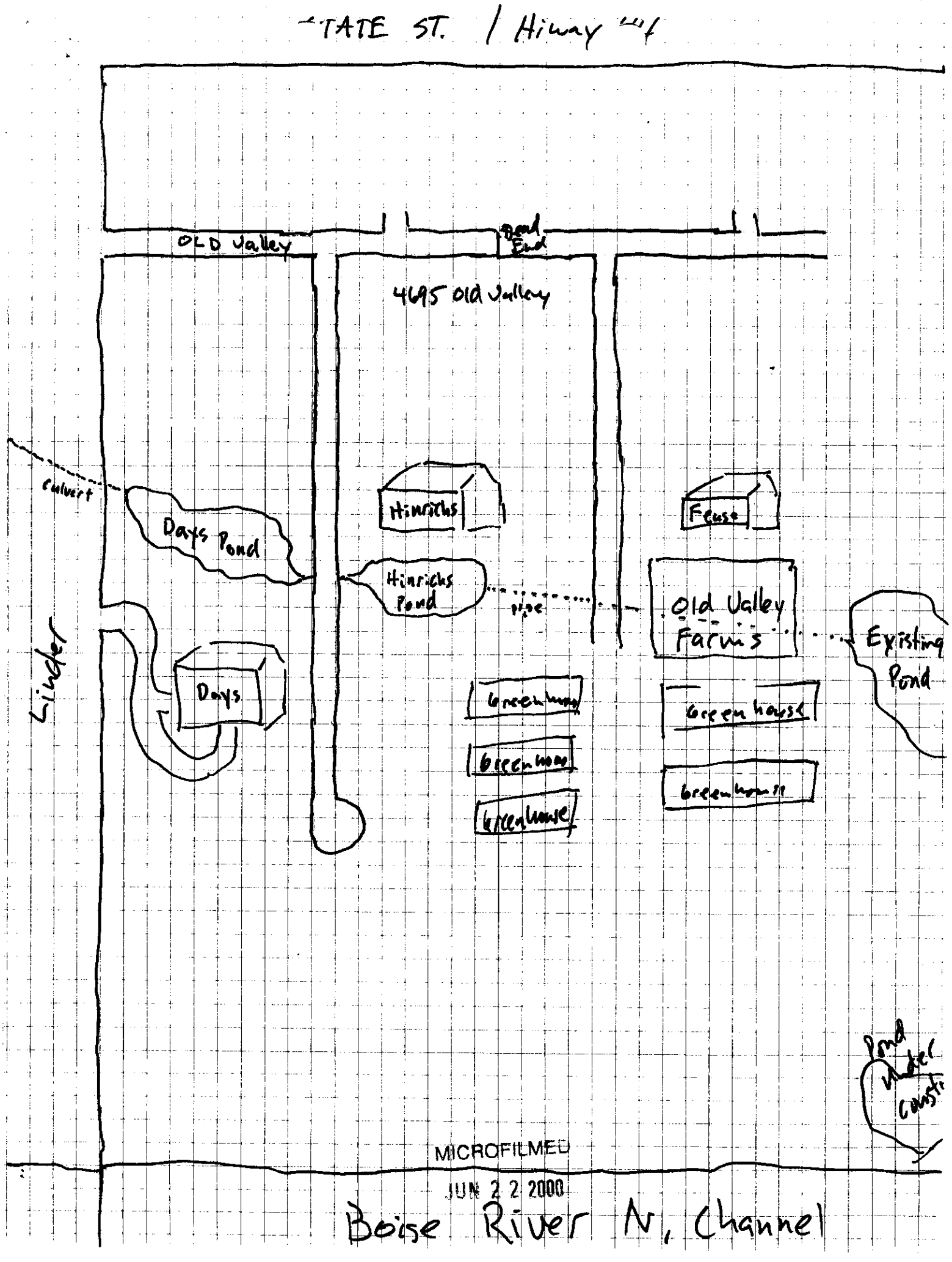
Last year, your agency and Ada County Developmental services served Old Valley Farms with a cease and desist order on the pond they are now once again constructing. Apparently they have met your and ACDS's requirements and are being allowed to continue with the construction of this pond. We have observed water tank trucks taking water from this pond. Again, no water rights exist with this pond and we wonder why they are being allowed to take water from the pond.

Since both ponds are upstream from our pond, we feel that these activities are impacting our potential water right. We are requesting Idaho Department of Water Resources to investigate this matter and if you find violations of water use, that they be addressed. We also request that until a better understanding of the hydrological connection of the Boise River to our pond, that the construction of the pond currently being built, be halted.

Kenley Hinrichs

4695 Old Valley Road
Eagle, ID 83616
939-0762 (h)
396-4970 (w)

MICROFILMED
JUN 2 2 2000



MICROFILMED
JUN 2 2 2000

State o daho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 24, 1997

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

Re: Protest of Application for Permit No. 63-12384 in the Name of Kenley Hinrichs &/or Lisa K. O'Toole

Dear Mr. Fease:

Enclosed for your information is a letter to the Department of Water Resources from Kenley Hinrichs.

We will inform you when we have scheduled a conference in this matter.

If you have any questions, please call this office.

Sincerely,

Sue Taylor

Sue Taylor

MICROFILMED
JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 22, 1997

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

Re: Application for Permit No. 63-12384 in the Name of Kenley J. Hinrich &/or Lisa K. Otoole

Dear Protestant:

This office acknowledges receipt of your protest(s) to the issuance of a permit pursuant to the above referenced application(s). 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.

If this office has not been advised within twenty (20) days that the protest(s) have been resolved, the matter will be scheduled for conference. The following are the criteria the Department must consider in either approving or denying an application or 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?

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

Sincerely,

Gary Spackman

Gary Spackman

GS/st

MICROFILMED
JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 22, 1997

KENLEY J HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

Re: Application for Permit No. 63-12384

Dear Applicant:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to the above-referenced application(s). The Department suggests that you contact the protestant(s) and attempt to resolve the protest(s).

If this office has not been advised within twenty (20) days that the protest(s) have been resolved, the matter will be scheduled for a conference. The following are the criteria the Department must consider (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?

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

Sincerely,

Gary Spackman

Gary Spackman

Enclosure: Copy of protest(s)

GS/st

MICROFILMED
JUN 2 2 2000

April 16, 1997

RECEIVED
APR 17 1997
WATER RESOURCES
WESTERN REGION

Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Re: application #63-12384

Director:

I am writing this letter to protest the application for water rights filed by Kenley Hinricks and Lisa O'Toole. The water rights involve a pond that was dug on their property this past Fall/Winter by Tuffy Excavation Company.

Water rights should be denied in this case because the applicants have not complied with the criteria of Section 42-203A of the Idaho Code. I believe *that the proposed use is such that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use.*

The applicants have disturbed the natural and historic drainage of our property, which is adjacent to the applicants' on their east and the south boundaries, and has sought to do our property harm by deliberately blocking our access to the drainage by piling fill from the pond excavation along our common boundaries (refer to the enclosed photographs). We have asked the applicants to remove the fill and restore the natural drainage or to present us with a plan that addresses the drainage problem but our request has been ignored.

I am also concerned that the applicants' pond may not be in compliance with Ada County setback requirements from existing drain fields and may create a public health hazard for the people of the area. The pond was dug as close to the property lines as possible without consideration for impact on adjacent properties and there may be additional concerns we have not yet considered.

I am requesting that your agency perform a site inspection of the applicants' pond before determining the permits in question and to advise us on any additional concerns we should be aware of.

Sincerely,

Tim Fease

Tim Fease
4557 Old Valley Road
Eagle, Idaho 83616

protest

CC: Kenley Hinrick and Lisa O'Toole

MICROFILMED
JUN 22 2000

RECEIVED
APR 1 7 1997
WATER RESOURCES
WESTERN REGION

MICROFILMED
JUN 2 2 2000

RECEIVED
APR 16 1997
WATER RESOURCES
WESTERN REGION

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707-0040

LEGAL ADVERTISING INVOICE

Account Number/Trans. #	Identification			Amount Due
100564	Notice of Application for Water Right			$189.00
Ordered By	P.O. Number	Rate	Run Dates	
Sue Taylor		TT	April 3, 10, 1997	

Sue Taylor
STATE OF IDAHO
Department of Water Resources, Western Region
2735 Airport Way
Boise ID 83705-5082

Estimated Inches	Real Inches
# Affidavits	Legal Number
1	7311

LEGAL NOTICE
NOTICE OF APPLICATION FOR WATER RIGHT

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

63-12384

HINRICH, KENLEY J.
O'TOOLE, LISA K.
4695 OLD VALLEY RD
EAGLE, ID 83616

Source: GROUNDWATER

Diversion Pt: LOT 3 (NWNW) Sec 13 T 04N R 01W in ADA County.

Use: RECREATION STORAGE (15.00 AF)
AESTHETIC STORAGE (15.00 AF)
Total Diversion: (15.00 AF)

Date Filed: 3/24/1997

In: ADA County
T04N R01W S13 Lot 3(NWNW)

Pond filled by shallow ground water to be mitigated by reduction of existing irrigation use.

63-12388

FELLOWSHIP CHURCH OF THE NAZARINE, NEW CREATION
3500 GOOD ST
BOISE, ID 83703

Source: GROUNDWATER

Diversion Pt: SESESW Sec 14 T 04N R 01E in ADA County.

Use: HEATING (0.530 CFS)
COOLING (0.530 CFS)
Total Diversion: (0.530 CFS)

Date Filed: 3/4/1997

In: ADA County
T04N R01E S14 SESW

63-12390

JACOBS, RANDY S.
120 WOODVINE
BOISE, ID 83706

Source: MC FARLAND CREEK WS
Tributary: CURRENT CREEK

Diversion Pt: SWSE Sec 30 T 05N R 02E in ADA County.

Use: WILDLIFE (0.200 CFS)
FIRE PROTECTION (0.200 CFS)
Total Diversion: (0.200 CFS)

Date Filed: 1/17/1997

In: ADA County
T05N R02E S30 SWSE

Proposed use includes a small on-stream pond covering less than 1/2 acre.

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, ID 83705 together with a protest fee of $25.00 on or before April 21, 1997. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher
Director

Pub. April 3 & 10, 1997 7311

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for Two

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip

insertion(s) beginning with the issue of
April 3, 1997
and ending with the issue of
April 10, 1997

Janice Hildreth

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 10th day of April in the year of 1997, before me, a Notary Public, personally appeared JANICE HILDRETH 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 she executed the same.

Janice Madie
Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: 5/97

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

March 26, 1997

BALLENTYNE DITCH CO LTD
C/O KEITH RICKS
1001 SHOSHONE ST
BOISE ID 83705

Re: Application for Water Right No. 63-12384 in the Name of Kenley J. Hinrich &/or Lisa K. Otoole

Dear Sir:

Enclosed is a copy of the above referenced application for water right which may be of interest to you.

Please review the application and return any comments you might have within two weeks. If you have questions or need information, feel free to contact this office.

Sincerely,

Gary Spackman

Gary Spackman

GS:st

Enclosure: Copy of Application

MICROFILMED
JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

March 26, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

K HINRICH & L OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

RE: APPLICATIONS FOR PERMIT NOS. 63-12384 AND 63-12385

Dear Applicants:

Your two applications for permit to appropriate ground water for dual uses will be handled as follows. Application no. 63-12384 for non-irrigation uses will be processed without delay due to the apparent lack of any increase in consumptive use for that proposal. Application 63-12385 for the same system but to be used for irrigation will be held pending changes in the department's policy for any consumptive use filings. Delays related to department actions do not affect the date of priority or seniority of any application, once established.

Both applications have been revised per your instructions to reflect a storage capacity of 15 acre feet. The priority dates for both filings have been advanced to March 24 based on your revision.

Please contact me at your convenience if you have any questions.

Sincerely,

Steve Lester

Steve Lester
Water Rights Supervisor

MICROFILMED
JUN 2 2 2000

CONVERSATION MEMORANDUM

DATE 3/24/97

FILE 63-12384
63-12385

NAME OF PARTY Lisa O'toole 939-0762

EMPLOYEE CJH relayed to SL

RE:

Pond estimate revised -

Applicants are mathematicians, recalculated volume (sides straighter than originally thought so volume greater), estimate pond covers 1/2 - 3/4 acre @ 15 af total.

No add'tl. fee needed ($50.00 category) but advance drops to 3/24 per increased amount of water.

Process

-12384 Non-irrig use reasonably assumed to be mitigated by reduced irrigation s/w wetted land due to its location, source ± part of River system

Hold

-12385 proposes irrig. from same pond., cons. use, bc 63 "hold letter" to be sent.

MICROFILMED
JUN 2 2 2000

priority
advanced
due to
change in
amt. of storage
on 3/24

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MARCH 26, 1997

Legal Notices Department
THE IDAHO STATESMAN
PO BOX 40
BOISE, ID 83707

Dear Legal Dept.:

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

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

Please send the affidavit of publication and publication billing to this office before APRIL 21, 1997.

Yours truly,

SUE TAYLOR
Secretary/Office Coordinator

Encl.

MICROFILMED
JUN 2 2 2000

NOTICE OF APPLICATION FOR WATER RIGHT

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

MICROFILMED

JUN 2 2 2000

63-12384

HINRICH, KENLEY J
OTOOLE, LISA K
4695 OLD VALLEY RD
EAGLE, ID 83616

Source: GROUNDWATER

Diversion Pt: LOT 3 (NWNW) Sec 13 T 04N R 01W in ADA County.

Use: RECREATION STORAGE	(	15.00 AF)
AESTHETIC STORAGE	(	15.00 AF)
Total Diversion:	(	15.00 AF)

Date Filed: 3/24/1997

In: ADA County
T04N R01W S13 Lot 3(NWNW)

Pond filled by shallow ground water to be mitigated by reduction of existing irrigation use.

APPROVED

JUN 2 2 2000

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 on or before APRIL 21, 1997. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

Published: 4/ 3/1997 & 4/10/1997

MICROFILMED

JUN 2 2 2000

11/99

For Office Use Only
$25 filing fee 25.00
Receipt # 0526649
Date 3-9-01

RECEIVED
MAR - 9 2001
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF PERMIT

To change the ownership of a permit

I, Lisa O. Toole, hereby assign to Marcy Delap

of, 4695 Old Valley Rd. Eagle, ID 83616 (208) 938-5223
(Full Address) (Phone)

All my right, title, and interest in and to Permit No. 63-12384 to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to for Permit No._____ to appropriate the public waters of the State of Idaho.
(Describe portion of the application for permit assigned, listing the number of acres in each 40 acre subdivision, point of diversion location, and amount of the water in cubic feet per second.)

Made this 5th day of March, 20 01.

Permit Holder(s)

State of Idaho)
)ss
County of Ada)

On this 6th day of March, 20 01, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

ROBIN A. THORNGREN NOTARY PUBLIC STATE OF IDAHO

SEAL

Notary Public residing at
Boise, ID

My commission expires: 9/19/02

MICROFILMED
APR 25 2001

Form No. 217
12/99

FOR OFFICE USE ONLY
Amt. of Fee $: 50.00
Receipt No. C052292
Receipt By: [illegible]
Date Receipted: 2-14-01

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
FEB 14 2001
Department of Water Resources

PROOF OF BENEFICIAL USE

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

1. Permit No. 63-12384 Telephone No. (208) 362-7845
2. Name of Permit Holder(s): Kenley Hinrichs / Lisa O'Toole
3. Mailing Address: 4802 S. Rawhide

   City Boise State ID Zip 83709
4. Source of Water: Groundwater If **GROUNDWATER** (well), N/A Date Drilled: mo.____ / yr.____

   a. Well Driller: ____ Drilling Permit Number: ___ - ___ - ___ - ___ - ___
5. Use(s) (as authorized by the water right permit):

   Domestic (No. of households): ____ Stockwater (No. and type of stock): ____

   Irrigation (No. of acres): ____ Other: Recreation Storage / Aesthetic Storage
6. Total rate of diversion and/or volume for which proof is submitted: ____ cfs **OR** 15.0 acre feet
7. Measuring Device Requirement: **(refer to the approval conditions on your permit and respond accordingly)**
   (*This question is **not optional**. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)*

   Measuring Device: Is a measuring device required? Yes ___ **or** No ✓
   Has the measuring device been installed? Yes ___ **or** No ___
8. Fee Enclosed: $ 50.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)
9. Person to contact to accompany the Department representative during field examination of the water system.

   Name: Lisa O'Toole Telephone Number: 362-7845

   Address: 4802 S. Rawhide, Boise, ID 83709
10. ***The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted. I agree to relinquish any undeveloped portion of the permit to the State of Idaho.***

Signature of permit holder: ____ Date: 6/20/00
(include your title, if on behalf of company of organization)

MICROFILMED
MAR 05 2001

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 63-12384

Priority: March 24, 1997 Maximum Storage Volume: 15.0 AF

This is to certify, that **KENLEY J HINRICH**
LISA K OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616
has applied for a permit to appropriate water from: **GROUNDWATER**

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

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
RECREATION STORAGE	01/01 to 12/31		15.0 AF
AESTHETIC STORAGE	01/01 to 12/31		15.0 AF
	Totals		15.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 3(NWNW), Sec. 13, Township 04N, Range 01W
ADA County

PLACE OF USE: RECREATION STORAGE

TWN	RGE	SEC	
04N	01W	13	Lot 3(NWNW)

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of application of water to beneficial use shall be submitted on or before **June 1, 2001.**
2. Subject to all prior water rights.
3. Place of use is located within Parcel 1, Lot 11, Compton Andrews Tract.
4. As mitigation for this approval, the applicant has ceased using water received from Ballentyne Ditch Co. to irrigate the land now covered by the pond surface area. The right holder shall retain ownership of Ballentyne Ditch Co. shares sufficient to irrigate the land area covered by the pond but shall not utilize the water represented by those shares to irrigate any land.
5. This permit does not authorize the construction of a well or the withdrawal of water from an existing well.

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

8th day of June, 2000.

MICROFILMED
JUN 22 2000

for Karl J. Dreher, Director

Ident. No. 63-12384

RECEIVED
MAY 15 2000
Department of Water Resources

RECEIVED
JAN 12 1998
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name: KENLEY J HINRICH 208-939-0762
   Address: 4695 OLD VALLEY RD
   EAGLE ID 83616
   AND/OR
   Name: LISA K OTOOLE 208-939-0762
   Address: 4695 OLD VALLEY RD
   EAGLE ID 83616

2. Source: GROUNDWATER Trib. to:
3. Location of Point of Diversion: Lot 3(NWNW), Sec. 13, Township 04N, Range 01W
   ADA County

4. Water will be used for the following purposes:

Purpose	From	To	CFS	(or)	AF
RECREATION STORAGE	01/01	12/31			~~10~~.00 15.0 *
AESTHETIC STORAGE	01/01	12/31			~~10~~.00 15.0

5. Total quantity to be appropriated is:
   CFS (and/or) ~~10.00~~ AF 15.0 *

6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc.
   EXCAVATED POND
   b. Height of storage dam N/A feet; active reservoir capacity ~~10~~.00 15 acre-feet; total reservoir capacity ~~10~~.00 15 acre-feet; period of year when water will be diverted to storage: 1/01 to 12/31 inclusive.
   c. Proposed well diameter is inches; proposed depth of well is feet.
   d. Is groundwater with a temperature greater than 85F being sought? NO
   e. If well is already drilled, when?
   Drilling Firm
   Well was drilled for

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

MICROFILMED
JUN 22 2000

* Base update 3/25/97 per 3/24/97 telecon with Applicant.

-JL

8. Place of Use: RECREATION STORAGE (aesthetic p/u same per dept. standards)

TWN RGE SEC
04N 01W 13 Lot 3(NWNW)

9. 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.

10. Remarks: Pond filled by shallow ground water to be mitigated by reduction of existing irrigation use. *

11. Map of proposed point of diversion and place of use attached? [✓]

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

Applicant

3-24-97 priority

Received by cjl Date 3-18-97 Time 1100 Preliminary check by SL

** Fee $ 50 ~~100.00~~ Receipted by cjl #W022039 Date 3/18/1997

Publication prepared by st Date 3-26-97 Published in Statesman 4-3 + 10, 97

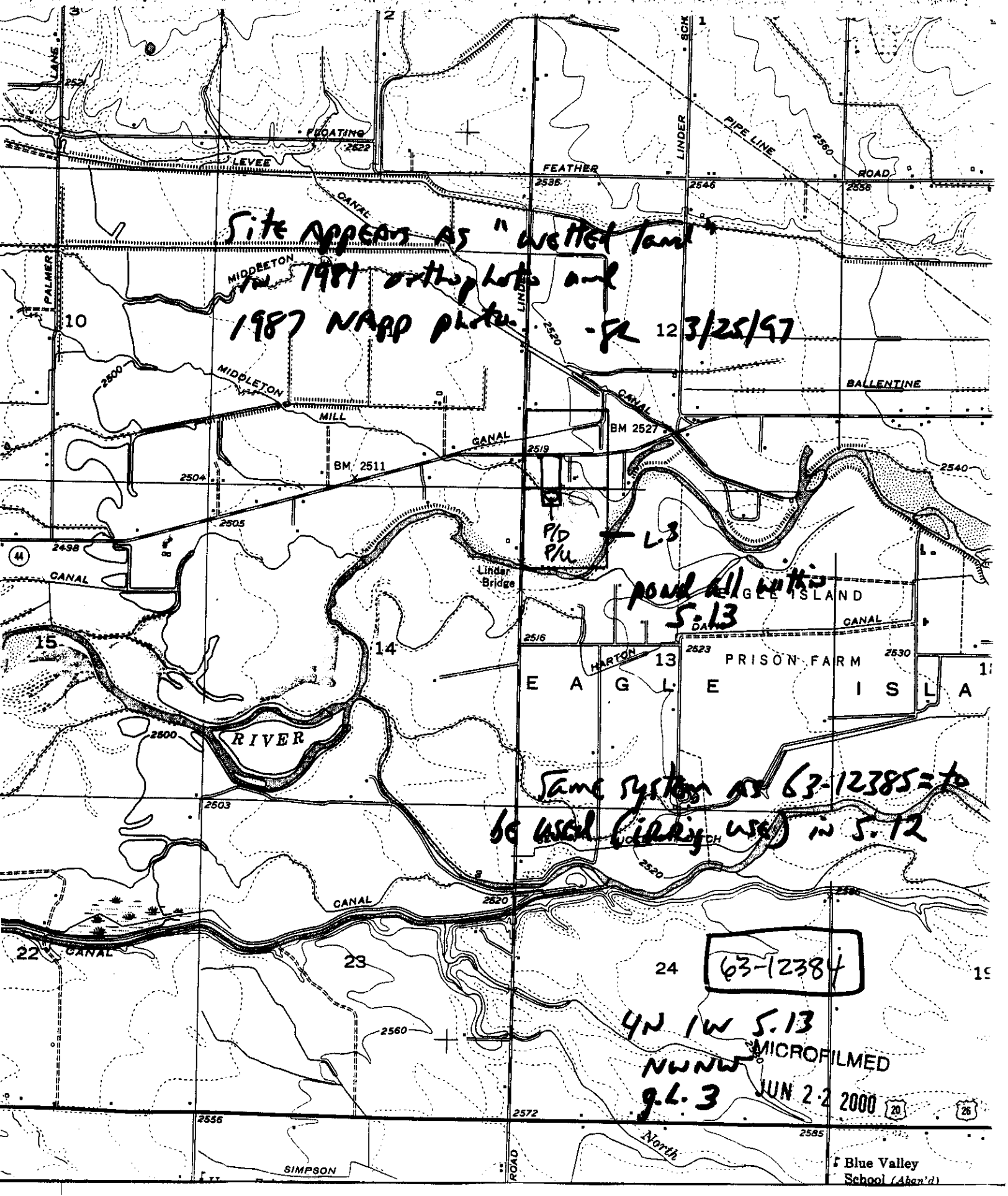
Publication approved st Date 4-21-97

** $100 paid 2 appls @ $50 each

MICROFILMED
JUN 22 2000

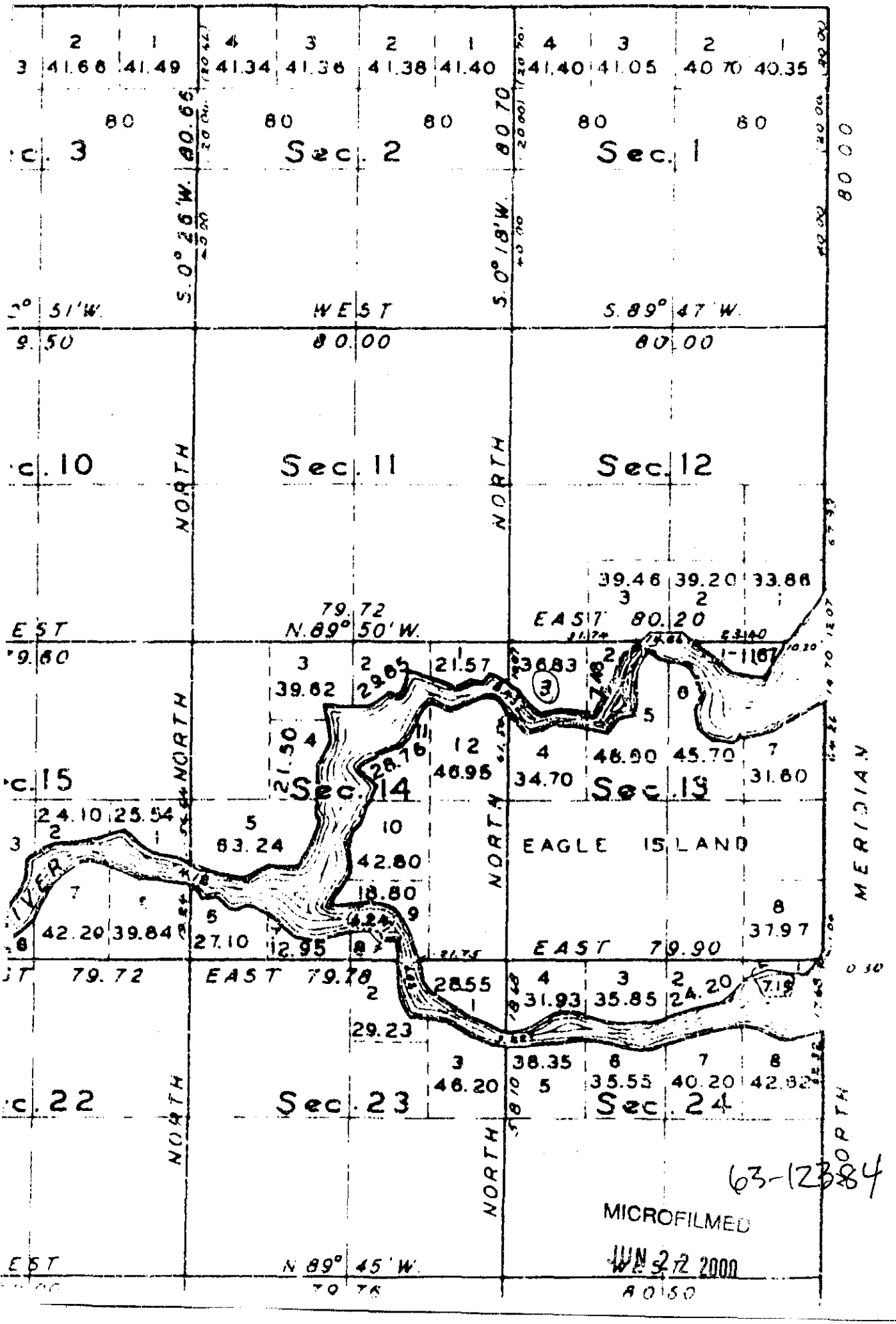
* d'base updated 3/25/97 -SL

— SEE D'BASE COMMENTS FOR ADD'L STAFF INFO —


Site appears as "wetted land"
on 1981 orthophoto and
1987 NAPP photo. -SR 3/25/97
FEATHER
ROAD
LEVEE
FLOATING
CANAL
PIPE LINE
LINDER
PALMER
MIDDLETON
MILL
BALLENTINE
BM 2527
BM 2511
P/D
P/U
L.3
Linder Bridge
pond all within
S.13
EAGLE ISLAND
PRISON FARM
E A G L E I S L A
RIVER
HARTON
Same system as 63-12385 - to
be used (likely used) in S.12
63-12384
4N 1W S.13
NWNW
g.L.3
MICROFILMED
JUN 22 2000
SIMPSON
North
Blue Valley
School (Akan'd)

1981

x>



63-12384

MICROFILMED
JUN 22 2000

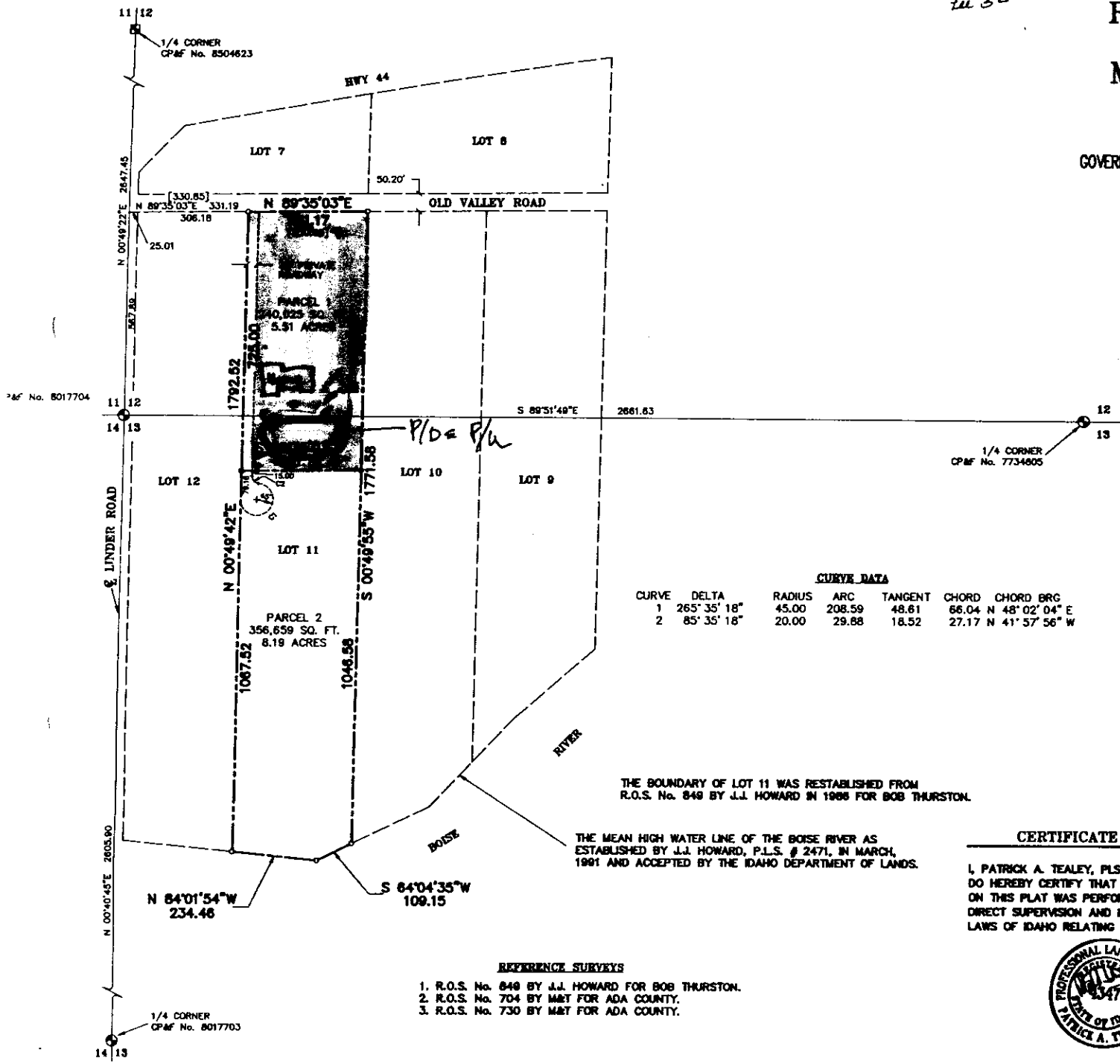
Ok. Min. page 9 Book A M. on 17 day of July 1991
J. DAVID NAVARRO, Recorder
By Jacobson Deputy
Fee 5.00

INSTRUMENT NO. 9158101
BOOK G PAGE 1918

RECORD OF SURVEY
FOR
MARK BRIDGEWATER

LOT 11 OF COMPTON ANDREWS TRACT
SITUATED IN THE SW 1/4 OF SECTION 12 AND
GOVERNMENT LOT 3 AND ACCRETION GROUND IN SECTION 13,
T.4N., R.1W., B.M.
ADA COUNTY, IDAHO
APRIL, 1991

MICROFILMED 12384
JUN 2 2 2000



SCALE: 1" = 100'

LEGEND

	BOUNDARY LINE
	LOT BOUNDARY
	EASEMENT BOUNDARY
	EXISTING FENCELINE
⊕	FOUND BRASS CAP
⊠	FOUND ALUMINUM CAP
○	FOUND 1/2" IRON PIN
●	SET 1/2" x 24" IRON PIN w/CAP
△	CALCULATED POINT
(1320.00)	DATA OF RECORD
[691.4]	PLATTED DIMENSION

CURVE DATA

CURVE	DELTA	RADIUS	ARC	TANGENT	CHORD	CHORD BRG
1	265° 35' 18"	45.00	208.59	48.61	66.04	N 48° 02' 04" E
2	85° 35' 18"	20.00	29.88	18.52	27.17	N 41° 57' 56" W

THE BOUNDARY OF LOT 11 WAS RESTABLISHED FROM R.O.S. No. 849 BY J.J. HOWARD IN 1988 FOR BOB THURSTON.

THE MEAN HIGH WATER LINE OF THE BOISE RIVER AS ESTABLISHED BY J.J. HOWARD, P.L.S. # 2471, IN MARCH, 1991 AND ACCEPTED BY THE IDAHO DEPARTMENT OF LANDS.

CERTIFICATE OF SURVEYOR

I, PATRICK A. TEALEY, PLS NO. 4347, STATE OF IDAHO, DO HEREBY CERTIFY THAT THE SURVEY REPRESENTED ON THIS PLAT WAS PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS IN ACCORDANCE WITH THE LAWS OF IDAHO RELATING TO SURVEYS.

PROFESSIONAL LAND SURVEYOR REGISTERED 4347 STATE OF IDAHO PATRICK A. TEALEY
4-5-91

REFERENCE SURVEYS

1. R.O.S. No. 849 BY J.J. HOWARD FOR BOB THURSTON.
2. R.O.S. No. 704 BY M&T FOR ADA COUNTY.
3. R.O.S. No. 730 BY M&T FOR ADA COUNTY.

RECORDING INDEX No. 414-12-3-3-0-05-223
414-13-4-4-0-05-223

DWG\771-BNDY

TEALEY'S LAND SURVEYING
478 MAIN ST. • BOISE, IDAHO
208-385-0838

DATE:	DRAWING NO.:
APRIL, 1991	771

FORM 202
2/96

Ident. No. 63-12384

RECEIVED
FEB 25 1997
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Kenley Hinrich & Lisa O'Toole Phone 939-0762
   Mailing address 4695 Old Valley Rd. Eagle ID 83616
2. Source of water supply groundwater ~~irrigation water~~ which is a tributary of N/a ~~Boise River~~
3. Location of point of diversion is Township 4N Range 1W Sec. 12 & 13, in the ~~SW~~ NW 1/4, NW 1/4, _____ 1/4, Govt. Lot 3, B.M., Ada County;
   additional points of diversion if any: none (Lot 11 of Compton Andrews tract, Book 5 of plats p 223 Parcel 1 of)
4. Water will be used for the following purposes:
   Amount ~~20~~ 10 acre feet (cfs or acre-feet per annum) for storage ~~fish habitat~~ aesthetic/recreation purposes from 1/1 to 1/1 (both dates inclusive)
   Amount ~~3 acre feet~~ (cfs or acre-feet per annum) for irrigation purposes ~~from April 1 to Oct. 1~~ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for ~~[illegible]~~ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated is (a) _____ cubic feet per second and/or (b) _____ acre feet per annum
6. Proposed diverting works:
   a. Describe type and size of devices used to divert water from the source none. Pond is merely a hole in the ground filled by groundwater. (Presumed from Boise River?)
   b. Height of storage dam none (excavated feet; active reservoir capacity ~~20~~ 10 acre-feet; total reservoir capacity ~~20~~ 10 acre-feet
   c. Proposed well diameter is 0 inches; proposed depth of well is N/a feet
   d. Is ground water with a temperature of greater than 85°F being sought? no
   e. If well is already drilled, when? N/a; Drilling firm N/a;
   Well was drilled for (well owner) N/a; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 1 years (*minimum 1 year*)
8. Description of proposed uses (*if irrigation only, go to item 9*):
   a. Hydropower; show total feet of head and proposed capacity in KW. _____
   b. Stockwatering; list number and kind of livestock. _____
   c. Municipal; show name of municipality. _____
   d. Domestic; show number of households. _____
   e. Other; describe fully. _____

MICROFILMED
JUN 22 2000

this original filing used to prepare 2 Apps., 63-12384 (process) & 63-12385 (hold).
-RC 3/25/97

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	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	1W	13						A/R											

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. none that I am aware of.

11. a. Who owns the property at the point of diversion? My wife & I.

b. Who owns the land to be irrigated or place of use? My wife & I.

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: A pond was present on the property when bought it. We have widened & deepend it. We do NOT have any source of intake other than ground-water. The overflow from our pond drains into a pond on our neighbors property. ~~We ~~ would like to keep the pond full by ~~[illegible]~~ storing our irrigation water into the pond, as necessary.~~ We do not plan to run a hatchery, but will stock the pond with fish (bass, bluegill, catfish).

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.

CONFORMED

[illegible] 2 2 2000

Signature of Applicant (and title, if applicable)

Received by VR Date 2-25-97 Time 12:40 Preliminary check by _____

Fee $ -0- Receipted by _____ # _____ Date _____

Publication prepared by _____ Date _____ Published in _____

Publication approved _____ Date _____

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

March 12, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

MARCY DELAP
4695 OLD VALLEY RD
EAGLE ID 83616

RE: Change of Ownership for Water Right 63-12384

Dear Water Right Holder(s):

The department acknowledges receipt of correspondence changing ownership of the above referenced water right permit to you. The department has modified its records to reflect the change in ownership and has enclosed a computer-generated report for your records.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owner of a water right to the department. Notice of the change must be provided to the department within 120 days of the change. Change reporting forms are available from any office of the department.

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

Sincerely,

for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

MICROFILMED
APR 2 6 2001

Idaho Department of Water Resources Receipt

Receipt ID C052649

Payment Amount $25.00 **Date Received** 3/9/01 1:22:28 PM **Region** State **Status**

Payment Type Check **Check Number** 1916

Payer OTOOLE LISA K

Comment WATER RIGHT # 63-12384

Fee Detail

Amount	Description	Fund	FD	PCA	SO
$25.00	ASSIGNMENTS	0229	21	56103	1155

Signature Line (Dept. Representative)

MICROFILMED
APR 2 6 2001

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

March 2, 2001

KENLEY J HINRICH
LISA K O'TOOLE
4802 S. RAWHIDE
BOISE ID 83709

MARCY DELAP
4695 OLD VALLEY RD
EAGLE, ID 83616

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 63-12384

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to contact you to schedule a field examination to determine and confirm the use being made of the water, and that it meets the permitted beneficial use. According to the proof filed with the department we will contact Lisa O'Toole to accompany the field examiner while inspecting the diversion. If that is not the correct contact person, please notify me or the IDWR's Western Regional office.

Be advised that Section 42-248, Idaho Code requires you or the owner of this water right to maintain current ownership and address records on file with the department. I have enclosed an Assignment of Permit for the current permit holders to complete and file with the department to assign the permit to Marcy DeLap. There is a $25.00 filing fee associated with the assignment of permit.

If you have questions regarding the proof or the assignment of permit, please contact me at (208)327-7953 or any questions concerning the field examination, please contact the **Western** Regional Office of the department in Boise at (208) 334-2190.

Sincerely,

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Encl.
c: IDWR - Regional Office

MICROFILMED
MAR 0 5 2001

ANALYSIS SHEET FOR PROOF OF BENEFICIAL USE

Permit No.: 63-12384 Reviewed By: dgibson Date: March 2, 2001

	Yes	No		Yes	No
Proof received timely?	X		Drilling permit required?		X
License examination fee required?	X		Drilling permit No.:		
Appropriate fee submitted?	X		Drilling permit upgrade needed?		
Receipt No.:			Well driller's report filed?		X
Additional Amount Due:			Measuring device required?		X
Name and address same as permit?		X	Measuring device installed?		
Are the water uses correct?	X		Measure device waiver requested?		

Priority Calculation

Date proof received		02/14/2001
Date proof due	-	06/01/2001
Lapse notice sent	-	
No. of days late	=	0
Holiday allowance	+	
Priority date	+	03/18/1997
New priority date	=	03/18/1997

Deficiencies of Actions Items

Acknowledge proof, request ~~a Change of Ownership~~ an Assignment of Permit be filed with the department and correct the priority date to 3/24/1997. Database incorrect.

Updated info. on permit holders new address & added Marcy DeLap as present owner w/address, etc.

RECEIVED
FEB 14 2001
Department of Water Resources

February 12, 2001

Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098
attn: Debbie Gibson

Re: Permit #63-12384

Enclosed please find a Proof of Beneficial Use. The form was completed during the sale/purchase transaction period of the property including the subject pond. I purchased the home and property at 4695 Old Valley Rd. Eagle in August 2000 from Lisa O'Toole and Kenley Hinrichs. I just recently received the paperwork from the sellers to obtain ownership of permit of the pond located on the property.

Per a conversation with Debbie Gibson I am enclosing the original Proof of Beneficial Use and my check in the amount of $50 for the process of the permit.

I am not certain what is the next step...do I receive a permit in my name? Will someone contact me for the next step? I await to hear from you.

Thank you for your assistance.

Sincerely,

Marcy DeLap
4695 Old Valley Rd.
Eagle, ID 83616
(208)938-5223

MICROFILMED
MAR 05 2001

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 8, 2000

KENLEY J HINRICH
LISA K OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 63-12384

Dear Permit Holder:

The Department of Water Resources (IDWR) 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 IDWR pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action by IDWR unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.**

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

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 right were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Groundwater Protection Section located here at this office or our regional office nearest you.

Also, please note that water right owners are required to report any change of water right ownership and/or change of 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 reporting form.

MICROFILMED

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

Sincerely,

Shelley Keen

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosures

2 2 2000

MICROFILMED
JUN 2 2 2000

CERTIFICATE OF MAILING

I hereby certify that on the **8th** day of **June, 2000**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (Approved Permit)** to the person(s) listed below:

Water Right No. 63-12384

KENLEY J HINRICH
LISA K OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

Kari Lynn Townsend
Secretary

MICROFILMED
JUN 2 2 2000

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).

MICROFILMED
JUN 2 2 2009

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.

MICROFILMED
JUN 2 7 2000

Ballentyne Ditch Co.,LTD
325 N.Park Lane
Eagle, Idaho 83616
6/1/00

Idaho Dept. of Water Resources
ATTN: Sharla Curtis

RE:Permit No. 63-12384

Dear Ms. Curtis;

In response to your letter of 5/30/00,the following should answer your questions:

Ques. # 1 : Henrich/O'Toole own 7 fully paid shares.They have not been re-allocated.

Ques. # 2 :Water per share is one miner's inch.

Ques.#3 :Shares can be re-allocated only to landowners on the same lateral. As shares represent real property,they cannot be taken if fully paid up.Lisa O'Toole paid for 7 shares this April. Therefore,re-allocating these shares would be stealing.

I hope this is helpful.

Very truly yours,

James A. Schuck
Sec'ty/Treas.

MICROFILMED
JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

May 30, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

BALLENTYNE DITCH CO
325 PARK LN
EAGLE ID 83616

RE: Application for Permit No. 63-12384
in the Name of Kenley Hinrich &/or Lisa O'Toole

Gentlemen:

We are trying to finalize the above referenced application for permit approval and there are a couple of items for which I need information from you before that process can continue. The application reflects excavation of a 15.0 af capacity storage pond for recreation and aesthetic purposes from shallow groundwater. The pond was built on land previously irrigated with Ballentyne Ditch shares. To offset any consumption associated with the pond, the applicants are reducing their irrigation via the ditch shares. I need the following information from you at your earliest convenience:

1) How many shares do Kenley Hinrich and/or Lisa O'Toole hold with Ballentyne Ditch Co.? Have any shares held by these two individuals been re-allocated recently?
2) What is the equivalent amount of water associated with a share?
3) What will Ballentyne Ditch Co. do in regards to the now unused shares? Is there a possibility these shares could be re-allocated? Do you have a system for guaranteeing such shares will not be re-allocated and that the current holders of those shares continue to be assessed for those shares even though they are not being used?

I would like to ask that you fax me a written response to these questions so that I can use it as documentation for the water right file. I really appreciate your assistance with this. If you have any questions, please give me a call.

Sincerely,

Sharla Curtis

Sharla Curtis
Sr. Water Resource Agent

MICROFILMED
JUN 2 2 2000

APPLICATION FOR PERMIT
STATE OFFICE ANALYSIS
Reviewed by Sharla Curtis on 5/19/00

No. 63-12384 Name: Hinrich/O'Toole Corp. Officers N/A Ad ok ✓ Govt Lots _____

AREA OF CONCERN: No/Yes TVGW study area Moratorium _____ ~~GWMA~~ ~~TRUST/NON-TRUST~~

GROUNDWATER: (√Flow Chart)

~~DRILLING PERMIT~~	
All wells	- 046(**P23**)
Basin/34	- 084
Irr. w/in WD	- **P05**
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

SURFACE WATER: (√Flow Chart)

F&G contacted	- Yes/No Response _____
In/Above MSF	- WB9
PLANNING REVIEW/RESPONSE	_____
In-stream development	- **P52**
WD	- R04 (WD# _____)
≤ 0.20 cfs/others	- 01H(P01), 01P or No MD
> 0.20 cfs	- 01J(**P08**)
SPRINGS/SINK, INACTIVE WD & REST OF STATE	
≤ 0.24 cfs/5 acres	- No MD
>0.24 cfs/5 acres	- 01M or No MD

RIVER BASINS: (SW special considerations)

Snake R (01)	- W22(**P04**), N/A
(02,03)	- 007 (w/ remark WB9 if above Weiser)
Payette R (65)	- 047(**P04**) (Payette Lake)
Salmon R (70's)	- 029 (fish screens)
Weiser R (67)	- 086-087

LOCATION:

~~Boise Front LoGeo~~	- 058 (<85 GW)
Mitigation	- 121
42-248 Area	- **P84** (20s-70s, 81-86)
Swan Falls Flag	- _____
Trust	- 051(**P74**) (consumptive uses)
Non-Trust	- 048-049 (consumptive uses or non-cons. > 1.0 cfs)

USES:

STORAGE	- 18A-01H(**P01**),01P-18B(**P09**)-~~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/USFS)
MINING	- 054-081(**P10**)
FISH PROP	- 029(70'S only)-007-042-081(**P10**)
HEAT/COOL	- R07(injection well)
FIRE PROT.	- 077

USES:

POWER	- 17H-17K (+uses)-08A-025(**P18**)-01N-081(**P10**)
MUNICIPAL	
Restricted area	- 022,075
Irr., GW supp to SW	- 102
DOMESTIC	
Surface water	- WB5 (Big Wood or Boise above Star Bridge) 27A (Payette R)
>1 in restricted area	- 070-071-075(no parks/common areas, etc)
Irr use listed separate	- WB5
Moratorium approvable	- W03 (2500 gpd – meets domestic definition i.e. D/convenience store)

BENEFICIAL USE DUE: 6/01/2001

MISC CONDITIONS/REMARKS:

~~Protested~~	~~- 020-W19~~ N/A
Development Period	
≤ 1 yr	**P16**
> 1 yr	- 26A(**P17**)
Ownership	- 004
Non-consumptive	- 027
Water Quality	- 081-R07
Multiple pd's per ¼¼	- W32
Subd lot desc (pd)	- W59
Subd lot desc (pu)	- W60 Parcel 1, Lot 11, Compton Andrews tract.
Use definitions	- W02 example – S/50 range
Pre-1987 development	- 068-074 (allow 120 days for proof due)
Single p/d intended	- 076

IRRIGATION SEASON _____ - _____ (Per updated map)

OTHER CONDITIONS/REMARKS _____

COMMENTS 3/26/97 Dary letter to Ballentyne Ditch Co. for comment w/no response
c/o Keith Ricks
1001 Shoshone St
Boise 83705

Form No. 202a.
5/96

RECEIVED
MAY 1 5 2000
DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: SL DATE: 3/26/97 APPLICATION: 63-12384

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) Priority advanced to 3/24/97 per increase in A.F.
- 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. ≥ 5 homes in non-restricted area)
- Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)
- Fee:
- Yes ____ No* In form to receipt:

Gov't. Lots:
4 P/D
4 P/U

ADVERTISE W/ REMARK

ADDITIONAL INFORMATION

YES	NO	
✓		Overlapping place of use: (Describe source & relationship to present application on next page.)
✓		Overlapping point of diversion.
	✓	Field check required: Field check by:_____
	✓	Field report attached:
	✓	Critical groundwater area:
	✓	Groundwater management area:
	✓	1992 moratorium: see "Mitigation"
	✓	Copy to SCA staff: (perennial stream, non-pump diversion &/or any mining).
✓		Copy to Dam Safety staff: (for any storage) cc to JFW 3/26 ✓
* ✓		Mitigation plan: where ground water replaces surface water for irrigation, request additional information &/or mitigation plan to address reduced aquifer recharge
	✓	Send power requirement letter:
	✓	Send fish farm requirement letter:
	✓	Power residency affidavit:
	✓	Power efficiency form:
	✓	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

DATE REQUESTED

✓ ___ ADDITIONAL INFORMATION ON REVERSE SIDE:

* NON-irrig use but mitigation plan = Reduce existing irrig from Ballentyne Ditch Co.

PROCESSING APP. NO. 63-12384

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:

YES	NO		YES	NO	
	✓	I.D. Health & Welfare		✓	U.S. BLM
	✓	I.D. District Health		✓	U.S. Forest Service
	✓	I.D. Fish & Game		✓	Water Dist. #
	✓	I.D. Lands	✓		Other Ballentyne Ditch Co
	✓	Adjudication Bureau			

See attached for address etc.

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:
✓		Protests received. Final date for protest 4-21-97
✓		Protest dates, resolution of protest recorded on application: is file, withdrawn 3/6/00
✓		Recommendations attached: 5/11/00 = SL's
	✓	Measuring device required:
	✓	Measuring port required:
	✓	Water delivered by water master? District # NO, but consider source trib. to River
✓		Special conditions of approval or cover letter: See 5/11/00 memo
	✓	See below for additonal information

Recommended Date or Priority 3-24-1997 -SL

Recommended by: SL Date: 5/11/00

STATE OFFICE REVIEW _____

___ See below for additional information. By _____ Date _____

ADDITIONAL INFORMATION:

Overlap - 63-12385 irrig use, Appl. held - same system

- Boise River irrig Rights @ Ballentyne Ditch Co.
- Waste water " " @ Drainage Dist.

} listed on same land as applicants

→ Ditch Co. did not reply to comment letter.

Comment letter to ditch co. since approval may eventually result in SRBA impact on cov. rights.

SD-4103 Idaho Department of Water Resources Date: 03/26/97
INQUIRY Adjudication Names Screen Time: 07:59:31

Water Right Number: A63-00195 FIRST PAGE
Owner Codes: O Original Owner P Present Owner L Lien Holder T Trustee
C Current Owner R Representative S Lessee
K Also Known As A Attorney of Record D Dir Rpt Owner

Last: BALLENTYNE DITCH COMPANY LTD First:
Address: C/O KEITH RICKS 1001 SHOSHONE ST
City: BOISE
State: ID Zip: 83705- Phone: (208) 344-1126
Owner Code: C

Name Connector: AND/OR
Last: First:
Address:
City:
State: Zip: - Phone: ( ) -
Owner Code:

(GOLD4=Prev Screen) (GOLD6=End of Data) (Enter=Exit)
(GOLD5=Next Screen) (GOLD8=Cancel)

include statement that:

this application implies that ditch company shares delivered to this land might be impacted and might not be available to be used elsewhere

for appl cc to ditch co.
just send computer generated
appl. = 3 pgs + 1st map (topo map) only

Comment letter to
ditch co. re:
63-12384
63-12385

Ident. No. 63-12384

Comments: Date: 3/18/1997 User-ID: CHODGES

Subject: APPLICATION INFO

Pond is an existing excavated impoundment approximately 1/2 acre in surface area and 20' deep. The maximum storage assumption (.5 X 20 = 10) has been taken. Pond fills with shallow ground water and is presently discharging into Middleton Mill drain. Pond does not receive water from Middleton Mill drain, as the upper reaches of the drain have been blocked. Pond will be used for aesthetic and recreational uses including fish stocking with bass, bluegill and catfish.
Place of use is within Parcel 1 of Lot 11, Compton Andrews tract.

Comments: Date: 3/18/1997 User-ID: CHODGES

Subject: MITIGATION CONCERNS

It is believed by applicant that any consumptive losses from this pond are offset by reduced irrigation within the five-acre parcel which they own. Formerly, the property was entirely irrigated with shares from Ballentyne Ditch. Presently, only about 2 acres pasture is irrigated with surface water. The pond and home/lawn cover about 1.5 acres and the balance is not irrigated (horse corrals or dry).

Comment Date: 3/25/1997 User ID: SLESTER

Subject: ADDITIONAL INFORMATION

Original filing made 2-25-97 subsequently resulted in 2 filings signed by applicant on 3-18-97. Storage estimate revised to 15 af per telecon 3-24-97 before advertising, priority advanced to 3-24 as a result. Pond will cover @ 1/2-3/4 acre & have straighter sides than originally thought. Storage use intended to include a refill component. All development to occur on wetted land (see cc of 1987 NAPP photo for confirmation). Since irrigation water is controlled by ditch company, it seems more reasonable to have new application (mitigated by reduced irrigation on site) for permit than to pursue transfer route. Shallow ground water is reasonably thought to be tributary to Boise River. There does not appear to be an increase in consumptive use in this proposal.
Companion application 63-12385 will be held since includes irrig. use from same storage system.

MEMORANDUM

RECEIVED

MAY 15 2000

Department of Water Resources

TO: File

FROM: Steve Lester

DATE: May 11, 2000

RE : Application for Permit No. 63-12384

I received a verbal request from co-applicant Lisa O'toole to forward this application to the S.O. to potentially assist in the sale of the property. The protest in this application and neighboring applications for Fease/Ellensohn/Ballentyne Ditch Company were withdrawn. No harm is done in forwarding the Hinrich/O'toole application before the others for these stand-alone systems.

The application was originally filed on 2-25-97 but subsequently split into two filings via the technique in use at that time to deal with processible (63-12384) and non-processible (63-12385 for irrigation from the same pond) proposals within the Basin 63 moratorium. Application 63-12384 was revised to increase the amount of storage prior to advertising (no additional fee needed). The proposed priority date is the date of the storage increase, 3-24-97.

The pond is fairly small but might include a minor consumptive use aspect. The pond was built on wetted land in/near an area irrigated with Ballentyne Ditch company shares (see attached map). The reduction in irrigation via the ditch shares for the applicants' property will more or less offset any consumption associated with the pond. This technique of mitigating possible consumptive use by a reduction of irrigation of an area served by a surface water system was used earlier in the moratorium, although it has since fallen out of favor as the preferred technique. We should allow this one as "one in the pipeline" and avoid complicating the situation any more than necessary.

Under the preceding thought, let the mitigation plan be the reduced irrigation. The plan is enhanced by the site location – a wetted area near the river. This is far from the "dryland scenario" that the moratorium often addresses. In this manner, the plan incorporates the "request to process" of more recent times by providing an immediate mitigation plan to address Basin 63 issues. This in turn means that out of basin issues about flows in the Snake River are not applicable: there will be nothing to mitigate for the downstream scenario.

The shallow ground water source is considered tributary to the river. The right should be subject to Watermaster control for that reason, but measuring devices and reporting requirements are not necessary. The right should include the fill and refill components for a pond. Existing surface water serving the applicants' property should remain in use to the maximum extent possible, and furthermore should not be removed from that property.

Please excuse the left-hand side of the file presentation. This was the practice before the recent update to Application Processing Memo #9, changes to applications. Application Comments were moved to the right side of the file (attached to staff review form) but should be noted in processing this application.

Co-applicant O'toole is available at the S.O. if any questions about the application occur.

MICROFILMED

JUN 2 2 2000

Middleton Mill drain 63-12384 & 85 (1987 X-7 5E NAPP)

63-12384 - non irrig
63-12385 - irrig ("hold")
MICROFILMED
JUN 22 2000

WR0725NP
(OD-725)

IDAHO DEPARTMENT OF WATER RESOURCES
T-R-S PLACE OF USE 1/4 1/4 COMPARISON REPORT

DATE: 03/26/97
PAGE: 1

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

		NE				NW				SW				SE				
		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
WR-NUMBER	SOURCE	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
T04N R01W S 13																		
NO MATCHES FOR THIS POU IN AJ-POU-TEMP																		
6300132K	BOISE RIVE															I		
A6300132K	BOISE RIVE															12		12
6300132L	BOISE RIVE															I		
6300133K	BOISE RIVE															I		
A6300133K	BOISE RIVE															12		12
6300133L	BOISE RIVE															I		
A6300133L	BOISE RIVE															12		12
A6300134	BOISE R.	23	33	40	36	15		40	40	33	36	38	31	32	40	38	10	485
6300186	BOISE RIVE						03-I	04-I		I	I	I	I					
A6300186	BOISE RIVE	23	???	40	36			40	40	33	36	38	31	32	40	38	10	452
6300187	BOISE RIVE							I			I	I						
A6300195	BOISE RIVE					5	30											35
A6300198AA	BOISE RIVE					5	30											35
A6300234	BOISE RIVE					5	30											35
* A6300258A	BOISE RIVE					5	30											35
A6300260B	BOISE RIVE					5	30											35
A6300264	BOISE RIVE					5	30											35
A6300285	BOISE RIVE					5	30											35
6300289	BOISE RIVE						I											
6302406	WASTE WATE					9	38											47
A6302406	WASTE WATE					9	38											47
6304142	GROUNDWATE									1								1
6304342	GROUNDWATE					02-2												2
A6304342	GROUNDWATE					02-2												2
6304500	GROUNDWATE	01-11																11
A6304500	GROUNDWATE																	
6307565	GROUNDWATE									12								12
6307857	GROUNDWATE											1						1
A6307857	GROUNDWATE											1						1
6308753	GROUNDWATE					02-1												1
6308963	GROUNDWATE									5								5
A6308963	GROUNDWATE									5								5
6309822	GROUNDWATE												1					1
A6309822	GROUNDWATE												1					1
6309929	GROUNDWATE			06-2	07-9													11
A6309929	GROUNDWATE			06-2	07-9													11
* A6315238	BOISE RIVE					5	30											35
A6330136	BOISE RIVE												1					1
PLSS DATA	LEGAL LOOK	01 1	01 1	1	1	05 1	03 1	04 1	05 1	1	1	1	1	1	1	1	08 1	
PLSS DATA	LEGAL LOOK	07 1	1	1	07 1	1	1	1	1	1	1	1	1	1	1	1	1	
PLSS DATA	LEGAL LOOK	1	06 1	1	07 1	1	1	1	1	1	1	1	1	1	1	1	1	
PLSS DATA	LEGAL LOOK	1	06 1	06 1	1	1	1	1	1	1	1	1	1	1	1	1	1	
PLSS DATA	LEGAL LOOK	1	1	06 1	1	02 1	1	1	1	1	1	1	1	1	1	1	1	
PLSS DATA	LEGAL LOOK	1	1	1	1	02 1	1	1	1	1	1	1	1	1	1	1	1	

Deceased to NWWW but claimed elsewhere

Not claimed in SRBA w/ this #

Drainage Dist #2

MICROFILMED
JUN 2 2 2000
P/U Overlap

* B. Ditto Co.

63-12384 Does not show since = nonirrig
63-12385 " " " " ?: T flag used? (Appl. hold)

P 414 384 090

US Postal Service

Receipt for Certified Mail

KENLEY HINRICH &/OR
LISA O'TOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 2.52
Postmark or Date	

MICROFILMED
JUN 22 2000

PS Form **3800**, April 1995

Stick postage s[illegible]s to article to cover First-Class postage, certified mail fee, a[illegible] charges for any [illegible]cted optional services *(See front).*

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge).*

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this receipt and present it if you make an inquiry.

PS Form **3800,** April 1995 *(Reverse)*

P 414 384 087

US Postal Service

Receipt for Certified Mail

DAVID &/OR BEVERLY
PILLOTT
903 BRIARWOOD DR
NAMPA ID 83651

Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 2.05
Postmark or Date	

MICROFILMED
JUN 2 2 2005

PS Form **3800**, April 1995

Stick postage [illegible]ps to article to cover First-Class postage, certified mail fee, charges for an[illegible]lected optional services *(See front).*

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge).*

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6. Save this receipt and present it if you make an inquiry.

PS Form **3800**, April 1995 *(Reverse)*

P 414 384 088

US Postal Service

Receipt for Certified Mail

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

Postage	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 2.52
Postmark or Date	

PS Form **3800**, April 1995

MICROFILMED

JUN 2 2001

Stick postage [illegible]s to article to cover First-Class postage, certified mail fee, charges for any [illegible]ected optional services *(See front).*

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6. Save this receipt and present it if you make an inquiry.

PS Form **3800**, April 1995 *(Reverse)*

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

April 17, 2000

TIMOTHY F FEASE &/OR
KATHY ELLENSOHN
4557 OLD VALLEY RD
EAGLE ID 83616

KENLEY HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

BALLENTYNE DITCH CO
325 PARK LN
EAGLE ID 83616

Re: Application for Permit Nos. 63-12459 in the Name of Tim Fease &/or Kathy Ellensohn; 63-12384 in the Name of Kenley Heinrich &/or Lisa O'Toole; Application for Transfer No. 5284 in the Name of Ballentyne Ditch Co.

Ladies and Gentlemen:

We have received withdrawals of protests from the protestants to application nos. 63-12459, 63-12384 and application for transfer no. 5284. The department will now continue to process these applications, subject to certain conditions of approval.

If you have any questions please call this office.

Sincerely,

Gary Spackman

GS:st

CC: Susan Buxton
S. Bryce Farris
Martha G. Wharry

MICROFILMED
JUN 2 2 2000

CONVERSATION MEMORANDUM

DATE 3/30/00

FILE

NAME OF PARTY Tim Fease

EMPLOYEE SR

RE: Protest Withdrawals

Tim called to check on mutual withdrawals of protests.

So far we've received protest withdrawals for Appls. 63-12384 (Hinrichs/O'Hook Appl.) and 63-12459 (Fease/Ellensohn Appl.) but not the companion transfer # 5284 Appl. (Fease/Ellensohn ditch shares via Ballentyne Ditch Co.).

This is probably an oversight but need to check into it.

Tim said he'd call Bryce Farris (his attorney) to see what's up.

We should respond to Martha Wharry to clarify this if don't receive transfer protest withdrawal soon.

MICROFILMED

JUN 22 2000

RECEIVED
MAR 6 . 2000
Department of Water Resources

RECEIVED
MAR 0 9 2000
WATER RESOURCES
WESTERN REGION

S. Bryce Farris (ISB # 5636)
RINGERT CLARK CHARTERED
455 So. Third St.
P.O. Box 2773
Boise, ID 83701
(208) 342-4591

Attorneys for Tim Fease and Kathy Ellensohn

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY HINRICHS &/OR LISA O'TOOLE	WITHDRAWAL OF PROTEST ON BEHALF OF TIM FEASE AND KATHY ELLENSOHN

Tim Fease and Kathy Ellensohn, by and through their attorneys of record Ringert Clark, Chartered, hereby withdraw their protest in the above-referenced matter.

DATED this 6th day of ~~February~~ March, 2000.

RINGERT CLARK CHARTERED

S. Bryce Farris
Attorneys for Tim Fease and Kathy Ellensohn

withdrawal of protest

MICROFILMED
JUN 2 2 2000

CERTIFICATE OF SERVICE

I certify that on ~~February~~ March 6th, 2000, I mailed copies of this document, postage prepaid, to the following:

Gary Spackman
Western Region Office
Idaho Dept. of Water Resources
2735 Airport Way
Boise, ID 83705

Kenley Hinrichs
4695 Old Valley Rd.
Eagle, ID 83616

S. Bryce Farris

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JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

July 12, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

TIMOTHY F FEASE &/OR
KATHY ELLENSOHN
4557 OLD VALLEY RD
EAGLE ID 83616

KENLEY HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

BALLENTINE DITCH CO
325 PARK LN
EAGLE ID 83616

Ladies and Gentlemen:

In November, 1998, I issued an order suspending processing of application for water right no. 63-12459 in the name of Kathy Ellensohn and Timothy Fease, and application for transfer no. 5284 (water right no. 63-00289) in the name of The Ballentine Ditch Co. The six month suspension has now expired.

The purpose of this letter is to inquire about the status of the applications.

I intend to schedule a prehearing conference for this matter unless the parties have shown that the protests are resolved, or that good cause exists for an additional suspension. I anticipate scheduling the prehearing conference for September 9, 1999, at 10:00 a.m. at the Western Regional Office of the Department of Water Resources. If that date conflicts with your schedule, please provide available dates to me. If a party receives a letter stating a conflict, all parties shall submit a calendar of available dates to me within one week of receipt of the letter indicating a conflict.

Sincerely,

Gary Spackman

Gary Spackman

GS:st

CC: Susan Buxton
Richard Burleigh

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JUN 2 2 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12459 IN THE NAME OF TIM FEASE &/OR KATHY ELLENSOHN, APPLICATION FOR TRANSFER OF WATER RIGHT NO. 63-00289 IN THE NAME OF BALLENTYNE DITCH CO. LTD, AND APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY HINRICH &/OR LISA O'TOOLE.	)	**ORDER INTERRUPTING APPLICATION PROCESSING**

Parties for the above entitled matters filed a stipulation to extend hearing dates with the Idaho Department of Water Resources (IDWR) on November 4, 1998. The stipulation requests that IDWR postpone a prehearing conference, scheduled for November 9, 1998, and a hearing scheduled for December 8 and 9, 1998 "to a time convenient with the Department and counsel."

Rule 40.d. states that an applicant may request in writing that . . . processing be interrupted for a period not to exceed six (6) months. The request by the parties shall be interpreted as a request for interruption of processing. Department processing will commence when the parties inform IDWR that they are ready to proceed, if they are prepared prior to the expiration of six (6) months.

ORDER

IT IS HEREBY ORDERED that processing of application for permit no. 63-12459, application for transfer of water right no. 63-00289 and application for permit no. 63-12384 is interrupted for a period not to exceed six (6) months. IDWR will resume processing the application in six (6) months, or upon notice from the parties, whichever is earlier.

DATED this 6th day of November, 1998.

Gary Spackman

Gary Spackman

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JUN 2 2 2000

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of November, 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Senior Secretary

TIMOTHY F FEASE &/OR
KATHY ELLENSOHN
4557 OLD VALLEY RD
EAGLE ID 83616

BALLENTYNE DITCH CO.
325 PARK LN
EAGLE ID 83616

KENLEY HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

SUSAN BUXTON ESQ
999 W MAIN
BOISE ID 83702

RICHARD BURLEIGH
HAWLEY TROXELL ENNIS & HAWLEY
PO BOX 1617
BOISE ID 83701

MICROFILMED
JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

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NOV 04 1998
WATER RESOURCES
WESTERN REGION

Attorneys for Kenley Hinrichs & Lisa O'Toole

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12459 IN THE NAME OF TIM FEASE &/OR KATHY ELLENSOHN, APPLICATION FOR TRANSFER OF WATER RIGHT NO. 63-00289 IN THE NAME OF BALLENTINE DITCH CO. LTD, AND APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY HINRICH &/OR LISA O'TOOLE	)	STIPULATION TO EXTEND HEARING DATES

COMES NOW, RICHARD BURLEIGH, attorney for Tim Fease and Kathy Ellensohn and SUSAN E. BUXTON, attorney for Kenley Hinrichs and Lisa O'Toole, and hereby stipulate and agree that the Idaho Department of Water Resources should extend the dates presently set for November 9, 1998 for a conference for the protests and December 8 and 9, 1998 for a hearing in the above entitled matter to a time convenient with the Department and counsel.

This Stipulation is based on the following facts:

1. The parties are attempting to enter into settlement negotiations in this matter.

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2. Both parties need additional time to conduct discovery procedures pursuant to IDWR rules.

Dated this 4th day of November, 1998.

HAWLEY, TROXELL ENNIS & HAWLEY

Richard B. Burleigh

Dated this 3rd day of November, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

MICROFILMED

JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of November, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

and depositing the same in the United States mail, postage prepaid, properly addressed to the following:

MICROFILMED
JUN 2 2 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 63-12459 IN THE NAME OF TIM FEASE &/OR KATHY ELLENSOHN, APPLICATION FOR TRANSFER OF WATER RIGHT NO. 63-00289 IN THE NAME OF BALLENTINE DITCH CO. LTD, AND APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY HINRICH &/OR LISA O'TOOLE.	)	**NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING**

On March 18, 1997, Kenley Hinrich &/or Lisa O'Toole filed with the Department of Water Resources (department) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Tim Fease &/or Kathy Ellensohn and Ballentyne Ditch Co. LTD.

On March 11, 1998, Tim Fease &/or Kathy Ellensohn filed with the Department of Water Resources (department) an application for permit to appropriate the public waters of the State of Idaho. On April 20, 1998, Ballentyne Ditch Co. LTD filed with the department an application for transfer of water right. The applications were protested by Kenley Hinrich.

The department has scheduled a conference for the protests to be held on Monday, November 9, 1998, at 10:00 a.m. at the Idaho Department of Water Resources (IDWR), conference room c, 1301 N. Orchard, Boise, Idaho. The department has also scheduled a hearing to be held on Tuesday and Wednesday, December 8 and 9, 1998, at 9:00 a.m. at IDWR, conference rooms a & b, 1301 N. Orchard, Boise Idaho 83706. 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 and Regulations of Water Appropriation of the Department of Water Resources. The presiding officer at the hearing will be Gary Spackman.

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The conference and hearing will be conducted in a facility which 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 the department within (10) days prior to the conference and/or hearing.

Dated this 9th day of October, 1998.

Gary Spackman

I hereby certify that on the 9th day of October, 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Senior Secretary

TIMOTHY F FEASE &/OR
KATHY ELLENSOHN
4557 OLD VALLEY RD
EAGLE ID 83616

BALLENTYNE DITCH CO.
325 PARK LN
EAGLE ID 83616

KENLEY HINRICHS
4695 OLD VALLEY RD
EAGLE ID 83616

SUSAN BUXTON ESQ
999 W MAIN
BOISE ID 83702

RICHARD BURLEIGH
HAWLEY TROXELL ENNIS & HAWLEY
PO BOX 1617
BOISE ID 83701

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JUN 2 2 2000

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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JUN 2 2 2000

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 which 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.

MICROFILMED
JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	MOTION TO STAY
Applicants,	)	
	)	
	)	
	)	

COMES NOW, Applicants, Kenley Hinrichs and Lisa O'Toole, by and through their counsel of record, Moore & McFadden, Chartered and hereby moves the Department to stay the above-entitled matter.

This Motion for Stay is based upon Applicants' counsel's upcoming open heart surgery scheduled for April 27, 1998. Counsel will undergo general anesthesia and will likely require four-to-six weeks of recovery. See, Affidavit of Susan E. Buxton in support of Motion for Stay filed concurrently herewith.

The stay should allow continued supplementation of discovery and settlement discussions by the parties. All new discovery requests, motions, and/or hearings should be

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stayed until such time as Applicants' counsel has recovered sufficiently to resume this matter. Applicants' counsel will inform the Department at such time she has resumed her duties.

Respectfully submitted this 21st day of April, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorney for Applicants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of April, 1998, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

Susan E. Buxton

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JUN 2 2 2000

63-12384

SENDER:

- Complete items 1 and/o[illegible] additional services.
- Complete items 3, 4a, [illegible]
- Print your name and ad[illegible] on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also [illegible] to receive the follow[illegible]ervices (for an extra [illegible]

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

KENLEY HINRICH &/OR
LISA O'TOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

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JUN 2 [illegible]

4a. Article Number

P 414 384 090

4b. Service Type

☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

JAN 1 9 [illegible]

5. Received By: *(Print Name)*

6. Signature: *(Addressee or Agent)*

X

8. Addressee's Address *(Only if requested and fee is paid)*

USPS

PS Form 3811, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES PC SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

RECEIVED

JAN 14 1998

WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

MICROFILMED

JUN 22 2000

63-12384

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

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JUN 22 2000

4a. Article Number
P 414 384 088

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
1-10-98

5. Received By: *(Print Name)*

6. Signature: *(Addressee or Agent)*
X

8. Addressee's Address *(Only if requested and fee is paid)*

PS Form 3811, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES PC SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

RECEIVED

JAN 13 1998

WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

MICROFILMED

JUN 2 2 2000

63-12384

SENDER:

- Complete items 1 and/or [illegible] additional services.
- Complete items 3, 4a, [illegible]
- Print your name and ad[illegible] on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also w[illegible] to receive the follow[illegible]rvices (for an extra [illegible]

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

DAVID &/OR BEVERLY
PILLOTT
903 BRIARWOOD DR
NAMPA ID 83651

MICROFILMED
JAN 2 2 2000

4a. Article Number
P 414 384 089

4b. Service Type

☐ Registered ☐ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
JAN 21 1998

5. Received By: *(Print Name)*

6. Signature: *(Addressee or Agent)*

[redacted]

8. Addressee's Address *(Only if requested and fee is paid)*

Domestic Return Receipt

YOUR RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES PO SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

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JAN 2 2 1998

WATER RESOURCES
WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705

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JAN 2 7 2000

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER SUITE 910
999 MAIN STREET BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*‡
MICHAEL C. MOORE‡
PAUL A. TURCKE

*Also Admitted in Oregon
‡ Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

RECEIVED
APR 21 1998
Department of Water Resources

April 21, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Motion to Stay and Affidavit of Susan E. Buxton in Support of Motion to Stay, together with copies of same for filing in the above-referenced matter. Please conform and return copies to me in the enclosed postage paid envelope. dic 4/21/98 KS

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Donna Everitt

Donna Everitt
Legal Assistant

SEB:de
Enclosures

MICROFILMED
JUN 22 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	AFFIDAVIT OF
Applicants,	)	SUSAN E. BUXTON IN
	)	SUPPORT OF MOTION
	)	TO STAY
	)	

STATE OF IDAHO)
: ss.
County of Ada)

SUSAN E. BUXTON, being first duly sworn upon oath, deposes and says:

1. I am counsel of record for the Applicants, Kenley Hinrichs and Lisa O'Toole, in the above-entitled matter.

2. I am scheduled for open heart surgery on April 27, 1998 at St. Luke's Hospital in Boise, Idaho.

3. I will undergo general anesthesia and will likely require four-to-six weeks of recovery.

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JUN 2 2 2000

Further, your Affiant saith not.

Dated this 21st day of April, 1998.

Susan E. Buxton

SUBSCRIBED AND SWORN to before me this 21st day of April, 1998.

Notary Public for State of Idaho
Residing in Boise ID
Commission Expires 8-24-2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of April, 1998, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

Susan E. Buxton

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JUN 2 2 2000

Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 OPPOSITION TO MOTION TO SUPPRESS OR IN THE ALTERNATIVE MOTION TO CORRECT DEPOSITION

Tim Fease, by and through his attorneys of record, Hawley Troxell Ennis & Hawley LLP, submits this opposition to Applicants' motion to suppress the change sheet to his deposition submitted pursuant to Rule 30(e). Applicants' only objection to the change sheet is that it does not state the reason for making the changes. However, the failure to state the reasons for change was merely an oversight. As stated in the affidavit of Tim Fease filed herewith, the purpose of the changes was to clarify the testimony in the deposition so that the deposition

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JUN 2 2 2000

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would state the truth. Such changes are appropriate. *See, e.g.*, *Hodge v. Borden*, 91 Idaho 125, 130, 417 P.2d 75 (1966).

Applicants have suffered no prejudice by this oversight. Nor have they even suggested that they have been prejudiced. It is impossible to imagine a circumstance in which they would be prejudiced. Applicants merely rely on a technicality of Rule 30(e) for this motion. Their motion should, therefore, be denied.

In the alternative, Protestant moves the Hearing Officer for an order allowing him to submit the affidavit of Timothy Fease filed herewith as the reason for change required pursuant to I.R.C.P. 30(e). As noted above, Applicants have suffered no prejudice as a result of the failure to state the reason for change in the first instance. Furthermore, Applicants will have every opportunity to cross-examine Protestant upon the changes made in the change sheet. Protestant respectfully requests that Applicants' motion be denied and that this motion be granted.

DATED THIS 15th day of April, 1998.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Richard B. Burleigh
Attorneys for Protestant
Tim Fease

MICROFILMED
JUN-22 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 1998, I caused to be served a true copy of the foregoing OPPOSITION TO MOTION TO SUPPRESS OR IN THE ALTERNATIVE MOTION TO CORRECT DEPOSITION by the method indicated below, and addressed to each of the following:

Susan E. Buxton Moore & McFadden, Chartered 999 Main Street, Suite 910 Boise, ID 83702 (Attorneys for Applicant)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
L. Glen Saxton Hearing Officer State of Idaho Department of Water Resources 1301 N. Orchard Boise, ID 83706	___ U.S. Mail, Postage Prepaid ✓ Hand Delivered 4·16·98 ___ Overnight Mail ___ Telecopy

Richard B. Burleigh

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JUN 22 2000
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Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 AFFIDAVIT OF TIM FEASE

TIM FEASE, being first duly sworn upon oath, deposes and says:

1. My name is Timothy F. Fease. The information set forth in this affidavit is based upon my own personal knowledge.

2. On February 24, 1998, my deposition was taken by the counsel for Kenley J. Hinrichs and Lisa K. O'Toole. I was subsequently given the opportunity to review that deposition and make changes that I deemed appropriate on the change sheet. I made the changes outlined in Exhibit 1 attached hereto and on

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JUN 2 2 2000

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which my signature appears. These changes were made in a timely fashion.

The reason for these changes was to clarify the deposition so that the deposition would state the truth.

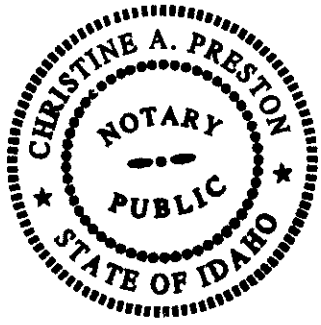
Further your affiant sayeth naught.

Timothy F. Fease

Timothy F. Fease

STATE OF IDAHO)
) ss.
County of Ada)

April SUBSCRIBED AND SWORN before me this 15th day of April, 1998.



Christine A. Preston

Name: CHRISTINE A. PRESTON
Notary Public for Idaho
Residing at Boise Id
My commission expires 10-12-2000

MICROFILMED
JUN 22 2000

G:\CLIENT\07333\001\FEASE.AFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of April, 1998, I caused to be served a true copy of the foregoing AFFIDAVIT OF TIM FEASE by the method indicated below, and addressed to each of the following:

Susan E. Buxton Moore & McFadden, Chartered 999 Main Street, Suite 910 Boise, ID 83702 (Attorneys for Applicant)	✓ U.S. Mail, Postage Prepaid ___ Hand Delivered ___ Overnight Mail ___ Telecopy
L. Glen Saxton Hearing Officer State of Idaho Department of Water Resources 1301 N. Orchard Boise, ID 83706	___ U.S. Mail, Postage Prepaid ✓ Hand Delivered 4·16·98 ___ Overnight Mail ___ Telecopy

Richard B. Burleigh

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JUN 2 2 2000

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER SUITE 910
999 MAIN STREET BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*‡
MICHAEL C. MOORE‡
PAUL A. TURCKE

*Also Admitted in Oregon
‡ Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

Vault File

RECEIVED
APR 14 1998
Department of Water Resources

April 13, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Notice of Service, together with a copy of same for filing in the above-referenced matter. Please conform and return the copy to me in the enclosed postage-paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Donna Everitt

Donna Everitt
Legal Assistant

SEB:de
Enclosures

MICROFILMED
JUN 22 2000

RECEIVED
APR 14 1998
Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	NOTICE OF SERVICE OF APPLICANTS' SUPPLEMENTAL ANSWERS TO INTERROGATORIES AND REQUEST FOR PRODUCTION

COME NOW, the above-named Applicants, and notifies the Department of service upon Protestants' counsel of record of Applicants' Supplemental Answers to Interrogatories and Request for Production. That said document was hand delivered, addressed to Richard B. Burleigh, Hawley, Troxell, Ennis & Hawley, 877 W. Main Street, Suite 1000, Boise, Idaho 83702, on the 13th day of April, 1998.

DATED this 13th day of April, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorney for Applicants

MICROFILMED
JUN 22 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of April, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701
Attorney for Protestants

and by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Susan E. Buxton

Susan E. Buxton

MICROFILMED
JUN 2 2 2000

vault File

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER SUITE 910
999 MAIN STREET BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*‡
MICHAEL C. MOORE‡
PAUL A. TURCKE

*Also Admitted in Oregon
‡ Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

RECEIVED
APR 14 1998
Department of Water Resources

April 9, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Motion to Suppress, together with a copy of same for filing in the above-referenced matter. Please conform and return the copy to me in the enclosed postage paid envelope. → dcd KS 4-14-98

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

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JUN 22 2000

RECEIVED
APR 14 1998
Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	MOTION TO SUPPRESS
Applicants,	)	
	)	
	)	
	)	

COMES NOW, Applicants, Kenley Hinrichs and Lisa O'Toole, by and through their counsel of record, Moore & McFadden, Chartered and pursuant to the Administrative Rules of the Idaho Department of Water Resources, Procedure Rule 523, and the Idaho Rules of Civil Procedure 30(e) and 32(d)(4), hereby move the Department to suppress Protestant Tim Fease's Change Sheet to his Deposition conducted on February 24, 1998. This motion is based upon the grounds that Protestant Tim Fease failed to state the reasons for the changes to the deposition. See Exhibit A attached hereto and incorporated by reference herein.

Rule 30(e) requires in part that "any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them." See, also, Hodge v. Borden, 91 Idaho 125,

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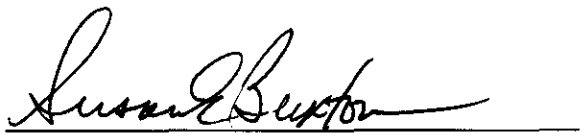
JUN 22 2000

417 P.2d 75. Accordingly, Protestant Tim Fease's Correction Sheet should be suppressed in its entirety as such changes were not accompanied by a statement of reasons within the thirty-day time period.

Respectfully submitted this 9th day of April, 1998.

MOORE & McFADDEN, CHARTERED



Susan E. Buxton
Attorney for Applicants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of April, 1998, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

Susan E. Buxton

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JUN 2 2 2000

GE SHEET FOR TIMOTHY FEASE

PAGE	LINE	~~REMIS~~ SHOULD READ	REASON FOR CHANGE
36	20	No, because I sprinkle irrigate that field now with ditch water	
46	16	The original artesian well does, the old	
50	19	Were shut off that would send the water from the 6" well out that	
52	22	send it out. I would have to take a	
68	16	property line. There is a fence between our	
68	17	property now, this fence that is shown on here.	
77	5	I have repaired it a couple of times since it was installed.	
109	3	I do not recall.	
109	4	(Delete entire line)	
109	5	I did talk with the - when the	

WITNESS SIGNATURE Timothy E. Fease

T. FEASE, 2-24-98

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JUN 2 2 2000

EXHIBIT A

RECEIVED
MAR 19 1998
Department of Water Resources

Richard B. Burleigh
HAWLEY TROXELL ENNIS & HAWLEY LLP
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000
FAX: (208) 342-3829

Attorneys for Protestant, Tim Fease

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY J. HINRICHS and LISA K. O'TOOLE, husband and wife, Applicants.	Case No. 63-12384 NOTICE OF COMPLIANCE

Pursuant to Rule 34 of the Idaho Rules of Civil Procedure, Protestant hereby gives notice that on the 18th day of March, 1998, he responded to Applicants' First Set of Interrogatories and Request for Production of Documents to Protestants by serving the original of PROTESTANT'S RESPONSE TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO PROTESTANTS upon the following person or persons:

Susan E. Buxton
Moore & McFadden, Chartered
999 Main Street, Su
Boise, ID 83702

MICROFILMED
JUN 2 2 2000

DATED THIS 18th day of March, 1998.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Richard B. Burleigh
Attorneys for Protestant
Tim Fease

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 1998, I caused to be served a true copy of the foregoing NOTICE OF COMPLIANCE by the method indicated below, and addressed to each of the following:

Susan E. Buxton
Moore & McFadden, Chartered
999 Main Street, Suite 910
Boise, ID 83702
(Attorneys for Applicants)

___ U.S. Mail, Postage Prepaid
✓ Hand Delivered
___ Overnight Mail
___ Telecopy

L. Glen Saxton
Hearing Officer
State of Idaho
Department of Water Resources
1301 N. Orchard
Boise, ID 83706

✓ U.S. Mail, Postage Prepaid
___ Hand Delivered
___ Overnight Mail
___ Telecopy

_____
Richard B. Burleigh

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JUN 2 2 2000

Vault File

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

RECEIVED
MAR 0 6 1998
Department of Water Resources

March 5, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Notice of Service of Applicants' Answers to Interrogatories and Request for Production, together with a copy of same for filing in the above-referenced matter. Please conform and return the copy to me in the enclosed postage paid envelope. 3/6

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

MICROFILMED
JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
MAR 0 6 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	NOTICE OF SERVICE OF
Applicants,	)	APPLICANTS' ANSWERS TO
	)	INTERROGATORIES AND
	)	REQUEST FOR PRODUCTION
	)	

COME NOW, the above-named Applicants, and notifies the Department of service upon Protestants' counsel of record of Applicants' Answers to Interrogatories and Request for Production. That said document was hand delivered, addressed to Richard B. Burleigh, Hawley, Troxell, Ennis & Hawley, 877 W. Main Street, Suite 1000, Boise, Idaho 83702, on the 5th day of March, 1998.

DATED this 5th day of March, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorney for Applicants

MICROFILMED
JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of March, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701
Attorney for Protestants

and by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Susan E. Buxton

Susan E. Buxton

MICROFILMED

JUN 2 2 2000

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

MONA DOBARAN MACK
Of Counsel

*Also Admitted in Oregon
† Also Admitted in Washington

RECEIVED
MAR 04 1998
Department of Water Resources

March 3, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Notice of Vacating Deposition Duces Tecum of Protestant Kathy Ellensohn in order to accommodate settlement negotiations, together with a copy of same for filing in the above-referenced matter. Please conform and return the copy to me in the enclosed postage paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

MICROFILMED
JUN 22 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
MAR 0 4 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	NOTICE OF VACATING DEPOSITION DUCES TECUM OF PROTESTANT KATHY ELLENSOHN

TO: Protestants Tim Fease and Kathy Ellensohn, and their attorney of record, Richard B. Burleigh

PLEASE TAKE NOTICE that the deposition of Kathy Ellensohn scheduled for March 4, 1998, at 3:30 p.m. is hereby vacated and will be rescheduled on further notice in the event settlement in this matter is not reached.

DATED this 3rd day of March, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorneys for Applicants

MICROFILMED
JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 1998, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
1301 N. Orchard
Boise, Idaho 83706

M&M Court Reporting Service, Inc.
421 W. Franklin
Boise, Idaho 83702

Susan E. Buxton

Susan E. Buxton

MICROFILMED

JUN 2 2 2000

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

RECEIVED
MAR 0 4 1998
Department of Water Resources

March 4, 1998

HAND DELIVERED

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Motion for Withdrawal of Motion for Protective Order, together with a copy of same for filing in the above-referenced matter. Please conform and return the copy to me in the enclosed postage paid envelope. 31463

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E Buxton /hr

Susan E. Buxton

SEB:hr
Enclosures

MICROFILMED
JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

RECEIVED
MAR 04 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	MOTION FOR WITHDRAWAL OF MOTION FOR PROTECTIVE ORDER

COMES NOW, the Applicants, by and through their counsel of record, Moore & McFadden, Chartered, and hereby move pursuant to Rule 305, Idaho Rules of Civil Procedure, to withdraw their Motion for Protective Order filed on March 2, 1998.

This Motion is based upon the grounds and for the reasons that Protestants and Applicants have come to an agreement regarding responses to discovery propounded by Protestants and, therefore, request that the Motion for Protective Order filed March 2, 1998, be withdrawn.

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JUN 22 2000

Respectfully submitted this 4th day of March, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorney for Applicants

CERTIFICATE OF SERVICE

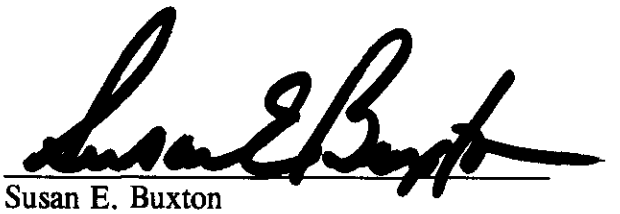
I HEREBY CERTIFY that on the 4 day of March, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

and by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616
Intervenors



Susan E. Buxton

JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

March 5, 1998

Susan E. Buxton
MOORE & MCFADDEN
999 Main St.
STE 910
Boise, ID 83702

Richard B. Burleigh
HAWLEY, TROXELL, ENNIS & HAWLEY
877 West Main St.
STE 1000
Boise, ID 83702

David Pillott
398 South River Rush Lane
Eagle, ID 83616

RE: APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY HINRICHS

Dear Parties:

This letter acknowledges receipt on March 3, 1998 of a Stipulation to Withdraw Protest and Intervention of David Pillott and Beverly Pillott (intervenors). Since the stipulation signed by the intervenors withdraws their protest to the above referenced application, the department will no longer consider the intervenors as parties to the matter.

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

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

c: IDWR - W. Region
Gary Spackman

MICROFILMED
JUN 2 2 2000

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

MONA DOBARAN MACK
Of Counsel

*Also Admitted in Oregon
† Also Admitted in Washington

March 3, 1998

RECEIVED

MAR 0 3 1998

Department of Water Resources

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Amended Opposition to Protestant's Motion for Reconsideration, together with a copy of same for filing in the above-referenced matter. Please conform and return the copies to me in the enclosed postage paid envelope. 3/3/98

The exhibits were inadvertently not attached to the Opposition to Protestant's Motion for Reconsideration which we filed on March 2, 1998.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

MICROFILMED

JUN 2 2 2000

RECEIVED
MAR 0 3 1998
Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife, Applicants,	)	Case No. 63-12384 AMENDED OPPOSITION TO PROTESTANT'S MOTION FOR RECONSIDERATION

COMES NOW, Applicants, Kenley Hinrichs and Lisa O'Toole, by and through their counsel of record, Moore & McFadden, Chartered and in opposition to Protestants' Motion for Reconsideration to continue the hearing set in the above-entitled matter for March 17, 1998 at 9:00 a.m. The pleadings filed by the Protestant Tim Fease, downplays the legal issues that must be reviewed by this tribunal on the request for continuance.

A. Parallel Criminal Case.

Most importantly, Mr. Hinrichs is involved in a criminal matter not of his own choosing that intimately involves the facts of this case. The preliminary hearing for Mr. Hinrichs was held Friday, February 27, 1998. At the hearing the prosecution dismissed the

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JUN 2 2 2000

charges but informed Mr. Hinrichs' legal counsel, Mr. Westberg, that they want to interview one additional witness and may decide to refile the criminal charges based on that interview. Without divulging any of Mr. Hinrich's potential constitutional protections with regard to the criminal claim, the Protestants and the Intervenors are both complainants and witnesses for the prosecution. The factual matters to be developed in this case before the Department necessarily include information that could possibly be used against Mr. Hinrichs in the criminal matter, instigated, at least in part, by Protestants and Intervenors the day after the December 10, 1997 prehearing conference held by Mr. Spackman in this protest matter.

Protestant's opposition to continuance unduly restricts the scope of factual issues in both the administrative and criminal proceedings. Rather than unrelated issues involving discrete facts, the two cases will necessarily involve entwined issues of credibility and the use of real and personal property. Protestants have little to risk from this potential overlap unlike Applicant Hinrichs who is defending himself in a criminal matter and faces at least the possibility of incarceration. Competent defense of Mr. Hinrichs in the criminal matter simply will not allow him to testify to any factual issue in the civil proceedings which might have even potential applicability to any issue in the criminal prosecution. Stated simply, Mr. Hinrich's is facing a burden of production in the administrative proceeding that he cannot meet without waiving fundamental constitutional protections in his criminal case.

B. The Criminal Action and Legal Counsel's Health Delayed Presentation for the Hearing.

Despite the fact that the criminal case involves conduct that allegedly occurred before the pending application was initiated, the criminal case was not pending until the current

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JUN 2 2 2000

administrative hearing date was proposed. The criminal case filing, coupled with Mr. Hinrichs' legal counsel, Susan Buxton's health concerns, created a timing problem wherein preparation for this proceeding was delayed for approximately one (1) month. Mr. Hinrichs will suffer manifest injustice if Applicants are forced to proceed with the hearing as scheduled.

C. Other Issues.

There exists the need for clarification and/or declarations on part of the Department with regard to the existence or nonexistence of water rights and uses of water by parties to this Application prior to proceeding with the hearing on this Application. In a letter dated August 7, 1997, attached here as Exhibit A, Mr. Spackman identifies Protestants' nursery operation as irrigated from one of their two ponds, surface waters from Boise River, and/or one or both wells beyond the normal delivery of the surface water rights. Mr. Spackman's letter also acknowledges there exist no water rights on file with the Department authorizing diversion from ground water sources for irrigation by Mr. Fease. Furthermore, Mr. Fease has also excavated a pond on his property for which no storage water right has been granted and has filled in an existing structure. Also, as was discussed in the August 7, 1997 letter, the specific purpose for the construction of the pond on Mr. Fease's property is unknown. Mr. Spackman also recognizes that at least one of, if not both of, the ponds on Mr. Fease's property are hydrologically connected to the other. There are numerous issues also related to an October 31, 1997 letter from Steve Lester, Water Rights Supervisor, to Mr. Fease, Exhibit B, attached hereto and incorporated herein. Mr. Lester directs Mr. Fease to cease utilizing his domestic wells and pond(s) for irrigating this commercial nursery.

MICROFILMED
JUN 2 2 2000

Mr. Fease has continually irrigated his nursery operation without a water right. It does not appear that any such water right for irrigation from his domestic wells or his pond(s) for his commercial operation has been finalized by the Department. See Exhibit C, October 9, 1997 letter from Steve Lester. Exhibit C shows that the wells are for residential use only. Further, Department records do not demonstrate Protestants' filing for commercial irrigation use of said wells in the Snake River Basin Adjudication and Applicants have received no notice of such filing as has been requested.

Mr. Burleigh's representations regarding the domestic water wells are inaccurate, the reference to Protestant's wells is relevant to the permit application in that all the ponds, Applicants' and Protestants' are apparently hydrologically related. The August 7, 1997 letter from Mr. Spackman indicates that any irrigation practices should not affect the level of the Applicants' reservoir, meaning the water level in Applicants' pond "should remain relatively constant." It is significant that Protestants' commercial nursery operation and its use of domestic wells and pond(s) for irrigation appears to lower the level of Applicants' pond. Also, as was discussed in the prehearing conference on December 10, 1998, Mr. Spackman recognized that these irrigation issues likely would be addressed in this proceeding due to their related nature.

With regard to Protestants' allegation that the "intended irrigation right of way over Protestants' property" is blocked is untrue. This issue was raised by Intervenors. It is curious then, why Protestants' legal counsel is concerned if he merely represents the Pillotts to defend their deposition. Mr. Burleigh's willingness to allege unsubstantiated harm on behalf of the

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Pillotts, suggests his representation goes beyond their deposition. The area in question is not subject to any dedicated easement or right of way, nor is the subject property blocked.

With regard to Protestants' drainage concerns, there exists no easement for drainage from Protestants' to Applicants' property. Further, the massive excavation, leveling, and filling undertaken by Protestants on their property has likely altered the natural drainage. Accordingly, this is properly the subject of a quiet title action and makes Protestants' drainage irrelevant to this case.

CONCLUSION

The criminal case has obviously created additional issues to be considered in this matter that were not contemplated when the hearing of this matter was set. Further, no immediate threat of harm has been demonstrated by Protestant. Accordingly, the interests of justice and conduct of a logical, well-developed hearing on the pending Application necessitate the requested continuance.

Respectfully submitted this 3rd day of March, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton
Attorney for Applicants

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JUN 2 2 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of March, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

and by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616
Intervenors

Susan E. Buxton

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JUN 22 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 7, 1997

KINLEY HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

Re: Various Water Right Issues:

Gentlemen:

Both of you have visited our office and written correspondence defending your positions in a dispute that is contentious. I have listened to both of you present your respective sides of the story and your descriptions of the behavior and demeanor of the other person. Each of you describe the activities of the other with some indignation. The facts described by each of you don't seem to match up well. Nonetheless, I will attempt to recite facts that I think are not in dispute with respect to the use of water:

1. Each of you has a pond that is hydrologically connected to the other. It appears that both of the ponds were constructed in a natural drainage area that may once have been a part of the Middleton Mill Ditch. The Fease pond is hydrologically upstream of the Hinrich pond.

2. A pond was or is presently being constructed by Fease near the Boise River on his property. The purpose of the construction is unknown at the present time.

3. Surface water rights are delivered from the Boise River to both the Fease and Hinrich properties. The surface water rights irrigate the Fease and Hinrich properties.

4. Fease operates a nursery business on a portion of his property. Both the nursery and the residual Fease property are irrigated by the surface water from the Boise River. In addition, water from the pond and water delivered from one or two artesian wells irrigate plants of the nursery. The nursery plants are irrigated beyond the normal delivery of the surface water rights.

5. No water rights authorize irrigation by Fease beyond the normal irrigation season when water is delivered from the Boise River.

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EXHIBIT A

6. Hinrich filed two applications for permit for use of water in his pond. One application, now advertised and protested by Fease, proposes diversion of water for storage and aesthetic storage. Another application proposes irrigation from the pond, but is being held until the department begins processing applications.

7. Fease has not filed any water right applications to authorize storage in either of his two ponds. Furthermore, no water rights are on file authorizing diversion from ground water for irrigation by Fease.

The Idaho Department of Water Resources (IDWR) has not required every owner of a recreational storage pond on the Boise River to obtain a water right for the storage. If a dispute about the use of water arises, however, a water user can protect himself by obtaining a water right for his use. I understand that Hinrich filed his water right applications according to this understanding. IDWR has not yet regulated the use of water in recreational ponds. This policy may change in the future, however, if the use of water along the Boise River is more highly scrutinized. Your dispute is forcing IDWR to look at the use of water in your ponds in greater detail.

If the facts I have represented above are correct, you should adhere to the following instructions:

1. IDWR has not required a water right for storage of water already diverted if the reservoir stores and the water stored is released from the reservoir with a 24 hour period. Again, we have not enforced this rule strictly. IDWR will not regulate the diversion of ditch water to your reservoirs if water is being continuously diverted to the reservoir, and you are regularly diverting water from the reservoir in quantities not exceeding what was diverted into the reservoir. In other words, the level of the reservoir should remain relatively constant. The reservoir should not be drawn down significantly.

2. Any irrigation beyond the time when Boise River water is not being delivered without a water right is a violation of the law, IDWR will not allow the diversion of water after the irrigation company's ditches are not delivering surface water.

Fease represented to me that September is not a good time for a conference. Hinrich indicated that the last two weeks of October are not a good time for a conference. I will schedule a conference the first two weeks of November. By then, the water should be turned out of the ditches and any irrigation without a water right should cease.

Sincerely,

Gary Spackman

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JUN 22 2000

Gary Spackman

GS:st

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

October 31, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MR TIM FEASE
4557 OLD VALLEY RD
EAGLE ID 83616

RE: USE OF GROUND WATER FOR IRRIGATION PURPOSES

Dear Mr. Fease:

Enclosed is a copy of a complaint received at this office on October 29, 1997 regarding irrigation at your nursery. The complaint refers to the Idaho Department of Water Resources (IDWR) letter dated August 7, 1997 in which the parties were informed that IDWR will not allow irrigation without a valid water right after the ditch company ceases delivering water.

Today's letter confirms that you have remained in contact with this office regarding this subject in an effort to document what you believe to be a beneficial use ("grandfather") irrigation right(s) using ground water as a source. Furthermore, it appears that you are working on other solutions to your overall water use situation, e.g. transfer application to import water from another irrigation right(s) to cover any water right deficit that might exist for your land. No filings have been submitted to this office for irrigation from ground water for your property.

I recognize that some of the delay in filing the appropriate water right documents has been due to my delay in responding to your requests for technical information. These delays by IDWR have been regrettable but unavoidable.

Now, however, IDWR must require you to show that continuing irrigation is authorized by a water right. Specifically, please provide documentation within ten (10) days of receipt of this letter to verify whether or not you have adequate water rights to allow irrigation after the surface water is not available. Without authorized water right protection, IDWR will be obligated to issue a cease and desist order to curtail continued irrigation.

Please contact this office if you need more information.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure: copy of complaint
c: Lisa O'Toole and Kenley Hinrichs

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JUN 2 2 2000

EXHIBIT B

State Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

October 9, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

K HINRICH & L OTOOLE
4695 OLD VALLEY RD
EAGLE ID 83616

RE: COPIES OF RECORDS

Dear Kenley and Lisa:

As you requested, enclosed are copies of the records regarding your well and the Fease/Ellensohn wells. Specifically, the following copies are included.

1. Your well log (originally Bridgewater) for a domestic well drilled in 1991. A well log is identified as a "well driller's report".

2. Fease/Ellensohn well log for a domestic well drilled in 1988.

3. Fease/Ellensohn Snake River Basin Adjudication (SRBA) claim no. A63-17846 dating to 1888 for well water for what appears to be the original home on the site, now their current dwelling.

4. Fease/Ellensohn SRBA claim no. A63-17848 dating to 1988 for a well drilled in that year for a second home on the site.

A well log cannot be found in department records for the artesian well. That is not unusual for older wells.

The drilling permit issued for the 1988 well was not a replacement ("replacement" implies abandonment of original well) drilling permit, instead it was for a new well. This means that both wells are to be used for domestic purposes as needed. The SRBA claims can be clarified by the claimants to remove any confusion that might be suggested by the remarks shown on both claims.

As we discussed earlier, the notice of violation regarding the newer pond by the river is not an Idaho Department of Water Resources notice but instead is a county matter as far as I can determine. Of course, that pond can be part of any discussion that ensues between the interested parties and this department.

Sincerely,

Steve Lester
Water Rights Supervisor

c: T. Fease & K. Ellensohn

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JUN 22 2000

EXHIBIT C

Form 238-7
3/90

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

USE TYPEWRITER OR BALLPOINT PEN

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name MARK BRIDGEWATER

Address 4695 OLD VALLEY RD. EAGLE, ID.

Drilling Permit No. 63-91-W-316

Water Right Permit No. _____

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement
☐ Well diameter increase
☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)

3. PROPOSED USE

☒ Domestic ☐ Irrigation ☐ Test ☐ Municipal
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

☐ Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary
☒ Cable ☐ Dug ☐ Other _____

5. WELL CONSTRUCTION

Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____

Thickness	Diameter	From	To
2.50 inches	6 inches +	1 feet	113 feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ☒ Yes ☐ No
Was a packer or seal used? ☒ Yes ☐ No
Perforated? ☐ Yes ☒ No
How perforated? ☐ Factory ☐ Knife ☐ Torch ☐ Gun
Size of perforation _____ inches by _____ inches

Number	From	To
_____ perforations	_____ feet	_____ feet

7. WATER LEVEL

Static water level GROUND LEVEL feet below land surface.
Flowing? ☐ Yes ☒ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature 55 °F. Quality GOOD
Describe artesian or temperature zones below.

8. WELL TEST DATA

☐ Pump ☐ Bailer ☒ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped
50	75'	1

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
8	0	7	CLAY		
	7	18	GRAVEL	X	
6	18	23	SAND	X	
	23	36	GRAVEL	X	
	36	73	SAND	X	
	73	81	BRN CLAY		
	81	84	SAND	X	
	84	96	CLAY		
	96	100	SAND	X	
	100	101	CLAY		
	101	120	SAND	X	

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JUN 2 2 2000

Form 238-7
6/69

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

USE TYPEWRITER OR BALLPOINT PEN

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name: JIM EFASE / Kathy Ellenson

Address: 210 VALLEY RD EAGLE

Owner's Permit No. 63-89-2-700 A43-17848

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement
Well diameter increase
Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)

3. PROPOSED USE

☒ Domestic ☐ Irrigation ☐ Test ☐ Municipal
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

☐ Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary
☒ Cable ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Casing schedule: ☒ Steel ☐ Concrete ☐ Other

Thickness	Diameter	From	To
.250 inches	6 inches	+ 1 feet	feet
inches	inches	feet	feet
inches	inches	feet	feet
inches	inches	feet	feet

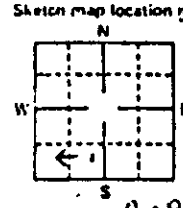
Was casing drive shoe used? ☒ Yes ☐ No
Was a packer or seal used? ☒ Yes ☐ No
Perforated? ☐ Yes ☒ No
How perforated? ☐ Factory ☐ Knife ☐ Torch
Size of perforation _____ inches by _____ inches

Number	From	To
perforations	feet	feet
perforations	feet	feet
perforations	feet	feet

Well screen installed? ☒ Yes ☐ No
Manufacturer's name JOHNSON
Type STAINLESS Model No. 304
Diameter 5" Slot size .250 Set from 123 feet to 128 feet
Diameter Slot size Set from feet to feet
Gravel packed? ☐ Yes ☒ No ☐ Size of gravel
Placed from feet to feet
Surface seal depth 18 Material used in seal: ☐ Cement grout ☐ Bentonite ☐ Puddling clay ☐
Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing ☒ Overbore to seal depth
Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent Weld ☐ Cemented between strata
Describe access port

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name
Lot No. Block No.
County ADA
SW ¼ SW ¼ Sec. 12 T. 4 N ☒ S ☐ R. 1 E ☐ W ☐

7. WATER LEVEL

Static water level 12 feet below land surface.
Flowing ☐ Yes ☒ No G.P.M. flow
Artesian closed-in pressure p.s.i.
Controlled by ☐ Valve ☐ Cap ☐ Plug
Temperature 55 °F. Quality GOOD
Describe artesian or temperature zones below

8. WELL TEST DATA

☐ Pump ☐ Bailer ☒ Air ☐ Other

Discharge G.P.M.	Pumping Level	Hours Pumped
30	60	1

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
8"	0	12	TOP SOIL		X
	12	5	BROWN CLAY		X
	5	18	RED GRAVEL	X	
	18	42	" "	X	
	42	57	BROWN CLAY		X
	57	60	FINE SAND	X	
	60	69	BROWN CLAY		X
	69	75	FINE SAND KLAY SEEPS	X	
	75	96	BROWN SANDY CLAY		X
	96	101	BROWN HARD CLAY		X
	101	105	COARSE SAND	X	
	105	120	BROWN HARD CLAY		X
	120	130	COARSE SAND	X	

10. Work started 8-18-88 finished 8-24-88

11. DRILLERS CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name COURSE WELL DRILLING Firm No. 401
Address EAGLE IDA. Date 8-30-88
Signed by (Firm Official) Gary E Course
and
(Operator)

USE ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT

MICRO...

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	TO	DIVERSION RATE	DIVERSION VOLUME
C	KATHY A ELLENSOHN	12/31/1888	DOMESTIC	01-01	12-31	0.04 CFS	
C	TIMOTHY F FEASE						
				TOTAL DIVERSION:		0.04 CFS	

Water Source: GROUNDWATER Tributary to: Stage: BENEFICIAL USE

Point(s) of Diversion: T04N R01W S12 SWSW ADA County

Place of use Legal Description for: DOMESTIC

	NE				NW				SW				SE			
	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T R S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
04N 01W 12											D					

POU County: ADA

Non-Irrigation Uses: D/1 HOME W/LAWN

Other Rights: A63-17848

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A63-17848 A63-28192 A63-30263 R63-17846 R63-17848 R63-28192

Remarks: GEN LOT 9 AND 10, COMPTON-ANDREWS TRACT. WELL ON LOT 10. THE 130'D WELL IS A REPLACEMENT WELL FOR THE ARTESIAN. THE ARTESIAN IS USED AS A BACKUP. THEY ARE HOOKED UP ON SAME SYSTEM.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

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2", c 100' artesian well

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	TO	DIVERSION RATE	DIVERSION VOLUME
C	KATHY A ELLENSOHN	08/01/1988	DOMESTIC	01-01	12-31	0.04 CFS	
C	TIMOTHY F FEASE						
				TOTAL DIVERSION:		0.04 CFS	

Water Source: GROUNDWATER Tributary to: Stage: BENEFICIAL USE

Point(s) of Diversion: T04N R01W S12 SWSW ADA County

Place of use Legal Description for: DOMESTIC

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
04N	01W	12											D					

POU County: ADA

Non-Irrigation Uses: D/1 HOME W/LAWN

Other Rights: A63-17846

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A63-17846 A63-28192 A63-30263 R63-17846 R63-17848 R63-28192

Remarks: GEN THIS IS A REPLACEMENT WELL FOR AN ARTESIAN. THE ARTESIAN IS SOMETIMES USED AS A BACKUP. THE HOUSE WAS ADDED TO THE WELLS IN 1988. BOTH WELLS ARE ON THE SAME SYSTEM.
WELL IS LOCATED ON LOT 10.
LOTS 9 AND 10, COMPTON-ANDREWS TRACT.
NEED WELL DRILLING PERMIT NUMBER. 63-89-C-0200-000

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

MICROFILMED
JUN 2 2 2000

6", 130' drilled well

RECEIVED
MAR 0 3 1998
Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
Applicants,	)	STIPULATION TO WITHDRAW PROTEST AND INTERVENTION OF DAVID PILLOTT AND BEVERLY PILLOTT

COME NOW, Intervenors David Pillott and Beverly Pillott, and Applicants by and through their counsel of record, Susan E. Buxton of Moore & McFadden, Chartered, and hereby stipulate and agree to the withdrawal of David Pillott and Beverly Pillott's protest and request for intervention in the above-entitled matter.

DATED this 3 day of March, 1998.

David Pillott, Intervenor

DATED this 3rd day of March, 1998.

Susan E. Buxton
Attorneys for Applicants

DATED this 3 day of March, 1998.

Beverly Pillott, Intervenor

MICROFILMED
JUN 2 2 2000

withdrawal of intervention

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

and by hand delivering the same to the following at the offices of Moore & McFadden, Chartered, 999 Main Street, Suite 910.

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
Attorney for Protestants and Intervenors

David and Beverly Pillott
Intervenors

Susan E. Buxton

MICROFILMED

JUN 2 2 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

March 3, 1998

Susan E. Buxton
MOORE & MCFADDEN
999 Main St.
STE 910
Boise, ID 83702

Richard B. Burleigh
HAWLEY, TROXELL, ENNIS & HAWLEY
877 West Main St.
STE 1000
Boise, ID 83702

David Pillott
398 South River Rush Lane
Eagle, ID 83616

RE: APPLICATION FOR PERMIT NO. 63-12384 IN THE NAME OF KENLEY HINRICHS

Dear Parties:

The Petition for Continuance filed with the department by Susan Buxton on February 20, 1998, raises issues in Paragraphs 4. and 5. which I wish to address and clarify for the parties to the referenced matter as follows:

Paragraph 4. - An excavation which incidentally fills with groundwater with no associated use of the groundwater does not require a water right. An excavation which is intentional, however, with an intended beneficial use of water which accumulates in the excavation such as aesthetic use or other accepted beneficial use requires the filing of an application for permit or must be represented by a water right unless the use is exempt from filing under sections 42-111 and 42-229, Idaho Code. If a use is exempt from mandatory filing, a party may, however, choose to make a water right filing for the purpose of establishing the priority of use. In connection with Section 42-111, Idaho Code, the department has considered that the depletion of water through evaporation from a pond with a 1/2 acre surface area is similar in amount to the consumption of water associated with the irrigation of 1/2 acre of land.

Paragraph 5. - By copy of this letter and a copy of the Petition for Continuance of Ms. Buxton to the department's Western Regional office, I am requesting that the Regional Office investigate the water uses of Tim Fease and Kathy Ellensohn to determine whether they have filed appropriate documents with the department in connection with their water uses. If not, the regional office is asked to separately pursue the matter with Tim Fease and Kathy Ellensohn. The

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department will consider the water right filing matter of Tim Fease and Kathy Ellensohn as a separate matter from the protested application of Kenley Hinrichs.

With respect to the department's Order Vacating Hearing dated February 23, 1998, the department generally grants such petitions filed by an applicant, since the applicant is the party who is prevented from proceeding with a proposal. There generally is not injury to a protestant caused by a delay in the scheduling of a hearing.

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

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

c: IDWR - W. Region
Gary Spackman w/ encl

MICROFILMED
JUN 2 2 2000

RECEIVED
APR 2 4 1998
Department of Water Resources

MOORE & McFADDEN, CHARTERED
ATTORNEYS AT LAW

ONE CAPITAL CENTER SUITE 910
999 MAIN STREET BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*‡
MICHAEL C. MOORE‡
PAUL A. TURCKE

MONA DOBARAN MACK
Of Counsel

*Also Admitted in Oregon
‡ Also Admitted in Washington

April 22, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Reply to Protestant's Response to Applicants' Motion to Suppress, together with a copy of same for filing in the above-referenced matter. Please conform and return a copy to me in the enclosed postage paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Donna Everitt

Donna Everitt
Legal Assistant

SEB:de
Enclosures

MICROFILMED
JUN 2 2 2000

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	REPLY TO PROTESTANT'S
Applicants,	)	RESPONSE TO APPLICANTS' MOTION
	)	TO SUPPRESS
	)	
	)	

Contrary to Protestants' argument and opposition to the Motion to Suppress, compliance with Idaho Rules of Civil Procedure 30(e) is mandatory. Protestants' Affidavit is insufficient to provide a statement of reasons for each change made on the change sheet and should be suppressed and stricken. Protestants cannot benefit from their failure to follow mandatory rules on the mere speculation that Applicants are not prejudiced by such omission. In fact, the rule presumes that allowing changes with a blanket reason is insufficient and prejudices the other party in that the other party is not given proper notice or reasons for each line changed. Further, an untimely correction sheet must be stricken as discussed in Griswold vs. Fresenius USA, Inc. 978 Fed Sup 718. 721(N.P.) Ohio (1997). Federal Rule 30(e) is similar to the Idaho rule in that it states:

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. . . if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivisions (F)(1), whether any review is requested and if so shall append any changes made by deponent during the period allowed.

Accordingly, the Affidavit of Mr. Fease should be stricken, and Protestants should be required to reimburse Applicants' attorney's fees and costs incurred to prosecute this motion.

Respectfully submitted this 22nd day of April, 1998.

MOORE & MCFADDEN, CHARTERED

SUSAN E. BUXTON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of April, 1998, I caused to be served a true and correct copy of the foregoing document by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

Susan E. Buxton

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Department of Water Resources

MOORE & McFADDEN, CHARTERED
ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
JOHN J. MCFADDEN*†
MICHAEL C. MOORE†
PAUL A. TURCKE

*Also Admitted in Oregon
† Also Admitted in Washington

MONA DOBARAN MACK
Of Counsel

March 2, 1998

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: In Re: Kenley Hinrichs and Lisa O'Toole
Case No. 63-12384

Dear Mr. Saxton:

Enclosed is an original Opposition to Protestant's Motion for Reconsideration, and Motion for Protective Order, together with copies of same for filing in the above-referenced matter. Please conform and return the copies to me in the enclosed postage paid envelope.

Thank you for your assistance in this matter. If you have any questions, please contact me.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
Enclosures

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Department of Water Resources

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN RE: KENLEY HINRICHS and LISA O'TOOLE, husband and wife,	)	Case No. 63-12384
	)	
	)	OPPOSITION TO
Applicants,	)	PROTESTANT'S MOTION
	)	FOR RECONSIDERATION
	)	
	)	

COMES NOW, Applicants, Kenley Hinrichs and Lisa O'Toole, by and through their counsel of record, Moore & McFadden, Chartered and in opposition to Protestants' Motion for Reconsideration to continue the hearing set in the above-entitled matter for March 17, 1998 at 9:00 a.m. The pleadings filed by the Protestant Tim Fease, downplays the legal issues that must be reviewed by this tribunal on the request for continuance.

A. Parallel Criminal Case.

Most importantly, Mr. Hinrichs is involved in a criminal matter not of his own choosing that intimately involves the facts of this case. The preliminary hearing for Mr. Hinrichs was held Friday, February 27, 1998. At the hearing the prosecution dismissed the charges but informed Mr. Hinrichs' legal counsel, Mr. Westberg, that they want to interview

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one additional witness and may decide to refile the criminal charges based on that interview. Without divulging any of Mr. Hinrich's potential constitutional protections with regard to the criminal claim, the Protestants and the Intervenors are both complainants and witnesses for the prosecution. The factual matters to be developed in this case before the Department necessarily include information that could possibly be used against Mr. Hinrichs in the criminal matter, instigated, at least in part, by Protestants and Intervenors the day after the December 10, 1997 prehearing conference held by Mr. Spackman in this protest matter.

Protestant's opposition to continuance unduly restricts the scope of factual issues in both the administrative and criminal proceedings. Rather than unrelated issues involving discrete facts, the two cases will necessarily involve entwined issues of credibility and the use of real and personal property. Protestants have little to risk from this potential overlap unlike Applicant Hinrichs who is defending himself in a criminal matter and faces at least the possibility of incarceration. Competent defense of Mr. Hinrichs in the criminal matter simply will not allow him to testify to any factual issue in the civil proceedings which might have even potential applicability to any issue in the criminal prosecution. Stated simply, Mr. Hinrich's is facing a burden of production in the administrative proceeding that he cannot meet without waiving fundamental constitutional protections in his criminal case.

B. The Criminal Action and Legal Counsel's Health Delayed Presentation for the Hearing.

Despite the fact that the criminal case involves conduct that allegedly occurred before the pending application was initiated, the criminal case was not pending until the current administrative hearing date was proposed. The criminal case filing, coupled with Mr.

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Hinrichs' legal counsel, Susan Buxton's health concerns, created a timing problem wherein preparation for this proceeding was delayed for approximately one (1) month. Mr. Hinrichs will suffer manifest injustice if Applicants are forced to proceed with the hearing as scheduled.

C. Other Issues.

There exists the need for clarification and/or declarations on part of the Department with regard to the existence or nonexistence of water rights and uses of water by parties to this Application prior to proceeding with the hearing on this Application. In a letter dated August 7, 1997, attached here as Exhibit A, Mr. Spackman identifies Protestants' nursery operation as irrigated from one of their two ponds, surface waters from Boise River, and/or one or both wells beyond the normal delivery of the surface water rights. Mr. Spackman's letter also acknowledges there exist no water rights on file with the Department authorizing diversion from ground water sources for irrigation by Mr. Fease. Furthermore, Mr. Fease has also excavated a pond on his property for which no storage water right has been granted and has filled in an existing structure. Also, as was discussed in the August 7, 1997 letter, the specific purpose for the construction of the pond on Mr. Fease's property is unknown. Mr. Spackman also recognizes that at least one of, if not both of, the ponds on Mr. Fease's property are hydrologically connected to the other. There are numerous issues also related to an October 31, 1997 letter from Steve Lester, Water Rights Supervisor, to Mr. Fease, Exhibit B, attached hereto and incorporated herein. Mr. Lester directs Mr. Fease to cease utilizing his domestic wells and pond(s) for irrigating this commercial nursery.

Mr. Fease has continually irrigated his nursery operation without a water right. It does not appear that any such water right for irrigation from his domestic wells or his pond(s) for

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his commercial operation has been finalized by the Department. See Exhibit C, October 9, 1997 letter from Steve Lester. Exhibit C shows that the wells are for residential use only. Further, Department records do not demonstrate Protestants' filing for commercial irrigation use of said wells in the Snake River Basin Adjudication and Applicants have received no notice of such filing as has been requested.

Mr. Burleigh's representations regarding the domestic water wells are inaccurate, the reference to Protestant's wells is relevant to the permit application in that all the ponds, Applicants' and Protestants' are apparently hydrologically related. The August 7, 1997 letter from Mr. Spackman indicates that any irrigation practices should not affect the level of the Applicants' reservoir, meaning the water level in Applicants' pond "should remain relatively constant." It is significant that Protestants' commercial nursery operation and its use of domestic wells and pond(s) for irrigation appears to lower the level of Applicants' pond. Also, as was discussed in the prehearing conference on December 10, 1998, Mr. Spackman recognized that these irrigation issues likely would be addressed in this proceeding due to their related nature.

With regard to Protestants' allegation that the "intended irrigation right of way over Protestants' property" is blocked is untrue. This issue was raised by Intervenors. It is curious then, why Protestants' legal counsel is concerned if he merely represents the Pillotts to defend their deposition. Mr. Burleigh's willingness to allege unsubstantiated harm on behalf of the Pillotts, suggests his representation goes beyond their deposition. The area in question is not subject to any dedicated easement or right of way, nor is the subject property blocked.

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With regard to Protestants' drainage concerns, there exists no easement for drainage from Protestants' to Applicants' property. Further, the massive excavation, leveling, and filling undertaken by Protestants on their property has likely altered the natural drainage. Accordingly, this is properly the subject of a quiet title action and makes Protestants' drainage irrelevant to this case.

CONCLUSION

The criminal case has obviously created additional issues to be considered in this matter that were not contemplated when the hearing of this matter was set. Further, no immediate threat of harm has been demonstrated by Protestant. Accordingly, the interests of justice and conduct of a logical, well-developed hearing on the pending Application necessitate the requested continuance.

Respectfully submitted this 2nd day of March, 1998.

MOORE & McFADDEN, CHARTERED

Susan E. Buxton
Attorney for Applicants

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CERTIFICATE OF SERVICE

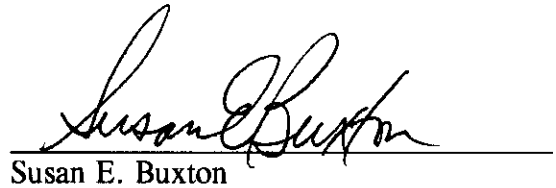
I HEREBY CERTIFY that on the 7nd day of March, 1998, I caused to be served a true and correct copy of the foregoing document by hand delivering the same addressed to the following:

L. Glen Saxton, Hearing Officer
State of Idaho, Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

and by depositing the same in the United States mail, postage prepaid, properly addressed to the following:

Richard B. Burleigh
Hawley, Troxell, Ennis & Hawley
877 W. Main Street, Suite 1000
Boise, Idaho 83702
Attorney for Protestants

David and Beverly Pillott
398 South River Rush Lane
Eagle, Idaho 83616
Intervenors



Susan E. Buxton

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