



T2N
R2W
S4C03

NO GOV LT

POND

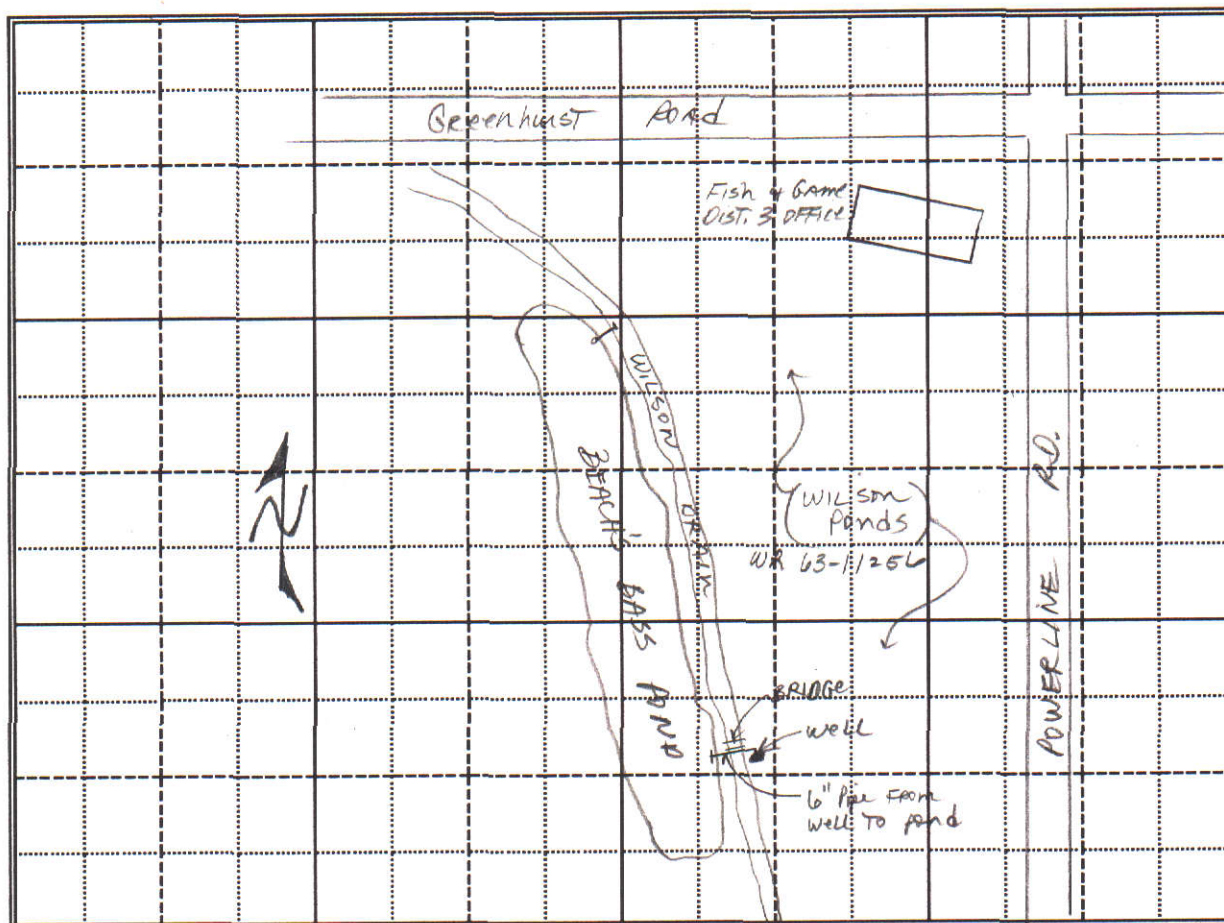
P/DN

This topographic map shows a section of the Los Angeles River area. Key features and handwritten annotations include:

- Handwritten Annotations:**
 - Blue:** "T3N", "T2N", "R2W", "TACKETT WELL", "MILLARD WELL", "M", "T".
 - Green:** "PROPOSED POND (STORAGE) P/U".
- Geographic Features:**
 - Rivers/Streams:** Los Angeles River, Wilson, Partridge, Lateral, Power Drain, Canal, New York, Pacific, Deal, Lewis.
 - Roads:** 12TH AVE, RIDGE AVE, SUNNY AVE, BINSON ROAD, LANE, POWER LINE, SOUTH SIDE BLVD.
 - Landmarks:** Mt Calvary Cem, Sunny Ridge School, South Side School, Gravel Pit, BM 2522, BM 2562.
 - Topography:** Contour lines (2497, 2509, 2511, 2513, 2519, 2547, 2550, 2552, 2554, 2572, 2600).
- Other Notes:** "Siphon", "Gravel Pit", "Deal", "South Side School", "BM 2522", "BM 2562", "CANAL", "POWER LINE", "NEW YORK", "PACIFIC", "DEAL", "LEWIS", "SOUTH SIDE BLVD", "BINSON ROAD", "LANE", "SUNNY AVE", "RIDGE AVE", "12TH AVE", "WILSON", "PARTRIDGE", "LATERAL", "POWER DRAIN", "CANAL", "NEW YORK", "PACIFIC", "DEAL", "LEWIS", "SOUTH SIDE BLVD".

Ferry Holubetz
(Applicant)
Title: REGIONAL FISHERY MANAGER

3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = NTS

☒ Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

N/A Aerial Photo Attached (required for irrigation of 10+ acres)

☒ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor ^{model} Serial No.	Pump Make	Pump Serial No. or Discharge Size
	Franklin	5	2821138310	unknown	6" ?

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

D. FLOW MEASUREMENTS

1.

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

2. Measurements: none - discharge too large for 5 gallon bucket. Also
due to buried pipe, polysonic was not feasible.

OCT 16 1995

PERMIT 63-11705 INIT PC
T. R. S. Q/Q
P/D 2N 2W 3 SESE
SCALE _____
PHOTO ID. X-56 Tampa

plu

-pld

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PHOTO ONE-

View southwest of well (in concrete manhole). Well located on east bank of Wilson Drain. South end of Beach's Bass Pond is on other side of Wilson Drain.



REMOVED
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PHOTO TWO-

View westward of 6" pipe over Wilson Drain to Beach's Bass Pond.



PHOTO THREE-

View southeasterly of 6" discharge line into Seschi's Pond. Well, is just off the photo to the left.



PHOTO FOUR-

View southwest of south end of Seschi's Pond. The 6" discharge line is shown.

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WATER RESOURCES DIVISION
U.S. ARMY CORPS OF ENGINEERS
Vicksburg, Mississippi



PHOTO FIVE-

View southerly of north end of Beach's Pond.
Overflow standpipe is shown to the left.

>



PHOTO SIX-

View southeast of overflow standpipe and Wilson Ponds
in background. The 8" corr overflow pipe is visible to
the left. Flow discharges into Wilson Drain.



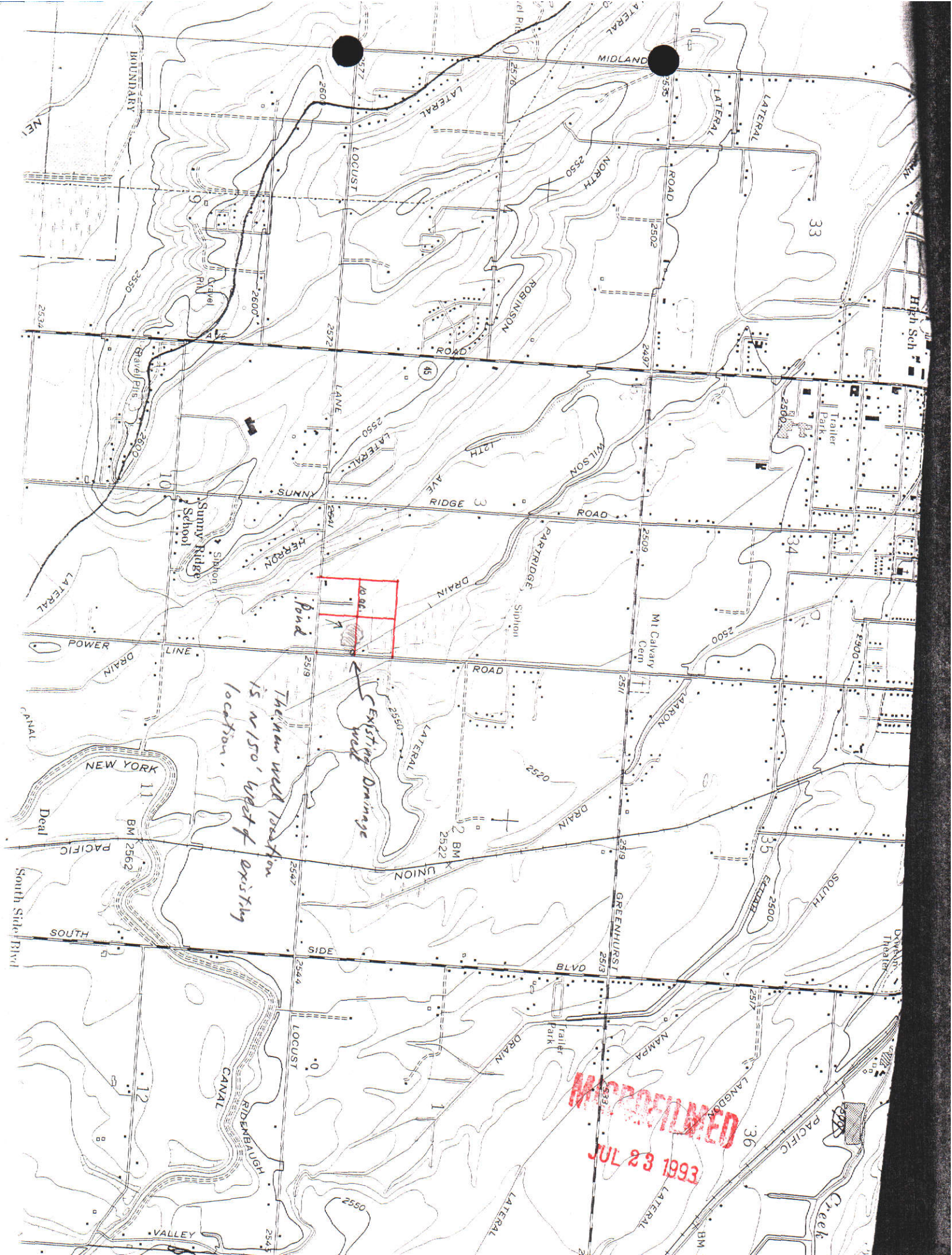
Seven
PHOTO ~~FIVE~~-

View NORTHEAST OF 8" CMP Overflow pipe discharging
into Wilson Drain.

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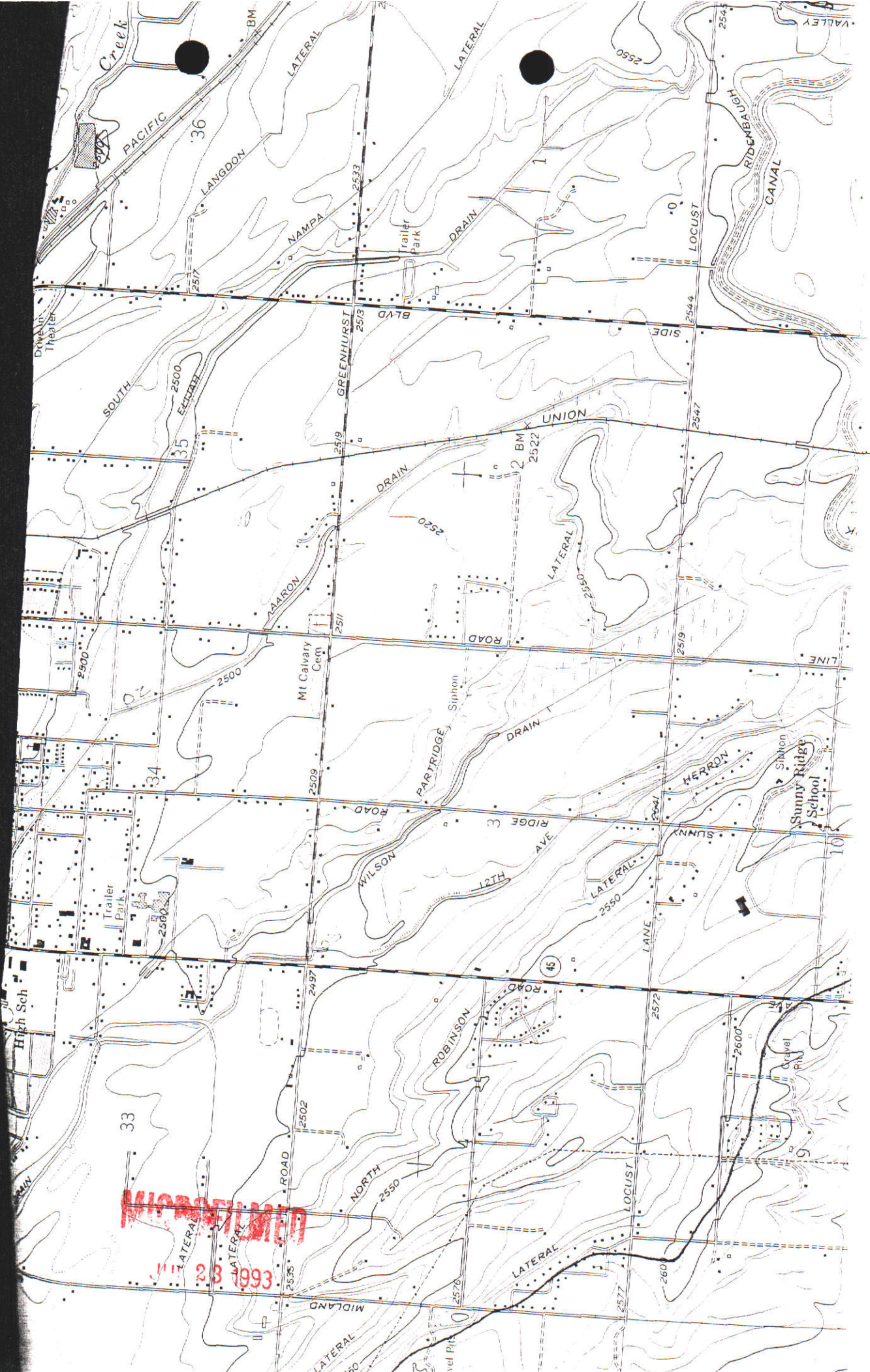
Eight
PHOTO ~~SIX~~-



The new well location
is N 150' west of existing
location.

Existing Drainage
well

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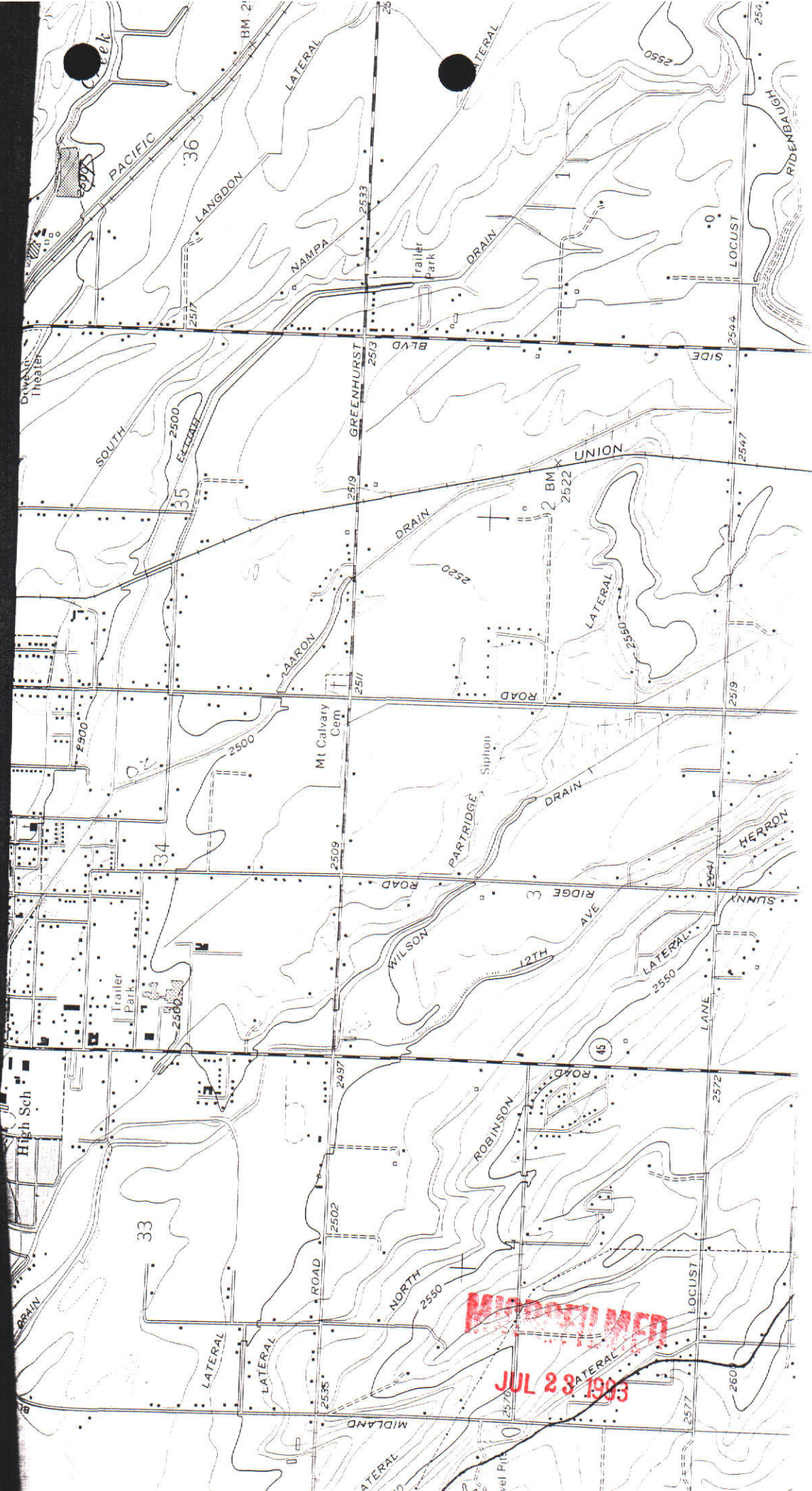


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23 1993



Copy of
Applicant's
Exhibit No. 1
YAS

63-11705



MULTITIMER

JUL 23 1993



R2W

O. S. J. D. A. NOR. BRANCH

NAMPA

NORTH

SOUTH

NAMPA

R. CANAL

MURPHY

HERRON FEEDER

WATKINS

ALVAREZ

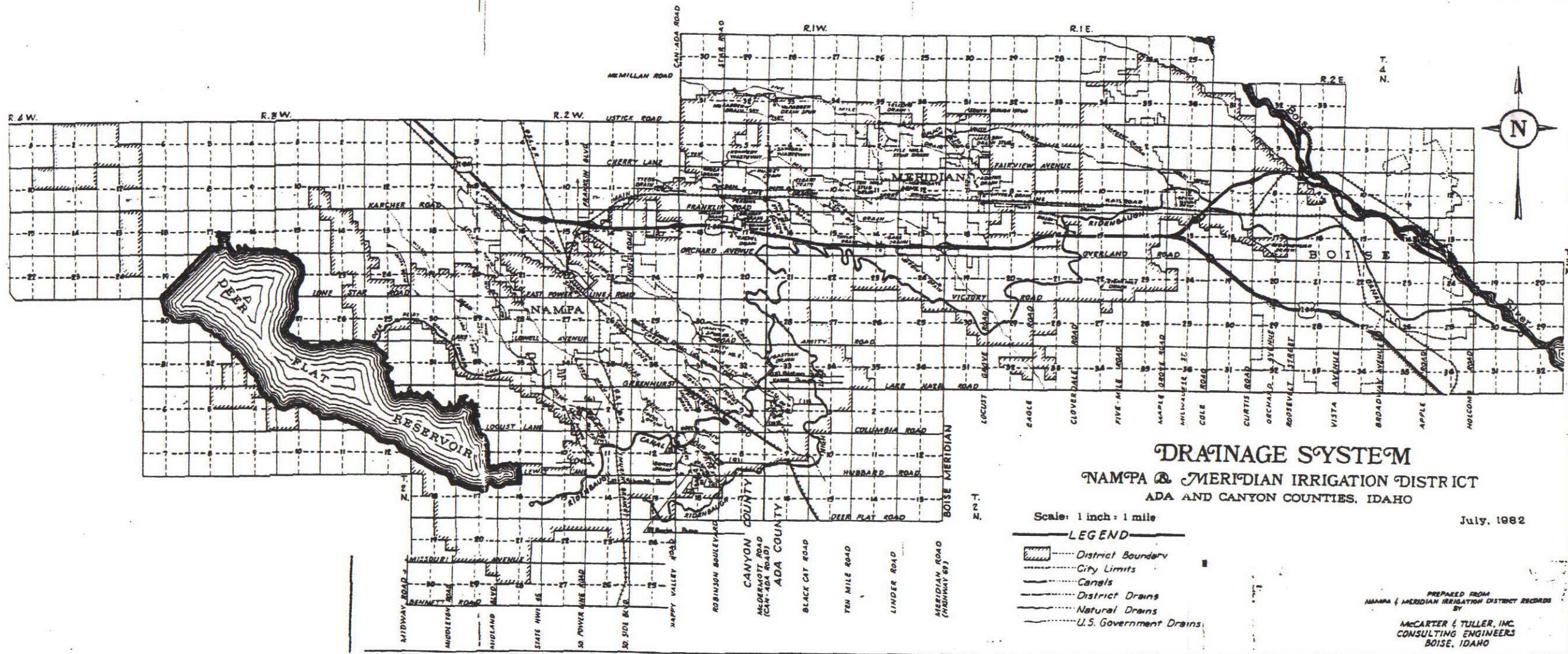
RIDENBAUGH

BURKE

BRANCH

NOV 19 1992

Protestant's
Exhibit No. 3
Admitted
9/8/92 Dnr



Prokstant's Exhibit No. 2

Admitted 9/8/92 by G. Saxton

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Conference Notes. by D. Tuttle 7/30/1990

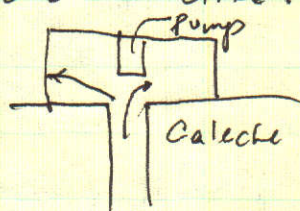
63-11705 in the Name of Id Dept of Fish & Game

Applicant -
IDFG - Terry Holubetz
Steve Goddard

Bill Henson - Nampa/Meridian
Andreas Harrington ID

Terry Holubetz

Originally planned to use the Millard well / Now intend to use only the Tackett well. This well provides artesian flow into the Wilson Drain. Pond lies west of Wilson Drain. Overflow from the pond is intended to flow into Wilson Drain at various points between the existing p/a and a point 300' downstream. Use is non-consumptive. The water supply line is intended to cross Wilson Drain. Brief retention time; no pollutants planned to be added. Springs arose in the vicinity of the pond. Soil is tight clay with underlying caleche. Wells in this area are uncased. ^{below caleche.} Millard well is cased above ground - presently is not flowing. Water from Tackett well has historically flowed into Wilson Drain from the east. Under proposal, 380 gpm would flow into the ponds (pumped), low lift (Panna), over the dike. Bridge has been replaced over Wilson Drain.



Pump will divert only the water that ^{NOV 19 1992} ~~is~~ ^{is} caleche. Could reduce head on the well by 1.5', thus increasing the flow.

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State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-11705

Priority: February 26, 1992

Maximum Diversion Rate:

0.40 CFS

Maximum Diversion Volume:

11.0 AF

This is to certify, that STATE OF IDAHO

DEPT OF FISH & GAME

3101 S POWERLINE

NAMPA ID 83686

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 26, 1992; and has submitted Proof of Beneficial Use on October 26, 1993. An examination indicates that the works have a diversion capacity of 0.400 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
RECREATION STORAGE	01/01 to 12/31		11.0 AF
DIVERSION TO STORAGE	01/01 to 12/31	0.40 CFS	
	Totals	0.40 CFS	11.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NESESE , Sec. 3, Township 02N, Range 02W
CANYON County

PLACE OF USE: RECREATION STORAGE

TWN RGE SEC

02N 02W 3

NESE

SESE

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Use of water under this right shall be non-consumptive.
6. This right authorizes an annual volume of water to fill the pond and the amount required to replace losses through evaporation.

OCT 16 1995

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

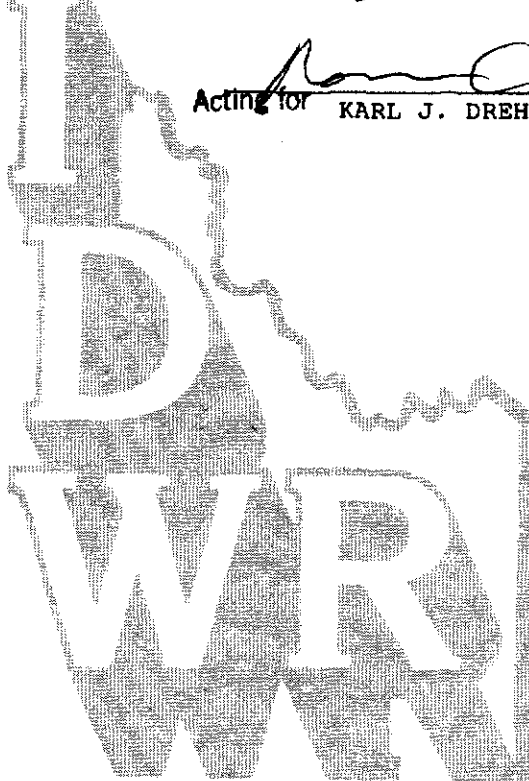
WATER RIGHT NO. 63-11705

CONDITIONS OF APPROVAL AND REMARKS

7. This right authorizes diversion and use of water only from the Tackett well located in the NESESE, S03, T02N, R02W.
8. The recreational storage use is for a non-commercial, recreational fish pond.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 5TH day of OCTOBER, 1995.

Acting for  KARL J. DREHER, Director



OCT 16 1995

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OCT 26 1993
Department of Water Resources

OFFICE USE ONLY
Amt. of Fee \$ 100.00
Date 10-26-93
Receipt No. C028852
Receipt by J. Wansant

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 63-11705 Telephone No. 887-6729/465-8465
2. Name(s) of Permit Holder(s): State of Idaho - Department of Fish & Game
3. Mailing Address: 3101 South Powerline Road, Nampa, Idaho 83686
4. Source of Water: TACKETT WELL
- If GROUNDWATER, Well Driller's Name: Bill Doty? Date Drilled: prior to 7/1/87
early 70's
- OPTIONAL:
Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

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

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)
Irrigation _____ (No. of acres) Other Recreation Storage / Div. to Storage

6. Total rate and/or volume for which proof is submitted 0.75 cfs OR 15.5 acre/feet

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

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

OR

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

8. Fee Enclosed: \$ 100.00 (See License Fee Schedule on back of Instruction Sheet)

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

SCOTT GRUNDER / STEVE YUNDT 887-6729/465-8465
Name Telephone No.
3101 South Powerline Road, Nampa, Idaho 83686
Address

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

DEC 02 1993

10/25/93 Ed Gray ARS (Acting Regional Supervisor)
Date Signature (and title, if on behalf of a company or organization) Southwest Region
IDFG

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO.)
63-11705 IN THE NAME OF THE)
IDAHO DEPARTMENT OF FISH AND)
GAME)
_____)

ORDER

This matter having come before the Idaho Department of Water Resources (department), the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On November 10, 1992, the department issued Permit No. 63-11705 to the Idaho Department of Fish and Game (permit holder) authorizing the diversion of 0.75 cubic feet per second of ground water from an existing well (the Tackett well) to be used for recreation storage within section 3, T2N, R2W, BM.

2. Condition of Approval no. 7. of the permit required the permit holder to modify the construction of the Tackett well such that the construction would comply with the Well Construction Standards Rules and Regulations of the department.

3. Subsequent to issuance of the permit, the department has investigated the Tackett well together with other nearby wells and has determined that the permit holder does not need to modify construction of the Tackett well in order to prevent waste and contamination of the ground water resource.

CONCLUSIONS OF LAW

1. The department should remove Condition of Approval no. 7 as a condition of approval of Permit No. 63-11705.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Condition of Approval no. 7. is hereby **REMOVED** as a condition of approval of Permit No. 63-11705 in the name of the Idaho Department of Fish and Game.

Dated this 13th day of July, 1993.


L. GLEN SAXTON, Chief
Water Allocation Bureau

JUL 23 1993

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 63-11705

Proposed Priority: February 26, 1992 Maximum Diversion Rate: 0.75 CFS

This is to certify, that **STATE OF IDAHO**
DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

has applied for a permit to appropriate water from: **GROUNDWATER**
and a permit is **APPROVED** for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
RECREATION STORAGE	01/01 to 12/31		15.5 AF
DIVERSION TO STORAGE	01/01 to 12/31	0.75 CFS	
	Totals	0.75 CFS	

LOCATION OF POINT(S) OF DIVERSION: NESESE , Sec. 3, Township 02N, Range 02W
CANYON County

PLACE OF USE: RECREATION STORAGE
TWN RGE SEC

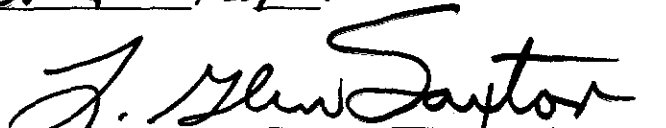
02N 02W 3 NESE SESE

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before November 1, 1993.
2. Subject to all prior water rights.
3. This right authorizes an annual volume of water to fill the pond and the amount required to replace losses through evaporation.
4. The recreational storage use is for a non-commercial, recreational fish pond.
5. See the Final Memorandum Decision and Order for additional conditions of approval.

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

10th day of November, 1992


R. Keith Higginson, Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-11705 IN THE NAME)
OF THE IDAHO DEPARTMENT OF FISH)
AND GAME)

MEMORANDUM
DECISION AND ORDER

On September 17, 1992, the Idaho Department of Water Resources (department) issued a Proposed Memorandum Decision and Order in connection with the above captioned matter. On September 30, 1992, the protestant, Nampa & Meridian Irrigation District (protestant or district) filed exceptions to the decision. The applicant did not file a response to the exceptions.

The Director of the department has reviewed the exceptions of the protestant and responds to the exceptions as follows:

PROTESTANT'S EXCEPTIONS TO FINDINGS OF FACT

1. Finding of Fact No. 13 is relevant since the proposed appropriation of groundwater is no different than many similar applications filed in the past within the boundaries of the district which the protestant has not protested.

2. Finding of Fact No. 15 shown in the proposed decision has been deleted as requested.

PROTESTANT'S EXCEPTIONS TO CONCLUSIONS OF LAW

1. Conclusion of Law No. 1. should not be changed since the evidence, or lack thereof, presented at the hearing clearly did not "establish" that all or a significant portion of the water which flows from the Tackett well originates from surface water rights of the protestant. The information presented at the hearing inferred that water from the Tackett well might be attributable to surface water irrigation dependent of the Tackett well but did not "establish" that fact.

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2. Conclusion of Law No. 1, has been changed to eliminate the inference of the protestant's burden of proof.

3. Conclusion of Law No. 7 has been changed so that it does not contradict Conclusion of Law No. 8.

PROTESTANT'S EXCEPTIONS TO ANALYSIS

1. The Analysis section has been changed to clarify that the provisions of the 1915 contract are not binding on the Department of Water Resources. The protestant apparently interpreted the reference to "the state of Idaho" to mean the applicant when in fact the Department of Water Resources was intended.

2. The department agrees with the concept that a water user has the right to capture its waste water and reapply that waste water to its original place of use. In this case, however, a relationship between the protestant's use of surface water and water flowing from the Tackett well has not been shown. It would be highly inappropriate for the department to grant a limited approval based on a relationship which could exist and might be shown in the future. The department, however, has deleted some of the language in the decision referenced by the exception.

3. See item 2. immediately above this paragraph. The case cited in the exception refers to a "surface" water source in terms of "flow in natural channels." The case bears little applicability to the "ground" water source sought for use by the applicant.

PROTESTANT'S EXCEPTIONS TO THE ORDER

1. Approval condition no. 6. as shown in the proposed decision should not be changed based on the possibility that the protestant may own the well. The protestant had the opportunity to establish ownership of the Tackett well at the hearing but did not do so.

2. The Order has been changed to clearly show that use of water under the permit is subject to all prior water rights.

Having considered information in the record, information in department files and the exceptions of the protestant, the Director makes the following Findings of Fact, Conclusions of Law, Analysis

MEMORANDUM DECISION - Pg 2

NOV 19 1992

and Order:

FINDINGS OF FACT

1. On February 26, 1992, the Idaho Department of Fish and Game (applicant) submitted Application for Permit No. 63-11705 to the department proposing the diversion of 1.6 cubic feet per second (cfs) of water from two existing wells both located in Section 3, T2N, R2W, BM., Canyon County. The well located in the NE1/4SE1/4SE1/4 Section 3 is known as the Tackett well and the well located in the SW1/4SE1/4SE1/4 Section 3 is known as the Millard well. Water from the wells was proposed for storage year-round in a pond about 15.5 acre feet in size for a recreational fishery.

2. The application was advertised as required by law and was protested by the Nampa & Meridian Irrigation District. On September 8, 1992, the department held a hearing in the contested matter. The applicant was represented by Steve Goddard, Deputy Attorney General, and the protestant was represented by William F. Ringert, attorney at law.

3. Issues identified by the protestant at the hearing are as follows:

a. Whether the district has the right to "intercept" ground water which presently is available to the Tackett well so long as the water originates from the protestant's delivery system or from the Boise Project Board of Control's transferred works delivery system and if so, whether application 63-11705 should be conditioned to recognize the right of the protestant to future "interception" of the ground water. This issue essentially is whether approval of the application will reduce the amount of water under existing water rights.

b. Whether the application is contrary to conservation of water resources within the state of Idaho.

4. Exhibits entered into the record include the following:
a. Applicant's Exhibit No. 1 - A copy of an enlarged 1992 aerial photo obtained from the Soil Conservation Service showing the proposed project area. An overlay prepared

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by the applicant is also a part of the exhibit.

b. Protestant's Exhibit No. 1 - A map entitled "Drainage System, Nampa & Meridian Irrigation District" dated July 1982 which shows the boundaries and distribution and drainage systems of the Nampa & Meridian Irrigation District.

c. Protestant's Exhibit No. 2 - A smaller version of protestant's Exhibit No. 1 and a list of drains and pump locations within the Nampa & Meridian Irrigation District.

d. Protestant's Exhibit No. 3 - A copy of a schematic showing irrigation laterals and the drainage system in the vicinity of the Wilson Drain.

e. Protestant's Exhibit No. 4 - A copy of a 1915 contract between the protestant and the United States for the construction of a drainage system for the protestant.

5. Since filing the application, the applicant has dropped the Millard well as a potential point of diversion and has reduced the rate of diversion from the 1.6 cfs originally proposed to 0.75 cfs. The total storage in the amount of 15.5 acre feet has not changed.

6. The Tackett well is an existing well which consists of an uncased bore hole into the ground through a caliche layer. The well is located on land owned by the applicant and was used by the former owner for domestic, stock and irrigation purposes. Water from the well which was not consumptively used discharged into Wilson Drain. The applicant has owned the land for about three years.

7. The protestant maintains drainage wells within the boundaries of the district by periodically "blowing out" the wells to cause them to flow more water thus lowering the level of the water table. The protestant does not maintain the Tackett well, could not show ownership of the Tackett well and did not show that the well had been constructed as a part of the general drainage system constructed by the United States for the protestant. The protestant does not know who constructed the Tackett well, has not

measured flow from the well and has not monitored discharge from the well.

8. The district does not deliver any water from the Tackett well or from the Wilson Drain to any of its shareholders or to any other water users.

9. The applicant has constructed the recreational fishing pond also known as Beach's Pond including related retaining dikes. The purpose of the project is to provide recreational fishing opportunity close to Nampa in an urban area. Water diverted from the Tackett Well into Beach's Pond will be discharged back into Wilson Drain within about 300 yards of the Tackett well.

10. As a part of the project proposed in the application, the applicant has filled certain hydric (wet) areas such that the areas have become xeric (dry) areas and has created some pond area which was formerly hydric. About 10 times as much land has been changed in character from hydric to xeric than from xeric to pond area.

11. There are water rights of record with the department for diversion of water from the Wilson drain. The water rights are in the name of individuals and are not in the name of the protestant. The protestant does not deliver water to these water rights.

12. The live flow delivery of water within the boundaries of the district intuitively increases the amount of ground water in the general area of the Tackett well and Wilson Drain to some extent although no specific studies have been conducted by the protestant to define a relationship.

13. In the past, the department has issued many water right permits to individuals for the diversion of ground water within the boundaries of the Nampa & Meridian Irrigation District without challenge to the proposed ground water uses such as alleged in this matter.

14. Section 42-228, Idaho Code, provides as follows:

The excavation and opening of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of land by draining them shall not be forbidden or governed by this act, and likewise, there shall be exempted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation districts, and

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NOV 19 1992

other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant; providing that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code.

CONCLUSIONS OF LAW

1. Approval of the application will not reduce the amount of water under existing water rights. In addition, use of water as proposed by the applicant will be essentially non-consumptive, other than for evaporation from Beach's Pond. Any increase in water loss due to evaporation from Beach's Pond will be offset by reduced water loss from the land whose character has been changed from hydric to xeric.

2. The water supply is sufficient for the purposes intended.

3. The application was not made for delay or speculative purposes since the applicant has been actively pursuing the project and its completion.

4. The applicant does have financial resources to complete the work involved in the project since much of the project has already been constructed and is in place.

5. The application is in the public interest and will provide recreational fishing opportunity in the Nampa urban area.

6. Use of water as proposed in the application is not contrary to the conservation of water within the state of Idaho. The project when completed likely will cause more water to be available to other water users than existed prior to the development since less water will be lost through evaporation and evapotranspiration.

7. The protestant is entitled under the provisions of section 42-228, Idaho Code, to recover ground water resulting from its project for further use on its land, but the protestant has not shown that water flowing from the Tackett well is water originating from its project and/or, if so shown, how much.

8. The applicant is entitled to a permit which is not

conditioned subject to some anticipated future diversion of ground water by the protestant.

ANALYSIS

The district superintendent who has been employed by the protestant for about 16 years first observed the Tackett well about three (3) years ago and then only after purchase of the Tackett property by the applicant. The protestant does now know who constructed the well, does not maintain the well, has not monitored the well and does not divert or deliver water to any of its shareholders from the well or from Wilson Drain to which the Tackett well discharges.

Testimony indicated that the protestant's recent interest in the Tackett well is due to the general lack of water in the area attributable to the last six (6) years of drought. This reduction in water availability is the stated reason the protestant is considering options such as exchanges and the construction of new wells to "intercept" ground water which it claims is available due to the surface water delivery system of the protestant.

The protestant points to a 1915 contract between the protestant and the U.S. government as the authority which vests title to drainage waters within the district in the protestant and the Boise Project. This contract which provided for the construction of a drainage system for the protestant, however, is and/or was binding only on the parties to the contract. The Department of Water Resources and other individual ground water users either within or outside the district boundaries are not bound by terms of the 1915 construction contract.

The protestant provided testimony intended to show that since there were losses in the protestant's delivery system and there was little natural surface water recharge to district lands, the ground water in the vicinity of the Tackett well had to be attributable to the surface water delivery system of the protestant. The parties generally agreed that flow from the Tackett well and other wells in the vicinity was influenced to some undetermined extent by the amount of water flowing in the surface water distribution system of

the protestant but none of the parties could show the extent of the assumed relationship.

In past contested matters before the department, irrigation districts have not made claims as has the protestant in this matter to unspecified future diversion and use of ground water. Districts have, however, objected to new applications for permit which would interfere with their existing delivery of surface water and the department has ruled in a manner to protect existing water rights and authorized delivery practices.

Specific findings of fact, conclusions of law, and conditions of approval relative to "recovery" of water are not required in this decision because the use of water under permits issued by the department are subject to all prior water rights. Prior water rights unclude the right to cease wasting water and the right to recover the water if recovery activity complies with provisions of Section 42-228, Idaho Code.

ORDER

IT IS THEREFORE, hereby ORDERED, that Application for Permit No. 63-11705 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under this permit is subject to all prior existing water rights.

2. A flow measurement port or other device as specified by the department shall be installed by the right holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the department.

3. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

4. Use of water under this right shall be non-consumptive.

5. This approval authorizes diversion and use of water only from the Tackett well located in the NE1/4SE1/4SE1/4 Section 3, T2N, R2W, BM, Canyon County.

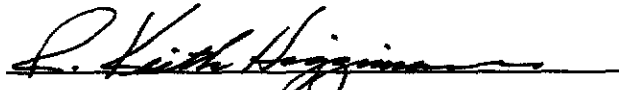
6. The maximum rate of diversion authorized under this approval shall not exceed 0.75 cfs.

7. The permit holder is required to modify the construction

of the Tackett well such that the construction will comply with Well Construction Standards Rules and Regulations of the department.

8. The permit holder shall submit proof of construction of works and application of water to beneficial use on or before November 1, 1993.

Dated this 10TH day of NOVEMBER, 1992.


R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 17th day of November, 1992, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid, to the following parties:

Terry Holubetz
Dept of Fish & Game
3101 S Powerline
Nampa, ID 83638

John P Anderson
Nampa & Meridian Irr Dist
1503 1st St S
Nampa, ID 83651-4395

Andrew Harrington
Ringert & Clark
PO Box 2773
Boise, ID 83701

Steve Goddard
Dept of Fish & Game
PO Box 25
Boise, ID 83701

Karen L. Gustafson
Karen L. Gustafson
Secretary/Records Manager

NOV 19 1992

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-11705 IN THE NAME OF)
THE IDAHO DEPARTMENT OF FISH AND GAME)

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

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

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

I.
EXCEPTIONS

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

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

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

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

II.
BRIEFS

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

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

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III.

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

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

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

IV.

CERTIFICATE OF SERVICE

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

V.

FINAL DECISION

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

Dated this 17th day of September, 19 92.


R. KEITH HIGGINS
Director

NOV 19 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-11705 IN THE NAME)
OF THE IDAHO DEPARTMENT OF FISH)
AND GAME)

PROPOSED MEMORANDUM

DECISION AND ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protest against the approval of application for permit no. 63-11705, the department having held a hearing in the matter and having considered the information in the hearing record and in the files of the department, makes the following Findings of Fact, Conclusions of Law and Order:

1. On February 26, 1992, the Idaho Department of Fish and Game (applicant) submitted application for permit no. 63-11705 to the department proposing the diversion of 1.6 cubic feet per second of water (cfs) to be diverted from two existing wells both located in Section 3, T2N, R2W, BM., Canyon County, said water to be stored year-round in a pond for a recreational fishery. The well located in the NE1/4SE1/4SE1/4 Section 3, is known as the Tackett well and the well located in the SW1/4SE1/4SE1/4 Section 3 is known as the Millard well. Water from the wells was proposed for storage in a pond about 15.5 acre feet in size.

2. The application was advertised as required by law and was subsequently protested by the Nampa & Meridian Irrigation District (protestant or district). On September 8, 1992, the department held a hearing in the contested matter. The applicant was represented by Steve Goddard, deputy attorney general and the protestant was represented by William F. Ringert, attorney at law.

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3. Issues identified by the protestant are as follows:

- a. Whether the district has the right to "intercept" ground water which presently is available to the Tackett well so long as the water originates from the protestant's delivery system or from the Boise Project Board of Control's transferred works delivery system and if so, whether application 63-11705 should be conditioned to recognize the right of the protestant to future "interception" of the ground water. This issue essentially is whether approval of the application will reduce the amount of water under existing water rights.
- b. Whether the application is contrary to conservation of water resources within the state of Idaho.

4. Exhibits entered into the record include the following:

- a. Applicant's Exhibit No. 1 - A copy of an enlarged 1992 aerial photo obtained from the Soil Conservation Service showing the proposed project area. An overlay prepared by the applicant is also a part of the exhibit.
- b. Protestant's Exhibit No. 1 - A map entitled "Drainage System, Nampa & Meridian Irrigation District" dated July 1982 which shows the boundaries and distribution and drainage systems of the Nampa & Meridian Irrigation District.
- c. Protestant's Exhibit No. 2 - A smaller version of protestant's Exhibit No. 1 and a list of drains and pump locations within the Nampa & Meridian Irrigation District.

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d. Protestant's Exhibit No. 3 - A copy of a schematic showing irrigation laterals and the drainage system in the vicinity of the Wilson Drain.

e. Protestant's Exhibit No. 4 - A copy of a 1915 contract between the protestant and the United States for the construction of a drainage system for the protestant.

5. Since filing the application, the applicant has dropped the Millard well as a potential point of diversion and has reduced the rate of diversion from the 1.6 cfs originally proposed to 0.75 cfs. The total storage in the amount of 15.5 acre feet has not changed.

6. The Tackett well is an existing well which consists of an uncased bore hole into the ground through a caliche layer. The well is located on land owned by the applicant and was used by the former owner for domestic, stock and irrigation purposes. Water from the well which was not consumptively used discharged into Wilson Drain. The applicant has owned the land for about three years.

7. The protestant maintains drainage wells within the boundaries of the district by periodically "blowing out" the wells to cause them to flow more water thus lowering the level of the water table. The protestant does not maintain the Tackett well, could not show ownership of the Tackett well and did not show that the well had been constructed as a part of the general drainage system constructed by the United States for the protestant. The protestant does not know who constructed the Tackett well, has not measured flow from the well and has not monitored discharge from

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the well.

8. The district does not deliver any water from the Tackett well or from the Wilson Drain to any of its shareholders or to any other water users.

9. The applicant has constructed the recreational fishing pond also known as Beach's Pond including related retaining dikes. The purpose of the project is to provide recreational fishing opportunity close to Nampa in an urban area. Water diverted from the Tackett Well into Beach's Pond will be discharged back into Wilson Drain within about 300 yards of the Tackett well.

10. As a part of the project proposed in the application, the applicant has filled certain hydric (wet) areas such that the areas have become xeric (dry) areas and has created some pond area which was formerly hydric. About 10 times as much land has been changed in character from hydric to xeric than from xeric to pond area.

11. There are water rights of record with the department for diversion of water from the Wilson drain. The water rights are in the name of individuals and are not in the name of the protestant. The protestant does not deliver these water rights.

12. The live flow delivery of water within the boundaries of the district intuitively increases the amount of ground water in the general area of the Tackett well and Wilson Drain to some extent although no specific studies have been conducted by the protestant to define a relationship.

13. In the past, the department has issued many water right permits to individuals for the diversion of ground water within the boundaries of the Nampa & Meridian Irrigation District without

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challenge to the proposed ground water uses such as alleged in this matter.

14. Section 42-228, Idaho Code, provides as follows:

The excavation and opening of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of land by draining them shall not be forbidden or governed by this act, and likewise, there shall be exempted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation districts, and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant; providing that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code.

15. The protestant has filed its claims pursuant to the ongoing Snake River Basin Adjudication, but has not submitted an adjudication claim to ground water as now alleged in this contested matter and has not submitted an adjudication claim to water from Wilson Drain.

CONCLUSIONS OF LAW

1. Approval of the application will not reduce the amount of water under existing water rights since the protestant has not shown any prior water right to the use of ground water which flows or may be pumped from the Tackett well. In addition, use of water as proposed by the applicant will be essentially **Non-consumptive**, **Non-consumptive**

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other than for evaporation from Beach's Pond. Any increase in water loss due to evaporation from Beach's Pond will be offset by reduced water loss from the land whose character has been changed from hydric to xeric.

2. The water supply is sufficient for the purposes intended.

3. The application was not made for delay or speculative purposes since the applicant has been actively pursuing the project and its completion.

4. The applicant does have financial resources to complete the work involved in the project since much of the project has already been constructed and is in place.

5. The application is in the public interest and will provide recreational fishing opportunity in the Nampa urban area.

6. Use of water as proposed in the application is not contrary to the conservation of water within the state of Idaho. The project when completed likely will cause more water to be available to other water users than existed prior to the development since less water will be lost through evaporation and evapotranspiration.

7. The protestant is entitled under the provisions of section 42-228, Idaho Code, to recover ground water resulting from its project for further use on its land, but the applicant has not shown that water flowing from the Tackett well is water originating from its project and/or, if so shown, how much.

8. The applicant is entitled to a permit which is not conditioned subject to some anticipated future diversion of ground water by the protestant.

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ANALYSIS

The district superintendent who has been employed by the protestant for about 16 years first observed the Tackett well about three (3) years ago and then only after purchase of the Tackett property by the applicant. The protestant does now know who constructed the well, does not maintain the well, has not monitored the well and does not divert or deliver water to any of its shareholders from the well or from Wilson Drain to which the Tackett well discharges.

Testimony indicated that the protestant's recent interest in the Tackett well is due to the general lack of water in the area attributable to the last six (6) years of drought. This reduction in water availability is the stated reason the protestant is considering options such as exchanges and the construction of new wells to "intercept" ground water which it claims is available due to the surface water delivery system of the protestant.

The protestant points to a 1915 contract between the protestant and the U.S. government as the authority which vests title to drainage waters within the district in the protestant and the Boise Project. This contract which provided for the construction of a drainage system for the protestant, however, is and/or was binding only on the parties to the contract. The state of Idaho and other individual ground water users either within or outside the district boundaries are not bound by any terms of the 1915 construction contract.

The protestant provided testimony intended to show that since there were losses in the protestant's delivery system and there was

NOV 9 1992

little natural surface water recharge to district lands, the ground water in the vicinity of the Tackett well had to be attributable to the surface water delivery system of the protestant. The parties generally agreed that flow from the Tackett well and other wells in the vicinity was influenced to some undetermined extent by the surface water distribution system of the protestant but none of the parties could show the extent of the assumed relationship.

In past contested matters before the department, irrigation districts have not made claims as has the protestant in this matter to unspecified future diversion and use of ground water. Districts have, however, objected to new applications for permit which would interfere with their existing delivery of surface water and the department has ruled in a manner to protect existing water rights and authorized delivery practices.

The department should not condone the reservation of ground water for future "interception" as proposed by the protestant, since existing water rights would be injured. The looming threat of a seventh year of drought with below normal amounts of water available to water users appears to be the reason for the present position of the protestant. Water users with rights junior to that of the protestant should recognize, however, that their use of water could be subject to the right of the protestant to recapture and reuse its water after an appropriate showing by the protestant.

ORDER

IT IS THEREFORE, hereby ORDERED, that application for permit no. 63-11705 is APPROVED subject to the following conditions and limitations:

PROPOSED DECISION - Pg 8

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1. A flow measurement port or other device as specified by the department shall be installed by the right holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the department.

2. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

3. Use of water under this right shall be non-consumptive.

4. This approval authorizes diversion and use of water only from the Tackett well located in the NE1/4SE1/4SE1/4 Section 3, T2N, R2W, BM, Canyon County.

5. The maximum rate of diversion authorized under this approval shall not exceed 0.75 cfs.

6. The permit holder is required to modify the construction of the Tackett well such that the construction will comply with Well Construction Standards Rules and Regulations of the department.

7. The permit holder shall submit proof of construction of works and application of water to beneficial use on or before the date shown in the final decision and order of the director.

Dated this 17th day of September, 1992.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF MAILING

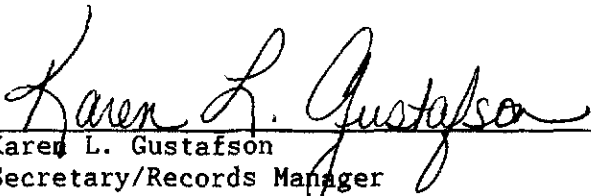
I HEREBY CERTIFY THAT on this 17th day of September, 1992, I mailed a true and correct copy of the foregoing Proposed Memorandum Decision and Order and the Order Issuing the Proposed Memorandum Decision and Order, postage prepaid, to the following parties:

Terry Holubetz
Dept of Fish & Game
3101 S Powerline
Nampa, ID 83638

John P Anderson
Nampa & Meridian Irr Dist
1503 1st St S
Nampa, ID 83651-4395

Andrew Harrington
Ringert & Clark
PO Box 2773
Boise, ID 83701

Steve Goddard
Dept of Fish & Game
PO Box 25
Boise, ID 83701



Karen L. Gustafson
Secretary/Records Manager

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FEB 26 1992

Ident. No. 63-11705

Form 202
8/85

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FEB 24 1992

STATE OF IDAHO Department of Water Resources
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Department of Water Resources

1. Name of applicant IDAHO DEPARTMENT OF FISH AND GAME Phone 887-6729
Post office address 3101 S. POWERLINE NAMPA 83686
2. Source of water supply * Groundwater
ARTESIAN WELLS which is a tributary of WILSON DRAIN
3. Location of point of diversion is TACKETT WELL NE 1/4 of SE 1/4 of SE 1/4, Govt. Lot
Sec. 3 Township 2N Range 2W B.M. CANYON County; additional
MILLARD WELL = SW 1/4, SE 1/4, SE 1/4 OF SEC. 3 T2N R2W
4. Water will be used for the following purposes:
Amount 1.0 * Diversion to GRA. for Storage purposes from JAN. 1 to DEC. 31 (both dates inclusive)
(cfs or acre-feet per annum)
* Amount 15.5 for Recreation purposes from 01-01 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum) Storage
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 1.60 BLM and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc. MILLARD
THE WELLS WILL FLOW INTO A
POND ADJACENT TO AND NORTHEAST OF THE WELL.
THE TACKETT WELL WILL OVERFLOW INTO A SHED
 - b. Height of storage dam _____ feet; active reservoir capacity 15.5 acre-feet; total
* reservoir capacity 15.5 acre-feet; period of year when water will be diverted to storage:
JANUARY 1 to DEC 31 inclusive.
 - c. Existing well diameter is 4" 4" inches; proposed depth of well is UNKNOWN feet.
 - d. Is ground water with a temperature of greater than 90°F being sought? NO
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
1 years (minimum 1 year).

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* Corrections made during initial filing. 28 02-24-92

* Per application. 6 2/5/92

J. H. Hulse

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

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. RECREATIONAL FISH POND

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
* 02N	02W	3													R			R	—

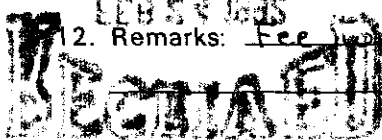
Total number of acres to be irrigated _____

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

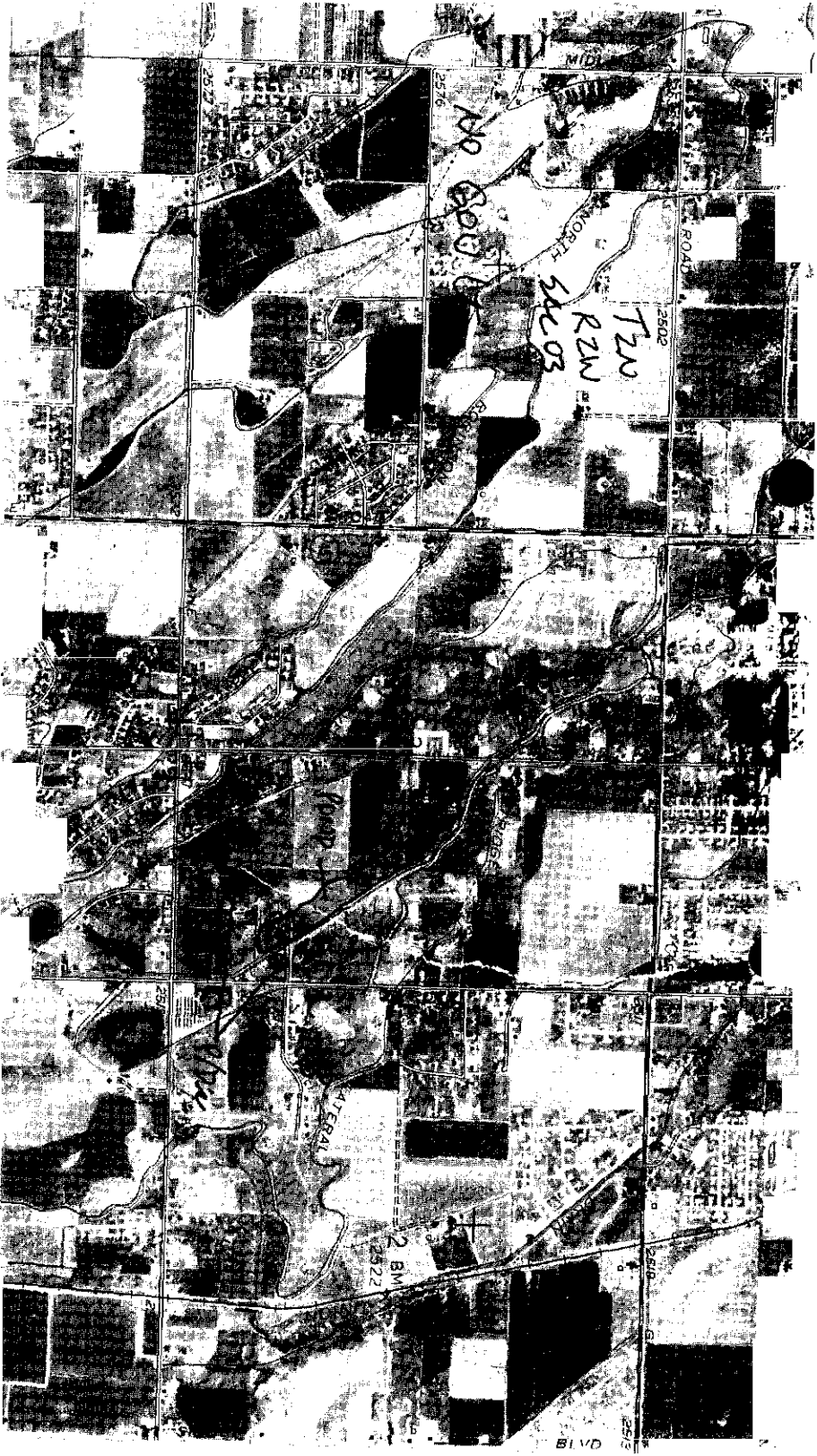
- Who owns the property at the point of diversion? IDAHO DEPARTMENT OF FISH AND GAME
- Who owns the land to be irrigated or place of use? " " " "
- If the property is owned by a person other than the applicant, describe the arrangement enabling the

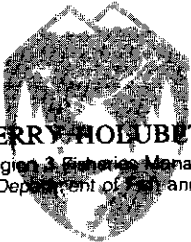
applicant to make this filing. _____

2. Remarks: Fee will be sent to Regional Office.



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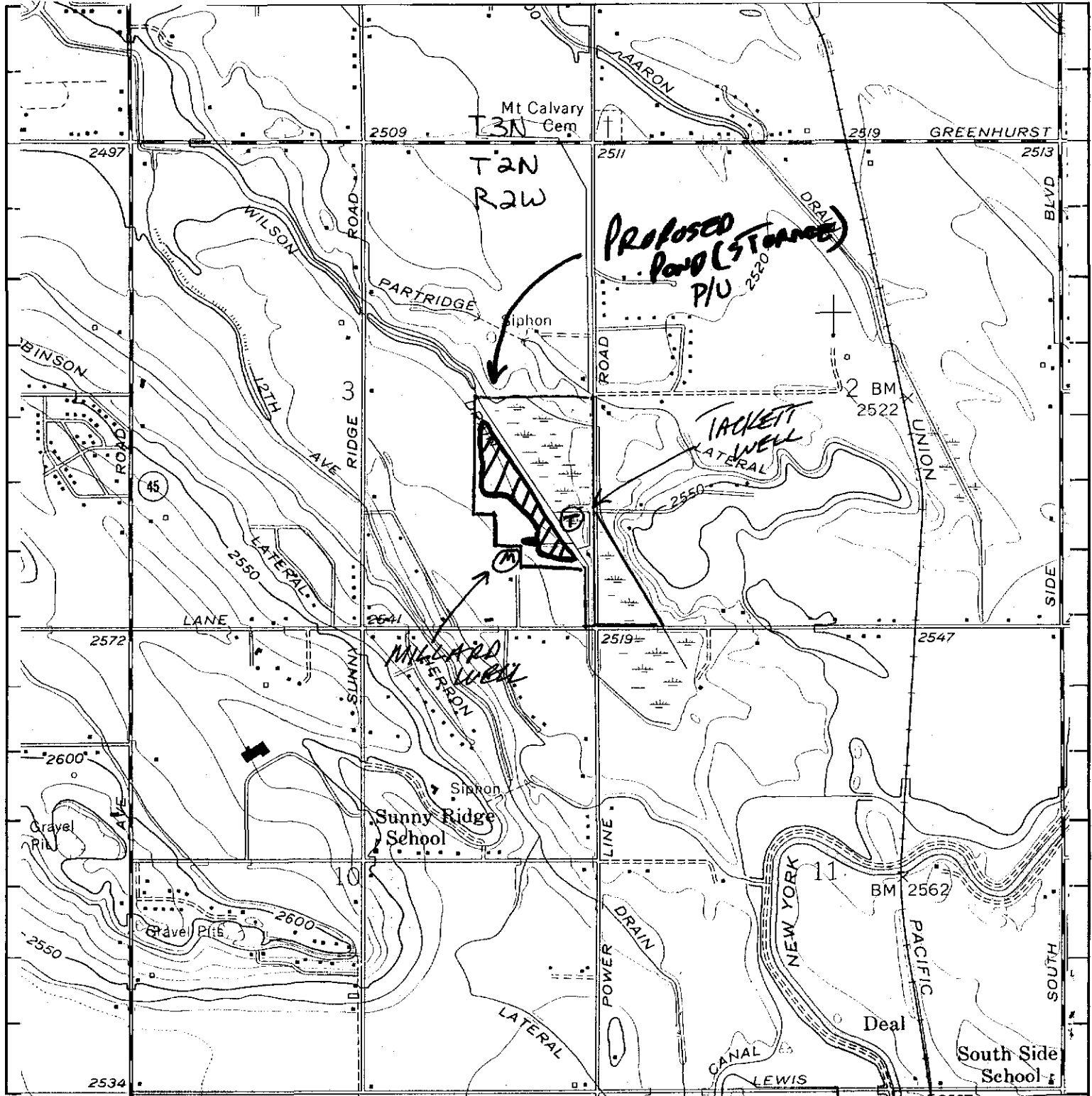
TERRY HOLUBETZ

Region 3 Fisheries Manager
Idaho Department of Fish and Game

3101 S. Powerline Road
Nampa, ID 83686

Business Phone (208) 465-8465
(208) 887-6729
Residence Phone (208) 896-4224

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



MM 02-26-92 2:03pm
Received by CS Date 02-24-92 Time 1:58 PM Preliminary check by Ly
No fee on 02-24-92
Fee \$ 65.00 Received by LW # W014201 Date 2-26-92
Publication prepared by GG Date 3-11-92 Published in Press-Tribune
Publication approved st Date 4-6-92 3/18 & 3/25/92

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

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NOTICE OF APPLICATION FOR WATER RIGHT

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

AFFIDAVIT OF PUBLICATION

PFESTER, H V
RANDOLF RD
MELBA, ID 83641
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11649
NWNE Sec 36 T 01N R 02W in CANYON County.
Total Diversion: (1.600 CFS)
(1.600 CFS)

Date Filed: 2/24/1992
In: CANYON County
T01N R02W S36
80.0 ACRES TOTAL

E OF IDAHO)

GARMAN, STEPHEN KENT
PO BOX 518
WILDER, ID 83676
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11691
SESE Sec 22 T 04N R 05W in CANYON County.
SWSW Sec 23 T 04N R 05W in CANYON County.
Total Diversion: (2.000 CFS)
(2.000 CFS)

WISSEL, CLINTON
WISSEL, JUDITH
15451 MIDWAY RD
NAMPA, ID 83651
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11670
NWNE Sec 18 T 03N R 02W in CANYON County.
Total Diversion: (3.600 CFS)
(3.600 CFS)

Date Filed: 2/25/1992
In: CANYON County
T03N R02W S18
R03W S13
180.0 ACRES TOTAL

Date Filed: 3/5/1992
In: CANYON County
T04N R05W S22
S23
101.0 ACRES TOTAL

KRAJNICK, ED
KRAJNICK, ORVETA
KRAJNICK, GARY
9749 RIM RD
NAMPA, ID 83686
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11693
NESE Sec 20 T 02N R 02W in CANYON County.
NWSW Sec 21 T 02N R 02W in CANYON County.
Total Diversion: (1.600 CFS)
(1.600 CFS)

SCROGGINS, JEROME
16752 LONKEY LN
CALDWELL, ID 83605
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11674
SWNW Sec 2 T 03N R 04W in CANYON County.
SENE Sec 2 T 03N R 04W in CANYON County.
Total Diversion: (1.600 CFS)
(1.600 CFS)

Date Filed: 2/25/1992
In: CANYON County
T03N R04W S02
80.0 ACRES TOTAL

Date Filed: 2/4/1992
In: CANYON County
T02N R02W S20
80.0 ACRES TOTAL

GOSSETT, CHARLES ELMER
141 WESLEY ST
CAPITOLA, CA 95010
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11694
NWSE Sec 21 T 02N R 02W in CANYON County.
Total Diversion: (1.560 CFS)
(1.560 CFS)

LOWE, DERALD W
6373 ROBINSON RD
KUNA, ID 83634
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11682
NWSW Sec 32 T 02N R 01W in CANYON County.
Total Diversion: (2.000 CFS)
(2.000 CFS)

Date Filed: 2/28/1992
In: CANYON County
T02N R01W S32
139.0 ACRES TOTAL

Date Filed: 3/6/1992
In: CANYON County
T02N R02W S21
78.0 ACRES TOTAL

GULLION, MARY E
419 E MAINE AVE
NAMPA, ID 83651
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11701
NENESE Sec 13 T 02N R 03W in CANYON County.
Total Diversion: (1.760 CFS)
(1.760 CFS)

BAIRD, DEAN
10576 DUCK LN
NAMPA, ID 83686
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11683
SENE Sec 12 T 02N R 03W in CANYON County.
Total Diversion: (1.000 CFS)
(1.000 CFS)

Date Filed: 2/28/1992
In: CANYON County
T02N R03W S12
50.0 ACRES TOTAL

Date Filed: 2/24/1992
In: CANYON County
T02N R03W S13
88.0 ACRES TOTAL

JOHNSON, GREGORY B
JOHNSON, HEIDI M
PO BOX 344
MERIDIAN, ID 83642
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11702
NESE Sec 24 T 01N R 02W in CANYON County.
Total Diversion: (2.400 CFS)
(2.400 CFS)

FARGO FARMS INC
25502 UPPER PLEASANT RIDGE
WILDER, ID 83676
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11685
SWSW Sec 27 T 04N R 05W in CANYON County.
Total Diversion: (1.200 CFS)
(1.200 CFS)

Date Filed: 3/4/1992
In: CANYON County
T04N R05W S27
S34
60.0 ACRES TOTAL

Date Filed: 3/3/1992
In: CANYON County
T01N R02W S24
120.0 ACRES TOTAL

HATCH, HAL
2055 N TEN MILE
MERIDIAN, ID 83642
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11704
SWSW Sec 5 T 03N R 01W in CANYON County.
Total Diversion: (.400 CFS)
(.400 CFS)

FARGO FARMS INC
25502 UPPER PLEASANT RIDGE
WILDER, ID 83676
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11686
SENE Sec 34 T 04N R 05W in CANYON County.
Total Diversion: (1.600 CFS)
(1.600 CFS)

Date Filed: 3/4/1992
In: CANYON County
T04N R05W S34
80.0 ACRES TOTAL

Date Filed: 2/28/1992
In: CANYON County
T03N R01W S05
20.0 ACRES TOTAL

STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA, ID 83686
Source: GROUNDWATER
Diversion Pt:
Use: RECREATION STORAGE

63-11705
NESESE Sec 3 T 02N R 02W in CANYON County.
SWESE Sec 3 T 02N R 02W in CANYON County.
Total Diversion: (1.600 CFS)
(1.600 CFS)

H J BATT WILDER LAND CO LTD
PO BOX 666
WILDER, ID 83676
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11689
SWNE Sec 15 T 04N R 05W in CANYON County.
Total Diversion: (1.600 CFS)
(1.600 CFS)

Date Filed: 3/5/1992
In: CANYON County
T04N R05W S15
80.0 ACRES TOTAL

Date Filed: 2/26/1992
In: CANYON County
T02N R02W S03

ABBOTT, DAVID M
4252 W KUNA RD
KUNA, ID 83634
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION

63-11707
NWSE Sec 20 T 02N R 01W in CANYON County.
Total Diversion: (1.600 CFS)
(1.600 CFS)

COLE TRUST, NORMAN R
210 FAY LN
NAMPA, ID 83686
Source: GROUNDWATER
Diversion Pt:
Use: IRRIGATION DOMESTIC

63-11690
NWNE Sec 21 T 02N R 02W in CANYON County.
Total Diversion: (.800 CFS)
(.800 CFS)

Date Filed: 3/5/1992
In: CANYON County
T02N R02W S21
40.0 ACRES TOTAL

Date Filed: 3/2/1992
In: CANYON County
T02N R01W S20
80.0 ACRES TOTAL

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 on or before APRIL 6, 1992.
R. KEITH HIGGINSON, Director
March 18, 25, 1992



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

October 5, 1995

STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

RE: WATER RIGHT NO. 63-11705

Dear Water Right Holder(s):

Enclosed is a copy of the Water Right License issued on the above referenced permit. If you have any questions, please contact me within 10 days of receipt of this license.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

RECORDED

OCT 16 1995

LICENSE REVIEW CHECKLIST

PERMIT NO. 63-11705 DATE 10-2-95



NAME	<u>Change</u> ☒ <u>OK</u>	Or Address Change? <u> </u>
PRIORITY DATE	<u> </u> ☒	Advance? <u> </u> Advanced to: <u> </u> Order to reinstate needed? <u> </u> Incorrect fee for rate recommended? <u> </u>
SOURCE	<u> </u> ☒	Changes or just clarification of originally intended source? <u> </u> Notice of Intent to Void necessary? <u> </u>
POINT OF DIV	<u> </u> ☒	Amendment needed? <u> </u> Overlaps? <u>1/A</u>
PLACE OF USE	<u> </u> ☒	Amendment needed? <u> </u> Overlaps? <u>NA</u>
DIV RATE	<u> </u> ☒	Permit/fee limits: <u>.75 CFS</u> Meas Q = <u> </u> Theo Q <u>.40</u> Recommend: <u>.40</u> <u> </u> Combined rates exceed capacity <u> </u>
ANNUAL VOLUME	<u> </u> ☒	Volume Limit: <u>15.5</u> Season: <u> </u> Calculations: <u>Volume of Pond 11 at - NOT 12 at</u> Flow limit: <u> </u> cfs x <u> </u> x 1.9835 = <u> </u> Combined volumes exceed capacity/allowable <u> </u>
USES	<u> </u> ☒	Change in Nature of Use or additional uses? <u> </u> Amendment necessary? <u> </u>
ADDITIONAL INFO		Supplemental Groundwater <u> </u> PPU Scenario <u> </u> Irr/Dom Combination <u> </u> Shared G/W System <u> </u>
NEW REMARKS	<u> </u> ☒	Multiple p/d(s) in <u>1/4</u> <u>1/4</u> ? <u> </u> <u>YES</u> Other <u>EDIT REMARKS (TACKETT well only)</u>
NEW CONDITIONS	<u> </u> ☒	Watermaster control - District <u> </u> Measuring/Locking Devices <u> </u> Irrigation Overlap <u> </u> Other <u> </u> Water Quality <u> </u> Heat/Cool/Fish verified <u> </u>
COMMENTS:	<u>Reduce rate & volume.</u>	

RECOMMENDATION	CFS	VOLUME	SRBA Claim Filed	<u>NO</u>
<u>REC STORAGE</u>	<u> </u>	<u>11.0</u>	Adjustment Memo Needed	<u>YES</u>
<u>DIV TO STORAGE</u>	<u>.40</u>	<u> </u>	LICENSE	☒
<u> </u>	<u> </u>	<u> </u>	1ST AMEND LETTER	<u> </u>
<u> </u>	<u> </u>	<u> </u>	2ND AMEND LETTER	<u> </u>

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED

JAN 03 1995

Department of Water Resources

A. GENERAL INFORMATIONPermit No. 63-117051. Owner: STATE OF Idaho, Department of Fish & Game Phone No. 887-6729/465-8965Current Address: 3101 S. Powerline Road, Nampa, ID 836862. Accompanied by: DALE Turnipseed EXAM DATE: 9/4/94Address: _____ Phone No. SAMERelationship to Permit Holder: Employee3. Source: GROUNDWATER tributary to _____**B. OVERLAP REVIEW**1. Other water rights with the same place of use: 63-02388, 63-11256, 63-089402. Other water rights with the same point of diversion: 63-11256, 63-08940**C. DIVERSION AND DELIVERY SYSTEM**

1. Point(s) of Diversion:

Ident No.	Gov't Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SE	SE	3	2N	2W	Canyon	AERIAL Map

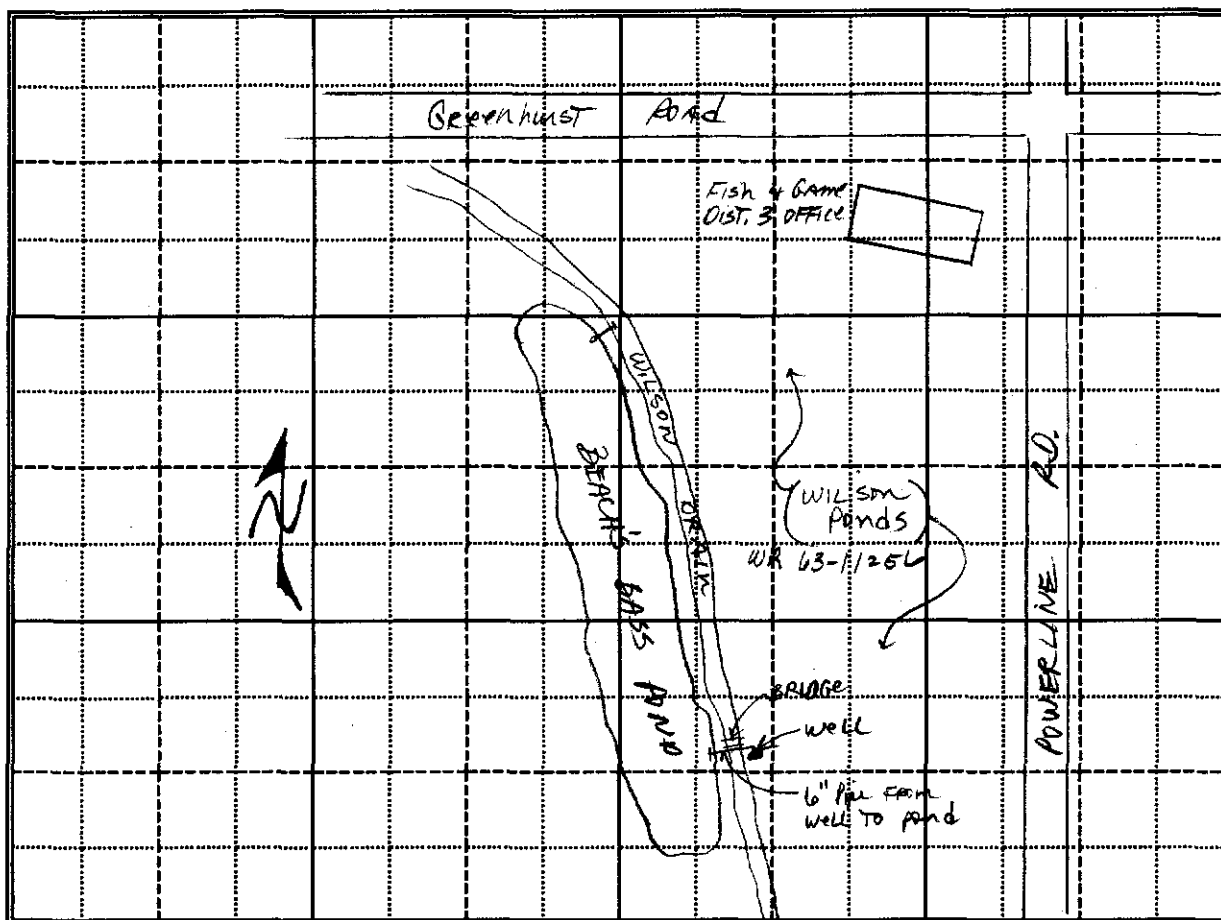
2. Place(s) of Use:

Indicate Method of Determination SAME AS P/D

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2N	2W	3													Rec. STg			Rec STg	
																		Div. to STg	

OCT 16 1995

3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe I.D. as applicable.



Scale: 1" = NTS

☒ Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

N/A Aerial Photo Attached (required for irrigation of 10+ acres)

☒ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	^{model} Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	Franklin	5	2821138310	unknown	6" ?

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

D. FLOW MEASUREMENTS

1.

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

2. Measurements: NONE - Discharge too large for 5 gallon bucket. Also
due to buried pipe, polysonic was not feasible.

OCT 16 1995

E. NARRATIVE/REMARKS/COMMENTS

OVERLAPS - P/D Same QR, different P/Ds (Wilson Drain)
P/U Same QR, different places of use (Wilson Pond and Irrigation)

Artesian well, with 23 Feet of 6" casing, supplies water to Beach's Bass Pond. A 5 h.p. pump delivers water from well to pond through a bent section of 6" ~~PVC~~ PVC and iron pipe. Located at north end of pond is an overflow stand pipe, which diverts water through 8" CMP to Wilson Drain.

The requested allocation is 0.75 cfs, but system capacity is only 0.40 cfs, therefore recommend Licensing for 0.40 cfs for diversion to storage.

Pond size is approximately 12 AF, not 15 AF as indicated on permit. Recommend Licensing 12 AF for recreation storage.

(No Adjudication Claim Filed)

Note: 23' of 6" casing installed by Dennis Phipps in Dec. 1992.

Concrete manhole placed around casing. Static Level assumed - 3'.

$$\text{Theoretical: } Q = \frac{(8.8)(0.7)(5)}{10 + (2.31 \times 30)} = \frac{30.8}{79.3} \times \frac{0.40}{0.24} \text{ cfs}$$

Note: Dynamic Pumping Level determined per office diagram and specifications.

System Pressure assumed per pump size, 30 psi due to open discharge and bends and undulations in pipe.

Have conditions of permit approval been met? ☒ yes ☐ no

UNRECORDED
OCT 16 1995

F. FLOW CALCULATIONS

____ Additional Computation Sheets Attached

Measured Method:

(SEE NARRATIVE FOR THEORETICAL SYSTEM CAPACITY CALCULATION)

G. VOLUME CALCULATIONS1. Volume Calculations for Irrigation: *N/A*

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = \underline{\hspace{2cm}}$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = \underline{\hspace{2cm}}$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} = \underline{\hspace{2cm}}$$

2. Volume Calculations for Other Uses:

$$\begin{aligned} V_{(\text{pond})} &= 150' \times 2000' \times 4' = 1,200,000 \text{ FT}^3 \approx 27.5 \text{ AC} \\ &= 27.5 \text{ AC} \times 0.4 \approx 11.0 \text{ AF} \\ &\quad \quad \quad 12.0 \end{aligned}$$

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
RECREATION STORAGE	1/1	12/31	—	11.0 12.0
DIVERSION TO STORAGE	1/1	12/31	0.40	
Totals:			0.40	11.0 12.0

2. Recommended Amendments

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

I. AUTHENTICATIONField Examiner's Name Rick Collingwood Date 4/20/94

Reviewer _____ Date _____

SEAL
OCT 18 1995

MEMORANDUM

TO: File 63-11705 / F & G
FROM: Brenda Chapman
DATE: October 2, 1995
RE: Recommendation Adjustment(s)

=====

The final licensing recommendations for Right 63-11705 are based on the information below:

G. VOLUME CALCULATIONS

The volume of the pond is 11 af. The examiner also had 11 af but increased it to 12 with no justification for the change.

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use	Rate of Div	Annual Vol
Rec Storage	1-01 to 12-31		11.0
Div to Storage	1-01 to 12-31	.40	

RECORDED

OCT 16 1995

PERMIT 63-11705 INIT PC
T. R. S. Q/Q
P/D 2N 2W 3 SESE
SCALE
PHOTO ID. X-56 Nampa

PHU

PHU

PROFH

1995

LEWIS



PHOTO ONE-

View southwest of well (in concrete manhole). Well located on east bank of Wilson Drain. South end of Beach's Bass Pond is on other side of Wilson Drain.



View westward of 6" pipe over Wilson Drain to Beach's Bass Pond.

PHOTO TWO-

RECEIVED
OCT 16 1995



PHOTO THREE-

View southeasterly of 6" discharge line into Seschi Pond. Well, is just off the photo to the left.



PHOTO FOUR-

View southwest of south end of Seschi Pond. The 6" discharge line is shown.

OCT 16 1995

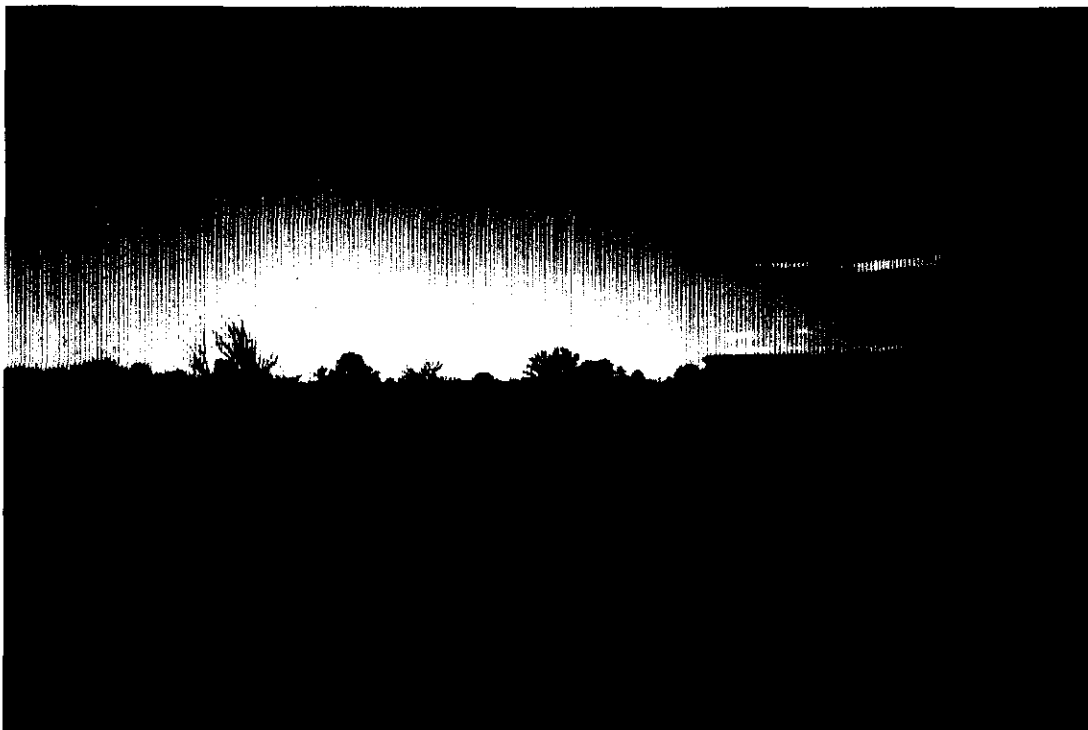


PHOTO FIVE-

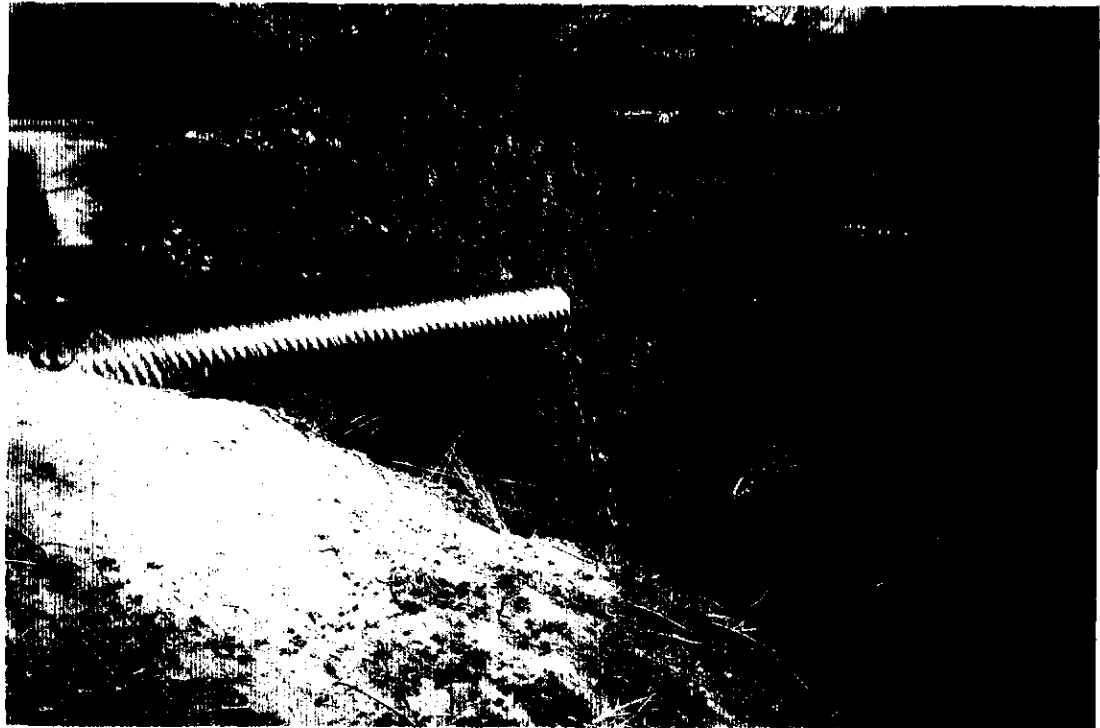
View southealy of north end of Beachs Pond.
Overflow Standpipe is shown to the left.



PHOTO SIX-

View southeast of overflow standpipe and Wilson Ponds
in background. The 8" corr overflow pipe is visible to
the left. Flow discharge into Wilson Drain.

OCT 16 1995



Seven
PHOTO ~~FIVE~~-

View NORTHEAST OF 8" CMP Overflow pipe discharging
into Wilson Drain.

>

OCT 16 1995

Eight
PHOTO ~~SIX~~-

MEMORANDUM

To: File 63-11705
From: L. Glen Saxton *LS*
RE: MEASURING PORT CONDITION OF APPROVAL
Date: November 12, 1993

Scott Grunder of Fish and Game called concerning the condition of approval requiring the installation of a flow measurement port (port). He was correctly under the impression that the department did not regularly use annubar equipment which utilizes the port to determine the rate of flow.

I advised Grunder that the department would not require the installation of the port if the department could measure the rate of flow in some other manner. Hence the condition requiring the installation of the flow measurement port is waived unless there is no other way to measure the rate of flow. This will be determined during the field examination.

RECEIVED

DEC 02 1993

November 4, 1993

STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 63-11705

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 conduct a field examination to determine and confirm the use being made of the water.

I note that the permit issued to you by the department requires the installation of a flow measurement port to allow the department to determine the rate of diversion. The proof which you submitted does not show that you have installed this equipment.

The installation of the flow measurement port must be complete by the time the department representative conducts the examination of your system unless the department has rescinded the requirement prior to the field examination. ~~In some cases, the equipment requirement can be rescinded because the equipment cannot be physically installed, is not appropriate or can be accommodated with other measuring methods.~~

If you have questions concerning this matter, please feel free to contact the WESTERN Regional Office in Boise at (208)334-2190.

Sincerely,

Karen L. Gustafson
Senior Secretary

c: IDWR - Region

RECEIVED

DEC 02 1993

ANALYSIS SHEET
FOR
PROOF OF BENEFICIAL USE

Permit No. 63-11705

Reviewed by klg

Date 10/26/93

GENERAL CONSIDERATIONS

yes Name same as permit?
yes Address same as permit?
yes Proof timely received?
If not, complete calculation below.

TYPES OF USE

Recreation stg/diversion
no stg
Correct Uses? yes

SOURCE OF WATER

 Surface water source
✓ Ground water source

provi
7/1/87
NA Drilling permit required?
 Copy in the file? Drilling Permit No.
 Amount paid for permit Correct?
 Well log in the file?

LICENSE EXAMINATION FEE

yes Required?
100 Amount Submitted
yes Correct?

MEASURING DEVICE

yes Required?
no Installed?
no Waiver requested?

PRIORITY CALCULATION

Date proof received NA
Date proof due -
No. of days late =
Priority Date +
New Priority Date

DEFICIENCIES OR ACTION ITEMS

proof acceptable
DEC 2 1993

DATA ENTRY
New Address

needs a flow
10/26/93
11/4/93
klg
Proof Made



IDAHO FISH & GAME

REGION 3

3101 S. Powerline
Nampa, ID 83686
(208) 465-8465

October 25, 1993

Karen L. Gustafson
Secretary/Records Manager
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83720-9000

RE: Proof Due Notice, Permit No. 63-11705
License Examination Fee Enclosed

Dear Ms. Gustafson:

On behalf of the Idaho Department of Fish and Game, I am enclosing a check in the amount of \$100.00 for the license examination fee required as part of the permitting process for proof of beneficial use for water permit number 63-11705. Enclosed also find the proof of beneficial use form completed as requested.

The Department requests a paid receipt following processing of this permit sent to the Southwest Region.

Sincerely,

Scott A. Grunder
Environmental Staff Biologist

cc: Natural Res. Policy Bur. (C. Robertson)
IDFG-Legal (Steve Goddard)
Fisheries Bureau
Steve Yundt

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

Equal Opportunity Employer



Working for wildlife - since 1939

RECEIVED

DEC 02 1993

August 31, 1993

STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

PROOF DUE NOTICE

RE: PERMIT NO. 63-11705

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before November 1, 1993. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

Karen L. Gustafson
Secretary/Records Manager

Enclosures

CERTIFIED MAIL

NO. 140535

DEC 02 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 19, 1993

STATE OF IDAHO
DEPARTMENT OF FISH & GAME
3101 S POWERLINE
Nampa ID 83686

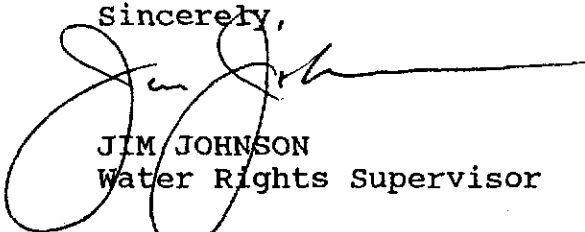
RE: Permit No. 63-11705

Dear Permit Holder(s):

Enclosed is a copy of the Order Removing Condition of Approval.

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

Sincerely,


JIM JOHNSON
Water Rights Supervisor

JJ:dc

Enclosure

MICROFILMED

JUL 23 1993

JULY 8, 1993

MEMORANDUM

TO: FILE

FROM: MARK SLIFKA *MS*

SUBJECT: IDAHO F & G --TACKETT WELL/ WR 63-11705

I spoke to Norm Young on June 30 regarding the WR condition requirements for reconstruction of the above described well to control artesian flowing water. It appears that the well was drilled and utilized as a drainage well under 42-228, I.C. and the the F&G has been pumping the well under their water right to obtain sufficient water to meet their needs. The well does not flow water in excess of the water right appropriation and does not require control equipment to prevent waste. I informed Norm of the difficulty in reconstructing this well and we decided that since the well has not wasted water (being authorized as a drainage well) and that the appropriation more than covers the flow from the well, that the conditions on the Water Right requiring reconstruction were unnecessary and should be eliminated. I spoke to Mr. Lee VanDeBogart with the F&G about this so that they would not proceed in drilling the alternate well.

There are several drainage wells in the area which may require abandonment or reconstruction in the future if it is determined that they are wasting water and their status changed statutorially.

REPRODUCED

JUL 23 1993

June 18, 1993

MEMO

TO: Norm Young
FROM: Mark Slifka

Reference: IDFG Tackett Well-WR 63-11705

The IDFG has been working with the Department over the past several weeks to have the drain well that they are using under this right modified to meet minimum Well Construction Standards and conditions as ordered in their Water Right. A number of drillers have looked at the project and have discussed with myself, John Carlson and Rob Whitney different methods of modification but the geohydrolic conditions of near surface and surface fractures and water flow make the job risky. The IDFG and the driller has suggested that a new well be constructed nearby and built to our minimum Well Construction Standards. The existing drainage well would then be allowed to revert back to its original intended purpose as allowed under 42-228, Idaho Code.

- 1] The IDFG would like to have this well drilled prior to July 1, 1993
- 2] Will this action require an amendment if the new well is drilled within the same legally described POD?
- 3] Can we issue an expedited Drilling Permit if an ammendment is required?

Slifka
Let's discuss - I don't
understand how this helps
MS

MICROFILMED
JUL 23 1993

MEMORANDUM

DATE: June 17, 1993
TO: MARK SLIFKA
FROM: JOHN D. CARLSON
RE: ORDER DIRECTED TO F&G TO BRING A WELL INTO COMPLIANCE
UNDER WATER RIGHT PERMIT 63-11705. *IN 2w 3 NEEDED*

On June 16, 1993 Rob Whitney and I met with Frank Skinner of S.O.S. Drilling and Lee J. VanDeBogart an engineer with F&G. We met at the site of the well with the intention of observing and discussing Mr. Skinners concerns that there are several other wells in the same condition as the well under permit in this drain/swampy location. His contention is should we spending that much money on one well when there are several others on F&G property and other property that are in the same condition.

We observed the well in question and proceeded to locate other wells which may be of the same nature.

Three wells were located across the road from this well. They had casing extending above ground level from 6 inches to 1 1/2 feet (observed from the road). All three were flowing artesian.

One well was observed and one other (location shown but unable to actually see because of cobble size rocks placed over it and it was also under the bank a little ways) were located a few hundred feet upstream from the well of concern. These two were uncased.

Mr. VanDeBogart thoughts on the issue was that the wells were drilled in the 1930's, with the intention of draining the marshy area. He thinks the driller put in 10, 20, 30 maybe many more and then the Corp of Engineers put the drain right along the wells. While we observed these two on F&G property (their are probably more and there are more (as told by Mr. VanDeBogart) on up the drain. These wells are believed to be around 50 feet deep.

Across the road at the fish hatchery they have two 100 plus foot wells which are cased 18 feet and flow at the surface half of what they are pumped, 6 cfs. each. There are 7 others wells in the 50 foot range also in the fish hatchery area. These were not observed. The two deep hatchery wells are said to fluxuate along with lake Lowell.

The situation being argued is that fixing this one well will not make an overall difference in conserving the artesian resource.

MICROFILMED
JUL 23 1993

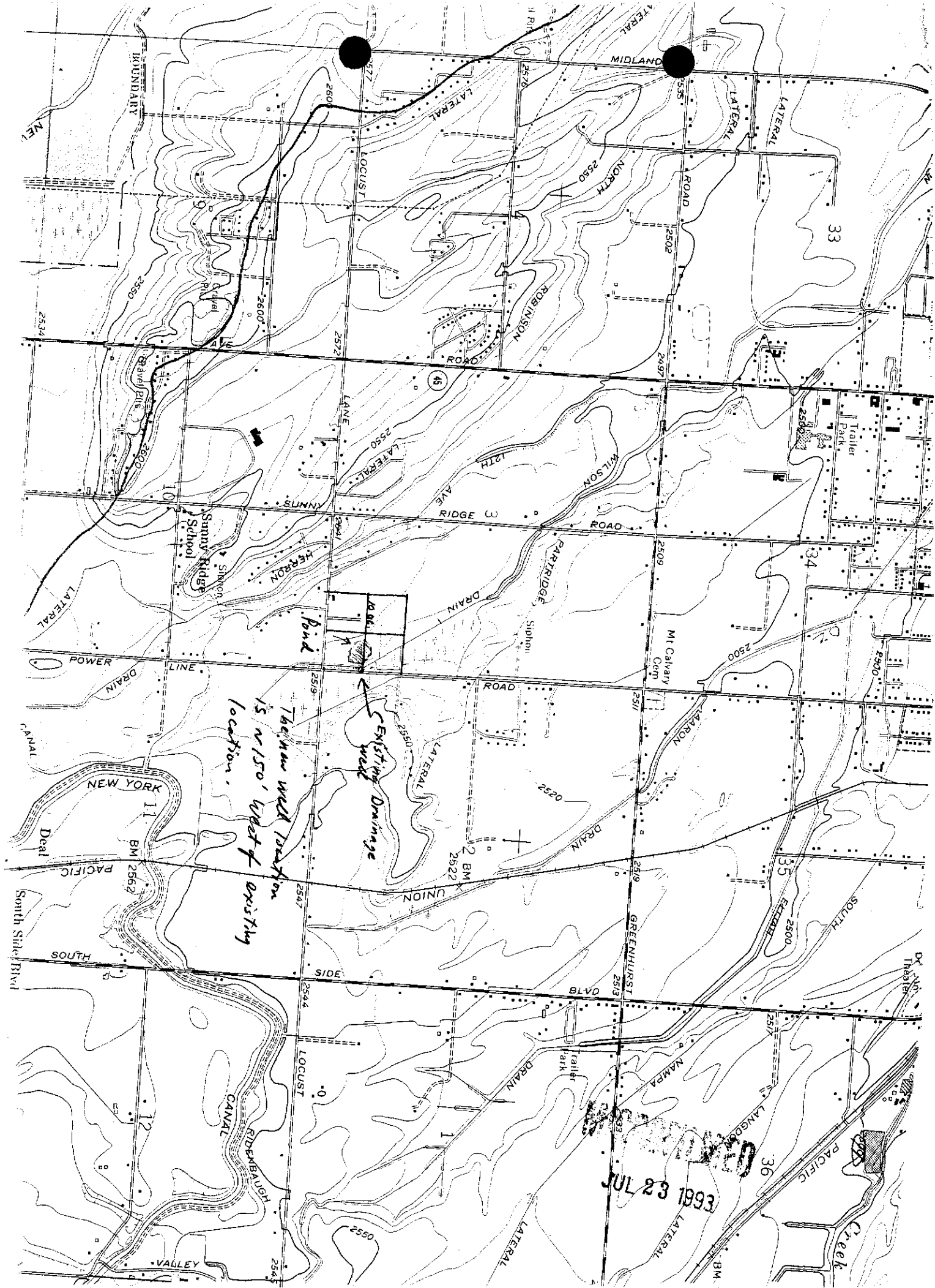
Also they argue that the aquitard confining the artesian aquifer is a calachie cap which the marsh indicates is not doing a great job of confining the aquifer. A reasonable assumption on their part is the wells and drain were put in to reduce the soil moisture in the area and if it is possible to repair/plug these wells the drain itself may not be enough to keep the area from subbing again.

F&G does not have a problem with trying to repair or control the one well under permit, however there is some question on the part of Mr. Skinner and Mr. VanDeBogart that the calichie cap 5 to 6 feet deep, is highly fractured/eroded and they could end up spending many more dollars than originally allotted to the repair without success and without solving the overall situation. This is definitely an area of natural discharge. They are willing to forget this well, pull the pump and just leave it as they found it and put in a new well over by the pond. This is what they had originally intended on doing, but the biologist proceed without their input.

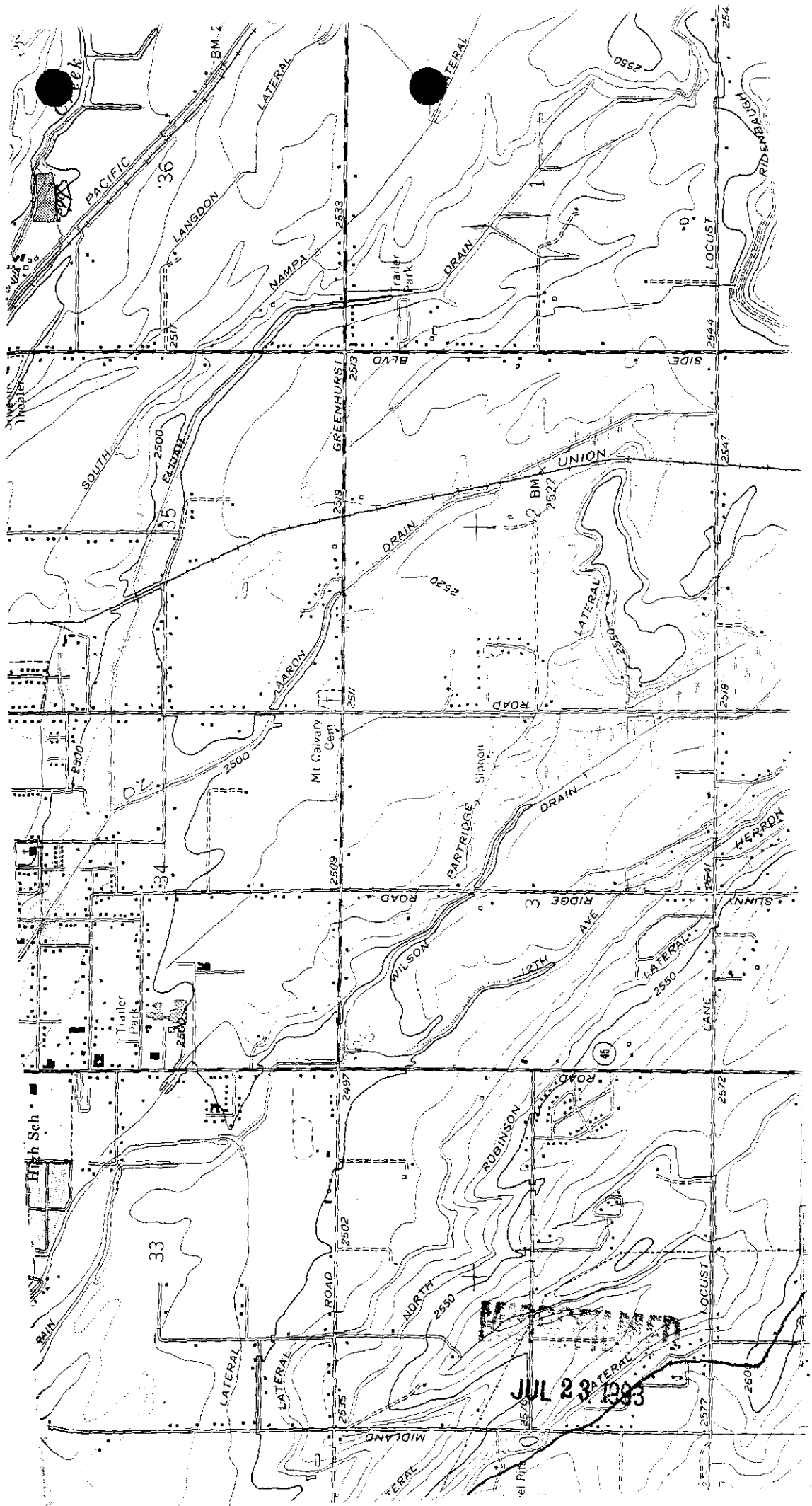
I have a basic feeling that the one well may be with some effort put into a condition that would appear to control the flow around the casing which presently is not controlled. For appearance sake this would be good. However without looking at all of wells it may not make a large difference. If we did look at all of the wells, their is a chance that the marsh would return? or grow in size (there is still marsh) and not make us very popular with the locals. What might preclude this is that F&G is pumping the head in the two wells down about 2 feet presently and they intend to place larger pumps in the well significantly increasing the discharge and probably the drawdown. This should effect all of the area as they do see a response in the 50 foot wells closest to the 100 foot wells when pumping at the present rate.

The negative effect of doing nothing is that if the aquifer is produced some time in the future to a point of a negative head, these wells may turn into injection wells of unknown location.

MICROFILMED
JUL 23 1993







the protestant but none of the parties could show the extent of the assumed relationship.

In past contested matters before the department, irrigation districts have not made claims as has the protestant in this matter to unspecified future diversion and use of ground water. Districts have, however, objected to new applications for permit which would interfere with their existing delivery of surface water and the department has ruled in a manner to protect existing water rights and authorized delivery practices.

Specific findings of fact, conclusions of law, and conditions of approval relative to "recovery" of water are not required in this decision because the use of water under permits issued by the department are subject to all prior water rights. Prior water rights unclude the right to cease wasting water and the right to recover the water if recovery activity complies with provisions of Section 42-228, Idaho Code.

ORDER

IT IS THEREFORE, hereby ORDERED, that Application for Permit No. 63-11705 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under this permit is subject to all prior existing water rights.

2. A flow measurement port or other device as specified by the department shall be installed by the right holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the department.

3. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

4. Use of water under this right shall be non-consumptive.

5. This approval authorizes diversion and use of water only from the Tackett well located in the NE1/4SE1/4SE1/4 Section 3, T2N, R2W, BM, Canyon County.

6. The maximum rate of diversion authorized under this approval shall not exceed 0.75 cfs.

7. The permit holder is required to modify the construction

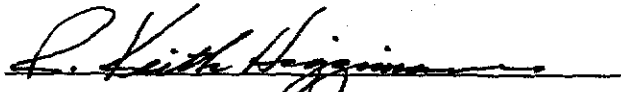
JUL 23 1993

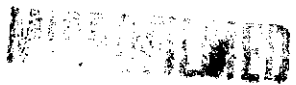
NOV 10 1992

of the Tackett well such that the construction will comply with Well Construction Standards Rules and Regulations of the department.

8. The permit holder shall submit proof of construction of works and application of water to beneficial use on or before November 1, 1993.

Dated this 10TH day of NOVEMBER, 1992.


R. KEITH HIGGINSON
Director


JUL 23 1993

NOV 19 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NO. 63-11705 IN THE NAME	)	NOTICE OF
OF IDAHO DEPARTMENT OF FISH & GAME	)	RESCHEDULING
	)	HEARING

On March 30, 1992, the Department of Water Resources received a protest against the approval of Application for Permit No. 63-11705. A hearing was set for Wednesday, August 26, 1992, at 9:00 a.m. in the First Floor Conference Room, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho, 83706. The hearing date has been changed to Tuesday, September 8, 1992, at 10:00 a.m. in the Second Floor Conference Room, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho 83706.

The hearing 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 and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 27th day of August, 1992.



DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

MICROFILMED

JUL 23 1993

I hereby certify that on the 27th day of August, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary, Office Coordinator

Certified Mail

TERRY HOLUBETZ
ID DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83638

JOHN P ANDERSON
NAMPA & MERIDIAN IRRIG DIST
1503 1ST ST S
NAMPA ID 83651-4395

Non-Certified Mail

ANDREW M HARRINGTON ESQ
RINGERT & CLARK
455 S THIRD ST
PO BOX 2773
BOISE ID 83701

STEVE GODDARD ESQ
ID DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

RECEIVED
JUL 23 1993

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing 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 proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 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, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

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

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

MEMORANDUM

To: File 63-11705
From: L. Glen Saxton *LS*
RE: APPLICANT'S EXHIBIT NO. 1
Date: December 22, 1992

Attached to this memo is a copy of Applicant's Exhibit No. 1 which was admitted into evidence in the hearing conducted by the department in the contested matter of approval of the application.

The original exhibit consisted of an enlargement of a 35 mm photograph and was overlaid with mylar which had been marked to show hydric and exeric areas. Since the original would not conveniently fit into a water right file, I produced a copy of the exhibit and substituted it into the water right file.

The copy accurately depicts the original exhibit.

RECEIVED
JUL 23 1993

63-11705

copy of
Applicant's
Exhibit North
118

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

Date

Activity

HEARING HELD

FILE RECEIVED AT STATE OFFICE (Cindy)

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

GENERAL APPLICATION REVIEW (Brenda)

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

9/17/92

PREPARE PMD&O (Karen & Hearing officer)

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

10/19/92

PREPARE FINAL ORDER (Karen)

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

11-17-92

FINAL PERMIT PROCESSING (Brenda)

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

11/17/92

PREPARE FINAL ORDER (Karen)

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

NOT REPRODUCED

NOV 19 1992

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- Film the file
- Route file to vault

Did not film this 10/23/1993, how else, I did

VAULT

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 16, 1992

Re: In the Matter of Application for Permit No. 63-11705
in the name of the Idaho Department of Fish and Game

Dear Permit Holder:

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

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

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

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enc: Final Order
Certificate of Mailing
Copy of the Approved Permit

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NOV 19 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 7, 1992

Steve Goddard
Idaho Dept of Fish & Game
P.O. Box 25
Boise, Idaho 83707

RE: APPLICATION FOR PERMIT NO. 63-11705 IN THE NAME OF THE IDAHO
DEPARTMENT OF FISH AND GAME

Dear Mr. Goddard:

Attached is a copy of an affidavit of John P. Anderson which was submitted to the department to supplement the hearing record created on September 8, 1992 in connection with the above referenced matter. At that hearing, after checking with the parties for any further matters before concluding the hearing, I closed the record and concluded the hearing.

Hence, I do not intend to consider information submitted after the record has been closed such as the affidavit of the protestant John P. Anderson, unless you advise me in writing that you have no objection to the inclusion of the affidavit in the record. You should advise me in this regard within ten (10) days if you have no objection to inclusion of the affidavit in the record.

Sincerely,

L. GLEN SAXTON
Hearing Officer

Encl: 1

c: IDWR - W. Region
William F. Ringert

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OCT 13 1992

Department of Water Resources

LARRY ECHOHAWK
ATTORNEY GENERAL

Stephen V. Goddard
W. Dallas Burkhalter
Deputy Attorneys General
P O Box 25
Boise, ID 83707
Telephone (208) 334-3715
FAX (208) 334-2114

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE APPLICATION)
FOR PERMIT NO. 63-11705)

OBJECTION TO THE AFFIDAVIT
OF JOHN ANDERSON

COMES NOW, the Idaho Department of Fish and Game by and through its attorney of record and objects to the admission or to any consideration being given to the affidavit of John P. Anderson which Protestant Nampa Meridian Irrigation District mailed to the Idaho Department of Water Resources on October 5, 1992.

The grounds for this objection are as follows:

First, Protestant had more than ample opportunity to locate and present this evidence at the hearing or during the 10-day period after the hearing. Protestant now seeks to supplement his testimony with additional evidence approximately three weeks after Water Resources filed a Proposed Memorandum Decision and Order; and a week after Protestant mailed its exceptions and brief regarding the proposed decision and order. Protestant had its chance to present this evidence at the hearing and should have located this material with the exercise of due diligence.

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OBJECTION TO THE AFFIDAVIT - P. -1-
OF JOHN ANDERSON

Second, not only is this material presented a long time after the hearing, but also Fish and Game has been foreclosed from the opportunity to cross-examine the Protestant on this evidence. To allow this material into the record would be clear procedural error. Shokal v. Dunn, 109 Idaho 330, 334 (1985). In Shokal, applicant after a second hearing on its application determined its first plan was unable to comply with the new water quality standards and reworked the plans and submitted new operational criteria for its project to Water Resources. Protestants objected to the new criteria and argued the Director should not consider it without holding a new hearing. Nevertheless, the criteria were accepted by the Director and a permit was issued without a hearing. The court held that the final order was issued upon unlawful procedure and, therefore, was in error. Id. at 334. That ruling clearly applies to this situation.

CONCLUSION

For the reasons given above, the hearing officer should reject the applicant and not consider in any way the affidavit of John Anderson, or any other information he may find in his files.

DATED this 8th day of October 1992.

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NOV 19 1992


Stephen V. Goddard
Deputy Attorney General, Counsel
for Idaho Department of Fish
and Game

CERTIFICATE OF SERVICE

I, Corinne Barlow, Secretary/Records Manager with the Idaho Department of Fish and Game, hereby certify that I served true and correct copies of OBJECTION TO THE AFFIDAVIT OF JOHN ANDERSON by placing a copy thereof in the United States Mail on October 8, 1992, postage prepaid, to names and addresses listed below:

Mr. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83720
Statehouse Mail

Mr. Bill Ringert
Ringert Clark Chartered
455 S. 3rd Street
P.O. Box 2773
Boise, ID 83702


Corinne Barlow
Secretary/Records Manager
Idaho Department of Fish and Game

NOV 19 1992

OCT 13 1992

**Stephen V. Goddard
W. Dallas Burkhalter
Deputy Attorneys General
P O Box 25
Boise, ID 83707
Telephone (208) 334-3715
FAX (208) 334-2114**

OBJECTION TO THE AFFIDAVIT
OF JOHN ANDERSON

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NOV 19 1992

Second, not only is this material presented a long time after the hearing, but also Fish and Game has been foreclosed from the opportunity to cross-examine the Protestant on this evidence. To allow this material into the record would be clear procedural error. Shokal v. Dunn, 109 Idaho 330, 334 (1985). In Shokal, applicant after a second hearing on its application determined its first plan was unable to comply with the new water quality standards and reworked the plans and submitted new operational criteria for its project to Water Resources. Protestants objected to the new criteria and argued the Director should not consider it without holding a new hearing. Nevertheless, the criteria were accepted by the Director and a permit was issued without a hearing. The court held that the final order was issued upon unlawful procedure and, therefore, was in error. Id. at 334. That ruling clearly applies to this situation.

CONCLUSION

For the reasons given above, the hearing officer should reject the applicant and not consider in any way the affidavit of John Anderson, or any other information he may find in his files.

DATED this 8th day of October 1992.

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SEP 30 1992

Department of Water Resources

W. F. Ringert
RINGERT CLARK CHARTERED
455 S. 3rd Street, P.O. Box 2773
Boise, Idaho 83702
Telephone: (208) 342-4591
Attorneys for Protestants

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE APPLICATION)
FOR PERMIT NO. 63-11705)
_____)

**EXCEPTIONS AND BRIEF OF
NAMPA & MERIDIAN
IRRIGATION DISTRICT**

Nampa & Meridian Irrigation District (the Protestant or the District) files the following exceptions to the Proposed Memorandum Decision and Order entered in this matter by Hearing Officer L. Glen Saxton on September 17, 1992.

A. EXCEPTIONS

EXCEPTIONS TO FINDINGS OF FACT

1. Protestant takes exception to Finding of Fact No. 13 on the grounds that the finding is irrelevant and on the further ground that, if the finding is relevant, then it should be supplemented by reference to the several protests that have been filed by this Protestant against other applications for permits to appropriate ground water within the boundaries of the District.

2. Protestant takes exception to Finding of Fact No. 25 on the ground that action taken by the Protestant to recapture seepage, drainage and other forms of percolating water within the

NOV 19 1992

boundaries of the District, constitutes part of the original appropriations and is not required to be submitted as an adjudication claim to ground water in the pending Snake River Basin Adjudication, Twin Falls County Case No. 39576. Accordingly, Finding of Fact No. 15 also is irrelevant.

EXCEPTIONS TO CONCLUSIONS OF LAW

1. Protestant takes exception to Conclusion of Law No. 1 on the grounds that the evidence establishes that Protestant's river flow rights for 8500 miners inches with priority of May 1, 1878 and 18,542 miners inches with priority of August 20, 1888 (see, e.g., Boise River Watermaster's Report for 1988, pages 9 and 10, Chart 1) and its storage rights in Arrowrock Reservoir for 55,055 acre feet and a portion of the Boise Project Board of Control storage right of 177,816 acre feet, and in Anderson Ranch Reservoir for 77,784 acre feet and 15,137 acre feet (id., p. 43, Chart No. 8) are the sources of all or a significant portion of the water supply for the Tackett well, and Idaho water law long has recognized that seepage water belongs to the original appropriator, who is entitled to recapture that water for beneficial use.

2. Protestant takes exception to Conclusion No. 1 on the further grounds that the evidence presented by the Applicant was not sufficient to establish that the source of water for the Tackett well is a natural subterranean stream, Nampa & Meridian Irrigation District v. Petrie, 37 Idaho 45, 51 (1923), or that

the flow from the well is public water subject to appropriation, Cantlin v. Carter, 88 Idaho 179, 186-187 (1964).

3. Protestant takes exception to Conclusion of Law No. 8 on the grounds that Conclusion of Law No. 8 contradicts Conclusion of Law No. 7 and fails to recognize that the right to recapture "ground water resulting from its project for future use on its land", as stated in Conclusion of Law No. 7, is part of Protestant's water rights and as such constitutes a prior water right which is entitled to protection in the issuance of the permit sought by the Applicant.

EXCEPTIONS TO ANALYSIS

1. Protestant takes exception to the portion of the analysis section of the Proposed Decision that states the 1915 Contract between the Protestant and the U.S. Government was binding only on the parties to the contract. The records of the Department should include the 1915 Contract, as well as the Judgment of the District Court (Canyon County) confirming the contract and the proceedings taken in connection therewith, including the election among the landowners in Nampa & Meridian Irrigation District. See, generally, Nampa & Meridian Irrigation District v. Petrie, 28 Idaho 227, 233-234 (1915). If the record of the confirmation proceedings, both in the Irrigation District and in the District Court, cannot be located as they should be in the records of the Department, official notice may be taken from the cited opinion of the Idaho Supreme Court. **MICROFILMED**

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statutory proceedings, the approval of the contract at the election among the landowners in the District, and the confirmation by the District Court, the 1915 Contract became binding upon all lands within Nampa & Meridian Irrigation District, including those now owned by the Applicant. The statutory procedure governing contracts such as the 1915 Contract is set forth in Chapter 18 of Title 43, Idaho Code, including I.C. § 43-1808(a), which provides that the procedure in connection with an election to confirm such a contract, and the confirmation thereof by the court, shall be essentially the same as provided in connection with a bond issue, and bond issues are controlled by the provisions of Chapter 4, Title 43, Idaho Code.

2. Protestant takes exception to that portion of the analysis section of the Proposed Decision that states that the Department should not condone "the reservation of ground water for future 'interception' as proposed by the Protestant, since existing water rights would be injured." The right to recapture seepage is an integral element of the original water right, and Protestant's position in this matter does not constitute a "reservation" of ground water for future "interception."

3. Protestant takes exception to that portion of the analysis section of the Proposed Decision that states that junior water rights "could be subject to the right of the Protestant to recapture and reuse its water after an appropriate showing by the Protestant." In United States v. Haga, 276 Fed. 41, 4

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the court recognized that "the waters under discussion diverted from the Boise River and carried many miles through the plaintiff's costly system of artificial canals and from them indirectly discharged into Eight Mile creek are not 'flowing in their natural channels.'" To the extent the waters flowing from the Tackett well consist of seepage from the Protestant's delivery system or from irrigation of lands irrigated under the water rights of the Plaintiff or under water rights of the Boise Project, that water is not flowing in its natural channel and is not subject to appropriation by the Applicant. As a practical matter, any controversy involving this issue more than likely would take the form of a claim or charge by the Applicant that a particular instance of recapture of seepage water by the Protestant interferes with the flow of water from the Tackett well. Under such circumstances, the burden of establishing both that the diversion was not within the Protestant's original water rights and that the diversion by the Protestant interfered with the flow of the Tackett well would be upon the Applicant. No statute of this state requires the original appropriator to obtain further authorization or a new permit for the purpose of recapturing water that is available at a certain location as a result of the original appropriation.

EXCEPTIONS TO THE ORDER

1. Protestant takes exception to paragraph 6 of the Order on the grounds that ownership of the well has not

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established in these proceedings and, if the well is owned by the Protestant, the Applicant has no right to comply with the provisions of paragraph 6, unless it first obtains permission for such compliance from the Protestant.

2. Protestant takes exception to the Order because it does not include a provision recognizing that any appropriation made by the Applicant will be subject to the Protestant's right to recapture water diverted by the Protestant from the Boise River under its various water rights, for use upon lands within the District.

B. BRIEF

The Protestant submits the following authorities and argument in support of its exceptions to the Proposed Memorandum Decision and Order, in addition to those set forth in the body of the Exceptions.

1. THE RECAPTURE ISSUE

The statutory law and the decisions of the appellate courts in this state clearly recognize the right of the original appropriator of water from a natural stream to recapture seepage water and, in the absence of abandonment or forfeiture, to reclaim that water so long as the original appropriator is willing and able to put it to a beneficial use. Crawford v. Inglin, 44 Idaho 663, 669 (1927); Reynolds Irrigation District v. Sproat, 70 Idaho 217, 222 (1950); Hidden Springs Trout Ranch v. Hagerman Waterusers, Inc., 101 Idaho 667, 680 (1979). To the

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extent seepage water may be appropriated, such an appropriation is subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. Hidden Springs Trout Ranch, supra, citing Colthorp v. Mountain Home Irrigation District, 66 Idaho 173 (1945), and Sebern v. Moore, 44 Idaho 410, 416-417 (1927).

This same principle was recognized in a case in the United States District Court for the District of Idaho, involving the Boise Project, United States v. Haga, 276 Fed. 41 (1921), which was quoted at length with approval by the United States Supreme Court in Ide v. United States, 163 U.S. 497, 506, 68 L.Ed. 407, 412 (1924).

Other principles involved in this proceeding were reiterated and confirmed in Hidden Springs Trout Ranch, supra. The court stated that "[n]o appropriator of waste water should be able to compel any other appropriator to continue the waste of water which benefits the former", citing Crawford v. Inglin, supra; "[w]hile the waste of the original appropriator is not to be encouraged, the recognition of a right in a third person to enforce the continuation of waste will not result in more efficient uses of water. The rule instead has been that some loss of water through seepage or evaporation is considered a prerogative of the appropriator, so long as the loss is reasonable." (Citing Glenn Dale Ranches v. State, 64 Idaho 585

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(1972). And, finally "[t]he senior appropriator retains his right to all of the water, including that which is lost through reasonable seepage, and thus may reclaim it, for instance, by improving his transmission system." 101 Idaho at 681.

In Hidden Springs Trout Ranch the right to reclaim the seepage water was confirmed even though the seepage condition had existed for perhaps more than 65 years. The court held that "[s]o long as that water which arrived at its destination was put to a beneficial use, and so long as the amount of water loss through seepage during the transportation of that water from its place of origin to its place of use was reasonable, it can not be said that the mere fact of seepage transformed it into water not beneficially used." 101 Idaho at 682. This followed the court's admonition that in order to establish forfeiture "Hidden Springs had to show that the water was not put to a beneficial use for a period of at least five years prior to this suit." Id. The testimony in this proceeding is sufficient to establish that water diverted under the Protestant's water rights is put to beneficial use either as a part of the transportation system or for irrigation. No evidence was offered by the Applicant to refute John Anderson's testimony on this point, and it also is a matter of common knowledge, of which the Hearing Officer is entitled to take official notice, that water diverted by the Protestant from the Boise River is put to beneficial use in transportation or in irrigation.

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The right to reclamation of seepage water by the original appropriator has received statutory recognition and confirmation in Idaho Code § 42-228, quoted in the Proposed Decision at page 5. Thus, under both long-standing and unanimous case law, and statutory provisions, the right of the Protestant to recapture seepage water originating within its delivery system and from the irrigation of lands lying within the District's boundaries, is firmly established. Any authorization for the use of those waters by the Applicant at times when the water is not being used by the Protestant or its landowners, must be made subject to the Protestant's right to reclaim that water.

2. THE BINDING EFFECT OF THE 1915 CONTRACT

The Protestant's basic argument on this point is set forth in Exception No. 1 to the analysis in the Proposed Decision, supra, at pages 3-4. The Idaho Supreme Court has held that contract election proceedings by irrigation districts in matters similar to the 1915 contract election in the District, and governed by the same rules, are proceedings in rem that bind all benefitted lands within the irrigation district. See Oregon Shortline Railroad v. Pioneer Irrigation District, 16 Idaho 578, 595, 102 Pac. 904 (1909).

3. CONCLUSION

1. The Applicant has not established that the water it seeks to appropriate is flowing in a natural stream at the intended point of diversion, and the application should be

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denied. In the alternative, it should be recognized that water diverted from the Boise River under Protestant's various water rights is the source of supply for the Tackett well, and that all or some portion of the proposed appropriation will be subject to recapture by the Protestant as part of its original water rights. The provisions of the Order pertaining to modifications of the well, and a measuring device, should be modified to recognize the possibility that the Tackett well might be part of the drainage system constructed by the United States under the 1915 Contract, or constructed by the Protestant subsequent to completion of the construction activity of the United States.

Dated September 30, 1992.

RINGERT CLARK, CHARTERED

By


W. F. Ringert

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NOV 19 1992

CERTIFICATE OF SERVICE

I hereby certify that service of the within and foregoing Exceptions and Brief of Nampa & Meridian Irrigation District was made this 30th day of September, 1992, by mailing a copy thereof, postage prepaid to each of the following:

Terry Holubetz
Idaho Department of Fish & Game
3101 South Powerline
Nampa, ID 83638

Steve Goddard
Idaho Department of Fish & Game
P. O. Box 25
Boise, ID 83707



W. F. Ringert

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NOV 19 1992

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OCT 05 1992

Department of Water Resources

W. F. Ringert
RINGERT CLARK CHARTERED
455 S. 3rd Street, P.O. Box 2773
Boise, Idaho 83702
Telephone: (208) 342-4591
Attorneys for Protestants

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE APPLICATION)
FOR PERMIT NO. 63-11705)

AFFIDAVIT OF
JOHN P. ANDERSON

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

John P. Anderson, being first duly sworn on oath, deposes and says:

I am the same John P. Anderson who testified at the hearing in this matter on September 8, 1992, and I make this Affidavit for the purpose of supplementing the evidence offered by the Protestant, Nampa & Meridian Irrigation District.

Pursuant to my instructions, an employee of Nampa & Meridian Irrigation District (the District) has been searching old records of the District in an attempt to discover information concerning the construction and operation of drainage wells, including the Tackett well which is the point of diversion for the appropriation for which the Idaho Department of Fish and Game has applied. Records discovered thus far indicate that two or three wells in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 2 North, Range 2 West, B.M., have been monitored by the District since 1914. Copies of

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the observation logs which have been extracted from the files of the District are attached to this Affidavit as Exhibit A.

The search for additional records is continuing, and any additional records found as a result of that search will be made available through counsel for the District.

Dated this 5th day of October, 1992.

John P. Anderson
John P. Anderson

SUBSCRIBED AND SWORN to before me this 5th day of October, 1992.

Ainta C. McCormick
Notary Public for the State of Idaho
Residing at Boise, Idaho
My commission expires: 11-14-92

NOV 19 1992

CERTIFICATE OF SERVICE

I hereby certify that service of the within and foregoing Affidavit of John P. Anderson was made this 5th day of October, 1992, by mailing a copy thereof, postage prepaid to each of the following:

Terry Holubetz
Idaho Department of Fish & Game
3101 South Powerline
Nampa, ID 83638

Steve Goddard
Idaho Department of Fish & Game
P. O. Box 25
Boise, ID 83707



W. F. Ringert

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NOV 19 1992

WELL RECORD		ELEV. PLATFORM: 2517.31		ELEV. GROUND: 2516.72		
		DATE		DEPTH BELOW		WATER ELEV.
		PLATFORM	GROUND			
SECTION: 3		9-10-14	7.0		10.3	
TWP. 2N. 2W		11-12-14	11.7		05.6	
NAME J. Pipher		10-31-16	8.5		9.8	
LOCATION 1000' N. 700' W. SE. Cor		10-17-17	8.1		09.2	
		10-28-18	6.1			
		10-19-25	3.6	3.01		
		11-8-28		3.		
		11-18-28		3.		
		5-6-30	4.6	4.0	2512.7	
		10-29-30		3.		
		11-13-31		6.5		
		11-2-32		2.		
KIND OF WELL Drilled & Cased.		9-19-33	Cellar-Dry	6.8	Well at house	
WELL LOG 9-19-33 Measured drilled		3-14-34		7.0		
Well at house.		11-8-34		12.0		
REMARKS At the old well the water has been		2-11-35		8.5		
flowing out top all Summer 11-8-28.		10-23-35	10.4	10.7		
Same 1929-1934. Water in cellar		3-6-36	7.8	7.6		
within 3' of ground surface-5-6-36						

[illegible]



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 17, 1992

Dear Interested Party:

Enclosed are copies of the Proposed Memorandum Decision and Order and the Order Issuing the Proposed Memorandum Decision and Order.

Any party who appeared at the hearing is given the opportunity to file exceptions or briefs, or to request oral arguments within 15 days of the date of this mailing. At the end of that time, the director will issue his final decision adopting, modifying, rejecting or replacing the proposed decision. Copies of that decision and order shall also be mailed to all parties.

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

Sincerely,

L. Glen Saxton
Chief, Water Allocation Bureau

Enc: Proposed Memorandum Decision and Order
Order Issuing Proposed Memorandum Decision and Order
Certificate of Mailing

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APPLICATION FOR PERMIT REVIEW

Application #: 63-11705 Date: 9-11-92 Reviewer: Brenda Miller

SYSTEM COMPLETED:

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

GROUNDWATER:

- GT. 0.2 cfs <flo-ch> - 01G-P03, 01C-P03 (existing well)
- NMR <fl ch>, A of C SNAKE RIVER MORATORIUM
- LT. 0.2 cfs - No measurement required <flow chart>
- Drilling Permit:
- Approved w/permit - P99
- Not included - 046-46A-46B-P23 (after 7/1/87), N/A

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

LOCATION:

- Water Districts - WD No. 63
- Surface water - R04, R04-01H-P01(LT.2 w/pump)
- R04-01J-P08(GT.2), NMR <flow chart>
- Groundwater - P05
- Irrigation Districts - 023
- Canal Co. Areas - 023
- Drainage Districts - 024
- Boise Front (63) - 058 (Groundwater)
- Swan Falls Flag - (1, Blank or Other)
- Trust - 051-052-053-P74(Consumptive Uses)
- Non Trust <1> - 048-049

RIVER BASINS:

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

USE:

- Fish Propagation - 06A, 09E-P10 & 010 (WQ/Choose One),
- 042(req.), 002-P06(MD), 07A(Spec.),
- 044(Policy 5G)
- Power - Use Power Review
- Mining - 06A, 010, or 09E-P10 & 054(req.)
- Storage - 18A-for multiple measuring devices(In WD),
- 18B-P09(Size)
- Rec/Wildlf/Aes - 027(Non-Consumptive)
- Domestic - 021 (Boise River - upstream from L Peak)
- (restricted areas) 27A (Payette River & main tributaries)

OWNERSHIP:

- Non land owner - 004

PROTESTED:

- Agreement - 020

Beneficial Use Due Date: - 10-01-1993

Other Conditions:

- ① Annual volume allowance
- ② Non commercial recreational fish pond
- ③ Memorandum Decision & Order

R2W

End

Co. L

O. S. IDA.

S. NO. R. BRANCH

R. DECH

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Admitted

9/8/92 by L.G. Saxton

Protestant's Exhibit No. 4

THIS AGREEMENT made this 1st day of June, 1915, between the UNITED STATES OF AMERICA, acting for this purpose by the Secretary of the Interior, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) known as the Reclamation Act, and acts amendatory thereto or supplementary thereto, and the Act of Congress of February 21, 1911, (36 Stat. L. 925), the party of the first part, hereinafter called the United States, and the NAMP & MERIDIAN IRRIGATION DISTRICT, an Irrigation District organized under the laws of the State of Idaho, and located in Canyon and Ada Counties, Idaho, acting for the purposes of this contract under authority of Title 14 of the Idaho Revised Codes, including Sections 2396, 2397, and 2398, the party of the second part, hereinafter called the District-

WITNESSETH - That,

WHEREAS, the District includes within its boundaries about Twenty-four Thousand Five Hundred Fifty-seven (24,557) acres of irrigated land, Twenty-two thousand six hundred twelve (22,612) acres of which are entitled to receive water from the District; the remainder being irrigated with water from the Settlers' and New York Canals; and whereas, the District owns and controls that certain canal known as the Ridenbaugh Canal through which water is supplied from Boise River to the lands of the District for irrigation and domestic purposes, and whereas, the natural flow of Boise River which the District is entitled to divert under its priorities and appropriations, is insufficient during the latter part of said irrigation season to furnish a complete water supply for the lands of the District, and the District desires to secure a certain amount of stored water in order to furnish its land owners and water users a more complete water supply during the low water periods of the irrigation season, and

WHEREAS, the ground water table is rising in the District and in places is already close to the surface, so

that a large part of the lands of the District are likely to become permanently ruined and incapable of producing crops, or bearing any share of the expense of the District, unless a drainage system is promptly provided; and whereas, it is believed that such a drainage system will reclaim considerable areas which cannot now be cultivated successfully on account of such seepage conditions, and will check the spread of such seepage conditions, and save other large areas which are now threatened with destruction from the same cause; and

WHEREAS, the United States is now constructing, under the provisions of the Reclamation Act, that certain irrigation project known as the Boise Project, including the Arrowrock and Deer Flat storage reservoirs, and a portion of the lands of the District have been subscribed to said project by the individual owners of such lands; and

WHEREAS, it is believed that under existing conditions the only way in which the additional water supply and drainage system required by the District can be secured promptly and at a cost which the land owners of the District can afford to pay, is by means of a contract between the District and the United States, under the provisions of the Acts of Congress of June 17, 1902 (32 Stat. 388) and February 21, 1911 (36 Stat. L., 925) and Title 14 of the Idaho Revised Codes.

NOW, THEREFORE, it is hereby agreed-

1. That as a part of the general drainage system of its Boise Project, the United States will construct for the Nampa & Meridian Irrigation District, a drainage system to a total cost of Five Hundred Fifty-seven Thousand Dollars, (\$557,000). The location of the drains, to be constructed, is shown on the map attached hereto and marked Exhibit "A", it being understood that in general drains numbered "one" on the said map will be constructed first, drains numbered "two" will be constructed next, drains numbered "three" will be constructed last, so far as said limit of expenditure will allow such work to go, such drainage system to

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have sufficient capacity in its main drains to carry the seepage water flowing into the District from the lands lying above the District and drainage into it, as well as that originating in the District itself. The Supervising Engineer in charge of such construction shall have the right to make changes in the alignment of the drains shown on the attached map, and in grades and cross-sections, where such changes shall be found in his judgment to be necessary or desirable to increase the efficiency or economy of the system. It is understood that in case any part of the work shown on the said map shall prove unnecessary for the benefit of District lands, such part may be omitted by mutual consent of the parties hereto. It is fully understood that the United States is to expend only Five Hundred Fifty-seven Thousand Dollars (\$557,000), including cost of preliminary work in drainage construction for the District, under this contract, and to stop when such limit of expenditure has been reached. It is not expected that the lands of the District can be completely drained at this cost nor a drainage system extended to each farm unit, but that only a number of principal drains will be constructed with which individual and community farm drains can be connected.

2. That for the purposes of this contract, irrigable lands in the District which are now entitled to $5/8$ of a miner's inch of water or more per acre, out of the present water rights of the District, or of the Settlers' District or through ownership of stock in the New York Canal Company, are considered as old water right lands and referred to herein under that name; irrigable lands in the District which have no water right from the District or the Settlers' District, and have not been irrigated through ownership of stock in the New York Canal Company, are considered as project lands and referred to herein under that name, and irrigable tracts of land in the District which are entitled to some water from the present water rights of the District, or of the Settlers' District, or through ownership of stock in

the New York Canal Company, but less than 5/8 of an inch per acre, shall be considered as old water right lands to the extent of the number of acres for which the water right of such tract will provide 5/8 of an inch per acre, and project lands as to the remainder thereof.

3. That the District will pay to the United States for that portion of the above described drainage work in the District, equitably chargeable to the old water right lands in the District, the sum of Two Hundred Sixty-six Thousand Dollars (\$266,000), in the same number of annual installments not less than ten (10) and same percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the construction charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise Project is issued by the Secretary of the Interior, and one installment on the same day of each year thereafter until all installments are paid, and will use the taxing power of the District and all the powers and resources of the District to collect said sums of money and pay the same to the United States when due. The benefits of the expenditures of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) for drainage shall be apportioned among the old water right lands of the District. No portion of said sum of Two Hundred Sixty-six Thousand Dollars (\$266,000) shall be apportioned to the project lands in the District but the balance of the said sum to be expended on drainage works in the District as provided in paragraph 1 hereof shall be charged to the general expense of the Boise Project and the project lands in the District shall pay the construction, operation and maintenance charges provided in paragraphs 11 and 12 hereof.

4. That after the construction thereof, the District will maintain said drainage system in good serviceable condition, at its own expense, and shall charge the cost thereof to the old water right lands in the District in the

proportion which the amount of construction cost chargeable to the old water right lands in the District, to-wit, Two Hundred Sixty-six Thousand Dollars (\$266,000), bears to the total construction cost, to-wit, Five Hundred Fifty-seven Thousand Dollars (\$557,000), and will charge the balance to the United States. In case the District shall fail or neglect to maintain said drainage system in good serviceable condition, the United States may maintain or repair the same and charge the cost thereof to the District, which cost the District will promptly pay.

5. The right to water developed in the drainage system herein provided for shall belong to the Boise Project and the old water right lands of the District, and be divided between said Boise Project and said old water right lands of the District in the same proportion as the cost of the drainage system herein provided, and the drains to be constructed under this contract shall be subject to use by the lands of the Boise Project whether outside or inside the District, as well as the old water right lands of the District.

6. That the District will pay to the United States the sum of Twenty-four Thousand Eight Hundred Forty Dollars for storage capacity in Arrowrock Reservoir- a reservoir to be constructed by the United States on Boise River in Boise and Elmore Counties, Idaho, and to have a capacity of between 200,000 and 250,000 acre feet and the United States will provide for the District that portion of the total storage capacity of Arrowrock Reservoir which Twenty-four Thousand Eight Hundred Forty Dollars is of the total cost of said reservoir, and will deliver at the downstream end of the outlets of the Arrowrock Reservoir, for the District each year after the completion of said reservoir, the same proportion of the stored water available from said reservoir at such times after three (3) days notice from the District to the United States officer in charge, and in such quantities as the District may direct not in excess of

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United States 1915 Page 5

the District's proportionate part of the available outlet capacity. The total cost of said reservoir will be determined and stated by the Secretary of the Interior in his Public Notice of the charges to be made for the Boise Project, and to include all cost and expenses of whatsoever nature or kind for the purpose of, growing out of, in connection with, or resulting from the construction of said reservoir including engineering expenses and overhead charges, and such interest, if any, as may be payable on account of advances under the provisions of the Act of Congress of June 25, 1910 (36 Stat. L. 835), or other legislation by Congress.

7. The said sum of Twenty-Four Thousand Eight Hundred Forty Dollars shall be paid by the District to the United States in the same number of annual installments not less than ten (10) and same percentage of the total in each annual installment as is fixed by the Secretary of the Interior for the lands of the Boise Project in his Public Notice announcing the construction charge for the Boise Project, the first installment to be due and payable one (1) year after the day on which said Public Notice for the Boise Project is issued by the Secretary of the Interior and one installment on the same day of each year thereafter until all installments are paid; and the District will use the taxing power of the District, and all the powers and resources of the District to collect said sums of money, and pay the same to the United States when due, and will also pay each year its proportionate share of the cost of operation and maintenance of said reservoir and delivery of water therefrom, as announced by the Secretary of the Interior.

8. No interest will be charged on any of the said installments for drainage work, or stored water, or money to be paid to the United States for operation and maintenance, on account of the drainage works or stored water, until due; but any part thereof which remains unpaid after the same

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is due shall bear interest from maturity until paid at ten per cent (10%) per annum, and the United States shall not be obliged to deliver or turn out for the District any stored water while the District is in default on any of the payments herein provided to be made by the District to the United States.

9. The District agrees to distribute the amount of water delivered to it by the United States under this contract in full compliance with the provisions of said Reclamation Act of June 17, 1902, and the rules and regulations thereunder, and to use and distribute the same only upon the lands within the District, and in compliance with the provisions of Section 2 of the Act of Congress of February 21, 1911 (36 Stat. L. 925) known as the Warren Act.

10. The stored water from Arrowrock Reservoir hereinabove agreed to be purchased by the District, shall be diverted from Boise River through the canal system of the District and delivered to old water right lands in the District to supplement the water supply of such lands at times when the natural flow of Boise River is insufficient, and the benefits and cost of such stored water shall be apportioned to such lands; Provided, however, that no portion of said stored water is to be delivered, and no part of the cost thereof apportioned to those old water right lands of the District to which the first priority right of the District has been allotted under the classification of lands as to priority, which has been made by the District, it being considered that the lands having the first priority right need no stored water.

11. For the project lands in the District, the United States will provide both storage capacity in the reservoirs of the United States and carrying capacity in the United States Canal System of the Boise Project, and each year after the completion of the Arrowrock Reservoir, will deliver to the District for distribution to the project lands in the District lying under the canal system of the District, as

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nearly as practical, the same proportionate share per acre of the water actually available from said works of the United States, both flood water and stored water, as is provided for similar lands in the United States Boise Project, outside of the District except as otherwise provided in paragraph 12 hereof, but not more, however, than is needed for beneficial use on said land, and for the project lands in the District lying above the canal system of the District a similar water supply will be furnished directly by the United States through the laterals and canals of the United States. The water supply for the project lands in the District shall be carried through the Main Canal of the United States Boise Project, and that portion for the project lands lying under the canal of the District delivered to the District at convenient points in the District where laterals or distributing canals from the Canal System of the United States reach or cross the canal of the District, and will there be received by the District and distributed by the District to the project lands in the District entitled to the use thereof; under the provisions of a certain contract for the distribution of water, between the parties hereto, dated April 1, 1909, it being understood that the said certain contract shall remain in effect until such time as a new contract shall be mutually agreed upon by the parties hereto, providing for a different method of distribution of water and division of the cost of distribution.

12. The District will promptly apportion to the project lands in the District a total of Three Million Three Hundred Four Thousand Five Hundred (\$3,304,500) Dollars, being a charge of Seventy-five (\$75.00) Dollars per acre as the benefits under this contract to said lands; provided, however, that if the building charge per acre announced by the Secretary of the Interior in his Public Notice for similar lands of the Boise Project, is less than Seventy-five (\$75.00) Dollars per acre, then the assessment of benefits against the project lands in the District shall be reduced to the same amount per acre as announced by the Secretary

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of the Interior for the similar lands of the Boise Project, and the District will collect the sums so apportioned to such project lands in the District and pay the same to the United States in the same number of annual installments not less than ten (10) and same schedule of graduated payments as is fixed by the Secretary of the Interior in his Public Notices for similar lands of the Boise Project outside of the District. Provided, that should the construction charge per acre announced by the Secretary of the Interior, for the Boise Project for a full water right, be in excess of Seventy-five Dollars (\$75.00) per acre of irrigable land, the benefits to be assessed to the project lands in the District under this contract and collected by the District under this contract from the said project lands for the payment to the United States of the construction charge, shall nevertheless be only Seventy-five Dollars (\$75.00) per acre, and the number of installments and the percentage of the total payable in each annual installment shall be the same number and percentage as for the lands of the Boise Project outside of the District, but in that event, the amount of both stored water and flood water furnished for such project lands in the District by the United States shall be the same proportion of the amount furnished per acre to the lands of the Boise Project outside of the District as Seventy-five Dollars (\$75.00) per acre is to the charge announced for the Boise Project lands outside of the District; provided, that in that event, the owners of project lands in the District, individually or the District on behalf of all the project land owners in the District, may, if they or it so elect, by supplemental contract with the United States, secure from the United States works additional water sufficient to make their water rights equal in amount per acre to the rights furnished by the United States to similar project lands outside of the District, by payment of the difference between Seventy-five (\$75.00) Dollars per acre and the charge announced by the Secretary of the Interior in his ~~Public~~ Notice for the lands of the

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Boise Project outside the District, but the amount to be apportioned to the project lands in the District under this present contract shall not be in excess of Seventy-five (\$75.00) Dollars per acre. The installments of the charges apportioned to the project lands in the District shall be due and payable from the District to the United States on the same dates as fixed by the Secretary of the Interior in his Public Notice for the payment of the charges for the lands of the Boise Project outside of the District. The District will be reimbursed by the United States for the cost of distributing the water to said project lands in the District by the payment to the District of the pro-rata share of the cost of operation and maintenance provided in the contract of April 1, 1909, between the District and the United States, until the expiration of said contract as provided in paragraph 11 hereof and thereafter under the new contract provided to be made in paragraph 11 hereof. The project lands in the District shall pay the same operation and maintenance charge per acre as announced by the Secretary of the Interior for similar lands of the Boise Project and the same shall be collected by the District for the United States and paid over by the District to the United States, and upon notice from the officer of the United States in charge of the Boise Project, the District will withhold the delivery of water from such project lands in the District as are in default in the payment of said operation and maintenance charge.

13. It is fully understood that the old water right lands of the District shall not in any event be liable for any part of the charges herein agreed to be apportioned to and collected from the project lands, nor the project lands for any portion of the charges herein agreed to be apportioned to or collected from the old water right lands in the District, and the United States agrees to waive the right to hold either of said two classes of land for any part of the charges herein agreed to be apportioned to and paid by the other, but will look to the old water right lands for the old

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water right land charges and the project lands for the project land charges.

14. No interest will be charged on any of said installments for water to be supplied to said project lands in the District until due, but any part thereof which may remain unpaid after the same is due, shall bear interest from maturity until paid at ten (10%) per cent per annum, and the United States shall not be obliged to deliver or turn out for the District any water for such project lands in the District as are in default on any of the payments herein provided to be made. Provided, the project lands in the District shall be subject to the same provisions as to residence, cultivation and limit of area as the lands of the Boise Project outside of the District.

15. The United States will assent to the release by the Payette-Boise Water Users' Association of such lands in the District as have been subscribed under stock subscription and contract to the said association, and have therefore become subject to the lien provided in such subscription and contract for the repayment of a proportionate part of the cost of the Payette-Boise Project from the lien and obligation of such stock subscription, and also release and cancel the contract under date of October 12, 1906, between the Nampa & Meridian Irrigation District and the Payette-Boise Water Users' Association, providing for a credit to the subscribed lands of the District for existing works, as regards both the old water right lands and the project lands.

16. The Payette-Boise Water Users' Association agrees to join in the release of said stock subscription contracts and liens upon conditions above stated, and its name is subscribed hereto in evidence thereof.

17. Where any appropriations of water have been made and water rights acquired by parties other than the District out of any of the draws, sloughs or natural channels of the Nampa & Meridian Irrigation District, and such rights are interfered with by the ~~interference~~ of such channels and the

construction of the said drainage system in the District, it is understood that the money herein provided for the construction of drainage works shall be available for the satisfaction of any just claims for damages and of judgments, liabilities or obligations on account of, growing out of, or resulting from the interference with any such rights by the deepening of such channels and construction of such drainage system, and that the United States may pay such claims, judgments, liabilities and obligations out of said money. Any lateral construction which may be agreed upon between the District and the United States as being necessary to replace the rights of flow through natural drainage lines, may be built by the United States as a part of the drainage system herein contemplated.

IN WITNESS WHEREOF, the parties hereto have caused their names and seals to be attached the day and year first above written, the Nampa & Meridian Irrigation District, and the Payette-Boise Water Users' Association, acting in pursuance of resolutions of their Board of Directors, of which Certified copies are hereto attached and made a part hereof.

NAMPA & MERIDIAN IRRIGATION DISTRICT

(SEAL)

ATTEST:

G A Remington
Secretary

By H. B. Carpenter
President

PAYETTE-BOISE WATER USERS' ASSOCIATION

(SEAL)

ATTEST:

W L Girard
Secretary

By J W Brandt

Andrieus A Jones
1st Asst SECRETARY OF THE INTERIOR
for and on behalf of the
United States

sgd Dec 13, 1915

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NOV 19 1992

Nampa-Meridian Drainage System

Est. of Mar 24, 1914

ESTIMATE OF COST

The drainage ditches proposed for construction are listed below, together with their cost, size, yardage, and other information. All the ditches in the Nampa-Meridian District will discharge into drainage ditches now under construction in the Pioneer Irrigation District below the Phyllis Canal, with the exception of the Five Mile Creek Drainage System, and the Ten Mile Drainage System.

The proposed ditches will follow the natural drainage courses as closely as feasible, and these channels will be straightened and deepened.

Five Mile Creek Wilson Slough

Furdam Gulch Elijah Slough

These drains together with their branches:

Ten Mile Creek Orr Slough

Nine Mile Creek Joseph Slough

Sky Pilot Slough Aaron Slough

compose the entire drainage system.

RECEIVED
NOV 19 1914

WORK WITHIN NADIA-MERIDIAN DISTRICT

Five Mile Creek Drainage System

Name	Est Dis-charge Sec ft	Base Width	Water Surface In ft	Water Depth In ft	Area Drained Acres	Cubic Yds
Five Mile Cr	62-90	10'	13.6-16.6	1.2-2.2	27,165	558,920
Nine Mile Cr	9	5'	7.1- 7.7	.7- .9	3,150	134,725
Sky Pilot Sl	4	5'	6.8	.6	1,175	59,420
Total						553,065
Total for System		Add 20% . . .				110,613
						663,678

Ten Mile Creek Drainage System

Ten Mile Cr	34	6'	9.4-10.8	1.1-1.6	8,710	389,950
Total for System		Add 20% . . .				77,990
						467,940

Furdam Gulch Drainage System

Furdam Glch	20-28	5'	8.0- 9.8	1.0-1.6	11,195	120,020
Total for System		Add 20% . . .				24,004
						144,024

Wilson Creek Drainage System

Wilson Sl	13-27	5'	9.8-11.0	1.2-1.5	10,530	154,336
Grr Sl	5.1	5'	7.0- 7.4	0.5-0.6	1,530	53,390
Total						207,726
Total for System		Add 20% . . .				41,544
						249,270

Elijah Slough Drainage System

Elijah Sl	23-33	5'	9.8-11.0	1.2-1.5	13,040	123,650
Joseph Sl	3.5	5'	7.0	0.5	960	95,160
Aaron Sl	4.0	5'	7.0	0.5	1,140	79,080
Total						297,890
Total for System		Add 20% . . .				59,578
						357,468

Changes in Lateral System Made Necessary by Drainage

South Lateral (to carry Five Mile Creek water)	13,260
Settlers Canal Reconstruction	5,665
Small miscellaneous lateral construction	6,818
Total	25,743
Add 10%	2,574
Total Cu Yds for System	28,317

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WORK OUTSIDE NAMPA-MERIDIAN DISTRICT

Five and Ten Mile Drainage System

Name	Est. Dis- charge Sec ft	Base Width	Water Depth In ft	Area Drained (Acres)	Cubic Yds
Five Mile Cr	90-133	14-10	20.6-16.6	31,300	217,995
Ten Mile Cr	29- 34	6	10.2-10.8	10,115	125,025
Total					<u>343,020</u>
		Add 20%			38,604
Total for System					<u>381,624</u>

ESTIMATED COST OF DRAINAGE SYSTEM

Work Within Nampa-Meridian District

Five Mile Creek Drainage System 663,678 cu yds
Ten Mile Creek Drainage System 467,940
Purdam Gulch Drainage System 144,024
1,275,642
Wilson Slough Drainage System 249,270
Elijah Slough Drainage System 357,468
606,738
Changes in Canal and Lateral System 28,317
Total to be Excavated within Nampa-Meridian Dist . . 1,910,697

1,275,642 cu yds at 20¢. \$255,128.40
606,738 " " " 18¢. 109,212.80
28,317 " " " 30¢. 8,495.10
Right of Way 25,595.00
Canal Crossings & Miscel Structs. 30,882.00
Bridges. 40,613.00
Total 469,926.30

Add 15% for Engineering & Incidentals 70,488.95

Total Cost Work within District \$540,415.25

Microfilm

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ESTIMATED COST OF WORK
OUTSIDE OF NAMPA-MERIDIAN DISTRICT

Required to furnish an outlet for District drainage water and to serve as local drains for lands in Pioneer Irrigation Dist

Five Mile & Ten Mile Drainage System

Total Excavation.	411,624 cu yd
411,624 cu yds at 20¢	\$82,324.80
Right of Way.	580.00
Canal Crossing & Misc Structures . . .	3,160.00
Bridges	<u>5,150.00</u>
Total	\$91,814.80
15% for Engineering & Incidentals . . .	<u>13,772.20</u>
Estimated Total Cost.	\$105,587.00

These drains if made deep as contemplated in above estimate, will drain certain lands in the Pioneer District and for that reason, it is assumed that arrangements can be perfected to have the Pioneer District pay for one-half the cost of these drains but not to exceed \$50,000.00, leaving a balance estimated at \$55,587.00 to be paid jointly by the United States and the Nampa-Meridian District, which amount is figured to be ample for the construction of shallow drains in the even the Pioneer District prefers not to make such arrangements.

SUMMARY OF ESTIMATES

Total Cost Work Within Nampa-Meridian District	\$540,415.25
Total Cost Work Outside Nampa-Meridian District	<u>105,587.00</u>
Total Cost of Proposed Work	\$646,002.25
Estimated Share Assumed by Pioneer District	50,000.00
Estimated Share Assumed by Nampa-Meridian District and United States.	<u>596,002.25</u>

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ESTIMATE OF COST GROUPED ON IMPORTANCE OF WORK

NO 1 DRAINAGE DITCHES

Name	Stations	Length in miles	Earthwork	Cost
Five Mile Creek	74 to 356	5.34	261,594	66,595.12
" " "	356 to 720	6.89	335,616	110,946.48
Ten Mile Creek	0 to 215	4.07	150,030	38,991.90
" " "	215 to 760	10.33	467,940	134,248.70
Nine Mile Creek	0 to 192	3.64	161,670	48,799.10
Wilson Slough	550 to 550	3.79	185,203	43,613.96
Elijah Slough	500 to 494	3.68	148,385	41,015.67
Orr Slough	0 to 80	<u>1.51</u>	<u>64,068</u>	<u>15,752.98</u>
Total No 1 Drains		39.25	1,774,506	\$499,968.91

NO 2 DRAINAGE DITCHES

Purdan Gulch	230 to 422	3.64	144,024	\$ 42,495.72
Joseph Slough	0 to 153	2.90	114,192	27,933.57
Five Mile Creek	720 to 830	<u>2.08</u>	<u>95,088</u>	<u>36,572.19</u>
Total No 2 Drains		8.62	353,304	\$107,001.48

NO 3 DRAINAGE DITCHES

Aaron Slough	0 to 80	1.51	94,897	20,984.00
Sky Pilot Slough	0 to 120	<u>2.27</u>	<u>71,304</u>	<u>18,051.32</u>
Total No 3 Drains		3.78	166,201	\$ 39,035.32

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SUMMARY OF GROUPS ACCORDING TO IMPORTANCE

Total Cost of No 1 Drainage System	\$ 499,968.91
Total Cost of No 2 Drainage System	<u>107,001.48</u>
Total Cost Nos 1 and 2 Drains.	\$ 606,970.39
Total Cost No 3 Drainage System.	<u>39,035.32</u>
Total Estimate	\$ 646,005.71

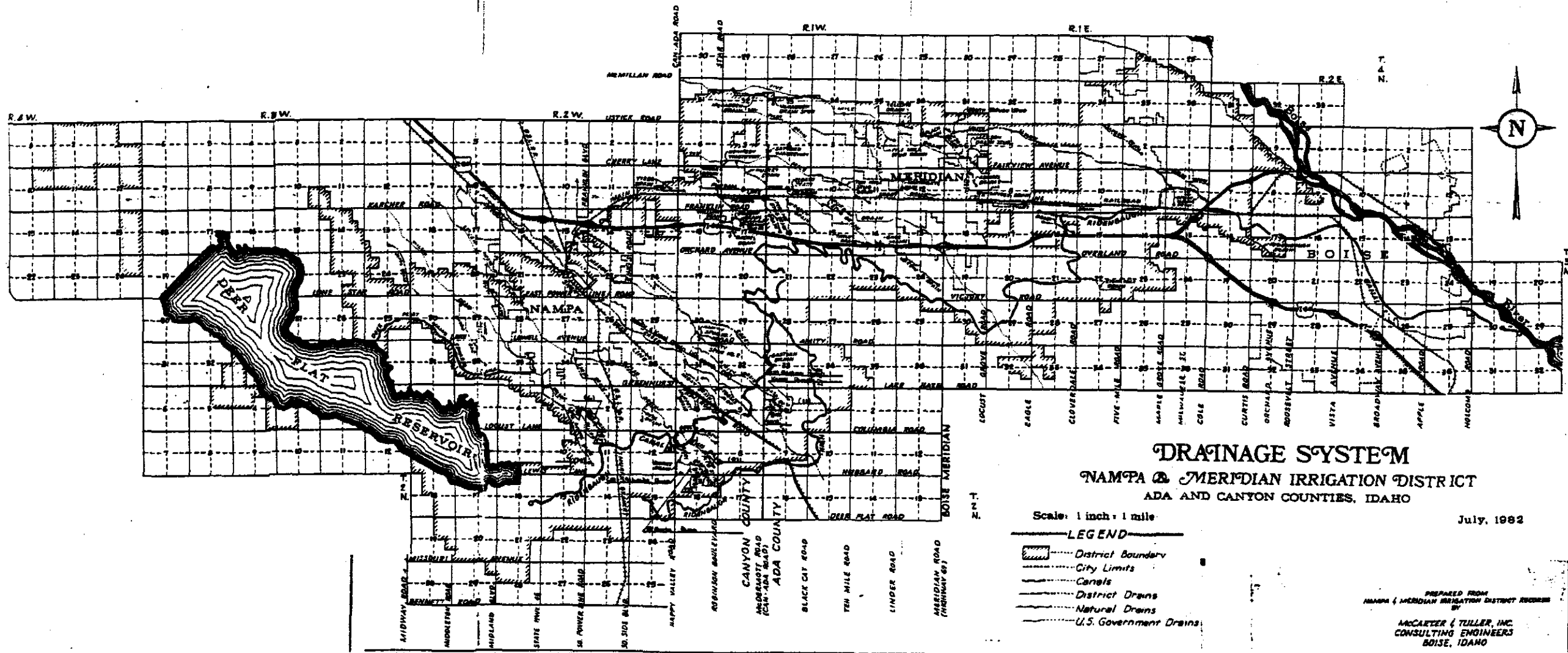
DISTRIBUTION OF COST

	Paid by Nampa-Meridian District and United States	Assumed Amt to be paid by Pioneer District	Total Cost
Estimated cost within Nampa-Meridian District - No 1 & No 2 Drains	\$ 501,383.00		\$501,383
Estimated cost outside of Nampa-Meridian District	<u>55,587.00</u>	<u>\$ 50,000.00</u>	<u>105,587</u>
	556,970.00		
	or say		
	557,000.00	50,000.00	606,970
To be paid by Government	<u>291,000.00</u>		
To be paid by Nampa-Meridian District	\$ 226,000.00		

I hereby certify this to be a true and accurate copy.


 Daren R. Coon, Secretary/Treasurer
 NAMPA & MERIDIAN IRRIGATION DISTRICT

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 NOV 19 1992



Protestant's Exhibit No. 2

Admitted 7/8/92 by G. Sapp

MIDDERVED

NOV 19 1992

- (1) The Burke Pump is 352 feet north from the center of Lewis Lane on the Bray Drain.
(In Section 7 T2N R1W) (50' deep)
- (2) To the south and east on the Bray Drain, the first well is 640 feet east from the center of Lewis Lane. The second well is 876 feet south. (In Section 18 T2N R1W)
(shallow well)
- (3) Starting at the intersection of the Bray Drain and Lewis Lane, the Schmitt Pump is 824 feet west along the road and then north 31 feet from the center of Lewis Lane. (In Section 7 T2N R1W) (< 50' well)
- (4) On the Bray Stub Drain, starting from the center of Lewis Lane, the first well is 302 feet north and the second well is 822 feet. (In Section 7 T2N R1W)
(shallow well)
- (5) On the Bray Drain/Lateral, the first well is 187 feet west of South Powerline Road. (In Section 3 T2N R2W) (Patterson wells)
- (6) On the Bray Drain/Lateral, starting from the east side of South Powerline Road where the drain crosses the road, the first well is 140 feet to the south. The second well is 222 feet, the third well is 316 feet and the fourth well is 937 feet. The fifth well is 1119 feet from South Powerline Road. (In Section 2 T2N R2W)
(artesian wells)
- (7) On the Bray Drain/Lateral, starting from the center of Locust Lane, the first well is 38 feet south. The second well is 68 feet south. (In Section 11 T2N R2W)
(shallow wells)
- (8) On the Bray Drain, starting at the corner of Locust Lane and Happy Valley, the first well is 500 feet south along Happy Valley Road and the second well is 771 feet along Happy Valley Road going south. (In Section 7 T2N R1W)
(artesian well)
- (9) On the Ellis Drain, from the center of the south side of the New York Canal road, the first well is 800 feet to the south and the next well is 817 feet south. (In Section 7 T2N R1W) (200' deep w/pump)
- (10) On the Kasel Drain, 799 feet east from the center of McDermott Road on the first south drain, it is 316 feet to the first well and the second well is 822 feet. The third well is 931 feet to the southeast and the fourth well is 1267 feet to the southeast. The fifth well is southeast 1392 feet. (In Section 4 T2N R1W)
(50-60' deep well)
shallow
- (11) On the Kasel Drain, from the first south drain that is 799 feet east from the center of McDermott Road, it is 1394 feet east to the Kasel Pump. On the second drain going south (not on July 1982 Drainage System map), the first well is south 273 feet and the second well is to the south 580 feet. (In Section 4 T2N R1W)
(50'-60' deep well)
shallow
- (12) The Bastian Pump is 1401 feet east from the center of McDermott Road up Mason Creek on the east side of the Ridenbaugh Canal. (In Section 33 T3N R1W)
(shallow well)
- (13) The Amity and Kasel Drain lift pump is on the east side of the Ridenbaugh Canal and 71 feet on the north side of Lake Hazel Road. (In Section 32 T3N R1W)
(surface pump)
- (14) On the 12th Avenue Drain, from the center of Ruth Lane going upstream to the south-east towards South Powerline Road, the well is 560 feet. (In Section 11 T2N R2W)
(Artesian well)

NOV 19 1982

EXHIBITS

~~of~~

~~HEARING TAPE~~

NOV 19 1992

RECEIVED

Re: ID Department of Fish & Game, No. 63-11705

Place: ID Dept. of Water Resources, 1301 N. Orchard, Boise, ID

Date: September 8, 1992

Hearing conducted by: Glen Saxton

ROSTER OF ATTENDANCE

[illegible]

P 054 455 013



**Receipt for
Certified Mail**

No Insurance Coverage Provided

**TERRY HOLUBETZ
ID DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686**

Postage

\$

Certified Fee

Special Delivery Fee

Restricted Delivery Fee

Return Receipt Showing
to Whom & Date Delivered

Return Receipt Showing to Whom,
Date, and Addressee's Address

TOTAL Postage
& Fees

\$

Postmark or Date

PS Form 3800, June 1991

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED 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 inquiry.

P 054 455 014



**Receipt for
Certified Mail**

No Insurance Coverage Provided

**JOHN P ANDERSON
NAMPA & MERIDIAN IRRIG I
1503 1ST ST S
NAMPA ID 83651-4395**

Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1991

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED 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 inquiry.

P 054 455 010



Receipt for Certified Mail

No Insurance Coverage Provided

Do not use for International Mail

TERRY HOLUBETZ
ID DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

NOV 6 1992

Postage

Certified Fee

Special Delivery fee

Restricted Delivery Fee

Return Receipt Showing
to Whom & Date Delivered

Return Receipt Showing to Whom,
Date, and Addressee's Address

TOTAL Postage
& Fees

\$ 2 29

Postmark or Date

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED 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 inquiry.



Receipt for Certified Mail

No Insurance Coverage Provided

JOHN P ANDERSON
NAMPA & MERIDIAN IRRIG DI
1503 1ST ST S
NAMPA ID 83651-4395

Postage	\$.29
Certified Fee	1. —
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1. —
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$ 2 29
Postmark or Date	

PS Form 3800, June 1991

**STICK POSTAGE STAMPS TO ARTICLE TO COVER FIRST CLASS POSTAGE,
CERTIFIED MAIL FEE, AND CHARGES FOR ANY SELECTED 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.
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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 inquiry.

62-11105

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

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

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

3. Article Addressed to:

JOHN P ANDERSON
 NAMPA & MERIDIAN IRRIG DI
 1503 1ST ST S
 NAMPA ID 83651-4395

4. Article Number

P 397 917 169

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee
 Agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

AUG 28 1992

Addressee's Address (ONLY if requested and fee paid)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

RECEIVED

AUG 31 1992



PENALTY FOR PRIVATE
USE, \$300

Department of Water Resources
Western Regional Office

RETURN

TO

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

NOV 9 1992

DEPARTMENT OF WATER RESOURCES

2735 AIRPORT WAY
BOISE, IDAHO 83705

BOISE ID 83707 DC81 22:43 08-28-92

65-11103

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

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

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

3. Article Addressed to:

TERRY HOLUBETZ
ID DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

4. Article Number

P 054 455 010

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

8-28-92

8. Addressee's Address (ONLY if requested and fee paid)

UNITED STATES POSTAL SERVICE ID 83705 DCR1 22:43 08-28-92

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

RECEIVED

AUG 31 1992



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO

Print Sender's name, address, and ZIP Code in the space below.
Department of Water Resources
Western Regional Office

RECEIVED

DEPARTMENT OF WATER RESOURCES

2735 AIRPORT WAY

BOISE, IDAHO 83705

NOV 19 1992

IDAHO DEPARTMENT OF WATER RESOURCES

WESTERN REGION

2735 Airport Way

Boise, Idaho 83705-5082

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

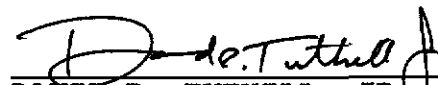
IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-11705 IN THE NAME)
OF IDAHO DEPARTMENT OF FISH & GAME)

NOTICE OF
RESCHEDULING
HEARING

On March 30, 1992, the Department of Water Resources received a protest against the approval of Application for Permit No. 63-11705. A hearing was set for Wednesday, August 26, 1992, at 9:00 a.m. in the First Floor Conference Room, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho, 83706. The hearing date has been changed to Tuesday, September 8, 1992, at 10:00 a.m. in the Second Floor Conference Room, Idaho Department of Water Resources, 1301 North Orchard Street, Boise, Idaho 83706.

The hearing 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 and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 27th day of August, 1992.



DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

NOV 19 1992

I hereby certify that on the 27th day of August, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary, Office Coordinator

Certified Mail

TERRY HOLUBETZ
ID DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83638

JOHN P ANDERSON
NAMPA & MERIDIAN IRRIG DIST
1503 1ST ST S
NAMPA ID 83651-4395

Non-Certified Mail

ANDREW M HARRINGTON ESQ
RINGERT & CLARK
455 S THIRD ST
PO BOX 2773
BOISE ID 83701

STEVE GODDARD ESQ
ID DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

NOV 19 1992

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing 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 proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 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, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 5, local public interest, lies with the both the applicant and protestant as to factors which they are most knowledgable and cognizant of. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

RECEIVED
JUL 9 1992

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

MICROFILMED

NOV 19 1992

**RINGERT
CLARK**
CHARTERED
LAWYERS

RECEIVED
AUG 19 1992

Department of Water Resources
Western Regional Office

William F. Ringert
D. Blair Clark
Andrew M. Harrington
James G. Reid
Jeffrey R. Christenson
James P. Kaufman
Laura E. Burri
David Hammerquist
Daniel V. Steenson

Samuel Kaufman (1921-1986)

August 18, 1992

DM
Steve Goddard, Attorney
Idaho Department of Fish & Game
P.O. Box 25
Boise, Idaho 83707

Re: License Agreement - Wilson Drain and Bray Lateral

Dear Steve:

I wrote Terry and you on August 7, 1992 and sent along duplicate originals of License Agreement for final review and signature. On the same day--August 7--by letter dated August 6 Terry mailed me proposed License Agreement prepared by Idaho Fish & Game.

I am greatly disappointed in the terms of the License Agreement mailed to me. Fish & Game apparently now has repudiated positions long since agreed upon by both parties. Concessions made by Nampa & Meridian Irrigation District intended to satisfy demands of Fish & Game are now said to be insufficient and more on the same subject demanded. I thought following the June 8 hearing before Department of Water Resources that the parties were very near agreement and I thought agreement should have been reached by virtue of my letter to Terry and you dated July 31. However, since then Fish & Game appears to have headed in a direction directly opposite.

Following are comments on the proposed changes by Fish & Game; references are to the License Agreement prepared by Fish & Game and mailed to me August 7:

Page 3, 2nd full par.: In your letter to me dated July 24, 1992 you asked that the word "reasonable" be inserted in what was the final sentence of this paragraph. I complied with that request in the agreement I later sent you. Now we find that the sentence in which "reasonable" was inserted has now been entirely eliminated.

Page 8, par. 2: Here I inserted the word "only" exactly where Terry had requested it with the anticipated result that that issue had been settled. Now I see that additional language on the same subject has been added to this paragraph.

Page 8, par. 3: Virtually from the first time I spoke with Terry he insisted that Fish & Game conceded the superiority of the water right of NMID and agreed to inclusion of a statement to that effect through all the drafts of the agreement. Now that statement has been entirely eliminated although agreement by NMID to withdraw its protest remains.

455 South Third Street • P.O. Box 2773 • Boise, Idaho 83701 • 208/342-4591 FAX 342-4657

NOV 19 1992

Also eliminated were references to the water in which NMID has the prior right although the eliminated language I believe restricts rather than enlarges the right by its description of it and Fish & Game's objection was at most that the words were unnecessary.

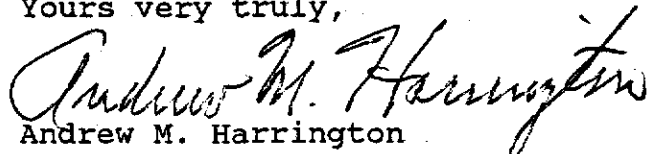
Page 9, par. 8: This paragraph is a boiler plate used in all license agreements in which water is discharged into an NMID watercourse. It merely permits NMID to prohibit discharge into Wilson Drain if such discharge becomes in violation of EPA or other governmental directives, a situation which I am sure Fish & Game as well as NMID would want to avoid. Terry has told me he had no problem with this paragraph.

Page 9, par. 9: This paragraph restricts acquisition of a water right by Fish & Game in Wilson Drain for fishing or other recreational purposes. NMID cannot permit creation of a water right in waters used for drainage and irrigation purposes. It is thought that Fish & Game has no intention of creating a water right in the waters of Wilson Drain and I would think would have no objection to inclusion of the paragraph other than the expressed objection that it is unnecessary. It may be unnecessary from the standpoint of Fish & Game but NMID feels it should be included in the agreement and sees no good reason why it should not be.

We have no objection to restriction of attorney fees to "reasonable" fees and have sent you our itemized statement of charges in connection with the agreement.

Regarding the addition referred to above at page 8, par. 2, it may be that the new sentence at the end of the paragraph beginning "Foot access" may be agreed to by NMID after I have had a chance to speak with NMID personnel. However, each of the other changes enumerated above I am sure will not be acceptable to NMID.

Yours very truly,


Andrew M. Harrington

AMH/llw:

cc: John Anderson
David Tuthill 

NOV 19 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
	)	
FOR PERMIT NO. 63-11705 IN THE	)	NOTICE OF HEARING
	)	
NAME OF IDAHO DEPARTMENT OF	)	
	)	
<u>FISH AND GAME</u>	)	

On February 26, 1992, the Idaho Department of Fish and Game filed with the Department of Water Resources an application for permit to appropriate the public waters of the State of Idaho, for storage purposes. The application was protested by Nampa and Meridian Irrigation District and a conference was held by the Department on July 30, 1992.

The Department has now set the matter of protest for a hearing to be held on August 26, 1992, at 9:00 a.m. at the First Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706. The hearing 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 and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and

NOTICE

NOV 19 1992

Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 17 day of August, 1992.

David R. Tuthill, Jr.
DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

I hereby certify that on the 14th day of August, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary, Office Coordinator

Certified Mail

TERRY HOLUBETZ
ID DEPT OF FISH AND GAME
3101 S POWERLINE
NAMPA ID 83638

JOHN P ANDERSON
NAMPA & MERIDIAN IRRIG DIST
1503 1ST ST S
NAMPA ID 83651-4395

Non-Certified Mail

ANDREW M HARRINGTON ESQ
RINGERT & CLARK
455 S THIRD ST
PO BOX 2773
BOISE ID 83701

STEVE GODDARD ESQ
ID DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

MICROFILMED

NOV 19 1992

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing 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 proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 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, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 5, local public interest, lies with the both the applicant and protestant as to factors which they are most knowledgable and cognizant of. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

**RINGERT
CLARK**
CHARTERED
LAWYERS

✓ent
File - Protected IDFG
App —

William F. Ringert
D. Blair Clark
Andrew M. Harrington
James G. Reid
Jeffrey R. Christenson
James P. Kaufman
Laura E. Burni
David Hammerquist
Daniel V. Sreenson

Samuel Kaufman (1921-1986)

July 31, 1992

RECEIVED
AUG 03 1992

Terry Holubetz
Steve Goddard
Idaho Department of Fish & Game
P.O. Box 25
Boise, Idaho 83707

Department of Water Resources
Western Regional Office

Re: License Agreement - Wilson Drain and Bray Lateral

Dear Terry and Steve:

I spoke with Terry yesterday after our hearing at Department of Water Resources to see whether we could reach agreement on the terms of the License Agreement after the exchanges of information and positions at the hearing.

Terry said at the hearing that he could perceive only two obstacles to reaching accord on the terms of the license agreement: amount of water flow and relocation of the word "only" in one of the paragraphs of the license agreement.

In reliance on Terry's statements regarding water flow and his confidence that he could produce supporting data plus the observations of Dave Tuthill at the hearing, I sense that we will have no problem on this subject.

I told Terry yesterday that we would place the word "only" in the agreement where Fish & Game wants it placed. As a consequence, I will broaden the already existing indemnity provisions with regard to the bridges so as to include other general use of the easement. Extension of this indemnity has been previously discussed and has presented no problem.

After I have made these and other changes discussed below in this, the fifth, draft of the agreement, I will send you an itemization of my time and charges allocated to the license agreement and excluding, as I have in keeping my time, charges in relation to the agreement and related matters that I felt should be made to NMID.

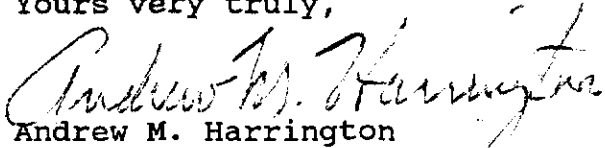
I will adjust the agreement to remove references to and provisions regarding the Millard Well. Terry yesterday and Steve in his letter to me dated July 24 referred to paragraphs 3, 8 and 9 of Exhibit D. These paragraphs were not referred to as problematical in the hearing yesterday if referred to at all. In each instance, NMID wishes to include certain provisions which it deems important while

NOV 19 1992

Fish & Game views them as harmless but unnecessary. Over the years I have always followed the rule that if one party strongly wishes inclusion of a particular provision and the other party believes the provision is merely superfluous, the provision should be included.

Based on our discussions at the hearing, it seems to me there is no reason why we cannot enter into the agreement, the problems referred to at the hearing having been resolved as stated above. There was some discussion between Terry and me yesterday about Terry stating certain particulars in a letter to me and I will await that letter before I make what I hope to be a final draft of the agreement. I hope that letter raises no new serious issues.

Yours very truly,


Andrew M. Harrington

AMH/llw
cc: David Tuthill
Bill Henson

NOV 19 1992

Conference Notes. by D. Tutthill 7/30/1990

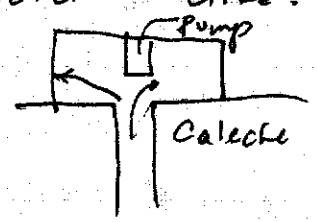
63-11705 in the Name of Id Dept of Fish & Game

Applicant -
IDFG - Terry Holubetz
Shere Goddard

Bill Henson - Nampa / Meridian
Andreas Harrington ID

Terry Holubetz

Originally planned to use the Marland well / Now intend to use only the Tackett well. This well provides artesian flow into the Wilson Drain. Pond lies west of Wilson Drain. Overflow from the pond is intended to flow into Wilson Drain at various points between the existing p/a and a point 300' downstream. Use is non-consumptive. The water supply line is intended to cross Wilson Drain. Brief retention time; no pollutants planned to be added. Springs arose in the vicinity of the pond. Soil is tight clay with underlying coleche. Wells in this area are uncased. ^{below coleche} Marland well is cased above ground - presently is not flowing. Water from Tackett well has historically flowed into Wilson Drain from the east. Under proposal, 380 gpm would flow into the ponds (pumped), low lift (Panna), over the dike. Bridge has been replaced ~~from Wilson Drain~~.



Pump will divert only the water ^{NOV 19 1992} coleche. Could reduce head on the well by 1.5', thus increasing the flow.

Concerns of Protestants (per Andrew Harrington)

IOWE issue * - Amount of water in the drain will be reduced by the surface evaporation of the pond.

IOWE issue * - Vegetative matter could enter into Wilson Drain.
 - Liability of bridge over Wilson Drain - seeking indemnification
 - Does not want "fishing" water rights to be established.

Issues:

* 1. Does impact other water rights (consumption of add'l surface area).

* 2. Possible

3.

4.

5. Vegetative matter

* 6. Possible

Pond will not interfere with Wilson Drain.

Set
 → Aug 26th for hearing date

RECEIVED

NOV 19 1992

Attendance - Conf for 63-11705
Id Dept of Fish & Game

<u>Name</u>	<u>Representing</u>
Andrew M. Harrington	NMID
Bill Renon	NMID
Terry Houbert	IDFG
Steve Goddard	IDFG.

MICROFILMED

NOV 19 1992

RINGERT CLARK

CHARTERED
LAWYERS

RECEIVED

JUL 20 1992

July 17, 1992

Department of Water Resources
Western Regional Office

William F. Ringert
D. Blair Clark
Andrew M. Harrington
James G. Reid
Jeffrey R. Christenson
James P. Kaufman
Laura E. Burri
David Hammerquist
Daniel V. Steenson

Samuel Kaufman (1921-1986)

Steve Goddard, Attorney
Idaho Department of Fish & Game
P.O. Box 25
Boise, Idaho 83707

Re: License Agreement - Wilson Drain and Bray Lateral

Dear Steve:

On July 2 I completed revisions of the proposed license agreement (fourth draft) and Terry Holubetz picked the agreement up from our offices. Terry called me July 6 to discuss the agreement which he said had not yet been reviewed by you. I asked Terry about any objections he had to the agreement and he told me that the word "only" in par. 2 at page 8 of the agreement was in the wrong place in the sentence and that Fish & Game was willing to pay attorney fees in connection with the agreement but only if the fees were reasonable. Terry told me to call you.

I left a telephone message for you the following day which you returned the day (July 8) following that. You at that time suggested a conference on the subject of the agreement, to which I agreed. Terry was to be out of his office until July 13 or 14, you had a conference later in the week or on July 13, and I had a supreme court brief due July 13 that I thought I might complete, as I did, on July 10. I expected to hear from you concerning our conference on July 13 or 14 but I have not.

I suggested on July 8 that you write me listing any objectionable parts of the agreement so I could determine whether they could be resolved. You said you would. I have not received that listing of objections from you.

I see no problem with placing the word "only" where Terry wants it placed, perhaps with some innocuous language added to the agreement, and I will be happy to forward to you my time and charges so you can discuss their reasonability with me. These are the only objections to the agreement that I have been apprised of.

I received today from Department of Water Resources a Notice of Conference set for July 30, 1992 on the protest of Nampa & Meridian Irrigation District to Fish & Game's application for permit. I do not know whether Terry once again has called Department of Water Resources to set a hearing as he has in the past when negotiations about the

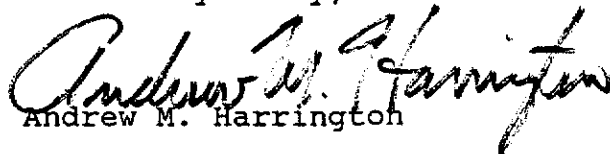
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NOV 19 1992

license agreement frustrate him. I on the other hand become frustrated when I am not told what changes Fish & Game wants in an agreement so I am not given the opportunity to consider and very possibly make the desired changes. It is very difficult to conduct negotiations when periodically and without notice one party breaks off communication and requests a hearing.

It is impossible to reach an agreement if you will not tell me what you find unacceptable about the agreement. The only two objections mentioned to me to the last draft of the agreement I believe can be taken care of.

Yours very truly,


Andrew M. Harrington

AMH/llw

cc: Terry Holubetz
John Anderson
David R. Tuthill

RECEIVED

NOV 19 1992

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-11705 IN THE)
NAME OF STATE OF IDAHO, FISH)
AND GAME)

NOTICE OF CONFERENCE

On February 26, 1992, the State of Idaho, Department of Fish and Game filed with the Department of Water Resources an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Nampa & Meridian Irrigation District.

The Department has set the matter of protest for a conference to be held on Thursday, July 30, 1992, at 10:00 a.m., in the First Floor Conference Room, Department of Water Resources, 1301 N. Orchard St., 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 Practice and Procedure of the Department of Water Resources, and Rules 4 and 5 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 16th day of July, 1992.

David R. Tuthill, Jr.

DAVID R. TUTHILL, JR., P. E.

Manager, Western Regional Office

NOV 19 1992

I hereby certify that on the 16th day of July, 1992, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor
Secretary

Certified Mail

TERRY HOLUBETZ
ID DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

JOHN P ANDERSON
NAMPA & MERIDIAN IRRIG DIST
1503 1ST ST S
NAMPA ID 83651-4395

- - - - -
- Non-Certified Mail

ANDREW M HARRINGTON ESQ
RINGERT & CLARK
455 S THIRD ST
PO BOX 2773
BOISE ID 83701

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

In accordance with IDAHO CODE, Section 42-203, the following issues are involved in the consideration of the application and protest(s):

- 1) Will the proposed use reduce the quantity of water under existing 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 proposed project?
- 5) Will the proposed use conflict with the local public interest?
- 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, that is, the applicant has the burden of coming forward with evidence for evaluation of those criteria.

The initial burden of proof on issue 5, local public interest, lies with the both the applicant and protestant as to factors which they are most knowledgable and cognizant of. The applicant has the ultimate burden of persuasion with respect to this issue.

PROCEDURE

The procedure normally followed by the department in arriving at a decision on the issues which must be considered is to first hold a conference in the matter and then, if necessary, hold a hearing. If a hearing is held a written decision is issued based on the hearing record.

CONFERENCE

Preliminary to holding a hearing, a pre-hearing conference is held to to familiarize the department and the parties with the matter and to determine if a resolution of the protest(s) is possible without the need for a hearing.

NOV 19 1992

At the conference the department may formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

HEARING

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be issued and the parties will be afforded the opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by IDAHO CODE, Section 42-1701A.

The parties by written stipulation, may waive their right to a proposed decision, however, the failure of either party to waive a proposed decision will not prejudice the director's review of a party's evidence and arguments. However, such a waiver will shorten the decision making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 42-1701A is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Under the provisions of the IDAHO CODE, Sections 42-1701A and 67-5215, any court review of the department's decision on appeal shall be confined to the record created before the department.

EXHIBITS

If any party at a hearing intends to present an exhibit to augment the hearing record, such party shall in advance of the hearing, prepare sufficient copies of the exhibit for distribution to all parties at the hearing.

NOV 19 1992

CONVERSATION MEMORANDUM

DATE 7/9/92

FILE 63-11705

NAME OF PARTY IDFG

EMPLOYEE D. Tuthill

RE: _____

Called to assess status. Terry Blane Holubetz is out until 7/13
I left a message for him to return my call.

DAT

MICROFILMED

NOV 19 1992

**RINGERT
CLARK
CHARTERED
LAWYERS**

104
JUN 11 1992
Department of Water Resources
Western Regional Office

William F. Ringert
D. Blair Clark
Andrew M. Harrington
James G. Reid
Jeffrey R. Christenson
James P. Kaufman
Laura E. Burn
David Hammerquist
Daniel V. Steenson

Samuel Kaufman (1921-1986)

June 10, 1992

David R. Tuthill
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Protest of Filing 63-11705

Dear Mr. Tuthill:

This is in response to your letter to me dated June 4, 1992 regarding withdrawal of protest by Nampa & Meridian Irrigation District in connection with the above application made by Idaho Department of Fish & Game. You and I discussed the subject after I wrote you my letter dated May 15, 1992.

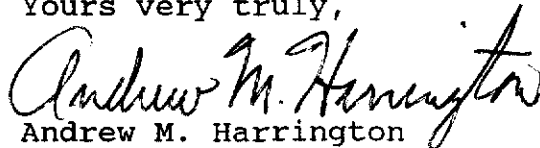
I told you in that May 15 letter that I thought a license agreement between Fish & Game and NMID would be entered into very shortly thereby obviating the necessity of any hearing on the protest because the protest would be withdrawn upon execution of the agreement. The license agreement was picked up for review by Fish & Game on May 5, 1992. When I would inquire of Terry Holubetz about the status of the agreement, I was never able to learn what changes should be made in it and I told Terry several times I thought the changes Fish & Game might have could be reconciled if they were made known to me. Finally, on June 3 Terry and Steve Goddard and I met to discuss the terms of the agreement. I have dictated a revised version of the agreement since then and will be sending it to Fish & Game soon.

It should be understood that Fish & Game proposes a rather elaborate system of use of the ground waters in which NMID has a prior right. NMID by its license agreement must be protected against impurities in the return flow to Wilson Drain after water is pumped into a sump and thence into a pond, against excessive return flow, and other such matters. Fish & Game has constantly requested NMID to withdraw its protest but it cannot do so until such matters have been agreed on via the license agreement which was held for so long without response by Fish & Game.

NOV 19 1992

NMID therefore cannot withdraw its protest until the subjects to be covered by the license agreement are resolved. We feel it is better for the parties to negotiate their differences and reach an agreement than to litigate these matters before your department.

Yours very truly,


Andrew M. Harrington

AMH/llw

cc: Terry Holubetz
John Anderson
Steve Goddard

NOV 18 1942



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

04-Jun-1992

ANDREW M HARRINGTON ESQ
RINGERT & CLARK
455 S THIRD ST
PO BOX 2773
BOISE ID 83701

Re: Application for Permit #63-11705 in the Name of Idaho
Department of Fish and Game

Dear Mr. Harrington:

The above-referenced application is still being held pending withdrawal of the protest. Based on our last conversation in this regard, it was my understanding that the Nampa-Meridian Irrigation District did intend to withdraw the protest. Accordingly, please find enclosed a form that can be used for withdrawing the protest. If appropriate, please complete and return the form to this office to allow the department to continue to process the application.

Sincerely,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

DRT:st

Encl: Withdrawal of Protest Form

CC: John Anderson, NMID
Terry Holubetz, IDFG

RECEIVED

NOV 19 1992

**RINGERT
CLARK
CHARTERED
LAWYERS**

Protest File
MAY 13 1992

Department of Water Resources
Western Regional Office

William F. Ringert
D. Blair Clark
Andrew M. Harrington
James G. Reid
Jeffrey R. Christenson
James P. Kaufman
Laura E. Burri
David Hammerquist
Daniel V. Steenson

Samuel Kaufman (1921-1986)

May 15, 1992

DM
David R. Tuthill
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Protest of Filing 63-11705

Dear Mr. Tuthill:

John Anderson of Nampa & Meridian Irrigation District has spoken to me about NMID's protest of the above claim of water right by State of Idaho, Department of Fish & Game. I enclose a copy of John's letter dated March 25, 1992 asserting the protest.

I have sent a proposed License Agreement to Idaho Fish & Game which among other things relates to use of the flow to Wilson Drain, referred to in John's letter.

Terry Holubetz of Fish & Game has been the individual with whom I have dealt in connection with preparation of the license agreement. Terry told me that Fish & Game did not dispute the priority of NMID's water right and no problem should be created on that point. I therefore included a reference to that fact in the license agreement sent Terry to be considered and signed by Fish & Game. I enclose a copy of page 8 of the agreement which at par. 3 is a statement of what I understand to be the facts.

I have attempted to reach Terry the last couple of days and I missed his return call to me. I wanted to learn whether the agreement had been signed or at least whether there was any problem with the agreement as written. All I can presently say is that I have no reason to believe that par. 3 is objectionable to Fish & Game.

I anticipate that prior to the May 21 hearing date you will be informed of the priority of the NMID water right. If not, this letter is our request that the hearing set for May 21 be postponed for one week or more to be sure that Fish & Game and NMID have been able to communicate on the question and resolve any differences.

Yours very truly,

Andrew M. Harrington
Andrew M. Harrington

*Hearing/conf not
formally set. I responded
by telecon. DM 5/18/92
AMH/llw*

cc: Terry Holubetz (w/encl.)
John Anderson (w/encl.)

455 South Third Street ♦ P.O. Box 2773 ♦ Boise, Idaho 83701 ♦ 208/342-4591 FAX 342-4657

NOV 19 1992

RECEIVED

MAR 30 1992

Exhibit D-1

Department of Water Resources
Western Regional Office

Nampa & Meridian Irrigation District

1503 FIRST STREET SOUTH NAMPA, IDAHO 83651-4395
FAX # 208-888-6201

March 25, 1992

Phones: Area Code 208

OFFICE: Nampa 466-7861

Boise 343-1884

SHOP: Nampa 466-0663

Boise 343-2431

David R. Tuthill
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Protest of filing 63-11705

Dear Dave:

I am writing on behalf of Nampa & Meridian Irrigation District to protest new water right filing number 63-11705 by the State of Idaho, Department of Fish & Game. Nampa & Meridian Irrigation District claims any return flow to the Wilson Drain. The Wilson Drain is a constructed facility designed to drain subterranean flow. Nampa & Meridian Irrigation District has a prior right and it should be recognized before the Idaho Department of Fish and Game.

Please feel free to contact me if I can be of further assistance.

Sincerely,



John P. Anderson
District Water Superintendent

pc: Each Director
Secretary of the Board
William Ringert
Bill Henson
Rider 8
File

JPA:jj

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NOV 19 1992

APPROXIMATE IRRIGABLE ACRES
RIVER FLOW RIGHTS - 21,000

3. Attached hereto as Exhibit D-1 and incorporated herein is letter dated March 25, 1992 from John P. Anderson, District Water Superintendent, to David R. Tuthill, Idaho Department of Water Resources which is a protest to Filing 63-11705 of the Licensee. The subject of the water rights filing by the Licensee is the waters from the artesian well which under the terms of this agreement will flow into the sump and be pumped into the pipe attached to the bridge over Wilson Drain and thence into the pond to the west of Wilson Drain. The Licensee hereby acknowledges the validity of said protest and the prior right of the District to said waters. The Licensee will take whatever action is necessary in the said Filing 63-11705 to establish and authenticate the prior right of the District in said waters.

4. Attached hereto as Exhibit D-2 and incorporated herein by this reference is a drawing consisting of one sheet depicting the details of the two bridges (same for each bridge) to be placed over Wilson Drain by the Licensee.

5. Attached as Exhibit D-3 and by this reference incorporated herein are plans and drawings consisting of two sheets related to the said sump, pump and transportation of the well water across Wilson Drain and into the pond to be constructed by the Licensee.

6. Licensee shall notify the water superintendent of the District prior to and immediately after construction so that he or the District's engineers may inspect and approve construction. If the District's engineers perform such inspection, Licensee shall pay the District's engineers any fee charged in connection therewith.

7. Licensee shall place no structures of any kind above ground on the District's easement area except as referred to in this agreement or exhibits thereto without the prior written consent of the District. The District's easement along this section of right of way of Wilson Drain is 100 feet, 30 feet on the southwesterly side, 70 feet on the northeasterly side of centerline. The District's easement along this section of Bray Lateral is 55 feet, 30 feet left looking downstream, 25 feet right.

NOV 19 1992

CONVERSATION MEMORANDUM

DATE 5/14/92
FILE 63-11705

NAME OF PARTY John Anderson

EMPLOYEE D. Tuttle

RE: _____

Called to say that he will withdraw his protest. I
asked that he notify this office in writing

Dr

MICROFILMED

NOV 19 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 31, 1992

JOHN P ANDERSON
NAMPA & MERIDIAN IRRIGATION DISTRICT
1503 1ST ST S
NAMPA ID 83651-4395

Re: Application for Permit No. 63-11705 in the Name of State
of Idaho, Fish & Game

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application. 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 has been resolved, the matter will be scheduled for conference. At such a conference, the following are the principle items the Department can consider in either approving or denying an application or permit (Section 42-1203, 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,

DAVID R. TUTHILL, JR., P. E.
Manager, Western Regional Office

DRT/st

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NOV 19 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 31, 1992

ID DEPT OF FISH & GAME
3101 S POWERLINE
NAMPA ID 83686

Re: Application for Permit No. 63-11705

Dear Applicant:

Enclosed is a copy of a protest(s) filed against the issuance of a permit pursuant to the above-referenced application. 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) has been resolved, the matter will be scheduled for a conference. At such a conference, the following are the principle items the Department will review (per Section 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the 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,

DAVID R. TUTHILL, JR., P.E.
Manager, Western Regional Office

Enclosure: Copy of protest(s)

RECEIVED
MAY 12 1992

NOV 19 1992

RECEIVED

MAR 30 1992

Department of Water Resources
Western Regional Office

Nampa & Meridian Irrigation District

1503 FIRST STREET SOUTH NAMPA, IDAHO 83651-4395
FAX # 208-888-6201

March 25, 1992

Phones: Area Code 208

OFFICE: Nampa 466-7861

Boise 343-1884

SHOP: Nampa 466-0663

Boise 345-2431

David R. Tuthill

Idaho Department of Water Resources

1925 Airport Way

Boise, Idaho 83705

Re: Protest of filing 63-11705

Dear Dave:

I am writing on behalf of Nampa & Meridian Irrigation District to protest new water right filing number 63-11705 by the State of Idaho, Department of Fish & Game. Nampa & Meridian Irrigation District claims any return flow to the Wilson Drain. The Wilson Drain is a constructed facility designed to drain subterranean flow. Nampa & Meridian Irrigation District has a prior right and it should be recognized before the Idaho Department of Fish and Game.

Please feel free to contact me if I can be of further assistance.

Sincerely,



John P. Anderson

District Water Superintendent

cc: Each Director
Secretary of the Board
William Ringert
Bill Henson
Rider 8
File

JPA:jj

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NOV 19 1992

APPROXIMATE IRRIGABLE ACRES

RIVER FLOW RIGHTS — 23,000

BOISE PROJECT RIGHTS — 10,000

SPECIAL NOTE: _____

Application No. 63-11705

PROTEST INFORMATION SHEET

Protestant - Name(s)

Nampa-Meridian Irrigation District (John P. Anderson)

Address 1503 1st St. S., Nampa, ID

Attorney - Name & Address Andrew Harrington, 455 S 3rd, Boise

Steve Goddard, ID Dept Fish & Game, PO Box 25, Boise, ID

Date Filed 2-26-92

Protest Date 4-6-92

Issues _____

Applicant - Attorney - Name & Address _____

Dates: _____

Acknowledgement letters: _____

Hearing Notice: _____

Hearing Date: _____

Other: _____

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NOV 19 1992

Protest Information submitted in Computer (following hearing): _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: Ly DATE: 3/5/92 APPLICATION: 63-11705

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) Gov't. Lots:
☒ Period of use: ☒ P/D
☒ Nature of proposed use: (Include description of use) ☒ P/U
☒ Description of diverting works:
☒ Time required for beneficial use of water:
☒ Place of use or acres irrigated:
☒ Map:
☒ Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)
☒ Fee:
☒ Yes ☐ No* In form to receipt:

ADDITIONAL INFORMATION

YES	NO	
☒	☐	Overlapping place of use: (Describe source & relationship to present application on the back.)
☒	☐	Overlapping point of diversion:
☐	☐	Field check required: Field check by: _____
☐	☒	Field report attached:
☐	☒	Critical groundwater area:
☐	☒	Groundwater management area:
☐	☒	Diversion within interim protected river area
☐	☒	Send dam safety information:
☐	☒	Send power requirement letter:
☐	☒	Send fish farm requirement letter:
☐	☒	Power residency affidavit:
☐	☒	Power efficiency form:
☐	☒	Within trust water boundary: (If yes, attach Trust Water Supplemental Analysis Sheet.)
☐	☒	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:

PROCESSING

APPLICATION NO. 63-11705

YES NO

☒ ☐
☐ ☒
☒ ☐

In form for advertising:

Statewide advertising:

Fee amount, receipt number and date recorded on application:

SEND COPIES TO

YES NO

☐ ☒
☐ ☒
☐ ☒
☐ ☒

I.D. Health and Welfare

I.D. Fish and Game

I.D. Lands

Adjudication Bureau

YES NO

☐ ☒
☐ ☒
☐ ☒
☐ ☒

U.S. BLM

U.S. Forest Svc.

Water Dist. # _____

Other _____

FINAL REGIONAL PROCESSING REVIEW

YES NO

☒ ☐
☒ ☐

Affidavit of publication received:

Application published correctly: If not, record action taken.

☒ ☐
☐ ☐
☐ ☐
☐ ☐
☐ ☐
☐ ☐
☐ ☐
☐ ☐

Publication dates and paper recorded on application:

Protests received. Final date for protest April 6, 1992

Protest dates, resolution of protest recorded on application:

Recommendations attached:

Measuring device required:

Measuring port required:

Water delivered by water master? District # _____

Special conditions of approval or cover letter: _____

See below for additional information

Recommended Date or Priority _____

Recommended by: _____ Date _____

STATE OFFICE REVIEW

See below for additional information. By _____ Date _____

ADDITIONAL INFORMATION

overlap info

63-08940

11256

GW

Wilson Dr.

Springs

P/O

←

←

1990

NOV 19 1992

In: CANYON County
T02N R02W S03 NESE SESE