

S

State of Idaho
 Department of Water Resources
Water Right License

WATER RIGHT NO. 45-07727

Priority: April 11, 1995

Maximum Diversion Rate: 1.00 CFS
 Maximum Diversion Volume: 679.0 AF

It is hereby certified that NOLAN VICTOR
 1528 ADDISON AVE E
 TWIN FALLS ID 83301 has complied with the terms and
 conditions of the permit, issued pursuant to Application for Permit dated April 11, 1995; and has
 submitted Proof of Beneficial Use on November 01, 1999. An examination indicates that the works have
 a diversion capacity of 1.34 cfs of water from:

SOURCE

GROUND WATER

Tributary: TRAPPER CREEK

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
HEATING	01/01 to 12/31	0.10 CFS	24.9 AF
DOMESTIC	01/01 to 12/31	0.10 CFS	2.4 AF
FISH PROPAGATION	01/01 to 12/31	0.90 CFS	652.0 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 34, Twp 14S, Rge 21E, B.M., CASSIA County

PLACE OF USE: HEATING and DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S 21E 34							X										

PLACE OF USE: FISH PROPAGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S 21E 34							X										

CONDITIONS OF APPROVAL

1. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 45C.
2. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
3. The right holder shall maintain a totalizing measuring device of a type approved by the Department as part of the diverting works and shall maintain a suitable measuring device as determined by the Department at the point effluent water is discharged to Trapper Creek.

RECEIVED

DEC 22 2003

Department of Water Resources
 Southern Region

45-7727

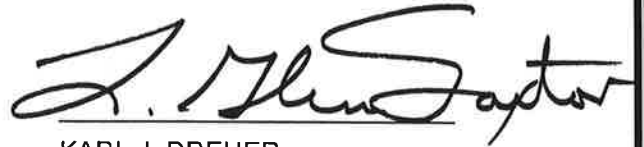
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 45-07727

4. Heating use is for 4 homes and a hot tub.
5. Domestic use is for 4 homes and does not include lawn, garden, landscape, or other types of irrigation.
6. Effluent discharged to Trapper Creek shall be treated, if necessary, to insure that the effluent meets Idaho Water Quality Standards.
7. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 19th day of December, 2003.



for **KARL J. DREHER**
Director

RECEIVED

DEC 22 2003

Department of Water Resources
Southern Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 30, 2003

BRANDON BEDKE WATERMASTER
WATER DISTRICT 45-C
PO BOX A
BURLEY ID 83318

Re: License No. 45-7727 - Nolan Victor

Dear Mr. Bedke:

For your information, we have enclosed a copy of a recently issued License within your District.

If you have any questions, please contact this office or the applicant.

Very truly yours,

A handwritten signature in cursive script that reads "Mary A. Baldwin".

Mary A. Baldwin
Administrative Assistant I

MB

Enclosure

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
JOHN K. SIMPSON
NORMAN M. SEMANKO
TIMOTHY J. STOVER
AMY D. CHESTNUT

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

RECEIVED
JUN 21 2000
Department of Water Resources
Custom Bank

June 20, 2000

Allen Merritt
Southern Regional Office
Idaho Department of Water Resources
1341 Fillmore Street, Ste 200
Twin Falls ID 83301-3380

RECEIVED

JUN 26 2000

Department of Water Resources

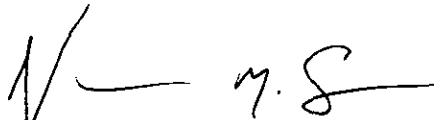
Re: Tony Thompson

Dear Allen:

Please be advised that, effective July 1, 2000, neither I nor this firm will be representing Tony Thompson. We are presently assisting Mr. Thompson in securing new counsel to handle his legal affairs.

Let us know if you have any questions.

Sincerely,


NORMAN M. SEMANKO

NMS/jl

cc: Tony Thompson

(!jl/nms/letters/parsons-tony ltr)

45-07727

RECEIVED

JUN 23 2000

Department of Water Resources
Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

ROSHOLT, ROBERTSON & TUCKER
Chartered

ATTORNEYS AT LAW

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
JOHN K. SIMPSON
NORMAN M. SEMANKO
TIMOTHY J. STOVER
AMY D. CHESTNUT

RECEIVED
JUN 21 2000
Department of Water Resources
Southern Region

June 20, 2000

Allen Merritt
Southern Regional Office
Idaho Department of Water Resources
1341 Fillmore Street, Ste 200
Twin Falls ID 83301-3380

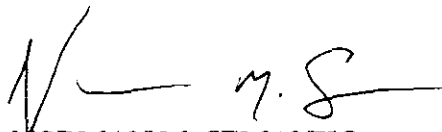
Re: Tony Thompson

Dear Allen:

Please be advised that, effective July 1, 2000, neither I nor this firm will be representing Tony Thompson. We are presently assisting Mr. Thompson in securing new counsel to handle his legal affairs.

Let us know if you have any questions.

Sincerely,


NORMAN M. SEMANKO

NMS/jl

cc: Tony Thompson

(jlj/nms/letters/parsons-tony ltr)

43-01167

RECEIVED
NOV 01 1999
Department of Water Resources
Southern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

PROOF OF BENEFICIAL USE NOV 3 - 1999

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

- 1. Permit No. 45-07727 Telephone No. (208) 731-1345
- 2. Name(s) of Permit Holder(s): Antone R. Thompson
- 3. Mailing Address: P.O. Box 221 Oakley Id. 83346 / 250-S 500W Cedar City UT 84712
- 4. Source of Water: Ground water If GROUNDWATER (well), Date Drilled: mo. 14 yr. 17
- a. Well Driller: Unknown Drilling Permit Number: N.A.

b. **OPTIONAL:** Artesian
Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____

- 5. Use(s) (as authorized by the water right permit):
Domestic (No. of households): 4 Stockwater (No. and type of stock): _____
Irrigation (No. of acres): _____ Other: Fish Propagation & Commercial

6. Total rate of diversion and/or volume for which proof is submitted: 1.0 cfs OR _____ acre feet

7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)
(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required? Yes 0 or No _____
Has the measuring device been installed? Yes 0 or No _____

Flow Measurement Port: Is a flow measurement port required? Yes _____ or No 4
Has the measurement port been installed? Yes _____ or No 12

8. Fee Enclosed: \$ 100 (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.
Name: Antone R. Thompson Telephone Number: (208) 731-1345
Address: Same

10. The information given on this form 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.

Signature of permit holder: Antone R. Thompson Date: Oct. 28 '99
(include your title, if on behalf of company or organization)

MICROFILMED

JAN 28 2000

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 45-07727

Proposed Priority: April 11, 1995 Maximum Diversion Rate: 1.00 CFS

This is to certify, that **ANTONE R THOMPSON**
350 S 500 W
CEDAR CITY UT 84720
has applied for a permit to appropriate water from:
GROUNDWATER tributary of **TRAPPER CREEK**

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>
COMMERCIAL	01/01 to 12/31	0.60 CFS
FISH PROPAGATION	01/01 to 12/31	0.90 CFS
DOMESTIC	01/01 to 12/31	0.10 CFS
	Totals	1.00 CFS

LOCATION OF POINT(S) OF DIVERSION: SESWNW , Sec. 34, Township 14S, Range 21E
SWSNW , Sec. 34, Township 14S, Range 21E
CASSIA County

PLACE OF USE: COMMERCIAL
TWN RGE SEC
14S 21E 34 SWNW SENW

PLACE OF USE: FISH PROPAGATION, same as COMMERCIAL use

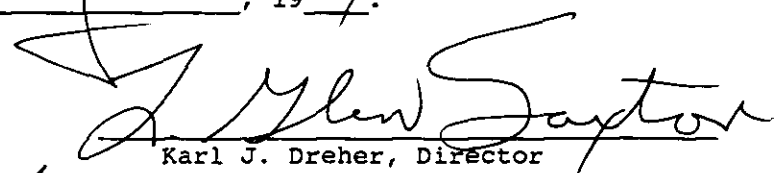
PLACE OF USE: DOMESTIC, same as COMMERCIAL use

CONDITIONS OF APPROVAL AND REMARKS

1. See Amended Preliminary Order for conditions and limitations for use of water under this 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

23rd day of January, 1997.


Karl J. Dreher, Director
bar

RECORDED
FEB 25 1997

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 45-07727 IN THE NAME)
OF ANTONE R. THOMPSON)
_____)

**AMENDED
PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources (department), as a result of the filing of an application for permit with the department, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On April 11, 1995, Ace Realty Trust submitted Application for Permit No. 45-07727 to the department proposing the diversion of 1.0 cubic foot per second (cfs) of hot ground water to be diverted from an existing well in the SE1/4SW1/4NW1/4 Section 34, T14S, R21E, B. M. to be used year-round for commercial, heating and recreation purposes. (The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The department published notice of the application for permit which was protested by the Oakley Canal Company.

3. On March 15, 1996, Ace Realty Trust assigned the application to Antone R. Thompson who on March 15, 1996, filed Amended Application for Permit No. 45-07727 (application) with the department proposing the diversion of 1.0 cfs of hot ground water to be diverted from an existing well located within the SWSENW or SESWNW Section 34, T14S, R21E, B.M. to be used for fish propagation, heating of greenhouses and domestic use for 4 homes.

4. The department published notice of the amended application which also was protested by the Oakley Canal Company (protestant).

5. On June 19, 1996, the department held a conference in the contested matter at Burley, Idaho. The applicant was present and was represented by Norman M. Semanko. The protestant also was present and was represented by William A. Parsons. On June 26, 1996, the department issued an order granting intervention into the matter to Shoulders 3 Ranches (intervenor).

6. On September 10, 1996, the applicant, protestant and intervenor reached an agreement in the contested matter and submitted a signed stipulation to the department for review and execution by the department.

Handwritten:
10/10/96
500

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01557 (Procedure Rule 557) provides in pertinent part as follows:

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so.

2. When the department acts upon an application for permit, it determines at that time the extent to which the provisions of a stipulation is appropriate to include as specific conditions of approval of a permit or will be acknowledged as an agreement which may affect the rights existing under the permit and any subsequent license.

3. The department should approve the application and should issue a permit subject to certain conditions and limitations.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Permit No. 45-07727 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the right is subject to all prior water rights.

2. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

3. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before **November 1, 1999**.

4. The right holder shall install and maintain a totalizing measuring device of a type approved by IDWR as a part of the diverting works and shall install and maintain a suitable measuring device as determined by the department at the point effluent water is discharged to Trapper Creek.

5. After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.

6. Use of water under this right is affected by an agreement between the protestant, intervenor and the right holder.

7. Use of water under the right is subject to the control of the watermaster of State Water District 45C, Goose Creek.

8. The commercial and fish propagation uses shall be non consumptive. The commercial use is for greenhouses and a swimming pool.

9. The right holder shall be required to provide the Department, upon request, information showing volume changes per hour necessary to maintain an adequate environment for the fish propagation facility. Volume changes per hour shall be based upon actual fish production.

10. Domestic use is for 4 homes. Fish propagation use is in existing ponds.

11. Approval of the permit does not confirm ownership of the existing well and does not authorize the construction of a new well.

12. Approval of the permit authorizes use of water from the existing well if the permit holder obtains any needed consents to use the existing well.

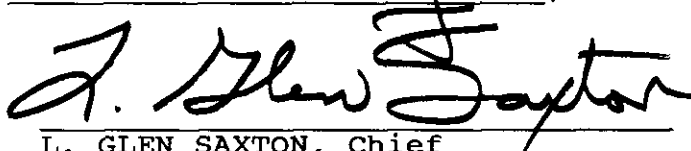
13. Effluent discharged to Trapper Creek shall be treated, if necessary, to insure that the effluent meets Idaho Water Quality Standards.

14. Use of water for domestic purposes is limited to in-house use and water for livestock kept for household use.

15. This right authorizes the use of heat in the water for greenhouse use but does not authorize use of the water for irrigation use within the greenhouses or for lawns of the domestic residences.

16. The permit holder is not authorized to assign ownership of the permit to another party without prior approval of the department.

Dated this 23rd day of January, 1997.


L. GLEN SAXTON, Chief
Water Allocation Bureau

RECORDED
FEB 26 1997

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 45-07727 IN THE NAME)
OF ANTONE R. THOMPSON)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department), as a result of the filing of an application for permit with the department, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On April 11, 1995, Ace Realty Trust submitted Application for Permit No. 45-07727 to the department proposing the diversion of 1.0 cubic foot per second (cfs) of hot ground water to be diverted from an existing well in the SE1/4SW1/4NW1/4 Section 34, T14S, R21E, B. M. to be used year-round for commercial, heating and recreation purposes. (The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The department published notice of the application for permit which was protested by the Oakley Canal Company.

3. On March 15, 1996, Ace Realty Trust assigned the application to Antone R. Thompson who on March 15, 1996, filed Amended Application for Permit No. 45-07727 (application) with the department proposing the diversion of 1.0 cfs of hot ground water to be diverted from an existing well located within the SWSE or SESWNW Section 34, T14S, R21E, B.M. to be used for fish propagation, heating of greenhouses and domestic use for 4 homes.

4. The department published notice of the amended application which also was protested by the Oakley Canal Company (protestant).

5. On June 19, 1996, the department held a conference in the contested matter at Burley, Idaho. The applicant was present and was represented by Norman M. Semanko. The protestant also was present and was represented by William A. Parsons. On June 26, 1996, the department issued an order granting intervention into the matter to Shoulders 3 Ranches (intervenor).

6. On September 10, 1996, the applicant, protestant and intervenor reached an agreement in the contested matter and submitted a signed stipulation to the department for review and execution by the department.

MICROFILMED

FEB 25 1997

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01557 (Procedure Rule 557) provides in pertinent part as follows:

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so.

2. When the department acts upon an application for permit, it determines at that time the extent to which the provisions of a stipulation is appropriate to include as specific conditions of approval of a permit or will be acknowledged as an agreement which may affect the rights existing under the permit and any subsequent license.

3. The department should approve the application and should issue a permit subject to certain conditions and limitations.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Application for Permit No. 45-07727 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under the right is subject to all prior water rights.

2. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.

3. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before **November 1, 1999**.

4. The right holder shall install and maintain a totalizing measuring device of a type approved by IDWR as a part of the diverting works and shall install and maintain a suitable measuring device as determined by the department at the point effluent water is discharged to Trapper Creek.

5. After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.

6. Use of water under this right may be affected by an agreement between the protestant, intervenor and the right holder.

7. Use of water under the right is subject to the control of the watermaster of State Water District 45C, Goose Creek.

8. The commercial and fish propagation uses shall be non consumptive. The commercial use is for greenhouses and a swimming pool.

9. The right holder shall be required to provide the Department, upon request, information showing volume changes per hour necessary to maintain an adequate environment for the fish propagation facility. Volume changes per hour shall be based upon actual fish production.

10. Domestic use is for 4 homes. Fish propagation use is in existing ponds.

11. Approval of the permit does not confirm ownership of the existing well and does not authorize the construction of a new well.

12. Approval of the permit authorizes use of water from the existing well if the permit holder obtains any needed consents to use the existing well.

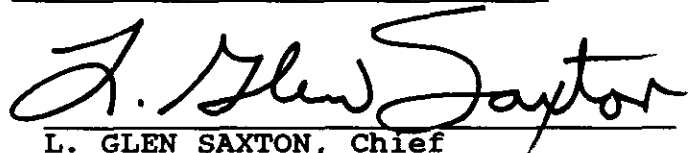
13. Effluent discharged to Trapper Creek shall be treated, if necessary, to insure that the effluent meets Idaho Water Quality Standards.

14. Use of water for domestic purposes is limited to in-house use and water for livestock kept for household use.

15. This right authorizes the use of heat in the water for greenhouse use but does not authorize use of the water for irrigation use within the greenhouses or for lawns of the domestic residences.

16. The permit holder is not authorized to assign ownership of the permit to another party without prior approval of the department.

Dated this 9th day of October, 1996.


L. GLEN SAXTON, Chief
Water Allocation Bureau

RECORDED
FEB 25 1997

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of October, 1996,
I mailed a true and correct copy, postage prepaid, of the foregoing
PRELIMINARY ORDER to the following:


Antone R. Thompson
350 S 500 W
Cedar City, UT 84720

Norman Semanko
ROSHOLT ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906

William Parsons
PARSONS SMITH STONE
& FLETCHER
P.O. Box 910
Burley, ID 83318

Robert Whiteley
Shoulders 3 Ranches
1153 S HWY 27
Burley, ID 83318

Oakley Canal Co.
Oakley, ID 83346



JULIE L. YARBROUGH
Senior Secretary

RECORDED
FEB 13 1997

RECEIVED

OCT 04 1996

Form 202

10/92

RECEIVED

Department of Water Resources

STATE OF IDAHO

Ident. No. 45-07727

MAR 15 1996

DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Amended
3/15/96

Department of Water Resources
Southern Region
To appropriate the public waters of the State of Idaho

1. Name of applicant Antone R. Thompson Phone (801) 586-1345

Post office address 350 S. 500 W. Cedar City, Utah 84720

2. Source of water supply Groundwater which is a tributary of _____

3. Location of point of diversion is SW 1/4 of SE 1/4 of NW 1/4, Govt. Lot _____

Sec. 34 Township 14S. Range 21E B.M. Cassia County; additional

points of diversion if any: Note: well is very close to line it may be in
SE 1/4 SW 1/4 NW 1/4 of Sec 34,

4. Water will be used for the following purposes:

Amount 0.90 for Fish Prop purposes from 1-1 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 0.60 for Commercial purposes from 1-1 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 0.10 for Domestic purposes from 1-1 to 12-31 (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) 1.00 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Existing Well to
pipeline to various uses then discharged into
Trapper Creek

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:

_____ to _____ inclusive.
c. Proposed well diameter is Existing 10 inches; proposed depth of well is Below 600 feet.

d. Is ground water with a temperature of greater than 85°F being sought? Yes 120°
MICROFILMED

e. If well is already drilled, when? 1917; Drilling firm Unknown
Well was drilled for (well owner) Oil Exploration
FEB 25 1997

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

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

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. 4 homes
- e. Other; describe fully. Commercial - Greenhouse & swimming pool. Fish Propagation in existing ponds

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
14S	21E	34							F	F									
14S	21E	34							D	D									
14S	21E	34							C	C									

Total number of acres to be irrigated _____

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

License 45-07360 used for fish propagation

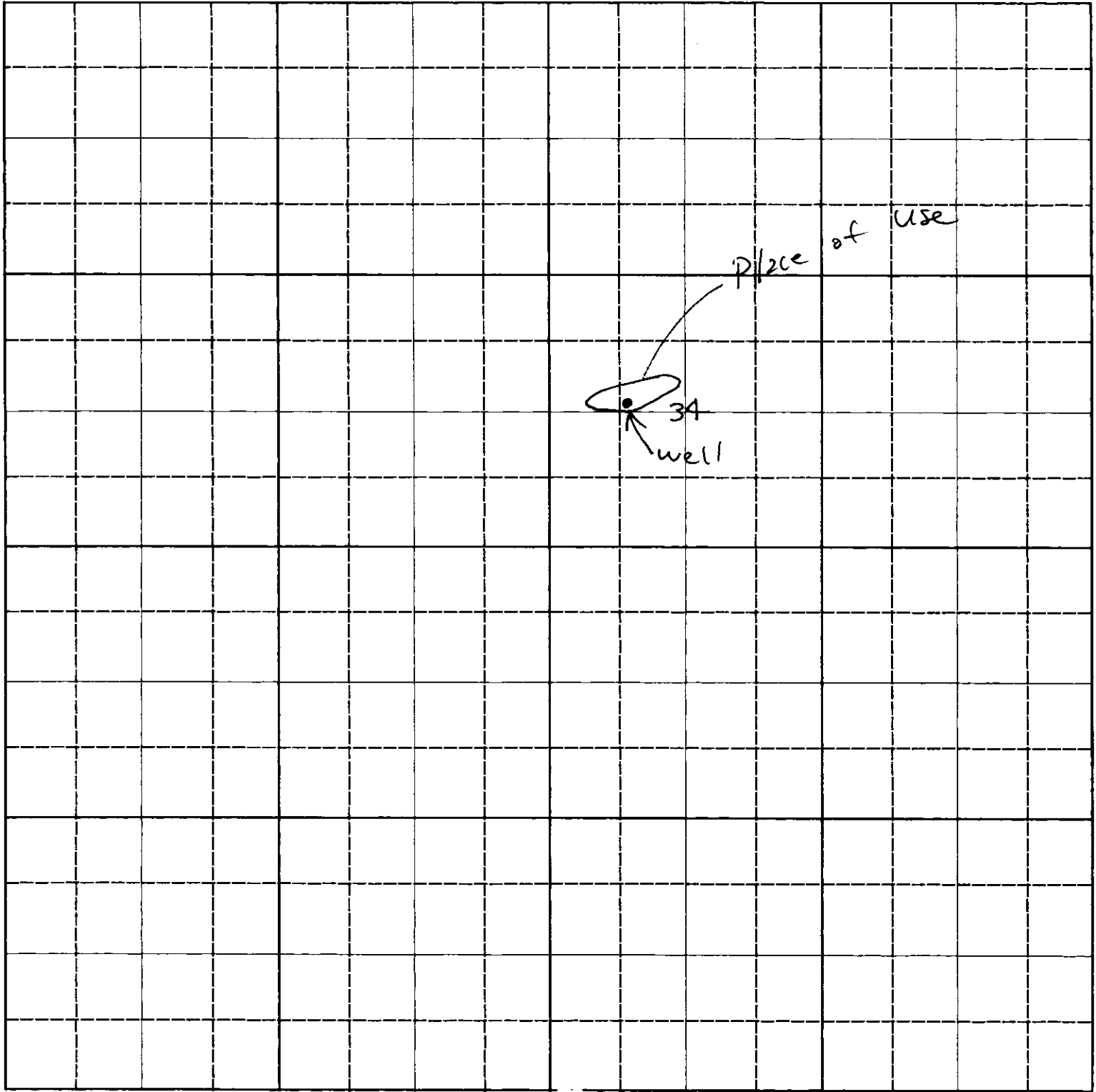
11. a. Who owns the property at the point of diversion? applicant

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

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

12. Remarks: Existing fish ponds, hot water well & pipe. Propose to construct greenhouses and use one of my nine ponds for the hot water use. The heat for the green houses will be extracted from water then water used in fish ponds. All water eventually discharges into Trapper Creek.

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



Scale: 2 inches equal 1 mile.

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

MICHAEL L. HARRIS
FEB 23 1977
Antoine R. Thompson
(Applicant)

Received by AD Date 3/15/96 Time 9:20 Preliminary check by ADM
Fee \$ 50⁰⁰ Received by MB # 5018924 Date 3/15/96
Publication prepared by MB Date 3/19/96 Published in So. Id. Press
Publication approved MB Date 4/8/96

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:

MICROFILMED
FEB 25 1997

RECEIVED

MAR 15 1996

State of Idaho
DEPARTMENT OF WATER RESOURCES

OFFICE USE ONLY
Amt. of Fee \$25.00
Date 3/15/96
Receipt No. S018934
Receipt by MB

Department of Water Resources
Southern Region Office

ASSIGNMENT OF APPLICATION FOR PERMIT

To change the ownership of an application for permit

I, Nolan Victor, M24256
of Ace Realty Trust, hereby assign to Antone R. Thompson
of 350 S. 500 W. Cedar City, Utah 84720
(Applicant)
(Full Address)

All my right, title, and interest in and to Application for Permit
No. 45-07727 to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to
Application for Permit No. _____ to appropriate the public waters of the
State of Idaho.

Describe portion of the permit assigned listing the number of acres in each 40 acre subdivision,
point of diversion location, and the amount of water in cubic feet per second.

Made this 15th day of March, 1996

Nolan Victor
Applicant(s)

State of Idaho)
County of Twin Falls SS

On this 15th day of March, 1996, personally appeared before me the
signer of the above instrument, duly acknowledged to me that he/she/they executed the same.

[Signature]
Notary Public

SEAL

[Signature]
Signature

MICROFILMED
FEB 25 1997

My commission expires: 6-30-2000

45-07727
RECEIVED
Id. Div. No.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

APR 11 1995

Department of Water Resources
Southern Region

To appropriate the public waters of the State of Idaho

1. Name of applicant Ace Realty Trust Phone 208-733-5217

Post office address 1528 Addison Ave. East, Twin Falls, Idaho 83301

2. Source of water supply Groundwater (Artesian Well (hot water)) which is a tributary of TRAPPER CREEK

3. Location of point of diversion is See Attached Map $\frac{1}{4}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Govt. Lot _____

Sec. 34 Township 14 South Range 21 E, B.M. CASSIA County; additional

points of diversion if any: at well head. (WELL IS LOCATED ON OUR OWN DEEDED PROPERTY)

4. Water will be used for the following purposes:

Amount 181.48 for Greenhouses purposes from Sept. 1st to May 15th (both dates inclusive)
(cfs or acre-feet per annum)

Amount 181.48 for Commercial Sewage Treatment purposes from all year to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 181.48 for Houses/heating purposes from Sept 1 to June 1 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 181.48 for Recreation Pool/club house purposes from all year to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) one cubic feet per second and/or (b) 725.9 acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Existing artesian hot-water well.
We will install a pipe system to divert the water to heat hot house, houses, swimming pool.

discharge 725.9

b. Height of storage dam none feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____ to _____ inclusive.

c. ~~Proposed~~ well diameter is 10" inches; ~~proposed~~ depth of well is 1200? feet.

d. Is ground water with a temperature of greater than 85°F being sought? yes **MICROFILMED**

e. If well is already drilled, when? old?; Drilling firm unknown **MICROFILMED FEB 25 1997**
Well was drilled for (well owner) unknown **FEB 25 1997**

7. Time required for the completion of the works and application of the water to be proposed beneficial use is 5* years (minimum 1 year). * Per telecon w/applicant 4-13-95

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

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. 32 homes to be heated.
- e. Other; describe fully. Greenhouses, Clubhouse, Sewage Digestor-Treatment
Swimming Pool, Commercial = sewage digester,
Recreation = swimming pool

9. Description of place of use:

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
45	21E	34							C										
									G										
									R										

Total number of acres to be irrigated _____

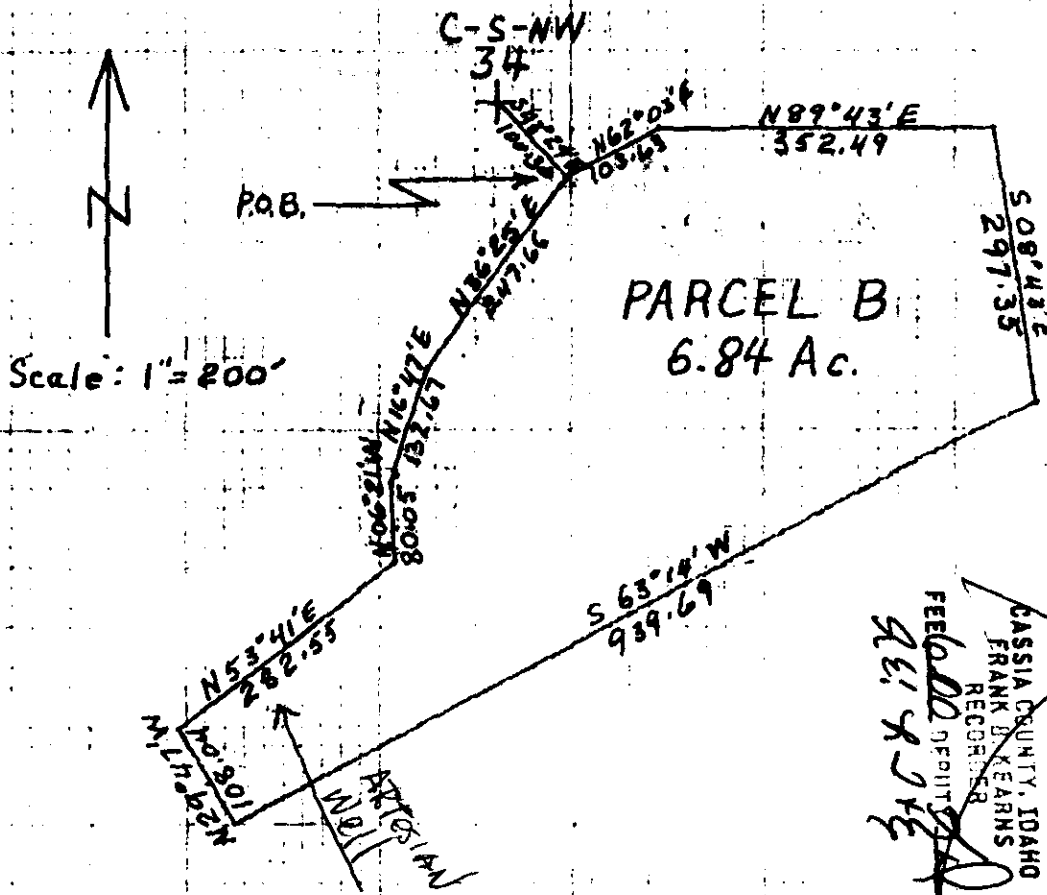
10. Describe any other water rights used for the same purposes as described above. _____

- 11. a. Who owns the property at the point of diversion? ACE REALTY TRUST
- b. Who owns the land to be irrigated or place of use? " " "
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. NOTED VICTOR TRUST MANAGER

12. Remarks: The source is an existing artesian well with a temperature of approx. 100°F. We decide to use the heat component of the water as a non-consuming use and then discharge the water into Trapper Creek. A coldwater well will be needed for culinary use - permit will be applied for later.

EB 25 1937

T 14 S, R 21 E, B.M.



RECORDED AT THE REQUEST OF
LAND TITLE ESCROW
 FILM 170
 JAN 29 1 43 PM '85
 CASSIA COUNTY, IDAHO
 FRANK J. KEARNS
 RECORDER
 FEELDE DEPUTY
 221 X J K

PROPERTY DESCRIPTION

PARCEL B

Beginning at the C-S-NW 1/64 corner of Section 34
 Twp 14S Rge 21E, B.M.; Thence S 43° 29' E 100.30 ft.
 to the REAL POINT OF BEGINNING.

- Thence N 62° 03' E 103.63 ft.
- Thence N 89° 43' E 352.49 ft.
- Thence S 08° 43' E 297.35 ft.
- Thence S 63° 14' W 939.69 ft.
- Thence N 29° 47' W 108.04 ft.
- Thence N 53° 41' E 282.55 ft.
- Thence N 06° 21' W 80.05 ft.
- Thence N 16° 47' E 132.67 ft.
- Thence N 36° 25' E 247.66 ft.

To the REAL POINT OF BEGINNING.
 Containing 6.84 Acres, more or less.

Presented to and recorded by me
 this 21st day of Feb. 1985
 [Signature]

MICROFILMED

FEB 25 1987

Loren D Holmes, P.E., L.S.
 741 Beta Circle
 Twin Falls, ID 83301

MICROFILMED

FEB 25 1997



TRAIL

28

08

9

10

Walker

Holl

3188 II NE
(SEVERE SPRING)

4674

4673

10'

4672

T. 14 S.

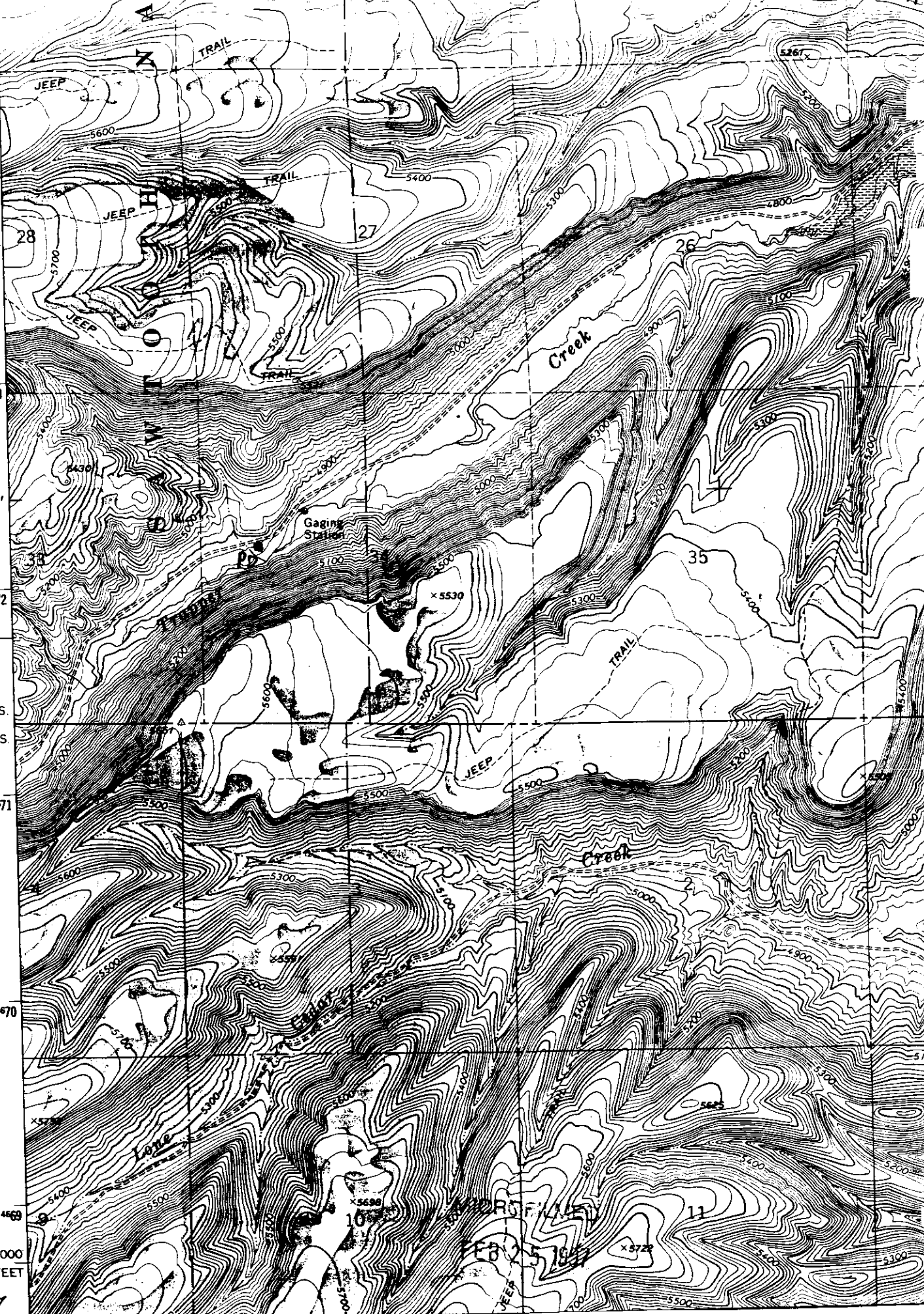
T. 15 S.

4671

4670

170 000

45- FEET
07727



FEB 25 1947

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

See Attached maps

MICROFILMED
FEB 25 1987

Scale: 2 inches equal 1 mile.

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

ac Health Trust
John Dietz Manager

(Applicant)

Received by MTS Date 4-11-95 Time 11:55 Preliminary check by J.F. Stanton
Fee \$ 100 Received by MTS # 5077966 Date 4-11-95
Publication prepared by MP Date 4/6/95 Published in So. Id Press
Publication approved _____ Date _____

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:

MICROFILMED
FEB 25 1997

THIS CONTRACT AND DECLARATION OF TRUST IS EXECUTED
IN THE UNITED STATES OF AMERICA, AND SHALL BE
CONSTRUED UNDER ITS COMMON LAW

THIS CONTRACT AND DECLARATION OF TRUST is made this 27th day of December, 1993, by STEVE VICTOR, of the County of Twin Falls, State of Idaho, referred to as "Creator" of this Trust Organization, and WILFORD NOLAN VICTOR and RUBY C. VICTOR, of the County of Twin Falls, State of Idaho, hereinafter referred to as "Exchangor", and do hereby agree as follows:

TRUST CREATION

Exchange:

1. The Creator hereby offers to bargain or exchange in trade, Trust certificates comprising of a total of one hundred units for the real and/or personal property of the Exchangor.

2. The EXCHANGOR, for Ten Dollars (\$10.00) United States and other full and adequate consideration, the receipt of which is hereby acknowledged, does hereby bargain assign, convey, exchange and deliver unto the Creator said consideration for all of the Trust Certificate Units in the Trust Organization created herein, said consideration to be held in trust by the Creator in the Trust name pursuant to the terms of this Declaration of Trust and obligations as set forth herein.

Name and Domicile:

3. The Trust Organization name and other things of value to constitute a Trust Organization shall have its principle domicile in the County of Twin Falls, State of Idaho, or elsewhere as designated by the Trustee(s), and be known as ACE REALTY TRUST

Indenture Purpose:

4. The purpose of this Indenture is that these same assets will be promptly conveyed to a Board of Trustees to constitute the corpus of a Pure Trust Organization and further that these assets are to be held in fee simple by the Trust Organization in trust for the period herein designated and to provide for the same, common, logical and economical administration thereof by natural persons acting in fiduciary capacity.

A. To preserve the estate, avoiding probate costs and inheritance taxes;

B. To gain a shield against a litigation happy society;

ACKNOWLEDGEMENT OF APPOINTMENTS

STATE OF IDAHO)
) ss.
County of Twin Falls)

In fulfillment of all required duties set forth in the Indenture, and seeking a full release and exoneration thereof, BE IT KNOWN that the Creator of this Trust Organization does hereby freely designate and appoint KENDAL F. EGBERT, of Twin Falls County, State of Idaho, as and to be the Trustee of ACE REALTY TRUST, Trustee(s) have chosen NOLAN VICTOR to be the Manager, of Twin Falls County, Idaho, of ACE REALTY TRUST, while under absolutely no obligation to, and without compulsion by, said designee.

Additionally, for an in consideration of the premises, the Creator does hereby ASSIGN, CONVEY, DELIVER, without warranty, unto the Board of Trustees of ACE REALTY TRUST, all the concerned real and/or personal properties of the EXCHANGOR, as described in the Schedules to the Indenture.

Said Trustee hereby accepts such appointment, together with the powers, and duties, and responsibilities pertaining thereto, and acknowledge receipt of all the said properties and assets, also of original, full acknowledged copy of Contract and Declaration of Trust creating ACE REALTY TRUST, and agree to be bound thereby.

Steve Victor

CREATOR

William E. Toolson

PROTECTOR

Kendal F. Egbert

TRUSTEE

Nolan Victor

MANAGER

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 27th day of December, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared STEVE VICTOR, KENDAL F. EGBERT, NOLAN VICTOR, and WILLIAM E. TOOLSON, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Michael Campbell

NOTARY PUBLIC FOR IDAHO
Residence: *Twin Falls, Idaho*
My Commission Expires: _____

MICROFILMED
FEB 25 1997

228509

QUITCLAIM DEED

For Value Received

NOLAN VICTOR and RUBY C. VICTOR, husband and wife

do hereby convey, release, remise and forever quit claim unto

ACE REALTY TRUST

whose address is: 1528 Addison Avenue East, Twin Falls, Idaho 83301

the following described premises, to-wit:

PARCEL #1

EVERGREEN MOTEL

Lots 7, 8, 9, 10, and 11 in Block 115 of the BURLEY TOWNSHIP, Cassia County, Idaho as the same is plated in the official plat thereof, now of record in the office of the Recorder of said County.

PARCEL #2

PARCEL A

Part of Sections 33 and 34, Township 14 South, Range 21 E.B.M., Cassia County, Idaho, described as: Beginning at the 1/4 Section corner common to Sections 33 and 34, thence S. 00°00' E. 50.00 feet to the real point of beginning, thence S. 89°39' E. 347.48 feet; thence S. 05°45' W. 334.48 feet; thence S. 68.12' W. 390.24 feet; thence S. 55°22' W. 625.49 feet; thence N. 20°26' W. 146.32 feet; thence N. 00°24' E. 235.46 feet; thence N. 48°39' E. 118.58 feet; thence N. 48°30' E. 251.20 feet; thence N. 56°57' E. 399.78 feet to the real point of beginning, less an easement for ingress and egress over all existing roadways that exist on the above-described property, together with: an easement for ingress and egress over existing roadways.

PARCEL B

A portion of Section 34, Township 14 South, Range 21 E.B.M., Cassia County, Idaho, described as: Beginning at the C-S-NW 1/64 corner of Section 34, thence S. 43°29' E. 100.30 feet to the real point of beginning, thence N. 62°03' E. 103.63 feet; thence N. 89°43' E. 352.49; thence S. 08°43' E. 297.35 feet; thence S. 63°14' W. 939.69 feet; thence N. 29°47' W. 108.04 feet; thence N. 53°41' E. 282.55 feet; thence N. 06°21' W. 80.05 feet; thence N. 16°47' E. 132.67 feet; thence N. 36°25' E. 247.66 feet to the real point of beginning, less: an easement for ingress and egress over all existing roadways that exist on the above-described property, together with: an easement for ingress and egress over existing roadways.

together with their appurtenances.

Dated:

12/30/93

Nolan Victor
Ruby C. Victor

FEE 300 DEPUTY REC

ts: Kay 337
Ruber 310

CASSIA COUNTY, IDAHO
FRANK DEAN ARMS
RECORDER

1994 JAN - 4 P 1:25

RECORDED AT THE REQUEST OF

1528 Addison Ave
257

STATE OF IDAHO, COUNTY OF Twin Falls
On this 30th day of December, 1993,
before me, a notary public in and for said State, personally appeared

MICROFILM
FEB 25 1994

**SOUTH IDAHO PRESS
BURLEY, IDAHO
AFFIDAVIT OF PUBLICATION**

RECEIVED

APR 08 1996

**Department of Water Resources
Southern Region**

)
) ss
)

being first duly sworn, deposes and says that she is the General
South Idaho Press, a daily newspaper published at Burley, Idaho, in
aid and that the paper is of general circulation therein. Deponent
the printed notice attached hereto was duly published according to
editions of the South Idaho Press for 100 consecutive week(s),
the issue dated March 25 19 96, and ending with the issue
19 96.

Kary D Miller

)
)
)

day of April in the year of 1996 before me a Notary
appeared Kary D. Miller, known or identified to me to be the person
described to the within instrument, and acting by me first duly sworn,
statements therein are true, and acknowledged to me that she

Jana K Burns
Notary Public for Idaho

Residing at: Rupert, Idaho

My commission expires: 6-28-2000

Cost of Publication 35.04
Notary Fee .50
Total Cost 30.14

OK
MB
4/8/96

MICROFILMED
FEB 25 1997

SOUTH IDAHO PRESS
BURLEY, IDAHO
AFFIDAVIT OF PUBLICATION

RECEIVED

APR 6 1996

Department of Water Resources
Southern Region

96-124
NOTICE OF AMENDED
APPLICATION FOR WATER
PERMIT

Notice is hereby given that the following
application for permit to appropriate
the public waters of the State of Idaho
has been amended as follows:

ANTONE R. THOMPSON
350 S 500 W
CEDAR CITY UT 84720
45-07727

Date Amended: 3/15/96
Source: groundwater
Diversion Pt: SW1/4SE1/4NW1/4 or
SE1/4SW1/4NW1/4, S34, T14S, R21E;
Cassia County.

Use: 1/1-12/31
Commercial (0.60 cfs)
(Greenhouses & swimming pool)
Fish Propagation (0.90 cfs)
Domestic (0.10 cfs) (4 homes)

Total to be appropriated: 1.00 cfs
In: S1/2NW1/4, S34, T14S, R21E.

The permit will be subject to all prior
water rights. Any protest must be filed
with the Director, Dept. of Water
Resources, Southern Region, 222
Shoshone Street East., Twin Falls, ID
83301 together with a protest fee of
\$25.00 on or before April 11, 1996.
The protestant must also send a copy of
the protest to the applicant.

Karl J. Dreher, Director

Published in the South Idaho Press on March
25 and April 1, 1996.

)
) SS
)

being first duly sworn, deposes and says that she is the General
Manager of the South Idaho Press, a daily newspaper published at Burley, Idaho, in
aid and that the paper is of general circulation therein. Deponent
the printed notice attached hereto was duly published according to
the editions of the South Idaho Press for one consecutive week(s),
the issue dated March 25 1996, and ending with the issue
19 96.

Kary D. Miller

)
)
)

day of March in the year of 1996 before me a Notary
appeared Kary D. Miller, known or identified to me to be the person
described to the within instrument, and being by me first duly sworn,
statements therein are true, and acknowledged to me that she

Notary Public for Idaho

Residing at: Rupert, Idaho

My commission expires: 6-28-2000

Cost of Publication 20.00

Notary Fee 5.00

Total Cost 25.00

cf
MP
4

SOUTH IDAHO PRESS
BURLEY, IDAHO
AFFIDAVIT OF PUBLICATION

RECEIVED

MAY 15 1995

Department of Water Resources
Southern Region

County of Cassia)
STATE OF IDAHO) ss
)

Kary D. Miller, being first duly sworn, deposes and says that she is the General Manager of the South Idaho Press, a daily newspaper published at Burley, Idaho, in the county aforesaid and that the paper is of general circulation therein. Deponent further states that the printed notice attached hereto was duly published according to law in the regular editions of The South Idaho Press for two consecutive week(s), commencing with the issue dated May 1, 1995, and ending with the issue dated May 8, 1995.

Kary D Miller

STATE OF IDAHO)
COUNTY OF Cassia)
)

On this 10th day of May in the year of 1995 before me, a Notary Public, personally appeared Kary Miller, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Kelly Admon
Notary Public for Idaho
Residing at Burley, ID
My commission expires: May 23, 1997

Cost of Publication 32.40
Notary Fee .50
Total Cost 32.90

OK
MB
5/19/95

REC-13 103

96-149

**NOTICE OF APPLICATION FOR
WATER PERMIT**

The following application has been filed
to appropriate the public waters of the
State of Idaho:

**ACE REALTY TRUST
1528 ADDISON AVE EAST
TWIN FALLS ID 83301
45-07727**

Source: groundwater tributary to
Trapper Creek

Diversion Pt: SE1/4SW1/4NW1/4, S34,
T14S, R21E; Cassia County.

Use:

Commercial	(1.0 cfs)	1/1-12/31
Heating	(1.0 cfs)	9/1-06/01
Recreation	(1.0 cfs)	1/1-12/31

Total Diversion: 1.0 cfs

Date Filed: 4/11/1995

In: SW1/4NW1/4, S34, T14S, R21E

The permit will be subject to all prior
water rights. Any protest must be filed
with the Director, Dept. of Water
Resources, Southern Region, 222
Shoshone Street East, Twin Falls, ID
83301 together with a protest fee of
\$25.00 on or before May 18, 1995. The
protestant must also send a copy of the
protest to the applicant.

R. Keith Higginson, Director

Published in the South Idaho Press on May 1
and 8th 1995.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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

May 26, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

William A. Parsons
PARSONS, SMITH & STONE, LLP
137 West 13th Street
P.O. Box 910
Burley, ID 83318

RE: PERMIT NO. 45-07727 - ANTONE R. THOMPSON

Dear Mr. Parsons:

I have reviewed your letter dated May 24, 2000 in which you raise several questions in connection with the above referenced permit in the name of Antone R. Thompson ("permit holder"). Your questions and responses to questions as determined by a review of the water right file are as follows:

1. **Was proof of construction of works and application to beneficial use submitted before November 1, 1999 or was an extension granted?**

Answer: Proof was submitted on November 1, 1999. An extension of time in which to file the proof was not requested or granted.

2. **Was the totalizing meter approved by the department? And has he maintained a suitable measuring device?**

Answer: In early February 1999, the department determined that the permit holder had installed measuring devices but they were not adequate to measure the water from the well and the amount being discharged back to the creek. In late February 1999, Thompson submitted information to show that the devices had been calibrated by a licensed engineer.

3. **Has the department requested of him and has he complied with (reporting of) the amount of water diverted?**

Answer: The department has not asked the permit holder to annually report the amount of water diverted.

4. **Has the permit holder supplied information showing volume changes as required in paragraph 9 of the order?**

Answer: The department has not asked the permit holder to annually report the volume changes per hour. That information likely would be required from the permit holder at the time of the field examination to determine the extent of beneficial use.

The department water right file does not contain significant correspondence after late February 1999. The southern regional office of the department has not yet conducted a field examination to determine the extent of beneficial use and compliance with permit conditions.

If you have additional questions, please feel free to contact the department.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - Region
Norman Semanko
Antone Thompson

RECEIVED

MAY 25 2000

PARSONS, SMITH & STONE, LLP

ATTORNEYS AT LAW

137 WEST 13TH STREET

P. O. BOX 910

BURLEY, IDAHO 83318

Department of Water Resources

TELEPHONE

(208) 678-8382

FAX NO.

(208) 678-0146

WILLIAM A. PARSONS

RICHARD K. SMITH

RANDOLPH C. STONE

rcstone@cyberhighway.net

LANCE A. LOVELAND

love9593@cyberhighway.net

May 24, 2000

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83701

RE: 45-07727 Antone R. Thompson

Gentlemen:

Pursuant to the Order of the Department on January 23, 1997, Antone R. Thompson was to have done certain things and he may have made some reports to you.

I have several questions:

1. Was proof of construction of works and application to beneficial use submitted before November 1, 1999 or was an extension granted?
2. Was the totalizing measuring device approved by the department? And has he maintained a suitable measuring device?
3. Has the department requested of him and has he complied with the amount of water diverted?
4. Has the permit holder supplied information showing volume changes as required by paragraph 9 of the Order?

We would appreciate this information at your earliest convenience as it may be that it will be necessary to pursue the matter further through administrative proceedings.

Very truly yours,

PARSONS, SMITH & STONE, LLP



William A. Parsons

WAP:rt



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

January 13, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ANTONE R THOMPSON
PO BOX 221
OAKLEY ID 83346

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 45-07727

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.

Be advised that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office.

If you have questions concerning the field examination, please contact the **SOUTHERN** Regional Office of the department in Twin Falls at (208) 736-3033.

Sincerely,

A handwritten signature in black ink that reads "Kari Lynn Townsend". The signature is written in a cursive style.

Kari Lynn Townsend
Secretary

c: IDWR - Regional Office

MICROFILMED

JAN 28 2000

August 31, 1999

ANTONE R THOMPSON
350 S 500 W
CEDAR CITY UT 84720

PROOF DUE NOTICE

RE: PERMIT NO. 45-07727

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, 1999.

(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.

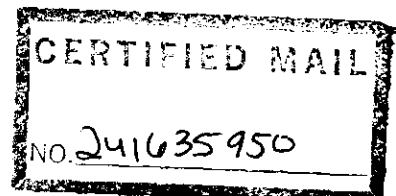
SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

MICROFILMED

JAN 28 2000



RECEIVED

MAR 01 1999

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
NORMAN M. SEMANKO
PATRICK D. MADIGAN
TIMOTHY J. STOVER

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Department of Water Resources

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

February 26, 1999

Allen Merritt, PE
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

HAND DELIVERED

Re: Tony Thompson -- Permit No. 45-07727

Dear Allen:

As promised, this is in response to your letter of February 5, 1999.

The enclosed letter and certified data from Clarence W. Robison, PE, CWR Consulting, provides the information that you requested regarding installation of a totalizing flow meter, calibration of the measuring devices, diversion rate from the well, and losses through the system. In addition to the totalizing flow meter, an outlet valve was installed, as requested in your letter.

The "losses" discussed in Robison's letter are composed of seepage and evaporation. The major component is seepage. Of course, the seepage returns to the water system and is not "consumptive use". See, I.C. Sec. 42-202B(1) (1997) and I.C. Sec. 42-1401A(2) (amended and transferred to Sec. 42-202B(1) in 1997); see also, Stipulation between the parties, p. 5, par. 14 (Jan. 29, 1997). The evaporation component is minimal and is still being evaluated, but it is expected that the evaporation is not greater than it was before Thompson obtained Permit No. 45-07727 and the well was running in an unregulated manner across the property to Trapper Creek. Of course, the ponds were already utilizing Trapper Creek water under License No. 45-07360 before the permit was obtained in 1997. As you may know, the Stipulation between the parties in this matter requires only that the "consumptive use" not be greater than that which existed prior to Thompson's use. As a result, Thompson's diversion and use do not result in injury to senior water rights.

The paddle wheel device observed during your last field visit is used for de-icing, aeration of water, and for silt control to prevent silt from prematurely settling and clogging the screens. The paddle wheel does not now, nor has it ever, produced power. If Mr. Thompson determines that the apparatus would be suitable to produce power in the future, he will apply for a water right permit, as you have indicated would be necessary. At present, however, he has no plans to produce power.

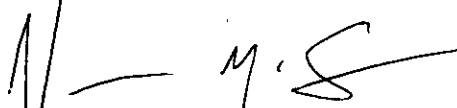
MICROFILMED

JAN 28 2008

Allen Merritt
February 26, 1999
Page 2

If you have any questions about these materials, please feel free to contact any of us.

Sincerely,

A handwritten signature in black ink, appearing to read 'N.M.S.', written over a horizontal line.

NORMAN M. SEMANKO

02119902.NMS

Enclosure

cc: Bill Parsons
Walt Mullins, Oakley Canal Co.
Norm Young, IDWR
Clarence Robison
Tony Thompson

MICROFILMED
JAN 28 2000

CWR Consulting
Clarence Wm. Robison, PE
230 Maxine Lane
Kimberly ID 83341

February 25, 1999

Tony Thompson
P.O. Box 221
Oakley ID 83346

Norm Semanko
Rosholt, Robertson & Tucker
142 3rd Ave. North
P. O. Box 1906
Twin Falls, ID 83303-1906

Re: Trapper Creek Fish Facility Water Measurement Devices.

Tony and Norm:

I performed the initial calibration of the flow measuring devices associated the hot water well diversion for the fish facility during the afternoon of February 22, 1999, in the company of Tony. The totalizing flow meter, Aquamaster Model 400B -- serial number 20312, required by the Idaho Department of Water Resources was installed that morning. The calibration was conducted using a Polysonics Ultrasonic flow meter in conjunction with the installed 6 inch orifice plate. Considering the measurements taken that afternoon, the orifice meter and ultrasonic meter best represented the discharge from the well to the fish ponds. These two meters were within 6 percent of each other. The Aquamaster flow meter significantly under registered the flow. If one believes that the true flow in the pipe was the mean of the orifice and ultrasonic meters, the Aquamaster meter has an error of -30 percent and readings from this meter should be multiplied by 1.423. If IDWR requests, it is possible to incorporate this factor in by adjusting the electronics; however, I would prefer a sealed tag on the Aquamaster indicating the readings shall be multiplied by 1.423.

The broad crested weir at the outlet of the fishponds has a permanently gauge (steel ruler) attached. Using the location of the gauge and the as-built dimensions of the weir, a rating table was developed with a published and accepted computer model capable of producing rating tables within +/-2 percent (*Measuring Flumes for Open Channel Systems*; Bos, Roplogle, and Clemmens, 1984). A field calibration of this rating table would not be effective since most field methods of determining flow have errors on the order of +/- 5 percent at best. The range of the rating table produced by the model has an accuracy range. Over discharges of 0.8 cfs, the rating accuracy is within +/-2 percent. Below heads of 1.5 inches (gauge reading of 1.375 inches with associated flow of 0.39 cfs) the model is not capable of accurately predicting the discharge for this weir. Between gauge readings of 1.375 and 1.625 inches the accuracy is probably on the order of +/-5 percent. From gauge readings of 1.625 to 2.375 inches the accuracy is probably between +/-5 to +/-2 percent. These accuracys do not reflect errors associated with determining the gauge reading. It is my firm belief that the water level on the steel ruler can only be determined to the nearest 0.125 (1/8) inch.

MICROFILMED

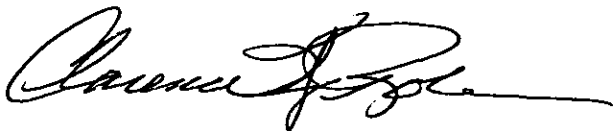
JAN 28 2000

During the calibration of the closed conduit flow measurement devices, the gauge reading on the outlet flume was 1.875 inches. This reading was constant during the period. The discharge back to Trapper Creek from the fish facility was 0.60 (+/-0.03) cfs compared to the hot water diversion of 0.64 (+/-0.019) cfs. During this time period there was no diversion occurring from Trapper Creek itself. Thus, 0.04 cfs appears to be returning to the hydrological system as seepage or evaporation. Given approximate size of the ponds operating, one set 300 feet by 30 feet or 9000 square feet, the loss is approximately 0.192 inches per square foot per hour or 4.61 inches per square foot per day. Potential evaporation for the Malta, Kimberly, and Rupert areas was approximately 0.05 inches per square foot per day for February 22, 1999. This leads me to believe that most of the "loss" is returning to system (Trapper Creek drainage) as seepage. Further evaluation of the evaporation component is planned.

The next set of tests and calibrations, need to address what occurs with actual surface diversions from Trapper Creek and how the hot water diversion changes the "loss" through the system. Additionally, I would also like to check the flow meter calibration at a different diversion rate at some future date. Until such time, please use the rating tables I have enclosed and multiply the Aquamaster readings by 1.423.

Please call me if you have any questions.

Sincerely,



Clarence W. Robison, P.E.

MICROFILMED
JAN 28 2000

Inlet Flume

Trapper Creek Fish Facility Diversion Flume -- Tony Thompson

Gauge: 18 inches from toe of sill
Width: 36 inches

Sill height: 5 inches
Ramp Length: 12 inches

Roughness: rough metal, .02 in
Throat Length: 36 inches

Rating Table in cfs

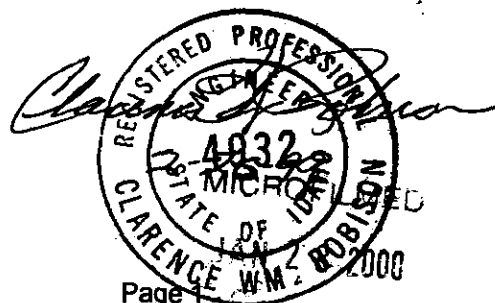
Gauge	0.000 in	0.125 in	0.250 in	0.375 in	0.500 in	0.625 in	0.750 in	0.875 in	1.000 in
1 in	NA	NA	NA	NA	0.38	0.43	0.49	0.54	0.60
2 in	0.60	0.66	0.72	0.78	0.85	0.92	0.99	1.06	1.13
3 in	1.13	1.21	1.29	1.36	1.45	1.53	1.61	1.70	1.79
4 in	1.79	1.87	1.97	2.06	2.15	2.25	2.35	2.44	2.55
5 in	2.55	2.65	2.75	2.86	2.96	3.07	3.18	3.29	3.41
6 in	3.41	3.52	3.64	3.75	3.87	3.99	4.11	4.24	4.36
7 in	4.36	4.49	4.61	4.74	4.87	5.00	5.14	5.27	5.40
8 in	5.40	5.54	5.68	5.82	5.96	6.10	6.24	6.39	6.53
9 in	6.53	6.68	6.83	6.98	7.13	7.28	7.44	7.59	7.75
10 in	7.75	7.91	8.06	8.22	8.38	8.55	8.71	8.87	9.04
11 in	9.04	9.21	9.38	9.55	9.72	9.89	10.06	10.23	10.41
12 in	10.41	10.59	10.76	10.94	11.12	11.30	11.49	11.67	11.85
13 in	11.85	NA	NA	NA	NA	NA	NA	NA	NA

Example: For a gauge height of 4 and 3/8 inches (4.375") the flow rate is given by the cell where the 4 in row and the 0.325 in column intercept (2.06) in cfs.

Rating Table in gpm

Gauge	0.000 in	0.125 in	0.250 in	0.375 in	0.500 in	0.625 in	0.750 in	0.875 in	1.000 in
1 in	NA	NA	NA	NA	171	194	218	243	269
2 in	269	296	323	352	382	412	443	475	508
3 in	508	542	577	612	649	686	723	762	801
4 in	801	841	882	924	966	1009	1053	1097	1142
5 in	1142	1188	1235	1282	1330	1379	1428	1478	1529
6 in	1529	1580	1632	1684	1738	1791	1846	1901	1957
7 in	1957	2013	2070	2128	2186	2245	2305	2365	2426
8 in	2426	2487	2549	2611	2675	2738	2803	2867	2933
9 in	2933	2999	3066	3133	3201	3269	3338	3407	3477
10 in	3477	3548	3619	3691	3763	3836	3909	3983	4057
11 in	4057	4132	4208	4284	4360	4438	4515	4593	4672
12 in	4672	4751	4831	4911	4992	5073	5155	5237	5320
13 in	5320	NA	NA	NA	NA	NA	NA	NA	NA

Example: For a gauge height of 4 and 3/8 inches (4.375") the flow rate is given by the cell where the 4 in row and the 0.325 in column intercept (924) in gpm.



Outlet Flume

Trapper Creek Fish Facility Outlet Flume -- Tony Thompson

Gauge: 18 inches from toe of sill
Width: 36 inches

Sill height: 5.25 inches
Ramp Length: 12 inches

Roughness: smooth metal, .002 in
Throat Length: 36 inches

Rating Table in cfs

Gauge	0.000 in	0.125 in	0.250 in	0.375 in	0.500 in	0.625 in	0.750 in	0.875 in	1.000 in
1 in	NA	NA	NA	0.39	0.44	0.49	0.55	0.60	0.66
2 in	0.66	0.73	0.79	0.86	0.93	1.00	1.07	1.14	1.22
3 in	1.22	1.30	1.37	1.46	1.54	1.63	1.71	1.80	1.89
4 in	1.89	1.98	2.07	2.17	2.26	2.36	2.46	2.56	2.66
5 in	2.66	2.77	2.87	2.98	3.09	3.20	3.31	3.42	3.54
6 in	3.54	3.65	3.77	3.89	4.01	4.13	4.25	4.38	4.50
7 in	4.50	4.63	4.76	4.89	5.02	5.15	5.29	5.42	5.56
8 in	5.56	5.70	5.84	5.98	6.12	6.26	6.41	6.55	6.70
9 in	6.70	6.85	7.00	7.15	7.30	7.46	7.61	7.77	7.93
10 in	7.93	8.08	8.24	8.41	8.57	8.73	8.90	9.06	9.23
11 in	9.23	9.40	9.57	9.74	9.91	10.08	10.26	10.43	10.61
12 in	10.61	10.79	10.97	11.15	11.33	11.51	11.69	11.88	12.06
13 in	12.06	NA	NA	NA	NA	NA	NA	NA	NA

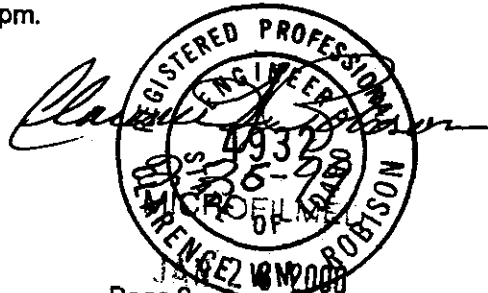
Example: For a gauge height of 4 and 3/8 inches (4.375") the flow rate is given by the cell where the 4 in row and the 0.325 in column intercept (2.17) in cfs.

Gauge zero 0.125 inches above sill elevation, rating table reflects this offset.

Rating Table in gpm

Gauge	0.000 in	0.125 in	0.250 in	0.375 in	0.500 in	0.625 in	0.750 in	0.875 in	1.000 in
1 in	NA	NA	NA	173	196	220	245	271	298
2 in	298	326	355	385	415	447	479	512	547
3 in	547	581	617	653	690	729	767	807	847
4 in	847	888	930	972	1059	1104	1149	1195	1195
5 in	1195	1242	1289	1337	1386	1435	1485	1536	1587
6 in	1587	1639	1692	1745	1799	1854	1909	1965	2021
7 in	2021	2079	2136	2195	2254	2313	2373	2434	2496
8 in	2496	2557	2620	2683	2747	2811	2876	2942	3008
9 in	3008	3075	3142	3210	3278	3347	3416	3487	3557
10 in	3557	3628	3700	3772	3845	3919	3992	4067	4142
11 in	4142	4218	4294	4370	4447	4525	4603	4682	4761
12 in	4761	4841	4921	5002	5083	5165	5248	5330	5414
13 in	5414	NA	NA	NA	NA	NA	NA	NA	NA

Example: For a gauge height of 4 and 3/8 inches (4.375") the flow rate is given by the cell where the 4 in row and the 0.325 in column intercept (930) in gpm.



Orifice Meter

Trapper Creek Fish Facility Artesian Well Orifice Plate -- Tony Thompson

Orifice Plate Thickness: 0.25 in
Orifice Diameter: 6.00 in

Pipe Diameter
10.02 in ID

Upstream Tap: 10 in from plate
Downstream Tap: 5 in from plate

Rating Table in cfs (based on Fluid Mechanics, 2ed", by Frank M. White, McGraw-Hill, 1986)

Difference	0.000 in	0.125 in	0.250 in	0.375 in	0.500 in	0.625 in	0.750 in	0.875 in	1.000 in
0 in	NA	NA	0.15	0.19	0.21	0.24	0.26	0.28	0.30
1 in	0.30	0.32	0.34	0.35	0.37	0.38	0.40	0.41	0.43
2 in	0.43	0.44	0.45	0.46	0.48	0.49	0.50	0.51	0.52
3 in	0.52	0.53	0.54	0.55	0.56	0.57	0.58	0.59	0.60
4 in	0.60	0.61	0.62	0.63	0.64	0.65	0.65	0.66	0.67
5 in	0.67	0.68	0.69	0.70	0.70	0.71	0.72	0.73	0.73
6 in	0.73	0.74	0.75	0.76	0.77	0.77	0.78	0.79	0.79
7 in	0.79	0.80	0.81	0.81	0.82	0.83	0.84	0.84	0.85
8 in	0.85	0.86	0.86	0.87	0.87	0.88	0.89	0.89	0.90
9 in	0.90	0.91	0.91	0.92	0.92	0.93	0.94	0.94	0.95
10 in	0.95	0.95	0.96	0.97	0.97	0.98	0.98	0.99	0.99
11 in	0.99	1.00	1.01	1.01	1.02	1.02	1.03	1.03	1.04
12 in	1.04	1.04	1.05	1.05	1.06	1.06	1.07	1.07	1.08

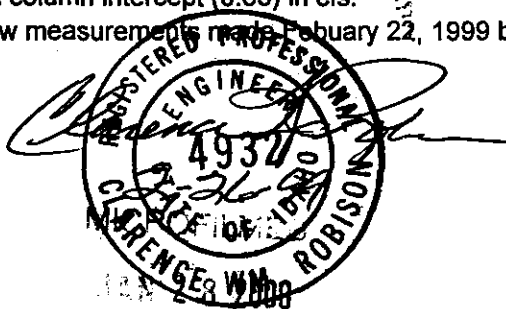
Example: For a head difference of 4 and 3/8 inches (4.375") across the orifice plate, the flow rate is given by the cell where the 4 in row and the 0.325 in column intercept (0.63) in cfs.

Rating Table in cfs (Based on field measurements)

Difference	0.000 in	0.125 in	0.250 in	0.375 in	0.500 in	0.625 in	0.750 in	0.875 in	1.000 in
0 in	NA	NA	0.16	0.19	0.22	0.25	0.27	0.29	0.31
1 in	0.31	0.33	0.35	0.36	0.38	0.40	0.41	0.43	0.44
2 in	0.44	0.45	0.47	0.48	0.49	0.50	0.51	0.53	0.54
3 in	0.54	0.55	0.56	0.57	0.58	0.59	0.60	0.61	0.62
4 in	0.62	0.63	0.64	0.65	0.66	0.67	0.68	0.69	0.69
5 in	0.69	0.70	0.71	0.72	0.73	0.74	0.74	0.75	0.76
6 in	0.76	0.77	0.77	0.78	0.79	0.80	0.81	0.81	0.82
7 in	0.82	0.83	0.84	0.84	0.85	0.86	0.86	0.87	0.88
8 in	0.88	0.88	0.89	0.90	0.90	0.91	0.92	0.92	0.93
9 in	0.93	0.94	0.94	0.95	0.95	0.96	0.97	0.97	0.98
10 in	0.98	0.99	0.99	1.00	1.00	1.01	1.02	1.02	1.03
11 in	1.03	1.03	1.04	1.04	1.05	1.06	1.06	1.07	1.07
12 in	1.07	1.08	1.08	1.09	1.09	1.10	1.11	1.11	1.12

Example: For a head difference of 4 and 3/8 inches (4.375") across the orifice plate, the flow rate is given by the cell where the 4 in row and the 0.325 in column intercept (0.63) in cfs.

Correction Factor: 1.034 based on flow measurements made February 22, 1999 by C.W.R.



Calibration

Trapper Creek Fish Facility Artesian Well Diversion Calibration

Time	Polyscronic DCT-7088 Flow Meter				Orifice Plate		Aquamaster Meter Model 400B SN:20312		
	Signal Strength	Velocity ft/s	Flow cfs	Volume af	Head in	Flow cfs	Flow gpm	Flow cfs	Volume af
2/22/99 14:36	100%	1.80	0.65	0.00	4.250	0.62	190	0.42	0.22
2/22/99 15:03	100%	1.81	0.67	0.03	4.125	0.61	160	0.36	0.23
2/22/99 15:24	100%	1.86	0.69	0.05	4.250	0.62	160	0.36	0.24
2/22/99 15:30	Adjustment of Aquamaster from standard 8" pipe installation (ID=7.981) to actual pipe ID of 8.25" and insertion depth								
2/22/99 15:52	100%	1.80	0.66	0.07	4.375	0.63	210	0.47	0.26
2/22/99 16:15	100%	1.80	0.68	0.10	4.250	0.62	220	0.49	0.27
2/22/99 16:30	100%	1.79	0.66	0.11	4.250	0.62	190	0.42	0.28
2/22/99 16:45	100%	1.79	0.66	0.12	4.250	0.62	210	0.47	0.29
2/22/99 16:48	100%	1.79	0.66	0.13					
2/22/99 17:06	100%	1.79	0.65	0.14	4.000	0.60	210	0.47	0.30
2/22/99 17:21	100%	1.80	0.67	0.16	4.250	0.62	210	0.47	0.31
2/22/99 17:25	100%	1.76	0.65	0.16	4.250	0.62	220	0.49	0.31
2/22/99 17:30				cubicft					
2/22/99 17:30	100%	1.74	0.65	0.00	4.250	0.62	190	0.42	0.32
2/22/99 17:36	100%	1.76	0.66	258.00	4.250	0.62	200	0.45	0.32
2/22/99 17:41	100%	1.76	0.65	441.00					
2/22/99 17:46							190	0.42	0.32
Mean Flow	14:36 to 17:25		0.67	0.67		0.62	198	Invalid Settings	
Mean Flow	15:52 to 17:25		0.66	0.69		0.62	210	0.47	0.39
Error with respect to Ultrasonic				4%		-7%		-29%	-41%
Mean Flow	17:30 to 17:41		0.65	0.66		0.62		0.43	
Error with respect to Ultrasonic				1%		-5%		-34%	
Error with respect to Ultra.&Orifice			3%			-3%		-30%	
Meter Correction K			1.000			1.062		1.465	
True flow represented by ultrasonic									
Meter Correction K			0.969			1.034		1.423	
True flow represented by ultrasonic and orifice									
Meter Correction K									
True flow represented by orifice									
			0.937			1.000		1.377	
Meter Correction K									
True flow represented by mean of all meters									
			0.897			0.957		1.318	

MICROFILMED

JAN 28 2000
Page 4



ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
NORMAN M. SEMANKO
PATRICK D. MADIGAN
TIMOTHY J. STOVER

RECEIVED
FEB 12 1999

Department of Water Resources

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

Given
File
NM
NY

February 11, 1999

Allen Merritt, PE
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Tony Thompson -- Permit No. 45-07727 Water Measuring

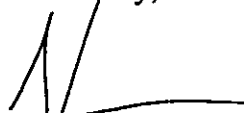
Dear Allen:

This is to acknowledge receipt of your letter of February 5, 1999.

I met with Tony Thompson and Clarence Robison yesterday afternoon regarding the requests made in your letter. Tony indicated that he would make every effort to comply within the relatively short timeframe that you have provided. I have encouraged Clarence Robison to contact you directly with any questions that he may have about the matters discussed in your letter. We will plan to provide you with a full written response on or before February 26, 1999. In the meantime, please let us know if you have any questions.

Thank you.

Sincerely,



NORMAN M. SEMANKO

02119902.NMS

cc: Bill Parsons
Walt Mullins, Oakley Canal Co.
Norm Young, IDWR
Clarence Robison
Tony Thompson

MICROFILMED
JAN 28 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

RECEIVED

FEB 08 1999

Department of Water Resources

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

February 5, 1999

Tony Thompson
350 S 500 W
Cedar City, UT 84720

RE: Permit 45-07727 Measuring and Reporting Use

Dear Mr. Thompson:

Thank you for meeting with me last Tuesday and describing your facility. As you are aware your water use is of concern to the Oakley Canal Company and it's potential affect on their senior water rights. The department initially granted permit 45-07727 with certain conditions which were intended to protect the Oakley Canal Company's senior rights. If it is determined that your use injures senior rights and that injury is not fully mitigated then your use must cease.

As a condition of approval of permit 45-07727 you are required to install adequate measuring devices on the well and on the effluent discharge. The measuring device on the well is required to be a totalizing measuring device. My recent inspection found that you have installed measuring devices however you indicate these devices have not yet been calibrated. I found the measuring device on the well does not have a mechanical means to totalize the volume used. I also observed that the discharge rate of the effluent, when only flow from the well is being discharged, is at the extreme low end of the reliable range of your installed broad crested weir.

Currently your measuring devices are not adequate to measure the water from the well and the amount of water being discharged back into the creek to demonstrate that your use is non-consumptive. Please have your devices calibrated or modified so that your use can be adequately measured to determine the loss through your facility, if any. Please have this work completed no later than February 26th. Since you are required to have a totalizing measuring device at the well please provide for same by February 26th or petition to have this condition removed by February 26th. If you choose to petition for removal of this condition the Oakley Canal Company has the opportunity to object.

As you know the discharge measurements taken during my inspection utilizing your un-calibrated devices indicated that there may be up to 200 gpm loss through your facility and that you were diverting 500 gpm from the well. Recognizing that these numbers may be unreliable, they do indicate two potential problems. 1) The use is not non-consumptive and may injure senior rights. 2) The diversion

MICROFILMED

JAN 28 2000

exceeds the permitted amount for the current beneficial use established. Please note that losses through your facility must be fully mitigated or your use curtailed. Diversions from the well must be regulated within permitted parameters. Regarding this last issue; currently there does not exist valves to limit your use to permitted amounts while directing excess flow from the well to the creek or to shut your use off. Please reconfigure your pipeline to provide for regulation by February 26th.

During my inspection there was observed a paddle-wheel device at your Trapper Creek point of diversion. Please provide a written explanation as to what your intentions are with this device by February 26th or remove it from across the stream. As you are aware to generate power requires a water right which you currently do not have. Uses of this device, other than power, may be permitted if is determined to be an appropriate integral part of your diversion structure (ie. a trash rack device) for your current water right.

By this letter the department requires that you shall provide certified measurements, of your water use taken by your engineer, and/or other documentation by February 26th to demonstrate that your facility is being operated in a manner consistent with your approved water rights. Failure to do so will result in the department issuing a "notice of violation/cease and desist order".

If you have questions regarding this matter, please feel free to contact me at this office.

Sincerely,



Allen Merritt, PE
Southern Region Manager

CC: Walt Mullins - Oakley Canal Co
Norm Semanko
Clarence Robison
✓ Norm Young - IDWR

MICROFILMED

JAN 28 2000

Glen ✓
Time *1/27*



State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200,
Phone: (208) 736-3033 FAX: (208) 736-3034

SOUTHERN REGION

February 5, 1999

Tony Thompson
350 S 500 W
Cedar City, UT 84720

RE: Permit 45-07727 Measuring and Reporting Use

Dear Mr. Thompson:

Thank you for meeting with me last Tuesday and describing your facility. As you are aware your water use is of concern to the Oakley Canal Company and it's potential affect on their senior water rights. The department initially granted permit 45-07727 with certain conditions which were intended to protect the Oakley Canal Company's senior rights. If it is determined that your use injures senior rights and that injury is not fully mitigated then your use must cease.

As a condition of approval of permit 45-07727 you are required to install adequate measuring devices on the well and on the effluent discharge. The measuring device on the well is required to be a totalizing measuring device. My recent inspection found that you have installed measuring devices however you indicate these devices have not yet been calibrated. I found the measuring device on the well does not have a mechanical means to totalize the volume used. I also observed that the discharge rate of the effluent, when only flow from the well is being discharged, is at the extreme low end of the reliable range of your installed broad crested weir.

Currently your measuring devices are not adequate to measure the water from the well and the amount of water being discharged back into the creek to demonstrate that your use is non-consumptive. Please have your devices calibrated or modified so that your use can be adequately measured to determine the loss through your facility, if any. Please have this work completed no later than February 26th. Since you are required to have a totalizing measuring device at the well please provide for same by February 26th or petition to have this condition removed by February 26th. If you choose to petition for removal of this condition the Oakley Canal Company has the opportunity to object.

As you know the discharge measurements taken during my inspection utilizing your un-calibrated devices indicated that there may be up to 200 gpm loss through your facility and that you were diverting 500 gpm from the well. Recognizing that these numbers may be unreliable, they do indicate two potential problems. 1) The is not

Post-It* Fax Note 7671		Date	# of pages 2
To <i>Novak Young</i>	From <i>Allen Hewitt</i>		
CO./Dept	Co.		
Phone #	Phone #		
Fax #	Fax #		

ORNE
IER

MICROFILMED

JAN 28 2000

non-consumptive and may injure senior rights. 2) The diversion exceeds the permitted amount for the current beneficial use established. Please note that losses through your facility must be fully mitigated or your use curtailed. Diversions from the well must be regulated within permitted parameters. Regarding this last issue; currently there does not exist valves to limit your use to permitted amounts while directing excess flow from the well to the creek or to shut your use off. Please reconfigure your pipeline to provide for regulation by February 26th.

During my inspection there was observed a paddle-wheel device at your Trapper Creek point of diversion. Please provide a written explanation as to what your intentions are with this device by February 26th or remove it from across the stream. As you are aware to generate power requires a water right which you currently do not have. Uses of this device, other than power, may be permitted if is determined to be an appropriate integral part of your diversion structure (ie. a trash rack device) for your current water right.

By this letter the department requires that you shall provide certified measurements, of your water use taken by your engineer, and/or other documentation by February 26th to demonstrate that your facility is being operated in a manner consistent with your approved water rights. Failure to do so will result in the department issuing a "notice of violation/cease and desist order".

If you have questions regarding this matter, please feel free to contact me at this office.

Sincerely,



Allen Merritt, PE
Southern Region Manager

CC: Walt Mullins - Oakley Canal Co
Norm Semanko
Clarence Robison
Norm Young - IDWR

MICROFILMED

JAN 28 2003

SLP *AS* *my*

**ROSHOLT ROBERTSON & TUCKER
ATTORNEYS AT LAW**

**142 THIRD AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, ID 83303-1906
(208) 734-0700
FAX (208) 736-0041**

FACSIMILE TRANSMISSION

*WR. Permit #
45-07727*

DATE: March 19, 1998
FAX TO: Norm Young FAX NO. 208-327-7866
FROM: Norman Semanko
RE: Tony Thompson/Oakley Canal Company

NUMBER OF PAGES INCLUDING THIS ONE: 5

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

MICROFILMED
JAN 28 2000

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. BLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2130
BOISE, IDAHO 83701-2130
TELEPHONE (208) 336-0700
FAX (208) 344-8084

March 18, 1998

Norm Young
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID

VIA FAX

Re: Tony Thompson/Oakley Canal Company

Dear Norm:

The enclosed letter has been provided to Bill Parsons asking that a meeting be held regarding the current situation between Tony Thompson and Oakley Canal Company. Copies were provided to the department.

I understand from our client, Tony Thompson, that Allen Merritt did a site visit today. During the visit, it was mentioned that Oakley Canal Company may ask for a waiver of the department's Well Construction Standards Rules and other provisions applicable to the unauthorized work done on Thompson's property.

Bill Parson's has informed me that the Canal Company is agreeable to a meeting sometime during April. As a result, we request that no action be taken on any waiver request in the meantime. We think it is important that the parties, including the department, first sit down to talk these issues over.

In addition, we have concerns about the work done by the Canal Company and, at this point, are opposed to any waiver being granted. Allen Merritt also observed today that the PVC pipe that the Canal Company installed -- which Thompson is now expected to hook up to -- could wash out during high water periods. The bedding of the PVC pipe does not appear to be up to standard specifications. Thompson would also like to see the well properly controlled by attaching a control device directly to the well, not to the PVC pipe. Leakage problems in the casing where the pipe was cut were also observed. Finally, we understand that the well was not cleaned, other than the upper casing, when the work was done to the well.

MICROFILMED

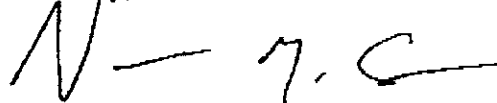
JAN 28 2000

Norm Young
March 18, 1998
Page 2

We assume that the department is aware that this situation has delayed Thompson's ability to develop his permit. Thompson submitted plans to the department, which were granted a waiver, prior to the Canal Company's actions. In addition, a well driller had been lined up to clean the well. However, these efforts were preempted by the Canal Company's work on or around January 1, 1998. Nonetheless, Thompson will continue to do what work he can until this situation is resolved. At some point, however, he will need to hook up to the source and get water. In the meantime, since any delays are due to circumstances beyond Thompson's control, we believe Thompson is covered by the provisions of LC. Sec. 42-204.

I will be out of the office for two weeks, but will be back in the office on April 3. Thank you for your attention to this matter.

Sincerely,



NORMAN M. SEMANKO

03189802.NMS

Enclosure

cc: Bill Parsons (via fax)
Tony Thompson (via fax)

MICROFILMED
JAN 28 2000

**ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW**

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2122
BOISE, IDAHO 83701-2122
TELEPHONE (208) 336-0700
FAX (208) 344-6034

March 13, 1998

Bill Parsons
Parsons, Smith, Stone & Fletcher
P.O. Box 910
Burley, ID 83318

VIA FAX and U.S. MAIL

Re: Oakley Canal Co. -- Repairs to Well & Interference with Development of
Thompson Water Right Permit No. 45-07727

Dear Bill:

We have now had an opportunity to examine the work done on Tony Thompson's property by Oakley Canal Company in more detail, as well as your response to our questions. We have also spoken with representatives of the Idaho Department of Water Resources (IDWR), including Allen Merritt and Mark Slifka.

From Thompson's perspective, the work performed by Oakley Canal Company on or about January 1, 1998 is simply unacceptable, and probably illegal. The changes made to the well and the apparatus that was installed have jeopardized Thompson's ability to finish developing Permit No. 45-07727. They also constitute trespass on the property. We propose a meeting as soon as possible to discuss and attempt to resolve these matters.

Thompson planned to hook up directly to the well in developing his permit. This is what the application for permit approved by IDWR sought permission to do. Of course, this cannot be done now because of the Canal Company's actions. Further development, including installation of any additional measuring devices, has been frustrated by the Canal Company.

We are not clear how the Canal Company expects Thompson to hook up to the new apparatus that has been installed. In addition, because the repairs to the well were not approved in advance by IDWR, we are unsure that the structure will be in place permanently. Thompson is also concerned about the adequacy of the structure, including the use of plastic PVC pipe. Thompson does not want to spend time and money hooking up to a structure that may not be legal or physically adequate.

MICROFILMED

JAN 28 2000

Bill Parsons
March 13, 1998
Page 2

The work done to the well and the apparatus attached to it do not appear to conform to IDWR's Well Construction Standards Rules (IDAPA 37.03.09). The repairs certainly were not approved in advance (see IDAPA 37.03.09.030.06.a). Also, the natural ravine which Thompson planned to use as part of his development was filled-in by the Canal Company, the top of the well was removed, and the rock structure around the well was removed.

Entry on the property and the work done by the Canal Company constitute trespass on Thompson's property without his consent and without an easement, unlawful injury to property, and interference with the waterworks and water supply for Permit No. 45-07727, as well as other violations of Title 18, Idaho Code.

It is obvious that Thompson stands to lose the future productive use of his property if this situation is not rectified. We propose a meeting to discuss this matter on Tuesday, March 17 and would be willing to meet at your office in Burley. We also think that IDWR should be invited to attend. Allen Merritt and Mark Slifka both think that a meeting is advisable.

Thompson plans to do additional work on his permit as soon as this situation is adequately addressed. Time is of the essence.

We are willing to meet to discuss these matters in the hope of coexisting and avoiding any administrative or judicial intervention. Please let us know as soon as possible whether your clients are willing to meet.

Sincerely,



NORMAN M. SEMANKO

03139803.NMS

cc: Allen Merritt, Idaho Department of Water Resources (Southern Region) (via fax)
Mark Slifka, Idaho Department of Water Resources (State Office) (via fax)
Tony Thompson (via fax)

MICROFILMED

JAN 28 2000

** TOTAL PAGE.005 **

From: DWR60::AMERRITT 19-MAR-1998 09:45:05.37
To: DWR03::MSLIFKA,DWR03::JCARLSON,DWR03::NYOUNG
CC: AMERRITT
Subj: THOMPSON/OAKLEY CANAL CO WELL

YESTERDAY MORNING MR. THOMPSON VISITED OUR OFFICE AND REQUESTED THAT SOMEONE CONDUCT A SITE VISIT OF THE WELL. BEFORE GOING I CALLED MARK AND DISCUSSED WHAT HAD TRANSPIRED DURING THE MEETINGS IN BOISE THE DAY BEFORE. WHILE MR. THOMPSON WAS IN MY OFFICE WE CALLED THE OAKLEY CANAL COMPANY AND TALKED WITH WALT MULLINS, THE MANAGER, AND ARRANGED TO MEET HIM AT THE WELL AT 11:00.

AT 11:00 I MET WITH MR. THOMPSON, WALT MULLINS, ROBERT WHITELY & HIS BROTHER. MR. WHITELY IS ON THE CANAL BOARD AND OWNS THE LAND DOWNSTREAM FROM THOMPSON.

AT THE SITE I OBSERVED THE WELL HEAD AND THE OUTFLOW FROM THE TWO DISCHARGE PIPES. ONLY ABOUT 2' OF 8" CASING AND THE VENT PIPE IS ABOVE GROUND; EVERYTHING ELSE IS BURIED EXCEPT THE VERY END OF THE 8" & 6" PVC DISCHARGE PIPES WHERE THEY DUMP INTO TRAPPER CREEK.

AT THE MEETING WALT DESCRIBED IN DETAIL WHAT HE DID TO THE WELL HEAD AND HOW HE CONSTRUCTED THE DRAIN GALLERY NEXT TO THE WELL HEAD. NOTE THAT THE 8" PVC DISCHARGES WATER FROM THE WELL HEAD. THE 6" PVC DISCHARGES WATER FROM THE DRAIN GALLERY PLACED NEXT TO THE WELL HEAD. I WAS NOT ABLE TO MEASURE THE WATER FROM EITHER PIPES BUT ESTIMATE THAT THE 8" WAS FOLLOWING ABOUT 6 TIMES MORE THAT THE 6".

THERE DOES NOT EXIST ANY VALVES TO CONFINE FLOW AT THE WELL HEAD. WE DISCUSSED THIS MATTER AND ALSO DISCUSSED 42-1601. I ENCOURAGED THE CANAL CO. TO REQUEST A WAIVER OF THE VALVING REQUIREMENT FOR THIS WELL AND THE OTHER SIMILAR WELLS ABOVE THE RESERVOIR (TOTAL OF FIVE). WALT THOUGHT THEY HAD A WAIVER. HE INDICATED HE HAS BEEN GOING THROUGH THE OLD VAULT AT THE OFFICE AND REMEMBERS RUNNING ACROSS DOCUMENTS TO THAT AFFECT. HE INDICATED THAT HE FOUND THAT THIS WELL WAS DRILLED IN 1935 AND AUTHORIZED BY THE STATE DROUGHT COMMITTEE AS AN EMERGENCY WELL. I TOLD HIM THAT IF HE HAD SUCH DOCUMENTS IT WOULD BE NICE TO INCLUDE COPIES IN THE AJ FILES.

THE REMAINDER OF THE MEETING INVOLVED DISCUSSIONS ABOUT WHAT THOMPSON WAS GOING TO DO IN DEVELOPMENT. DISCUSSIONS ABOUT MEASUREMENT OF THE WELL AND DIVERSION FROM TRAPPER CREEK TO THE FISH PONDS & THE MEASUREMENT FROM THE PONDS BACK INTO THE CREEK.

AT ISSUE:

THOMPSON'S CONCERN IS THAT THE WELL HAS BEEN MODIFIED AND THE WATER WAS NEVER MEASURED PRIOR TO RECENT WORK. HE CONTENTS THAT HIS PERMIT 45-07727 REQUIRES HIM TO PUT BACK IN THE CREEK ONLY WHAT WAS GOING THERE BEFORE. NOW WITH THE IMPROVEMENTS THERE MAY BE MORE WATER GOING TO THE CREEK. ANOTHER CONCERN IS THAT HE FEELS THAT BY NOW BEING FORCED TO HOOK ON THE NEW STRUCTURE HE IS GIVING UP SOME SORT OF CLAIM OF OWNERSHIP OF THE WELL AND HE IS BEING RESTRICTED IN THE WAY HE INTENDED TO USE THE WATER. HE ALSO HAS CONCERN ABOUT LACK OF COMMUNICATION AND QUESTIONS ABOUT TRESSPASS.

THE OAKLEY CANAL CO'S ISSUE IS THAT THEY FEEL THEY OWN THE WELL AND WATER AND DO NOT PARTICULARLY WANT PEOPLE TO USE IT. ALTHOUGH THEY SIGNED AN AGREEMENT FOR PERMIT 45-07727 THEY QUESTION THAT THOMPSON HAS NOT BEEN DILIGENT IN CONSTRUCTION. THEY ALSO QUESTION THE VIABILITY OF LICENSE 45-07360 FOR DIVERSION OF TRAPPER CREEK SINCE FISH HAVE NOT BEEN RAISED FOR MANY YEARS.

JAN 28 2000

AFTER THE MEETING WALT MULLINS VISITED THE OFFICE AND HE BROUGHT A LARGE COLLECTION OF PAPERS. HE THOUGHT HE COULD DEMONSTRATE THAT WAIVERS OF VALVES HAD ALREADY OCCURRED BUT WE COULD NOT FIND ANYTHING. WE DID FIND PAPERS ABOUT THE DROUGHT COMMITTEE AND WHERE THE CANAL CO. SPENT \$150,000 FOR THE WELLS IN 1935. WE ALSO FOUND A RESOLUTION OF THE BOARD TO SELL THE LAND WHERE THE THOMPSON WELL IS LOCATED TO PRIOR OWNERS RESERVING THE SUBTERRANEAN FLOW. WE DISCUSSED THE LICENSING OF 45-07360. I TOLD HIM THAT THE DEPARTMENT PRESENTLY WOULD PURSUE THE FORFEITURE ISSUE REGARDING THIS LICENSE. I ALSO TOLD HIM THAT AS FOR DILIGENCE FOR DEVELOPING PERMIT 45-07727 I DID NOT KNOW ALL THE FACTS. AT THE END OF THIS MEETING MR. MULLINS WAS GOING TO DRAFT A LETTER TO NORM TO REQUEST A WAIVER OF THE VALVE. HE WAS ALSO GOING TO RESEARCH THE DEED THAT RESULTED FROM THE RESOLUTION FOR SALE OF THE LAND. I DO NOT KNOW IF HE IS GOING TO PURSUE THE ISSUE OF FORFEITURE OF 45-07360 OR RAISE SOME TYPE OF ISSUE REGARDING DILIGENCE IN COMPLETING PERMIT 45-07727.

MICROFILMED

JAN 28 2000

From: DWR60::AMERRITT 19-MAR-1998 10:17:05.87
To: DWR03::MSLIFKA,DWR03::JCARLSON,DWR03::NYOUNG,DWR03::GSAXTON
CC: AMERRITT
Subj: ERROR IN MAIL MESSAGE REGARDING THOMPSON WELL.

I TOLD MULLINS THE DEPARTMENT WOULD NOT PURSUE THE FORFEITURE ISSUE WITH REGARDS TO LICENSE 45-07360. IF WE FOUND THE WATER BEING USED AT THE TIME OF SRBA REVIEW WE WOULD RECOMMEND IT.

ALLEN

MICROFILMED

JAN 28 2000

From: DWR03::JCARLSON 16-MAR-1998 15:41:49.75
To: DWR60::AMERRITT
CC: JCARLSON
Subj: Thompson Well

Good Morning Mr. Merritt:

Mr. Tony Tompson and his attorney will be in this office tomorrow and will be interested in meeting at the well site.

Can we meet them or visit the well site on Wed. Morning 3/18/98.

This is the flowing well which was to be repaired, which was modified by Oakley Canal Co. apparently on a tresspass.

WR. 45-7727

T14S 21E Sec 34 SESWNW or SWSNW

Thanks

Send me or call a message.

jdc

MICROFILMED

JAN 28 2000

March 17, 1998

Memo to File
From: Mark Slifka

RE: WR # 45-07727

I visited with Mr. Tony Thompson and his attorney, Norm Semanko concerning the repair of a LT Geothermal well on the property owned by Mr. Thompson. The repair proposal submitted by Thompson in September 1997 was approved and permitting requirements waived do to the simple nature of the repair of the exposed portion of the well.

On about January 1, 1998 the Oakley Canal Company, who claim right to the water flowing from the well, entered the property and modified the well head diverting the water through an outlet lower on the well. This lower diversion should have reduced the head on the well and may have increased the flow. The reconstruction by Oakley was not approved by Mr. Thompson and so a dispute arose (refer to Stipulation agreement dated January 27, 1997). Initially I told Thompson and Semanko that the well was not constructed properly and would require repair to meet the IDWR well construction standards and that Oakley Canal Company's reconstruction effort did not meet those standards.

After discussion with Norm Young it was decided that since this well, and others like it in the area, have been free flowing since construction, or for at least several decades, and that the water was claimed by Oakley and others to be beneficially used to fill the Oakley reservoir that 42-160b(1) allows for such diversion if the persons utilizing the water are using it beneficially and not allowing waste. I told Mr. Thompson that he should submit to the director a request for waiver of the permitting requirements and that a similar waiver request would be sought from Oakley Canal Co.

MICROFILMED

JAN 28 2000

**ROSHOLT ROBERTSON & TUCKER
ATTORNEYS AT LAW**

**142 THIRD AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, ID 83303-1906
(208) 734-0700
FAX (208) 736-0041**

FACSIMILE TRANSMISSION

DATE:	March 13, 1998		
FAX TO:	Allen Merritt	FAX NO.	736-3037
	Mark Slifka		208-327-7866
	Tony Thompson		801-586-1345
FROM:	Norman Semanko		
RE:	Oakley Canal Co. -- Repair to Well		

NUMBER OF PAGES INCLUDING THIS ONE: 3

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

**MICROFILMED
JAN 28 2000**

ROSHOLT, ROBERTSON & TUCKER
Chartered

ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1908
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-8034

March 13, 1998

Bill Parsons
Parsons, Smith, Stone & Fletcher
P.O. Box 910
Burley, ID 83318

VIA FAX and U.S. MAIL

Re: Oakley Canal Co. -- Repairs to Well & Interference with Development of Thompson Water Right Permit No. 45-07727

Dear Bill:

We have now had an opportunity to examine the work done on Tony Thompson's property by Oakley Canal Company in more detail, as well as your response to our questions. We have also spoken with representatives of the Idaho Department of Water Resources (IDWR), including Allen Merritt and Mark Slifka.

From Thompson's perspective, the work performed by Oakley Canal Company on or about January 1, 1998 is simply unacceptable, and probably illegal. The changes made to the well and the apparatus that was installed have jeopardized Thompson's ability to finish developing Permit No. 45-07727. They also constitute trespass on the property. We propose a meeting as soon as possible to discuss and attempt to resolve these matters.

Thompson planned to hook up directly to the well in developing his permit. This is what the application for permit approved by IDWR sought permission to do. Of course, this cannot be done now because of the Canal Company's actions. Further development, including installation of any additional measuring devices, has been frustrated by the Canal Company.

We are not clear how the Canal Company expects Thompson to hook up to the new apparatus that has been installed. In addition, because the repairs to the well were not approved in advance by IDWR, we are unsure that the structure will be in place permanently. Thompson is also concerned about the adequacy of the structure, including the use of plastic PVC pipe. Thompson does not want to spend time and money hooking up to a structure that may not be legal or physically adequate.

MICROFILMED

JAN 28 2000

Bill Parsons
March 13, 1998
Page 2

The work done to the well and the apparatus attached to it do not appear to conform to IDWR's Well Construction Standards Rules (IDAPA 37.03.09). The repairs certainly were not approved in advance (see IDAPA 37.03.09.030.06.a). Also, the natural ravine which Thompson planned to use as part of his development was filled-in by the Canal Company, the top of the well was removed, and the rock structure around the well was removed.

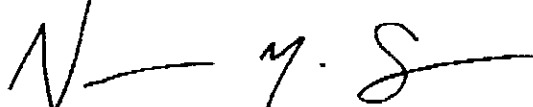
Entry on the property and the work done by the Canal Company constitute trespass on Thompson's property without his consent and without an easement, unlawful injury to property, and interference with the waterworks and water supply for Permit No. 45-07727, as well as other violations of Title 18, Idaho Code.

It is obvious that Thompson stands to lose the future productive use of his property if this situation is not rectified. We propose a meeting to discuss this matter on Tuesday, March 17 and would be willing to meet at your office in Burley. We also think that IDWR should be invited to attend. Allen Merritt and Mark Slifka both think that a meeting is advisable.

Thompson plans to do additional work on his permit as soon as this situation is adequately addressed. Time is of the essence.

We are willing to meet to discuss these matters in the hope of coexisting and avoiding any administrative or judicial intervention. Please let us know as soon as possible whether your clients are willing to meet.

Sincerely,



NORMAN M. SEMANKO

03139803.NMS

cc: Allen Merritt, Idaho Department of Water Resources (Southern Region) (via fax)
Mark Slifka, Idaho Department of Water Resources (State Office) (via fax)
Tony Thompson (via fax)

MICROFILMED

JAN 28 2000

** TOTAL PAGE.003 **

9/17/97

Post-It* Fax Note	7671	Date	# of pages ▶ 3
To	John Carlson	From	Allen Mavitt
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

John

Please review this plan. I recommend that a drilling permit be waived. Please advise.

Allen

Allen,

I agree, if the pressures are low (<5#) and temperatures are (< 110°F). Go ahead and waive.

Mark

For file

45-07727

MICROFILMED

JAN 28 2000

thanks
gwc

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. ELGATE
BERRY V. HENREN
BRUCE M. ELGATE
JOHN L. ROBERTSON
PATRICK D. MADRIGAN
TIMOTHY J. STOFFER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 354-0700
FAX (208) 344-0204

September 16, 1997

Allea Merritt
Idaho Department of Water Resources
Twin Falls, ID

VIA FAX

RECEIVED
SEP 16 1997
Department of Water Resources
Southern Region

Re: Tony Thompson - Repair of Above-Ground Casing

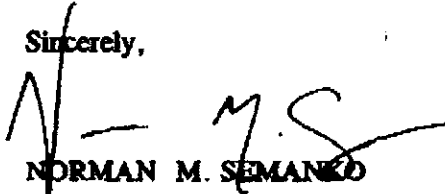
Dear Allen:

As we discussed briefly this morning, please find enclosed a copy of our client's plan to repair the above-ground casing on his property near Trapper Creek. In short, bullet holes exist in the above-ground casing which need to be repaired to facilitate our client's development of Permit No. 45-07727.

We do not believe that this constitutes a modification of the existing low-temperature geothermal well which would require additional departmental approval for at least three reasons: (1) the item being fixed is not the well, but the above-ground casing (see definitions of "well" and "casing" at IDAPA 37.03.09.10, Well Construction Standard Rules); (2) no modification of the well is taking place ("modify" means a change which deepens the well, increases its dimensions, or causes the well not to meet minimum well construction standards. IDAPA 37.03.09.10.22); and (3) the department has previously authorized development of Permit No. 45-07727, including use of the existing well.

Please advise as soon as possible whether you have any concerns or believe that our client's plans require some kind of departmental approval. Otherwise, we plan to commence with the needed repairs. Thank you for your attention to this matter.

Sincerely,



NORMAN M. SEMANKO

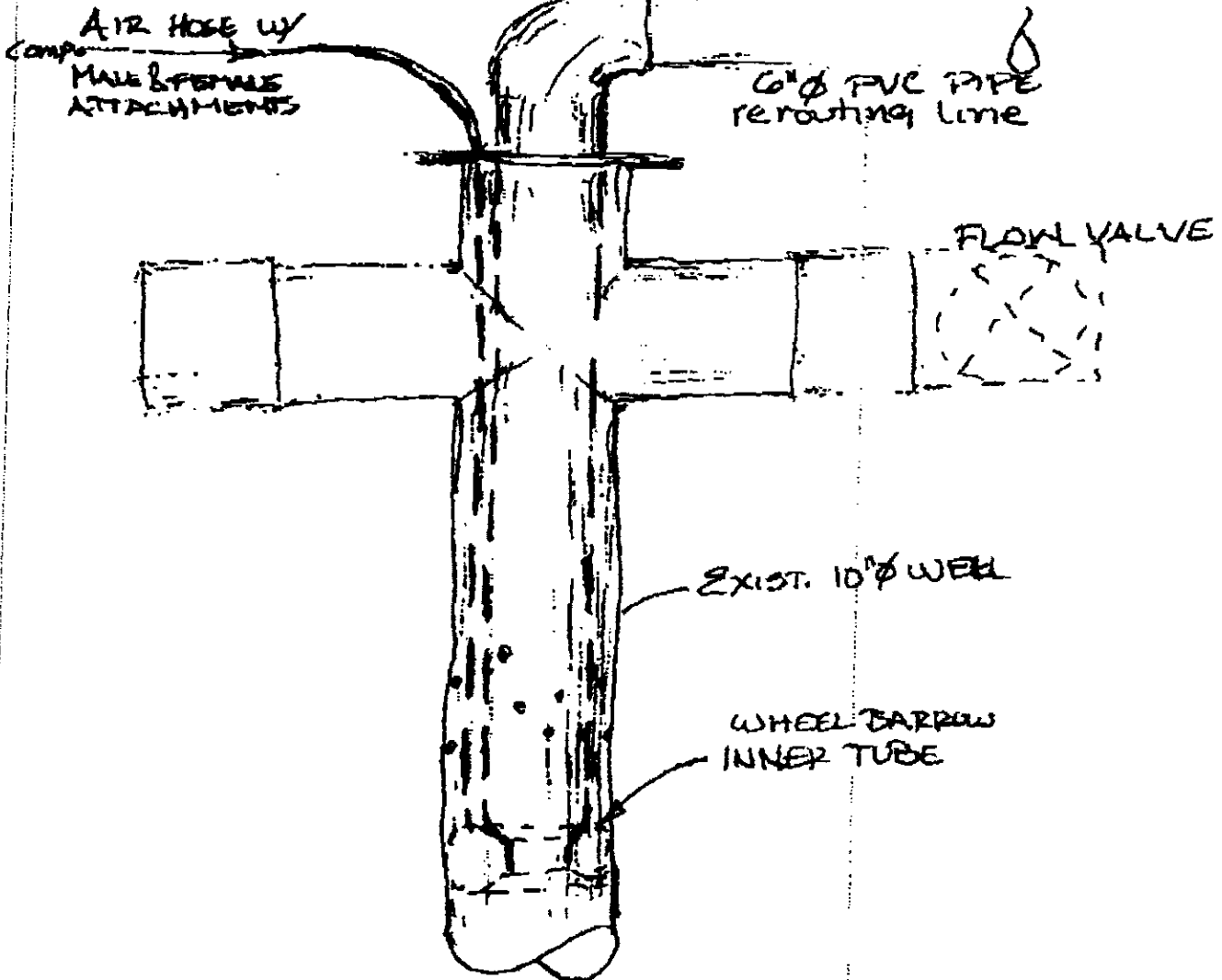
09169702.NMS
Enclosure
cc: Bill Parsons

MICROFILMED
JAN 28 2000

FROM : Int Engineering

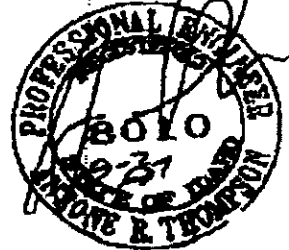
PHONE NO. : 801 586 1345

P02



Procedure:

1. PLACE WHEEL BARROW INNER TUBE ON END OF 6" Ø PVC PIPE.
2. INSERT 6" Ø PVC PIPE INSIDE OF EXIST. WELL
3. INFLATE INNER TUBE (SEALING WATER-FLOW IN 6" Ø)
4. WELD DAMAGED WELL
5. INSTALL FLOW VALVES



SEP 12 '97 12:57

MICROFILMED

PAGE.002

** TOTAL PAGE.003 **

JAN 28 2000

RECEIVED

FEB 21 1997

PARSONS, SMITH, STONE & FLETCHER, LLP

Department of Water Resources
TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

February 19, 1997

Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Attn: L. Glen Saxton

RE: Permit 45-07727 and
License 45-07360

Dear Glen:

I am enclosing the executed Stipulation between Thompson,
Oakley Canal and Shoulder 3.

This should be part of the departmental official records.

Very truly yours,

William A. Parsons
William A. Parsons *W.A.*

WAP:rt
Enc.
cc: Norman Semanko

ENCLOSURE
FEB 25 1997

RECEIVED

FEB 21 1997

Department of Water Resources

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PARSONS, SMITH, STONE & FLETCHER, LLP
LAWYERS
BURLEY, IDAHO

PARSONS, SMITH, STONE & FLETCHER, LLP
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
Telephone: (208) 678-8382
Fax: (208) 678-0146
Attorneys for Oakley Canal Company

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

In the Matter of the Application)
for Permit No. 45-07727 -Antone) STIPULATION
R. Thompson, and License No.)
45-07360.)

OAKLEY CANAL COMPANY ("Oakley"), SHOULDER 3 RANCHES,
INC. ("Shoulder") and ANTONE R. THOMPSON, ("Thompson")
stipulate as follows:

1. Use of water under Permit No. 45-07727 or License No. 45-07360 shall be non consumptive.
2. Ground water used pursuant to Permit No. 45-07727 shall be discharged into Trapper Creek so as to avoid injury to Oakley Canal Company and Shoulder or their successors in interest. The parties shall agree in writing on the point of discharge so as to avoid injury. The water shall be treated so as to insure that all discharges meet applicable Idaho Water

MICROFILMED
FEB 25 1997

1 Quality Standards. The applicant shall comply with all
2 applicable health and environmental regulations during the
3 period of development and ultimate use under Permit No. 45-
4 07727 and License No. 45-07360 and shall furnish copies of any
5 compliance report to Oakley and Shoulder or their successors in
6 interest that have been provided to the Division of
7 Environmental Quality during all use periods. If no reports
8 are required by said Department, Thompson shall provide at
9 least quarterly, water quality reports to Oakley and Shoulder.
10 The quarterly report shall commence three (3) months from the
11 effective date of the stipulation unless the reports are being
12 made to the Division of Environmental Quality.

13 3. Measuring devices will be installed at the cost
14 of Thompson on or before one (1) year from the approval of the
15 Department of Water Resources of Permit No. 45-07727, provided
16 that any use under License No. 45-07360 shall have measuring
17 devices installed prior to the beginning of the irrigation
18 season in 1997 or March 1, 1997, whichever first occurs. Such
19 measuring devices shall be gauged by an independent engineer to
20 verify:

21 3.1. The amount of water diverted from the
22 Artesian ground water well pursuant to Permit No. 45-07727 and
23 any license issue thereto, and

24 3.2. The amount of water diverted from Trapper
25 Creek pursuant to License No. 45-07360.

26 3.3. The amount of water discharged to Trapper
Creek after use under Permit No. 45-07727 and License No. 45-

1 07360 and any license issued therefore.

2 The measuring devices will be maintained by Thompson
3 or his successors in interest of the lands described in
4 paragraph 19.

5 The measuring devices shall be of such accuracy that
6 will enable Oakley and Shoulder to verify that there has not
7 been any consumptive use of water beyond that amount that would
8 have been consumed in the normal flow without the use by
9 Thompson.

10 4. Oakley and Shoulder, their successors in
11 interest, shall have access to the well, the measuring devices,
12 diversion works, and other reasonable access to the property
13 where the diversions and devises are installed for observing
14 the compliance with the terms of this stipulation and any
15 permits or licenses issued by the Idaho Department of Water
16 Resources. Oakley and Shoulder shall attempt reasonable notice
17 before entry by giving notice to Thompson or the occupant of
18 the property owned by Thompson or his successor wherein the
19 water is being utilized.

20 5. Thompson shall notify Oakley and Shoulder, or
21 their successors, prior to filing any application for extension
22 of time to submit proof of beneficiary use to the Idaho
23 Department of Water Resources for Permit No. 45-07727. Such
24 application shall be filed only if good faith development is in
25 progress consistent with this stipulation.

26 6. Oakley and Shoulder may apply to the Idaho
Department of Water Resources for cancellation of any permit or

1 license in the event of noncompliance with this stipulation and
2 the terms and conditions of any permit and/or license
3 subsequently issued under Nos. 45-07727 and 45-07360.
4 Revocation may occur under Idaho Code § 42-350 or any
5 subsequent legislation or regulation of similar provisions.
6 The same right to petition for cancellation may be made by
7 Oakley and Shoulder under Idaho Code § 42-311 in the event of
8 noncompliance with conditions of the permit or such other
9 statute or regulation as may be in effect regarding permits.

10 7. Upon the execution of this stipulation by Oakley,
11 Shoulder, and Thompson and the inclusion by the Department of
12 Water Resources that the use of water under the right affected
13 by an agreement among the parties, Oakley and Shoulder shall
14 withdraw their objection to application for Permit No. 45-
15 07727.

16 8. The use of Permit No. 45-07727 and License No.
17 45-07360 is subject to this stipulation.

18 9. The Artesian Ground Water Well subject to
19 Application 45-07727 is located in the SE~~SE~~NW~~NW~~, Section 34,
20 Township 14 South, Range 21 East, Boise Meridian. Appropriate
21 amendments may be made by the Idaho Department of Water
22 Resources consistent with this stipulation as to location of
23 said well.

24 10. The provisions of this stipulation regarding
25 consumptive use, measuring devices, water quality shall be
26 applicable to License No. 45-07360 or fish propagation.

11. All fish ponds shall be so constructed and

FEB 25 1997

1 maintained as to eliminate consumptive use beyond the amount
2 that would have been consumed in the normal flow without the
3 use by Thompson and to provide for water quality consistent
4 with Idaho Water Quality Standards.

5 12. Oakley and Shoulder shall not be responsible for
6 any of the costs incident to Thompson complying with the
7 requirements of this stipulation.

8 13. If any party to this stipulation or their
9 successors in interest are required to enforce this stipulation
10 or defend against the enforcement of this stipulation, the
11 prevailing party in such action shall be entitled to reasonable
12 attorney fees for the cost of prosecution or the defense of
13 such action. This provision shall include attorney fees
14 incurred at the administrative level before the Idaho
15 Department of Water Resources or other applicable
16 jurisdictional agency such as, but not limited to the agency
17 determining water quality standards.

18 14. "Consumptive Use" shall mean the amount of water
19 that does not remain in the water system after its use or is
20 not returned to the water system through return flows or
21 seepage. "Water System" means all rivers, streams, lakes,
22 springs, ground waters, or other sources within this state,
23 including a river system or other source upon which Oakley and
24 Shoulder rely for their water rights.

25 15. Thompson shall construct and maintain all
26 necessary diversion apparatus necessary for the use of the
water consistent with this stipulation and the permit and/or

1 license granted by the Idaho Department of Water Resources.
2 This provision shall not prevent Oakley, Shoulder, or Thompson
3 or their successors from entering into any written agreements
4 pertaining to the construction and maintenance of diversion
5 apparatus, provided, however, that such agreements to be
6 effective must be in writing and signed by the respective party
7 or parties and shall not modify this stipulation.

8 16. This stipulation shall be effective upon the
9 signing by Oakley, Shoulder, and Thompson and inclusion by the
10 Idaho Department of Water Resources as a condition to Permit
11 No. 45-07727, providing that the use of water under the right
12 is affected by an agreement among the parties.

13 17. Oakley is the owner of Water Right Nos. A45-
14 12457 and A45-04234 from the well located on the description in
15 paragraph 6. Each party has right to access to the well for
16 maintenance and repairs to the use of water rights. Each party
17 will cooperate and notify the other of repairs and maintenance
18 or changes in the well.

19 18. If the measuring devices demonstrate that
20 Thompson, or his successor in interest, is consuming water,
21 beyond the amount that would have been consumed in the normal
22 flow without the use by Thompson or his successor in interest
23 shall immediately cease and desist from diverting the water so
24 that the water can flow into the Trapper Creek or provide
25 replacement water. The determination of whether Thompson is
26 consuming water beyond the amount that would have been consumed
in the normal flow without the use by Thompson shall be

RECORDED
FEB 25 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

verified by an independent engineer. The permit or license shall not be cancelled until the provisions of paragraph 6 have been followed and completed.

19. Time is of the essence of this stipulation as to completion of the measuring devices, diversion and diversion apparatus as well as the compliance with the other terms and conditions of this stipulation in the use of the water under Permits and/or Licenses 45-07727 and 45-07360.

20. This stipulation when executed and approved shall be binding on Thompson and his successors and assigns of the land generally described as SW~~1~~/~~4~~NW~~1~~/~~4~~ and SE~~1~~/~~4~~NW~~1~~/~~4~~, Section 34, Township 14 South, Range 21 E.B.M.

21. This stipulation shall be binding upon Oakley and Shoulder and their successors and assigns.

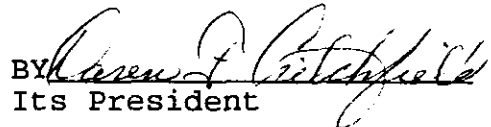
IN WITNESS WHEREOF, this stipulation has been executed this 29 day of January, 1997.

APPLICANT


Antone R. Thompson

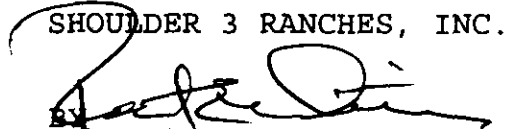
PROTESTANT

OAKLEY CANAL COMPANY

BY 
Its President

INTERVENOR

SHOULDER 3 RANCHES, INC.


Its President

MICROFILMED
FEB 25 1997



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

January 23, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ANTONE R THOMPSON
350 S 500 W
CEDAR CITY UT 84720

RE: Permit No. 45-07727

Dear Water Right Holder(s):

The accompanying permit is an amended "preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

MICROFILMED

FEB 25 1997

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

- i. A hearing was held,
- ii. The final agency action was taken,

MICROFILMED
2
FEB 25 1987

- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

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

Sincerely,



L. GLEN SAXTON, Chief
Water Allocations Bureau

LGS:pah

Enclosures

MICROFILMED

3

FEB 25 1997

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of **January, 1997**, I mailed a true and correct copy, postage prepaid, of the foregoing **AMENDED PRELIMINARY ORDER** to the person(s) listed below:

WATER RIGHT NO. 45-07727


ANTONE R THOMPSON
350 S 500W
CEDAR CITY UT 84720

NORMAN SEMANKO
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

WILLIAM PARSONS
PARSONS SMITH STONE
& FLETCHER
PO BOX 910
BURLEY ID 83318

ROBERT WHITELEY
SHOULDERS 3 RANCHES
1153 S HWY 27
BURLEY ID 83318

OAKLEY CANAL CO.
OAKLEY ID 83346



Patti Harrell
Secretary

MICROFILMED

FEB 25 1997

PARSONS, SMITH, STONE & FLETCHER, LLP

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

January 21, 1997

RECEIVED

JAN 22 1997


Norm Semanko
Rosholt, Robertson & Tucker
Box 1906
Twin Falls, Idaho 83303

Department of Water Resources

Dear Norm:

I have changed the Stipulation consistent with your letter and correspondence from the Department. If it is acceptable to you please sign it and return it to me for the signature of Critchfield and Whiteley.

Very truly yours,


William A. Parsons

WAP:rt

cc: Glen Saxton
Department of Water
Resources
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720-9000
(letter only)
RE: Reference Permit 45-07727

MICROFILMED

FEB 25 1997



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

January 3, 1997

William A. Parsons
PARSONS, SMITH et. al.
137 West 13th Street
P.O. Box 910
Burley, ID 83318

RE: PERMIT 45-07727 - ANTONE R. THOMPSON

Dear Mr. Parsons:

Enclosed is a copy of my November 8, 1996 letter to you in connection with the above referenced matter. I have not yet received the information from you and/or Norman Semanko.

Please advise me if your clients are no longer interested in having changes made to the conditions of approval of the permit. If they are still interested, please promptly complete your coordination with Mr. Semanko and submit appropriate information to me in order that I can complete department action on this pending matter.

If you have questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "L. Glen Saxton".

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 1

c: IDWR - S. Region
Norman Semanko

100-20-10000

FEB 25 1997



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

November 8, 1996

William A. Parsons
PARSONS, SMITH et. al.
137 West 13th Street
P.O. Box 910
Burley, ID 83318

RE: PERMIT 45-07727

Dear Mr. Parsons:

In connection with your November 7, 1996 letter, I will wait until you advise me that you and Norm Semanko have had the opportunity to revise your agreement before the department issues any additional orders in the above referenced matter.

If you have questions, please feel free to contact me or the department.

Sincerely,

A handwritten signature in black ink that reads "L. Glen Saxton". The signature is written in a cursive, flowing style.

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Allen Merritt

MICROFILMED
FEB 25 1997

PARSONS, SMITH, STONE & FLETCHER, LLP

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

November 7, 1996

RECEIVED

NOV 08 1996

Department of Water Resources

Mr. Glen Saxton
Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720-9000

RE: Permit 45-07727

Dear Glen:

I have had an opportunity to discuss your letter of October 25 on changing the proposed Order in paragraph 6 to make the use of water under the named water right to be effected by an agreement between the Protestant/Intervenor and the Right Holder.

Our clients are inclined to accept such a provision, however, it would appear that before the order is issued that Norm Semanko and I need to make a few changes in the stipulation which is really the agreement because there is the clause in the stipulation in paragraph 8 that may not be true because the department is not going to do that. Likewise paragraph 16 would not be appropriate and of course the department is apparently not going to approve the stipulation so that would have to come off.

Certainly it was not the intent of the parties to put the department in a position of enforcing provisions of a private agreement and the language of the stipulation did not do that. All the original stipulation provided was that the permits and licenses would be subject to the agreement and be included therein but the language that you are now using may have the same effect but the language will have to be cleaned up between Norm and myself.

ENCLOSURE

FEB 25 1997

Page 2 - Glen Saxton
November 7, 1996

Since everybody is anxious to get the matter concluded I thought I would send this letter to you and to Norm and if you are generally acceptable to that then Norm and I can make the changes in the stipulation and thereby conclude the matter.

Very truly yours,



William A. Parsons

WAP:rt

cc: Norm Semanko
Robert Whiteley
Daren Critchfield

MICROFILMED

FEB 25 1997

PARSONS, SMITH, STONE & FLETCHER, LLP

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

October 30, 1996

RECEIVED

NOV 01 1996

Glen Saxton
Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720-9000

Department of Water Resources


RE: Permit 45-07727

Dear Glen:

I am contacting our clients relative to your October 25, 1996 letter. Both clients are in the process of winding up the harvest and it will probably be next week before I can have a meaningful conference with them to respond to your letter.

I would indicate that the letter sounds a whole lot better than the original proposal and I will respond as soon as I can get together with the clients within the harvest schedule.

Very truly yours,


William A. Parsons

WAP:rt

cc: Norm Semanko
P. O. Box 1906
Twin Falls, Idaho 83303-1906

Robert Whiteley
Daren Critchfield

1996 OCT 31 10 10 AM

FEB 25 1997



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 25, 1996

William A. Parsons
PARSONS, SMITH et. al.
137 West 13th Street
P.O. Box 910
Burley, ID 83318

RE: PETITION FOR RECONSIDERATION - PERMIT NO. 45-07727

Dear Mr. Parsons:

I have reviewed the Petition for Reconsideration which you filed in connection with the above referenced permit and the response to the petition filed by Norman M. Semanko.

The department is willing to make reasonable changes to the Preliminary Order but will not put itself in a position of enforcing provisions of a private agreement for which the department has no authority.

Semanko's suggestion of changing Condition of Approval No. 6 to the following appears to be reasonable:

6. Use of water under this right is affected by an agreement among the protestant, intervenor and the right holder.

If suitable with you, the department will issue an Amended Preliminary Order making this change rather than conducting another conference or a hearing.

Please advise me soon in this matter.

Sincerely,

A handwritten signature in black ink that reads "L. Glen Saxton". The signature is written in a cursive, flowing style.

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Allen Merritt
Norman M. Semanko
Shoulders 3 Ranches

1000-00000

FEB 25 1997

RECEIVED

OCT 25 1996

Department of Water Resources

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
10249601.NMS/kn

Attorneys for Antone R. Thompson

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 45-07727 IN THE)
NAME OF ANTONE R. THOMPSON)
_____)

RESPONSE TO PETITION
FOR RECONSIDERATION

COMES NOW, the Applicant, Antone R. Thompson, through counsel, and responds to the Petition for Reconsideration filed in the above-captioned matter as follows:

1. The Applicant contends that the conditions and limitations contained in the October 9, 1996 Preliminary Order, while they could be worded more precisely, adequately incorporate the provisions of the Stipulation entered into by the parties by the reference in paragraph 6 of the Preliminary Order's conditions and limitations.

2. Notwithstanding the Applicant's contention, and in recognition of the allegation by the Protestant and the Intervenor that the proposed order ignores the

MICROFILMED
OCT 25 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Stipulation, the Applicant respectfully suggests that paragraph 6 of the Preliminary Order's conditions and limitations be changed to read as follows:

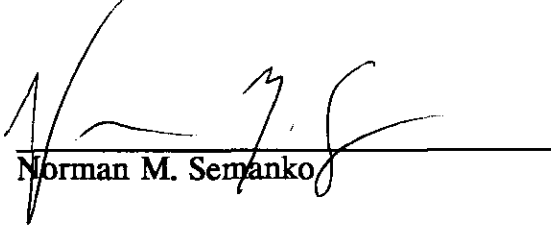
"In addition to the conditions set forth in this Order, use of the water under this right shall be subject to that certain Stipulation between the parties attached hereto and incorporated by this reference."

As an alternative, the Applicant suggests that the word "may" be changed to the word "is" in paragraph 6 of the Preliminary Order's conditions and limitations.

The Applicant does not believe that an additional pre-hearing conference or hearing on the protest is necessary, but requests that one of the changes described above be made in order to give effect to the Stipulation entered into by the parties.

DATED this 24 day of October, 1996.

ROSHOLT, ROBERTSON & TUCKER



Norman M. Semanko

RECORDED
FEB 25 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

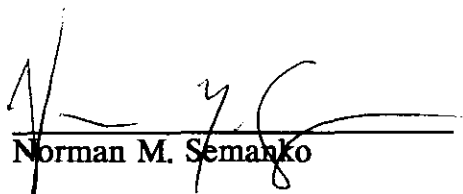
I hereby certify that on this 24 day of October, 1996, I served a copy of the foregoing RESPONSE TO PETITION FOR RECONSIDERATION, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Robert Whiteley
Shoulder 3 Ranches
1153 S. Highway 27
Burley, ID 83318

Oakley Canal Company
P.O. Box 207
Oakley, ID 83346

Antone R. Thompson
350 South 500 West
Cedar City, UT 84720

William A. Parsons
P.O. Box 910
Burley, ID 83318


Norman M. Semanko

MICROFILMED
FEB 19 1997

RECEIVED

OCT 23 1996

Department of Water Resources

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PARSONS, SMITH, STONE & FLETCHER, LLP
LAWYERS
BURLEY, IDAHO

PARSONS, SMITH, STONE & FLETCHER, LLP
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
Telephone: (208) 678-8382
Fax: (208)678-0146
Attorneys for Oakley Canal Company
and Shoulder 3 Ranches, Inc.

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

In the Matter of the Application)
for Permit No. 45-07727-Antone) PETITION FOR
R. Thompson and License No. 45-07360.) RECONSIDERATION

COME NOW, Oakley Canal Company and Shoulder 3 Ranches, Inc. in the capacity of Protestant and Intervenor and petition for reconsideration of the proposed Order as served upon the parties on October 11, 1996, and allege:

1. The proposed Order ignores for the most part the Stipulation signed by the parties.
2. At the pre-hearing conference the parties were encouraged to resolve the differences so that a formal hearing was not necessary. The parties complied with the departmental direction and through the efforts of their attorneys, Norman Semanko and William A. Parsons, the parties arrived at a stipulation that solved this unique situation.

MICROFILMED

FEB 25 1997

1 3. There is nothing in the Stipulation that the
2 Department cannot incorporate into its final Order nor is there
3 anything in the Stipulation that is in violation of law or
4 Departmental regulation.

5 4. A previous Stipulation was entered into by some of
6 the parties and their predecessors in interest and did not
7 contain adequate provisions for the use by the parties of the
8 water and yet not jeopardize other water rights.

9 5. Oakley and Shoulder are not obligated to withdraw
10 their protests unless the Stipulation and the conditions of the
11 Stipulation are considered in the permit and the license as
12 outlined in the Stipulation.

13 6. To issue the Order, without the hearing and without
14 compliance with the Stipulation violates the rights of the
15 Protestant and Intervenor. The Protestant and Intervenor are not
16 obligated to withdraw the protest without a hearing unless the
17 Stipulation is complied with and currently it is not being
18 complied with.

19 7. One example of the ignoring of the Stipulation is
20 in paragraph 6 when it says "Use of the water under this right
21 may be affected by an agreement between the Protestant,
22 Intervenor and the right holder." The water right may not be
23 affected by it, it is affected by it.

24 8. As an alternative to merely rewriting the proposed
25 Order it may be beneficial to have the Department and the parties
26 to have another pre-hearing conference to see if a better Order
can be structured before the parties have to spend considerable

PARSONS, SMITH, STONE & FLETCHER, LLP
LAWYERS
BURLEY, IDAHO


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

more time, money and effort in resolving this issue.

WHEREFORE, the Protestant and Intervenor respectfully request reconsideration of the proposed Order or alternatively that a subsequent pre-hearing conference be had to attempt to resolve the issues or that the matter go to hearing as the protest is still in existence.

DATED this 22nd day of October, 1996.

PARSONS, SMITH, STONE & FLETCHER, LLP



William A. Parsons
Attorneys for Oakley Canal
Company
137 West 13th Street
P. O. Box 910
Burley, Idaho 83318

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of October, 1996 I served a copy of the foregoing Petition for Reconsideration upon the following:

Antone R. Thompson
350 South 500 West
Cedar City, Utah 84720

Norman Semanko
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, Idaho 83303

Robert Whiteley
Shoulder 3 Ranches
1153 S. Highway 27
Burley, Idaho 83318

Oakley Canal Company
Oakley, Idaho 83342

MICROFILMED
FEB 25 1997

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to the above named persons at the above addresses, their last known address.

PARSONS, SMITH, STONE & FLETCHER, LLP



William A. Parsons
Attorneys for Oakley Canal Company
and Shoulder 3 Ranches, Inc.
137 West 13th Street
P. O. Box 910
Burley, Idaho 83318

RECORDED

FEB 25 1987

RECEIVED

OCT 10 1996

PARSONS, SMITH, STONE & FLETCHER, LLP

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

Department of Water Resources
(208) 678-8382
FAX NO.
(208) 678-0146

October 4, 1996

RECEIVED

OCT 07 1996

Department of Water Resources
Southern Region

Mr. Allen Merritt, P.E.
Southern Region Manager
State of Idaho
Department of Water Resources
222 Shoshone St. East
Twin Falls, ID 83301-6105

RE: Permit [REDACTED]

Dear Allen:

Because of another scheduling matter I was not able to respond to your letter of September 20th within the ten days, however, I would like to make a few comments.

It is the position of the Department for people to settle their differences. Norm and I have worked with our clients and have settled the differences, however, it appears that the Department would take a different view.

First of all, it will be up to the parties to compare the consumptive measurements, and not the Department.

The Department is not being forced to enforce matters of the agreement between the parties as the Stipulation clearly is between the parties or it requires the parties to bring some sort of an action in the Department for termination.

You certainly can make 07727 and 07360 compatible by putting a condition on 07727 that relates to 07360, as they are for use in the same area and for largely the same purposes.

On behalf of Oakley Canal we would ask that you reconsider those positions and attempt to resolve the matter rather than have to go back through some more hearings on a "rejected stipulation".

Very truly yours,


William A. Parsons

WAP:kl
cc: Norman M. Semanko, Esq.

MICROFILMED
FEB 25 1997



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

October 9, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of use of Application for Permit No. 45-07727 in the name of Antone R. Thompson

Dear Interested Party:

The accompanying order is a "preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below.

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The

MICROFILMED

FEB 25 1997

Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

RECEIVED

OCT 04 1996

FROM: Allen Merritt

Department of Water Resources

DATE: October 3, 1996

TO: Application for Permit No. 45-07721 7727 TAB
In the Name of: Antone Thompson

SUBJECT: Review and Recommendation

This application was originally filed by Ace Realty Trust on 4/11/95 and protested by the Oakley Canal Company. The application was assigned to Antone Thompson on 3/15/96 who on the same date amended the application. The amended application was re-advertised and was again protested by the Oakley Canal Company. A pre-hearing conference was held on 6/19/96. Based on the conference a prehearing order was issued on 6/26/96 and in part allowed the intervention of Shoulders 3 Ranches. (I do not know if they paid an intervention fee) On 9/19/96 our office received a letter from Mr. Parsons, attorney for the Oakley Canal Company and also for Shoulders 3 Ranches which requested the department execute the signed stipulation which if adopted by the department would resolve the protests. I consulted with Phil Rassier which resulted in my letter dated 9/20/96. Since my letter no further correspondence has been received from any of the parties.

RECOMMENDATION

I recommend that the permit 45-07727 be approved as a recommended, order giving opportunity of the protestants to continue protest if they don't like the department's conditions. The recommended conditions are:

- ✓ -Subject to an agreement between applicant and protestants.
- ✓ -A measuring device with totalizing meter shall be maintained on the well and a measuring device be maintained at the point of discharge back to Trapper Creek.
- ✓ -This permit is under the control of the watermaster of district 45C.
- ✓ -The commercial and fish propagation uses shall be non-consumptive.
- ✓ -No new well is authorized under initial approval of this application. Use will be from an existing well. The approval of this permit in no way confirms ownership of the well. This permit does not in itself grant right to use the well which may be owned by others whose approval must be obtained.
- ✓ -Return water shall be treated to insure that the effluent meets DEQ standards.
- ✓ -Use of water for domestic purposes is limited to in-house use and watering of household stock.
- ✓ -Irrigation use of water within greenhouses or for lawns or crops is not authorized.

MICROFILMED

FEB 25 1997



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

September 20, 1996

COPY

William A. Parsons
PARSONS, SMITH, STONE & FLETCHER
PO Box 910
Burley, ID 83318

RE: Amended Application for Permit 45-07727 in the name of Antone Thompson

Dear Mr. Parsons:

The Department of Water Resources acknowledges receipt on September 19, 1996, of six originals of a Stipulation of the parties in the contested proceeding before the department in the matter of Application for Permit No. 45-07727 in the name of Antone R. Thompson. I have placed the department's filing stamp on each original. One original has been placed in the department's files and another sent to Mr. Thompson along with a copy of this letter. The other four originals are returned to you as requested.

The department in acting upon the application for permit will determine at that time the extent to which the provisions of the Stipulation shall be included as specific conditions of approval on the permit, or acknowledged as an agreement which may affect the rights existing under the permit and any subsequent license. It is not the practice of the department to bind itself by approving a stipulation among the parties to an agency proceeding before the department has formally acted in the matter. Under the Department's Rule of Procedure 557, the agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. IDAPA 37.01.01.557.

In reviewing the Stipulation, I have identified several matters which may merit further consideration by the parties:

1. Paragraph 3 of the Stipulation calls for the installation of measuring devices capable of verifying that no consumptive use of the diverted water has occurred beyond that amount that would have been consumed in the normal flow without the use by Thompson. This standard of measurement is not reasonably capable of being satisfied by any measuring

MICROFILMED

FEB 25 1997

device known to the department. Further, it will not be possible to compare current consumptive measurements with pre-development conditions that no longer exist.

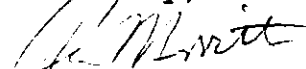
2. While the parties to a department proceeding are free to make such side agreements between themselves as they deem appropriate, the department should not be placed in the position of being expected to enforce matters of agreement between the parties that the department would not itself consider necessary or appropriate conditions on a water right. Enforcement of such provisions might better be left to a court of competent jurisdiction.

3. The Stipulation provides that it shall become a part both of Permit No. 45-07727, the subject of the present agency proceeding, and License No. 45-07360, an existing water right to be used in conjunction with the new permit. The permit applicant voluntarily may agree to conditions on his use of the existing licensed water right, and the parties may request that a copy of the agreement be included in the department's water right file for the existing license. The department does not anticipate, however, that it would take any further action to formally condition license no. 45-07360 to reflect the provisions of the agreement.

I propose to hold the application in our office for 10 days so that you may consider the foregoing. At the end of the 10 days I plan to forward the application to our state office and recommend that the permit be issued with conditions as a "recommended order" pursuant to Section 67-5243, Idaho Code.

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

Sincerely,



Allen Merritt, PE
Southern Region Manager

CC: Norm Young, Phil Rassier - IDWR State Office
Norm Semanko

MICROFILMED

FEB 25 1987

LT ALLEN, MER

Post-it* Fax .e 7671	Date 9/20/96	# of pages 2
To Allen Merritt	From Phil Rassier	
Co./Dept. Southern Reg.	Co. IOWA	
Phone #	Phone # 202/327-7905	
Fax # 202/730-3037	Fax #	

September 20, 1996

Allen Merritt,

Re: Suggested response to faxed letter on Stipulation for App. 45-07727

The Department of Water Resources acknowledges receipt on September 19, 1996 of six originals of a Stipulation of the parties in the contested proceeding before the department in the matter of Application for Permit No. 45-07727 in the name of Antone R. Thompson. I have placed the department's filing stamp on each original. One original has been placed in the department's files and another sent to Mr. Thompson. The other four originals are returned to you as requested.

The department in acting upon the application for permit will determine at that time the extent to which the provisions of the Stipulation shall be included as specific conditions of approval on the permit, or acknowledged as an agreement which may affect the rights existing under the permit and any subsequent license. It is not the practice of the department to bind itself by approving a stipulation among the parties to an agency proceeding before the department has formally acted in the matter. Under the Department's Rule of Procedure 557, the agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. IDAPA 37.01.01.557.

In reviewing the Stipulation, I have identified several matters which may merit further consideration by the parties:

1. Paragraph 3 of the Stipulation calls for the installation of measuring devices capable of verifying that no consumptive use of the diverted water has occurred beyond that amount that would have been consumed in the normal flow without the use by Thompson. This standard of measurement is not reasonably capable of being satisfied by any measuring device known to the department. Further, it will not be possible to compare current consumptive measurements with pre-development conditions that no longer exist.

2. While the parties to a department proceeding are free to make such side agreements between themselves as they deem appropriate, the department should not be placed in the position of being expected to enforce matters of agreement between the parties that the department would not itself consider necessary or appropriate conditions on a water right. Enforcement of such provisions might better be left to a court of competent jurisdiction.

RECEIVED

Post-it* Fax Note 7671	Date	# of pages 10
To Phil Rassier	From Allen Merritt	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax #	

1996

Water Resources Region

3. The Stipulation provides that it shall become a part both of Permit No. 45-07727, the subject of the present agency proceeding, and License No. 45-07360, an existing water right to be used in conjunction with the new permit. The permit applicant voluntarily may agree to conditions on his use of the existing licensed water right, and the parties may request that a copy of the agreement be included in the department's water right file for the existing license. The department does not anticipate, however, that it would take any further action to formally condition license no. 45-07360 to reflect the provisions of the agreement.

* * * * *

Allen,

Please give me a call if you want to discuss this or if you want us to transfer the document to you.

Phil

PARSONS, SMITH, STONE & FLETCHER

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

September 18, 1996

Allen Merritt
Department of Water Resources
222 Shoshone Avenue East
Twin Falls, Idaho 83301

RE: Permit 45-07727

Dear Allen:

Enclosed are six Stipulations which have been signed by all parties, and which now need to be executed by Idaho Department of Water Resources. Please have all six Stipulations signed.

When they are signed please retain one completed copy for your file, send one copy to Mr. Thompson and return the other four to me.

Thank you for your prompt attention to this matter.

Very truly yours,

William A. Parsons
William A. Parsons *W.A.P.*

WAP:rt
Enc.

MICROFILMED

FEB 25 1997

RECEIVED

SEP 19 1996

Department of Water Resources
Southern Region

RECEIVED

SEP 19 1996

Department of Water Resources
Southern Region

PARSONS, SMITH, STONE & FLETCHER
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
(208) 678-8382
Attorneys for Oakley Canal Company

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

In the Matter of the Application)
for Permit No. 45-07727-Antone) STIPULATION
R. Thompson and License No.)
45-07360.)

OAKLEY CANAL COMPANY, ("Oakley"), SHOULDER 3 RANCHES,
INC. ("Shoulder"), and ANTONE R. THOMPSON, ("Thompson")
stipulate as follows:

1. Use of water under Permit No. 45-07727 or License
No. 45-07360 shall be non consumptive.
2. Ground water used pursuant to Permit No. 45-07727
shall be discharged into Trapper Creek so as to avoid injury to
Oakley Canal Company and Shoulder or their successors in
interest. The parties shall agree in writing on the point of
discharge so as to avoid injury. The water shall be treated

MICROFILMED
FEB 25 1997

PARSONS, SMITH, STONE & FLETCHER, LLP
LAWYERS
BURLEY, IDAHO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 so as to insure that all discharges meet applicable Idaho Water
2 Quality Standards. The applicant shall comply with all
3 applicable health and environmental regulations during the
4 period of development and ultimate use under Permit No. 45-
5 07727 and License No. 45-07360 and shall furnish copies of any
6 compliance report to Oakley and Shoulder or their successors in
7 interest that have been provided to the Division of
8 Environmental Quality during all use periods. If no reports
9 are required by said Department, Thompson shall provide at
10 least quarterly, water quality reports to Oakley and Shoulder.
11 The quarterly report shall commence three (3) months from the
12 effective date of the stipulation unless the reports are being
13 made to the Division of Environmental Quality.

14 3. Measuring devices will be installed at the cost
15 to Thompson on or before one (1) year from the approval of the
16 Department of Water Resources of Permit No. 45-07727, provided
17 that any use under License No. 45-07360 shall have measuring
18 devices installed prior to the beginning of the irrigation
19 season in 1997 or March 1, 1997, whichever first occurs. Such
20 measuring devices shall be gauged by an independent engineer to
21 verify:

22 3.1. The amount of water diverted from the
23 Artesian ground water well pursuant to Permit No. 45-07727 and
24 any license issue thereto, and

25 3.2. The amount of water diverted from Trapper
26

1 Creek pursuant to License No. 45-07360.

2 3.3. The amount of water discharged to Trapper
3 Creek after use under Permit No. 45-07727 and License No. 45-
4 07360 and any license issued therefore.

5 The measuring devices will be maintained by Thompson
6 or his successors in interest of the lands described in
7 paragraph 19.

8 The measuring devices shall be of such accuracy that
9 will enable Oakley and Shoulder to verify that there has not
10 been any consumptive use of water beyond that amount that would
11 have been consumed in the normal flow without the use by
12 Thompson.

13 4. Oakley and Shoulder, their successors in
14 interest, shall have access to the well, the measuring devices,
15 diversion works, and other reasonable access to the property
16 where the diversions and devices are installed for observing
17 the compliance with the terms of this stipulation and any
18 permits or licenses issued by the Idaho Department of Water
19 Resources. Oakley and Shoulder shall attempt reasonable notice
20 before entry by giving notice to Thompson or the occupant of
21 the property owned by Thompson or his successor wherein the
22 water is being utilized.

23 5. Thompson shall notify Oakley and Shoulder, or
24 their successors, prior to filing any application for extension
25 of time to submit proof of beneficial use to the Idaho
26

1 Department of Water Resources for Permit No. 45-07727. Such
2 application shall be filed only if good faith development is in
3 progress consistent with this stipulation.

4 6. Oakley and Shoulder may apply to the Idaho
5 Department of Water Resources for cancellation of any permit or
6 license in the event of noncompliance with this stipulation and
7 the terms and conditions of any permit and/or license
8 subsequently issued under Nos. 45-07727 and/or 45-07360.
9 Revocation may occur under Idaho Code § 42-350 or any
10 subsequent legislation or regulation of similar provisions.
11 The same right to petition for cancellation may be made by
12 Oakley and Shoulder under Idaho Code § 42-311 in the event of
13 noncompliance with conditions of the permit or such other
14 statute or regulation as may be in effect regarding permits.

15 7. Upon the execution of this stipulation by Oakley,
16 Shoulder, and Thompson and the inclusion by the Department of
17 Water Resources as a condition to Permit No. 45-07727 and
18 License No. 45-07360, Oakley and Shoulder shall withdraw their
19 objection to application for Permit No. 45-07727.

20 8. Permit No. 45-07727 shall contain a condition
21 that the use combined with License No. 45-07360 is subject to
22 this stipulation.

23 9. The Artesian Ground Water Well subject to
24 application 45-07727 is located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 34,
25 Township 14 South, Range 21 East, Boise Meridian. Appropriate
26

1 amendments may be made by the Idaho Department of Water
2 Resources consistent with this stipulation as to location of
3 said well.

4 10. The provisions of this stipulation regarding
5 consumptive use, measuring devices, water quality shall be
6 applicable to License No. 45-07360 on fish propagation.

7 11. All fish ponds shall be so constructed and
8 maintained as to eliminate consumptive use beyond the amount
9 that would have been consumed in the normal flow without the
10 use by Thompson and to provide for water quality consistent
11 with Idaho Water Quality Standards.

12 12. Oakley and Shoulder shall not be responsible for
13 any of the costs incident to Thompson complying with the
14 requirements of this stipulation.

15 13. If any party to this stipulation or their
16 successors in interest are required to enforce this stipulation
17 or defend against the enforcement of this stipulation, the
18 prevailing party in such action shall be entitled to reasonable
19 attorney fees for the cost of prosecution or the defense of
20 such action. This provision shall include attorney fees
21 incurred at the administrative level before the Idaho
22 Department of Water Resources or other applicable
23 jurisdictional agency such as, but not limited to the agency
24 determining water quality standards.

25 14. "Consumptive Use" shall mean the amount of water
26

1 that does not remain in the water system after its use or is
2 not returned to the water system through return flows or
3 seepage. "Water System" means all rivers, streams, lakes,
4 springs, ground waters, or other sources within this state,
5 including a river system or other source upon which Oakley and
6 Shoulder rely for their water rights.

7 15. Thompson shall construct and maintain all
8 necessary diversion apparatus necessary for the use of the
9 water consistent with this stipulation and the permit and/or
10 license granted by the Idaho Department of Water Resources.
11 This provision shall not prevent Oakley, Shoulder or Thompson
12 or their successors from entering into any written agreements
13 pertaining to the construction and maintenance of diversion
14 apparatus, provided, however, that such agreements to be
15 effective must be in writing and signed by the respective party
16 or parties and shall not modify this stipulation.

17 16. This stipulation shall become a part of the
18 conditions of Permit No. 45-07727 and License No. 45-07360 and
19 any licenses issued on either or both permits. This stipulation
20 shall be effective upon the signing by Oakley, Shoulder, and
21 Thompson and inclusion by the Idaho Department of Water
22 Resources as a condition to Permit No. 45-07727 and License No.
23 45-07360.

24 17. Oakley is the owner of Water Right Nos. A45-
25 12457 and A45-04234 from the well located on the description in
26

1 paragraph 6. Each party has right to access to the well for
2 maintenance and repairs to the use of water rights. Each party
3 will cooperate and notify the other of repairs and maintenance
4 or changes in the well.

5 18. If the measuring devices demonstrate that
6 Thompson, or his successor in interest, is consuming water,
7 beyond the amount that would have been consumed in the normal
8 flow without the use by Thompson or his successor in interest
9 shall immediately cease and desist from diverting the water so
10 that the water can flow into the Trapper Creek or provide
11 replacement water. The determination of whether Thompson is
12 consuming water beyond the amount that would have been consumed
13 in the normal flow without the use by Thompson shall be
14 verified by an independent engineer. The permit or license
15 shall not be cancelled until the provisions of paragraph 6 have
16 been followed and completed.

17 19. Time is of the essence of this stipulation as to
18 completion of the measuring devices, diversion and diversion
19 apparatus as well as the compliance with the other terms and
20 conditions of this stipulation in the use of the water under
21 Permits and/or Licenses 45-07727 and 45-07360.

22 20. This stipulation when executed and approved
23 shall be binding on Thompson and his successors and assigns of
24 the land generally described as SW~~1~~NW~~4~~ and SE~~1~~NW~~4~~, Section 34,
25 Township 14 South, Range 21 E.B.M.
26

1 21. This stipulation shall be binding upon Oakley
2 and Shoulder and their successors and assigns.

3
4 IN WITNESS WHEREOF, this stipulation has been
5 executed this 10 day of Sept., 1996.

6 APPLICANT

7
8 *Antone R. Thompson*
9 Antone R. Thompson

10 PROTESTANT

11 OAKLEY CANAL COMPANY

12
13 BY *Robert Fitchfield*
14 Its President

15 INTERVENOR

16 SHOULDER 3 RANCHES, INC.

17 BY *Robert D. ...*
18 Its President

19
20
21 APPROVAL

22 Idaho Department of Water Resources approves of the
23 terms and conditions of the foregoing Stipulation between the
24 parties signatory for inclusion as a condition in Permit No.
25

MICROFILM
FEB 25 1997

PARSONS, SMITH, STONE & FLETCHER, LLP
LAWYERS
BURLEY, IDAHO

1 45-07727 and License No. 45-07360.

2 DATED this ____ day of _____, 1996.

3 IDAHO DEPARTMENT OF WATER
4 RESOURCES

5 BY _____

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
PARSONS, SMITH, STONE & FLETCHER, LLP
LAWYERS
BURLEY, IDAHO

INTER-DEPARTMENT MEMO

TO: File: 45-07727

SUBJECT: _____

FROM: ADW

DATE: 9/10/96

Phone conv. with Norm Senzalko.

Agreement being circulated for signature.

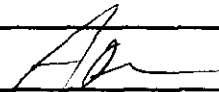
Dept. should receive final agreement resolving
issues in a few days.

MICROFILMED

FEB 25 1997

For your information

Response required



signature

PARSONS, SMITH, STONE & FLETCHER

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

August 16, 1996

RECEIVED

AUG 16 1996

Department of Water Resources
Southern Region

Allen Merritt
Department of Water Resources
222 Shoshone Avenue East
Twin Falls, Idaho 83301

RE: Permit 45-07727

Dear Allen:

It is my understanding that Norm talked to a couple days ago about the fact that the parties are not in technical compliance with the scheduling order, however, I believe that Norm and I have stipulated that we can work through that if the current good-faith negotiations on the stipulation for settlement fall apart.

We have a conference call set for Tuesday on some language of some proposed stipulations and we should know shortly thereafter whether or not we can get to where we need to go.

Very truly yours,


William A. Parsons

WAP:rt

cc: Norman Semanko

MICROFILMED
FEB 25 1997

INTER-DEPARTMENT MEMO

TO: File 45-07727

SUBJECT: _____

FROM: Amendment
AD

DATE: 8/15/96

Norm Semrako phoned & indicated they
are still negotiating with Orlley C.C.

I asked if they wanted to set hearing.

He said "No". I told him I would write
~~to~~ to hear from him to set hearing,

() For your information

() Response required

RECORDED
ALS
signature SEP 23 1997



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

June 26, 1996

RECEIVED

JUN 28 1996

Department of Water Resources
Southern Region

RE: In the Matter of Application for Permit No. ~~45-~~
07727 in the name of Antone R. Thompson

Dear Interested Parties:

I have enclosed a copy of the PRE-HEARING ORDER in connection with the above referenced application for permit.

If you have any questions regarding the enclosed order, please feel free to contact me at (208)327-7900.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

Enclosure

cc: IDWR - Region

45-07727

MICROFILMED

FEB 29 1997

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 45-07727 IN THE)
NAME OF ANTONE R. THOMPSON)
_____)

PREHEARING ORDER

On April 11, 1995, Ace Realty Trust filed with the Department of Water Resources (department) Application for Permit No. 45-07727 (application) proposing the diversion of ground water from an existing artesian well. The application was subsequently protested by the Oakley Canal Company. On March 15, 1996 the application was assigned to Antone R. Thompson who amended the application.

On June 19, 1996, the department conducted a prehearing conference in the matter in Burley. The applicant was represented by attorney, Norman Semanko and the protestant was represented by attorney, William Parsons.

At the conference the protested matter was not resolved, however, the parties agreed as follows:

1. Shoulders 3 Ranches (Robert Whiteley, President, address: P.O. Box 218, Oakley, ID 83346, represented by William Parsons, attorney) who sought intervention into the protested matter should be allowed to intervene.
2. The exchange of exhibits, witness lists, and of the names of expert witnesses should occur on or before August 15, 1996.
3. The department should schedule a hearing in the matter approximately on September 1, 1996.

ORDER

IT IS THEREFORE HEREBY ORDERED as follows:

1. Shoulders 3 Ranches is granted intervention into the above captioned matter.
2. All parties shall exchange exhibits, witness lists, and the names of expert witnesses on or before August 15, 1996.

Dated this 26th day of June, 1996.



L. Glen Saxton
Hearing officer

MICROFILMED

FEB 25 1997

CERTIFICATE OF MAILING

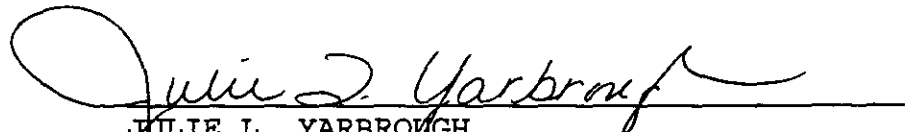
I HEREBY CERTIFY that on this 26th day of June, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **PRE-HEARING ORDER** to the following:

Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906

Antone R. Thompson
350 S 500 W
Cedar City, UT 84720

William A. Parsons
PARSONS SMITH STONE
& FLETCHER
P.O. Box 910
Burley, ID 83318

Oakley Canal Co.
Oakley, ID 83346


JULIE L. YARBROUGH
Senior Secretary



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

June 20, 1996

RECEIVED

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JUN 25 1996

Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Ave N.
Twin Falls, ID 83303-1906

Department of Water Resources
Southern Region

RE: APPLICATION FOR PERMIT NO. 45-07727 IN THE NAME OF ANTONE R. THOMPSON

Dear Mr. Semanko:

I have reviewed your letter in connection with the above referenced application in which you ask the department to confirm the ownership of a certain artesian well located within Section 34, T14S, R21E, B.M.

The department does not have information to confirm the ownership of the well in question. Department records do show, however, the following information:

1. Ace Realty Trust filed Application for Permit No. 45-07727 (application) with the department on April 11, 1995, proposing the diversion of 1.0 cfs of hot water from an existing artesian well located in the SESWNW Section 34, T14S, R21E, B.M., Cassia County. The proposed use is commercial, heating and recreation.
2. On March 15, 1996, the application was assigned to Antone R. Thompson and was amended.
3. The application has been subsequently protested by the Oakley Canal Company.
4. On June 19, 1996, the department conducted a conference in the protested matter.

If you have additional questions, please feel free to contact the department.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region
Alan Merritt

RECEIVED
JUN 28 1996

From: DWR60::AMERRITT 21-JUN-1996 09:31:21.88
To: DWR03::GSAXTON
CC: AMERRITT
Subj: Pre-hearing conference for 45-07727

On June 19, 1996 I conducted a prehearing conference for protested application 45-07727 in the name of Thompson. The protest is by the Oakley Canal Company. Both parties were present and represented by council. Thompson was represented by Norm Semanko and OCC was represented by William Parsons. The protest was not resolved but they are working on maybe coming up with an agreement. Thompson is to provide a plan of operation that addresses the concerns of the OCC and will provide it to them to present to the OCC Board which will meet July 15th. At the conference Robert Whiteley, president of Shoulders 3 Ranch and also board member of the OCC desired to intervene as a separate entity. Semanko had no objection to this as long as it be done as soon as possible. The parties also agreed that in case the matter was not resolved that exhibits, witness lists and the indication of what experts are to be used in a hearing be exchanged by August 15th and that the IDWR should schedule a hearing no sooner than September 1, 1996 but shortly after.

I have prepared a draft prehearing order for your consideration. It can be found on PC COMMON directory here at Southern Region and the file name is THOMP.ODR;1 and it is in WP format and the protection should be set for world access.

If you have question let me know.

Allen

RECORDED

FEB 25 1997

ROSHOLT, ROBERTSON & TUCKER

**Chartered
ATTORNEYS AT LAW**

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANKO

June 17, 1996

Karl Dreher, Director
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706-2237

VIA FAX: (208) 327-7866

Re: Artesian Well Ownership

Dear Karl:

Our client, Antone R. Thompson is the owner of certain lands located in Section 34, Township 14 South, Range 21 East, Boise Meridian, Cassia County. He acquired the lands during 1995.

An artesian well is located on Mr. Thompson's property in the NW 1/4 of Section 34. We believe the well was drilled during 1917 for purposes of oil exploration by an unknown drilling firm.

Under Section 42-1601, Idaho Code, the owner of the land on which any artesian well is located shall be deemed to own the well unless documentation acceptable to the director is available to demonstrate that the well is owned by another. I.C. Sec. 42-1601(3). We are not aware of any documentation demonstrating ownership of the well.

The owner of an artesian well has certain responsibilities to maintain the well to prevent waste or contamination of ground waters. Failure to take any necessary corrective actions may result in a misdemeanor and possible civil and/or criminal penalties. I.C. Secs. 42-1601 to -1607.

As the presumptive owner of the well under Section 42-1601, Mr. Thompson has a definite interest in confirming his ownership of the well. Only upon such confirmation will he be willing and able to recognize and exercise the duties placed upon him under Sections 42-1601 et. seq. Idaho Code. Mr. Thompson has also filed Application for Permit No. 45-07727, listing the existing artesian well as the proposed point of diversion.

RECORDED

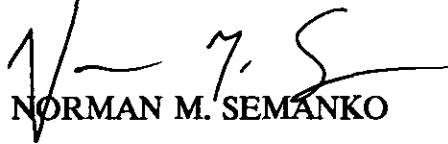
FEB 25 1997

Karl Dreher
June 17, 1996
Page 2

Upon confirmation of the artesian well's ownership, Mr. Thompson would like to work with the Department to identify any actions that may need to be taken with regard to the artesian well to bring it into compliance.

Consistent with the authority cited above, please confirm Mr. Thompson's ownership of the artesian well in question at your earliest convenience.

Sincerely,



NORMAN M. SEMANKO

06179604.NMS

cc: Allen Merritt, IDWR-Southern Office
Antone R. Thompson

UNRECORDED

FEB 25 1997

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 45-07727) _____)	NOTICE OF PRE-HEARING CONFERENCE
Ace Realty Trust, Applicant) Antone R. Thompson, Assignee)	SOURCE: groundwater
Oakley Canal Company, Protestant) _____)	COUNTY: Cassia

On April 11, 1995 Ace Realty Trust, applicant, filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. The Department has received a protest against the approval of said application from the above captioned protestant. On March 15, 1996 an Assignment of the Application for Permit to Antone R. Thompson was received with the subsequent Amending of the application. The Amended Application for Permit was advertised in the South Idaho Press; a new protest was filed by the Oakley Canal Company on April 8, 1996.

The Department has set the matter of protest for conference on Wednesday, June 19, 1996 at 10:00 a.m. in the Commissioners Room 3, Cassia County Courthouse, 1459 Overland Avenue; Burley ID 83318

The purpose of the conference is to 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.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

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

Dated this 23rd day of May, 1996.



Allen D. Merritt, P.E.
Regional Manager

FEB 15 1996

CERTIFICATE OF MAILING

I hereby certify that on the 23RD of May, 1996, a true and correct copy of the Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary Baldwin
Secretary

ANTONE R THOMPSON
350 S 500 W
CEDAR CITY UT 84720

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

WILLIAM A PARSONS ESQ
PO BOX 910
BURLEY ID 83318

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

NORMAN M. SEMANKO ESQ
PO BOX 1906
TWIN FALLS ID 83303-1906

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

1996 MAY 23 10:00 AM
FEDERAL COURT
TWIN FALLS, ID



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

May 23, 1996

ATTN EMILY AGBERT
CASSIA COUNTY COURTHOUSE
1459 OVERLAND AVE
BURLEY ID 83318

Dear Ms. Agbert:

This is a follow-up to our telephone conversation of May 22nd to confirm the reservation of the Commissioners Room for a meeting to be held by this office on **Wednesday, June 19, 1996 from 10:00 a.m. - 12:00 p.m.**

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Senior Secretary

208-736-3033
208-736-3037

ROSHOLT, ROBERTSON & TUCKER

**Chartered
ATTORNEYS AT LAW**

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
PATRICK D. MADIGAN
PAUL W. SAMUELSON
TIMOTHY J. STOVER
NORMAN M. SEMANKO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6234

May 22, 1996

VIA FACSIMILE

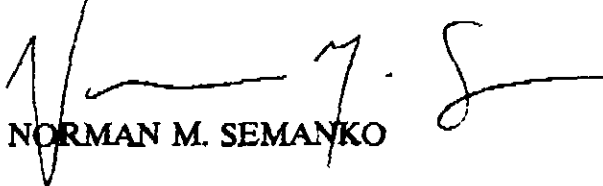
Allan Merritt, Regional Supervisor
Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, ID 83301

Re: Application for Permit No. 45-07727

Dear Allan:

I understand that tomorrow's pre-hearing conference has been canceled. At your staff's suggestion, I have contacted Protestant's counsel, William Parsons, to arrive at a new date to suggest to the Department. Our schedules are both open on Wednesday, June 19. We request that the pre-hearing conference be held on this date at 10:00 a.m. in Burley. We suggest holding the conference at the conference room in Burley's City Hall or, if that is unavailable, in Mr. Parson's law firm's conference room.

Sincerely,



NORMAN M. SEMANKO

NMS:kn
05229605.NMS

cc: Antone R. Thompson (via fax)
William Parsons (via fax)

MAY 22 1996
FEB 15 1997



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

May 2, 1996

PHILIP E. BATT
Governor

KARL J. DREHER
Director

WILLIAM A PARSONS ESQ
PO BOX 910
BURLEY ID 83318

RE: APPLICATION FOR PERMIT NO. 45-07727 (Antone R. Thompson)

Dear Mr. Parsons:

This office acknowledges your letter asking for cancellation of the hearing scheduled for May 23, 1996 regarding the above referenced water right. Correspondence has been sent to all parties of the change.

When a new hearing date is set, we will notify you. If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

cc: Antone R. Thompson
350 S 500 W
Cedar City UT 84720

PARSONS, SMITH, STONE & FLETCHER

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

April 29, 1996

RECEIVED

APR 30 1996

Department of Water Resources

Allen D. Merritt
Regional Manager
Idaho Department of
Water Resources
1301 North Orchard
Boise, Idaho 83701

RECEIVED

MAY 02 1996

Department of Water Resources
Southern Region

RE: Application for Permit
45-07727

Dear Allen:

I recognize that scheduling administrative hearings is difficult, however, I must request that the hearing set in this matter on May 23, 1996 at 10:00 A.M. be continued as I am scheduled for a trial in United States Bankruptcy Court in Pocatello on that same day in the case involving D. L. Evans Bank v. Miller. This latter case has been scheduled for some time by Judge Pappas.

Since this matter has been around for some time it is doubtful that one delay would be of any consequence. I would be more than happy to provide the Department with available dates if you or one of your staff could tell us some parameters of time.

I have sent a copy of this letter to the Applicant advising him of this request.

Very truly yours,


William A. Parsons

WAP:rt

cc: Antone R. Thompson
350 South 500 West
Cedar City, Utah 84720

Oakley Canal Company
Oakley, Idaho 83346

828 00 00

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 45-07727) _____)	NOTICE OF PRE-HEARING CONFERENCE
Ace Realty Trust, Applicant) Antone R. Thompson, Assignee)	SOURCE: groundwater
Oakley Canal Company, Protestant) _____)	COUNTY: Cassia

On April 11, 1995 Ace Realty Trust, applicant, filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. The Department has received a protest against the approval of said application from the above captioned protestant. On March 15, 1996 an Assignment of the Application for Permit to Antone R. Thompson was received with the subsequent Amending of the application. The Amended Application for Permit was advertised in the South Idaho Press; a new protest was filed by the Oakley Canal Company on April 8, 1996.

The Department has set the matter of protest for conference on Thursday-May 23, 1996 at 10:00 a.m. in the Commissioners Room 3, Cassia County Courthouse, 1459 Overland Avenue; Burley ID 83318

The purpose of the conference is to 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.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

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

Dated this 26th day of April, 1996.



Allen D. Merritt, P.E.
Regional Manager

APR 26 1996
FBI

CERTIFICATE OF MAILING

I hereby certify that on the 26TH day of April, 1996, a true and correct copy of the Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary A. Baldwin
Secretary

ANTONE R THOMPSON
350 S 500 W
CEDAR CITY UT 84720

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

WILLIAM A PARSONS ESQ
PO BOX 910
BURLEY ID 83318

Hand delivered _____
U.S. Mail-Regular x
U.S. Mail-Certified _____
Fax _____

[Faint handwritten notes]

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT ISSUES

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

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

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

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

CONFERENCE

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

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

April 26, 1996

ATTN RANDI
CASSIA CO COURTHOUSE
1459 OVERLAND AVE
BURLEY ID 83318

Dear Randi:

This is a follow-up to our telephone conversation today to confirm the reservation of the Commissioners Room 3 for a meeting to be held by this office on Thursday-May 23, 1996 from 10:00 a.m.- 12:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Senior Secretary

FOR THE DIRECTOR

RECEIVED

APR 08 1996

Department of Water Resources
Southern Region

PARSONS, SMITH, STONE & FLETCHER
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
Telephone No. (208) 678-8382
Attorneys for Oakley Canal Company
Fax No. 208-678-0146

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

* * * * *

In the Application of)
ANTONE R. THOMPSON, proposing) PROTEST
a permit to appropriate water,)
OAKLEY CANAL COMPANY,)
Protestant.)

COMES NOW, the Protestant, and in protest to the notice of proposed permit to appropriate water pursuant to the application number 45-07727, submitted by Antone R. Thompson, 350 South 500 West, Cedar City, Utah 84720.

1. Protestant, Oakley Canal Company, is a decreed user of waters from Trapper Creek bearing a priority dating on or about March, 1882, which decree entitles Protestant to the use and benefit of water from said creek throughout the year, and further that the water which the applicant, Antone R. Thompson, seeks to appropriate is a tributary to or otherwise increases the flow of water into said Trapper Creek.

2. Your Protestant, Oakley Canal Company, was a prior owner of the real property now owned and described in said application by Antone R. Thompson, and that by deed dated

IN REPLY TO

FEB 25 1997

Receipt # 5018999
4/8/96
MB

PARSONS, SMITH, STONE & FLETCHER
LAWYERS
BURLEY, IDAHO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 February 15, 1952, your Protestant conveyed the said real
2 property to Daniel L. Mabey and Vernie Mabey, husband and wife,
3 EXCEPTING AND RESERVING all water, water rights and water
4 privileges appurtenant to the same real estate and any and all
5 ground or subterranean water flowing through or under the surface
6 of said premises, and further that your Protestant is and
7 continues to be the rightful owner of the water applied for by
8 the said applicant. A photocopy of said deed is attached hereto
9 and made a part hereof by reference as Exhibit A.

10 3. That the application of Antone R. Thompson for the
11 appropriation of water from the source described in its
12 application will, if approved, derogate the rights of Protestant
13 and adversely affect the benefits and use of Protestant's right
14 to said waters, all to its injury and detriment.

15 4. That the improvements described by the applicant
16 herein are in substantial measure dependent upon the warm
17 subterranean water which the applicant hereby seeks to
18 appropriate, which was is the property of Your Protestant, and
19 that as a consequence thereof, the said application is
20 speculative and impracticable.

21 5. That the applicant Antone R. Thompson is proposing
22 the construction of recreational, domestic and commercial
23 activities which will, if approved, conflict with the affairs of
24 the people in the vicinity directly affected by the proposed use.

25 6. That there is pending and has been pending an
26 application of a similar nature under Case No. 45-07720 by Ace
Realty Trust, c/o Nolan Victor, 1528 Addison Avenue East, Twin
Falls, Idaho 83301, which application has never been determined
by the Department nor to the information of the Protestant has
ever been dismissed.

7. A similar permit has been approved with
stipulations under number 45-7360 and the stipulations of the
permit were never complied with.

8. The Protestant denies all of the allegations of the
application for a permit of Antone R. Thompson.

WHEREFORE, OAKLEY CANAL COMPANY prays the application

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

of Antone R. Thompson be denied in all respects.

DATED this 5th day of April, 1996.

PARSONS, SMITH, STONE & FLETCHER



William A. Parsons
Attorneys for Oakley Canal
Company
137 West 13th Street
P. O. Box 910
Burley, Idaho 83318

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of April, 1996, I served a copy of the foregoing Protest upon the following:

Antone R. Thompson
350 South 500 West
Cedar City, Utah 84720

Director, Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to the above named persons at the above addresses, their last known address.

PARSONS, SMITH, STONE & FLETCHER



William A. Parsons
Attorneys for Protestant
137 West 13th Street
P. O. Box 910
Burley, Idaho 83318

REC-10-117

COMPALED

D E E D

THIS INDENTURE, Made this 15th day of February in the year of our Lord nineteen hundred and fifty-two, between the OAKLEY CANAL COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Idaho, having its principal office at Oakley, County of Cassia, State of Idaho, party of the first part, and DANIEL L. MABEY and VERNIE MABEY his wife, of Oakley, County of Cassia, State of Idaho, parties of the second part.

WITNESSETH, That at the regular meeting of the board of directors of the Oakley Canal Company had and held at the office of the said corporation on the 15th day of February, 1952, the following resolution was adopted:

RESOLVED, That the Oakley Canal Company, a corporation, for and in consideration of the sum of Two Thousand Dollars (\$2,000.00), lawful money of the United States of America, do hereby sell unto Daniel L. Mabey the following described real estate in the County of Cassia, State of Idaho, to-wit:

East half of the Northeast quarter of the Southeast quarter (E $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{2}$), Southwest quarter of the Northeast quarter of the Southeast quarter (SW $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{2}$), Southeast quarter of the Northwest quarter of the Southeast quarter (SE $\frac{1}{2}$ NW $\frac{1}{2}$ SE $\frac{1}{2}$), and East half of the Southwest quarter of the Southeast quarter (E $\frac{1}{2}$ SW $\frac{1}{2}$ SE $\frac{1}{2}$) of Section 33; Southwest quarter of the Northeast quarter (SW $\frac{1}{2}$ NE $\frac{1}{2}$), East half of the Southeast quarter of the Northwest quarter (E $\frac{1}{2}$ SE $\frac{1}{2}$ NW $\frac{1}{2}$), Southwest quarter of the Southeast quarter of the Northwest quarter (SW $\frac{1}{2}$ SE $\frac{1}{2}$ NW $\frac{1}{2}$), Southeast quarter of the Southwest quarter of the Northwest quarter (SE $\frac{1}{2}$ SW $\frac{1}{2}$ NW $\frac{1}{2}$), and North half of the Northwest quarter of the Southwest quarter (N $\frac{1}{2}$ NW $\frac{1}{2}$ SW $\frac{1}{2}$) of Section 34; all in Township 14 South, Range 21, East of the Boise meridian: Excepting and reserving to the Oakley Canal Company all water, water rights and water privileges appurtenant to the said real estate and any and all ground or subterranean water flowing through or under the surface of the said premises and any and all gas, oil and minerals and mineral rights of every kind or nature whatsoever, together with the right to enter into and upon the said premises, or any part or parcel thereof, to drill for and remove therefrom any ground or subterranean water, gas, oil or minerals that may be found or discovered in or under the surface of the said premises.

Upon the payment of all of the purchase price of the said premises, the president and secretary of the Oakley Canal Company are hereby authorized, directed and empowered, for and on behalf of and in the name of the said corporation, to execute and deliver a deed transferring and conveying the above described real estate to Daniel L. Mabey, the purchaser thereof, subject to the exceptions and reservations herein contained.

NOW, THEREFORE, Pursuant to the said resolution and for and in consideration of the sum of Two Thousand Dollars (\$2,000.00), lawful money of the United States of America, to the party of the first part in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, the party of the first part has granted, bargained and sold and by these presents does grant, bargain, sell, convey and confirm unto the said parties of the second part and to their heirs and assigns forever, all of the following described real estate in the County of Cassia, State of Idaho, to-wit:

East half of the Northeast quarter of the Southeast quarter (E $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{2}$), Southwest quarter of the Northeast quarter of the Southeast quarter (SW $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{2}$), Southeast quarter of the Northwest quarter of the

Exhibit A

RECORDED
FEB 23 1952

(SW1NE1), East half of the Southeast quarter of the Northwest quarter (E1SE1NW1), Southwest quarter of the Southeast quarter of the Northwest quarter (SW1SE1NW1), Southeast quarter of the Southwest quarter of the Northwest quarter (SE1SW1NW1), and North half of the Northwest quarter of the Southwest quarter (N1NW1SW1) of Section 34; all in Township 14 South; Range 21, East of the Boise Meridian: Excepting and reserving to the Oakley Canal Company all water, water rights and water privileges appurtenant to the said real estate and any and all ground or subterranean water flowing through or under the surface of the said premises and any and all gas, oil and minerals and mineral rights of every kind or nature whatsoever, together with the right to enter into and upon the said premises, or any part or parcel thereof, to drill for and remove therefrom any ground or subterranean water, gas, oil or minerals that may be found or discovered in or under the surface of the said premises.

TO HAVE AND TO HOLD All and singular the above mentioned and described premises, subject to the exceptions and reservations, unto the said parties of the second part, their heirs and assigns forever.

IN WITNESS WHEREOF, The party of the first part, pursuant to the said resolution, has caused its corporate name to be hereunto subscribed by its president and its corporate seal to be hereunto affixed by its secretary, the day and year first above written.

(CORPORATE SEAL)

OAKLEY CANAL COMPANY

By H. P. Matthews
President

ATTEST:

W. B. Whiteley
Secretary

STATE OF IDAHO }
County of Cassia } ss.

On this 15th day of February, 1952, before me, the undersigned, a Notary Public in and for said State, personally appeared H. P. Matthews, known to me to be the President of the Oakley Canal Company, the corporation whose name is subscribed to the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Lloyd E. Smith
Notary Public for the State of Idaho,
residing at Oakley, Idaho.

Filed for record at request of D. L. Mabey at 1:25 P.M., on April 19th, 1952.

Fee: \$2.50

Wm. Baugh, Jr., County Recorder.

#175331

(No Revenue Stamps Attached)

COMPARED

STATUTORY WARRANTY DEED

THE GRANTOR VIOLA S. SEELEY (a widow) for and in consideration of ONE and 00/100 (\$1.00) Dollar and other valuable considerations in hand paid, conveys and warrants to FORREST G. KINNEAR & GERALDINE S. KINNEAR (husband and wife) the following described real estate, situated in the County of CASSIA, State of IDAHO; to wit:

The Southeast Quarter of the Northeast Quarter, of Section 14, Township 12, - Range 22 E.B.M.

Dated this 18th, day of June, 1951.

Viola S. Seeley (SEAL)

STATE OF WASHINGTON, }
County of Pierce } ss.

Exhibit A

**NOTICE OF AMENDED
APPLICATION FOR WATER
PERMIT**

Notice is hereby given that the following
application for permit to appropriate
the public waters of the State of Idaho
has been amended as follows:

**ANTONE R. THOMPSON
350 S 500 W
CEDAR CITY UT 84720
45-07727**

Date Amended: 3/15/96

Source: groundwater

**Diversion Pt: SW1/4SE1/4NW1/4 or
SE1/4SW1/4NW1/4, S34, T14S, R21E;
Cassia County.**

Use: 1/1-12/31

Commercial (0.60 cfs)

(Greenhouses & swimming pool)

Fish Propagation (0.90 cfs)

Domestic (0.10 cfs) (4 homes)

Total to be appropriated: 1.00 cfs

In: S1/2NW1/4, S34, T14S, R21E.

The permit will be subject to all prior
water rights. Any protest must be filed
with the Director, Dept. of Water
Resources, Southern Region, 222
Shoshone Street East., Twin Falls, ID
83301 together with a protest fee of
\$25.00 on or before April 11, 1996.
The protestant must also send a copy of
the protest to the applicant.

Karl J. Dreher, Director

**Published in South Idaho Press on 3/25
& 4/1/96.**

RECORDED
FEB 25 1997



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

March 20, 1996

PHILIP E. BATT
Governor

KARL J. DREHER
Director

SOUTH IDAHO PRESS
PO BOX 190
BURLEY ID 83318

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Sr. Secretary

Enclosure

RECEIVED
MAR 28 1996

NOTICE OF AMENDED APPLICATION FOR WATER PERMIT

Notice is hereby given that the following application for permit to appropriate the public waters of the State of Idaho has been amended as follows:

ANTONE R. THOMPSON
350 S 500 W
CEDAR CITY UT 84720

45-07727

Date Amended: 3/15/96

Source: groundwater

Diversion Pt: SW1/4SE1/4NW1/4 or SE1/4SW1/4NW1/4, S34, T14S, R21E;
Cassia County.

Use: 1/1-12/31

Commercial	(0.60 cfs)	(Greenhouses & swimming pool)
Fish Propagation	(0.90 cfs)	
Domestic	(0.10 cfs)	(4 homes)

Total quantity to be appropriated: 1.00 cfs

In: S1/2NW1/4, S34, T14S, R21E.

The permit will be subject to all prior water rights. Any protest must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East., Twin Falls, ID 83301 together with a protest fee of \$25.00 on or before April 11, 1996. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in South Idaho Press on 3/25 & 4/1/96.

AMENDED
FEB 16 1996



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

March 19, 1996

ANTONE R THOMPSON
350 S 500 W
CEDAR CITY UT 84720

Re: Amended Application for Permit No. 45-07727

Dear Mr. Thompson:

The Department of Water Resources acknowledges the assignment and amendment of the above referenced application for permit.

This office will be advertising the amended application in the South Idaho Press on 3/25 & 4/1/96. A period of ten days following the second publication will be allowed for the submittal of protests.

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

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

Very truly yours,


Allen D. Merritt, P.E.
Regional Manager

AM:MB

**NOTICE OF APPLICATION FOR
WATER PERMIT**

The following application has been filed to appropriate the public waters of the State of Idaho:

**ACE REALTY TRUST
1528 ADDISON AVE EAST
TWIN FALLS ID 83301
45-07727**

**Source: groundwater tributary to
Trapper Creek**

**Diversion Pt: SE1/4SW1/4NW1/4, S34,
T14S, R21E; Cassia County.**

Use:

**Commercial (1.0 cfs) 1/1-12/31
Heating (1.0 cfs) 9/1-06/01
Recreation (1.0 cfs) 1/1-12/31**

Total Diversion: 1.0 cfs

Date Filed: 4/11/1995

In: SW1/4NW1/4, S34, T14S, R21E

The permit will be subject to all prior water rights. Any protest must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East, Twin Falls, ID 83301 together with a protest fee of \$25.00 on or before May 18, 1995. The protestant must also send a copy of the protest to the applicant.

R. Keith Higginson, Director

**Published in South Idaho Press on 5/1
& 5/8/95.**

FILED
MAY 15 1995



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

May 19, 1995

PHILIP E. BATT
Governor

KARL J. DREHER
Director

NOLAN VICTOR MANAGER
ACE REALTY TRUST
1528 ADDISON AVE EAST
TWIN FALLS ID 83301

RE: APPLICATION FOR PERMIT NO. 45-07727

Dear Mr. Victor:

Enclosed is a copy of a protest filed against the above referenced application.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

May 19, 1995

PHILIP E. BATT
Governor

KARL J. DREHER
Director

JOHN R MARTIN VICE PRESIDENT
OAKLEY CANAL COMPANY
RT 1
OAKLEY ID 83346

RE: APPLICATION FOR PERMIT NO. 45-07727 (Ace Realty Trust, Nolan Victor-Mgr)

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)

RECEIVED

MAY 17 1995

Department of Water Resources
Southern Region

CK. no.

2153

BEFORE THE
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

In Re the Application of)
ACE REALTY TRUST proposing)
a permit to appropriate water;)
)
Oakley Canal Company,)
)
PROTESTANT.)

P R O T E S T

*Corrected by
MTS
5-17-95*
COMES NOW the Protestant, and in protest to the notice of proposed permit to appropriate water pursuant to application number 45-077207, submitted by Ace Realty Trust, c/o Nolan Victor, 1528 Addison Avenue East, Twin Falls, Idaho 83301, alleges:

1. That your Protestant, Oakley Canal Company, is a decreed user of waters from Trapper Creek bearing a priority dating on or about March, 1882, which decree entitles Protestant to the use and benefit of water from said creek throughout the year, and further that the water which the applicant Ace Realty Trust seeks to appropriate is a tributary to or otherwise increases the flow of water into said Trapper Creek.

2. That your Protestant, Oakley Canal Company, was a prior owner of the real property now owned and described in its said application by Ace Realty Trust, and that by deed dated February 15, 1952, your Protestant conveyed the said real property to Daniel L. Mabey and Vernie Mabey, husband and wife, EXCEPTING AND RESERVING all water, water rights and water privileges appurtenant to the said real estate and any and all ground or subterranean water flowing through or under the surface of said premises, and further that your Protestant is and continues to be the rightful owner of the water applied for by the said applicant. A photocopy of said deed is attached hereto and made a part hereof by reference as Exhibit A.

3. That the application of Ace Realty for the appropriation of water from the source described in its application will, if approved, derogate the rights of Protestant and adversely affect the benefits and use of Protestant's right

MICROFILMED
FEB 25 1997

Receipt # 5018105
5/17/95

to said waters, all to its injury and detriment.

4. That the improvements described by the applicant herein are in substantial measure dependent upon the warm subterranean water which the applicant hereby seeks to appropriate, which water is the property of your Protestant, and that as a consequence thereof, the said application is speculative and impracticable.

5. That the applicant Ace Realty Trust is proposing the construction of recreational and commercial activities which will, if approved, conflict with the affairs of the people in the vicinity directly affected by the proposed use.

WHEREFORE, the undersigned prays the application of Ace Realty Trust be denied in all respects.

DATED this 15th day of May, 1995.

OAKLEY CANAL COMPANY

By: John R. Martin
John R. Martin, V.P.

Attest: Daren Critchfield
Daren Critchfield, Sec.

STATE OF IDAHO)
) ss.
County of Cassia)

John R. Martin and Daren Critchfield, being first duly sworn upon oath, depose and state:

That they are the President and Secretary for the Protestant OAKLEY CANAL COMPANY in the above entitled action; that they have read the within and foregoing Protest, know the contents thereof and the facts stated therein, and believe them to be true and correct to the best of their knowledge and belief.

John R. Martin
John R. Martin, Vice President
Route 1
Oakley, Idaho 83346

RECORDED
FEB 25 1997

Daren Critchfield
Daren Critchfield, Secretary
Route 1
Oakley, Idaho 83346

1995. SUBSCRIBED AND SWORN to before me this 15th day of May,

Sharon Kimber
Notary Public for Idaho
Residing at: Oakley, Idaho
My Commission Expires: 3/10/2000

MICROFILMED
FEB 25 1977

(SW1/4NE1/4), East half of the Southeast quarter of the Northwest quarter (E1/2SE1/4NW1/4), Southwest quarter of the Southeast quarter of the Northwest quarter (SW1/4SE1/4NW1/4), Southeast quarter of the Southwest quarter of the Northwest quarter (SE1/4SW1/4NW1/4), and North half of the Northwest quarter of the Southwest quarter (N1/2NW1/4SW1/4) of Section 34; all in Township 14 South; Range 21, East of the Boise Meridian: Excepting and reserving to the Oakley Canal Company all water, water rights and water privileges appurtenant to the said real estate and any and all ground or subterranean water flowing through or under the surface of the said premises and any and all gas, oil and minerals and mineral rights of every kind or nature whatsoever, together with the right to enter into and upon the said premises, or any part or parcel thereof, to drill for and remove therefrom any ground or subterranean water, gas, oil or minerals that may be found or discovered in or under the surface of the said premises.

TO HAVE AND TO HOLD All and singular the above mentioned and described premises, subject to the exceptions and reservations, unto the said parties of the second part, their heirs and assigns forever.

IN WITNESS WHEREOF, The party of the first part, pursuant to the said resolution, has caused its corporate name to be hereunto subscribed by its president and its corporate seal to be hereunto affixed by its secretary, the day and year first above written.

(CORPORATE SEAL)

OAKLEY CANAL COMPANY

By H. P. Matthews
President

ATTEST:

W. B. Whiteley
Secretary

STATE OF IDAHO)
County of Cassia) ss.

On this 15th day of February, 1952, before me, the undersigned, a Notary Public in and for said State, personally appeared H. P. Matthews, known to me to be the President of the Oakley Canal Company, the corporation whose name is subscribed to the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(NOTARIAL SEAL)

Lloyd E. Smith
Notary Public for the State of Idaho,
residing at Oakley, Idaho.

Filed for record at request of D. L. Mabey at 1:25 P.M., on April 19th, 1952.

Fee: \$2.50

Wm. Baugh, Jr., County Recorder.

#175331

(No Revenue Stamps Attached)

COMPARED

STATUTORY WARRANTY DEED

THE GRANTOR VIOLA S. SEELEY (a widow) for and in consideration of ONE and 00/100 (\$1.00) Dollar and other valuable considerations in hand paid, conveys and warrants to FORREST G. KINNEAR & GERALDINE S. KINNEAR (husband and wife) the following described real estate, situated in the County of CASSIA, State of IDAHO; to wit;

The Southeast Quarter of the Northeast Quarter, of Section 14, Township 12, - Range 22 E.B.M.

Dated this 18th day of June 1951.

Viola S. Seeley (SEAL)

STATE OF WASHINGTON
County of Pierce

Exhibit A



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

D. ANDRUS
Governor PHIL BATT

April 26, 1995

R. KEITH HIGGINSON
Director

SOUTH IDAHO PRESS
PO BOX 190
BURLEY ID 83318

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates. If time allows, please submit a galley proof for review before publication.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Sr. Secretary

Enclosure

MICROFILMED

FEB 25 1997

NOTICE OF APPLICATION FOR WATER PERMIT

The following application has been filed to appropriate the public waters of the State of Idaho:

ACE REALTY TRUST
1528 ADDISON AVE EAST
TWIN FALLS ID 83301

45-07727

Source: groundwater tributary to Trapper Creek

Diversion Pt: SE1/4SW1/4NW1/4, S34, T14S, R21E; Cassia County.

Use:

Commercial	(1.0 cfs)	1/1-12/31
Heating	(1.0 cfs)	9/1-06/01
Recreation	(1.0 cfs)	1/1-12/31

Total Diversion: 1.0 cfs

Date Filed: 4/11/1995

In: SW1/4NW1/4, S34, T14S, R21E

The permit will be subject to all prior water rights. Any protest must be filed with the Director, Dept. of Water Resources, Southern Region, 222 Shoshone Street East, Twin Falls, ID 83301 together with a protest fee of \$25.00 on or before May 18, 1995. The protestant must also send a copy of the protest to the applicant.

R. Keith Higginson, Director

Published in South Idaho Press on 5/1 & 5/8/95.

MICROFILMED

FEB 25 1997



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor PHIL BATT

April 26, 1995

R. KEITH HIGGINSON
Director

NOLAN VICTOR MGR
ACE REALTY TRUST
1528 ADDISON AVE EAST
TWIN FALLS ID 83301

Re: Application for Permit No. 45-07727

Dear Mr. Victor:

The Department of Water Resources acknowledges receipt of your water right application for permit. The application has been assigned the above referenced identification number. Please refer to this number in all further correspondence.

This office has scheduled advertising the application in the South Idaho Press for 5/1 & 5/8/95. A period of ten days following the second publication will be allowed for the submittal of protests.

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

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

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

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

RECORDED

FEB 25 1997

TO: File

DATE: April 13, 1995

FROM: Jim Stanton

SUBJECT: Ace Realty Trust App. for Permit

I am personally familiar with the subject property. Well location has been verified by former property owner Gary Funderburg. Although we did not measure the flow from this well, it was estimated at about 1 cfs by Gary. Gary gave his flow estimate to the applicant, who then applied for the 1 cfs. Gary said that there is about 15 acres of flat land in this area that could be built upon, although the area is soft, rocky soil that is not very stable for building purposes. Flooding could be a problem in high-water years, as this is a narrow canyon bottom with Trapper Creek flowing thru it. This is an old geothermal artesian well that has flowed for years into Trapper Creek and then into Oakley Reservoir where it is used for irrigation. Oakley Canal Co. has filed claims on this and 5 other geothermal wells along Trapper Creek. Use would have to be totally non-consumptive in order not to affect the OCC rights, and no additional groundwater development could be allowed in order to stay outside the Snake River moratorium.

ENCLOSURE

FEB 23 1997

45-0772;