

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 45-07642

Priority: May 11, 1989

Maximum Diversion Rate: 1.23 CFS
Maximum Diversion Volume: 518.7 AF

This is to certify, that EARL LAVELL WARTHEN
PO BOX 145

ALBION ID 83311 has complied with the terms and conditions
of the permit, issued pursuant to Application for Permit dated May 11, 1989; and
has submitted Proof of Beneficial Use on February 4, 1994. An examination indicates
that the works have a diversion capacity of 1.230 cfs of water from:

HOWELL CREEK tributary to MARSH CREEK

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	09/15 to 04/15	1.23 CFS	518.7 AF

LOCATION OF POINT(S) OF DIVERSION: SESW , Sec. 16, Township 12S, Range 25E
CASSIA County

PLACE OF USE: POWER

TWN RGE SEC

12S 25E 16 SENW

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
6. Use of water under this right shall be non-consumptive.

MICROFILMED
MAY 15 1998

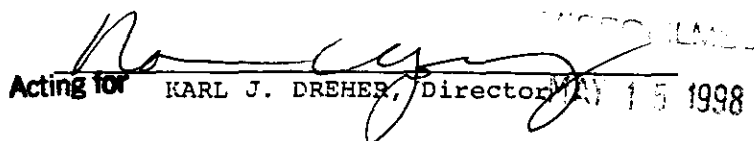
State of Idaho
Department of Water Resources**Water Right License**

WATER RIGHT NO. 45-07642

CONDITIONS OF APPROVAL AND REMARKS

7. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
8. Use of water under this water right will be regulated by the watermaster of State Water District No. 45F.
9. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
10. The right holder shall pay the extra costs of the watermaster in monitoring measuring devices at his point of diversion and also his point of discharge back to Howell Creek, and any additional monitoring of other water rights that is required as a result of this hydropower project.
11. This right shall be subject to the diversion of water under water rights for irrigation purposes diverted during the non-irrigation season provided the use is in compliance with applicable law, and the ground will absorb the water.
12. During the non-irrigation season, a flow of ten miner's inches (0.20 cfs) or more shall bypass the point of diversion. The bypass shall be measured at the point of diversion unless a downstream user shows 1) the 0.20 cfs is not available downstream, and 2) he is being injured by the unavailability, at which time the department may increase the bypass to satisfy the water need downstream.
13. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after February 1, 2004. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
14. The right holder shall maintain a measuring device of a type acceptable to the Department near the point of discharge into Howell Creek for the purposes of determining system losses.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 17th
day of APRIL, 1998.


Acting for KARL J. DREHER, Director MAY 15 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 45-07642 IN THE NAME OF)
EARL LAVELL WARTHEN)
_____)

**ORDER GRANTING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right license, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On March 31, 1998, the Department issued a preliminary order (order) granting Water Right License No. 45-07642 (license) in the name of Earl Lavell Warthen (petitioner).
2. On April 9, 1998, the petitioner filed a Petition for Reconsideration (petition) with the department in connection with the order. The petitioner asserts that the total annual volume of water developed in accordance with Permit No. 45-07642 was not properly recognized in the license.

CONCLUSIONS OF LAW

1. Section 67-5243(3), *Idaho Code*, provides in pertinent part as follows:

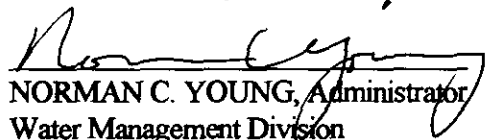
Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. The Department should grant the petition for reconsideration of the order pursuant to Section 67-5243(3), *Idaho Code*, to provide an opportunity to review the total annual volume listed on the license.

ORDER

In order to further review and evaluate the information asserted in the petition, it is ordered that the petition is hereby **GRANTED**.

Dated this 17th day of April, 1998.


NORMAN C. YOUNG, Administrator
Water Management Division

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MAY 15 1998

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 45-07642

Priority: May 11, 1989

Maximum Diversion Rate: 1.23 CFS

Maximum Diversion Volume: 375.1 AF

This is to certify, that EARL LAVELL WARTHEN

PO BOX 145

ALBION ID 83311

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated May 11, 1989; and has submitted Proof of Beneficial Use on February 4, 1994. An examination indicates that the works have a diversion capacity of 1.230 cfs of water from:

HOWELL CREEK

tributary to MARSH CREEK

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	09/15 to 04/15	1.23 CFS	375.1 AF

LOCATION OF POINT(S) OF DIVERSION:

SESW , Sec. 16, Township 12S, Range 25E
CASSIA County

PLACE OF USE: POWER

TWN RGE SEC

12S 25E 16

SENW

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
6. Use of water under this right shall be non-consumptive.

SUPERSEDED

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MAY 15 1998

State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 45-07642

CONDITIONS OF APPROVAL AND REMARKS

7. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
8. Use of water under this water right will be regulated by the watermaster of State Water District No. 45F.
9. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
10. The right holder shall pay the extra costs of the watermaster in monitoring measuring devices at his point of diversion and also his point of discharge back to Howell Creek, and any additional monitoring of other water rights that is required as a result of this hydropower project.
11. This right shall be subject to the diversion of water under water rights for irrigation purposes diverted during the non-irrigation season provided the use is in compliance with applicable law, and the ground will absorb the water.
12. During the non-irrigation season, a flow of ten miner's inches (0.20 cfs) or more shall bypass the point of diversion. The bypass shall be measured at the point of diversion unless a downstream user shows 1) the 0.20 cfs is not available downstream, and 2) he is being injured by the unavailability, at which time the department may increase the bypass to satisfy the water need downstream.
13. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after February 1, 2004. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
14. The right holder shall maintain a measuring device of a type acceptable to the Department near the point of discharge into Howell Creek for the purposes of determining system losses.

SUPERSEDED

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 31st day of MARCH, 1998.

MAY 15 1998

Acting for

KARL J. DREHER, Director

RECEIVED

FEB 04 1994

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 45-07642 Telephone No. 208-623-5385
2. Name(s) of Permit Holder(s): Earl Lavell Warthen
3. Mailing Address: Box 145 Albion Id 83311
4. Source of Water: Howell Creek - Surface

If GROUNDWATER, Well Driller's Name: _____ Date Drilled: _____

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

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

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

Irrigation _____ (No. of acres) Other Power

6. Total rate and/or volume for which proof is submitted 63 1/2" cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly: 1.25 cfs

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

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

8. Fee Enclosed: \$ 125.00 (See License Fee Schedule on back of Instruction Sheet)

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

Earl Lavell Warthen 623-5385
Name Telephone No.
Box 145 Albion, Idaho 83311
Address

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

APR 12 1994

2-3-94 Earl Lavell Warthen
Date Signature (and title, if on behalf of a company or organization)

RECEIVED
FEB 27 1992

For Office Use Only
\$15 Fee Received by 903
Date 2-27-92
Receipt No. 8025303

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

REQUEST FOR EXTENSION OF TIME
TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF
BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of water right under the provisions of Section 42-204, Idaho Code.

Permit No. 45-07642
Name(s) of Permit Holder: Earl Lavell Warkler
Mailing Address: P.O. Box 145 Albion, Idaho 83311
Date Proof is Due April 1, 1992 Telephone No. 673-5385

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

Pipe line to where pelton wheel will be is completed.
Buildings for pelton wheel & controlling work are under
construction or completed.

Costing \$3,000.00

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

I have added more costs to the project in making
it more efficient in generating capacity & maintainance-
abilities, taking more time to complete.

Permit holder(s) request an extension to April 1, 1994

FEE: \$15.00

(Signature)*

*If other than permit holder, Power of Attorney must be supplied.

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ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED
and the time within which to submit proof of beneficial use is extended to
April 1, 1994.

Signed this 17th day March, 19 92

J. M. Saxton
Chief, Water Allocation Bureau

March 16th, 1992

RECEIVED

MAR 17 1992

Department of Water Resources

Earl L. Warthen
Box 145
Albion, Idaho
83311

Dear Karen Gustafson

Enclose are photos of the small hydro project I and my family have been working towards the last few years. Photos are numbered on back and I will give description below.

#1 thru #4 Show the building that houses the project.

#5 Shows building discharge outlet the water.

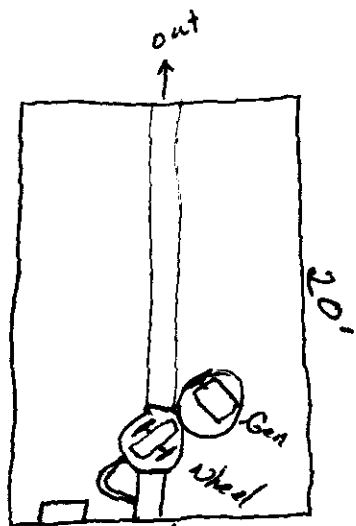
#6 Looking in at water wheel and generator from outside building.

#7 thru #9 Showing water wheel & generator in place with discharge & Intake in place.

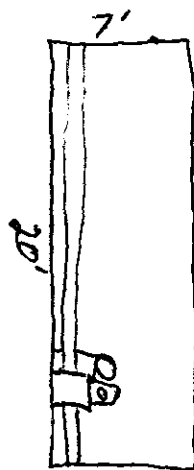
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- #10 - Showing pressure side with
4" Valve in place and pressure gage,
#11 - Showing discharge side in
building



floor View



REGISTERED

APR 08 1992

Controls not in yet.

Thank you
Errol L. Walker
Please keep in file.

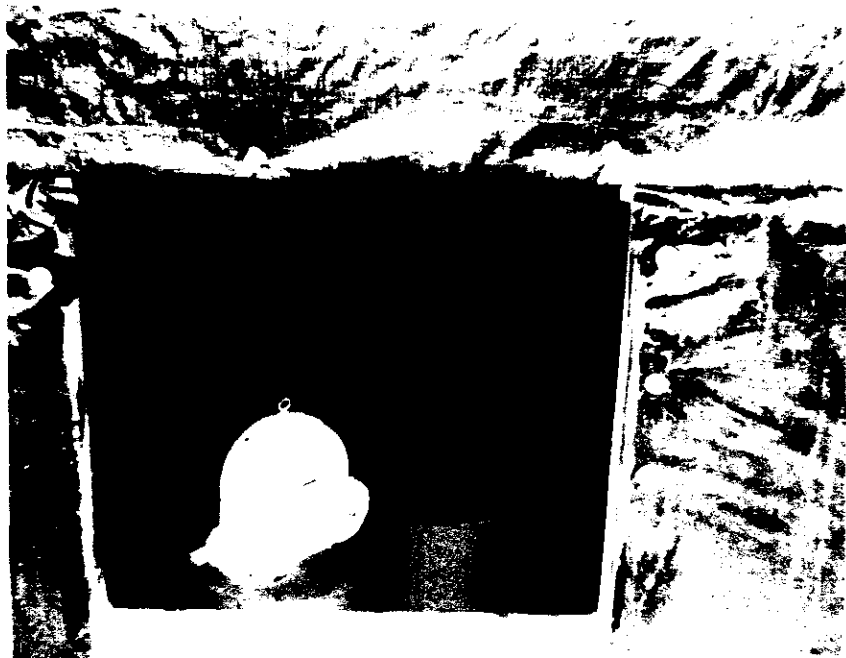


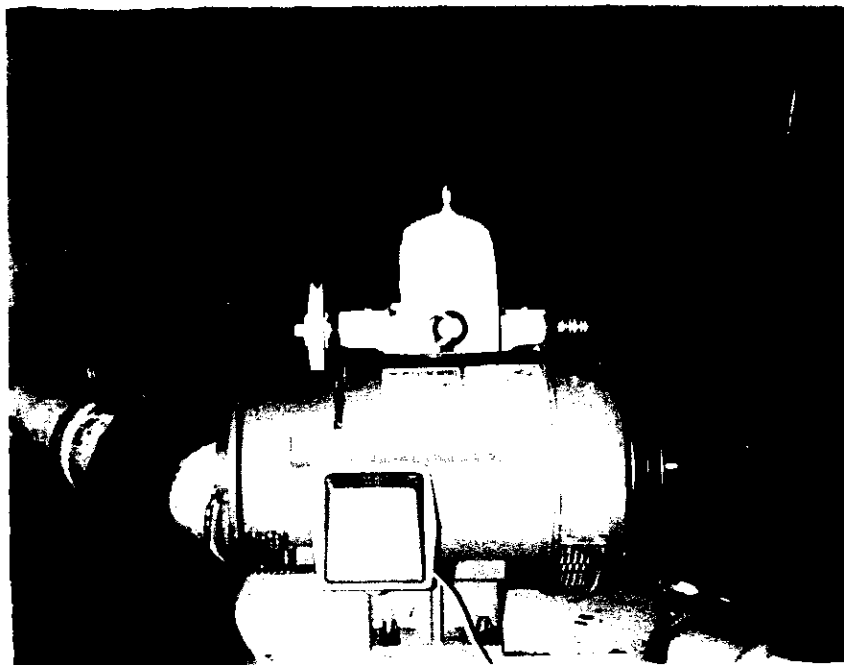


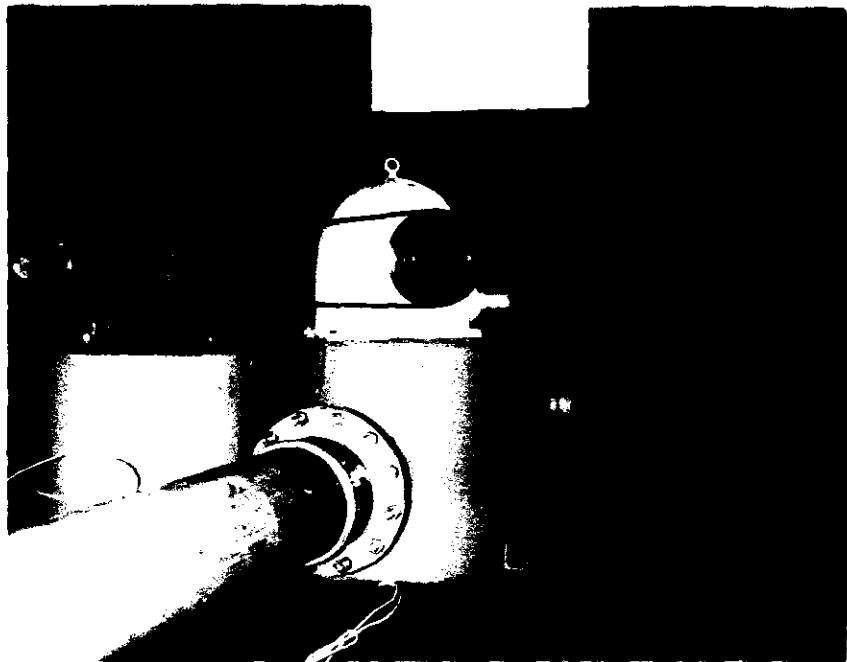


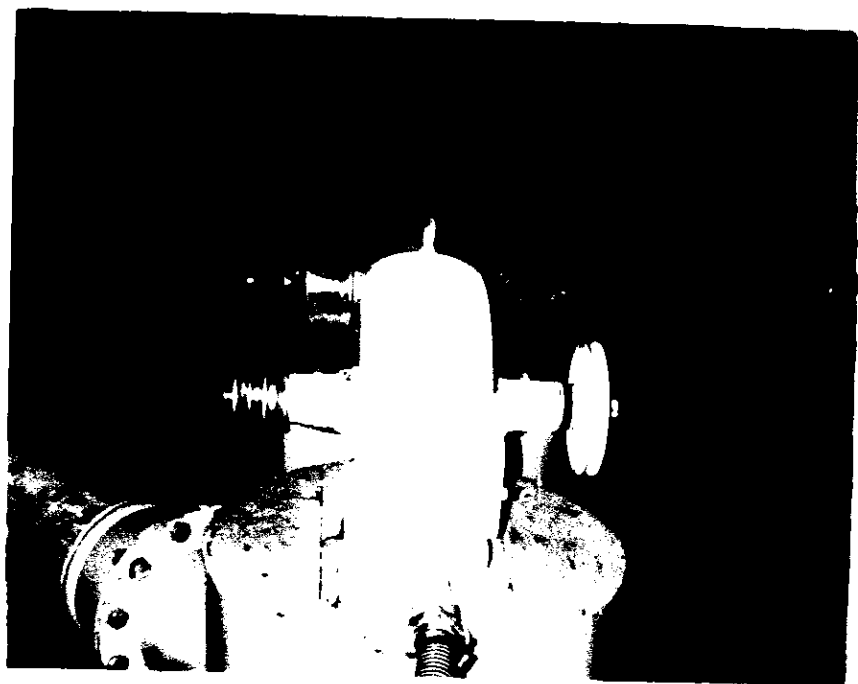














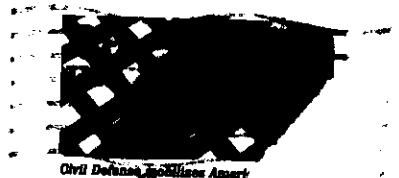


Earl L. Warkentin
Box 145
Albion, Idaho
83311

ATTN: Karen L. Gustafson
State of Idaho
Department of Water Resources
1301 North Orchard Street,
Statehouse Mail
Boise, Idaho 83720-9000

ATT. P. OFFICE
PLEASE HANDSTAMP

Photos
Enclosed



APR 08 1992

Photos accompanying Request
for Extension of Time Submitted
2/27/92

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
PERMIT NO. 45-07642 IN THE NAME OF	)	ORDER ADOPTING
EARL LAVELL WARTHEN	)	PROPOSED MEMORANDUM
	)	DECISION AND ORDER

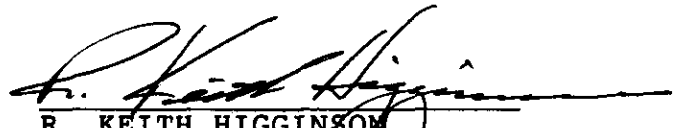
A Proposed Memorandum Decision and Order in the above-captioned matter has been issued and a copy served on the parties;

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

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

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order and proof of construction of works and application of water to beneficial use shall be submitted on or before April 1, 1992.

Dated this 8TH day of January, 1990.


R. KEITH HIGGINSON
Director

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CERTIFICATE OF MAILING

I hereby certify that on the 9th day of January, 1990, I mailed a true and correct copy, postage prepaid, of the Order Adopting Proposed Memorandum Decision and Order to the following individuals:

Earl Lavell Warthen
Box 145
Albion, ID 83311

Helen Goodman
Box 6
Albion, ID 83311

Berniece S. Bailey
P.O. Box 164
Albion, ID 83311

Norman Dayley
Box 165
Albion, ID 83311

Jim Chatburn
Albion, ID 83311

J. Vard Chatburn
Box 97
Albion, ID 83311

Leo Bell
Star Rt. Box 26
Albion, ID 83311

Lindsey W. Dimond
Box 456
Albion, ID 83311

H. Lee Jolley
Box 21
Albion, ID 83311

Rick Bollar
Box 396
Rupert, ID 83350


JENNIFER SEIFERT
Clerical Assistant

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MAR 08 1990

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

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 45-07642 IN THE NAME OF
EARL LAVELL WARTHEN

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

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

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

I.
EXCEPTIONS

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

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,
2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and
3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

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

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

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III.

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

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

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

IV.

CERTIFICATE OF SERVICE

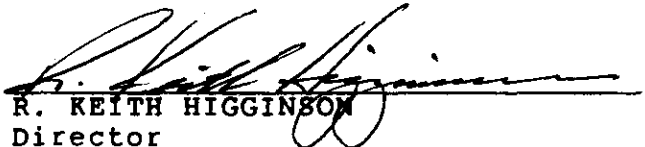
All exceptions, briefs, requests oral arguments and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

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

Dated this 20th day of December, 1989.


R. KEITH HIGGINSON
Director

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MAR 08 1990

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 45-07642 IN THE NAME)
OF EARL LAVELL WARTHEN)

PROPOSED MEMORANDUM
DECISION AND ORDER

A hearing having been held regarding protests filed against this application, the hearing officer finds, concludes and orders as follows:

FINDINGS OF FACT

1. Earl Lavell Warthen (Warthen) filed an application to appropriate water with the Department of Water Resources (Department) on May 11, 1989. The application proposes the diversion of 1.25 cubic feet per second (cfs) from Howell Creek for power purposes from September 15 through April 15.

2. The proposed point of diversion from Howell Creek is located in the SE1/4SW1/4, Section 16, T12S, R25E, B.M., Cassia County. The application proposes to deliver water through an existing pipeline to a turbine to be located in the SE1/4NW1/4, Section 16, T12S, R25E, B.M.

3. The application was properly advertised in the South Idaho Press on June 8 and 15, 1989.

4. Protests were filed against the application by the following parties: Helen Goodman, Berniece S. Bailey, Jim

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Chatburn, Leo Bell, H. Lee Jolley, Lindsey W. Dimond, Norman E. Dayley, and J. Vard Chatburn.

5. A hearing to resolve the protests was conducted on November 15, 1989, in the Albion City Hall. All of the parties were properly notified of the hearing.

6. The following parties appeared at the hearing: Helen Goodman, Jim Chatburn, Leo Bell, H. Lee Jolley, J. Vard Chatburn, and Earl Lavell Warthen. Warthen was represented by Rick Bollar, attorney at law.

7. Parties not appearing at the hearing were: Berniece S. Bailey, Lindsey W. Dimond and Norman E. Dayley. Berniece S. Bailey was unable to attend the hearing because she was in the hospital. She did not request, however, that the hearing be continued in her absence.

8. The parties stipulated at the hearing that the issues would be confined to questions of whether the application would result in injury to other water users, whether there was sufficient water for the purposes proposed, and whether the application was in the local public interest.

9. Warthen has sufficient financial resources to construct the project, which will cost about \$1500.

10. Warthen represented that, if this application is approved, he will attempt to finish the project within the next year.

11. Electricity produced from the hydropower plant would provide electricity to a home, shops, and possibly

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Warthen's lambing sheds. The power would be used only for personal use.

12. The proposed power plant would operate at flows ranging from 10.0 miner's inches (0.20 cfs) to 60.0 miner's inches (1.20 cfs).

13. Warthen stipulated to bypass at least ten miner's inches (0.20 cfs) of water from his point of diversion in the natural stream channel for stockwater use.

14. Except during extraordinarily low water years, the flow in Howell Creek during the period from September 15 through April 15 equals or exceeds 20 miner's inches of water (0.40 cfs).

15. A portion of the existing pipeline that will act as a penstock is perforated pipe. The perforations could expel water if the pipe is pressurized or flowing full.

16. The perforated pipe is installed in a boggy area, and may also collect water if the perforated pipe is not flowing full.

17. Farmers in the Albion area have traditionally diverted water onto meadows and fields during late fall, winter and early spring, allegedly filling the soil profile and enhancing the stream flows during the summer months from ground water return flows.

18. The parties to this matter, including Warthen, stipulated that the diversion of water to meadows and fields during the non-irrigation season placed additional water in the soil profile and enhanced streamflows during the next irrigation season.

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19. Warthen stipulated that he would recognize diversion for purpose of filling the soil profile and enhancing future streamflows for all water rights with a date of priority earlier than May 11, 1989, provided the water is only diverted when it can be absorbed by the soil.

20. The watermaster for Howell Creek is now distributing water for the entire year. He is not currently being compensated, however, for the delivery of water after the regular irrigation season.

21. Warthen stipulated that he would pay for his share of the cost of distributing water during the non-irrigation season, and for the additional cost of monitoring his diversion for hydropower.

22. Concern was raised about losses to Warthen's property through the perforated pipe when used for a penstock. Warthen stipulated that he would install a measuring device at the point of diversion, and also at the point of discharge back to Howell Creek to determine if water was being lost. Warthen agreed that the same amount of water diverted should be discharged back to Howell Creek.

CONCLUSIONS OF LAW

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1. Idaho Code, Section 42-203A(5) states in part as follows: MAR 08 1990

The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be

appropriated, or (c) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Rule 4,4,2,1. of the Water Appropriation Rules and Regulations requires the applicant to carry the burden of coming forward with evidence that water is available for appropriation, and that the proposed diversion will not reduce the quantity under existing rights.

3. Rule 4,4,2,2. of the Water Appropriation Rules and Regulations states that both the applicant and protestant have the burden of coming forward with evidence regarding public interest of which they are each most cognizant.

4. The local public interest criterion of Idaho Code, Section 42-203A(5) (Supp. 1989) is defined by 5,1,5. of the Water Appropriation Rules and Regulations to include:

The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both long and short term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;

The effect the project will have on recreation, fish and wildlife resources in the local public area affected by the proposed use;

Compliance with applicable air, water, hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdiction.

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5. Rule 9,2. of the Practice and Procedure Rules and Regulations states that "if a party fails to appear . . . the Director . . . may, with prejudice, deny or dismiss that party's . . . protest . . ."

6. The protests of the parties who did not appear should be dismissed.

7. Idaho Code § 42-203B states that the Department must establish a term of years for permits to appropriate water for hydropower purpose. The Department must consider the term of any FERC approvals and power sales contracts, the policy of PUC and existing downstream water uses.

8. FERC and PUC approval are not necessary for the proposed project. Power is not being sold. There are downstream uses of water, and water delivered to these uses will also be available for hydropower diversion in the future.

9. Warthen has sufficient financial resources to construct the project.

10. This application is not speculative.

11. The application will not cause injury to other water right holders under the following conditions: (a) The same amount of water diverted from Howell Creek is discharged back to Howell Creek; (b) At least ten miner's inches (0.20 cfs) bypasses the point of diversion and sufficient flow is maintained in Howell Creek between the point of diversion and point of discharge to satisfy stockwater needs; (c) Irrigation rights with a date of priority earlier than May 11, 1989, may continue to be diverted during the non-irrigation season, provided the soil will

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MAR 28 1990

absorb the moisture, and the use is in compliance with applicable law; (d) The applicant pays the cost of any additional administration in the distribution of water required by his hydropower plant operation.

12. There is sufficient water for the proposed project in Howell Creek.

13. Although certain issues regarding local public interest, including possible impacts to fish habitat, were raised as part of the original protests, no evidence was submitted regarding issues of general local public interest.

14. The protests are not resolved in this decision on the basis of public interest. Warthen presented sufficient information to establish that his use would be beneficial, and would save costs of electricity. The protestants had an obligation to come forward with evidence to show that there were local public interests that could be injured by the proposal. The protestants did not establish a public interest that could be injured by this proposal.

15. The applicant showed that his use of water will be beneficial and without further rebuttal is found to be in the public interest.

16. Thirty years is a reasonable term of years for a hydropower right.

ORDER

IT IS HEREBY ORDERED that application to appropriate water no. 45-07642 is APPROVED with the following conditions

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MAR 08 1990

1. This right is subject to control of the watermaster of water district #45F, Marsh Creek.

2. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed prior to diverting water under this permit and shall be maintained as part of the diverting works. In addition, a measuring device must be permanently installed below the hydropower generating plant just upstream from the discharge back into Howell Creek to determine losses.

3. Warthen shall pay the extra costs of the watermaster in monitoring measuring devices at his point of diversion and also his point of discharge back to Howell Creek, and any additional monitoring of other water rights that is required as a result of his hydropower project.

4. This permit and subsequent license shall be subject to the diversion of water under water rights for irrigation purposes diverted during the non-irrigation season provided the use is in compliance with applicable law, and the ground will absorb the water.

5. During the non-irrigation season, a flow of ten miner's inches (0.20 cfs) or more shall bypass the point of diversion. The bypass shall be measured at the point of diversion unless a downstream user shows: (1) The 0.20 cfs is not available downstream, and (2) He is being injured by the unavailability, at which time Department may increase the bypass to satisfy the water need downstream.

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MAR 08 1990

6. The water right acquired under this permit 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 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.

7. The term of this permit and subsequent license shall be thirty (30) years.

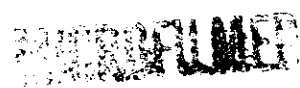
8. Proof of beneficial use shall be filed on or before the date set in the forthcoming final decision.

9. The protests of the non-appearing parties are dismissed.

Dated this 20th day of December, 1989.



GARY SPACKMAN,
Hearing Officer
Department of Water Resources



MAR 18 1990

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of December, 1989, I mailed a true and correct copy of this Proposed Memorandum Decision and Order and the Order Issuing Proposed Memorandum Decision, postage prepaid, to the following individuals:

Earl Lavell Warthen
Box 145
Albion, ID 83311

Berniece S. Bailey
P.O. Box 164
Albion, ID 83311

Jim Chatburn
Albion, ID 83311

Leo Bell
Star Rt. Box 26
Albion, ID 83311

H. Lee Jolley
Box 21
Albion, ID 83311

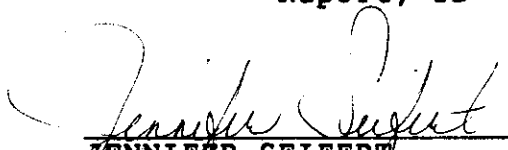
Helen Goodman
Box 6
Albion, ID 83311

Norman Dayley
Box 165
Albion, ID 83311

J. Vard Chatburn
Box 97
Albion, ID 83311

Lindsey W. Dimond
Box 456
Albion, ID 83311

Rick Bollar
Box 396
Rupert, ID 83350


JENNIFER SEIFERT
Clerical Assistant

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MAR 08 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Earl Lovell Warthen Phone 673-5385
Post office address Box 145 Albion Idaho 83311
2. Source of water supply Howell Creek which is a tributary of Marsh Cr.
S.W. Corner E2 NE 1/4 9424
3. Location of point of diversion is NW 1/4 of SE 1/4 of SW 1/4, Govt. Lot _____
Sec. 16 Township 12 S Range 25 E B.M. Cassia County; additional
points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 1.25 for POWER purposes from Sept 15 to Apr. 15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 62 1/2" 1.25 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. All Headgates x Pipe
lines are Existing with current Gravity Sprinkler
System, Supply by Deep Well x Water Right Priority Mar 1882
March 1882
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total 62 1/2
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
d. Is ground water with a temperature of greater than 90°F being sought? No
7. Time required for the completion of the works and application of the water to the beneficial use is
#2 years (minimum 1 year).

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MAR 08 1990

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

- a. Hydropower; show total feet of head and proposed capacity in KW. 90' Head 2.5 to 20 KW.
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. _____

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	
12S	25E	16								P									

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. NONE

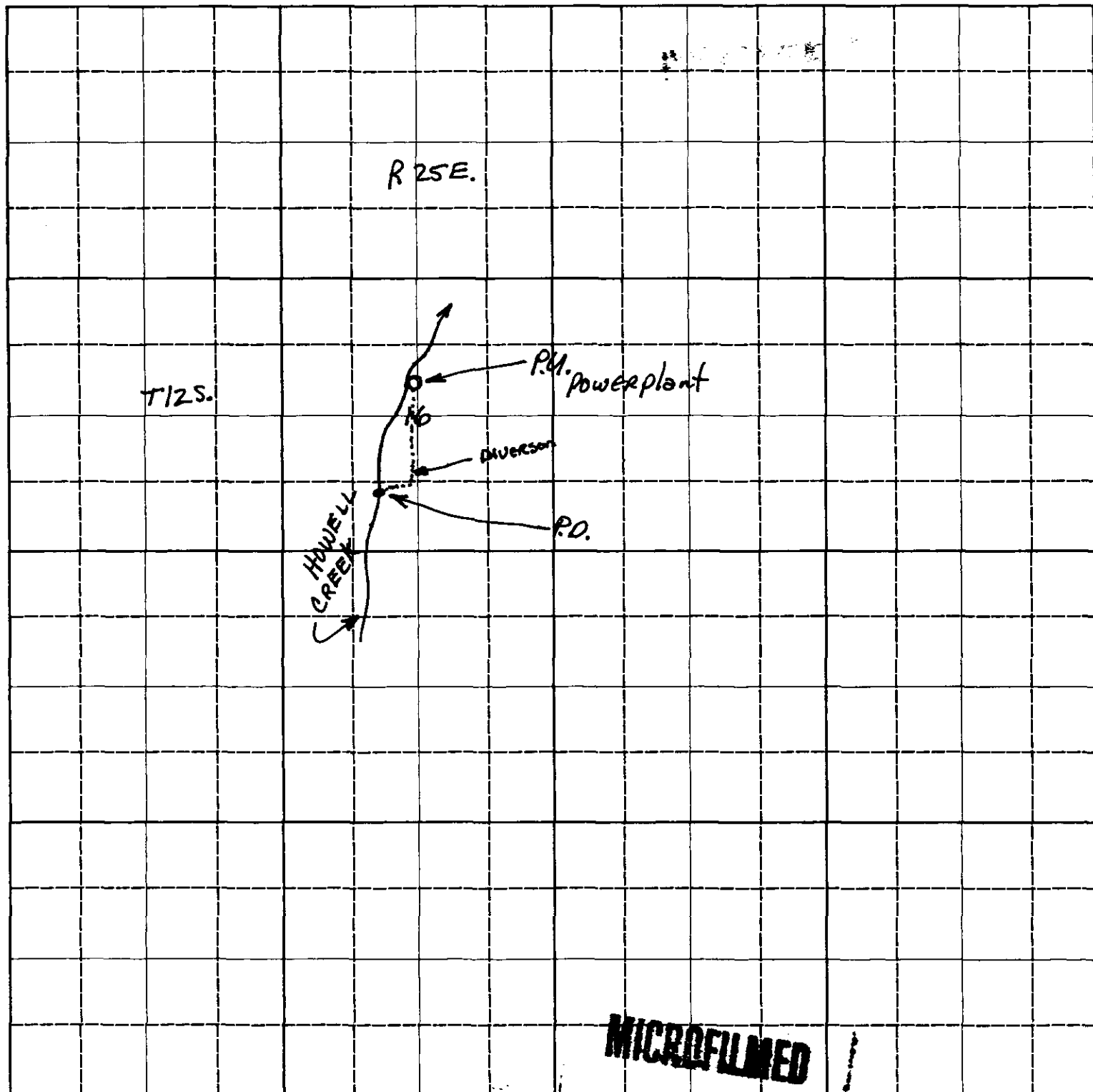
11. a. Who owns the property at the point of diversion? Dick Anderson Headgate Measuring Device
- b. Who owns the land to be irrigated or place of use? Earl Warthen
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: IRRIGATION claimed under A45-00327 E

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MAR 08 1990

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.

MICROFILMED

MAR 08 1990

[Handwritten Signature]

(Applicant)

Received by SCC Date 5/11/89 Time 11:00 AM Preliminary check by J. F. Johnston
Fee \$ 65.00 Received by SCC # 5007086 Date 5/11/89
Publication prepared by M. Baldwin Date 6/1/89 Published in S. ID. Press
Publication approved M. Baldwin Date 6/28/89

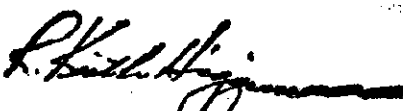
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 45-07642, and said application is hereby APPROVED.

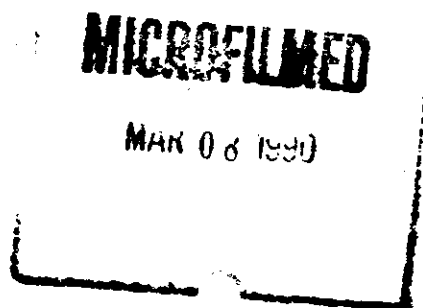
1. Approval of said application is subject to the following limitations and conditions:

- 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 April 1, 19 92.
- 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: PURSUANT TO PROPOSED MEMORANDUM DECISION AND ORDER AND ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

Witness my hand this 8th day of January, 1990.



R. KEITH HIGGINSON
Director



SOUTH IDAHO PRESS

BURLEY, IDAHO

AFFIDAVIT OF PUBLICATION

County of Cassia,)
) ss.
STATE OF IDAHO)

... Cheryl Blauer being first
duly sworn, deposes and says that she is the

clerk of the South Idaho
Press, a daily newspaper published at Bur-
ley, Idaho, in the county aforesaid and that
the paper is of general circulation therein.
Deponent further states that the printed no-
tice attached hereto was duly published
according to law in the regular editions of

The South Idaho Press for two (2)
consecutive weeks, commencing with the issue
dated June 8 1989 and ending
with the issue dated June 15 1989

Cheryl Blauer

STATE OF IDAHO

COUNTY OF

On this 26 day of June in the year of 1989, before me,
a Notary Public, personally appeared Cheryl Blauer,
known or identified to me to be the person whose name subscribed to the within instrument,
and being by me first duly sworn, declared that the statements therein are true, and
acknowledged to me that he executed the same.

Marge Brenden
Notary Public for Idaho
Residing at Burley, Idaho
My commission expires: 2-1-94

Cost of Publication 22.08
Notary Fee 50
Total Cost 22.58

014
MB
6/28/89

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MAY 06 1990

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JUN 28 1989

Department of Water Resources
Southern Region Office

SOUTH IDAHO PRESS

BURLEY, IDAHO

AFFIDAVIT OF PUBLICATION

County of Cassia,)
STATE OF IDAHO.) ss.

..... being first

duly sworn, deposes and says that...he is the

..... 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 consecutive weeks, commencing with the issue

dated 19....., and ending

with the issue dated 19.....

89-280

NOTICE OF APPLICATION FOR
WATER RIGHT
45-07642

WARTHEN, EARL LAVELL

P.O. BOX 145

ALBION, ID 83311

Source: HOWELL CREEK Tributary:

MARSH CREEK

Diversion Pt: NWSESW Sec 16 T 12S R 25E

Use: POWER (1.250 CFS)

Date Filed: 5/11/1989

In: T12S R25E S16 SENW

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Southern Region, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before June 26, 1989.

R. Keith Higginson, Director

Published in the South Idaho Press on June 8 and 15, 1989.

STATE OF IDAHO

COUNTY OF

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

Notary Public for Idaho

Residing at _____

My commission expires: _____

Cost of Publication

Notary Fee

Total Cost

01-
MB
6/25/89

MICROFILMED

Mar 06 1989

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JUN 28 1989

Department of Water Resources
Southern Region Office



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

April 20, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

EARL LAVELL WARTHEN
PO BOX 145
ALBION ID 83311

RE: WATER RIGHT NO. 45-07642

Dear Mr. Warthen:

I have enclosed a copy of the order granting your petition for reconsideration of water right license 45-07642 and a copy of the license as it was re-issued on April 17, 1998. The revised license is an amended preliminary order issued by the Department pursuant to section 67-5243, Idaho Code. **A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief as further described below:**

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within 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 a 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, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a 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 Department. The Department retains the right to review the preliminary order on its own motion.

RECEIVED
MAY 13 1998

ORAL ARGUMENT

If the Department grants a petition to review the preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department 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 Department 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 Department 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:

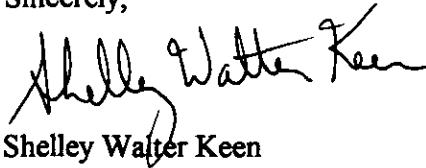
- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

RECORDED

MAY 15 1998

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,

A handwritten signature in cursive script that reads "Shelley Walter Keen". The signature is written in dark ink and is positioned above the printed name.

Shelley Walter Keen
Water Rights Supervisor

Enclosure

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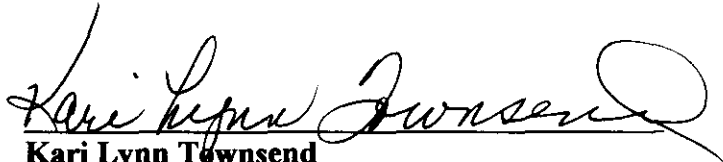
MAY 15 1988

CERTIFICATE OF MAILING

I hereby certify that on the **20th** day of **April, 1998**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (Amended License)** to the person(s) listed below:

Water Right No. 45-07642

**EARL LAVELL WARTHEN
PO BOX 145
ALBION ID 83311**


**Kari Lynn Townsend
Secretary**

RECORDED

MAY 15 1998

MEMORANDUM

TO: File 45-07642

FROM: Sharla

DATE: April 13, 1998

RE: Petition for Reconsideration

A petition for reconsideration of the license issued as a preliminary order has been filed on this right by the right holder. The right holder disagreed with the total annual volume listed on the license. The volume is for the period of September 15 - April 15, for a total of 518.7 af. The volume was inadvertently calculated on a season of 4/15 - 9/15.

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MAY 15 1998

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APR 09 1998

4-7-98

Department of Water Resources

Earl Lavell Warthen

Box 145

Albion, Idaho

83311

673-5385

ATTN: Mr. Shelley W. Keen.
Idaho Dept of Water Resources
1301 North Orchard Street
Boise, Idaho 83720-0098

RE: Water Right No. 45-07642

Dear Shelley W. Keen.

After Review of Water Right License # 45-07642. I find the Maximum Diversion Volume: of 375.1 AF to be short of approx 142.5 AF. My figures came out at the below amounts. Please check my figures

33,000 gals an hour or 792,000 gal a day equal 2.43 acre feet a day at a total yearly use of 517,59 for a proximity 213 day of at lease 7 months of use. But I also realize that when our area is in a short fall for precipitation or drought that this amount will be considerably less. Also will continue to review license #45-07642

Sincerely

Earl L. Warthen

P.S. = Inclosed ~~copy~~ of original letter for records Thanks Earl

Dear Mr. Keen

Please consider the following answers to Mr. Wandron Anderson's comments on Water Appropriation Permit # 45-07642 being given to the best of my knowledge on this date of 3-7-98.

My response to ~~the~~ protested reasons I thing as given by Mr Anderson

1. The upper $\frac{1}{3}$ of my 10" pipe line is dissined to be maintained for winter use to prevent freezing. Where the lower $\frac{2}{3}$ is shut off by a 10" valve at power plant and pumped dry to prevent freezing at the end of our growing season.

There is only one out let between the house and shop that I use for emergency, or or stock water use, or domestic that can be used in the winter months.

W. C. K. K.

MAY 15 1998

2. Two places along Howell Creek I have altered by ~~my~~ hand labor only. These being removal of willows tangled in stream bed to the west of by lambling sheds.

Here willows were ~~used~~ woven into stream banks and rocked to prevent excessive bank erosion. The other area was at the discharge point for the power plant. Where I had built an eddy where as discharge from power plant could be easily measured.

3. Upper water storage system used in developing head pressure does not distort water in Howell Creek.

4. Flow meter was the best to buy at time of installation.

ENCLOSURE

MAY 15 1969

5, Upper Head gate and measuring device were installed by Soil and Water Conservation District in about 1969 by there guide lines and are still work fine with yearly maintainance.

6. Measuring below power plant is phisically checked for accuracy by watermaster to insure all upper devices are in working order.

7, I have found no problems with accuracy of flow meter at head of power plant.

8. Power Plant is working fine for purposes that I designed it for, and very well during power outages in our Valley.

EX-107
MAY 15 1983

9. The generator when
I first aquired it was
in need of repair which
I had it recondisioned and
has worked fine with only
one down time to replace
a bearing.

MAILED
MAY 15 1968

MEMORANDUM

DATE: April 6, 1998

TO: File 45-07642

FROM: Kari Lynn Townsend

RE: Mailing of copies

On April 1, 1998 I mailed a copy of the water right license and the cover letter to:

Woody Anderson
975 Parke Lane
Albion ID 83311

The above mailing was done at the request of Shelley Keen.

MICROFILMED
MAY 15 1998



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

April 1, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

EARL LAVELL WARTHEN
PO BOX 145
ALBION ID 83311

RE: WATER RIGHT NO. 45-07642

Dear Water Right Holder(s):

The Department of Water Resources (the Department) has issued the enclosed license confirming that a water right has been established in accordance with the permit referenced above. The license 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 or files an exception and/or brief as further described below:

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within 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 Department.

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 Department. The Department retains the right to review the preliminary order on its own motion.

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MAY 15 1998

ORAL ARGUMENT

If the Department grants a petition to review the preliminary order, the Department 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 Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department 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 Department 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 Department 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.

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MAY 15 1988

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.

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

Sincerely,



Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

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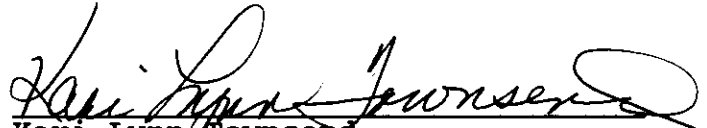
MAY 15 1958
3

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of April, 1998, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

Water Right No. 45-07642

EARL LAVELL WARTHEN
PO BOX 145
ALBION ID 83311


Kari Lynn Townsend
Secretary

RECORDED

MAY 15 1998

MEMORANDUM

DATE: March 31, 1998

TO: Water Right File 45-07642

FROM: Shelley W. Keen *fwk*

RE: Annual diversion volume

Earl Warthen called me this morning in response to my letter asking about his annual diversion volume. Mr. Warthen said that his practice has been to divert at full capacity continuously from September through April each year.



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

March 25, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

EARL WARTHEN
BOX 145
ALBION ID 83311

RE: Water Right 45-07642

Dear Mr. Warthen:

I have been asked to pursue one additional item with you before a water right license is issued for the development under permit 45-07642. There is no information in the water right file to indicate the volume of water you divert annually for power production. We initially drafted your license with a volume figure based on a continuous diversion of 1.23 cfs over the 154 days from September 15 to April 15, which is the season of use authorized on your permit. Your actual practice during the development phase of the permit may, however, have been to divert water less frequently. Therefore, I am writing you to ask you to help us more accurately determine your annual diversion volume by telling us the frequency and duration of your diversions for power production prior to February 4, 1994, which is the date you submitted your proof of beneficial use statement. Please submit the requested information within 30 days from the date of this letter.

Also, you should know that water right licenses are now issued as preliminary orders of the department pursuant to Section 67-5243, *Idaho Code*. Within a prescribed time period, any party may appeal a preliminary order by filing a petition for reconsideration or an exception. Because of the concerns raised by Woody Anderson about your appropriation, it is probably prudent for the department to send him a copy of your license when it is issued so that he is aware of the license and the details of the appeal process.

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

Respectfully,

A handwritten signature in cursive script that reads 'Shelley Walter Keen'.

Shelley Walter Keen
Water Rights Supervisor

MEMORANDUM

TO: File 45-07642

FROM: Sharla

DATE: March 13, 1998

RE: Power Use/Recommendation Adjustment(s)

The adjustments to licensing recommendations for Permit No. 45-07642 are as follows:

H. RECOMMENDATIONS

Power	9/15 - 4/15	1.23 cfs	375.1 afa
-------	-------------	----------	-----------

Power use is for an individual power facility, in this case, supplying power for a shop. Individual power facilities do not require licensing from FERC. Since power is solely used by the right holder and is not sold, there is no power purchase contract. Therefore, the term of years to be listed on the license is not pre-determined by the above. As set forth in Section 42-203B(7), the term of years (once determined) is calculated as commencing at the time of the proof of beneficial use filing. Previously issued licenses falling in this category have had a term set for 10 years, expiring February 1, 2004.

The examiner did not propose a volume, however, power use requires an annual volume on the license. The volume has been calculated based on continuous diversion for the time period of 9/15 - 4/15 as permitted.

Examiner: Jim Stanton
Exam Date: March 31, 1995

RECORDED

MAY 15 1998

RECEIVED

MAR 11 1998

Department of Water Resources

March 10, 1998

Shelley Walter Keen
DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098

FAXED
3-10-98
(208) 327-7866

Re: Permit 45-07642

Dear Ms. Keen:

Please consider the following as a response to Mr. Woodrow Anderson's comments on Water Appropriation Permit #45-07642.

My response is to the October 27, 1997 protest filed by Mr. Anderson. The following are specific to the enumerated objections of Mr. Anderson:

1. The upper 1/3 of my 10" pipe line is designed to be maintained for winter use to prevent freezing. The lower portion is shut off by a 10" valve at the power plant and pumped dry to prevent freezing at the end of the growing season. There is only one (1) outlet between the house and shop which I use in the event of an emergency for stock water use, or domestic purposes (excluding culinary use) that can be used in the winter months.

2. In areas along Howell Creek, I have altered the channel. The alterations have been by hand labor only. Alterations include the removal of willows tangled in the stream bed to the west of my lambing sheds. The willows were woven into the stream banks and rip-rapped to prevent bank erosion. The other area was at the discharge point for the power plant. At that point, I hand built a levy where the discharge from power plant could be easily measured

3. The upper water storage system used in developing head pressure does not distort water in Howell Creek. The nature of the "distortion" is not clear to me.

4. The flow meter was the best available at the time of installation. Further, see the enclosed letter of Don Gunderson regarding his ability, as water master, to read the meter.

5. The upper headgate and measuring device were installed by the Soil and Water Conservation District in about 1969. The installation was consistent with their guidelines. The device still works fine, and is provided with yearly maintenance.

MAY 15 1998

Shelley Walter Keen
DEPARTMENT OF WATER RESOURCES
March 10, 1998
Page 2

6. Measuring below power plant is physically checked for accuracy by the water master to insure all upper devices are in working order.

7. I have found no problems with accuracy of flow meter at the head of power plant.

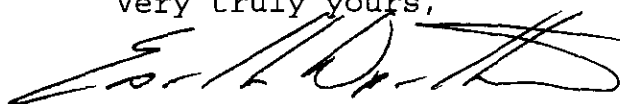
8. The power plant is working fine for purposes that I designed it for and very well during power outages in our valley.

9. The generator when first acquired was in need of repair, I had it reconditioned and it has worked fine, with only one period of down time to replace a bearing.

Of particular significance is the timing of the Anderson Protest. No protest, objection, or response was filed by Anderson during the objection period allowed by statute, and after my application. I would submit that the protest must be dismissed as having been untimely filed.

Please file this in response to the proported protest of Mr. Anderson.

Very truly yours,



Earl Warthen
Box 145
Albion, ID 83311

MAILED
MAY 15 1998

March 3, 1998

To whom it may Concern:

I Don Sunderson, Watermaster of 45F, turned water to Mr. Earl Warthen on March 1, 1998 for use on his non-consumptive project (permit #45-CT462/45-00327). I did the following checks.

Water turned in at diversion point and the meter above the power generator was checked on water flow, lense was clean and meter was working. I have a problem in reading the gauge, I therefore use the needle of the gauge (pressure flow) on a variation of 30° , the gauge is marked for the minimum to maximum flow permitted (220/550 gpm) along with my measuring of water leaving the system, which Mr. Warthen and I concur on usage of water.

With Mr. Warthen's improvement of the system since it was put in place, I understand Water Resources have been back to verify the system, which I believe would also include the checking of his meter gauge. The documentation would be in the Twin Falls office.

I as the watermaster, will make known, that there was a demonstration of the system to the downstream users, Water district members, myself and Water Resources from Twin Falls, all of which gave the man the Okay. This was in early 96. If a protest was to be filed - I believe it should of been done then, and not 2 years down the road.

MICROFILMED

MAY 15 1998

If you have any questions, I can be reached
by phone 673-5359 or P.O. Box 125, Albion, ID 83311.

yours Respectively,
Don S. Henderson
Watermaster 45F

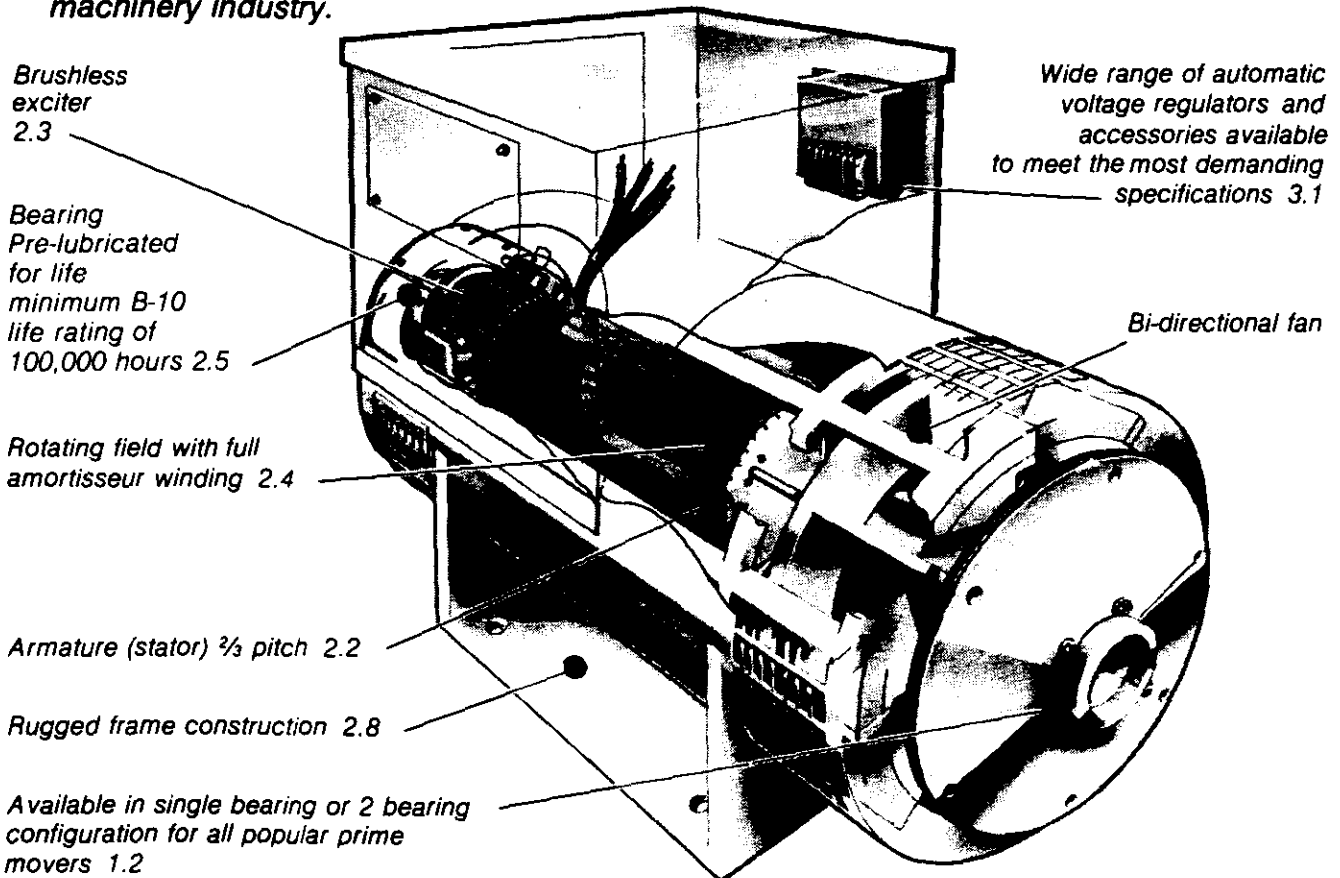
MICROFILMED
MAY 15 1998

GENERATOR



COMPARE THESE LIMA SER BENEFITS

- All Lima SER Alternators - 4 pole and 6 pole - are wound to 2/3 RD's pitch to eliminate harmonics and circulating currents when paralleling.
- Best delivery in the market-monthly stock objectives.
- 12 lead, reconnectable standard through 500KW
- ABS approval and certification readily available.
- Approved by more than 100 US governmental agencies.
- The Lima 2/5 warranty backs over 50 years of field proven success in the rotating machinery industry.

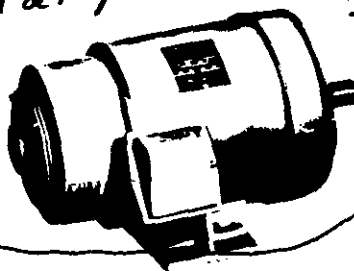


MODERN LINE

MAY 15 1988



FRAME 280
Two Bearing



LIMA MAC

MOTOR APPLICATION CHARACTERISTIC
BRUSHLESS ALTERNATORS
Self Excited/Self Regulated
(NO EXTERNAL REGULATOR)

U.S. Patent No. 3210644

**You'll find LIMA MAC[®] alternators
wherever dependability counts most.**

With good reason, LIMA's self-regulating (Motor Application Characteristic) alternators are built for the toughest jobs. The MAC will start induction motor loads of 1 HP/KW and recover to full output voltage in less than a second.

The heart of MAC superiority is a patented (U.S. Pat. Off. # 3210644) excitation system. It is actually a 3-phase rotating current transformer frequency converter which responds to load changes and keeps output voltage within 4% ... more than satisfactory for induction motors and most other power system requirements.

At 80°C. rise, a MAC will handle 150% load for an hour; 125% load for two hours. With rectifiers rated at a minimum of 10 times normal RMS voltage, and a patented excitation system, the MAC will sustain short circuit currents of 500% of rated current while circuit protectors react ... without costly external excitation support systems.

MAC alternators are the rugged, dependable choice wherever motor starting and self-regulated power is needed. It's the "hands off" alternator with no adjustments to make. MAC alternators are sized from 3.5 KW to 250 KW.

Minimum Maintenance

- Self-regulated, no external voltage regulator or other electronic control aids.
- Brushless. No slip rings or brushes to maintain.
- Linear Volts per Hertz output. No damage from underspeed during engine warm-up or idle.
- No control components or electronics to service.
- Permanent Residual Voltage. No field flashing required for normal use.
- No knobs and/or adjustments to keep operative.

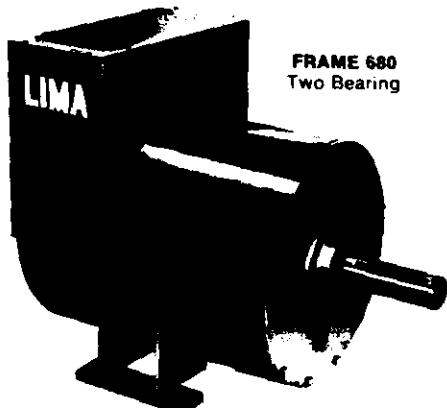
Inherent Advantages in Performance

- Superior motor starting, 1 HP per KW.
- No need for excitation support fault clearing systems.
- 125% load for 2 hours at 80°C Rise.
- 150% Load for 1 hour.
- 35% Voltage Dip at 1 HP/KW. Code G motor starting Across-The-Line.
- 10% Voltage Dip at rated KVA and 80% Power Factor.
- 4% Voltage Regulation.
- Automatic MAC paralleling. No complicated controls.

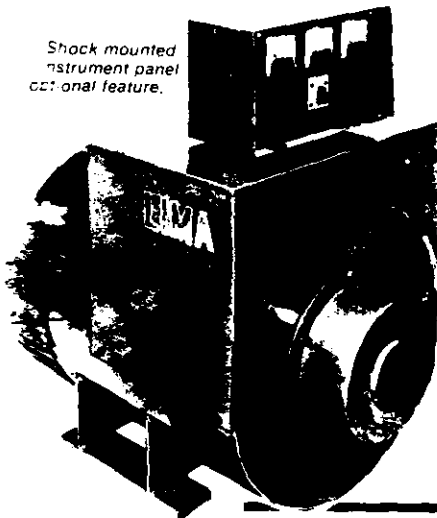
Substantial Cost Saving

- 10% to 20% less costly than comparable externally regulated alternator for same motor starting needs.
- Substantially less on-the-job cost with no electronics to maintain, saves approximately 5% to 10%.
- Experience in electronic controls not required by operating personnel.

FRAME 680
Two Bearing



Shock mounted
instrument panel
control feature.



• Order MAC alternators with an instrument panel or a host of other options.

Lima Brushless Alternators 1800 RPM 60 cycle

KW	120-240 VOLT 1 PHASE	ALL STANDARD VOLTAGES 3 PHASE
5	\$1690.00	\$1690.00
7.5	\$1950.00	\$1950.00
10	\$2140.00	\$1950.00
12	\$2260.00	\$1840.00
15	\$2600.00	\$2140.00
20	\$3270.00	\$2230.00
25	\$3720.00	\$2900.00
30	\$3950.00	\$2900.00
35	\$4230.00	\$3300.00
40	\$4230.00	\$3720.00
50	\$5230.00	\$3950.00
60	\$5560.00	\$4230.00
75	\$6750.00	\$5230.00
100	\$7820.00	\$6750.00

Sizes to 1200 KW 1800 RPM available.
Sizes 13 KW to 105 KW 1200 RPM available.
Prices on request.

SYNCHRONOUS AND INDUCTION GENERATORS AND ALTERNATORS

Thousands of surplus new and used A.C. generators and alternators both vertical and horizontal are available in sizes from 1 to 80,000 K.W. all voltages including: 120/240 - 208 - 440 - 460 - 480 - 550 - 2300/4160 - 4800 - 13,500 and others. Many speeds are available: 3600 - 1800 - 1200 - 900 - 700 - 600 - 514 - 450 - 400 - 360 - 327 - 300 - 277 - 257 - 240 - 225 - 200 - 180 - 144 - 120 R.P.M. and others.

NOTE: Most of the low RPM models are large generators. D.C. Generators, large and small, new and used are also available. Many of these surplus generators are as good or better than the new ones made today and at a small fraction the cost.

Let us know your needs.

SEE NEXT PAGE FOR INDUCTION GENERATOR PRICES

RECEIVED
MAY 15 1968



**Raft River Rural
Electric Cooperative, Inc.**

250 North Main
P.O. Box 617
Malta, ID 83342
Telephone: 208-645-2211
FAX: 208-645-2300

*Response from
Raft River Electric
in question in letter
from Anderson.*

Earl Warthen

February 26, 1998

To Whom it may concern

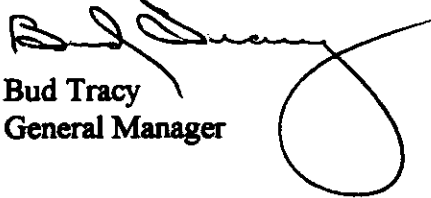
RE: Earl Warthen

This writing is in response to a request of Mr. Earl Warthen pursuant to a letter of October 27, 1997 from Mr. Woody Anderson to Mr. Shelley Keen. (Copy attached herewith)

The first paragraph references Raft River has indicated the subject power is so insignificant that they would not purchase the power.

The Raft River Electric Co-op. has always and continues to operate with the premise that we will not acquire any resources that have a cost greater than our avoided cost. Given the size of this project it has been viewed as too small to be cost effective. Raft River Electric Co-op to my knowledge has never communicated with Mr. Anderson or the Department of Water Resources, with regards to this project. The only communication Raft River has had, has been with the property owner Mr. Earl Warthen.

Respectfully submitted,


Bud Tracy
General Manager

MICROFILMED
MAY 15 1998

Water Sample in question

Earl Warthen

COLIFORM BACTERIA ANALYSIS REPORT

Magic Valley Labs
210 Addison Ave.
Twin Falls, ID 83301
208-733-4250



- ☐ Public Drinking Water System
☒ Private Drinking Water

Shaded areas must be fully filled out or samples will not be run. Private samples need not have pwt or Chlorine residual. Clear areas are for lab use only.

Your sample will be analyzed for TOTAL COLIFORMS unless you specify another analysis under Remarks.

Lab ID No

RESULTS

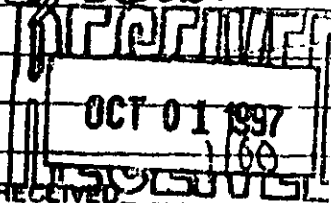
Sample Number	Sample Type Code	Sampling Location	Time Collected	Chlorine Residual PPM	Original Sample Date	TOTAL COLIFORMS		FECAL COLIFORMS		ESCHERICHIA COLI		HPC	
						Method Code	(Present/Absent #100 ml)	Method Code	(Present/Absent #100 ml)	Method Code	(Present/Absent #100 ml)	Method Code	CFU
5100161	CLX		3 P.M.			WTRMB	P			WTRMB	P		
5100171	CLX		3 P.M.			"	P			"	P		
MAY 15 1998													
HOWELL CREEK													
EARL WARTHEN PROPERTY													

Sample Type Codes

- S - Routine Sample U - Upstream Repeat W - Untreated (source)
P - Repeat Sample D - Downstream Repeat V - Invalidated by lab.
(At original tap) X - Other Repeat C - Construction/Special
E - Enforcement
(Chain of custody required)

REMARKS

Construction special



DATE/TIME RECEIVED

ANALYST

DATE ANALYZED

*For PW3 only, if this is a repeat sample, mark the date of the previous analysis result



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

February 20, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

EARL LAVELL WARTHEN
BOX 145
ALBION ID 83311

RE: Permit 45-07642

Dear Mr. Warthen:

The Department of Water Resources (IDWR) is currently reviewing Water Appropriation Permit 45-07642 in preparation for issuing a water right license. IDWR recently received a letter from Woody Anderson commenting on the use of water you developed under Permit 45-07642. I have enclosed a photocopy of Mr. Anderson's letter.

I will hold the file for 21 days to allow you to respond in writing to the items in Mr. Anderson's letter. You may provide any information you believe may be pertinent to IDWR's evaluation of your water use.

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

Respectfully,

Shelley Walter Keen
Water Rights Supervisor

Enclosure

RECORDED
MAY 15 1998

MEMORANDUM

DATE: February 20, 1998

TO: Water Right File 45-07642

FROM: Shelley W. Keen ^{SWK}

RE: Points raised by Woody Anderson

In conjunction with IDWR's usual pre-licensing review of the permit file, I have considered the points raised in Woody Anderson's 10/27/97 letter.

1. Mr. Warthen is apparently the holder of decreed irrigation water right 45-00327A. The R. L. Wood et. al. vs. Wm. Stokes decree does not specify a season of use for irrigation purposes, but in the Memorandum Decision and Order approving permit 45-07642, the hearing officer found that it is customary for farmers in the Albion area to divert water in the late fall and early spring to allegedly fill the soil profile and enhance stream flows during the following summer. Rather than diverting his "non-consumptive water" in this way, Mr. Warthen is apparently following the local customary practice for use of water under his irrigation water right. There does not appear to be any evidence that Mr. Warthen has attempted to divert water for both irrigation and hydropower purposes simultaneously.
2. Under the provisions of Section 42-3803, *Idaho Code*, anyone proposing to alter the channel of a natural stream of continuously flowing water must obtain a permit from IDWR. However, Section 42-3806, *Idaho Code*, and Stream Channel Alteration Rule 25.03 exempt work to construct, clean, repair, and maintain the diversion structure for a valid water right. If Mr. Anderson believes the channel of Howell Creek has been altered in violation of the law and rules governing stream channel alterations, he should notify Allen Merritt in Twin Falls.
3. I am not sure exactly what is meant by a "buried French Drain", nor how it "distorts" the flow of water in Howell Creek.
4. I assume Mr. Anderson is referring to the flow meter installed on Mr. Warthen's penstock approximately 25 feet above the generator. Without more details, I cannot evaluate the assertion that the flow meter is inadequate. IDWR's field examiner did not report any problems with the flow meter. In fact, he reported a "good even reading."
5. Adjustable headgates and properly constructed flumes have proven to be reliable for measuring and controlling surface water diversions under conditions similar to Mr. Warthen's. IDWR's field examiner did not report any visible problems with Mr. Warthen's headgate and/or flume, nor do I have any record of complaints from the watermaster. It is wise, however, to periodically calibrate the flume and adjust the rating tables accordingly. I do *not*

know how often the watermaster checks the accuracy of the measuring devices in the water district.

6. The Memorandum Decision and Order approving permit 45-07642 required the permit holder to install a measuring device "just upstream from the discharge back into Howell Creek", not on Howell Creek itself. IDWR's field examiner reports that a meter was tried at this location, but its readings proved to be inaccurate. Therefore, the meter was installed 25 feet above the generator. Because the meter is still located near the end of the penstock, it is in a reasonable location for measuring system losses, which is the purpose for installing the device.
7. See No. 4 above.
8. Since 1971, anyone proposing to divert and use surface water in Idaho has been required to obtain a permit from IDWR, regardless of the frequency of use.
9. The field examiner reported that Mr. Warthen's generator produces electricity used in his shop. The diversion of water for hydropower production is recognized as a beneficial use of water in Idaho.

MEMORANDUM

TO: File 45-07642

FROM: Sharla

DATE: November 13, 1997

RE: Compliance with Conditions of Approval and Protest of License Issuance

On October 30, we received a letter from Woody Anderson protesting the issuance of a license on the above referenced right. Mr. Anderson listed nine (9) reasons for his protest and these were considered in the license review as follows:

- ◆ Concerning reason #1 - condition number 4 of the Proposed Memorandum Decision and Order (issued as a Final Order on December 20, 1989) explains the non-irrigation season of use. The season identified in the application is 9/15 - 4/15; that is the non-irrigation season. See the memorandum dated 10/20/89 from Loren Holmes, bullet #3.
- ◆ Concerning reason #2 - there is no support for the accusation that the creek's channel has been altered. The diagram identified on the application appears to match the aerial photo attached with the examiner's report.
- ◆ Concerning reason #3 - I found no reference in the remarks section of the field report noting a buried French Drain at the upper end of the dam.
- ◆ Concerning reasons #4, 5, and 6 - the examiner's remarks do indicate that the conditions requiring measuring devices on the diverting works and below the power plant just upstream from the discharge back to the creek have not been complied with. The examiner lists reasons why he thinks the conditions are not reasonable, however, compliance with these conditions needs to be pursued (perhaps by withholding license issuance until compliance or requiring evidence from the right holder to warrant removal or modification of the condition).
- ◆ Concerning reason #7 - the examiner makes a statement that he obtained a "good even reading" from the flow meter. I don't find any information in the exam to support the accusation that the meter is faulty and inaccurate.
- ◆ Concerning reason #8 - the examiner used the terminology that "usage is spotty", however this statement was followed by a comment that assigning an annual volume would be meaningless. Whether usage is spotty or not, a permit for that use is required.

RECORDED

MAY 15 1998

- ◆ Concerning reason #9 - an old generator does not negate the use of water and the generation of power, even of dubious value, is recognized as a beneficial use of water if that electricity is used by the right holder. The exam confirmed that the right holder uses the generated power for his shop and will eventually use it in his house. In the beginning of Mr. Anderson's letter, he states that the Raft River Rural Electric Coop., Inc. has indicated the the power produced is so insignificant that they wouldn't purchase the power produced by the right holder. There is no rule, regulation or policy that requires power produced to be purchased by another individual or entity. Numerous water rights of record reflect personal use as opposed to having a power purchase contract with some power-providing agency.

Mr. Anderson was not one of the protestants at the time the application for permit was filed. The original protests failed to show that local public interests could be injured by this right. The concern of injury to other right holders was addressed with conditions stipulating that 1) the same amount of water diverted would be discharged back to Howell Creek, 2) at least ten miner's inches would be allowed to bypass the point of diversion, 3) irrigation rights could continue to be diverted during the non-irrigation season, provided the soil would absorb the moisture and the use is in compliance with applicable law, and 4) the right holder would pay the cost of any additional administration in the distribution of water required by his plant operation. These conditions will be carried forward to any license issued on this right.

All the above having been said, it appears that the only valid "complaint" to be considered in the issuance of a license is the compliance with measuring device requirements. It may be proper to send Mr. Anderson a copy of any correspondence we send to the permit holder, or perhaps a letter to Mr. Anderson is appropriate to address each of his concerns individually in much the same way as I have done above.

UNRECORDED

MAY 15 1988

RECEIVED

OCT 30 1997

Department of Water Resources

Mr. Woody Anderson
975 Parke Lane
Albion, Idaho 83311

October 27, 1997

Mr. Shelley Keen
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706

Re: Earl Warthen Permit #45-07642 Irrigation Right #45-00327

Dear Mr. Keen:

I am writing to protest the issuance of a claim for a non-consumptive use of water to Mr. Earl Warthen of Albion, Idaho. The permit number is #45-07642 with an irrigation water right #45-00327. The non-consumptive use application is for a Pelton Wheel type generator to supply power for his shop. The Raft River Rural Electric Coop., Inc. the provider in the Albion Valley, has indicated that the power (produced) is so insignificant, that they would not purchase the power produced by Mr. Warthen.

We protest the issuance of this claim for the following reasons:

1. As the water that is delivered to the power plant by pipe line is the same as is used for irrigation, there have been times when the claimant has used the non-consumptive water for irrigation purposes late in the Fall and early in the Spring. This pipe line should not be allowed to handle both purposes.
2. The original Howell Creek channel has been altered by Mr. Warthen.
3. There is a buried French Drain at the upper end of the dam (see remarks Field Report) that further distorts the flow of water in Howell Creek.
4. Flow meter is inadequate.
5. Headgate and weir are inadequate to determine the amount of water being used.
6. There is no measuring device below the generator on Howell Creek.
7. The meter located above the power plant is faulty and inaccurate.
8. Usage is so spotty that a permit is not warranted.
9. The previous owner of the generator indicates it is old and of dubious value in generating electricity.

As the conditions for the approval of this permit have not been met, we strongly protest this application.

MICROFILMED

MAY 15 1998

Further, Mr. Warthen's sheep and lamming sheds are right on Howell Creek and as the enclosed two water tests done on Mr. Warthen's property from Howell Creek show the water is seriously contaminated.

Also for years, Mr. Warthen's effluent from his house has been run out on to the road next to his house.

Thank you,



Woody Anderson

AWA:sja

Enc.:10-1-97 Water Sample Report

cc: Don Gunderson, Water Master
Mr. Scott Arnell, South Central Health District

MICROFILMED
MAY 15 1998

Water System Name		PWS ID No.
Collector	Date Collected 9-30-97	County Cassia
Report Results To:		
Name		
Address		
City Albion	State ID	Zip Code 83311
Phone Number		

COLIFORM BACTERIA ANALYSIS REPORT

☐ Public Drinking Water System
☒ Private Drinking Water

Shaded areas must be fully filled out or samples will not be run. Private samples need not have persulfate or Chlorine residual. Clear areas are for lab use only.

Your sample will be analyzed for TOTAL COLIFORMS unless you specify another analysis under Remarks.

Magic Valley Labs
 210 Addison Ave.
 Twin Falls, ID 83301
 208-733-4250



Lab ID No

R E S U L T S

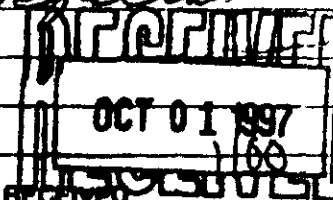
Sample Number	Sample Type Code	Sampling Location	Time Collected	Chlorine Residual PPM	Original Sample Date	TOTAL COLIFORMS		FECAL COLIFORMS		ESCHERICHIA COLI		HPC	
						Method Code	(Present) (Absent) #100 ml	Method Code	(Present) (Absent) #100 ml	Method Code	(Present) (Absent) #100 ml	Method Code	CFU
5100161	CX		3 P.M.			WATMS	P			WATMS	P		
5100171	CX		3 P.M.			"	P			"	P		
HOWELL CREEK													
EARL WARTHEN PROPERTY													

Sample Type Codes

S - Routine Sample U - Upstream Repeat W - Untreated (source)
 P - Repeat Sample D - Downstream Repeat V - Invalidated by lab.
 (AI original tap) X - Other Repeat C - Construction/Special
 E - Enforcement
 (Chain of custody required)

REMARKS

Construction special



DATE/TIME RECEIVED

ANALYST

DATE ANALYZED

*For PWS only, if this is a repeat sample, mark the date of the ORIGINAL ANALYSIS REPORT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED

MAY 1 1995

A. GENERAL INFORMATION

Permit No. 45-00327 Department of Water Resources

1. Owner: Earl Warthen Phone No. 673-5385

Current Address: PO Box 145, Albion, ID 83311

2. Accompanied by: owner EXAM DATE: 3-31-95

Address: _____ Phone No. _____

Relationship to Permit Holder: _____

3. Source: Howell Creek tributary to Marsh Creek

B. OVERLAP REVIEW

1. Other water rights with the same place of use: _____

2. Other water rights with the same point of diversion: 45-00327

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion:

Ident No.	Gov't Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		NW	SE	SW	16	12S	25E	C95519	Aerial photo, site visit

2. Place(s) of Use:

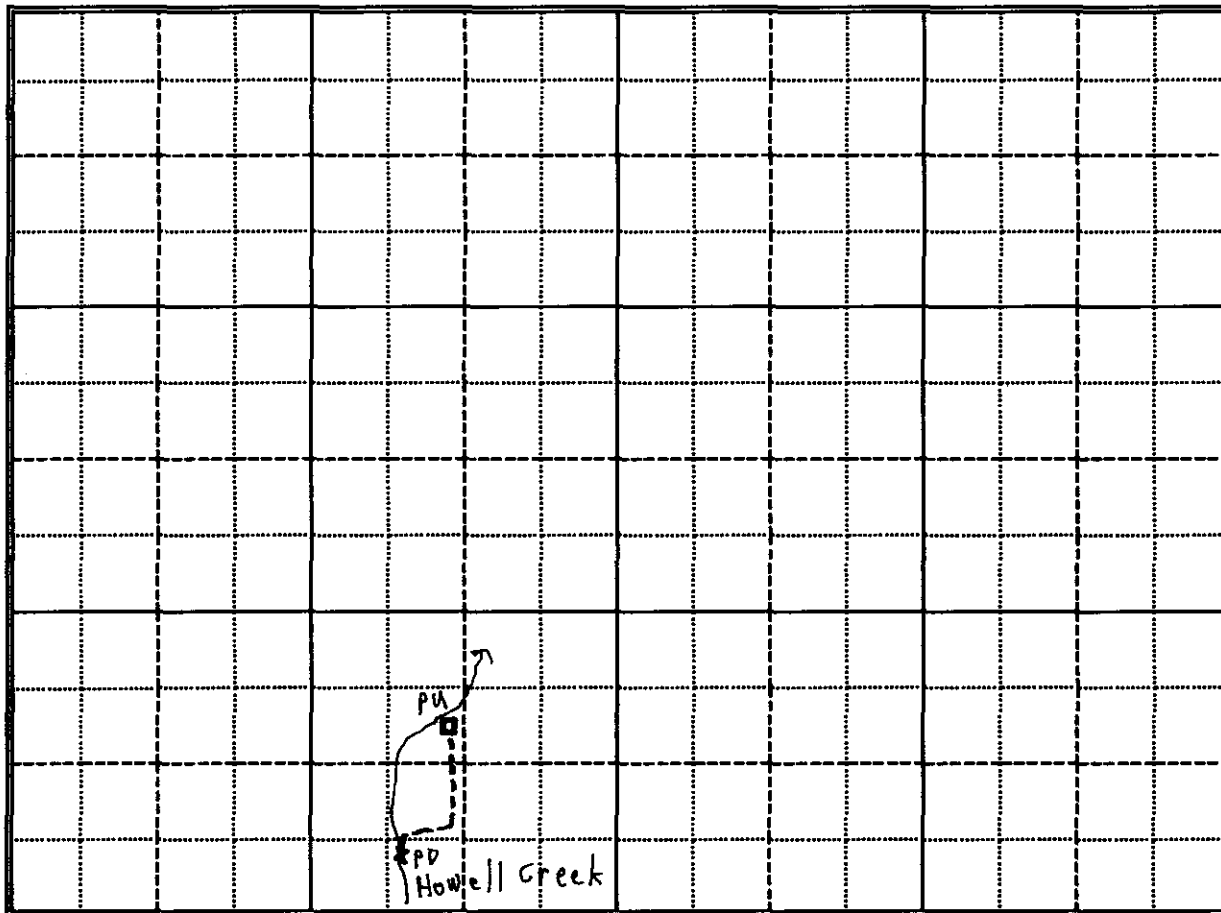
Indicate Method of Determination Quad Map

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	25E	16																	

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MAY 15 1995

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



Scale: 1" = _____

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

____ Aerial Photo Attached (required for irrigation of 10+ acres)

____ Photo of Diversion and System Attached

4.

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

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

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
McCrometer Flow Meter	in-line	McCrometer	?	not available	10"	

2. Measurements: 550 gpm on Flow meter (good even reading)

MAY 15 1993

E. NARRATIVE/REMARKS/COMMENTS

Diversion in Howell Creek, buried pipeline to Pelton Wheel. Runs 7 hp generator (#A4155BM). Pipeline back into Howell Creek. 37 psi in line.

Check dam to 9" flume, earth ditch to settling pond, buried pipeline from pond to generator. Owner has 63" of decreased irrigation water that is diverted thru the same system. Valve in pipeline above turbine allows water to be used for gravity sprinklers.

When I read the flow meter, no water was being diverted from Howell Creek; I was reading water already in the pipeline. Owner said the pipeline would only carry 550 gpm without losing efficiency. We later went up to the p/d, where he opened the headgate to 0.42' on the weir. This was 40" on the watermaster's table for 9" flumes. Diversion would carry more water, but owner was not sure how far to open the headgate (neither was I).

Power generated is used in owner's shop, & he plans to run it into the house. Usage is spotty, so assigning an annual volume to this right would be meaningless. With most of the water in a buried pipeline, use is almost entirely non-consumptive.

Installing a measuring device below the p/d on Howell Cr. would be very difficult due to the ~~the~~ location. Trying to measure 10" of water (the required bypass amount) thru a 3' weir would be difficult to do accurately. This part of Howell Creek actually gains water from springs. Permit required a measuring device below the generator - this was tried but did not provide an accurate reading. So meter was installed in the pipeline maybe 25' above the power plant.

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

MICROFILMED
MAY 15 1998

F. FLOW CALCULATIONS

_____ Additional Computation Sheets Attached

Measured Method:

$$550 \text{ gpm} \div 448.8 \text{ gpm/cfs} = 1.23 \text{ cfs}$$

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

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

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

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

2. Volume Calculations for Other Uses:

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Power	9-15	4-15	1.23	
Totals:				

2. Recommended Amendments

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

I. AUTHENTICATIONField Examiner's Name J. F. Stanton Date 4-27-95

Reviewer _____ Date _____

SEAL

MICROFILM

MAY 15 1998

181
T1407

604
T1409

1
48

NW

26.4 HE

MAY 15 1938

PD *

9.2

2
28.4

NHEL W

3
12.6

5
17.1

17 16
20 21

4
40.6

T9032

1275
T1922

16 15
21 22

NHEL W

20.0

NHEL W

W

13.1

NHEL W

2

12.0

T9033

X 5

32.1

8

8.0

4.0

3

7.9

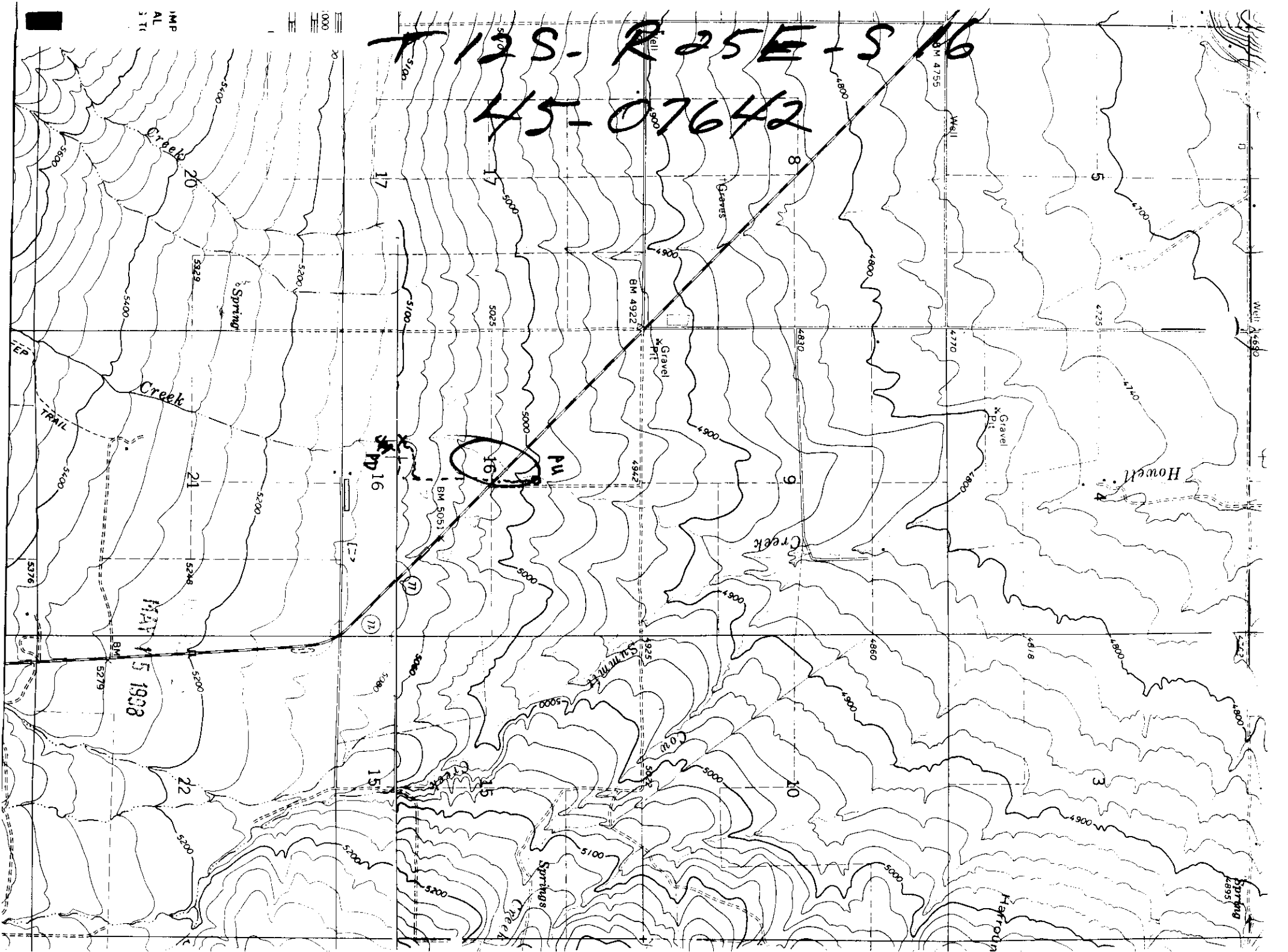
5

53

12.0

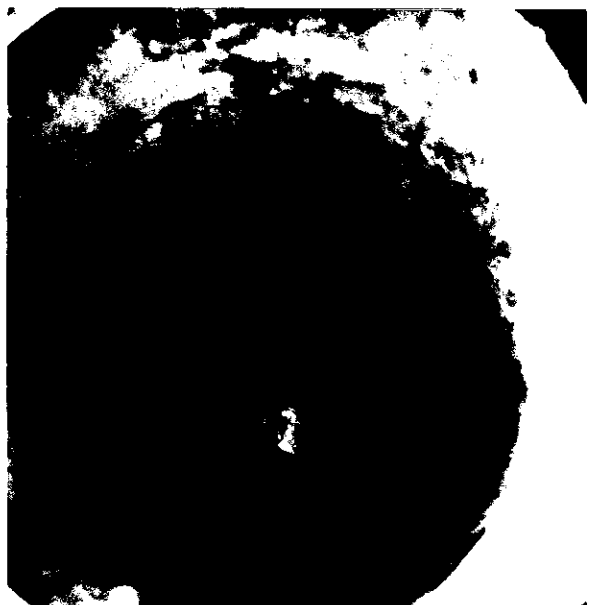
33.7

T 12 S. R 25 E - S 16
45-07642

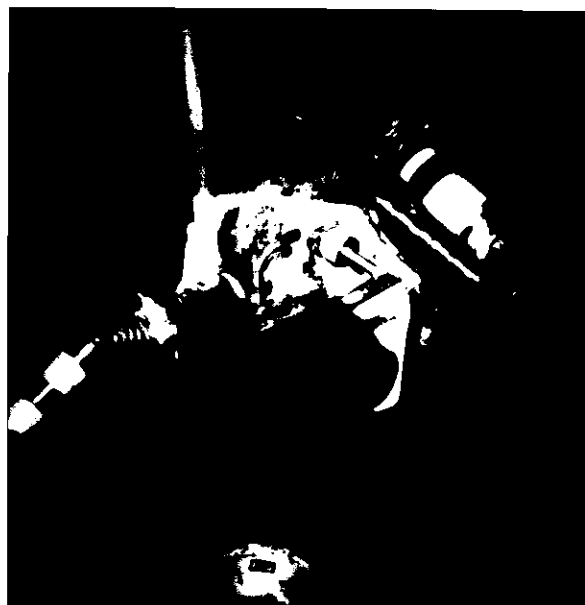




Measuring Point & Power House



Closeup of Flow Meter



Generator



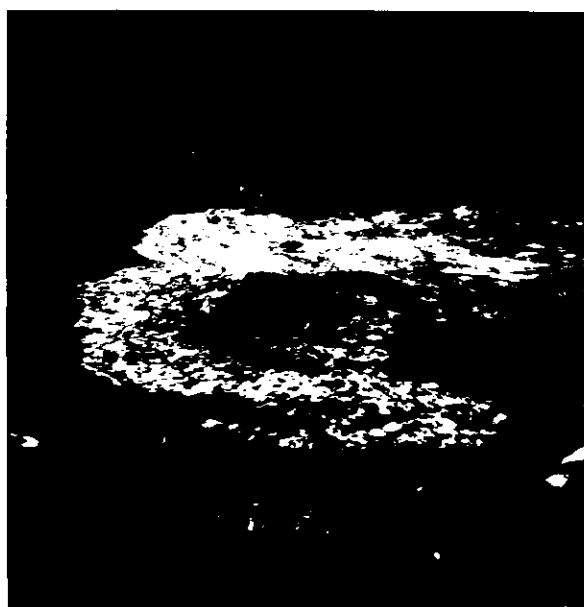
Outlet of Power Plant Into Howell Cr.



Headgate on Howell Creek

9" Flume Below Headgate

Settling Pond-
Upper End of
Pipeline



45-07642

February 23, 1994

EARL LAVELL WARTHEN
P.O. BOX 145
ALBION ID 83311

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 45-07642

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.

If you have questions concerning this matter, please feel free to contact the SOUTHERN Regional Office in Twin Falls at (208)736-3033.

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

c: IDWR - Region

RECEIVED

APR 12 1994

January 31, 1994

EARL LAVELL WARTHEN
P.O. BOX 145
ALBION ID 83311

PROOF DUE NOTICE

RE: PERMIT NO. 45-07642

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 April 1, 1994. (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.

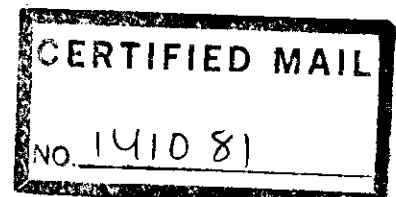
SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

RECEIVED

APR 12 1994





State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

March 18, 1992

Earl Lavell Warthen
P.O. Box 145
Albion, ID 83311

Re: Permit No. 45-07642

Dear Permit Holder:

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to April 1, 1994. Please note that the department has granted this extension based on due diligence. It is important that you work diligently toward the completion of this project during the construction period allowed. The department may not be able to grant additional requests.

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

Sincerely,

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

Enclosure

C: IDWR-Regional Office

MICROFILMED

APR 08 1992

INTER-DEPARTMENT MEMO

TO: File

SUBJECT: Pending Extension

FROM: Karen

DATE: 2/26/92

Permit Holder will submit extension today -
wants to take pictures & submit @ a later date -
Told him I would hold the file until all info
was received

MICROFILMED

APR 08 1992

() For your information

() Response required

Karen Gustafson
signature

January 31, 1992

EARL LAVELL WARTHEN
P.O. BOX 145
ALBION ID 83311

PROOF DUE NOTICE

RE: PERMIT NO. 45-07642

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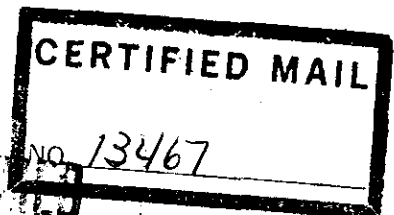
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SINCERELY,

Karen L. Gustafson
Secretary/Records Manager

Enclosures



APR 08 1992

TUFT AND BYWATER

**ATTORNEYS AT LAW
205 EAST 15TH STREET
P.O. Box 1088
BURLEY, IDAHO 83318**

**STEVEN A. TUFT
STEPHEN A. BYWATER**

February 27, 1991

**TELEPHONE 208-678-1164
FAX 208-678-2924**

RECEIVED
FEB 28 1991

**Earl Warthen
Albion, Idaho 83311**

Re: Howell Creek diversion

Department of Water Resources

Dear Mr. Warthen:

Helen Goodman asked me to write to advise you that your damming of Howell Creek on your property by your filling in the creek bed with rock removed from your property is preventing her to gain access to her water pursuant to her water rights.

Idaho law does not permit the diversion of water or blocking of a set stream course or boundary with the consent of the Idaho Department of Water Resources, acting upon a property application.

From the facts as I understand them, I am confident that even if you applied for the right to do what you are doing, the Department would have no legal basis to grant you permission.

Please remove and clean the rocks out of the stream bed as soon as you can.

**Very truly yours,
Tuft & Bywater**

Steven A. Tuft

SAT/ld

**cc: Helen Goodman
Idaho Department of water Resources
Representative Bruce Newcomb
Representative Jim Kempton**

APR 08 1992

January 9, 1990

<name>

RE: Permit No. <no.>

Dear <sal>:

Please find enclosed a copy of the Order Adopting Proposed Memorandum Decision and Order and a copy of Application for Permit No. <no.>.

Any party who disagrees with the decision of the Director may request a rehearing before the Director within twenty (20) days or may appeal to the district court within thirty (30) days from the date this decision is mailed.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

RECEIVED

MAR 08 1990

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of January, 1990, I mailed a true and correct copy, postage prepaid, of the Order Adopting Proposed Memorandum Decision and Order to the following individuals:

Earl Lavell Warthen
Box 145
Albion, ID 83311

Berniece S. Bailey
P.O. Box 164
Albion, ID 83311

Jim Chatburn
Albion, ID 83311

Leo Bell
Star Rt. Box 26
Albion, ID 83311

H. Lee Jolley
Box 21
Albion, ID 83311

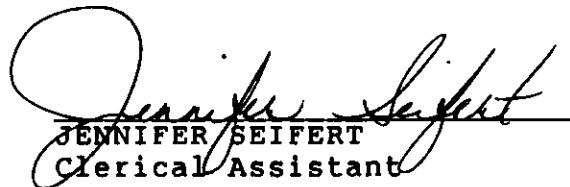
Helen Goodman
Box 6
Albion, ID 83311

Norman Dayley
Box 165
Albion, ID 83311

J. Vard Chatburn
Box 97
Albion, ID 83311

Lindsey W. Dimond
Box 456
Albion, ID 83311

Rick Bollar
Box 396
Rupert, ID 83350


JENNIFER SEIFERT
Clerical Assistant

RECEIVED
MAR 08 1990

Hearing Notes for 45-07642
APPLICATION FOR PERMIT NO.

Applicant: Earl ^{Lowell} Warthen - represented by Rick Bollar
Filed May 11, 1989
Period of use - 1.25 cfs

Protestants:

- Norman E. Dayley - no reason for protest - not here
- * J. Vard Chatburn - injury - is it a personal interest - here
- Lindsey W. Dimond - no purpose stated - not here
- * H. Lee Tolley - No purpose set forth - here
- * Leo Bell - period of use - injury stockwater - injury - fish & wildlife public interest - this is an application and date of application
- * Jim Chatburn - injury to water rights -
- Berniece Bailey - no purpose set forth - not here
- * Helen Goodman - direct infringement on right

State criteria to be considered: I.C. 42-203A
Issues to be addressed:

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Tim Chatburn -

HEARING NOTES -

Opening statement No danger of reduction of water -
No

Vard Chatburn - priority is earlier -
if precautions will not diminish -

Tim Chatburn will represent

Lee Tolley - earlier water right -

Tim Chatburn spokesman

* Leo Bell - Prior right - adverse to
question whether sufficient -

* Tim Chatburn - earlier water rights
adequate supply of water -

Placement of turbine - how will water be
used -

Helen Goodman

APPLICANT'S CASE

Earl Warthen

Farmed ground for 19 years -

Gravity 1976

Span of irrigation season -

Irrigation begins the 1st of April

Designed to start after irrigation ended
1.25 cubic feet per second -

2 turbine located

3 point of discharge from turbine

1 must be point of diversion

Pipeline entirely upon Warthen's property

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MAR 08 1990

He designed the project himself -

10" to 60" of water -

Shop, home & lambing shed will be the recipients of electricity

Amount is non consumptive -

Measured ~~to~~ at point of diversion and after use.

Perhaps a stockwater problem would arise for Leo Bell

Raises sheep - registered Suffolk sheep -
Waters the sheep from Howell Creek
Need a minimum flow in the creek

How much can leave in Creek - will maintain a flow of 10 inches.

10" is economically feasible

Minimum amount of water needed is 20"

Cost will be \$1500.00

Already own turbines - Can construct thru spring or summer.

Not for speculation

Minimum flow has never been below 10" of water -

Howell Creek always maintains ^{flows} ~~maintains~~ 20 inches of water -

7.5 Kw -

beneficial use - would be consistent with local public interest

Costs to him & ~~collected~~ cost of distribution

MAR 08 1990

Watermaster
on all year
control:

X - Examination

by Jim Chatburn

First 500 ft is screened pipe
solid pipe -

Depletion of water -

Would have to put solid pipe in

What kind of measuring device -

- digital counter on lower end -

Issue about perforated pipes -

Placement of turbines -

Placed below mainline across -

by Leo Bell

From perforated pipe - directly into
mainline -

When is earliest date when seen water
on meadow - Irrigation from creek
Meadows need to be

Has irrigated meadows during the
season - Leaking from pipeline -

Gov't assistance - for generation of power -

RECORDED

MAR 08 1990

BUTLER → Doyle E. Butler

Albion - block over caddis cornered

Sleepin & eatin

Watermaster here - 19 years -

Distributed water according to the water rights.

Has observed amount of water in Howell
Creek between September 15 and April 15

Yes - 50" to 100" in Howell Creek in
the winter months &

What is lowest flow in Howell Creek he
has observed?

He couldn't tell -

He thinks 30 inches is the lowest flow
on Howell Creek -

Seen Warthen property all his life -

Will run higher than 20 inches -

INDEXED

MAR 08 1990

JIM
CHATBURN TESTIMONY

Not anywhere near the amount of water
that Doyle testified to.

No stockwater in the creek two miles -
Just enough to water Warthen's sheep -

LEO BELL -

Cannot use irrigation water for
power purposes -

His right is subject

Stockwater is used beneficially -

Looking measuring device -

Donald B. Danner

Watermaster -

This was his first year -

Called water for stock - diverted -

Main channels have been completely shut
down because there is no recognition
of stockwater -

Do people divert water for stock? No
Star ditch is full now - delivered
for irrigation -

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MAR 08 1990

Hydro project -

- No dispute over economics -
has financial ability
- Adequacy of supply -

Mr. Butler -

minimum flow is maintainable

RECEIVED

MAR 08 1990

December 20, 1989

<address>

Dear <sal>:

Please find enclosed a copy of the Proposed Memorandum Decision and Order and Order Issuing Proposed Memorandum Decision and Order for Application No. 45-07642 in the name of Earl Lavell Warthen.

Any party who disagrees with the Proposed Decision may file exceptions to the decision within fifteen (15) days of service of the Proposed Decision.

Respectfully,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

Enclosure

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MAR 08 1990

Admitted - XZ

Stand and raise hand take oath
~~Do you swear~~

Read question & respond out loud.

What is your name?
Where do you live ^{former}
~~Former~~ What is your occupation?

- ① What duties were performed when water master?
- ② If in performance of duties has he had opportunity to observe amount of water in Howell Creek? ^(report) And has he observed them during winter months between Sept. 15th to April 15th?)
~~He has not reported~~
- ④ How is the lowest flow of Howell creek that you have observed?
Are you familiar with the Earl Warthen property?
- ⑤ In your opinion maintains a minimum flow of 20 in. from Sept. 15th to April. on the Earl Warthen property.
But would it generally run higher than 20 in in your opinion?
- ⑥ How many years were you water master?

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MAR 08 1990

X-0

S 16
T 12
R 25

Applicant's Exhibit
#1

Admitted

595
T1405

13.1
HEL

2
19.8

3
29.7

4
43.1

181
T1407

Point 2
Turkish

1590000

1000000

Point One
American

RECEIVED

MAR 08 1990

Assisted by: Lois Holmes

ROSTER OF ATTENDANCE

[illegible]

45-07642

Earl Lavell Warthen
Box 145
Albion, ID 83311

45-07642

Norman E. Dayley
Box 165
Albion, ID 83311

45-07642

J. Vard Chatburn
Box 97
Albion, ID 83311

45-07642

Lindsey W. Dimond
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45-07642

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Albion, ID 83311

45-07642

Leo Bell
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45-07642

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Albion, ID 83311

45-07642

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45-07642

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45-07642

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Berniece S. Bailey
P.O. Box 164
Albion, ID 83311

45-07642

Helen Goodman
Box 6
Albion, ID 83311

45-07642

Bernice Bailey
~~She~~ is in the
Twin Falls Shop.
Cannot be at this
mtg.

Her Daughter
called to let you
know why she
is absent.

MICROFILMED

MAR 08 1990

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "TURN TO" space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.

2. ☐ Restricted Delivery.

4. Article Number

891

Type of Service:

☒ Registered
☒ Certified
☒ Express Mail

☐ Insured
COD

Always obtain signature of addressee or agent and **DATE DELIVERED.**

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

5. Signature - Addressee

X Helen Goodman

MAR 07 1990

6. Signature - Agent

X 18-31-89

7. Date of Delivery

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

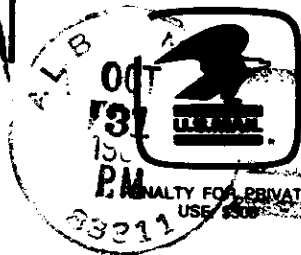
- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

**RETURN
TO**



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

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301



MAR 08 1990

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

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

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

3. Article Addressed to:

4. Article Number

892

Type of Service:

- ☐ Registered
☒ Certified
☐ Express Mail

☐ Insured
☐ COD

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

10/31/89

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

MICROFILM

MAR 08 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

RETURN
TO



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

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301



PENALTY FOR PRIVATE
USE, \$300

RECEIVED
MAR 08 1990
131
PM

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

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

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

3. Article Addressed to:

4. Article Number

893

Type of Service:

☐ Registered
☐ Certified
☐ Express Mail

☐ Insured
COD

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee

X

MAR 08 1990

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

6. Signature - Agent

X

7. Date of Delivery

10/31/89

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

**RETURN
TO**



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

MICROFILMED
DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

MAR 08 1990

OCT
31
PM



PENALTY FOR PRIVATE
USE, \$300

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

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

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

3. Article Addressed to:

4. Article Number

894

Type of Service:



Registered
Certified
Express



Insured
COD

Always obtain signature of addressee or agent and **DATE DELIVERED**.

5. Signature — Addressee

X

Always obtain signature of addressee or agent and **DATE DELIVERED**.
Addressee's Address (ONLY if requested and fee paid)

6. Signature — Agent

X *Mirka Bell*

7. Date of Delivery

Oct 31 - 1989

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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RETURN
TO



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

RECEIVED

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

OCT 31 1966
MAR 08 1990
PM
83301



PERMIT NO. 1000
TWIN FALLS, IDAHO
USE \$300

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

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

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

3. Article Addressed to:

4. Article Number

8915

Type of Service:

- ☐ Insured
☐ Certified
☐ Express Mail

☐ Insured
COD

Agent must obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature — Addressee

X

6. Signature — Agent

X

Margaret Jolley

7. Date of Delivery

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

MAR 08 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

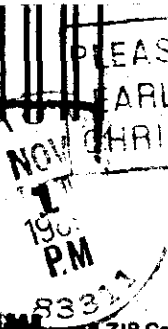
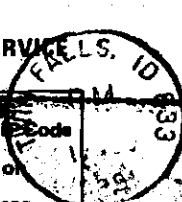
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- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN
TO



MICROFILMED

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301



PLEASE MAIL
EARLY
CHRISTMAS



PENALTY FOR PRIVATE
USE, \$300

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

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3. Article Addressed to:

4. Article Number

896

Type of Service:

☐ Insured
☐ COD

Always obtain signature of addressee or agent and DATE DELIVERED

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

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

11-1-89

MAR 8 1989
NOV 3 1989

Department of Water Resources

Southern Region (SW)

DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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- Endorse article "Return Receipt Requested" adjacent to number.

RECEIVED

NOV 8 1989



PENALTY FOR PRIVATE
USE, \$200

RETURN
TO



Department of Water Resources

Print your name and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in "RETURN TO" space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

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3. Article Addressed to:

4. Article Number

892

Type of Service:

- ☐ Registered
☒ Certified
☐ Express Mail

☐ Insured
☐ COD

Always obtain signature of addressee or agent and **DATE DELIVERED**.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

10/31/89

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

**UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS**

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RETURN
TO



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

UNRECEIVED

PAID BY WATER RESOURCES

2148 4th AVENUE EAST

TWIN FALLS, IDAHO 83301



OCT
131



PENALTY FOR PRIVATE
USE, \$300

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

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3. Article Addressed to:

4. Article Number

898

Type of Service:

- ☐ Registered
☒ Certified
☐ Express Mail

☐ Insured
COD

Always obtain signature of addressee or agent and **DATE DELIVERED.**

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

NOV 3 1989

Department of Water Resources
Southern Region Office

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

11-1-89

RECEIVED
MAR 08 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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RECEIVED

MAR 8 8 1990



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



DEPARTMENT OF WATER RESOURCES
Southern Office

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

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

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4. Article Number

Type of Service:

☐ Registered
☐ Certified
☐ Express Mail

☐ Insured
☐ COD

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

7. Date of Delivery

10-31-89

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

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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PENALTY FOR PRIVATE
USE, \$300

RETURN
TO



MAILED
OCT 31 1961
TWIN FALLS, IDAHO

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

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

NAME AND
ADDRESS
OF SENDER

EDWR

10-30-89

Indicate type of mail

- ☐ Registered
☐ Insured
☐ COD
☒ Certified ☐ Express Mail

Check appropriate block for

- Registered Mail:
☐ With Postal Insurance
☐ Without Postal Insurance

Affix stamp here if issued as
certificate of mailing or for
additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

inc	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee Remarks
1	891 ✓	Helen Goodman										
2	892 ✓	Bernice S. Bailey										
3	893 ✓	Jim Chatburn										
4	894 ✓	Leo Bell										
5	895 ✓	H. Lee Jolley										
6	896 ✓	Lindsey W. Dimond										
7	897 ✓	J. Vard Chatburn										
8	898 ✓	Norman E. Dayley										
9	899 ✓	Earl Levell Warthen										
10												
11	Uncertified	To Rich Boller, Attorney										
12												
13												
14												
15												

RECEIVED

MAR 08 1990

all returned

Total Number of Pieces
Listed by Sender

9

Total Number of Pieces
Received at Post Office

POSTMASTER, PER (Name of receiving employee)

The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500. The maximum indemnity payable is \$25,000 for Registered Mail, \$400 for COD and \$400 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels. Special delivery service also includes special handling service.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

U.S. GOVERNMENT PRINTING OFFICE: 1984-445-138

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT TO APPROPRIATE)
WATER NO. 45-07642)

Earl Lavell Warthen,)
Applicant)

Norman E. Dayley, J. Vard)
Chatburn, Lindsey W. Dimond,)
H. Lee Jolley, Leo Bell,)
Jim Chatburn, Berniece Bailey,)
Helen Goodman,)

Protestants)

NOTICE OF HEARING

SOURCE: Howell Creek

COUNTY: Cassia

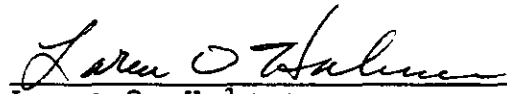
On May 11, 1989, Earl Lavell Warthen, applicant, filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. The Department has received a protest against the approval of said application from the above listed parties.

A pre-hearing conference on October 18, 1989.

The Department has set the matter of protest for hearing for Wednesday, November 15, 1989, at 1:00 PM in the Albion City Hall, Albion.

The hearing 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. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 30 day of October, 1989.


Loren O. Holmes
Southern Region Manager

MAILED

MAR 01 1990

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

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

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

PROCEDURE

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

CONFERENCE

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

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

HEARING

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

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

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

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

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 parties.

NOT RECORDED

MAR 08 1990

MEMORANDUM

DATE: 20-Oct-1989

FROM: Loren Holmes *LH*

TO: File 45-07642, Earl Warthen

SUBJECT: Outcome of pre-hearing conference 10/18/89

It is possible that a resolution of this application may be reached before a hearing is held. Hearing date was tentatively set for Nov. 15, 1989.

At the conference, the following factual information was determined:

- ° The proposed penstock system is already in existence as an irrigation diversion.
- ° There is one diversion (Helen Goodman) in the reach to be bypassed by the power penstock.
- ° Water is often diverted for irrigation use in February and other winter months when no crops are growing. All parties agree that this is beneficial to soil moisture, ground water levels, and stream flows later in the season.
- ° A portion of the existing pipeline is perforated to allow water to infiltrate from a boggy area the pipe passes through. The protestants were concerned that using the pipe as a pressurized penstock would cause loss of water. The applicant seemed to be agreeable to installing an extra measuring device at the outlet to determine if loss occurs.

MICROFILMED

MAR 08 1990

Assisted by: _____

ROSTER OF ATTENDANCE

[illegible]

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

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

3. Article Addressed to:

4. Article Number

869

Type of Service:



Registered



Insured



Certified



COD



Express Mail

Always sign signature of addressee or
"NOT DELIVERED".

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

10-10-89

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

MAR 06 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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RETURN
TO

RECEIVED

OCT 11 1988

Department of Water Resources
Southern Region Office

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

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

OCT
10
1988
PM



PENALTY FOR PRIVATE
USE: \$300

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

3. Article Addressed to:

4. Article Number

870

Type of Service:

☐ Registered
☒ Certified
☐ Express Mail

☐ Insured
☐ COD

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature — Addressee

X

Levy

MAR 08 1989

6. Signature — Agent

X

7. Date of Delivery

10-7-89

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

OCT
7
1989
PM

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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PENALTY FOR PRIVATE
USE, \$300

RETURN
TO

Print Sender's Name, Address, and ZIP Code in the space below.

RECEIVED
MAR 08 1990

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

RECEIVED
OCT 10 1989
Department of Water Resources
Southern Region Office

65543

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

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

3. Article Addressed to: 4. Article Number

871

Type of Service:

☐ Registered ☐ Insured
☒ Certified ☐ COD
☒ Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature — Addressee

X

MAR 08 1989

6. Signature — Agent

X *Erin Chatham*

7. Date of Delivery

10/6/89

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

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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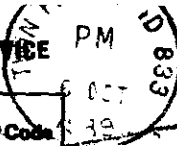
RETURN
TO

RECEIVED
OCT 10 1989

Department of Water Resources
Southern Region Office

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

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301



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3. Article Addressed to:

4. Article Number

872

Type of Service:

☒ Registered
☒ Certified
☒ Registered Mail

☐ Insured
COD

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X

6. Signature — Agent

X

Janalee Diamond

7. Date of Delivery

10-26-89

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

MAR 08 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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RETURN
TO



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

RECEIVED

RECEIVED DEPARTMENT OF WATER RESOURCES
2143 4th AVENUE EAST
OCT 27 1989 TWIN FALLS, IDAHO 83301

Department of Water Resources
Southern Region Office

OCT 126
15 PM

MAR 08 1990



PENALTY FOR PRIVATE
USE. \$300

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4. Article Number

873

Type of Service:

- ☐ Registered
☒ Certified
☐ Express Mail

- ☐ Insured
☐ COD

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature — Addressee

X

6. Signature — Agent

X

Maryanne Jolley

7. Date of Delivery

10/10/89

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

MAR 08 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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RETURN
TO

RECEIVED

OCT 11 1989

Department of Water Resources
Southern Region Office

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DEPARTMENT OF WATER RESOURCES
2143 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

OCT 10 1989
MAR 08 1990

OCT 10 1989
PM

PENALTY FOR PRIVATE
USE, \$300



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3. Article Addressed to:

4. Article Number

874

Type of Service:

- ☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always indicate the name of addressee or
agent and **DATE DELIVERED**.

5. Signature — Addressee

X

6. Signature — Agent

X

Maria Bell

7. Date of Delivery

10/10/89

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

MAR 08 1990

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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RETURN TO

Print Sender's Name and Address in the space below.

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301



POSTAGE AND FEES PAID
USE \$300

0661 80 844P M
OCT 10 1989
W MAR 08 1990

RECEIVED
OCT 11 1989
Department of Water Resources
Southern Region Office

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do so will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

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

3. Article Addressed to:

4. Article Number

875

Type of Service:

☐ Registered

☒ Certified

☐ Insured
COD

RECEIVED

Obtain signature of addressee or agent and DATE DELIVERED.

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

5. Signature — Addressee

X

6. Signature — Agent

X

Eva Chaburn

7. Date of Delivery

11/6/89

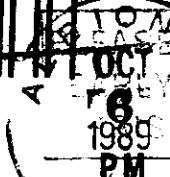
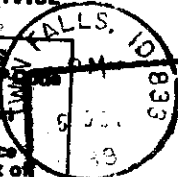
DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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



0661 80 8411

1831 PENALTY FOR PRIVATE
USE, \$300

Print Sender's Name and Address in the space below.

RECEIVED

OCT 10 1989

Department of Water Resources
Southern Region Office

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

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

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

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

3. Article Addressed to:

4. Article Number

976

Type of Service:

- ☐ Registered
☒ Certified
☐ Express Mail

☐ Insured
☐ COD

3.7
17
Always obtain signature of addressee or
agent. DATE DELIVERED.

5. Signature - Addressee

X Bernice S. Bailey

6. Signature - Agent

X 10-10-89

7. Date of Delivery

5. Addressee's Address (ONLY if requested and paid)
MAR 08 1989

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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

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

RETURN
TO

Print Sender's Name, Address, and ZIP Code in the space below.

RECEIVED
OCT 11 1989
Department of Water Resources
Southern Region Office

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

0661 80 84WPM
MAR 08 1990

OCT
10
1989



PENALTY FOR PRIVATE
USE, \$300

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

3. Article Addressed to:

4. Article Number

877

Type of Service:

☒ Registered
☒ Certified

☐ Insured
☐ COD

Signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee

X Helen Goodman

6. Signature - Agent

X

7. Date of Delivery

10-6-89

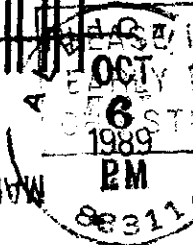
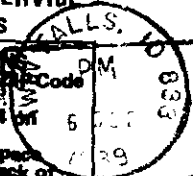
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UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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PENALTY FOR PRIVATE USE, \$300

RETURN TO



RECEIVED
OCT 10 1989

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

RECEIVED

Department of Water Resources
Southern Region Office

DEPARTMENT OF WATER RESOURCES
2148 4th AVENUE EAST
TWIN FALLS, IDAHO 83301

PS Form 3877, Feb. 1982
FOR REGISTERED, INSURED, C.O.D., CERTIFIED, AND EXPRESS MAIL

NAME AND ADDRESS OF SENDER

I.D.W.R.

10/6/89

RE 45-07642

Indicate type of mail

☐ Registered
☐ Insured
☐ COD
☒ Certified ☐ Express Mail

Check appropriate block for Registered Mail:

☐ With Postal Insurance
☐ Without Postal Insurance

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (If Regl.)	Insured Value	Due Sender If C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee	Remarks
1	869 ✓	Earl Lavell Warthen	25	85	95	205							
2	870 ✓	Norman E. Dayley	25	85	95	205							
3	871 ✓	J. Vard Chaburn	25	85	95	205							
4	872 ✓	Lindsey W. Diamond	25	85	95	205							
5	873 ✓	H. Lee Jolley	25	85	95	205							
6	874 ✓	Leo Bell	25	85	95	205							
7	875 ✓	Jim Chalburn	25	85	95	205							
8	876 ✓	Bernice S. Bailey	25	85	95	205							
9	877 ✓	Helen Goodman	25	85	95	205							
10													
11		+ 1 To Rick Bullat Attorney											
12		Not Certified											
13													
14													
15													
Total Number of Pieces Listed by Sender			Total Number of Pieces Received at Post Office			POSTMASTER, PER (Name of receiving employee)			The full declaration of value The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500. The maximum indemnity payable is \$25,000 for Registered Mail, \$400 for COD and \$400 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels. Special delivery service also includes special handling service.				

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

★ U.S. GOVERNMENT PRINTING OFFICE: 1984-445-138

Certified mail 1 set for each label

1 set (Not Certified) to

Rick Bullat, Attorney

P.O. Box 396

Robert, ID 83350

MICROFILMED

MAR 08 1990

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT TO APPROPRIATE)
WATER NO. 45-07642)

NOTICE OF
PRE-HEARING CONFERENCE

Earl Lavell Warthen,)
Applicant)

SOURCE: Howell Creek

Norman E. Dayley, J. Vard)
Chatburn, Lindsey W. Dimond,)
H. Lee Jolley, Leo Bell,)
Jim Chatburn, Berniece Bailey,)
Helen Goodman,)

COUNTY: Cassia

Protestants)

On May 11, 1989, Earl Lavell Warthen, 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 listed parties.

The Department has set the matter of protest for conference for Wednesday, October 18, 1989, at 10:00 AM in the City Council Room of the Burley City Hall, 1401 Overland Ave., Burley.

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. Opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved.

Dated this 5 day of October, 1989.

RECEIVED

MAR 08 1990

Loren O. Holmes
Loren O. Holmes
Southern Region Manager

LING, NIELSEN & ROBINSON

ROGER D. LING
ROBERT M. NIELSEN
BRENT T. ROBINSON
DAVID W. HALEY
MARK A. INGRAM
RICK BOLLAR

ATTORNEYS AT LAW
615 "H" STREET
P. O. BOX 396
RUPERT, IDAHO 83350

AREA CODE 208
TELEPHONE 436-4717
FAX 436-6804

October 3, 1989

RECEIVED

OCT 4 1989

Department of Water Resources
Southern Region Office

Loren Holmes
Department of Water Resources
2148 4th Avenue East
Twin Falls, Idaho 83301

RE: Application for Permit No. 45-07642, Earl Warthen

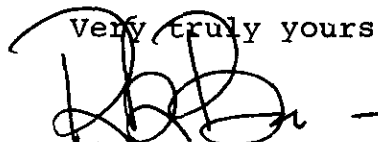
Dear Mr. Holmes:

This will acknowledge your request to Earl Warthen regarding continuance of the hearing date on October 12th. Earl would be amenable to postponing the hearing until October 18th.

As I am sure you understand, the project which Earl proposes to develop on his property in Albion would require an expediant construction schedule. Any delays in that project will be seriously detrimental. We would hope for a hearing date at the earliest time possible with no unreasonable postponements.

Thank you for your ongoing attention in this regard.

Very truly yours,


Rick Bollar

RB:pc

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Earl Lavell Warthen
Box 145
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Warthen:

We have received notice of scheduling conflicts from some of the parties in the above matter.

The pre-hearing conference is being tentatively rescheduled for October 18, 1989. Notices formally setting the time and place will be mailed about October 6, 1989.

If you will not be available on this date, please advise this office prior to formal setting.

Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Rick Bollar, Attorney
P.O. Box 396
Rupert, ID 83350

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Bollar:

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Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Norman E. Dayley
Box 165
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

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Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

J. Vard Chatburn
Box 97
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Chatburn:

We have received notice of scheduling conflicts from some of the parties in the above matter.

The pre-hearing conference is being tentatively rescheduled for October 18, 1989. Notices formally setting the time and place will be mailed about October 6, 1989.

If you will not be available on this date, please advise this office prior to formal setting.

Very Truly yours,

A handwritten signature in cursive script that reads 'Loren O. Holmes'.

Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Lindsey W. Dimond
Box 456
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Dimond:

We have received notice of scheduling conflicts from some of the parties in the above matter.

The pre-hearing conference is being tentatively rescheduled for October 18, 1989. Notices formally setting the time and place will be mailed about October 6, 1989.

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Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

H. Lee Jolley
Box 21
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Jolley:

We have received notice of scheduling conflicts from some of the parties in the above matter.

The pre-hearing conference is being tentatively rescheduled for October 18, 1989. Notices formally setting the time and place will be mailed about October 6, 1989.

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Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Leo Bell
Star Rt. Box 26
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Bell:

We have received notice of scheduling conflicts from some of the parties in the above matter.

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Very Truly yours,

A handwritten signature in cursive script, reading 'Loren O. Holmes'.

Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 06 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Jim Chatburn
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Chatburn:

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If you will not be available on this date, please advise this office prior to formal setting.

Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Berniece S. Bailey
P.O. Box 164
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

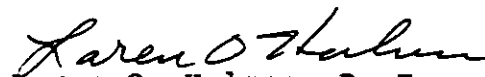
Dear Mrs. Bailey:

We have received notice of scheduling conflicts from some of the parties in the above matter.

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Very Truly yours,


Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1989

Helen Goodman
Box 6
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mrs. Goodman:

We have received notice of scheduling conflicts from some of the parties in the above matter.

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Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAY 08 1990

CONV. SATION MEMORANDUM

Date 10/2/89 File # 45-07642

NAME OF PARTY Bernice Carter

EMPLOYEE JH

RE Conference Schedule -

Has a Conflict with

Oct 12 - Next week

OK.

MICROFILMED

11/11/89 15:20

R: 45-07642, Conference date, Warthen

9/25/89 - Telephone call

Jim Chatburn, Albion

He will be out of town on Oct. 12.

Any P.m - the week of Oct 16 is OK.

Mary

MICROFILMED

MAR 0 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 18, 1989

Earl Lavell Warthen
Box 145
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mr. Warthen:

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If you will not be available on this date, please advise this office prior to formal setting.

Very Truly yours,

A handwritten signature in cursive script that reads "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 06 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 18, 1989

Rick Bollar, Attorney
P.O. Box 396
Rupert, ID 83350

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Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 18, 1989

Norman E. Dayley
Box 165
Albion, ID 83311

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Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 18, 1989

J. Vard Chatburn
Box 97
Albion, ID 83311

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Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

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Governor

R. KEITH HIGGINSON
Director

September 18, 1989

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Albion, ID 83311

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Very Truly yours,

A handwritten signature in cursive script that reads "Loren O. Holmes".

Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAK 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
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September 18, 1989

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Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 18, 1989

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Star Rt. Box 26
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Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

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September 18, 1989

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Albion, ID 83311

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Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 18, 1989

Berniece S. Bailey
P.O. Box 164
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

Dear Mrs. Bailey:

This office is tentatively scheduling the matter of protests for a pre-hearing conference for October 12, 1989. Notices formally setting the conference time and place will be mailed about September 29, 1989.

The purpose of the conference will be to familiarize the department and the parties with the issues and to provide a forum for possible resolution of the matter.

If you will not be available on this date, please advise this office prior to formal setting.

Very Truly yours,

Loren O. Holmes
Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

September 18, 1989

Helen Goodman
Box 6
Albion, ID 83311

Re: Application for permit No. 45-07642, Earl Warthen

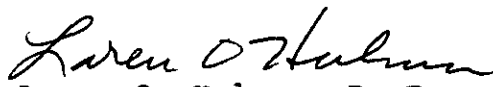
Dear Mrs. Goodman:

This office is tentatively scheduling the matter of protests for a pre-hearing conference for October 12, 1989. Notices formally setting the conference time and place will be mailed about September 29, 1989.

The purpose of the conference will be to familiarize the department and the parties with the issues and to provide a forum for possible resolution of the matter.

If you will not be available on this date, please advise this office prior to formal setting.

Very Truly yours,


Loren O. Holmes, P. E.
Southern Region Manager

MICROFILMED

MAR 08 1990

Sept. 5, 1989

Loren Holmes
Dept. of Water Resources
Twin Falls, Idaho

RECEIVED

SEP 7 1989

RE. Permit #4507642 by Earl Warthen

Department of Water Resources
Southern Region Office

Dear Loren:

Sept. 1, 1989, I received a letter from the law firm of Ling, Nielsen and Robinson addressing my protest on the above permit. As near as I can ascertain, the other people who protested recieved a letter also.

We the undersigned are not **satisfied** with the proposals addressed in said letters. We don't think we are obligated to try to negotiate a settlement on this issue by dealing individually with Mr. Warthens attorney. I ~~don't~~ think we are capable of reaching an agreement under these circumstances--also, would it be binding legally?

We feel that your department should chair a hearing on this matter. If such a hearing could be arranged we would very much appreciate your time in arranging same.

Sincerely yours,

Leo Bell

Leo Bell

Lee Jolley

Helen Goodman

Bernice Bailey

Larry Dinnard

Jim Chaburn

Q: Vard Chaburn

cc

Norman E. Day

MICROFILMED

MAY 08 1990

E

LEO BELL
Route Box 26
Albion, Idaho 83311

ALBION, IDAHO

L



Loren Holm
Dept of Water Resources
2148 4th Ave East
Twin Falls, Idaho
83301

CONFERENCE AND HEARING PROCEDURE

IN THE MATTER OF A PROTESTED APPLICATION FOR PERMIT

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

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

PROCEDURE

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

CONFERENCE

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

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

HEARING

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

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

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

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

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) of the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

MICROFILMED

MAR 08 1990

09-Aug-1989

Earl Lavell Warthen
Box 145
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Mr. Warthen:

Enclosed are copies of protests filed against the issuance of a permit pursuant to your above referenced application. The Department suggests you contact the protestant directly in an effort to determine nature of the protest and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MICROFILMED

MAR 08 1990

09-Aug-1989

Norman E. Dayley
Box 165
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Mr. Dayley:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MAILED

MAR 06 1990

09-Aug-1989

J. Vard Chatburn
Box 97
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Mr. Chatburn:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MICROFILMED

MAR 08 1990

09-Aug-1989

Jim Chatburn
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Mr. Chatburn:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

- 1) Will the proposed use reduce the quantity of water under existing rights?
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- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
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If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MICROFILMED

MAR 08 1990

09-Aug-1989

Berniece S. Bailey
P.O. Box 164
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Ms. Bailey:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

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- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MICROFILMED

MAR 08 1990

09-Aug-1989

Helen Goodman
Box 6
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Ms. Goodman:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

- 1) Will the proposed use reduce the quantity of water under existing rights?
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If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MICROFILMED

MAR 08 1990

09-Aug-1989

Lindsey W. Dimond
Box 456
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Mr. Dimond:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
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- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MICROFILMED

MAR 08 1990

09-Aug-1989

H. Lee Jolley
Box 21
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Mr. Jolley:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

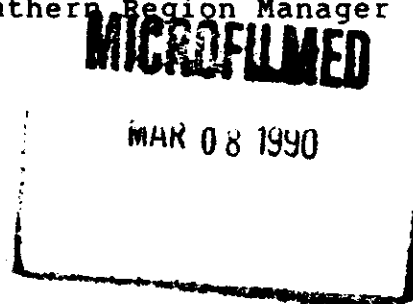
- 1) Will the proposed use reduce the quantity of water under existing rights?
- 2) Is the proposed water supply insufficient for the purposes intended?
- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB



09-Aug-1989

Leo Bell
Star Rt. Box 26
Albion, ID 83311

Re: Application for permit No. 45-07642

Dear Mr. Bell:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

The following are the principal items the Department can consider in either approving or denying an application for permit (Section 42-203, IDAHO CODE):

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- 3) Is the application made in good faith or for delay or speculative purposes?
- 4) Has the applicant sufficient financial resources with which to complete the proposed project?
- 5) Will the proposed use conflict with the local public interest?

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Loren O. Holmes, P.E.
Southern Region Manager

LH:MB

MICROFILMED

MAR 08 1990

Albion Idaho
June 18, 1989

Idaho Dept. of Water Resources:
Southern Regional Office
2148 4th, Ave East
Twin Falls, Idaho 83301.

Dear Sirs:

I Berniece S. Bailey am protesting the
application of Earl Lovell Warthen no-45-07642
for diversion of Howel Creek Water a tributary
of Marsh Creek in Albion Idaho. For the
use of power. Thank you.

RECEIVED

JUN 20 1989

Department of Water Resources
Southern Region Office

Berniece S. Bailey
P.O. Box 164
Albion Idaho

MICROFILMED

MAR 08 1990

6-23-89

Norman E. Dayley
Box 165
Albion, Idaho 83311

Idaho Dept. of Water Resources
Southern Regional Office
2148 4th Ave. East
Twin Falls, Idaho 83301

Dear Sirs:

In Regards to Notice of Application for Water Right # 45 - 07642, Earl Lavell Warthen, Box 145, Albion, Idaho 83311, I am registering a formal protest in opposition to his use of Howell Creek Water for the Generation of Electrical Power.

Sincerely,

W. Dayley
Norman E. Dayley

RECEIVED

JUN 26 1989

Department of Water Resources
Southern Region Office

MICROFILMED

MAR 06 1990

RECEIVED

JUN 26 1989

Department of Water Resources
Southern Region Office

Albion, Idaho
June 23, 1989

Director, Dept. Water Resources
Southern Region,
2148 4th Ave. East,
Twin Falls, Id. 83301
Dear Mr. Holmes;

Regarding notice of application for Water Right No. 45-07642 to divert part or all of the waters of Howell Creek at a diversion point in Sec.16, T12S, R25E, EBM. While this is a laudable endeavor on Mr. Worthens part, in my opinion, there are several reasons why this could or may be detrimental to prior irrigation water rights and possibly a fishery resource.

Although I have never been apprised of the engineering and planned construction of the project, I feel there are enough concerns among the owners of the prior water rights that they deserve a full and detailed explanation of the project. Therefore, I wish to file a protest at least until such time as definite answers to problems I have in mind are fully answered to my satisfaction.

Sincerely,

J. Vard Chatburn
J. Vard Chatburn

J. Vard Chatburn
Box 97
Albion, Id. 83311

MICROFILMED

MAR 08 1990

6-22-89

I Lindsey W. Duinard hereby protest
the application # 4507642 by Earl
Lavell Worthen,

Sincerely Lindsey W. Duinard
PO Box 456
Albion, Id. 83211

MICROFILMED

MAR 08 1990

RECEIVED

JUN 23 1989
Department of Water Resources
Southern Region Office

June 21, 1989
Albion, Idaho 83311

Idaho Department of Water Resources
Southern Regional Office
2148 4th Avenue East
Twin Falls, Idaho 83301

Re: NOTICE OF APPLICATION FOR WATER RIGHT
NO. 45-07642
EARL LAVELL WARTHEN, BOX 145, ALBION, IDAHO 83311

Dear Sirs:

Please consider this as my formal protest to the filing of EARL LAVELL WARTHEN for use of Howell Creek water for the purpose of generating power.

Yours truly,

H. Lee Jolley

H. Lee Jolley
Box 21
Albion, Idaho 83311

RECEIVED

JUN 22 1989

Department of Water Resources
Southern Region Office

RECEIVED

MAR 08 1990

RECEIVED

JUN 22 1989

Department of Water Resources
Southern Region Office

June 21, 1989
Albion, Idaho 83311

Idaho Department of Water Resources
Southern Regional Office
2148 4th Avenue East
Twin Falls, Idaho 83301

re: NOTICE OF APPLCIATION FOR WATER RIGHT
NO. 45-07642
EARL LAVELL WARTHEN, BOX 145, ALBION, IDAHO 83311

Dear Sirs:

Please consider this as my formal protest to the filing of EARL LAVELL WARTHEN for use of Howell Creek water for the purpose of generating power. I am making this protest based on the knowledge of the past performance of EARL LAVELL WARTHEN. I have a prior water right with a diversion below EARL LAVELL WARTHEN'S diversion.

On numerous occasions in the past several years EARL LAVELL WARTHEN has without permission taken water from Howell Creek into his pipe line system that he was not entitled to, causing undue hardships on those below him on the creek, including but not limited to loss of crops, the necessity of running deep well pumps longer than usual to water livestock, and in one instance having the water level drop enough to burn out a pump. I am therefore filing this Protest.

Respectfully,

Jim Chatburn
Jim Chatburn
Albion, Idaho 83311

MICROFILMED

MAR 08 1990

Albion, Id.

June 21, 1939

Director Dep't of Water Resources

2148 4th Avenue East

Twin Falls, Idaho

Dear Sir:

I wish to file a protest on Earl Warthen's application for Water Right #45-07642 for the following reasons:

1. What calander days will this right be in force? As I understand it, our water decrees in this area apply to the calander year. Rumors indicate Mr. Warthen thinks he will have an exclusive right to this water from Nov. 1 to Apr. 1. This certainly is not so.
2. What effect will diversion of this water have on Stock water? What will it do to fish habitat and wildlife?
3. What will his priority date be on this water?
4. If this right is based on his decreed water right, how can he do this? His decreed water right is for irrigation use only--not for power. If his priority date is 5/11/89, he will not be in line for any water about 99% of the time.

RECEIVED

JUN 22 1939

Department of Water Resources
Southern Region Office

Thank you,

Leo Ball
Leo Ball

Star Rt. Box 26

Albion, Id. 83311

MICROFILMED

MAR 08 1990

Albion, Idaho
June 18, 1989
Bx 6 83311

Department of Water Resources
3148 4th Ave, E.
Twin Falls, Idaho 83301

Dear Sir,

I wish to protect the application
of water right no. 45-07642 applied
for by, Harthen Earl Savell.

It will be a direct infringement
on my water right.

It is a direct attempt to establish
use that will harm me.

Yours sincerely
Helen Goodman

Helen Goodman
Albion, Idaho.
Bx 6 83311

RECEIVED

JUN 20 1989

Department of Water Resources
Southern Region Office

MICROFILMED

MAR 08 1990

45-07642

^H
WARTEN, EARL LAVELL
P.O. BOX 145
ALBION, ID 83311

Source: HOWELL CREEK

Tributary: MARSH CREEK

Diversion Pt: NWSESW Sec 16 T 12S R 25E

Use: POWER (1.250 CFS)

Date Filed: 5/11/1989

In: T12S R25E S16 SENW

MICROFILMED

MAR 08 1990

89-280

**NOTICE OF APPLICATION FOR
WATER RIGHT**
45-07842

WARTHEN, EARL LAVELL
P.O. BOX 145

ALBION, ID 83311

Source: HOWELL CREEK Tributary:
MARSH CREEK
Diversion Pt: NWSESW Sec 16 T 12S R
25E

Use: POWER (1.250 CFS)

Date Filed: 5/11/1989

In: T12S R25E S16 SENW

The permit(s) will be subject to all prior
water rights. Protests must be filed with
the Director, Dept. of Water Resources,
Southern Region, 2148 4th Avenue East,
Twin Falls, Idaho 83301 on or before June
26, 1989.

R. Keith Hightman, Director

Published in the South Idaho Press on
June 8 and 15, 1989.

Full header missing

*MB
6/12/89*

RECEIVED

JUN 8 1989

Department of Water Resources
Southern Region Office

MICROFILMED

MAR 08 1990

The permit(s) will be subject to all prior water rights. Protests must be filled with the Director, Dept. of Water Resources, Southern Region, 2148 4th Avenue East, Twin Falls, Idaho 83301 on or before JUNE 26, 1989.

R. KEITH HIGGINSON, Director

Published 6/08/1989 & 6/15/1989

MICROFILMED

MAR 08 1990

NOTICE OF APPLICATION FOR WATER RIGHT

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

MICROFILMED

MAR 08 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Southern Region
2148 4th Avenue East
Twin Falls, ID 83301
(208)734-3578

JUNE 1, 1989

SOUTH IDAHO PRESS
BOX 190
BURLEY, ID 83318

Gentlemen:

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

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

Please send the affidavit of publication and publication billing to this office before JUNE 26, 1989.

Yours truly,

Mary Baldwin
Secretary/Office Coordinator

Enclosure

MICROFILMED

MAR 08 1990

S. Region
5/89

Application No. 45-07642

ADDITIONAL INFORMATION REQUIREMENTS FOR POWER
APPLICATIONS FOR 5 CFS OR LESS AND MORE THAN 500 HP

The following additional information is required to be made part of the application file pursuant to Idaho Code provisions and the department's Rules and Regulations for Water Appropriation:

- 1) An affidavit to establish residence and indicate the ownership of any existing man-made works to be used in the project must be completed and filed with your application. (Sections 42-205 through 208, Idaho Code) A form is enclosed for your completion and return.
- 2) A certified financial statement or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the proposed use. (Rule 4,5,3,4,1)

MICROFILMED

MAR 08 1990

01-Jun-1989

Earl Lavell Warthen
P.O. Box 145
Albion, ID 83311

Re: Application for Permit No. 45-07642

Dear Applicant (s):

The Department of Water Resources acknowledges receipt of your application for a water right permit. The application has been assigned identification No. 45-07642. Please refer to this number in all further correspondence.

A legal notice of the application is being prepared for publication in South Idaho Press and will appear on 6/8 & 6/15/89. 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 notified and sent a copy of all protests filed.

Review of your application indicates that additional information is required to be made part of the application file pursuant to Idaho Code provisions and the department's Rules and Regulations for Water Appropriation. The attached sheet(s) give details regarding the information which is required.

The required additional information must be submitted within 30 days after the final date for receiving protests (June 26, 1989). The time may be extended upon request and showing of good cause that additional time is required to submit the information.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosure

MICROFILMED

MAR 08 1990

01-Jun-1989

Donald B. Danner, Watermaster
Water District #45-F
P.O. Box 116
Albion, ID 83311

Dear Mr. Danner:

Please find enclosed a copy of the above referenced
Application for Permit for your information and files.

If you have any questions or if this office can be of further
assistance, please feel free to contact us.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosure

MICROFILMED

MAR 08 1990

01-Jun-1989

Idaho Dept. of Fish & Game
P.O. Box 428
Jerome, ID 83338

Re: Application for Permit No. 45-07642

Gentlemen:

Please find enclosed a copy of the above referenced
Application for Permit for your information and files.

If you have any questions or if this office can be of further
assistance, please feel free to contact us.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosure

MICROFILMED

MAR 08 1990

Form No. 202a
4/87

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

INITIAL REVIEW BY J. F. Stanton DATE 5-12-89 APPLICATION NUMBER 45-07642

REQUIRED INFORMATION

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

ADDITIONAL INFORMATION

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

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT _____
 _____ Date Requested _____

ADDITIONAL INFORMATION

LOCAL PUBLIC INTEREST

Comments received from:

<u> </u> City	<u> </u> Idaho Fish & Game	<u> </u> Irrigation District
<u> </u> County	<u> </u> Idaho Health & Welfare	<u> </u> Canal Company
<u> </u> Reservations	<u> </u> Division of Environment	<u> </u> Other <u> </u>

Project impacts/implications report

COMMENTS

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A45-00327E
Date Received: 5/11/1989
Receipt No: S007085
Received By: See

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: EARL WARTHEN 208-673-5385
Address: BOX 145
ALBION, ID 83311

2. Date of Priority: MAR 01, 1881

3. Source: HOWELL CREEK Trib. to: MARSH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
12S	25E	16	SE	SE	NW		CASSIA
			NW	SE	SW		CASSIA

5. Description of diverting works:
HEADGATES AND MEASURING DEVICES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/01	11/01	1.250		

7. Total Quantity Appropriated is:
0.700 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 297.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
12S	25E	16	NE	NW		IRR	40.0
			NW	NW		IRR	20.0
			SE	NW		IRR	19.0

A45-00327E

Page 1

Date: 05/11/89

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MAR 08 1990

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
12S	25E	16	NE	SW		IRR	20.0

Section Acres 99.0

Total Acres 99.0

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

A45-07366

14. Remarks:

THIS IS A PORTION OF THE WR 45-00327A OF 2.5 CFS.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 3/21/1892

R. L. WOOD, ET. AL.
Decree Plaintiff

WM. STOKES, ET. AL.
Decree Defendant

vs

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Earl L. Wath Date: 5-10-89

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 11th day

of May 19 89

Steve Collins
Notary Public

Seal

Residing at Twin Falls

My Commission Expires Dec 7, 1994

CONSERVATION PLAN MAP

Owner Earl Warthen Operator -
County Cassia State Idaho Date 2-76
Approximate acres 103 Approximate scale 2" = 1 mile 1" = 660'
Cooperating with East Cassia Conservation District
Plan identification - Photo number -
Assisted by R.J. Baum USDA Soil Conservation Service



EXHIBIT "A"

The East Half of the Northeast Quarter of the Southwest Quarter ($E\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$) of Section Sixteen (16), Township Twelve (12) South, Range Twenty-five (25) East of the Boise Meridian, together with $37\frac{1}{2}$ inches of the flow of Howell Creek with date of priority March 1, 1881, ALSO: Commencing at the "initial point" and the Northeast corner of the land being conveyed and described, running West at an angle of 90 degrees with the Government subdivision line connecting the Government quarter or half mile corners on the North and South boundaries of Section 16, Township 12 South, Range 25 East Boise Meridian, 510 feet to the Northwest corner which is a quartzite stone and permanent monument marked P. M. 11; thence at an angle of 90 degrees running South 258 feet more or less to the Government subdivision line connecting the Government quarter or half mile corners on the east and west boundaries of the said Section 16; thence East along the last said line 510 feet to the legal center of the said Section 16; thence North along the Government subdivision line 258 feet more or less to the Initial Point, and containing three acres and 900 sq. feet of ground be the same more or less. The said "Initial Point" is a quartzite stone and permanent monument marked M. P. 1; situated on the first said subdivision line, and it is hereby agreed that all lines established on February 28, 1905, are and shall be permanent lines except the South boundary of the tract of land being conveyed and described which shall be on the true Government Subdivision line when ascertained; EXCEPTING, THEREFROM: All that portion deeded to the State of Idaho for highway purposes, ALSO EXCEPTING: Commencing 372 feet West from the Northeast corner of the Southwest Quarter of Section 16, Township 12 South, Range 25 East Boise Meridian, thence West 138 feet; thence North 258 feet; thence East 138 feet; thence South 258 feet to the place of beginning; ALSO EXCEPTING: that part of the above-described real estate lying North and East of the Howell Creek Road, also known as Idaho State Highway # 77, in Cassia County, Idaho.

SUBJECT to the right of the Grantor to the use and occupancy of the pasture on said premises, with water, for and during her natural life, or until relinquished, in writing, by said Grantor.

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MAR 08 1990

A45-00327 E

MORTGAGE—SHORT COVENANT

Printed By The Minidoka County News

THIS INDENTURE, Made the 27th day of October, in the year of our Lord one thousand nine hundred and Seventy-five, between EARL WARTHEN, a single man,

of Albion, County of Cassia, State of Idaho, part y of the first part, and ALBERT B. WARTHEN and ELSIE WARTHEN, husband and wife,

of Burley, County of Cassia, State of Idaho the part ies of the second part:

WITNESSETH, That the said part y of the first part, for and in consideration of the sum of FIFTEEN THOUSAND AND NO/100 DOLLARS lawful money of the United States, do ss by these presents GRANT, BARGAIN, SELL AND CONVEY unto the said part ies of the second part, and to their heirs and assigns, FOREVER, all that certain real property situated in the County of Cassia and State of Idaho, and bounded and particularly described as follows, to-wit:

All that portion of the Northwest Quarter (NW $\frac{1}{4}$) of Section Sixteen (16), Township Twelve (12) South, Range Twenty-five (25) East, Boise Meridian, lying North and East of the Howell Canyon Road, in Cassia County, Idaho, together with all water and water rights, ditches and ditch rights, used thereon or appurtenant thereto, including but not limited to 25 inches of the decreed waters of Howell Creek, having a priority of 1881.

together with the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

THIS GRANT is intended as a Mortgage to secure the payment of One certain promissory note of even date herewith, executed and delivered by the said

Earl Warthen to the said part ies of the second part In the Principal Sum of \$15,000.00, with interest at five (5%) per cent per annum, with an agreed increase in the interest rate to eight and one-half (8 $\frac{1}{2}$ %) per annum in the event the Second Parties sell, transfer, assign, trade, bargain, sell or convey said promissory note and this mortgage, commencing on the date of such sale, transfer, assignment, trade, or conveyance, and payable at the rate of \$500.00 principal, plus interest semi-annually, commencing on July 1, 1976, and on January 1, 1977, and on each July 1 and January 1 thereafter until the note is fully paid.

AND THESE PRESENTS SHALL BE VOID if such payment be made. But in case default shall be made in the payment of the said principal sum of money, or any part thereof, as provided in the said note, or if the interest be not paid as herein specified, then it shall be optional with the said part ies of the second part, their executors, administrators, or assigns to consider the whole of said principal sum expressed in said note as immediately due and payable; and immediately to enter into and upon all and singular the above described premises, and to sell and dispose of the same, according to law, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said promissory note, together with the costs and charges of foreclosure suit, including a reasonable sum of dollars as and for

counsel fees and also the amounts of all such payments of taxes, assessments, incumbrances or insurance as may have been made by said second part ies their heirs, executors or assigns, with the interest on the same, rendering the over and above chase money (if any there shall be) unto the said part y of the first part, his heirs, executors, administrators, or assigns.

IN WITNESS WHEREOF, The said part y of the first part ha s hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of

Earl Warthen (Seal)
Earl Warthen (Seal)

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MAR 08 1990

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