

### WATER RIGHT SUMMARY

<u>ACTION</u>	<u>RIGHT NO.</u>	<u>NAME</u>	<u>AMOUNT CFS</u>
Original Application	45-07498	George &/or Arto Montgomery	5.20
Full-Assignment	45-07498	Warren Yadon	5.20

**MICROFILMED**

OCT 10 1996



of evidence clearly establishing the extent of beneficial use prior to the proof due date and a showing of reasonable cause why the proof was submitted late.

7. On June 16, 1995, the current permit holder submitted an acceptable proof and license examination fee along with an Assignment of Permit.

8. On September 21, 1995, the department corresponded with the permit holder's representative (Norman Semanko) and requested that the permit holder submit additional information to demonstrate extent of use. On November 24, 1995, the department again corresponded with Mr. Semanko since the requested information had not been received.

9. On February 22, 1996, the permit holder's representative submitted an affidavit from the original permit holder (George Montgomery) stating that the water right was put to beneficial use during the authorized development period (June 22, 1982 until July 1, 1987.) Aerial photos from 1987 were also submitted to show that irrigation had taken place on the authorized place of use. Mr. Semanko further explained that after the death of the original permit holder in 1986, confusion ensued and it was not sorted out until the current permit holder acquired the property.

10. On July 19, 1996, the permit holder submitted a Relinquishment of Application for Permit No. 45-07724.

#### CONCLUSIONS OF LAW

1. The permit holder has submitted proof of beneficial use along with supporting evidence which establishes that water was in fact beneficially used within the authorized development period.

2. The permit holder has shown sufficient cause why the proof of beneficial use was not submitted in a timely manner.

3. The department should reinstate the permit with the date of priority advanced to the date proof of beneficial use and supporting information was received by the Department.

OCT 10 1996

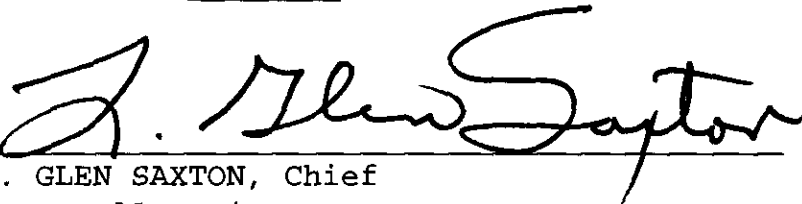
ORDER

IT IS HEREBY ORDERED that Permit No. 45-07498 is REINSTATED.

IT IS FURTHER ORDERED that the priority date is advanced to June 16, 1995.

IT IS FURTHER ORDERED that reinstatement of this permit does not authorize further development or construction of new wells.

Dated this 27<sup>th</sup> day of September, 1996.

  
\_\_\_\_\_  
L. GLEN SAXTON, Chief  
Water Allocation Bureau

OCT 10 1996



For Office Use Only  
\$25.00 Filing Fee  
Receipt # 035014  
Date 3-8-96

State of Idaho  
DEPARTMENT OF WATER RESOURCES

RECEIVED

ASSIGNMENT OF PERMIT  
To change the ownership of a permit

JUN 16 1995

Department of Water Resources

We ~~of~~ George & Esther Montgomery hereby assign to Warren Yadon  
(Permit Holder)  
of Box 11 Albion, Idaho 83311 (208) 673-6211  
(Full Address and Phone Number)

All my right, title, and interest in and to Permit No. 45-07498  
to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Made this 9 day of June, 1995.

George Montgomery Esther Montgomery  
GEORGE MONTGOMERY Permit Holder(s) ESTHER MONTGOMERY

State of Idaho )  
County of Cassia )  
SS

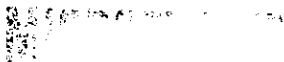
On this 9th day of June, 1995, personally appeared before me  
the signer of the above instrument, duly acknowledged to me that he/she/they executed the same.

Betty Perry  
Notary Public

SEAL

Betty Perry  
Signature

My commission expires: 4-28-2000



OCT 10 1996

# NOTICE

This file has been REPRODUCED  
from MICROFICHE XXXXXXXXXX

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*David J. Block*  
Person Recreating File

*7-7-95*  
Date

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 45-7498 IN )  
THE NAME OF GEORGE &/OR ARLO MONTGOMERY ) ORDER

WHEREAS, the Department issued the above-captioned permit with the condition that proof of construction of works and application of water to beneficial use be submitted on or before June 1, 1987; and,

WHEREAS, proper notice was not given to the permit holder sixty days prior to the date that proof of beneficial use of water was due as required by section 42-204, Idaho Code;

IT IS, THEREFORE, HEREBY ORDERED that the time within which to submit proof of beneficial use be extended to July 1, 1987.

Dated this 30<sup>th</sup> day of April, 1987.



L. GLEN SAXTON  
Chief, Operations Bureau

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPROVED** APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

George #/or

1. Name of applicant ARLO MONTGOMERY Phone 673-5331

Post office address ALBION, IDAHO

2. Source of water supply GROUNDWATER which is a tributary of -

3. Location of point of diversion is SW 1/4 of N2 1/4 of Section 9 Township 12S

Range 2SE B.M. CASSIA County, additional points of diversion if any: -

SW 1/4 NW 1/4, Sec 10 T12S R2SE

4. Water will be used for the following purposes:

Amount 5.20 for IRRIGATION purposes from MARCH 15 to NOV 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:

a. 5.20 cubic feet per second and/or b. \_\_\_\_\_ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. (2) wells MATORS  
1 pump w/ sprinkler lines

b. Height of storage dam \_\_\_\_\_ feet, active reservoir capacity \_\_\_\_\_ acre-feet; total reservoir capacity \_\_\_\_\_ acre-feet, materials used in storage dam: \_\_\_\_\_

Period of year when water will be diverted to storage \_\_\_\_\_ to \_\_\_\_\_ inclusive.  
(Month/Day) (Month/Day)

c. Proposed well diameter is 16 inches; proposed depth of well is 500 feet.

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

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: \_\_\_\_\_ % of \_\_\_\_\_ % of Section \_\_\_\_\_ Township \_\_\_\_\_

Range \_\_\_\_\_ B.M.

(2) Amount of power to be generated: \_\_\_\_\_ horsepower under \_\_\_\_\_ feet of head.

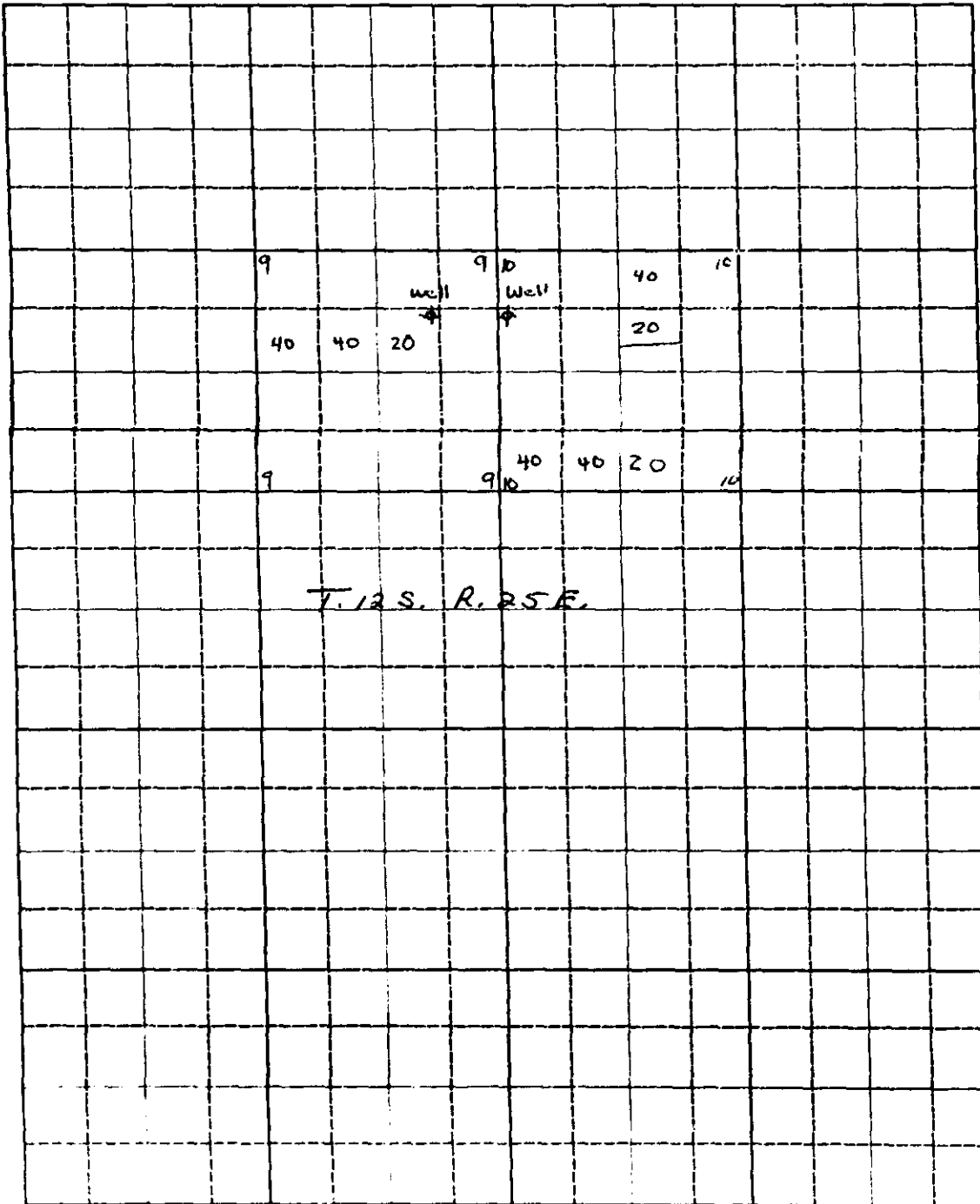
(3) List number of each kind of livestock to be watered \_\_\_\_\_

(4) Name of municipality to be served \_\_\_\_\_, or number of families to be supplied with domestic water: \_\_\_\_\_

(5) If water is to be used for other purposes describe: \_\_\_\_\_



11. 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.

(Applicant)

Processed Priority 3/5/1982

Received by ADM Date 3/5/82 Time 2:00 p.m.

Preliminary check by J Fee \$ 145<sup>00</sup>

Received by ADM Date 3/5/82 # 22066

Publication prepared by myer Date 3/6/82

Published in South Ida Press

Publication dates 3/25 + 4/1/82

Publication approved myer Date 3/23/82

Protests filed by: None

Copies of protests forwarded by \_\_\_\_\_

Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Recommended for approval denial by ADM RC

**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. 45-7498, 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 June 1, 19 87.

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. Other: Permit holder shall commence the excavation or construction of diversion works within one year of the date this permit is issued and shall proceed diligently until the project is complete.

An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

Witness my hand this 22<sup>nd</sup> day of June, 1982.

J. Glen Saylor  
Chief, Operations Bureau



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

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

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

September 27, 1996

WARREN YADON  
BOX 11  
ALBION ID 83311

**PROOF ACKNOWLEDGEMENT LETTER**

**RE: PERMIT NO. 45-07498**

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit.

Enclosed is an order reinstating your permit since proof was submitted after the proof due date of July 1, 1987. Please note that the priority date has been advanced to June 16, 1995.

Please be advised that Section 42-248, Idaho Code, which became affective on July 1, 1996, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Please contact any office of the department for the proper form to file a change of ownership of a water right and/or a change in the address of the owner. Failure to maintain current records with the department could result in the assessment of a monetary penalty.

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 the field examination, contact the **SOUTHERN** Regional Office in Twin Falls at (208)736-3033.

Sincerely,

A handwritten signature in cursive script that reads "Julie L. Yarbrough".

JULIE L. YARBROUGH  
Senior Secretary

Enclosure

c: IDWR - Region

RECEIVED  
OCT 10 1996



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

RECEIVED

JUL 17 1996

Department of Water Resources

*copy*

RECEIVED

JUL 19 1996

Department of Water Resources  
 Southern Region

RELINQUISHMENT  
 OF  
 APPLICATION FOR PERMIT

I WARREN YADON, hereby relinquish to the State of Idaho, all  
 my right, title and interest in and to Application for Permit to Appropriate the Public  
 Waters of the State of Idaho, No. 45-07724.

Signed this 18<sup>th</sup> day of June, 1996.

Warren Yadon  
 PERMIT HOLDER(S)

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OCT 10 1996

AUG 29 1996

**ROSHOLT, ROBERTSON & TUCKER**

**Chartered  
ATTORNEYS AT LAW**

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

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

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

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JUL 17 1996

Department of Water Resources

July 16, 1996

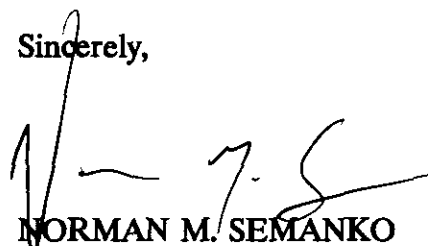
Julie Yarbrough  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720-9000

Re: Warren Yadon - Reinstatement of Permit No. 45-07498

Dear Julie:

As instructed by your letter of June 12, 1996, please find enclosed a completed Relinquishment form for Permit No. 45-07724. With this accomplished, we look forward to the Department's reinstatement of Permit No. 45-07498, consistent with the draft order previously forwarded to us. Please send us a copy of the final Order as soon as possible.

Sincerely,



NORMAN M. SEMANKO

NMS:kn  
Enclosures  
cc: Warren Yadon  
George Kelley

07169601.NMS

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OCT 10 1996



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

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

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

June 12, 1996

**VIA FAX**

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

**RE: Warren Yadon - Reinstatement**

Dear Norm:

The department has prepared a draft Order of Reinstatement for Permit No. 45-07498 in the name of Warren Yadon. However, the department will not issue the order until Mr. Yadon relinquishes Application for Permit No. 45-07724 since it overlaps Permit No. 45-07494. I have enclosed a relinquishment form and a copy of the draft order for your reference.

If you have any questions regarding this matter, please contact me at (208)327-7953.

Sincerely,

A handwritten signature in cursive script that reads "Julie L. Yarbrough".

JULIE L. YARBROUGH  
Senior Secretary

Enclosures

RECORDED

OCT 10 1996

C035014  
3-8-96 ju

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

JOHN A. ROSHOLT  
J. EVAN ROBERTSON  
JAMES C. TUCKER  
GARY D. SLETTE  
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NORMAN M. SEMANKO

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BOISE, IDAHO 83701-2139  
TELEPHONE (208) 336-0700  
FAX (208) 344-6034

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MAR 08 1996

Department of Water Resources

March 7, 1996

Idaho Department of Water Resources  
Attn: Julie Yarbrough  
1301 North Orchard  
Statehouse Mail  
Boise, ID 83720

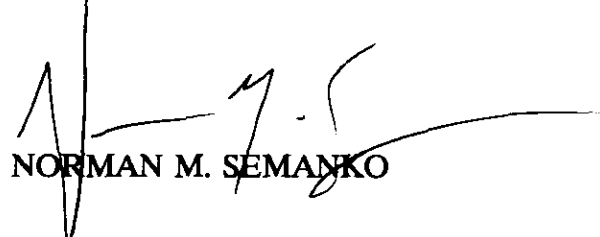
Re: Warren Yadon - Assignment of Permit No. 45-7498

Dear Julie:

Enclosed is our check in the amount of \$25.00 for the Assignment of Permit from George and Esther Montgomery to Warren Yadon.

If you have any questions, please call.

Sincerely,



NORMAN M. SEMANKO

NMS:le  
03079604.NMS

Enclosure

0071 0400

ROSHOLT, ROBERTSON & TUCKER  
Chartered  
ATTORNEYS AT LAW

JOHN A. ROSHOLT  
J. EVAN ROBERTSON  
JAMES C. TUCKER  
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TELEPHONE (208) 336-0700  
FAX (208) 344-6034

February 21, 1996

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FEB 22 1996

Department of Water Resources

L. Glen Saxton, Chief  
Water Allocation Bureau  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720-9000

Re: Reinstatement of Lapsed Permit No. 45-07498

Dear Glen:

As requested by your previous correspondence, and pursuant to section 42-218a.2., Idaho Code, the following information is provided to facilitate the reinstatement of Permit No. 45-07498:

1. Evidence Showing Beneficial Use Did Commence Before July 1, 1987 and the Extent of the Use of Water During the Authorized Permit Period.
  - a. Affidavit of George Montgomery. Mr. Montgomery's affidavit provides evidence that the water that is the subject of Permit No. 45-07498 was being put to beneficial use prior to July 1, 1987. Exhibit "A", attached to the affidavit, indicates the acres irrigated under the permit.
  - b. Aerial Photography. The 1987 aerial photograph provides additional evidence that the water was put to beneficial use prior to July 1, 1987. The highlighted quarter-quarter sections indicate irrigated acres within the place of use authorized under Permit No. 45-07498.

This evidence is consistent with the Proof of Beneficial Use previously filed with the Department on or about June 15, 1995, indicating that 228 acres were irrigated under the permit prior to July 1, 1987.

MICROFILMED  
OCT 10 1996

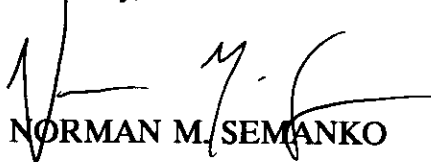
L. Glen Saxton, Chief  
February 21, 1996  
Page 2

2. Reasonable Cause Why the Proof of Beneficial Use was not Timely Filed.

During the authorized development period for Permit No. 45-07498, Arlo Montgomery, the original and primary permit holder, became ill and passed away on September 6, 1986. As indicated by the chronology of this permit, confusion ensued following, and even before, Arlo Montgomery's death. It was only upon the current permit holder's acquisition of the farm, and subsequent consultation with counsel, that this confusion was finally sorted out and the proof of beneficial use was submitted.

We trust that our submittal meets the conditions outlined in your previous correspondence and satisfies the requirements of section 42-218a.2., Idaho Code. Therefore, we request that Permit No. 45-07498 be reinstated and look forward to your confirmation.

Sincerely,



NORMAN M. SEMANKO

02209602.NMS

Enclosures

cc: Warren Yadon  
George Kelley

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OCT 10 1996

Exhibit A

RECEIVED  
OCT 1 0 1996

RECEIVED  
FEB 22 1996

Norman M. Semanko  
ROSHOLT, ROBERTSON & TUCKER  
P.O. Box 1906  
Twin Falls, Idaho 83303-1906  
Telephone: (208) 734-0700  
01129601.NMS/le

Department of Water Resources

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

\*\*\*\*\*

In Re: ) AFFIDAVIT OF  
 ) GEORGE MONTGOMERY  
Permit No. 45-7498 )  
\_\_\_\_\_ )

STATE OF IDAHO )  
 ) ss.  
County of Cassia )

COMES NOW, George Montgomery, and being first duly sworn, deposes and says:

1. I was the original permit holder of Permit No. 45-7498, issued by the Idaho Department of Water Resources on June 22, 1982, along with my father, Arlo Montgomery.
2. After Arlo's death on September 6, 1986, the permit was held by myself and my mother, Esther Montgomery.
3. On June 9, 1995, Esther Montgomery and I assigned Permit No. 45-7498 to Warren Yadon.

AFFIDAVIT OF GEORGE MONTGOMERY - 1

OCT 10 1996

4. I have personal knowledge of the facts surrounding the beneficial use of water under Permit No. 45-7498 during the authorized development period (June 22, 1982 until July 1, 1987).

5. On September 13, 1985, Arlo Montgomery filed Proof of Beneficial Use for Permit No. 45-7498, indicating that 260 acres had been developed under the permit. This proof was filed in error and was subsequently withdrawn at Esther Montgomery's request, after Arlo's death.

6. Before the 1985 proof was withdrawn, I filed an Examination Fee Information form on October 8, 1986. This form correctly indicated that at least 90 acres had been developed under the permit as of October 8, 1986.

7. Esther Montgomery forwarded a completed Request for Extension of Time to the Department on or about September 30, 1986. The form, which was subsequently returned without being processed, correctly indicated that the "wells [had] been put in," but "Arlo Montgomery [had] pass[ed] away and we need[ed] time to continue the [d]evelopment."

8. After the forms referred to in Paragraphs 6 and 7 were submitted to the Department, development of Permit No. 45-7498 continued. While it was not possible to irrigate all 260 acres approved under the permit without an extension of time, we did beneficially use water on the acres depicted on Exhibit "A," attached hereto, prior to July 1, 1987.

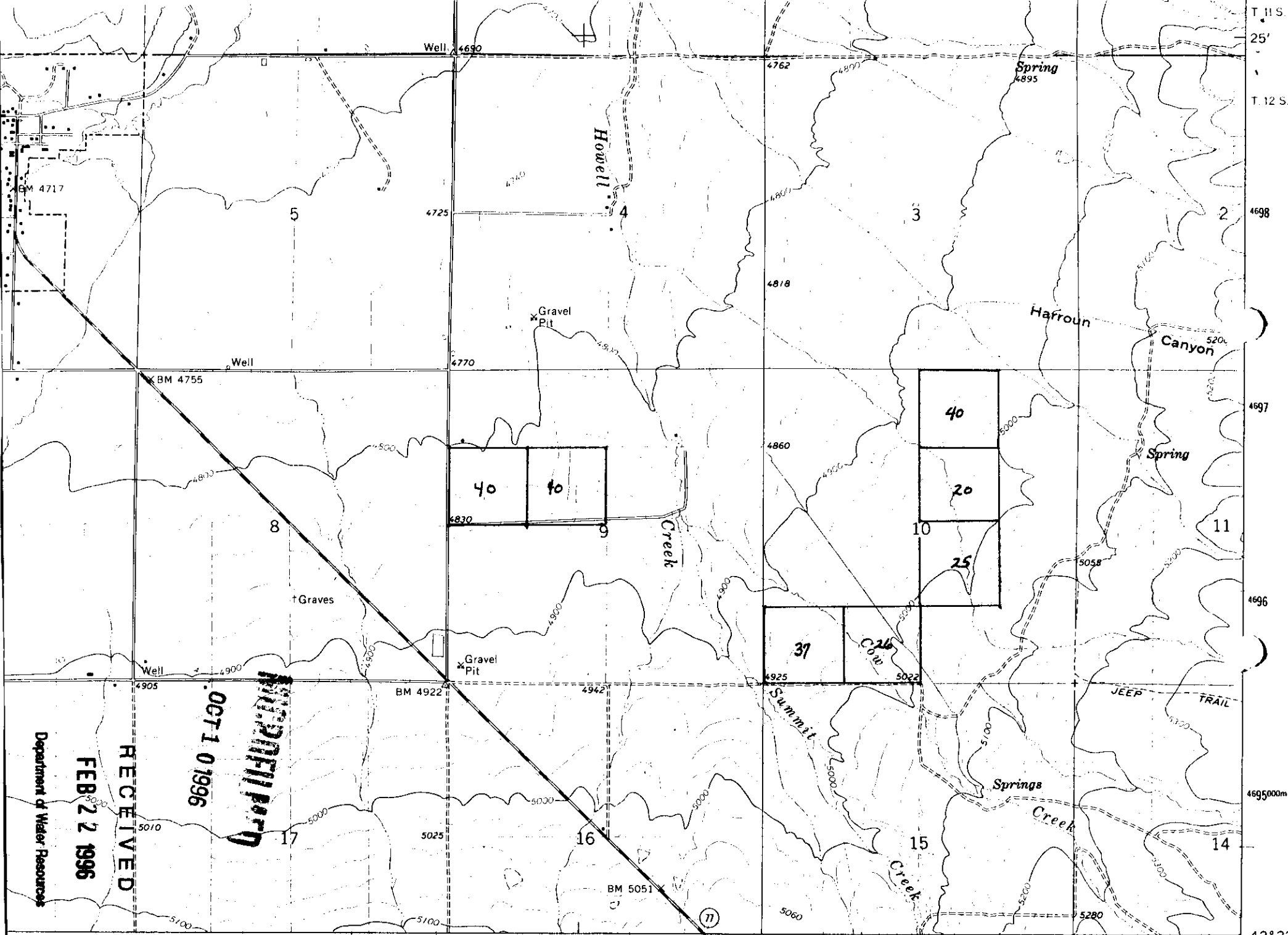
OCT 10 1986

9. Further, your affiant sayeth naught.

George Montgomery  
GEORGE MONTGOMERY

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of  
Feb, 1996.

Katherine E. Adams  
NOTARY PUBLIC FOR IDAHO  
Residing at Albion, Id  
My Commission Expires 10-1-99



Department of Water Resources  
**RECEIVED**  
**FEB 22 1996**

**OCT 10 1996**  
**WILSON**

Exhibit B

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OCT 1 0 1996



100-100-100  
OCT 10 1995

RECEIVED  
FEB 22 1996

Department of Water Resources

**ROSHOLT, ROBERTSON & TUCKER**

**Chartered  
ATTORNEYS AT LAW**

JOHN A. ROSHOLT  
J. EVAN ROBERTSON  
JAMES C. TUCKER  
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TELEPHONE (208) 336-0700  
FAX (208) 344-6034

**RECEIVED**

**JAN 24 1996**

Department of Water Resources *924*

January 23, 1995

L. Glen Saxton, Chief  
Water Allocation Bureau  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720-9000

VIA FAX

Re: Reinstatement of Lapsed Permit No. 45-07498

Dear Glen:

On December 21, 1996, I advised you that we needed more time to provide the evidence required by Section 42-218a.2., Idaho Code, which would allow the department to further consider reinstatement of permit no. 45-07498, and would provide this evidence by today's date. The purpose of this letter is to advise you that we will need an additional period of time to produce this evidence.

We are still in the process of finalizing the necessary evidence to demonstrate the extent of beneficial use. We have reviewed available satellite photographs and prepared a map of the use that existed when proof was due. In addition, I anticipated a meeting before today's date with Steve Clelland of your Southern Office to discuss the extent of beneficial use in 1987, as reflected in his interpretation of the available satellite photographs, but he has been held up with SRBA settlement conferences. We anticipate getting together to compare our respective analyses today or later this week. I believe his analysis will help verify, or at least clarify, what the extent of beneficial use on the due date was. Also, we have had some difficulty in tracking down George Montgomery, one of the original permit holders, to secure his affidavit.

As a result, we request an additional thirty (30) days, or until **February 22, 1996**, to submit the required information. As before, if we do not hear otherwise from you, we will assume that this is acceptable and will plan to send the required information by February 22. Please call if you have any questions.

Sincerely,

  
NORMAN M. SEMANKO

**RECEIVED**

OCT 10 1996

01239605.NMS

ROSHOLT, ROBERTSON & TUCKER  
Chartered  
ATTORNEYS AT LAW

JOHN A. ROSHOLT  
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NORMAN M. SEMANKO

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TELEPHONE (208) 336-0700  
FAX (208) 344-6034

RECEIVED  
DEC 26 1995

December 21, 1995

Department of Water Resources

*NS*  
L. Glen Saxton, Chief  
Water Allocation Bureau  
Idaho Department of Water Resources  
1301 North Orchard Street  
Statehouse Mail  
Boise, ID 83720-9000

VIA FAX

Re: Reinstatement of Lapsed Permit No. 45-07498

Dear Glen:

As requested, this letter is meant to confirm our telephone discussion earlier today regarding the status of our reinstatement request for permit no. 45-07498.

In your November 24, 1995 letter on this matter (copy enclosed), you advised us that we had thirty (30) days in which to file the information described in Section 42-218a.2., Idaho Code, which would allow the department to further consider reinstating permit no. 45-07498. We are in the process of finalizing the necessary evidence to demonstrate the extent of beneficial use, but anticipate needing additional time before sending this information to the department. As a result, we request an additional thirty (30) days, or until **January 23, 1996**, to submit the required information. If we do not hear otherwise from you, we will assume that this is acceptable and will plan to send the required information by January 23.

Please call if you have any questions.

Happy Holidays,

*NMS*  
NORMAN M. SEMANKO

12219503.NMS

Enclosure

cc: George Kelley  
Warren Yadon

*Michael*  
OCT 10 1996



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

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

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

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

November 24, 1995

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

**RE: LAPSED PERMIT NO. 45-07498**

Dear Mr. Semanko:

Enclosed is a copy of my September 21, 1995, letter to you in connection with the above referenced lapsed permit. To date, you have not responded and have not provided information described in Section 42-218a.2., Idaho Code, which would allow the department to consider late reinstatement of the permit.

The department will hold the matter in abeyance for another thirty (30) days and then will remove the file which we have recreated from microfilm from our hard file records if you have not provide the appropriate information.

Sincerely,

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

L. GLEN SAXTON, Chief  
Water Allocation Bureau

Encl: 1

c: IDWR - S. region

RECEIVED  
NOV 24 1995

OCT 10 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

September 21, 1995

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

RE: LAPSED PERMIT NO. 45-07498

Dear Mr. Semanko:

The department has reviewed your letter dated June 15, 1995, which requested reinstatement of the above referenced permit. This response to your letter is very late, since your letter and the file information were inadvertently misplaced.

The department's water right file shows the following:

- On June 22, 1982, the department issued Permit No. 45-07498 with a condition of approval that the permit holder was required to submit proof of beneficial use of water to the department on or before June 1, 1987.
- On September 13, 1985, the permit holder filed proof of beneficial use of water.
- On October 1, 1986, Esther Montgomery advised the department that she wanted to withdraw the proof of beneficial use and submitted a request for extension of time with filing fee to the department.
- In a letter dated October 9, 1986, the department returned the extension of time request and filing fee to Mrs. Montgomery. The department also advised Mrs. Montgomery to either resubmit the extension of time request or submit the license examination fee which the department requested in a letter dated August 12, 1986 in connection with the proof of beneficial use.
- On October 8, 1986, Mrs. Montgomery submitted the license examination fee in the amount of \$125 to the department's Southern Regional Office.

OCT 10 1996

- On October 27, 1986, Mrs. Montgomery again visited the department's Twin Falls office and advised she wanted to withdraw the proof of beneficial use of water and would file the proof of beneficial use in June 1987.

- On November 25, 1986, the department returned the proof of beneficial use to Mrs. Montgomery and refunded the \$125 filing fee. The department advised Mrs. Montgomery that proof was due in June 1987 and would so advise her 60 days prior to that date.

- On April 30, 1987, by certified mail the department advised the permit holders that proof was due.

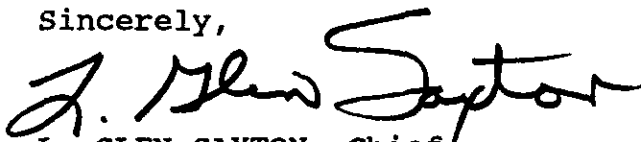
- Since proof was not submitted, on July 28, 1987, the department sent a lapse notice to which no response was received.

The correspondence and sequence of actions by Mrs. Montgomery shows that her intent was to withdraw the proof of beneficial use and file the required proof when it was due in June 1987. Her intent was not to file an extension of time request to extend the proof due date past June 1987.

In order for the department to further consider your request for reinstatement of the permit, you need to submit the information described in Section 42-218a.2., Idaho Code. More specifically, you need to (1) submit sufficient evidence to clearly demonstrate the extent of beneficial use made of the water during the authorized development period [from June 22, 1982 to July 1, 1987] and (2) provide reasonable cause for filing the late proof of beneficial use.

Again, I apologize for this late response to your letter.

Sincerely,



L. GLEN SAXTON, Chief  
Water Allocation Bureau

c: IDWR - S. Region

OCT 10 1986

**ROSHOLT, ROBERTSON & TUCKER**

**Chartered  
ATTORNEYS AT LAW**

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

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

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

June 15, 1995

Karl Dreher, Director  
Idaho Department of Water Resources  
1301 N. Orchard  
Statehouse Mail  
Boise, ID 83720

RECEIVED

JUN 16 1995

Department of Water Resources

Re: Permit No. 45-7498

Dear Karl:

Please find enclosed a completed Proof of Beneficial Use form for Permit No. 45-7498, along with the appropriate fee (Exhibit "A"). You will also find enclosed an Assignment of Permit from Esther Montgomery and her son George to our client, Warren Yadon (Exhibit "B").

Pursuant to section 42-218a, Idaho Code, we request that Permit No. 45-7498 be reinstated for the following reasons:

The proof of beneficial use for Permit No. 45-7498 was due on June 1, 1987. Arlo Montgomery prematurely submitted proof on September 13, 1985, but his wife, Esther Montgomery, requested to withdraw the proof and filed a request for extension of time on September 30, 1986. Her husband had been ill and passed away on September 6, 1986 and more time was needed to complete the development. The department received Esther's request for extension of time on October 1, 1986. However, the request for extension of time was returned to Esther by the department on October 9, 1986. (See Exhibit "C").

Section 42-218a, Idaho Code, states that a permit shall lapse only if "proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof" (Exhibit "D")(emphasis added). While Esther Montgomery voluntarily withdrew the proof filed in 1985 and, therefore, no proof was filed before the June 1, 1987 (later moved to July 1, 1987) deadline, the department did receive a request for extension of time before proof was due. In addition, even though a request to withdraw the proof had been received, the department failed to act on the request for extension of time and, instead, simply returned it to Esther Montgomery.

OCT 10 1996

Karl Dreher, Director  
June 15, 1995  
Page 2

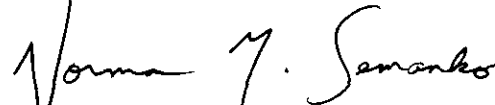
Therefore, under the plain language of Section 42-218a, the permit should not have lapsed at all.

Furthermore, because the department failed to act on the request for extension of time, the deadline for submitting proof of beneficial use should be extended by up to five years, or until June 1, 1992. I.C. Secs. 42-204.5, -218 (Exhibit "E"). A request for extension was timely filed and "good cause" existed due to the untimely death of Esther's husband, the original permit holder. The department simply failed to act on the request.

Finally, because the permit lapsed due to an error or mistake of the department, and, in fact, never actually should have lapsed under the plain language of Section 42-218a, the original priority date should be retained. I.C. Sec. 42-218a.3.

We look forward to your favorable consideration of this request and will await your response. In the meantime, if you have questions or need additional information, please do not hesitate to contact us at the Twin Falls address or phone number on this letterhead.

Sincerely,

  
NORMAN M. SEMANKO

06149503.NMS

Enclosures

OCT 10 1996

Exhibit A

96610 1 130  
OCT 1 0 1996

Exhibit B

RECEIVED  
FBI  
LABORATORY

OCT 10 1996

Exhibit C

10/1/96

OCT 1 0 1996

RECEIVED

JUN 16 1995

Department of Water Resources

RECEIVED

OCT 1 1995

Department of Water Resources

~~45-7498~~  
Dept. of Water Res.

To whom it may concern, I  
would like to withdraw proof of  
Beneficial use for 45-7498

Thank you.  
Esther Montgomery

See letter of 10-9-96

RECEIVED

OCT 10 1996

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit  
proof of beneficial use on a water right permit

ARLO Montgomery of Albion, Idaho  
(Name) (Address)

State of Ida, deposes and says:

That he is the holder, or the duly authorized agent of the holder\*, of Permit to Appropriate the Public  
Waters of the State of Idaho No. 45-7498.

That under the terms and conditions of said permit, work thereunder was required to be completed on or  
before June, 1987.

That he has heretofore performed the following work described under said permit: \_\_\_\_\_  
Wells have been put in  
\_\_\_\_\_  
\_\_\_\_\_ Costing \$ 150,000.00

That he is unable to complete the remainder of the work within the required time for the following  
reasons, to-wit: Arlo Montgomery has passed away  
and we need time to continue the Development.  
\_\_\_\_\_  
\_\_\_\_\_

Wherefore, he asks that the Department of Water Resources extend the time for the completion of  
obligations under said permit to June, 1992.

I am the spouse of the deceased.  
Escher Montgomery  
(Signature)\*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

MIDWESTERN  
OCT 10 1996

\* IF OTHER THAN HOLDER, Power of Attorney must be supplied.

45-7498

[REDACTED]

Mrs. Esther Montgomery  
Star Route  
Albion, ID 83311

Dear Mrs. Montgomery:

Re: Permit No. 45-7498

[REDACTED]

A proof of beneficial use form is a signal to the department that the project has been developed. The proof of beneficial use submitted in September, 1985 appears to be in order. It claims that 260 acres are being irrigated from a well, which is what was proposed by the permit. If the project is complete, why do you wish to withdraw the proof?

Please advise the department of what action you wish to take. Either supply information about the proof withdrawal and return the extension form and fee or take action as requested in our letter dated August 12, 1986 (copy enclosed).

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

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

RECORDED

OCT 10 1996

October 9, 1986

Mrs. Esther Montgomery  
Star Route  
Albion, ID 83311

Dear Mrs. Montgomery:

Re: Permit No. 45-7498

On October 1, 1986, the department received your request for withdrawal of the proof form, request for extension of time and your check No. 1350 (92-39/1241) in the amount of \$15. Returned is the request for extension of time and your check.

A proof of beneficial use form is a signal to the department that the project has been developed. The proof of beneficial use submitted in September, 1985 appears to be in order. It claims that 260 acres are being irrigated from a well, which is what was proposed by the permit. If the project is complete, why do you wish to withdraw the proof?

Please advise the department of what action you wish to take. Either supply information about the proof withdrawal and return the extension form and fee or take action as requested in our letter dated August 12, 1986 (copy enclosed).

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

Sincerely,

RITA I. FLECK  
Secretary/Records Manager



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ction 42-218a, Idaho  
3, ch. 36, § 1, p. 134;  
C.S., § 5577; I.C.A.,  
. 138, § 1, p. 434; am.

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eer (department of water  
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mitted to prove the benefi-  
ditional amount of water.  
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ferences. 78 Am. Jur. 2d,  
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s. § 178.

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200) shall be paid by  
al fee of fifty dollars  
on March 31 of each  
es collected shall be  
water administration

the requirements of  
97, § 1, p. 192.]

**42-218. Proof of application to beneficial use — Extension of time.**

— Whenever a less period of time than the maximum prescribed in section 42-204 has been granted by the department of water resources for making proof of beneficial use, upon a satisfactory showing being made by the permit holder, the department can extend the time for making such proof of beneficial use, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in section 42-204. The department shall grant no extension unless the application therefor be filed with it prior to the date upon which the proof of beneficial use was required to be made under the original terms of the permit. [1913, ch. 47, § 1, p. 154; am. by implication, 1915, ch. 94, § 1, p. 216; adding a proviso extending the maximum period of ten years in some cases; compiled and reen. C.L., § 3260a; C.S., § 5578; I.C.A., § 41-212; am. 1967, ch. 374, § 9, p. 1079.]

**Compiler's notes.** The name of the depart- to the department of water resources on the  
ment of water administration (formerly the authority of S.L. 1974, ch. 286, § 1 and S.L.  
department of reclamation) has been changed 1974, ch. 20, § 28 (§ 42-1801a).

**42-218a. Lapse of application for failure to request extension or submit proof of application to beneficial use — Notice of lapsing. —**

A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail provided:

1. That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof;

2. That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received;

3. The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department. [I.C., § 42-218a, as added by 1967, ch. 374, § 10, p. 1079; am. 1983, ch. 157, § 1, p. 435.]

**Compiler's notes.** Section 2 of S.L. 1983. **Sec. to sec. ref.** This section is referred to  
ch. 157 declared an emergency. Approved in § 42-217.  
April 8, 1983.



proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said diversion (including expenditures for the purchase of rights of way and property in connection therewith) at least one hundred thousand dollars (\$100,000).

3. The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

4. In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

5. In all other situations not governed by these provisions the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

Any applicant feeling himself aggrieved by the decision of the department of water resources regarding his application may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the decision and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon

**42-218. Proof of application to beneficial use — Extension of time.**

— Whenever a less period of time than the maximum prescribed in section 42-204 has been granted by the department of water resources for making proof of beneficial use, upon a satisfactory showing being made by the permit holder, the department can extend the time for making such proof of beneficial use, but in no case shall such extension or extensions, including the original time granted, exceed the maximum prescribed in section 42-204. The department shall grant no extension unless the application therefor be filed with it prior to the date upon which the proof of beneficial use was required to be made under the original terms of the permit. [1913, ch. 47, § 1, p. 154; am. by implication, 1915, ch. 94, § 1, p. 216; adding a proviso extending the maximum period of ten years in some cases; compiled and reen. C.L., § 3260a; C.S., § 5578; I.C.A., § 41-212; am. 1967, ch. 374, § 9, p. 1079.]

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1. That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof;

2. That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received;

3. The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department. [I.C., § 42-218a, as added by 1967, ch. 374, § 10, p. 1079; am. 1983, ch. 157, § 1, p. 435.]

**Compiler's notes.** Section 2 of S.L. 1983, ch. 157 declared an emergency. Approved April 8, 1983. **Sec. to sec. ref.** This section is referred to in § 42-217.

# NOTICE

This file has been REPRODUCED  
from MICROFICHE 

---

---

---

*Daryl A. Block*

Person Recreating File

*July 7, 1995*

Date

I certify that file No. 45-7498 has been reviewed and is ready to be MICROFILMED and DESTROYED.

J. Curtis

Signature

8-25-88

Date



April 30, 1987

George and Arlo Montgomery  
Star Rt.  
Albion, ID 83311

CERTIFIED MAIL

138505

Dear Mr. and Mrs. Montgomery:

Re: Permit No. 45-7498

PROOF DUE NOTICE

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 July 1, 1987. (See enclosed order). Enclosed is a form which when accompanied by the license examination fee or a completed 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 provided the delay is for reasonable cause as described in Section 42-204, Idaho Code. If you have been prevented from proceeding by a government agency or by litigation, 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 the lapse notice, the permit will no longer be of any force nor effect.

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

Enclosures

INTER-DEPARTMENT MEMO — 1

FROM Rita Fleck

DATE 11-25-86

TO Accounting Section

SUBJECT Refund

Please prepare a refund of \$125. Attached are two copies of receipt No. 38749, along with a copy of the attached letter. Please make the refund from account 06-10-120, 1238.

If you have any questions, please contact me.

Thanks.

  
SIGNATURE

[REDACTED]

November 25, 1986

Mrs. Esther Montgomery  
Star Rt.  
Albion, ID 83311

Dear Ms. Montgomery:

Re: Permit No. 45-7498

Returned is the Proof of Beneficial Use form and this letter will also provide notice to our Accounting Section to refund \$125. Please allow several weeks to process the refund.

I received a memo from Gary Funderburg of our Southern Regional office advising that the proof was submitted in error since the project was not complete and, consequently, the Examination Fee Information form and fee were also submitted in error. In response to your request to withdraw proof, the department is returning the document. Please be advised that proof is due June 1, 1987 and the department will notify you sixty days prior to that day that proof is due.

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

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

Enclosures

cc: Accounting Section  
Southern Region

INTER-DEPARTMENT MEMO — 1

FROM Gary Junderburg  
TO Rita Fleck

RECEIVED  
OCT 28 1986

DATE 10/27/86

Department of Water Resources

45-7498

SUBJECT

Rita:

Mrs Arlo Montgomery received the attached copy of the letter from you. She would like at this time to just w/draw the proof of Beneficial use filed earlier by Arlo Montgomery. She will then write until 1987 June to receive the notice of Beneficial use in do. Mrs Arlo Montgomery wants to w/draw proof because her husband was ill at the time he filed the proof also the wells have not all been drilled.

Gary Junderburg

SIGNATURE



State of Idaho  
DEPARTMENT OF WATER RESOURCES  
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

A. KENNETH DUNN

Mailing address  
Statehouse  
Boise, Idaho 83720  
(208) 334-4440

October 9, 1986

Mrs. Esther Montgomery  
Star Route  
Albion, ID 83311

*She never received  
this*

Dear Mrs. Montgomery:

Re: Permit No. 45-7498

On October 1, 1986, the department received your request for withdrawal of the proof form, request for extension of time and your check No. 1350 (92-39/1241) in the amount of \$15. Returned is the request for extension of time and your check.

A proof of beneficial use form is a signal to the department that the project has been developed. The proof of beneficial use submitted in September, 1985 appears to be in order. It claims that 260 acres are being irrigated from a well, which is what was proposed by the permit. If the project is complete, why do you wish to withdraw the proof?

Please advise the department of what action you wish to take. Either supply information about the proof withdrawal and return the extension form and fee or take action as requested in our letter dated August 12, 1986 (copy enclosed).

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

Sincerely,

*Rita I. Fleck*  
RITA I. FLECK  
Secretary/Records Manager

October 9, 1986

Mrs. Esther Montgomery  
Star Route  
Albion, ID 83311

Dear Mrs. Montgomery:

Re: Permit No. 45-7498

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Please advise the department of what action you wish to take. Either supply information about the proof withdrawal and return the extension form and fee or take action as requested in our letter dated August 12, 1986 (copy enclosed).

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

Sincerely,

RITA I. FLECK  
Secretary/Records Manager

4/86

Void

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EXAMINATION FEE INFORMATION

For Office Use Only  
Fee Received 125.  
Date 10-8-86  
Receipt # 88747  
Receipt by [Signature]  
Sent to S/O. 10/9/86

**RECEIVED**

OCT 10 1986

1. Permit No. 45-7498

ONE OF THE FOLLOWING BOXES SHOULD BE MARKED TO DESIGNATE YOUR CHOICE:  
Department of Water Resources

I choose to have the department make the field examination of this permit; attached is the examination fee. (If this box is marked, complete items 1 thru 8.)

2. Permit Holder: Arlo &/or George Montgomery

3. Post Office Address: Star Route, Albion, ID 83311 c/o George Montgomery  
Telephone No. 673-6644

4. Source of Water: Groundwater

5. Extent of Use:  
Domestic \_\_\_\_\_ (No. of households) Stockwater \_\_\_\_\_ (No. and type of stock)  
Irrigation 90 (acres) Other/Remark \_\_\_\_\_

6. Total rate &/or volume for which proof is submitted 1.8 cfs \_\_\_\_\_ acre-feet

7. Show the date water was first diverted and beneficially used under this permit:

1979

8. Person to contact to accompany the department representative during the field examination:

George Montgomery  
(Name)

Same 673-6644  
(Address) (Telephone Number)

I choose to have the field examination conducted by a certified water right examiner. Attached is a statement from the certified examiner I have selected verifying that he has been retained to conduct the examination. (If this box is marked, complete items 1 thru 7.)

Oct 8 1986 George Montgomery  
Date Signature of Permit Holder (and title, if appropriate)

9-30-1986

RECEIVED  
OCT 1 1986

Dept. of Water Res.

Department of Water Resources

To whom it may concern, I  
would like to withdraw proof of  
Beneficial use parcel 45-7498

Thank you.  
Esther Montgomery

In letter of 10-9-86 JF



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
SOUTHERN REGION

John V. Evans  
Governor

A. Kenneth Dunn  
Director

1041 Blue Lakes Blvd. North  
Twin Falls, Idaho 83301  
(208) 734-3578

45-749R  
MONTGOMERY, GEORGE  
MONTGOMERY, ARLD  
STAR RT.  
ALBION, ID 83311

138109

August 12, 1986

CERTIFIED MAIL

EXAMINATION FEE NOTICE

Dear Permit Holder:

Department records show that proof of beneficial use has been submitted for the above-referenced permit, but that a field examination has not yet been conducted to determine the extent of beneficial use of the water for licensing purposes.

House Bill 671 (effective April 4, 1986) enacted by the 1986 Idaho Legislature requires the payment of a fee before this department can conduct the field examination needed to issue a license confirming use of water under the permit. This letter is notification that the license examination fee is due within sixty (60) days of the date of this letter. The examination fee information sheet (enclosed) must be returned with the fee.

As an alternative to submitting the fee, the department will accept a field examination report completed by a certified water right examiner from the private sector. If you choose to have the examination done by a certified water right examiner, you need not submit the license examination fee to the department, but you must within sixty (60) days of the date of this letter return to the department, the examination fee information sheet showing appropriate information together with a statement from the certified examiner to verify that you have retained a certified examiner to conduct the field examination. If you choose this alternative, a completed field examination report must be submitted within one year of the date of this letter. You cannot later change your decision to use this alternative and submit the fee needed for the department to conduct the field examination, but you may change to another certified examiner.

Certified water right examiners are licensed engineers or geologists certified by the department to conduct water right examinations. The procedure for certifying examiners results from the recently enacted HB 671 and is being developed at this time. A listing of certified water

right examiners will be available from this department when examiners have been certified.

If your permitted use, in fact, has already been examined by the department and you have not asked to have the examination repeated, the fee requirement is not applicable to your permit. If you believe this is the case, please contact the department.

The license examination fee is to be based on the amount of water you indicate you have developed, as listed in item 6 on the examination fee information sheet. The amount of water on which the examination fee is based can be less than the permitted amount, if less water has been diverted and beneficially used. The licensed amount of water, however, will not exceed the amount you claim on the examination fee information sheet. The enclosed license examination fee schedule shows a listing of applicable fees.

FAILURE TO SUBMIT WITHIN THE SIXTY (60) DAY PERIOD, THE FEE OR THE STATEMENT THAT A CERTIFIED EXAMINER HAS BEEN RETAINED TO MAKE THE FIELD EXAMINATION, WILL BE CAUSE TO ADVANCE THE PRIORITY OF THE PERMIT ONE DAY FOR EACH DAY THAT THE FEE SUBMITTAL IS LATE.

FAILURE TO SUBMIT THE FEE OR THE COMPLETED FIELD EXAMINATION REPORT WITHIN A YEAR WILL BE CAUSE TO CONSIDER THE PROOF OF BENEFICIAL USE TO BE INCOMPLETE AND TO LAPSE THE PERMIT.

The attached examination fee information sheet and the fee may be submitted to the following department office.

Southern Region  
Idaho Dept. of Water Resources  
1041 Blue Lakes Blvd. North  
Twin Falls, ID 83301  
Phone: 734-3578

Sincerely,

*Loren Holmes*  
LOREN HOLMES  
Southern Regional Manager

Enclosures

*Proof + Exam  
returned + fee  
See letter of  
11-25-1986  
by*

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Southern Region

1041 Blue Lakes Blvd. N.  
Twin Falls, Idaho 83301  
(208) 734-3375

NOVEMBER 15, 1986

GEORGE &/OR ERLO MONTGOMERY  
STAR ST.  
ALBION ID 83211

RE: Permit No. 45-7422

Dear Permit Holder:

We acknowledge receipt of your statement submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this department.

A field examiner will contact you to arrange to examine your system.

If you have any questions regarding the field examination, please contact this office by phone at 734-3375 or in person at our office at 1041 Blue Lakes Blvd. N. Twin Falls, Idaho.

Sincerely,  
Mary G. Namba  
Superintendent

*Proof returned  
11-25-1986*

Form 217  
12:84  
**RECEIVED**  
SEP 16 1985

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
PROOF OF BENEFICIAL USE

**RECEIVED**  
SEP 19 1985

Department of Water Resources  
Southwest District Office

Department of Water Resources

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has completed development under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below:

Permit No. 45-7498  
Name(s) of Permit Holder: George & Arlo Montgomery  
Post Office Address: Stat Rt Albion, ID 83311  
Telephone No. 673-6331

Source of Water: Groundwater

Extent of Use:  
Domestic \_\_\_\_\_ (number of households)  
Stockwater \_\_\_\_\_ (number and type of stock)  
Irrigation 260 \_\_\_\_\_ (acres)  
Other/Remarks \_\_\_\_\_

Indicate the date water was first diverted and beneficially used under this permit: \_\_\_\_\_

Measuring Device: Required?  Yes  No  
Installed?  Yes  No

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

Person to contact to accompany the Department representative during the field examination:  
Permit holder  
(Name)  
\_\_\_\_\_  
(Address) (Telephone Number)

The above information is a true statement of the extent to which the above numbered permit has been developed.

Sept 13, 1985 Date  
Arlo Montgomery Signature of Permit Holder (and Title, if appropriate)



State of Idaho  
**DEPARTMENT OF WATER RESOURCES**  
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

SEPTEMBER 1, 1985

Mailing address:  
Statehouse  
Boise, Idaho 83720  
(208) 334-4440

DEAR PERMIT HOLDER:

ACCORDING TO OUR RECORDS, YOU ARE THE HOLDER OF A WATER PERMIT ON WHICH PROOF OF BENEFICIAL USE OF WATER WAS NOT SUBMITTED BEFORE JULY 1, 1985, WHICH INDICATES YOUR PROJECT IS NOT COMPLETE. THEREFORE, YOU NEED TO BE AWARE OF CHANGES IN IDAHO LAW, EFFECTIVE JULY 1, 1985, WHICH IMPACT ALL WATER PERMITS ISSUED BY THIS DEPARTMENT.

SPECIFICALLY, PURSUANT TO SECTION 42-203D, IDAHO CODE, THE DEPARTMENT MUST REVIEW ALL PERMITS FOR WHICH DEVELOPMENT OF WATER USE WAS NO COMPLETED ON OR BEFORE JULY 1, 1985, TO DETERMINE IF THEY MEET THE NEW REQUIREMENTS OF CHAPTER 2, TITLE 42, IDAHO CODE. RULES AND REGULATIONS GOVERNING THE RE-EVALUATION OF PERMITS ARE NOT YET FINALIZED. HOWEVER, IF YOU COMPLETED THE DEVELOPMENT UNDER YOUR PERMIT BEFORE JULY 1, 1985, YOU SHOULD SUBMIT A PROOF OF BENEFICIAL USE STATEMENT, STATING THAT THE PROJECT WAS COMPLETED BEFORE JULY 1, 1985 SO THAT YOUR PERMIT WILL NOT BE SUBJECT TO THE REVIEW REQUIREMENTS OF SECTION 42-203D, WHICH READS AS FOLLOWS:

42-203D. REVIEW OF PERMITS - OPPORTUNITY FOR HEARING. - (1)THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THE EFFECTIVE DATE [JULY 1, 1985] OF THIS SECTION, EXCEPT TO THE EXTENT A PERMIT HAS BEEN PUT TO BENEFICIAL USE PRIOR TO JULY 1, 1985, TO DETERMINE WHETHER THEY COMPLY WITH THE PROVISIONS OF CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PROPOSED USE DOES NOT SATISFY THE CRITERIA OF CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL EITHER CANCEL THE PERMIT OR IMPOSE THE CONDITIONS REQUIRED TO BRING THE PERMIT INTO COMPLIANCE WITH CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PERMIT SATISFIES THE CRITERIA ESTABLISHED IN CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL ENTER AN ORDER CONTINUING THE PERMIT.  
(2)THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR HEARING IN ACCORDANCE WITH SECTION 42-1701A, IDAHO CODE, AND SECTIONS 67-5209 THROUGH 67-5215, IDAHO CODE, FOR EACH HOLDER OF A PERMIT THAT IS PROPOSED EITHER TO BE CANCELLED OR MADE SUBJECT TO NEW CONDITIONS.

YOU MAY OBTAIN PROOF OF BENEFICIAL USE FORMS FROM THE DEPARTMENT. IF YOU HAVE ANY QUESTIONS, PLEASE LET US KNOW.

SINCERELY,

L. GLEN SAXTON  
CHIEF, OPERATIONS BUREAU

July 13, 1982

RE: Permit No. 45-7496

George &/or Arlo Montgomery  
Albion,  
Idaho 83311

Ger. Clerk:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the fourth page.

Be sure to note the special condition requiring you to install a measuring device, or an access port to provide for the installation of measuring equipment by the Department. Enclosed please find a list of measuring device options, and specifications for the installation of the access port.

The 1982 Idaho Legislature added a requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you commence construction, no later than one year from the date the permit was approved.

We have enclosed a form entitled "Making Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

Our records indicate that there are several domestic wells located near your proposed point of diversion. Therefore, we recommend that you utilize unperforated casing for at least the first 165 feet to avoid possible impacts on prior water rights.

Sincerely,

DAVID R. TUTHILL, JR., P.E.  
Supervisor, Water Allocation Section

DRT:kw  
Enclosures



State of Idaho  
DEPARTMENT OF WATER RESOURCES  
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Deputy Governor

Mailing address  
Statehouse  
Boise, Idaho 83720  
(208) 334-4440

June 7, 1982

MEMO

TO: Glen Saxton  
FROM: Stan Szczepanowski, *SS*  
SUBJECT: Application #45-7498 for 2 irrigation wells (5.2 cfs total) in T12S R25E Section 9 SW $\frac{1}{4}$ NE $\frac{1}{4}$  and 10 SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Cassia County

At least two domestic wells (162 and 175 ft. deep) are very close to the proposed wells (perhaps within 1/5 mile from the well sites). Other domestic and irrigation wells are found at varying distances in surrounding sections. Static water levels ranged, at the times of the completion of the wells (1965 to 11/78), from 16 to 101 feet. A drilled unused water table well in an unknown aquifer has been a USGS observation well since 1966; it is 379 ft. deep, is found in Section 9, and has shown a 3.6 ft. drop between March 1981 and March 1982 (water level on March 19, 1982: 95.66 ft. below land surface).

The applicant's own domestic well is quite close to the well site in Section 9 (the 175 ft. deep well mentioned above). This well relies on water from a sand and gravel aquifer located from 112 to 140 feet. The 162 ft. domestic well I also mentioned earlier obtains water from a sand and gravel aquifer found between 140 and 162 feet. While I suspect there is sufficient water to sustain the domestic wells, it would be prudent to protect those relatively shallow aquifers by casing the irrigation wells to the first reasonably thick clay layer below 165 feet. From well logs, it seems there are other, deeper aquifers which are adequately thick and saturated to furnish water to the new wells.

SS:mb

State of Idaho  
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: J. F. [Signature] APPLICATION NUMBER: 45-7498 MONTGOMERY, George &/or Arto

CHECK:

- Source.
- Point of diversion.
- County.
- Quantity of water and period of use.
- Description of diverting works.
- Time required for beneficial use of water.
- Place of use or acres irrigated.
- Map.
- Signature.
- Fee.
- Yes  No Field check required.
- Yes  No Critical groundwater area.
- Yes  No Request dam safety information. Sent by: \_\_\_\_\_ Date: \_\_\_\_\_
- Yes  No In form to receipt.

Field check by: \_\_\_\_\_  
Date: \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SEND COPIES TO:

- Idaho State Health Department. Copies sent by: \_\_\_\_\_ Date: \_\_\_\_\_
- Idaho Fish and Game Department. \_\_\_\_\_
- Idaho Department of Lands. \_\_\_\_\_
- U.S. Bureau of Land Management. \_\_\_\_\_
- U.S. Forest Service. \_\_\_\_\_
- Other \_\_\_\_\_

PROCESSING:

- Yes  No Platted by: J Map No. 60-30
- Yes  No Other rights on same place of use. 45-2818 (Amph. rights)
- Yes  No In form for advertising.
- Yes  No Final date for protests: 4/28/82 ✓
- Yes  No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- Affidavit of publication received. Date: 4/21/82 ✓
- Application published correctly. If not, record action taken: \_\_\_\_\_
- Fee amount, receipt date & number, recorded on application.
- Publication dates and paper, recorded on application.
- Protests, dates, withdrawal, etc., recorded on application.
- Recommendation & initial, recorded on application.
- Yes  No Measuring device required.
- Yes  No Access port required.
- Yes  No Will water be delivered by watermaster? If yes, what district? \_\_\_\_\_
- 3/5/82 Date of priority recommended.
- Special conditions of approval or cover letter. OIC

NOTE: The application is not in OSWA it is yet to be done. Location 45/43 boundary.  
By: ADA Date: 4/28/82

STATE OFFICE REVIEW:

[Signature] OIC  
**RECEIVED**  
APR 30 1982

See attached sheet for more information.  
By: \_\_\_\_\_ Date: \_\_\_\_\_

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

45-2498-

MONTGOMERY, GEORGE &/or ARLD

ALBION, ID 83311

Source: GROUNDWATER

Date Filed: 03/05/1982

Amount: 5.20 CFS

Diversion Point: SHNE Sec 09 T 12S R 25E SHNW Sec 10 T 12S R 25E,  
CASSIA Co.

Use: IRRIGATION (5.20 CFS) from 03/15 to 11/15

Place of Use: SHNE SHNW SENW Sec 09 T 12S R 25E NNINE SHNE SWSW SESW SWSE  
Sec 10 T 12S R 25E FOR 260 ACRES

Diversion Means: WELL, PUMP, SPRINKLER

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301 and received on or before APRIL 12, 1982.

R. KENNETH DUNN

Director

Published 3/25 & 4/1/1982.

82 80

**NOTICE OF APPLICATION  
FOR WATER RIGHT**

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho

45-7498

MONTGOMERY, GEORGE E./or ARLO, ALBION,  
ID 83311 Source GROUNDWATER Date filed  
03/05/1982 Amount 5.20 CFS Diversion Point  
SWNE Sec. 09 T. 17S R. 25E SWNW Sec. 10 T. 12S R.  
25E, CASSIA Co. Use IRRIGATION (5.20 CFS) from  
03/15 to 11/15 Place of Use SWNE SWNW SENW  
Sec. 09 T. 12S R. 25E MWNE SWNE SWSW SESW SWSE  
Sec. 10 T. 17S R. 25E FOR 250 ACRES Diversion  
Means WELL, PUMP, SPRINKLER.

If issued, the permit(s) will be subject to all  
prior water rights. Protests against the granting of  
any permit must be filed with the Director of the  
Idaho Department of Water Resources, 1041 Blue  
Lakes Blvd. North, Twin Falls, Idaho 83301 and  
received on or before APRIL 12, 1982.

A. KENNETH DUNN  
Director

Published in the South Idaho Press March 25 and  
April 1, 1982

*ad*  
*may*  
*2/2/82*

---

S T A T E O F I D A H O  
DEPARTMENT OF WATER RESOURCES  
Southern Region

---

1041 Blue Lakes Blvd N.

Twin Falls, Idaho 83301  
(208) 734-3578

MARCH 16, 1982

South Idaho Press  
P.O. Box 190  
Burley, Idaho 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. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. 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 billings to this office before APRIL 12, 1982.

Yours truly,

Mary R. Hill  
Secretary

Encl.

---



SOUTH IDAHO PRESS  
BURLEY, IDAHO

AFFIDAVIT OF PUBLICATION

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

Mary Summers, being first

duly sworn, deposes and says that he is the

..... Clerk..... of the South Idaho Press, a daily newspaper published at Burley, Idaho, in the county aforesaid and that the paper is of general circulation herein. Deponent further states that the printed notice attached hereto was duly published according to law in the regular editions of

The South Idaho Press for .....two..... consecutive weeks, commencing with the issue dated March 25th..... 19..82, and ending with the issue dated April 1st..... 19..82.

*[Handwritten signature]*

Subscribed and sworn to before me

this *22nd* day of *April*

19*82*

*[Handwritten signature]* Notary Public

Cost of Publication \$ *17.55*

Notary Fee .....

Total Cost \$ *17.55*

NOTARY PUBLIC RESIDING AT  
BURLEY, IDAHO. MY COMMISSION  
EXPIRES JUNE 21, 1985.

82-80

NOTICE OF APPLICATION  
FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho.

AS-7498

MONTGOMERY, GEORGE E./or ARLO, ALBION, ID. 83311. Source: GROUNDWATER. Date Filed: 03/05/1982. Amount: 5.20 CFS. Diversion Point: SWNE Sec. 09 T 12S R 25E SWNW Sec. 10 T 12S R 25E, CASSIA Co. Use: IRRIGATION (5.20 CFS) from 03/15 to 11/15. Place of Use: SWNE SWNW SEHW Sec. 09 T 12S R 25E NWNE SWNE SWSW SESW SWSE Sec. 10 T 12S R 25E FOR 260 ACRES. Diversion Means: WELL, PUMP, SPRINKLER.

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho 83301 and received on or before APRIL 12, 1982.

A. KENNETH DUNN  
Director

Published in the South Idaho Press March 25 and April 1, 1982.

*[Handwritten signature]*  
RECEIVED

Department of Water Resources  
Twin Falls, Idaho