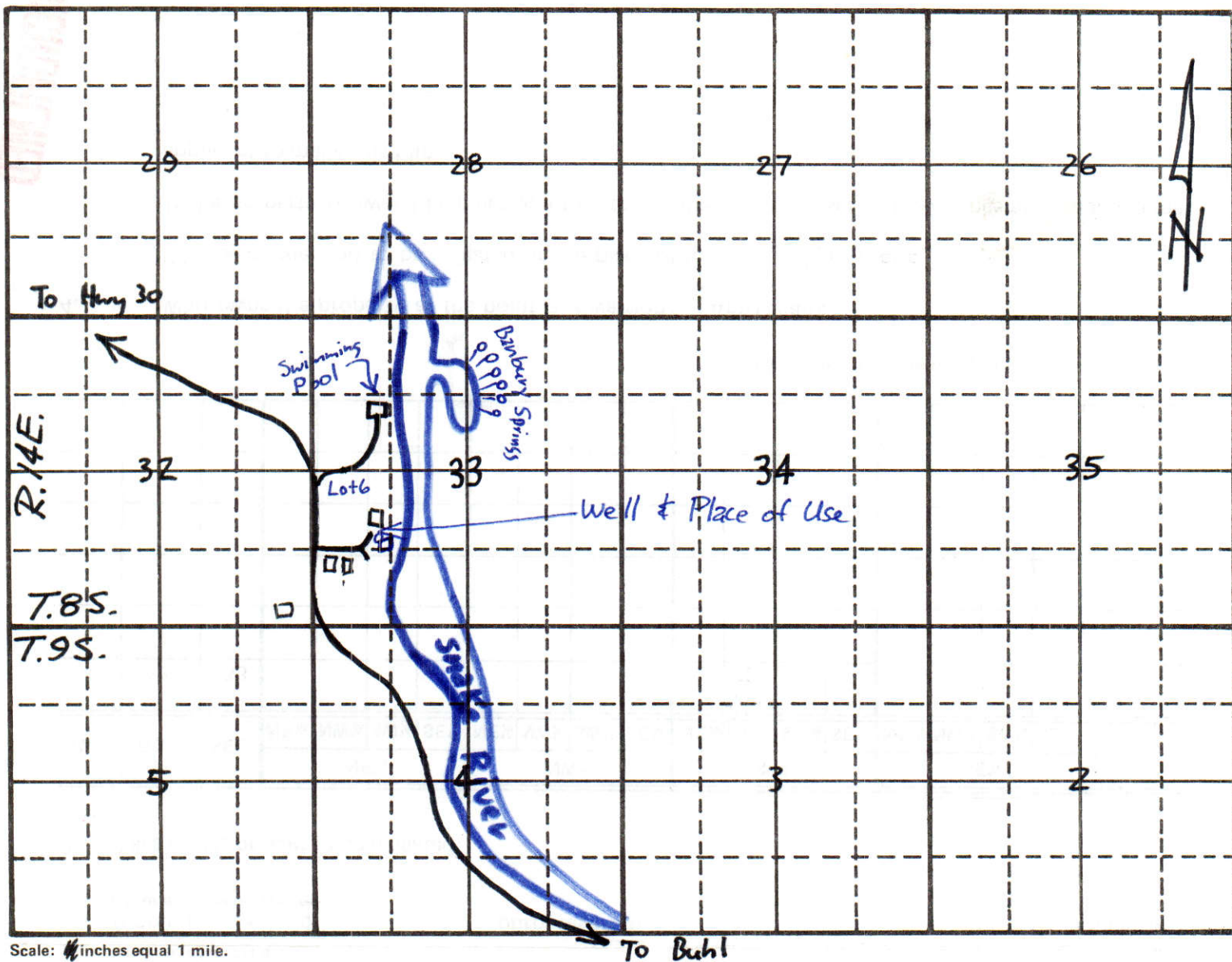


Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 1/8 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Res., this 8 day of April, 1981.

Darwin J. Collier
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by AA Fee = \$20.00

Received by manya Date 4/13/81 # 16959

Publication prepared by _____ Date _____

Published in _____

Publication dates _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

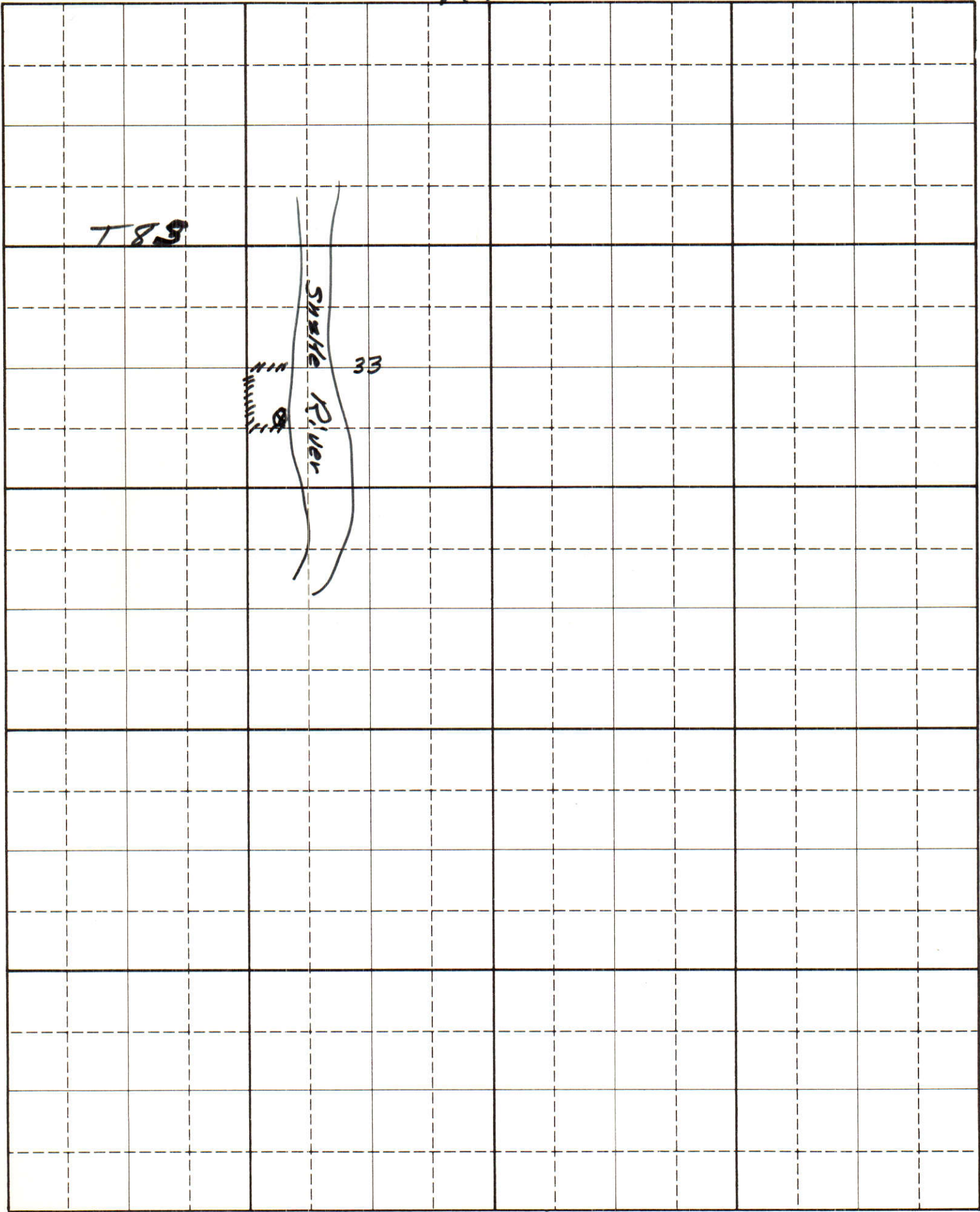
I, A KENNETH DUNN, Director of the Department of Water Resources hereby

APPROVE THE ABOVE referenced Amendment For Permit No. 47-7279

Witness my hand this 26 day of June, 19 81.

A. Kenneth Dunn
Director

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.

Darwin J. Collier
(Applicant)

AFFIDAVIT of PUBLICATION

RECEIVED

NOV 5 1974

Department of Water Resources
Southern District Office

STATE OF IDAHO }
County of Twin Falls } ss.

I, **Robert E. Bailey**, do solemnly swear that I am the printer and editor of THE BUHL HERALD, a weekly newspaper of general circulation, published once each week at Buhl, Idaho; that the notice attached hereto was published in said newspaper two consecutive weeks, the first publication having been made on the 24th day of October, 1974, and the last publication having been made on the 31st day of October, 1974; that said notice was published in the regular and entire issue of every number of the paper during the period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in **Buhl, Twin Falls County, Idaho**, for a period of more than 78 weeks prior to the first publication of the attached notice.

Subscribed and sworn to before me this

31st day of October, 1974

Robert E. Bailey

Notary Public.

Buhl, Idaho

Residing at

April 17, 1977

My Commission Expires

Legal Department

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Darwin J. Collier Hagerman, Idaho, has on 10-17-74 submitted Application No. 47-7279 for a permit to appropriate .5 cubic feet per second of water from groundwater by means of well within the NW¼ SW¼, Sec. 33, T 8S, R 14E, B.M., Twin Falls Co. to be used from January 1 to Dec. 31 for heating system and swimming within the NW¼SW¼, Sec. 33, T 8S, R 14E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before 11-11-74.

R. KEITH HIGGINSON
Director

Published in the Buhl Herald on 10-24 and 10-31-74.
(42t2)

O.K. cc
11-5-74

RECEIVED

[illegible]

(Include distance from pump to measuring device, if applicable.)

Point(s) of diversion: (Lot 6) NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec 33, T.8S., R.14E., B.M.

Place(s) of Use

[illegible]

- ☐ Change P.D. as reflected above
- ☐ Change P.U. as reflected above

- ☐ Add P.D. as reflected above
- ☐ Add P.U. as reflected above

☐ None

☒ Other Add Domestic Use

Examiner's Signature

Checked by

Approved by

Date 4/3/81

Date

Date 5/7/81

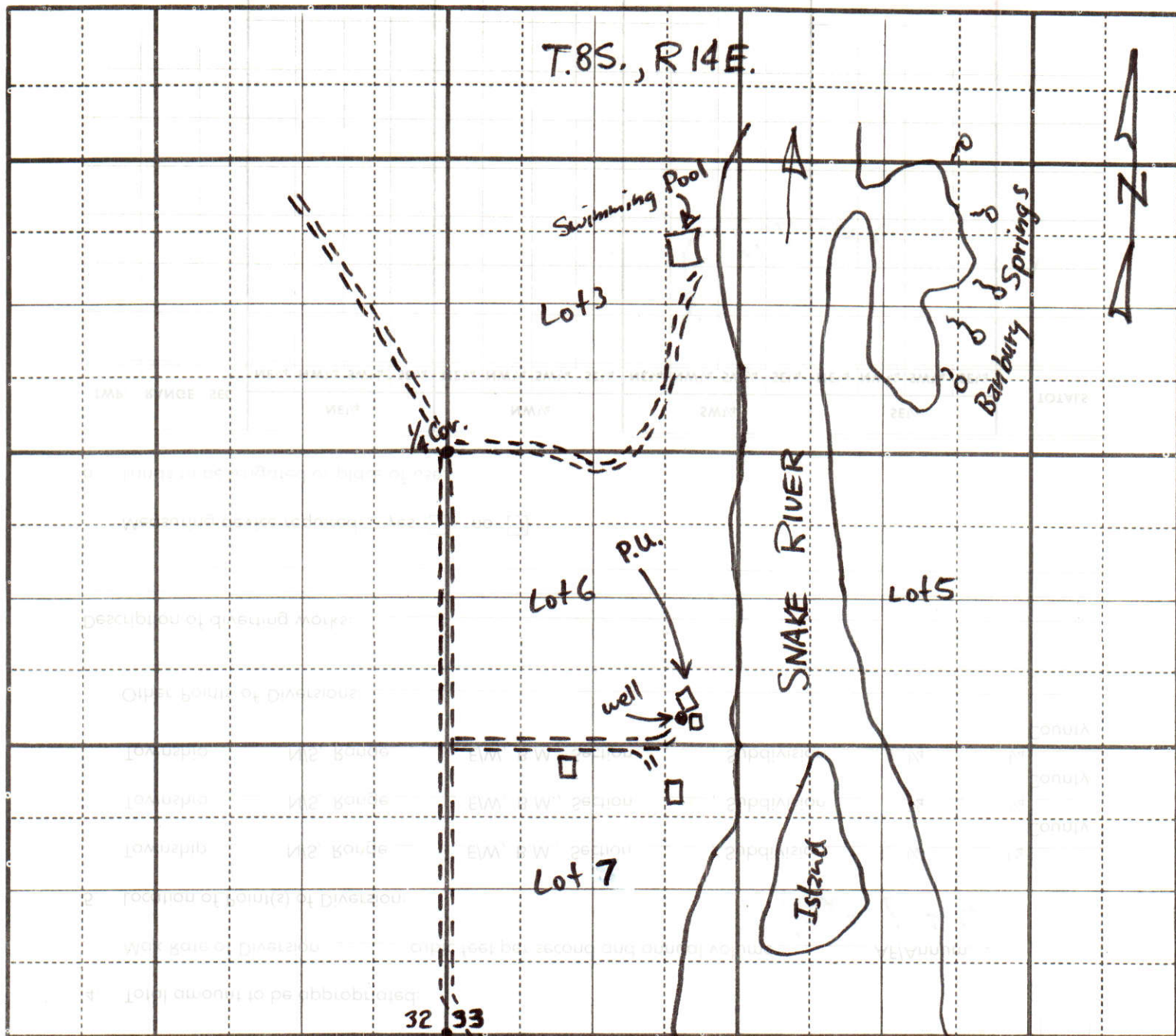
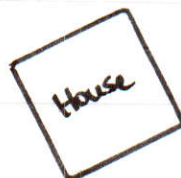


Diagram of System

Note: buried pipeline from well goes to house & garage for heating



Well



3. Water will be used for the following purposes:



3. source of water supply: Groundwater ☐ surface water ☐

Person to contact

Phone

Post office address

Phone

1. Name of permit holder

WATER RIGHT LICENSE

THIS IS TO CERTIFY, that DARWIN J. COLLIER

Total number of acres irrigated _____

Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR AMENDMENT OF A PERMIT

RECEIVED

APR 13 1981

To change the point of diversion and/or the place of use.

Department of Water Resources
Southern District Office

Comes now Darwin J. Collier

of (address) Rt. 3, P.O. Box 315A, Buhl, Idaho, 83316, and represents to the
Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho
No. 47-7279, and requests that the permit and permit map be changed as follows:

(Lot 6)

1. Point of diversion: NW ¼ SW ¼, Section 33, Township 8S, Range 14E, B.M.,
County of Twin Falls. Other points of diversion: None

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount 0.03 for Heating purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre feet per annum)

Amount 0.03 for Domestic purposes from Jan. 1 to Dec. 31 (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)

3. Place of use or land to be irrigated:

TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
8S	14E	33										Lot 6 X							

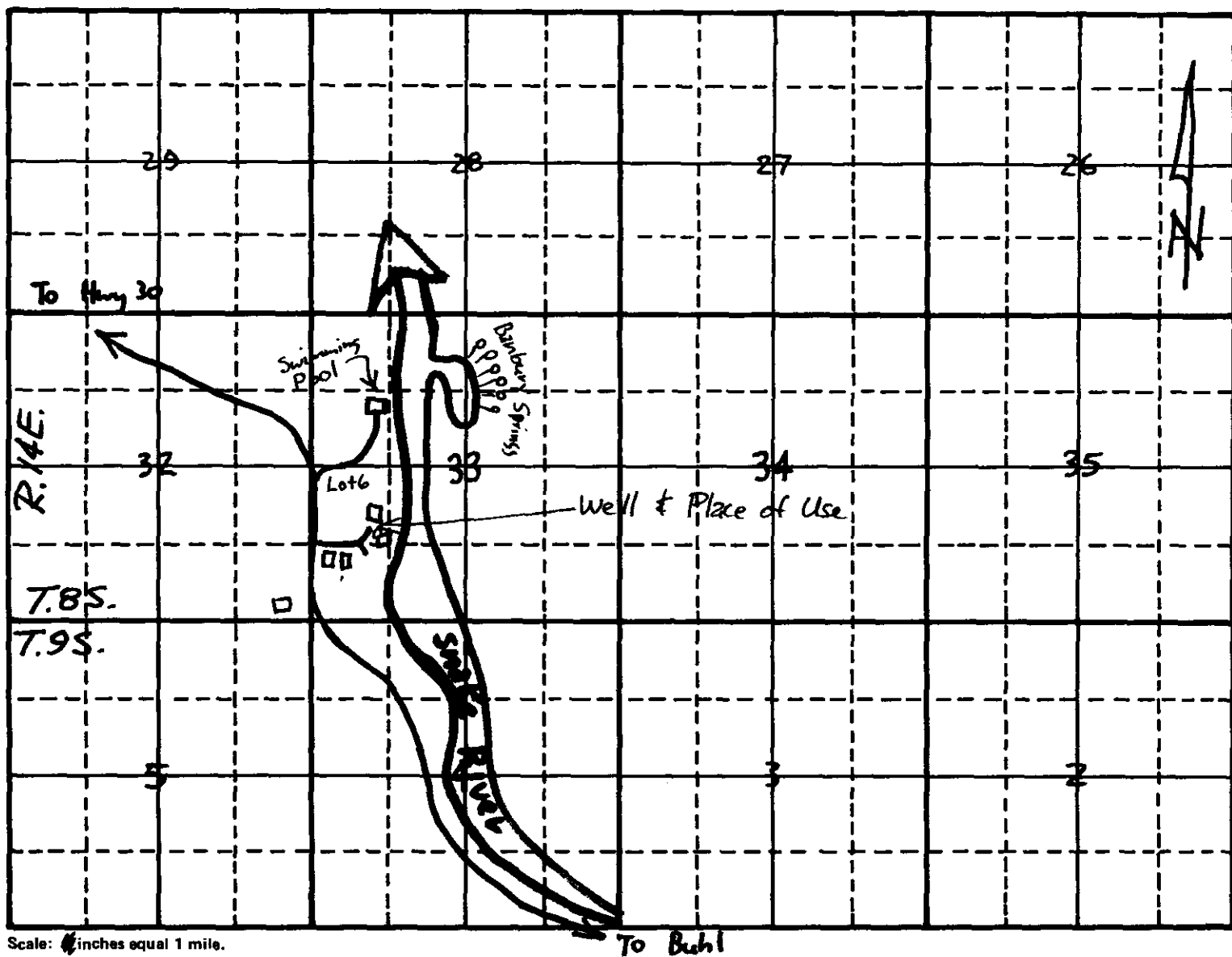
Total number of acres to be irrigated =

4. a. Who owns the property at the point of diversion? Applicant
b. Who owns the land to be irrigated or the place of use? Applicant
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

RECORDED

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.



That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Res., this 8 day of April, 1981.

Darwin Collier
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by AA Fee = \$20.00

Received by man Date 4/13/81 # 16959

Publication prepared by _____ Date _____

Published in _____

Publication dates _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, A KENNETH DUNN, Director of the Department of Water Resources hereby

APPROVE THE ABOVE referenced Amendment For Permit No. 47-7279

Witness my hand this 26 day of June, 19 81.

A. Kenneth Dunn
Director

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF REMOVAL OF THE MEASURING }
DEVICE REQUIREMENT FOR PERMIT NO. 47-7279 }

ORDER

WHEREAS, it has been determined by the Department of Water Resources that a measuring device is not required at this time for a determination of the quantity of water appropriated under said permit;

IT IS, THEREFORE, HEREBY ORDERED that the condition of approval that a measuring device of a type approved by the Department be permanently installed and maintained as part of the diverting works, be and is, REMOVED from said permit.

Dated this 28th day of August, 1978.


L. GLEN SAXTON

Chief, Operations Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF CHANGING THE MEASURING
DEVICE REQUIREMENT FOR PERMIT NO. 47-7279 }

ORDER

WHEREAS, the above numbered permit was approved with the condition that a measuring device of a type approved by the Department be permanently installed and maintained as part of the diverting works; and,

WHEREAS, on July 1, 1978, the Department adopted a new water measurement condition which states: "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"; and,

WHEREAS, the former condition required the permit holder to purchase and install a measuring device or hire a professional engineer to certify the rate of diversion; and,

WHEREAS, the measuring device condition effective July 1, 1978, requires less capital expenditure by the permit holder; and,

WHEREAS, to be equitable to holders of permits issued prior to July 1, 1978, the new condition should be retroactive;

NOW THEREFORE, it is hereby ordered that the condition of approval of this permit related to water measurement is hereby changed as follows: "The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access port or other device as specified by the Department".

Dated this 18th day of August, 1978.


C. STEPHEN ALLRED
Director

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 47-7279 in the name of) MEMORANDUM DECISION
DARWIN J. COLLIER.) AND ORDER

Based upon the information in the records of the Department, the Director makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1) Title 42, Chapter 1 and 2, Idaho Code specifies that all waters of this state are subject to appropriation. The waters in question are public waters and subject to appropriation under the laws of Idaho.

2) Idaho Code, §42-203 provides four grounds for a protest:

- a) reduce quantity of water under existing rights;
- b) water supply is insufficient for purpose sought;
- c) appropriation for delay and speculation; and
- d) the applicant lacks the financial resources to complete the work involved.

The protestants have not established any grounds for denial of the requested permit.

3) The Director of the Department of Water Resources has no jurisdiction over the subject matter presented by the protestant regarding any prior contract rights.

4) The water beneath the land of the applicant was not appropriated by anyone prior to the applicant.

5) The state's ownership of ground water was affirmed by §42-226, Idaho Code.

6) The applicant requests a permit to appropriate ground water with no mention made of the temperature.

7) Hot water used for space heating and swimming pool operations is subject to the water right permit procedure and is a beneficial use of water.

CONCLUSIONS OF LAW

1) The ground water in question is public water of the State of Idaho and is subject to appropriation.

2) The use of water proposed by this application is a beneficial use.

ORDER

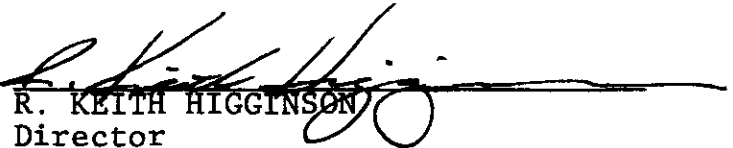
IT IS, THEREFORE, HEREBY ORDERED and Application for Permit No. 47-7279 is hereby APPROVED subject to the following limitations and conditions:

1) That said permit shall be subject to all prior water rights.

2) That proof of construction of works and beneficial use of water shall be submitted on or before October 1, 1978.

3) That a measuring device of a type approved by this Department shall be permanently installed and maintained at the point of diversion.

DATED this 22 day of October, 1975.


R. KEITH HIGGINSON
Director

Identification No. _____

Application No. 47-7279

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Darwin J. Collier
post office address ~~Hagerman, Idaho~~ Rt 3 Box 315A Buhl, ID
2. Source of water supply groundwater which is a tributary of _____
3. a. Location of point of diversion is NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33 Township 8S
Range 14E B.M. Twin Falls County; additional points of diversion if any: _____

- b. If water is not consumed, it will be discharged into Snake River at a point in NW $\frac{1}{4}$
of SW $\frac{1}{4}$ of Section 33 Township 8S Range 14E B.M. Twin Falls Co.
4. Water will be used for the following purposes:
Amount .5 cfs for heating purpose from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. .5 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. _____
well to home heating system and swimming

- b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is 6 inches; proposed depth of well is 200-300 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 3 years.
b. Estimated construction cost is \$ 2,000.00.
8. Description of proposed uses:
a. If water is **not** for irrigation:
(1) Give the place of use of water: NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33 Township 8S
Range 14E B.M.
(2) Amount of power to be generated: _____ hp 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: heating home and swimming pool

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

[illegible]

Total number of acres to be irrigated_____

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

none

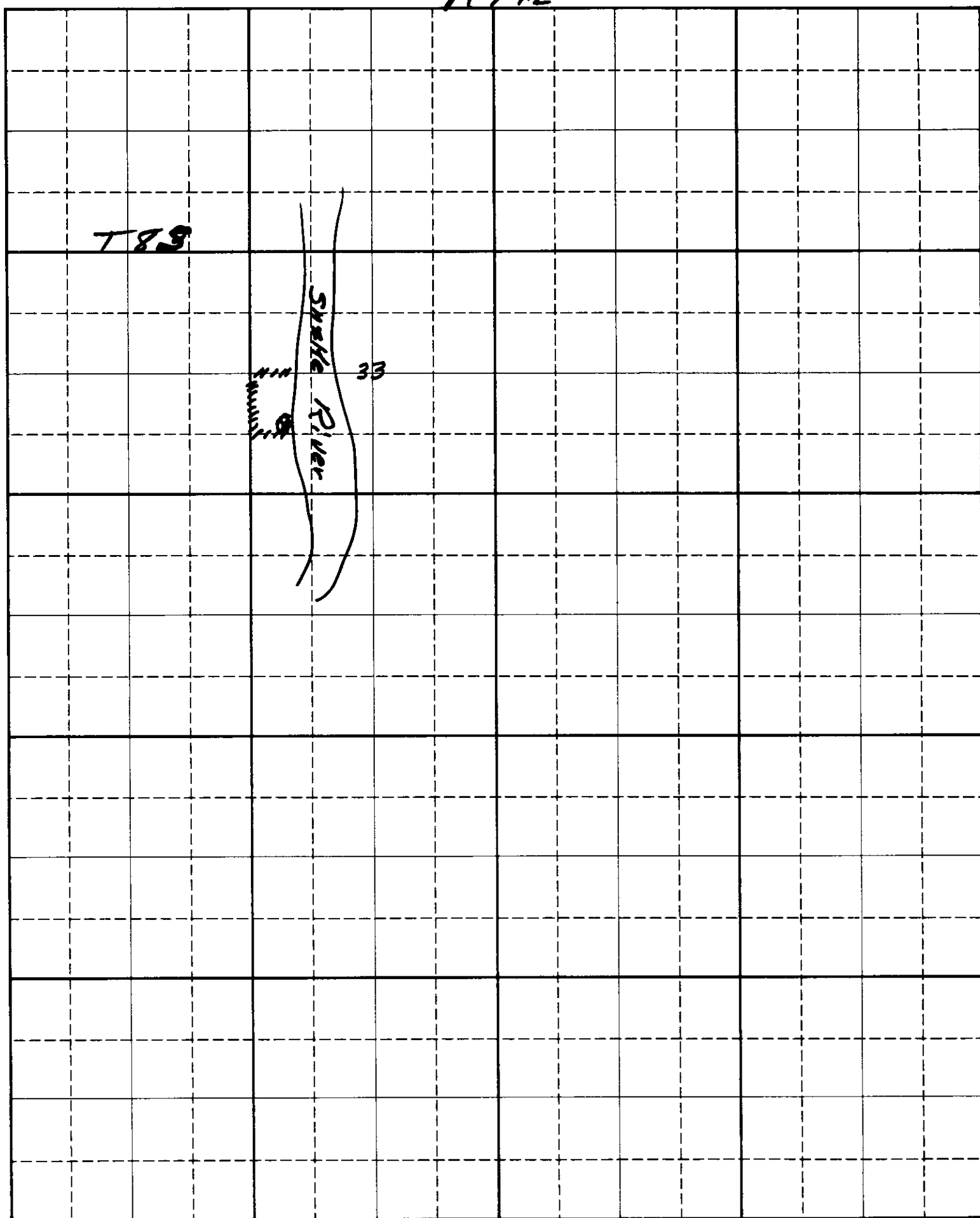
9. a. Who owns the property at the point of diversion applicant

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

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

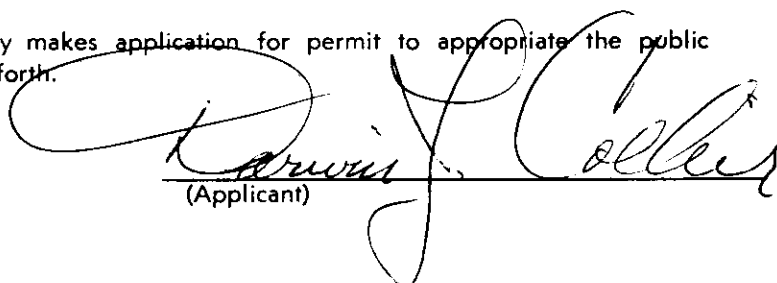
10. Remarks _____

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)

Proposed Priority 10-17-1974

Received by KOF Date 10-17-74 Time 4:15 PM
Preliminary check by MS Fee \$ 25.00 (14622)
Receipted by LT Date 10-17-74
Publication prepared by LT Date 10-17-74
Published in Buhl Herald
Publication dates 10-24 & 10-31-74
Publication approved CC Date 11-5-74
Priority reduced to _____ Reason _____

Protests filed by: Dale Bell

Copies of protests forwarded by CC
Hearing held by _____ Date _____
Recommended for approval denial by _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

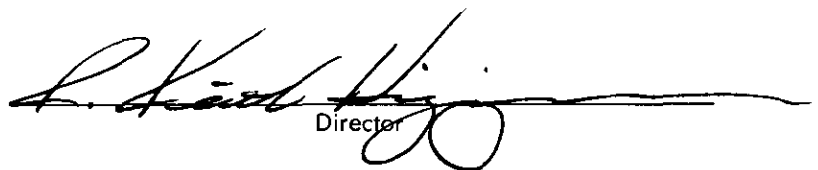
This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 47-7279, and said application is hereby APPROVED.

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 November 1, 19 78.
- c. Other: Pursuant to Memorandum Decision and Order of this date.

2. Denial of said application is for the following reasons: _____

Witness my hand this 22 day of October 19 75.


Director

AFFIDAVIT of PUBLICATION

RECEIVED

NOV 5 1974

Department of Motor Resources
Southern District Office

STATE OF IDAHO }
County of Twin Falls } ss.

I, **Robert E. Bailey**, do solemnly swear that I am the printer and editor of THE BUHL HERALD, a weekly newspaper of general circulation, published once each week at Buhl, Idaho; that the notice attached hereto was published in said newspaper two.....consecutive weeks, the first publication having been made on the 24th.....day of October....., 19.....74....., and the last publication having been made on the 31st.....day of October....., 19.....74.....; that said notice was published in the regular and entire issue of every number of the paper during the period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in **Buhl, Twin Falls County, Idaho**, for a period of more than 78 weeks prior to the first publication of the attached notice.

Subscribed and sworn to before me this

.....31st.....day of October....., 19.....74.....

Robert E. Bailey

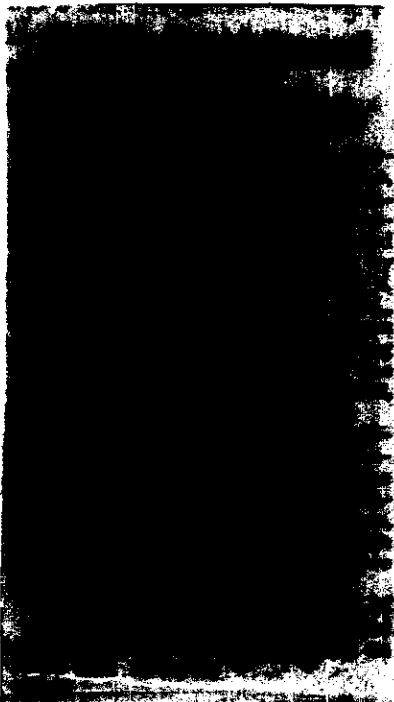
Notary Public.

Buhl, Idaho

Residing at

April 17, 1977

My Commission Expires



O.K. cc
11-5-74

July 8, 1981

Darwin J. Collier
Rt. 3,
P.O. Box 315 A
Buhl, ID 83316

Dear Mr. Collier,

RE: Permit No. 47-7279

Enclosed is a copy of the Water Right License issued on the above referenced Permit, along with a copy of the approved Amendment.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

Enclosure

RECEIVED

INTER-DEPARTMENT MEMO — 1

APR 17 1981

DATE 4/16/81

FROM Loren Holmes

Department of Water Resources

TO ~~State Office~~
— Robyn —

SUBJECT Re-exam of 47-7279

The Permit has been re-examined & our application
for amendment (attached) has been filed.

LA

SIGNATURE

RECEIVED

State of Idaho
DEPARTMENT OF WATER RESOURCES
FIELD REPORT

47-7279

Permit No.

CONTACT WITH PERMIT HOLDER

	DATE	INITIALS	REMARKS
☐ Appointment letter mailed:			
☐ Telephone call made: (List Telephone No. used)	4/3/81	ADM	543-5104
☐ Appointment scheduled for: (Date, time, location)	2/9/79 4/3/81	ADM ADM	

EXAMINATION

Date 2/9/79 Re-exam 4/3/81 Accompanied by Mr. Collier
Gary Funderburg Total Q measured 0.03 cfs
If source is surface water, estimate total flow of source _____
Methods of measurement Bucket Meets Permit requirements? Yes

Measurement calculations: Meas. made 2/9/79
Meas. 10gts in 10.0 sec. $\Rightarrow \frac{[(10\text{gts}/10\text{sec}) \times (60\text{ sec/min})]}{[(4\text{gts/gal}) \times (448.8\text{ gpm/cfs})]} = \textcircled{0.03\text{ cfs}}$ capacity
Vol. = $0.03\text{ cfs} \times 1.9835\text{ A.F./day/cfs} \times 365\text{ days/Ann.} = 21.7\text{ A.F./Ann.}$

WELL/DIVERSION* NO.	HP	MOTOR MAKE	MOTOR SERIAL NO.	PUMP MAKE	PUMP SERIAL NO.	MEASURING DEVICE TYPE	CONDITION OF MEAS. DEV.	REMARKS
		Well is flowing						

System Description Well with gate valve delivers to house and garage via buried plastic pipelines.

*Code with map on reverse side. Disregard code if only one.

RECOMMENDED AMOUNTS

USE	Irrigation requirement = _____ AFA/Acre			
	Q (cfs)	V (afa)	FROM	TO
Domestic	0.03 ✓	1.2 ✓	1/1	12/31
Heating	0.03 ✓	20.5 ✓	1/1	12/31
Total	0.03 ✓	21.7 ✓		

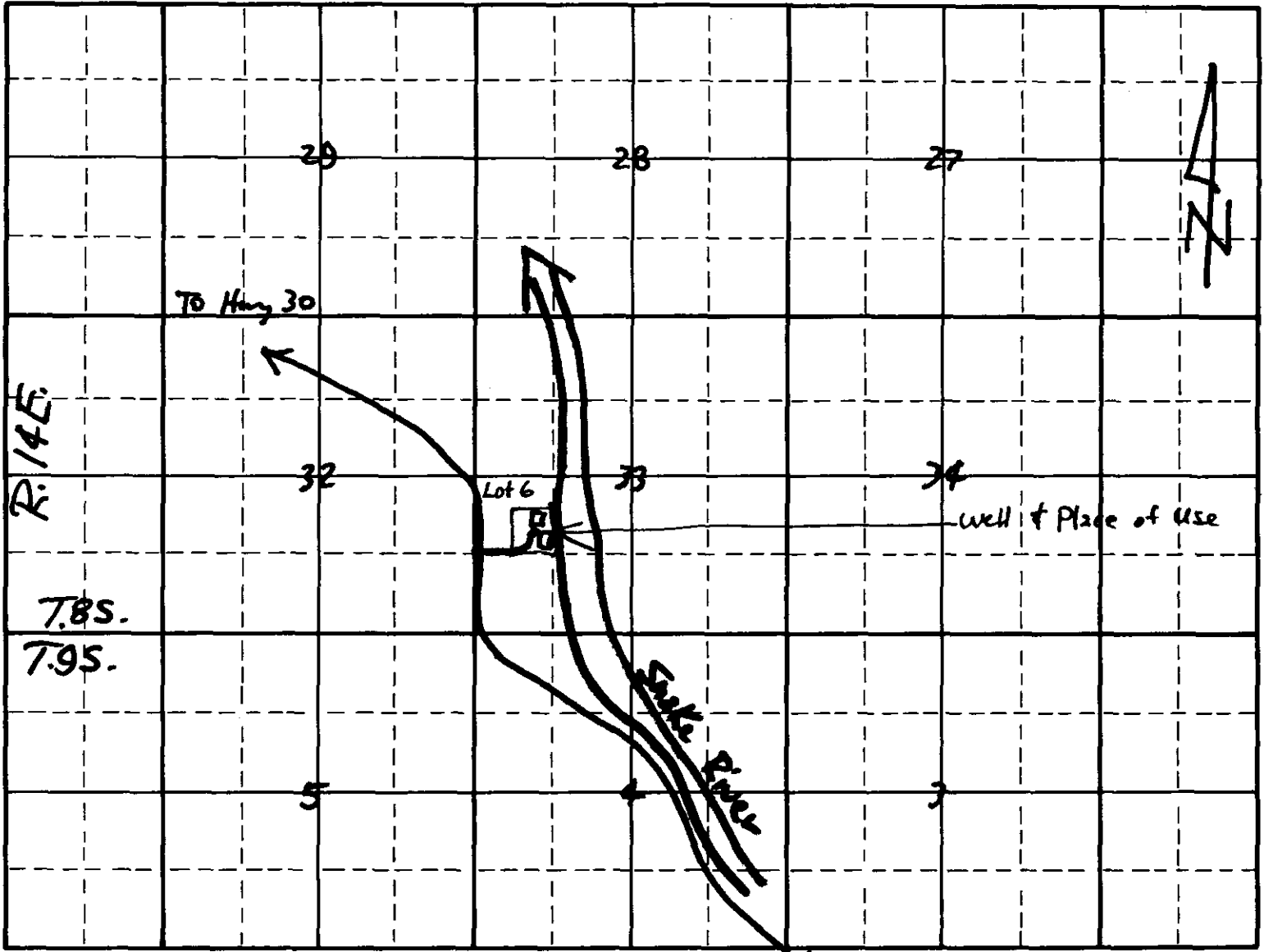
Remarks Original exam made 2/9/79; during this exam Mr. Collier stated that well was approx. 80 ft. deep and temp. of water was 110°F with 40 psi registering on gauge @ well when meas. was made.

Water is used for heating of garage and house; water also used for hot water domestic use at the house and garage. Domestic use includes water for small pool.

Re-exam 4/3/81 was made to clarify the uses recognized under exam on 2/9/79; pursuant to re-exam it is recommended that domestic use be added by amendment with no change in priority.

MICROFILMED

MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM To Buhi

(Include distance from pump to measuring device, if applicable.)

Point(s) of diversion: (Lot 6) NW 1/4 SW 1/4, Sec 33, T. 8S., R. 14E., B.M.

Place(s) of Use

TWP.	RGE.	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8S.	14E.	33																	

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 Add Domestic Use

Examiner's Signature John P. Merrill

Checked by [Signature]

Approved by [Signature]

Date 4/3/81

Date 5/7/81



Edwin V. Boone
Assistant Director

C. Stephen Allred
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION

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

April 6, 1981

Darwin J. Collier
Route 3
P.O. Box 315A
Buhl, Idaho, 83316

RE: Permit 47-7279

Dear Mr. Collier:

Please find enclosed a copy of the re-exam report I completed pursuant to our meeting on April 3, 1981 and a draft application for ammendment of your permit.

During our discussion on April 3, 1981 I told you I would draft a new application for permit which would apply for domestic purposes; however, I have found that the domestic use can be added to your old permit by ammendment without changing the priority date of your old permit. This route now seems the best so I drafted the application for ammendment for your review.

Please sign the ammendment on the back and return it to our office with the \$20.00 filing fee and our office will recommend your permit 47-7279 be licensed for heating and domestic purposes as described on the enclosed exam report.

If you have any questions please feel free to contact me at our office.

Sincerely,

Allen Merritt
Sr. Water Resource Analyst

Enc:

Microfilm

MEMO

RECEIVED

MAR 4 1981

Department of Water Resources
Southern District Office

To: *Loen - Southern*

From: *Relyn*

Date: *3/2/1981*

Herewith forwarding field exam report for Permit No. *47-7279*

Cannot issue license until the following is determined:

- ☐ Amount of water measured
- ☐ Location of point of diversion
- ☐ Place of use for domestic
- ☐ Place of use for stockwater
- ☐ Place of use for irrigation (number of acres in each 40-acre subdivision)
- ☐ Installation of measuring device
- ☒ Permit holder does not agree with findings of examiner, please re-examine
- ☐ Other

Returning as per your request

RECEIVED

Department of Water Resources
Southern District Office

Permit No. 47-1279
Examination for 6/12

[illegible]**TOTAL AC**

MICROFILMED

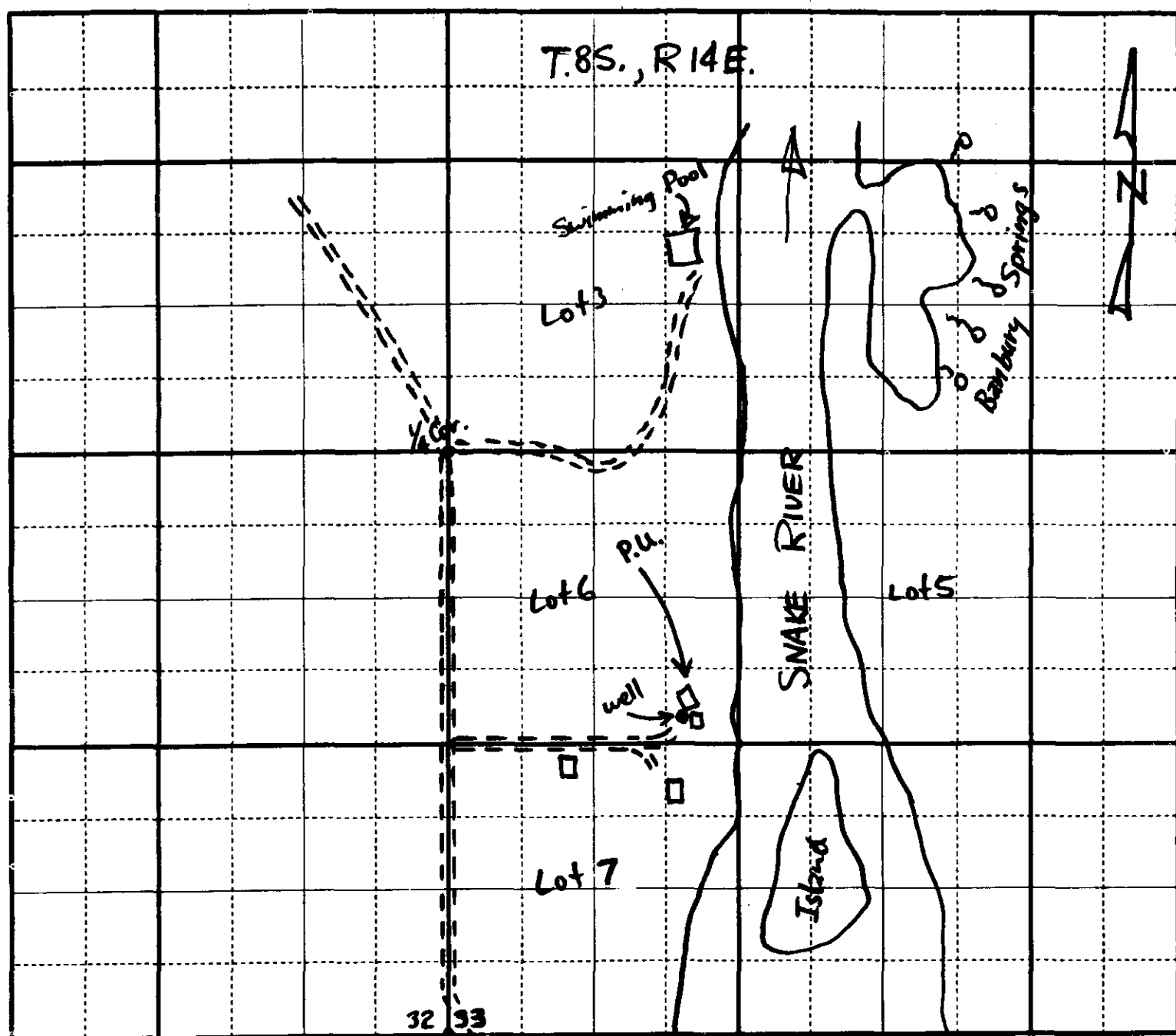
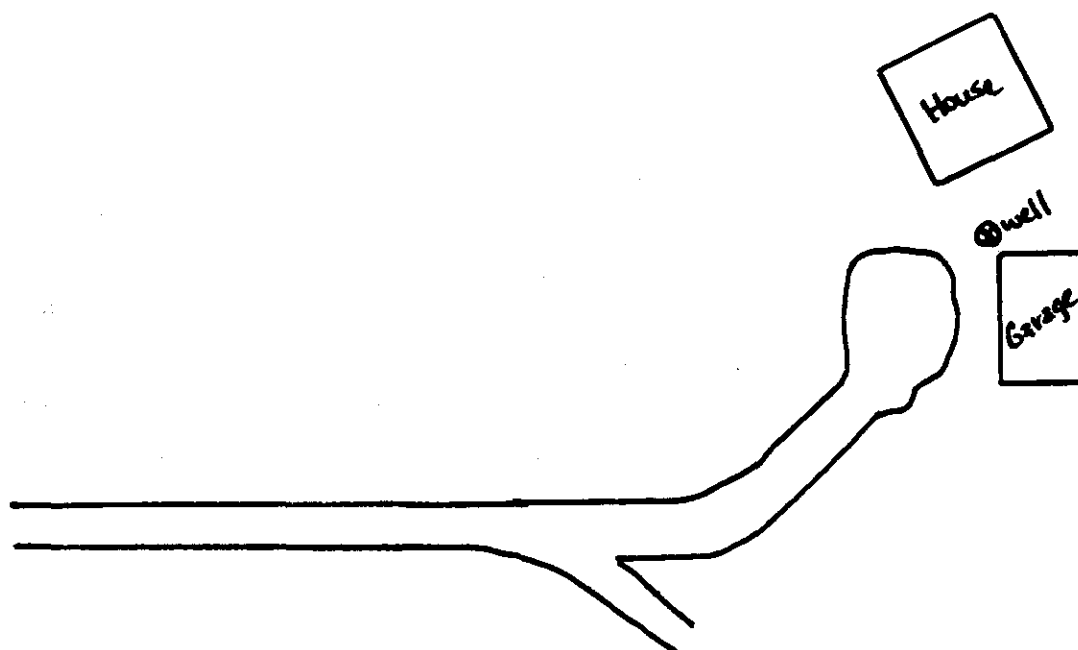


Diagram of System



Note: buried pipeline
from well goes
to house &
garage for
heating

DATE OF EXAM 2-9-79

ACREAGE

Found _____
Recommended _____

Irrigation Requirement _____ Ac Ft/Ac

USE

Irrigation Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____
Domestic Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____
Livestock Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____
Heating Q= 0.033 cfs U= 23.9 A.F./Ann. From Jan. 1 to Dec. 31
21.7

Is water co-mingled? yes _____ no ☒

Name source: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Exchange? yes _____ no ☒

Name source exchanged with: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of injection: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of exchange: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Total Q measured 0.033 cfs Method of measurement Bucket

Total Q recommended 0.033 cfs Meter No. _____ Type _____ Condition _____

Total V recommended 23.9 A.F./Ann.

Recommended Amendments:

P.D. _____
Place of Use _____
Other _____
None ☒ (Note: NW 1/4 SW 1/4 is Gov't Lot 6)

MEASUREMENT CALCULATION:

10 gts/10sec by bucket method

$$Q = [(10 \text{ gts}/10 \text{ sec}) \div 4 \text{ gts/gal}] \times 60 \text{ sec/min} \div 450 \text{ gpm/cfs} = \underline{0.033 \text{ cfs}}$$

$$U = 0.033 \text{ cfs} \times 1.98 \text{ A.F./day/cfs} \times 365 \text{ day/Ann.} = \underline{23.9 \text{ A.F./Ann.}}$$
$$.03 \times 1.9835 \times 365 = \underline{21.7} \checkmark$$

SYSTEM DESCRIPTION:

Well with gate valve delivering by open discharge via three
1" plastic pipelines into buried pipeline system which
heats 1 house and 1 garage.

REMARKS:

Applicant was present during exam. Mr. Collier stated that
well was approx. 80 ft. deep and temp. of water was
110° F. There was 40 psi registering on gauge on well
gate valve.

Examiner's Signature _____

Date 2-12-79

Checked by _____

Date 2-12-79

Approved by _____

Date 2/25/1981

No Overlapping Rights

84
ROUGH DRAFT

State of Idaho
Department of Water Resources

10 Day
ROUGH DRAFT

WATER RIGHT LICENSE

License of Water Right No. 47-7279 Priority 10-17-1974 Amount 0.03 cfs

THIS IS TO CERTIFY, that E Darwin J. Collier
of Rte 3 Box 315A, Buhl, Id, has complied with the terms and conditions of Permit
No. 47-7279 issued pursuant to Application for Permit dated 10-17-1974
and has submitted proof to the Department of Water Resources on 10-18-1976
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 0.03 cfs of water from A ground water source
tributary to —, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>heating</u>	from <u>1-1</u> to <u>12-31</u>	at <u>0.03</u> cfs and	~~23.9 AF~~ <u>21.7 AF</u>
from	to	at	cfs and
from	to	at	cfs and

(both dates inclusive)

Subject, however, to the condition that no more than 0.03 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
~~23.9~~ 21.7 acre feet per year, said waters to be diverted within the (Lot 6) NW 1/4 Sec. 33
T. 8S R. 14E in the County of Twin Falls

Description and location of place of use:

Twp.	Range	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
8S	14E	33									Lot 6 X								

~~No water being diverted~~

Total number of acres irrigated

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this _____ day of _____, 19____.

ROUGH DRAFT
Director



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

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

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

February 26, 1981

Darwin J. Collier
Rt. 3, P.O. Box 315A
Buhl, Idaho 83318

Dear Mr. Collier,

A representative of this Department has made an examination of the works covered by your Permit No. **47-7279**, and has found the following:

Amount of water that can be recognized as beneficially used under
Idaho law: **.03 cfs** Source: **groundwater**

The maximum quantity diverted shall not exceed **21.7** acre feet per year.

Point(s) of diversion: **(Lot 6) NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, Twp. 8S, Rge. 14E, B.M.**

Beneficial use: **Heating use within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ (Lot 6), Sec. 33, Twp. 8S,
Rge. 14E**

Priority date established: **October 17, 1974**

Conditions (if any):

If you do not concur with these findings please contact us within 10 days, otherwise a water license will be issued as set forth above.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
State House
Boise, Idaho 83720



RETURNED
TO
WRITER
UNDELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

Department of Water Resources

NOV 21 1978

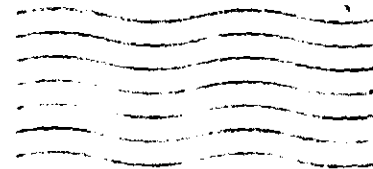
RECEIVED

Darwin J. Collier
Route 3, P. O. Box 315A
Buhl, ID 83302

*Contacted Assessor
12-4-78*

new address:

Hagerman, Id 83332



MICROFILMED



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

November 15, 1978

Darwin J. Collier
Route 3, Box 315A
Boise, ID 83316

Dear Mr. Collier:

Re: Permit No. 47-7279

Enclosed is a copy of the Order removing the measuring device requirement.

We acknowledge receipt of the affidavit 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. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

If you have any questions regarding the field examination, please contact our regional office in Twin Falls.

Sincerely,

RITA FLECK
Water Rights

SEND A MEMO TO THE DISTRICT OFFICE ADVISING THEM OF THE CHANGE IN THE
MEASURING DEVICE REQUIREMENT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

PROOF OF APPLICATION
OF WATER TO BENEFICIAL USE

OCT 18 1978

Department of Water Resources

1. a) Name of permit holder DARWIN J. Collier
b) Post office address RT. #3 P.O. Box 315A Buhl Idaho
2. Permit number 147-7279
3. Date of priority that you are prepared to establish Oct. 17, 1974
4. a) Source from which water was appropriated well
b) Location of the point of diversion: N/W 1/4 S/W 1/4, Section 33
Township 8 S., Range 14 E Boise Meridian. Other points of diversion: _____
5. a) The amount of water and use to which the water has been applied:
Amount 15 CU. FTS. for _____ purposes from Jan 1 to Dec. -31 incl.
(cfs &/or acre-feet per annum) (month-day) (month-day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs &/or acre-feet per annum) (month-day) (month-day)
Amount _____ for _____ purposes from _____ to _____ incl.
(cfs &/or acre-feet per annum) (month-day) (month-day)
b) Total amount appropriated _____ cfs and/or acre-feet per annum.
c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: _____
6. If the means of diversion and conveyance are owned by someone other than the permit holder:
a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____
b) Describe the agreement of understanding by which you take water from the works: _____
7. a) Briefly describe the works for diverting and conveying the water to the place of use, (if from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch):
5" well Casing
b) Describe the provision for making a measurement which you have at your point of diversion: (i.e., installed measuring device, access point, other)
5" Valve (gate)

Examined 10/23/78

c) Give well driller's name and address and the date the well was completed:

Heating (for Recreation (Swimming))

[illegible]

Total number of acres irrigated

Oct. 16, 1978
(Date)

(Signature)

Barbara Lucille Clark
Notary Public
Residing at Hagerman

My commission expires 9-15-80

D.J. Collier
Rt. #3 P.O. B. 315A
Buhl, Idaho 83316



Dept. of Water Resources
Statehouse

Boise Idaho

83720



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

CERTIFIED MAIL

August 31, 1978

100426

Re: Permit No. 47-7279

Darwin J. Collier
Hagerman,
Idaho 83332

Dear Mr. Collier:

One of the conditions of approval of your water Permit No. 47-7279 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before November 1, 1978. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted.

Either the beneficial use affidavit or a request for an extension of time must be received by this Department on or before the above mentioned date, otherwise, the permit will lapse and be of no further force or effect.


RITA FLECK
Water Rights

Encl: Proof affidavit
Order

RECEIVED
SEP 11 1978
BOISE, IDAHO

October 24, 1975

Re: Permit No. 47-7279

Darwin J. Collier
Hagerman,
Idaho 83332

Dear Mr. Collier:

Enclosed is a copy of your approved Application for Permit No. 47-7279 along with the Memorandum Decision and Order. We direct your attention to the conditions of approval as listed on the third page of the order.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:rb

Enc.

cc: Letter & order
John C. Hapworth, Attorney
Dale Bell, Protestant

April 11, 1975

Re: Application for Permit No. 47-7279 - Darwin J. Collier

Hepworth, Nungester, Felton & Hart
Attn: John C. Hepworth
1020 Main, Professional Center
Buhl, Idaho 83316

Dear Mr. Hepworth:

We have received your petition to reset the hearing on the protest of Application for Permit No. 47-7279 in the name of Darwin J. Collier.

We do not believe, due to the nature of the protest, that any useful purpose would be served by a formal hearing. Our conversation with you indicates that the issues that you raised are points of law, and therefore, could be argued by submitting a brief on the subject. Therefore, we are delaying any further action on this application for 15 days to allow you to submit the briefs concerning the effects that the contract has upon the granting of a water right for Mr. Collier.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jg

INTER-DEPARTMENT MEMO — 1

RECEIVED

DATE April 8, 1975

APR 10 1975

Department of Water Resources

FROM Bob Haynes

TO Bob Fleenor

SUBJECT RE: Darwin J. Collier - Application No. 47-7279

Attached is a petition from John Hepworth for re-hearing on Collier application.

SIGNATURE

LAW OFFICES
HEPWORTH, NUNGESTER, FELTON, AND HART
PROFESSIONAL CENTER
1020 MAIN
AREA CODE 208
PHONE 543-4368
BUHL, IDAHO 83316

RECEIVED

APR 8 1975

Department of Water Resources
Southern District Office

JOHN C. HEPWORTH
WM. L. NUNGESTER
MICHAEL H. FELTON
J. WILLIAM HART

April 7, 1975

Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Re: Permit No. 47-7279

Gentlemen:

Enclosed is the original petition to reset hearing on protest of Dale Bell on Application for Permit No. 47-7279.

Very truly yours,

HEPWORTH, NUNGESTER, FELTON & HART



Wm. L. Nungester

WLN:bh

Encl.

RECEIVED

APR 8 1975

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

Department of Water Resources
Southern District Office

* * * * *

IN THE MATTER OF PROTEST AGAINST APPROVAL) PETITION TO RESET
HEARING ON PROTEST
OF APPLICATION FOR PERMIT NO. 47-7279 in) OF DALE BELL ON
APPLICATION FOR
the name of DARWIN J. COLLIER) Permit No. 47-7279

* * * * *

The petition of Dale Bell, by and through his attorney,
John C. Hepworth, alleges as follows:

That an application was made by Darwin J. Collier, being
Application No. 47-7279, with the Department of Water Resources;

That the application was protested by Dale Bell, on the
grounds and for the reason that the protestant owned the hot water
rights in connection with the land upon which the proposed well
was to be drilled or, in the alternative, that the applicant was
precluded from drilling for water beyond a certain temperature
as a result of contract rights established in connection with the
land owned by the applicant, which contract rights run with the
land.

That a hearing was scheduled on the protest for Wednesday,
April 2, 1975, at 1:00 p.m. That protestant is represented by
John C. Hepworth, of the firm of Hepworth, Nungester, Felton &
Hart, whose offices are located at 1020 Main, Buhl, Idaho, and
that protestant's attorney had advised protestant it would not be
necessary for him to appear inasmuch as the protest is based upon
contract evidenced by writing and that protestant's attorney did
not feel that the protestant's presence was required.

1 That the undersigned, as attorney for protestant,
2 inadvertently overlooked the hearing until approximately 1:30
3 p.m., April 2, 1975, at which time the undersigned attorney
4 received a call from Bob Haynes, of the Twin Falls Office, advising
5 the undersigned that the applicant had appeared and left and that
6 the protest was being dismissed by reason of protestant's failure
7 to appear. Protestant, by and through his attorney, asks that a
8 new hearing be scheduled; that any direct costs suffered by the
9 applicant by reason of protestant's failure to appear be levied
10 against protestant's attorney and that a new hearing be scheduled
11 on the protest at the convenience of the Department of Water
12 Resources and the applicant.

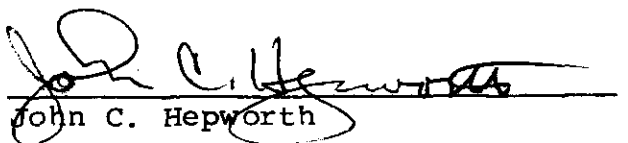
13 That protestant alleges that to dismiss the protest by
14 reason of the negligence of protestant's attorney would be both
15 unfair and not in the best interests of justice and that protestant
16 is serious about his protest and that there are serious matters
17 to present to the Hearings Officer which should be considered
18 and which could have far reaching effects. That to refuse to
19 reschedule said hearing will likely lead to legal action which
20 would be to the disadvantage of both applicant and protestant.

21 WHEREFORE, protestant requests that the protest be not
22 dismissed and that a new hearing be scheduled and for such other
23 and further relief as may be appropriate

24 DATED this 3rd day of April, 1975.

25 HEPWORTH, NUNGESTER, FELTON & HART
26 1020 Main, Buhl, Idaho 83316
27 Attorneys for Protestant

28 By


John C. Hepworth

47-7279 - Darwin J. Collier

Department of Water Resources, Twin Falls, Idaho

April 2, 1975 - 1:00 p.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
Darwin J. Collier	Rt. #1	Hagerman

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

In the Matter of Protest Against Approval of Application for Permit No. 47-7279 in the name of Darwin J. Collier	} } } }	NOTICE OF CONFERENCE AND/OR HEARING
---	------------------	-------------------------------------

On October 17, 1974, Darwin J. Collier filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On November 7, 1974, the Department received a protest against approval of said application from Hepworth, Nungester, Felton & Hart, Attorneys At Law, submitted in behalf of Dale Bell.

The Department has set the matter of protest for conference and/or hearing for Wednesday, April 2, 1975, at 1:00 p.m., at the Department of Water Resources, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party desiring the taking of stenographic notes by a qualified court reporter must request such in writing at least five (5) days before the date set for hearing and must submit to the director the name of a qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's attendance fees. A taped record of the proceedings will be maintained for the appeal period.

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

Dated this eighteenth day of March, 1975.



BOB HAYNES
Southern District Engineer

No. 735593

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO		POSTMARK OR DATE
HEPWORTH, NUNGESTER, FELTON & HART		
STREET AND NO.		
1020 Main Attorneys At Law		
P.O., STATE AND ZIP CODE		
Buhl, Idaho 83316		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered ..	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (extra fee required)		

PS Form 3800
Apr. 1971

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

735592

No.

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO		POSTMARK OR DATE
Mr. Darwin J. Collier		
STREET AND NO.		
Hagerman, Idaho 83332		
P.O., STATE AND ZIP CODE		
OPTIONAL SERVICES FOR ADDITIONAL FEES		
RETURN RECEIPT SERVICES	1. Shows to whom and date delivered	15¢
	With delivery to addressee only	65¢
	2. Shows to whom, date and where delivered ..	35¢
	With delivery to addressee only	85¢
DELIVER TO ADDRESSEE ONLY		50¢
SPECIAL DELIVERY (extra fee required)		

PS Form
Apr. 1971

3800

**NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL**

(See other side)

★ GPO : 1974 O - 551-454

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)

(Additional charges required for these services)

☐ Show address
where delivered

☐ Deliver ONLY
to addressee

RECEIPT

Received the numbered article described below

REGISTERED NO.

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

CERTIFIED NO.

735593

INSURED NO.

DATE DELIVERED

1

2

3

Higworth, Margaret, Olton
SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Hart

By Albert Gannon

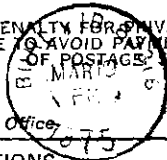
SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

8-19-75

Return Receipt Requested

U.S. POSTAL SERVICE
OFFICIAL BUSINESS

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE \$300



Postmark of Delivering Office

SENDER INSTRUCTIONS

space below your name, address, including ZIP Code.
special services are desired, check block(s) on other side.
fasten gummed ends and attach to back of article.

**RETURN
TO**



**IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
1041 BLUE LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301**

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)

(Additional charges required for these services)

☐

Show address
where delivered

☐

Deliver ONLY
to addressee

RECEIPT

Received the numbered article described below

REGISTERED NO.

CERTIFIED NO.

735592

INSURED NO.

DATE DELIVERED

3-19-75

SIGNATURE OR NAME OF ADDRESSEE *(Must always be filled in)*

1

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

SHOW WHERE DELIVERED *(Only if requested, and include ZIP Code)*

3

REturn Receipt Requested

POSTAL SERVICE
OFFICIAL BUSINESS

PENALTY FOR PRIVATE
USE TO AVOID PAYMENT
OF POSTAGE, \$300



Postmark of Delivering Office

SENDER INSTRUCTIONS

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

- If special services are desired, check block(s) on other side.
- Moisten gummed ends and attach to back of article.

RETURN
TO

PS Form 3811
June 1973

IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN DISTRICT OFFICE
1041 BLUE LAKES BLVD. NORTH
TWIN FALLS, IDAHO 83301

NAME AND
ADDRESS
OF SENDER

3-18-75

IDWR
Southern District

Re: Darwin J. Calhoun
no. 47-7279

Indicate type of mail

☐ INSURED

☐ C. O. D.

☒ CERTIFIED

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

POSTMARK AND DATE OF RECEIPT

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	DUE SENDER IF C. O. D.	ENDORSE- MENT ¹	R. R. FEE	S. D. FEE	S. H. FEE ²	RESTRICTED DELIVERY FEE	Remarks
1	735592 Darwin J. Calhoun, Hagerman, Idaho 83332	10	30			15				
2	735593 Hepworth, Hungate, Belmont Hwy 1020 main Bill, Idaho 83316	10	30			15				
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TOTAL NUMBER OF PIECES LISTED BY SENDER	TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE	POSTMASTER, PER (Name of receiving employee)	¹ Mark "F" if "Fragile," "P" if "Perishable," "E" if "Eggs," "EH" if "Eggs for Hatching," "B" if "Butter," "FL" if "Fragile-Liquid," and "FLU" if "Fragile-Liquid —This Side Up." ² Special-handling charges apply only to third- and fourth-class parcels. Special-delivery service also includes special-handling service.
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November 7, 1974

RE: Application No. 47-7279 - Darwin J. Collier

Mr. Darwin J. Collier
Hagerman, Idaho 83332

Dear Mr. Collier:

We have enclosed a copy of the protest filed against the issuance of a permit pursuant to your Application No. 47-7279. You should be aware that the following are the principle items we can consider at a conference and/or hearing 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 water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the applicant through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for a conference and/or hearing to discuss the matters of protest. Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of any assistance, please contact us.

Very truly yours,

Bob Haynes
Southern District Engineer

Enc.

bcc: Boise

November 7, 1974

RE: Application No. 47-7279 - Darwin J. Collier

HEPWORTH, NUNGESTER, FELTON & HART
1020 Main
Buhl, Idaho 83316

Attn: John Hepworth

Dear Mr. Hepworth:

This is to acknowledge receipt of the Protest submitted in behalf of Dale Bell to issuance of a permit pursuant to the above referenced application. The following are the principle items we can consider at a conference and/or hearing 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 water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?

The Department may reject an application and refuse issuance of a permit, partially approve the permit, approve the permit for a quantity of water less than applied for, or approve the permit subject to special conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish a right-of-way over private or governmental lands. Any right-of-way or easement must be obtained by the individuals concerned through action outside of the water right proceedings.

You will be notified at a later date as to the time and place set for conference and/or hearing to discuss the matters of protest. If we may be of further assistance, please contact us.

Very truly yours,

Bob Haynes
Sct.
Southern District Engineer

Acc. Baise

RECEIVED

NOV 7 1974

Department of Water Resources
Sawtooth National Forest

PROTEST

TO: Keith R. Higginson, Director
Department of Water Resources
1041 Blue Lakes Boulevard North
Twin Falls, Idaho 83301

NOTICE IS HEREBY GIVEN that Dale Bell, of Route # 3, Buhl, Idaho, does hereby make written protest to the granting of Application No. 47-7279, to Darwin J. Collier, Hagerman, Idaho, for a permit to appropriate .5 cubic feet per second of water from groundwater by means of a well.

This protest is based upon the following:

1. That these mineral and hot water rights are owned and reserved by Dale Bell as evidenced by a warranty deed, a copy of which is attached hereto as Exhibit "A".

DATED this 7th day of November, 1974.


Dale Bell

Doc #
538623

EXHIBIT "A"
Recorded

6-2-64

RECEIVED

Department of Water Resources
Southern District Office

THIS DEED was made this 29th day of April, 1964,
between ELLA S. MARCH, a widow, and FLORENCE M. MARCH, a divorced
woman, of Buhl, County of Twin Falls, State of Idaho, the parties
of the first part, hereinafter called the grantors, and

J. WILSON MILLER and BESSIE MILLER, his wife,
of Buhl, County of Twin Falls, State of Idaho, the parties of the
second part, hereinafter called the grantees,

WITNESSETH, that the grantors, for and in consideration of
the sum of TWENTY-FIVE HUNDRED and no/100 - - - - - DOLLARS
in lawful money of the United States of America, to the grantors in
hand paid by the grantees, the receipt whereof is hereby acknow-
ledged, have granted, bargained and sold, and by these presents do
grant, bargain, sell, convey and confirm unto the grantees, and to
the grantees' heirs and assigns forever, all of the following
described real estate, situated in Twin Falls County, State of Idaho:

All of Lot Six (6), Section Thirty-three (33), Township Eight
(8), South of Range Fourteen (14), East of the Boise Meridian,
excepting that piece of land described as follows:
Beginning at the quarter corner common to Sections 32 and 33,
T. 8. S., R. 14. E., said point being marked with a stone;
thence East along the quarter section line common to lots 5 and
6 to a point on the west bank of Snake River, said point being
South Eighty-nine Degrees and Forty-five Minutes East (S. 89° 45' E.)
One Thousand Two Hundred Forty-eight (1248) feet; thence South
One Degree and Four Minutes East (S. 1° 04' E.) Two Hundred Seventy-
Six (276) feet; thence North Eighty-one Degrees and Thirty-four
Minutes West (N. 81° 34' W.) One Hundred and Forty-one (141) feet;
thence North One Degree and Thirty-four Minutes West (N. 1° 34' W.)
One Hundred Fifty-eight (158) feet; thence North Eighty-eight
Degrees and no Minutes West (N. 88° 00' W.) Three Hundred and
Sixty-six (366) feet to a stake driven in a ten inch deciduous
tree; thence North Seventy Degrees and Thirty-seven Minutes West
(N. 70° 37' W.) One Hundred Fifty-three (153) feet to a point forty
(40) feet South of the North line of said Lot Six (6); thence
North Eighty-nine Degrees and Forty-five Minutes West (N. 89° 45' W.)
Six Hundred (600) feet; thence North Eighty-eight Degrees and Four
Minutes West (N. 88° 04' W.) Forty feet (40) to the place of begin-
ning. Together with a water right consisting of Thirty-six (36)
shares of water from the Sanbury Pipe Line.

Also reserving all gas, oil and minerals and hot water
of a 90° temperature or over that may now or may be hereafter
discovered under said land, together with the right to enter
any portion of the land conveyed for the purpose of drilling
wells thereon and for the use and development for or devel-
oping hot water, gas, oil or minerals under said land.

TO HAVE WITH ALL AND SURETY THE ASSURANCE, HEREDINAFTER AND

538-215
Warranty Deed

appurtenances thereunto belong or in anywise appertain, the
reversion and reversions, remainder and remainders, rent, issue
and profits thereof, and all estate, rights, title and interest in and
to the said property, as well in law as in equity, of the grantor.

TO HAVE AND TO HOLD, all and singular the above mentioned and
described premises, together with the appurtenances, unto the grantees
and to the grantees' heirs and assigns forever. And the grantors
and the grantors' heirs, the said premises in the quiet and peaceable
possession of the grantees, and the grantees' heirs and assigns,
against the grantors, and the grantors' heirs, and against all and
every person and persons whomsoever lawfully claiming the same, shall
and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the grantors have subscribed this deed the
day and year first above written.

Irene Banbury

Grace B. French

STATE OF IOWA

County of Twin Falls

ss

On this 6th day of March 1932, before me, the
undersigned, a Notary Public in and for said State, personally
appeared Irene Banbury, a widow, and Grace B. French, a divorced
woman, known to me to be the persons whose names are subscribed
to the within instrument and acknowledged to me that they executed
the same.

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

J. L. Sherry
Notary Public for the State of
Iowa, residing at Des Moines.

My Commission expires on the 11th day of November, 1934.

October 17, 1974

RE: Application No. 47-7279 - Darwin J. Collier

Buhl Herald
P.O. Box 312
Buhl, Idaho 83316

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

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

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

Sincerely,

Bob Haynes
Southern District Engineer

RECEIVED

OCT 22 1974

**Department of Water Resources
Southern District Office**

**NOTICE OF APPLICATION
FOR WATER PERMIT**

Notice is hereby given that Darwin J. Collier Hagerman, Idaho, has on 10-17-74 submitted Application No. 47-7279 for a permit to appropriate .5 cubic feet per second of water from groundwater by means of well within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, T 8S, R 14E, B.M., Twin Falls Co. to be used from January 1 to Dec. 31 for heating system and swimming within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, T 8S, R 14E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before 11-11-74.

R. KEITH HIGGINSON
Director

Published in the Buhl Herald on
10-24 and 10-31-74.
(4242)

NOTICE OF APPLICATION FOR WATER PERMIT

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Hagerman, Id.

has on 10-17-74 submitted Application No. 47-7279

for a permit to appropriate .5 cubic feet per second ~~above base per annum~~

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for heating system and swimming

within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, T 8S, R 14E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before 11-11-74.

R. KEITH HIGGINSON

Director

Published in the Buhl Herald

on 10-24 and 10-31-74

11-2-61

AP

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

* * * * *

In the Matter of Protest Against Approval)
of Application for Permit No. 47-7289 in)
the name of Darwin J. Collier)

PROTESTANT'S
MEMORANDUM

* * * * *

F A C T S

On October 17, 1974, applicant, Mr. Darwin J. Collier, filed with the Department of Water Resources, Application No. 47-7279. By this application, applicant sought to be granted a water permit to appropriate .5 cubic feet per second of water by means of a well, said well to be located within the Northwest Quarter of the Southwest Quarter (NW 1/4 SW 1/4) of Section 33, Township 8 South, Range 14 E., B.M., Twin Falls County, Idaho. Applicant intends to use said water for a heating system and for swimming.

Notice of this application was published in the Buhl Herald on October 24 and October 31, 1974. Pursuant to this notice, all protests against the granting of the permit were to be filed with the Idaho Department of Water Resources on or before November 11, 1974.

On November 7, 1974, Dale Bell, by and through his attorney, Hepworth, Nungester, Felton & Hart, did properly file a written protest against the granting of said water permit.

Hearing on Mr. Bell's protest was scheduled for hearing on April 2, 1975, in Twin Falls, Idaho, but because of the failure of protestant's attorney to appear at that time and place, said

hearing was not conducted. It is now the recommendation of the Department of Water Resources to proceed with the protest by submitting a written brief setting forth those arguments in support of the protest.

Essentially, two grounds are relied upon by Mr. Bell in interjecting his protest to Mr. Collier's Application No. 47-7279. First, it is Mr. Bell's contention that these deposits of hot water located beneath the property described in the above-mentioned application are in reality the private property of Mr. Bell. Secondly, or alternatively, it is Mr. Bell's argument that as result of contract which runs with the land, Mr. Bell has the sole right to make use of these hot water deposits, and Mr. Collier, along with others who may come into possession of this land are precluded from interfering with these contract rights.

Both these contentions, have as their underlying basis, a certain warranty deed, a copy of which is attached hereto as Exhibit "A". By this warranty deed, the property described therein was conveyed by Irene Banbury and Grace B. French to J. Wilson Miller and Bessie Miller, husband and wife. The grantors under that deed reserved unto themselves all gas, oil, minerals, and hot water of a 90° temperature or over, along with the right to enter said property to mine or develop these items.

Following this conveyance, the applicant, Mr. Collier, obtained his interest in this real property through the grantees named in that deed, Mr. and Mrs. J. Wilson Miller. Alternatively, the protestant, Mr. Bell, traces his interest to this property, or to the gas, oil, minerals and hot water found thereunder, to the exception or reservation retained under the above-mentioned deed by the grantors therein, Irene Banbury and Grace B. French.

Attached hereto are Exhibits "B" and "C" which are copies of deeds by which the protestant, Dale Bell, traces his rights and interests to the exception or reservation referred to above. As mentioned above, the original owners of this reservation or exception were Irene Banbury and Grace B. French. Exhibit "B" is a deed conveying these rights and interests to Harry and Freida Van Devander, and Exhibit "C" is a deed whereby these same interests were conveyed by the Van Devanders to the protestant herein, Dale Bell.

LAW AND ARGUMENT

When Irene Banbury and Grace B. French, by the April 29th warranty deed (Exhibit "A") conveyed the property described therein to Mr. and Mrs. Miller, they retained unto themselves all rights to gas, oil, minerals, and hot water that may be found on, or under the property exchanged. This brings into discussion the laws of "exceptions and reservations" as it applies to real estate sales.

An "exception" is a clause in a deed withdrawing from operation of deed some part of the estate granted which otherwise would have passed to grantee. See Victory Oil Co. v. Hancock Oil Co., 270 P.2d 604, 125 C.A.2d 222. Weyse v. Biedebach, 261 P. 1092, 86 Cal. App. 736; Edwards v. Brusha, 90 P. 727, 18 Okla. 234; Powell v. Big Horn Lowline Ditch Co. 263 P. 692, 81 Mont. 430; Rall v. Purcell, 281 P. 832, 131 Or. 19; Johnson v. Peck, 63 P.2d 251, 90 Utah 544.

On the other hand, a "reservation" creates some right or privilege for benefit of the grantor in the land described in the deed, and withholds it from operation of the grant, and by a "reservation" the grantor reserves to himself something which did not exist as an independent right before the grant, but which is thereby newly created. See Victory Oil, supra; Proctor v.

Graham, 506 P.2d 1236; City of Missoula v. Mix, 214 P.2d 212, 123 Mont. 365.

The distinction between an "exception" and a "reservation" is therefore a fine one, with the difference centered on the thing being excepted or reserved. In the former case, the rights excepted are already in existence, whereas in the latter case, the rights being reserved are created at the same time the reservation take effect.

From a practical point of view, however, the Courts very frequently do not make this distinction between an "exception" and a "reservation". For example, the Arizona case of Phoenix Title & Trust Co., v. Smith, 403 P.2d 828, 1 Ariz. App. 424, states as follows:

"For purpose of determining what is granted in a deed, distinction between exception and reservation is of little importance, since by whatever name, property excepted, or estate preserved is never considered a part of grant."

Likewise, the terms generally are used interchangeably, with the intent of the grantor controlling as to whether we are dealing with an "exception" or a "reservation". See Proctor v. Graham, supra; City of Missoula v. Mix, supra; Ewing v. Trawick, 256 P.2d 182, 208 Okla. 311; Hurd v. Byrnes, 506 P.2d 686.

Thus, it would appear from these several cases that in reality, the Courts treat an "exception" and a "reservation" almost identically, and will not depend solely upon the language used in the deed in making that determination. The wording employed in the deed, in the case at hand is as follows:

"Also reserving all gas, oil and minerals and hot water of 90° temperature or over that may now or may be hereafter discovered under said land, together with the right to enter any portion of the land conveyed for the purpose of drilling wells thereon and for the purpose of prospecting for or developing hot water, gas, oil or minerals under said land."

This clause uses the word "reserving" but whether a "reservation" or an "exception" was intended cannot be determined from the language found in that deed. However, as pointed out above, it makes little or no difference, and in either case we are dealing with the rights which the grantors intended to retain and did not want to see pass to the grantees under the deed.

The deed attached to the memorandum, marked Exhibit "A" involves real property which includes that property now owned by the applicant and upon which the applicant now wishes to appropriate water by means of a well. The water sought is not the typical underground water we have become accustomed to, but rather is water with a special characteristic namely the fact that it has

a temperature in excess of 90°. Thus, it is Mr. Bell's argument that the very water the applicant wishes to appropriate was the subject of the "reservation" or "exception" in the deed attached hereto as Exhibit "A".

As indicated earlier in this brief, Mr. Bell takes the position that these hot water deposits found beneath the applicant's property, as well as other minerals, including gas and oil, which may be found under that same property, belong to him as his sole and individual property. They were rights which did not pass to the applicant when he purchased the property. His predecessor to the property did not own them and could not convey them. These rights, had for all practical purposes, been severed from the property as a result of the reservation referred to above.

It is the rule that for either an "exception" or a "reservation" in a deed, to be effective, it must be shown that the interest or right which the grantor attempts to reserve or except was owned by him at the time the deed was made. See Leidig v. Hoopes, 288 P.2d 402 and Phillips v. Johnson, 217 P.2d 520, 202 Okla. 645. Applying this rule, it is sufficient to establish ownership of these rights and interests in the original grantors under the deed attached as Exhibit "A", namely Irene Banbury and Grace B. French.

At the time of the Banbury-French conveyance, these two women were the record title owners of the property described in the deed. As owners of this real property, they were likewise deemed the owners of all that goes to make up the earth in its natural condition. This follows from the general rule that the title to lands extends down to the center of the earth. See Del Monte Min. & Milk Co. v. Last Chance Min. & Mill Co., 171 U.S. 55; Gas Products Co. v. Rankin, 207 P. 993; Gostina v. Ryland, 199 P. 298; Texas Pacific Coal & Oil Co. v. State, 234 P.2d 452; Ramano v. Birmingham R. Light & P. Co., 62 So. 677; Carpenter v. Capital Electric Co., 52 NE 973; Edwards v. Sims, 24 SW2d 619; Seager v. McCabe, 52 NW 299; Newhoff v. Mayo, 23 A. 265; Hynes v. New York C.R. Co., 131 NE 898; Murphy v. Bolger Bros. 15 A. 365; Jordon v. Benwood, 26 SE 266; Piper v. Ekein, 194 NW 159; Pyramid Coal Corp. v. Pratt, 99 NE2d 427; People's Gas Co. v. Tyree, 31 NE 59.

Based upon these rules of law, it would follow that Irene Banbury and Grace B. French, at the time they conveyed the property described on Exhibit "A", not only owned the surface of that property, but likewise owned everything found below the surface. By their conveyance, they effectively transferred ownership of the surface of this real estate, but by their reservation

retained unto themselves all interest and rights to that found below the surface, including the hot water deposits. These were property rights or interests which were in themselves subject to conveyance, which was indeed done with Mr. Bell ultimately coming into possession of the same. Thus, Mr. Bell is now the owner of these underground interests, including the hot water deposits and any interference with these rights by the applicant is illegal and should not be allowed or tolerated.

The argument can be posed that the rights to or interest in these underground hot water deposits could not be excepted or reserved by the grantors in the deed attached hereto as Exhibit "A" because the grantors did not own those hot water deposits. The argument would follow on the lines that only that which the grantor owns, can be reserved or excepted when he makes a conveyance of real property. To support their argument that these underground hot water resources did not belong to the grantor, reference would most likely be made to Idaho Code 42-226, where it is stated that:

"All ground waters in this state are declared to be the property of the state. . . "

It must be pointed out however, that this statute was not enacted until 1951, whereas, the deed relied upon by Mr. Bell in this proceeding is dated April 29, 1950. In short, ground waters of

this state were not declared to be public waters at the time this deed was dated. Likewise, Section 42-226 was not intended to be applied retroactively and specifically states as follows in this respect:

"All rights to the use of ground water in this state, however acquired before the effective date of this act are hereby in all respects validated and confirmed."

Secondly, Mr. Bell bases his ownership of these hot water deposits on the proposition that this water fell within the classification of "minerals" and thus was within the scope of the "reservation" written into the Banbury-French deed. It must be recalled that we are dealing here with water with a very special characteristic, namely its high temperature. Such water has a very special and beneficial use. General reference to the word "mineral" in Words and Phrases cites a number of cases as it applies to underground water. Those cases which include underground water within the definition of a mineral include:

Ridgeway Light & Heat Co. v. Elk City
43 A. 323

Gulf Production Co. v. Continental Oil Co.
132 SW2d 553

Goodloe v. City of Richmond
113 SW2d 834

Hathorn v. Natural Carbonic Gas Co.
87 NE 504

Westmoreland & Cambria Natural Gas Co. v. DeWitt
18 A. 724

The above cases did conclude that underground water was a mineral even though the water involved therein possessed no special characteristics. Because of the uniqueness of the underground water involved in this proceedings, it is respectfully suggested that a very strong argument exists to conclude that those waters are indeed minerals.

Again, reference may be made to the Idaho Geothermal Resources Act, which in Section 42-4002 defines a "geothermal resource" to be neither a mineral resource, nor a water resource. However, such statute is of recent vintage and cannot be applied retroactively so as to declare nonmineral that which had been earlier treated as mineral.

As an alternative, protestant, Mr. Dale Bell contends the applicant has no right to make use of this 90° plus water located under this property on contract basis. It is the position that the applicants' predecessor, by contract, has agreed not to make use of these hot water deposits, and since that contract runs with the land, it applies equally well against the applicant, Mr. Collier.

The contractual language relied upon by Mr. Bell is

more commonly referred to as a "restrictive covenant". The term "covenant" in its wide sense, is used to indicate a contract. A "restrictive" covenant is a promise or contract which generally calls for the nonperformance of some specified act.

Volume 20 of Am. Jur 2d, p. 746, states as follows:

"While the Courts have manifested some disfavor of covenants restricting the use of property, they have generally sustained them, where reasonable, not contrary to public policy or to law, and not in restraint of trade or for the purpose of creating a monopoly. . . Subject to these limitations, the Courts will enforce restrictions to the same extent that it would lend judicial sanction to any other valid contractual relationship. So long as the beneficial enjoyment of the estate is not materially impaired and the public good and interests are not violated, such restrictions are valid."

The Idaho case of Payette Lakes Protective Ass'n. v. Lake Reservoir Co., 68 Idaho 111, says as follows as concerns the validity of restrictive covenants:

"Restrictive agreement by which one party is restricted in the use to which he may put his property are valid."

Thus, there seems to be little argument as to the validity of restrictive covenants. They have long been in existence and are widely recognized. The only limitation is that they must be reasonable, must not materially impair the use of the property, and must not be in conflict with public policy.

Secondly the means of creation of a restrictive covenant

is discussed in 20 Am. Jur.2d 168:

"The technical form of the agreement creating a restrictive covenant is not material. It may be in the form of a condition or covenant, or of a reservation or exception in the deed." (Emphasis ours)

In the case at bar, we have restrictive language employed in the form of a reservation or exception in the deed. As stated above, this is a commonly accepted method used to create a restrictive covenant. Also, the restrictive language used in that deed is not in any way against public policy, is not unreasonable, and does not unduly burden the estate being conveyed. The grantors under that deed did not restrict the grantee's right to make use of all percolating waters, but rather limited that restriction to a very unique and uncommon form of underground water.

Furthermore, a restrictive covenant may "run with the land" so as to inure to the benefit of a successor to the original grantor, and to burden a subsequent owner of the property against which the covenant applies.

Generally, it is said that in order to "run with the land" a restrictive covenant must be in writing, must "touch and concern" the land, and finally must have been intended by the original covenants to effect their heirs and assigns. See Updegrave v. Agee, 484 P.2d 821; Huff v. Duncan, 502 P.2d 584,

Jack Mathis General Contractors, Inc. v. Murphy, 472 P.2d 820;
Hudspeth v. Eastern Oregon Land Co. 430 P.2d 353, and Hall v. Risley, 213 P.2d 88.

Certainly, the first requirement of a writing is satisfied here in that the agreement was placed into the deed attached hereto as Exhibit "A".

As concerns the second requirement, the Courts rule is as follows:

"Covenants running with land are those which have for their object something annexed to, or inherant in, or connected with, land or other property. Texas Co. v. Butler, 256 P.2d 259

"A covenant runs with the land when it touches or concerns land granted or demised, which occurs if covenant is such as to benefit grantor, lessor, grantee or lessee. " City of Seattle v. Fender, 254 P.2d 470

Certainly the interest to the hot water deposits are rights which touch and concern the use of the overlying real estate. Not only does the covenant directly effect the overlying real property, but furthermore was entered into as a result of the conveyance of the overlying real property. Furthermore, as a result of the covenant the grantors were benefited whereas the grantees were limited or restricted in the use of their property.

Finally, one must ask if the parties to the conveyance intended the restrictive covenant to "run with the land."

Hudspeth v. Eastern Oregon Land Co., supra, says as follows as concerns this requirement:

"Intention of original parties to deed may be derived from language used in instrument or from fact that undertaking is one which because of business practice, custom or common understanding of community is deemed to have been intended to benefit those who succeed to promise land."

In the case at hand, it would seem that the parties must have intended this covenant to apply to their successor in interest because of the simple fact that it was written directly into the deed and thus recorded. If only a personal agreement was desired, which would have no effect on outside parties, then such steps would not have been necessary. A simple contract between the original parties would have sufficed. The only logical reason for placing the restriction in the deed was to have it run with the land and bind all successors and assigns. It also made Banbury Hot Springs swimming pool, which was owned by the grantors more valuable.

Thus, it is evident that the basic elements and requirements of a "restrictive covenant" exists. The covenant was effectively established by language written into the deed, said covenant is valid under our law, and finally it appears as though all prerequisites are met so as to allow that covenant to "run with the land". Also, applicant herein cannot plead that while this "restrictive covenant" is one which would normally run with the

land, it should not apply to him because he was not informed of it when he made his purchase of the overlying real property. In effect, because of the deed attached hereto as Exhibit "A", applicant has "constructive notice" of the covenant. It was of public record, and it was incumbent on him to become aware of it. In short, constructive notice is equated with actual notice. This conclusion is implied strongly in the very recent Washington case of Busos v. Cape George Colony Club, 521 P.2d 1217, where it stated as follows:

"Purchase without constructive or actual notice of restriction on use of land takes free of restriction."

By that statement it must follow that if the purchaser has either constructive or actual notice of the covenant, he is bound by it. At the least, constructive notice is present here and thus the applicant, Mr. Collier, is in effect a party to the restrictive covenant written in the Banbury-French deed.

In Twin Lakes Improvement Ass'n. v. East Greenacres Irrigation District, 90 Idaho 281, on appeal after remand 93 Idaho 922, a 1906 contract concerning water levels of certain lakes in Kootenai County was at issue. The contract, which effected the use of the water in those lakes, was entered into by the predecessors to the parties involved in the lawsuit. The trial court had

concluded that the respondent was not a successor to the original contracting party so as to be bound by the 1906 covenant. The Supreme Court, in reversing the judgment, said as follows:

"The purposes set forth in this agreement are clearly for the benefit of the land and the use and enjoyment by the landowners as benefited by the agreement. Such a covenant is one running with the land.

"As to property owners herein, the agreement is valid and binding upon the District. . . "

In Payette Lakes Protective Ass'n v. Lake Reservoir Co., 68 Idaho 111, the parties to the proceeding had entered into a contract which established certain rights to the use of Big Payette Lake. Following a disagreement, the appellant, Lake Reservoir Co., brought an injunction action to enforce that contract. The Court said as follows in so far as its opinion is relevant to the case at hand:

". . . In any event, appellant did contract with respondent, limiting appellants' use of the Lake as a reservoir, and it would, therefore seem to follow logically that appellant must recognize respondents right to enforce the contract. . .

The parties having reached agreement and entered in to the contract set forth and sued upon, are estopped to deny its general nature and force and effect, and must act in accordance with such agreement and understanding. Restrictive agreements of this nature are legal.

At the outset, it should be noted that agreements

containing restrictions as to the use of property include a great variety of subjects. . . and necessarily so, for the Constitution guarantees the right to contract freely for lawful purposes. . .

Appellant argues that the contract is ultra vires and void as against public policy and that respondent by the contract has deprived appellant of its constitutional rights of appropriation. . .

Appellant's cited authorities do not hold directly or in general, a voluntary contract of this nature restricting the use of real property (which includes water rights) is invalid, void, or ultra vires, or otherwise ineffective. While appellant asserts respondent is attempting to interfere with its constitutional right of appropriation of water, the right asserted by respondent is based upon the contract by which appellant itself limited its use of the Lake, and no reason has been advanced why there is any greater property right in water than in any other right of possession or use of property, real or personal or the right to contract. . .

By reason of the contract, respondent, though not thereby a grantor, would seem in principle to have rights, with regard to enjoining the violation of a contract, similar to that of a grantor to enforce restrictive covenants as to the use of transferred property. . .

. . . a Court of equity fastens upon the real contract and compels the execution of the very thing covenanted to be done. . . Plaintiff may stand on the very letter of his obligation, for a party may not make a solemn engagement and then disregard it on the ground that no harm will result.

Appellant's limited use of the Lake as a reservoir was the very essence of the contract and the results of compliance are not so unreasonable as to be inequitable.

Appellant has established no legal reason why it should

not be held to its contract, which it freely and voluntarily entered into, restricting its use of Payette Lake. . ."

The above case is very relevant to the case at hand because of its striking similarity in the issues being determined. In both situations we are dealing with the enforceability of a "restrictive covenant." Also, in both cases that restrictive covenant applies as to a body of water, and operates so as to restrict one of the covenantors from making use of that water. Third, the effect of either covenant is to limit the ability of the burdened party to appropriate those waters. The only real differences between the two cases is the fact that the body of water we are dealing with here is located underground whereas the Payette Lakes case involved surface water. Also, we are here dealing not with the original parties to the covenant, but rather with their successors. I do not consider these distinctions significant in that the determination has already been made that this covenant "runs with the land" and on that basis, we are obligated to look upon the applicant and protestant herein, as if they were the original covenantors.

With this degree of similarity in the cases, it is nearly mandated that a similar result be reached here. After all, this "restrictive covenant" reserved or excepted by the

grantor under their deed herein, was looked upon by said grantors as part of the consideration which they were to receive in return for the sale of the overlying real property. It constituted a part or portion of the sales price and is what was bargained for in making the conveyance.

It is strongly urged that the contract to which the applicant and protestant herein are parties be given full and complete effect as was done in the Payette Lakes case above, where the Supreme Court was being asked to resolve issues virtually identical to those here. Indeed, the last paragraph from the quote cited above from the Payette Lakes case can easily be written as follows so as to apply to this case:

Applicant has established no legal reason why he should not be held to his contract, which his predecessor freely and voluntarily entered, restricting his and his successors' use of the 90° plus water deposits located beneath his real property.

Protestant, as successor in interest of Irene Banbury and Grace B. French to the rights to the 90° plus water under Mr. Collier's land, has the right to demand that Mr. Collier not be allowed to appropriate said water.

Respectfully submitted,

HEPWORTH, NUNGESTER, FELTON & HART

By D. Brent Martens
D. Brent Martens of the firm

CERTIFICATE OF MAILING

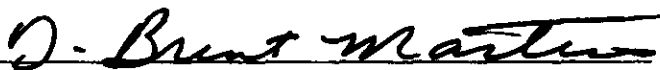
I HEREBY CERTIFY that on the 25th day of April, 1975,
I served the foregoing Protestant's Memorandum upon

State of Idaho
Department of Water Administration
Statehouse
Boise, Idaho 83720

Department of Water Administration
1041 Blue Lakes Blvd. N.
Twin Falls, Idaho 83301

Darwin J. Collier
Hagerman, Idaho 83332

be depositing a copy thereof in the United States mail, postage
prepaid, in an envelope addressed to said parties at the above
address.


D. Brent Martens

6-2-64

[illegible]

Recorded
Filed

whereas the said premises are in the possession of the said grantors, and the said grantors, their heirs and assigns, have and lawfully claim the same, and all the rights, title and interest in and to the said property, as well in law as in equity, of the grantors.

NO LINE 10 TO 102, all and singular the above and above described premises, together with the appurtenances, unto the grantees and to the grantees' heirs and assigns forever. And the grantors and the grantees' heirs, the said premises in the quiet and undisturbed possession of the grantees, and the grantees' heirs and assigns, against the grantors, and the grantors' heirs, and against all and every person and persons whatsoever lawfully claiming the same, shall and will WARRANT and by these presents forever WARRANT.

IN WITNESS WHEREOF, the grantors have subscribed this deed the day and year first above written.

Irene Banbury

Grace B. French

State of Illinois }
County of Cook }

On this 6th day of March 1912 before me, the undersigned, a Notary Public in and for said State, personally appeared Irene Banbury, a widow, and Grace B. French, a divorced woman, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

J. H. Buckley
Notary Public in and for the State of Illinois

My office is in the City of Chicago, Ill., on the 14th day of April, 1914.

EXHIBIT "B"

WARRANTY DEED

THIS INSTRUMENT, made this 11th day of October, 1957, between ALICE HANBURY, a widow, and GRACE B. FRENCH, a divorced woman, of Twin Falls County, State of Idaho, the parties of the first part, hereinafter called the grantors, and FERRY J. VAN DYK and FRED A. VAN DYKENDER, husband and wife of Buhi, County of Twin Falls, State of Idaho, the parties of the second part, hereinafter called the grantees,

ALFRED W. FRENCH, That the grantors, for and in consideration of the sum of SIXTY THOUSAND AND NO/100 (\$60,000.00) DOLLARS in lawful money of the United States of America, to the grantors in hand paid by the grantee, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the grantee, and to the grantee's heirs and assigns forever, all of the following described real estate, situated in Twin Falls County, Idaho, to-wit:

That the quarter stone common to Sections 32 and 33 Township 33 North (Tn. 33N), Range Fourteen East of Longitude 112° 56' 00" W., bearing South Eighty-one degrees and forty-five minutes East (S. 80° 45' E.) one hundred and fifteen (150) feet on the quarter section line of said Township and Six (6) feet to a point "A", where said point "A" there is a spike driven in the ground. From point "A" bearing South ten degrees and twenty-five minutes East (S. 10° 25' E.) one hundred and fifteen (150) feet. Commencing from the above described point "A" which is on the South boundary line of said Township and Range (thence North Two degrees and forty-five minutes East (N. 2° 45' E.) four hundred and thirty-one (431) feet to a point "B" - where a galvanized iron pipe is driven approximately in the middle of said boundary - thence North seventeen degrees and eleven minutes East (N. 17° 11' E.) seven hundred three and five eighths (703 5/8) feet to a point "C" thence North five degrees and twenty-eight minutes East (N. 5° 28' E.) one hundred and eighty-eight and six tenths (188.6) feet to a point "D"; thence South eighty-nine degrees and forty-five minutes East (S. 89° 45' E.) two hundred twenty-one (221) feet to the North boundary line of Lot Three (3), said Township and Range to a point "E"; thence South ten degrees and seventeen minutes East (S. 10° 17' E.) - along the Snake River - one hundred sixty-nine (169) feet to a point "F";

thence South sixteen degrees and seventeen minutes West (S.16°17'W.) one hundred seventy (170) feet to a point "B"; thence South three degrees and fifty-eight minutes West (S.3°58'W.) two hundred fifty (250) feet to a point "C"; thence South eight degrees and fifty-six minutes East (S.8°56'E.) one hundred fifty-six (156) feet to a point "D"; thence North eight degrees and three tenths (N.8.3/10°) feet to the North East corner on the North line extended of the quarter section; thence South one degree and fifty-five minutes East (S.1°55'E.) three hundred (300) feet to a point "E"; thence South seven degrees and six minutes East (S.7°06'E.) two hundred five (205) feet to a point "F"; thence South Naught degrees and fifty minutes East (S.0°50'E.) six hundred and four tenths (60.4) feet to a point "G"; thence North eighty-nine degrees and thirty-five minutes West (N.89°35'W.) one thousand two hundred and thirty-three (1233) feet along the quarter section to the point "A" of commencement, containing two and five tenths (2.5) acres, more or less.

Also that portion of the southeastern part of Lot Two (2) Township thirty-three (Sec. 33), Township eight South (Tp. 8S.) Range fourteen East Boise Meridian (R.14E.B.M.) described as follows: Beginning at a point "A" which lies N.89°35'W. and four minutes West (N.89°39'W.) one thousand seven hundred twenty-one and five tenths (1,721.5) feet to a point "B"; thence North eighty-nine degrees and forty-five minutes East (N.89°45'E.) one thousand twenty-one and two tenths (1,201.2) feet to a point "C" which lies on the West line of the quarter section; thence North thirty-three (Sec. 33), Township eight South (Tp. 8S.) Range fourteen East Boise Meridian (R.14E.B.M.) described as follows: Beginning at the same point "A" North eight degrees and twenty-eight minutes East (N.8°28'E.) two hundred thirty-six (236) feet to a point "B"; thence North eight degrees and eight minutes East (N.8°08'E.) two hundred thirty-seven (237) feet to a point "C" on the Snake River; thence South ten degrees and seven minutes East (S.10°07'E.) two hundred ninety-four (294) feet to a point "D"; thence North eighty-nine degrees and forty-five minutes East (N.89°45'E.) two hundred twenty-one (221) feet to the point "A" of commencement, containing one and five tenths (1.5) acres more or less.

Also a northern part of Lot Six (6), Section thirty-three (Sec. 33), Township eight South (Tp. 8S.) Range fourteen East Boise Meridian (R.14E.B.M.) described as follows: Beginning at the quarter corner stone common to Sections thirty-two and thirty-three (Sec. 32 & 33), Township eight South (Tp. 8S.) Range fourteen East of the Boise Meridian (R.14E.B.M.); thence South eighty-nine degrees and forty minutes East (S.89°40'E.) one thousand two hundred and thirty-three (1233) feet along the North Boundary Line of the quarter section to a point on the edge of the Snake River designated as "A"; thence South one degree and fifty-five minutes East (S.1°55'E.) two hundred and thirty-three (233) feet to a point "B"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "C"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "D"; thence South eighty-nine degrees and thirty-four minutes East (S.89°34'E.) one thousand two hundred and thirty-three (1233) feet to a point "E"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "F"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "G"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "H"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "I"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "J"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "K"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "L"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "M"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "N"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "O"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "P"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "Q"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "R"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "S"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "T"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "U"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "V"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "W"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "X"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "Y"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "Z"; thence North eighty-nine degrees and thirty-four minutes West (N.89°34'W.) one thousand two hundred and thirty-three (1233) feet to a point "A" of commencement, containing one and five tenths (1.5) acres more or less.

eighty-eight degrees and no minutes west, then
thence along a line (186) feet to a point "B"; where

a well is driven in a ten inch Deciduous Tree; thence
thence South eighty-nine degrees and thirty-seven minutes West
to a point "C", one hundred fifty-three (153) feet to a point
"D", thence South eighty-nine degrees and forty-five min-
utes West (89° 45' W.) six hundred (600) feet to a point
"E", thence North eighty degrees and four minutes West
(80° 04' N.) thirty-seven feet to the place of beginning.
Containing two and three tenths acres, more or less.

Together with all water and water rights appurtenant to
said land, under and by virtue of Water License No. 1270,
and Permit No. 60 with date of priority November 17,
1905, issued to J. W. Barnum, of Mendell, County of Bonanza,
State of Idaho, on the 18th day of October, 1905, together
with all water appropriated and used under said permit at
the Snake River, located in Lot Three (3) of Sec-
tion Thirty-three (33), Township Eight (8) South, Range
Fourteen (14) East of the Boise Meridian; said water right
being a right of diversion, a tributary of Snake River,
for the purpose of irrigation and domestic use under Permit
No. 1270; point of diversion being located on the South-
west Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of Section
Thirty-three (33), Township Eight (8) South, Range Four-
teen (14) East of the Boise Meridian, in Gooding County,
Idaho.

all gas, oil, mineral and hot water of a 90° temperature
or over that may now, or may be hereafter discovered under the
following described land, together with the right to enter any
portion of the following described land for the purpose of drill-
ing wells thereon and for the purpose of prospecting for or devel-
oping water, gas, oil or minerals under the following described
property, to-wit:

All of Lot Six (6), Section Thirty-three (33), Township
Eight (8) South of Range Fourteen (14) East of the Boise
Meridian, excepting that piece of land described as follows:
beginning at the quarter corner common to Sections 32
and 33, T. 8. S., R. 14 E., S. 14 N., said point being marked
with a monument east along the quarter section line
corner to lots 3 and 6 to a point on the west bank of
Snake River, said point being South Eighty-nine Degrees
and thirty-five minutes East (89° 35' E.) One Thousand
and Hundred Forty-eight (1048) feet; thence South One
Degree and Four minutes East (S. 1° 04' E.) Two Hundred
and Eighty-one (281) feet; thence North Eighty-one Degrees
and thirty-four minutes West (N. 81° 34' W.) One Hundred
and Forty-one (141) feet; thence North One Degree and
thirty-four minutes West (N. 1° 34' W.) One Hundred Fifty-
three (153) feet; thence North Eighty-eight Degrees
and thirty minutes West (N. 88° 30' W.) Three Hundred and Sixty-
six (366) feet to a spike driven in a ten inch Deciduous
tree; thence North Twenty Degrees and thirty-seven min-
utes West (N. 20° 37' W.) One Hundred Fifty-three (153)
feet; thence South One Degree and thirty-four minutes East
(S. 1° 34' E.) One Hundred Forty-one (141) feet; thence South
Eighty-one Degrees and thirty-four minutes West (S. 81° 34' W.)
One Hundred and Forty-one (141) feet; thence North Eighty-one
Degrees and thirty-four minutes West (N. 81° 34' W.) One Hundred
and Forty-one (141) feet; thence North Eighty-eight Degrees
and thirty minutes West (N. 88° 30' W.) Three Hundred and Sixty-
six (366) feet to a spike driven in a ten inch Deciduous
tree; thence North Twenty Degrees and thirty-seven min-
utes West (N. 20° 37' W.) One Hundred Fifty-three (153)
feet; thence South One Degree and thirty-four minutes East
(S. 1° 34' E.) One Hundred Forty-one (141) feet; thence South
Eighty-one Degrees and thirty-four minutes West (S. 81° 34' W.)
One Hundred and Forty-one (141) feet to the place of begin-
ning. Together with a water right consisting of Thirty-
six (36) shares of water from the Barnum Pipe Line.

oil, gas, coal, minerals and water of a 90° temperature
or lower that are now, or may be hereafter discovered
under the above described land, together with the
right to enter any portion of the of the above des-
cribed land for the purpose of drilling wells thereon
and for the purpose of prospecting for or developing
oil, gas, coal, minerals under the above des-
cribed property.

TO HAVE AND TO HOLD, with all and singular the tenements, heredita-
ment and appurtenances therunto belonging, or in anywise apper-
taining, the reversion and reversions, remainder and remainders,
rents, profits and benefits thereof, and all estate, right, title
or interest in and to the said property, as well in law as in
equity, of the grantor.

TO HAVE AND TO HOLD, all and singular the above mentioned
and described premises, together with the appurtenances, unto
the grantees, and to the grantees' heirs and assigns forever.
And the grantors and the grantors' heirs, the said premises in
the quiet and peaceable possession of the grantees, and the
grantees' heirs and assigns, against the grantors, and the gran-
tors' heirs, and against all and every person and persons whom-
soever lawfully claiming the same, shall and will WARRANT and
WARRANT forever HOLDING.

IN WITNESS WHEREOF, the grantors have subscribed this deed
the tenth year first above written.

Grace B. French

Grace B. French

Witness my hand and seal
this 10th day of October, 1957.

On this 10th day of October, 1957, before me, the under-
signed, a Notary Public in and for said State, personally ap-
peared Irene Sanbury, a widow, and Grace B. French, a divorced
woman, known to me to be the persons whose names are subscribed
to the within instrument and acknowledged to me that they executed
the same.

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

Notary Public

EXHIBIT "C"

RECORDED - 1900

That on the 14th day of May, 1900, between
 J. M. Dever and Frank A. Van Dever, husband and
 wife, of Twin Falls County, State of Idaho, the parties of the
 first part, hereinafter called the grantor, and Dale Bell and
 Ella Bell, husband and wife, of Cassia County, State of Idaho,
 the parties of the second part, hereinafter called the grantees.

Witness, that the grantor, for and in consideration of
 the sum of \$25,000.00 DOLLARS in lawful money of the United
 States of America, to the grantor in hand paid by the grantees,
 the receipt whereof is hereby acknowledged, has granted, bargain-
 ed and sold, and by these presents does grant, bargain, sell,
 convey and confirm unto the grantees, and to the grantees's heirs
 and assigns forever, all the following described real estate,
 situated in Twin Falls County, State of Idaho:

From the quarter stone corner to Sections 32 and 33
 Township 21 North (T. 21 N.) Range Fourteen, East of
 the 10th Meridian (R. 14 E.), bearing South Sixty
 degrees and Forty-five minutes East (S. 64° 45' E.)
 one hundred fifteen (115) feet on the quarter section
 line to Lots Three and Six (3 & 6) lies a point
 "A". From this point "A" there is a stake driven in
 the ground (11) feet bearing True bearing South
 Sixty degrees and Forty-five minutes East (S. 64° 45' E.)
 one hundred fifteen (115) feet. Commencing from the above
 point "A" which is on the South boundary line
 of the quarter section (11) feet bearing North Two
 degrees and Forty-five minutes East (N. 2° 45' E.) four hun-
 dred and twenty (220) feet to a point "B" where a galvanizing
 pipe is driven approximately in the middle atop a huge
 rock. From this point "B" bearing North seventeen degrees and eleven minutes
 East (N. 17° 11' E.) seven hundred three and five eighths (703.6)
 feet to a point "C"; thence North Five degrees and twenty-
 five minutes East (N. 5° 25' E.) one hundred forty-eight
 (148) feet to a point "D"; thence South eight
 degrees and thirty-five minutes East (S. 8° 35' E.) one
 hundred and twenty (120) feet along the North boundary line
 of the quarter section and bears to a point "E";
 thence North Six degrees and seventeen minutes West (N. 6° 17'
 W.) along the Snake River - one hundred sixty-nine (169)
 feet to a point "F"; thence South sixteen degrees and seven-
 teen minutes East (S. 16° 17' E.) one hundred seventy (170)
 feet to a point "G"; thence South three degrees and fifty-
 eight minutes East (S. 3° 58' E.) two hundred fifty (250) feet
 to a point "H"; thence South Eight degrees and fifty-six
 minutes East (S. 8° 56' E.) one hundred fifty-six (156) feet
 to a point "I"; this said point "I" being nine and three
 eighths (9.3) feet East of the North East corner of the North
 line corner of the Sanbury building proper; thence South

one degree and fifty-six minutes East (S. 1° 56' E.) three hun-
 dred (300) feet to a point "J"; thence South seven degrees

Also a description of the southeastern part of East Fox
Island, Tule Lake Area (E-1, E), Township of Rich South
County, California, Eastern Part Notes Periodic (9, 10, 11, P.N.V.)
is as follows: Beginning at a point "W" which lies
about one-half distance and three minutes east (N. 6° 30' E.) one
mile and thirty hundred twenty-one and five tenths (1.1315)
from and about eighty-nine degrees and forty-five minutes
East (89° 45' E.) and thence north twenty-one and two tenths
(2.1212) feet of the quarter stone situated on the North
side of section thirty-three (Sec. 33), Township of Rich South
County, California, East Note Periodic (9, 11, P.N.V.),
beginning there being on the Southern Boundary line of lot
10 (P. 1). Commencing at the first stated point "W" north five
degrees and forty-eight minutes East (N. 49° 35' E.) two hun-
dred and twenty-two (222) feet to a point "X"; thence North
five degrees and eight minutes East (N. 49° 08' E.) two hun-
dred and thirteen (213) feet to a point "Y" on the Soule
Section; thence South ten degrees and seventeen minutes
East (S. 17° 17' E.) two hundred and ninety-four (294) feet to
the intersection of the quarter stone survey and forty-five
degrees East (N. 45° E.). The hundred over one (211) feet
line is a line of chain extent. Containing one and five
tenths (1.5) acres of land.

[illegible]

... on with all water and water rights appurtenant to said land, under and by virtue of Water License No. 33330,

Section 1773 also did not singular the tenants, hereinafter called "tenants," thereunto belonging, or in anywise obligating.

All non-fossil minerals and hot water or steam found in the area that was not or may be a later discovery. The area is described, however, with regard to the location of the hydrothermal vent field and the location of the hydrothermal vent field. The purpose of prospecting for or developing hot water, or steam, or minerals under the following described real estate, is as follows:

All of Lot Six (6), Section Thirty-three (33), Township Eight (8), South Range Fourteen (14), East of the Boise Meridian, except that piece of land described as follows:

2. At corner of the section corner set on to
 Sections 32 and 33, Twp. 8., R. 11, E. 1. N. 1.,
 said point being marked with a stake; thence
 East along the section section line between to
 said point 5 to a point on the East Bank
 of Snake River, said point being South Ninety-
 nine Degrees and Ninety-five Minutes East
 11.3° 44' (11.344) feet; thence East two hundred forty-
 five (11.345) feet; thence South one Degree
 and Ninety Minutes East (S. 1° 54' N.) two
 hundred twenty-six (11.346) feet; thence
 South Ninety-nine Degrees and Ninety-four
 Minutes East (S. 1° 54' N.) one hundred and
 thirty (11.347) feet; thence North one
 Degree and Ninety-four Minutes East (N. 1°
 4' N.) one hundred thirty-nine (11.348) feet;
 thence North one Degree and Ninety-four and no
 minutes East (N. 1° 4' N.) three hundred
 and six (11.349) feet to a stake driven
 into the ground; thence East; thence North
 one Degree and Ninety-four Minutes East (N. 1°
 4' N.) one hundred thirty-three
 (11.350) feet; thence North one Degree and
 Ninety-four Minutes East (N. 1° 4' N.) one
 hundred thirty (11.351) feet; thence South
 one Degree and Ninety-four Degrees and Forty-
 five Minutes East (S. 1° 54' 45" E.) one hundred
 and three (11.352) feet; thence North
 one Degree and Ninety-four Minutes East (N. 1°
 4' N.) one hundred and thirty (11.353) feet
 to the corner of the section at beginning, To-
 wit: with a water right consisting of
 one-half (1/2) acre of water from the
 Snake River line.

with all and singular the torrents, here this
abundant increase of balsams, or in any case
of balsams.

oil gas, all the minerals and hot water of 80° temperature or over that temperature may be discovered under the land prospector described, together with the right of other portions of the prospector described land owner, all for the purpose of prospector for or developing hot water, gas, oil or minerals under the following described real estate, to-wit:

111 of 10⁶ Six (6), Section Thirty-three (23),
Tenthers West (8), South Fourteen (14),
and South Sixteen (16), except that piece of
land described as follows:

[illegible]

TO HAVE WITH all and singular the tenements, hereditaments and appurtenances thereunto, belonging or in anywise appurtenant, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the grantor.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with appurtenances, unto the grantee, and to the grantee's heirs and assigns forever, And the grantor, and the grantor's heirs, the said premises in the quiet and peaceable possession of the grantee, and the grantee's heirs and assigns, against the grantor, and the grantor's heirs, and against all and every person and persons whatsoever, lawfully claiming the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the grantor has subscribed this deed the day and year first above written.

Harry J. Van Dewater
Freda A. Van Dewater

CITY OF IDAHO)
County of Twin Falls) ss.

On this First day of May, 1958, before me, John C. Heworth, a Notary Public in and for said State, personally appeared Harry J. Van Dewater and Freda A. Van Dewater, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

(SEAL)

John C. Heworth
Notary Public in and for the State of Idaho, residing at Suni, Idaho

My commission expires on the 1st day of December, 1960.

578372

Recd. Number

Filing Number

Harry J. Van Devedder

TO

Paula Bell

Character of Instrument

STATE OF IDAHO }
County of Twin Falls }

I hereby certify that this instrument filed
for record at the request of

Twin Falls Title & Trust Co.

filed *Oct 7 1953*
in my office and duly recorded in book

of _____ page _____

H. A. LANCASTER

Ex Officio Recorder

Quinn L. Wood Deputy

Fees \$ *6.00*
Paula Bell

RECORDED - 1953

THIS INSTRUMENT, made this 1st day of May, 1953, between
Harry J. Van Devedder and Paula A. Van Devedder, husband and
wife, of Twin Falls County, State of Idaho, the parties of the