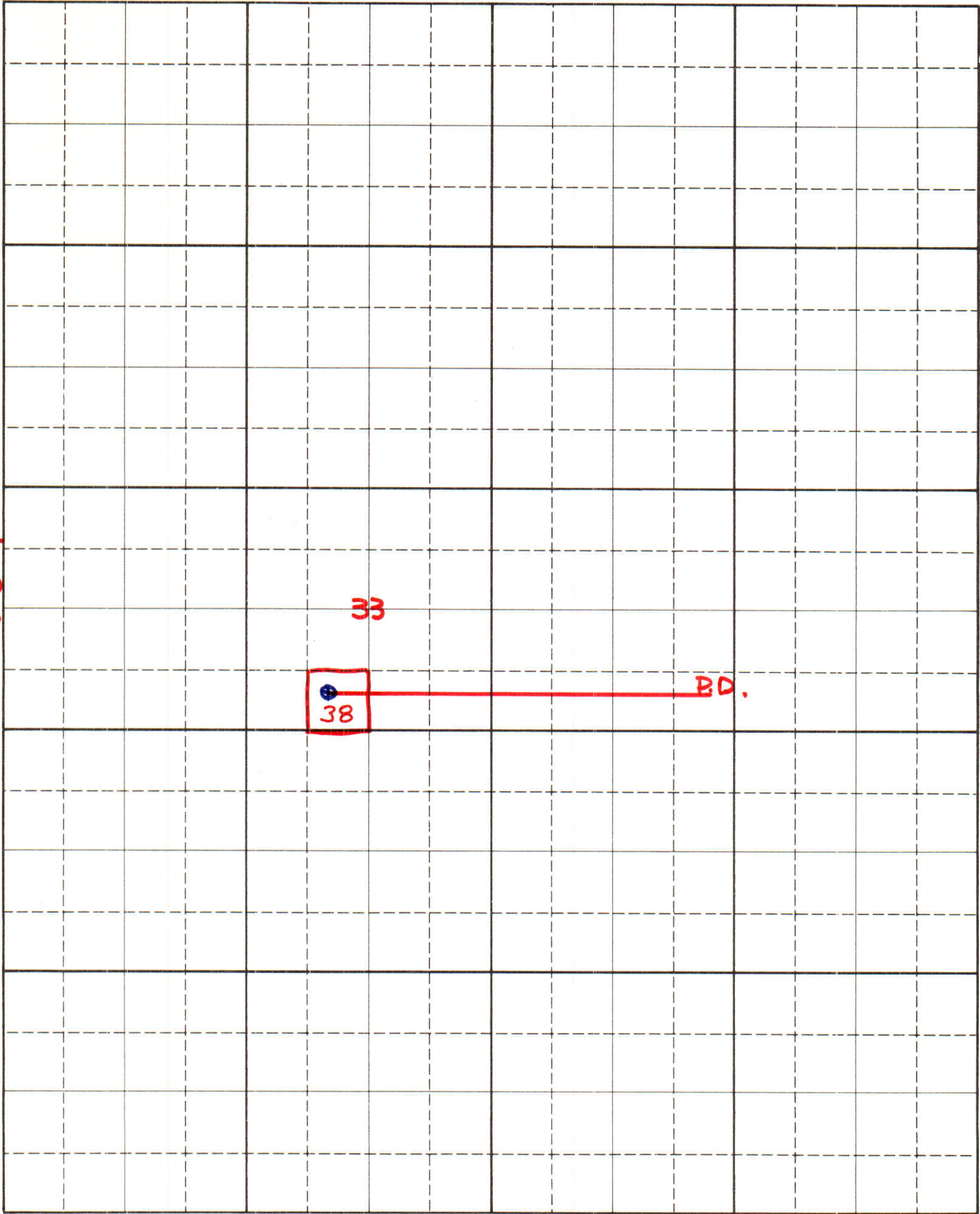


11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

R.16-E

T.10-S



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.

Carolyn J. Biggs  
(Applicant)

7254

# Affidavit of Publication

STATE OF IDAHO, }  
COUNTY OF TWIN FALLS }

ss.

Nº 2915

## NOTICE OF APPLICATION FOR WATER PERMIT

NOTICE IS HEREBY GIVEN that Russell A. Biggs and/or Carolyn J. Biggs, 201 S. Washington, Twin Falls, Idaho has on 3-18-74 submitted Application No. 47-7254 for a permit to appropriate 76 cubic feet per second of water from wastewater by means of pump in natural drain within the SE 1/4 SW 1/4, Sec. 33, T 10S, R 16E, B.M., Twin Falls County to be used from Mar. 15 to Nov. 15 for irrigation of 38 acres within the SE 1/4 SW 1/4, Sec. 33, T 10S, R 16E, 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 Administration, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before April 15, 1974.

R. Keith Higginson  
Director

Published in the Times News on  
March 28, and April 4, 1974.

RECEIVED

APR 8 1974

Department of Water Administration  
Southern District Office

I, Kay Mabey being first duly sworn upon  
oath, depose and say that I am Princ/ Clerk of the TIMES-NEWS,  
published daily, except Saturday, at Twin Falls, Idaho, and do solemnly swear that a copy  
of the notice of advertisement, as per clipping attached, was published in the regular and  
entire issue of said newspaper, and not in any supplement thereof, for two  
consecutive Thursdays, commencing with the issue dated  
March 28, 19 74, and ending with the issue dated  
April 4, 19 74.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

Kay Mabey  
Subscribed and sworn to before me on this 5th day of

April, 19 74.

Mable T. Clark  
Notary Public in and for the County of Twin Falls,  
State of Idaho, residing at Twin Falls, Idaho

47 7254

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

RECEIVED

JUN 13 1979

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

Department of Water Resources  
Sawtooth District Office

Russell A. &/or Carolyn J. Biggs of Route 2, Filer, Idaho  
(Name) (Address)

State of Idaho, deposes and says:

That he is the holder, or the duly authorized agent of the holder\*, of Permit to Appropriate the Public  
Waters of the State of Idaho No. 47-7254.

That under the terms and conditions of said permit, work thereunder was required to be completed on or  
before July 1, 19 79.

That he has heretofore performed the following work described under said permit: \_\_\_\_\_

Twelve acres are irrigated by gravity.

Costing \$ 150.00

That he is unable to complete the remainder of the work within the required time for the following  
reasons, to-wit: Lack of funds has prevented installation of pump to irrigate remaining  
ground.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of  
obligations under said permit to July 1, 19 84.

Russell Biggs  
(Signature)\*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time  
within which to submit proof of beneficial use of water is extended to July 1, 1984.

Signed this 25<sup>th</sup> day of June, 19 79.

J. Glen Saxton  
CHIEF, Operations Bureau

MICROFILMED

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. )  
47-7254 in the name of RUSSELL A. BIGGS &/or )  
CAROLYN J. BIGGS )  
\_\_\_\_\_ )

MEMORANDUM DECISION  
AND ORDER

On March 18, 1974, Russell A. Biggs &/or Carolyn J. Biggs filed Application for Permit No. 47-7254 to appropriate .76 cubic feet per second of wastewater in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 33, Twp. 10S, Rge. 16E, B.M., Twin Falls County, to be used for irrigation purposes. Notice of this proposed appropriation was published in the Times News, Twin Falls, Idaho, on March 28, and April 4, 1974.

On April 15, 1974, the Department received a letter from Mr. Fred D. Decker, attorney for the protestant Bryon O. Wright, protesting the granting of the permit. A conference was held concerning this matter in the offices of the Department of Water Resources (formerly the Department of Water Administration), 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, on June 18, 1974. The protestant was represented by Mr. Fred D. Decker, attorney, and the applicants represented themselves. The applicants and the protestant agreed to allow the Department of Water Resources to render a decision without a formal hearing on the matter.

Based upon the information in the file, the statements made at the conference, and the Department's understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

- (1) The water available in the source is sufficient for the purposes for which it ~~is~~ sought to be appropriated.
- (2) The source of the water supply is wastewater from the irrigated land of the protestant.
- (3) The point of diversion requested is on the applicant's land, and the water will be diverted after it leaves the protestant's land.

Conclusions of Law

- (1) Diversion of water as proposed would not reduce the quantity of water available to nor interfere with existing water rights.
- (2) The waters which are the subject of this application are public waters of the State of Idaho which may be appropriated under provisions of State law. The protestant,

however, is not required to continue his present irrigation practice to supply the applicant with water.

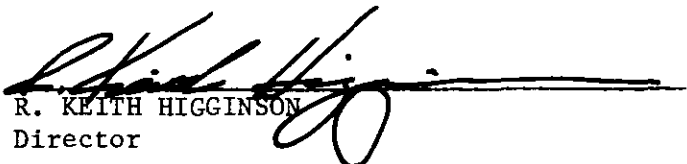
(3) The applicant is entitled to a permit for the appropriation of .76 cubic feet per second of wastewater.

Order

IT IS, THEREFORE, ORDERED and Application for Permit No. 47-7254 is hereby APPROVED subject to the following conditions:

- (1) That the permit is subject to all prior water rights.
- (2) That proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before July 1, 1979.
- (3) That a measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.

Dated this 8 day of July, 1974.

  
R. KEITH HIGGINSON  
Director

Identification No. \_\_\_\_\_

Application No. 47-7254

**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)

**APPROVED**

1. Name of applicant Russell A. Biggs and/or Carolyn J. Biggs  
post office address 201 S. Washington, Twin Falls, Idaho
2. Source of water supply wastewater which is a tributary of sinks
3. a. Location of point of diversion is SE  $\frac{1}{4}$  of SW  $\frac{1}{4}$  of Section 33 Township 10S  
Range 16E B.M. Twin Falls County; additional points of diversion if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
b. If water is not consumed, it will be discharged into \_\_\_\_\_ at a point in \_\_\_\_\_  $\frac{1}{4}$   
of \_\_\_\_\_  $\frac{1}{4}$  of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ B.M. \_\_\_\_\_
4. Water will be used for the following purposes:  
Amount .76 cfs for irrigation purpose from Mar. 15 to Nov. 15 (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. .76 cubic feet per second and/or  
b. \_\_\_\_\_ acre feet per annum.
6. Proposed diverting works:  
a. Description of ditches, flumes, pumps, headgates, etc. pump in natural drain  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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 \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use  
is 5 years.  
b. Estimated construction cost is \$ \_\_\_\_\_.
8. Description of proposed uses:  
a. If water is **not** for irrigation:  
(1) Give the place of use of water: \_\_\_\_\_  $\frac{1}{4}$  of \_\_\_\_\_  $\frac{1}{4}$  of Section \_\_\_\_\_ Township \_\_\_\_\_  
Range \_\_\_\_\_ 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**47 7254**

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

| TWP. | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|------|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|      |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
| 10S  | 16E   | 33   |     |     |     |     |     |     |     |     |     |     | 38  |     |     |     |     |     | 38     |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|      |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

Total number of acres to be irrigated 38

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

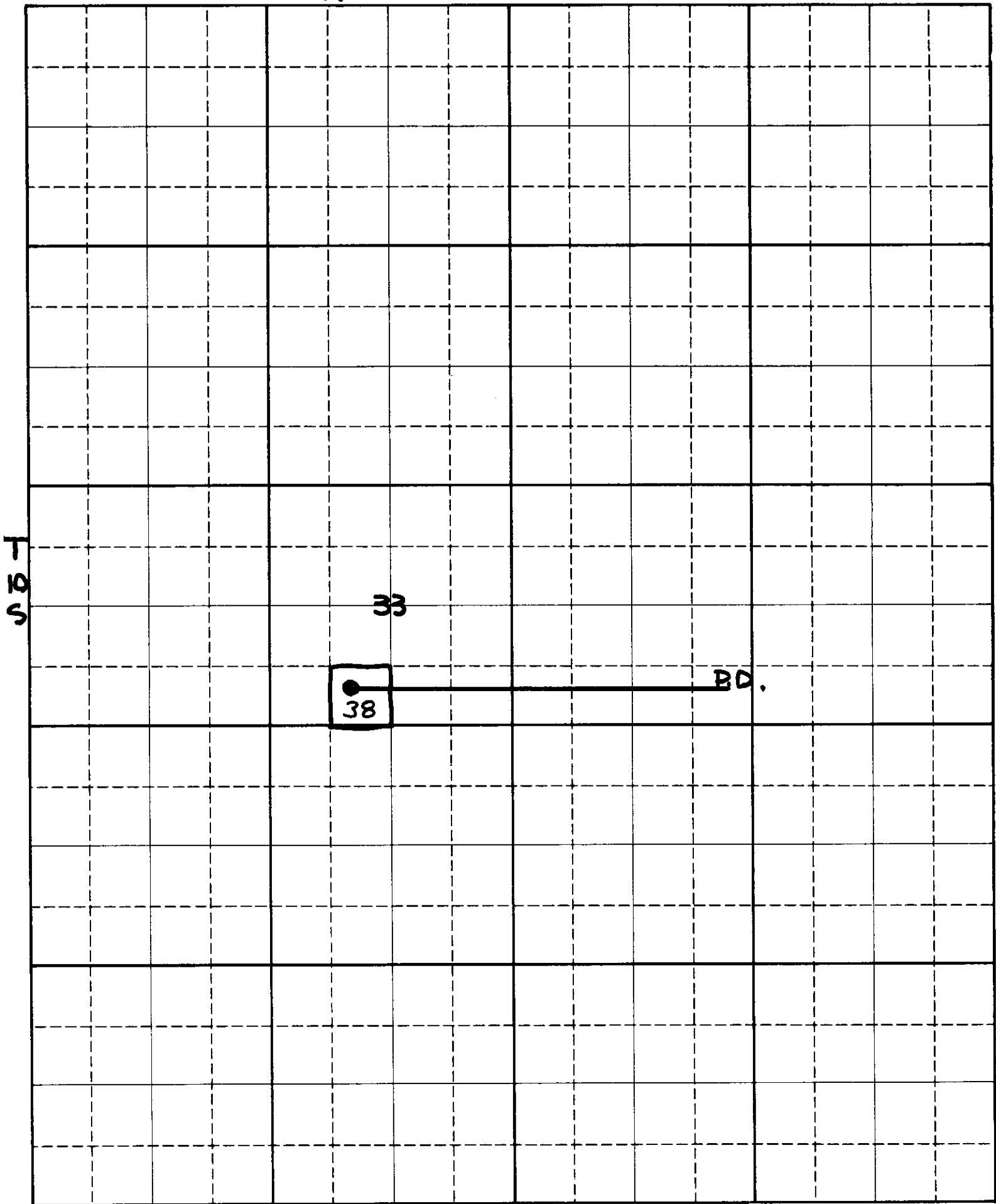
b. Who owns the land to be irrigated or place of use applicant

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.

R-16-E



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.

Carolyn J. Biggs  
(Applicant)

7254

Received by mls Date 3-18-74 Time 1:30  
 Preliminary check by gcf Fee \$ 25.00 (13849)  
 Receipted by LT Date 3-18-74  
 Publication prepared by LT Date 3-19-74  
 Published in Times News  
 Publication dates 3-28 & 4-4-74  
 Publication approved LT Date 4-9-74  
 Priority reduced to \_\_\_\_\_ Reason \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Protests filed by: Byron O. Wright  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Copies of protests forwarded by \_\_\_\_\_  
 Hearing held by \_\_\_\_\_ Date \_\_\_\_\_  
 Recommended for approval denial by 306

## 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. 47-7254, 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 July 1, 1979.
- 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 8 day of July 19 74.

R. Kent Higgins  
 Director

DEPARTMENT OF WATER ADMINISTRATION  
- STAFF ANALYSIS -

| Item | Initial  | Date            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------|----------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)  | CLF      | 3-17-74         | Application No. <u>47-7254</u> <u>Russell A. Biggs and/or</u><br><u>Carolyn J. Biggs.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| (2)  |          |                 | <input checked="" type="checkbox"/> Source<br><input checked="" type="checkbox"/> Point of Diversion<br><input checked="" type="checkbox"/> County<br><input checked="" type="checkbox"/> Quantity of Water and Period of Use<br><input checked="" type="checkbox"/> Description of Diverting Works<br><input checked="" type="checkbox"/> Time required for B/U of water<br><input checked="" type="checkbox"/> Place of Use or Acres Irrigated<br><input checked="" type="checkbox"/> Map<br><input checked="" type="checkbox"/> Signature<br><input checked="" type="checkbox"/> Fee |
| (3)  | CLF      | 3-17-74         | In form to receipt<br><br>Send Copies to:<br><input type="checkbox"/> Idaho State Health Department<br><input type="checkbox"/> Idaho Fish and Game Department<br><input type="checkbox"/> Bureau of Land Management                                                                                                                                                                                                                                                                                                                                                                    |
| (4)  |          |                 | <input type="checkbox"/> Request Special Use Permit from U.S.F.S.<br><input type="checkbox"/> Request Easement from B.L.M.<br><input type="checkbox"/> Request Information from Applicant                                                                                                                                                                                                                                                                                                                                                                                               |
| (5)  | CLF      | 2-17-74         | In form for advertising                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (6)  |          |                 | Located within Water District No. _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (7)  |          |                 | Critical groundwater area: yes _____ no _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| (8)  |          |                 | Groundwater levels:<br><br>____ Decline (comment) _____<br>____ Stable (comment) _____<br>____ Increasing (comment) _____                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| (9)  |          |                 | Comments: _____<br>_____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (10) | LT       | 4-9-74          | Affidavit of Publication received (date) <u>4-9-74</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| (11) |          |                 | Final date for protests <u>4-15-74</u><br>Protests received: yes _____ no <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| (12) |          |                 | Date and Place of hearing _____<br>Decision reached at hearing _____<br>_____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| (13) |          |                 | All requested information received from agencies or applicant<br>yes <input checked="" type="checkbox"/> no _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| (14) |          |                 | Action recommended:<br><input checked="" type="checkbox"/> Approve <span style="float: right;">Priority <u>318-14</u></span><br><input type="checkbox"/> Deny <span style="float: right;">Reason for Reduction _____</span><br><input checked="" type="checkbox"/> Measuring device required<br><input type="checkbox"/> See attached sheet for additional conditions of approval<br><input type="checkbox"/> No additional conditions for approval                                                                                                                                     |
| (15) | District | <u>Southern</u> | By <u>Bob Haynes</u> Date <u>4-15-74</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

47 7254

47 7254

RECEIVED  
Department of Water Administration

# Affidavit of Publication

STATE OF IDAHO,  
COUNTY OF TWIN FALLS }

ss.

Nº 2915

I, Kay Mabey being first duly sworn upon oath, depose and say that I am Princ/ Clerk of the TIMES-NEWS, published daily, except Saturday, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for two consecutive Thursdays, commencing with the issue dated March 28, 19 74, and ending with the issue dated April 4, 19 74.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to be published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in each issue thereof, Thursday is announced as the day on which said legal notices will be published.

Subscribed and sworn to before me on this 5th day of April, 19 74.

Notary Public in and for the County of Twin Falls,  
State of Idaho, residing at Twin Falls, Idaho

4/86

RECEIVED

SEP 23 1987

Department of Water Resources  
Southern Region Office

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EXAMINATION FEE INFORMATION

RECEIVED

SEP 28 1987

For Office Use Only  
Fee Received \$100.  
Date 9-23-87  
Receipt # 44295  
Receipt by [Signature]  
Sent to S.O. 9/25

1. Permit No. 47-7254

ONE OF THE FOLLOWING BOXES SHOULD BE MARKED TO DESIGNATE YOUR CHOICE:

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

2. Permit Holder: Russell Biggs

3. Post Office Address: Rt. 2, Filer, ID 83328

Telephone No. 326-5281

4. Source of Water: Waste Water

5. Extent of Use:

Domestic \_\_\_\_\_ (No. of households) Stockwater \_\_\_\_\_ (No. and type of stock)

Irrigation 25 (acres) Other/Remark \_\_\_\_\_

6. Total rate &/or volume for which proof is submitted 0.50 cfs \_\_\_\_\_ acre-feet

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

1972

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

Permittee

(Name)

(Address)

(Telephone Number)

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

9 23 87  
Date

Russell Biggs  
Signature of Permit Holder (and title, if appropriate)

State of Idaho  
Department of Water Resources

LICENSE EXAMINATION FEE SCHEDULE

(c.f.s. = cubic feet per second  
AF = acre feet)

| cfs          | AF          | Fee    |
|--------------|-------------|--------|
| 0 - 0.04     | 0 - 4       | \$ 0   |
| .05 - 0.20   | 5 - 20      | 50.00  |
| .21 - 1.0    | 21 - 100    | 100.00 |
| 1.01 - 2.0   | 101 - 200   | 125.00 |
| 2.01 - 3.0   | 201 - 300   | 150.00 |
| 3.01 - 4.0   | 301 - 400   | 175.00 |
| 4.01 - 5.0   | 401 - 500   | 200.00 |
| 5.01 - 6.0   | 501 - 600   | 225.00 |
| 6.01 - 7.0   | 601 - 700   | 250.00 |
| 7.01 - 8.0   | 701 - 800   | 275.00 |
| 8.01 - 9.0   | 801 - 900   | 300.00 |
| 9.01 - 10.0  | 901 - 1000  | 325.00 |
| 10.01 - 11.0 | 1001 - 1100 | 350.00 |
| 11.01 - 12.0 | 1101 - 1200 | 375.00 |
| 12.01 - 13.0 | 1201 - 1300 | 400.00 |
| 13.01 - 14.0 | 1301 - 1400 | 425.00 |
| 14.01 - 15.0 | 1401 - 1500 | 450.00 |
| 15.01 - 16.0 | 1501 - 1600 | 475.00 |
| 16.01 - 17.0 | 1601 - 1700 | 500.00 |
| 17.01 - 18.0 | 1701 - 1800 | 525.00 |
| 18.01 - 19.0 | 1801 - 1900 | 550.00 |
| 19.01 - 20.0 | 1901 - 2000 | 575.00 |
| 20.01 & over | 2001 & over | 600.00 |

Checks should be made payable to the  
Department of Water Resources

No fee is required for single family  
domestic use or stockwater use.



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

CECIL D. ANDRUS  
Governor

A. KENNETH DUNN

Director

47-7254  
BIGGS, RUSSELL A.  
BIGGS, CAROLYN J.  
RT. 2  
FILER, ID 83328

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

August 12, 1987

Dear Permit Holder:

**LAPSE NOTICE**  
**License Examination Fee**

You are hereby notified that under the provisions of Section 42-217 and 42-218a, Idaho Code, the above referenced permit will lapse and be of no further force nor effect on October 12, 1987, for failure of the permit holder to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water right examiner.

Provisions of § 42-217, Idaho Code, and the Beneficial Use Examination Rules and Regulations provide that failure of the permit holder to submit either the fee or an acceptable field examination report within one (1) year and sixty (60) days after notification by the director that the submittal is due is cause for the director to reject the proof of beneficial use and lapse the permit. The Department notified you of the required submittal on August 12, 1986.

The lapsed permit can be reinstated upon a showing of reasonable cause for late submittal of proof of beneficial use, if you submit to the Department on or before December 11, 1987, either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water right examiner.

Enclosed is a fee information sheet that must be completed and submitted to the Department to keep the permit in good standing. If you have questions, please contact any office of the Department.

Sincerely,

*L. Glen Saxton*  
L. GLEN SAXTON, Chief  
Operations Bureau

Enclosure



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
SOUTHERN REGION

John V. Evans  
Governor

A. Kenneth Dunn  
Director

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

47-7254  
BIGGS, RUSSELL A.  
BIGGS, CAROLYN J.  
RT. 2  
FILER, ID 83328

138119

August 12, 1986

CERTIFIED MAIL

EXAMINATION FEE NOTICE

Dear Permit Holder:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

  
LOREN HOLMES  
Southern Regional Manager

Enclosures

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Southern Region

---

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

MAY 23, 1984

RUSSELL BIGGS  
RT. 2  
FILER

ID 83328

RE: Permit No. 47-7254

Dear Permit Holder:

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

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

A condition of approval of your original permit required the installation of a measuring device which, according to the proof card submitted by you, has not been installed. A measuring device must be installed and operating at the time the field examination is made. If a measuring device is not installed your permit may be subject to cancellation.

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

If you have any questions regarding the field examination, please contact this office by phone at 734-3578 or in person at our office at 1041 Blue Lakes Blvd. N. Twin Falls, Idaho.

Sincerely,  
s/Mary A. Newby  
Secretary

PLACE  
13 CENT  
STAMP  
HERE

**RECEIVED**

MAY 3 1984

Department of Water Resources  
Southern District Office



**MICROFILMED**

**RECEIVED**

MAY 4 1984

IDAHO DEPARTMENT OF WATER RESOURCES  
Department of Water Resources  
BOISE, IDAHO 83720

# DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card as a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 47-7254.

Name(s) of Permit Holder: Russell Biggs

Post Office Address: Route #2

Filer, ID 83328

Tel. No. 326-5769

Source of Water: Wastewater

Extent of Use:

- |                                                          |                            |
|----------------------------------------------------------|----------------------------|
| <input type="checkbox"/> Domestic                        | (number of households)     |
| <input type="checkbox"/> Stockwater                      | (number and type of stock) |
| <input checked="" type="checkbox"/> Irrigation <u>35</u> | (acres)                    |
| <input type="checkbox"/> Other                           |                            |

Measuring Device:

Required? ☒ Yes ☐ No

Installed? ☐ Yes ☒ No will be

Access Port

Required? ☐ Yes ☒ No

Installed? ☐ Yes ☒ No installed

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

5-3-84  
Date

Russell Biggs  
Signature of Permit Holder

S T A T E O F I D A H O  
D E P A R T M E N T O F W A T E R R E S O U R C E S

---

STATEHOUSE  
BOISE, IDAHO 83720  
(208) 334-4440  
CERTIFIED MAIL

BIGGS, Russell A. &/or Carolyn J.  
Rt. 2  
Filer, ID 83328

138488

P R O O F D U E N O T I C E

A P R I L            30, 1984

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 47-7254 WAS THAT PROOF OF THE EXTENT OF YOUR BENEFICIAL USE MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE JULY 01, 1984. (SEE LAST PAGE OF YOUR APPROVED PERMIT OR YOUR LAST APPROVED EXTENSION REQUEST). ENCLOSED IS A POSTCARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU OR A PREVIOUS OWNER OF THIS PERMIT HAVE NOT RECEIVED A PRIOR EXTENSION OF TIME, YOU MAY REQUEST AN EXTENSION OF TIME IF THE DELAY IS FOR REASONABLE CAUSE AS PROVIDED IN SECTION 42-204, IDAHO CODE. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. AN EXTENSION OF TIME REQUEST FORM IS ENCLOSED FOR YOUR CONVENIENCE.

EITHER THE BENEFICIAL USE POSTCARD OR A REQUEST FOR AN EXTENSION OF TIME MUST BE RECEIVED BY THIS DEPARTMENT ON OR BEFORE THE ABOVE DESCRIBED PROOF DUE DATE. IF NEITHER IS RECEIVED, THE DEPARTMENT WILL SEND YOU A LAPSE NOTICE. WITHIN SIXTY (60) DAYS OF THE MAILING OF THE LAPSE NOTICE, THE PERMIT WILL NO LONGER BE OF ANY FORCE NOR EFFECT.

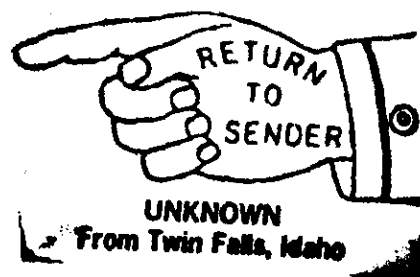
SINCERELY,

RITA FLECK  
SECRETARY/RECORDS MANAGER

ENCLOSURES

CONFIDENTIAL

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
House  
Twin Falls, Idaho 83720



Russell A. and/or Carolyn J. Biggs  
201 S. Washington  
Twin Falls, ID 83301

Box 1905  
Twin Falls,

RECEIVED  
JUL 4 1979

Department of Water Resources

RECEIVED

100873

June 25, 1979

Russell A. 7/or Carolyn J. Biggs  
Rt. 2  
Filer, ID 83328

Dear Mr. & Mrs. Biggs

Re: Permit No. 47-7254

Enclosed is a copy of the approved application for extension of time in connection with the above referenced permit.

The time within which to submit proof of beneficial use of water has been extended to ~~July 1, 1984.~~

Sincerely,

Jan Grover  
Water Rights Supervisor

**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

May 1, 1979

100873

Russell A. and/or Carolyn J. Biggs  
201 S. Washington  
Twin Falls, ID 83301

Dear Mr. and Mrs. Biggs:

One of the conditions of approval of your water Permit No. 87-7254 was that evidence of the extent of development must be submitted to this office on or before July 1, 1979. (See last page of your approved permit). Enclosed is a post card which may 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 post card 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 within 60 days.

Sincerely,

  
RITA FLECK  
Sr. Secretary

Enc: 1



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

NOV 28 1979

Dear Wateruser:

The enclosed Order changes the measuring device condition of approval on your water right permit.

The changed condition should be less restrictive and provide more flexibility to you in the development of your water right system. The specifications related to the size and location of the access port will be available upon request from the Department, as soon as the Department's measuring equipment is obtained.

If you have questions regarding this matter, please contact this office or our regional offices.

Sincerely,

L. GLEN SAXTON  
Chief, Operations Bureau

LGS:JG:kw

Enclosure

ENCLOSURE

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF CHANGING THE MEASURING  
DEVICE REQUIREMENT FOR PERMIT NO. **47-7254**

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,

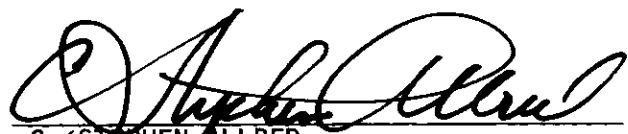
WHEREAS, the former condition required the permit holder to purchase and install a measuring device or hire a professional engineer to certify the rate of diversion; and,

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 18<sup>th</sup> day of August, 1978.

  
C. STEPHEN ALLRED  
Director

July 16, 1974

Re: Permit No. 47-7254

Russell A. &/or Carolyn Biggs  
201 S. Washington  
Twin Falls, Idaho 83301

Dear Mr. & Mrs. Biggs:

Enclosed is a copy of the approved Application for Permit No. 47-7254 along with a copy of the Memorandum Decision and Order. We direct your attention to the conditions of approval as listed in 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 copy of a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR  
Chief, Water Rights

BDF:jfr

Enclosures

cc: Protestants

47 7254

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

R. P. PARRY  
T. M. ROBERTSON  
JOHN H. DALY (1913-1968)  
BERT LARSON  
C. G. McINTYRE  
JOHN R. COLEMAN  
THOMAS G. NELSON  
JOHN A. ROSS  
FRED D. DECKER  
ROBERT C. PAINE

THE IDAHO FIRST NATIONAL BANK BUILDING  
P. O. BOX 525  
TWIN FALLS, IDAHO 83301

TELEPHONE  
(208) 733-3722

April 15, 1974

RECEIVED

APR 16 1974

Department of Water Administration  
Twin Falls, Idaho

Mr. R. Keith Higginson  
Department of Water Administration  
1041 Blue Lakes Boulevard North  
Twin Falls, Idaho 83301

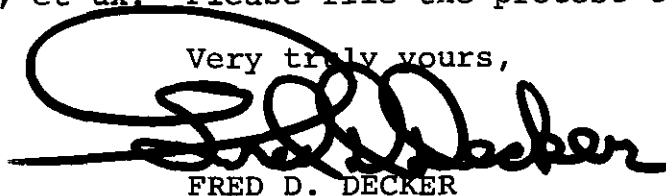
HAND DELIVERED

Re: Permit Application No. 47-7254

Dear Mr. Higginson:

Enclosed please find the original and one copy of the protest of Bryon O. Wright, who resides at 342 Polk Street in Twin Falls, Idaho, to application No. 47-7254 filed by Russell A. Biggs, et ux. Please file the protest today.

Very truly yours,



FRED D. DECKER

FDD:cs  
Enclosures

47 7254

RECEIVED

APR 11 1974

LANDING OFFICE  
TWIN FALLS, IDAHO

PARRY, ROBERTSON, DALY & LARSON  
P. O. Box 525  
Twin Falls, Idaho 83301  
Telephone: 733-3722  
Attorneys for Protestant

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 47-7254 OF ) PROTEST TO APPLICATION  
RUSSELL A. BIGGS AND/OR ) FOR PERMIT  
CAROLYN J. BIGGS. )

COMES NOW, BYRON O. WRIGHT, Protestant, and respectfully  
alleges:

1. That protestant is an individual who owns and operates a 160 acre farm, described as Lots 3 and 4 and the South One-Half of the Northwest Quarter, (S 1/2 NW 1/4) of Section 4, Township 11 South, Range 16 East of Boise Meridian in Twin Falls County, Idaho.

2. That application No. 47-7254 proposes to divert protestant's waste water that would normally be used and reused by Protestant on his above described farm, and thus deprive him of the use and reuse of irrigation water appurtenant to his farm, as fully disclosed by protestant's claim of water right No. 47-4030, on file with this Department, to which reference is hereby made.

3. That during the irrigation season, the protestant is entitled to the use of all of the water upon his farm to the exclusion of applicants Biggs.

NOW, THEREFORE, protestant hereby protests application

47-7254

1 No. 47-7254 for the following reasons, to-wit:

2 1. That the use proposed in application No. 47-7254  
3 would reduce the quantity of water to which protestant is entitled  
4 through valid and existing water rights.

5 2. That the supply of water itself is insufficient for  
6 the purpose for which the applicant seeks to appropriate water, if  
7 protection is afforded to protestant's prior and existing water  
8 rights.

9 WHEREFORE, Protestant respectfully requests that applica-  
10 tion No. 47-7254 be forthwith denied by the Department of Water Ad-  
11 ministration, and that no permit be issued to applicant.

12 DATED This 15th day of April, 1974.

13  
14   
15 BYRON O. WRIGHT

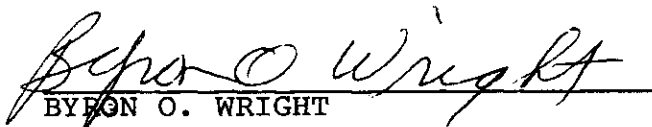
16 HARRY ROBERTSON, DAVE & LARSON

17 BY:   
18 Attorneys for Protestant  
19 Residing at Twin Falls, Idaho

20 STATE OF IDAHO )  
21 ) ss.  
22 County of Twin Falls )

23 BYRON O. WRIGHT, being first duly sworn on oath, says:

24 That he is the Protestant in the above entitled matter;  
25 that he has read the above and foregoing Protest, knows the contents  
26 thereof, and believes that the facts stated therein are true.

27   
28 BYRON O. WRIGHT

29 SUBSCRIBED and SWORN to before me this 15th day of  
30 April, 1974.

31   
32 Notary Public for Idaho  
Residing at Twin Falls, Idaho

47-7254 - Russell A. Biggs and/or  
Carolyn J. Biggs

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

June 18, 1974 - 1:30 p.m.

ROSTER OF ATTENDANCE

Name

Address

Representing

|                         |                                   |                 |
|-------------------------|-----------------------------------|-----------------|
| <del>Byron Wright</del> |                                   |                 |
| Bill Wright             |                                   |                 |
| Errol Decker            | P.O. Box 525<br>Twin Falls, Idaho | Byron D. Wright |
| Russell Biggs Jr        |                                   |                 |

## Protestant

1. Concern about the establishment of vested rights on waste water
2. No problem about interfering with protestant water.
3. 40 acres of the 160 acres is watered from waste

I agree to allow the Department of Water  
Administration to render a decision in the matter  
of protested application 47-7254 based on  
information in the file and information presented  
at an informal conference June 18, 1974

Russell & Siggs or  
Byron Wright

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

MEMORANDUM OF LAW

TO MR. BYRON WRIGHT

Facts:

Byron Wright owns 160 acres of farm land south of Filer. A certain amount of the water appurtenant to his farm wastes onto an adjoining farm which has no Salmon River Canal Company rights appurtenant thereto. Mr. Wright wishes to recapture this waste water and by using 1400 feet of pipe, bring it back to the upper portion of his land. In this manner he will be able to reuse his waste water.

Issues:

1. The right of an appropriator to cease wasting water.
2. The rights of a junior appropriator as to waste water.

I. Right to Cease Wasting Water

A water owner has a right to cease wasting water and recapture such water. The Idaho decisions supporting this principle are numerous and serve to qualify the rule only by a proviso that the recaptured water must also be applied to the beneficial use.

Sebern v. Moore, 44 Idaho 410, 258 Pac. 176 (1927), at p. 418:

"We conclude that surface waste and seepage water may be appropriated under the provisions of C.S., sec. 5562, subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. His control is not dependent upon continuous actual possession, and in the absence of abandonment or forfeiture of his right to its use, he may assert his right, which is not affected by his once having applied it to a beneficial use. (*United States v. Haga*, 276 Fed. 41, cited with approval in *Ide v. United States*, 263 U.S. 497, 44 Sup. Ct. 182, 68 L. ed. 407)" (Emphasis supplied.)

Crawford v. Inglin, 44 Idaho 663, 258 P. 541 (1927) at p. 669:

"In the conclusions of law, it is stated that the defendant is enjoined from interfering with plaintiff's ditch or with the collection in plaintiff's ditch of any of the waste water or interfering with the flow into plaintiff's ditch as it has heretofore naturally flowed therein of any waste water finding its way therein.' This conclusion goes too far; it is not justified from the facts. There is no evidence whatever of a grant of any water from Clawson. The most that can be said, from the testimony of respondent's son, is that Clawson permitted certain of his water to waste and to be carried away by respondent. Clawson did not agree to permit water, to which he was entitled, to waste for any definite time. While respondent, under the issues here presented, would seem to be entitled to all the water that

17-7000

1 collected in the ditch, appellant cannot be required to waste water  
2 into the ditch. He can use all his water, waste none of it, or  
3 apply it on other lands, and thereby prevent its flow into the  
ditch. \* \* \*

4 In Colthorp v. Mountain Home Irr. Dist., 66 Idaho 173, 157 P.2d  
5 1005 (1945), plaintiff contended that a cause of action was stated by reason  
6 of the following facts (p. 178);

7 " \* \* \* that the change of the point of diversion and place  
8 of use of the waters decreed to the Lockman ranch and  
9 consequent failure to irrigate that ranch as was the 'custom'  
10 unlawfully and wrongfully deprived appellant of the use  
11 of such seepage water, because the long use of that water  
for the irrigation of the lower Ake ranch constituted an  
appropriation thereof which had ripened into a right to  
use it. "

The court said on page 179:

12 " \* \* \* Sebern v. Moore, 44 Ida. 410, 416, 417, 418,  
13 258 P. 176, this court held 'surface waste and seepage  
14 water may be appropriated under the provisions of  
15 C.S., sec. 5562 (now Sec. 41-107, supra), subject  
16 to the right of the owner to cease wasting it, or in  
good faith to change the place or manner of wasting it,  
or to recapture it, so long as he applies it to a beneficial  
use. "

17 And on page 182:

18 "It must be conceded respondents could not be required  
19 to irrigate the Lockman ranch; that respondent could not  
20 be required to continue to waste 75% of the water decreed  
21 to it, for the benefit of appellant; that respondents could  
22 not be enjoined from ceasing to waste such decreed water  
23 and making beneficial use of it and that a denial of the  
24 application of the district to change the point of diversion  
and place of use of the water does not constitute res  
judicata. For these reasons we conclude, and so hold,  
that the second amended complaint does not state a cause  
of action either for the recovery of damages or for injunc-  
tive relief. "

25 Reynolds Irrigation Dist. v. Sproat, 70 Idaho 217, 214 P.2d 930  
26 (1950), p. 222:

27 "The second assignment takes issue with the finding  
28 that the water collected by the drain belonged to the  
29 primary appropriator. In this case the record shows  
30 that the Boise-Kuna Irrigation District is the primary  
31 appropriator. It is settled law that seepage and waste  
32 water belong to the original appropriator and, in the  
absence of abandonment or forfeiture, may be reclaimed  
by such appropriator as long as he is willing and able to  
put it to a beneficial use. \* \* \*

1 In Wells A. Hutchins Book, The Idaho Law of Water Rights (1956),  
2 Mr. Hutchins discusses the problems with which this research is concerned  
3 and cites from Twin Falls Canal Co. v. Damman, 277 F. 331 (1920) at p. 90  
4 of his Book:

5 "An irrigation company is not bound to maintain conditions  
6 giving rise to the waste of water from any particular part of  
7 its system for the benefit of individuals who have been  
8 making use of the waste. While such company cannot  
9 maliciously divert the waste water away from the users,  
10 it has the superior right of use for its own purposes in  
11 good faith."

12 Continuing, Mr. Hutchins summed up the law on waste water in Idaho:

13 "The Idaho Supreme Court has said that there is no vested  
14 right in waste or seepage waters as against the paramount  
15 owner thereof; 'that is, the owner of the water taken from'  
16 the stream or the owner of the land, or reservoir, etc.,'  
17 from which the water seeps or wastes. An owner of land  
18 'can use all his water, waste none of it, or apply it on other  
19 lands, and thereby prevent its flow into the ditch' of another  
20 party who had been making use of the waste water with the  
21 permission of the owner of the land from which it flowed; there  
22 having been no evidence whatever of any grant of water from  
23 the original owner."

## 24 II. Rights of A Junior Appropriator as to Waste Water

25 Hutchins states that the only rights that a subsequent appropriator  
26 of waste water might have acquired are through abandonment and forfeiture by  
27 the original appropriator. The Idaho court has allowed the original appropriator  
28 to change the point of beneficial use without affecting the rights of a subsequent  
29 appropriator of waste water.

30 In Application of Boyer, 73 Idaho 152, 243 P. 2d 540 (1952) at pages  
31 162-163, the Court got to this question as to waste water. Boyer had applied  
32 to change the point of beneficial use of his water and the appellants urge that  
they are entitled to the waste water:

33 "It is axiomatic that no appropriator can compel any other  
34 appropriator to continue the waste of water whereby the  
35 former may benefit. Sebern v. Moore, 44 Idaho 410 at page  
36 418, 258 P. 176; Colthorp v. Mountain Home Irr. Dist.,  
37 66 Idaho 173 at page 179, 157 P. 2d 1005; Johnson v.  
38 Twin Falls Canal Co., 66 Idaho 660 at page 669, 167 P. 2d  
39 334. If respondent, by a different method of irrigation in  
40 Section 30 could so utilize his water that it would all be  
41 consumed in transpiration and consumptive use, \* \* \* and  
42 thus no waste water return by seepage or percolation to  
43 the river, no other appropriator--from the evidence herein--  
44 could complain. Reynolds Irrigation Dist. v. Sproat, 70  
45 Idaho 217 at page 222, 214 P. 2d 330. Instead of thus changing

1 the method of use, respondent accomplishes the same result by  
2 changing the point of diversion, loss in transmission having  
3 been taken care of by stipulation. The rule that a junior  
4 appropriator has the right to continuation of stream conditions  
5 as they were at the time he made his appropriation, could not  
6 compel respondent to continue to waste his water by use on  
7 Section 30."

8 Hutchins stated at page 90, 91, in a discussion of In Application of  
9 Boyer, supra:

10 "One who uses waste water flowing from the land of another  
11 has no right as against the owner of the land from which the  
12 waste water flows in the absence of a grant of water therefrom.  
13 The Supreme court stated in 1952 that:

14 "It is axiomatic that no appropriator can compel any other  
15 appropriator to continue the waste of water whereby the  
16 former may benefit. \* \* \*"

17 "The fact that the owner of the upper land gives the lower user  
18 verbal permission to take the waste water does not, of itself,  
19 convey any right on the part of the lower user to compel the  
20 upper landowner to waste any of his appropriated water. Even  
21 if under the circumstances of a particular case the lower user  
22 would seem to be entitled to all the waste water collecting in the  
23 ditch leading to his land, nevertheless the upper owner in the  
24 basence of a grant cannot be required to waste water into the ditch."

25 In Thompson v. Bingham, 73 Idaho 305, 302 P. 2d 942 (1956), at  
26 p. 949, 50, the Idaho Court comprehensively stated the rules as to a subsequent  
27 appropriator of waste water.

28 "It is a rule long recognized that a landowner cannot  
29 acquire a prescriptive right to the continued flow of waste  
30 water or waste water running from one's land to that of  
31 another need not be continued and it may be intercepted and  
32 taken by such owner at any time and used on the land to which  
33 it is appurtenant. Garns v. Rollins, 41 Utah 260, 125 P. 367;  
34 Burkart v. Meiberg, 37 Colo. 127, 86 P. 98, 6 L.R.A., N.S.,  
35 1104, 119 Am. St. Rep. 279; Smith Canal or Ditch Co. v.  
36 Colorado Ice & Storage Co., 34 Colo. 485, 82 P. 940, 3 L.R.A.,  
37 N.S., 1143; Petersen v. Cache County Drainage District No. 5,  
38 77 Utah 256, 294 P. 289. For collection of authorities see  
39 Ann. Cas. 1915C, 1165.

40 "No valid appropriation can be made or prescriptive right  
41 acquired by gathering surplus water as it flows over the  
42 surface from adjoining property upon which it has been spread  
43 for irrigation purposes, or by merely accepting and using  
44 water when it is allowed to flow into one's ditch by the original  
45 owner, who makes exclusive use of it whenever he chooses to do  
46 so." 30 Am. Jur. 611 Sec. 19.

47 The original appropriator may at any time recapture waste water  
48 remaining on his land and apply it to a beneficial use. Barker  
49 v. Sonner, 135 Or. 75, 294 P. 1053; Sebern v. Moore, 44 Idaho  
50 410, 258 P. 176; Reynolds Irrigation Co. v. Sproat, 70 Idaho 217  
51 214, P. 2d 380.

1 Hence, as against the original appropriator and owner, an  
2 adjoining land owner cannot acquire a prescriptive right to  
waste or seepage water."

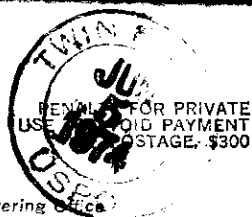
3 III. Conclusion:

4 The rule seems clear that an individual land owner can recapture waste  
5 water and apply it to a beneficial use upon the lands to which the water is  
6 appurtenant or upon other lands owned by the individual water user to which such  
7 water right has been transferred.

8 In the case of an individual water user, a change in point of beneficial  
9 use may be made when no injury will result to a junior appropriator. Granted no  
10 injury can be sustained by a junior appropriator where the senior appropriator  
11 ceases wasting water and puts it to a beneficial use on the lands to which it is  
12 appurtenant and to which it was applied at the time the junior appropriator per-  
13 fected his appropriation.

14 Since a private land owner might recapture waste water for his own  
15 use subject to the rule that such water be applied to a beneficial use, it would  
16 appear clear that Byron Wright can properly proceed with the installation of his  
17 pipe so that he might reuse his waste water.

U.S. POSTAL SERVICE  
OFFICIAL BUSINESS



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 UN

PS Form 3811  
June 1973

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

6 1974

47 7254

RECEIVED

**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.

217582

47-7254

1

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

INSURED NO.

DATE DELIVERED

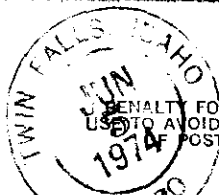
6-5-74

3

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

47 7254

U.S. 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

Department of Water Administration  
Southern District Office

JUN 6 1974

RECEIVED

PS Form 3811  
June 1973

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

47 7254

**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.

217583

47-7254

INSURED NO.

1

2

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

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

6-5-74

3

47 7254

No. 217583

**RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)**

|                                                        |                                               |                               |
|--------------------------------------------------------|-----------------------------------------------|-------------------------------|
| SENT TO<br>Russell A. Biggs and/or Carolyn J. Biggs    |                                               | POSTMARK<br>OR DATE<br>6-4-74 |
| STREET AND NO.<br>201 S. Washington, Twin Falls, Idaho |                                               | 47 7254                       |
| P.O., STATE AND ZIP CODE                               |                                               |                               |
| OPTIONAL SERVICES FOR ADDITIONAL FEES                  |                                               |                               |
| RETURN                                                 | 1. Shows to whom and date delivered .....     | 15¢                           |
| RECEIPT                                                | With delivery to addressee only .....         | 65¢                           |
| SERVICES                                               | 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 : 1972 O - 460-743

No. 217582

**RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)**

|                                                   |                                               |                               |
|---------------------------------------------------|-----------------------------------------------|-------------------------------|
| SENT TO<br>Fred Decker, Attorney at Law           |                                               | POSTMARK<br>OR DATE<br>6-4-74 |
| STREET AND NO.<br>P.O. Box 525, Twin Falls, Idaho |                                               | 47 7254                       |
| P.O., STATE AND ZIP CODE                          |                                               |                               |
| OPTIONAL SERVICES FOR ADDITIONAL FEES             |                                               |                               |
| RETURN                                            | 1. Shows to whom and date delivered .....     | 15¢                           |
| RECEIPT                                           | With delivery to addressee only .....         | 65¢                           |
| SERVICES                                          | 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 : 1972 O - 460-743

NAME AND  
ADDRESS  
OF SENDER

IDWA-Twin Falls

47-7254

Indicate type of mail

☐ INSURED ☐ C. O. D.☒ CERTIFIEDAffix stamp here if issued as  
certificate of mailing or for  
additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

| NUMBER OF<br>ARTICLE                          | NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS      | POSTAGE                                              | FEE | DUE SENDER<br>IF C. O. D.                    | ENDORSE-<br>MENT <sup>1</sup> | R. R.<br>FEE                                                                                                                                                                                                                                                                                                                                         | S. D.<br>FEE | S. H.<br>FEE <sup>2</sup> | RESTRICTED DELIVERY FEE<br>Remarks |
|-----------------------------------------------|---------------------------------------------------------|------------------------------------------------------|-----|----------------------------------------------|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------|------------------------------------|
| 1                                             | 217582 Fred Decker, Atty, PO Box 525, TF                | .10                                                  | .30 |                                              |                               | .15                                                                                                                                                                                                                                                                                                                                                  |              |                           |                                    |
| 2                                             | 217583 Russell A. and/or Carolyn Biggs, 201 S. Wash. TF | .10                                                  | .30 |                                              |                               | .15                                                                                                                                                                                                                                                                                                                                                  |              |                           |                                    |
| 3                                             |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 4                                             |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 5                                             |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 6                                             |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 7                                             |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 8                                             |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 9                                             |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 10                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 11                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 12                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 13                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 14                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 15                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 16                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 17                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 18                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 19                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| 20                                            |                                                         |                                                      |     |                                              |                               |                                                                                                                                                                                                                                                                                                                                                      |              |                           |                                    |
| TOTAL NUMBER OF<br>PIECES LISTED<br>BY SENDER |                                                         | TOTAL NUMBER OF<br>PIECES RECEIVED<br>AT POST OFFICE |     | POSTMASTER, PER (Name of receiving employee) |                               | <sup>1</sup> 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."<br><sup>2</sup> Special-handling charges apply only to third- and fourth-class parcels. Special-delivery service also includes special-handling service. |              |                           |                                    |

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION  
OF THE  
STATE OF IDAHO

In the Matter of Protest Against Approval  
of Application for Permit No. 47-7254 in  
the name of Russell A. Biggs and/or  
Carolyn J. Biggs  
.....

NOTICE OF CONFERENCE AND/OR HEARING

On March 18, 1974, Russell A. Biggs and/or Carolyn J. Biggs filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On April 15, 1974, the Department received protest against approval of said application from Bryon O. Wright.

The Department has set the matter of protest for conference and/or hearing for Tuesday, June 18, 1974, at 1:30 p.m., in the office of the Department of Water Administration, 1041 Blue Lakes Blvd. N., 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 Administration. 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 4th day of June, 1974.

  
BOB HAYNES  
Southern District Engineer

April 15, 1974

RE: Application No. 47-7254

Mr. and Mrs. Russell A. Biggs  
201 S. Washington  
Twin Falls, Idaho

Dear Mr. and Mrs. Biggs:

We have enclosed a copy of the protest filed against the issuance of a permit pursuant to your Application No. 47-7254. 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?

The Department cannot allow a permit for irrigation purposes which would entail the use of more than a continuous flow of .02 cubic feet per second of water for each acre of land, or an annual amount of 5 acre feet for each acre of land, unless the applicant can show that more is required. (Section 42-202, Idaho Code)

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 maddatory 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

47 7254

BH:lt      bc: Boise office  
enc.

April 15, 1974

RE: Application No. 47-7254 - Russell A. Biggs and/or Carolyn J. Biggs

Mr. Fred D. Decker  
Parry, Robertson, Daly & Larson  
P.O. Box 525  
Twin Falls, Idaho 83301

Dear Mr. Decker:

This is to acknowledge receipt of the protest submitted in behalf of Bryon O. Wright 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  
Southern District Engineer

BH:lt

bc: Boise office

47-7254

March 19, 1974

RE: Application No. 47-7254 - Russell A. Biggs and/or Carolyn J. Biggs

Times News  
P.O. Box 548  
Twin Falls, Idaho 83301

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.

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid."

---

(signature of claimant)

Very truly yours,

Bob Haynes  
Southern District Engineer  
Bob Haynes  
District Engineer  
Southern District  
enc.

Bill submitted 4-9-74 by LT

47-7254

3-28-74  
Times-News, Twin Falls, Idaho 21

## LEGAL NOTICE

### NOTICE OF APPLICATION FOR WATER PERMIT

NOTICE IS HEREBY GIVEN that Russell A. Biggs and/or Carolyn J. Biggs, 201 S. Washington, Twin Falls, Idaho has on 3-18-74 submitted Application No. 47-7254 for a permit to appropriate .76 cubic feet per second of water from wastewater by means of pump in natural drain within the SE 1/4 SW 1/4, Sec. 33, T 10S, R 16E, B.M., Twin Falls County to be used from Mar. 15 to Nov. 15 for irrigation of 38 acres within the SE 1/4 SW 1/4, Sec. 33, T 10S, R 16E, S. 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 Administration, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before April 15, 1974.

R. Keith Higginson  
Director

Published in the Times News on  
March 28 and April 4, 1974.

ok  
LT 3-28-74

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Russell A. Biggs and/or Carolyn J. Biggs  
201 S. Washington, Twin Falls, Idaho  
has on 3-18-74 submitted Application No. 47-7254  
for a permit to appropriate .76 cubic feet per second ~~acre feet per annum~~  
of water from wastewater  
by means of pump in natural drain  
within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 33, T 10S, R 16E, B.M., Twin Falls County

to be used from Mar. 15 to Nov. 15  
for irrigation of 38 acres  
within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 33, T 10S, R 16E, 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 Administration, 1041 Blue Lakes Blvd. North, Twin Falls, Idaho, 83301 on or before Apr. 15, 1974.

R. KEITH HIGGINSON

Director

Published in the Times News  
on Mar. 28 and Apr. 4, 1974

47 7254