Federal rules comparison. There is no comparable federal rule.

Cited in: Griffin v. Griffin, 102 Idaho 588, 642 P.2d 949 (Ct. App. 1982); Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983); Bernard v. Roby, 112 Idaho 583, 733 P.2d 804 (Ct. App. 1987); Dieziger v. Pickering, 122 Idaho 718, 838 P.2d 321 (Ct. App. 1992).

CASE NOTES

Entry of Default.

Entry of default is not available in appellate proceedings; motion for entry of default after filing of appeal of magistrate's decision was improper and could not be basis for any relief. Parsons v. State, 113 Idaho 421, 745 P.2d 300 (Ct. App.), aff'd, 113 Idaho 429, 745 P.2d 308 (1987), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

Rule 83(y). Listening to or copying recording tapes.

Any party to an action in the magistrates division may listen to or copy an electronic tape or belt recording of the trial or hearing proceedings under such rules and for such fee as adopted by the majority of the district judges of the judicial district. The fee charged under this rule shall be transmitted to the county treasurer of the county in which the trial or hearing occurred for deposit in the current expense fund of the county and credited back to the clerk's budget. (Adopted January 8, 1976, effective March 1, 1976.)

Federal rules comparison. There is no comparable federal rule.

Cited in: Ustick v. Ustick, 104 Idaho 215, 657 P.2d 1083 (Ct. App. 1983).

Rule 83(z). [Judgment entered on appeal.]

If part or all of an appeal is heard as a trial de novo, upon determination of the appeal the district judge shall enter a judgment as required by Rule 58(a). If part or all of an appeal is heard on the record, upon determination of the appeal the district judge shall enter an appellate judgment which shall include instruction to the magistrate. The clerk shall file stamp the appellate ruling and mail copies to the parties. The original appellate ruling shall be filed in the court file which returned to the magistrate division as provided by Rule 83(n). (Adopted April 19, 1995, effective July 1, 1995.)

Rule 84. Judicial Review of Agency Actions by the District Court.

Rule 84(a). Judicial review of state agency and local government actions.

(1) Scope of Rule 84. Rule 84 provides the procedure to be followed when statute provides for the district court's judicial review of actions of state agencies or officers not in the judicial department or of actions of a local government, its officers or its units. Rule 84 does not apply to the issuance of writs of mandate, prohibition, quo warranto, certiorari, review, or other common law or equitable writs, but petitions for judicial review under this rule may be filed with or in the alternative to petitions for these common law or equitable writs.

(2) Definitions. The terms "action," "agency," "judicial review" and "petitioner" have the following meaning in Rule 84:

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APR 2 8 1998

(A) "Action" means any rule, order, ordinance or other decision or lack of decision of an agency made reviewable by statute.

(B) "Agency" means any board, commission, department, or officer for which statute provides for the district court's judicial review of the agency's action.

(C) "Judicial review" means the district court's review pursuant to statute of actions of agencies, whether the statutory term for review is appeal or judicial review or some other term, and the term judicial review includes other terms like appeal.

(D) "Petitioner" means the person seeking judicial review and includes other terms like appellant. (Adopted April 19, 1995, effective July 1, 1995.)

Rule 84(b). Judicial review ordinarily on record before agency.

Unless otherwise provided by law, judicial review of an agency shall be heard by the district court on the record before the agency. (Adopted April 19, 1995, effective July 1, 1995.)

Rule 84(c). [Reserved.]

Rule 84(d). [Reserved.]

Rule 84(e). Filing petition for judicial review.

(1) A petition for judicial review from an agency to district court must be filed with the appropriate district court within twenty-eight (28) days after the agency action is ripe for judicial review under the statute authorizing judicial review, unless a different time is prescribed by statute, but the time for filing a petition for judicial review is extended as provided in the next sentence. When the decision to be reviewed is issued by an agency with authority to reconsider its decision, the running of the time for petition for judicial review is suspended by a timely motion for reconsideration, and the full time for petition for judicial review commences to run and is computed from the date of any decision on reconsideration, the date of any decision denying reconsideration, or the date that reconsideration is deemed to be denied by statute by inaction on a petition for reconsideration. Judicial review is commenced by filing a petition for judicial review with the district court, and the petition shall forthwith serve copies of the notice of petition for judicial review upon the agency whose action will be reviewed and all other parties to the proceeding before the agency (if there were parties to the proceeding). Proof of service on the agency and all parties shall be filed with the court.

(2) When a petition for judicial review has been filed the verbatim record or recording of hearings and oral presentations conducted by the agency shall be preserved for purposes of judicial review. (Adopted April 19, 1995, effective July 1, 1995.)

MICROFILMED
APR 2 8 1998

Rule 84(f). Petit

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Rule 84(g). Cr

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Rule 84(h). [R

Rule 84(i). St

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April 19, 1995.

Rule 84(j). M

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May 18, 1984

TO: Whom it May Concern

RE: Study of Water Table Levels in Gibson-Jack area.

In regards to determining impacts on existing domestic users by future domestic wells, I have been asked to recommend a time period to begin a hydrologic study.

The time of maximum water recharge and maximum water drawdown will lag the time of surface water recharge by a time period dependent upon the depth, porosity or permeability and slope or gradient. In order to determine the trend of groundwater rise or decline, data should be collected for a long enough time period to show the seasonal fluctuations and the annual changes in both the peaks and minimum levels associated with non-static groundwater levels. The water level of a confined aquifer is dependent upon the recharge minus the withdrawals from that system. If the inflow to that system is reduced or the withdrawals are increased, the water levels will rise or decline proportionately.

Lyle Swank

LYLE SWANK, P.E.
Assistant Watermaster
Water District No. 1

MICROFILMED
APR 2 8 1998

Form 238-7
4/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

USE TYPEWRITER
BALLPOINT PEN

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name Tom Iverson
Address Pocatello, Id.
Drilling Permit No. 29-95-E-0101
Water Right Permit No.

2. NATURE OF WORK

■ New well ☐ Deepened ☐ Replacement
☐ Well diameter increase ☐ Modification
☐ Abandoned (describe abandonment or modification procedures such as liners, screen, materials, plug depths, etc. in lithologic log, section 9.)

3. PROPOSED USE

■ Domestic ☐ Irrigation ☐ Monitor
☐ Industrial ☐ Stock ☐ Waste Disposal or injection
☐ Other _____ (specify type)

4. METHOD DRILLED

■ Rotary ☐ Air ☐ Auger ☐ Reverse rotary
☐ Cable ☐ Mud ☐ Other _____ (backhoe, hydraulic, etc.)

5. WELL CONSTRUCTION

Casing schedule: ■ Steel ☐ Concrete ☐ Other _____

Thickness	Diameter	From	To
.250 inches	8" inches	+ 1 feet	300' feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ☐ Yes ■ No
Was a packer or seal used? ☐ Yes ■ No
Perforated? ■ Yes ☐ No
How perforated? ☐ Factory ■ Knife ☐ Torch ☐ Gun
Size of perforation? 1/4 inches by 2 inches

Number		From	To
50	perforations	200 feet	230 feet
30	perforations	255 feet	260 feet
40	perforations	270 feet	285 feet

Well screen installed? ☐ Yes ■ No
Manufacturer _____ Type _____
Top Packer or Headpipe _____
Bottom of Tailpipe _____

Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Gravel packed? ☐ Yes ■ No ☐ Size of gravel _____
Placed from _____ feet to _____ feet

Surface seal depth 20' Material used in seal: ☐ Cement grout
■ Bentonite ☐ Puddling clay ☐ _____
Sealing procedure used: ☐ Slurry pit
☐ Temp. surface casing ■ Overbore to seal depth

7. WATER LEVEL

Static water level 125' feet below land surface.
Flowing? ☐ Yes ■ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature 54 °F. Quality Good
Describe artesian or temperature zones below.

8. WELL TEST DATA

☐ Pump ☐ Baller ■ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
8"	0	15	Dry Clay		X
	15	60	Boulders & Clay		X
	60	200	Clay, Gravel, & Some Boulders		X
	200	210	Boulders & Gravel	X	
	210	215	Brown Clay		X
	215	230	Boulders & Gravel	X	
	230	255	Brown Clay & Gravel		X
	255	260	Gravel	X	
	260	270	Clay & Gravel		X
	270	285	Gravel & Some Clay	X	
	285	300	Blue Clay		X

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Surface seal depth 20' Material used in seal: ☐ Cement grout
■ Bentonite ☐ Puddling clay ☐ _____
Sealing procedure used: ☐ Slurry pit
☐ Temp. surface casing ■ Overbore to seal depth
Method of joining casing: ☐ Threaded ■ Welded
☐ Solvent Weld ☐ Cemented between strata

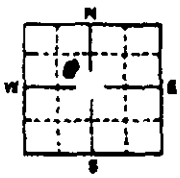
Describe access port Well Cap

10.

Work started 12/1/95 finished 12/8/95

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

County Bannock

Address of Well Site Gibson Jack
(give at least name of road)

SE ¼ NW ¼ Sec. 19, T. 7 N ☐ or S ■, R. 35 E ■ or W ☐

11. DRILLER'S CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name Cushman Drilling Firm No. #94
Address 1405 South Broadway Blackfoot, Idaho Date 12/8/95

Signed by Drilling Supervisor Bob Cushman

and
(Operator) Monte Stapley
(If different than the Drilling Supervisor)

ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT

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APR 2 8 1998

USE TYPEWRITER OR BALL POINT PEN

State of Idaho
Department of Water Resources

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name CHRSON WEST

Address P.O.BOX 2357 POCATELLO

Owner's Permit No. _____

2. NATURE OF WORK

☑ New well ☐ Deepened ☐ Replacement

☐ Abandoned (describe method of abandoning)

_____

3. PROPOSED USE

☑ Domestic ☐ Irrigation ☐ Test ☐ Other (specify type)

☐ Municipal ☐ Industrial ☑ Stock ☐ Waste Disposal or Injection

4. METHOD DRILLED

☐ Cable ☑ Rotory ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 6 inches Total depth 180 feet

Casing schedule: ☑ Steel ☐ Concrete

Thickness	Diameter	From	To
.250 inches	6 inches	+2" feet	160 feet
.250 inches	8 inches	0 feet	35 feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ☑ Yes ☐ No

Was a packer or seal used? ☐ Yes ☑ No

Perforated? ☑ Yes ☐ No

How perforated? ☐ Factory ☐ Knife ☑ Torch

Size of perforation 1/4 inches by _____ inches

Number	From	To
30 perforations	0 feet	30 feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ☑ No

Manufacturer's name _____

Type _____ Model No. _____

Diameter ___ Slot size ___ Set from _____ feet to _____ feet

Diameter ___ Slot size ___ Set from _____ feet to _____ feet

Gravel packed? ☐ Yes ☑ No Size of gravel _____

Placed from _____ feet to _____ feet

Surface seal depth 40 Material used in seal ☑ Cement grout

☐ Puddling clay ☑ Well cuttings

7. WATER LEVEL

Static water level 21 feet below land surface

Flowing? ☐ Yes ☑ No G.P.M. flow _____

Temperature _____ ° F. Quality _____

Artesian closed-in pressure _____ p.s.i.

Controlled by ☐ Valve ☐ Cap ☐ Plug

8. WELL TEST DATA

☐ Pump ☐ Bailer ☑ Other AIR

Discharge G.P.M.	Draw Down	Hours Pumped
25		2½

9. LITHOLOGIC LOG

Hole Diam.	Depth From	Depth To	Material	Water Yes	Water No
10	0	30	ROCK & SOME DIRT		✓
8	30	55	ROCK & BROWN CLAY		✓
6	55	160	ROCK & BROWN CLAY		✓
	160	180	PINK ROCK WATER COMES IN @ 165-170'	✓	

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APR 2 8 1998

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4/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

USE TYPEWRITER OR BALLPOINT PEN

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name Everett Diller

Address 2917 N. Stephanie Lane Pocatello

Drilling Permit No. _____

Water Right Permit No. 29-7766

2. NATURE OF WORK

■ New well ☐ Deepened ☐ Replacement
☐ Well diameter increase ☐ Modification
☐ Abandoned (describe abandonment or modification procedures such as liners, screen, materials, plug depths, etc. in lithologic log, section 9.)

3. PROPOSED USE

■ Domestic ☐ Irrigation ☐ Monitor
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

■ Rotary ☐ Air ☐ Auger ☐ Reverse rotary
☐ Cable ☐ Mud ☐ Other _____ (backhoe, hydraulic, etc.)

5. WELL CONSTRUCTION

Casing schedule: ■ Steel ☐ Concrete ☐ Other _____

Thickness	Diameter	From	To
.250 inches	6" inches	+ 1 feet	163 feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ■ Yes ☐ No
Was a packer or seal used? ☐ Yes ■ No
Perforated? ☐ Yes ■ No
How perforated? ☐ Factory ☐ Knife ☐ Torch ☐ Gun
Size of perforation? _____ inches by _____ inches

Number	From	To
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ■ No
Manufacturer _____ Type _____
Top Packer or Headpipe _____
Bottom of Tailpipe _____

Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Gravel packed? ☐ Yes ■ No ☐ Size of gravel _____
Placed from _____ feet to _____ feet

Surface seal depth 20 Material used in seal: ☐ Cement grout
☐ Bentonite ■ Puddling clay ☐ _____
Sealing procedure used: ☐ Slurry pit
☐ Temp. surface casing ☐ Overbore to seal depth
Method of joining casing: ☐ Threaded ■ Welded
☐ Solvent Weld ☐ Cemented between strata

7. WATER LEVEL

Static water level 65' feet below land surface.
Flowing? ☐ Yes ■ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature 52 °F. Quality Good
Describe artesian or temperature zones below.

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Air ■ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped
30	100'	1 Hour

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
6"	0	1	Top Soil		X
	1	62	Clay & Boulders		X
	62	150	Clay & Boulders & Gravel	X	
	150	165	Gravel, Streaks of Clay	X	

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APR 28 1998

10.

State denies farmer's pump permit request

ARCO (AP) — State water officials have rejected a local farmer's request to idle three wells and drill a new one uphill of his cropland, citing the need to protect groundwater levels in the Big Lost River area.

Parkinson Farms' application was denied on Thursday because "pumping would hurt people around the area of the new well," said Dick Larsen, spokesman for the Idaho Department of Water Resources.

The applicant, Ralph Parkinson, could not be reached for comment Friday.

His request was protested by the Big Lost River Water Users Association and 16 other local water users.

Parkinson wanted to drill a new well eight miles north and hydrologically upstream from his old wells and 480 acres of cropland. The groundwater supply at the proposed new site is more reliable than at the old wells, and it can be pumped more economically because it is closer to the surface, Water Resources Director Karl Dreher said.

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Total Monthly Precipitation

Station: 107211 - Pocatello WSO AP in Power County, Idaho

Climate Region: 9 - Upper Snake River Plains
River Basin: 17040208 - Portneuf

Latitude: 425500
Longitude: 1123600
Elevation: 4454

Opened: 07/1899
Status: Active
NHIMS Records Available: 01/1917 - 12/1995

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1985	0.71	0.96	1.55	0.29	1.27	1.04	0.48	0.05	1.42	0.50	2.37	1.17	11.81
1986	1.07	2.63	0.87	2.56	1.90	0.33	0.12	0.14	1.33	0.39	0.89	0.20	12.43
1987	1.03	0.71	0.84	0.47	2.02	0.67	1.93	0.66	0.00	0.25	0.44	1.21	10.23
1988	1.06	0.21	0.83	0.97	0.78	0.37	0.00	0.20	0.04	0.00	2.27	1.19	7.92
1989	0.59	1.36	2.91	0.33	0.76	0.62	0.11	0.43	0.48	0.84	1.03	0.07	9.53
1990	0.53	0.24	2.28	1.43	1.37	0.75	0.14	0.70	0.33	0.31	0.92	1.15	10.15
1991	0.71	0.28	2.25	2.56	3.02	0.59	0.12	0.85	0.66	0.74	1.65	0.22	13.65
1992	0.21	0.65	0.47	0.72	0.25	1.34	0.71	0.37	0.08	0.98	1.37	1.82	8.97
1993	2.30	2.04	1.68	1.54	1.93	2.95	1.07	1.90	0.27	1.01	0.54	0.65	17.88
1994	0.59	1.46	0.11	0.43	1.57	0.10	0.60	0.40	0.38	1.33	0.85	1.27	9.09
1995	1.49	0.40	2.94	1.06	1.76	3.30	0.38	0.69	0.50	0.28	1.30	1.96	16.06
1996	1.15	-	-	-	-	-	-	-	-	-	-	-	-

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Station 107211 - POCATELLO WSO ARPT
1961-90

Climate Summary

Month	Temperature (°F) Avg daily max	Avg daily min	Avg	2 yrs in 10 will have Max temp. >than	2 yrs in 10 will have Min temp. <than	Avg no of grow deg days*	Precipitation (Inches) Avg	2 yrs in 10 will have less than	2 yrs in 10 will have more than	Avg no. of days with 0.10 or more	Avg snow-fall
January	31.8	14.4	23.1	52	-20	4	1.04	0.56	1.46	3	9.4
February	38.4	19.9	29.1	58	-11	10	0.92	0.43	1.35	2	6.7
March	46.8	26.0	36.4	68	3	47	1.26	0.65	1.79	4	6.8
April	57.5	32.5	45.0	80	18	179	1.20	0.48	1.80	4	4.7
May	67.4	39.8	53.6	87	24	425	1.36	0.67	1.95	3	0.8
June	78.0	47.2	62.6	97	32	678	1.02	0.39	1.56	2	0.0
July	88.0	53.0	70.5	100	39	946	0.65	0.18	1.10	1	0.0
August	86.3	51.1	68.7	100	36	889	0.67	0.14	1.08	1	0.0
September	75.1	42.3	58.7	94	25	562	0.85	0.22	1.45	2	0.1
October	62.3	33.1	47.7	83	16	262	0.91	0.30	1.47	2	2.1
November	45.2	25.6	35.4	67	1	44	1.16	0.52	1.71	4	6.0
December	33.7	16.0	24.8	55	-15	6	1.11	0.47	1.66	3	10.5
Yearly Total	---	---	---	---	---	4051	12.15	9.41	14.73	31	47.2
Average	59.2	33.4	46.3	---	---	---	---	---	---	---	---
Extreme**	104	-33	---	101	-24	---	1.68	---	---	---	---
MM/DD/YY	8/ 2/69	2/ 1/85	---	---	---	---	10/ 2/76	---	---	---	---

* Based on 40° F
** Extreme Daily Value

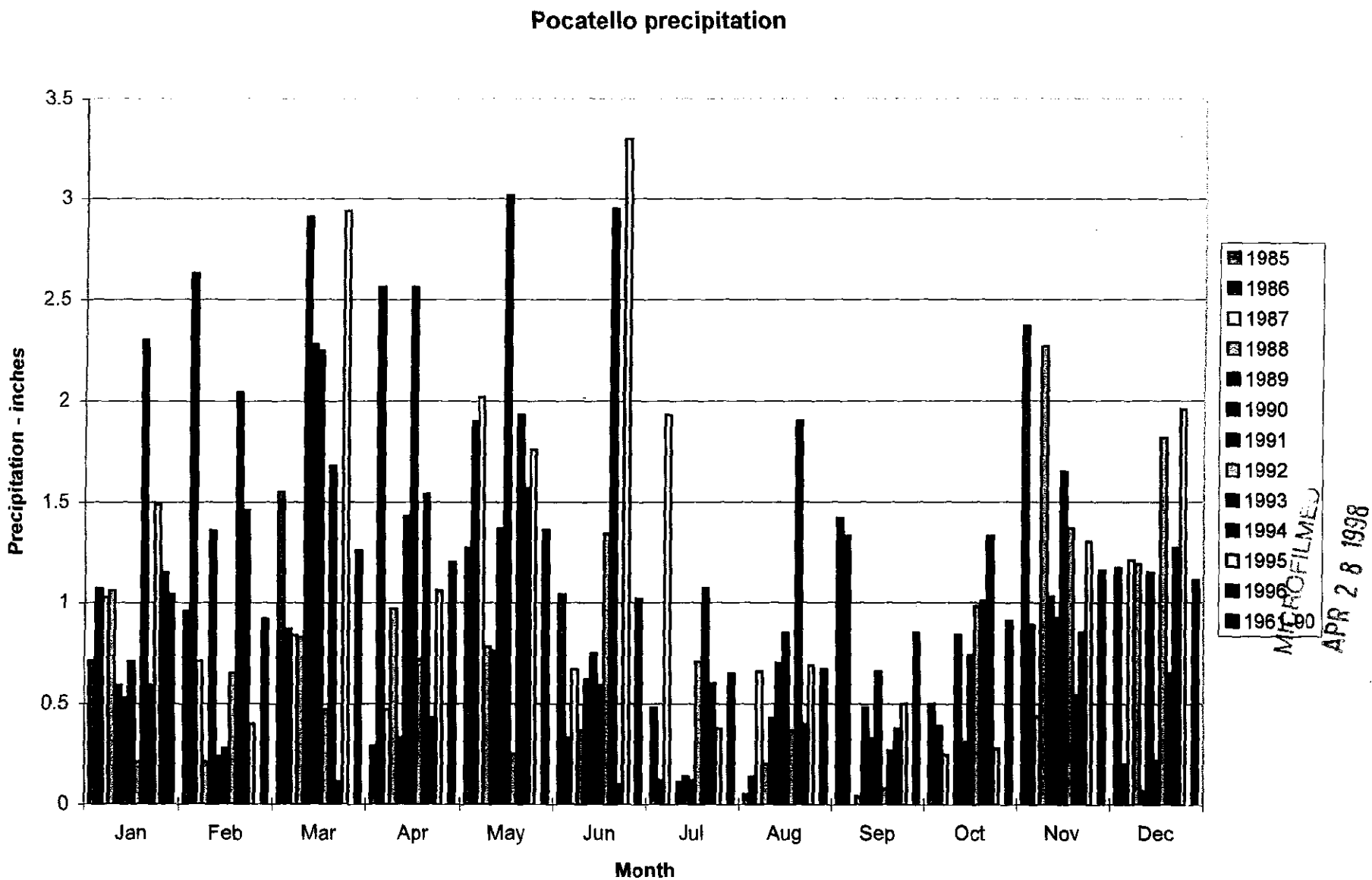
Growing Season Length

Probability	Daily Minimum Temperature no. days > 24°F	no. days > 28°F	no. days > 32°F
9 years in 10	158	125	92
8 years in 10	166	133	101
5 years in 10	183	148	117
2 years in 10	200	163	134
1 year in 10	209	171	142

Fall and Spring Freezing Temperatures

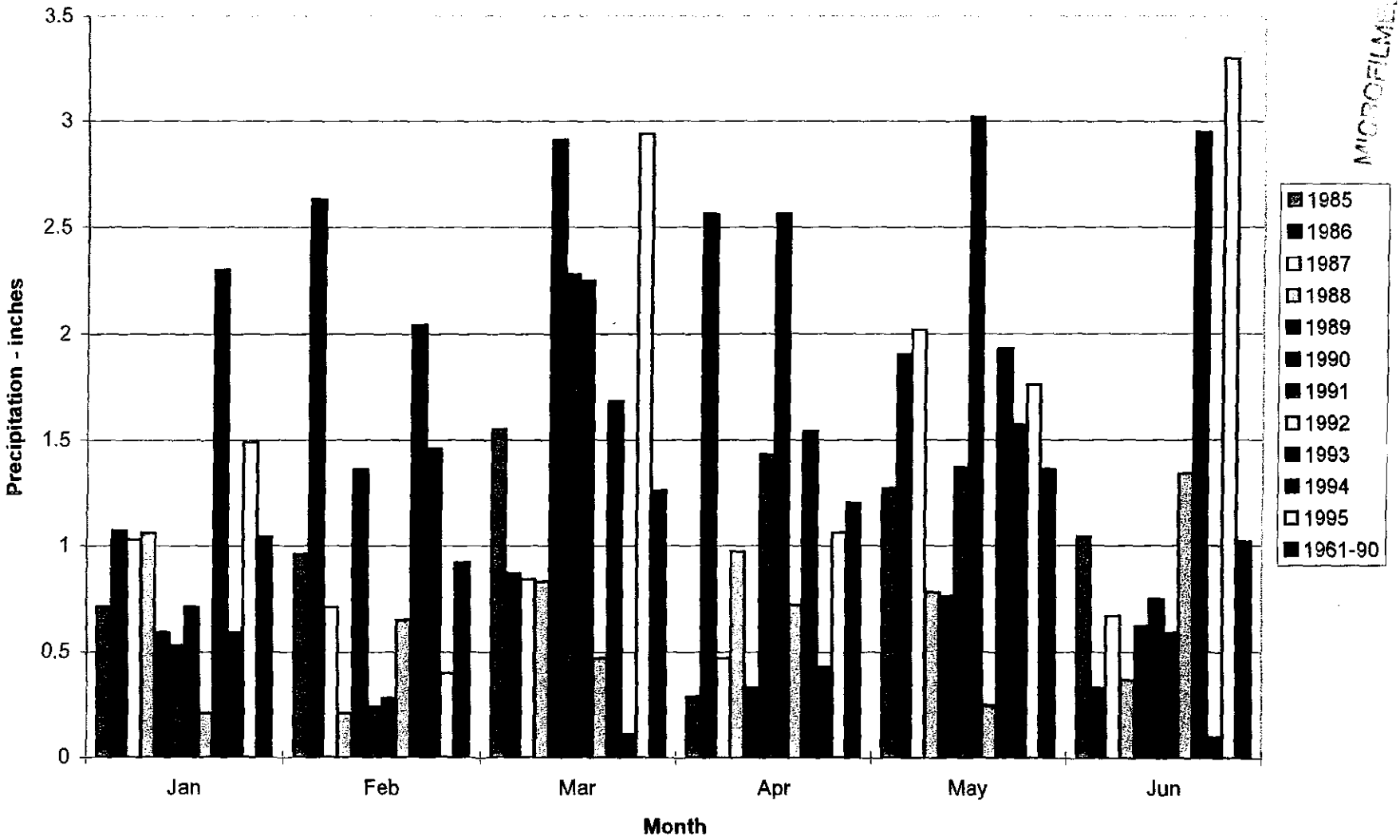
Probability	Temperature 24°F or lower	28°F or lower	32°F or lower
Last freezing temperature in spring:			
1 year in 10 later than--	May 1	May 21	June 15
2 year in 10 later than--	April 24	May 16	June 7
5 year in 10 later than--	April 12	May 5	May 23
First freezing temperature in fall:			
1 yr in 10 earlier than--	September 25	September 15	September 4
2 yr in 10 earlier than--	October 1	September 20	September 9
5 yr in 10 earlier than--	October 13	October 1	September 18

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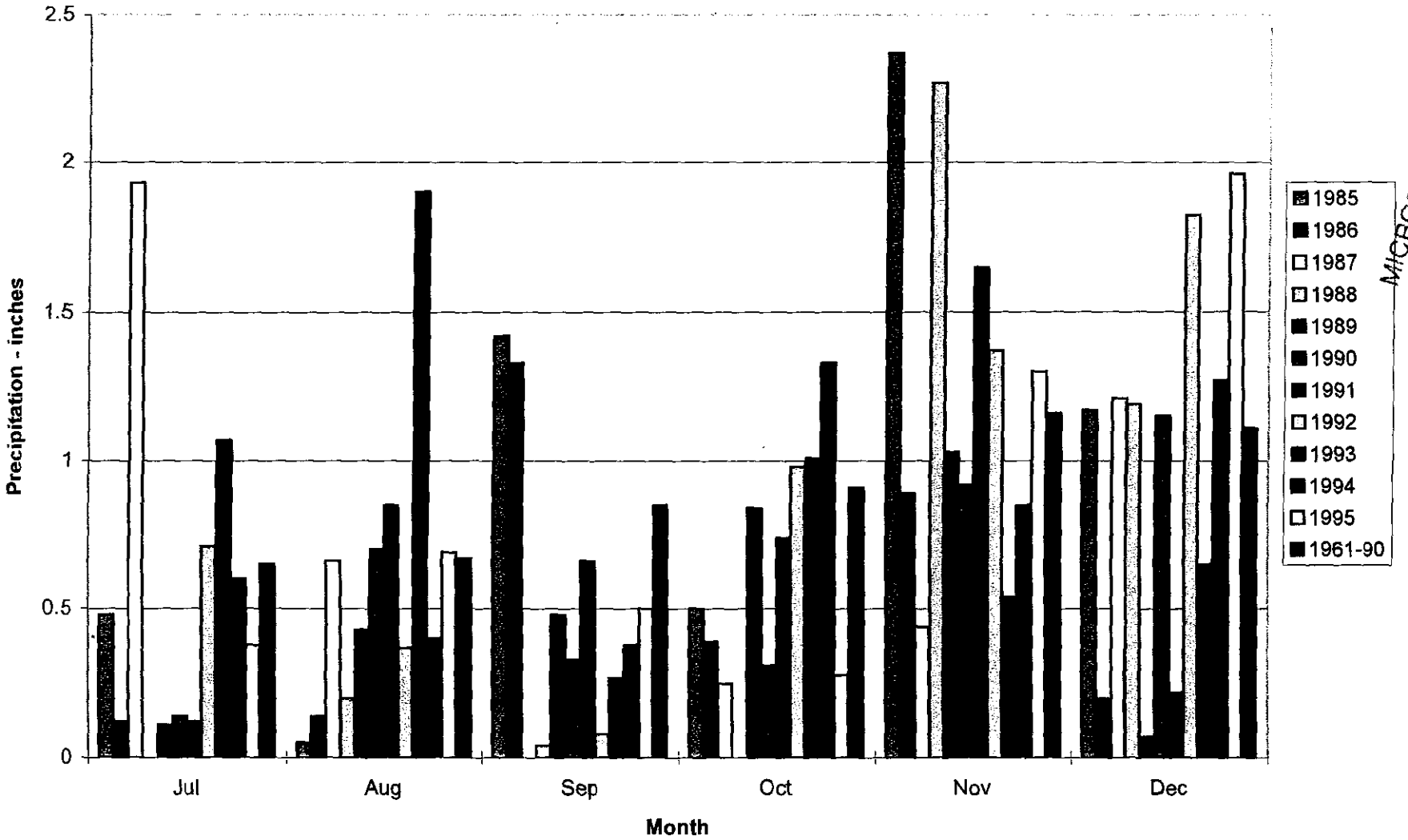
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Pocatello Precipitation - Jan through June



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APR 2 8 1998

Pocatello Preciptation - July-December



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APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE aka WILD HORSE RIDGE SUBDIVISION	NOTICE OF HEARING

On July 12, 1996, Gibson Jack Joint Venture filed with the Department of Water Resources applications for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183 and 29-08184. On August 14, 1996, Richard M. Hollingsworth protested the applications. On August 29, 1996, Clark Kelly filed a petition to intervene. On September 12, 1996, Everett D. Diller also filed a petition to intervene. The Department will rule on the petition to intervene by separate order.

THE DEPARTMENT HAS SCHEDULED THE MATTER FOR HEARING ON OCTOBER 22, 1996, AT 9:30 A.M. TO 5:00 P.M. IN THE UPPER CONFERENCE ROOM AT THE POCATELLO AIRPORT, POCATELLO, IDAHO. The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of the exhibits to each party and to the presiding officer. The hearing officer will be Gary Spackman.

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

Dated this 3rd day of October, 1996.

Gary Spackman

Gary Spackman
Hearing Officer

327-7900

MICROFILMED
APR 2 8 1998

Table 2 - Iverson Well Pumping Test, 1/11/96

Well radius: 0.33 ft
All data are depthsare reported as below top of casing

Pump start @ 9:36 AM Static water SWL = 97.21
Pump discharge (after 10 min.) = 54336 gal/day

Time, min	Water level	Corrected Drawdown	log(t)	log(s)
0.80	112.0	14.6	-0.10	1.17
1.20	121.0	23.6	0.08	1.37
1.75	130.0	32.6	0.24	1.51
2.63	139.0	41.6	0.42	1.62
2.92	143.0	45.6	0.46	1.66
3.28	146.0	48.6	0.52	1.69
3.63	149.0	51.6	0.56	1.71
4.00	152.0	54.6	0.60	1.74
4.42	155.0	57.6	0.65	1.76
4.87	158.0	60.6	0.69	1.78
5.37	161.0	63.6	0.73	1.80
5.73	163.0	65.6	0.76	1.82
6.13	165.0	67.6	0.79	1.83
6.57	167.0	69.6	0.82	1.84
7.05	169.0	71.6	0.85	1.86
7.58	171.0	73.6	0.88	1.87
8.08	173.0	75.6	0.91	1.88
8.73	175.0	77.6	0.94	1.89
9.58	177.0	79.6	0.98	1.90
10.75	179.0	81.6	1.03	1.91
11.37	180.0	82.6	1.06	1.92
11.97	181.0	83.6	1.08	1.92
12.63	182.0	84.6	1.10	1.93
13.37	183.0	85.6	1.13	1.93
14.20	184.0	86.6	1.15	1.94
15.00	185.0	87.6	1.18	1.94
15.83	186.0	88.6	1.20	1.95
16.67	187.0	89.6	1.22	1.95
17.58	188.0	90.6	1.25	1.96
18.55	189.0	91.6	1.27	1.96
19.57	190.0	92.6	1.29	1.97
20.75	191.0	93.6	1.32	1.97
31	190.0	92.6	1.49	1.97
48	206.0	108.6	1.68	2.04
51	207.0	109.7	1.71	2.04
57.5	207.5	110.1	1.76	2.04
59.5	207.9	110.5	1.77	2.04
63	209.1	111.7	1.80	2.05
66	209.9	112.5	1.82	2.05
67	210.3	112.9	1.83	2.05
73	211.5	114.1	1.86	2.06
82	213.5	116.1	1.91	2.06
91	215.0	117.6	1.96	2.07
96.5	215.4	118.0	1.98	2.07
115	217.5	120.1	2.06	2.08
179	223.8	126.5	2.25	2.10
225	225.7	128.3	2.35	2.11
264	227.3	130.0	2.42	2.11
308	229.5	132.1	2.49	2.12
372	233.4	136.0	2.57	2.13
439	234.0	136.6	2.64	2.14

MICROFILMED
APR 28 1998

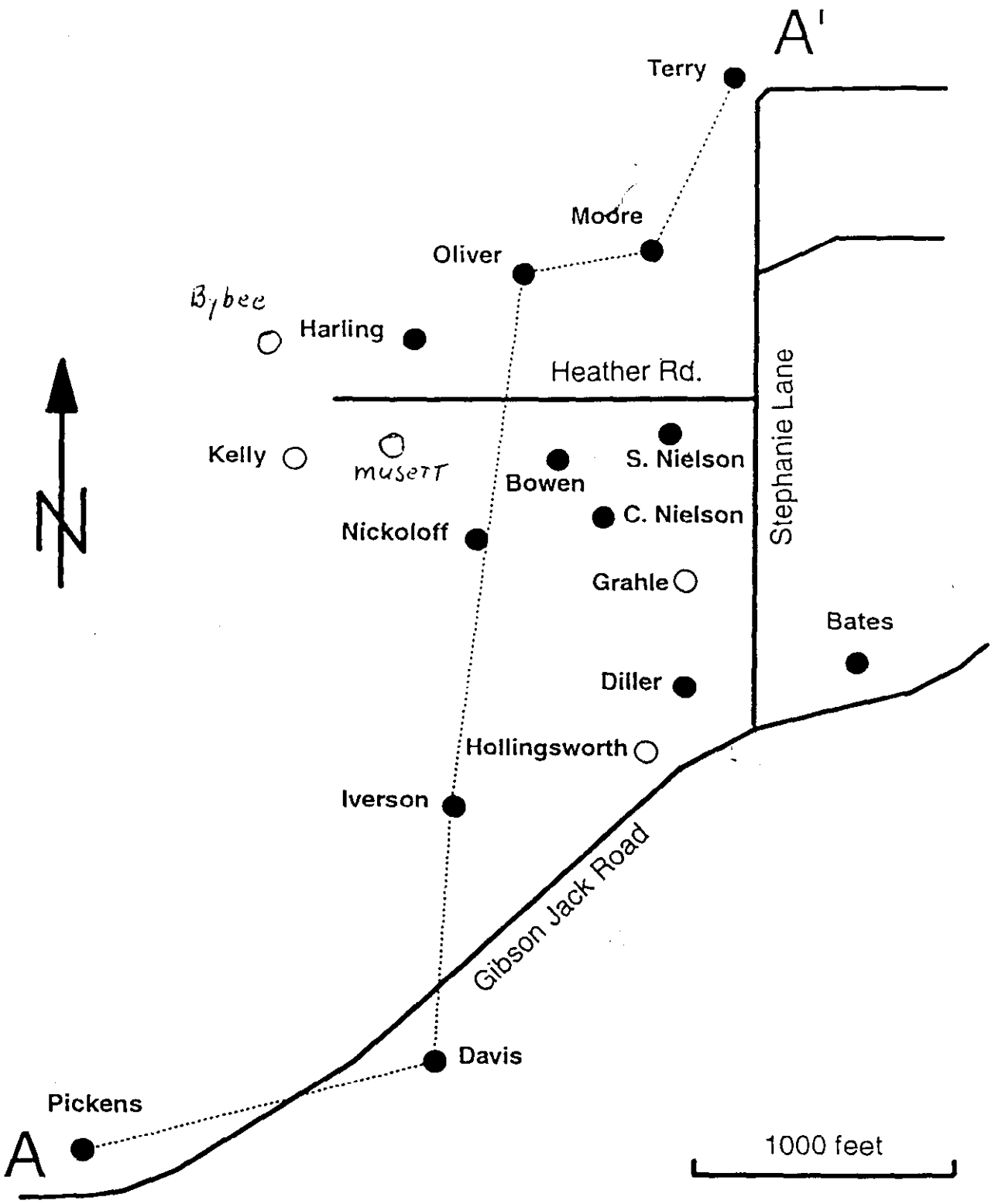


Figure 1 - Locations of wells with geologic logs (filled circles), showing line of cross-section A-A' in Figure 2.

MICROFILMED
APR 2 8 1998

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH PLAINTIFF VS BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. O. COTANT TOM KATSILOMETERS. DEFENDANT	CASE NO. CVOC 96-01023-A AFFIDAVIT OF EVERETT DILLER

EVERETT DILLER being first duly sworn deposes and states:

1. I have two wells, one for strictly domestic use which was drilled in spring of 1978 - the well was drilled to 165 feet, with a static water level of 65 feet, with a discharge of 30 gallons per minute, and a pumping level of 100 feet. When this well was just drilled, I had enough water for the household usage, watering the livestock and to irrigate my lawns and pastures.

2. At the present time I can only operate four or five small lawn sprinklers at one time with my domestic well. When my family members wish to take a bath or do laundry, we had to turn off the sprinklers, because the well pump would start breaking suction for lack of water. And this is not due to a poor constructed well either. It is due to the lack of water in this area.

3. A few years later in August of 1988, I drilled a second well for the purpose of irrigation and stock water. But I will eventually have to connect it up to the house water system. Which

MICROFILMED
APR 28 1998

I'm confident that it will occur if more wells are drilled in the near vicinity of my property. Because my first well, the domestic well is breaking suction as I previously stated.

4. My property is adjacent to and East of this proposed subdivision. And any additional wells will have a direct effect on the production of my wells, and the existing aquifer.

5. With the increased number of wells and septic systems in the area caused from the proposed subdivision would increase the possibility of waste contamination of the existing wells and aquifer.

6. The proposed area of the subdivision that is to be left in the natural state also brings up the need for and adequate fire protection system capabilities in order to meet the state statutes as outlined by the Pocatello Valley Fire Protection District Commissioner, Mr. Ron LeBlanc.

7. I feel the subdivision needs to connect to the city water and sewer systems in order to protect the existing residents already located in the area.

8. The road leading to the subdivision (Gibson Jack Road) is sub-standard for the present pedestrian and motor traffic, there-fore should he improved prior to the development, in order to accommodate the increased residential and construction traffic.

9. I have been a resident in the Gibson Jack area for nineteen (19) years. I am aware of the water problems that my neighbors have been experiencing, as I have indicated above. I strongly recommend a long term study of the water availability.

MICROFILM
APR 2 8 1998

10. The developer has not proven the present water table will support the demand required for the additional residents. They have not shown proof or guaranteed that my water rights will not be affect or violated in the future years.

11. The developer drilled a test to the West of my property. The well was drilled by "Cushman Drilling" out of Blackfoot, Idaho. They used the same procedure as the existing wells in this area have used for years.

12. Due to the rock conformation, the methods used are the approved ways for drilling wells. The developers claim that there is a modern drilling technique which will improve the water availability - which is false, according to all of the drillings which I have talked to.

13. It appears to me, since the developers make this claim, why didn't they use this modern technique when drilling their test well, which only produced 20 gallons per minute. The developer, had this test well drilled deeper, and the results were, that it did not increase the production of water, nor did they connect into another water aquifer.

14. The members of the Bannock County Planning and Development Council are volunteer members that are not paid for their services. Most of them have no professional training or knowledge of the housing development profession.

15. During the last meeting of the Council, and just before the members were to vote on the development, one member made the statement "I'm glad the project is around your place and not around mine". That is not a very professional attitude for

MICROFILMED
APR 28 1998

someone to make and then vote approval on the development.

EVERETT DILLER

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this ____ day of March, 1997, before me, a Notary Public in and for said State personally appeared: Everett Diller known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

NOTARY PUBLIC FOR IDAHO

Residing at:_____

Commission Expires: _____

APR 28 1998

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH PLAINTIFF VS BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. O. COTANT TOM KATSILOMETERS. DEFENDANT	CASE NO. CVOC 96-01023-A AFFIDAVIT OF FRANCES DILLER

FRANCES DILLER being first duly sworn deposes and states:

1. This affidavit is in regards to the proposed Wild Horse Subdivision, in the Gibson Jack area.

2. When my husband and I sold our home in Chubbuck, Idaho. We invested all of our savings to buy four acres of undeveloped ground in the Gibson Jack Creek area. We were following my dreams of a place in the country for retirement.

3. In 1978 we drilled a well with a 6 inch casing, got first water at 65 feet.

4. So far so good, went down to 165 feet with 30 gallons per minute of recovery (which is indicated on our well report, as a estimate from the driller).

5. So we felt building a home was safe. Ten years went by and the water level began dropping as more homes were built in our area.

6. During this period, I couldn't fill the bath tub or flush the toilet if any of the water was being used elsewhere.

7. So we had to drill another well at a cost of thirteen

FILED
APR 28 1998

thousand dollars in 1988, with a larger well casing, 8 inch. We filed on this well as irrigation well.

8. We drilled to a depth of 255 feet and got water enough to begin watering the pasture again and the first well was used for house use only.

9. We fear the two wells will have to be joined in the future. At our age with our future retirement income, we will not be able to afford to keep drilling wells. When the present water aquifer is depleted, we will not be able to afford the cost of having to hook into the city water and sewer systems. Lets please do it right, and bring the city water in as well as the city sewer lines.

10. We do get spring run off from the land behind us, where the subdivision joins our four acres and have been flooded before due to the spring run off.

11. After the land has been moved around and the natural drainage disturbed it makes me very nervous.

12. Also when thirty seven septic tanks and leaching fields are laid down, we are in the direct line of the resulting waste.

13. There is a lot of traffic on the Gibson Jack Road.

14. Presently there is pedestrians, bicycle riders and dog walkers using the Gibson Jack Road. The road is to narrow to support this amount of traffic and pedestrian usage.

15. I think every one has the right to follow their dreams and this would be possible if the city water and sewer service was available for future residents in my area.

16. The developers should be responsible for the people

RECEIVED
APR 28 1988

they sell the land to for adequate water and sewer systems, safe roads, and adequate fire protection. I feel they are going to take the profit and run, leaving the residents, Bannock County, and so forth with all additional cost to take care of what should of been done in the beginning.

17. When we first built we had fire protection coverage, but it was later dropped because of cost.

18. My husband (Everett Diller), Leonard Kovit, and Gerald Pearson were appointed by Governor of Idaho, John Evans in August 1979 to form an independent fire district which was the beginning of the Pocatello Valley Fire District.

19. For loan purposes, we had to take it up on ourselves to fine a means to provide fire protection so we could get fire insurance on our home.

20. I understand the Pocatello Valley Fire District at this time has a law suit against the developer or the Bannock County Commissioner's for not complying with the fire regulations of the State of Idaho.

21. Thank you for reading my affidavit.

Frances L. Diller
FRANCES DILLER

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this ____ day of March, 1997, before me, a Notary Public in and for said State personally appeared: Frances Diller known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

APR 28 1997

first above written.

NOTARY PUBLIC FOR IDAHO

Residing at: _____

Commission Expires: _____

AUG 28 1985

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH PLAINTIFF VS BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. O. COTANT TOM KATSILOMETERS. DEFENDANT	CASE NO. CVOC 96-01023-A AFFIDAVIT OF MICHAEL OLIVER

MICHAEL OLIVER being first duly sworn deposes and states:

1. My residence is located at 9530 West Heather Road, Pocatello, Idaho.

2. The first well was drilled in 1991 to 180 feet and with perforation to 160 to 180 feet below the surface.

3. This wells capacity tested to 15 gallons per minute for an hour and a half and served me well until the summer of 1994, when I started noticing air in my house water lines.

4. It was around October 1994 when I measured the water level in the well with a standpipe and determined that the water level in the well without pumping for three hours was at about 160 feet.

5. Based on this, I had a second well drilled and abandoned the first well.

6. The second well was drilled to 280 feet in December of 1994.

7. The second well capacity tested to 35 gallons per minute, for one hour.

APR 28 1996

8. I have not had any problems with it since.

9. This well was perforated to pick up water streams at 180 feet to 200 feet, 215 feet to 225 feet, and 250 feet to 280 feet.

10. Base on my experience, the usable water level in the area of my property significantly dropped in the first four years that I lived on this property.

11. Similar dropage in the water table could probably be expected in other wells in this area.

12. Regarding the fire protection aspect, I support the POCATELLO VALLEY FIRE DEPARTMENT requirement, that the Uniform Fire Code be adhered to.

13. I am concerned over the Pocatello Valley Fire Department's ability to provide fire protection to twice as many homes with the existing limited water resources for fire fighting.

Michael Oliver

MICHAEL OLIVER

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this 31st day of March, 1997, before me, a Notary Public in and for said State personally appeared: Michael Oliver known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

MELINDA A. MARINELLI NOTARY PUBLIC STATE OF IDAHO

Melinda A Marinelli

NOTARY PUBLIC FOR IDAHO

Residing at: Chubbuck

Commission Expires: 03/03/99

APR 28 1997

3/29/97

To Whom it may concern:

I have been asked by Richard Hollingsworth to describe in detail the water situation on my property at 9658 W. Heather Rd. Pocatello Idaho. I have lived at this address since August 1994.

I had the well tested for out put by Rays Pumps in May of 1995. We used the bucket and hose system for testing and determined the maximum flow to be between 11 and 12 gallons per minute on that day. When demand is greater than this the well can not replenish itself fast enough to meet the demand and airy water enters the system and eventually the well shuts down. The system will recharge itself within 20 minutes if this occurs.

My well is at 200 feet with the pump at 180 feet encased in 8 inch pipe.

I have sufficient water during the months of October through April when the only needs are for household uses. In the spring and summer months while trying to maintain a lawn (12,000 square feet) and 50 plus trees my water to the house is constantly airy which causes the pipes in the house to spurt creating a noisy environment each time the hot water is turned on.

I have an automatic sprinkling system with 12 stations which was installed by Clayton Armstrong. The information about the well was known by Mr. Armstrong before its installation. For a lawn of only 12,000 square feet the use of 12 stations is twice the ordinary amount. He used the 12 stations so as to limit the amount of heads per

APR 2 8 1997

station (4)and thus control the gallons per minute (12). The well will still pump dry on occasion even when using the carefully planned system.

I can only water my grass between the hours of 12 midnight and 6 am which is not the ideal time for watering your lawn. Each station can only run for 25 minutes every other night and still this exceeds out put of the well. This is not enough water to maintain a green lawn throughout the summer. By July there are areas that are beginning to brown from the lack of water. I can not water during the day because I need the water for the house.

Any reduction to the water table by drilling additional wells may have an adverse effect on my well.

Sincerely,

Larry Bybee

APR 2 8 1999

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH PLAINTIFF VS BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. O. COTANT TOM KATSILOMETERS. DEFENDANT	CASE NO. CVOC 96-01023-A AFFIDAVIT OF KATHY MUSETT

KATHY MUSETT being first duly sworn deposes and states:

1. I have lived in the Gibson Jack area for about one year with my family, my address is 9663 West Heather, Pocatello, Idaho.

2. Our property adjoins the property proposed for the subdivision.

3. In the short amount of time we have lived here, we have experienced a shortage of water.

4. We have had the pump in our well pump air and so we have a real concern for water supply in this area.

5. On a dry year there probably won't be enough water to support all the homes already here plus the subdivision.

6. I am also concerned about the extra sewage that will eventually drain down into the aquifer and contaminate everyones water.

7. I understand this area will eventually be developed.

8. But I believe the water and sewer issues need to be seriously addressed.

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Kathy Musett
KATHY MUSETT

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this ____ day of March, 1997, before me, a Notary Public in and for said State personally appeared: Kathy Musett known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

NOTARY PUBLIC FOR IDAHO

Residing at:_____

Commission Expires: _____

RECORDED
APR 28 1997

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH PLAINTIFF VS BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. O. COTANT TOM KATSILOMETERS. DEFENDANT	CASE NO.: CVOC 96-01023-A AFFIDAVIT OF BOB MUSETT

BOB MUSETT being first duly sworn deposes and states:

1. My family and I live a short distance from the planned subdivision site.

2. We live just to the North of it, 9663 West Heather, Pocatello, Idaho.

3. In fact our property borders the subdivision.

4. We are concerned that there is a water problem in this area.

5. We moved here last spring and by late summer our well had dropped so low that we pumped air on several occasions.

6. We were told by our neighbors whom have lived here for numerous years that this was a problem.

7. We were told that it usually occurs during a dry year or when several of the area residence use their pumps at the same time.

8. Other than the normal household uses for water, we only water our lawn and fill a water trough for two horses.

9. We would like to plant a garden this year, but are

FILED
APR 28 1998

concerned that there may not be an adequate water supply even though this has been a wet year.

10. We realize that this subdivision will probably be the first of many in this area.

11. Knowing this, it wouldn't be right to sell a home to someone without an adequate water supply for their needs.

12. I am greatly concerned about the fire protection not being available for the residence in this proposed subdivision as well as for my own property.

13. I am concerned about the long term contamination with the 38 proposed drainage fields for the sewage of these residence, affecting our water aquifer.

14. With the water problems that I have expressed, I can not understand why additional wells would be approved, when the residence up here, including myself are having water problems.

_____

BOB MUSETT

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this ____ day of March, 1997, before me, a Notary Public in and for said State personally appeared: Bob Musett known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

_____

NOTARY PUBLIC FOR IDAHO

Residing at:_____

Commission Expires: _____

APR 28 1997

POOR QUALITY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH

PLAINTIFF

VS

BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. [illegible] TANT T. M. KATSILOMETERS.

DEFENDANT

CASE NO. [illegible]

AFFIDAVIT OF CHARLES HARLING

Charles Harling being first duly sworn deposes and states:

1. I reside at 9588 West Heather Road, Pocatello, Idaho.

2. My well was drilled in 1978, by Bill Dubbe who was considered on of the best well drillers in the area. Mr. Dubbe drilled my well to a approximate depth of 150 feet.

3. At that time the well was tested at 60 gallons per minute.

4. The pump was set to a depth of 100 feet.

5. The static water level was at 50 feet.

6. Every thing went along fine with the water until roughly 1994.

7. This is when the well started pumping air, and we couldn't run the dish washer clothes washer or lawn sprinkler at the same time.

8. So we had Rays Pump come to our residence and add a 50 foot extension to the existing pump. he also indicated that our well did not need to be cleaned.

9. It help some what, but we could only run three lawn

APR 28 1995

POOR QUALITY

sprinklers for about an hour then we would have to shut the well down for a while to allow the recharge to occur.

10. Previously when we were running the sprinklers to water the lawn, we couldn't use the water for household usage to take our showers or to use the dishwasher and / or the washer.

11. In 1994 I had my well check on its water level by Rays Pump and compared it to the time when my well was originally drilled, and it had dropped roughly 50 feet.

12. This is over a period of 16 years.

13. I feel that at the time my well was drilled, it was producing more water than the existing wells in the area at that time.

14. Carson West, the original owner who lived to the West of my residence, put his well in roughly a year before I had my well drilled. To my memory his well was pumping out half the water that mine was. His well is roughly 500 feet from my well.

15. The new owner of Carson West's residence is Dr. Larry Bybee. He is experiencing Water problems.

16. I am greatly concerned about the possibility that my well will go dry. My neighbor to the East of me, Mike Oliver, had to redrill a complete new well.

17. I have a strong concern for not having proper fire protection, do to the lack of water in our area.

18. The foot and bike traffic has greatly increase on the Gibson Jack Creek road. The road is way to narrow in most locations.

Charles Harling

CHARLES HARLING

APR 28 1999

POOR QUALITY

STATE OF IDAHO)
)ss.
COUNTY OF BANNOCK)

On this ____ day of March, 1987, before me, a Notary Public in and for said State, personally appeared Charles Harding known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

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

NOTARY PUBLIC FOR IDAHO

Residing at: _____

Commission Expires: _____

APR 28 1987

POOR QUALITY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HALLOWAY ETUX

PLAINTIFF

VS

BANNOCK COUNTY PUBLIC WORKS DIRECTOR CAROLYN MELINE, ITS ASSISTANT TOM KATSILOMETES.

DEFENDANT

CASE NO. CV-99-[illegible]

AFFIDAVIT OF MARY HARLING

MARY HARLING being first duly sworn deposes and states:

1. I reside at 9583 West Heather Road, Pocatello, Idaho.

2. Our property is located to the North of this proposed subdivision.

3. We started experiencing water problems in 1994.

4. At that time, when my husband was watering the lawn, I would draw air at the kitchen sink while doing the dishes.

5. At the present time, when he is watering the lawn, I would only get a trickle of water out of the faucet.

6. So was not able to utilize the water in the house unless we used only one appliance at a time.

7. Like I can still only use either the dishwasher, or clothes washer, or shower at a time.

8. I was at that time, and still to this date, am concerned that our well going dry. I fear that any additional wells in this would take away our water. I base this on the experience were having as well as my neighbors.

9. When we had our well tested by Rays Pump, and he

APR 28 1999

POOR QUALITY

installed an additional 20 feet of depth for [illegible] pump.

10. There is nothing wrong with our well in reference to the casing. It needing to be cleaned. The well [illegible] properly. It was originally put in by Mr. Gibbs who is considered the best well driller in the State of Idaho, Southern part.

11. I am concerned about the traffic and the number of cars which are all ready going up and down [illegible].

11. I am worried about the sewage waste material from the additional homes proposed in this subdivision. The contamination of the present water table. have there been any study's to show otherwise.

12. I have no problem with the subdivision coming into my area, but I wish the developers would hook into the City Water System, and Sewage System, and do it right.

13. I have been shown a court order that was signed by a District Judge requiring the developers to hook into City Water. Why isn't this being done?

Mary Harling 3-30-97
HARLING

STATE OF IDAHO)
)ss.
COUNTY OF BANNOCK)

On this 30 day of March, 1997, before me, a Notary Public in and for said State personally appeared: Mary Harling known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge it me that he executed the same.

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

[illegible]

APR 2 8 1997

POOR QUALITY

NOTARY PUBLIC FOR IDAHO

Residing at: _____

Commission Expires: _____

AUG 28 1983

/cdbs/id/prec16

Station : 7211, POCATELLO WSO AP

MONTHLY PRECIPITATION

Unit = inches

yr	oct	nov	dec	jan	feb	mar	apr	may	jun	jul	aug	sep	SUM
17	2.11	0.61	2.31	0.82	2.15	1.29	1.83	2.63	0.52	0.16	0.04	1.29	15.76
18	0.00	0.67	0.55	1.94	0.94	1.39	0.89	0.68	0.86	1.52	0.41	0.33	10.18
19	1.29	0.44	0.22	0.19	2.06	0.99	1.31	0.35	0.00	0.27	0.44	2.13	9.69
20	1.26	0.55	1.48	0.14	0.46	1.41	2.28	1.36	0.95	0.33	2.53	0.92	13.67
21	2.62	1.29	1.26	0.95	0.70	0.92	3.23	2.47	0.58	1.06	0.33	0.56	15.97
22	0.56	0.71	1.97	1.54	1.94	0.69	1.81	1.84	0.82	0.17	2.20	0.07	14.32
23	0.76	0.49	1.82	1.14	0.44	1.33	2.57	1.32	1.68	0.95	0.60	0.86	13.96
24	3.03	0.38	1.15	0.45	0.24	1.38	0.61	0.31	0.36	1.67	0.03	0.82	10.43
25	1.84	0.53	1.35	1.15	1.09	0.88	2.09	0.67	2.33	3.33	0.89	2.68	18.83
26	0.63	0.86	0.57	0.56	0.96	0.77	0.90	0.54	0.54	0.76	0.80	2.72	10.61
27	0.43	1.53	1.32	1.31	1.43	1.26	2.03	2.54	0.77	0.64	0.44	1.58	15.28
28	1.09	1.92	1.31	0.46	0.41	1.59	0.74	1.53	1.00	0.29	0.12	0.22	10.68
29	0.97	1.34	1.10	2.02	0.74	0.82	2.61	0.40	1.47	0.11	1.11	1.21	13.90
30	0.67	0.46	1.01	1.32	1.19	0.53	0.90	1.31	0.71	0.88	3.59	1.17	13.74
31	1.65	0.97	1.22	0.52	0.42	0.81	0.88	0.36	0.09	0.62	0.54	1.11	9.19
32	1.51	0.85	1.09	1.97	0.85	0.99	1.75	0.89	1.32	1.07	0.61	0.00	12.90
33	0.09	0.25	1.45	1.85	0.41	0.42	0.99	1.46	0.15	1.05	0.25	0.16	8.53
34	0.21	0.47	1.92	0.73	0.84	0.37	0.28	0.00	0.80	0.56	0.37	0.41	6.96
35	0.65	2.14	1.30	1.37	0.34	1.06	2.94	1.69	0.02	0.08	0.28	0.10	11.97
36	1.09	0.61	0.74	2.46	2.04	1.48	0.97	0.71	1.03	2.44	1.92	0.20	15.69
37	0.53	0.09	0.81	1.70	1.80	1.40	1.89	1.05	0.37	1.10	0.35	0.62	11.71
38	0.87	1.54	1.42	1.08	1.32	3.11	1.22	1.64	1.12	0.81	0.68	0.02	14.83
39	2.05	1.38	0.67	0.75	0.84	0.43	0.56	0.47	0.46	0.67	0.11	0.88	9.27
40	0.57	0.02	0.72	2.52	1.87	0.79	1.03	0.05	0.38	0.21	0.12	3.80	12.08
41	1.64	0.71	1.64	0.62	1.32	0.93	2.26	1.78	0.93	1.01	1.43	0.76	15.03
42	0.47	2.05	2.03	2.22	1.03	0.30	1.12	2.29	0.58	0.13	0.76	1.63	14.61
43	0.38	2.18	1.09	0.89	0.96	1.52	0.36	0.84	1.38	0.51	0.62	0.28	11.01
44	1.43	0.42	0.37	0.44	0.78	0.52	1.56	1.31	3.39	1.11	0.00	0.25	11.58
45	0.27	1.81	1.03	0.20	0.95	1.41	0.61	2.14	1.09	0.12	1.51	1.21	12.35
46	0.69	0.72	0.72	0.85	0.84	2.63	0.48	1.86	1.30	0.33	0.82	0.90	12.14
47	2.16	1.43	0.78	0.42	0.26	1.31	0.72	1.30	1.70	0.09	0.59	0.99	11.75
48	0.83	1.32	1.14	0.80	0.73	1.41	1.51	0.93	2.47	0.01	0.34	1.39	12.88
49	0.35	2.44	1.12	1.26	0.85	1.10	0.42	2.03	0.56	0.09	0.21	0.07	10.50
50	1.17	0.76	0.56	2.54	0.34	1.48	0.44	0.77	1.20	0.68	0.09	0.81	10.84
51	1.19	1.37	0.74	0.44	1.46	0.38	1.02	0.39	0.31	0.28	1.23	0.02	8.83
52	0.81	0.36	1.58	0.68	1.00	1.13	0.98	0.59	1.67	0.27	0.01	0.06	9.14
53	0.00	0.82	1.34	1.39	0.51	0.52	1.23	1.57	0.77	0.04	0.78	0.06	9.03
54	1.16	0.81	0.38	0.83	0.43	1.02	1.01	0.87	1.48	0.08	0.44	0.38	8.89
55	1.07	0.51	0.45	0.57	1.04	0.49	1.70	0.76	1.30	0.31	0.55	0.29	9.04
56	0.24	0.46	1.33	2.92	0.33	0.20	0.47	1.06	0.03	0.08	0.01	0.13	7.26
57	2.56	0.25	0.55	0.71	0.72	1.24	1.74	3.11	0.26	0.44	0.60	0.02	12.20
58	0.57	0.79	0.74	1.06	1.23	0.74	1.04	0.40	1.07	0.56	0.00	0.33	8.53
59	0.00	1.73	1.09	1.39	0.78	0.37	0.19	1.11	0.34	0.02	0.42	1.73	9.17
60	0.20	0.02	0.68	0.98	1.28	0.94	0.66	0.53	1.31	0.19	0.84	0.16	7.79
61	0.53	1.31	0.47	0.24	1.44	1.11	0.85	1.29	0.41	0.48	0.15	1.97	10.25
62	2.03	0.68	0.93	1.17	1.18	1.26	0.74	1.16	0.37	0.76	1.01	0.40	11.69
63	0.42	1.10	0.45	1.48	1.00	0.85	3.30	2.26	2.74	0.00	0.53	0.96	15.09
64	0.32	1.49	1.22	0.76	0.34	0.78	1.46	1.41	2.08	0.30	0.24	0.00	10.40
65	0.50	0.85	2.95	0.71	0.38	0.10	1.65	0.84	1.12	1.19	0.78	0.85	11.92
66	0.02	1.21	1.20	0.27	0.51	0.42	0.31	0.93	0.21	0.10	0.02	0.82	6.02
67	0.40	0.63	0.72	1.08	0.18	1.21	1.81	1.14	3.30	0.22	0.13	0.14	10.96
68	0.80	0.51	0.91	0.75	1.11	1.29	0.39	1.70	1.84	0.10	3.98	0.64	14.02
69	0.58	0.92	0.78	1.80	0.94	0.40	0.34	0.19	2.02	0.14	0.54	0.14	8.79

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70	0.56	0.87	1.10	1.98	0.12	1.11	1.28	2.03	1.18	1.25	0.11	0.80	12.39
71	0.68	1.60	1.13	1.47	0.62	1.90	2.33	0.50	1.26	0.32	0.58	2.06	14.45
72	2.29	1.81	1.69	1.45	0.92	0.61	1.36	0.54	1.29	0.56	1.36	1.14	15.02
73	1.39	0.44	1.89	1.04	1.00	1.45	0.70	0.44	0.87	1.84	0.13	2.29	13.48
74	1.19	1.87	0.84	1.55	0.66	1.66	1.40	1.28	0.02	0.14	0.15	0.07	10.83
75	1.99	0.77	0.93	0.65	1.51	1.71	1.51	1.64	0.73	1.61	0.02	0.03	13.10
76	2.54	0.95	0.59	0.45	1.42	1.08	2.82	0.51	0.98	0.77	0.74	0.45	13.30
77	1.83	0.01	0.20	0.70	0.37	0.79	0.06	2.09	0.77	0.58	0.32	0.99	8.71
78	0.18	0.94	1.08	1.17	1.07	1.16	1.24	1.99	0.22	0.03	0.41	0.87	10.36
79	0.06	1.39	0.74	1.09	1.17	0.79	0.63	0.33	0.96	0.59	0.70	0.23	8.68
80	0.79	1.12	0.40	3.24	1.12	1.52	0.55	3.29	0.86	0.72	1.25	1.34	16.20
81	1.88	1.12	0.37	0.72	0.47	1.69	1.27	3.24	0.68	0.29	0.32	0.08	12.13
82	1.52	1.67	2.22	1.40	0.91	1.98	1.02	1.06	0.47	1.27	2.02	3.43	18.97
83	0.99	1.17	2.00	0.48	1.12	2.95	0.72	1.99	1.19	1.13	1.67	1.64	17.05
84	1.21	2.84	3.39	0.49	2.06	0.63	2.13	0.69	1.33	2.28	0.71	0.50	18.26
85	0.89	0.96	0.53	0.71	0.96	1.55	0.29	1.27	1.04	0.48	0.05	1.42	10.15
86	0.50	2.37	1.17	1.07	2.63	0.87	2.56	1.90	0.33	0.12	0.14	1.33	14.99
87	0.39	0.89	0.20	1.03	0.71	0.84	0.47	2.02	0.67	1.93	0.66	0.00	9.81
88	0.25	0.44	1.21	1.06	0.21	0.83	0.97	0.78	0.37	0.00	0.20	0.04	6.36
89	0.00	2.27	1.19	0.59	1.36	2.91	0.33	0.76	0.62	0.11	0.43	0.48	11.05
90	0.84	1.03	0.07	0.53	0.24	2.28	1.43	1.37	0.75	0.14	0.70	0.33	9.71
91	0.31	0.92	1.15	0.71	0.28	2.25	2.56	3.02	0.59	0.12	0.85	0.66	13.42
92	0.74	1.65	0.22	0.21	0.65	0.47	0.72	0.25	1.34	0.71	0.37	0.08	7.41
93	0.98	1.37	1.82	2.30	2.04	1.68	1.54	1.93	2.95	1.07	1.90	0.27	19.85
94	1.01	0.54	0.65	0.59	1.46	0.11	0.43	1.57	0.10	0.60	0.40	0.38	7.84
94	1.01	0.54	0.65	0.59	1.46	0.11	0.43	1.57	0.10	0.60	0.40	0.78	8.24
95	1.33	0.99	1.27	1.49	0.40	2.94	1.06	1.76	3.30	0.38	0.69	0.50	16.11
all years													
ave	0.96	1.03	1.08	1.09	0.95	1.14	1.23	1.28	1.01	0.63	0.68	0.79	11.87
yrs	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)
1961-1990 average :													
	0.92	1.17	1.09	1.04	0.92	1.26	1.20	1.35	1.02	0.65	0.67	0.85	12.14
yrs	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)

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/cdbs/id/snow16

Station : 12G17S, WILDHORSE DIVIDE SNOTEL
ELEVATION 6490

SNOW WATER EQUIVALENT

Unit = inches

year	January			February			March			April			May		
	date	dep	swe	date	dep	swe	date	dep	swe	date	dep	swe	date	dep	swe
45-1							E/ST		10.9	E/ST		16.0			
46-1							E/ST		15.6	E/ST		16.9			
47-1							E/ST		9.1	E/ST		8.0			
48-1							E/ST		10.3	E/ST		15.9			
49-1							E/ST		22.4	E/ST		23.9			
50-1							E/ST		20.3	E/ST		24.8			
51-1							E/ST		15.7	E/ST		16.0			
52-1							E/ST		21.7	E/ST		26.8			
53-1							E/ST		18.8	E/ST		17.2			
54-1							E/ST		13.3	E/ST		14.2			
55-1							E/ST		8.6	E/ST		11.1			
56-1					E/ST	11.7	E/ST		14.8	E/ST		15.7			
57-1					E/ST	8.2	E/ST		8.1	E/ST		13.9			
58-1					E/ST	12.7	E/ST		17.0	E/ST		18.7			
59-1					E/ST	6.7	E/ST		12.2	E/ST		13.0			
60-1					E/ST	4.8	E/ST		10.1	E/ST		11.8			
61-1					E/ST	6.6	E/ST		11.7	E/ST		14.5			
62-1					E/ST	12.7	E/ST		14.3	E/ST		19.8			
63-1					E/ST	3.5	E/ST		8.3	E/ST		8.5			
64-1					E/ST	11.2	E/ST		13.0	E/ST		18.1			
65-1					E/ST	14.3	E/ST		14.4	E/ST		15.2			
66-1					E/ST	10.2	E/ST		13.3	E/ST		10.8			
67-1					E/ST	12.3	E/ST		14.7	E/ST		17.4			
68-1					E/ST	7.1	E/ST		10.4	E/ST		14.4			
69-1					E/ST	15.6	E/ST		18.1	E/ST		19.4			
70-1					E/ST	11.6	E/ST		13.4	E/ST		15.0			
71-1					E/ST	15.1	E/ST		17.1	E/ST		23.1			
72-1					E/ST	18.8	E/ST		22.2	E/ST		23.3			
73-1					E/ST	10.1	E/ST		13.7	E/ST		16.6			
74-1					E/ST	14.6	E/ST		18.1	E/ST		20.7			
75-1					E/ST	13.2	E/ST		19.0	E/ST		23.8			
76-1					E/ST	13.4	E/ST		16.2	E/ST		21.5			
77-1					E/ST	2.8	E/ST		4.7	E/ST		8.2			
78-1					E/ST	10.6	E/ST		14.2	E/ST		13.8			
79-1					E/ST	9.6	E/ST		13.2	E/ST		18.4			
80-1					E/ST	11.5	E/ST		16.7	E/ST		19.4			
81-1					E/ST	6.7	E/ST		8.3	E/ST		11.6			
82-1	1/01		12.7	2/01		19.0	3/01		22.0	4/01		28.5	5/01		20.0
83-1					E/ST	12.3	E/ST		17.7	E/ST		21.1			
84-1					E/ST	16.9	E/ST		24.2	E/ST		27.7			
85-1					E/ST	10.0	E/ST		14.1	E/ST		16.4			
86-1	1/01		8.5	2/01		11.9	3/01		18.3	4/01		16.5	5/01		11.3
87-1	1/01		3.4	2/01		6.8	3/01		8.9	4/01		9.9	5/01		0.0

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88-1 1/01	4.1 2/01	7.8 3/01	9.1 4/01	10.2 5/01	0.3
89-1 1/01	9.3 2/01	13.1 3/01	16.8 4/01	21.5 5/01	7.2
90-1 1/01	4.3 2/01	6.9 3/01	9.1 4/01	10.4 5/01	0.0
91-1 1/01	6.3 2/01	9.4 3/01	11.5 4/01	14.6 5/01	13.3
92-1 1/01	4.8 2/01	5.5 3/01	7.2 4/01	5.1 5/01	0.0
93-1 1/01	9.2 2/01	14.3 3/01	17.9 4/01	17.1 5/01	17.2
94-1 1/01	3.9 2/01	6.0 3/01	11.5 4/01	10.0 5/01	2.0
82-2 1/15	15.8 2/15	20.8 3/15	25.9 4/15	28.2 5/15	9.4
83-2					
86-2 1/15	10.4 2/15	15.0 3/15	17.3 4/15	15.5 5/15	6.8
87-2 1/15	5.2 2/15	8.2 3/15	9.5 4/15	4.5 5/15	0.0
88-2 1/15	6.7 2/15	8.7 3/15	10.3 4/15	4.9 5/15	0.0
89-2 1/15	12.6 2/15	14.2 3/15	18.8 4/15	17.6 5/15	0.0
90-2 1/15	5.9 2/15	8.6 3/15	12.2 4/15	2.4 5/15	0.0
91-2 1/15	7.8 2/15	10.3 3/15	13.8 4/15	12.2 5/15	11.3
92-2 1/15	5.4 2/15	5.7 3/15	6.3 4/15	0.0 5/15	0.0
93-2 1/15	11.9 2/15	15.9 3/15	18.8 4/15	20.3 5/15	9.3
94-2 1/15	5.6 2/15	8.1 3/15	11.4 4/15	9.2 5/15	0.0

FIRST OF MONTH MEASUREMENTS

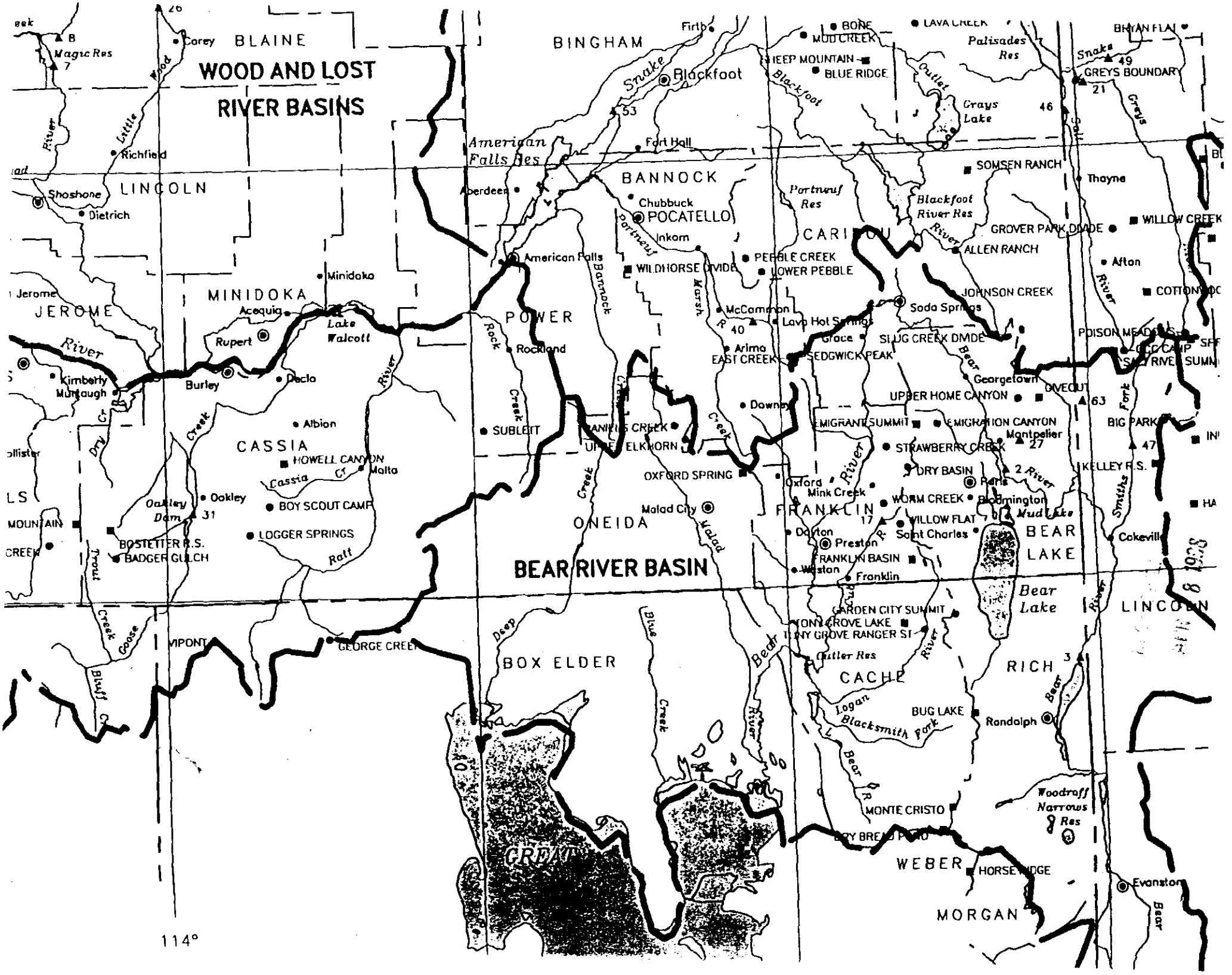
average depth and swe :		6.7		10.7		14.2		16.5		7.1
years	0	10	0	39	0	50	0	50	0	10
1961-1990 average :		7.1		11.2		14.5		17.2		6.5
years	0	6	0	30	0	30	0	30	0	6

MID-MONTH MEASUREMENTS

average depth and swe :		8.7		11.6		14.4		11.5		3.7
years	0	10	0	10	0	10	0	10	0	10
1961-1990 average :		9.4		12.6		15.7		12.2		2.7
years	0	6	0	6	0	6	0	6	0	6

NOTES: -O/dd - October, J/dd - November, K/dd - December, E/ST - estimate
-Card type 1 = First of Month, 2 = Mid-month, and 3 = Special Measurement

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WOOD AND LOST
RIVER BASINS
BEAR RIVER BASIN
BLAINE
LINCOLN
BINGHAM
BANNOCK
POWER
MINIDOKA
JEROME
CASSIA
ONEIDA
FRANKLIN
BEAR LAKE
BOX ELDER
CACHE
RICH
WEBER
MORGAN
LINCOLN
Blackfoot
Fort Hall
American Falls Res
Palisades Res
Grays Lake
Portneuf Res
Blackfoot River Res
Lake Walcott
Magic Res
Oakley Dam
Mud Lake
Bear Lake
Cutler Res
Woodruff Narrows Res
Corey
Richfield
Shoshone
Dietrich
Aberdeen
Chubbuck
POCATELLO
Inkom
American Falls
WILDHORSE DIVIDE
PEBBLE CREEK
LOWER PEBBLE
McCammon
Lava Hot Springs
Soda Springs
Grace
Arimo
EAST CREEK
SLUG CREEK DIVIDE
SEDGWICK PEAK
JOHNSON CREEK
ALLEN RANCH
GROVER PARK DIVIDE
WILLOW CREEK
Afton
SOMSEN RANCH
Thayne
Georgetown
UPPER HOME CANYON
MIGRANT SUMMIT
MIGRATION CANYON
Montpelier
STRAWBERRY CREEK
DRY BASIN
Paris
Bloomington
WORM CREEK
WILLOW FLAT
Dayton
Preston
Saint Charles
FRANKLIN BASIN
Weston
Franklin
Oxford
Mink Creek
OXFORD SPRING
Malad City
Downey
SUBLETT
UPPER ELKHORN
Rockland
Minidoka
Acequia
Rupert
Burley
Declo
Albion
HOWELL CANYON
Malta
BOY SCOUT CAMP
LOGGER SPRINGS
BOSTETTER R.S.
BADGER GULCH
Oakley
Kimberly
Murtaugh
Hollister
MOUNTAIN
CREEK
Dry Creek
Trout Creek
Goose Creek
Bluff Cr
Raft River
Cassia Cr
Rock Creek
Marsh Creek
Bannock Creek
Portneuf River
Deep Creek
Blue Creek
Malad River
Bear River
Logan Blacksmith Fork
BUG LAKE
Randolph
MONTE CRISTO
GARDEN CITY SUMMIT
TONY GROVE LAKE
TONY GROVE RANGER ST
Evanston
HORSE RIDGE
Cokeville
KELLEY R.S.
BIG PARK
DIVIDE
Outlet
Snake River
Blackfoot River
Portneuf River
Bear River
Smiths Fork
Crays River
Jordan
GREAT
114°

RECEIVED

JUL 3 0 1984

BANNOCK COUNTY LAND
DEVELOPMENT BOARD

July 27, 1984

Mayor L. Ed Brown
Administrative Offices
902 E. Sherman
Pocatello, ID 83201

Dear Mayor Brown and Members of the Pocatello City Council:

This letter is being written to protest the Pocatello City Council's recent decision and recommendation to approve a subdivision of 52 lots of 2½ acres known as Gibson Jack First Addition.

Your recent decision to approve this subdivision has ignored pleas by present Gibson Jack property owners concerning water table depletion. Developer Bob Thompson, of Alpine Engineering, has publicly acknowledged that the underground water table is not sufficient for full irrigation of the lots and it is my understanding that the test made by the state hydrologist, reported in the Idaho State Journal, declaring that there was sufficient water for culinary use was made during the month of April 1984. Present property owners have protested that April is a strong run-off month for the water table and this test was not giving a fair picture of the real situation during the dry months. Apparently, recommendations by present property owners to have additional tests made during the months of July, August and September when water run-off is greatly reduced have been ignored and reflect the seriousness of the council's premature decision. Again, this year, present property owners living below the proposed subdivision are being adversely affected, experiencing a drop in well water capacities and output. THIS IS EXACTLY WHAT HAS HAPPENED AGAIN IN 1996.

It is interesting to note that most of your council meeting before approving this subdivision was used to discuss the "potential water supply problem," however, the council did not resolve the potential water problem as the board recommended before reaching its decision to approve the subdivision. Councilman Edgar Malepeai voted against the final motion because he also felt that "the council was not taking care of the potential water supply and fire protection problem," nor was Councilman Malepeai supported in his motion to flag each plat with a notation that the water supply is limited. As well, Thompson would not support a central well for fire protection because "the underground water is not sufficient." With this in mind, additional questions must also be addressed: 1) who will supervise the proposed 52 new water users to see that their well water would not be used to irrigate either part or the total 2½ acres? 2) By allowing 52 new wells, what will happen to the present property owners irrigation water? Water which is already low will most certainly not improve. 3) With less water available and with potential dryouts of existing wells, property below the proposed subdivision will lose its marketable value. 4) Present property owners and undeveloped lot owners on the original Gibson Jack area have been divided into 5 acres raising the issue of fairness as to why the proposed new subdivision was platted into

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2½ acres? 5) Nor have you satisfactorily resolved the fire protection problem, and 6) To my knowledge, as yet, clarification has not been officially made as to the type of residencies to be zoned for this subdivision. Rumors have been heard that this subdivision would be used for a trailer/mobile home park. In order that present property values be maintained, this proposal would be completely unacceptable.

In conclusion, it appears that your recent decision to approve this subdivision of 52 lots of 2½ acres to be reckless, thoughtless and potentially dangerous in terms of water, fire and present property values. This letter then is to serve notice to you and the members of the Pocatello City Council that you will be held directly accountable, responsible and liable for any damages incurred due to your recent decision to approve the Gibson Jack First Addition. Unbelievably, you approved the subdivision even though as reported in the Idaho State Journal, Friday July 6, 1984 "...the council did not resolve the potential water problem as the board recommended." You have not satisfied the board before approving this subdivision, nor have you satisfied this property owner. It is not fair to the people of Pocatello to continue to accept decisions made by the city council without having the council assume direct responsibility for their consequences.

Sincerely,

Anthony Martin
Gibson Jack Road

cc: Bannock County Planning and Zoning Commission
Tom Katsilometes, Bannock County Commissioners Office
Idaho State Journal

APR 2 8 1988

SUBDIVISION PLAN REVIEW COMMITTEE

DEPARTMENT REVIEW AND APPROVAL SUMMARY

SUBDIVISION Wild Horse Ridge (ACCI)

SKETCH____

PRELIMINARY X

SHORT____

FINAL____

BUILDING DEPARTMENT
APPROVE____
DISAPPROVE____
APPROVE W/CONDITIONS____ REVIEWED BY_____ DATE_____

WATER DEPARTMENT
APPROVE____
DISAPPROVE____
APPROVE W/CONDITIONS X REVIEWED BY JH DATE 6-21-95
~~the~~ Water system to be constructed to City Standards - Need plan for review) — Connect to City water —

ENGINEERING/STREETS DEPARTMENTS
APPROVE____
DISAPPROVE____
APPROVE W/CONDITIONS ✓ REVIEWED BY JHO DATE 6-26-95
Curb and Gutter and 40 ft section for road design ~~as~~ wells as shown on plans Storm water to be retained on site. Gibson Jack Road to be paved in front of all lots with curb and gutter.
Sidewalk is not required.

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FIRE DEPARTMENT
APPROVE ____
DISAPPROVE ____
APPROVE W/CONDITIONS X REVIEWED BY RBA DATE 6-25-95

CONNECT TO CITY WATER WITH HYDRANTS SPACED AS PER FIRE CODE, PLACED ON INGRESS SIDE OF ROAD. REQUIRED FIRE FLOW IS PER UFC APPENDIX III-A

WPC DEPARTMENT
APPROVE ____
DISAPPROVE ____
APPROVE W/CONDITIONS ✓ REVIEWED BY [illegible] DATE 6-1

[illegible] sewer is provided to the [illegible] is the city sewer for all lots.

SANITATION DEPARTMENT
APPROVE ✓
DISAPPROVE ____
APPROVE W/CONDITIONS ____ REVIEWED BY KDH DATE 6-25-95

LEGAL DEPARTMENT
APPROVE ____
DISAPPROVE ____
APPROVE W/CONDITIONS ____ REVIEWED BY ____ DATE ____

COMMUNITY DEVELOPMENT & RESEARCH DEPARTMENT
APPROVE ____
DISAPPROVE ____
APPROVE W/CONDITIONS ____ REVIEWED BY ____ DATE ____

APR 2 8 1998

ject, however, to all prior rights. [1899, p. 380, § 32; reen. R.C. & C.L., § 3249; C.S., § 5565; I.C.A., § 41-110.]

Cited in: State v. Twin Falls Canal Co. (1911), 21 Idaho 410, 121 P. 1039, writ of error dismissed 235 U. S. 690, 59 L. ed. 427, 35 Sup. Ct. 205; Kettenbach v. Walker (1919), 32 Idaho 544, 186 P. 912.

Collateral References. 78 Am. Jur. 2d, Waters, §§ 119-127.

42-111. Domestic purposes defined. — For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase "domestic purposes" or "domestic uses" means:

A. The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or

B. Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

For purposes of these sections, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection B. of this section. [1899, p. 380, part of § 12; reen. R.C. & C.L., § 3250; C.S., § 5566; I.C.A., § 41-111; am. 1990, ch. 319, § 1, p. 870.]

Compiler's notes. Section 2 of S.L. 1990, ch. 319 is compiled as § 42-221.

Sec. to sec. ref. This section is referred to in § 42-1401A.

Cross ref. Definition in underground water law, § 42-230.

Domestic purposes not to include land irrigation, § 42-914.

Cited in: Village of Peck v. Denison (1969), 92 Idaho 747, 450 P.2d 310; Stevenson v. Steele (1969), 93 Idaho 4, 453 P.2d 819.

Heating of Dwelling-houses.

Heating of dwelling-houses comes within the meaning of "domestic purposes." Public Utilities Comm. v. Natatorium Co., 36 Idaho 287, 211 P. 533 (1922).

42-112. Completion defined. — By completion is meant conducting the waters to the place of intended use. [R.S., § 3162; 1899, p. 380, § 7; reen. R.C. & C.L., § 3251; C.S., § 5567; I.C.A., § 41-112.]

Cited in: Schodde v. Twin Falls Land & Water Co. (1908), 161 Fed. 43, affd. 224 U. S. 107, 56 L. ed 686, 32 Sup. Ct. 470; Sand Point Water & Light Co. v. Panhandle Dev. Co. (1905), 11 Idaho 405, 83 P. 347.

42-113. In-stream livestock use. — A permit may be issued, but shall not be required for appropriation of water for the in-stream watering of livestock. In the consideration of applications for permits to appropriate water for other purposes, the director of the department of water resources shall impose such reasonable conditions as are necessary to protect prior downstream water rights for in-stream livestock use, and in the administration of the water rights on any stream, the director, and the district court where applicable, shall recognize and protect water rights for in-stream livestock use, according to priority, as they do water rights for other

APR 2 8 1993

purposes. As used
stock" means the
stream, without th
§ 42-113, as adde

Compiler's notes. S
ch. 124 read: "The pro
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provision of this act or
provision to any pers

42-114. Stock
of domestic livesto
making applicatio
person or associat
deemed a benefic

As used in this
drinking of water
water source or otl
p. 498.]

Opinions of Attorn
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APPRC

SECTION.
42-201. Water right
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water.
42-202. Application
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receipt
42-203. [Amended a
42-203A. Notice upo
— Pr
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42-203B. Authority t
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right
lish a
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permit
42-203C. Hydropowe
for re
Burde
42-203D. Review of
for he
42-204. Examinatio

Legals

NOTICE OF APPLICATION FOR WATER RIGHT

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

29-08174
RUSH, EVELEE HILL
PO BOX 4905
POCATELLO, ID 83205
Source: SPRING
Tributary: PORTNEUF RIVER
Diversion Pt: LOT 1 (SESE) Sec 21 T 09S R 38E in BANNOCK County.
Use: COMMERCIAL
Total Diversion: (1.510 CFS)
Date Filed: 7/11/1996
In: BANNOCK County
T09S R38E S21 Lot 1 (SESE)

29-08175
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08176
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SENW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SENW

29-08177
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08178
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08179
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08180
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08181
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08182
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08183
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08184
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08185
BECKSTROM, KELLY
4464 HOLLOW RD
NIBLEY, UT 84321
Source: SPRING
Tributary: SINKS
Diversion Pt: NESWNW Sec 21 T 06S R 38E in CARIBOU County.
Use: DOMESTIC (0.040 CFS)
STOCKWATER (0.020 CFS)
Total Diversion: (0.060 CFS)
Date Filed: 7/9/1996
In: CARIBOU County
T06S R38E S21 SWNW
The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a $25.00 filing fee, Eastern Region, 900 N. Skyline, Idaho Falls, Idaho 83402 on or before AUGUST 19, 1996.
KARL J. DREHER,
Director
August 1, 8, 1996

Date Filed: 7/11/1996
In: BANNOCK County
T09S R38E S21 Lot 1 (SESE)

29-08175
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08176
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SENW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SENW

29-08177
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08178
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08179
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08180
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08181
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08182
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08183
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08184
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)

Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW
29-08185
BECKSTROM, KELLY
4464 HOLLOW RD
NIBLEY, UT 84321
Source: SPRING
Tributary: SINKS
Diversion Pt: NESWNW Sec 21 T 06S R 38E in CARIBOU County.
Use: DOMESTIC (0.040 CFS)
STOCKWATER (0.020 CFS)
Total Diversion: (0.060 CFS)
Date Filed: 7/9/1996
In: CARIBOU County
T06S R38E S21 SWNW
The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a $25.00 filing fee, Eastern Region, 900 N. Skyline, Idaho Falls, Idaho 83402 on or before AUGUST 19, 1996.
KARL J. DREHER,
Director
August 1, 8, 1996
LN1658

525-7161 I.F.
327-7900

APR 2 6 1999

3-1

WARRANTY DEED

94011108

For Value Received **BOB G. TRIPP and LA RAE TRIPP, husband and wife**

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

GUY ANDERST, A MARRIED MAN DEALING WITH HIS SOLE AND SEPERATE PROPERTY AND W. CHRIS PEIN, A MARRIED MAN DEALING WITH HIS SOLE AND SEPERATE PROPERTY AND THOMAS IVERSON, AN UNMARRIED MAN

whose address is: P.O. Box R Pocatello, Idaho 83206

Hereinafter called the Grantee, the following described premises situated in BANNOCK County, Idaho, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: JUNE 15, 1994

Bob G. Tripp
BOB G. TRIPP

La Rae Tripp
LA RAE TRIPP

STATE OF IDAHO)
: ss
COUNTY OF BANNOCK)

On This 15TH day of JUNE, in the year 1994, before me, a Notary Public in and for said State, personally appeared BOB G. TRIPP and LA RAE TRIPP, known or identified to me to be the person(s) whose name(s) ARE subscribed to the within Instrument, and acknowledged to me that THEY executed the same.

94011108
NO. REQUEST OF
FIRST AMERICAN TITLE
'94 JUN 16 A9:46

Notary Public of Idaho
Residing at POCATELLO, ID.
Commission Expires: 4-28-99

OFFICIAL RECORDS BOOK NO 617
BANNOCK COUNTY IDAHO
LARRY W. GRAHAM RECORDER
FEE 9.00 DEPUTY

TAX EXEMPT

APR 28 1998

ATTACHMENT #5

3-2

94011108

EXHIBIT "A"

Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, Section 19: E½NW¼, Lots 1 and 2.

EXCEPT: A parcel of land situated in the South Half of the Northwest Quarter of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

Commencing at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal centerline of said Section 737.50 feet to the TRUE POINT OF BEGINNING; said point being marked by a half inch iron pin tagged LS 968; thence continuing along said latitudinal centerline South 89°54'16" West, 885.00 feet to a half inch iron pin tagged LS 968, said point being on the South line of Gibson Jack Road, said line being measured at right angles to and paralleling 25 feet South of centerline of said road; thence North 55°01'27" East along said South line 858.93 feet to a half inch iron pin tagged LS 968; thence South 20°15'35" East, 523.26 feet to the latitudinal centerline of said Section, said point also being the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A parcel of land situated in the South Half of the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO. More particularly described as follows:

Beginning at the West Quarter Corner of said Section, said point being marked by a 5/8" rebar with a 2" Aluminum Cap stamped LS 968; thence North 89°54'16" East along the latitudinal Centerline of said Section 874.64 feet more or less to a point on the Northwesterly line of Gibson Jack Creek Road, said point being marked by a ½" iron pin stamped LS 968; thence North 55°01'27" East along said Northwesterly line of Gibson Jack Creek Road 94.36 feet to a ½" iron pin stamped LS 968; thence South 89°54'16" West parallel to the latitudinal centerline of said Section 952.10 feet more or less to a point on the West line of said Section, said point being marked by a ½" iron pin stamped LS 968; thence South 0°09'18" East along said West line 53.96 feet more or less to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A tract of land in the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, described as follows: BEGINNING at the West Quarter Corner of Section 19, Township 7 South, Range 35 East, Boise Meridian, said Corner marked by an iron pin with an aluminum cap stamped LS 968, as depicted on the Record of Survey Map recorded in the records of BANNOCK COUNTY as Instrument 658184; thence Northeasterly and Easterly along the West and North boundaries of the land depicted on the Record of Survey Map recorded in BANNOCK COUNTY as Instrument 657503, for the following two (2) courses:

B.T.
L.T.

APR 26 1996

3-3 94011108

1. North 60°17'36" East for a distance of 109.21 feet; thence
2. North 89°54'16" East for a distance of 857.10 feet to the Northeast Corner of the said land; thence

North 00°09'18" West for a distance of 457.52 feet; thence South 89°54'16" West for a distance of 952.10 feet to an intersection with the West line of said Section 19; thence South 00°09'18" East along the West line of Section 19 for a distance of 511.48 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A parcel of land in the E½NW¼ of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal center line of said Section, 325 feet; thence North 3°47'21" West, 1,017.78 feet to a point on the South line of Gibson-Jack Road; said point being measured and parallel 25 feet South of the Center line of Gibson-Jack Road; thence North 45°2'37" East along said Section line of Gibson-Jack Road, 543.49 feet to the Intersection of said Section line and the meridional center line of said Section. Said point being marked by a ½" aluminum pin LS 968; thence South 00°19'33" East along said meridional center line 1,399.03 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A parcel of land located in the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO and is more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section 19, Township 7 South, Range 35 East, Boise Meridian. Said Corner being an aluminum cap tagged L.S. 968; thence S 89°54'16" W along the center latitudinal line of said Section 325.00 feet to the TRUE POINT OF BEGINNING; thence continuing S 89°54'16" W along said center latitudinal line, 412.50 feet; thence N 20°15'35" W, 523.26 feet to the South right of way of Gibson Jack Creek Road; thence N 45°02'37" E along said South right of way, 743.50 feet; thence S 3°48'21" E, 1017.78 feet to the POINT OF BEGINNING.

B.T.
L.R.J.

APR 2 8 1996

ATTACHMENT #6

FIRST AMERICAN

SCHEDULE B

Order No. 18682-B Policy No. J 259391

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

SECTION 1

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

3. Easements, claims of easement or encumbrances which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

SECTION 2

1. General Taxes for 1994 are an accruing lien and not yet due and payable. Taxes which may be assessed and extended on any subsequent roll for the tax year 1994 with respect to new improvements and the first occupancy which may be included on the regular assessment roll and which are an accruing lien not yet due or payable.

2. Easement for PIPE LINE granted to CITY OF POCATELLO recorded November 8, 1916, in Book 31, as No. 324.

3. Right-of-way granted to AMERICAN TELEPHONE AND TELEGRAPH COMPANY recorded as Instrument No. 279186.

continued on page 2

FIRST AMERICAN

SCHEDULE B
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 2

4. Right-of-way granted to MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY recorded as Instrument No. 398605.

5. Right-of-way for GIBSON JACK ROAD running across the Southeast side of subject property.

6. REAL ESTATE MORTGAGE dated June 15, 1994 to secure an indebtedness in the principal sum of $169,000.00, and any other amounts and/or obligations secured thereby.
   Recorded: June 16, 1994, Instrument No. 94011109
   Mortgagor: W. CHRIS PEIN, a married man dealing with his sole and separate property and GUY ANDERST, a married man dealing with his sole and separate property, and THOMAS IVERSON, an unmarried person
   Mortgagee: BOB G. TRIPP and LA RAE TRIPP, husband and wife

APR 28 1996

FIRST AMERICA

LEGAL DESCRIPTION
Order No. 18682-B
Policy No. J 259391

SCHEDULE "C"

Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, Section 19: E½NW¼, Lots 1 and 2.

EXCEPT: A parcel of land situated in the South Half of the Northwest Quarter of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

Commencing at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal centerline of said Section 737.50 feet to the TRUE POINT OF BEGINNING; said point being marked by a half inch iron pin tagged LS 968; thence continuing along said latitudinal centerline South 89°54'16" West, 885.00 feet to a half inch iron pin tagged LS 968, said point being on the South line of Gibson Jack Road, said line being measured at right angles to and paralleling 25 feet South of centerline of said road; thence North 55°01'27" East along said South line 858.93 feet to a half inch iron pin tagged LS 968; thence South 20°15'35" East, 523.26 feet to the latitudinal centerline of said Section, said point also being the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land situated in the South Half of the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO. More particularly described as follows:

Beginning at the West Quarter Corner of said Section, said point being marked by a 5/8" rebar with a 2" Aluminum Cap stamped LS 968; thence North 89°54'16" East along the latitudinal Center-line of said Section 874.64 feet more or less to a point on the Northwesterly line of Gibson Jack Creek Road, said point being marked by a ½" iron pin stamped LS 968; thence North 55°01'27" East along said Northwesterly line of Gibson Jack Creek Road 94.36 feet to a ½" iron pin stamped LS 968; thence South 89°54'16" West parallel to the latitudinal centerline of said Section 952.10 feet more or less to a point on the West line of said Section, said point being marked by a ½" iron pin stamped LS 968; thence South 0°09'18" East along said West line 53.96 feet more or less to the TRUE POINT OF BEGINNING.

continued on page 2

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FIRST AMERICAN

LEGAL DESCRIPTION
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 2

ALSO EXCEPTING THEREFROM:

A tract of land in the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, described as follows: BEGINNING at the West Quarter Corner of Section 19, Township 7 South, Range 35 East, Boise Meridian, said Corner marked by an iron pin with an aluminum cap stamped LS 968, as depicted on the Record of Survey Map recorded in the records of BANNOCK COUNTY as Instrument 658184; thence Northeasterly and Easterly along the West and North boundaries of the land depicted on the Record of Survey Map recorded in BANNOCK COUNTY as Instrument 657503, for the following two (2) courses:

1
North 60°17'36" East for a distance of 109.21 feet; thence
2
North 89°54'16" East for a distance of 857.10 feet to the Northeast Corner of the said land; thence
North 00°09'18" West for a distance of 457.52 feet; thence South 89°54'16" West for a distance of 952.10 feet to an intersection with the West line of said Section 19; thence South 00°09'18" East along the West line of Section 19 for a distance of 511.48 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land in the E½NW¼ of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal center line of said Section, 325 feet; thence North 3°47'21" West, 1,017.78 feet to a point on the South line of Gibson-Jack Road; said point being measured and parallel 25 feet South of the Center line of Gibson-Jack Road; thence North 45°2'37" East along said Section line of Gibson-Jack Road, 543.49 feet to the Intersection of said Section line and the meridional center line of said Section. Said point being marked by a ½" aluminum pin LS 968; thence South 00°19'33" East along said meridional center line 1,399.03 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land located in the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO and is more particularly described as follows:

continued on page 3

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FIRST AMERICAN

SCHEDULE B
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 3

BEGINNING at the Center Quarter Corner of said Section 19, Township 7 South, Range 35 East, Boise Meridian. Said Corner being an aluminum cap tagged L.S. 968; thence S 89°54'16" W along the center latitudinal line of said Section 325.00 feet to the TRUE POINT OF BEGINNING; thence continuing S 89°54'16" W along said center latitudinal line, 412.50 feet; thence N 20°15'35" W, 523.26 feet to the South right of way of Gibson Jack Creek Road; thence N 45°02'37" E along said South right of way, 743.50 feet; thence S 3°48'21" E, 1017.78 feet to the POINT OF BEGINNING.

COMMUNITY DEVELOPMENT & RESEARCH
911 N. 7th
P.O. Box 4169
Pocatello, Idaho 83205
(208) 234-6184
FAX (208) 234-6296

Appl. ion Due: 5/26
CDC Meeting (preliminary/short plats):
City Council Meeting (final/short plats): 6/6

SUBDIVISION APPLICATION FORM
CITY OF POCATELLO, IDAHO

Mar 22, 1996	*See Below	96-5246
Date of Application	Filing Fee	Receipt Number

Type of Plat: ____Preliminary ____Short X Final

FILING FEES

PLANNING REVIEW FEES:
Preliminary Plat: $100.00 + $5.00/lot
Short/Final Plat: $100.00 + $5.00/lot

ENGINEERING REVIEW FEES (short/final plats only):

-Survey Review	$200 + $22.50/lot	200 + 22.5	522.5
-Plan Review of public improvements	$200 + $15.00/lot	200 + 235	435
			1037.50
-Primary inspections	1-10 lots $75.00/lot; $300 minimum 10-20 lots $60.00/lot 20+ lots $50.00/lot		
-Subsequent inspections	$125.00 per department per trip to the site (will be billed by Engineering Department)		

WATER HOOK UP FEES:
-3/4"/1" water line hookup $333 per lot

Name of Subdivision: WILD HORSE RIDGE SUBDIVISION

Location (Section, Township, Range): NW 1/4 S19, T7S, R35E, BM
General Location: ADJACENT TO GIBSON JACK SUBDIVISION

Total Acreage: +/- 55 ACRES / PHASE 1 & 2 Number of Lots: 17

If residential property, Open Space Factor requested: _____

APPLICANT: GUY ANDEREST / (GIBSON JACK JOINT VENTURE)

Mailing Address: P.O. BOX 'R' POCATELLO, ID 83206

Phone Number: 208-237-8180

(OVER)

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

APR 2 8 1996

Contamination on the rise

Pocatello now looking at ways to purify the city's polluted water

By Tim Jackson
Of The Journal

Solvent contamination at a key location in the aquifer that supplies Pocatello's drinking water has increased to its highest concentration measured so far.

And frequent sampling of wells on the city's south side continues showing that a plume of the carcinogenic trichloroethylene (TCE) solvent is traveling north. It's creeping closer to the main well field beneath Pocatello and it shows no signs of abating on its own.

"We don't want the whole system to become contaminated," said Fred Ostler, Pocatello Water Superintendent.

That's why the city is going ahead with an expensive method of assuring city residents will continue drinking safe water — even though it won't correct the source of the problem.

Crews this week are installing two new wells behind the Mormon church on South Bannock Highway. The wells — costing the city about $300,000 — will provide abundant water for the city's growing south side.

More importantly, the wells are being drilled strategically into the aquifer at spots directly in front of the northwest-flowing, underground TCE plume.

Atop each well, crews will install devices called air stripping towers.

The $800,000-plus towers are a proven technology designed to remove TCE from water pumped up through the wells. They'll work by evaporating the TCE.

City officials hope that removing TCE at the two upstream wells will protect dozens of city wells downstream in Pocatello.

The city, county and state have studied TCE pollution in the aquifer since 1989.

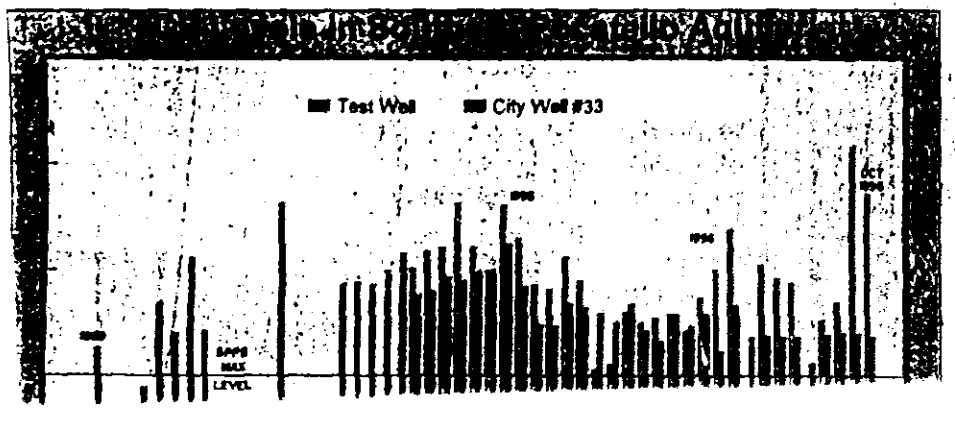
Research indicates most of it originates from past dumping at an old section of the county landfill south of Pocatello.

Officials know barrels of industrial solvents were dumped into the landfill in the 1960s. They suspect some of those barrels are now leaking.

Since 1993, TCE concentrations above the federal health protection limit of 5 parts per billion have shown up in four of Pocatello's south side drinking water wells. They were shut down.

The city restarted two wells furthest downstream, after TCE concentrations

See WATER, A8 ▶





IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH PLAINTIFF VS BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. O. COTANT TOM KATSILOMETERS. DEFENDANT	CASE NO. CVOC 96-01023-A AFFIDAVIT OF LEONARD & GLENNIE WEIDERT

LEONARD & GLENNIE WEIDERT being first duly sworn deposes and states:

1. Our concerns with the proposed "Wildhorse Ridge" subdivision are not with the development of the land, but the approach that the developer is taking to accomplish these goals.

2. Our main concern is with the available water supply.

3. When we built twelve years ago we had our well depth increased to handle two households as my parents own the acreage next to ours.

4. Our feeling was that it was cost effective to have one deep well to handle two households than to sink two individual wells.

5. However, my parents never built on the property as anticipated.

6. Over the years as new development has taken place our water has gone from being crystal clear to now having a reddish tone.

7. This reddish residue can be extracted using a coffee filter to demonstrate the contaminates that are now in our water supply.

8. Also, this past summer my pump started pumping air on one occasion which leads me to believe that the water table has receded significantly.

9. Another concern is that both the City of Pocatello and Bannock County were informed of the fire code requirements for new developments, and were knowledgeable of the fact that the proposed development could not meet code.

APR 2 8 1998

10. I strongly feel that the city and county are very remiss in not ensuring that basic code standards are enforced.

11. Again, we are not against the development of this land, but I feel that the local governing bodies should take a more responsible approach and require City water to be run to the development.

12. With this approach our concerns over ground water and fire codes could be alleviated.

Leonard and Glennie Weidert
LEONARD & GLENNIE WEIDERT

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this ____ day of March, 1997, before me, a Notary Public in and for said State personally appeared: LEONARD & GLENNIE WEIDERT known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

_____
NOTARY PUBLIC FOR IDAHO

Residing at:_____

Commission Expires: _____

APR 28 1997

P Included

LARRY ECHOHAWK
BANNOCK COUNTY PROSECUTING ATTORNEY
P.O. Box P
Pocatello, Idaho 83205-0050
(208) 236-7280

ERICH N. STORM
Deputy Prosecuting Attorney

Lodged X 5-2-88

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, dba GIBSON JACK, 1st Addition, Plaintiffs, vs. BANNOCK COUNTY COMMISSIONERS, Defendants.	Case No. 39322-C RESPONDENTS' BRIEF ON PETITION FOR JUDICIAL REVIEW

FACTS

Respondents are in substantial agreement with Petitioners' recitation of the procedural history of the case.

DISCUSSION OF THE LAW

On page 8 of their brief, dated December 2, 1987, Petitioners have set forth the five issues subject to this review. Respondents will address these in order.

A. The Board of Commissioners' Modified Findings of Fact and Conclusions of Law Do Not Violate Any State or Constitutional Provisions.

On page 9 of their brief, Petitioners argue that the modified findings of fact and conclusions of law somehow deprive

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them of state and federal constitutional guarantees of due process of law. However, as the argument unfolds, Petitioners in actuality attack not the validity of the findings of fact or conclusions of law but the legitimacy of the land use ordinance itself. While Petitioners may collaterally attack the validity of the ordinance, they are required first to exhaust administrative remedies, including the basic determination whether the findings of fact and conclusions of law in this instance are supported by the evidence. See County of Ada v. Henry, 105 Idaho 263 (1983); see also Burt v. City of Idaho Falls, 105 Idaho 65 (1983).

While respondents are not certain how to respond because Petitoner's allegations are unclear, it appears that Petitoners now argue that the county's actions constitute a "taking" without just compensation. Respondents point out that any "taking" claim cannot be an issue before the Court. The administrative bodies passing judgment had no opportunity to address the taking question, and Petitioners admit they presented no evidence on the point. See Balser v. Kootenai County Board of Commissioners, Idaho (1986).

On page 11 of their brief, Petitioners appear to make the additional argument that requiring certain conditions for the development constitutes a deprivation of equal protection under the law guaranteed by both the United States and Idaho State constitutions. Again, this is an issue not presented to the administrative bodies below and not subject to review at this stage since the present action cannot take the form of a trial de novo. See Balser, supra; see also Daley v. Blaine County, 108

Idaho 814 (1985); Clow v. Board of County Commissioners, 105 Idaho 714 (1983). In any event, the Court ruled earlier that inclusion of such evidence on review is improper.

B. The Findings of Fact and Conclusions of Law Do Not Exceed The Authority of the Board of Commissioners.

Petitioners advance the argument that since the applicable provisions of the Bannock County Ordinance do not regulate water production for irrigation purposes beyond lot sizes of one-half of an acre, an attempt to impose water requirements for irrigation purposes on two and one-half acre lots is outside the scope of the ordinance and therefore in excess of the authority of the Board of Commissioners.

The availability of water was a hotly contested issue in the hearings before the Planning and Zoning Commission and the Board of Commissioners. Under the present zone designation of development residential property owners in the proposed division could maintain lawns, orchards, gardens and livestock, all of which impose a demand upon the existing water supply.

Respondents point to finding of fact No. 8 in the modified findings of fact. Petitioners do not dispute the Board of Commissioners' finding that Mr. Chapman, a witness for Petitioners, believed residents in the proposed subdivision would be able to irrigate only approximately one and one-half acres of the two and one-half acre parcels. Similarly, Petitioners do not attack finding of fact No. 10 in the modified findings stating that Mr. Chapman's analysis demonstrates that domestic wells

APR 26 1988

would not be able to irrigate fifty-two (52) two and one-half acre lots and that a central supplemental irrigation well would have an adverse affect upon other domestic wells.

Petitioners' own expert states that as a practical matter there is insufficient water for domestic, fire and irrigation uses on the property. Therefore, regardless of the failure of the ordinance to address the issue, the simple fact remains that there is not enough water available for lots of that size.

C. The Board's Modified Findings of Fact and Conclusions of Law Are Not Clearly Erroneous.

It is the province of the Planning and Zoning Commission and the Board of County Commissioners to determine the credibility of witnesses and resolve disputed facts. Van Orden v. State Department of Health and Welfare, 102 Idaho 663 (1981). This Court may not substitute its judgment with respect to findings of fact for that of the administrative agencies. To say the least, the Planning and Zoning Commission and the Board of County Commissioners were faced with a striking conflict in the evidence. While the expert opinion of Mr. Chapman on the one hand is worthy of substantial consideration, so also is the testimony of the landowners with first-hand knowledge of the water supply in the area. Petitioners are requesting that this Court determine, de novo, that residents of the area in fact have faulty wells and that Mr. Chapman is, as a matter of fact, correct in stating that there is sufficient water in the area to support the installation of fifty-two (52) additional wells.

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D. The Board's Modified Findings of Fact and Conclusions of Law Are Not Arbitrary and Capricious.

On page 16 of their brief Petitoners' allege that the board's modified findings of fact and conclusions of law are arbitrary and capricious. However, Petitioners have not included any argument for Respondents to address.

E. Petitioners' Proposed Plat Does Not Comply With the Modified Findings of Fact.

This argument appears to be a rehashing of Petitioners' earlier argument that the Board of County Commissioners is without authority to require a reasonable demonstration of the availability of water prior to allowing the construction of a fifty-two (52) lot subdivision. Again, even assuming the accuracy of Mr. Chapman's analysis, Mr. Chapman himself agrees that there is insufficent water for domestic, irrigation and fire protection services on the two and one-half acre lots.

CONCLUSION

When all is said and done, it is worthy for the Court to note that Petitioners have not attacked any finding of fact as such. Rather, Petitioners rely instead upon the argument that because the ordinance does not address water requirements for two and one-half acre lots, any requirement of water availability must be illegal.

Respondents urge the Court to recognize that the Petitioners do not dispute the insufficiency of water for two and

2 6 1995

one-half acre lots as reflected in findings of fact No. 8 and 10 and rule that Respondents justifiably required a reasonable demonstration that there is sufficient water for the proposed development.

The case law is clear that Petitioners must exhaust administrative remedies under the Idaho Adminstrative Procedure Act before challenging the legality of the land use ordinance. Respondents request the Court refrain from addressing Petitioners' argument that the ordinance is unlawful under Idaho State Constitutional law.

Respondents also take the position that Petitioners' allegations of denial of due process of law and equal protection of the laws are unsupported by the record and are not subject to review for the reason that Petitioners failed to preserve these issues for review.

Respondents respectfully request the Court to affirm the decision of the Board of Commissioners.

DATED This 29 day of April, 1988.

ERICH N. STORM, Deputy
Prosecuting Attorney

APR 2 6 1988

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That a true and correct copy of the foregoing RESPONDENTS BRIEF ON PETITION FOR JUDICIAL REVIEW was hand-delivered to:

Charles C. Just, Esq.
WEINPEL, WOOLF, JUST, COMBO
& DAVIS
P.O. Box 936
Idaho Falls, Idaho 83402

This 2 day of May, 1988.

ERICH N. STORM

MICROFILMED

APR 2 8 1988

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2. Many of the residents already living in the Gibson Jack area have testified repeatedly throughout the time period this proposed subdivision has been under review that they are experiencing difficulty in obtaining sufficient water for their culinary, irrigation and fire suppression needs and that they are fearful that an additional 52 residental lots in their immediate vicinity will aggravate what they perceive to be water problems in the area.

3. After reviewing the subdivision plans, the Southeastern District Health Department commented in a letter to Alpine Engineering dated May 1, 1984 that"...based on the available data that was submitted regarding quantities of water, it is our opinion that there appears to be adequate water in the aquifer to provide water for culinary purposes. It is also our opinion that there is not enough yield out of this aquifer to adequately irrigate the sizes of lots that are proposed..."

4. Because of the controversy surrounding the water availability issue the developer hired Mr. Sheryl L. Chapman, Registered Professional Geologist specializing in groundwater hydrology, water rights, water well design and geothermal resources to perform a field study in order to determine whether or not 52 individual domestic wells could be relied upon to provide an adequate supply of water for the proposed subdivision.

5. Mr. Chapman testified that he performed a study of the hydrology of the area that included a review of the data available from various agencies and an on-the-ground study consisting of a pump test and a field survey of the geology and hydrodogy of the area.

6. According to Mr. Chapman, this study confirmed the results of an earlier less in depth investigation of the area. The data indicated that given proper well design individual wells would be capable of producing sufficient water for domestic consumption, including household use, watering of lawns, gardens and some stock watering, and limited irrigation. Mr. Chapman stated that in his opinion sufficient water does exist beneath the Gibson Jack Subdivision to provide adequate water for the development that is proposed to be there, both for domestic consumption and limited irrigation, and that the installation of fifty-two additional culinary wells should not affect the other wells in the area.

7. In his study Mr. Chapman found no evidence of a drained or dropping water table. He indicated that most perceived problems with water supply were most likely to be difficulties with well construction, well design or pump problems in combination with the nature of the local soils which Mr. Chapman described as colluvium having a limited perosity or permeability. Despite an abundant aquifer, the rate at which water can be pumped out of the aquifer is limited by the restricted permeability of the soils. Nonetheless, his pump test indicated sufficient water for culinary and limited irrigation purposes.

8. Limited irrigation according to Mr. Chapman meant residents would be able, assuming proper well design and construction, to irrigate 1.5 acres, possibly 2 acres at the most.

MAR 26 1984

1301 N. Orchard Street
83706-2237

OCT 11 1984

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

no lawyer there 1996 NEW DIRECTOR IS KARL DREHER

~~800~~ 1-208-327-7866 FAX

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

October 9, 1984

TOM ORR ISU

1-29-96 2:18 pm MURPHY

Ms. Carolyn Meline, Chairman
Board of Bannock County Commissioners
P.O. Box 4016
Pocatello, ID 83201

Dear Ms. Meline:

This letter is in response to your request for advice on two issues, (1) a question of assured domestic water supply for the proposed Gibson Jack subdivision, and (2) a question as to whether individual wells or a single central supply well would have less impact on new and existing wells.

Based upon limited published water resources reports, driller's logs, discussions with drillers, exhibits and other information supplied by the Bannock County Commission, certain facts have come to light. First, the proposed Gibson Jack subdivision is in an area thought to be underlain by the Salt Lake Formation, a geologic formation that is unpredictable in yielding water to wells; yields can be fairly high in places, but often are quite poor. Drillers logs that supply well test information including drawdown as well as discharge data, have only been somewhat helpful in determining aquifer characteristics. These data indicate relatively poor aquifers developed by wells in the vicinity of Sections 18 and 19, T7S, R35E.

The "well test" performed by ~~Alpine Engineering~~ CHRIS PINE was not run in accordance with established methods of testing aquifers to determine their characteristics; but perhaps that was not the intent. Using data from the test, however, may be very misleading. Bob Cushman of Cushman Drilling in Blackfoot, was present at the test, and he indicated to me that the well tested was not as "good" as many surrounding wells, which implies that data from the test may lead to pessimistically low estimates of yield. In any case, drillers describe it as a relatively poor-yielding aquifer which underlies the area to depths of up to 200 feet. As a result, more severe interference effects can be expected between new and existing wells than if the aquifer was more productive. A single, central supply well, depending upon location, would likely have a more severe interference effect than several low-capacity wells, unless it was completed in an aquifer not hydraulically connected with the Salt Lake Formation.

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Underlying the Salt Lake Formation at greater depth are various consolidated rock units of unknown potential for groundwater yield and extensive development. Another source of water for the subdivision is the city of Pocatello. Perhaps the most obvious source of groundwater (to a geologist) is the alluvium of the Portneuf River valley. A well located in the area of the fan of Gibson Jack Creek should supply adequate water for domestic, irrigation, and fire protection purposes.

To summarize, my conclusions are as follows:

1) There is insufficient data on aquifer characteristics in the area to allow meaningful projections of the effects of pumpage.

2) Based on the limited data available, however, domestic wells with properly sized pumps providing water for in-house uses only, are not likely to have any long-term adverse effects on new or existing wells, although some minor interference between can be expected. Such pumps would typically be 1/2 h.p. pumps capable of pumping about 10 gpm.

3) Individual wells providing irrigation water are likely to be marginal in production capacity and would have more serious potential drawdown effects on water levels in surrounding wells, due to their higher pumpage rate and more continuous pumping schedule.

4) A single, high capacity municipal supply well completed in the same aquifer, depending upon location, would have a more serious interference effect on nearby wells than several low-capacity domestic wells. This would not be the case, however, if the central well were completed in another, perhaps deeper, aquifer not hydraulically connected to the Salt Lake Formation.

5) Other geologic units underlying or adjoining the proposed subdivision area have unknown to very high potential for yielding adequate water for the subdivision. The unit with the best potential is the alluvium of the Portneuf River.

I have a couple of recommendations, which I hope will be helpful to you in arriving at a solution:

1) A competent hydrogeologic consulting firm with excellent references should be retained to conduct aquifer tests in the Gibson Jack area, analyze the results of the tests, and provide projections of pumpage effects based on those analyses. The consultant should also develop

APR 2 8 1988

a water budget, if possible, for the watershed of Gibson Jack Creek, to help determine what long-term level of development the area could sustain. The data obtained would have good transfer value to adjoining drainages where other development may be contemplated or in progress.

2) The alluvium of Portneuf River valley has the potential to be a prolific aquifer, capable of supplying adequate water. A consultant should be retained to perform appropriate well tests, develop well construction specifications, supervise the drilling and development of a test well in the alluvium and to provide a comprehensive report to the Bannock County Commission. The well, if of sufficient capacity, could eventually be tied into the city of Pocatello system, providing further supplies to the southeast outlying areas of the City. Two factors should be addressed before constructing a well in the alluvium; however, water quality and protection from flooding.

I hope the above discussion helps you all in reaching a timely decision. If there is anything else I can do to assist you, please feel free to call.

Sincerely,

Paul M. Castelin

PAUL M. CASTELIN
Hydrogeologist

PMC:cjk

APR 2 8 1989

FILED
LARRY W. GHAN
CLERK OF DISTRICT COURT
BANNOCK COUNTY, IDAHO

'87 NOV 24 A9:42

BY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, d/b/a/ GIBSON JACK, 1st ADDITION, Plaintiffs, vs. BANNOCK COUNTY COMMISSIONERS, Defendants.	CASE NO. 39322-C MEMORANDUM DECISION AND ORDER

The court has reviewed the file, record and transcript of the county hearings, statement of position, and points and authorities filed by counsel.

In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivison plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System. Developer's petitioned for judicial review and in January 1985, Judge McDermott remanded to the Board for further hearing. At this additional hearing the Board issued the modified findings of facts and conclusions of law but adhered to its prior decision requiring connection to the municipal water system. A second petition has been filed with this court asking for judicial review and additionally for the presentation of additional evidence. Developers complain that the Board had given approval to other proposed subdivisions without requiring the developers to demonstrate the availability of water as they

NOV 26 1987

had required of these petitioners. The testimony of petitioner's expert, Mr. Chapman, is requested to clarify the record because of "inaudible" gaps in the transcript.

Notwithstanding the allegation that the Board may have approved other subdivision proposals without the scrutiny given to available water supply as it has to the present application, there is nothing in the record which would indicate that the conditional approval of this plate was arbitrary or otherwise improper. The burden is on the petitioner to demonstrate the infirmity of the Board's decision and they have not sustained this burden.

It is clear from the transcript that the availabilty of adequate water was very much in dispute. Several expressions of concern were made to the Board about the sufficiency of water, availability and the possibile impact of additional users and in light of these concerns it is not arbitrary nor unreasonable for the Board to require the developer to guarantee the availability of an adequate water supply before accepting the proposed subdivison. A local governing Board may be impowered to act to promote and preserve the general welfare of the community, and in providing for an adequate water supply as one of the means by which to do so. City of Lewiston vs Knieriem, 107 Idaho 80, 685 P.2d 821 (1984).

Once it is recognized that the Board is empowered to require the Developer to demonstrate that sufficient water is available,

APR 2 8 1989

the inquirY then focuses on whether or not there was substantial evidence to support the Board's findings that adequate ground water was not available in this case. According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficent water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal.

The fact that there are a number of "inaudible" gaps in the transcript does not require further testimony by Mr. Chapman. The transcript is, while not ideal, sufficient to allow the court to evaluate the reasonableness of the board's findings.

IT IS THEREFORE ORDERED that the petition for Judicial Review of Administrative Proceedings and For Leave To Present Additional Evidence each are denied and the decision of the Bannock County Commissioners herein is affirmed.

DATED this 18th day of November, 1987.

WALLACE M. TRANSTRUM
District Judge

APR 2 8 1988

THE IDAHO STATESMAN
Boise, Idaho

AUG 3 1 1992

First gets water rights

Associated Press

The Idaho Supreme Court says "first in time is first in right" when it comes to water rights.

With that, the court on Monday unanimously upheld a district court decision in a Bear Lake County water dispute.

Carl Parker brought the suit five years ago when his shallow domestic well ran dry after a neighbor drilled a deeper irrigation well.

Parker asked for a court order to prevent his neighbor, L. Junior Wallentine, from pumping from his well.

The Supreme Court ruled that Parker has the water right, and that he is not subject to a 1978 law that modified earlier state water laws.

But the court said Parker does not have an absolute right, and Wallentine can develop his well if there is sufficient water available. Wallentine also must repay Parker if he is required to change his method of pumping or means of diversion to maintain his water level.

LEWISTON
MORNING TRIBUNE
Lewiston, Idaho

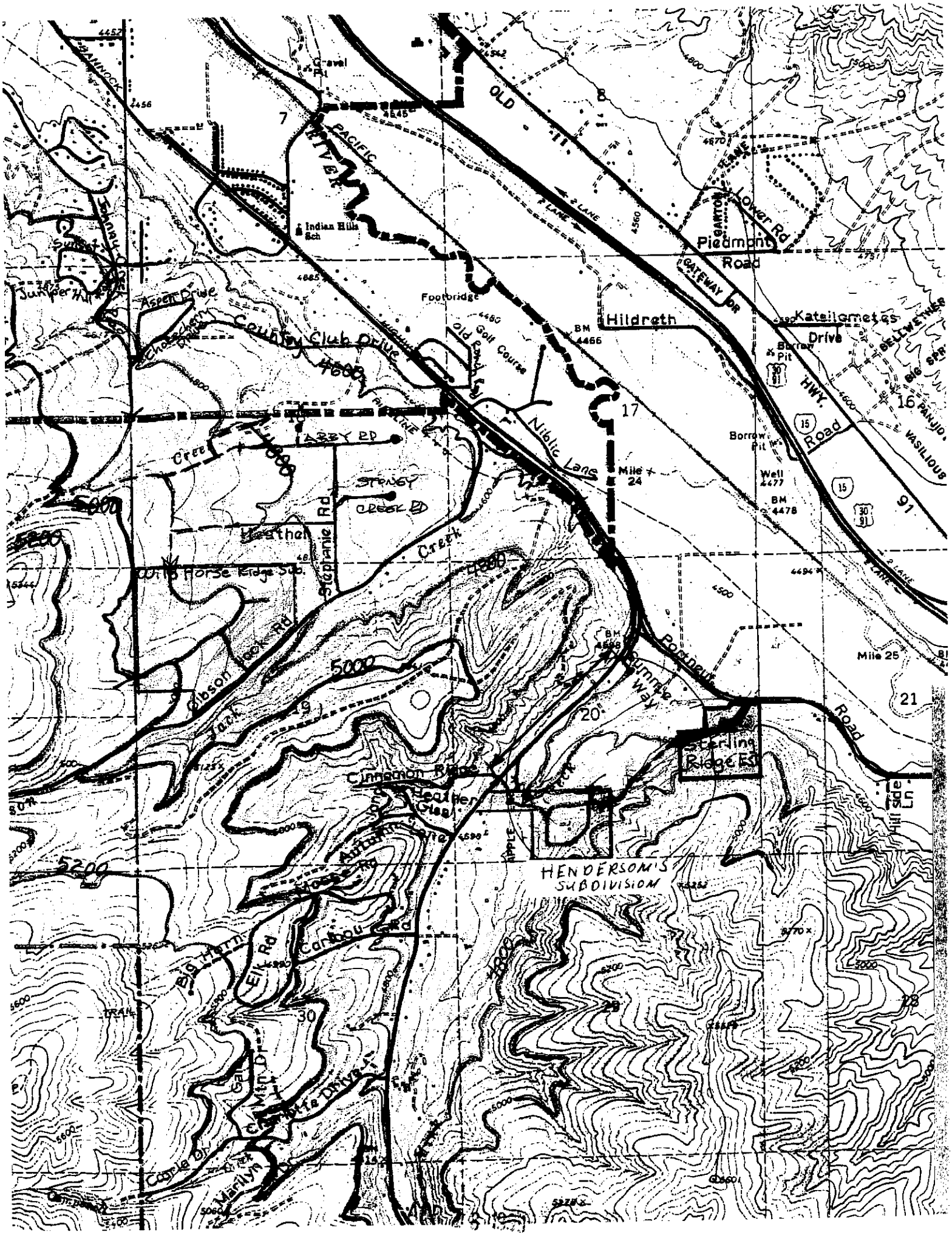
AUG 3 1 1992

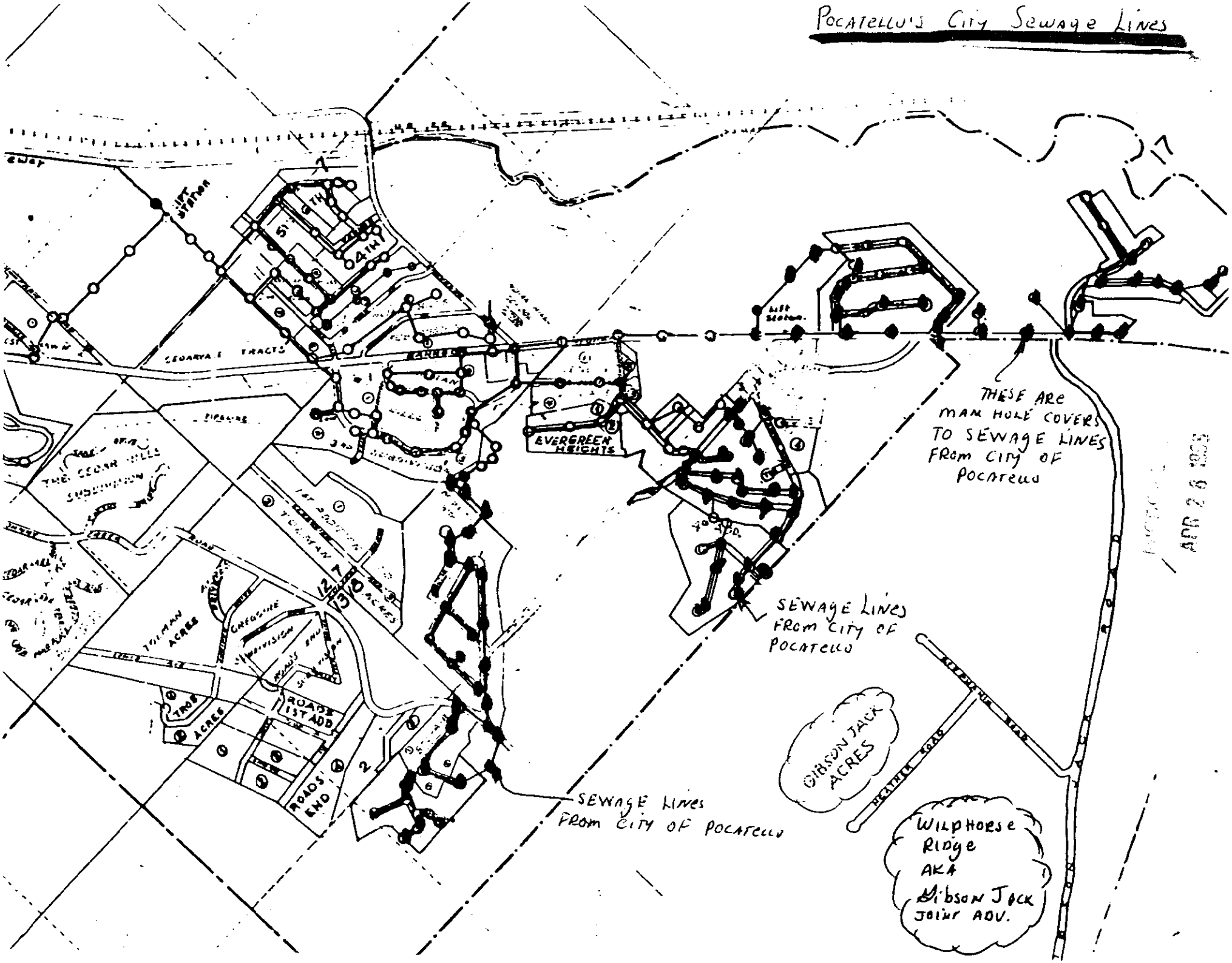
NORTH SIDE NEWS
Jerome, Idaho

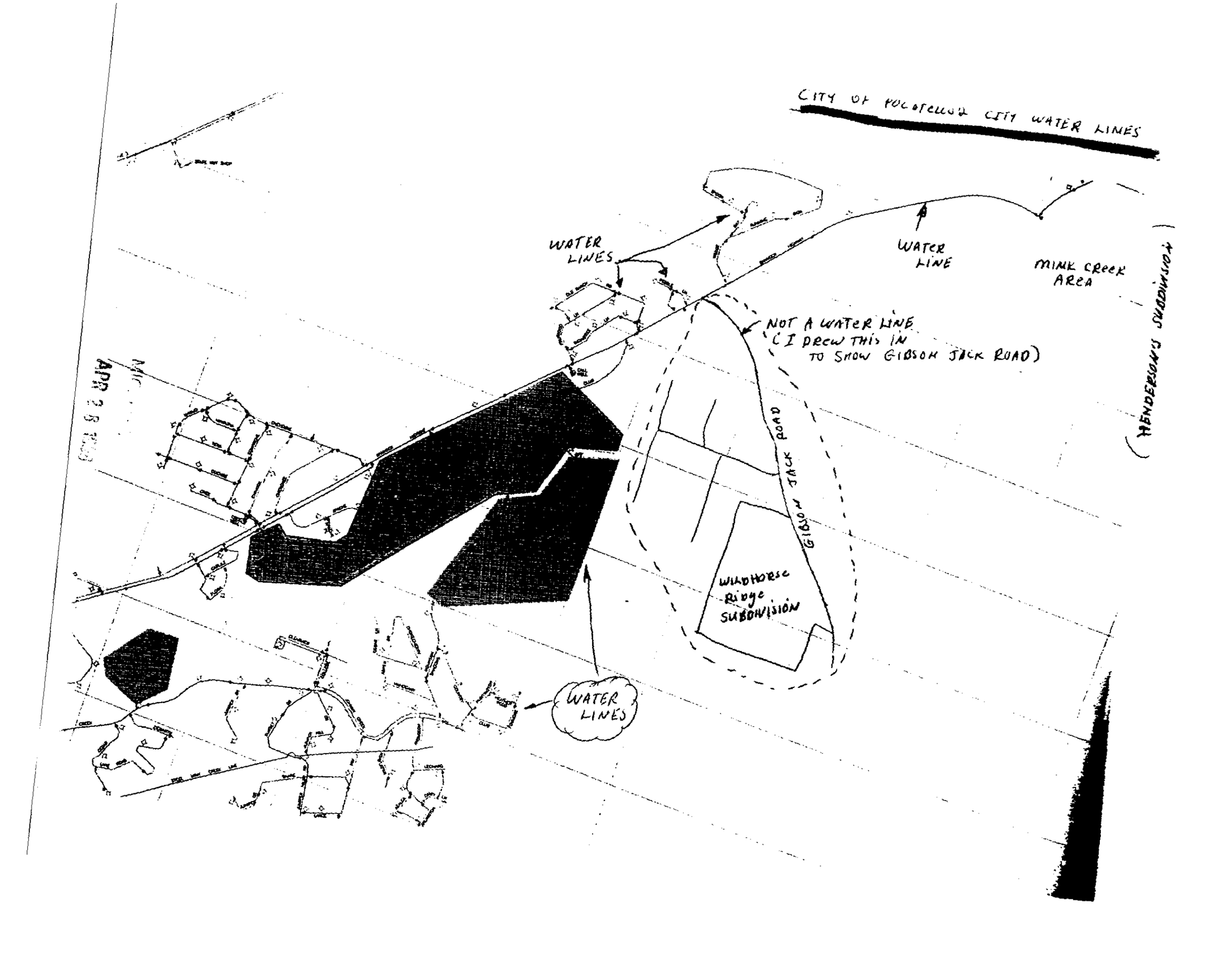
SEP 2 1992

Brent Abbott X
Mavin Rowell X
Martha Shaver X
Roger Bird
Roland Hall
Margaret McNabb X
Rita Earl X secretary

AUG 2 8 1992


OLD
PACIFIC
RIVER
Gravel Pit
Indian Hills Sch
Sunset
Juniper Hills
Aspen Drive
Chaparral
Country Club Drive
Footbridge
Old Golf Course
BM 4466
Hildreth
Gateway Dr
Piedmont Road
Lower Rd
Kateilometes Drive
Borrow Pit
HWY.
Road
Niblic Lane
Mile + 24
Well 4477
BM 4478
Abby Rd
Stoney Creek Rd
Heather
Stephanie Rd
Wild Horse Ridge Sub.
Gibson Jack Rd
Pokeweed
Summer Way
Mile 25
Sterling Ridge Est
Cinnamon Ridge
Heather Glen
Autumn Leaf
Apple
HENDERSON'S SUBDIVISION
Hill Side Ln
Caribou Rd
Big Horn
Elk Rd
Trail
Mountain Dr
Cascade Dr
Marilyn Dr
Cougar Dr
Bellewether
Panjio
Vasilious
7
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5200
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4600


POCATELLO'S CITY SEWAGE LINES
LIFT STATION
6TH
5TH
4TH
CEDARVALE TRACTS
EVERGREEN HEIGHTS
LIFT STATION
THESE ARE MAN HOLE COVERS TO SEWAGE LINES FROM CITY OF POCATELLO
THE CEDAR HILLS SUBDIVISION
TILMAN ACRES
GREGOIRE SUBDIVISION
ROADS 1ST ADD
ROADS END
SEWAGE LINES FROM CITY OF POCATELLO
SEWAGE LINES FROM CITY OF POCATELLO
GIBSON JACK ACRES
WILDHORSE RIDGE AKA GIBSON JACK JOINT ADV.
APR 26 1993


CITY OF POCATELLO CITY WATER LINES
WATER LINES
WATER LINE
MINK CREEK AREA
NOT A WATER LINE (I DREW THIS IN TO SHOW GIBSON JACK ROAD)
GIBSON JACK ROAD
WILDHORSE RIDGE SUBDIVISION
WATER LINES
HENDERSON'S SUBDIVISION

POOR QUALITY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH

PLAINTIFF

VS

BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. [illegible] STANI TOM KATSILOMETES,

DEFENDANT

CASE NO. CV97-96-01933-A

AFFIDAVIT OF KAREN AGUILAR

KAREN AGUILAR being first duly sworn deposes and states:

1. Since taking over the position of Fire Chief of the Pocatello Valley Fire District on March 3rd, 1997.

2. I have not signed any documents or agreements of any kind pertaining to the Wildhorse Subdivision on Gibson Jack Creek Road, Pocatello, Idaho to this date, March 30, 1997.

KAREN AGUILAR

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this ____ day of March, 1997, before me, a Notary Public in and for said State personally appeared: Karen Aguilar known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

NOTARY PUBLIC FOR IDAHO

Residing at:_____

Commission Expires: _____

APR 25 1997

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RICHARD M. HOLLINGSWORTH PLAINTIFF VS BANNOCK COUNTY COMMISSIONERS CAROLYN MELINE, J. O. COTANT TOM KATSILOMETERS. DEFENDANT	CASE NO. CVOC 96-01023-A AFFIDAVIT OF Ronald P. LeBlanc

Ronald P. LeBlanc being first duly sworn deposes and states:

1. I am a Commissioner with the Pocatello Valley Fire Protection District. As of this date, 31 March 1997, the Fire District has not approved the Wild Horse Ridge Subdivision.

2. The Fire District has been trying to negotiate with the developers a plan that will comply with the spirit of the Uniform Fire Code. The latest attempt was rejected by the developers the week of March 16, 1997.

3. In my discussions with the developers about meeting the minimum requirements of water flow and fire hydrant placement of the Uniform Fire Code, adopted by the State of Idaho in Idaho State Code Section 41-253. The developers have stated that - "It would cost to much and we would not be able to make any money."

4. It should be noted that Bannock County Resolution No. 199710 dated February 7, 1997 requires the developers of Wild Horse Ridge to get a letter of approval from the Fire District prior to any building permits being issued. No such letter of approval has been issued.

5. It should also be noted, as specified by District Judge Peter D. McDermott in JUDGEMENT of Case No. CVOC 96-01084, that the subdivision ordinance of Bannock County, Section D-511 through D-513 and D-701(H)are in conflict with the general laws of the State of Idaho.

Ronald P. LeBlanc

RONALD P. LEBLANC

MAR 28 1997

STATE OF IDAHO)
)SS.
COUNTY OF BANNOCK)

On this ____ day of March, 1997, before me, a Notary Public in and for said State personally appeared: Ronald P. LeBlanc known or proven to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledge to me that he executed the same.

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

_____
NOTARY PUBLIC FOR IDAHO

Residing at:_____

Commission Expires: _____

APR 2 8 1998

FILED
LARRY W. GHAN
CLERK OF THE DISTRICT COURT
97 MAR 21 AM 10: 06
BY
DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF POWER

POCATELLO VALLEY FIRE PROTECTION DISTRICT

Plaintiff,

-vs-

BANNOCK COUNTY

Defendant.

Case No. CVOC 96-01084

JUDGMENT

In its Memorandum Decision and Order dated March 19, 1997, the Court concluded that PVFPD's complaint states a claim upon which relief can be granted; that Bannock County's subdivision ordinance, sections D-511 through D-513 and D-701(H), are in conflict with the general laws of the state of Idaho, i.e., the Uniform Fire Code as adopted pursuant to I.C. §41-253; that Bannock County must follow the Uniform Fire Code, rather than those provisions of its subdivision ordinance pertaining to fire suppression; that PVFPD has the sole authority to enforce the Uniform Fire Code within the boundaries of its district, while Bannock County has the authority to enforce the Uniform Fire Code in those areas not within the PVFPD; that since the Court concluded that Bannock County must follow the Uniform Fire Code, the issuance of an injunction preventing Bannock County from ignoring the provision in its subdivision ordinance, D-400d(H), which mandates that the county require developers to seek comments from PVFPD in a subdivision application, is unnecessary; that PVFPD has not submitted sufficient facts in the record to prove that it was entitled to have this Court issue a moratorium preventing the county

APR 2 8 1997

from approving any pending subdivision applications; however, should Bannock County ignore the Court's order and not have PVFPD require pending subdivision applicants adhere to the Uniform Fire Code, PVFPD may seek an injunction from this Court to have a moratorium imposed at that time; that it is unnecessary for the Court to issue a writ of mandate forcing Bannock County to recognize the authority of PVFPD when this Court has already concluded that PVFPD shall have the sole authority to enforce the Uniform Fire Code within its boundaries; and that PVFPD is not entitled to attorney fees or costs pursuant to I.C. §§ 12-120 and 12-121.

Having reached the foregoing conclusion and finding that no genuine issues of material fact exist requiring resolution at trial, and that PVFPD is entitled to judgment as a matter of law, this Court hereby declares that judgment be entered against Bannock County.

IT IS SO ORDERED.

DATED this 19 day of March, 1997.

PETER D. McDERMOTT
District Judge

Copies to:
Michael D. Gaffney
Guy Price

APR 2 3 1997

POCATELLO VALLEY FIRE PROTECTION DISTRICT

Ronald P. LeBlanc
Commissioner

907 N. Marilyn Dr.
Pocatello, ID 83204
208-236-3957

21 February 1997

TO: Bannock County Commissioners

FROM: Ronald P. LeBlanc, Commissioner – Pocatello Valley Fire Protection District

SUBJECT: Protest of Preliminary Plat Approval Wildhorse Ridge Subdivision – RS No. 1997-10 dated February 7, 1997.

I believe the revised Preliminary Plant Approval for Wildhorse Ridge Subdivision contains substantive errors of fact and a significant error of omission.

The issues include:

1) Resolution Item 12.4.a – stating that the proposed plan is in conformance with the Bannock County Comprehensive Plan.

> Section I. Population and II. Land Use section 6.c is not being met by this plan. This subdivision lies within the city's area of impact. The subdivision is not being required to be annexed per section 6.c nor does the preliminary plat approval wave this requirement.

2) Resolution Item 12.4.b – stating that the proposed plan is in conformance with all applicable provision of this Ordinance, other county ordinances, and Idaho Code.

> County Subdivision Ordinance Section D-400d specifically states that ..."**No application will be accepted for processing by the County unless all of the following reviewing agencies comments are attached.**" Section 400d.H specifically requires input from the Appropriate Fire District or Other Fire Suppression Provider.
>
> None of the required inputs from the appropriate Fire District have ever been submitted for this or any other subdivision within the boundaries of the Pocatello Valley Fire Protection District.

APR 2 8 1997

Additionally, in Idaho State Code Section 41-253, the State of Idaho adopted the Uniform Fire Code, 1979 edition with the 1981 supplement and any other later editions and the Appendices. The subdivision Preliminary Plat does not comply with the minimum water flow requirements of the Uniform Fire Code nor the placement of fire hydrants and the 20 psi residual pressure in the system.

3) Resolution Item 13.1 – stating ..."the developers provide fire protection with fire resistant vegetative strips around the residences, and on the perimeters of the development as approved by the Pocatello Valley Fire District.

   The requirement for fire resistant vegetative strips around the residences, and on the perimeters of the development is not any part of the Uniform Fire Code and has not been a requirement of the Fire District.

4) The error of omission in the Amended Resolution is the fact that this subdivision lies within the City of Pocatello's area of impact. This fact is not recognized in the Amended Resolution nor is the fact that this subdivision does not meet or has been exempted from meeting the city's requirements for subdivisions within the impact area.

I look forward to your resolution of these issues.

APR 2 8 1993

Fire district taking county to court to force code compliance

By Chuck Oxley
Of the Journal

The Pocatello Valley Fire Protection District is suing Bannock County for alleged incompliance with the state uniform fire code and wants to stop all subdivision development in the district until there is compliance.

In civil court documents filed last Friday in 6th District Court and signed by Fire District Commissioner Ron LeBlanc, the suit asks for a judge to order Bannock County to change its ordinances to conform to state fire code and fire marshal rules.

It also would require review and approval of all fire access roads by the fire district chief.

"Three subdivisions in the last two years were approved by the county but are not in compliance with the uniform fire code," said LeBlanc, who also is the Republican challenger facing Bannock County Commission Chairman Tom Katsilometes, a Democrat, in the November election.


LEBLANC


KATSILOMETES

Katsilometes said ha and the other county commissioners have tried for more than a year to work with the fire district on the question of authority over subdivision developers with regard to fire suppression requirements.

In an April memo to county commissioners and planning and development staff members, county attorney Guy Price said it would be "outside the law of plats and recording" to require the fire marshal or any of his assistants to approve subdivision plats.

With that opinion in hand, Katsilometes said the county will not change its operations unless ordered to do so by a judge.

"There's nothing in state law that says fire chiefs and fire districts have to sign off on plats," Katsilometes said. "We're not about to break the law for

See FIRE, A8

R.O.W 236, 345

Fire

▶ Continued from A-1

Ron LeBlanc or anybody else."

The standard procedure now is for the county planning and development council to ask for comments from the district fire chief about what requirements need to be met for each subdivision.

The council takes the chief's or fire district commissioners' requests and works out a plan with the developer.

But in his suit, LeBlanc says the county has developed its own standards for fire vehicle access, water flow requirements for fire suppression and fire hydrant location.

"Their standards are inconsistent either in content or application with the standards published in the uniform fire code," the suit said.

Regardless of how a judge may rule, Katsilometes said the motive behind the suit's filing is political.

"If he had some concerns, he should have filed them a year ago," Katsilometes said.

Commissioner J.O. Cotant, the commission's sole Republican, criticized LeBlanc for filing the suit close to an election.

"I think it's self-serving and has no validity at all," Cotant said.

But LeBlanc said he filed the suit because he got no satisfaction from county authorities after a year of negotiations.

"These are the problems that I face with the planning and zoning department and county commissioners, and these issues are the reasons that made me initially decide to run for county commissioner," LeBlanc said.

The fire commission is represented by an Idaho Falls attorney. LeBlanc said five different local law firms turned down the case.

"No attorneys in Bannock County would represent us because this is dealing with the city and county government. Given the politics in this town, they wouldn't be able to do business anymore," LeBlanc said.

The case has been assigned to 6th District Judge Peter McDermott.

APR 23 1998

Orig.

BEFORE THE DEPARTMENT OF WATE

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE)
NAME OF GIBSON JACK JOINT VENTURE,)
aka WILDHORSE RIDGE SUBDIVISION.)
)
_____)

PARTIAL TRANSCRIPT OF HEARING
DATED OCTOBER 22, 1996
CONTAINING EXCERPTS FROM WITNESSES TESTIMONY
OF JOHN WELHAN & SHERL CHAPMAN

Idaho Department of Water Resources
Gary Spackman, Hearing Officer

F. RANDALL KLINE
F. RANDALL KLINE, CHARTERED
P.O. Box 397
Pocatello, Idaho 83204
Attorney for Applicant

MICROFILMED
Water Book
APR 28 1998

RICHARD HOLLINGSWORTH
9502 Gibson Jack
Pocatello, Idaho 83204
Protestant

EVERETT DILLER
2917 N. Stephanie Rd.
Pocatello, Idaho 83204
Protestant

CLARK R. KELLY
9685 Heather Rd.
Pocatello, Idaho 83204
Protestant

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE)
NAME OF GIBSON JACK JOINT VENTURE,)
aka WILDHORSE RIDGE SUBDIVISION.)
)
)

BE IT REMEMBERED that this matter came on for hearing on the 22nd day of October, 1996, at Pocatello, Idaho before Gary L. Spackman, Hearing Officer, Idaho Department of Water Resources.

The following is a portion of the transcript of the above-referenced hearing.

APPEARANCES

The Applicant's Representative:

F. RANDALL KLINE
F. RANDALL KLINE, CHARTERED
P.O. Box 397
Pocatello, Idaho 83204

Protestants:

RICHARD HOLLINGSWORTH
9502 Gibson Jack
Pocatello, Idaho 83204

EVERETT DILLER
2917 N. Stephanie Rd.
Pocatello, Idaho 83204

CLARK R. KELLY
9685 Heather Rd.
Pocatello, Idaho 83204

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JOHN ANDREW WELHAN

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Redirect Testimony 40

Recross-Examination 41

SHERL L. CHAPMAN

Direct Testimony 47

Cross-Examination 56

[Note: The following testimony begins at position 2593 of hearing tape #1.]

WELHAN DIRECT TESTIMONY

MR. KLINE: I would like to call John Welhan.

MR. SPACKMAN: Mr. Welhan, . . . (Inaudible) . . . please.

MR. KLINE: I would indicate also on the record apparently he has a 1 o'clock class, so if we would complete his statements before we break up, I would appreciate that.

MR. SPACKMAN: I would be happy to do that. We can take a late lunch.

MR. DUNN: His students would be happy . . . (Inaudible). . . .

MR. SPACKMAN: Thank you Mr. Dunn. (Inaudible) And if anyone wants to break please raise your hand. I will literally allow those, but if we could press forward I would like to do so. Mr. Welhan, if you'll raise your right hand, please. Do you swear to tell the truth, the whole truth and nothing but the truth?

MR. WELHAN: I do.

MR. SPACKMAN: Thank. You may be seated.

MR. KLINE: May I inquire?

MR. SPACKMAN: Yes.

MR. KLINE: Mr. Welhan would you state your full name for the record please?

MR. WELHAN: John Andrew Welhan.

MR. KLINE: How are your employed?

MR. WELHAN: I am a geologist with the Idaho Geological Survey.

MR. KLINE: How long have you been in that position?

MR. WELHAN: Since 1990.

MR. KLINE: Just a brief summary of your educational background.

MR. WELHAN: I have a Ph.D. in Geological Sciences. Including a Masters Degree in Ground Water Science both in ground water, subsurface water research for the last 20 years.

MR. KLINE: And are you familiar with the Gibson Jack area?

MR. WELHAN: To the extent that I have done work up there, yes.

MR. KLINE: You did a report, which has been marked and I assume admitted as Exhibit 4?

MR. SPACKMAN: Yes.

MR. KLINE: Do you have that document with you?

MR. WELHAN: Yes I do.

MR. KLINE: I'm just going to basically allow an open discussion if you would, of what process and procedure that you followed and what your conclusions were.

MR. WELHAN: Ok.

MR. SPACKMAN: We recognize that Mr. Welhan is an expert.

MR. HOLLINGSWORTH: I have no objection to that at all.

MR. SPACKMAN: By that recognition, I believe that it grants some liberty to the witness to go ahead and discuss technical information, again without the very careful question. Thank you.

MR. WELHAN: As we have been apprised the well was drilled in December of 1995. I was contacted by developers and asked if I would give them some recommendations on how to

test the well. I think I responded that I would be happy to help in any way I could, because one of our main problems in this area and most areas that are undergoing development is a lack of technical information and the developers indicated they would be willing to conduct a controlled well test and that I was more than happy to help them out in achieving that goal. So we agreed to design the test and to collect the information, and to interpret for them, provide recommendations based on the information collected and any other information that would be relevant. At that time I told Chris Pine that I can't take sides in this kind of a debate and the chips had to fall where they may, so we went ahead as Guy Anderst indicated. Basically in my eyes the developers wanted to find out what the situation really was, and if it was acceptable or not for developing plans they had.

We conducted the tests on the 11th of January and prior to that, starting some time in December, I placed an automatic recording device in the Chad Nielsen well to provide background water level information. At that time we already decided that we were, it had been decided for us, I'm not sure what the situation was I was simply going by the information that the developers were providing. We had decided that we could not monitor any other well and the Chad Nielsen well, because it had been recently drilled, had not had a pump installed, was not being utilized for domestic purposes, was in fact the only option we had for monitoring static water levels and for monitoring the response of a well to the effects of the pumping well. So that went in my graph here, about the 17th or 18th of December and we collected information through January and February spanning the time of the pumping test itself. The well was pumped for a little more than seven hours continuously starting at about

70 gallons per minute. The discharge rate was measured from a series of sprinkler heads attached to a sprinkler discharge line that had been rigged up to the well discharge. By summing the amounts of discharge from each sprinkler head we were able to determine the approximate pumping rate. That pumping rate varied at the beginning of the test for the first 6-8 minutes, the pump was running essentially with no back pressure until the sprinkler line filled up. At that point the sprinkler line was filled, back pressure increased and the effective pumping rate dropped, from our measurements 38 gallons per minute, and that is estimated to be plus or minus ten percent (10%) accuracy. That 38 gallons per minute rate was held constant, we checked it during the test (a couple of times), for the duration of the test of 7.3 hours. At the end of that period the well had gone down 136 feet and . . .

MR. HOLLINGSWORTH: Say that again?

MR. WELHAN: The well had drawn down at the end of the test, at the end of 7.3 hours to a total of 136 feet. That is 136 feet below the starting water level. With the one observation well that we had available to us, the Chad Nielsen well, located some distance away. I don't recall exactly how far it was, I think it was 1100 feet.

MR. HOLLINGSWORTH: I believe it was 13--.

MR. WELHAN: 1300 feet? That sounds about right.

MR. DILLER: 1350.

MR. WELHAN: Somewhere I have it here, oh, here it is, 1350. No response was detectible. That was partly due to the precision of the data recorder which can measure changes of .02 feet, but mostly to the noise or background water level fluctuations that we

observed before and after the test. We determined subsequently by looking at barometric pressure readings that there was a strong inverse relationship. As barometric pressure went up, water levels went down. This indicated a condition known as a confined hydraulic condition in the aquifer, which would be expected to give this kind of response. What that really translates to is that we could not see more than .02 feet of draw down at the observation well at 1350 feet distance from the pumping well, and that was after seven hours of pumping. The barometric response in the aquifer allows us to at least constrain the other hydraulic parameters that are necessary to be able to quantify or describe the aquifer's hydraulic response. With that information we felt quite confident that we were able to describe the ability of the well and the aquifer around the well with some confidence to be able to supply 20 gallons per minute continuously, at 24 hours per day, pumping at 20 gallons per minute. And certainly the results of the test indicate that up to 40 gallons per minute would be expected on a non-continuous basis, pumping discontinuously at 40 gallons a minute or more, with periods of time for the water levels to recover.

I then wrote a memorandum to the developers summarizing the results of the test, our interpretations, recommending that with the hydraulic response of this aquifer as determined in this control test that certain well spacing should be met in any development plan. I pointed out to them that from the interpretations we had made from the existing well logs, from private wells on the Gibson Jack bench, from the geologic information, from the water level information as provided in the original driller's logs for those wells, there was reason to believe that changes in storage, from ground water levels on the Gibson Jack bench, were

significant both seasonally and over the period of the drought that proceeded the 6-8 years before the test was conducted, and indicated that the actual cumulative effect or impact of a number of wells would be pretty near impossible to predict accurately with the amount of information we have about the water balance situation on the Gibson Jack bench and the amount of information we have about the hydraulic conditions in the aquifer. Remember this test we conducted only tells us about a limited part of the aquifer around the well and so our ability to extrapolate beyond that is very limited. I did point out also in the recommendations that it appears that a half acre irrigation limit for 15 gallon per minute supply is probably not unreasonable and we really have to go out on a limb to say more than that.

I wish we could explore scenarios but scenarios are only as good as the assumptions you make and any loop-holed experts will have as many scenarios, or reasonable assumptions as there are experts in the room. So I think with the scenarios that I considered, asking the question of what we know of where the water comes from and which people are going to be depending for a well water supply, what can we say about how much of that represents a safe long-term yield. Within the constraints and limitations of what we know about this aquifer, its extent, the geology of the bench areas, I feel fairly confident that we can make a case, as long as we are aware that most of the water is being withdrawn from the aquifer right now, by existing homes, existing users, and it would be withdrawn in the future by future developments. It is coming from storage in the aquifer itself, because the ability of that aquifer appears to be limited as far as providing an amount of water moving through it that would not be sufficient to rely on for an extended period of time. What we do know is that

there is an awful lot more water, ten times more water, that is available right now in storage that is being exploited right now by existing homes, and that causes a seasonal decline in the rebound on a yearly basis. That amount of water from storage which is being utilized, in addition to the amount that we can estimate is moving through the system that would be available from recharge, makes me feel confident that with the proposed 37 new users the existing number of users up there, which I don't know exactly how many there are, I guessing 25-30, that the capacity of the system will be able to match that. However, a strong caveat to that opinion, that is based on our best estimate which is based on available information today, that may very well change, and I have to give the developers credit for looking at the situation with regard to, is this feasible is it at all do-able or is it impossible, and I think with the amount of information they have collected, they've even gone so far as an attempt to determine whether a deeper aquifer exists which can be exploited, unfortunately it didn't prove out, perhaps Mr. Cushman can tell us more about the results of that test drilling, but I think in terms of what we know of the aquifer which is being exploited today, by existing homes which we are here today talking about the future possibilities for exploitation in new developments, I have to give my expert opinion. Which is, I believe there is enough water based on the information we have in hand today.

MR. KLINE: At the time that you ran the tests, was there any effort to curtail the use of water from other wells in the area, during the test?

MR. WELHAN: No sir. That is nearly impossible in any situation, even if people are willing to do so. Because we don't have the manpower to go out and contact people

individually. The greatest use, for our test purposes, was a well that was within 500 feet of the pumping well. Since we couldn't obtain access to one like that, we settled for the next best available well which was the Nielsen well. That was a little too far away to be directly useful although with the water level information we collected and the barometric response we were able to determine at least some constraints in hydraulic properties that we needed.

MR. KLINE: From a geologic point of view would it make more sense to go with 30 individual wells or to go with 10 wells serving 3-4 lots each?

MR. WELHAN: I think with the more wells you introduce into any system you run into more problems. Some of those are for every well that goes in, it has to be properly sealed to avoid contamination or leakage from surface water sources. It has to be properly maintained. If a well goes in under an individual's control it is basically under that individual's sole control and I've seen it happen too many times where individuals really don't take responsibility for their well. The wells are considered a done deal and its a whole in the ground from which you extract a resource that you can depend on, but on most things we depend on we usually take for granted. It goes unmaintained, it may be abused, and the problems don't surface until it's too late, whether it is through a lack of maintenance, whether through lack of monitoring of water levels, of where the pump should be set, for the water level fluctuations that you are observing, the kind of pumping usage you are putting the well to, or just the total amounts you are withdrawing from the well. One of the strongest arguments I have heard so far by a communal use well, is that you do have some internal degree of policing. That users are not on their own to use or abuse the well or the resource

according to their own volition. That is my opinion and it may not matter here, but I feel that in response to your question that is one advantage to a shared well. From the standpoint of the hydraulic responses to this aquifer, it seems to be capable of providing, I am going on the basis of our controlled well test, a previous well test that was run, I'm not sure who did it, I know that Mr. Chapman was involved in interpreting that data and looking at the results of that we can estimate roughly what the permeability of the aquifer is and it compares to ours, its a little higher than in our test, but again it just tells us that one well test does not give you the ability to extrapolate to the entire aquifer. With two well tests that give you within a factor of two and one-half similar permeabilities, There is reasonable confidence that we can say that this type of sedimentary deposit that exists up there in which wells are now drilled, from which we are extracting water currently, and will be in the future, seems to have at least in a ball park range identifiable permeability of storage characteristics that we can base some decisions on. With that type of a system every individual well is going to have a draw down effect on its neighbors so with 37 wells, or whatever the number is proposed for the new development, the spacing would be pretty close to what you would not want to have, too close in other words, resulting in too great a draw down in individual wells due to competition between the wells for the available water. With fewer wells, pumping in larger capacities, the draw back is that . . .

MR. SPACKMAN: (Inaudible)

MR. WELHAN: I'm sorry.

MR. SPACKMAN: You were talking about . . . (Inaudible).

MR. WELHAN: With fewer wells?

MR. SPACKMAN: Oh, I thought you said . . . (Inaudible).

MR. WELHAN: I'm sorry. I tend to mumble.

MR. SPACKMAN: Go ahead.

MR. WELHAN: Yeah, with fewer wells each of which is pumping at a higher rate than a larger number of wells pumping at lower rates. The drawback is that each individual well, near the well will induce a larger amount of draw down. That can be controlled by the cycling of the pumping schedule. Whether you pump continuously for longer periods of time, or intermittently for shorter periods of time, to allow the aquifer to recover and keep providing you the desired amount of water that you can extract. Again in a properly designed communal system with a small number of wells, a pumping schedule with surface storage can be designed to make that the best situation possible. So I have to answer your question totally that from all respects, technical, water supply, geologic, a fewer number of wells would be a better situation than a large number of wells.

MR. KLINE: Would you anticipate that there would be a difference, this test was done in the dryer part of the year, in December, January and February? Would you expect any difference later in the spring or at a different time of the year?

MR. WELHAN: That is a good question, because one of the main pieces of information we do not have is what is the seasonal average change in water levels in the aquifer. How much do the water levels change in response to that one time, essentially, one time spring recharge pulse which replenishes the aquifer and then the ensuing summer and fall decline due

to natural drainage and ground water withdrawal? Since we don't have that information our ability to answer your question really is limited at best. From the existing driller's logs where water levels are recorded after the drilling has been completed there is an indication, statistical basically, that wells that are drilled in the January through June period, tend to have higher water levels than wells drilled from July to December. It is not a very good correlation. Part of that is because we don't have any ability to normalize these water level measurements. These are all taken at different times of the year, different years, and this figure 4 which is one of the exhibits from my report is merely intended to indicate the kind of uncertainty we have in the depth of the water, where the water table lies in that aquifer system. But it also suggests that there may be a statistical difference between wells that are drilled in the early part of the year, that is in which water levels tend to be higher due to spring recharge, due to lack of irrigation in the later months of the year. And tend to be lower in the summer months of the year when the irrigation withdrawals are greatest. That is not as strong a piece of evidence as my figure 5 which I gained from the same source of data, is plotted to ask the question, is there any indication from the driller's water levels that were measured that there is a difference due to extended times in which water levels can change due to drought or excess water. This figure 5 shows a plot that is a much stronger suggestion that there is at least 10 feet, and up to 15 or 20 feet, average difference between the water levels in wells that were drilled prior to 1987, which is a wet time locally, the period in time 1980 through 1986 was an above normal period of precipitation. We had a lot more precipitation in this area, measurable at the Pocatello airport, on the meterological station and on the Wildhorse Divide

Snow Gauge Station up in the Bannock Range. So wells that are up the Gibson Jack Bench and are drilled prior to 1987 appear to have consistently, with no exceptions, a 10-20 foot higher water level compared to wells around them which were drilled after 1987 to the present, which much of that period of time has been in below normal recharge conditions, drought conditions. That is the strongest indication in my opinion that the storage capacity of this aquifer is the primary concern, its the thing we know least about and the source of my caveat to my original opinion about the ability of the system to supply the required amount of water.

MR. KLINE: With regard to the test well that was drilled, that was drilled in December, which tends to be the dryer part of the year?

MR. WELHAN: It is the dryer part of the year, but water levels tend to be recovering by that time, as our water level measurements indicated. It's still prior to when you expect significant new water to replenish the system, so it is a reasonable time to say that you have looked at the system at closer to its low water mark than biasing the picture from looking at the system near its high water situation, which would occur if you did it say in May or June.

MR. KLINE: The questions posed by the Idaho Code is, will the proposed use reduce the quantity of water under existing water rights. I think you've already indicated that you thought there was sufficient water as that still your position? Do you think there is sufficient water?

MR. WELHAN: Yes I do. As long as you realize that water, most of it is being withdrawn from storage, so we have to understand what that storage, that bank account is. As

long as our estimates right now are somewhere in the right ball park, close to the actual values that we should be using, then yes we do have enough water in it.

MR. KLINE: Is there evidence to indicate that there is insufficient water for the purpose that this applicant is seeking?

MR. WELHAN: No.

MR. KLINE: Is the proposed use contrary to the conservation of Water Resources within the State of Idaho?

MR. WELHAN: Is the?

MR. KLINE: Is the proposed use contrary or consistent with the conservation of Water Resources within the State of Idaho?

MR. WELHAN: It's consistent with. . .

MR. KLINE: No further questions.

MR. SPACKMAN: Mr. Hollingsworth, questions?

WELHAN CROSS-EXAMINATION

MR. HOLLINGSWORTH: When you make the comment about it was producing 70 gallons per minute, and you said it only dropped down to 20-38 gallons per minute.

MR. WELHAN: 38.

MR. HOLLINGSWORTH: Can you explain to me why it dropped from 70 gallons per minute to 38 gallons per minute?

MR. WELHAN: When the pump turns on, there is no back pressure, its essentially filling the discharge pipe to the surface. Of course as that is occurring, back pressure is increasing effectively to the pump because the pump is sensing that pressure head above it. Then when it got to the surface it also had to fill the sprinkler line. After that point in time the only back pressure was the pressure of water, given by the elevation head, the elevation distance where the water was and the sprinkler line and where the pump was. Once it filled the sprinkler line, we could discharge water only through the sprinkler heads, because the back pressure increased then over and above that pressure head difference. The elevation difference of where the pump is and where the sprinkler heads are. Because you are no longer able to freely flow water, and to now push it up through the sprinkler heads. So as that pressure increases, and looking at that point, in fact there was a transition period there.

MR. HOLLINGSWORTH: So after that has occurred then it maintained 20 to 38 gallons per minute?

MR. WELHAN: 38. We measure the discharges twice; right after it filled up and then about 5 hours into the test. That was 38, plus or minus 10%.

MR. HOLLINGSWORTH: Can you explain how you actually measured the gallons per minute?

MR. WELHAN: Ok. Each sprinkler head we'd capture in the bucket. Time the rate of capture in the bucket. With the bucket's volume, and the time, we can calculate the discharge rate through each sprinkler head. So we'd measure each sprinkler head, that was the

measurement procedure. And there were three leakage points between the joints and the sprinkler line. The rest of the measurement goes, they're about 5-10 gallons per minute.

MR. HOLLINGSWORTH: When you spoke of a recall. I'm assuming you mean the recall to water to feed back into the well?

MR. WELHAN: The recharge.

MR. HOLLINGSWORTH: The recharge. When you pump that for, I think you said 7.5 hours the first day?

MR. WELHAN: 7.3

MR. HOLLINGSWORTH: Before I go back to my original question. On the second day do you know how many hours you pumped it that day? Wasn't it around 5.

MR. WELHAN: I don't recall. I don't think it was that long at all. Because what we had done was that on the basis of the first 7.3 hours we determined that a good safe capacity would be 20 gallons per minute. So then Guy and Chris went back the next day allowing the aquifer to recover to run a quick and dirty test.

MR. HOLLINGSWORTH: But see to allow the aquifer to recover. . .

MR. WELHAN: Right.

MR. HOLLINGSWORTH: You pumped the well for three days straight, correct?

MR. WELHAN: Three days? No.

MR. HOLLINGSWORTH: Three days straight on one day, next day and next day. I think it was roughly 7.5 hours the first day, maybe 5 hours the next day, and I think it was 4 the next day.

MR. WELHAN: I don't recall that at all.

MR. HOLLINGSWORTH: When you talk about the recall, is the recall slow, or is it fast? The recharge?

MR. WELHAN: It's rapid at first and slows longer and quickly.

MR. HOLLINGSWORTH: Ok. And then when you did the test on Mr. Chad Nielsen's well, was that done the same day the first pumping was done for 7.5 hours?

MR. WELHAN: Yes. The test itself is somewhat of a misnomer. It is an observation really. We observe the water level in the Nielsen well for a period of 40 days, which span the period in time from the middle of December to after the test.

MR. HOLLINGSWORTH: When you talk about, you said the recharge was slower, I didn't hear what you said on that. On the recharge on the test well, was it slow or fast, or what did you say it was?

MR. WELHAN: It didn't show more than .02 feet of decline.

MR. HOLLINGSWORTH: Then the distance was 1,300 and something feet from the test well to Chad Nielsen's well?

MR. WELHAN: Right.

MR. HOLLINGSWORTH: So can you explain to me then why that far of a distance with the aquifer being pumped from this location to this location, if the recall or recharge is slow or fast, how that could show you the dropage in that much of a distance of another well?

MR. WELHAN: I'm not sure if I understand your question. Are you asking?

MR. HOLLINGSWORTH: I can't understand in my mind, even scientifically, how, if you pump water from this well for 7.5 hours, and you get 38 gallons per minute? Then you go over here and check Chad Nielsen's well the next day or you said for a 40 day period, 1,300 and something feet away at a different elevation. How you can determine the dropage of that well? To determine if there is enough sufficient water.

MR. WELHAN: The well itself is, the Nielsen well is screened in the same interval of the bench and looking at the same aquifer as the Iverson well. The test well that we pumped at. So that is why we chose it. It is one of the first considerations is it sampling or looking at the same system that we are stressing with the pumping over here. So it's in the same system, it's looking at the same geologic materials, the same body of water. Now when this pump starts up it imposes a stress, a hydraulic stress on the aquifer. You could think of it as reducing the pressure. And I am not physically moving very much water from a point 1300 feet away to a well. In fact there is very little being moved physically. The pressure response propagates much faster. Its the pressure response that we are looking to observe and document at that distance. As I said though 1300 feet was a fall back position because it was the only well we had available to us because our first choice, something within 500 feet was not available.

MR. HOLLINGSWORTH: But why wasn't . . . ?

MR. SPACKMAN: We need to change the tape. It is our high pitched beeper.

(Pause to change the recorder's tape.)

MR. SPACKMAN: Mr. Hollingsworth you were questioning.

MR. HOLLINGSWORTH: You said there was a well available 500 feet away. Which well was that?

MR. WELHAN: That was the, I believe the Diller well.

MR. HOLLINGSWORTH: Ok. Was there a reason I was not approached to have my well to be used in this testing?

MR. WELHAN: I left that to the developers. As I said earlier, we don't have the manpower to go out and do these kinds of tests. So just the logistics of the test like this are owners to say that the least to approach well owners to find out what kind of wells, conditions they have, the kind of pumping schedules they have, would they be willing to make the well available for a monitoring test. We just don't have that kind of capability. Especially in this case which was a situation where I was called, they said we are planning to test this well would you give us some recommendations about how to do it? And I said great, I will be willing to help you. Because it would give us a lot of valuable information for our purposes, I didn't have the time to go out and approach people, so I rely on the developers, to tell me . . .

MR. HOLLINGSWORTH: Mr. Welhan when you do it on a test well, and you pumped the water for three days, to my knowledge. . . ?

MR. WELHAN: No.

MR. HOLLINGSWORTH: . . . it was three days, but one day you were there for 7.5 hours. Then you made the comment that you observed Mr. Chad Nielsen's well for 40 days. What was the reason for checking his well for 40 days, only pumping water out of the one well for one day? What is the reason for watching a new well for 40 days?

MR. WELHAN: The reason is that static water levels are changing. The term static is a misnomer. It simply refers to a no effective pumping. But static water level is changing all the time. And especially as distance increases away from a pumping well, the need to be able to separate the changes that would have occurred without pumping from the effect of pumping become more strict. So as we went up to 1300 feet we realized that we were looking at very small signals.

MR. HOLLINGSWORTH: But from this . . . ?

MR. WELHAN: So we had to be able to have a long term record both before, during and after the test to be able to attempt to separate out these effects and identify the effects of pumping.

MR. HOLLINGSWORTH: A long term record. Can I read an excerpt and see if you would agree or disagree with this? I think this is one that is in the exhibit.

MR. SPACKMAN: I think you probably need to identify where the excerpt is coming from.

MR. HOLLINGSWORTH: Ok. Its ah, I don't remember which exhibit, its marked out.

MR. SPACKMAN: Is it one of your exhibits? (Inaudible). . . identify it.

MR. HOLLINGSWORTH: It's in with the appeal that I submitted to you when I filed the objection to the water permit. It is the original thing that I addressed to you people.

MR. SPACKMAN: . . . protest?

MR. HOLLINGSWORTH: It's addressed to Mr. Dreher, dated the 10th of August, 1996. It was the original and all the attachments I sent you. I believe that is it that you have there.

MR. SPACKMAN: Yes. This is probably it.

MR. KLINE: I will indicate for the record that the only thing that I received by way of protest was simply just that. There were no exhibits attached.

MR. HOLLINGSWORTH: This is my question Mr. Spackman, when I asked you if the stuff I submitted to you on the objection if it would automatically be an exhibit? And you indicated that yes it would be.

MR. SPACKMAN: What I said was, what was in the file with the department would be considered. Now I guess it's the responsibility of the department once a protest is received Mr. Kline, to send you a copy of the. . . (Inaudible) . . . of this matter _____ letter in the files _____.

MR. HOLLINGSWORTH: It is marked as an exhibit, but I don't remember which one it is, Mr. Spackman?

MR. SPACKMAN: Well this is a, for your information Mr. Kline, this is a letter to the Bannock County Commission.

MR. KLINE: Could I inspect it for just a second to see what it is.

MR. SPACKMAN: Sure. It is dated April 30th, 1996.

MR. KLINE: Ok.

MR. SPACKMAN: What are you wanting to refer to?

MR. HOLLINGSWORTH: It is a document that Lyle S-W-A-N-K presented. And I just wanted to read that one paragraph to ask Mr. Welhan about it.

MR. SPACKMAN: This is the document that is marked as exhibit written by Lyle Swank.

MR. HOLLINGSWORTH: Yes sir.

MR. SPACKMAN: Ok.

MR. HOLLINGSWORTH: The time of maximum water recharge, maximum water draw down will lag the time of surface water recharge by a time period dependant upon the depth, velocity and permeability and slope and gradient. In order to determine the trend of water, the ground water rise or decline, data should be collected for a long enough time period to show the seasonal fluctuations and the annual changes in both the peaks and the minimum levels associated with non-static ground water levels. The water level in a confined aquifer is dependant upon the recharge minus the withdrawals from that system.

My question to you is. When you ran a test for one day and did an observation of Mr. Chad Nielsen's well for 40 days, how can you really make a determination and give an expert opinion that there is adequate and efficient water for the wells that are being proposed to be put in? When. . .

MR. SPACKMAN: Before he answers the question, Mr. Hollingsworth, I think there are two questions that you were asking.

MR. HOLLINGSWORTH: There was two questions.

MR. SPACKMAN: So let's ask the first question. Which was, I think it was whether he agreed with Mr. Swank's (Inaudible) . . .

MR. HOLLINGSWORTH: Correct. I was wondering if you agreed with Mr. Swank's comments was here? Over a long period of time and to do the testing instead of having it within a one day test.

MR. WELHAN: As I have already gone on record as saying that one of our greatest deficiency is in information right now is not having long term records of water level changes

in the aquifer. That would tell us, is the aquifer subject to 10 to 20 foot seasonal water level changes, from year to year and is it seeing long term declines of the same order when you go through six, seven years of drought. That is one of the key missing pieces of information right now that we do not have. And I'm working by inference on the basis of existing driller's reports and the water level information in those. So I agree with that source, that long term records are necessary to understand response in the system. I have seen in the water level records from the existing driller's logs is evidence that in fact, we are pulling most of our water out of storage and the water level in the aquifer is going up and down in that 20 foot range.

MR. HOLLINGSWORTH: So your answer to that question, is it yes, a long term study would be more feasible than this one test study that you did?

MR. WELHAN: Well, . . .

MR. KLINE: I'm going to object to the form of the question, because he said nothing about feasibility. I think that is a very different issue if he is going to raise questions about feasibility.

MR. SPACKMAN: I'm not certain that I would distinguish Mr. Kline's objection, maybe I just wasn't following the question. Ask the question again if you would.

MR. HOLLINGSWORTH: I'll restate it then. Never mind, just strike it. Just forget it.

MR. HOLLINGWORTH: I know the driller's logs provide a lot of information including the draw down as well as the discharge data, correct? But that's only helpful in determining expert characteristics. But in your opinion, the well logs when they classify that this produces

"X" amount of gallons per minute? In your opinion is that really what it is, gallons per minute from the well logs?

MR. WELHAN: That's a very rough estimate that depends on how the driller actually developed that well, initially, to get that estimate. If he did a controlled draw down test, if he did a short term draw down to determine how much water he can get from a short term as opposed to long term. The accuracy of his water level measurements. So there are a lot of factors that make the information in driller's logs very coarse.

MR. HOLLINGSWORTH: I think it's sections 18 and 19 that this development is in, if I remember right. In your opinion from the conversations that you and I've had in the past is this not still classified as a poor aquifer area?

MR. WELHAN: A poor? It's not a . . .

MR. HOLLINGSWORTH: With reference from Indian Hills School to Mink Creek?

MR. SPACKMAN: (Inaudible) He needs to be able to respond. (Inaudible)

MR. WELHAN: It is not a world class aquifer. But there are hundreds of others just like it all around the state, and people are withdrawing water from, right now. With permeability in the range of half to one-foot a day, it's not a bad aquifer, in fact its pretty good. But good or bad, it has a lot to do with your frame of reference. Whether your living in the desert, or whether you're living in Florida. So. . . .

MR. HOLLINGSWORTH: I can just give him my copy, Mr. Dunn you don't have to do it, but Exhibit J and Exhibit A. If I could just approach him I could give him mine.

MR. SPACKMAN: Why don't we do that for you?

MR. HOLLINGSWORTH: When you made a comment about a 7 year drought, to your knowledge when did the Pocatello area of Bannock County, in the southern part have a drought? Or if you have knowledge of that, how long was the drought, and if we're still in a drought?

MR. WELHAN: I'm looking at my long term precipitation records here. And the scale is pretty coarse on this, the divisions on the scale are coarse. So it looks like starting about 1986 annual precipitation totals went below normal for a long term average and they stayed that way except for in one year until 1993. So '86 - '93, 7 years. With the exception of one year that was slightly above normal.

MR. HOLLINGSWORTH: If you'll look at Exhibit A, this is the information that came from the University of Idaho in Moscow? There are some charts I asked them to prepare for me and it's the Pocatello precipitation. With reference to what you are talking about. Can you explain to me when you look at Chart No. 1, Mr. Welhan? Now these are supposed to be inches, I understand.

MR. WELHAN: Right.

MR. HOLLINGSWORTH: Can you explain to me, when they say precipitation in inches, does that mean for that day?

MR. WELHAN: No these would mean average monthly amounts.

MR. HOLLINGSWORTH: I had them do it for a period of twenty years. So these charts reflect that.

MR. WELHAN: Ok. So looking at the first month on the chart, is the average January precipitation based on 20 years of record. So in twenty Januaries the average precipitation was so and so.

MR. HOLLINGSWORTH: The reason why I want you to keep that in mind, when you make the comment about the aquifer of the Gibson Jack Creek area. I think you made the comment that it is seasonal due to the precipitation. Correct?

MR. WELHAN: (No audible response.)

MR. HOLLINGSWORTH: So if the water availability in your opinion in that aquifer is due to a seasonal runoff, which I am assuming you're making a comment comes from rain and snow storage and so forth?

MR. WELHAN: Snow. Mostly snow. Yeah.

MR. HOLLINGSWORTH: And if we've had a, and this is a drought area and has been over a period of years, and then when you speak of the fluctuation of water where it is high, I think you said, in January and February? And then it gets low in the summer months.

MR. WELHAN: Well, not January or February; March, April, May.

MR. HOLLINGSWORTH: Ok, thank you. Then we get into the summer months, and then where you have a well that produces 20 gallons per minute, in your expert opinion again, how can you say that the water will be there for 20 to 38 gallons per minute for the usage of four homes or four residences off from that well?

MR. WELHAN: I'm not God so I can't say yes it will be there, no ifs, ands or buts.

MR. HOLLINGSWORTH: The reason I ask that is because you said in your expert opinion, the water is there. And I'm trying to ask the questions properly, because the water is not there.

MR. WELHAN: If you recall I also said that the expert opinion is based on the information in hand right now. So with the most reasonable estimates, and also looking at the pessimistic and optimistic ranges for those estimates of various hydrologic properties for the aquifer, the amount of water that could be expected to be flowing through the aquifer, the amount of water that is available from changing the storage in the aquifer. That is the basis of my opinion. Those estimates are based on the best available information to date. Those are going to change as more information becomes available. But the technical opinion is based on information existing today. I can't look into the future, and say that we will . . .

MR. HOLLINGSWORTH: But is that not what you have done though when you have made the comment that the water is there for a project that is going to go in to put in additional 9 to 12 wells. You are making the comment that yes, the water is there. Now you are saying that, you are not God and you can't predict it, so how can you make an expert opinion on that?

MR. KLINE: I'm going to object. That is argumentative.

MR. SPACKMAN: Well, it may be, but I think it is cross-examination, . . . (Inaudible) and he's entitled to pose those kinds of questions. I think . . . (Inaudible) overruled.

MR. WELHAN: Any expert will tell you that all we can do is provide our opinion based on the best information available, at the time that the question is asked or the problem is posed. And that is all I've been able to do. I've tried to make that clear in my opening

description of what we did, that in my best opinion with the information we have available, with the estimates we can make about how much water is likely moving through that aquifer and how much water is available for drawing from storage in that aquifer. If that aquifer is able to sustain the numbers of wells, now and plus the wells that are proposed.

MR. HOLLINGSWORTH: I think you already answered this question, but you made the comment that when you just used Chad Nielsen's well when you did this testing for the 7.5 hour period, and you observed his well for 40 days, why in your opinion, why didn't you require or at least ask the developers to get more than just Chad Nielsen's well to be observed? Like mine for instance, or even John Grails. Why did you feel that just the one well would suffice in doing the test to make this opinion?

MR. WELHAN: That was not my first choice. I was told though that was the only available well.

MR. SPACKMAN: Just a moment. (Inaudible)

(Pause to address interruption of hearing caused by maintenance workers.)

MR. WELHAN: I forgot where we were now.

MR. SPACKMAN: Let's go forward.

MR. HOLLINGSWORTH: Well I think you answered the question anyway. Because of your line of work and what you are doing and keeping with what you are doing, I am assuming that you get information from the drillers, correct?

MR. WELHAN: Yes.

MR. HOLLINGSWORTH: Ok. What has been the overall opinion of the drillers in this area, to you, about the water aquifer and the water availability from the Indian Hills area south?

MR. WELHAN: It depends on where you are drilling. For example, if you are south of Indian Hills, in the valley bottom, you don't have any problem any time, there is just a huge amount of water available. If you are drilling, say up in the bench.

MR. HOLLINGSWORTH: Wait, when you say a huge amount, you are talking about the lower levels or in the higher levels.

MR. WELHAN: Lower levels.

MR. HOLLINGSWORTH: Ok.

MR. WELHAN: But if your talking about drilling in the bench areas, it is very much a hit or miss proposition. Which is one reason why water witchers are still in business. Because they are still one of the most used resources for people who need to drill a well, to find water, to tell a driller; ok drill here, rather than here. Because a driller will tell you up in those bench areas if you let me go, I might hit water, I might not. So the owner of the well, the person that is paying for the drilling has to be the one who makes the final decision where is he going to drill. It is his risk.

MR. HOLLINGSWORTH: I don't think you've answered, I need to be more direct. What was the opinion of the drillers then in that area on the higher levels? That you got from them about the water availability?

MR. WELHAN: That it is limited. It is there and you'll have to expect some risk in finding it.

MR. HOLLINGSWORTH: Were you present when they drilled the additional 125 feet, I believe it was, on the test well that Mr. Iverson had put in?

MR. WELHAN: No I wasn't.

MR. HOLLINGSWORTH: So you don't have any knowledge of what occurred at that?

MR. WELHAN: Only from the well logs that was provided after the drilling was completed.

MR. HOLLINGSWORTH: With your knowledge that you have, would it stand to reason that if just the one test well, but let's say that they are allowed to have nine wells in above this test well. Would it stand to reason, in your expert opinion then that those of us who are surrounding the subdivision on the east and north side would have water problems, especially in the months of July and December like you indicated when the water level is low. Especially when you are looking at 20 gallons to 38 gallons?

MR. WELHAN: It goes back to the whole question of what the water balance of that aquifer is. That is, how much is moving through it, as apposed to how much is being extracted from the bank account, in lowering the account balance. From the estimates I have been able to put together the amount of water that actually flows through is a tenth of what people are withdrawing from storage. So the storage potential of the aquifer is extremely important. It is what you depend on today and what you have depended upon as an existing well owner up there for your water on a year round basis, to carry you through the summer

months and to carry you through the drought years. There is only a certain amount of water that gets recharged through that system and for the rest of the time of the year you are pulling water out of that bank account.

MR. HOLLINGSWORTH: There was a conversation made about Mr. Anderst when he was commenting, and I think maybe you're the one that can put it to bed for me and maybe for Mr. Diller. When he made the comment that when people up there now who are water users, that why haven't we taken action against each other because the problems we are having with our wells? How do I ask this, to make it a question? When Mr. Everett Diller pumps his irrigation well with an 8-inch casing and he pumps that water for a day and a half to irrigate his field, then the next person next to him turns on their well, not the same day, but a day and a half or two days later, sometimes pumps air. With your expert opinion, what would be causing that? You may want to highlight on it, but. . . .

MR. WELHAN: Party well interference, it is his pumping effect [that] would lower the water level in the aquifer some distance away from his well and by the time that you turned your well on, they hadn't fully recovered. The water balance of the aquifer, the amount of water in storage at that time, if it is where the static water level sits and where your pump sits, relative to that.

MR. HOLLINGSWORTH: Now the question is on this is then. On this aquifer to your knowledge isn't there more than just one stream of water that goes through, it's not just one big ocean under the dirt where everyone connects to. Am I correct in assuming that?

MR. WELHAN: That is too big a question, I couldn't answer that. Because . . .

MR. HOLLINGSWORTH: Well, I guess I'm asking with your knowledge, under the ground isn't the water in various streams and different flows? In other words, if this is the Gibson Jack Subdivision area, and there is a well here and a well there, could water be flowing this way as well as that way in separate streams, so that when you make the comment that drillers drill a well they take it by chance, of maybe getting water or not getting water. Or hitting the proper table, or not hitting the proper water table, and they made the comment that witch doctors come in and do this and that. If that water flows in different directions, would it all go into the same table, or would it not?

MR. WELHAN: It's very misleading to think of what water witchers say in terms of directions of movement or sources. In this type of geologic environment, in this type of sedimentary aquifer, there is a lot of averaging that goes on so we can consider the way water is moving in that sedimentary package. If it is mostly the same kind of material, now that is one big "if" that we don't know, but we can get the well logs that we have that are spread across the bench from your area down to the far end of Stephanie Road, from Mr. Pickens at the highest elevation of the bench down to Mr. Bates, I think is below you. The geology looks fairly uniform, in fact much more uniform than I would have guessed, prior to this whole discussion when we got into looking at the geology and trying to determine what we were doing in terms of this test. So it is fairly, if you want to call it, a well behaved system. That is its, geology is not exceedingly complex, there are some regularity to it, and that allows us to make simple conceptual pictures of what the beast looks like.

MR. SPACKMAN: I want to interject right here. How much longer will we be? I'm not trying to press you towards some quick answer, Mr. Hollingsworth, but it is almost 1 o'clock, and I have a few questions myself, of this witness.

MR. HOLLINGSWORTH: I guess that you would probably ask better questions than I, Mr. Spackman. But could I ask maybe one or two questions when you are done with your questions? Can I do that?

MR. SPACKMAN: Again, I want to know, I think we are at a point where we ought to break, and come back unless we can wrap this up. Its up to you.

MR. HOLLINGSWORTH: I'll just ask him one more question, well two then. I don't know if I can ask this or not, but, I contacted you in Las Vegas, Nevada, we had a telephone conversation, I guess this would be a yes or no, but did you not indicate to me at that time that you didn't feel there was enough water to do what these gentlemen were proposing to do. And if you agree and you agree that you said that, why did you change your mind?

MR. SPACKMAN: One question at a time.

MR. WELHAN: Ok. When you called me, what I was thinking of was the statement I made in this report to the developers which is, is it possible to tell, since the natural recharge rate or the water balance of the aquifer is unknown, it is impossible to say what the number of new wells in the proposed development will have a significant impact on the aquifer storage. That is what I was getting at. In the intervening time, I have seen that independent estimates of the hydraulic properties of this package of bench sediments, that we are talking about. Corroborate these measurements, so it gives me more confidence to say that, ok

maybe we don't know just something about a little part of that sedimentary package right around the well that we can generalize a little more, because if we knew what the regional scale of water balance comes back saying that our permeabilities are in the same range. So, maybe that package is a lot more uniform than I would initially guess. And with those kinds of other lines of evidence and this kind of a scenario based look at the question of what is the water balance, what is the capability of the aquifer that is applied to certain amounts of water, I do have new information if you will and a new perspective. But what I said before, was not that there is not enough water, its that we just don't know, as I said in the report. Which is the exhibit that you have with you.

MR. HOLLINGSWORTH: Well this is my last question then. The conversation that you and I had in your office, at the _____ University, you made the comment that Mr. Chris Pine wanted you to state that there was adequate water. And that you said that you could not make that kind of a statement, and this was after you did the test well. This was after that you did this compilation so again, why the change?

MR. WELHAN: As I just tried to say, at the time here when we had the initial look at this system, that was my official line, that we don't have enough information to say yes or no, because the water balance is the whole question. Its not the behavior of one well, its the cumulative behavior and impact of all the wells that are up there and will be up there. Since then with the retrospective look at corroborating evidence that tells me that, ok, these permeabilities are reasonable to consider for the aquifer as a whole up there on the bench. Looking at a scenario based approach, I have reason to defend an opinion that there is

adequate water. That is based though on the recommendation that you are drawing that water 90% or more of it from storage. And if you didn't have that spring recharge every year, you wouldn't even last more than a year.

MR. HOLLINGSWORTH: Ok, when you think about that storage, Mr. Welhan, that is the concern. That is where. . . I . . . . (Inaudible).

MR. WELHAN: And it always has been. I've made that clear to you, I've made that clear to the developers.

MR. HOLLINGSWORTH: . . . in your expert opinion and you really can't give an expert opinion if the water is there?

MR. WELHAN: Well but . . . I've. . . .

MR. HOLLINGSWORTH: You can't. Because what you are saying the draw down that is going down that period of time, and if you are looking at 20-38 gallons per minute to supply four homes, which I don't see how it could ever be done, I think it takes 15 gallons to do one home to my knowledge, from what I have read. I can't see again how you could say the water availability is there.

MR. WELHAN: Well don't forget the 40 gallons per minute was a proved yield sustainable for seven hours of continuous pumping.

MR. HOLLINGSWORTH: Yeah, but you also made the comment that they had to wait the next day for a recharge.

MR. WELHAN: Yes.

MR. HOLLINGSWORTH: See?

MR. SPACKMAN: Ok. I want to cut off the discussion a little bit, because I don't think that this is . . .

MR. HOLLINGSWORTH: Ok. I'm done with the questions. I'm getting argumentative now.

MR. SPACKMAN: Yeah, and I don't think this witness is prepared to testify about whether 15 gallons a minute a day is adequate versus 20 gallons a minute per residential use. I don't think that is his area of expertise. And I want to leave that alone.

MR. HOLLINGSWORTH: I don't have any more questions. Thank you Mr. Welhan.

MR. WELHAN: Thank you.

MR. SPACKMAN: Mr. Diller, your questions.

MR. DILLER: Ok, when you was pumping on that new well, how many birds did you have on those irrigation lines?

MR. WELHAN: If I had my complete set of notes here I would be able to tell you, its ah, about a dozen and a half.

MR. DILLER: 18?

MR. WELHAN: Something like that Maybe a little less, 16?

MR. DILLER: I think you better check your notes again, because 18 birds you've got to have a lot of water.

MR. SPACKMAN: Ok, you are testifying now again. (Inaudible) . . . ask questions.

MR. WELHAN: Each individual sprinkler head was only getting 2 gallons a minute or something.

MR. DILLER: In fact they weren't sprinkling to their fullest extent, then is that what you're saying?

MR. WELHAN: That is right.

MR. DILLER: Ok. Also you were saying something about the back pressure, that all is regulated by the number of birds you've got, right?

MR. WELHAN: Right.

MR. DILLER: Ok, the more birds you have, the lower back pressure and the less number of birds you have the higher the back pressure?

MR. WELHAN: Right.

MR. DILLER: Why would you want a static well to be checked, when you are pumping this other well out? Why do you want a static well?

MR. WELHAN: The reason is that to be able to describe the hydraulic behavior of the aquifer, you need two basic pieces of information; one is the rate of the permeability of the aquifer, it's the ability to move water. And the other is a parameter known as the storage parameter. It is a measure of how much additional water you receive from the water decompressing and the aquifer skeleton acting like a sponge. With only one well, if we only measured the draw down response in the pumping well, we'd only be able to give you information about that first parameter, the permeability. To be able to say anything about the second parameter, which is necessary to be able to talk intelligently about the ability of the aquifer to provide water to a number of wells or distribute in different configurations, we need a second well, whose water level is responding only to the pumping well.

MR. DILLER: Is there any possibility that both those wells are not on the same aquifer?

MR. WELHAN: There is always a possibility. Because whenever I look at . . .

MR. DILLER: What is your professional opinion? Are they on the same aquifer?

MR. WELHAN: My professional opinion is that they are in the same aquifer. And that is based on the consistency in the geologic descriptions that several different well drillers have provided on 17 wells.

MR. DILLER: Ok. What is your professional opinion on how the well drillers in this area are drilling wells?

MR. WELHAN: How they are drilling wells, what do you mean?

MR. DILLER: How are they drilling? Are they doing it professionally?

MR. KLINE: (Inaudible).

MR. SPACKMAN: If Mr. Kline won't objection, I will limit that question. I don't think that is relevant . . . (Inaudible).

MR. DILLER: Well its already a statement in one of my exhibits here.

MR. SPACKMAN: Well, those have simply been marked, Mr. Diller, they haven't been received into evidence. And if you want to offer that kind of information, I'll probably move the same way, that it is not relevant to what we are discussing. This isn't an inquiry about the competency of the well drillers in the Pocatello area or southeast Idaho.

MR. DILLER: Well the only problem is on that one is they are saying that because some people having their wells go dry is because they had well drillers that were doing barbaric ways of drilling wells.

MR. SPACKMAN: Well construction is always a question in determining whether someone is being affected by someone else's well.

MR. DILLER: Ok. The test well that was drilled was it done in the most scientific well drilling procedure?

MR. WELHAN: No. It was done in a standard manner for wells in Idaho. In fact it was done a little better than most because of the drilling method employed and the sealing method employed. But the actual completion of the well where it communicates with the aquifer is, you will probably see that in 100% of the wells that are drilled in the same manner of . . .

MR. DILLER: How were they done then, that way? Are they perforated, are they screened or what?

MR. WELHAN: As I understand the casing is perforated.

MR. DILLER: Ok.

MR. WELHAN: Over certain depth intervals in which the driller determined that there was sufficient water to supply the needs of the client.

MR. DILLER: But is that the most accurate way of doing it?

MR. WELHAN: No, it's not the most accurate, as I say it's the standard way of doing it in Idaho.

MR. DILLER: With the type of terrain that you have here with the rocks, boulders and so forth?

MR. WELHAN: With the type of . . . ?

MR. DILLER: Terrain. You know the underground terrain you have boulders, you have rocks, you have . . . .

MR. WELHAN: That method of well completion allowing the well to communicate with the aquifer is very standard practice in the drilling community in Idaho. It's not the best way, because it doesn't allow communication with the aquifer in the most efficient manner. But for domestic uses the differences are small. For an irrigation well it becomes more important.

MR. DILLER: Ok. On that, the hillside there where the two wells were at, the test well and Chad Nielsen's, are those approximately on the same level, as far as elevation and so forth?

MR. WELHAN: Yeah. I could tell you . . .

MR. DILLER: Does that make a difference to the response to the aquifer, one pumping down the other one?

MR. WELHAN: No.

MR. DILLER: Doesn't have any possibility?

MR. WELHAN: No. In fact it makes the interpretation a little simpler. There are fewer steps we have to go through to make sure the interpretation is correct.

MR. DILLER: You were stating something about background noises in the well as you were monitoring? What kind of background noises was you looking for?

MR. WELHAN: The water level changes would go up and down on a daily basis and then there was a secular or a long-term trend of up and down and _____ to that was a one or two week period of up and down trend that was due to the barometric pressure changes. So that is what I meant by noise, if you expected to measure a static water level and say that the water level in the aquifer is this, you couldn't say that because it would actually be a statistical window in which you have to say there is noise variation.

MR. DILLER: Is that system more accurate than the way, like now the well drillers whenever they come out and drill they bring two pieces of wire and all that stuff and drop it down in there, then they have a test light up here, and when the light comes on they've hit the water level and so forth.

MR. WELHAN: Right. We are using the same method. This method that was used to record the Nielsen well, though is an electronic pressure sensor. That stays down in the well and it's responding to the pressure on a membrane that is converted to an electrical signal and recorded in a small computer.

MR. DILLER: That's all I have then. Thank you.

MR. SPACKMAN: Mr. Kline.

WELHAN REDIRECT

MR. KLINE: You are not being paid to testify today?

MR. WELHAN: No.

MR. KLINE: You're not being bought and paid for by Chris Pine?

MR. WELHAN: Never. No, I've made that clear because as a state agency our mandate is to provide the best available technical information, geologic, hydrologic, environmental, that we are asked to. That is what I told the developers when they first contacted me, the chips will have to fall where they do, because I can't bias the information and the interpretation.

MR. SPACKMAN: Ok. If there are no further questions . . . (Inaudible) based on the questions Mr. Kline has asked . . . (Inaudible) . . . I will have to limit the scope of the cross-examination.

MR. HOLLINGSWORTH: I have no cross-examination.

WELHAN RECROSS-EXAMINATION

MR. SPACKMAN: Ok. I need to clean up my notes, because there are some inconsistencies that may be my misunderstanding. Mr. Welhan, I have written here and I want you to tell me what is wrong. I want to just read to you from my notes. I've written that you feel confident that most of the water being withdrawn is coming from storage?

MR. WELHAN: That is correct.

MR. SPACKMAN: I have written here that the storage water would not be, and when I'm talking about storage water I suppose it's water stored in . . . the aquifer.

MR. WELHAN: The aquifer.

MR. SPACKMAN: But it would not be sufficient to rely on over a long period of time, is that correct?

MR. WELHAN: If that is what I said, I didn't intend to say that. The water level, the change in storage is the primary supplier for water users up there. Is the annual change in aquifer storage, which is being relied upon. . . .

MR. SPACKMAN: What I understood you to say, and I tried to be careful in writing this down, is that it would not be sufficient to rely on over a long period of time, if there were 37 new users. Or ten new wells.

MR. WELHAN: I am sorry if you interpreted what I said that way but, my point was that with the storage being the primary source of water exploited in the bench system, that as long as we are aware that we are pulling water out of storage and incurring a seasonal, annual change that there will be sufficient water. Where we can't go, where we're going out on a limb drastically is to say that will carry us through drought years as well. But from the information I have from the drillers records, if we are talking about 20 foot difference between normal water years or good water years and normal water years, that is of the same water magnitude apparently as the seasonal change in storage.

MR. SPACKMAN: Do you believe that there are some drought years where there may not be sufficient storage for all the users?

MR. WELHAN: If we are looking at six - seven years of drought conditions that superseded this particular study, as being a typical drought period. You might be able to infer

that for droughts that extend much beyond that, we could be suffering larger storage declines and hence more serious problems with breaking suction.

MR. SPACKMAN: You are not testifying, at least based on what I have written down here, that the aquifer is in a continued decline. That's. . . (Inaudible).

MR. WELHAN: No. No. It appears to be continually recharged, replenished. What our lack of information right now centers on is, on what scale does that replenishment occur. Does it replenish itself more than enough every year, or does it replenish itself with more than enough, or especially less than enough and my guess right now, if a 20 foot difference in aquifer storage, or like if a water level is between good years and drought years of the order of 20 feet which is comparable to the, which represents something of the order of six to seven years of below normal water years. That magnitude of water level change being comparable to what appears to be a seasonal water level change of the same amount suggests that it probably being recharged more than enough every year. So only in drought years do you see accumulative effects over five, six, seven years adding up to something of over 20 years total. So no, I'm definitely not saying that we've got a long term problem. As long as we have annual recharge and replenishment, it appears that that aquifer is capable of replenishing itself and sustaining the kind of usage we are talking about.

MR. SPACKMAN: I think I heard you testify that this is a confined aquifer.

MR. WELHAN: It appears to be, because of the strong barometric response, the storage coefficient estimated from that response is to the order of .0001. So that puts it into a classical type of confined or strongly semi-confined aquifer.

MR. SPACKMAN: Have you determine the boundaries of that confined aquifer?

MR. WELHAN: No. You mean vertical boundaries?

MR. SPACKMAN: Well, or horizontal?

MR. WELHAN: Horizontal - No. All we can do right now is look at the aerial portion of the aquifer which is bounded on the west side, up at the foothills by bedrock, by Gibson Jack Creek and out to the end of Stephanie Lane.

MR. SPACKMAN: You have not determined the actual storage within that aquifer, in say acre feet of water?

MR. WELHAN: I can give you an idea of what the storage is per foot of thickness. We are talking about an aquifer that appears to be on the order of 150 feet thick from the top of the average water levels measured down to its base on the clay zone, about a 150 feet, and per foot of thickness the water in storage is 1.5 million cubic feet. Yeah, 1.5 million cubic feet. So multiply that by 150.

MR. SPACKMAN: Just a couple of other questions. You said you think a pumping schedule with all the wells has merit. This is paraphrased, to protect from multiple draw downs. What was your reason for making that statement?

MR. WELHAN: What was the statement again?

MR. SPACKMAN: Well, you were talking about a pumping schedule for the users. So that they were all not pumping at the same time.

MR. WELHAN: And this is on, between the nine or ten wells we were talking about?

MR. _____: I think we were talking about the difference between individual wells, 25 or 30 of them, as opposed . . .

MR. WELHAN: . . . versus nine or ten.

MR. KLINE: . . . as opposed to 10 wells. And which would have a greater impact and I think it dealt with the running small wells continuously versus running a few wells intermittently.

MR. SPACKMAN: Ok. Well I'll leave that particular question. The last question is, I wrote here that you said the storage is 1/10th of what is being withdrawn.

MR. WELHAN: No, that's not right.

MR. SPACKMAN: I think I wrote that down verbatim, that the storage is 1/10th of what is being withdrawn.

MR. WELHAN: No I said the water that is moving through the aquifer is 1/10th of the storage.

MR. KLINE: Yes.

MR. SPACKMAN: Let me write it the way you said it.

MR. WELHAN: The amount of water that we can estimate that is moving through the aquifer given the hydraulic gradient, the permeability, the thickness of the aquifer, the width that we want to consider for that bench area is 1/10th, actually less than a tenth, of the amount of storage that amount of water is being withdrawn from storage.

MR. SPACKMAN: I'm writing. The storage moving through the aquifer . . .

MR. WELHAN: No the water moving through the aquifer . . .

MR. SPACKMAN: What? The storage what?

MR. WELHAN: No not the storage. The water moving through the aquifer.

MR. SPACKMAN: Ok. Is 1/10th . . .

MR. WELHAN: Is 1/10th or less of the amount of water being withdrawn from storage.

MR. SPACKMAN: Thank you. Now have my questions raised any others?

MR. HOLLINGSWORTH: No.

MR. SPACKMAN: Thank you Mr. Welhan. We will break for lunch.

MR. SPACKMAN: We are recording again and Mr. Kline you may call your next witness.

MR. KLINE: I call Sherl Chapman.

MR. SPACKMAN: Mr. Chapman will you come forward please and raise your right hand? Do you swear to tell the truth, the whole truth and nothing but the truth?

MR. CHAPMAN: I do.

MR. SPACKMAN: Thank you. Please be seated. You may question Mr. Kline.

MR. KLINE: Thank you. Mr. Chapman would you state your full name for the record please?

MR. CHAPMAN: My name is Sherl L. Chapman.

MR. KLINE: And where do you reside?

MR. CHAPMAN: Meridian, Idaho.

MR. KLINE: And what is your occupation?

MR. CHAPMAN: I am a geo-hydrologist.

MR. KLINE: What is a geo-hydrologist?

MR. CHAPMAN: The combination of a geologist and hydrologist. I have a degree in geology and then post-graduate work and on the job work, subsequent training in hydrology.

MR. KLINE: What is your current position?

MR. CHAPMAN: I am the President of Sherl Chapman Consulting, Incorporated.

MR. KLINE: And what type of work does that involve?

MR. CHAPMAN: I work in the field of ground water development, water rights, geothermal development, other water resource development, water measurement and the other fields of hydrology.

MR. KLINE: What degrees do you have and where did you obtain them?

MR. CHAPMAN: I have a Bachelor of Science Degree from the University of Puget Sound and then just subsequent work in upper level courses.

MR. KLINE: I request that he be recognized as an expert in the field.

MR. SPACKMAN: Mr. Hollingsworth?

MR. HOLLINGSWORTH: I have no objection.

MR. SPACKMAN: Mr. Diller?

MR. DILLER: No.

MR. SPACKMAN: I wanted to ask if Mr. Kelly . . . (inaudible)?

MR. KELLY: No.

MR. SPACKMAN: Mr. Chapman is recognized as an expert.

MR. KLINE: Thank you. Are you familiar with the area around Gibson Jack?

MR. CHAPMAN: I am.

MR. KLINE: Are you familiar with the particular project that is being proposed by my clients?

MR. CHAPMAN: Yes.

MR. KLINE: Would you explain your history and when you first became involved with Gibson Jack area?

MR. CHAPMAN: I was initially contacted about doing some hydrologic work in this area, back in 1984. I was contacted because of a proposed development and analysis of the hydrologic system that needed to be made to determine initially whether or not there was a capability of developing individual domestic wells for 52 lots in the Gibson Jack Subdivision. I conducted an investigation in the area to determine the capacity of domestic wells and just in general the various hydrologic parameters of the aquifer in that area. That resulted in a report that was developed and sent to my clients in 1984. Subsequent to that in 1985 I was again contacted and requested to do something more in detail to try and refine what we had done in the past and to better define the hydrologic parameters. I conducted a second well test at that time and it was conducted by a registered professional engineer under my supervision. We developed the hydrologic parameters and then that resulted in a report which was given to the clients in 1985. Since then I have not conducted any work on the ground in that area, but have reviewed the records of the Department of Water Resources and also Mr. John Welhan's report that was done in 1996.

MR. KLINE: Your observations in 1984 and 1985, how would you characterize the water availability in that area?

MR. CHAPMAN: At that time I concluded that there was sufficient water for individual domestic wells and wells of greater production up into the area of 20-25 gallons per minute, but I did not believe that there was a good potential for the development of irrigation wells in the area to irrigate the full two and one-half acres on each lot as had been initially considered by the project proponents.

MR. KLINE: In your review of Dr. Welhan's report, is there anything in particular that you find noteworthy?

MR. CHAPMAN: The thing that I noticed was that the data that Dr. Welhan gathered which was certainly more comprehensive and more detailed than I gathered and the conclusions that I have drawn both in the 1984 and 1985 reports tracked very closely, particularly with regard to the specific capacities and the transmissivity of the aquifer. That would lead me to believe that since the analyses were done many years apart in different areas of the subdivision that the data from all three of the reports is consistent and that the conclusions that Dr. Welhan has testified to earlier this morning are accurate, within the normal range of error that we would expect in such analysis.

MR. KLINE: When you did your review in '84 and '85, how many wells did you test or didn't?

MR. CHAPMAN: We pump tested a different well each time and we used a different observation well each time. The first test in 1984, we used a pumping well in Lot No. 1 and an observation well in Lot No. 2. In 1985 we used a pumping well. . .

MR. HOLLINGSWORTH: Excuse me Mr. Chapman. Could you indicate that those lots are in the Gibson Jack Subdivision or where are they at, when you say lots?

MR. CHAPMAN: I am sorry the lots are in the Gibson Jack Subdivision.

MR. HOLLINGSWORTH: Thank you.

MR. CHAPMAN: The second pumping test was in Lots 3 and 4. With the well in Lot No. 3 being the pumping well and the one in Lot 4 being the observation well. In the case of the

first test the observation well did demonstrate six tenths of a foot of draw down. In the second test we found no draw down. The first observation well was 270 feet from the pumping well. In the case of the second pumping well test, the observation well was approximately 400 feet away. In both cases the tests were run around 25 or 26 hours continuously.

MR. KLINE: The standard for review of the applications include questions; will the proposed use reduce the quantity of water under the existing water right? How would you respond to that inquiry?

MR. CHAPMAN: I think the quantity of water available beneath the Gibson Jack Subdivision is sufficient for the project as its proposed. I would agree with Mr. Welhan that there is significant water in storage beneath the Gibson Jack Subdivision, more than enough to satisfy the needs of the project.

MR. KLINE: And that storage is recharged annually?

MR. CHAPMAN: As far as we know. Yes.

MR. KLINE: Do you see any evidence of what we might refer to as water mining, involving that there is going to be a net depletion of the aquifer in that area?

MR. CHAPMAN: I do not, I have not found any evidence or any records that would indicate that there is a continual and consistent decline in this area. There are very few long term observation wells in the vicinity, but what little data we do have would lead me to believe that there is not mining.

MR. KLINE: Is the proposed water supply sufficient for the purpose intended?

MR. CHAPMAN: I believe so, yes.

MR. KLINE: Will the proposed use be contrary to conservation of water resources within the state of Idaho?

MR. CHAPMAN: Now I think the way the project proponents have the subdivision laid out now, is probably more consistent with conservation than perhaps individual domestic wells. As Mr. Welhan pointed out, if you had 37 or 38 individual domestic wells in the area, you could end up in a situation where you had longer term pumping, more pumping, less controlled use of the ground water system in the area. With the proposed three or four party systems and a storage vessel with a self-policing that has been discussed earlier today, as well as the ability to operate the pumping system so that they pumped essentially less water for a short period of time to fill up the storage system, I think that demonstrates an effort toward conservation as apposed to being contrary.

MR. KLINE: When a well is drilled, do you just leave it and forget it, or does it require some maintenance?

MR. CHAPMAN: Wells are just like any other mechanical piece of equipment that we have. They do require maintenance. Particularly in Idaho where we have typically hard water, or water that is highly mineralized. And that problem is exacerbated in areas where you have limestones. Because of the high calcium carbonate content. Wells need to be cleaned and they can be cleaned through a number of different types of efforts. Particularly open bottom wells that don't have perforations, can accumulate sediment in the bottom of them which restricts the ability of the well to produce water at the same level as it might have

when it was originally drilled. If it is perforated or screened, calcium carbonate can accumulate on the inside of the well bore, much the same as you see hard water deposits in a hot water tank or in piping and seal off those perforations. That leads to a lowering of production, increased draw downs, deeper pumping levels and sometimes a secession of the production almost entirely.

MR. KLINE: Are there steps that can be taken or need to be taken to keep a well vital?

MR. CHAPMAN: Yes. The steps that you can take are to clean them either through a sonic devise, high pressure water jetting, acidization, other techniques of cleaning of a well. There are a number of standard and usual efforts and opportunities for cleaning and maintaining wells.

MR. KLINE: In March 20, 1984, you authored a letter to Alpine Engineering, have you had occasion to review that letter as of late?

MR. CHAPMAN: Yes.

MR. KLINE: Have you had an opportunity to review that letter since you have reviewed the information obtained by Dr. Welhan?

MR. CHAPMAN: Yes.

MR. KLINE: Based upon your knowledge and review, the information that Dr. Welhan generated, is the information in your letter of 1984 still accurate?

MR. CHAPMAN: Yes, I believe so. As I indicated earlier Dr. Welhan's efforts were certainly much more detailed and comprehensive than I conducted at that time. That effort in 1984 was pretty much of a reconnaissance effort to try and initially determine what wells

would produce in that area and a very quick analysis of the aquifer characteristics. Dr. Welhan's study has refined that significantly.

MR. KLINE: Do you concur with Dr. Welhan's report that there is sufficient and adequate water in this area to meet the needs of this development?

MR. CHAPMAN: I do.

MR. KLINE: And in meeting those needs it would not be to the detriment of other producers?

MR. CHAPMAN: I don't think that it would, No.

MR. KLINE: In review of Dr. Welhan's methodology, did the process and protocol that he used, is that appropriate in your business?

MR. CHAPMAN: Yes it is.

MR. KLINE: Do you have other information that you would like to convey to Mr. Spackman regarding this project?

MR. CHAPMAN: I guess the only statement that I would make is that, it's rare when you have three different sets of tests spanning the kind of time frame that we do here on an area particularly for a project this small. I think it's very remarkable is that the data are as consistent as they are.

MR. KLINE: Climatologically is there a sufficient area to recharge this aquifer annually?

MR. CHAPMAN: I believe so although I have not conducted a water budget analysis for the area, but just looking at the geography it appears that there is. Yes.

MR. KLINE: If you were to get a rainfall on Tuesday, it wouldn't necessarily show up in the aquifer the next Wednesday?

MR. CHAPMAN: Not necessarily. No.

MR. KLINE: Would you concur with Dr. Welhan that it seems to be primarily a spring recharge?

MR. CHAPMAN: Yes. Yeah, it seems to be what we refer to as a normal hydrograph.

MR. KLINE: And in that normal hydrograph would it be say at a low water table level say in December as apposed to in June?

MR. CHAPMAN: The water table typically would decline say from July on through perhaps October, November and then begin to recover in the late Fall and as it began to recover the high point of this system of the water table would be in May or June.

MR. KLINE: I don't believe I have further questions.

MR. SPACKMAN: Mr. Hollingsworth, you may question Mr. Chapman.

MR. HOLLINGSWORTH: Mr. Spackman this is Mr. Kelly Clark.

MR. KELLY: Clark Kelly.

MR. HOLLINGSWORTH: I mean Clark Kelly.

MR. SPACKMAN: I wanted to welcome Mr. Kelly.

MR. KELLY: Excuse me for my appearance and lateness here. Ray doesn't approve of laying off during Elk season.

MR. SPACKMAN: Probably not for hearings either.

MR. KELLY: That's true.

CHAPMAN CROSS-EXAMINATION

MR. HOLLINGSWORTH: I'm trying to find a copy of the letter that . . .

MR. SPACKMAN: Mr. Chapman wrote?

MR. HOLLINGSWORTH: I have it here, but I had a copy of it myself that I had highlighted that I wanted to ask him specific questions on.

(Long pause.)

To start off, could I ask him to be given a copy of this form, the first one I submitted to you Mr. Spackman?

MR. SPACKMAN: What form?

MR. HOLLINGSWORTH: It was the one on my appeal. I'd like him to be handed it and have him look at the second page. The one you are looking at now.

MR. SPACKMAN: The second page of your letter?

MR. HOLLINGSWORTH: Correct, the second page of my letter.

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: It would be on the brown. . . the second page.

MR. DUNN: Is that the letter from Lyle?

MR. HOLLINGSWORTH: No. It's my letter addressed to Mr. Karl Dreher.

MR. SPACKMAN: This letter from Mr. Diller. . . (Inaudible)

MR. HOLLINGSWORTH: Oh, I'm sorry.

MR. SPACKMAN: . . . and I think this part of the original protest . . . .

MR. HOLLINGSWORTH: With Mr. Kline's approval the excerpts distracted, I have the certified copies with me, I can have him review from that.

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: Correct. These are just quotes that were . . . . On the very first word, on that page should be system.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: Make sure your on the right page.

MR. CHAPMAN: I have it.

MR. HOLLINGSWORTH: On the third paragraph, where I have the quotes. According to petitioners, that would be Mr. Bob Tripp, as Gibson Jack First Edition, an expert Mr. Chapman, the ground water supply is inadequate to meet the requirement that have been established by the board. The finding by the board is domestic wells will not be capable of producing sufficient water to supply the lots as reasonable. This support by substantial evidence and will not be disturbed on the appeal. This comment is not coming from you, it is coming from District Judge Transtrom?

MR. CHAPMAN: Yes.

MR. HOLLINGSWORTH: But did you make that comment at that time, do you recall?

MR. CHAPMAN: I didn't make this comment, as you say, it was made by the Judge and in reviewing that it's my recollection that the requirements that had been established by the board that he was referring to included the irrigation water. And I agree, I had said, in fact I said in both reports that the aquifer or the wells in that area should not be considered as being

adequate for irrigation water as well as domestic water, but that they were adequate for domestic purposes.

MR. HOLLINGSWORTH: With that comment, then I want to jump then if you would, on that same document, go 1, 2, 3, 4, 5, 6, on the 7th page, again this is not you, but it has been extracted from testimony that you gave.

MR. CHAPMAN: I'm sorry where are we?

MR. KLINE: If this is extracted from testimony then we are in the realm of hearsay, and I would object.

MR. HOLLINGSWORTH: It's not hearsay. Again I have the certified copies of the documents and this is testimony that this individual gave.

MR. SPACKMAN: (Inaudible). . . questions can be asked about Mr. Chapman's own statement whether he made those statements. I wondered whether you have access to particular documents. . . (Inaudible).

MR. HOLLINGSWORTH: Yes, he was mailed a copy of this stuff. On the lefthand bottom of the page it says Memorandum Decision and Order No. 3. Is that the page you are on?

MR. CHAPMAN: No I have 2.

MR. HOLLINGSWORTH: Sorry. I think it can be that one there, maybe.

MR. CHAPMAN: Ok. I'm on the same page. It has his signature on it?

MR. HOLLINGSWORTH: Yes Sir. Ok. On the very first paragraph that is there, the first sentence it starts out with according to, I'd like to read this and see if you agree with this still, or not agree.

According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that have been established by the board. The finding by the board that domestic wells, because a few minutes ago you said irrigation wells, domestic wells will not be capable of producing sufficient water to supply the lots is reasonable, is supported by substantial evidence and will not be disturbed on the appeal. I talked to Mr. Echohawk who is now in Utah, . . . (Inaudible)

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: I apologize. Would that still be your standing as it was then? Is that what the comments you made at that time to your memory?

MR. CHAPMAN: First of all, I didn't testify in the District Court proceeding. I was not a witness in the District Court proceeding and this apparently is taken from a transcript of a hearing that was held before one of the county bodies, but regardless of that . . .

MR. HOLLINGSWORTH: It was taken from a transcript?

MR. CHAPMAN: Yes. But regardless of that my answer is still the same. It is my understanding that whether the Judge or the Board is calling them domestic wells or whatever, the criteria established by the board that they were talking about included irrigation water for each of the lots as well as the domestic water. And I agree that those wells are not capable of producing irrigation water for all of that land, outside of the half acre that might be irrigated otherwise. I don't think there is any question about that.

MR. HOLLINGSWORTH: Thank you. I asked this of Mr. Welhan and you were present with him, when I said this, but when I was asking him about, I don't know if you remember reading the statement about taking a long time to do a study, to see if the water visibility is really there. I'd like to re-read it.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: I don't know what exhibit it is, but it's on the same page you have. Can I approach him and give it . . . ? Or let me just read it again.

MR. SPACKMAN: What . . . (Inaudible).

MR. HOLLINGSWORTH: It's the one I read to Mr. Welhan, because I would like his opinion on this.

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: This is the one I read earlier. I'll just read it. "In order to determine the trend of the water, to have a proper study done."

MR. SPACKMAN: (Inaudible) . . . by Lyle Swank?

MR. HOLLINGSWORTH: No it's the one I have, Mr. Spackman, the same packet that he has there, that I read to Mr. Welhan and asked him to voice his opinion if he agreed or disagreed to it.

MR. SPACKMAN: Who are you quoting?

MR. HOLLINGSWORTH: It's coming, the one from Lyle Swank, S-W-A-N-K.

MR. CHAPMAN: I don't think that it's on here.

MR. SPACKMAN: (Inaudible). . . you refer to the exhibit itself, or the document. . . (Inaudible).

MR. HOLLINGSWORTH: It's the same I did earlier.

MR. SPACKMAN: It's marked, I think as Exhibit . . . (Inaudible).

MR. CHAPMAN: Thanks

MR. HOLLINGSWORTH: That's the letter. Maybe it is in the letter. Can I approach him?

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: You don't have to read it out loud, but I was wondering if you just take a minute to read that and then tell me if you agree or disagree with that?

MR. CHAPMAN: I would agree with the statement.

MR. HOLLINGSWORTH: I would like to ask you the same question that I asked Mr. Welhan. How can you experts make the testimony that adequate water is there? When Lyle Swank has made the comment, and I have heard it from other people, that this should be done over a long term period of time. And when I ask them to explain what is a long period of time, do you mean a month, two months, or a year or two years, to see if the feasibility of the water is there. So in your expert opinion the study that was done by Mr. Welhan where they pumped the one well for three days, but only for the one day for 7.5 hours and then checked the well for 40 days that it wasn't being pumped. In your expert opinion, is that really a proper study to say if there is enough adequate water there?

MR. CHAPMAN: I think so. Yeah.

MR. HOLLINGSWORTH: So then, when you talk about the spring "recoverage". Which is telling me again that the aquifer in that area is being supplied by the precipitation in this area. When you think about the gallons that one home would use and multiply it times the number of homes that are there now, plus the homes that are going to be there, in your opinion do you still take the stand that there is enough adequate water there?

MR. CHAPMAN: I believe so, yes.

MR. HOLLINGSWORTH: And when you make the comment that the water is higher, like Mr. Welhan did, in the beginning of the year and then in the summer months it is low, with the number of home users up there, and with the water to be pumped out of that ground, thousand of gallons, do you still make the stand that the water will still be there, even during the drought periods we've had over the last seven years, and that may occur in the future?

MR. CHAPMAN: I believe so. Yes.

MR. HOLLINGSWORTH: When you talk about the maintenances of the well, bear with me for a minute. (Pause) I don't know the exhibit this was. I guess I'll just read it. If you would explain to me, I guess more than anybody here. When you talked about the maintenance of a well, you talked about the perforations, maybe being "oxidized" or deposits plugging it up, and so forth. If the well has been put in, like my well has been since 1976, and it has been checked and the perforations are still open, they are not plugged up, what would be your expert opinion why my well would not have a recall or when other wells are being used? I'm not asking that right. I don't like this position I have.

MR. KLINE: I guess I'm going to raise an objection to that.

MR. HOLLINGSWORTH: I apologize.

MR. KLINE: If he wants to hire him to go check his well, that's one thing, but at this point, with the information. . .

MR. HOLLINGSWORTH: No, I wanted your opinion on when you talk about the . . .

MR. KLINE: . . . given the information that is provided it makes it extremely difficult for this person to speculate as to why his well is not functioning.

MR. HOLLINGSWORTH: Let me find what I wanted to . . .

MR. SPACKMAN: I will sustain the objection, Mr. Hollingsworth, because of the way the question is worded. I think there is a way to ask that question, posing a hypothetical situation to Mr. Chapman and let him respond to that hypothetical . . . (Inaudible.)

MR. HOLLINGSWORTH: I apologize. I agree. I've found what I needed. I apologize.

I am reading this from a, it's in his exhibit, it's from the Facts and Findings again, back during Mr. Tripp's subdivision, and I'd like to read this.

> In this study Mr. Chapman found no evidence of the drained or dropping water table. He indicated that most perceived problems with water supply are most likely difficulties with well construction, well design or pump problems in combination with natural and local soils.

That is I guess the question I was trying to get to you about. When you made the comment about well construction, and well design and pump problems, I'd like you to expound on that if you would?

MR. CHAPMAN: Ok. In many areas where I have done work over the last 25 or 30 years, I've found that perceived problems with wells that were intially attributed to declining water

tables or well interference, quite often, in fact more often than not we're because of encrustation that had occurred inside of a well that had sealed the perforations or the screen off, or that a well had accumulated sediment in the bottom of it, if it was just a casing with an open bottom as many domestic wells in particular are constructed. Or bowls, impellers that had worn to the point where they just wouldn't lift water anymore because of sand or other problems or cavitation, or that the well in some cases were just not constructed adequately, it was suppose to be perforated and perhaps wasn't perforated as the driller had represented, or that the perforations were not completely penetrating, a number of things with construction. Now in some cases I've found where well screens hadn't been set where the well screen had actually not been set out the bottom of the casing, but was still up inside the casing. Those kinds of things that affect the ability of a well to produce. We're all guilty of it, we tend to drill a well or whatever we have that is out of sight, tends to be out of mind and its rare that anybody will go in and essentially maintain a domestic well in particular. What I have found over my years of experience is that many well problems that as I say that were attributed to water level declines were not water level declines but were in fact problems with things like these and once the well was cleaned or reconstructed the problem was gone. And that was what I was referring to there.

MR. HOLLINGSWORTH: Thank you. This might be redundant but again from the transcripts and so forth, "this is under _____ proposed plot does not comply with modified Findings of Facts," and this is coming from Mr. Echohawk now, coming from transcripts I guess that he took from you when he interviewed you or spoke to you. But he

made the comment again, and I don't want to hammer you on it, this will be the last time. "Again even assuming accuracy of Mr. Chapman's analysis, Mr. Chapman himself agrees that there is insufficient water for domestic irrigation and fire protection services on the two and one-half acre lots." I bring this up because, I think I've already covered about the domestic uses, but what about the fire protection water availability? If you again think of the thousands of gallons being pumped up for household usage, the gallons are being pumped up for just watering the lawns and those who might misuse it to try and water their excess acreage. Is it still your opinion that there will still be enough gallons of water there for fire protection as well?

MR. CHAPMAN: I believe so and the reason I say that with confidence is that typically you can build storage for fire protection. Now you don't have to have a direct flow out of the ground in order to provide fire protection. So if you are in a situation where you may be short of fire protection water, quite often tanks will be buried, with booster pumps. That is done routinely in the Boise Valley. So that they can provide fire protection, those high peak flows for a two hour period that is generally required by the Fire Marshall. So yes, I think that the fire suppression flows would be able to be met pretty easily.

MR. HOLLINGSWORTH: Well my next question, I guess I want to ask you, but I guess I'll have to go through Mr. Cushman the well driller. He made the comment about a booster pump for storage tanks to supply water for fire protection or for household usage. When you say a booster pump would this booster pump be the same thing as if they were going to bring in city water to carry it up?

MR. KLINE: Objection your honor. Same area again, we don't need to get into the issue of whether or not there is city water.

MR. SPACKMAN: Sustained.

MR. HOLLINGSWORTH: How do you explain to me the existing problems that the residents, like myself are having up there. Where it's not just Richard Harder's residence, but seven residents that are having well problems. Maintenance or not, because some of these are new wells that have been put in, how do you explain to me why their wells are dropping and sometimes are pumping air during the summer months. Still I'm asking you a double question here.

MR. CHAPMAN: I could only speculate, in order for me to determine why your well or anybody else's well was sucking air or having problems, I would have to investigate that specific well. So, I'd rather not speculate on why a well or a series of wells were sucking air.

MR. HOLLINGSWORTH: Would you give me your expert opinion on just the . . . can I show him this? Or. . .

MR. SPACKMAN: When you say this, this is . . . (Inaudible).

MR. HOLLINGSWORTH: This is a plot, exhibit on Mr. Terry Bailey.

MR. SPACKMAN: Letter C. . . (Inaudible).

MR. HOLLINGSWORTH: If you can see where north is and where east is, I'd like you to look at the proposed subdivision to the north and to the east. Again my question, being an expert witness and in your field of expertise, if there has been three wells that have just been drilled within the last 6 years. The rest of the wells I guess may have been over 15 year

period, but again I will ask you the question. On the east and north of this subdivision, while on the subdivision there are seven to eight homes that are experiencing well problems. By that I mean pumping air once in a while, not continuously all the time, but the water dropage is there. In your expertise opinion, why do you think this is happening, if there is plenty of water there, sufficient to put in additional wells and to have water for fire protection?

MR. CHAPMAN: With the information I have, I have no idea.

MR. HOLLINGSWORTH: Well if you can say it, then how can you have the opinion that the subdivision has no wells on it, they've got plenty of water?

MR. KLINE: It's been asked and answered, that's argumentative.

MR. HOLLINGSWORTH: I don't think so . . .

MR. SPACKMAN: Before I address the objection, Mr. Hollingsworth, let me just talk to you little bit about my impression. One of the problems that Mr. Chapman is faced with is, . . . (Inaudible). My impression is that he has looked at some information, both Mr. Welhan, did I say that correctly?

MR. KLINE: Mr. Welhan.

MR. SPACKMAN: Dr. Welhan report that his observation and test well data, as well as the data that he developed, he knew something about those wells. He doesn't know anything about the wells that you are referring to. Now he has drawn some conclusions based on those _____. But unless you give him specific information, more information than you've given him, in a hypothetical question, I don't think Mr. Chapman is in a position to answer those questions, because he doesn't have the well logs in front of him, he doesn't know what the

depths are, what the preparations are, when they were drilled individually, and exactly where they are located, he doesn't have any of that information. So his response that he doesn't know, is a legitimate response. He can draw some conclusions based on what information he has, which is done, so I would sustain the objection, unless you can give him that kind of information in a hypothetical question, then I think he can respond to them.

MR. HOLLINGSWORTH: I need to reword differently. I mean no disrespect to you Mr. Spackman, but I disagree with what you just said, especially your latter part. Because they do have the well logs and so forth. Because that is how Mr. Welhan did his report, supposedly was by the water that is being used by the residents up there. So he does have the information. He made the comment that he tested wells in Lots 3, 4 and 1 in the Gibson Jack Subdivision. He has knowledge so he knows what wells I'm talking about. So it's not hypothetical, he already has that knowledge and has already reviewed it, I'm assuming before he came here. So it's not hypothetical. Because the wells I'm talking about are the ones that they used to do the study back in '84 and '85 which he just testified when he said Lots 3&4 and Lot 1. He pumped water in Lot 1 for 24 hours.

MR. SPACKMAN: But I will sustain the objection, because the nature of the question at least in my opinion was there were seven wells that were located in some general area . . .

MR. HOLLINGSWORTH: Oh, I apologize.

MR. SPACKMAN: . . . here, and then with that statement then you said you wouldn't have any idea why their having problems.

MR. HOLLINGSWORTH: I see what your saying.

MR. SPACKMAN: . . . (Inaudible). He doesn't have any of the information in front of him regarding those seven wells and if you want to ask him questions about a specific well, lay a well log in front of him and talk about the specific information that is there, you are welcome to go through that, I hate to invite that, but that is the kind of question . . .

MR. HOLLINGSWORTH: I see what you are telling me now.

MR. SPACKMAN: He can't operate with that.

MR. HOLLINGSWORTH: I understand.

MR. SPACKMAN: He may claim that he can.

MR. CHAPMAN: I don't even claim that. (laughing)

MR. HOLLINGSWORTH: I knew I shouldn't, but I'll ask you . . . . With the exhibit that Mr. Kline presented then, I think it was Exhibit 4 of Mr. Welhan's report. Can he be shown that then?

MR. SPACKMAN: Exhibit 4?

MR. HOLLINGSWORTH: Thank you for your patience. I'd like you to look at, on Exhibit 4, on the seventh page, Mr. Chapman, at the bottom of the page, it says Figure 1, Locations of Wells with Geologic Logs. Field circles show the line in cross-section AA and Figure 2. Do you have that?

MR. CHAPMAN: I have that.

MR. HOLLINGSWORTH: Ok. These are the wells that I am referring to. These are the wells that are located to the east and to the north of the proposed subdivision. I know that

somewhere in our exhibits, we have the Gibson Jack Subdivision that shows those lots. Do you have it Everett?

MR. SPACKMAN: Would you identify those wells that you are talking about?

MR. HOLLINGSWORTH: Yes, I will, here I've got one.

MR. SPACKMAN: They are labeled with names. And that type of . . .

MR. HOLLINGSWORTH: May I approach him?

MR. SPACKMAN: What is that you are laying in front of him Mr. Hollingsworth?

MR. HOLLINGSWORTH: This is the Gibson Jack acres proposal _____ with the subdivision _____. This is the old subdivision it shows the lots and the block numbers so I can identify the location of the wells.

MR. SPACKMAN: Is this an exhibit, a document that has been mark as an exhibit . . . (Inaudible).

MR. HOLLINGSWORTH: No, but may I enter it as an exhibit now, or is it too late?

MR. SPACKMAN: (Inaudible.)

MR. HOLLINGSWORTH: May I enter this then?

MR. SPACKMAN: Well it can be marked. . . . (Inaudible) . . . let's mark it as Protestant's Exhibit D and then define this copy. Do you have a copy?

MR. HOLLINGSWORTH: Oh, I'm sorry.

MR. KLINE: Now I have a copy.

MR. SPACKMAN: And for clarification from my information, Gibson Jack Subdivision has no relationship to Gibson Jack Ventures.

MR. HOLLINGSWORTH: No it does not.

MR. KLINE: That is correct.

MR. HOLLINGSWORTH: They are separate. But Mr. Spackman for your information the proposed subdivisions is this section right here.

MR. SPACKMAN: Ok. (Inaudible)

MR _____: The proposed subdivision . . . (Inaudible).

MR. SPACKMAN: Ok. Mr. Hollingsworth has indicated that just looking at the subdivision plats labeled Protestant's Exhibit . . . (Inaudible). . . that the proposed subdivisions were located to the south_____ of the Gibson Jack Subdivision Plat. Any questions?

MR. HOLLINGSWORTH: Thank you.

I guess I better jump back then before I get back to what I'm trying to go into. When you made the comment at the beginning of your testimony you said that you pumped out of Lot 1 for 26 hours, I believe?

MR. CHAPMAN: Yeah, let me get you the exact time.

MR. KLINE: For clarification when we are referring to Lot 1, I see several Lot Ones. Can we be specific as to which Lot and Block?

MR. HOLLINGSWORTH: Well that's what I wanted to ask Mr. Chapman, because if it was in Block 2, there is no way you could have done it, if it was in Block 1 there was no well pumped in at that time. That's what I'm going to ask him.

MR. CHAPMAN: I don't find the total time, but I believe it was about 24 hours, 24-25 hours.

MR. HOLLINGSWORTH: Mr. Chapman, can you tell us which, when you said it was Lot 1. Yes with the map you have there that is on your right side, which lot was it, was it in the Block 1 or Block 2 area?

MR. CHAPMAN: It was marked on my map, it would be, let's see where Block 2 starts. Well, if I'm reading the map right, it would be in Block 2.

MR. HOLLINGSWORTH: In Block 2? So in Block 2, Lot 1 is where you pumped the well for 26 hours, or 24 hours?

MR. CHAPMAN: Yes.

MR. HOLLINGSWORTH: Do you have any notations there who's pump or who's well that was?

MR. CHAPMAN: No. I don't. The observation well was in Lot 2.

MR. HOLLINGSWORTH: It was in Lot 2, not Lot 1?

MR. CHAPMAN: No the pumping well. The well we pumped was in Lot 1. And the observation well was in Lot 2.

Just so you'll be aware of what I am referring to is a note that I have on a map that was made back in 1984.

MR. HOLLINGSWORTH: So it's Lot 2 and Lot 4. I keep saying Lot 1.

MR. CHAPMAN: Not according to the notes I have here.

MR. HOLLINGSWORTH: Well, I'm confused because in Lot 1 that property belonged to Everett Diller and also Richard Hollingsworth. And my well has never pumped for 26 hours, nor has his well ever pumped for 26 hours.

MR. CHAPMAN: No the Diller well was never pumped, it was used as an observation well at one time though.

MR. HOLLINGSWORTH: So which one did you pump the well out of again?

MR. CHAPMAN: The first notation I have here shows that there was a well in Lot 1 that was pumped and the observation well was in Lot 2, unless I've "mis-noted" these here.

MR. HOLLINGSWORTH: Well, I know the observation was done in Lot 2, that would be John Grayel's residence and his well was used. I guess it is immaterial, but I think it was Lot 4 was the one you pumped. But it's immaterial. So from what Mr. Spackman has directed me to do to direct to you to my question in the beginning so I can do it properly I hope. Again with the wells to the north and to the east the wells being to the east, the Hollingsworth's residence, the Diller residence, the Grayel residence, Chad Nielson's residence now, and Scott Nielson's residence are the ones to the east.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: The ones to the north would be the Bowen's residence, the Nickloff residence, and the Kelly residence. Those are the ones that are right next to the subdivision.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: The other wells are across to Heather Road. So you have reviewed the well logs, I'm assuming to come to the determination that the water availability is in this aquifer? Correct?

MR. CHAPMAN: I've reviewed some of them. Yes.

MR. HOLLINGSWORTH: Ok. So again my question, in the beginning I hope I did this proper, is that can you give me your expertise opinion why these wells, not all of them, but Hollingsworth, Diller, Greyal, Scott Nielson's, Nickloff's and Kelly's wells are having problems with recall or recharge or sometimes pumping air, in your opinion why do you feel it is occurring?

MR. KLINE: Same objection.

MR. SPACKMAN: Ok. I'll overrule this, . . . (Inaudible).

MR. CHAPMAN: Can I ask a clarifying question?

MR. HOLLINGSWORTH: Yes.

MR. CHAPMAN: Are you telling me that the Hollingsworth, Diller, Grayel, Bowen . . .

MR. HOLLINGSWORTH: Scott Nielson, the wells to the east are having difficulties. By difficulties I mean, not all of the time but sometimes they pump air or the recharge is with air, ok?

MR. CHAPMAN: Ok, but the Everson, Nickloff, Harley and Oliver, their not?

MR. HOLLINGSWORTH: And then the ones to the. . . they are. But I'm talking about the ones right by the subdivision, the other ones too are _____, but Mr. Spackman, I want to clarify, because you made the. Yes they are having problems as well. But the ones right by the proposed subdivision are the ones I am referring you to now. And the ones to the east that are having problems, I mean to the north is Scott Nielson's, the Bowens, the Nickloffs and the Kelly's.

MR. CHAPMAN: I can speculate, but that I wouldn't want to bank on the answer.

MR. HOLLINGSWORTH: Well, I don't want you to speculate, because again, if you get expert testimony Mr. Chapman, that this proposed subdivision has only got one well on it right now, a test well. It's only pumping 28-30 gallons per minute, can supply enough water for four homes, when the residents. . . .

MR. KLINE: I'm going to object to the mis-characterization, because it's been continuous through this thing. The testimony has been extremely clear in this, that is not 20, it's 38. Mr. Hollingsworth has repeatedly used the term 20. He has been corrected . . .

MR. HOLLINGSWORTH: Mr. Chapman, I can show documents that shows 20 gallons per minute.

MR. SPACKMAN: Ok.

MR. KLINE: He has been corrected on it twice, to this point, I am going to raise a continuing objection to the mis-characterization of the testimony and the documents that are already admitted into evidence.

MR. SPACKMAN: Ok, I think I'll sustain the objection on other grounds that it is Mr. Hollingsworth that your testifying . . . (Inaudible) . . . and that may be frustrating to you but . . .

MR. HOLLINGSWORTH: No it's not frustrating, as long as I am allowed to show a documentation where its saying 20 gallons per minute and I'll be able to do that I guess when I testify. And they are in these exhibits.

MR. SPACKMAN: And are you going to present them too?

MR. HOLLINGSWORTH: Well 38 gallons per minute is fine with me right now. But still if you say you can only speculate on this Mr. Chapman as an expert witness on why you think these wells are having problems around the proposed subdivision. How can you give an expert testimony opinion that there is adequate water in a proposed subdivision where there is only one well right now, when you took the information from the existing wells that I am talking about.

MR. CHAPMAN: I think Mr. Spackman pretty well clarified it, but I will do that again, is that in order to analyze a well problem, whether it's one well or a dozen wells, you need to look at more than just some points on a map or one or two well logs in order to come up with any kind of an accurate description on why you or anybody else might be having a problem. What I have done, however, is that I have conducted tests on that aquifer, twice myself, Mr. Welhan has conducted a very intensive test on the aquifer on his own . . .

MR. HOLLINGSWORTH: Ok, again I hate to interrupt you when you say test? On what wells. . .

MR. CHAPMAN: I have analyzed those data and those data have led me to the conclusions that I have come to. I'm not trying to dodge your question, its just I don't know why you are having problems, but I am confident in my analysis of my data. And I am confident that Mr. Welhan did a good job in analyzing his. Actually, much more thoroughly than I was able to, because he had more time and more data to work with.

MR. HOLLINGSWORTH: This is being redundant, because I don't think it is being answered right. I'm frustrated. If you get your information and data from the wells that may

or may not be having problems then, and these wells are not all 15-20 year old wells. These wells, some of them are 4-5 years old. If you can get your information to again come to the conclusion that Mr. Welhan did, when Mr. Welhan used the one well that they pumped water out for 7 and one-half hours and watched the well for 40 hours, and then used the wells that are around the subdivision to help come up with your data, still, how can you testify or even feel that an expert opinion that there is adequate water? I feel like the question has not been answered according to _____ my opinion. You can speculate why this is happening. I don't think the answer has been answered, Mr. Spackman, and I don't know how to get it out of them.

MR. SPACKMAN: (Inaudible)

MR. KLINE: If I could interject, I think one of the problems is that Mr. Hollingsworth is requesting that this individual give him some specific answers. If Mr. Hollingsworth wishes to get an expert to evaluate his well, that is what he ought to do. He is placing this witness in an impossible position of requiring him to give a definitive answer to why his particular well isn't working.

MR. HOLLINGSWORTH: But I disagree with him Mr. Spackman. Because again they are saying they got their data from the wells that I've indicated already have had a problem. They had the problem when they did the well testing apparently too.

MR. SPACKMAN: I hate to increase your frustration, Mr. Hollingsworth. . .

MR. HOLLINGSWORTH: You're going to, I can tell.

MR. SPACKMAN: . . . but I think Mr. Kline is correct. The reason I think he is correct, is I know you probably feel that I am taking sides, but in all of the hearings that I have held, expert witnesses like Mr. Chapman, have a specific assignment or Mr. Welhan, they have a specific assignment that they are trying to accomplish _____. And they look at a specific well or a couple of wells for a specific proof.

MR. HOLLINGSWORTH: I have no problem with that.

MR. SPACKMAN: But, the purpose for which he was looking at wells, even if he looked at some of the wells that you are concerned about, was not perhaps the purpose that you now want him to look at those wells. He was not looking for a problem in your well, or seven or eight or ten other wells. That was not the assignment that he was given by the people that retained him.

MR. HOLLINGSWORTH: So when you made the comment about speculation and a hearsay thing. I gave specifics and these wells are the ones that they did utilize for the study, Mr. Spackman.

MR. SPACKMAN: Let me give you the specifics. The kind of specifics that you probably would have to give Mr. Chapman, for Mr. Chapman to illicit, or prompt a response out of him. I'm not sure he'd be able to do that. You would have to describe a well, you'd have to describe its casing, you'd need to describe its depth, you'd need to describe the perforations in that well, probably describe for him the depth of water, describe for him what the problems are that are occurring, then at that point in time he might be able to speculate about the problems that you are having, not having been on site, not having looked at it. Now as an

expert he might be able to speculate about it. Now I sense that you are unwilling to _____ speculation, ____ (Inaudible) ___ tried to speculate about the problems, then you objected to that speculation, that's all they can do.

MR. HOLLINGSWORTH: Correct, because of what you just said also, I can do that with what Mr. Welhan gave me, I can go through each well then, do it individually and we can be here all afternoon. But that's not what I want to do. I want to still . . .

MR. SPACKMAN: Well to some degree . . . (Inaudible).

MR. HOLLINGSWORTH: I can't see how I can come as an expert witness, Mr. Spackman, make the comment that there is adequate water when again the existing wells surrounding this subdivision are having difficulties. It has nothing to do with the construction and maintenance of the wells, because a lot of these wells are still new. Then to have them say that because of the test they did, with the lots around this proposed subdivision and lots they utilized are some of the wells that are having the problems.

MR. SPACKMAN: My response is Mr. Hollingsworth is that if you want to put on that kind of testimony and you want someone to testify about those problems that you are having, then I think you have a responsibility to hire an expert witness, and bring them in, have them look at these problems and testify about what is causing those problems. It is not the responsibility of the applicant to provide an expert witness for you to establish any problems you may have.

MR. HOLLINGSWORTH: I agree with that. I agree with that wholeheartedly. I am trying to . . .

MR. KELLY: Mr. Spackman, excuse me, I don't mean to interrupt, I'm at a loss for what has been going on, but would witness testimony by those people that are up there that have witnessed the water table drop a 100 feet in eight years be suitable?

MR. SPACKMAN: All of that testimony is . . . (Inaudible). I question what you will get out of Mr. Chapman here as an expert witness for the applicants that would be worthwhile without going through some kind of arduous, very difficult hypothetical situation. Then at that juncture Mr. Chapman probably can only speculate about what those problems would be, because I have seen some of the testimony of the investigatory work that has been done to analyze some of those problems, and sometimes it is a down right problem.

And to actually look at what's happening down inside the well. That is not always the way it is, but sometimes that is what you want. Now I'm interjecting myself too much into this discussion, but I think we can spend an inordinate amount of time with Mr. Chapman trying to get things out of him that he will continue to say with good reason, I don't know, I can't tell you that.

MR. HOLLINGSWORTH: But yet he can sit and say there is adequate water Mr. Spackman. It doesn't make common sense to me. And I know what you are saying.

MS. _____: We feel the same, we don't agree with that, . . .

MR. SPACKMAN: I understand you don't agree with that, but Mr. Chapman has done some study that would lead him to conclude what he must conclude. You may not agree with that, but he at least was assigned this and has the ability to go out and analyze some of these particular problems that he has been asked to analyze by the applicant, and that is what he's

focus on. He has not gone out and looked at all the other wells who have been in a ten mile radius.

MR. HOLLINGSWORTH: In 1988 from the extract of the transcripts, you've already answered this but, when you made the comment that insufficient water for domestic, irrigation and fire protection services it's inadequate. Then due to a report from Mr. Welhan utilizing one more well, you still feel that there is adequate water and that the study has been done proper to make that comment.

MR. KLINE: That's asked and answered.

MR. HOLLINGSWORTH: Ok. I have no more questions then.

MR. SPACKMAN: Thank you Mr. Hollingsworth. I am troubled when you ___ (Inaudible) feel I've badgered you.

MR. HOLLINGSWORTH: No, no. I don't feel you've badgered me at all. I just feel frustrated because I'm not getting it across, but I'm not expertise enough to do it. So I apologize.

MR. SPACKMAN: Ok. Mr. Diller, do you wish to question?

MR. DILLER: Just a couple of items. You said on the perforations being plugged, or the veins being worn on the pumps, will that cause you to break suction on your well at all times or, it looks to me like if they were plugged and they were worn it would be just a short period of time before you would start breaking suction.

MR. CHAPMAN: Worn impellers, quite often, will not cause you to break suction at all, the water delivery just ceases. Sometimes it will cause cavitation enough to create some air

bubbles and some spitting for example in sprinkler systems, but typically if it is a worn impeller problem only, usually what happens is that you just start running out of pressure and running out of water.

MR. DILLER: Well, I _____ (Inaudible).

MR. SPACKMAN: Mr. Kelly you have not been here, ____ (Inaudible) ____ status, I told the other parties and both protestants, Mr. Hollingsworth and Mr. Diller, if they have any questions. You may question as well in order _____(Inaudible) ____ question of Mr. Chapman regarding his testimony?

MR. KELLY: First of all please forgive me, I'm at a loss because I was late and missed so much, I don't want to overlap anything, does Mr. Chapman deal with well engineering, or do you deal with water quality, or just well engineering?

MR. CHAPMAN: I deal with all of those.

MR. KELLY: Ok. Mr. Chapman. What would you consider a usual water table drop over the period of years, we all know that water tables do drop and go down year after year? What would you consider normal?

MR. CHAPMAN: I don't think that there is anything such as normal and the reason I say that is that I know of aquifers in Idaho that have a seasonal fluctuation of less than a foot. I also know of other areas that have seasonal fluctuations exceeding 20 or 30 feet. And so there is not really a rule of thumb, per say, that you can use to characterize a particular aquifer or particular area.

MR. KELLY: Well then Mr. Chapman, would you consider, I do measure. In fact I'm participating in the February of '95 survey of John Welhan on my well. In particular he did measure the well depth with his equipment. Would you consider a 100 feet in 8 years an abnormal drop in water table?

MR. CHAPMAN: It's pretty high, yes. I'd have to agree that that was a fair drop.

MR. KELLY: And that is being generous. That is exactly what happened. Mr. Chapman would you, I have a chart here, and forgive me, I didn't make copies for Mr. Spackman and Mr. Kline, would you consider a hardness level of 478, nitrate levels exceeding 12, excessive?

MR. CHAPMAN: What are the units, could you tell me?

MR. KELLY: Parts per million.

MR. CHAPMAN: Parts per million?

MR. KELLY: Um, huh.

MR. CHAPMAN: That is fairly hard water, yeah.

MR. KELLY: Would you consider nitrates over 12 safe to drink?

MR. CHAPMAN: Of parts per million?

MR. KELLY: Parts per million.

MR. CHAPMAN: Yeah, it is for most people.

MR. KELLY: Pregnant women?

MR. CHAPMAN: No, not pregnant women.

MR. KELLY: Ok.

MR. CHAPMAN: Or nursing mothers.

MR. KELLY: Ok. Yeah, I confirmed this with Janet Crockett, Senior Advisor of State Water Quality Board.

MR. CHAPMAN: Yeah.

MR. KELLY: Pocatello is currently, extremely in trouble with TCEs in the water. Are you aware that this development lies between the Fort Hall Mine Solvents and the Pocatello City Water?

MR. CHAPMAN: I've not done any investigation on that or the direction of ground water movement, as it relates to TCEs.

MR. KELLY: Uhuh.

MR. KLINE: I'm going to objection, I see not relevance to water quality to the water availability at this point.

MR. KELLY: Why is that? Unusable water is not water available.

MR. SPACKMAN: I'll overrule the objection right now, because water quality always has some relevance to the public interest as well as the Department of Water Resources _____(Inaudible). So, I'll overrule the objection at this time, _____(Inaudible)_____ water quality does some relevance _____(Inaudible) where the question goes.

MR. KELLY: Very good.

MR. SPACKMAN: Go ahead.

MR. KELLY: You almost made my question, there Mr. Spackman. I was wondering if since the water is of questionable quality would you consider the quantity of water if it is not quality enough to drink?

MR. CHAPMAN: My study was based on water quantity alone, I've not done any water quality studies there.

MR. KELLY: I do have, in case you are interested, and mine was a particularly bad well study analysis by Professor Welhan and some of his students on a survey that was completed February of 1995. Not thinking I'd be here, I don't have the copies but I can get them . . .

MR. SPACKMAN: . . . water quality or water quantity?

MR. KELLY: It's basically the lower Portneuf River Valley Aquifer a Geological Hydrologic Model and its Implications to Well Head Protection Strategies, Draft Final Report for the EPA Well Head Protection Demonstration Project for the City of Pocatello Aquifer Geological Characterization Project by John Welhan, Idaho Geological Survey, Chris Mecham, Student, Ted Reed, Student, February 1995.

MR. SPACKMAN: What relevance does it have to do to this particular application?

MR. KELLY: The relevance I propose was the fact that it is drawing water quality in question, if the water has no quality, you have no quantity. If it's not palatable water we've got everything possible connected to mine, it's gray water, and was for three years.

MS. _____: We had gray water with a new well.

MR. SPACKMAN: Just a moment. This is not an open discussion.

MS. _____: I'm sorry.

MR. SPACKMAN: So I need deal with one person and I'm dealing with Mr. Kelly right now. So.

Water quality has some relevance to this discussion, but the relevance that it has honestly is, and I need to go back to the court case, courts have told the Department of Water Resources that it cannot issue a permit that will violate water quality standards, but in the same breath or the same paragraph, the Supreme Court said, reminded and warned the Department of Water Resources that water quality was not within its primary jurisdiction. That jurisdiction is best within the Department of Health and Welfare, the Division of Environmental Quality, and some of its subsidiaries, or associated entities which includes the District Health organization. So its not the responsibility of the Department of Water Resources to analyze all water quality issues. It is the responsibility of the Department of Water Resources to insure that its permitting process does not ignore water quality. So, I guess what I am saying is that unless there is someone here from the Division of Environmental Quality or you can produce that information that fact will not comply with standards that are established by DEQ _____ (Inaudible). Then the department will consider an application but probably with condition of that as it complies with all the water quality standards. I am not here to determine whether the water is of this quality or that quality, I don't have that expertise. I need an expert to tell me these things. I am willing to take the report, I guess, but at least at this juncture it _____ (Inaudible).

MR. KELLY: I understand.

MR. SPACKMAN: (Inaudible). It may be relevant, but that information is _____(Inaudible).

MR. KELLY: Mr. Chapman. Back to the water table issue, and I'll free you from your water quality. Can we expect the water table to continue dropping and dropping, or is it depending on weather, precipitation, or is it going to continue to drop forever.

MR. CHAPMAN: I would anticipate that the water level decline that you may have seen in your well, may not be at all consistent with the rest of the area. There is very little long term water level data that are available. The only data that I could find was some data from back in the '70s that I believe that in a well in Section 20, where the water level was roughly a little over 50 feet below land surface. But whether or not you'll have specific declines or of what magnitude declines may occur. I've not found any evidence that I could find, any documentation that there has been a consistent water level decline and until those data are obtained the prediction of water level declines or rises, or the magnitude of seasonal fluctuations are based strictly on short-term measurements.

MR. KELLY: Ok. Mr. Chapman, we've brought recharge rates in to question several times. What is a reasonable distance that my well could be affected by another? When Brenda Pickens here can turn on her water which is on the exact opposite side of the subdivision from me, and I can see my sprinklers gradually drop . . .

MR. KLINE: Are we in testimony again?

MR. KELLY: What did Mr. Kline say? Excuse me, Mr. Kline.

MR. KLINE: I inquired as if we were testimony again or are we soliciting questions.

MR. SPACKMAN: You are testifying Mr. Kelly.

MR. KELLY: I am inexperienced at questioning the witness.

MR. SPACKMAN: And I didn't talk to you since you came late about cross-examination. But, in cross-examination you ask a questions, you propose hypothetical facts to Mr. Chapman and ask him to respond to those hypothetical questions or facts within the hypothetical circumstance _____(Inaudible).

MR. KELLY: Ok.

MR. SPACKMAN: _____(Inaudible) perceive what you said as stating of facts.

MR. KELLY: Right. I can't afford an attorney, so, I'll deal with my stupidity here.

Mr. Chapman in the eight years I've lived there not twenty was stated by Mr. Kline in his letter. . .

MR. SPACKMAN: You need to be cautious, _____ (Inaudible) _____ start telling what your experience is regarding the problems in the area . . .

MR. KELLY: What would you consider to be a maximum distance your water could be affected by another? Is that simple enough?

MR. CHAPMAN: That is a very simple question, to which there is no answer. For example, just so you'll know I'm not trying to dodge your question. When I worked for the Department of Water Resources we repaired a flowing artesian well in northern Owyhee county. We had installed a recorder on another well 8 miles away and we closed the well we repaired, stopped it from flowing and within 11 hours we saw a change in the water level 8 miles away. At the same time I have seen wells that were 15 feet apart that had no effect. It

depends on the geology on the transmissivity of the aquifer on the character of the geologic formation, the amount of water that is being taken out. A whole host of parameters that you have to be very specific about and that is frankly why we do well tests. Is because we need to control as many of those variables as we can in order to get to a prediction. And what we do is that we control all of those variables and we gather the data we think we need to gather and then we make a prediction based on those values. Much the same as most other professions do.

MR. KELLY: Have you made a prediction on this particular area?

MR. CHAPMAN: Yes, I have, I guess you weren't here when I did my direct testimony. Essentially I have conducted two well tests out there and Dr. Welhan conducted a third in 1996. Our data, independent of one another, I didn't even know John Welhan until this week, came up very close, the data and the predictions we came up with were within about 25 percent which is pretty good for ground water work. And so we feel very comfortable that our predictions are reasonable. That is not to say that monitoring of the water levels in that area shouldn't be continued, and that everybody ought to be cognizant of a possible water supply problem, but based on the data we collected and the calculations we made and our best professional judgement, it appears to both Dr. Welhan and I that there is sufficient water for the project as it is proposed.

MR. KELLY: Mr. Chapman, what do you consider a minimum per a household? I've heard so many varying questions I need to know from an expert.

MR. CHAPMAN: I can tell you for example, I have a place in Valley County and I get two gallons per minute, and that is adequate for the wife and I on a normal basis. But we are not irrigating a lawn or a garden. Normally, the Idaho State Statute is somewhere around 9 to 15 gallons per minute, depending on how you want to interpret it. But it is a fairly low amount. Typically, if you are looking at consumption you can estimate and there are figures published by various government agencies that would indicate that each individual in a household for in-house use consumes about 125 gallons per day. So if you would have a 4 member household you are talking about 500 gallons per day.

MR. KELLY: How about if you were talking about 4 households with 4 members?

MR. CHAPMAN: Then it would be four times that.

MR. KELLY: So could you calculate that into gallons per minute draw per well?

MR. CHAPMAN: You can if you use it as a direct diversion. If you use a storage facility as the project proponents have suggested, if you pumped at 20 gallons per minute and had a 3,000 gallon tank you would fill that tank in 2 & ½ hours. And you could then shut off that well and you would not with four families consume 3,000 gallons of water in that day. So you theoretically could pump a couple of hours per day with 20 gallons per minute, or you might want to pump for a longer period of time at 5 gallons per minute, or 10 gallons per minute. It depends on how you want to manage it. But what you need to get at is the requirements for the household and be able to satisfy that peak demand when everybody wants to take showers, cook breakfast and get ready to go to work, and that is why you need the storage.

MR. KELLY: I have no further questions.

MR. HOLLINGSWORTH: May I intervene one question?

MR. SPACKMAN: I think it is proper now to go back to Mr. Kline.

MR. KLINE: I have no questions at this time.

MR. SPACKMAN: Mr. Hollingsworth, normally it would probably be improper for me to grant the question, but I'll at least hear the question and we will . . . (Inaudible).

MR. HOLLINGSWORTH: On these proposed water tanks that they are going to use to hold water supposedly then for household usage, I understand they might use for the fire protection as well, and if they use them for the fire protection and the numerous amount of gallons is used to put out a fire in a house. How is that water is going to be resupplied to the tanks for household usage by the next day?

MR. CHAPMAN: I can respond. The tank procedure that I talked about that we've used in the Boise Valley, the tanks that were used for fire protection are totally independent of the domestic water supply system. They are essentially buried, filled up with water the booster pump set on them and then they are left. They're not touched, their not used for domestic, they're not used for irrigation or anything else. That is the fire protection reserve. So they are totally independent of the domestic water supply system.

MR. HOLLINGSWORTH: Thank you.

MR. SPACKMAN: Ok. Finished? Mr. Chapman do you need a break?

MR. CHAPMAN: I do.

MR. SPACKMAN: We'll just let you go.

CERTIFICATION

I CERTIFY that I was designated to prepare the foregoing partial agency transcript by the agency from the electronic sound recording of the proceeding in the above-entitled matter. The foregoing is a true and accurate report of the proceeding to the best of my ability, prepared in accordance with the provisions of Idaho Appellate Rule 26, excluding listing of exhibits or attachment of exhibits.

DATED This 12th day of September, 1997.

Deborah Drew-Ellis

DEBORAH DREW-ELLIS
Legal Secretary
Idaho Department of Water Resources

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of September, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

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DEBORAH DREW-ELLIS
Legal Secretary
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE)
NAME OF GIBSON JACK JOINT VENTURE,)
aka WILDHORSE RIDGE SUBDIVISION.)
)
)

COPY

PARTIAL TRANSCRIPT OF HEARING
DATED OCTOBER 22, 1996
CONTAINING EXCERPTS FROM WITNESSES TESTIMONY
OF JOHN WELHAN & SHERL CHAPMAN

Idaho Department of Water Resources
Gary Spackman, Hearing Officer

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EVERETT DILLER
2917 N. Stephanie Rd.
Pocatello, Idaho 83204
Protestant

CLARK R. KELLY
9685 Heather Rd.
Pocatello, Idaho 83204
Protestant

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 29-08175, 29-08176, 29-08177,)
29-08178, 29-08179, 29-08180, 29-08181,)
29-08182, 29-08183, 29-08184 IN THE)
NAME OF GIBSON JACK JOINT VENTURE,)
aka WILDHORSE RIDGE SUBDIVISION.)
)
)

BE IT REMEMBERED that this matter came on for hearing on the 22nd day of October, 1996, at Pocatello, Idaho before Gary L. Spackman, Hearing Officer, Idaho Department of Water Resources.

The following is a portion of the transcript of the above-referenced hearing.

APPEARANCES

The Applicant's Representative:

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WELHAN DIRECT TESTIMONY

MR. KLINE: I would like to call John Welhan.

MR. SPACKMAN: Mr. Welhan, . . . (Inaudible) . . . please.

MR. KLINE: I would indicate also on the record apparently he has a 1 o'clock class, so if we would complete his statements before we break up, I would appreciate that.

MR. SPACKMAN: I would be happy to do that. We can take a late lunch.

MR. DUNN: His students would be happy . . . (Inaudible). . . .

MR. SPACKMAN: Thank you Mr. Dunn. (Inaudible) And if anyone wants to break please raise your hand. I will literally allow those, but if we could press forward I would like to do so. Mr. Welhan, if you'll raise your right hand, please. Do you swear to tell the truth, the whole truth and nothing but the truth?

MR. WELHAN: I do.

MR. SPACKMAN: Thank. You may be seated.

MR. KLINE: May I inquire?

MR. SPACKMAN: Yes.

MR. KLINE: Mr. Welhan would you state your full name for the record please?

MR. WELHAN: John Andrew Welhan.

MR. KLINE: How are your employed?

MR. WELHAN: I am a geologist with the Idaho Geological Survey.

MR. KLINE: How long have you been in that position?

MR. WELHAN: Since 1990.

MR. KLINE: Just a brief summary of your educational background.

MR. WELHAN: I have a Ph.D. in Geological Sciences, including a Masters Degree in Ground Water Science, both in ground water, subsurface water research for the last 20 years.

MR. KLINE: And are you familiar with the Gibson Jack area?

MR. WELHAN: To the extent that I have done work up there, yes.

MR. KLINE: You did a report, which has been marked and I assume admitted as Exhibit 4?

MR. SPACKMAN: Yes.

MR. KLINE: Do you have that document with you?

MR. WELHAN: Yes I do.

MR. KLINE: I'm just going to basically allow an open discussion if you would, of what process and procedure that you followed and what your conclusions were.

MR. WELHAN: Ok.

MR. SPACKMAN: We recognize that Mr. Welhan is an expert.

MR. HOLLINGSWORTH: I have no objection to that at all.

MR. SPACKMAN: By that recognition, I believe that it grants some liberty to the witness to go ahead and discuss technical information, again without the very careful question. Thank you.

MR. WELHAN: As we have been apprised the well was drilled in December of 1995. I was contacted by developers and asked if I would give them some recommendations on how to

test the well. I think I responded that I would be happy to help in any way I could, because one of our main problems in this area and most areas that are undergoing development is a lack of technical information and the developers indicated they would be willing to conduct a controlled well test and that I was more than happy to help them out in achieving that goal. So we agreed to design the test and to collect the information, and to interpret for them, provide recommendations based on the information collected and any other information that would be relevant. At that time I told Chris Pine that I can't take sides in this kind of a debate and the chips had to fall where they may, so we went ahead as Guy Anderst indicated. Basically in my eyes the developers wanted to find out what the situation really was, and if it was acceptable or not for developing plans they had.

We conducted the tests on the 11th of January and prior to that, starting some time in December, I placed an automatic recording device in the Chad Nielsen well to provide background water level information. At that time we already decided that we were, it had been decided for us, I'm not sure what the situation was, I was simply going by the information that the developers were providing, We had decided that we could not monitor any other well and the Chad Nielsen well, because it had been recently drilled, had not had a pump installed, was not being utilized for domestic purposes, was in fact the only option we had for monitoring static water levels and for monitoring the response of a well to the effects of the pumping well. So that went in my graph here, about the 17th or 18th of December and we collected information through January and February spanning the time of the pumping test itself. The well was pumped for a little more than seven hours continuously starting at about

70 gallons per minute. The discharge rate was measured from a series of sprinkler heads attached to a sprinkler discharge line that had been rigged up to the well discharge. By summing the amounts of discharge from each sprinkler head we were able to determine the approximate pumping rate. That pumping rate varied at the beginning of the test for the first 6-8 minutes, the pump was running essentially with no back pressure until the sprinkler line filled up. At that point the sprinkler line was filled, back pressure increased and the effective pumping rate dropped, from our measurements 38 gallons per minute, and that is estimated to be plus or minus ten percent (10%) accuracy. That 38 gallons per minute rate was held constant. We checked it during the test a couple of times for the duration of the test of 7.3 hours. At the end of that period the well had gone down 136 feet and . . .

MR. HOLLINGSWORTH: Say that again?

MR. WELHAN: The well had drawn down at the end of the test, at the end of 7.3 hours, to a total of 136 feet. That is 136 feet below the starting water level. With the one observation well that we had available to us, the Chad Nielsen well, located some distance away. I don't recall exactly how far it was, I think it was 1100 feet.

MR. HOLLINGSWORTH: I believe it was 13--.

MR. WELHAN: 1300 feet? That sounds about right.

MR. DILLER: 1350.

MR. WELHAN: Somewhere I have it here. Oh, here it is, 1350. No response was detectible. That was partly due to the precision of the data recorder which can measure changes of .02 feet, but mostly to the noise or background water level fluctuations that we

observed before and after the test. We determined subsequently by looking at barometric pressure readings that there was a strong inverse relationship. As barometric pressure went up, water levels went down. This indicated a condition known as a confined hydraulic condition in the aquifer, which would be expected to give this kind of response. What that really translates to is that we could not see more than .02 feet of draw down at the observation well at 1350 feet distance from the pumping well, and that was after seven hours of pumping. The barometric response in the aquifer allows us to at least constrain the other hydraulic parameters that are necessary to be able to quantify or describe the aquifer's hydraulic response. With that information we felt quite confident that we were able to describe the ability of the well and the aquifer around the well with some confidence to be able to supply 20 gallons per minute continuously, at 24 hours per day, pumping at 20 gallons per minute. And certainly the results of the test indicate that up to 40 gallons per minute would be expected on a non-continuous basis, pumping discontinuously at 40 gallons a minute or more, with periods of time for the water levels to recover.

I then wrote a memorandum to the developers summarizing the results of the test, our interpretations, recommending that with the hydraulic response of this aquifer as determined in this control test that certain well spacing should be met in any development plan. I pointed out to them that from the interpretations we had made from the existing well logs, from private wells on the Gibson Jack bench, from the geologic information, from the water level information as provided in the original driller's logs for those wells, there was reason to believe that changes in storage, from ground water levels on the Gibson Jack bench, were

significant both seasonally and over the period of the drought that proceeded the 6-8 years before the test was conducted, and indicated that the actual cumulative effect or impact of a number of wells would be pretty near impossible to predict accurately with the amount of information we have about the water balance situation on the Gibson Jack bench and the amount of information we have about the hydraulic conditions in the aquifer. Remember this test we conducted only tells us about a limited part of the aquifer around the well and so our ability to extrapolate beyond that is very limited. I did point out also in the recommendations that it appears that a half acre irrigation limit for 15 gallon per minute supply is probably not unreasonable and we really have to go out on a limb to say more than that.

I wish we could explore scenarios but scenarios are only as good as the assumptions you make and any loop-holed experts will have as many scenarios, or reasonable assumptions as there are experts in the room. So I think with the scenarios that I considered, asking the question of what we know of where the water comes from and which people are going to be depending for a well water supply, what can we say about how much of that represents a safe long-term yield. Within the constraints and limitations of what we know about this aquifer, its extent, the geology of the bench areas, I feel fairly confident that we can make a case, as long as we are aware that most of the water is being withdrawn from the aquifer right now by existing homes, existing users, and it would be withdrawn in the future by future developments. It is coming from storage in the aquifer itself, because the ability of that aquifer appears to be limited as far as providing an amount of water moving through it that would not be sufficient to rely on for an extended period of time. What we do know is that

there is an awful lot more water, ten times more water, that is available right now in storage that is being exploited right now by existing homes, and that causes a seasonal decline in the rebound on a yearly basis. That amount of water from storage which is being utilized, in addition to the amount that we can estimate is moving through the system that would be available from recharge, makes me feel confident that with the proposed 37 new users the existing number of users up there, which I don't know exactly how many there are, I guessing 25-30, that the capacity of the system will be able to match that. However, a strong caveat to that opinion, that is based on our best estimate which is based on available information today, that may very well change, and I have to give the developers credit for looking at the situation with regard to is this feasible, is it at all do-able, or is it impossible, and I think with the amount of information they have collected, they've even gone so far as an attempt to determine whether a deeper aquifer exists which can be exploited. Unfortunately it didn't prove out. Perhaps Mr. Cushman can tell us more about the results of that test drilling, but I think in terms of what we know of the aquifer which is being exploited today by existing homes, which we are here today talking about the future possibilities for exploitation in new developments, I have to give my expert opinion. Which is, I believe there is enough water based on the information we have in hand today.

MR. KLINE: At the time that you ran the tests, was there any effort to curtail the use of water from other wells in the area, during the test?

MR. WELHAN: No sir. That is nearly impossible in any situation, even if people are willing to do so. Because we don't have the manpower to go out and contact people

individually. The greatest use, for our test purposes, was a well that was within 500 feet of the pumping well. Since we couldn't obtain access to one like that, we settled for the next best available well which was the Nielsen well. That was a little too far away to be directly useful although with the water level information we collected and the barometric response we were able to determine at least some constraints in hydraulic properties that we needed.

MR. KLINE: From a geologic point of view would it make more sense to go with 30 individual wells or to go with 10 wells serving 3-4 lots each?

MR. WELHAN: I think with the more wells you introduce into any system you run into more problems. Some of those are for every well that goes in, it has to be properly sealed to avoid contamination or leakage from surface water sources. It has to be properly maintained. If a well goes in under an individual's control it is basically under that individual's sole control and I've seen it happen too many times where individuals really don't take responsibility for their well. The wells are considered a done deal and its a whole in the ground from which you extract a resource that you can depend on, but on most things we depend on we usually take for granted. It goes unmaintained, it may be abused, and the problems don't surface until it's too late, whether it is through a lack of maintenance, whether through lack of monitoring of water levels, of where the pump should be set for the water level fluctuations that you are observing, the kind of pumping usage you are putting the well to, or just the total amounts you are withdrawing from the well. One of the strongest arguments I have heard so far by a communal use well is that you do have some internal degree of policing. That users are not on their own to use or abuse the well or the resource

according to their own volition. That is my opinion, and it may not matter here, but I feel that in response to your question that is one advantage to a shared well. From the standpoint of the hydraulic responses to this aquifer, it seems to be capable of providing, I am going on the basis of our controlled well test, a previous well test that was run, I'm not sure who did it, I know that Mr. Chapman was involved in interpreting that data and looking at the results of, that we can estimate roughly what the permeability of the aquifer is and it compares to ours. It's a little higher than in our test, but again it just tells us that one well test does not give you the ability to extrapolate to the entire aquifer. With two well tests that give you within a factor of two and one-half similar permeabilities, there is reasonable confidence that we can say that this type of sedimentary deposit that exists up there in which wells are now drilled, from which we are extracting water currently, and will be in the future, seems to have at least in a ball park range identifiable permeability of storage characteristics that we can base some decisions on. With that type of a system every individual well is going to have a draw down effect on its neighbors so with 37 wells, or whatever the number is proposed for the new development, the spacing would be pretty close to what you would not want to have. Too close, in other words, resulting in too great a draw down in individual wells due to competition between the wells for the available water. With fewer wells, pumping in larger capacities, the draw back is that . . .

MR. SPACKMAN: (Inaudible)

MR. WELHAN: I'm sorry.

MR. SPACKMAN: You were talking about . . . (Inaudible).

MR. WELHAN: With fewer wells?

MR. SPACKMAN: Oh, I thought you said . . . (Inaudible).

MR. WELHAN: I'm sorry. I tend to mumble.

MR. SPACKMAN: Go ahead.

MR. WELHAN: Yeah, with fewer wells each of which is pumping at a higher rate than a larger number of wells pumping at lower rates. The drawback is that each individual well near the well will induce a larger amount of draw down. That can be controlled by the cycling of the pumping schedule. Whether you pump continuously for longer periods of time, or intermittently for shorter periods of time, to allow the aquifer to recover and keep providing you the desired amount of water that you can extract. Again in a properly designed communal system with a small number of wells, a pumping schedule with surface storage can be designed to make that the best situation possible. So I have to answer your question totally that from all respects, technical, water supply, geologic, a fewer number of wells would be a better situation than a large number of wells.

MR. KLINE: Would you anticipate that there would be a difference, this test was done in the dryer part of the year, in December, January and February? Would you expect any difference later in the spring or at a different time of the year?

MR. WELHAN: That is a good question, because one of the main pieces of information we do not have is what is the seasonal average change in water levels in the aquifer. How much do the water levels change in response to that one time, essentially, one time spring recharge pulse which replenishes the aquifer and then the ensuing summer and fall decline due

to natural drainage and ground water withdrawal? Since we don't have that information our ability to answer your question really is limited at best. From the existing driller's logs where water levels are recorded after the drilling has been completed there is an indication, statistical basically, that wells that are drilled in the January through June period tend to have higher water levels than wells drilled from July to December. It is not a very good correlation. Part of that is because we don't have any ability to normalize these water level measurements. These are all taken at different times of the year, different years, and this figure 4 which is one of the exhibits from my report is merely intended to indicate the kind of uncertainty we have in the depth of the water, where the water table lies in that aquifer system. But it also suggests that there may be a statistical difference between wells that are drilled in the early part of the year, that is in which water levels tend to be higher due to spring recharge, due to lack of irrigation in the later months of the year. And tend to be lower in the summer months of the year when the irrigation withdrawals are greatest. That is not as strong a piece of evidence as my figure 5 which I gained from the same source of data, is plotted to ask the question, is there any indication from the driller's water levels that were measured that there is a difference due to extended times in which water levels can change due to drought or excess water. This figure 5 shows a plot that is a much stronger suggestion that there is at least 10 feet, and up to 15 or 20 feet, average difference between the water levels in wells that were drilled prior to 1987, which is a wet time locally, the period in time 1980 through 1986 was an above normal period of precipitation. We had a lot more precipitation in this area, measurable at the Pocatello airport, on the meterological station and on the Wildhorse Divide

Snow Gauge Station up in the Bannock Range. So wells that are up the Gibson Jack Bench and are drilled prior to 1987 appear to have consistently, with no exceptions, a 10-20 foot higher water level compared to wells around them which were drilled after 1987 to the present, which much of that period of time has been in below normal recharge conditions, drought conditions. That is the strongest indication in my opinion that the storage capacity of this aquifer is the primary concern. Its the thing we know least about and the source of my caveat to my original opinion about the ability of the system to supply the required amount of water.

MR. KLINE: With regard to the test well that was drilled, that was drilled in December, which tends to be the dryer part of the year?

MR. WELHAN: It is the dryer part of the year, but water levels tend to be recovering by that time, as our water level measurements indicated. It's still prior to when you expect significant new water to replenish the system, so it is a reasonable time to say that you have looked at the system at closer to its low water mark than biasing the picture from looking at the system near its high water situation, which would occur if you did it say in May or June.

MR. KLINE: The questions posed by the Idaho Code is, will the proposed use reduce the quantity of water under existing water rights? I think you've already indicated that you thought there was sufficient water. Is that still your position? Do you think there is sufficient water?

MR. WELHAN: Yes I do. As long as you realize that water, most of it is being withdrawn from storage, so we have to understand what that storage, that bank account is. As

long as our estimates right now are somewhere in the right ball park, close to the actual values that we should be using, then yes we do have enough water in it.

MR. KLINE: Is there evidence to indicate that there is insufficient water for the purpose that this applicant is seeking?

MR. WELHAN: No.

MR. KLINE: Is the proposed use contrary to the conservation of Water Resources within the State of Idaho?

MR. WELHAN: Is the?

MR. KLINE: Is the proposed use contrary or consistent with the conservation of Water Resources within the State of Idaho?

MR. WELHAN: It's consistent with. . .

MR. KLINE: No further questions.

MR. SPACKMAN: Mr. Hollingsworth, questions?

WELHAN CROSS-EXAMINATION

MR. HOLLINGSWORTH: When you make the comment about it was producing 70 gallons per minute, and you said it only dropped down to 20-38 gallons per minute. . .

MR. WELHAN: 38.

MR. HOLLINGSWORTH: Can you explain to me why it dropped from 70 gallons per minute to 38 gallons per minute?

MR. WELHAN: When the pump turns on, there is no back pressure, its essentially filling the discharge pipe to the surface. Of course as that is occurring, back pressure is increasing effectively to the pump because the pump is sensing that pressure head above it. Then when it got to the surface it also had to fill the sprinkler line. After that point in time the only back pressure was the pressure of water, given by the elevation head, the elevation distance where the water was and the sprinkler line and where the pump was. Once it filled the sprinkler line, we could discharge water only through the sprinkler heads, because the back pressure increased then over and above that pressure head difference. The elevation difference of where the pump is and where the sprinkler heads are. Because you are no longer able to freely flow water, and to now push it up through the sprinkler heads. So as that pressure increases, and looking at that point, in fact there was a transition period there.

MR. HOLLINGSWORTH: So after that has occurred then it maintained 20 to 38 gallons per minute?

MR. WELHAN: 38. We measure the discharges twice; right after it filled up and then about 5 hours into the test. That was 38, plus or minus 10%.

MR. HOLLINGSWORTH: Can you explain how you actually measured the gallons per minute?

MR. WELHAN: Ok. Each sprinkler head we'd capture in the bucket. Time the rate of capture in the bucket. With the bucket's volume, and the time, we can calculate the discharge rate through each sprinkler head. So we'd measure each sprinkler head, that was the

measurement procedure. And there were three leakage points between the joints and the sprinkler line. The rest of the measurement goes, they're about 5-10 gallons per minute.

MR. HOLLINGSWORTH: When you spoke of a recall, I'm assuming you mean the recall to water to feed back into the well?

MR. WELHAN: The recharge.

MR. HOLLINGSWORTH: The recharge. When you pump that for, I think you said 7.5 hours the first day?

MR. WELHAN: 7.3

MR. HOLLINGSWORTH: Before I go back to my original question, on the second day do you know how many hours you pumped it that day? Wasn't it around 5.

MR. WELHAN: I don't recall. I don't think it was that long at all. Because what we had done was that on the basis of the first 7.3 hours we determined that a good safe capacity would be 20 gallons per minute. So then Guy and Chris went back the next day allowing the aquifer to recover to run a quick and dirty test.

MR. HOLLINGSWORTH: But see to allow the aquifer to recover. . .

MR. WELHAN: Right.

MR. HOLLINGSWORTH: You pumped the well for three days straight, correct?

MR. WELHAN: Three days? No.

MR. HOLLINGSWORTH: Three days straight, on one day, next day and next day. I think it was roughly 7.5 hours the first day, maybe 5 hours the next day, and I think it was 4 the next day.

MR. WELHAN: I don't recall that at all.

MR. HOLLINGSWORTH: When you talk about the recall, is the recall slow or is it fast? The recharge?

MR. WELHAN: It's rapid at first and slows longer and quickly.

MR. HOLLINGSWORTH: Ok. And then when you did the test on Mr. Chad Nielsen's well? Was that done the same day the first pumping was done for 7.5 hours?

MR. WELHAN: Yes. The test itself is somewhat of a misnomer. It is an observation really. We observe the water level in the Nielsen well for a period of 40 days, which span the period in time from the middle of December to after the test.

MR. HOLLINGSWORTH: When you talk about, you said the recharge was slower, I didn't hear what you said on that. On the recharge on the test well, was it slow or fast, or what did you say it was?

MR. WELHAN: It didn't show more than .02 feet of decline.

MR. HOLLINGSWORTH: Then the distance was 1,300 and something feet from the test well to Chad Nielsen's well?

MR. WELHAN: Right.

MR. HOLLINGSWORTH: So can you explain to me then why that far of a distance with the aquifer being pumped from this location to this location, if the recall or recharge is slow or fast, how that could show you the dropage in that much of a distance of another well?

MR. WELHAN: I'm not sure if I understand your question. Are you asking?

MR. HOLLINGSWORTH: I can't understand in my mind, even scientifically, how, if you pump water from this well for 7.5 hours, and you get 38 gallons per minute, Then you go over here and check Chad Nielsen's well the next day, or you said for a 40 day period, 1,300 and something feet away at a different elevation, How you can determine the dropage of that well? To determine if there is enough sufficient water.

MR. WELHAN: The well itself is, the Nielsen well is screened in the same interval of the bench and looking at the same aquifer as the Iverson well, The test well that we pumped at. So that is why we chose it. It is one of the first considerations, Is it sampling or looking at the same system that we are stressing with the pumping over here? So it's in the same system, it's looking at the same geologic materials, the same body of water. Now when this pump starts up it imposes a stress, a hydraulic stress on the aquifer. You could think of it as reducing the pressure, And I am not physically moving very much water from a point 1300 feet away to a well. In fact there is very little being moved physically. The pressure response propagates much faster. Its the pressure response that we are looking to observe and document at that distance. As I said though 1300 feet was a fall back position because it was the only well we had available to us because our first choice, something within 500 feet, was not available.

MR. HOLLINGSWORTH: But why wasn't . . . ?

MR. SPACKMAN: We need to change the tape. It is our high pitched beeper.

(Pause to change the recorder's tape.)

MR. SPACKMAN: Mr. Hollingsworth you were questioning.

MR. HOLLINGSWORTH: You said there was a well available 500 feet away. Which well was that?

MR. WELHAN: That was the, I believe the Diller well.

MR. HOLLINGSWORTH: Ok. Was there a reason I was not approached to have my well to be used in this testing?

MR. WELHAN: I left that to the developers. As I said earlier, we don't have the manpower to go out and do these kinds of tests. So just the logistics of the test like this are owners to say that the least to approach well owners to find out what kind of wells, conditions they have, the kind of pumping schedules they have, would they be willing to make the well available for a monitoring test. We just don't have that kind of capability. Especially in this case which was a situation where I was called, they said we are planning to test this well, would you give us some recommendations about how to do it? And I said great, I will be willing to help you. Because it would give us a lot of valuable information for our purposes. I didn't have the time to go out and approach people. So I rely on the developers to tell me . . .

MR. HOLLINGSWORTH: Mr. Welhan, when you do it on a test well and you pumped the water for three days, to my knowledge. . . ?

MR. WELHAN: No.

MR. HOLLINGSWORTH: . . . it was three days, but one day you were there for 7.5 hours. Then you made the comment that you observed Mr. Chad Nielsen's well for 40 days. What was the reason for checking his well for 40 days, only pumping water out of the one well for one day? What is the reason for watching a new well for 40 days?

MR. WELHAN: The reason is that static water levels are changing. The term static is a misnomer. It simply refers to a no effective pumping. But static water level is changing all the time. And especially as distance increases away from a pumping well, the need to be able to separate the changes that would have occurred without pumping from the effect of pumping become more strict. So as we went up to 1300 feet we realized that we were looking at very small signals.

MR. HOLLINGSWORTH: But from this . . . ?

MR. WELHAN: So we had to be able to have a long term record both before, during and after the test to be able to attempt to separate out these effects and identify the effects of pumping.

MR. HOLLINGSWORTH: A long term record. Can I read an excerpt and see if you would agree or disagree with this? I think this is one that is in the exhibit.

MR. SPACKMAN: I think you probably need to identify where the excerpt is coming from.

MR. HOLLINGSWORTH: Ok. Its ah, I don't remember which exhibit, its marked out.

MR. SPACKMAN: Is it one of your exhibits? (Inaudible). . . identify it.

MR. HOLLINGSWORTH: It's in with the appeal that I submitted to you when I filed the objection to the water permit. It is the original thing that I addressed to you people.

MR. SPACKMAN: . . . protest?

MR. HOLLINGSWORTH: It's addressed to Mr. Dreher, dated the 10th of August, 1996. It was the original and all the attachments I sent you. I believe that is it that you have there.

MR. SPACKMAN: Yes. This is probably it.

MR. KLINE: I will indicate for the record that the only thing that I received by way of protest was simply just that. There were no exhibits attached.

MR. HOLLINGSWORTH: This is my question Mr. Spackman, when I asked you if the stuff I submitted to you on the objection if it would automatically be an exhibit? And you indicated that yes it would be.

MR. SPACKMAN: What I said was, what was in the file with the department would be considered. Now I guess it's the responsibility of the department once a protest is received Mr. Kline, to send you a copy of the. . . (Inaudible) . . . of this matter _____ letter in the files _____.

MR. HOLLINGSWORTH: It is marked as an exhibit, but I don't remember which one it is, Mr. Spackman?.

MR. SPACKMAN: Well this is a, for your information Mr. Kline, this is a letter to the Bannock County Commission.

MR. KLINE: Could I inspect it for just a second to see what it is.

MR. SPACKMAN: Sure. It is dated April 30th, 1996.

MR. KLINE: Ok.

MR. SPACKMAN: What are you wanting to refer to?

MR. HOLLINGSWORTH: It is a document that Lyle S-W-A-N-K presented. And I just wanted to read that one paragraph to ask Mr. Welhan about it.

MR. SPACKMAN: This is the document that is marked as exhibit written by Lyle Swank.

MR. HOLLINGSWORTH: Yes sir.

MR. SPACKMAN: Ok.

MR. HOLLINGSWORTH: The time of maximum water recharge, maximum water draw down will lag the time of surface water recharge by a time period dependant upon the depth, velocity and permeability and slope and gradient. In order to determine the trend of water, the ground water rise or decline, data should be collected for a long enough time period to show the seasonal fluctuations and the annual changes in both the peaks and the minimum levels associated with non-static ground water levels. The water level in a confined aquifer is dependant upon the recharge minus the withdrawals from that system.

My question to you is. When you ran a test for one day and did an observation of Mr. Chad Nielsen's well for 40 days, how can you really make a determination and give an expert opinion that there is adequate and efficient water for the wells that are being proposed to be put in? When. . .

MR. SPACKMAN: Before he answers the question, Mr. Hollingsworth, I think there are two questions that you were asking.

MR. HOLLINGSWORTH: There was two questions.

MR. SPACKMAN: So let's ask the first question. Which was, I think it was whether he agreed with Mr. Swank's (Inaudible) . . .

MR. HOLLINGSWORTH: Correct. I was wondering if you agreed with Mr. Swank's comments was here? Over a long period of time and to do the testing instead of having it within a one day test.

MR. WELHAN: As I have already gone on record as saying that one of our greatest deficiency is in information right now is not having long term records of water level changes

in the aquifer. That would tell us, is the aquifer subject to 10 to 20 foot seasonal water level changes from year to year and is it seeing long term declines of the same order when you go through six, seven years of drought. That is one of the key missing pieces of information right now that we do not have. And I'm working by inference on the basis of existing driller's reports and the water level information in those. So I agree with that source, that long term records are necessary to understand response in the system. I have seen in the water level records from the existing driller's logs is evidence that in fact, we are pulling most of our water out of storage and the water level in the aquifer is going up and down in that 20 foot range.

MR. HOLLINGSWORTH: So your answer to that question, is it yes, a long term study would be more feasible than this one test study that you did?

MR. WELHAN: Well, . . .

MR. KLINE: I'm going to object to the form of the question, because he said nothing about feasibility. I think that is a very different issue if he is going to raise questions about feasibility.

MR. SPACKMAN: I'm not certain that I would distinguish Mr. Kline's objection, maybe I just wasn't following the question. Ask the question again if you would.

MR. HOLLINGSWORTH: I'll restate it then. Never mind, just strike it. Just forget it.

MR. HOLLINGWORTH: I know the driller's logs provide a lot of information including the draw down as well as the discharge data, correct? But that's only helpful in determining expert characteristics. But in your opinion, the well logs when they classify that this produces

"X" amount of gallons per minute? In your opinion is that really what it is, gallons per minute from the well logs?

MR. WELHAN: That's a very rough estimate that depends on how the driller actually developed that well, initially, to get that estimate. If he did a controlled draw down test, if he did a short term draw down to determine how much water he can get from a short term as opposed to long term, The accuracy of his water level measurements. So there are a lot of factors that make the information in driller's logs very coarse.

MR. HOLLINGSWORTH: I think it's sections 18 and 19 that this development is in, if I remember right. In your opinion from the conversations that you and I've had in the past is this not still classified as a poor aquifer area?

MR. WELHAN: A poor? It's not a . . .

MR. HOLLINGSWORTH: With reference from Indian Hills School to Mink Creek?

MR. SPACKMAN: (Inaudible) He needs to be able to respond. (Inaudible)

MR. WELHAN: It is not a world class aquifer. But there are hundreds of others just like it all around the state, and people are withdrawing water from, right now. With permeability in the range of half to one-foot a day, it's not a bad aquifer, in fact its pretty good. But good or bad, it has a lot to do with your frame of reference. Whether your living in the desert, or whether you're living in Florida. So. . . .

MR. HOLLINGSWORTH: I can just give him my copy, Mr. Dunn you don't have to do it, but Exhibit J and Exhibit A. If I could just approach him I could give him mine.

MR. SPACKMAN: Why don't we do that for you?

MR. HOLLINGSWORTH: When you made a comment about a 7 year drought, to your knowledge when did the Pocatello area of Bannock County, in the southern part have a drought? Or if you have knowledge of that, how long was the drought, and if we're still in a drought?

MR. WELHAN: I'm looking at my long term precipitation records here. And the scale is pretty coarse on this, the divisions on the scale are coarse. So it looks like starting about 1986 annual precipitation totals went below normal for a long term average and they stayed that way except for in one year until 1993. So '86 - '93, 7 years. With the exception of one year that was slightly above normal.

MR. HOLLINGSWORTH: If you'll look at Exhibit A, this is the information that came from the University of Idaho in Moscow? There are some charts I asked them to prepare for me and it's the Pocatello precipitation. With reference to what you are talking about, can you explain to me when you look at Chart No. 1, Mr. Welhan? Now these are supposed to be inches, I understand.

MR. WELHAN: Right.

MR. HOLLINGSWORTH: Can you explain to me, when they say precipitation in inches, does that mean for that day?

MR. WELHAN: No these would mean average monthly amounts.

MR. HOLLINGSWORTH: I had them do it for a period of twenty years. So these charts reflect that.

MR. WELHAN: Ok. So looking at the first month on the chart, is the average January precipitation based on 20 years of record. So in twenty Januaries the average precipitation was so and so.

MR. HOLLINGSWORTH: The reason why I want you to keep that in mind, when you make the comment about the aquifer of the Gibson Jack Creek area, I think you made the comment that it is seasonal due to the precipitation. Correct?

MR. WELHAN: (No audible response.)

MR. HOLLINGSWORTH: So if the water availability in your opinion in that aquifer is due to a seasonal runoff, which I am assuming you're making a comment comes from rain and snow storage and so forth?

MR. WELHAN: Snow. Mostly snow. Yeah.

MR. HOLLINGSWORTH: And if we've had a, and this is a drought area and has been over a period of years, and then when you speak of the fluctuation of water where it is high, I think you said, in January and February? And then it gets low in the summer months.

MR. WELHAN: Well, not January or February; March, April, May.

MR. HOLLINGSWORTH: Ok, thank you. Then we get into the summer months, and then where you have a well that produces 20 gallons per minute, in your expert opinion again, how can you say that the water will be there for 20 to 38 gallons per minute for the usage of four homes or four residences off from that well?

MR. WELHAN: I'm not God so I can't say yes it will be there, no ifs, ands or buts.

MR. HOLLINGSWORTH: The reason I ask that is because you said in your expert opinion, the water is there. And I'm trying to ask the questions properly, because the water is not there.

MR. WELHAN: If you recall I also said that the expert opinion is based on the information in hand right now. So with the most reasonable estimates, and also looking at the pessimistic and optimistic ranges for those estimates of various hydrologic properties for the aquifer, the amount of water that could be expected to be flowing through the aquifer, the amount of water that is available from changing the storage in the aquifer. That is the basis of my opinion. Those estimates are based on the best available information to date. Those are going to change as more information becomes available. But the technical opinion is based on information existing today. I can't look into the future, and say that we will . . .

MR. HOLLINGSWORTH: But is that not what you have done though when you have made the comment that the water is there for a project that is going to go in to put in additional 9 to 12 wells? You are making the comment that yes, the water is there. Now you are saying that, you are not God and you can't predict it, so how can you make an expert opinion on that?

MR. KLINE: I'm going to object. That is argumentative.

MR. SPACKMAN: Well, it may be, but I think it is cross-examination, . . . (Inaudible) and he's entitled to pose those kinds of questions. I think . . . (Inaudible) overruled.

MR. WELHAN: Any expert will tell you that all we can do is provide our opinion based on the best information available, at the time that the question is asked or the problem is posed. And that is all I've been able to do. I've tried to make that clear in my opening

description of what we did, that in my best opinion with the information we have available, with the estimates we can make about how much water is likely moving through that aquifer and how much water is available for drawing from storage in that aquifer. If that aquifer is able to sustain the numbers of wells now and plus the wells that are proposed.

MR. HOLLINGSWORTH: I think you already answered this question, but you made the comment that when you just used Chad Nielsen's well when you did this testing for the 7.5 hour period, and you observed his well for 40 days, why in your opinion, why didn't you require or at least ask the developers to get more than just Chad Nielsen's well to be observed? Like mine for instance, or even John Grails. Why did you feel that just the one well would suffice in doing the test to make this opinion?

MR. WELHAN: That was not my first choice. I was told though that was the only available well.

MR. SPACKMAN: Just a moment. (Inaudible)

(Pause to address interruption of hearing caused by maintenance workers.)

MR. WELHAN: I forgot where we were now.

MR. SPACKMAN: Let's go forward.

MR. HOLLINGSWORTH: Well I think you answered the question anyway. Because of your line of work and what you are doing and keeping with what you are doing, I am assuming that you get information from the drillers, correct?

MR. WELHAN: Yes.

MR. HOLLINGSWORTH: Ok. What has been the overall opinion of the drillers in this area, to you, about the water aquifer and the water availability from the Indian Hills area south?

MR. WELHAN: It depends on where you are drilling. For example, if you are south of Indian Hills, in the valley bottom, you don't have any problem any time, there is just a huge amount of water available. If you are drilling, say up in the bench.

MR. HOLLINGSWORTH: Wait, when you say a huge amount, you are talking about the lower levels or in the higher levels.

MR. WELHAN: Lower levels.

MR. HOLLINGSWORTH: Ok.

MR. WELHAN: But if your talking about drilling in the bench areas, it is very much a hit or miss proposition. Which is one reason why water witchers are still in business. Because they are still one of the most used resources for people who need to drill a well, ok to find water, to tell a driller; ok drill here, rather than here. Because a driller will tell you up in those bench areas if you let me go, I might hit water, I might not. So the owner of the well, the person that is paying for the drilling has to be the one who makes the final decision where is he going to drill. It is his risk.

MR. HOLLINGSWORTH: I don't think you've answered, I need to be more direct. What was the opinion of the drillers then in that area on the higher levels? That you got from them about the water availability?

MR. WELHAN: That it is limited. It is there and you'll have to expect some risk in finding it.

MR. HOLLINGSWORTH: Were you present when they drilled the additional 125 feet, I believe it was, on the test well that Mr. Iverson had put in?

MR. WELHAN: No I wasn't.

MR. HOLLINGSWORTH: So you don't have any knowledge of what occurred at that?

MR. WELHAN: Only from the well logs that was provided after the drilling was completed.

MR. HOLLINGSWORTH: With your knowledge that you have, would it stand to reason that if just the one test well, but let's say that they are allowed to have nine wells in above this test well, would it stand to reason, in your expert opinion then that those of us who are surrounding the subdivision on the east and north side would have water problems, especially in the months of July and December like you indicated when the water level is low. Especially when you are looking at 20 gallons to 38 gallons?

MR. WELHAN: It goes back to the whole question of what the water balance of that aquifer is. That is, how much is moving through it, as opposed to how much is being extracted from the bank account, in lowering the account balance. From the estimates I have been able to put together the amount of water that actually flows through is a tenth of what people are withdrawing from storage. So the storage potential of the aquifer is extremely important. It is what you depend on today and what you have depended upon as an existing well owner up there for your water on a year round basis, to carry you through the summer

months and to carry you through the drought years. There is only a certain amount of water that gets recharged through that system and for the rest of the time of the year you are pulling water out of that bank account.

MR. HOLLINGSWORTH: There was a conversation made about Mr. Anderst when he was commenting, and I think maybe you're the one that can put it to bed for me and maybe for Mr. Diller. When he made the comment that when people up there now who are water users, that why haven't we taken action against each other because the problems we are having with our wells? How do I ask this, to make it a question? When Mr. Everett Diller pumps his irrigation well with an 8-inch casing and he pumps that water for a day and a half to irrigate his field, then the next person next to him turns on their well, not the same day, but a day and a half or two days later, sometimes pumps air. With your expert opinion, what would be causing that? You may want to highlight on it, but. . . .

MR. WELHAN: Party well interference, it is his pumping effect [that] would lower the water level in the aquifer some distance away from his well and by the time that you turned your well on, they hadn't fully recovered. The water balance of the aquifer, the amount of water in storage at that time, if it is where the static water level sits and where your pump sits, relative to that.

MR. HOLLINGSWORTH: Now the question is on this is then, on this aquifer to your knowledge isn't there more than just one stream of water that goes through? It's not just one big ocean under the dirt where everyone connects to. Am I correct in assuming that?

MR. WELHAN: That is too big a question, I couldn't answer that. Because . . .

MR. HOLLINGSWORTH: Well, I guess I'm asking with your knowledge, under the ground isn't the water in various streams and different flows? In other words, if this is the Gibson Jack Subdivision area, and there is a well here and a well there, could water be flowing this way as well as that way in separate streams, so that when you make the comment that drillers drill a well they take it by chance, of maybe getting water or not getting water. Or hitting the proper table, or not hitting the proper water table, and they made the comment that witch doctors come in and do this and that. If that water flows in different directions, would it all go into the same table, or would it not?

MR. WELHAN: It's very misleading to think of what water witchers say in terms of directions of movement or sources. In this type of geologic environment, in this type of sedimentary aquifer, there is a lot of averaging that goes on so we can consider the way water is moving in that sedimentary package. If it is mostly the same kind of material, now that is one big "if" that we don't know, but we can get the well logs that we have that are spread across the bench from your area down to the far end of Stephanie Road, from Mr. Pickens at the highest elevation of the bench down to Mr. Bates, I think is below you. The geology looks fairly uniform, In fact much more uniform than I would have guessed, prior to this whole discussion when we got into looking at the geology and trying to determine what we were doing in terms of this test. So it is fairly, if you want to call it, a well behaved system. That is its geology is not exceedingly complex, there are some regularity to it, and that allows us to make simple conceptual pictures of what the beast looks like.

MR. SPACKMAN: I want to interject right here. How much longer will we be? I'm not trying to press you towards some quick answer, Mr. Hollingsworth, but it is almost 1 o'clock, and I have a few questions myself, of this witness.

MR. HOLLINGSWORTH: I guess that you would probably ask better questions than I, Mr. Spackman. But could I ask maybe one or two questions when you are done with your questions? Can I do that?

MR. SPACKMAN: Again, I want to know, I think we are at a point where we ought to break, and come back unless we can wrap this up. Its up to you.

MR. HOLLINGSWORTH: I'll just ask him one more question, well two then. I don't know if I can ask this or not, but, I contacted you in Las Vegas, Nevada. We had a telephone conversation, I guess this would be a yes or no, but did you not indicate to me at that time that you didn't feel there was enough water to do what these gentlemen were proposing to do. And if you agree and you agree that you said that, why did you change your mind?

MR. SPACKMAN: One question at a time.

MR. WELHAN: Ok. When you called me, what I was thinking of was the statement I made in this report to the developers which is, is it possible to tell, since the natural recharge rate or the water balance of the aquifer is unknown, it is impossible to say what the number of new wells in the proposed development will have a significant impact on the aquifer storage. That is what I was getting at. In the intervening time, I have seen that independent estimates of the hydraulic properties of this package of bench sediments, that we are talking about, corroborate these measurements. So it gives me more confidence to say that, ok

maybe we don't know just something about a little part of that sedimentary package right around the well that we can generalize a little more. Because if we knew what the regional scale of water balance comes back saying that our permeabilities are in the same range. So, maybe that package is a lot more uniform than I would initially guess. And with those kinds of other lines of evidence and this kind of a scenario based look at the question of what is the water balance, what is the capability of the aquifer that is applied to certain amounts of water? I do have new information if you will and a new perspective. But what I said before, was not that there is not enough water, its that we just don't know, as I said in the report. Which is the exhibit that you have with you.

MR. HOLLINGSWORTH: Well this is my last question then. The conversation that you and I had in your office, at the _____ University, you made the comment that Mr. Chris Pine wanted you to state that there was adequate water. And that you said that you could not make that kind of a statement, and this was after you did the test well. This was after that you did this compilation so again, why the change?

MR. WELHAN: As I just tried to say, at the time here when we had the initial look at this system, that was my official line, that we don't have enough information to say yes or no, because the water balance is the whole question. Its not the behavior of one well, its the cumulative behavior and impact of all the wells that are up there and will be up there. Since then with the retrospective look at corroborating evidence that tells me that, ok, these permeabilities are reasonable to consider for the aquifer as a whole up there on the bench. Looking at a scenario based approach, I have reason to defend an opinion that there is

adequate water. That is based though on the recommendation that you are drawing that water 90% or more of it from storage. And if you didn't have that spring recharge every year, you wouldn't even last more than a year.

MR. HOLLINGSWORTH: Ok, when you think about that storage, Mr. Welhan, that is the concern. That is where. . . I . . . . (Inaudible).

MR. WELHAN: And it always has been. I've made that clear to you, I've made that clear to the developers.

MR. HOLLINGSWORTH: . . . in your expert opinion and you really can't give an expert opinion if the water is there?

MR. WELHAN: Well but . . . I've. . . .

MR. HOLLINGSWORTH: You can't. Because what you are saying the draw down that is going down that period of time, and if you are looking at 20-38 gallons per minute to supply four homes, which I don't see how it could ever be done, I think it takes 15 gallons to do one home to my knowledge, from what I have read. I can't see again how you could say the water availability is there.

MR. WELHAN: Well don't forget the 40 gallons per minute was a proved yield sustainable for seven hours of continuous pumping.

MR. HOLLINGSWORTH: Yeah, but you also made the comment that they had to wait the next day for a recharge.

MR. WELHAN: Yes.

MR. HOLLINGSWORTH: See?

MR. SPACKMAN: Ok. I want to cut off the discussion a little bit, because I don't think that this is . . .

MR. HOLLINGSWORTH: Ok. I'm done with the questions. I'm getting argumentative now.

MR. SPACKMAN: Yeah, and I don't think this witness is prepared to testify about whether 15 gallons a minute a day is adequate versus 20 gallons a minute per residential use. I don't think that is his area of expertise. And I want to leave that alone.

MR. HOLLINGSWORTH: I don't have any more questions. Thank you Mr. Welhan.

MR. WELHAN: Thank you.

MR. SPACKMAN: Mr. Diller, your questions.

MR. DILLER: Ok, when you was pumping on that new well, how many birds did you have on those irrigation lines?

MR. WELHAN: If I had my complete set of notes here I would be able to tell you, its ah, about a dozen and a half.

MR. DILLER: 18?

MR. WELHAN: Something like that Maybe a little less, 16?

MR. DILLER: I think you better check your notes again, because 18 birds you've got to have a lot of water.

MR. SPACKMAN: Ok, you are testifying now again. (Inaudible) . . . ask questions.

MR. WELHAN: Each individual sprinkler head was only getting 2 gallons a minute or something.

MR. DILLER: In fact they weren't sprinkling to their fullest extent, then is that what you're saying?

MR. WELHAN: That is right.

MR. DILLER: Ok. Also you were saying something about the back pressure, that all is regulated by the number of birds you've got, right?

MR. WELHAN: Right.

MR. DILLER: Ok, the more birds you have, the lower back pressure and the less number of birds you have the higher the back pressure?

MR. WELHAN: Right.

MR. DILLER: Why would you want a static well to be checked, when you are pumping this other well out? Why do you want a static well?

MR. WELHAN: The reason is that to be able to describe the hydraulic behavior of the aquifer, you need two basic pieces of information; one is the rate of the permeability of the aquifer, it's the ability to move water, And the other is a parameter known as the storage parameter. It is a measure of how much additional water you receive from the water decompressing and the aquifer skeleton acting like a sponge. With only one well, if we only measured the draw down response in the pumping well, we'd only be able to give you information about that first parameter, the permeability. To be able to say anything about the second parameter, which is necessary to be able to talk intelligently about the ability of the aquifer to provide water to a number of wells or distribute in different configurations, we need a second well, whose water level is responding only to the pumping well.

MR. DILLER: Is there any possibility that both those wells are not on the same aquifer?

MR. WELHAN: There is always a possibility. Because whenever I look at . . .

MR. DILLER: What is your professional opinion? Are they on the same aquifer?

MR. WELHAN: My professional opinion is that they are in the same aquifer. And that is based on the consistency in the geologic descriptions that several different well drillers have provided on 17 wells.

MR. DILLER: Ok. What is your professional opinion on how the well drillers in this area are drilling wells?

MR. WELHAN: How they are drilling wells, what do you mean?

MR. DILLER: How are they drilling? Are they doing it professionally?

MR. KLINE: (Inaudible).

MR. SPACKMAN: If Mr. Kline won't objection, I will limit that question. I don't think that is relevant . . . (Inaudible).

MR. DILLER: Well its already a statement in one of my exhibits here.

MR. SPACKMAN: Well, those have simply been marked, Mr. Diller, they haven't been received into evidence. And if you want to offer that kind of information, I'll probably move the same way, that it is not relevant to what we are discussing. This isn't an inquiry about the competency of the well drillers in the Pocatello area or southeast Idaho.

MR. DILLER: Well the only problem is on that one is they are saying that because some people having their wells go dry is because they had well drillers that were doing barbaric ways of drilling wells.

MR. SPACKMAN: Well construction is always a question in determining whether someone is being affected by someone else's well.

MR. DILLER: Ok. The test well that was drilled was it done in the most scientific well drilling procedure?

MR. WELHAN: No. It was done in a standard manner for wells in Idaho. In fact it was done a little better than most because of the drilling method employed and the sealing method employed. But the actual completion of the well where it communicates with the aquifer is, you will probably see that in 100% of the wells that are drilled in the same manner of . . .

MR. DILLER: How were they done then, that way? Are they perforated, are they screened or what?

MR. WELHAN: As I understand the casing is perforated.

MR. DILLER: Ok.

MR. WELHAN: Over certain depth intervals in which the driller determined that there was sufficient water to supply the needs of the client.

MR. DILLER: But is that the most accurate way of doing it?

MR. WELHAN: No, it's not the most accurate, as I say it's the standard way of doing it in Idaho.

MR. DILLER: With the type of terrain that you have here with the rocks, boulders and so forth?

MR. WELHAN: With the type of . . . ?

MR. DILLER: Terrain. You know the underground terrain you have boulders, you have rocks, you have . . . .

MR. WELHAN: That method of well completion allowing the well to communicate with the aquifer is very standard practice in the drilling community in Idaho. It's not the best way, because it doesn't allow communication with the aquifer in the most efficient manner. But for domestic uses the differences are small. For an irrigation well it becomes more important.

MR. DILLER: Ok. On that, the hillside there where the two wells were at, the test well and Chad Nielsen's, are those approximately on the same level, as far as elevation and so forth?

MR. WELHAN: Yeah. I could tell you . . .

MR. DILLER: Does that make a difference to the response to the aquifer, one pumping down the other one?

MR. WELHAN: No.

MR. DILLER: Doesn't have any possibility?

MR. WELHAN: No. In fact it makes the interpretation a little simpler. There are fewer steps we have to go through to make sure the interpretation is correct.

MR. DILLER: You were stating something about background noises in the well as you were monitoring? What kind of background noises was you looking for?

MR. WELHAN: The water level changes would go up and down on a daily basis and then there was a secular or a long-term trend of up and down and _____ to that was a one or two week period of up and down trend that was due to the barometric pressure changes. So that is what I meant by noise. If you expected to measure a static water level and say that the water level in the aquifer is this, you couldn't say that because it would actually be a statistical window in which you have to say there is noise variation.

MR. DILLER: Is that system more accurate than the way, like now the well drillers whenever they come out and drill they bring two pieces of wire and all that stuff and drop it down in there. Then they have a test light up here, and when the light comes on they've hit the water level and so forth.

MR. WELHAN: Right. We are using the same method. This method that was used to record the Nielsen well, though is an electronic pressure sensor. That stays down in the well and it's responding to the pressure on a membrane that is converted to an electrical signal and recorded in a small computer.

MR. DILLER: That's all I have then. Thank you.

MR. SPACKMAN: Mr. Kline.

WELHAN REDIRECT

MR. KLINE: You are not being paid to testify today?

MR. WELHAN: No.

MR. KLINE: You're not being bought and paid for by Chris Pine?

MR. WELHAN: Never. No, I've made that clear because as a state agency our mandate is to provide the best available technical information, geologic, hydrologic, environmental, that we are asked to. That is what I told the developers when they first contacted me, the chips will have to fall where they do, because I can't bias the information and the interpretation.

MR. SPACKMAN: Ok. If there are no further questions . . . (Inaudible) based on the questions Mr. Kline has asked . . . (Inaudible) . . . I will have to limit the scope of the cross-examination.

MR. HOLLINGSWORTH: I have no cross-examination.

WELHAN RECROSS-EXAMINATION

MR. SPACKMAN: Ok. I need to clean up my notes, because there are some inconsistencies that may be my misunderstanding. Mr. Welhan, I have written here and I want you to tell me what is wrong. I want to just read to you from my notes. I've written that you feel confident that most of the water being withdrawn is coming from storage?

MR. WELHAN: That is correct.

MR. SPACKMAN: I have written here that the storage water would not be, and when I'm talking about storage water I suppose it's water stored in . . . the aquifer.

MR. WELHAN: The aquifer.

MR. SPACKMAN: But it would not be sufficient to rely on over a long period of time, is that correct?

MR. WELHAN: If that is what I said, I didn't intend to say that. The water level, the change in storage is the primary supplier for water users up there. Is the annual change in aquifer storage, which is being relied upon. . . .

MR. SPACKMAN: What I understood you to say, and I tried to be careful in writing this down, is that it would not be sufficient to rely on over a long period of time, if there were 37 new users. Or ten new wells.

MR. WELHAN: I am sorry if you interpreted what I said that way but, my point was that with the storage being the primary source of water exploited in the bench system, that as long as we are aware that we are pulling water out of storage and incurring a seasonal, annual change that there will be sufficient water. Where we can't go, where we're going out on a limb drastically is to say that will carry us through drought years as well. But from the information I have from the drillers records, if we are talking about 20 foot difference between normal water years or good water years and normal water years, that is of the same water magnitude apparently as the seasonal change in storage.

MR. SPACKMAN: Do you believe that there are some drought years where there may not be sufficient storage for all the users?

MR. WELHAN: If we are looking at six - seven years of drought conditions that superseded this particular study, as being a typical drought period. You might be able to infer

that for droughts that extend much beyond that, we could be suffering larger storage declines and hence more serious problems with breaking suction.

MR. SPACKMAN: You are not testifying, at least based on what I have written down here, that the aquifer is in a continued decline. That's. . . (Inaudible).

MR. WELHAN: No. No. It appears to be continually recharged, replenished. What our lack of information right now centers on is, on what scale does that replenishment occur? Does it replenish itself more than enough every year, or does it replenish itself with more than enough, or especially less than enough? And my guess right now, if a 20 foot difference in aquifer storage, or like if a water level is between good years and drought years of the order of 20 feet, which is comparable to the, which represents something of the order of six to seven years of below normal water years, That magnitude of water level change being comparable to what appears to be a seasonal water level change of the same amount suggests that it probably being recharged more than enough every year. So only in drought years do you see accumulative effects over five, six, seven years adding up to something of over 20 years total. So no, I'm definitely not saying that we've got a long term problem. As long as we have annual recharge and replenishment, it appears that that aquifer is capable of replenishing itself and sustaining the kind of usage we are talking about.

MR. SPACKMAN: I think I heard you testify that this is a confined aquifer.

MR. WELHAN: It appears to be, because of the strong barometric response, the storage coefficient estimated from that response is to the order of .0001. So that puts it into a classical type of confined or strongly semi-confined aquifer.

MR. SPACKMAN: Have you determine the boundaries of that confined aquifer?

MR. WELHAN: No. You mean vertical boundaries?

MR. SPACKMAN: Well, or horizontal?

MR. WELHAN: Horizontal - No. All we can do right now is look at the aerial portion of the aquifer which is bounded on the west side, up at the foothills by bedrock, by Gibson Jack Creek and out to the end of Stephanie Lane.

MR. SPACKMAN: You have not determined the actual storage within that aquifer, in say acre feet of water?

MR. WELHAN: I can give you an idea of what the storage is per foot of thickness. We are talking about an aquifer that appears to be on the order of 150 feet thick from the top of the average water levels measured down to its base on the clay zone, about a 150 feet, and per foot of thickness the water in storage is 1.5 million cubic feet. Yeah, 1.5 million cubic feet. So multiply that by 150.

MR. SPACKMAN: Just a couple of other questions. You said you think a pumping schedule with all the wells has merit. This is paraphrased, to protect from multiple draw downs. What was your reason for making that statement?

MR. WELHAN: What was the statement again?

MR. SPACKMAN: Well, you were talking about a pumping schedule for the users. So that they were all not pumping at the same time.

MR. WELHAN: And this is on, between the nine or ten wells we were talking about?

MR. _____: I think we were talking about the difference between individual wells, 25 or 30 of them, as opposed . . .

MR. WELHAN: . . . versus nine or ten.

MR. KLINE: . . . as opposed to 10 wells. And which would have a greater impact and I think it dealt with the running small wells continuously versus running a few wells intermittently.

MR. SPACKMAN: Ok. Well I'll leave that particular question. The last question is, I wrote here that you said the storage is 1/10th of what is being withdrawn.

MR. WELHAN: No, that's not right.

MR. SPACKMAN: I think I wrote that down verbatim, that the storage is 1/10th of what is being withdrawn.

MR. WELHAN: No I said the water that is moving through the aquifer is 1/10th of the storage.

MR. KLINE: Yes.

MR. SPACKMAN: Let me write it the way you said it.

MR. WELHAN: The amount of water that we can estimate that is moving through the aquifer given the hydraulic gradient, the permeability, the thickness of the aquifer, the width that we want to consider for that bench area is 1/10th, actually less than a tenth, of the amount of storage that amount of water is being withdrawn from storage.

MR. SPACKMAN: I'm writing. The storage moving through the aquifer . . .

MR. WELHAN: No the water moving through the aquifer . . .

MR. SPACKMAN: What? The storage what?

MR. WELHAN: No not the storage. The water moving through the aquifer.

MR. SPACKMAN: Ok. Is 1/10th . . .

MR. WELHAN: Is 1/10th or less of the amount of water being withdrawn from storage.

MR. SPACKMAN: Thank you. Now have my questions raised any others?

MR. HOLLINGSWORTH: No.

MR. SPACKMAN: Thank you Mr. Welhan. We will break for lunch.

MR. SPACKMAN: We are recording again and Mr. Kline you may call your next witness.

MR. KLINE: I call Sherl Chapman.

MR. SPACKMAN: Mr. Chapman will you come forward please and raise your right hand? Do you swear to tell the truth, the whole truth and nothing but the truth?

MR. CHAPMAN: I do.

MR. SPACKMAN: Thank you. Please be seated. You may question Mr. Kline.

MR. KLINE: Thank you. Mr. Chapman would you state your full name for the record please?

MR. CHAPMAN: My name is Sherl L. Chapman.

MR. KLINE: And where do you reside?

MR. CHAPMAN: Meridian, Idaho.

MR. KLINE: And what is your occupation?

MR. CHAPMAN: I am a geo-hydrologist.

MR. KLINE: What is a geo-hydrologist?

MR. CHAPMAN: The combination of a geologist and hydrologist. I have a degree in geology and then post-graduate work and on the job work, subsequent training in hydrology.

MR. KLINE: What is your current position?

MR. CHAPMAN: I am the President of Sherl Chapman Consulting, Incorporated.

MR. KLINE: And what type of work does that involve?

MR. CHAPMAN: I work in the field of ground water development, water rights, geothermal development, other water resource development, water measurement and the other fields of hydrology.

MR. KLINE: What degrees do you have and where did you obtain them?

MR. CHAPMAN: I have a Bachelor of Science Degree from the University of Puget Sound and then just subsequent work in upper level courses.

MR. KLINE: I request that he be recognized as an expert in the field.

MR. SPACKMAN: Mr. Hollingsworth?

MR. HOLLINGSWORTH: I have no objection.

MR. SPACKMAN: Mr. Diller?

MR. DILLER: No.

MR. SPACKMAN: I wanted to ask if Mr. Kelly . . . (inaudible)?

MR. KELLY: No.

MR. SPACKMAN: Mr. Chapman is recognized as an expert.

MR. KLINE: Thank you. Are you familiar with the area around Gibson Jack?

MR. CHAPMAN: I am.

MR. KLINE: Are you familiar with the particular project that is being proposed by my clients?

MR. CHAPMAN: Yes.

MR. KLINE: Would you explain your history and when you first became involved with Gibson Jack area?

MR. CHAPMAN: I was initially contacted about doing some hydrologic work in this area, back in 1984. I was contacted because of a proposed development and analysis of the hydrologic system that needed to be made to determine initially whether or not there was a capability of developing individual domestic wells for 52 lots in the Gibson Jack Subdivision. I conducted an investigation in the area to determine the capacity of domestic wells and just in general the various hydrologic parameters of the aquifer in that area. That resulted in a report that was developed and sent to my clients in 1984. Subsequent to that in 1985 I was again contacted and requested to do something more in detail to try and refine what we had done in the past and to better define the hydrologic parameters. I conducted a second well test at that time and it was conducted by a registered professional engineer under my supervision. We developed the hydrologic parameters and then that resulted in a report which was given to the clients in 1985. Since then I have not conducted any work on the ground in that area, but have reviewed the records of the Department of Water Resources and also Mr. John Welhan's report that was done in 1996.

MR. KLINE: Your observations in 1984 and 1985, how would you characterize the water availability in that area?

MR. CHAPMAN: At that time I concluded that there was sufficient water for individual domestic wells and wells of greater production up into the area of 20-25 gallons per minute, but I did not believe that there was a good potential for the development of irrigation wells in the area to irrigate the full two and one-half acres on each lot as had been initially considered by the project proponents.

MR. KLINE: In your review of Dr. Welhan's report, is there anything in particular that you find noteworthy?

MR. CHAPMAN: The thing that I noticed was that the data that Dr. Welhan gathered which was certainly more comprehensive and more detailed than I gathered and the conclusions that I have drawn both in the 1984 and 1985 reports tracked very closely, particularly with regard to the specific capacities and the transmissivity of the aquifer. That would lead me to believe that since the analyses were done many years apart in different areas of the subdivision that the data from all three of the reports is consistent and that the conclusions that Dr. Welhan has testified to earlier this morning are accurate, within the normal range of error that we would expect in such analysis.

MR. KLINE: When you did your review in '84 and '85, how many wells did you test or didn't?

MR. CHAPMAN: We pump tested a different well each time and we used a different observation well each time. The first test in 1984, we used a pumping well in Lot No. 1 and an observation well in Lot No. 2. In 1985 we used a pumping well. . .

MR. HOLLINGSWORTH: Excuse me Mr. Chapman. Could you indicate that those lots are in the Gibson Jack Subdivision or where are they at, when you say lots?

MR. CHAPMAN: I am sorry the lots are in the Gibson Jack Subdivision.

MR. HOLLINGSWORTH: Thank you.

MR. CHAPMAN: The second pumping test was in Lots 3 and 4. With the well in Lot No. 3 being the pumping well and the one in Lot 4 being the observation well. In the case of the

first test the observation well did demonstrate six tenths of a foot of draw down. In the second test we found no draw down. The first observation well was 270 feet from the pumping well. In the case of the second pumping well test, the observation well was approximately 400 feet away. In both cases the tests were run around 25 or 26 hours continuously.

MR. KLINE: The standard for review of the applications include questions; will the proposed use reduce the quantity of water under the existing water right? How would you respond to that inquiry?

MR. CHAPMAN: I think the quantity of water available beneath the Gibson Jack Subdivision is sufficient for the project as its proposed. I would agree with Mr. Welhan that there is significant water in storage beneath the Gibson Jack Subdivision, more than enough to satisfy the needs of the project.

MR. KLINE: And that storage is recharged annually?

MR. CHAPMAN: As far as we know. Yes.

MR. KLINE: Do you see any evidence of what we might refer to as water mining, involving that there is going to be a net depletion of the aquifer in that area?

MR. CHAPMAN: I do not, I have not found any evidence or any records that would indicate that there is a continual and consistent decline in this area. There are very few long term observation wells in the vicinity, but what little data we do have would lead me to believe that there is not mining.

MR. KLINE: Is the proposed water supply sufficient for the purpose intended?

MR. CHAPMAN: I believe so, yes.

MR. KLINE: Will the proposed use be contrary to conservation of water resources within the state of Idaho?

MR. CHAPMAN: Now I think the way the project proponents have the subdivision laid out now, is probably more consistent with conservation than perhaps individual domestic wells. As Mr. Welhan pointed out, if you had 37 or 38 individual domestic wells in the area, you could end up in a situation where you had longer term pumping, more pumping, less controlled use of the ground water system in the area. With the proposed three or four party systems and a storage vessel with a self-policing that has been discussed earlier today, as well as the ability to operate the pumping system so that they pumped essentially less water for a short period of time to fill up the storage system, I think that demonstrates an effort toward conservation as apposed to being contrary.

MR. KLINE: When a well is drilled, do you just leave it and forget it, or does it require some maintenance?

MR. CHAPMAN: Wells are just like any other mechanical piece of equipment that we have. They do require maintenance. Particularly in Idaho where we have typically hard water, or water that is highly mineralized. And that problem is exacerbated in areas where you have limestones. Because of the high calcium carbonate content. Wells need to be cleaned and they can be cleaned through a number of different types of efforts. Particularly open bottom wells that don't have perforations, can accumulate sediment in the bottom of them which restricts the ability of the well to produce water at the same level as it might have

when it was originally drilled. If it is perforated or screened, calcium carbonate can accumulate on the inside of the well bore, much the same as you see hard water deposits in a hot water tank or in piping and seal off those perforations. That leads to a lowering of production, increased draw downs, deeper pumping levels and sometimes a secession of the production almost entirely.

MR. KLINE: Are there steps that can be taken or need to be taken to keep a well vital?

MR. CHAPMAN: Yes. The steps that you can take are to clean them either through a sonic devise, high pressure water jetting, acidization, other techniques of cleaning of a well. There are a number of standard and usual efforts and opportunities for cleaning and maintaining wells.

MR. KLINE: In March 20, 1984, you authored a letter to Alpine Engineering, have you had occasion to review that letter as of late?

MR. CHAPMAN: Yes.

MR. KLINE: Have you had an opportunity to review that letter since you have reviewed the information obtained by Dr. Welhan?

MR. CHAPMAN: Yes.

MR. KLINE: Based upon your knowledge and review, the information that Dr. Welhan generated, is the information in your letter of 1984 still accurate?

MR. CHAPMAN: Yes, I believe so. As I indicated earlier Dr. Welhan's efforts were certainly much more detailed and comprehensive than I conducted at that time. That effort in 1984 was pretty much of a reconnaissance effort to try and initially determine what wells

would produce in that area and a very quick analysis of the aquifer characteristics. Dr. Welhan's study has refined that significantly.

MR. KLINE: Do you concur with Dr. Welhan's report that there is sufficient and adequate water in this area to meet the needs of this development?

MR. CHAPMAN: I do.

MR. KLINE: And in meeting those needs it would not be to the detriment of other producers?

MR. CHAPMAN: I don't think that it would, No.

MR. KLINE: In review of Dr. Welhan's methodology, did the process and protocol that he used, is that appropriate in your business?

MR. CHAPMAN: Yes it is.

MR. KLINE: Do you have other information that you would like to convey to Mr. Spackman regarding this project?

MR. CHAPMAN: I guess the only statement that I would make is that, it's rare when you have three different sets of tests spanning the kind of time frame that we do here on an area particularly for a project this small. I think it's very remarkable is that the data are as consistent as they are.

MR. KLINE: Climatologically is there a sufficient area to recharge this aquifer annually?

MR. CHAPMAN: I believe so although I have not conducted a water budget analysis for the area, but just looking at the geography it appears that there is. Yes.

MR. KLINE: If you were to get a rainfall on Tuesday, it wouldn't necessarily show up in the aquifer the next Wednesday?

MR. CHAPMAN: Not necessarily. No.

MR. KLINE: Would you concur with Dr. Welhan that it seems to be primarily a spring recharge?

MR. CHAPMAN: Yes. Yeah, it seems to be what we refer to as a normal hydrograph.

MR. KLINE: And in that normal hydrograph would it be say at a low water table level say in December as apposed to in June?

MR. CHAPMAN: The water table typically would decline say from July on through perhaps October, November and then begin to recover in the late Fall and as it began to recover the high point of this system of the water table would be in May or June.

MR. KLINE: I don't believe I have further questions.

MR. SPACKMAN: Mr. Hollingsworth, you may question Mr. Chapman.

MR. HOLLINGSWORTH: Mr. Spackman this is Mr. Kelly Clark.

MR. KELLY: Clark Kelly.

MR. HOLLINGSWORTH: I mean Clark Kelly.

MR. SPACKMAN: I wanted to welcome Mr. Kelly.

MR. KELLY: Excuse me for my appearance and lateness here. Ray doesn't approve of laying off during Elk season.

MR. SPACKMAN: Probably not for hearings either.

MR. KELLY: That's true.

CHAPMAN CROSS-EXAMINATION

MR. HOLLINGSWORTH: I'm trying to find a copy of the letter that . . .

MR. SPACKMAN: Mr. Chapman wrote?

MR. HOLLINGSWORTH: I have it here, but I had a copy of it myself that I had highlighted that I wanted to ask him specific questions on.

(Long pause.)

To start off, could I ask him to be given a copy of this form, the first one I submitted to you Mr. Spackman?

MR. SPACKMAN: What form?

MR. HOLLINGSWORTH: It was the one on my appeal. I'd like him to be handed it and have him look at the second page. The one you are looking at now.

MR. SPACKMAN: The second page of your letter?

MR. HOLLINGSWORTH: Correct, the second page of my letter.

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: It would be on the brown. . . the second page.

MR. DUNN: Is that the letter from Lyle?

MR. HOLLINGSWORTH: No. It's my letter addressed to Mr. Karl Dreher.

MR. SPACKMAN: This letter from Mr. Diller. . . (Inaudible)

MR. HOLLINGSWORTH: Oh, I'm sorry.

MR. SPACKMAN: . . . and I think this part of the original protest . . . .

MR. HOLLINGSWORTH: With Mr. Kline's approval the excerpts distracted, I have the certified copies with me, I can have him review from that.

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: Correct. These are just quotes that were . . . . On the very first word, on that page should be system.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: Make sure your on the right page.

MR. CHAPMAN: I have it.

MR. HOLLINGSWORTH: On the third paragraph, where I have the quotes. According to petitioners, that would be Mr. Bob Tripp, as Gibson Jack First Edition, an expert Mr. Chapman, the ground water supply is inadequate to meet the requirement that have been established by the board. The finding by the board is domestic wells will not be capable of producing sufficient water to supply the lots as reasonable. This support by substantial evidence and will not be disturbed on the appeal. This comment is not coming from you, it is coming from District Judge Transtrom?

MR. CHAPMAN: Yes.

MR. HOLLINGSWORTH: But did you make that comment at that time, do you recall?

MR. CHAPMAN: I didn't make this comment, as you say, it was made by the Judge and in reviewing that it's my recollection that the requirements that had been established by the board that he was referring to included the irrigation water. And I agree, I had said, in fact I said in both reports that the aquifer or the wells in that area should not be considered as being

adequate for irrigation water as well as domestic water, but that they were adequate for domestic purposes.

MR. HOLLINGSWORTH: With that comment, then I want to jump then if you would, on that same document, go 1, 2, 3, 4, 5, 6, on the 7th page, again this is not you, but it has been extracted from testimony that you gave.

MR. CHAPMAN: I'm sorry where are we?

MR. KLINE: If this is extracted from testimony then we are in the realm of hearsay, and I would object.

MR. HOLLINGSWORTH: It's not hearsay. Again I have the certified copies of the documents and this is testimony that this individual gave.

MR. SPACKMAN: (Inaudible). . . questions can be asked about Mr. Chapman's own statement whether he made those statements. I wondered whether you have access to particular documents. . . (Inaudible).

MR. HOLLINGSWORTH: Yes, he was mailed a copy of this stuff. On the lefthand bottom of the page it says Memorandum Decision and Order No. 3. Is that the page you are on?

MR. CHAPMAN: No I have 2.

MR. HOLLINGSWORTH: Sorry. I think it can be that one there, maybe.

MR. CHAPMAN: Ok. I'm on the same page. It has his signature on it?

MR. HOLLINGSWORTH: Yes Sir. Ok. On the very first paragraph that is there, the first sentence it starts out with according to, I'd like to read this and see if you agree with this still, or not agree.

According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that have been established by the board. The finding by the board that domestic wells, because a few minutes ago you said irrigation wells, domestic wells will not be capable of producing sufficient water to supply the lots is reasonable, is supported by substantial evidence and will not be disturbed on the appeal. I talked to Mr. Echohawk who is now in Utah, . . . (Inaudible)

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: I apologize. Would that still be your standing as it was then? Is that what the comments you made at that time to your memory?

MR. CHAPMAN: First of all, I didn't testify in the District Court proceeding. I was not a witness in the District Court proceeding and this apparently is taken from a transcript of a hearing that was held before one of the county bodies, but regardless of that . . .

MR. HOLLINGSWORTH: It was taken from a transcript?

MR. CHAPMAN: Yes. But regardless of that my answer is still the same. It is my understanding that whether the Judge or the Board is calling them domestic wells or whatever, the criteria established by the board that they were talking about included irrigation water for each of the lots as well as the domestic water. And I agree that those wells are not capable of producing irrigation water for all of that land, outside of the half acre that might be irrigated otherwise. I don't think there is any question about that.

MR. HOLLINGSWORTH: Thank you. I asked this of Mr. Welhan and you were present with him, when I said this, but when I was asking him about, I don't know if you remember reading the statement about taking a long time to do a study, to see if the water visibility is really there. I'd like to re-read it.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: I don't know what exhibit it is, but it's on the same page you have. Can I approach him and give it . . . ? Or let me just read it again.

MR. SPACKMAN: What . . . (Inaudible).

MR. HOLLINGSWORTH: It's the one I read to Mr. Welhan, because I would like his opinion on this.

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: This is the one I read earlier. I'll just read it. "In order to determine the trend of the water, to have a proper study done."

MR. SPACKMAN: (Inaudible) . . . by Lyle Swank?

MR. HOLLINGSWORTH: No it's the one I have, Mr. Spackman, the same packet that he has there, that I read to Mr. Welhan and asked him to voice his opinion if he agreed or disagreed to it.

MR. SPACKMAN: Who are you quoting?

MR. HOLLINGSWORTH: It's coming, the one from Lyle Swank, S-W-A-N-K.

MR. CHAPMAN: I don't think that it's on here.

MR. SPACKMAN: (Inaudible). . . you refer to the exhibit itself, or the document. . . (Inaudible).

MR. HOLLINGSWORTH: It's the same I did earlier.

MR. SPACKMAN: It's marked, I think as Exhibit . . . (Inaudible).

MR. CHAPMAN: Thanks

MR. HOLLINGSWORTH: That's the letter. Maybe it is in the letter. Can I approach him?

MR. SPACKMAN: (Inaudible)

MR. HOLLINGSWORTH: You don't have to read it out loud, but I was wondering if you just take a minute to read that and then tell me if you agree or disagree with that?

MR. CHAPMAN: I would agree with the statement.

MR. HOLLINGSWORTH: I would like to ask you the same question that I asked Mr. Welhan. How can you experts make the testimony that adequate water is there? When Lyle Swank has made the comment, and I have heard it from other people, that this should be done over a long term period of time. And when I ask them to explain what is a long period of time, do you mean a month, two months, or a year or two years, to see if the feasibility of the water is there. So in your expert opinion the study that was done by Mr. Welhan where they pumped the one well for three days, but only for the one day for 7.5 hours and then checked the well for 40 days that it wasn't being pumped. In your expert opinion, is that really a proper study to say if there is enough adequate water there?

MR. CHAPMAN: I think so. Yeah.

MR. HOLLINGSWORTH: So then, when you talk about the spring "recoverage". Which is telling me again that the aquifer in that area is being supplied by the precipitation in this area. When you think about the gallons that one home would use and multiply it times the number of homes that are there now, plus the homes that are going to be there, in your opinion do you still take the stand that there is enough adequate water there?

MR. CHAPMAN: I believe so, yes.

MR. HOLLINGSWORTH: And when you make the comment that the water is higher, like Mr. Welhan did, in the beginning of the year and then in the summer months it is low, with the number of home users up there, and with the water to be pumped out of that ground, thousand of gallons, do you still make the stand that the water will still be there, even during the drought periods we've had over the last seven years, and that may occur in the future?

MR. CHAPMAN: I believe so. Yes.

MR. HOLLINGSWORTH: When you talk about the maintenances of the well, bear with me for a minute. (Pause) I don't know the exhibit this was. I guess I'll just read it. If you would explain to me, I guess more than anybody here. When you talked about the maintenance of a well, you talked about the perforations, maybe being "oxidized" or deposits plugging it up, and so forth. If the well has been put in, like my well has been since 1976, and it has been checked and the perforations are still open, they are not plugged up, what would be your expert opinion why my well would not have a recall or when other wells are being used? I'm not asking that right. I don't like this position I have.

MR. KLINE: I guess I'm going to raise an objection to that.

MR. HOLLINGSWORTH: I apologize.

MR. KLINE: If he wants to hire him to go check his well, that's one thing, but at this point, with the information. . .

MR. HOLLINGSWORTH: No, I wanted your opinion on when you talk about the . . .

MR. KLINE: . . . given the information that is provided it makes it extremely difficult for this person to speculate as to why his well is not functioning.

MR. HOLLINGSWORTH: Let me find what I wanted to . . .

MR. SPACKMAN: I will sustain the objection, Mr. Hollingsworth, because of the way the question is worded. I think there is a way to ask that question, posing a hypothetical situation to Mr. Chapman and let him respond to that hypothetical . . . (Inaudible.)

MR. HOLLINGSWORTH: I apologize. I agree. I've found what I needed. I apologize.

I am reading this from a, it's in his exhibit, it's from the Facts and Findings again, back during Mr. Tripp's subdivision, and I'd like to read this.

> In this study Mr. Chapman found no evidence of the drained or dropping water table. He indicated that most perceived problems with water supply are most likely difficulties with well construction, well design or pump problems in combination with natural and local soils.

That is I guess the question I was trying to get to you about. When you made the comment about well construction, and well design and pump problems, I'd like you to expound on that if you would.

MR. CHAPMAN: Ok. In many areas where I have done work over the last 25 or 30 years, I've found that perceived problems with wells that were intially attributed to declining water

tables or well interference, quite often, in fact more often than not ~~we're~~ were because of encrustation that had occurred inside of a well that had sealed the perforations or the screen off, or that a well had accumulated sediment in the bottom of it, if it was just a casing with an open bottom as many domestic wells in particular are constructed, or bowls, impellers that had worn to the point where they just wouldn't lift water anymore because of sand or other problems or cavitation, or that the well in some cases were just not constructed adequately, It was suppose to be perforated and perhaps wasn't perforated as the driller had represented, or that the perforations were not completely penetrating, a number of things with construction. Now in some cases I've found where well screens hadn't been set, where the well screen had actually not been set out the bottom of the casing, but was still up inside the casing. Those kinds of things that affect the ability of a well to produce. We're all guilty of it, We tend to drill a well or whatever we have that is out of sight, tends to be out of mind, and its rare that anybody will go in and essentially maintain a domestic well in particular. What I have found over my years of experience is that many well problems that as I say that were attributed to water level declines were not water level declines but were in fact problems with things like these and once the well was cleaned or reconstructed the problem was gone. And that was what I was referring to there.

MR. HOLLINGSWORTH: Thank you. This might be redundant but again from the transcripts and so forth, "this is under _____ proposed plot does not comply with modified Findings of Facts," and this is coming from Mr. Echohawk now, coming from transcripts I guess that he took from you when he interviewed you or spoke to you. But he

made the comment again, and I don't want to hammer you on it, this will be the last time. "Again even assuming accuracy of Mr. Chapman's analysis, Mr. Chapman himself agrees that there is insufficient water for domestic irrigation and fire protection services on the two and one-half acre lots." I bring this up because I think I've already covered about the domestic uses, but what about the fire protection water availability? If you again think of the thousands of gallons being pumped up for household usage, the gallons are being pumped up for just watering the lawns and those who might misuse it to try and water their excess acreage. Is it still your opinion that there will still be enough gallons of water there for fire protection as well?

MR. CHAPMAN: I believe so and the reason I say that with confidence is that typically you can build storage for fire protection. Now you don't have to have a direct flow out of the ground in order to provide fire protection. So if you are in a situation where you may be short of fire protection water, quite often tanks will be buried with booster pumps. That is done routinely in the Boise Valley. So that they can provide fire protection, those high peak flows for a two hour period that is generally required by the Fire Marshall. So yes, I think that the fire suppression flows would be able to be met pretty easily.

MR. HOLLINGSWORTH: Well my next question, I guess I want to ask you, but I guess I'll have to go through Mr. Cushman the well driller. He made the comment about a booster pump for storage tanks to supply water for fire protection or for household usage. When you say a booster pump would this booster pump be the same thing as if they were going to bring in city water to carry it up?

MR. KLINE: Objection your honor. Same area again, we don't need to get into the issue of whether or not there is city water.

MR. SPACKMAN: Sustained.

MR. HOLLINGSWORTH: How do you explain to me the existing problems that the residents, like myself are having up there. Where it's not just Richard Harder's residence, but seven residents that are having well problems. Maintenance or not, because some of these are new wells that have been put in, how do you explain to me why their wells are dropping and sometimes are pumping air during the summer months. Still I'm asking you a double question here.

MR. CHAPMAN: I could only speculate, in order for me to determine why your well or anybody else's well was sucking air or having problems, I would have to investigate that specific well. So, I'd rather not speculate on why a well or a series of wells were sucking air.

MR. HOLLINGSWORTH: Would you give me your expert opinion on just the . . . can I show him this? Or. . .

MR. SPACKMAN: When you say this, this is . . . (Inaudible).

MR. HOLLINGSWORTH: This is a plot, exhibit on Mr. Terry Bailey.

MR. SPACKMAN: Letter C. . . (Inaudible).

MR. HOLLINGSWORTH: If you can see where north is and where east is, I'd like you to look at the proposed subdivision to the north and to the east. Again my question, being an expert witness and in your field of expertise, if there has been three wells that have just been drilled within the last 6 years. The rest of the wells I guess may have been over 15 year

period, but again I will ask you the question. On the east and north of this subdivision, while on the subdivision there are seven to eight homes that are experiencing well problems. By that I mean pumping air once in a while, not continuously all the time, but the water dropage is there. In your expertise opinion, why do you think this is happening if there is plenty of water there, sufficient to put in additional wells and to have water for fire protection?

MR. CHAPMAN: With the information I have, I have no idea.

MR. HOLLINGSWORTH: Well if you can say it, then how can you have the opinion that the subdivision has no wells on it, they've got plenty of water?

MR. KLINE: It's been asked and answered, that's argumentative.

MR. HOLLINGSWORTH: I don't think so . . .

MR. SPACKMAN: Before I address the objection, Mr. Hollingsworth, let me just talk to you little bit about my impression. One of the problems that Mr. Chapman is faced with is, . . . (Inaudible). My impression is that he has looked at some information, both Mr. Welhan, did I say that correctly?

MR. KLINE: Mr. Welhan.

MR. SPACKMAN: Dr. Welhan report that his observation and test well data, as well as the data that he developed, he knew something about those wells. He doesn't know anything about the wells that you are referring to. Now he has drawn some conclusions based on those _____. But unless you give him specific information, more information than you've given him, in a hypothetical question, I don't think Mr. Chapman is in a position to answer those questions, because he doesn't have the well logs in front of him, he doesn't know what the

depths are, what the ~~preparations~~ perforations are, when they were drilled individually, and exactly where they are located, he doesn't have any of that information. So his response that he doesn't know, is a legitimate response. He can draw some conclusions based on what information he has, which is done, so I would sustain the objection, unless you can give him that kind of information in a hypothetical question, then I think he can respond to them.

MR. HOLLINGSWORTH: I need to reword differently. I mean no disrespect to you Mr. Spackman, but I disagree with what you just said, especially your latter part. Because they do have the well logs and so forth. Because that is how Mr. Welhan did his report, supposedly was by the water that is being used by the residents up there. So he does have the information. He made the comment that he tested wells in Lots 3, 4 and 1 in the Gibson Jack Subdivision. He has knowledge so he knows what wells I'm talking about. So it's not hypothetical, he already has that knowledge and has already reviewed it, I'm assuming before he came here. So it's not hypothetical. Because the wells I'm talking about are the ones that they used to do the study back in '84 and '85 which he just testified when he said Lots 3&4 and Lot 1. He pumped water in Lot 1 for 24 hours.

MR. SPACKMAN: But I will sustain the objection, because the nature of the question at least in my opinion was there were seven wells that were located in some general area . . .

MR. HOLLINGSWORTH: Oh, I apologize.

MR. SPACKMAN: . . . here, and then with that statement then you said you wouldn't have any idea why their having problems.

MR. HOLLINGSWORTH: I see what your saying.

MR. SPACKMAN: . . . (Inaudible). He doesn't have any of the information in front of him regarding those seven wells and if you want to ask him questions about a specific well, lay a well log in front of him and talk about the specific information that is there, you are welcome to go through that, I hate to invite that, but that is the kind of question . . .

MR. HOLLINGSWORTH: I see what you are telling me now.

MR. SPACKMAN: He can't operate with that.

MR. HOLLINGSWORTH: I understand.

MR. SPACKMAN: He may claim that he can.

MR. CHAPMAN: I don't even claim that. (laughing)

MR. HOLLINGSWORTH: I knew I shouldn't, but I'll ask you . . . . With the exhibit that Mr. Kline presented then, I think it was Exhibit 4 of Mr. Welhan's report. Can he be shown that then?

MR. SPACKMAN: Exhibit 4?

MR. HOLLINGSWORTH: Thank you for your patience. I'd like you to look at, on Exhibit 4, on the seventh page, Mr. Chapman, at the bottom of the page, it says Figure 1, Locations of Wells with Geologic Logs. Field circles show the line in cross-section AA and Figure 2. Do you have that?

MR. CHAPMAN: I have that.

MR. HOLLINGSWORTH: Ok. These are the wells that I am referring to. These are the wells that are located to the east and to the north of the proposed subdivision. I know that

somewhere in our exhibits, we have the Gibson Jack Subdivision that shows those lots. Do you have it Everett?

MR. SPACKMAN: Would you identify those wells that you are talking about?

MR. HOLLINGSWORTH: Yes, I will, here I've got one.

MR. SPACKMAN: They are labeled with names. And that type of . . .

MR. HOLLINGSWORTH: May I approach him?

MR. SPACKMAN: What is that you are laying in front of him Mr. Hollingsworth?

MR. HOLLINGSWORTH: This is the Gibson Jack acres proposal _____ with the subdivision _____. This is the old subdivision it shows the lots and the block numbers so I can identify the location of the wells.

MR. SPACKMAN: Is this an exhibit, a document that has been mark as an exhibit . . . (Inaudible).

MR. HOLLINGSWORTH: No, but may I enter it as an exhibit now, or is it too late?

MR. SPACKMAN: (Inaudible.)

MR. HOLLINGSWORTH: May I enter this then?

MR. SPACKMAN: Well it can be marked. . . . (Inaudible) . . . let's mark it as Protestant's Exhibit D and then define this copy. Do you have a copy?

MR. HOLLINGSWORTH: Oh, I'm sorry.

MR. KLINE: Now I have a copy.

MR. SPACKMAN: And for clarification from my information, Gibson Jack Subdivision has no relationship to Gibson Jack Ventures.

MR. HOLLINGSWORTH: No it does not.

MR. KLINE: That is correct.

MR. HOLLINGSWORTH: They are separate. But Mr. Spackman for your information the proposed subdivisions is this section right here.

MR. SPACKMAN: Ok. (Inaudible)

MR _____: The proposed subdivision . . . (Inaudible).

MR. SPACKMAN: Ok. Mr. Hollingsworth has indicated that just looking at the subdivision plats labeled Protestant's Exhibit . . . (Inaudible). . . that the proposed subdivisions were located to the south_____ of the Gibson Jack Subdivision Plat. Any questions?

MR. HOLLINGSWORTH: Thank you.

I guess I better jump back then before I get back to what I'm trying to go into. When you made the comment at the beginning of your testimony you said that you pumped out of Lot 1 for 26 hours, I believe?

MR. CHAPMAN: Yeah, let me get you the exact time.

MR. KLINE: For clarification when we are referring to Lot 1, I see several Lot Ones. Can we be specific as to which Lot and Block?

MR. HOLLINGSWORTH: Well that's what I wanted to ask Mr. Chapman, because if it was in Block 2, there is no way you could have done it, if it was in Block 1 there was no well pumped in at that time. That's what I'm going to ask him.

MR. CHAPMAN: I don't find the total time, but I believe it was about 24 hours, 24-25 hours.

MR. HOLLINGSWORTH: Mr. Chapman, can you tell us which, when you said it was Lot 1, Yes with the map you have there that is on your right side, which lot was it, was it in the Block 1 or Block 2 area?

MR. CHAPMAN: It was marked on my map, it would be, let's see where Block 2 starts. Well, if I'm reading the map right, it would be in Block 2.

MR. HOLLINGSWORTH: In Block 2? So in Block 2, Lot 1 is where you pumped the well for 26 hours, or 24 hours?

MR. CHAPMAN: Yes.

MR. HOLLINGSWORTH: Do you have any notations there who's pump or who's well that was?

MR. CHAPMAN: No. I don't. The observation well was in Lot 2.

MR. HOLLINGSWORTH: It was in Lot 2, not Lot 1?

MR. CHAPMAN: No the pumping well. The well we pumped was in Lot 1. And the observation well was in Lot 2.

Just so you'll be aware of what I am referring to is a note that I have on a map that was made back in 1984.

MR. HOLLINGSWORTH: So it's Lot 2 and Lot 4. I keep saying Lot 1.

MR. CHAPMAN: Not according to the notes I have here.

MR. HOLLINGSWORTH: Well, I'm confused because in Lot 1 that property belonged to Everett Diller and also Richard Hollingsworth. And my well has never pumped for 26 hours, nor has his well ever pumped for 26 hours.

MR. CHAPMAN: No the Diller well was never pumped, it was used as an observation well at one time though.

MR. HOLLINGSWORTH: So which one did you pump the well out of again?

MR. CHAPMAN: The first notation I have here shows that there was a well in Lot 1 that was pumped and the observation well was in Lot 2, unless I've "mis-noted" these here.

MR. HOLLINGSWORTH: Well, I know the observation was done in Lot 2, that would be John Grayel's residence and his well was used. I guess it is immaterial, but I think it was Lot 4 was the one you pumped. But it's immaterial. So from what Mr. Spackman has directed me to do to direct to you to my question in the beginning so I can do it properly I hope. Again with the wells to the north and to the east the wells being to the east, the Hollingsworth's residence, the Diller residence, the Grayel residence, Chad Nielson's residence now, and Scott Nielson's residence are the ones to the east.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: The ones to the north would be the Bowen's residence, the Nickloff residence, and the Kelly residence. Those are the ones that are right next to the subdivision.

MR. CHAPMAN: Ok.

MR. HOLLINGSWORTH: The other wells are across to Heather Road. So you have reviewed the well logs, I'm assuming to come to the determination that the water availability is in this aquifer? Correct?

MR. CHAPMAN: I've reviewed some of them. Yes.

MR. HOLLINGSWORTH: Ok. So again my question, in the beginning I hope I did this proper, is that can you give me your expertise opinion why these wells, not all of them, but Hollingsworth, Diller, Greyal, Scott Nielson's, Nickloff's and Kelly's wells are having problems with recall or recharge or sometimes pumping air, in your opinion why do you feel it is occurring?

MR. KLINE: Same objection.

MR. SPACKMAN: Ok. I'll overrule this, . . . (Inaudible).

MR. CHAPMAN: Can I ask a clarifying question?

MR. HOLLINGSWORTH: Yes.

MR. CHAPMAN: Are you telling me that the Hollingsworth, Diller, Grayel, Bowen . . .

MR. HOLLINGSWORTH: Scott Nielson, the wells to the east are having difficulties. By difficulties I mean, not all of the time but sometimes they pump air or the recharge is with air, ok?

MR. CHAPMAN: Ok, but the Everson, Nickloff, Harley and Oliver, their not?

MR. HOLLINGSWORTH: And then the ones to the. . . they are. But I'm talking about the ones right by the subdivision, the other ones too are _____, but Mr. Spackman, I want to clarify, because you made the. Yes they are having problems as well. But the ones right by the proposed subdivision are the ones I am referring you to now. And the ones to the east that are having problems, I mean to the north is Scott Nielson's, the Bowens, the Nickloffs and the Kelly's.

MR. CHAPMAN: I can speculate, but that I wouldn't want to bank on the answer.

MR. HOLLINGSWORTH: Well, I don't want you to speculate, because again, if you get expert testimony Mr. Chapman, that this proposed subdivision has only got one well on it right now, a test well. It's only pumping 28-30 gallons per minute, can supply enough water for four homes, when the residents. . . .

MR. KLINE: I'm going to object to the mis-characterization, because it's been continuous through this thing. The testimony has been extremely clear in this, that is not 20, it's 38. Mr. Hollingsworth has repeatedly used the term 20. He has been corrected . . .

MR. HOLLINGSWORTH: Mr. Chapman, I can show documents that shows 20 gallons per minute.

MR. SPACKMAN: Ok.

MR. KLINE: He has been corrected on it twice, to this point, I am going to raise a continuing objection to the mis-characterization of the testimony and the documents that are already admitted into evidence.

MR. SPACKMAN: Ok, I think I'll sustain the objection on other grounds that it is Mr. Hollingsworth that your testifying . . . (Inaudible) . . . and that may be frustrating to you but . . .

MR. HOLLINGSWORTH: No it's not frustrating, as long as I am allowed to show a documentation where its saying 20 gallons per minute and I'll be able to do that I guess when I testify. And they are in these exhibits.

MR. SPACKMAN: And are you going to present them too?

MR. HOLLINGSWORTH: Well 38 gallons per minute is fine with me right now. But still if you say you can only speculate on this Mr. Chapman as an expert witness on why you think these wells are having problems around the proposed subdivision. How can you give an expert testimony opinion that there is adequate water in a proposed subdivision where there is only one well right now, when you took the information from the existing wells that I am talking about.

MR. CHAPMAN: I think Mr. Spackman pretty well clarified it, but I will do that again, is that in order to analyze a well problem, whether it's one well or a dozen wells, you need to look at more than just some points on a map or one or two well logs in order to come up with any kind of an accurate description on why you or anybody else might be having a problem. What I have done, however, is that I have conducted tests on that aquifer, twice myself, Mr. Welhan has conducted a very intensive test on the aquifer on his own . . .

MR. HOLLINGSWORTH: Ok, again I hate to interrupt you when you say test? On what wells. . .

MR. CHAPMAN: I have analyzed those data and those data have led me to the conclusions that I have come to. I'm not trying to dodge your question, Its just I don't know why you are having problems, but I am confident in my analysis of my data. And I am confident that Mr. Welhan did a good job in analyzing his. Actually, much more thoroughly than I was able to, because he had more time and more data to work with.

MR. HOLLINGSWORTH: This is being redundant, because I don't think it is being answered right. I'm frustrated. If you get your information and data from the wells that may

or may not be having problems then, and these wells are not all 15-20 year old wells. These wells, some of them are 4-5 years old. If you can get your information to again come to the conclusion that Mr. Welhan did, when Mr. Welhan used the one well that they pumped water out for 7 and one-half hours and watched the well for 40 hours, and then used the wells that are around the subdivision to help come up with your data, still, how can you testify or even feel that an expert opinion that there is adequate water? I feel like the question has not been answered according to _____ my opinion. You can speculate why this is happening. I don't think the answer has been answered, Mr. Spackman, and I don't know how to get it out of them.

MR. SPACKMAN: (Inaudible)

MR. KLINE: If I could interject, I think one of the problems is that Mr. Hollingsworth is requesting that this individual give him some specific answers. If Mr. Hollingsworth wishes to get an expert to evaluate his well, that is what he ought to do. He is placing this witness in an impossible position of requiring him to give a definitive answer to why his particular well isn't working.

MR. HOLLINGSWORTH: But I disagree with him Mr. Spackman. Because again they are saying they got their data from the wells that I've indicated already have had a problem. They had the problem when they did the well testing apparently too.

MR. SPACKMAN: I hate to increase your frustration, Mr. Hollingsworth. . .

MR. HOLLINGSWORTH: You're going to, I can tell.

MR. SPACKMAN: . . . but I think Mr. Kline is correct. The reason I think he is correct, is I know you probably feel that I am taking sides, but in all of the hearings that I have held, expert witnesses like Mr. Chapman have a specific assignment or Mr. Welhan, they have a specific assignment that they are trying to accomplish _____. And they look at a specific well or a couple of wells for a specific proof.

MR. HOLLINGSWORTH: I have no problem with that.

MR. SPACKMAN: But, the purpose for which he was looking at wells, even if he looked at some of the wells that you are concerned about, was not perhaps the purpose that you now want him to look at those wells. He was not looking for a problem in your well, or seven or eight or ten other wells. That was not the assignment that he was given by the people that retained him.

MR. HOLLINGSWORTH: So when you made the comment about speculation and a hearsay thing. I gave specifics and these wells are the ones that they did utilize for the study, Mr. Spackman.

MR. SPACKMAN: Let me give you the specifics. The kind of specifics that you probably would have to give Mr. Chapman, for Mr. Chapman to illicit, or prompt a response out of him. I'm not sure he'd be able to do that. You would have to describe a well, you'd have to describe its casing, you'd need to describe its depth, you'd need to describe the perforations in that well, probably describe for him the depth of water, describe for him what the problems are that are occurring, then at that point in time he might be able to speculate about the problems that you are having, not having been on site, not having looked at it. Now as an

expert he might be able to speculate about it. Now I sense that you are unwilling to _____ speculation, ____ (Inaudible) ___ tried to speculate about the problems, then you objected to that speculation, that's all they can do.

MR. HOLLINGSWORTH: Correct, because of what you just said also, I can do that with what Mr. Welhan gave me, I can go through each well then, do it individually and we can be here all afternoon. But that's not what I want to do. I want to still . . .

MR. SPACKMAN: Well to some degree . . . (Inaudible).

MR. HOLLINGSWORTH: I can't see how I can come as an expert witness, Mr. Spackman, make the comment that there is adequate water when again the existing wells surrounding this subdivision are having difficulties. It has nothing to do with the construction and maintenance of the wells, because a lot of these wells are still new. Then to have them say that because of the test they did, with the lots around this proposed subdivision and lots they utilized are some of the wells that are having the problems.

MR. SPACKMAN: My response is Mr. Hollingsworth is that if you want to put on that kind of testimony and you want someone to testify about those problems that you are having, then I think you have a responsibility to hire an expert witness, and bring them in, have them look at these problems and testify about what is causing those problems. It is not the responsibility of the applicant to provide an expert witness for you to establish any problems you may have.

MR. HOLLINGSWORTH: I agree with that. I agree with that wholeheartedly. I am trying to . . .

MR. KELLY: Mr. Spackman, excuse me, I don't mean to interrupt, I'm at a loss for what has been going on, but would witness testimony by those people that are up there that have witnessed the water table drop a 100 feet in eight years be suitable?

MR. SPACKMAN: All of that testimony is . . . (Inaudible). I question what you will get out of Mr. Chapman here as an expert witness for the applicants that would be worthwhile without going through some kind of arduous, very difficult hypothetical situation. Then at that juncture Mr. Chapman probably can only speculate about what those problems would be, because I have seen some of the testimony of the investigatory work that has been done to analyze some of those problems, and sometimes it is a down right problem.

And to actually look at what's happening down inside the well. That is not always the way it is, but sometimes that is what you want. Now I'm interjecting myself too much into this discussion, but I think we can spend an inordinate amount of time with Mr. Chapman trying to get things out of him that he will continue to say with good reason, I don't know, I can't tell you that.

MR. HOLLINGSWORTH: But yet he can sit and say there is adequate water Mr. Spackman. It doesn't make common sense to me. And I know what you are saying.

MS. _____: We feel the same, we don't agree with that, . . .

MR. SPACKMAN: I understand you don't agree with that, but Mr. Chapman has done some study that would lead him to conclude what he must conclude. You may not agree with that, but he at least was assigned this and has the ability to go out and analyze some of these particular problems that he has been asked to analyze by the applicant, and that is what he's

focused on. He has not gone out and looked at all the other wells who have been in a ten mile radius.

MR. HOLLINGSWORTH: In 1988 from the extract of the transcripts, you've already answered this but, when you made the comment that insufficient water for domestic, irrigation and fire protection services it's inadequate. Then due to a report from Mr. Welhan utilizing one more well, you still feel that there is adequate water and that the study has been done proper to make that comment.

MR. KLINE: That's asked and answered.

MR. HOLLINGSWORTH: Ok. I have no more questions then.

MR. SPACKMAN: Thank you Mr. Hollingsworth. I am troubled when you ___ (Inaudible) feel I've badgered you.

MR. HOLLINGSWORTH: No, no. I don't feel you've badgered me at all. I just feel frustrated because I'm not getting it across, but I'm not expertise enough to do it. So I apologize.

MR. SPACKMAN: Ok. Mr. Diller, do you wish to question?

MR. DILLER: Just a couple of items. You said on the perforations being plugged, or the vanes being worn on the pumps, will that cause you to break suction on your well at all times? Or, it looks to me like if they were plugged and they were worn it would be just a short period of time before you would start breaking suction.

MR. CHAPMAN: Worn impellers, quite often, will not cause you to break suction at all, the water delivery just ceases. Sometimes it will cause cavitation enough to create some air

bubbles and some spitting for example in sprinkler systems, but typically if it is a worn impeller problem only, usually what happens is that you just start running out of pressure and running out of water.

MR. DILLER: Well, I _____ (Inaudible).

MR. SPACKMAN: Mr. Kelly you have not been here, ____ (Inaudible) ____ status, I told the other parties and both protestants, Mr. Hollingsworth and Mr. Diller, if they have any questions. You may question as well in order _____(Inaudible) ____ question of Mr. Chapman regarding his testimony?

MR. KELLY: First of all, please forgive me, I'm at a loss because I was late and missed so much, I don't want to overlap anything, does Mr. Chapman deal with well engineering, or do you deal with water quality, or just well engineering?

MR. CHAPMAN: I deal with all of those.

MR. KELLY: Ok. Mr. Chapman. What would you consider a usual water table drop over the period of years, we all know that water tables do drop and go down year after year. What would you consider normal?

MR. CHAPMAN: I don't think that there is anything such as normal and the reason I say that is that I know of aquifers in Idaho that have a seasonal fluctuation of less than a foot. I also know of other areas that have seasonal fluctuations exceeding 20 or 30 feet. And so there is not really a rule of thumb, per ~~say~~ se, that you can use to characterize a particular aquifer or particular area.

MR. KELLY: Well then Mr. Chapman, would you consider, I do measure. In fact I'm participating in the February of '95 survey of John Welhan on my well. In particular he did measure the well depth with his equipment. Would you consider a 100 feet in 8 years an abnormal drop in water table?

MR. CHAPMAN: It's pretty high, yes. I'd have to agree that that was a fair drop.

MR. KELLY: And that is being generous. That is exactly what happened. Mr. Chapman would you, I have a chart here, and forgive me, I didn't make copies for Mr. Spackman and Mr. Kline, would you consider a hardness level of 478, nitrate levels exceeding 12, excessive?

MR. CHAPMAN: What are the units, could you tell me?

MR. KELLY: Parts per million.

MR. CHAPMAN: Parts per million?

MR. KELLY: Um, huh.

MR. CHAPMAN: That is fairly hard water, yeah.

MR. KELLY: Would you consider nitrates over 12 safe to drink?

MR. CHAPMAN: Of parts per million?

MR. KELLY: Parts per million.

MR. CHAPMAN: Yeah, it is for most people.

MR. KELLY: Pregnant women?

MR. CHAPMAN: No, not pregnant women.

MR. KELLY: Ok.

MR. CHAPMAN: Or nursing mothers.

MR. KELLY: Ok. Yeah, I confirmed this with Janet Crockett, Senior Advisor of State Water Quality Board.

MR. CHAPMAN: Yeah.

MR. KELLY: Pocatello is currently extremely in trouble with TCEs in the water. Are you aware that this development lies between the Fort Hall Mine Solvents and the Pocatello City Water?

MR. CHAPMAN: I've not done any investigation on that or the direction of ground water movement, as it relates to TCEs.

MR. KELLY: Uhuh.

MR. KLINE: I'm going to objection. I see not relevance to water quality to the water availability at this point.

MR. KELLY: Why is that? Unusable water is not water available.

MR. SPACKMAN: I'll overrule the objection right now, because water quality always has some relevance to the public interest as well as the Department of Water Resources _____(Inaudible). So, I'll overrule the objection at this time, _____(Inaudible)_____ water quality does some relevance _____(Inaudible) where the question goes.

MR. KELLY: Very good.

MR. SPACKMAN: Go ahead.

MR. KELLY: You almost made my question, there Mr. Spackman. I was wondering if since the water is of questionable quality would you consider the quantity of water if it is not quality enough to drink?

MR. CHAPMAN: My study was based on water quantity alone. I've not done any water quality studies there.

MR. KELLY: I do have, in case you are interested, and mine was a particularly bad well study analysis by Professor Welhan and some of his students on a survey that was completed February of 1995. Not thinking I'd be here, I don't have the copies but I can get them . . .

MR. SPACKMAN: . . . water quality or water quantity?

MR. KELLY: It's basically the lower Portneuf River Valley Aquifer, A Geological Hydrologic Model and its Implications to Well Head Protection Strategies, Draft Final Report for the EPA Well Head Protection Demonstration Project for the City of Pocatello Aquifer Geological Characterization Project by John Welhan, Idaho Geological Survey, Chris Mecham, Student, Ted Reed, Student, February 1995.

MR. SPACKMAN: What relevance does it have to do to this particular application?

MR. KELLY: The relevance I propose was the fact that it is drawing water quality in question. If the water has no quality, you have no quantity. If it's not palatable water we've got everything possible connected to mine, it's gray water, and was for three years.

MS. _____: We had gray water with a new well.

MR. SPACKMAN: Just a moment. This is not an open discussion.

MS. _____: I'm sorry.

MR. SPACKMAN: So I need deal with one person and I'm dealing with Mr. Kelly right now. So.

Water quality has some relevance to this discussion, but the relevance that it has honestly is, and I need to go back to the court case, courts have told the Department of Water Resources that it cannot issue a permit that will violate water quality standards. But in the same breath or the same paragraph, the Supreme Court said, reminded and warned the Department of Water Resources that water quality was not within its primary jurisdiction. That jurisdiction is ~~best~~ vested within the Department of Health and Welfare, the Division of Environmental Quality, and some of its subsidiaries, or associated entities which includes the District Health organization. So its not the responsibility of the Department of Water Resources to analyze all water quality issues. It is the responsibility of the Department of Water Resources to insure that its permitting process does not ignore water quality. So, I guess what I am saying is that unless there is someone here from the Division of Environmental Quality or you can produce that information that fact will not comply with standards that are established by DEQ _____ (Inaudible). Then the department will consider an application but probably with condition of that as it complies with all the water quality standards. I am not here to determine whether the water is of this quality or that quality, I don't have that expertise. I need an expert to tell me these things. I am willing to take the report, I guess, but at least at this juncture it _____ (Inaudible).

MR. KELLY: I understand.

MR. SPACKMAN: (Inaudible). It may be relevant, but that information is _____(Inaudible).

MR. KELLY: Mr. Chapman. Back to the water table issue, and I'll free you from your water quality. Can we expect the water table to continue dropping and dropping? Or is it depending on weather, precipitation? Or is it going to continue to drop forever?

MR. CHAPMAN: I would anticipate that the water level decline that you may have seen in your well, may not be at all consistent with the rest of the area. There is very little long term water level data that are available. The only data that I could find was some data from back in the '70s that I believe that in a well in Section 20, where the water level was roughly a little over 50 feet below land surface. But whether or not you'll have specific declines or of what magnitude declines may occur. I've not found any evidence that I could find, any documentation that there has been a consistent water level decline, and until those data are obtained the prediction of water level declines or rises, or the magnitude of seasonal fluctuations are based strictly on short-term measurements.

MR. KELLY: Ok. Mr. Chapman, we've brought recharge rates in to question several times. What is a reasonable distance that my well could be affected by another? When Brenda Pickens here can turn on her water which is on the exact opposite side of the subdivision from me, and I can see my sprinklers gradually drop . . .

MR. KLINE: Are we in testimony again?

MR. KELLY: What did Mr. Kline say? Excuse me, Mr. Kline.

MR. KLINE: I inquired as if we were testimony again or are we soliciting questions.

MR. SPACKMAN: You are testifying Mr. Kelly.

MR. KELLY: I am inexperienced at questioning the witness.

MR. SPACKMAN: And I didn't talk to you since you came late about cross-examination. But, in cross-examination you ask a questions. You propose hypothetical facts to Mr. Chapman and ask him to respond to those hypothetical questions or facts within the hypothetical circumstance _____(Inaudible).

MR. KELLY: Ok.

MR. SPACKMAN: _____(Inaudible) perceive what you said as stating of facts.

MR. KELLY: Right. I can't afford an attorney, so, I'll deal with my stupidity here.

Mr. Chapman in the eight years I've lived there not twenty was stated by Mr. Kline in his letter. . .

MR. SPACKMAN: You need to be cautious, _____ (Inaudible) _____ start telling what your experience is regarding the problems in the area . . .

MR. KELLY: What would you consider to be a maximum distance your water could be affected by another? Is that simple enough?

MR. CHAPMAN: That is a very simple question, to which there is no answer. For example, just so you'll know I'm not trying to dodge your question, When I worked for the Department of Water Resources we repaired a flowing artesian well in northern Owyhee county. We had installed a recorder on another well 8 miles away and we closed the well we repaired, stopped it from flowing and within 11 hours we saw a change in the water level 8 miles away. At the same time I have seen wells that were 15 feet apart that had no effect. It

depends on the geology on the transmissivity of the aquifer on the character of the geologic formation, the amount of water that is being taken out, A whole host of parameters that you have to be very specific about, and that is frankly why we do well tests, Is because we need to control as many of those variables as we can in order to get to a prediction. And what we do is that we control all of those variables and we gather the data we think we need to gather and then we make a prediction based on those values. Much the same as most other professions do.

MR. KELLY: Have you made a prediction on this particular area?

MR. CHAPMAN: Yes, I have, I guess you weren't here when I did my direct testimony. Essentially I have conducted two well tests out there and Dr. Welhan conducted a third in 1996. Our data, independent of one another, I didn't even know John Welhan until this week, came up very close. The data and the predictions we came up with were within about 25 percent which is pretty good for ground water work, And so we feel very comfortable that our predictions are reasonable. That is not to say that monitoring of the water levels in that area shouldn't be continued, and that everybody ought to be cognizant of a possible water supply problem, But based on the data we collected and the calculations we made and our best professional judgement, it appears to both Dr. Welhan and I that there is sufficient water for the project as it is proposed.

MR. KELLY: Mr. Chapman, what do you consider a minimum per a household? I've heard so many varying questions I need to know from an expert.

MR. CHAPMAN: I can tell you for example, I have a place in Valley County and I get two gallons per minute, and that is adequate for the wife and I on a normal basis. But we are not irrigating a lawn or a garden. Normally, the Idaho State Statute is somewhere around 9 to 15 gallons per minute, depending on how you want to interpret it. But it is a fairly low amount. Typically, if you are looking at consumption you can estimate and there are figures published by various government agencies that would indicate that each individual in a household for in-house use consumes about 125 gallons per day. So if you would have a 4 member household you are talking about 500 gallons per day.

MR. KELLY: How about if you were talking about 4 households with 4 members?

MR. CHAPMAN: Then it would be four times that.

MR. KELLY: So could you calculate that into gallons per minute draw per well?

MR. CHAPMAN: You can if you use it as a direct diversion. If you use a storage facility as the project proponents have suggested, if you pumped at 20 gallons per minute and had a 3,000 gallon tank you would fill that tank in 2 & ½ hours. And you could then shut off that well and you would not with four families consume 3,000 gallons of water in that day. So you theoretically could pump a couple of hours per day with 20 gallons per minute, or you might want to pump for a longer period of time at 5 gallons per minute, or 10 gallons per minute. It depends on how you want to manage it. But what you need to get at is the requirements for the household and be able to satisfy that peak demand when everybody wants to take showers, cook breakfast and get ready to go to work, and that is why you need the storage.

MR. KELLY: I have no further questions.

MR. HOLLINGSWORTH: May I intervene one question?

MR. SPACKMAN: I think it is proper now to go back to Mr. Kline.

MR. KLINE: I have no questions at this time.

MR. SPACKMAN: Mr. Hollingsworth, normally it would probably be improper for me to grant the question, but I'll at least hear the question and we will . . . (Inaudible).

MR. HOLLINGSWORTH: On these proposed water tanks that they are going to use to hold water supposedly then for household usage, I understand they might use for the fire protection as well, and if they use them for the fire protection and the numerous amount of gallons is used to put out a fire in a house. How is that water is going to be resupplied to the tanks for household usage by the next day?

MR. CHAPMAN: I can respond. The tank procedure that I talked about that we've used in the Boise Valley, the tanks that were used for fire protection are totally independent of the domestic water supply system. They are essentially buried, filled up with water the booster pump set on them and then they are left. They're not touched, ~~their~~ they've not used for domestic, they're not used for irrigation or anything else. That is the fire protection reserve. So they are totally independent of the domestic water supply system.

MR. HOLLINGSWORTH: Thank you.

MR. SPACKMAN: Ok. Finished? Mr. Chapman do you need a break?

MR. CHAPMAN: I do.

MR. SPACKMAN: We'll just let you go.

CERTIFICATION

I CERTIFY that I was designated to prepare the foregoing partial agency transcript by the agency from the electronic sound recording of the proceeding in the above-entitled matter. The foregoing is a true and accurate report of the proceeding to the best of my ability, prepared in accordance with the provisions of Idaho Appellate Rule 26, excluding listing of exhibits or attachment of exhibits.

DATED This 12th day of September, 1997.

/s/
DEBORAH DREW-ELLIS
Legal Secretary
Idaho Department of Water Resources

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of September, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

F. RANDALL KLINE
F. RANDALL KLINE, CHARTERED
P.O. Box 397
Pocatello, Idaho 83204

EVERETT DILLER
2917 N. Stephanie Rd.
Pocatello, Idaho 83204

RICHARD HOLLINGSWORTH
9502 Gibson Jack
Pocatello, Idaho 83204

CLARK R. KELLY
9685 Heather Rd.
Pocatello, Idaho 83204

/s/
DEBORAH DREW-ELLIS
Legal Secretary
Idaho Department of Water Resources

8/96 **ROUTING SHEET - PROTESTED APP. FOR PERMIT**

Date / ity Applic. No. 29-8175 though 29-8184

_____ **PREPARE RECOMMENDED ORDER** (Julie or hearing officer)
- Prepare order/clean-up water right file
- Route to Cindy Z. for initial review

1/24/97 **INITIAL APPLICATION REVIEW** (Cindy Z)
- Check order for conditions of approval to use
- Data enter information using "p" prefix.

2/4/97 **PREPARE RECOMMENDED ORDER** (Hearing officer)
- Make appropriate changes to recommended order
- Route to Norm for review

2-5-97 **MAIL SIGNED RECOMMENDED ORDER** (Julie)
- Prepare certificate of service, cover letter and mail
- Send copy of recom. order to region
- Hold file for 21 days for exceptions and request for reconsideration

✓ **CALL UP FILE AND CONTINUE PROCESS** (Julie)
- Route file to hearing officer

_____ **PREPARE FINAL ORDER** (Hearing officer)
- Review exceptions, if any, for changes to Final Order

should be here.

_____ **REVIEW AND ROUTE FOR SIGNATURE** (Hearing officer/Julie)

AFTER FINAL ORDER HAS BEEN SIGNED

7/14/97 11/5/97 **PREPARE PERMIT FOR SIGNATURE** (Cindy Z)
- Update data base with changes and print a permit
- Route to Julie for final processing

(No permits prepared as applications are being rejected)

permits prepared and data base updated per Amended Final Order partially approving application 11/5/97

_____ **MAIL FINAL ORDER** (Julie)
- Prepare certificate of service and cover letter
- Mail cover letter, permit, final order, certificate of mailing to all parties
- Send copies within the department

~~11/6~~ 11/5/97 **UPDATE DATABASE** Cindy Z. [redacted]

X **CALL UP FILE AND ROUTE FOR SYNOPSIS PREPARATION** (Julie)
- Call up file after 21 day period in which to file exceptions and/or requests for reconsideration

X **PREPARE SHORT SYNOPSIS FOR AGENCY ORDER INDEX** (Hearing Officer)
- Route file to Julie for index update

4/17/97 FILMED **FINAL DATABASE UPDATE AND ACTION** (Cindy Z) ~~Shade Film Destroy Boxes~~

APR 28 1997 **ROUTE TO MICROFILM** (Darla)
- Film file
- Route to vault

_____ **VAULT**
- Remove the hearing tapes, index, and file
- Remove cards from protest and/or hold drawer

EXHIBIT LIST
FOR
CHRIS PEIN d/b/a GIBSON JACK JOINT VENTURE
BANNOCK COUNTY CASE NO. CV0C 97-02001

APPLICANT'S EXHIBITS:

1. Gibson Jack Acres plat map

2. Memo from Sherl L. Chapman regarding review and interpretation of data collected by Alpine Engineering Company from results of well test conducted 03/07/1984, dated 03/20/1984.

3. Letter re: well depth information and well tests done in the Gibson Jack area by Jack Cushman Drilling, Inc., dated 03/05/ 1985.

4. Memo from John Welhan of the Idaho Geological Survey regarding results of pumping test done 01/11/1996 on the Iverson Well in the Gibson Jack bench with supporting information.

PROTESTANT'S EXHIBITS:

A. Invoice from University of Idaho for faxed information to Richard Hollingsworth with the following attachments: Charts re: Climate Summary, Growing Season Length, and Fall and Spring Freezing Temperatures, Total Monthly Precipitation, Pocatello precipitation, Pocatello Precipitation - January through June, and Pocatello Precipitation - July through December.

B. Newspaper clipping entitled "State denies farmer's pump permit request."

C. Memo re: Staff Recommendation of Water Systems to Planning and Zoning Council for Proposed Subdivisions from Terry Bailey to the Bannock County Commissioners, dated 06/06/1996, with an attachment: "Analysis - Subdivision Development Comparing Costs of Individual Water Systems vs. Connecting to City System," and a colored topographical map showing Wildhorse Ridge Subdivision and the surrounding area.

D. Respondent's Brief on Petition for Judicial Review *in* Bob Tripp, Robert Thompson, dba Gibson Jack, 1st Addition v. Bannock County Commissioners, Bannock County Case No. 39322-C.

E. Resolution In the Matter of Upholding the Planning and Zoning Commission's Approval on Gibson Jack Subdivision, 1st Addition with Condition, dated 05/22/1985.

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F. Modified Findings of Fact, Conclusions of Law In the Matter of the Proposed Gibson Jack 1st Addition Subdivision Reconsideration of Decision on Appeal in Light of New Evidence on Water Availablity, dated 05/22/1985.

G. Newspaper clipping entitled "20 Gibson Jack Road residents oppose project," dated 05/24/1996.

H. Newspaper clipping entitled "Fire district taking county to court to force code compliance."

I. "Draft" Bannock County Planning and Development Council Meeting Minutes, dated 02/27/1996.

J. Chart showing data of monthly precipitation for Pocatello, collected from Station 7211; and, chart showing data collected at the Wildhorse Divide Snotel Station 12G17S; and Map showing Bear River Basin and adjoining area basins.

K. Well Driller's Report from the Department of Water Resources for Tom Iverson's well.

L. Charts showing "Meterological Data for the Current Year (1982)" and "Normals, Means and Extremes" for precipitation.

M. Letter re: Response to groundwater concerns of Richard Hollingsworth from L. Glen Saxton of the Department of Water Resources, dated 06/12/1984.

N. Memo re: Study of Water Table Levels in Gibson-Jack area prepared by Lyle Swank, Assistant Watermaster for Water District No. 1.

O. Letter re: domestic water supply, and individual wells versus a single central supply well and their impacts on the area; sent to Carolyn Meline, Chairman, Board of Bannock County Commissioners from Paul Castelin of the Department of Water Resources.

P. Memorandum Decision and Order *in re*: Bob Tripp, Robert Thompson, d/b/a Gibson Jack, 1st Addition v. Bannock County Commissioners, Bannock County Case No. 39322-C, dated 11/18/1987.

Q. Minute Entry and Order *in re*: Bob Tripp, Robert Thompson, dba Gibson Jack, 1st Addition v. Bannock County Commissioners, Bannock County Case No. 39322-C, dated 02/10/1988.

R. Letter re: Protest of the Pocatello City Council's decision and recommendation to approve the Gibson Jack First Addition, sent to Mayor Ed Brown from Anthony Martin of Gibson Jack Road, dated 07/27/1984.

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S. Order that additional evidence be made by the Bannock County Commissioners and submitted to the court as a modified Findings of Fact and Conclusions of Law *in* Bob Tripp, Robert Thompson dba Gibson Jack, 1st Addition v. Bannock County Commissioners, Bannock County Case No. 39322-C, as received by the Bannock County Land Development Board, dated 01/15/1985. (Board's Hearing Exhibit No. 1, dated 04/30/1985.)

T. Stipulation to allow additional testimony and evidence to be taken before the Bannock County Commissioners *in* Bob Tripp, Robert Thompson dba Gibson Jack, 1st Addition v. Bannock County Commissioners, Bannock County Case No. 39322-C, dated 11/1984.

U. Resolution and Findings of Fact and Conclusions of Law In the Matter of Conditionally Upholding the Planning and Zoning Commission's Decision Concerning the Conceptual Plan for Gibson Jack 1st Addition Subdivision, dated 08/29/1984. (Board's Hearing Exhibit No. 5, dated 04/30/1985.)

V. An Associated Press release entitled "First gets water rights," dated 08/31/1982 (?).

W. Page from Idaho Code § 42-111, re: Domestic purposes defined.

X. Letter re: request to amend application for Wildhorse Ridge Subdivision sent to the Bannock County Planning and Zoning by Guy Anderst and Chris Pein of Gibson Jack Joint Venture, dated 03/06/1996.

Y. Newspaper clipping entitled "Contamination on the rise, Pocatello now looking at ways to purify the city's polluted water."

Z. Copy of recorded plat map for the Gibson Jack Acres, dated 02/17/1976.

INTERVENOR DILLER'S EXHIBITS:

AA. Bannock County Planning and Development Council Meeting Minutes, dated 04/23/1996.

BB. Bannock County Board of Commissioners Findings of Fact, Conclusions of Law and Decision, Appeal of Decision, Wildhorse Ridge Subdivision, dated 03/22/1994.

CC. Subdivision Application, Community Development & Research Department Staff Report for Wildhorse Ridge Subdivision, **(may be incomplete)** with Wildhorse Ridge Subdivision's development proposal.

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DD. Resolution In the Matter of Upholding the Planning and Development Council's Decision, with Stipulations, Concerning the Preliminary Plat Approval for Wildhorse Ridge Subdivision, Dated 06/17/1996.

EE. Wildhorse Ridge Restrictive Covenants, Preliminary Plat Draft.

FF. Schedule of Improvement Requirements, Rural Acreage & Rural Estate Developments.

GG. 2 Well Driller's Reports for Everett Diller's wells for water right permits nos. 29-7766 and 29-7905, dated 08/12/1988.

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Roster

Name -	Address	Org.	Representing.
John Welhan	325 Phys Sci. I.S.U. Pocatello	236-4254	Id. Geol. Survey
F. Randall Kline	P. O. Box 357 Pocatello ID 83204	232-9007 ATT.	Applicant Gibson Jack Joint Venture
Warren Perry	P.O. Box R Poc. 83204	Applicant	Gibson Jack Joint Venture
Guy Anderst	PoBox R Poc 83206	Applicant	Gibson Jack Joint Venture
Mary Harling	9588 W. Heather Rd.	~~Poc. ID~~	self
Glenn Weidert	3118 N. Stephanie Rd.		Self
Steven Leaman	9959 Gibson Jack Rd.		
Tanya Nix	9959 Heather	83221	Self
Deb Cushman	1405 So. Broadway	Blackfoot	Jack Cushman Drilling
Randy Shelton-Davis	9615 Gibson Jack Road		Self
Steve Chapman	[illegible]		Applicant
Harvey Pickens	9806 W. Gibson Jack Rd.		Self

Telephones	Name
234-2234	Hollingsworth, R.M.
234-2202	Diller, E. D.
236-7288	Kelly, Mark R.
232-9007	F. Randall Kline

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Exhibits: ~~Applicant~~ - A - B - C ck ~~Protestant~~ - 1, 2, 3

Page 1

Tape -

Start at ~~22~~ 33 -

Applicants Exibits
#1 Plat map
#2, letter from Sherl Chapman
3, 1 page letter from Jack Cashman
4, report prepared by John welhan from IGS

Protest Exibits -
#A through Y
B
Protest - Diller
AA — GG

1. Applicants exibits are received into evidence -
2. Start recording at ~~34~~ 106 - Gary ~~speaking~~ opening remarks
3. @ 223 - Mr Cline - speaking - opening statement - att. applicant.
@ 358 - Gary
@ 375 - Mr Cline - area of impact - does not exist - within one mile.
@ 440 - Mr Hollingsworth - issue with Mr Cline -
Subdivision approval questions by county and city.
@ 604 Mr Andrews (Andrus?) Direct question by Mr Cline.
(Anders) Background on application —
@ 815 - Mr Hollingsworth - object to background narriation.
@ 846 - Mr Anders - continues
@ 907 Mr Cline asks for clarification -
@ 977 Mr Cline - questions about availablity of water in hearings before county and city hearings.
@ 1029 - Mr Cline - questions about DEQ approval -
@ 1048 - Mr Cline - for Mr Andres -
address the six criteria -
1. affect other rights
~~2.~~ Mr Dillers well - not able to use -
@ 1140 2. availability of water

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@ 1158 Mr ~~Anders~~ Cline - questions for Mr Anders addressing the six criteria

@ 1250 - Not picking up Mr Cline at all times -

@ 1473 - Mr Anders still addressing the 6 criteria through questions posed by Mr Cline.

@ 1623 - Mr Hollingsworth cross exam

@ 1729 objection by Mr Cline to question about subdivision finances

@ 1745 - Mr Hollingsworth - for Mr Cline - availabilty of city water

@ 1867 Mr Cline objects to protest exhibit y discussion of availabilty of water supply from Pocatello

@ 2003 Mr Hollingsworth looking @ well log - Exhibit K - Mr Anders answering questions

@ 2155 - ~~Break~~ No Break Mr ~~Anders~~ Anderss answering questions posed by Mr Hollingsworth

@ 2218 - Objection by Mr Cline -

@ 2259 End of Mr Hollingsworth questions

@ 2292 Mr Diller makes statement -

@ 2400 - Mr Diller questions Mr Anders

@ 2510 - End of Mr Diller questions -

@ 2550 Mr John Welhan - witness - questions by Mr Cline

@ 2611 - Mr Welhan is recognized as an expert.

@ 2612 - Mr Welhan discusses his testing and results

@ 3300 End of Mr Welhans Discussion -

@ 3301 - Mr Cline starts questionings - of Mr Welhan

@ 3773 John refers to figure 4 exhibit 4

@ 3856 - refers to figure 5 - wells drilled prior to 86 show higher water levels in the wells - drilled after 87 - 10 to 20' lower water level - aquifer is subject recharge - storativity is a real concern -

* @ 4017 Very Important about amount of H2O - is all coming from storage

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@ 4074 end of Mr Cline
@ 4075 Mr Hollingsworth starts cross questions

#2 New Tape Start @ 36
John Welhan testifying -- cross questions by Mr Hollingsworth speaking about the well testing.

@ 245 - Mr Welhan answers question about the recharge - questioned by Mr Hollingsworth - read Lyle swank letter - exhibit N

@ ≈ 395 Gave Mr Welhan copies of exhibit A & J

@ 700 Mr John Welhan answering questions from Mr Hollingsworth.
? water balance -

@ 1021 - Mr Hollingsworth ends questions - Mr Diller starts questions -

@ 1282 : End of Mr Dillers Questions
1284 : Questions by Mr Cline

* @ 1315 : Gary Spachman asks clarifying questions -
@ 1632 : Stop for lunch
@ 1632 Restart after lunch — Time 28
@ 1633 Sheryl Chapman testifying
@ 1700 Mr Cline asking questions of Sheryl Chapman
Testifier about investigations he has made in the Gibson Jack area.
@ 1808 - Mr Chapman compares his study to John's study.
Mr Chapmans test used wells in the gibson jack subdivision
@ 2047 - Mr Cline refers to exhibit 2 -
@ 1950 Mr Cline ends questions
@ 2252 Mr Hollingsworth starts cross exam of Mr Chapman
@ 2414 Mr Chapman states that the wells cannot produce irrigation water.
@ 2500 - Mr Hollingsworth refers to exibit N

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Page 4 - Start @ 2526 Mr Hollingsworth speaking.
Mr Chapman testifying

@ 2623 · objection by Mr Cline; Sustained

* @ 2989 · Mr Chapman addresses fire protection ~~availab~~ availability.

@ 2830 Object by Mr Cline, sustained.

@ 2876 : Mr Hollingsworth refers to ~~exhibi~~ exhibit C.

@ 2933 - Objection.

@ 3082 Mr Hollingsworth refers to exhibit 4.

@ 3075 Mr Hollingsworth Introduces a plat of Gibson Jack Subdivision label exhibit Z

@ 3230 Questioning resumes

@ 3423 Objection; overruled

@ 3500 Objection: sustained

@ 3900 Mr Hollingsworth ends questioning, Mr Diller starts cross exam of Mr Chapman.

@ 3975 Intervenor starts cross exam.

@ 4085 Objection - water quality & quantity - overruled.

* @ 4185 Water quality & quantity

* @ 4524 · "Water levels should be measured · Cheryl Chapman

@ 4632 Intervinor -- no further questions

@ 4650 Question by Mr Hollingsworth

@ 4695 : end of Testimony

4701 ——— 5 min break

Start at 4706 & Mr Cushman - Mr Cline questioning &

4785 Mr Cline questioning about Mr Hollingsworths well

@ 4825 Mr Cline refers to exhibit 3

@ 4830 Mr Cline questions Mr Cushman about wells in the Gibson Jack Subdivision.

@ 4875 Mr Hollingsworth objects - overruled.

@ 5020 Mr Cushman : depths of wells & amount of water

* @ 5057 · Objection. sustained

@ 5230 · Mr Cline refers to exhibit "Diller C6"
well logs - Mr Diller wells &

End @ 5332

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Start @ 5332 Mr Cline examining - Mr cushman witness
Talking about ~~5~~ well logs (Diller GG)

@ 5435 ~~53~~ Objection - overruled

@ 5445 Mr Hollingsworth Cross Exam of Mr Cushman.

@ 5570 Mr Hollingsworth refers to Protestant exhibit K
questions about perfs and why -
questions about well construction -

@ 5800 Mr Hollingsworth, question about his well for Mr Cushman -

* @ 5910 Stipulation by Mr Cline: More water in valley than foothills

@ 6088 Mr Hollingsworth Resumes questioning. & ends @ 6129

@ 6130 - Mr Diller questions Mr Cushman

@ 6219 - Mr Spachman interjects

@ 6380 - Mr Diller ends

@ 6382 Mr Kelly questions Mr Cushman

@ 6539 Mr Kelly ends questions

@ 6545 Mr Cline on redirect of Mr Cushman GG

@ 6585(?) Mr Hollingsworth - cross exam - mr cushman out

@ 6636 - Mr Rex Davis testifying ~~as~~ Mr Cline questioning.
Source of water - well construction.

~~2~~ 6660 end of tape 2.

* Start tape 3 @ 30
Mr Rex Davis testifying: Mr Cline questioning.

@ 100 Mr Hollingsworth refers to exhibit 4.

@ 181 Mr Hollingsworth - ceases - Mr Kelly has questions for mr Rex Davis -

* 300 Mr Davis makes statement.

- 352 Mr Davis cutoff by Gary

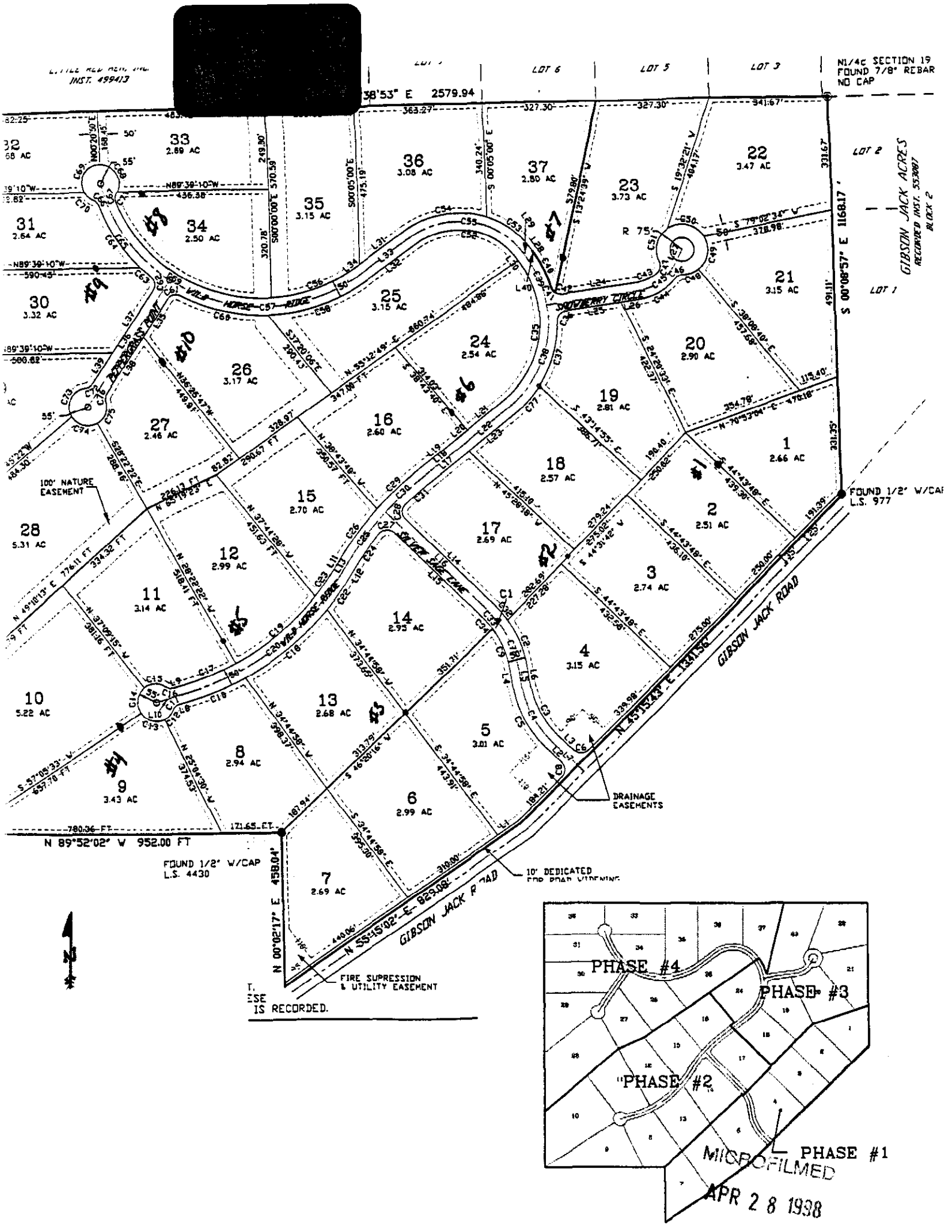
~~302~~

Stop tape 3 @ 533

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APPLICANT'S EXH.

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N1/4c SECTION 19
FOUND 7/8" REBAR
NO CAP
INST. 499413
LOT 6
LOT 5
LOT 3
LOT 2
LOT 1
38'53" E 2579.94
GIBSON JACK ACRES
RECORDED INST. 553087
BLOCK 2
S 00°08'57" E 1168.17'
FOUND 1/2" W/CAP
L.S. 977
100' NATURE EASEMENT
GIBSON JACK ROAD
N 45°15'43" E 1341.56'
DRAINAGE EASEMENTS
10' DEDICATED
FOR ROAD WIDENING
N 89°52'02" W 952.00 FT
FOUND 1/2" W/CAP
L.S. 4430
N 00°02'17" E 458.04'
N 55°15'02" E 825.08'
FIRE SUPRESSION
& UTILITY EASEMENT
IS RECORDED.
PHASE #4
PHASE #3
PHASE #2
PHASE #1
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Sherl L. Chapman

CONSULTANT

410 S ORCHARD / SUITE 144 / BOISE, IDAHO 83705 / PHONE 344-6690

[redacted]

TO: Alpine Engineering Company

FROM: Sherl L. Chapman, Consultant

DATE: March 20, 1984

SUBJECT: Gibson Jack Water Supply

This firm was contacted by Alpine Engineering Company and asked to review and interpret data collected by Alpine Engineering Company regarding the results of a pumping well test conducted on March 7, 1984 in the Gibson Jack Acres Subdivision. The objective of the review was to determine whether or not the well test and well log data provided were sufficient to determine the feasibility of individual domestic wells for approximately 52 lots in a new subdivision or if a central supply would be required for the subdivision. Data provided included measurements taken from a test well and observation well located in the existing subdivision, well log data, topographic maps and a subdivision plat. In addition, this author was able to utilize previously conducted studies made by this firm in the same area and data collected on file with the Idaho Department of Water Resources and the U. S. Geological Survey.

The well that was pumped for the project is 153 feet deep, has a static water level of 75 feet, and an initial pumping level of about 140 feet and a stabilized water level of about 100 feet after about three hours of pumping. Based on these data, the Specific Capacity, a measure of production of water per foot of drawdown, is about .56 gallons per minute per foot which is not unusually low for wells in this type of area. The observation well, some 270 feet distant, demonstrated only .6 foot drawdown after continuous pumping of the test well at maximum production. While this indicates some interconnection in the aquifer, it is not considered to be a problem since most domestic wells do not pump continuously for lengthy periods of time and drawdown of this magnitude is considered to be relatively insignificant, particularly in weak artesian systems which are extremely sensitive to changes in barometric pressure. The test well was pumped at about 14 gallons per minute from 100 feet which is a reasonable yield for a single family domestic well.

Wells drilled in this area encounter two specific types of subsurface geology. Most of the wells encounter interbedded clay, gravel, silt and boulders collectively known as colluvium to about 160 to 170 feet below land surface. Water is produced from gravel lenses in the clay and silt beds and from some fine sand layers. On the southern and western borders of the proposed project, one may encounter silicic volcanic rocks and other consolidated rocks common to the basin and range province. These rocks produce water from

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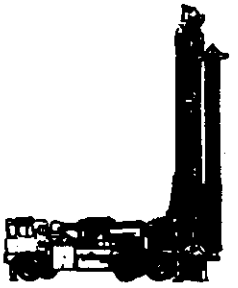
fracture zones and flow interbeds when penetrated by wells. Both geologic units are capable of producing significant quantities of water to wells and are commonly used in this area as well as others as sources of domestic water.

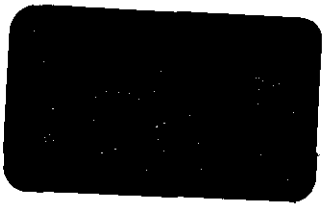
A critical objective of this review of data was to determine whether or not individual domestic wells are feasible in this area or whether a central subdivision supply should be constructed. Based upon the review of the data including the pumping well test and well logs, it is this author's opinion that individual domestic wells are feasible for the 52 lots in this area. Expected production from the wells will be approximately 10-15 gallons per minute and the average depth of wells to be drilled will range from about 140 feet to 200 feet depending on their location within the subdivision. Fifteen gallons per minute will allow sufficient water for domestic consumption and limited irrigation of lawns and gardens but will not be sufficient for irrigation of the full 2.5 acres within each lot. Homeowners should be aware that in order to irrigate the entire 2.5 acres in each plot a larger well will be required producing as much as 40 gallons per minute on individual lots. It would also be possible for the homeowners to collectively drill a single well to produce sufficient water for irrigation if they wish to irrigate the approximate 130 acres within the subdivision. Such an irrigation well would have to produce about 400 gallons per minute to efficiently irrigate the lots in the subdivision. However, irrigation of the land is not critical to the domestic requirement and it is recommended that the subdivision utilize individual domestic wells for domestic consumption.

If any questions arise with regard to this report, please contact Sherl Chapman, 410 S. Orchard, Suite 144, Boise, Idaho 83705.

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JACK CUSHMAN DRILLING & PUMP CO.
1405 South Broadway
BLACKFOOT, IDAHO 83221





March 5, 1985

Alpine Engineering
P.O. Box 1106
Pocatello, Idaho 83204

ATTENTION: Bob Thompson

Dear Mr. Thompson;

According to our records of the drilling our firm has done in the Gibson Jack Area, all the wells Jack Cushman Drilling, Inc. dug are to a depth of at least 275', and some are even 305', producing in our opinion plenty of water. The wells we test pumped for Alpine Engineering were only about 180' in depth.

So in our best judgement there is plenty of water available if the wells are taken to a sufficient depth. If you have any further questions or need further information please contact our office.

Sincerely yours,

Bob Cushman

Bob Cushman, Vice-president
JACK CUSHMAN DRILLING, INC.

BC/ms

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Branch Office at Pocatello
Physical Science, Room 325
Idaho State University
Pocatello, Idaho 83209-8071
(208) 236-3235

To: Chris Pein, ReMax Realty

January 25, 1996

From: John Welhan JHW

[redacted]

Re: results of pumping test on Iverson Well, Gibson Jack bench

I have completed my analysis of the data obtained from the pumping test conducted on your well on 1/11/96, and a hydrogeologic interpretation of the area's ground water supply. Due to the nature of the geologic data and water level records (obtained from existing drillers' reports of uncertain accuracy), the interpretations are preliminary and subject to change as new data become available. However, there appears to be sufficient consistency in the available information to indicate that this interpretation will hold up to closer scrutiny.

The following report is focused on two subjects: 1) the water yield and pumping response of your well as an indicator of other, similar wells on the bench, and the projected impact of pumping on nearby wells; and 2) potential geologic hazards associated with the Heather Road drainage.

Aquifer Geology and Hydraulic Response

I include a number of figures and tables which will be referenced in this discussion. The geology of sediments beneath the Gibson Jack bench was inferred from available well logs. Locations of wells with drillers' reports are shown in Figure 1, and a simplified geologic cross-section based on these reports is shown in Figure 2. Because the lithology in drillers' reports is commonly a general description of the actual geology, we usually have to rely on interpretation and intelligent guesses as to what drillers intended in their descriptions. Based on the fairly consistent descriptions of a "blue clay" unit and other clay zones, a generalized geologic model of the bench was constructed (Figure 3). The Upper Gravel represents the primary water-supply unit in this area, although it appears that a Lower Gravel unit (intercepted by the Pickens and Davis wells) also underlies the area and has higher (artesian) water pressure than the Upper Gravel aquifer (see Figure 4); this aquifer may also be supporting the flowing well which we looked at in the lowest part of your acreage.

Although water level information from drillers' reports must be interpreted with caution (because of insufficient waiting time after drilling to record a stable water level), there is sufficient consistency in the data (Table 1) to suggest that the Upper Gravel aquifer does experience seasonal and possibly longer-term (ie. drought-related) water level declines. Figure 5 shows water levels in wells located approximately from east to west on the bench, grouped according to those drilled prior to 1987 and those since. It appears that water levels in the older wells reflect pre-drought water conditions (ie. higher water levels), but that significant seasonal water level

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variations may also be represented. This is corroborated by reports of local well owners (Kelly, Hollingsworth) that their wells have experienced excessive drawdown during the year (breaking suction); from what I learned in questioning Mr. Hollingsworth about his well, this problem appears to have been exacerbated during the past 6-7 years of drought conditions.

The drawdown data associated with the Iverson well test are shown in Table 2 and Figures 6 and 7. The water level data obtained from the C. Nielson observation well over the course of a month are shown in Figure 8. The change in slope observed in the semi-logarithmic plot of Figure 6 is believed to be due to a change in the pump discharge rate, created when the sprinkler distribution line that was used to spread the discharge over a larger area filled and increased backpressure on the pump, thus decreasing the effective pumping rate. The factor of two change in slope is within 10% of the change expected for the observed discharge rate change. The calculated aquifer transmissivity is 300 gallons per day per foot or 40 ft^2/day. Aquifer storativity cannot be determined accurately from a single pumping well but was estimated at ca. 0.0001 from the barometric response in the observation well (about 0.5 ft of water level change in response to a barometric pressure change of about 1" of mercury). Based on these values, and assuming they are representative of the entire Upper Gravel aquifer, the expected drawdown in adjacent wells can be predicted and the effects of multiple pumping wells can be estimated. For example, during the test, the C. Nielson well water level was monitored with an automated data logger and less than 0.02 feet of drawdown due to the pumping well was detected (Figure 8). This is consistent with the expected drawdown predicted at that distance with the estimated storativity coefficient. In the case of multiple wells pumping at 20 gpm for 4 hour periods, the data indicate that individual well centers would have to be spaced more than 600 feet apart to avoid drawdown interference in adjacent wells of more than 10 feet.

Potential Geologic Hazards Associated with the Heather Road Drainage

During the time I was at the test site, you showed me your proposed development acreage and provided anecdotal information which aroused my interest. I have followed up this information and believe it is important enough to warrant a full geotechnical hazard analysis of your site. The area in question is the unnamed drainage which crosses Heather Road which displays several features of which you need to be aware, particularly because it affects almost half of your total proposed development's area.

The drainage originates from a very limited area, roughly circular in shape at its head, with steep scarps and evidence of slumping (soil movement). The total area of the head of this drainage is less than 1/3 square mile and it does not receive any surface flow from higher areas in the Bannock Range or its foothills. From your accounts and those of others who live in the area (Kelly), the area around and above the head of this drainage contains numerous ground water springs, apparently with sizeable discharges. Artesian pressures are also present at this location, as evidenced in an old well near the head of the drainage which was slowly flowing in January, 1996. The arroyo that cuts across the Gibson Jack bench from the head of the Heather Road drainage to Bannock Highway has side slopes which are as steep as those in the valley of Gibson Jack Creek, indicating an unexpectedly high erosion potential for so small a drainage source area.

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According to T. Ore of ISU Geology Department, the Heather Road drainage produced a large amount of water and debris during a flood event in 1963 or 1964. I assume that this was the same event you recounted to me, although I understood at the time that you were referring to an event in the 1970's. Large cobbles and gravel were washed over Bannock Highway from the mouth of this drainage together with a significant and unusual flow of water (photographic documentation is available at ISU Geology Department). This event was probably related to the widespread flooding and unusual runoff that occured in 1962 and 1963, when the Portneuf River recorded its highest and third highest flows ever, in back-to-back years. Apparently, the hydrologic conditions at the time were extreme enough to also cause City Creek to flow at an unprecedented level that covered the entire City Creek alluvial fan. Such flooding has not occured since.

Such flood events are rare but recurrent, and may be representative of those happening statistically on the order of once every hundred years. Such events are typically associated with intense rainfall on frozen ground in the spring, during which tributary drainages such as Heather Road can have "large amounts of debris carried onto the flood plain by high velocity water" (Corps of Engineers, 1970). In addition, excessively saturated soils can, under steep slope conditions, abruptly fail and create debris or mud flows.

Summary

A confined or semi-confined gravel unit between about 100 and 300 feet depth is the primary water-bearing unit on the bench that is being exploited by existing wells on Gibson Jack bench. Wells drilled into this aquifer yield approximately 20-50 gallons per minute, depending on the well diameter, perforated depth range and season of the year. The Iverson well was tested on 1/12/96 when aquifer water levels are at their lowest of the year. The well was pumped at 38 gallons per minute for 7.3 hours with 136 feet of drawdown incurred; based on these results a more conservative long-term safe yield of 20 gallons per minute was estimated from a brief, shorter test conducted on 1/12/96. A well located 1350 feet away showed no measurable drawdown during the 7 hour test. From the test results, the aquifer transmissivity was determined to be 300 gal/day/ft with aquifer storativity estimated at about 0.0001 from barometric response in the observation well.

Assuming that these values are representative of the upper gravel aquifer, wells would have to be spaced more than 600 feet apart to avoid causing more than 10 feet of drawdown in adjacent wells when pumping continuously at 20 gpm for 4 hours. Available water level records and anecdotal information obtained from local well owners suggests that aquifer water levels experience significant declines both seasonally and in response to the past 6-8 years of extended, below-normal recharge (drought conditions). Since the natural recharge rate or water balance of the aquifer is unknown, it is impossible to say whether the number of new wells associated with the proposed development will have a significant *cumulative* impact on the aquifer's storage and water levels. From the preliminary geologic model shown in Figure 3, it is possible to speculate that a deeper gravel aquifer exists which may provide adequate development potential, but with the amount of information in hand I would not bank on such an hypothesis.

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You should also be aware that the Department of Water Resources' regulation which restricts domestic ground water users to the present 1/2 acre irrigation limit under their domestic water use permit may be changed or lifted next year, making it more difficult for plaintiffs in water disputes to limit neighbors' excessive ground water withdrawals. Since we cannot predict the long-term cumulative impact of another 20 domestic wells let alone 20 irrigation wells on this aquifer, you should consider some covenant restrictions on irrigation of acreage in the development, in order to minimize the possibility of future water supply problems.

Finally, it is strongly recommended that the head region of the Heather Road drainage be thoroughly investigated for potential mass movement and flooding hazards which may be triggered during unusual hydrologic flooding events and which are known to have occured in the past. The numerous reported springs in the area, the known occurence of artesian ground water pressure at the head of the Heather Road drainage and evidence for slumping and the recorded movement of large amounts of water, cobbles and gravel from this drainage in the early 1960's, taken together, suggest that the behavior of this drainage system cannot be predicted on the basis of its benign response over the past decade of drought conditions. Unusual hydrologic events (such as intense runoff) may reactivate mass movement and flooding in this drainage, and structures built in the low lying parts of your acreage may be at risk from flooding and/or soil movement during such events.

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Table 1 - Gibson Jack Bench well water level data from drillers' logs, direct measurements and Alpine Engineering test data. Well surface elevations estimated from City of Pocatello detailed topopgraphic maps.

Wells sorted in order of increasing surface elevation:						*Secular Water Level Trends*			*Seasonal Trends*	
Well ID	*Date*	*Collar*	*Static Water Level, ft*			*Upper Gravel*		*Lower*	*Measured*	*Measured*
	Measured	*Elev'n*	*bls*	*amsl*		*Pre-1987*	*1987-95*	*Gravel*	*Jan-Jun*	*Jul-Dec*
Terry	07/11/94	4760	95	4665			4665			4665
Bates	07/07/76	4770	80	4690	*	4690				4690
Moore	05/28/86	4770	45	4725		4725			4725	
S. Nielson	11/22/89	4790	85	4705			4705			4705
Grahle	03/01/84	4795	75	4720		4720			4720	
Diller (deep)	08/12/88	4800	75	4725			4725			4725
Diller (shallow)	03/01/84	4800	66	4734		4734			4734	
Harling	04/09/78	4815	64	4751		4751			4751	
Oliver	12/28/94	4815	90	4725			4725			4725
Bowen****	05/06/87	4820	120	4700			4700		4700	
C. Nielson****	10/12/95	4820	100	4720			4720			4720
C. Nielson	01/09/96	4820	91.1	4728.9	***		4728.9			4728.9
Nickoloff	06/28/86	4845	100	4745		4745			4745	
Davis	01/07/93	4850	40	4810	**			4810	4810	
Iverson ****	12/08/95	4880	125	4755			4755			4755
Iverson	01/09/96	4880	95.5	4784.5	***		4784.5			4784.5
Pickens	11/22/91	5000	75	4925	**			4925		4925
				Average level:		4727.5	4709.8	4867.5	4729.2	4708.4

* very shallow perforations, may not be in Upper Gravel aquifer
** artesian head, interpreted as Lower Gravel aquifer water level
*** accurate measurement by e-tape
**** suspected water level measurement error

Table 2 - Iverson Well Pumping Test, 1/11/96

Well radius: 0.33 ft
All data are depthsare reported as below top of casing

Pump start @ 9:36 AM Static water SWL = 97.21
Pump discharge (after 10 min.) = 54336 gal/day

Time, min	Water level	Corrected Drawdown	log(t)	log(s)
0.80	112.0	14.6	-0.10	1.17
1.20	121.0	23.6	0.08	1.37
1.75	130.0	32.6	0.24	1.51
2.63	139.0	41.6	0.42	1.62
2.92	143.0	45.6	0.46	1.66
3.28	146.0	48.6	0.52	1.69
3.63	149.0	51.6	0.56	1.71
4.00	152.0	54.6	0.60	1.74
4.42	155.0	57.6	0.65	1.76
4.87	158.0	60.6	0.69	1.78
5.37	161.0	63.6	0.73	1.80
5.73	163.0	65.6	0.76	1.82
6.13	165.0	67.6	0.79	1.83
6.57	167.0	69.6	0.82	1.84
7.05	169.0	71.6	0.85	1.86
7.58	171.0	73.6	0.88	1.87
8.08	173.0	75.6	0.91	1.88
8.73	175.0	77.6	0.94	1.89
9.58	177.0	79.6	0.98	1.90
10.75	179.0	81.6	1.03	1.91
11.37	180.0	82.6	1.06	1.92
11.97	181.0	83.6	1.08	1.92
12.63	182.0	84.6	1.10	1.93
13.37	183.0	85.6	1.13	1.93
14.20	184.0	86.6	1.15	1.94
15.00	185.0	87.6	1.18	1.94
15.83	186.0	88.6	1.20	1.95
16.67	187.0	89.6	1.22	1.95
17.58	188.0	90.6	1.25	1.96
18.55	189.0	91.6	1.27	1.96
19.57	190.0	92.6	1.29	1.97
20.75	191.0	93.6	1.32	1.97
31	190.0	92.6	1.49	1.97
48	206.0	108.6	1.68	2.04
51	207.0	109.7	1.71	2.04
57.5	207.5	110.1	1.76	2.04
59.5	207.9	110.5	1.77	2.04
63	209.1	111.7	1.80	2.05
66	209.9	112.5	1.82	2.05
67	210.3	112.9	1.83	2.05
73	211.5	114.1	1.86	2.06
82	213.5	116.1	1.91	2.06
91	215.0	117.6	1.96	2.07
96.5	215.4	118.0	1.98	2.07
115	217.5	120.1	2.06	2.08
179	223.8	126.5	2.25	2.10
225	225.7	128.3	2.35	2.11
264	227.3	130.0	2.42	2.11
308	229.5	132.1	2.49	2.12
372	233.4	136.0	2.57	2.13
439	234.0	136.6	2.64	2.14

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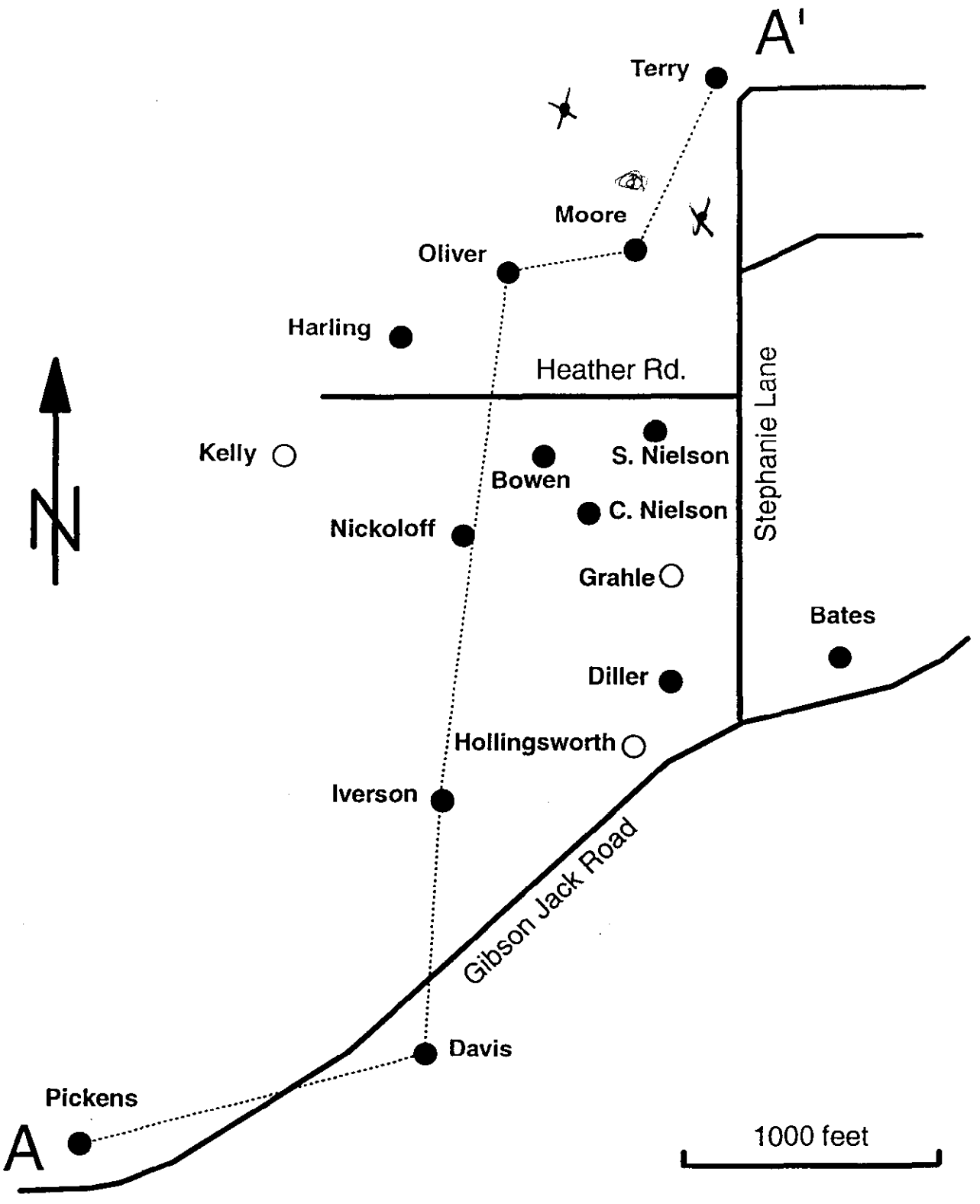


Figure 1 - Locations of wells with geologic logs (filled circles), showing line of cross-section A-A' in Figure 2.

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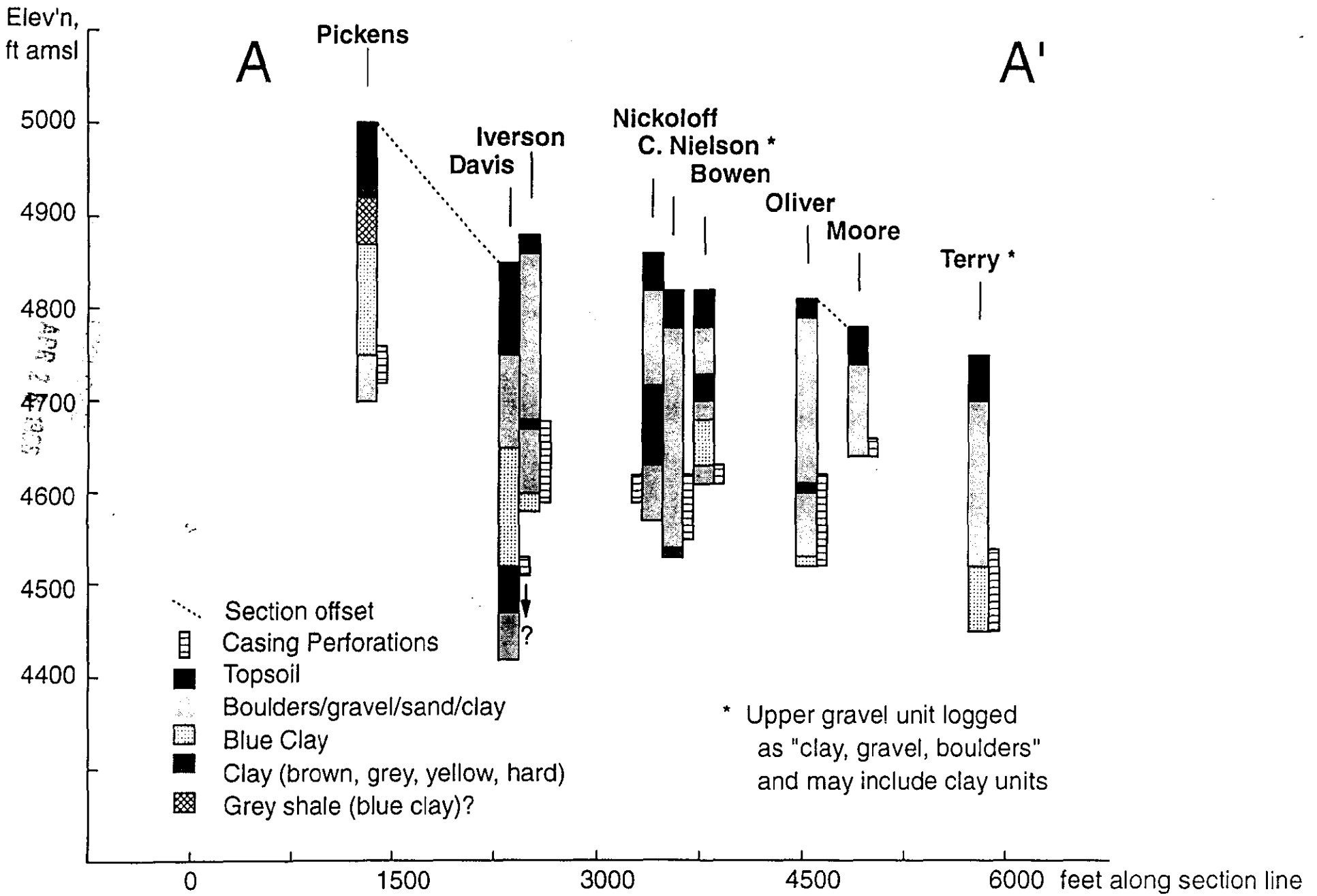


Figure 2 - Geologic cross-section, showing water producing zones and principal geologic units.

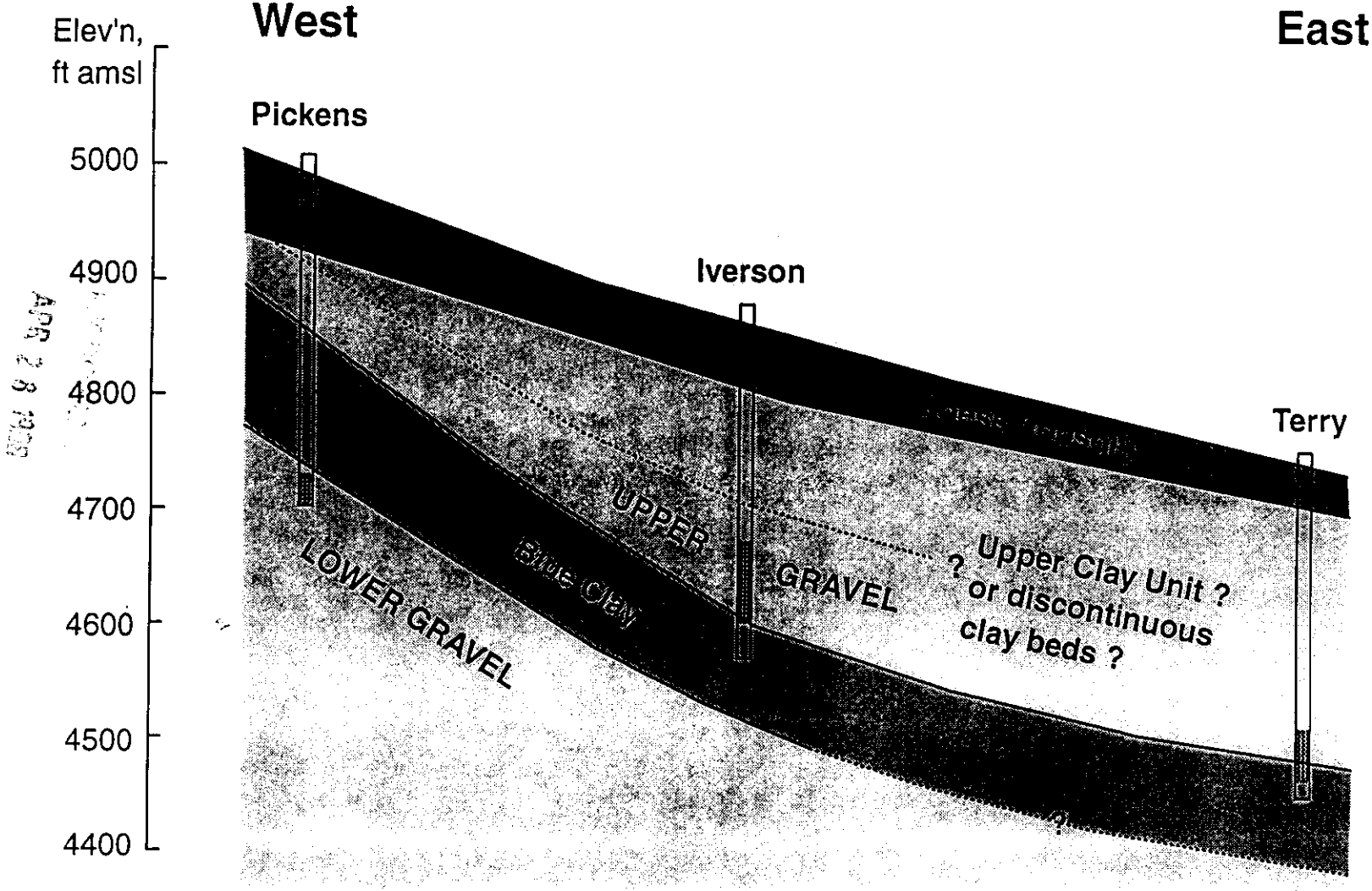


Figure 3 - Inferred generalized subsurface geologic environment on the Gibson Jack Bench, showing the Upper Gravel Aquifer, the Blue Clay aquitard and the Lower Gravel Aquifer.

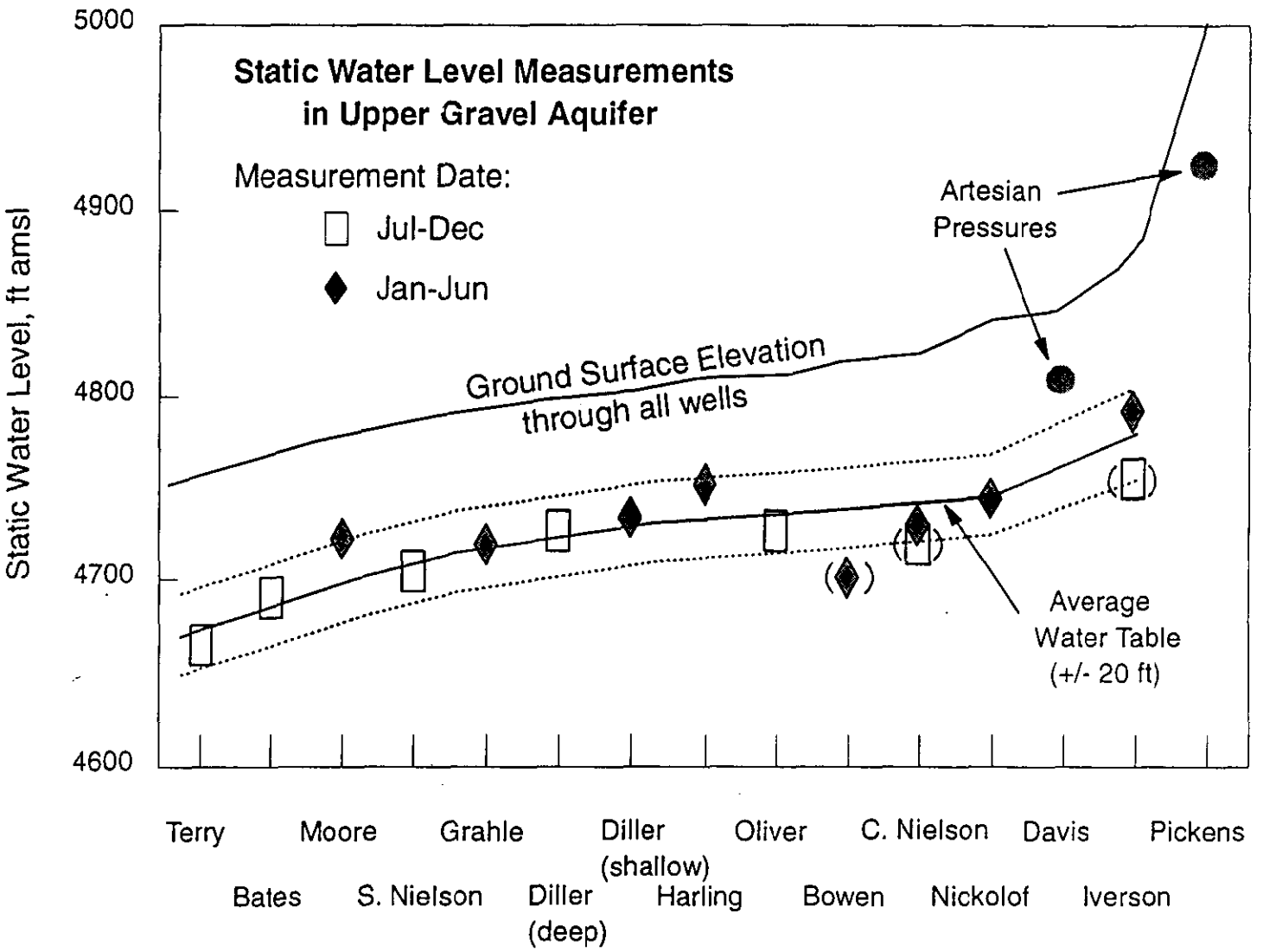


Figure 4 - Ground water levels in the study area, plotted in order of increasing surface elevation. The average water table so defined is consistent with the expected variation which mimics the topography. Note that the Davis and Pickens wells show excess pressure, and therefore are not tapping the Upper Gravel Aquifer. The overall noise (+/- 20 ft) in the data set is represented by the dashed lines. Brackets around symbols indicate known or suspected error in water level measurements.

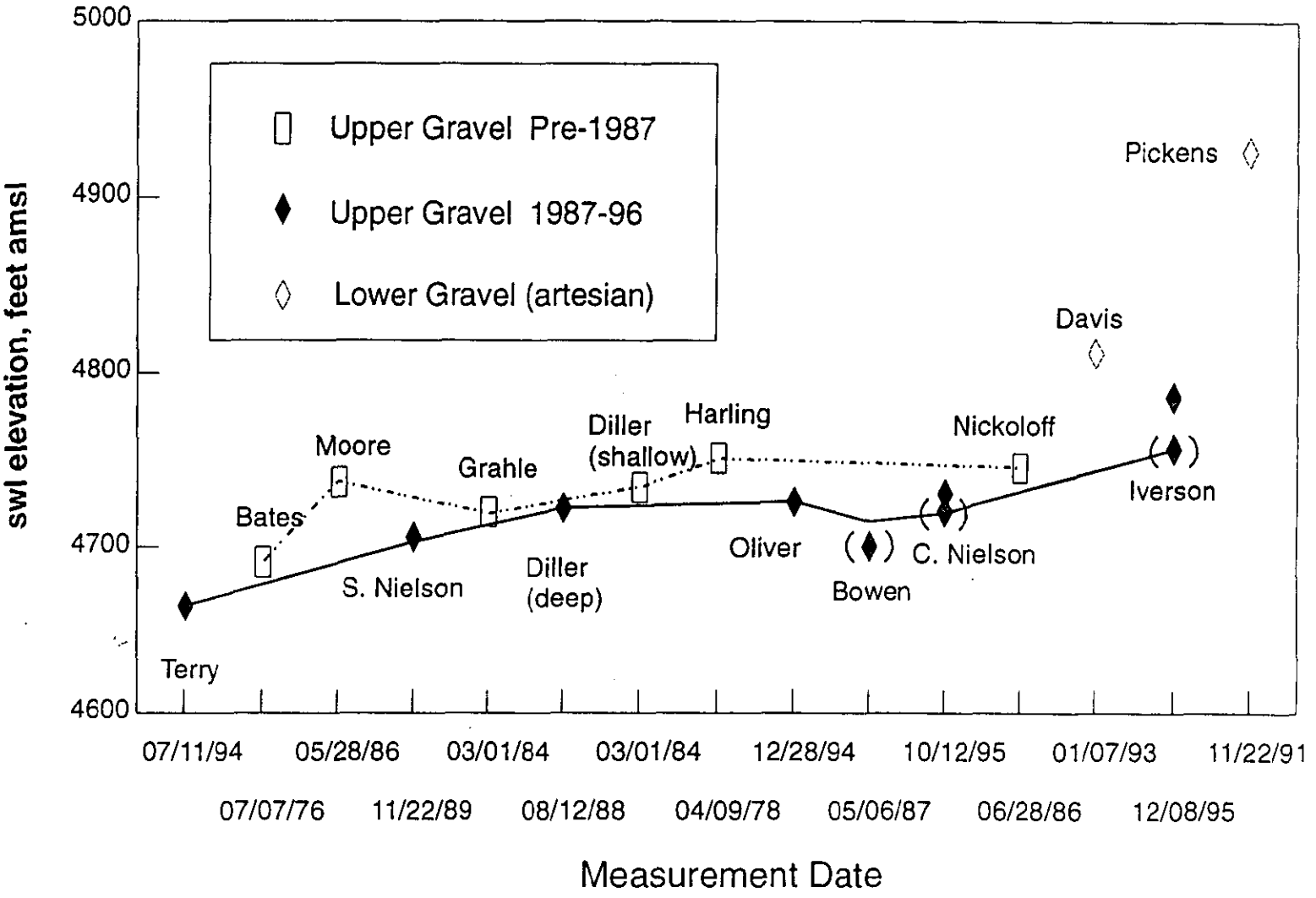


Figure 5 - Comparison of water levels from recent, drought-affected years (1987-96; diamonds) and water levels that were measured during normal or above-average water years (pre-1987; open rectangles). Water levels measured during normal or above average water years are consistently higher, although these wells were measured in the spring when recharge could be expected to increase aquifer water levels.

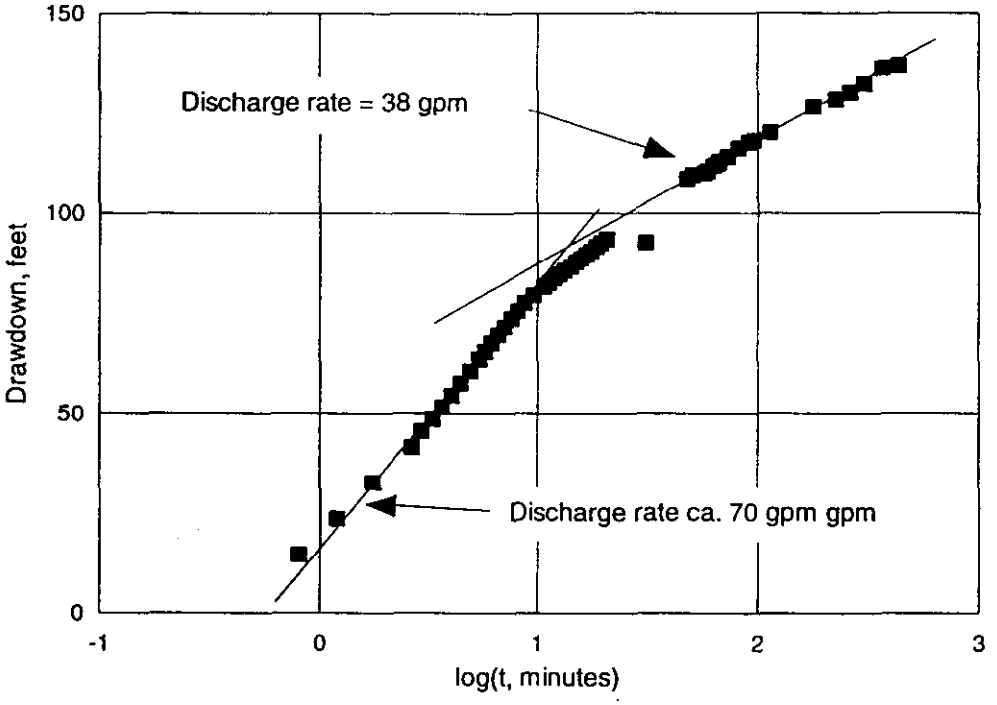


Figure 6 - Semi-logarithmic drawdown response of Iverson well during pump test

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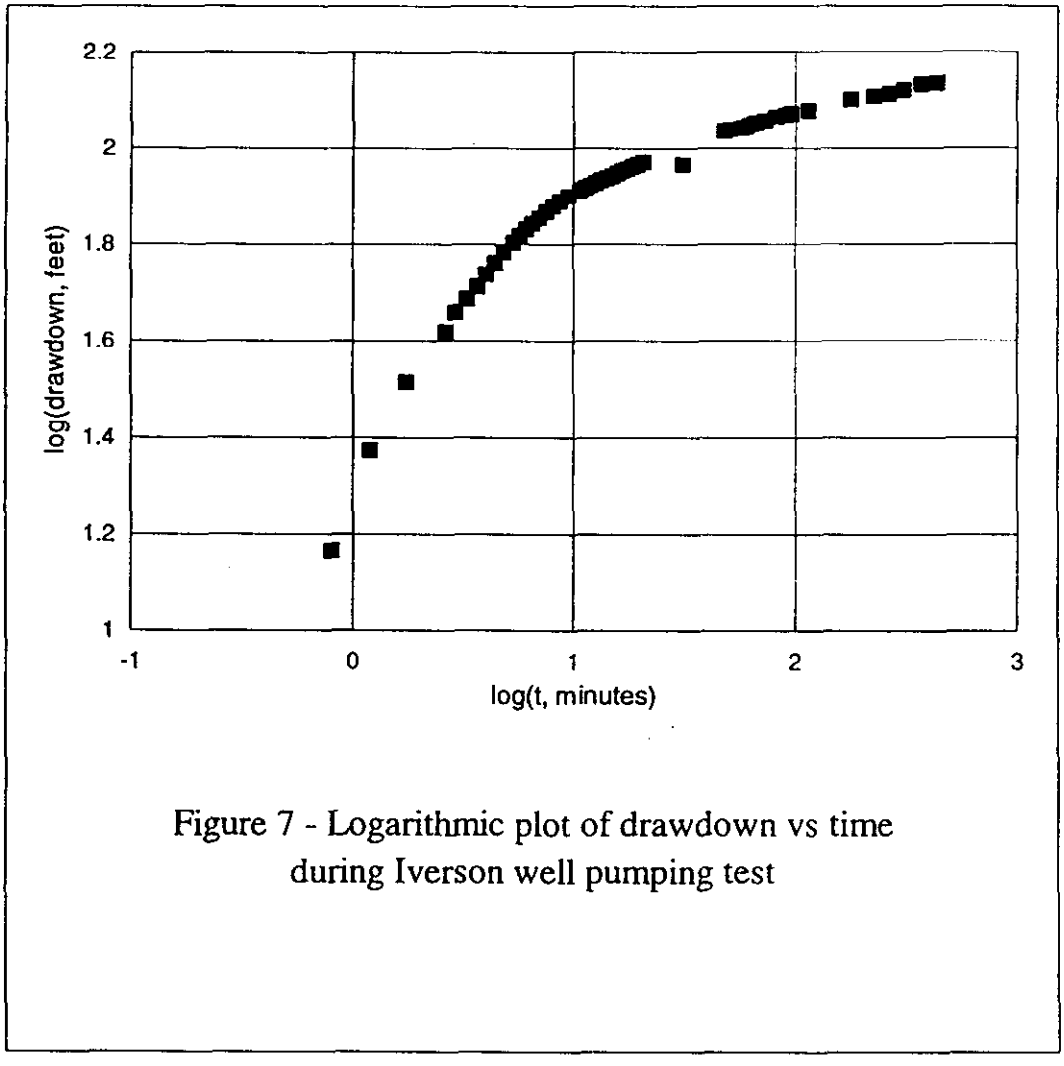


Figure 7 - Logarithmic plot of drawdown vs time during Iverson well pumping test

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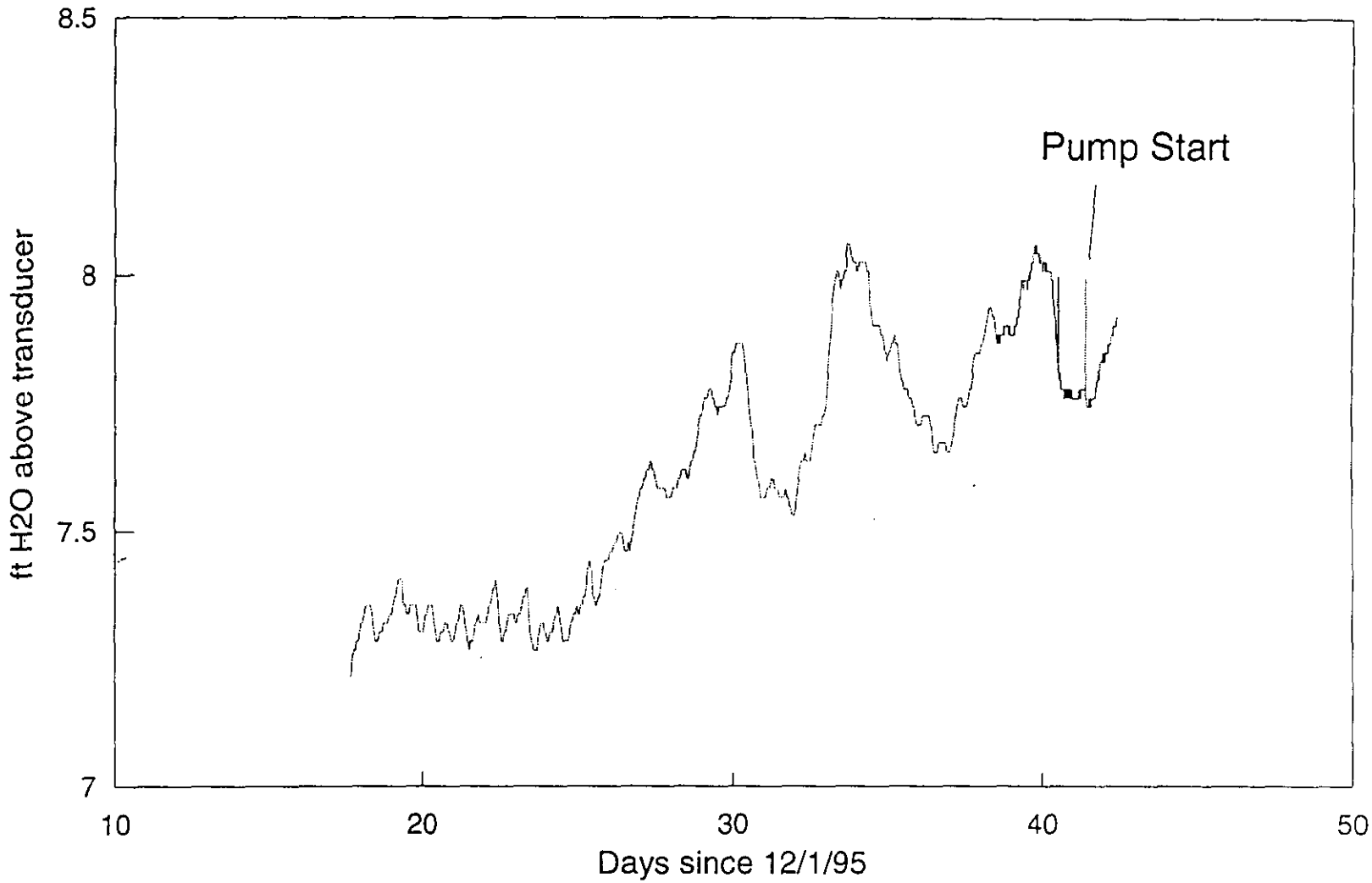


Figure 8 - Water level variations in the C. Nielson observation well, prior to and during the pumping test. The water level fluctuations of the order of 0.5 feet are due to barometric pressure.

PROTESTANT'S EXH.

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40613

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BURSAR, UNIVERSITY OF IDAHO

STATEMENT OF ACCOUNT DUE

University of Idaho
Moscow, Idaho 83843

NO. 96-106

MAIL PAYMENT TO:

Myron Molnau, State Climatologist
Biological & Agricultural Engineering
University of Idaho
Moscow ID 83844-0904

[redacted]

SERVICE DEPARTMENT

CHARGE TO:

BUDGET CODE		
ELEMENT		PROJECT
BF	Y040	State Climate

IN ACCOUNT WITH:

Richard Hollingsworth
9502 Jibson Jack
Pocatello ID 83204

REFERENCE:

DATE: 5/7/96

DATE AND QUANTITY	ITEM	UNIT PRICE		AMOUNT
	Pages Fax Charge	$14.28		$14.28
	Idaho Sales Tax	.72		.72
	Shipping/Handling	5.00		5.00
	PLEASE RETURN A COPY WITH PAYMENT THANK YOU			

TOTAL AMOUNT OF THIS STATEMENT $20.00

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APR 28 1998

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Station 107211 - POCATELLO WSO ARPT
1961-90

Climate Summary

Month	Temperature (°F) Avg daily max	Avg daily min	Avg	2 yrs in 10 will have Max temp. >than	Min temp. <than	Avg no of grow deg days*	Precipitation (Inches) Avg	2 yrs in 10 will have less than	more than	Avg no. of days with 0.10 or more	Avg snow-fall
January	31.8	14.4	23.1	52	-20	4	1.04	0.56	1.46	3	9.4
February	38.4	19.9	29.1	58	-11	10	0.92	0.43	1.35	2	6.7
March	46.8	26.0	36.4	68	3	47	1.26	0.65	1.79	4	6.8
April	57.5	32.5	45.0	80	18	179	1.20	0.48	1.80	4	4.7
May	67.4	39.8	53.6	87	24	425	1.36	0.67	1.95	3	0.8
June	78.0	47.2	62.6	97	32	678	1.02	0.39	1.56	2	0.0
July	88.0	53.0	70.5	100	39	946	0.65	0.18	1.10	1	0.0
August	86.3	51.1	68.7	100	36	889	0.67	0.14	1.08	1	0.0
September	75.1	42.3	58.7	94	25	562	0.85	0.22	1.45	2	0.1
October	62.3	33.1	47.7	83	16	262	0.91	0.30	1.47	2	2.1
November	45.2	25.6	35.4	67	1	44	1.16	0.52	1.71	4	6.0
December	33.7	16.0	24.8	55	-15	6	1.11	0.47	1.66	3	10.5
Yearly Total	---	---	---	---	---	4051	12.15	9.41	14.73	31	47.2
Average	59.2	33.4	46.3	---	---	---	---	---	---	---	---
Extreme**	104	-33	---	101	-24	---	1.68	---	---	---	---
MM/DD/YY	8/ 2/69	2/ 1/85	---	---	---	---	10/ 2/76	---	---	---	---

* Based on 40° F
** Extreme Daily Value

Growing Season Length

Probability	Daily Minimum Temperature no. days > 24°F	no. days > 28°F	no. days > 32°F
9 years in 10	158	125	92
8 years in 10	166	133	101
5 years in 10	183	148	117
2 years in 10	200	163	134
1 year in 10	209	171	142

Fall and Spring Freezing Temperatures

Probability	Temperature 24°F or lower	28°F or lower	32°F or lower
Last freezing temperature in spring:			
1 year in 10 later than--	May 1	May 21	June 15
2 year in 10 later than--	April 24	May 16	June 7
5 year in 10 later than--	April 12	May 5	May 23
First freezing temperature in fall:			
1 yr in 10 earlier than--	September 25	September 15	September 4
2 yr in 10 earlier than--	October 1	September 20	September 9
5 yr in 10 earlier than--	October 13	October 1	September 18

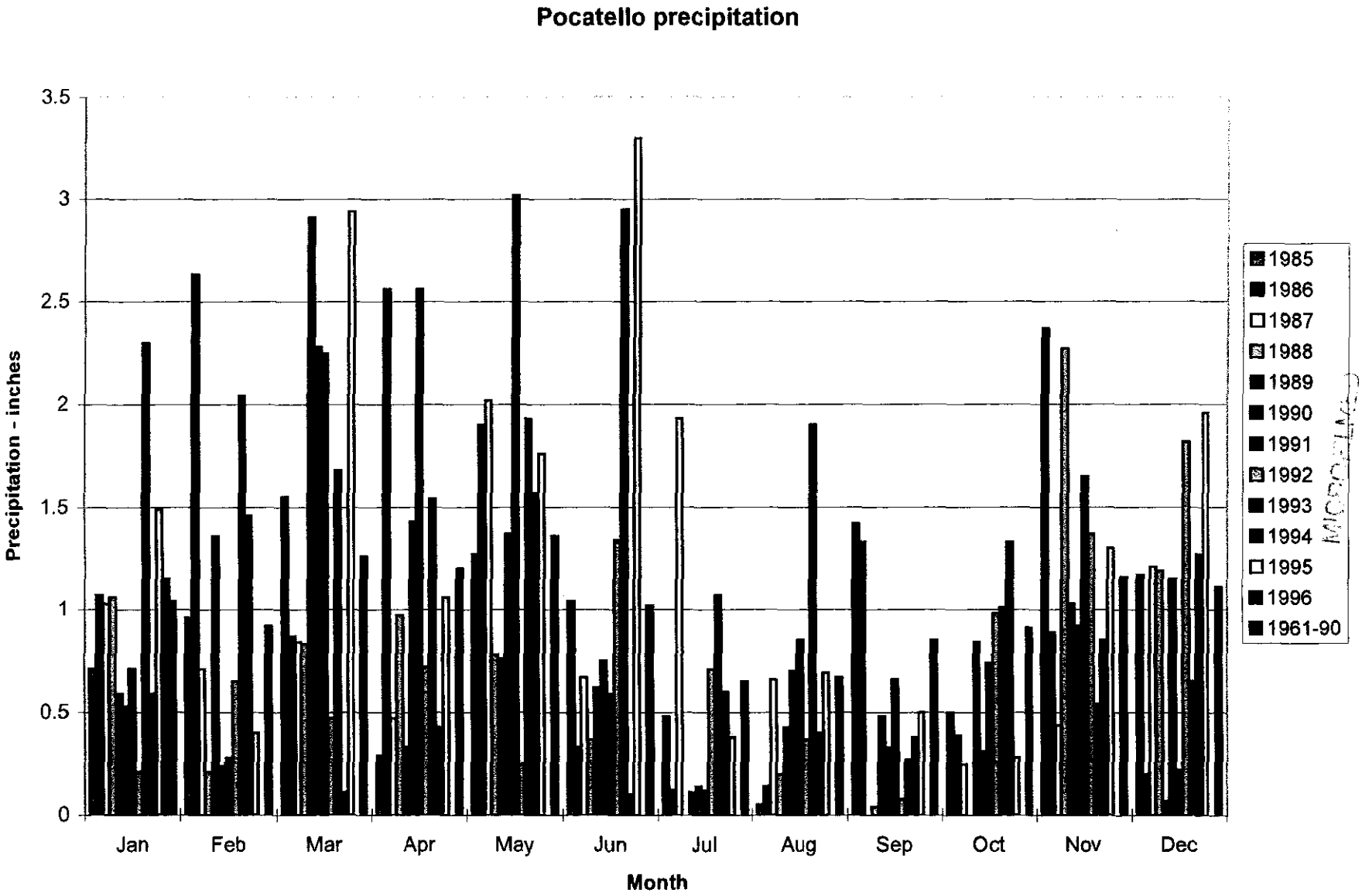
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APR 2 8 1998

Total Monthly Precipitation

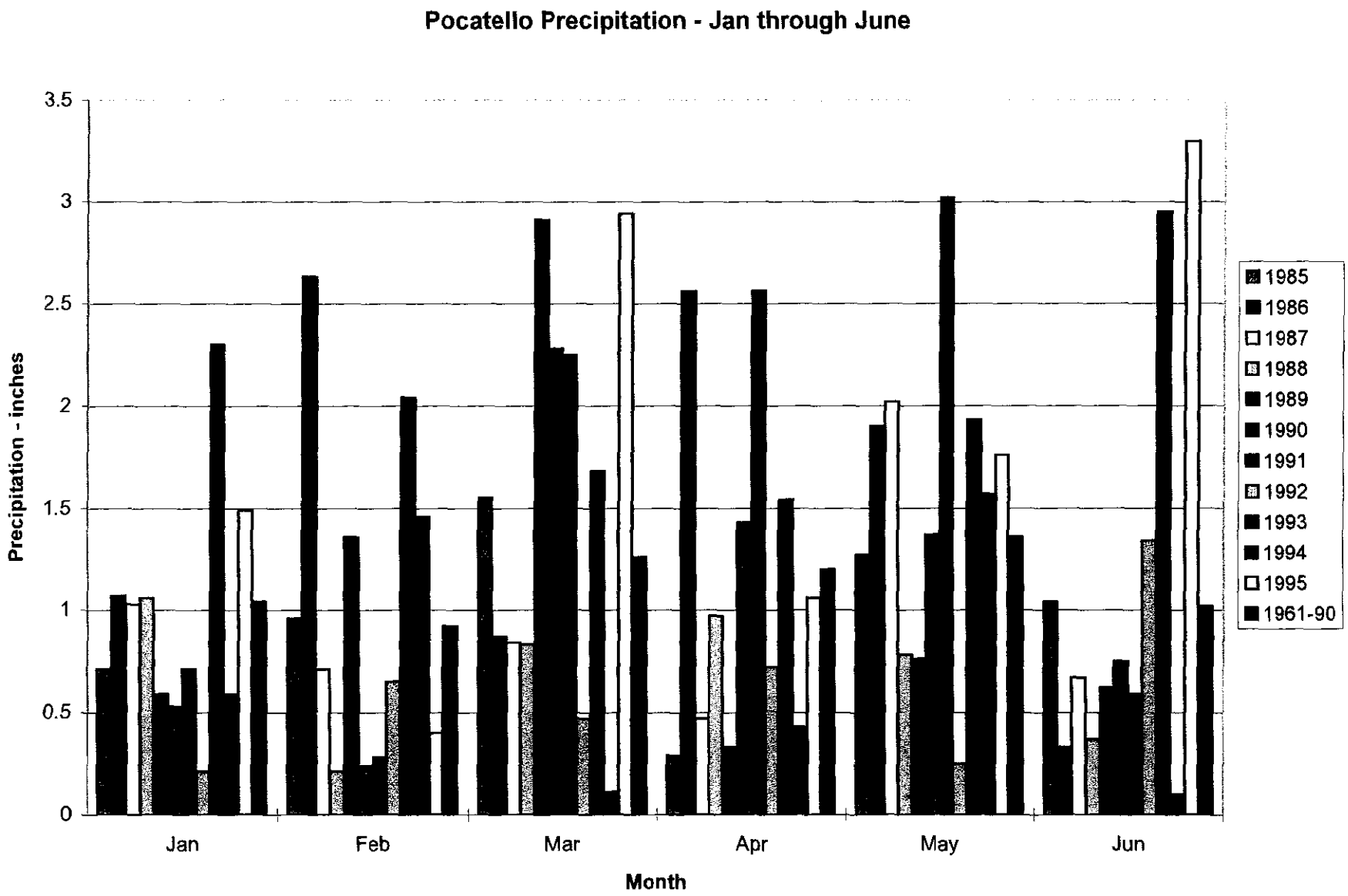
Station:	107211 - Pocatello WSO AP in Power County, Idaho
Climate Region:	9 - Upper Snake River Plains
River Basin:	17040208 - Portneuf
Latitude:	425500
Longitude:	1123600
Elevation:	4454
Opened:	07/1899
Status:	Active
NHIMS Records Available:	01/1917 - 12/1995

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
1985	0.71	0.96	1.55	0.29	1.27	1.04	0.48	0.05	1.42	0.50	2.37	1.17	11.81
1986	1.07	2.63	0.87	2.56	1.90	0.33	0.12	0.14	1.33	0.39	0.89	0.20	12.43
1987	1.03	0.71	0.84	0.47	2.02	0.67	1.93	0.66	0.00	0.25	0.44	1.21	10.23
1988	1.06	0.21	0.83	0.97	0.78	0.37	0.00	0.20	0.04	0.00	2.27	1.19	7.92
1989	0.59	1.36	2.91	0.33	0.76	0.62	0.11	0.43	0.48	0.84	1.03	0.07	9.53
1990	0.53	0.24	2.28	1.43	1.37	0.75	0.14	0.70	0.33	0.31	0.92	1.15	10.15
1991	0.71	0.28	2.25	2.56	3.02	0.59	0.12	0.85	0.66	0.74	1.65	0.22	13.65
1992	0.21	0.65	0.47	0.72	0.25	1.34	0.71	0.37	0.08	0.98	1.37	1.82	8.97
1993	2.30	2.04	1.68	1.54	1.93	2.95	1.07	1.90	0.27	1.01	0.54	0.65	17.88
1994	0.59	1.46	0.11	0.43	1.57	0.10	0.60	0.40	0.38	1.33	0.85	1.27	9.09
1995	1.49	0.40	2.94	1.06	1.76	3.30	0.38	0.69	0.50	0.28	1.30	1.96	16.06
1996	1.15	-	-	-	-	-	-	-	-	-	-	-	-

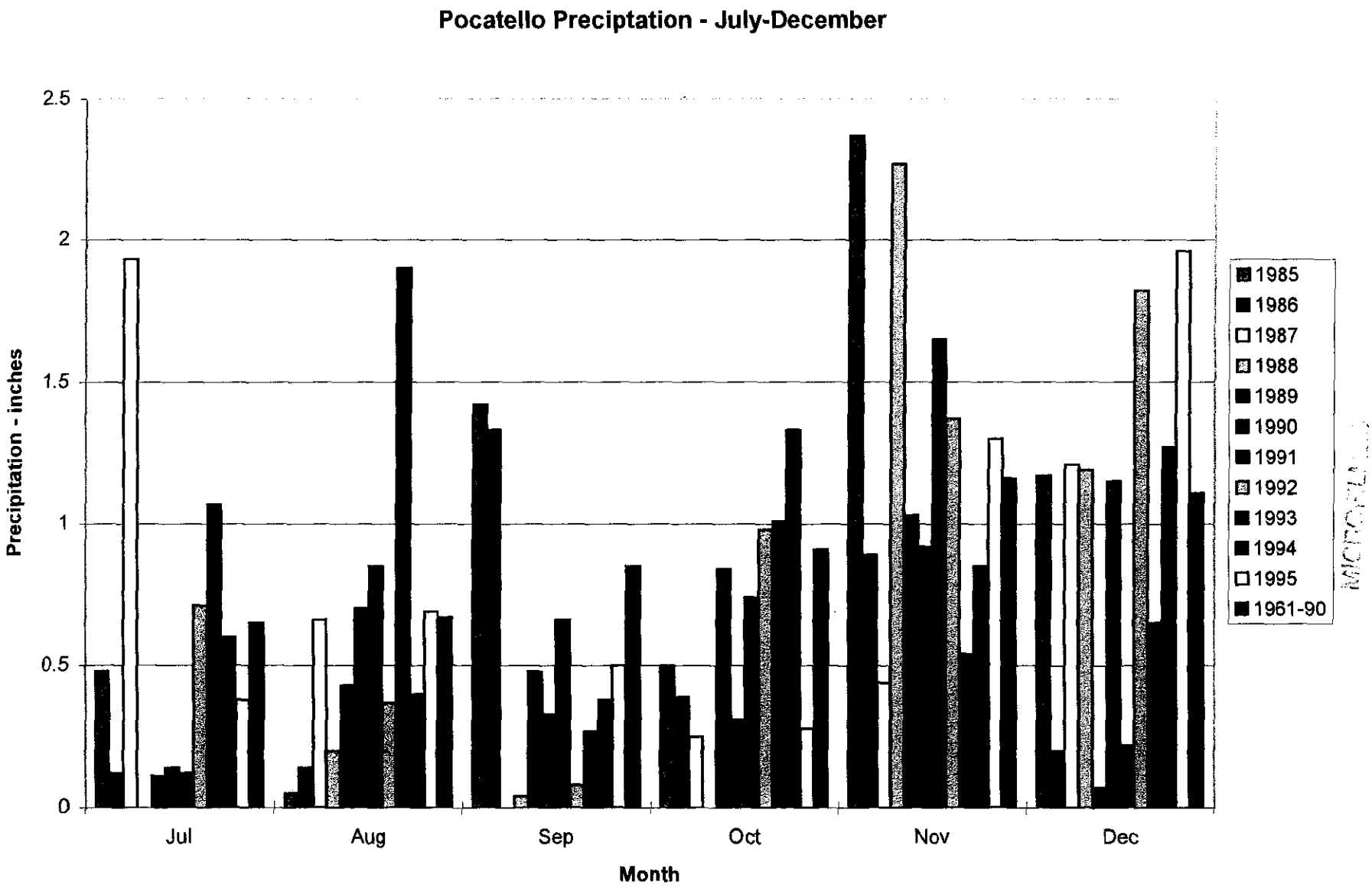
MICROFILMED
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Pocatello precipitation
Precipitation - inches
3.5
3
2.5
2
1.5
1
0.5
0
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
Month
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1961-90

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Pocatello Precipitation - Jan through June
Precipitation - inches
3.5
3
2.5
2
1.5
1
0.5
0
Jan
Feb
Mar
Apr
May
Jun
Month
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1961-90

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Pocatello Preciptation - July-December
Precipitation - inches
2.5
2
1.5
1
0.5
0
Jul
Aug
Sep
Oct
Nov
Dec
Month
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1961-90

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State denies farmer's pump permit request

ARCO (AP) — State water officials have rejected a local farmer's request to idle three wells and drill a new one uphill of his cropland, citing the need to protect groundwater levels in the Big Lost River area.

Parkinson Farms' application was denied on Thursday because "pumping would hurt people around the area of the new well," said Dick Larsen, spokesman for the Idaho Department of Water Resources.

The applicant, Ralph Parkinson, could not be reached for comment Friday.

His request was protested by the Big Lost River Water Users Association and 16 other local water users.

Parkinson wanted to drill a new well eight miles north and hydrologically upstream from his old wells and 480 acres of cropland. The groundwater supply at the proposed new site is more reliable than at the old wells, and it can be pumped more economically because it is closer to the surface, Water Resources Director Karl Dreher said.

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[redacted]

MEMO

DATE: June 6, 1996

TO: Bannock County Commissioners

FROM: Terry Bailey

RE: Staff Recommendation of Water Systems
To Planning & Zoning Council for Proposed Subdivisions

When evaluating subdivisions being proposed in City of Impact Areas, we prepare a very elementary cost analysis to determine if City Services should be applied to the new development. As a basis of comparison, we use individual wells as the base line. We have also asked that the waterlines, if used as part of a private system, meet all requirements of the City whose area of impact that the subdivision is within.

We know that City systems have an advantage in fire protection, management, maintenance, and operations over small private systems. We have not tried to put an actual dollar amount on these factors but feel they are substantial. The City systems also provide infrastructures to the Cities and provide for a more orderly and cost effective growth within the community. This is one of the primary goals of the County's and City's Master Plans, and a basis of all planning activities.

I am enclosing a map and a preliminary analysis of the three subdivisions in the Mink Creek and Gibson Jack area to show why and how we made system recommendations to the Planning Council.

[redacted]

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ANALYSIS - SUBDIVISION DEVELOPMENT COMPARING COSTS OF INDIVIDUAL WATER SYSTEMS VS. CONNECTING TO CITY SYSTEM

June 5, 1996

Estimated cost of individual systems:

Individual wells @ 250' depth	$ 5,500
Pressure tank and site work, per lot	1,000
Cost per lot:	**$ 6,500**

Note: Does not include any fire suppression water.

NOTE: This cost figure will be used as the basis for comparison with other possible systems.

Subdivisions under consideration:

A. Sterling Ridge: The building sites in this subdivision are near the 4600 foot elevation and can be serviced from Zone I water. The subdivision requires 425 linear feet of 6" water line and 2 fire hydrants. This will also provide a loop to the Henderson Subdivision in the future.

Estimated cost:

1. 425 L.F. @ $15.00/L.F.		$ 6,375
2. Two 6" hydrants @ $1500/ea.		3,000
3. Misc. valves and fittings		635
	Total:	$10,010
For 6 lots: Cost per lot:		$ 1,670
Service connections, per lot:		1,000
	Total per lot:	**$ 2,670**

Conclusion: This is less than the $6,500 per lot basis, therefore recommend city water.

B. Henderson Subdivision: This subdivider was asked to provide city water (if possible) and if available from the City of Pocatello.

Estimated cost: Off site water:

1. 3100 L.F. 10" water line from Portneuf Road to project @ $20/L.F.	$62,000
2. 3 fire hydrants on extension @ $1500	4,500
3. Misc. valves and fittings (1 L.S.)	6,000
4. Pump station to serve Zone II (1 L.S.)	10,000
Total to bring water to site:	$82,500

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On site work: (Henderson, continued)

1. 4200 L.F. 6" water line in streets @ $15/L.F.		$63,000
2. 7 fire hydrants @ $1500/ea.		10,500
3. Misc. valves and fittings (1 L.S.)		7,250
	Total:	$80,750
	Grand Total:	$163,250
For 28 lots:	Cost per lot:	5,830
Service connections, per lot:		1,000
	Total per lot:	**$ 6,830**

Alternate system proposed by Henderson:

Estimated costs - On site work:

1. 3900 L.F. of 6" water line in streets @ $15/L.F.	$ 58,500
2. 6 fire hydrants @ $1500 ea.	9,000
3. 20,000 gal. water storage tank	20,000
4. 300 L.F. 6" water line from tank @ $15/L.F.	4,500
5. Provide 2 wells with pumps and well houses	40,000
6. Misc. valves and fittings (1 L.S.)	7,250
7. Service connections, 28 lots @ $1000 ea.	28,000
Total:	$ 167,250
For 28 lots, total per lot:	**$ 5,970**

Both options are close to the $6,500 per lot individual system cost basis.

Conclusion: Bannock county staff recommends connecting to the city system since the cost is approximately the same as the individual system and additionally offers the following benefits:

1. The city water option provides continuity of system development.
2. Water testing is done by the city. Water systems that service more than 20 users must be tested periodically, usually four times a year.
3. The city will maintain the system.
4. A city system provides more fire protection than a private system.
5. The city may participate since the 10" line is a total system upgrade and will assist future development in the area.

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C. Wild Horse Ridge Subdivision:

Developer's proposal:

1. 8 wells plus 400 gal. pressure tank and pump and accessories ($15,000 ea.)	$120,000
2. Distribution system (8 ea. @ $1200)	9,600
3. 20,000 gal. water storage tank for fire suppression	20,000
4. 1800 L.F. 6" water lines for 7 hydrants ($15/L.F.)	27,000
5. 7 fire hydrants ($1500 ea.)	10,500
System total:	$187,100
For 37 lots, cost per lot:	**$ 5,050**

Estimated costs to provide city water to Wild Horse Ridge Subdivision:

Option A: Total city upgrade to serve area.

Cost of city upgrade:

1. 500,000 gallon storage tank at 5400 ft. elevation		$ 250,000
2. Transmission line from Bannock Hwy. to tank:		
4000 L.F. of 12" water line (600 psi) @$35/L.F.	$ 140,000	
3000 L.F. of 12" water line (400 psi) @$30/L.F.	90,000	
2700 L.F. of 12" water line (200 psi) @$20/L.F.	54,000	
Total cost of pipe:		284,000
3. Pump station at Bannock Hwy.		45,000
4. Misc. Valves and fittings		25,000
Total for supplying water to site only:		$ 604,000
For 37 lots, cost per lot:		**16,320**

On site water system:

1. 6000 L.F. 6" water pipe @ $15/L.F.	$ 90,000
2. 8 fire hydrants (6") @ $1500 ea.	12,000
3. Misc. valves and fittings (L.S.)	10,000
4. Water service connections 37 lots @ $1000 ea.	37,000
Total on-site cost:	$ 149,000
Cost per lot:	**$ 4,030**
Plus above cost per lot:	16,320
Total cost per lot to upgrade to city service: **Total** =	**$ 20,350**

Note: This is much greater than the $6,500 per lot basis.

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Option B: Install internal water system to City of Pocatello Standards and drill well on site to serve 37 lots and use hydro-pneumatic system for distribution and storage. Have City manage the water system thus developed.

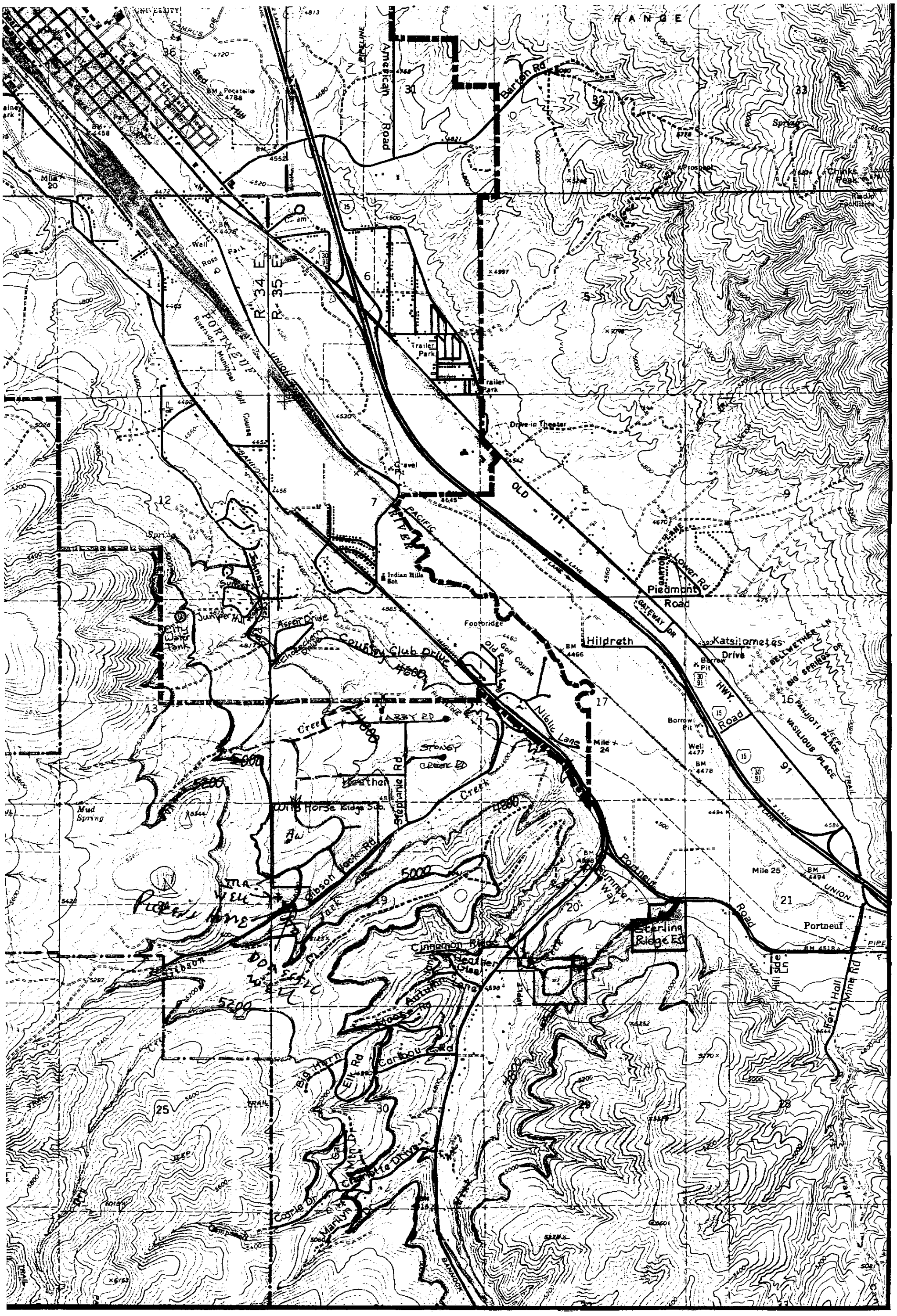
1. Drill 18" well to City Standards, 300 ft. depth	$ 55,000
2. Supply 3-phase power to new well	50,000
3. Install 3000 gal. hydro-pneumatic pressure system with appropriate pump	45,000
Delivery system subtotal:	$ 160,000
For 37 lots, cost per lot:	$ 4,320
Plus the on-site water system cost per lot:	4,030
Total cost per lot:	**$ 8,350**

Conclusion: A modified option B may work or developer's option should be used.

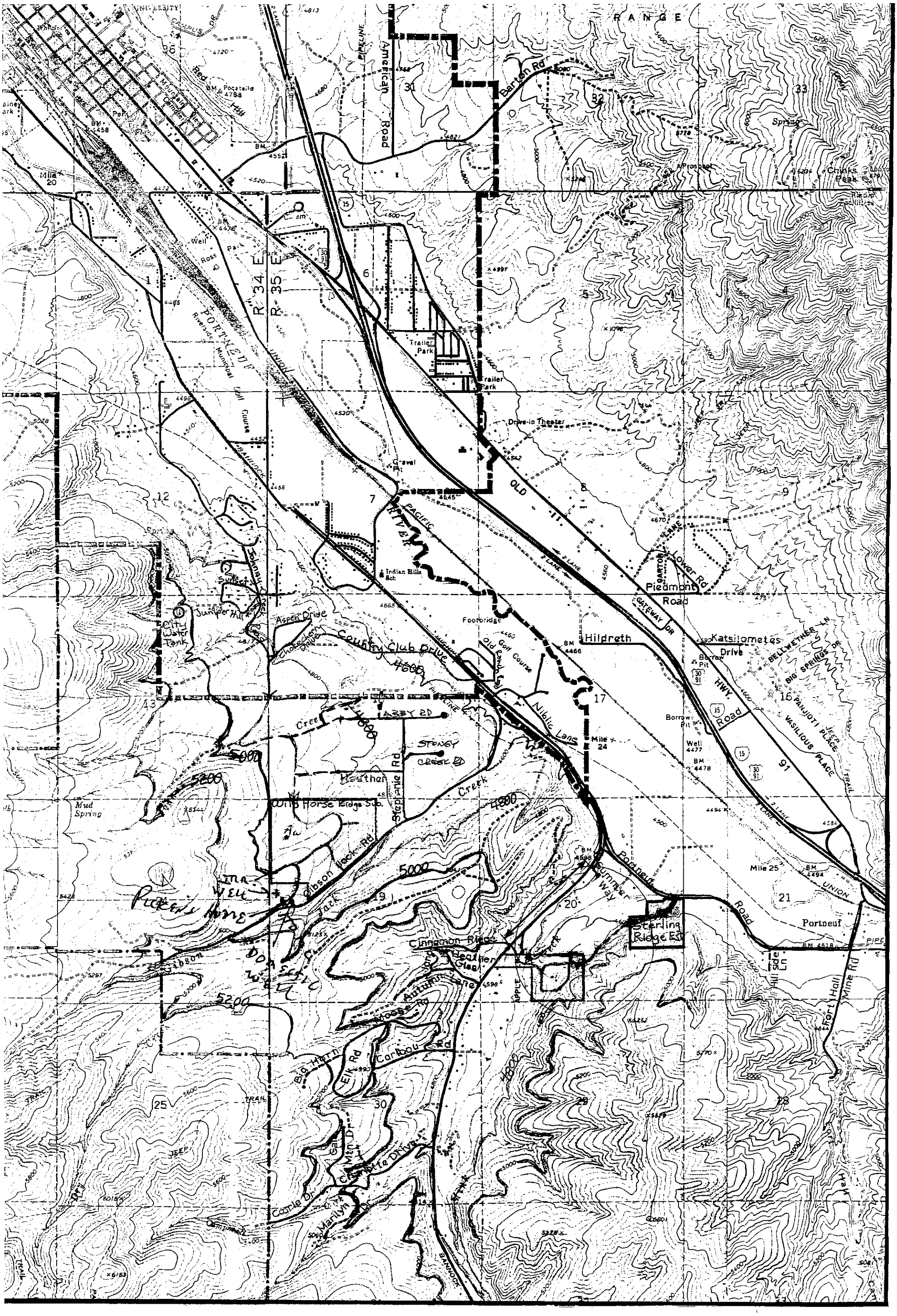
Terry Bailey, P.E.
June 5, 1996

APR 2 8 1996

PORTION OF EXHIBIT C



PORTION OF EXHIBIT C



LARRY ECHOHAWK
BANNOCK COUNTY PROSECUTING ATTORNEY
P.O. Box P
Pocatello, Idaho 83205-0050
(208) 236-7280

ERICH N. STORM
Deputy Prosecuting Attorney

[redacted]

Lodged X 5-2-88

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, dba GIBSON JACK, 1st Addition, Plaintiffs, vs. BANNOCK COUNTY COMMISSIONERS, Defendants.	Case No. 39322-C RESPONDENTS' BRIEF ON PETITION FOR JUDICIAL REVIEW

FACTS

Respondents are in substantial agreement with Petitioners' recitation of the procedural history of the case.

DISCUSSION OF THE LAW

On page 8 of their brief, dated December 2, 1987, Petitioners have set forth the five issues subject to this review. Respondents will address these in order.

A. The Board of Commissioners' Modified Findings of Fact and Conclusions of Law Do Not Violate Any State or Constitutional Provisions.

On page 9 of their brief, Petitioners argue that the modified findings of fact and conclusions of law somehow deprive

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them of state and federal constitutional guarantees of due process of law. However, as the argument unfolds, Petitioners in actuality attack not the validity of the findings of fact or conclusions of law but the legitimacy of the land use ordinance itself. While Petitioners may collaterally attack the validity of the ordinance, they are required first to exhaust administrative remedies, including the basic determination whether the findings of fact and conclusions of law in this instance are supported by the evidence. See County of Ada v. Henry, 105 Idaho 263 (1983); see also Burt v. City of Idaho Falls, 105 Idaho 65 (1983).

While respondents are not certain how to respond because Petitoner's allegations are unclear, it appears that Petitoners now argue that the county's actions constitute a "taking" without just compensation. Respondents point out that any "taking" claim cannot be an issue before the Court. The administrative bodies passing judgment had no opportunity to address the taking question, and Petitioners admit they presented no evidence on the point. See Balser v. Kootenai County Board of Commissioners, Idaho (1986).

On page 11 of their brief, Petitioners appear to make the additional argument that requiring certain conditions for the development constitutes a deprivation of equal protection under the law guaranteed by both the United States and Idaho State constitutions. Again, this is an issue not presented to the administrative bodies below and not subject to review at this stage since the present action cannot take the form of a trial de novo. See Balser, supra; see also Daley v. Blaine County, 108

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Idaho 814 (1985); Clow v. Board of County Commissioners, 105 Idaho 714 (1983). In any event, the Court ruled earlier that inclusion of such evidence on review is improper.

B. The Findings of Fact and Conclusions of Law Do Not Exceed The Authority of the Board of Commissioners.

Petitioners advance the argument that since the applicable provisions of the Bannock County Ordinance do not regulate water production for irrigation purposes beyond lot sizes of one-half of an acre, an attempt to impose water requirements for irrigation purposes on two and one-half acre lots is outside the scope of the ordinance and therefore in excess of the authority of the Board of Commissioners.

The availability of water was a hotly contested issue in the hearings before the Planning and Zoning Commission and the Board of Commissioners. Under the present zone designation of development residential property owners in the proposed division could maintain lawns, orchards, gardens and livestock, all of which impose a demand upon the existing water supply.

Respondents point to finding of fact No. 8 in the modified findings of fact. Petitioners do not dispute the Board of Commissioners' finding that Mr. Chapman, a witness for Petitioners, believed residents in the proposed subdivision would be able to irrigate only approximately one and one-half acres of the two and one-half acre parcels. Similarly, Petitioners do not attack finding of fact No. 10 in the modified findings stating that Mr. Chapman's analysis demonstrates that domestic wells

would not be able to irrigate fifty-two (52) two and one-half acre lots and that a central supplemental irrigation well would have an adverse affect upon other domestic wells.

Petitioners' own expert states that as a practical matter there is insufficient water for domestic, fire and irrigation uses on the property. Therefore, regardless of the failure of the ordinance to address the lissue, the simple fact remains that there is not enough water available for lots of that size.

C. The Board's Modified Findings of Fact and Conclusions of Law Are Not Clearly Erroneous.

It is the province of the Planning and Zoning Commission and the Board of County Commissioners to determine the credibility of witnesses and resolve disputed facts. Van Orden v. State Department of Health and Welfare, 102 Idaho 663 (1981). This Court may not substitute its judgment with respect to findings of fact for that of the administrative agencies. To say the least, the Planning and Zoning Commission and the Board of County Commissioners were faced with a striking conflict in the evidence. While the expert opinion of Mr. Chapman on the one hand is worthy of substantial consideration, so also is the testimony of the landowners with first-hand knowledge of the water supply in the area. Petitioners are requesting that this Court determine, de novo, that residents of the area in fact have faulty wells and that Mr. Chapman is, as a matter of fact, correct in stating that there is sufficient water in the area to support the installation of fifty-two (52) additional wells.

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D. The Board's Modified Findings of Fact and Conclusions of Law Are Not Arbitrary and Capricious.

On page 16 of their brief Petitoners' allege that the board's modified findings of fact and conclusions of law are arbitrary and capricious. However, Petitioners have not included any argument for Respondents to address.

E. Petitioners' Proposed Plat Does Not Comply With the Modified Findings of Fact.

This argument appears to be a rehashing of Petitioners' earlier argument that the Board of County Commissioners is without authority to require a reasonable demonstration of the availability of water prior to allowing the construction of a fifty-two (52) lot subdivision. Again, even assuming the accuracy of Mr. Chapman's analysis, Mr. Chapman himself agrees that there is insufficent water for domestic, irrigation and fire protection services on the two and one-half acre lots.

CONCLUSION

When all is said and done, it is worthy for the Court to note that Petitioners have not attacked any finding of fact as such. Rather, Petitioners rely instead upon the argument that because the ordinance does not address water requirements for two and one-half acre lots, any requirement of water availability must be illegal.

Respondents urge the Court to recognize that the Petitioners do not dispute the insufficiency of water for two and

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one-half acre lots as reflected in findings of fact No. 8 and 10 and rule that Respondents justifiably required a reasonable demonstration that there is sufficient water for the proposed development.

The case law is clear that Petitioners must exhaust administrative remedies under the Idaho Adminstrative Procedure Act before challenging the legality of the land use ordinance. Respondents request the Court refrain from addressing Petitioners' argument that the ordinance is unlawful under Idaho State Constitutional law.

Respondents also take the position that Petitioners' allegations of denial of due process of law and equal protection of the laws are unsupported by the record and are not subject to review for the reason that Petitioners failed to preserve these issues for review.

Respondents respectfully request the Court to affirm the decision of the Board of Commissioners.

DATED This 29 day of April, 1988.

ERICH N. STORM, Deputy
Prosecuting Attorney

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CERTIFICATE OF DELIVERY

I HEREBY CERTIFY That a true and correct copy of the foregoing RESPONDENTS BRIEF ON PETITION FOR JUDICIAL REVIEW was hand-delivered to:

Charles C. Just, Esq.
WEINPEL, WOOLF, JUST, COMBO
& DAVIS
P.O. Box 936
Idaho Falls, Idaho 83402

This 2 day of May, 1988.

ERICH N. STORM

APR 28 1988

749867

In the Matter of UPHOLDING THE PLANNING AND ZONING COMMISSION'S APPROVAL ON GIBSON JACK SUBDIVISION, 1ST ADDITION WITH CONDITION

R.S. No. 1985-76
22 May, 1985

RESOLUTION

WHEREAS, pursuant to plaintiffs' and defendants' stipulation the Honorable Peter D. McDermott ordered the Board of Bannock County Commissioners' to take additional evidence on water availability to the proposed Gibson Jack, 1st Addition subdivision; and

WHEREAS, pursuant to notice the Board conducted a public hearing to take additional evidence pro and con on the water availability issue; and

WHEREAS, the Board of County Commissioners has made Findings of Fact and Conclusions of Law based on the evidentiary record;

NOW, THEREFORE, BE IT RESOLVED in a motion made by Commissioner George Shiozawa, seconded by Commissioner Carolyn Meline, that the Board of Bannock County Commissioners hereby conditionally upholds the decision of the Planning and Zoning Commission to approve the Conceptual Plan for Gibson Jack 1st Addition subdivision with the following stipulation:

1. The proposed development must be provided a sufficient supply of water for culinary, irrigation and fire suppression purposes.

The motion carried and the voting was unanimous, as taken by roll call vote.

39322-C

BOARD OF BANNOCK COUNTY COMMISSIONERS

Tom Katsilometes, Chairman

Carolyn Meline, Member

George Shiozawa, Member

ATTEST:
Larry W. Chan, Clerk

749867
NO. _____
REQUEST OF
Bannock County Commission
'85 MAY 22 P3:56

OFFICIAL RECORDS BK NO. 425
BANNOCK COUNTY IDAHO
LARRY W. CHAN RECORDER
FEE -0- DEPUTY mc

APR 28 1988

749868

In the Matter of THE PROPOSED GIBSON JACK 1ST ADDITION SUBDIVISION RECONSIDERATION OF DECISION ON APPEAL IN LIGHT OF NEW EVIDENCE ON WATER AVAILABILITY

Modified Findings of Fact, Conclusions of Law No. 1985-76 May 22, 1985

This matter came on for hearing pursuant to case No. 39322 and proper notice before the Board of Bannock County Commissioners on the 30th day of April, 1985 in Room 212, Bannock County Courthouse, Pocatello, Bannock County, Idaho.

Robert Thompson and Bob Tripp, plaintiffs, were present on behalf of themselves.

Commission Chairman Tom Katsilometes and Commission Members Carolyn Meline and George Shiozawa, defendants, were also present.

Bannock County staff members present included Jay Nelson, Engineer's Office; Shawn Anderson, Prosecutor's Office and Judy Harmon, Land Development Office.

Also present were Richard Hollingsworth and Harvey Pickens appellants and other residents of the Gibson Jack area.

Chairman Katsilometes opened the hearing, read the legal notice of hearing and explained the purpose of the hearing.

Judy Harmon made introductory remarks and entered the exhibits.

The Commissioners listened to testimony for and against the availability of water to the Gibson Jack 1st Addition Subdivision from all those who wished to offer it. After considering all oral and written testimony the Commission now enters its Findings of Fact, Conclusions of Law and Resolution.

BACKGROUND FACTS

1. The matter under review is the proposed Conceptual Plan for Gibson Jack Subdivision, 1st Addition consisting of 52 2 1/2 acre lots in the NW 1/4 of Section 19, Township 7, Range 36 E., B.M.

2. The Bannock County Planning and Zoning Commission held its first public hearing on the proposed Conceptual for Gibson Jack Subdivision 1st Addition on February 28, 1984. One month later, on March 27, 1984, the Commissioners approved the Conceptual Plan with the condition that the subdivider guarantee culinary water for each lot. Subsequent to this, an appeal was filed by Mr. Richard Hollingsworth. Upon review the Board of County Commissioners remanded the Conceptual Plan to the Planning and Zoning Commission for further findings. After conducting an additional public hearing on May 22, 1984, the Planning and Zoning Commission once again approved the Conceptual Plan on July 17, 1984.

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3. Mr. Richard Hollingsworth and Mr. Harvey Pickens in a letter dated July 30, 1984 appealed the Planning and Zoning Commission's July 17th decision upon the following points:

   a. Defective response by the Land Development Board members due to the adsence of demanding proper proof to justify such a subdivision with no apparent concern about water usage and its demand by present or future residents.

   b. Additional well demands upon a nearly drained water table.

   c. Water shed for the City of Pocatello.

   d. Testimony and documentation of Gibson Jack Creek residents given at Land Development Board meeting at Bannock County Courthouse in February 1984.

4. Subsequent to review of the Planning and Zoning Commission's decision, the Board of County Commissioners upheld the Commission's decision but added the following conditions:

   a. The proposed development must be connected to the City of Pocatello Municipal Water System.

   b. An additional access for future development must be provided either through the adjacent (Tripp) property on the west to the McDevitt property or form the cul-de-sac on Adrienne Circle.

5. The developers, Mr. Bob Thompson and Mr. Bob Tripp appealed this decision to the District Court of the Sixth Judicial District. The plaintiffs and the defendants having stipulated to the taking of additional evidence, the Honorable Peter D. McDermott ordered the Board of County Commissioners to take additional evidence regarding the issue of water availability to the proposed subdivision. The District Judge further ordered the Board after taking additional testimony to prepare modified Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The developers Mr. Bob Tripp and Mr. Bob Thompson have proposed a subdivision consisting of fifty-two (52) 2 1/2 acre lots in the Gibson Jack area of Bannock County. The site adjoins the north side of Gibson Jack Road in the NW 1/4 of Section 19, Township 7 South, Range 35 E., B.M. Gibson Jack Acres, a subdivision recorded in April, 1976 and consisting of 19 lots borders the proposed Gibson Jack 1st Addition on the east. This area lies within the Area of City Impact, so designated pursuant to the requirements of Idaho Code Section 67-6526, and within the extra-territorial limits of the City of Pocatello as specified by Idaho Code Section 50-1306.

APR 2 8 1988

3

749868

2. Many of the residents already living in the Gibson Jack area have testified repeatedly throughout the time period this proposed subdivision has been under review that they are experiencing difficulty in obtaining sufficient water for their culinary, irrigation and fire suppression needs and that they are fearful that an additional 52 residental lots in their immediate vicinity will aggravate what they perceive to be water problems in the area.

3. After reviewing the subdivision plans, the Southeastern District Health Department commented in a letter to Alpine Engineering dated May 1, 1984 that"...based on the available data that was submitted regarding quantities of water, it is our opinion that there appears to be adequate water in the aquifer to provide water for culinary purposes. It is also our opinion that there is not enough yield out of this aquifer to adequately irrigate the sizes of lots that are proposed..."

4. Because of the controversy surrounding the water availability issue the developer hired Mr. Sheryl L. Chapman, Registered Professional Geologist specializing in groundwater hydrology, water rights, water well design and geothermal resources to perform a field study in order to determine whether or not 52 individual domestic wells could be relied upon to provide an adequate supply of water for the proposed subdivision.

5. Mr. Chapman testified that he performed a study of the hydrology of the area that included a review of the data available from various agencies and an on-the-ground study consisting of a pump test and a field survey of the geology and hydrodogy of the area.

6. According to Mr. Chapman, this study confirmed the results of an earlier less in depth investigation of the area. The data indicated that given proper well design individual wells would be capable of producing sufficient water for domestic consumption, including household use, watering of lawns, gardens and some stock watering, and limited irrigation. Mr. Chapman stated that in his opinion sufficient water does exist beneath the Gibson Jack Subdivision to provide adequate water for the development that is proposed to be there, both for domestic consumption and limited irrigation, and that the installation of fifty-two additional culinary wells should not affect the other wells in the area.

7. In his study Mr. Chapman found no evidence of a drained or dropping water table. He indicated that most perceived problems with water supply were most likely to be difficulties with well construction, well design or pump problems in combination with the nature of the local soils which Mr. Chapman described as colluvium having a limited perosity or permeability. Despite an abundant aquifer, the rate at which water can be pumped out of the aquifer is limited by the restricted permeability of the soils. Nonetheless, his pump test indicated sufficient water for culinary and limited irrigation purposes.

8. Limited irrigation according to Mr. Chapman meant residents would be able, assuming proper well design and construction, to irrigate 1.5 acres, possibly 2 acres at the most.

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9. Mr. Chapman's testimony is of a nature that can be relied upon to support a finding of sufficient water for culinary and limited irrigation purposes despite some residents' claim of a "drained" and "dropping" water table. This is because it is professional and as such, is supported by a systematic study following an accepted methodology and an evaluation of the data gathered utilizing established geological and hydrological principles.

10. It is important to note that Mr. Chapman's analysis indicated that domestic wells would not be capable of producing sufficient water to irrigate fifty-two 2.5 acre lots and that a central supplemental irrigation well would be likely to have an adverse impact upon other domestic wells.

11. It is the Board's judgement in light of the proposed lot sizes that the residents of the proposed subdivision are likely to expect to be able to irrigate their acreage. Current residents of the area are engaged in irrigation of their acreage. It is also very possible for an individual or family to purchase more than one lot for open space or farming purposes. Limitation of these priveleges through deed restrictions would be impractical and probably ineffective, and moreover would amount to little more than an abdication of the responsibility to address the problem of limited water availability. There is a history of conflict over water in this area which can be expected to escalate if 52 lots each 2 1/2 acres in size are developed in this area without an assured supply of water of sufficient quantity for the everyday and essential activities of life.

CONCLUSIONS OF LAW

1. The Board of County Commissioners have jurisdication in this matter under the appeal procedure established by the 1984 Interm Bannock County Land Use Ordinance, Section 10010 E. & F.

2. In light of the foregoing Findings of Fact in relation to the Board of County Commissioners' responsibility to protect the health safety and general welfare of the citizens of Bannock County through its subdivision regulations, the Board cannot approve a residential subdivision without the assurance of an adequate supply of water for the future residents. An adequate supply of water must be determined in light of the particular circumstances pertinent to the subdivision. In this case it must be defined in terms of activities a resident could reasonably expect to pursue as a function of his residency.

3. The Board is able to uphold the Planning and Zoning Commission's approval of the Gibson Jack 1st Addition Conceptual Plan only upon the following condition:

    a. The proposed development must be provided a sufficient supply of water for culinary, irrigation and fire suppression purposes.

APR 2 8 1988

749868

BOARD OF BANNOCK COUNTY COMMISSIONERS

Tom Katsilometes

Tom Katsilometes, Chairman

Carolyn Meline

Carolyn Meline, Member

George Shiozawa

George Shiozawa, Member

ATTEST: LARRY W. GHAN

Larry W. Ghan, Clerk

By Natalie Hill, Deputy Clerk

749868

NO. _____
REQUEST OF

Bannock County Commission

'85 MAY 22 P3:56

OFFICIAL RECORD NO. 425
BANNOCK COUNTY, IDAHO
LARRY W. GHAN RECORDER

FEE -0- DEPUTY ms

APR 28 1986

EXHIBIT
Protestant
G 1 page

20 Gibson Jack Road residents oppose project

Twenty Gibson Jack Road residents have signed on to an appeal to the Bannock County commissioners against a recent decision to allow the development of controversial 120-acre subdivision known as Wild Horse Ridge.

An appeal hearing is scheduled for June 6 at 1:30 p.m. in the commissioner's office.

Residents are asking commissioners to reverse the county planning and development council's approval of the project.

Richard Hollingsworth, author of the six-page appeal, bases his argument on a 1984 court decision.

In that ruling, 6th District Judge Wallace Transtrum upheld the county commission's decision to require a previous developer to connect to city water because groundwater availability was questioned.

Fire district taking county to court to force code compliance

By Chuck Oxley
Of The Journal

The Pocatello Valley Fire Protection District is suing Bannock County for alleged incompliance with the state uniform fire code and wants to stop all subdivision development in the district until there is compliance.

In civil court documents filed last Friday in 6th District Court and signed by Fire District Commissioner Ron LeBlanc, the suit asks for a judge to order Bannock County to change its ordinances to conform to state fire code and fire marshal rules.

It also would require review and approval of all fire access roads by the fire district chief.

"Three subdivisions in the last two years were approved by the county but are not in compliance with the uniform fire code," said LeBlanc, who also is the Republican challenger facing Bannock County Commission Chairman Tom Katsilometes, a Democrat, in the November election.


LEBLANC


KATSILOMETES

Katsilometes said ha and the other county commissioners have tried for more than a year to work with the fire district on the question of authority over subdivision developers with regard to fire suppression requirements.

In an April memo to county commissioners and planning and development staff members, county attorney Guy Price said it would be "outside the law of plats and recording" to require the fire marshal or any of his assistants to approve subdivision plats.

With that opinion in hand, Katsilometes said the county will not change its operations unless ordered to do so by a judge.

"There's nothing in state law that says fire chiefs and fire districts have to sign off on plats," Katsilometes said. "We're not about to break the law for

See FIRE, A8

RDH 236-3957

Fire

▶Continued from A-1

Ron LeBlanc or anybody else."

The standard procedure now is for the county planning and development council to ask for comments from the district fire chief about what requirements need to be met for each subdivision.

The council takes the chief's or fire district commissioners' requests and works out a plan with the developer.

But in his suit, LeBlanc says the county has developed its own standards for fire vehicle access, water flow requirements for fire suppression and fire hydrant location.

"Their standards are inconsistent either in content or application with the standards published in the uniform fire code," the suit said.

Regardless of how a judge may rule, Katsilometes said the motive behind the suit's filing is political.

"If he had some concerns, he should have filed them a year ago," Katsilometes said.

Commissioner J.O. Cotant, the commission's sole Republican, criticized LeBlanc for filing the suit close to an election.

"I think it's self-serving and has no validity at all," Cotant said.

But LeBlanc said he filed the suit because he got no satisfaction from county authorities after a year of negotiations.

"These are the problems that I face with the planning and zoning department and county commissioners, and these issues are the reasons that made me initially decide to run for county commissioner," LeBlanc said.

The fire commission is represented by an Idaho Falls attorney. LeBlanc said five different local law firms turned down the case.

"No attorneys in Bannock County would represent us because this is dealing with the city and county government. Given the politics in this town, they wouldn't be able to do business anymore," LeBlanc said.

The case has been assigned to 6th District Judge Peter McDermott.

APR 26 1995

[redacted]

(1)

draft **BANNOCK COUNTY PLANNING AND DEVELOPMENT COUNCIL MEETING MINUTES**

February 27, 1996

These minutes are a summary of the PLANNING AND DEVELOPMENT COUNCIL meeting. A tape recording of the entire meeting is available in the Planning and Development Services Office, Bannock County Courthouse Annex, 130 N. 6th Ave., Pocatello, Idaho, for a period of six months.

The regular meeting of the BANNOCK COUNTY PLANNING AND DEVELOPMENT COUNCIL was held February 27, 1996, AT 6:30 P.M.in the Bannock County Courthouse, Center and 5th Avenue, Pocatello, in Room 214.

BANNOCK COUNTY STAFF PRESENT: Terry Bailey, Engineer, Lori Bergfeld, Planner, and Barbara Anderson, Secretary.

Kay Merriam, Chairman, called the meeting to order at 6:30 p.m.

AGENDA ITEM A: ROLL CALL AND DISCLOSURE - CONFLICT OF INTEREST; Council members present: Bob Bergendorf, Floyd Johnson, Kay Merriam, Bill Orr, and Dacia Soulliere. No Conflict of Interest. Absent: Richard Steffens.

AGENDA ITEM B: APPROVAL OF MINUTES: Regular meeting of January 23, 1996. A motion was made by **Johnson** to accept the minutes as written. The motion was seconded by **Orr.** The motion carried.

AGENDA ITEM C: PUBLIC HEARING ITEM NO. 1: WILD HORSE RIDGE SUBDIVISION - Chris Pein, Et Al, Applicants. The Engineer is Tim Shurtliff of Shurtliff Engineering. **Merriam** gave staff report. The Applicants are proposing a 28 lot subdivision on a 119.3 acres parcel located in the NW4 of Section 19, Township 7 South, Range 35 East. The lot sizes on the brush and juniper hillside would range from 3.7 to 6.4 with the average being 4.08 acres. Zoning is Residential Suburban. developers propose individual wells, septic systems, utilities with Idaho Power, U.S. West and Intermountain Gas. Fire protection would be provided by Pocatello Valley Fire District. Roads would be dedicated and built to County standards. Merriam submitted exhibits into the record; letters from Bill Aller, Road Supervisor for Bannock County Highway Department, Caribou National Forest Service, Pocatello Valley Fire Department, U.S. West, and Idaho Fish and Game. Merriam reviewed criteria necessary for Concept Plan approval as applicable with County Comprehensive plan (located in staff report, pages 2-5) and then invited reviewing agencies to give comments.

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Steve Pew, SE District Health Department, said the information they had received met the health department's guidelines and they have given tentative approval, subject to approval from City and County.

Ronald LeBlanc, 907 N. Marilyn Dr., Commissioner with Pocatello Valley Fire Protection District, expressed concerns regarding a lack of participation in subdivision approval process. LeBlanc said Pocatello Valley Fire protection would require 2 entrance roads, with a road grade of no more than 10% and 1,000 gallons per minute for fire flow for a maximum 3,600 square feet dwelling.

Bill Aller, Bannock County Road & Bridge Supervisor, said the road width on the lower part of Gibson Jack is inadequate for present traffic load, the paved width varies from 21' to 22' and the County minimum standard is 24'. Some of the road has no shoulder and has a steep drop off. He advised a detailed drainage plan for the subdivision both for properties and roads. The minimum required right-of-way for roads would be 60' with additional 5' snow removal for each side of the road for a total of 70 feet.

Bergendorf asked if there were any plans for road improvement in the next year or two. **Aller** responded there are no plans in the near future.

Frank Holden, 9525 Gibson Jack, asked if the road would be paved on Gibson Jack to the end of the Subdivision.

Guy Anderst,Developer, 2511 S. Fairway Drive, said all roads within the subdivision would be paved.

Merriam read the letter from the Idaho Fish and Game (Exhibit 7) and Pocatello Valley Fire Department (Exhibit 5).

Anderst said Bannock County is in a housing crisis and this type of development is in demand. The lots are comparable in size with the surrounding area. The Health Department has said lot sizes would be okay for individual septic systems, and John Wellham, Geologist, has reported that there is adequate water to serve 28 homes. Anderst addressed LeBlanc's comment for fire protection requiring 1000 gallons per minute, and said no home outside of city water services would have that many gallons per minute and if it was a State requirement, all building should stop in Bannock County. Anderst said there was one major drainage that goes from top to bottom through the subdivision, and they would need to have some drainage easements and maybe catch basins, and asked for input from the County. Anderst addressed Fish and Game concerns, and said they would deal with animals harassing wildlife and fencing in their restrictive covenants. They would like to have deed restrictions for no division of lots. Anderst said they are willing to work with the County on the road and will work it out with Engineer and Road and Bridge.

Bailey said a drainage plan would be required for the Subdivision and said he would like to meet with the Developer and Road and

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Bridge and see what would be best for addressing drainage and road improvements and then report back to the Council.

Johnson asked if they would have a minimum house size and asked about landscaping.
Anderst said they would address that in the restrictive covenants but were tentatively considering no less than 1400 s.f. for single level and 2100 s.f. above finished grade for two story. There was discussion for a restriction on maximum height. Anderst said they would encourage natural vegetation and said the State has given every landowner the right to have a domestic well and irrigate up to 1/2 acre, however they do not have irrigation water rights for the property so there would be restrictive covenants against irrigating more than 1/2 acre.

Bergfeld read Staff Report recommendations and made correction (#5) subdivision roads be 60' wide and clarified #11 should be limited to no more than two large livestock per lot. Bergfeld expressed concern with fire access and lack of connectivity to property to the north.

Jeri Armstrong, 9021 Gibson Jack, expressed concerns with increased traffic and safety conditions of the road. She asked who planned to pay for proposed road improvements.

Richard Hollingsworth, 9502 Gibson Jack, Disputed the fact that John Wellham had said there was adequate water. Hollingsworth said he had contacted Wellham in Las Vegas by phone at 5:00 that afternoon and Wellham said there was **not** adequate water in Gibson Jack. Hollingsworth said Wellham told him he had submitted a report that reflects that and also told him Mr.Iverson's well dropped 150' after being pumped for 6 to 7 hours. Hollingsworth said Wellham told him there wasn't enough information to make any comment regarding adequate water. **Merriam** asked Hollingsworth if Wellham would be willing to state there is not adequate water in writing and **Hollingsworth's** said they could talk to Wellham next week.

Harvey Pickens, 9806 Gibson Jack, expressed concerns with water availability and said they have had problems with their wells
Also expressed concerns with safety of the road and drainage problems.

Mr. Dillard, 3917 N. Stephanie, concurs there are water problems and problems with availability. Dillard also suggested going down Stephanie, past Hilldreth's property, and down to Country Club Drive as a second access road. He expressed concerns with individual septic systems. Dillard said there are drainage problems in the vicinity and also on his property.

Soulliere asked how long Hollingsworth, Pickens and Dillard had lived in the area. **Pickens** replied **since** about 1972, **Hollingsworth**

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since 1974 and **Dillard** since 1978.

Linda Nielsen, 9413 W. Heather, concurs with safety issues regarding road and said they have problems with air and sand in their well.

Brenda Pickens, recommended requiring City water, curb and gutter and sidewalks.

Armstrong asked if Subdivision had been presented to the City, and asked if Chris Pein was a member of the Community Development Committee, and if his membership would influence the Committee's decision. **Pein** replied that he is a member, and the preliminary had been before the City. He said the CDC can make recommendations, however the City Council makes the decision. Pein said he would declare conflict of interest.

Lenny Widert, 3118 Stephanie, concurs with road issues. He suggested the developers set up an escrow account, and in the event there is a problem with the water if the subdivision is approved, there would be money available at no expense to existing residents.

Eric Stewart, 757 Bonanza, has been hired to look at areas near the City that could possibly be connected to City sewer services.

Hollingsworth said in 1984 when Bob Tripp tried to develop this land, development was denied unless hooked up to City water or a central water system.

Steve Lehman, 9259 Gibson Jack, concurs with road problems.

Chad Nielsen, 3075 Stephanie, said he thought all concerns mentioned could be resolved but asked the developers what their next step would be if the proposal is denied.

Anderst replied they had invested in the property and if forced to develop with City water and sewer services, they would have to develop smaller lots. In response to the report from Wellham, Anderst said he understood the report to mean there is adequate water and if Welham says there isn't they would accept that.

Chris Pien said he talked to Jim Hart about an recent article in the paper and Hart told him he had told Hollingsworth where there were other sites on Hollingsworth's property where he could have a better well. Pien said Hart had no problem finding a site on their property and indicated there were probably 30 additional sites that would equal the site they found.

Anderst said the well they drilled ran about 30 gallons a minute and the only well not being used that was tested for drawdown on flow, moved at less than .02 feet. The unused well was monitored

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for one month prior to their well being tested and it moved much further with barometric pressure changes and surrounding well usage. Anderst reiterated he had water rights as a land owner, and said there is other development occurring in the area. Anderst addressed the drainage saying if a drainage plan was designed correctly it would improve the area drainage as it now exists. Anderst feels all the issued raised can be worked out.

LAND owner- we will, they have T through Iversold.

Merriam suggested developing the subdivision by clustering the residences and having more open spaces that would be more compatible with the surrounding area. She said from going to conferences she has learned that they bring in more money, have higher resale value, and a better marketability. **Anderst** replied that he had traveled around the Country and had seen that type of development, however there doesn't seem to be a market for that here.

Orr suggested reserving some of the area used for drainage as unimproved common area and making the lots a little smaller.

Merriam questioned the report by Welham and **Orr** suggested the developers meet with Engineer and Road and Bridge regarding the road.

Soulliere made a motion to hold the hearing open and allow testimony for 10 days, have a work session, and make a decision at the March meeting. **Johnson** seconded the motion. A roll call vote was taken with all voting in favor.

A work session was scheduled for Monday, March 18, 1996 at 6:00 p.m.

PUBLIC HEARING ITEM NO.2: MASTER PLAN FOR A TWO-LOT SUBDIVISION, located on Crystal Springs Road, McCammon. The applicants are Ted and Patti Pulling. The parcel is located in the NW4 of the NE4 of Section 20, Township 9 South, Range 37 East, Boise Meridian. **Bergfeld** said the 20 acre parcel was a lot of record. In December of 94 the applicants divided it into 2 ten acre parcels. The Pullings wish to transfer a 2 1/2 acre parcel to their son, Kevin Faye. Bergfeld said the homes there already have existing approaches to them so there would be no road building involved. She said if the Council approved the subdivision she would recommend they require a Engineered site and drainage plan from the applicant that shows all of the drainage, springs, contour lines. Bergfeld said this application could set a precedence for future divisions of land in the Crystal Springs area. She said she suspects some adjacent land owners would be coming in to apply to subdivide.
Orr asked if it meets the width to depth ratio, and Bergfeld replied that it did.
Council discussed approval given for the first 2 lot split in 94.

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/cdbs/id/prec16

Station : 7211, POCATELLO WSO AP

MONTHLY PRECIPITATION



Unit = inches

yr	oct	nov	dec	jan	feb	mar	apr	may	jun	jul	aug	sep	SUM
17	2.11	0.61	2.31	0.82	2.15	1.29	1.83	2.63	0.52	0.16	0.04	1.29	15.76
18	0.00	0.67	0.55	1.94	0.94	1.39	0.89	0.68	0.86	1.52	0.41	0.33	10.18
19	1.29	0.44	0.22	0.19	2.06	0.99	1.31	0.35	0.00	0.27	0.44	2.13	9.69
20	1.26	0.55	1.48	0.14	0.46	1.41	2.28	1.36	0.95	0.33	2.53	0.92	13.67
21	2.62	1.29	1.26	0.95	0.70	0.92	3.23	2.47	0.58	1.06	0.33	0.56	15.97
22	0.56	0.71	1.97	1.54	1.94	0.69	1.81	1.84	0.82	0.17	2.20	0.07	14.32
23	0.76	0.49	1.82	1.14	0.44	1.33	2.57	1.32	1.68	0.95	0.60	0.86	13.96
24	3.03	0.38	1.15	0.45	0.24	1.38	0.61	0.31	0.36	1.67	0.03	0.82	10.43
25	1.84	0.53	1.35	1.15	1.09	0.88	2.09	0.67	2.33	3.33	0.89	2.68	18.83
26	0.63	0.86	0.57	0.56	0.96	0.77	0.90	0.54	0.54	0.76	0.80	2.72	10.61
27	0.43	1.53	1.32	1.31	1.43	1.26	2.03	2.54	0.77	0.64	0.44	1.58	15.28
28	1.09	1.92	1.31	0.46	0.41	1.59	0.74	1.53	1.00	0.29	0.12	0.22	10.68
29	0.97	1.34	1.10	2.02	0.74	0.82	2.61	0.40	1.47	0.11	1.11	1.21	13.90
30	0.67	0.46	1.01	1.32	1.19	0.53	0.90	1.31	0.71	0.88	3.59	1.17	13.74
31	1.65	0.97	1.22	0.52	0.42	0.81	0.88	0.36	0.09	0.62	0.54	1.11	9.19
32	1.51	0.85	1.09	1.97	0.85	0.99	1.75	0.89	1.32	1.07	0.61	0.00	12.90
33	0.09	0.25	1.45	1.85	0.41	0.42	0.99	1.46	0.15	1.05	0.25	0.16	8.53
34	0.21	0.47	1.92	0.73	0.84	0.37	0.28	0.00	0.80	0.56	0.37	0.41	6.96
35	0.65	2.14	1.30	1.37	0.34	1.06	2.94	1.69	0.02	0.08	0.28	0.10	11.97
36	1.09	0.61	0.74	2.46	2.04	1.48	0.97	0.71	1.03	2.44	1.92	0.20	15.69
37	0.53	0.09	0.81	1.70	1.80	1.40	1.89	1.05	0.37	1.10	0.35	0.62	11.71
38	0.87	1.54	1.42	1.08	1.32	3.11	1.22	1.64	1.12	0.81	0.68	0.02	14.83
39	2.05	1.38	0.67	0.75	0.84	0.43	0.56	0.47	0.46	0.67	0.11	0.88	9.27
40	0.57	0.02	0.72	2.52	1.87	0.79	1.03	0.05	0.38	0.21	0.12	3.80	12.08
41	1.64	0.71	1.64	0.62	1.32	0.93	2.26	1.78	0.93	1.01	1.43	0.76	15.03
42	0.47	2.05	2.03	2.22	1.03	0.30	1.12	2.29	0.58	0.13	0.76	1.63	14.61
43	0.38	2.18	1.09	0.89	0.96	1.52	0.36	0.84	1.38	0.51	0.62	0.28	11.01
44	1.43	0.42	0.37	0.44	0.78	0.52	1.56	1.31	3.39	1.11	0.00	0.25	11.58
45	0.27	1.81	1.03	0.20	0.95	1.41	0.61	2.14	1.09	0.12	1.51	1.21	12.35
46	0.69	0.72	0.72	0.85	0.84	2.63	0.48	1.86	1.30	0.33	0.82	0.90	12.14
47	2.16	1.43	0.78	0.42	0.26	1.31	0.72	1.30	1.70	0.09	0.59	0.99	11.75
48	0.83	1.32	1.14	0.80	0.73	1.41	1.51	0.93	2.47	0.01	0.34	1.39	12.88
49	0.35	2.44	1.12	1.26	0.85	1.10	0.42	2.03	0.56	0.09	0.21	0.07	10.50
50	1.17	0.76	0.56	2.54	0.34	1.48	0.44	0.77	1.20	0.68	0.09	0.81	10.84
51	1.19	1.37	0.74	0.44	1.46	0.38	1.02	0.39	0.31	0.28	1.23	0.02	8.83
52	0.81	0.36	1.58	0.68	1.00	1.13	0.98	0.59	1.67	0.27	0.01	0.06	9.14
53	0.00	0.82	1.34	1.39	0.51	0.52	1.23	1.57	0.77	0.04	0.78	0.06	9.03
54	1.16	0.81	0.38	0.83	0.43	1.02	1.01	0.87	1.48	0.08	0.44	0.38	8.89
55	1.07	0.51	0.45	0.57	1.04	0.49	1.70	0.76	1.30	0.31	0.55	0.29	9.04
56	0.24	0.46	1.33	2.92	0.33	0.20	0.47	1.06	0.03	0.08	0.01	0.13	7.26
57	2.56	0.25	0.55	0.71	0.72	1.24	1.74	3.11	0.26	0.44	0.60	0.02	12.20
58	0.57	0.79	0.74	1.06	1.23	0.74	1.04	0.40	1.07	0.56	0.00	0.33	8.53
59	0.00	1.73	1.09	1.39	0.78	0.37	0.19	1.11	0.34	0.02	0.42	1.73	9.17
60	0.20	0.02	0.68	0.98	1.28	0.94	0.66	0.53	1.31	0.19	0.84	0.16	7.79
61	0.53	1.31	0.47	0.24	1.44	1.11	0.85	1.29	0.41	0.48	0.15	1.97	10.25
62	2.03	0.68	0.93	1.17	1.18	1.26	0.74	1.16	0.37	0.76	1.01	0.40	11.69
63	0.42	1.10	0.45	1.48	1.00	0.85	3.30	2.26	2.74	0.00	0.53	0.96	15.09
64	0.32	1.49	1.22	0.76	0.34	0.78	1.46	1.41	2.08	0.30	0.24	0.00	10.40
65	0.50	0.85	2.95	0.71	0.38	0.10	1.65	0.84	1.12	1.19	0.78	0.85	11.92
66	0.02	1.21	1.20	0.27	0.51	0.42	0.31	0.93	0.21	0.10	0.02	0.82	6.02
67	0.40	0.63	0.72	1.08	0.18	1.21	1.81	1.14	3.30	0.22	0.13	0.14	10.96
68	0.80	0.51	0.91	0.75	1.11	1.29	0.39	1.70	1.84	0.10	3.98	0.64	14.02
69	0.58	0.92	0.78	1.80	0.94	0.40	0.38	1.19	2.02	0.14	0.54	0.14	8.79

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70	0.56	0.87	1.10	1.98	0.12	1.11	1.28	2.03	1.18	1.25	0.11	0.80	12.39
71	0.68	1.60	1.13	1.47	0.62	1.90	2.33	0.50	1.26	0.32	0.58	2.06	14.45
72	2.29	1.81	1.69	1.45	0.92	0.61	1.36	0.54	1.29	0.56	1.36	1.14	15.02
73	1.39	0.44	1.89	1.04	1.00	1.45	0.70	0.44	0.87	1.84	0.13	2.29	13.48
74	1.19	1.87	0.84	1.55	0.66	1.66	1.40	1.28	0.02	0.14	0.15	0.07	10.83
75	1.99	0.77	0.93	0.65	1.51	1.71	1.51	1.64	0.73	1.61	0.02	0.03	13.10
76	2.54	0.95	0.59	0.45	1.42	1.08	2.82	0.51	0.98	0.77	0.74	0.45	13.30
77	1.83	0.01	0.20	0.70	0.37	0.79	0.06	2.09	0.77	0.58	0.32	0.99	8.71
78	0.18	0.94	1.08	1.17	1.07	1.16	1.24	1.99	0.22	0.03	0.41	0.87	10.36
79	0.06	1.39	0.74	1.09	1.17	0.79	0.63	0.33	0.96	0.59	0.70	0.23	8.68
80	0.79	1.12	0.40	3.24	1.12	1.52	0.55	3.29	0.86	0.72	1.25	1.34	16.20
81	1.88	1.12	0.37	0.72	0.47	1.69	1.27	3.24	0.68	0.29	0.32	0.08	12.13
82	1.52	1.67	2.22	1.40	0.91	1.98	1.02	1.06	0.47	1.27	2.02	3.43	18.97
83	0.99	1.17	2.00	0.48	1.12	2.95	0.72	1.99	1.19	1.13	1.67	1.64	17.05
84	1.21	2.84	3.39	0.49	2.06	0.63	2.13	0.69	1.33	2.28	0.71	0.50	18.26
85	0.89	0.96	0.53	0.71	0.96	1.55	0.29	1.27	1.04	0.48	0.05	1.42	10.15
86	0.50	2.37	1.17	1.07	2.63	0.87	2.56	1.90	0.33	0.12	0.14	1.33	14.99
87	0.39	0.89	0.20	1.03	0.71	0.84	0.47	2.02	0.67	1.93	0.66	0.00	9.81
88	0.25	0.44	1.21	1.06	0.21	0.83	0.97	0.78	0.37	0.00	0.20	0.04	6.36
89	0.00	2.27	1.19	0.59	1.36	2.91	0.33	0.76	0.62	0.11	0.43	0.48	11.05
90	0.84	1.03	0.07	0.53	0.24	2.28	1.43	1.37	0.75	0.14	0.70	0.33	9.71
91	0.31	0.92	1.15	0.71	0.28	2.25	2.56	3.02	0.59	0.12	0.85	0.66	13.42
92	0.74	1.65	0.22	0.21	0.65	0.47	0.72	0.25	1.34	0.71	0.37	0.08	7.41
93	0.98	1.37	1.82	2.30	2.04	1.68	1.54	1.93	2.95	1.07	1.90	0.27	19.85
94	1.01	0.54	0.65	0.59	1.46	0.11	0.43	1.57	0.10	0.60	0.40	0.38	7.84
94	1.01	0.54	0.65	0.59	1.46	0.11	0.43	1.57	0.10	0.60	0.40	0.78	8.24
95	1.33	0.99	1.27	1.49	0.40	2.94	1.06	1.76	3.30	0.38	0.69	0.50	16.11
all years													
ave	0.96	1.03	1.08	1.09	0.95	1.14	1.23	1.28	1.01	0.63	0.68	0.79	11.87
yrs	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)	(80)
1961-1990 average :													
	0.92	1.17	1.09	1.04	0.92	1.26	1.20	1.35	1.02	0.65	0.67	0.85	12.14
yrs	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)	(30)

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/cdbs/id/snow16

Station : 12G17S, WILDHORSE DIVIDE SNOTEL
ELEVATION 6490

SNOW WATER EQUIVALENT

Unit = inches

year	January			February			March			April			May		
	date	dep	swe	date	dep	swe	date	dep	swe	date	dep	swe	date	dep	swe
45-1							E/ST		10.9	E/ST		16.0			
46-1							E/ST		15.6	E/ST		16.9			
47-1							E/ST		9.1	E/ST		8.0			
48-1							E/ST		10.3	E/ST		15.9			
49-1							E/ST		22.4	E/ST		23.9			
50-1							E/ST		20.3	E/ST		24.8			
51-1							E/ST		15.7	E/ST		16.0			
52-1							E/ST		21.7	E/ST		26.8			
53-1							E/ST		18.8	E/ST		17.2			
54-1							E/ST		13.3	E/ST		14.2			
55-1							E/ST		8.6	E/ST		11.1			
56-1				E/ST		11.7	E/ST		14.8	E/ST		15.7			
57-1				E/ST		8.2	E/ST		8.1	E/ST		13.9			
58-1				E/ST		12.7	E/ST		17.0	E/ST		18.7			
59-1				E/ST		6.7	E/ST		12.2	E/ST		13.0			
60-1				E/ST		4.8	E/ST		10.1	E/ST		11.8			
61-1				E/ST		6.6	E/ST		11.7	E/ST		14.5			
62-1				E/ST		12.7	E/ST		14.3	E/ST		19.8			
63-1				E/ST		3.5	E/ST		8.3	E/ST		8.5			
64-1				E/ST		11.2	E/ST		13.0	E/ST		18.1			
65-1				E/ST		14.3	E/ST		14.4	E/ST		15.2			
66-1				E/ST		10.2	E/ST		13.3	E/ST		10.8			
67-1				E/ST		12.3	E/ST		14.7	E/ST		17.4			
68-1				E/ST		7.1	E/ST		10.4	E/ST		14.4			
69-1				E/ST		15.6	E/ST		18.1	E/ST		19.4			
70-1				E/ST		11.6	E/ST		13.4	E/ST		15.0			
71-1				E/ST		15.1	E/ST		17.1	E/ST		23.1			
72-1				E/ST		18.8	E/ST		22.2	E/ST		23.3			
73-1				E/ST		10.1	E/ST		13.7	E/ST		16.6			
74-1				E/ST		14.6	E/ST		18.1	E/ST		20.7			
75-1				E/ST		13.2	E/ST		19.0	E/ST		23.8			
76-1				E/ST		13.4	E/ST		16.2	E/ST		21.5			
77-1				E/ST		2.8	E/ST		4.7	E/ST		8.2			
78-1				E/ST		10.6	E/ST		14.2	E/ST		13.8			
79-1				E/ST		9.6	E/ST		13.2	E/ST		18.4			
80-1				E/ST		11.5	E/ST		16.7	E/ST		19.4			
81-1				E/ST		6.7	E/ST		8.3	E/ST		11.6			
82-1	1/01		12.7	2/01		19.0	3/01		22.0	4/01		28.5	5/01		20.0
83-1				E/ST		12.3	E/ST		17.7	E/ST		21.1			
84-1				E/ST		16.9	E/ST		24.2	E/ST		27.7			
85-1				E/ST		10.0	E/ST		14.1	E/ST		16.4			
86-1	1/01		8.5	2/01		11.9	3/01		18.3	4/01		16.5	5/01		11.3
87-1	1/01		3.4	2/01			3/01		8.9	4/01		9.9	5/01		0.0

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88-1 1/01	4.1 2/01	7.8 3/01	9.1 4/01	10.2 5/01	0.3
89-1 1/01	9.3 2/01	13.1 3/01	16.8 4/01	21.5 5/01	7.2
90-1 1/01	4.3 2/01	6.9 3/01	9.1 4/01	10.4 5/01	0.0
91-1 1/01	6.3 2/01	9.4 3/01	11.5 4/01	14.6 5/01	13.3
92-1 1/01	4.8 2/01	5.5 3/01	7.2 4/01	5.1 5/01	0.0
93-1 1/01	9.2 2/01	14.3 3/01	17.9 4/01	17.1 5/01	17.2
94-1 1/01	3.9 2/01	6.0 3/01	11.5 4/01	10.0 5/01	2.0
82-2 1/15	15.8 2/15	20.8 3/15	25.9 4/15	28.2 5/15	9.4
83-2					
86-2 1/15	10.4 2/15	15.0 3/15	17.3 4/15	15.5 5/15	6.8
87-2 1/15	5.2 2/15	8.2 3/15	9.5 4/15	4.5 5/15	0.0
88-2 1/15	6.7 2/15	8.7 3/15	10.3 4/15	4.9 5/15	0.0
89-2 1/15	12.6 2/15	14.2 3/15	18.8 4/15	17.6 5/15	0.0
90-2 1/15	5.9 2/15	8.6 3/15	12.2 4/15	2.4 5/15	0.0
91-2 1/15	7.8 2/15	10.3 3/15	13.8 4/15	12.2 5/15	11.3
92-2 1/15	5.4 2/15	5.7 3/15	6.3 4/15	0.0 5/15	0.0
93-2 1/15	11.9 2/15	15.9 3/15	18.8 4/15	20.3 5/15	9.3
94-2 1/15	5.6 2/15	8.1 3/15	11.4 4/15	9.2 5/15	0.0

FIRST OF MONTH MEASUREMENTS

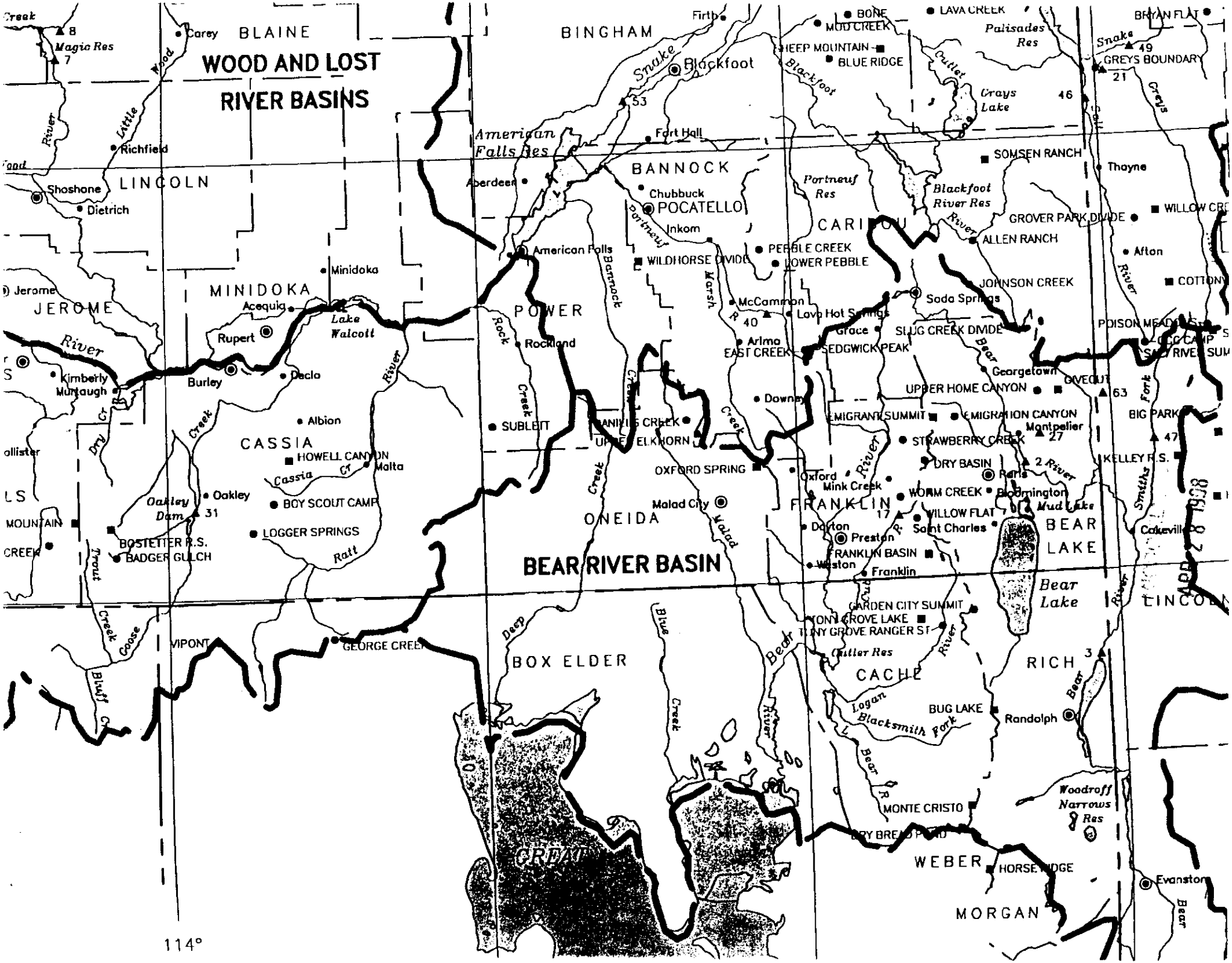
average depth and swe :		6.7		10.7		14.2		16.5		7.1
years	0	10	0	39	0	50	0	50	0	10
1961-1990 average :		7.1		11.2		14.5		17.2		6.5
years	0	6	0	30	0	30	0	30	0	6

MID-MONTH MEASUREMENTS

average depth and swe :		8.7		11.6		14.4		11.5		3.7
years	0	10	0	10	0	10	0	10	0	10
1961-1990 average :		9.4		12.6		15.7		12.2		2.7
years	0	6	0	6	0	6	0	6	0	6

NOTES: -O/dd - October, J/dd - November, K/dd - December, E/ST - estimate
-Card type 1 = First of Month, 2 = Mid-month, and 3 = Special Measurement

MICROFILM
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WOOD AND LOST
RIVER BASINS
BEAR RIVER BASIN
BLAINE
BINGHAM
LINCOLN
BANNOCK
POCATELLO
CARIBOU
JEROME
MINIDOKA
POWER
CASSIA
ONEIDA
FRANKLIN
BEAR LAKE
BOX ELDER
CACHE
RICH
WEBER
MORGAN
Magic Res
Carey
Richfield
Shoshone
Dietrich
Blackfoot
Fort Hall
American Falls Res
Aberdeen
Chubbuck
Inkom
American Falls
Minidoka
Acequia
Rupert
Lake Walcott
Rockland
Burley
Declo
Albion
Kimberly
Murtaugh
SUBLETT
HOWELL CANYON
Malta
Oakley
Oakley Dam
BOY SCOUT CAMP
LOGGER SPRINGS
BOSTETTER R.S.
BADGER GULCH
OXFORD SPRING
Malad City
Oxford
Mink Creek
Dayton
Preston
Weston
Franklin
Downey
Arimo
EAST CREEK
McCammon
Lava Hot Springs
Soda Springs
Grace
SEDGWICK PEAK
SLUG CREEK DIVIDE
Georgetown
UPPER HOME CANYON
EMIGRANT SUMMIT
EMIGRATION CANYON
Montpelier
STRAWBERRY CREEK
DRY BASIN
Paris
WORM CREEK
Bloomington
WILLOW FLAT
Mud Lake
Saint Charles
Bear Lake
Cokeville
KELLEY R.S.
BIG PARK
GIVEOUT
Afton
JOHNSON CREEK
ALLEN RANCH
GROVER PARK DIVIDE
SOMSEN RANCH
Thayne
Palisades Res
Crays Lake
GREYS BOUNDARY
BRYAN FLAT
BONE
MUD CREEK
LAVA CREEK
SHEEP MOUNTAIN
BLUE RIDGE
Portneuf Res
Blackfoot River Res
PEBBLE CREEK
LOWER PEBBLE
WILDHORSE DIVIDE
GARDEN CITY SUMMIT
TONY GROVE LAKE
TONY GROVE RANGER ST
Cutler Res
BUG LAKE
Randolph
MONTE CRISTO
Woodruff Narrows Res
HORSE RIDGE
Evanston
GEORGE CREEK
VIPONT
114°
42°

Form 238-7
4/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

[redacted]

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name Tom Iverson

Address Pocatello, Id.

Drilling Permit No. 29-95-E-0101

Water Right Permit No. _____

2. NATURE OF WORK

■ New well ☐ Deepened ☐ Replacement
☐ Well diameter increase ☐ Modification
☐ Abandoned (describe abandonment or modification procedures such as liners, screen, materials, plug depths, etc. in lithologic log, section 9.)

3. PROPOSED USE

■ Domestic ☐ Irrigation ☐ Monitor
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

■ Rotary ☐ Air ☐ Auger ☐ Reverse rotary
☐ Cable ☐ Mud ☐ Other _____ (backhoe, hydraulic, etc.)

5. WELL CONSTRUCTION

Casing schedule: ■ Steel ☐ Concrete ☐ Other _____

Thickness	Diameter	From	To
.250 inches	8" inches	+ 1 feet	300' feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ☐ Yes ■ No
Was a packer or seal used? ☐ Yes ■ No
Perforated? ■ Yes ☐ No
How perforated? ☐ Factory ■ Knife ☐ Torch ☐ Gun
Size of perforation? 1/4 inches by 2 inches

Number		From	To
50	perforations	200 feet	230 feet
30	perforations	255 feet	260 feet
40	perforations	270 feet	285 feet

Well screen installed? ☐ Yes ■ No
Manufacturer _____ Type _____
Top Packer or Headpipe _____
Bottom of Tailpipe _____

Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Gravel packed? ☐ Yes ■ No ☐ Size of gravel _____
Placed from _____ feet to _____ feet

Surface seal depth 20' Material used in seal: ☐ Cement grout
■ Bentonite ☐ Puddling clay ☐ _____
Sealing procedure used: ☐ Slurry pit
☐ Temp. surface casing ■ Overbore to seal depth

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7. WATER LEVEL

Static water level 125' feet below land surface.
Flowing? ☐ Yes ■ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature 54 °F. Quality Good
Describe artesian or temperature zones below.

8. WELL TEST DATA

☐ Pump ☐ Bailer ■ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
8"	0	15	Dry Clay		X
	15	60	Boulders & Clay		X
	60	200	Clay, Gravel, & Some Boulders		X
	200	210	Boulders & Gravel	X	
	210	215	Brown Clay		X
	215	230	Boulders & Gravel	X	
	230	255	Brown Clay & Gravel		X
	255	260	Gravel	X	
	260	270	Clay & Gravel		X
	270	285	Gravel & Some Clay	X	
	285	300	Blue Clay		X

Surface seal depth 20' Material used in seal: ☐ Cement grout
■ Bentonite ☐ Puddling clay ☐ _____
Sealing procedure used: ☐ Slurry pit
☐ Temp. surface casing ■ Overbore to seal depth
Method of joining casing: ☐ Threaded ■ Welded
☐ Solvent Weld ☐ Cemented between strata

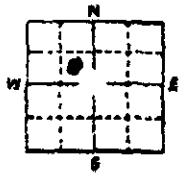
Describe access port Well Cap

10.

Work started 12/1/95 finished 12/8/95

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

County Bannock

Address of Well Site Gibson Jack
(give at least name of road)

SE ¼ NW ¼ Sec. 19, T. 7 N ☐ or S ■, R. 35 E ■ or W ☐

11. DRILLER'S CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name Cushman Drilling Firm No. #94

Address 1405 South Broadway Blackfoot, Idaho Date 12/8/95

Signed by Drilling Supervisor Bob Cushman

and

(Operator) Monte Stapley
(If different than the Drilling Supervisor)

ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT

RECEIVED
APR 2 8 1998

Meteorological Data For The Current Year

Station: POCATELLO, IDAHO MUNICIPAL AIRPORT Standard time used. MOUNTAIN Latitude: 42° 55' N Longitude: 112° 36' W Elevation (ground) 4454 feet Year 1982

Month	Temperature °F: Averages: Daily maximum	Daily minimum	Monthly	Extremes: Highest	Date	Lowest	Date	Degree days Base 65 °F: Heating	Cooling	Precipitation in inches: Water equivalent: Total	Greatest in 24 hrs.	Date	Snow, ice pellets: Total	Greatest in 24 hrs.	Date	Relative humidity, pct.: Hour 05 (Local time)	Hour 11	Hour 17	Hour 23	Wind: Resultant: Direction	Speed m.p.h.	Average speed m.p.h.	Fastest mile: Speed m.p.h.	Direction	Date	Percent of possible sunshine	Average sky cover, tenths, sunrise to sunset	Number of days: Sunrise to sunset: Clear	Partly cloudy	Cloudy	Precipitation .01 inch or more	Snow, ice pellets 1.0 inch or more	Thunderstorms	Heavy fog, visibility ¼ mile or less	Temperature °F: Maximum (b): 90° and above	32° and below	Minimum: 32° and below	0° and below	Average station pressure mb: Elev. 4478 feet m.s.l.
JAN	28.5	11.9	20.2	47	26	-24	7	1382	0	1.40	0.46	4-5	22.3	9.1	4-5	84	80	82	83	23	9.8	13.4	43	SW	4	72	8.9	0	5	26	16	5	0	4	0	20	31	9	861.8
FEB	33.5	13.4	23.5	62	21	-20	5	1161	0	0.91	0.22	13-14	5.8	2.5	7-8	80	71	69	76	22	4.1	9.8	33	S	14	51	7.8	2	8	18	14	1	0	0	3	12	22	11	865.6
MAR	47.2	28.2	37.7	59	25	22	22	838	0	1.98	0.95	14-15	13.6	3.8	28-29	82	68	63	79	23	8.1	11.2	33	S	31	61	8.2	2	8	21	14	7	2	0	0	0	26	0	858.1
APR	54.3	28.4	41.3	73	28	17	20	703	0	1.02	0.56	11-12	2.4	1.5	1	73	46	38	60	25	7.9	11.6	35	W	18	70	5.6	8	10	12	8	1	1	0	0	0	20	0	862.2
MAY	66.1	37.4	51.8	82	26	21	5	406	2	1.06	0.70	8-9	0.2	0.2	9	75	46	35	60	25	5.7	10.0	33	W	18	70	5.6	8	10	12	8	1	1	0	0	0	6	0	861.2
JUN	77.8	45.7	61.8	92	30	34	9	139	48	0.47	0.14	25	0.0	0.0		82	46	34	63	27	2.8	8.6	31	SW	25	71	5.9	6	13	11	9	0	8	1	0	*	0	0	0	861.2
JUL	83.2	52.6	67.9	97	20	40	6	38	133	1.27	0.59	27-28	0.0	0.0		81	46	38	63	25	4.2	8.2	33	SW	13	71	5.1	11	12	8	9	0	5	1	0	0	0	0	0	864.2
AUG	88.1	53.5	70.8	97	21	45	25	0	187	2.02	0.82	8-9	0.0	0.0		69	38	27	52	25	3.8	8.8	42	SW	8	91	4.1	15	11	5	8	0	10	0	0	15	0	0	0	864.5
SEP	71.6	44.9	58.3	90	3	35	11	216	16	3.43	1.13	15-16	T	T	30	79	55	44	66	24	2.1	9.4	37	SW	10	42	6.0	10	8	12	12	0	4	0	1	0	0	0	863.2
OCT	56.8	33.5	45.2	72	15	17	20	607	0	0.99	0.39	25-26	0.5	0.4	27	76	60	53	66	23	6.2	9.7	30	W	26	58	6.5	7	8	16	10	0	0	1	0	0	11	0	865.9
NOV	41.7	22.0	31.9	57	5	-3	23	987	0	1.17	0.44	18-19	7.3	3.5	22	81	67	62	77	23	4.0	9.0	35	S	18	46	6.8	7	7	16	8	3	1	4	0	4	26	3	862.5
DEC	32.4	18.1	25.3	46	16	-11	29	1227	0	2.00	0.91	1	18.3	9.5	1	78	73	72	75	22	6.0	11.4	37	S	17	55	8.1	2	6	23	14	4	0	3	0	16	27	3	864.2
YEAR	56.8	32.5	44.7	97	AUG 21	-24	JAN 7	7704	386	17.72	1.13	SEP 15-16	70.4	9.5	DEC 1	78	58	51	68	24	5.3	10.1	43	SW	JAN 4	62	6.6	78	108	179	132	21	33	14	28	52	169	26	862.9

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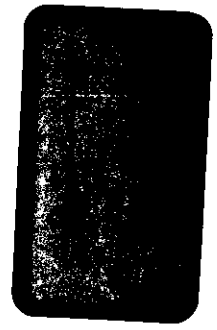
Normals, Means, And Extremes

Month	Temperatures °F: Normal: Daily maximum	Daily minimum	Monthly	Extremes: Record highest	Year	Record lowest	Year	Normal Degree days Base 65 °F: Heating	Cooling	Precipitation in inches: Water equivalent: Normal	Maximum monthly	Year	Minimum monthly	Year	Maximum in 24 hrs.	Year	Snow, ice pellets: Maximum monthly	Year	Maximum in 24 hrs.	Year	Relative humidity pct.: Hour 05 (Local time)	Hour 11	Hour 17	Hour 23	Wind: Mean speed m.p.h.	Prevailing direction	Fastest mile: Speed m.p.h.	Direction	Year	Pct. of possible sunshine	Mean sky cover, tenths, sunrise to sunset	Mean number of days: Sunrise to sunset: Clear	Partly cloudy	Cloudy	Precipitation .01 inch or more	Snow, ice pellets 1.0 inch or more	Thunderstorms	Heavy fog, visibility ¼ mile or less	Temperatures °F: Max. (b): 90° and above	32° and below	Min.: 32° and below	0° and below	Average station pressure mb: Elev. 4478 feet m.s.l.
(a)				33		33					33		33		33		33		33		19	19	19	16	30	14	33	33		33	33	33	33	33	33	33	32	32	19	19	19	19	
J	32.4	14.0	23.2	57	1974	-30	1962	1296	0	1.05	3.24	1980	0.24	1961	0.97	1970	28.1	1950	10.1	1950	77	74	69	75	11.1	SW	61	SE	1952	37	8.1	3	6	22	12	3	*	*	0	13	27	5	864.6
F	38.6	20.1	29.4	62	1982	-27	1956	997	0	0.80	1.51	1975	0.12	1970	0.59	1961	16.3	1955	6.1	1955	78	69	61	74	10.8	SW	57	W	1963	52	7.5	4	6	18	10	2	*	*	3	0	9	2	864.6
M	45.8	24.9	35.4	73	1978	-8	1960	918	0	0.94	1.98	1982	0.10	1965	0.70	1971	15.4	1962	7.3	1962	76	60	50	68	11.5	SW	72	W	1955	61	7.1	5	8	18	10	2	*	*	1	0	2	26	*	859.9
A	57.7	32.8	45.3	85	1977	15	1970	591	0	1.06	3.30	1963	0.06	1977	1.25	1976	15.5	1976	10.0	1976	69	48	38	58	11.8	SW	61	S	1956	65	6.7	6	8	16	8	1	*	*	0	*	17	0	861.5
M	68.1	40.7	54.4	93	1954	20	1972	336	7	1.29	3.29	1980	0.19	1969	1.67	1970	4.9	1975	4.6	1975	68	44	34	54	10.5	SW	61	W	1953	67	6.2	8	9	14	9	3	*	*	0	0	5	0	860.9
J	76.5	47.1	61.8	99	1974	30	1968	138	53	1.28	3.30	1967	0.02	1974	1.08	1960	0.2	1981	0.2	1981	71	42	32	54	10.2	SW	50	W	1955	74	4.9	12	9	9	7	0	5	*	*	0	*	0	862.3
J	88.8	54.1	71.5	102	1976	34	1981	0	197	0.36	1.84	1973	T	1963	0.98	1965	0.0		0.0		63	34	23	45	9.1	SW	57	W	1968	83	3.3	18	9	4	4	0	6	*	15	0	0	0	863.9
A	86.4	52.5	69.5	104	1969	32	1969	20	153	0.62	3.98	1968	T	1958	1.16	1972	0.0		0.0		60	34	23	43	8.9	SW	54	SW	1966	81	3.8	16	10	5	5	0	5	0	13	0	*	0	863.5
S	75.7	43.1	59.4	98	1976	21	1965	192	35	0.61	3.43	1982	T	1964	1.13	1982	2.0	1965	2.0	1965	65	39	28	50	9.1	SW	57	W	1961	79	4.0	15	8	7	5	0	4	*	2	0	3	0	864.5
O	63.0	33.8	48.4	88	1979	10	1971	515	0	0.75	2.56	1956	0.00	1952	1.82	1976	12.6	1971	8.0	1980	69	47	37	58	9.2	SW	54	SW	1966	70	5.3	12	9	10	5	*	2	*	2	0	0	0	865.6
N	45.9	25.5	35.7	71	1975	-13	1955	879	0	1.05	1.87	1973	0.01	1976	0.85	1969	11.5	1978	6.8	1971	76	65	57	71	10.1	SW	67	W	1955	68	7.1	6	7	17	8	1	*	*	2	0	4	0	864.9
D	35.5	18.3	26.9	59	1980	-28	1972	1181	0	0.99	2.95	1964	0.20	1976	0.91	1982	19.9	1951	9.5	1982	78	73	68	75	10.3	SW	57	NW	1981	38	7.9	3	7	21	11	3	*	*	0	11	27	3	865.2
YR	59.5	33.9	46.7	104	AUG 1969	-30	JAN 1962	7063	445	10.80	3.98	AUG 1968	0.00	OCT 1952	1.82	OCT 1976	28.1	JAN 1950	10.1	JAN 1950	71	52	43	61	10.2	SW	72	W	MAR 1955	65	6.0	108	96	161	95	14	23	15	33	38	170	11	863.5

Means and extremes above are from existing and comparable exposures. Annual extremes have been exceeded at other sites in the locality as follows: Highest temperature 105 in July 1931; lowest temperature -31 in January 1949; maximum monthly precipitation 4.34 in March 1907; maximum precipitation in 24 hours 2.60 in September 1926; maximum snowfall in 24 hours 14.6 in March 1916.

(a) Length of record, years, through the current year unless otherwise noted, based on January data.
(b) 70° and above at Alaskan stations.
* Less than one half.
T Trace.

NORMALS - Based on record for the 1941-1970 period.
DATE OF AN EXTREME - The most recent in cases of multiple occurrence.
PREVAILING WIND DIRECTION - Record through 1963.
WIND DIRECTION - Numerals indicate tens of degrees clockwise from true north. 00 indicates calm.
FASTEST MILE WIND - Speed is fastest observed 1-minute value when the direction is in tens of degrees.



State of Idaho
DEPARTMENT OF WATER RE[redacted]
STATE OFFICE, 450 W. State Street, Boise, I[redacted]

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

In a separate letter from the State of Idaho, Department of Water Resources, Mr Kenneth Dunn & Glen Saxton, the chief of Operations Bureau, expressed that

GLEN SAXTON

June 12, 1984

Richard Hollingsworth
Gibson Jack Acres Subdivision
Route #3
Pocatello, ID 83201

Dear Mr. Hollingsworth:

This office has received and reviewed your letter of May 21, 1984 relative to groundwater concerns in your area.

~~While~~ the Department does have the authority to designate groundwater management areas or critical groundwater areas, ~~such a designation, if determined to be appropriate, likely would not~~ provide the relief you are seeking other than perhaps in a general manner. To be more specific, in an area designated as critical, the only type of water appropriation that can be made is single family domestic or stockwater use from wells. This designation would perpetrate the problem you have described. A critical designation, however, would prevent development of irrigation wells and central domestic well systems. A central deep domestic well possibly would have less effect on existing wells than numerous small wells depending on geology and other factors.

A positive thing for developers

Designation of an area as a groundwater management area raises a flag that the area may be approaching critical conditions but provides more alternatives as far as monitoring and management.

The above discussion does not include the limitations on the Department and future water users due to the on-going Swan Falls litigation. This matter, in itself, prevents new consumptive appropriations in your area, other than single family domestic use from a well.

~~The Department will review water resource information in your~~ area including well logs, estimated recharge to the area, water rights of record and water level trends to determine if a management area or critical area designation is appropriate.

Proof was given presented to the Land Development Board on [illegible] amount of recapitation that one receives and is a [illegible] showing water recovery is [illegible] and supply after [illegible] meant [illegible] critical

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

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Operations Bureau

LGS:ldt

MICROFILMED
APR 2 8 1988

May 18, 1984

[redacted]

TO: Whom it May Concern

RE: Study of Water Table Levels in Gibson-Jack area.

In regards to determining impacts on existing domestic users by future domestic wells, I have been asked to recommend a time period to begin a hydrologic study.

The time of maximum water recharge and maximum water drawdown will lag the time of surface water recharge by a time period dependent upon the depth, porosity or permeability and slope or gradient. In order to determine the trend of groundwater rise or decline, data should be collected for a long enough time period to show the seasonal fluctuations and the annual changes in both the peaks and minimum levels associated with non-static groundwater levels. The water level of a confined aquifer is dependent upon the recharge minus the withdrawals from that system. If the inflow to that system is reduced or the withdrawals are increased, the water levels will rise or decline proportionately.

Lyle Swank

LYLE SWANK, P.E.
Assistant Watermaster
Water District No. 1

not sink a new well, pump water for 3 days and state - we have scientific data that there is enough water!!!

What errors, and lies by developers - or should I say mis-leadings.

APR 2 8 1988

1301 N. ORCHARD STREET
83706-2237

OCT 11 1984

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

NO LONGER THERE 1996 NEW DIRECTOR IS KARL DREHER

~~1-800~~ 1-208-327-7866 FAX

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

October 9, 1984

TOM ORR ISU

4-29-96 2:18 pm mtg

[redacted]

Ms. Carolyn Meline, Chairman
Board of Bannock County Commissioners
P.O. Box 4016
Pocatello, ID 83201

Dear Ms. Meline:

This letter is in response to your request for advice on two issues, (1) a question of assured domestic water supply for the proposed Gibson Jack subdivision, and (2) a question as to whether individual wells or a single central supply well would have less impact on new and existing wells.

Based upon limited published water resources reports, driller's logs, discussions with drillers, exhibits and other information supplied by the Bannock County Commission, certain facts have come to light. First, the proposed Gibson Jack subdivision is in an area thought to be underlain by the Salt Lake Formation, a geologic formation that is unpredictable in yielding water to wells; yields can be fairly high in places, but often are quite poor. Drillers logs that supply well test information including drawdown as well as discharge data, have only been somewhat helpful in determining aquifer characteristics. These data indicate relatively poor aquifers developed by wells in the vicinity of Sections 18 and 19, T7S, R35E.

The "well test" performed by ~~Alpine Engineering~~ CHRIS PINE was not run in accordance with established methods of testing aquifers to determine their characteristics; but perhaps that was not the intent. Using data from the test, however, may be very misleading. Bob Cushman of Cushman Drilling in Blackfoot, was present at the test, and he indicated to me that the well tested was not as "good" as many surrounding wells, which implies that THE data from the test may lead to pessimistically low estimates of yield. In any case, drillers describe it as a relatively poor-yielding aquifer which underlies the area to depths of up to 200 feet. As a result, more severe interference effects can be expected between new and existing wells than if the aquifer was more productive. A single, central supply well, depending upon location, would likely have a more severe interference effect than several low-capacity wells, unless it was completed in an aquifer not hydraulically connected with the Salt Lake Formation.

APR 28 1998

Underlying the Salt Lake Formation at greater depth are various consolidated rock units of unknown potential for groundwater yield and extensive development. Another source of water for the subdivision is the city of Pocatello. Perhaps the most obvious source of groundwater (to a geologist) is the alluvium of the Portneuf River valley. A well located in the area of the fan of Gibson Jack Creek should supply adequate water for domestic, irrigation, and fire protection purposes.

To summarize, my conclusions are as follows:

1) There is insufficient data on aquifer characteristics in the area to allow meaningful projections of the effects of pumpage.

2) Based on the limited data available, however, domestic wells with properly sized pumps providing water for in-house uses only, are not likely to have any long-term adverse effects on new or existing wells, although some minor interference between can be expected. Such pumps would typically be 1/2 h.p. pumps capable of pumping about 10 gpm.

3) Individual wells providing irrigation water are likely to be marginal in production capacity and would have more serious potential drawdown effects on water levels in surrounding wells, due to their higher pumpage rate and more continuous pumping schedule.

4) A single, high capacity municipal supply well completed in the same aquifer, depending upon location, would have a more serious interference effect on nearby wells than several low-capacity domestic wells. This would not be the case, however, if the central well were completed in another, perhaps deeper, aquifer not hydraulically connected to the Salt Lake Formation.

5) Other geologic units underlying or adjoining the proposed subdivision area have unknown to very high potential for yielding adequate water for the subdivision. The unit with the best potential is the alluvium of the Portneuf River.

I have a couple of recommendations, which I hope will be helpful to you in arriving at a solution:

1) A competent hydrogeologic consulting firm with excellent references should be retained to conduct aquifer tests in the Gibson Jack area, analyze the results of the tests, and provide projections of pumpage effects based on those analyses. The consultant should also develop

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APR 2 8 1998

a water budget, if possible, for the watershed of Gibson Jack Creek, to help determine what long-term level of development the area could sustain. The data obtained would have good transfer value to adjoining drainages where other development may be contemplated or in progress.

2) The alluvium of Portneuf River valley has the potential to be a prolific aquifer, capable of supplying adequate water. A consultant should be retained to perform appropriate well tests, develop well construction specifications, supervise the drilling and development of a test well in the alluvium and to provide a comprehensive report to the Bannock County Commission. The well, if of sufficient capacity, could eventually be tied into the city of Pocatello system, providing further supplies to the southeast outlying areas of the City. Two factors should be addressed before constructing a well in the alluvium; however, water quality and protection from flooding.

I hope the above discussion helps you all in reaching a timely decision. If there is anything else I can do to assist you, please feel free to call.

Sincerely,

Paul M. Castelin

PAUL M. CASTELIN
Hydrogeologist

PMC:cjk

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APR 2 8 1998

[redacted]

FILED
LARRY W. GUAN
CLERK OF DISTRICT COURT
BANNOCK COUNTY, IDAHO

'87 NOV 24 A9:42

BY [illegible]

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, d/b/a/ GIBSON JACK, 1st ADDITION, Plaintiffs, vs. BANNOCK COUNTY COMMISSIONERS, Defendants.	CASE NO. 39322-C MEMORANDUM DECISION AND ORDER

The court has reviewed the file, record and transcript of the county hearings, statement of position, and points and authorities filed by counsel.

In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivison plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System. Developer's petitioned for judicial review and in January 1985, Judge McDermott remanded to the Board for further hearing. At this additional hearing the Board issued the modified findings of facts and conclusions of law but adhered to its prior decision requiring connection to the municipal water system. A second petition has been filed with this court asking for judicial review and additionally for the presentation of additional evidence. Developers complain that the Board had given approval to other proposed subdivisions without requiring the developers to demonstrate the availability of water as they

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had required of these petitioners. The testimony of petitioner's expert, Mr. Chapman, is requested to clarify the record because of "inaudible" gaps in the transcript.

Notwithstanding the allegation that the Board may have approved other subdivision proposals without the scrutiny given to available water supply as it has to the present application, there is nothing in the record which would indicate that the conditional approval of this plate was arbitrary or otherwise improper. The burden is on the petitioner to demonstrate the infirmity of the Board's decision and they have not sustained this burden.

It is clear from the transcript that the availabilty of adequate water was very much in dispute. Several expressions of concern were made to the Board about the sufficiency of water, availability and the possibile impact of additional users and in light of these concerns it is not arbitrary nor unreasonable for the Board to require the developer to guarantee the availability of an adequate water supply before accepting the proposed subdivison. A local governing Board may be impowered to act to promote and preserve the general welfare of the community, and in providing for an adequate water supply as one of the means by which to do so. City of Lewiston vs Knieriem, 107 Idaho 80, 685 P.2d 821 (1984).

Once it is recognized that the Board is empowered to require the Developer to demonstrate that sufficient water is available,

APR 2 8 1988

the inquirY then focuses on whether or not there was substantial evidence to support the Board's findings that adequate ground water was not available in this case. According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficent water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal.

The fact that there are a number of "inaudible" gaps in the transcript does not require further testimony by Mr. Chapman. The transcript is, while not ideal, sufficient to allow the court to evaluate the reasonableness of the board's findings.

IT IS THEREFORE ORDERED that the petition for Judicial Review of Administrative Proceedings and For Leave To Present Additional Evidence each are denied and the decision of the Bannock County Commissioners herein is affirmed.

DATED this 18th day of November, 1987.

WALLACE M. TRANSTRUM
District Judge

APR 28 1988

[redacted]

P. Richmond

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, dba GIBSON JACK, 1st ADDITION,

Plaintiffs,

vs.

BANNOCK COUNTY COMMISSIONERS,

Defendants.

CASE NO. 39322-C

MINUTE ENTRY AND ORDER

lodged 2/10/88 with.

On September 17, 1987, a Pre-trial Conference was held in this matter and the courts Pre-trial Order issued September 22, 1987. Pursuant to such order, briefs were received by the court and duly considered and this court's Memorandum, Decision and Order entered November 18, 1987, disposing of all issues before the court. Subsequently, the court received a letter from counsel for plaintiff indicating a misunderstanding of the Pre-trial Order and an "agreement" reached at that time and requesting that the court accept additional briefs, together with oral argument on the petition itself, although agreeing that this court's order of November 18, 1987, disposed of a request of additional testimony. Counsel further requested that the court withdraw its Memorandum Decison and Order as to the issues presented by the petiton for review.

The court's notes of the Pre-trial Conference were not retained after dictating the Pre-trial Conference Order, however, until receipt of counsel's December 4th letter, it had no

FILED
APR 28 1988

indication that the terms of the Pre-trial Order were not correct. The order specifically stated that there would be no oral argument unless specifically requested by the parties and would otherwise be decided upon the briefs and the established record. No request was made by either party for oral argument.

In the interest of justice, and because of the apparent misunderstanding, the court will hear oral argument on the petition for review as requested. The court will not, however, set aside its Memorandum and Order of November 18th, but rather at the conclusion of argument and its final decision herein, will determine whether to leave such Memorandum Decison and Order in force or to set it aside and give plaintiff relief.

IT IS THEREFORE ORDERED that the Petition for Judicial Review filed herein be presented to the court on oral argument on the 22nd day of February 1988, at 2:30 o'clock p.m. at the courtroom thereof, Pocatello, Idaho. Counsel may contact the Trial Court's Administrators office prior to hearing to determine courtroom assignment.

IT IS FURTHER ORDER that if either party wishes to file additional briefs for the court's consideration the same will be filed no later than prior to hearing.

DATED this 10th day of February, 1988.

WALLACE M. TRANSTUM
District Judge

APR 2 8 1988

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 10th day of February, 1988, I mailed/served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):	Method of Service:
Erich N. Storm Bannock County Deputy Prosecuting Attorney P O Box P Pocatello ID 83205	U.S. Mail
Charles C. Just, Esq. WEINPEL, WOOF, JUST, COMBO & DAVIS P O Box 936 Idaho Falls, ID 83402	U.S. Mail

MYRNA W. ARCHIBALD, CLERK

by: Vida Mascarenas

APR 28 1988

RECEIVED
JUL 30 1984
BANNOCK COUNTY LAND
DEVELOPMENT BOARD

July 27, 1984

[redacted]

Mayor L. Ed Brown
Administrative Offices
902 E. Sherman
Pocatello, ID 83201

Dear Mayor Brown and Members of the Pocatello City Council:

This letter is being written to protest the Pocatello City Council's recent decision and recommendation to approve a subdivision of 52 lots of 2½ acres known as Gibson Jack First Addition.

Your recent decision to approve this subdivision has ignored pleas by present Gibson Jack property owners concerning water table depletion. Developer Bob Thompson, of Alpine Engineering, has publicly acknowledged that the underground water table is not sufficient for full irrigation of the lots and it is my understanding that the test made by the state hydrologist, reported in the Idaho State Journal, declaring that there was sufficient water for culinary use was made during the month of April 1984. Present property owners have protested that April is a strong run-off month for the water table and this test was not giving a fair picture of the real situation during the dry months. Apparently, recommendations by present property owners to have additional tests made during the months of July, August and September when water run-off is greatly reduced have been ignored and reflect the seriousness of the council's premature decision. Again, this year, present property owners living below the proposed subdivision are being adversely affected, experiencing a drop in well water capacities and output. THIS IS EXACTLY WHAT HAS HAPPENED AGAIN IN 1996.

It is interesting to note that most of your council meeting before approving this subdivision was used to discuss the "potential water supply problem," however, the council did not resolve the potential water problem as the board recommended before reaching its decision to approve the subdivision. Councilman Edgar Malepeai voted against the final motion because he also felt that "the council was not taking care of the potential water supply and fire protection problem," nor was Councilman Malepeai supported in his motion to flag each plat with a notation that the water supply is limited. As well, Thompson would not support a central well for fire protection because "the underground water is not sufficient." With this in mind, additional questions must also be addressed: 1) who will supervise the proposed 52 new water users to see that their well water would not be used to irrigate either part or the total 2½ acres? 2) By allowing 52 new wells, what will happen to the present property owners irrigation water? Water which is already low will most certainly not improve. 3) With less water available and with potential dryouts of existing wells, property below the proposed subdivision will lose its marketable value. 4) Present property owners and undeveloped lot owners on the original Gibson Jack area have been divided into 5 acres raising the issue of fairness as to why the proposed new subdivision was platted into

APR 2 8 1996

2½ acres? 5) Nor have you satisfactorily resolved the fire protection problem, and 6) To my knowledge, as yet, clarification has not been officially made as to the type of residencies to be zoned for this subdivision. Rumors have been heard that this subdivision would be used for a trailer/mobile home park. In order that present property values be maintained, this proposal would be completely unacceptable.

In conclusion, it appears that your recent decision to approve this subdivision of 52 lots of 2½ acres to be reckless, thoughtless and potentially dangerous in terms of water, fire and present property values. This letter then is to serve notice to you and the members of the Pocatello City Council that you will be held directly accountable, responsible and liable for any damages incurred due to your recent decision to approve the Gibson Jack First Addition. Unbelievably, you approved the subdivision even though as reported in the Idaho State Journal, Friday July 6, 1984 "...the council did not resolve the potential water problem as the board recommended." You have not satisfied the board before approving this subdivision, nor have you satisfied this property owner. It is not fair to the people of Pocatello to continue to accept decisions made by the city council without having the council assume direct responsibility for their consequences.

Sincerely,

Anthony Martin
Gibson Jack Road

cc: Bannock County Planning and Zoning Commission
Tom Katsilometes, Bannock County Commissioners Office
Idaho State Journal

APR 2 6 1985

BOARD'S HEARING
EXHIBIT NO. 1
NUMBER OF PAGES 3
DATE April 30, 85

File
Gibson Jack
1st Addr

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON dba GIBSON JACK, 1st addition

Plaintiffs,

vs.

BANNOCK COUNTY COMMISSIONERS

Defendant.

Case No. 39322-C

ORDER

[redacted]

Good cause appearing, it is hereby ORDERED:

That additional evidence may be taken before the Bannock County Commissioners which additional evidence shall be limited to water availability to the sub-division.

It is further ordered, that after the taking of the additional testimony, both pro and con, that modified Findings of Facts and Conclusions of Law shall be submitted to this Court for this review.

Richard D. McDermott
DISTRICT JUDGE

CC: James E. Harward
Shawn Anderson

RECEIVED
JAN 15 1985
BANNOCK COUNTY LAND DEVELOPMENT BOARD

APR 2 8 1985

JAMES E. HARWARD, Esq.
Attorney at Law
P. O. Box 86
Pocatello, Idaho 83204
(208) 233-4635

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON dba GIBSON JACK, 1st addition Plaintiffs, vs. BANNOCK COUNTY COMMISSIONERS Defendant.	Case No. 39322-C STIPULATION

COMES NOW, the Plaintiffs, by and through their attorney, James E. Harward, and the Defendants by and through their attorney, Shawn Anderson, and stipulate as follows:

I.

That there is a need for additional testimony to be taken before the Bannock County Commissioners.

II.

That pursuant to Idaho Code Section 67-5215 sub-paragraph E, parties stipulate to an order by the court to allow additional evidence to be taken before the Bannock County Commissioners.

APR 28 1993

III.

That pursuant to Idaho Code Section 67-5215 sub-paragraph E, parties stipulate to an order by the court to allow additional evidence to be taken before the Bannock County Commissioners.

IV.

The Bannock County Commissioners may modify their findings and decisions by reason of the additional evidence.

V.

That the Bannock County Commissioners shall file with the court a modification, if necessary, including new findings and facts to be reviewed by the court.

VI.

That any testimony taken shall be limited to that testimony as it regards the water availability to the sub-division.

VII.

That any additional evidence shall also be opened up to any opposition evidence with regards to the water availability to the sub-division.

SIGNED AND DATED THIS 28 day of November, 1984.

JAMES E. HARWARD
Attorney for Defendant

Shawn Anderson
Bannock County Prosecuting Att.

APR 2 8 1988

BOARD'S HEARING
EXHIBIT NO. 5
NUMBER OF PAGES 3
DATE April 30, 85

In the Matter of CONDITIONALLY UPHOLDING)
THE PLANNING AND ZONING COMMISSION'S)
DECISION CONCERNING THE CONCEPTUAL PLAN)
FOR GIBSON JACK 1ST ADDITION SUBDIVISION)

R.S. No. 1984-144
29 August 1984

[redacted]

RESOLUTION

WHEREAS, Mr. Richard Hollingsworth and Mr. Harvey Pickens appealed the decision of the Bannock County Planning and Zoning Commission on the Conceptual Plan for Gibson Jack 1st Addition Subdivision as provided for in Section 10010 E. of the Land Use Ordinance; and

WHEREAS, pursuant to public notice the Board of Bannock County Commissioners held a meeting to review the record upon which the Planning and Zoning Commission made its decision; and

WHEREAS, the Board of County Commissioners has made Findings of Fact and Conclusions of Law based on the evidentiary record established by the Planning and Zoning Commission as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the matter under review is the proposed Conceptual Plan for Gibson Jack Subdivision, 1st Addition consisting of 52 2 1/2 acre lots in the NW 1/4 of Section 19, Township 7, Range 36 E., B.M.

2. That the Bannock County Planning and Zoning Commission held its first public hearing on the proposed Conceptual for Gibson Jack Subdivision 1st Addition on February 28, 1984. One month later, on March 27, 1984, the Commissioners approved the Conceptual Plan with the condition that the subdivider guarantee culinary water for each lot. Subsequent to this, an appeal was filed by Mr. Richard Hollingsworth. Upon review the Board of County Commissioners remanded the Conceptual Plan to the Planning and Zoning Commission for further findings. After conducting an additional public hearing on May 22, 1984, the Planning and Zoning Commission once again approved the Conceptual Plan on July 17, 1984. This review has come about as a result of a second appeal, filed jointly by Mr. Richard Hollingsworth and Mr. Harvey Pickens.

3. That Mr. Hollingsworth and Mr. Pickens have appealed the Planning and Zoning Commission's July decision upon the following points:

a. Defective response by the Land Development Board members due to the absence of demanding proper proof to justify such a subdivision with no apparent concern about water usage and its demand by present or future residents.

b. Additional well demands upon a nearly drained water table.

c. Water shed for the City of Pocatello.

d. Testimony and documentation of Gibson Jack Creek residents given at Land Development Board meeting at Bannock County Courthouse in February 1984.

4. That pursuant to said appeal, the Board of County Commissioners has jurisdiction as provided by Section 10010 E. & F.

APR 2 8 1985

5. That the area for which the subdivision is proposed lies within the area of City Impact so designated pursuant to the requirements of Idaho Code Section 67-6526 and within the extra territorial limits of the City of Pocatello as specified by Idaho Code Section 50-1306.

6. That the supply of water that could be obtained from individual domestic wells, as well as the impact that 52 additional wells could have upon the existing wells in the close vicinity, have been the central issues since the first public hearing took place in February '84.

7. That residents already living in the Gibson Jack area have testified that here is presently insufficient water for their culinary, irrigation and fire suppression needs.

8. That the Southeastern District Health Department has expressed doubt concerning the availability of irrigation water for each lot.

9. That according to the record a consultant specializing in ground-water hydrology, water rights, water well design and geothermal resources was retained by the developer to determine whether or not individual domestic wells would be feasible for the domestic water supply in the proposed subdivision or whether a central subdivision supply would be necessary.

10. That based upon his review of existing data consisting of well logs and a pumping test, said consultant projected that 10-15 gallons per minute could be expected from wells drilled 140-200 feet deep.

11. That according to the record said consultant's opinion was that 15 gallons of water per minute would allow sufficient water for domestic consumption and limited irrigation of lawns and gardens, but would not allow sufficient water for irrigation of 2.5 acre lots. It would be necessary for each individual well to produce 40 gallons per minute in order provide enough water to irrigate 2.5 acres.

12. That said consultant did not speculate on the effects of additional individual wells upon existing wells.

13. That although the developer stated that he was willing to guarantee culinary water for each lot in the proposed subdivision, such a guarantee would not address the problem of irrigation water.

14. That further, a guarantee of even culinary water is neither possible nor satisfactory as a practical matter. The developer has neither established how he would underwrite such a guarantee, nor explored the problems of regulation and enforcement that would attend such a guarantee.

15. That the evidence in the record indicates that the developer was not willing to restrict the use of water for irrigation purposes or to restrict land use so as to reduce the demand for irrigation water.

16. That the entire water issue must be considered in light of the proposed subdivision's proximity to the City of Pocatello boundary.

17. That a connection to the City of Pocatello municipal water system would insure an adequate quantity of water for culinary irrigation and fire suppression purposes for a majority of the lots proposed with no impact upon existing local wells.

APR 2 8 1985

NOW, THEREFORE, BE IT RESOLVED in a motion made by Commissioner Tom Katsilometes, seconded by Commissioner George Shiozawa, that the Board of Bannock County Commissioners hereby conditionally upholds the decision of the Planning and Zoning Commission to approve the Conceptual Plan for Gibson Jack 1st Addition with the following stipulations:

a. The proposed development must be connected to the City of Pocatello Municipal Water System.

b. An additional access for future development must be provided either through the adjacent (Tripp) property on the west to the McDevitt property or from the cul-de-sac on Adrienne Circle.

The motion carried and the voting was unanimous, as taken by roll call vote.

BOARD OF BANNOCK COUNTY COMMISSIONERS

Carolyn Meline, Chairman

George Shiozawa, Member

Tom Katsilometes, Member

ATTEST: LARRY W. GHAN

Larry W. Ghan, Clerk

By Natalie Hill, Deputy

APR 2 8 1985

THE IDAHO STATESMAN
Boise, Idaho

AUG ? 1 [illegible]

First gets water rights

Associated Press

The Idaho Supreme Court says "first in time is first in right" when it comes to water rights.

With that, the court on Monday unanimously upheld a district court decision in a Bear Lake County water dispute.

Carl Parker brought the suit five years ago when his shallow domestic well ran dry after a neighbor drilled a deeper irrigation well.

Parker asked for a court order to prevent his neighbor, L. Junior Wallentine, from pumping from his well.

The Supreme Court ruled that Parker has the water right, and that he is not subject to a 1978 law that modified earlier state water laws.

But the court said Parker does not have an absolute right, and Wallentine can develop his well if there is sufficient water available. Wallentine also must repay Parker if he is required to change his method of pumping or means of diversion to maintain his water level.

LEWISTON
MORNING TRIBUNE
Lewiston, Idaho

AUG 3 1 1988

NORTH SIDE NEWS
Jerome, Idaho

SEP 2 1988

21

Brent Abbott X
Marvin Rowell X
Martha Shaver X
Roger Bird
Roland Hull
Margaret McNabb X
Rita Earl X secretary

APR 2 8 1988

ject, however, to all prior rights. [1899, p. 380, § 32; reen. R.C. & C.L., § 3249; C.S., § 5565; I.C.A., § 41-110.]

Cited in: State v. Twin Falls Canal Co. (1911), 21 Idaho 410, 121 P. 1039, writ of error dismissed 235 U. S. 690, 59 L. ed. 427, 35 Sup. Ct. 205; Kettenbach v. Walker (1919), 32 Idaho 544, 186 P. 912.

Collateral References. 78 Am. Jur. 2d, Waters, §§ 119-127.

42-111. Domestic purposes defined. — For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase "domestic purposes" or "domestic uses" means:

A. The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or

B. Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

For purposes of these sections, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection B. of this section. [1899, p. 380, part of § 12; reen. R.C. & C.L., § 3250; C.S., § 5566; I.C.A., § 41-111; am. 1990, ch. 319, § 1, p. 870.]

Compiler's notes. Section 2 of S.L. 1990, ch. 319 is compiled as § 42-221.

Sec. to sec. ref. This section is referred to in § 42-1401A.

Cross ref. Definition in underground water law, § 42-230.

Domestic purposes not to include land irrigation, § 42-914.

Cited in: Village of Peck v. Denison (1969), 92 Idaho 747, 450 P.2d 310; Stevenson v. Steele (1969), 93 Idaho 4, 453 P.2d 819.

Heating of Dwelling-houses.

Heating of dwelling-houses comes within the meaning of "domestic purposes." Public Utilities Comm. v. Natatorium Co., 36 Idaho 287, 211 P. 533 (1922).

42-112. Completion defined. — By completion is meant conducting the waters to the place of intended use. [R.S., § 3162; 1899, p. 380, § 7; reen. R.C. & C.L., § 3251; C.S., § 5567; I.C.A., § 41-112.]

Cited in: Schodde v. Twin Falls Land & Water Co. (1908), 161 Fed. 43, affd. 224 U. S. 107, 56 L. ed 686, 32 Sup. Ct. 470; Sand Point Water & Light Co. v. Panhandle Dev. Co. (1905), 11 Idaho 405, 83 P. 347.

42-113. In-stream livestock use. — A permit may be issued, but shall not be required for appropriation of water for the in-stream watering of livestock. In the consideration of applications for permits to appropriate water for other purposes, the director of the department of water resources shall impose such reasonable conditions as are necessary to protect prior downstream water rights for in-stream livestock use, and in the administration of the water rights on any stream, the director, and the district court where applicable, shall recognize and protect water rights for in-stream livestock use, according to priority, as they do water rights for other

APR 2 8 1993

(Tax payers should not pay for) ③ Road improved - major overhaul on Gibson Ja
① Fire protection
⑤ Drainage plan (stormwater drains?)
④ would 7 wells use less water than 28

Bannock County Planning and Zoning
130 North 6th Avenue
Pocatello, Idaho

[redacted]

March 6, 1996

Commissioners:

Gibson Jack Joint Venture would like to amend their application for Wildhorse Ridge Subdivision. At the meeting held on February 27th, there were suggestions that we felt could be incorporated into this subdivision. We would like to make the following changes to our application.

1. We feel the idea of a 'Nature Easement' would blend very well with the overall plan for this subdivision. There is an area in this subdivision that will be used for some type of drainage area. This area will need to remain clear of any buildings to assure proper drainage. We propose to use this area for some type of easement to allow the residents use as a walking path, riding area, etc. We will need time to fully develop the idea and amenities, but feel this will be an asset to the subdivision and the Gibson Jack area.

EVEN WELLS

2. After several discussions with John Welhan and the Water Resources Board, we would like to make the following proposal. Our original proposal was to drill one individual well for each of the 28 lots. We now propose that as the subdivision is developed. the developers would drill approx. seven wells to serve the entire subdivision. Each well would serve up to four lots. Each well would be engineered to provide adequate water through the use of modern drilling techniques, and the use of screens rather than perforations in the well casing. These wells would be considerably more expensive that an individual well, but could be allotted to each lot. These wells would be drilled to a sufficient depth to include the 'second aquifer mentioned in Mr. Welhans report. It is our opinion that this would minimize the effect the impact on the areas water resources.

HOW IS WELL ENGINEERED PRODUCE WATER - ID WATER AT THERE H AS HERE TEST WELL??

3. We have studied this plat at length in an attempt to find a way to accommodate a 'Second Access Road' requested by the Portneuf Valley Fire Department. State Fire Code states "there should be dual access to a subdivision" but also states "this is required where it is practical". We have also learned that the certification for the Portneuf Valley Fire Department has lapsed. Mr. Lablanc has stated publicly, "here is how you stop this subdivision." We question Mr. Lablancs motives.

We feel a second access road into the subdivision would have a minimal effect if any on the safety issue. A total of 28 homes will be built in this area. A second entrance would only benefit the first one or two lots entering the subdivision. The Gibson Jack area is served by one access road. We are agreeable to providing future access for a connection to Johnny Creek Road. We had proposed to build Eagle Pass Road from Gibson Jack Road to Deer Run, at a sufficient width to allow for good access by emergency vehicles. With the paved area and the area at each side of this road, it would be very difficult to block. The It is our opinion that there are better alternatives to the "Second Access Road" issue. The real concern that we see would be to plan for a future second access. One way would be to connect Stephanie Road to Country Club Drive.

HOW IT WOULD TO DOES ???

APR 2 8 1996

4. After a meeting with Terry Bailey and Bill Aller on March 6, 1996, we feel that an equitable solution whereas the developer will agree help improve Gibson Jack Road in the areas deemed necessary.

Please consider these amendments as stated. If you have any questions about these items, please call.

Best regards,

Guy Anderst
Chris Pein
Gibson Jack Joint Venture

APR 2 8 1996

Contamination on the rise

Pocatello now looking at ways to purify the city's polluted water

By Tim Jackson
Of The Journal

Solvent contamination at a key location in the aquifer that supplies Pocatello's drinking water has increased to its highest concentration measured so far.

And frequent sampling of wells on the city's south side continues showing that a plume of the carcinogenic trichloroethylene (TCE) solvent is traveling north. It's creeping closer to the main well field beneath Pocatello and it shows no signs of abating on its own.

"We don't want the whole system to become contaminated," said Fred Ostler, Pocatello Water Superintendent.

That's why the city is going ahead with an expensive method of assuring city residents will continue drinking safe water — even though it won't correct the source of the problem.

Crews this week are installing two new wells behind the Mormon church on South Bannock Highway. The wells — costing the city about $300,000 — will provide abundant water for the city's growing south side.

More importantly, the wells are being drilled strategically into the aquifer at spots directly in front of the northwest-flowing, underground TCE plume.

Atop each well, crews will install devices called air stripping towers.

The $800,000-plus towers are a proven technology designed to remove TCE from water pumped up through the wells. They'll work by evaporating the TCE.

City officials hope that removing TCE at the two upstream wells will protect dozens of city wells downstream in Pocatello.

The city, county and state have studied TCE pollution in the aquifer since 1989.

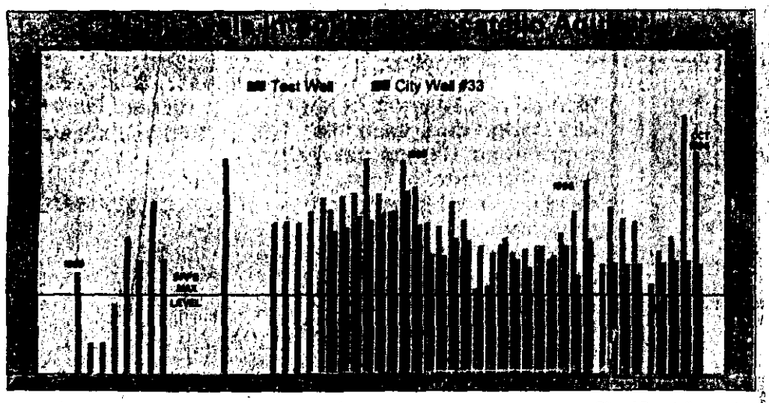
Research indicates most of it originates from past dumping at an old section of the county landfill south of Pocatello.

Officials know barrels of industrial solvents were dumped into the landfill in the 1960s. They suspect some of those barrels are now leaking.

Since 1993, TCE concentrations above the federal health protection limit of 5 parts per billion have shown up in four of Pocatello's south side drinking water wells. They were shut down.

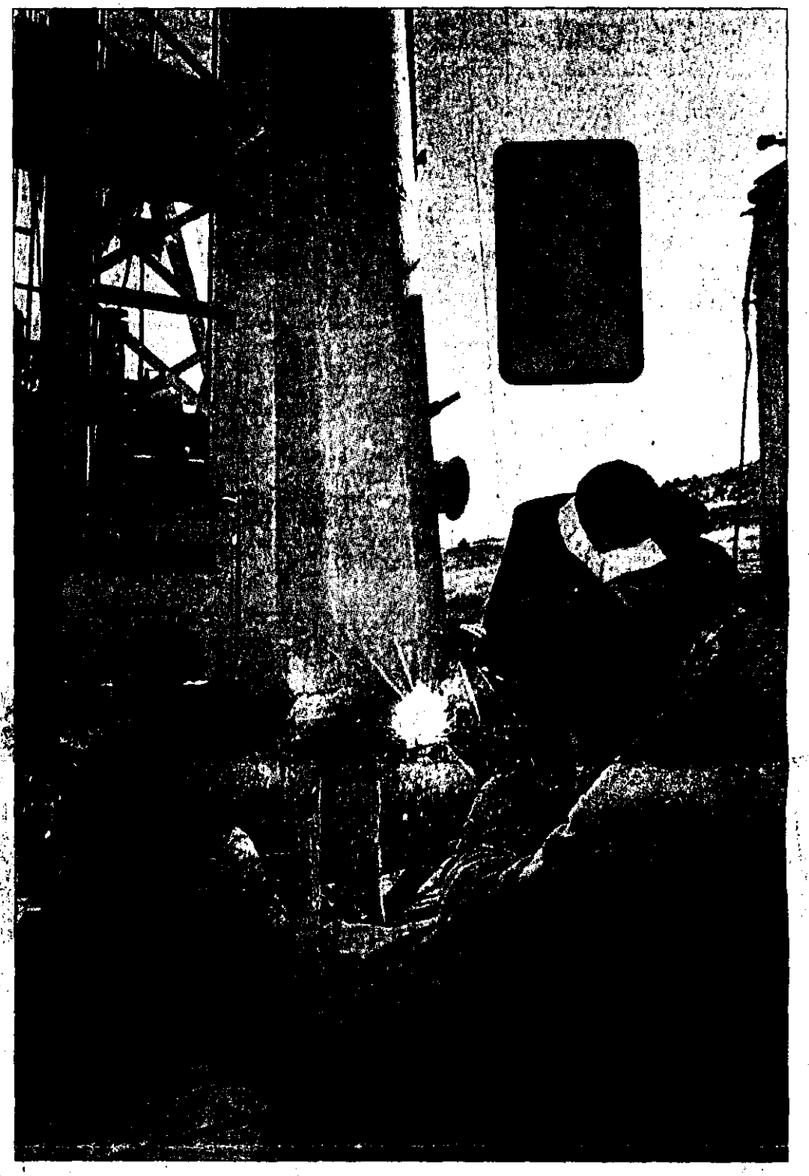
The city restarted two wells furthest downstream after TCE concentrations

See WATER, A8 ▶



City of Pocatello graphic

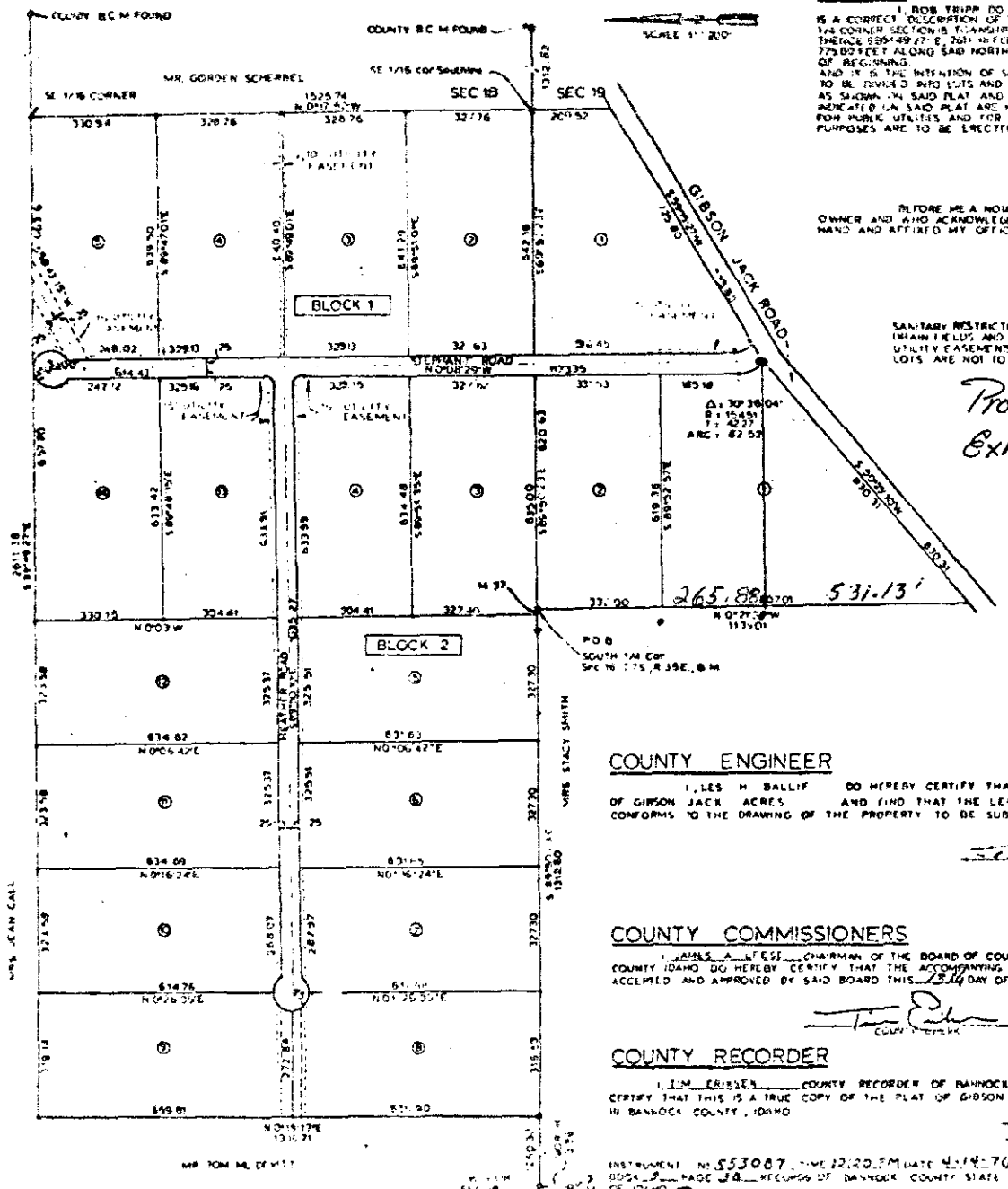
The test well is a 1/2-mile south and upstream from where the city is installing its two newest wells. Well No. 33 — shut down since 1993 — is a mile north and downstream from the new wells.



Journal photo by Doug Lindley

Dave Swenson builds the tip of a well-drilling bit at the sight of a new well the City of Pocatello is installing along South Bannock Highway.

APR 2 8 1995



OWNER

I, BOB TRIPP DO HEREBY CERTIFY THAT I AM THE OWNER OF THE FOLLOWING DESCRIBED PREMISES AND THAT THE FOLLOWING IS A CORRECT DESCRIPTION OF THE LAND INCLUDED IN THE PLAT OF GIBSON JACK ACRES, BANNOCK COUNTY, IDAHO BEGINNING AT THE SOUTH 1/4 CORNER SECTION 18, TOWNSHIP 7 SOUTH, RANGE 39 EAST BOISE MERIDIAN, THENCE [illegible] FEET, THENCE N 0°29'50"W, 1313.01 FEET, THENCE S 89°49'27"E, 2611.38 FEET, THENCE S 0°15'52"E, 1313.71 FEET TO THE NORTH LINE OF GIBSON JACK ROAD, THENCE S 30°15'27"W, 773.80 FEET ALONG SAID NORTH LINE, THENCE S 30°29'10"W, 830.31 FEET ALONG SAID LINE, THENCE N 89°29'29"W, 833.11 FEET TO THE POINT OF BEGINNING.

AND IT IS THE INTENTION OF SAID OWNER TO INCLUDE ALL OF THE ABOVE DESCRIBED PREMISES IN SAID PLAT AND THAT SAID PREMISES ARE TO BE DIVIDED INTO LOTS AND BLOCKS AS SHOWN ON SAID PLAT AND THAT THE LOCATION AND DIMENSIONS OF SAID LOTS AND BLOCKS ARE AS SHOWN ON SAID PLAT AND THAT DONATION OF THE STREETS SHOWN ON SAID PLAT IS HEREBY MADE TO THE PUBLIC. THE EASEMENTS INDICATED ON SAID PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY IN PERPETUITY RESERVED FOR PUBLIC UTILITIES AND FOR ANY OTHER USES AS DESIGNATED HEREON AND NO STRUCTURES OTHER THAN THOSE FOR SUCH UTILITY PURPOSES ARE TO BE ERECTED WITHIN THE LINES OF SAID EASEMENTS. SUBSCRIBED AND SWORN TO THIS [illegible] DAY OF April 1976

BOB TRIPP – OWNER

BEFORE ME A NOTARY PUBLIC IN AND FOR THE STATE OF IDAHO, PERSONALLY APPEARED BOB TRIPP KNOWN TO ME TO BE OWNER AND WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE ABOVE CERTIFICATE IN WITNESS WHEREOF I HAVE HEREUNTO HAND AND AFFIXED MY OFFICIAL SEAL THIS [illegible] DAY OF [illegible] 1976

NOTARY PUBLIC

SANITARY RESTRICTIONS IN FORCE UNDER TITLE 50 CHAPTER 13, IDAHO CODE.
DRAIN FIELDS AND SEEPAGE BEDS ONLY TO BE PERMITTED
UTILITY EASEMENTS ARE 15' WIDE, ROAD EASEMENTS ARE 50', AND CURVE RADIUS IS 20' UNLESS SHOWN OTHERWISE
LOTS ARE NOT TO BE SOLD IN SIZES SMALLER THAN THAT SHOWN.

Protestants Exhibit Z

ENGINEER

I, ROBERT L. THOMPSON, A LICENSED ENGINEER OF THE STATE OF IDAHO, DO HEREBY CERTIFY THAT A SURVEY WAS MADE UNDER MY DIRECTION OF THE PREMISES DESCRIBED IN THE OWNERS CERTIFICATE AND THAT THE PLAT UPON WHICH THIS CERTIFICATE APPEARS WAS MADE UNDER MY DIRECTION, THAT SAID PLAT SHOWS THE WHOLE OF THE DESCRIBED LAND, THE SAME KNOWN AS GIBSON JACK ACRES, A SUBDIVISION IN BANNOCK COUNTY, IDAHO, THAT SAID PLAT CORRECTLY REPRESENTS THE LOTS AND BLOCKS AS MARKED UPON THE GROUND AND THAT THE PERTINENT PROVISIONS OF THE STATUTES OF THE STATE OF IDAHO HAVE BEEN COMPLIED WITH. I FURTHER CERTIFY THAT THIS IS A TRUE COPY OF SAID PLAT

ENGINEER – LICENSE NO. 5057

SUBSCRIBED AND SWORN TO THIS 12th DAY OF April 1976

NOTARY PUBLIC – POCATELLO, IDAHO

COUNTY ENGINEER

I, LES H. BALLIF DO HEREBY CERTIFY THAT I HAVE REVIEWED THE PLAT OF GIBSON JACK ACRES AND FIND THAT THE LEGAL DESCRIPTION ON THE PLAT CONFORMS TO THE DRAWING OF THE PROPERTY TO BE SUBDIVIDED.

COUNTY ENGINEER

COUNTY COMMISSIONERS

I, JAMES A. LEESE, CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF BANNOCK COUNTY IDAHO DO HEREBY CERTIFY THAT THE ACCOMPANYING PLAT OF GIBSON JACK ACRES WAS ACCEPTED AND APPROVED BY SAID BOARD THIS 13th DAY OF April 1976

COUNTY CLERK — CHAIRMAN

COUNTY RECORDER

I, JIM ERISER, COUNTY RECORDER OF BANNOCK COUNTY IDAHO DO HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE PLAT OF GIBSON JACK ACRES, A SUBDIVISION IN BANNOCK COUNTY, IDAHO

COUNTY RECORDER

INSTRUMENT NO. 553087 TIME 12:20 PM DATE 4-14-76
BOOK 9 PAGE 38 RECORDS OF BANNOCK COUNTY STATE OF IDAHO
RECORDER $ 5.00 FEE AT REQUEST OF James Kunkler

GIBSON JACK ACRES

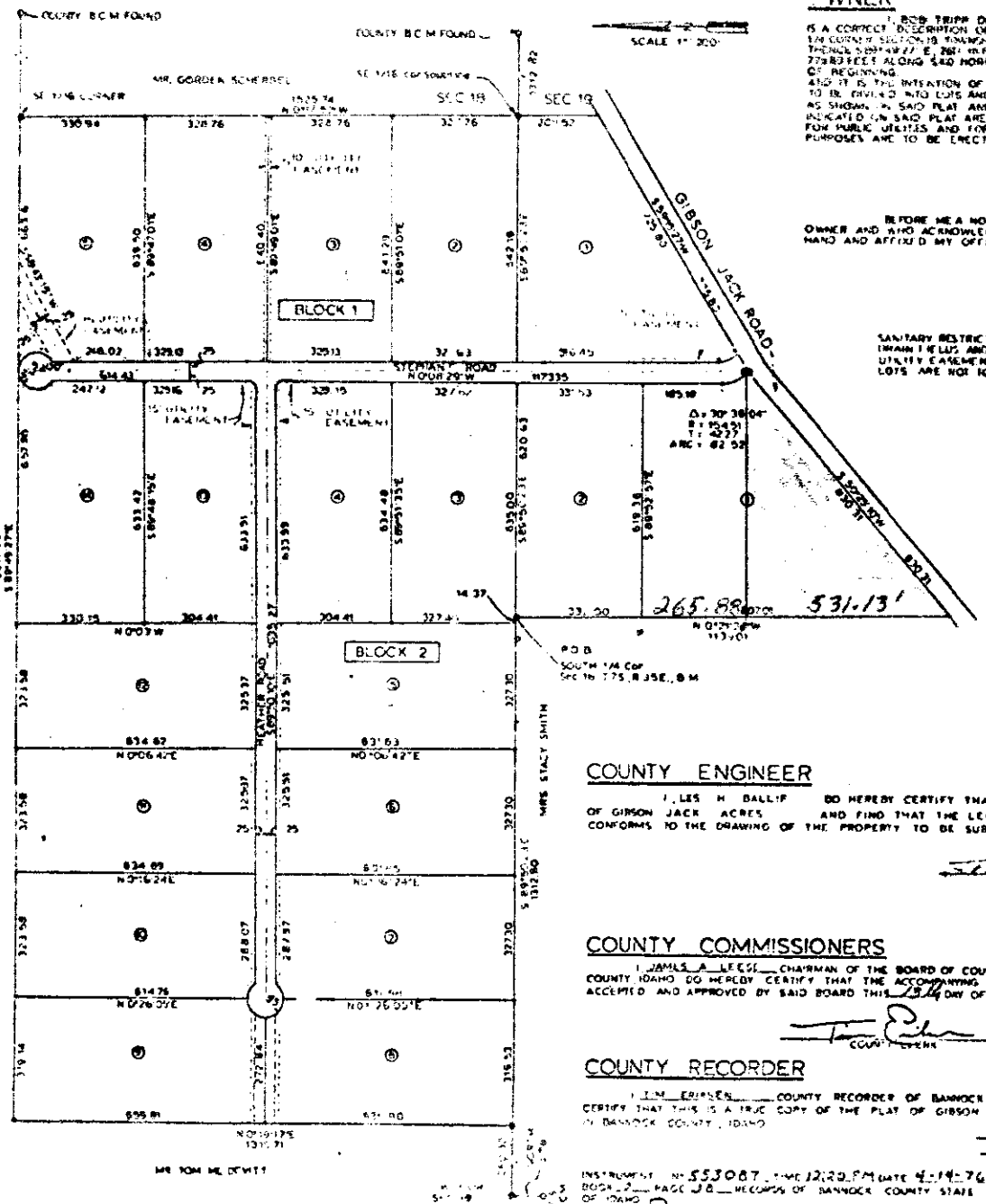
SEC 18, 19, T 7 S., R 39 E., B.M.
BANNOCK COUNTY, IDAHO

DRAWN S.W. & J.T.	DATE 17th FEB 1976
CHECKED [illegible]	SCALE 1" = 200'

Jim Wallis & Associates
ENGINEERS – PLANNING – SURVEYORS
600 E. Bdwy ST. — PO BOX 846
PHONE (208) 233-7161 — POCATELLO, IDAHO 83201

APR 26 1976

While this is a scale reproduction of the recorded plat, this com- [illegible] for variations, if any, which may subsequently



OWNER

I, BOB TRIPP DO HEREBY CERTIFY THAT I AM THE OWNER OF THE FOLLOWING DESCRIBED PREMISES AND THAT THE FOLLOWING IS A CORRECT DESCRIPTION OF THE LAND INCLUDED IN THE PLAT OF GIBSON JACK ACRES, BANNOCK COUNTY, IDAHO BEGINNING AT THE SOUTH 1/4 CORNER SECTION 18, TOWNSHIP 7 SOUTH, RANGE 35 EAST BOISE MERIDIAN, THENCE [illegible] 1312.8 FEET, THENCE NORTH 315.71 FEET, THENCE S 89° 45' E, 2611.19 FEET, THENCE S 0° 31' 52" E, 1315.71 FEET TO THE NORTH LINE OF GIBSON JACK ROAD, THENCE S 54° 15' 27" W, 2783.83 FEET ALONG SAID NORTH LINE, THENCE S 50° 25' 10" W, 830.31 FEET ALONG SAID LINE, THENCE N 0° 21' 47" W, 1133.1' FEET TO THE POINT OF BEGINNING.

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BOB TRIPP – OWNER

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LOTS ARE NOT TO BE SOLD IN SIZES SMALLER THAN THAT SHOWN.

ENGINEER

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ENGINEER – LICENSE NO. 3657

SUBSCRIBED AND SWORN TO THIS 12th DAY OF April 1976

NOTARY PUBLIC – POCATELLO, IDAHO

COUNTY ENGINEER

I, LES H. BALLIF DO HEREBY CERTIFY THAT I HAVE REVIEWED THE PLAT OF GIBSON JACK ACRES AND FIND THAT THE LEGAL DESCRIPTION ON THE PLAT CONFORMS TO THE DRAWING OF THE PROPERTY TO BE SUBDIVIDED.

COUNTY ENGINEER

COUNTY COMMISSIONERS

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COUNTY CLERK — CHAIRMAN

COUNTY RECORDER

I, TIM EMISES, COUNTY RECORDER OF BANNOCK COUNTY, IDAHO DO HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE PLAT OF GIBSON JACK ACRES, A SUBDIVISION IN BANNOCK COUNTY, IDAHO

COUNTY RECORDER

INSTRUMENT NO. 553087 TIME 12:20 PM DATE 4-14-76
BOOK 7 PAGE 38 RECORDS OF BANNOCK COUNTY STATE OF IDAHO

RECORDER — $ 2.00 FEE — AT REQUEST OF James Kueller

GIBSON JACK ACRES

SEC 18, 19, T. 7 S., R. 35 E., B. M.
BANNOCK COUNTY, IDAHO

DRAWN S. W. & J. T.	DATE 12th FEB 1976
CHECKED ___	SCALE 1" = 200'

Jim Keller & Associates
ENGINEERS - PLANNING - SURVEYORS

While this is a scale reproduction of the recorded plat, this company assumes no liability for variations, if any, in the dimensions

DILLER'S EXH.

MICROFILMED
APR 2 8 1998

BANNOCK COUNTY PLANNING AND DEVELOPMENT COUNCIL MEETING
MINUTES
April 23, 1996

These minutes are a summary of the PLANNING AND DEVELOPMENT COUNCIL meeting. A tape recording of the entire meeting is available in the Planning and Development Services Offices, Bannock County Courthouse Annex, 130 N 6th Ave., Pocatello, Idaho, for a period of six months.

The regular meeting of the BANNOCK COUNTY PLANNING AND DEVELOPMENT COUNCIL was held April 23, 1996, at 6:30 p.m. in the Bannock County Courthouse, Center and 5th Avenue, Pocatello, in Room 214.

BANNOCK COUNTY STAFF PRESENT: Lori Bergfeld, Terry Bailey, Barbara Anderson.

Kay Merriam, Chairman, called the meeting to order at 6:30 p.m.

AGENDA ITEM A: ROLL CALL AND DISCLOSURE - CONFLICT OF INTEREST; Council members present: Bob Bergendorf, Floyd Johnson, Kay Merriam, Bill Orr. Absent Dacia Soulliere, Richard Steffens. No conflict of interest.

THERE WERE NO MINUTES TO APPROVE FOR THIS MEETING

AGENDA ITEM B: PUBLIC HEARING ITEM

Merriam informed the audience that the public hearing item concerned a conditional use permit to operate a gravel pit in a construction business site with related activities. The applicant is Dwight Jensen on a 40 acre parcel, described as the SW_4 NE_4 Section 6 Township 6 South R34E. Merriam asked other members of the council what items were discussed during the work session this evening as she was unable to be there.

Bergendorf advised that it was discussed as to whether or not it was an appropriate use for the proposed piece of property.

Merriam advised that one of the problems of a multiple use district or multiple use zoning is that it is officially designated as an area which will take a variety of uses and the Board must look at any application from the perspective of whether or not they are useful to the area that they are in. The area was discussed.

Orr stated that in the work session they discussed the type of soil, amount of rock and how the overlay is situated on the property and how it lays in according to Hunsakers.

It was also discussed that the applicant wants the business in the NW corner, and that maybe he should start it in the corner right across from Hunsakers. This being based on proximity to an existing hole and ingress and egress would be easier, and that the

MICROFILMED
APR 2 8 1998

soil is shallower here.

Merriam stated it was her understanding the overburden was 50 inches shallower down at that end.

Bergfeld advised the site plan gives a vicinity map and survey setting out the property and contour lines, but does not include a reclamation plan nor written material as to how criteria for granting a conditional use permit will be met.

Male advised he lived next to where the sign was put up on the property, and stated the sign was laid down two days after being put up.

Merriam advised exhibits included information from DEQ who wants a paved road and rules for control of air pollution requiring permits, and the Idaho Dept of Lands who wants a reclamation plan to be approved by them.

Bergfeld read a letter from the soils department into records classifying it as a prime ag soil. One of the goals in the comprehensive plan is to preserve prime ag soils, and it would be expensive to remove the soil and preserve it. Reclamation would be expensive.

Merriam stated that this would be a requirement, that mitigation and rehabilitation would include putting back all of the top soil. At this time Merriam explained how testimony would be received from the applicant and those approving and opposing this project.

Dwight Jensen spoke for E&G Contractors, explaining the reason for choosing this piece of ground was that gravel went approximately 50 feet deep. He felt gravel would be an important commodity in the future and it was limited at this time. A gravel pit runs along the south end of the proposed property, and on two sides there are slated gravel pits owned by Monroc not currently being mined. He feels this gravel pit would be an excellent service to the community. The 40 acres sits back along the Portneuf river and sits back from the road some distance.

Merriam stated he needed to give very substantial reasons based on the comprehensive plan as to why this gravel pit should be allowed in prime ag soil, including more information as to trade offs in giving up prime ag land to gravel.

Jensen explained gravel is a mining operation and it is not found everywhere that can be used for development. With the loss of the source of slag the impact has been thrown back onto gravel pits.

Bergendorf asked where he would start the operation on the 40

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acres.

Jensen pointed to the SW portion, stating the NW portion was to be used for office space with the access road going out Syphon. Stockpile for the overburden would be along the west fence.

MALE asked if he had any type of reclamation plan.

Jensen stated they did not, they had not gotten a response back and had filed for a permit with air quality and had not gotten a response from them either.

Merriam asked what the approximate size of surface excavation would be.

Jensen stated it would depend on gravel sales. He stated there was quite a bit of overburden, but there was also a lot of gravel. He also stressed that good gravel sources would be necessary for concrete work in the future.

Male asked how deep the grade might go, and what was the future possibility of the land for leasing or purchase.

Jensen advised Hunsaker, right across the fence, was down about 35 feet and they were not at the bottom of the gravel yet. He advised that whole area had dropped due to gravel mining so that future potential, when it had all been mined for lease of purchase was possible.

Floyd asked if he had any proposed development plan.

Jensen stated they wanted to build a shop and office when funds were available.

Bergfeld asked if he had something written for the Board.

Sherry Davies stated they had just received the OK for the landlocked 40 acres, and so had just recently sent in for permits on the reclamation plan. They thought all the board required was the map but would be happy to give something in writing.

Bergfeld felt further information was needed as to the truck volume, the eventual build out of the area west of this pit. This information should be covered in the reclamation plan. Would they want a hot mix plant there?

Jensen felt they would eventually want a hot mix plant and that most of the area would be mined.

Davies explained the current application was for mining gravel

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only.

Bailey felt that many aspects needed to be considered as to traffic, neighbors, noise, dust, berms.

Merriam recapped that an application needed be specific to include these items where it was also in a residential area. Additional testimony would now be received.

Ron Wickam, 15480 W Siphon Road testified that he was opposed. He wanted to know if an environmental study had been done as to the runoff impact to the Portneuf river. Also would the road be an easement for future use. What are the future goals of the P&Z Board as to residential growth towards this area. Will Hunziker have to fill their 35 foot hole when they are done, and would this pit also be filled? How much traffic would be involved, as the road is in good shape having been recently resurfaced. How will this effect property values out there? He felt all of these items will detrimentally effect the area.

Merriam advised questions were being noted to be answered at the end of testimony.

Robert Crapo, 15503 W Siphon stated he was every opposed to athe pit and felt the road would be an extreme danger to the area. The road would be within 25 feet of his house and he is a disabled school teach with extreme respiratory problems. He testified he is on oxygen 24 hours per day as well as breathing machines when he lies down. He feels it would make it extremely hazardous to his health. He stated it was prime ag land, prime area for duck and geese and other wildlife. He wanted to know more about the road, and felt it would be detrimental to property values and the are in general.

Myrna Crapo, 15503 W Siphon wondered if this might involve light industrial, and what is classified as such. He felt traffic was currently bad and not patrolled by police so he worried about trucks driving at excessive speed and also agreed with all that had been previously said.

Jackson, 11573 N Rio Vista Road testified that the wind blows West to East most of the time and is worried about dust, which has never been a problem before. He felt taking the dirt off the top would cause a lot of dust. He also felt no one builds a house around a gravel pit because of the dirt. He is also representing Howard Jackson who submitted a letter, and felt values would be ruined.

Ron Wicham again testified that everyone has wells and wonders how the aquifer would be effected, as well as the pristine view.

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Robert Crapo stated Hunzaker told Mr. Jackson that the applicants could buy gravel cheaper from him than they could mine it.

Merriam reviewed questions asked during testimony. She asked Mr. Jackson to address the questions.

Jensen did not feel there would be a problem with run off to the Portneuf, that runoff water sinks faster in gravel than in silt and the property sits on a ledge above the Portneuf River which flows below the bottom gravel layer.

Merriam reminded that no research had been done regarding this opinion and advise Mr. Jackson it might be advisable for him to look for current research that may be of use to him.

Jensen advised a bordering 35 acre parcel would also be purchased by them, but they would develop it for re-sell, all but one acre.

Merriam stated that the board members are citizens in this community but that they must consider this matter with regard to the comprehensive plan and county ordinances which are the laws which the board must follow when considering any application.

Jensen advised all gravel would leave the pit by dump truck during business hours and that one pit in the area was almost mined out so its traffic would cease, but he had not considered the number of trucks per day his pit would generate at this time. He felt that growth created traffic.

Merriam again stated that he needed to consider these matters and that information was available to him to answer these questions.

Davies stated she was in real estate and that the land would be worth more as commercial than ag as it is multiple use area. She also testified that Mr. Crapo's home should not have a dust problem as the wind blows west to east and he is directly north. She felt that the overburden could be corrected by building it up with a windbreak, and landscaping would make it attractive to the West, and that a privacy fence to lessen truck danger. Insurance would look at dangers to be minimized. The road will also be paved 1200 feet back into the 40 acres, approximately 50 feet wide.

FEMALE 15312 W Siphon addressed the comment about selling the property between the gravel pit and Siphon road as ranchettes. She wondered why someone would want to build a home in this area, and wanted to know about the home property values, not the commercial property value. She also wondered how the truck drivers would be controlled with small children around.

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Robert Crapo said wind does come directly north by his house. The north boundary has a 50 foot drop off, and his well is at 8 feet, Mr. Jackson's is at 88 feet. He felt that a plan needed to be presented as required with environmental impacts. He also wished that if it did come to a road that it be paved and that it was still a poor placement for that road. He was concerned of the development of the other purchased acreage. He also stated that Monroc owns the land to the west but it remains ag and undeveloped and the gravel pit is on the opposite side of Siphon road and the river.

Jackson asked how high and what the berm was going to be. He wondered if his view would be blocked.

Merriam felt Mr. Jensen needed to collect the information brought forth at this hearing so that further deliberation could be made. **Bergfeld** felt if a decision was not made so that further information could be received the hearing could not be closed.

Bailey felt the applicant should bring in a plan to include environmental, drainage, weeds, planning, water reclamation, traffic studies, right and left turn lanes on Siphon Road, sound barriers where homes are close. Zoning, land use issues, the development of the ranchettes, streets, wind brakes, irrigation. The buildings on the site, all of which need to be compatible with the zone. Landscaping and height of buildings. Mining plans, hours of operation, what slopes it will be put on, maintenance of the slope, weed control, handling of hazardous products, and how reclamation issues will be handled, all of which was required of Hunzaker. Also included should be an operations plan including how they will operate the pit, who will be responsible, who has responsibility for the dust, and a safety plan. This plan should be made available one week before the next meeting for review by the public and the Board.

Merriam recommended all the things mentioned by Mr.Bailey be taken note of, as well as the issues brought forth in the meeting. Mr. Jensen needed to come into the P&Z office for this information, and have his answers available to the board and the public one week before the next meeting. She felt Mr. Jensen should go back and review the Comprehensive Plan so that he can rebut concerns.

Robert Crapo advised that Mr. Merrill has started a new gravel pit behind the one that has been mined out so that pit will still have traffic.

Merriam stated information needed to be gathered regarding adjacent gravel pits.

Davies stated all gravel pits on the opposite side of the river are

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all in Power County and the benefits from those businesses go to Power County and not Bannock County regarding taxes.

Delbert Jackson wanted to know if they put a crusher and a jaw down in a pit how the noise and vibration would be minimized. He stated he can hear the jaw from Bannock Paving.

Johnson stated it was his understanding that J K Merrill's new pit was by the old creamery which is directly straight East a couple of miles.

Floyd Johnson moved that the matter be kept open until the next meeting and a vote will be had on the information presented at that meeting. **Bob Bergendorf** seconded the motion. A roll call vote was taken, with all voting in favor.

AGENDA ITEM C: Lot Split Rowe/Romriell

Bergfeld pointed out the fence line to the north as being the property line, and that the the spllit would come out 50 to 100 feet. She felt safe access was the concern as the existing access isn't real good, but is on a fairly low volume highway. The existing access comes in almost parallel to the highway, and around a turn. The new one is a better site, but wondered how would they get down to the highway without having much of a grade. Was there a plan to widen the driveway out. The Road & Bridge permit says it needs to meet Old Highway 91 close to a 90 degree angel, and that the approach must have a 2% slope away from pavement into the ditch. She thought another consideration was how far back from the barrow it should be set.

Bailey stated we want enough approach to park a vehicle before you enter the road and have clear site distance. Then after that you go minus two to the ditch, plus two to the property line and then to 12% on the driveway. It is his recomendation that it be built in accordance with standards that we have in our Road & Bridge Department, so that there is a 90 degree approach, and a flat area so that a vehicle can come to stop before it comes out onto road. It must be wide and out far enough to set the mailbox 4 feet off the shoulder so that there are no problems. Those standards are available at Road & Bridge or at the Planning & Zoning office.

Bergfeld asked how long the driveway would be from the road to the house. The site plan does not indicate that. Anything over 150 feet has to be built to county standards because it is a fire access road. The last 150 feet is the driveway -- the rest is built to county standards.

Bailey suggested the engineer also give a grade line on the access so that the county can see that it will meet their standards.

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Bergfeld noted it had to be 2 1/2 acres, and a survey recorded.

Merriam asked for a motion based on the comments both Terry and Lori had made as far as getting that cut in there for the access to the road and following the standards that are put down by the Road & Bridge and County Ordinance, and also the right of way.

Bill Orr moved to accept the lot split according to the record of survey and the standards asked for the approach. **Floyd Johnson** seconded the motion which passed unanimously.

AGENDA ITEM D - Hall Lot Split

Bergfeld advised this lot split is in Sec 27 N of McCammon along Marsh Creek Road. Zella Hall is proposing to deed Tax Parcel 18 to family from the road to the creek. The original parcel was reviewed with previous splits. There are no more accessible lands after this split. It will be necessary that they avoid the flood plain, wet lands, and environmental concerns must be met with other agencies including the Army Corp. of Engineers.

Susan Hall stated they have already submitted where they want to build the house which is 100 feet up by the road, and is no where near the water.

Lori felt concerns for the area overall are that a small city if being created in this area however it is zoned residential rural. She felt a harder look was going to be needed when looking at future permits of this type. It was Lori's suggestion that if it was the desire of the Board to permit this lot split, that notice be served to those not now on a lot of record that any further divisions of land will require a plat.

Bailey Stated the east and west benches are of particular concern as to traffic, however this site does not have this problem.

Merriam asked for a motion regarding this particular lot split.

Bergendorf moved to accept this lot split. **Bill Orr** seconded the motion which passed unanimously.

AGENDA ITEM E

Bergfeld stated they needed to see where the road easement was located, and the drainage plan would be up to the engineer for the final and could be seen next month.

AGENDA ITEM F - **Wildhorse Ridge Subdivision Preliminary Plat**

Merriam read into record that the applicant Gibson Jack Joint

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Venture, Chris Pine et al., P O Box R, Pocatello, Id 83204. Sheppard Engineering Company, 203 Garfield, Pocatello. 37 lot sub NW_4 Section 19 T7SR35E. Gibson Jack Road West of Stephanie Road. The developer proposes a 37 lot sub on a 119.3 acre parcel. The range of lot sizes is from 2.6 acres to 6.1 acres, average lot size 3 acres. **The water is shared wells serving up to 4 lots. The sewer in on site sewage disposal.** The utilities are Idaho Power, U S West and Intermountain Gas serve the site. Fire Protection is Fire Protection Suppression services provided by Pocatello Valley Fire Dist. The concept plan was approved on March 26, 1996 provided that the developer reserved the right-of-way through lot 5 for access to land to the west. The Preliminary Plat will now be considered as the next step.

Bergfeld corrected item No 4 on page 2 **which should read the Subdivision will be served by multi-party wells provided by the developer.** It did say city water. She had previously asked him to take better care of the land with regards to roads and put more thought into the grade of the land and to reserve some emergency areas there. His redesign included 37 lots. She asked for a copy of the rough drawing from that work session. **He is proposing 4 phases, allowing him to construct the infrastructure as he goes.** Each phase would be recorded as he sells the lots. He has provided engineering regarding catch basins and how the water will cross the roads. He is going to participate in improving Gibson Jack Road. She advised that the meeting tonight was to determine if this concept is essentially what was approved, and if so can they proceed. If not, the developer must resubmit, however to her recollection, it is essentially the same. A lot of changes were made due to recommendations of the Board about the grades of the road. Their second engineer pointed out the road as submitted would not meet the grade specifications of the county ordinance so a different lay out is being submitted.

Merriam asked about the open area.

Guy Anderst advised it was the same plan with some modifications, but the grade lays out better including larger frontage lots etc.

Bailey advised that the subdivider was asked to provide a set of preliminary drainage plans which was done. They show through conventional engineering standards that he is retaining any surplus water on site, surplus over what now exists. He has reviewed the plan and feels it meets all the criteria of our subdivision ordinance and the down gradient needs. They currently have a small retention pond that will stop water from going down on Lots 1 and 2 in the subdivision, however there is some flooding, and what is proposed is suited even better to those needs. The road grades and design standards have been reviewed by himself and the Road &

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Bridge. There are approximately 100 lots available to be developed in this area right now. The developer has agreed to do their proportional share of upgrades. Road continuity is being looked at for this area. His only recommendation to the commission was an easement to the McDevitt property for fire department access off of Peppergrass point.

Merriam asked Bailey to review water and road issues.

Bailey advised there would be work done on the road and the developer is willing to do their proportional share of the development in the subdivision, as well as down off site. They will help do work that Road & Bridge has not been able to get to due to equipment and man power constraints, which will make the road immediately safer, but reminded there are still 60 more lots besides this particular development which can still be developed. **The water issue was discussed.**

Bergfeld stated that this subdivision was in the City of Pocatello's area of impact. She asked Robert Chambers with the City of Pocatello if he had any comment.

Chambers stated he had nothing to add. Their Community Development Commission meeting would be the next evening to consider this plat so he was present to get insight as to what the county was doing.

Merriam asked Lori to review the components of submittal requirements.

Bergfeld advised the ordinance requires a preliminary plat be provided together with improvement plans and other supplemental material as may be required to indicate the general subdivision plan and objectives of the development. The developer has given Lori a skeleton covenant of codes which lists some of the information required. Engineer has been looked at in the preliminary plat phase, the retention basin, the road cross section -- this would be called a development. P&Z dictates that improvements would mean any structure being built on the property. The preliminary plat shall be drawn to a scale of 1 inch equals 100 or 200 feet. A tract must be given a partition name which it has. The name and street names must be submitted so they are not duplicated. Also location, a list of existing conditions, ground contour lines, location of direction of water courses, including high water mark, outcroppings, existing structures remaining on the properties must all be submitted. Some of this information can change slightly in final engineering but not a great deal. All reserved land must be shown including easements. The developer has been asked to put the restrictions of each easement on the map. Deed restrictions, improvements, etc. must be listed.

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Merriam read into record the Tentative Findings of Fact, and recommended conditions. She then read into record the Wildhorse Ridge Restrictive Covenants Preliminary Plat Draft.

Clark Kelley 9685 Heather Road whose property adjoins the subdivision property stated they went through the same thing in 1984 and it was then determined that the water problems were not resolved. He stated it was ruled at that time by the County Commissioners that 5 acre lots be required, or city water and sewer would be provided. He questioned why they went from 28 to 37 lots and how could they still provide room for septic fields, views and wells.

He participated in a project by Professor John Welhan, Idaho State Idaho Geologist. His well was tested extensively and scientifically, and documentation shows that the recharge is very run-off related. The wells up there don't do bad in the spring, but do terrible in the fall. If the Portneuf River, or reservoirs are down, the wells are down. His well has dropped from 10 feet above the surface to 120 feet from the surface in the 8 years since the last subdivision was turned down. According to Dr. Welhan the recharge rate is extremely low. A house 1/2 mile away affects his water when they are irrigating.

He feels the subdivision appears nicer than the one proposed in 1984, but does not know if the water problem has been resolved. The plat says up to four households on a well, that could still be one household on each well. Dr. Welham's report also shows a very high mineral content and chemicals which he attributes to leaching of septic fields, nitrates from fertilizers and salts. Hopefully the water engineering where they are closer to the surface has settled that. However with the decreased lot size from 28 to 37 lots, he feels with the septic field, and well there would be no room to preserve a view on that small a lot. He felt the quality of houses looked responsible, however he questions why they have so many lots. Mr Welham states 5 acres is an optimum when you have a septic field. It doesn't seem to him that the water problems were resolved in 1984, and this issue has not yet been addressed. He also stated that street lights were discussed in the city meeting and wanted to know if this was still on the list.

Developer stated he had not considered street lights at the time of the city meeting but felt that it didn't make a lot of sense to do it because its very expensive and he did not desire to provide this.

Clark Kelley asked if he intended to build to suit or to just sell undeveloped lots.

Developer advised they would be selling lots in most cases,

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building homes is more time consuming.

Clark Kelley asked why they went from 28 to 37 lots.

Developer said he wished to develop a subdivision which one could be proud of - to improve the area voluntarily. Part of increasing the lot numbers was to help pay for the improvements such as nature trails - homes built instead of land not being improved. By adding extra roads, they were able to provide more frontage.

Clark Kelley agreed it looked a lot nicer but was again concerned about the water problem.

Developer stated that the State says you have the right to drill a well and irrigate a 1/2 acre piece of land that you own. He had been advised by the Resource Board in Idaho along with John Welhan, that the majority of wells in the Pocatello area are done very poorly, in the way they are designed, the way they are punched, the way they are perforated, they are done incorrectly. There are better ways to do wells - according to Dr. Welhan and the Water Resource Board, however to build a better well you are going to spend about $20,000.00 a well - to perforate it correctly with a nice holding tank. A storage tank is something which everybody up there that has a poor well probably ought to consider doing. He felt the 1984 decision was based on someone saying they would only irrigate a 1/2 acre, but how do you keep the people from irrigating the whole thing. Case in point.

Clark Kelley stated they were given three acres and your household as a domestic water....

Developer stated he did not think that was the case currently.

Clark Kelley stated he had a document which signed documented and approved as to water right for that purpose. But what he wanted to know was how the new wells were going to effect his well.

Developer said there is no way for anyone to know.

Bergfeld felt this point could be addressed from a law perspective. What happened in 1984 was that the Planning & Zoning Commission and the County Commissioners said we are turning this subdivision down, because we don't think there is water there. That was validated by the courts. Planning & Zoning had the right to say that and so did the County Commissioners. When a developer comes along and says I'll provide the water, and the state has said its his water under his ground, we have no where to go.

Clark Kelley wondered what would happen if it did effect their

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wells.

Bergfeld stated if he drills a second well and its sand, he doesn't sell anymore lots, he has taken all the responsibility for providing water.

Clark Kelley asked what if he drills down and the water from his well isn't there anymore.

Merriam interrupted this debate as to the water. She felt what was being said was that if they pump and go down into that second aquifer and if it doesn't work, what was the developer going to do, continue on or stop?

Developer stated he was not going to dig a hole to China, and he understands concerns, and also understands attempts of blocking things just for lack of a better reason than water. He stated they were taking on the risk, they owned the land also. He is a neighbor and wants a good neighborhood that they could all be proud of. Its going to be very nice, but could not guarantee what water is or isn't, that Dr. Welhan, the county engineers, the city, nobody can do that.

Lenny White, 3118 N Stephanie Road brought up that a Fire Commissioner, Mr. LaBlanc was taken in a very caviler way by the Board and that he planned to call the Attorney General to resolve this issue.

Merriam stated she disagreed.

Guy Anderst stated that Mr. LaBlanc was overheard saying before going into that hearing "this is how you block a subdivision". He felt the P&Z Board did a good job.

Lenny continued stating the plat did not show the adjacent properties correctly on the plats. Mr. Anderst agreed that they had one or two too many. Lenny also stated that the Road & Bridge department states that Gibson Jack Road does not currently meet county standards which means it probably means that is does not meet the fire standards either. Three kids were killed x number of years ago and he thinks the family of the kids that were killed probably had appropriate litigation against the county because of those standards not being met so he did not understand why the county is not now fixing that road. He paid his taxes this year.

Bailey stated he had not paid enough taxes to even plow snow on Gibson Jack Road.

Merriam brought the meeting back to order.

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Clark Kelley asked about the cost of the septic field at $6,000 to $8,000 dollars and $20,000.00 for a four family well he felt the costs would also be very similar in price to bring in city water and sewer.

Anderst stated he was wrong, a septic tank would cost $3,000 to $4,000. If the cost was less he would do it.

Gordon , 75 Valleyview, Pocatello, owns the property below this in Section 17, 18 and 19 adjacent to Gibson Jack Road. He expressed his concern of rumors of the 50 foot right-of-way currently on Gibson Jack Road being interfered with. He also asked about power going up Gibson Jack for fire protection.

Anderst stated the 70 foot right-of-way started at the beginning of their subdivision and would not affect his property.

Bailey advised the county expects to keep the current right-of-ways as they exist. If change becomes necessary the landowner will be contacted and an agreement worked out if can be.

Randy Davis, 9615 Gibson Jack commended the Board for their professionalism and stated the land will some day be developed. He does not want in the City and felt the City coming in would only amount to more lots.

Merriam ended testimony and asked for a motion.

Developer asked that in this review it be added that they provide one fire access, and a second easement going west.

Bailey felt circulation roads needed to be included to prevent build up and felt the easement would be helpful.

Floyd Johnson spoke briefly on the water issue and the future development of that area. Floyd moved to accept the preliminary plat, reading into record the Findings of Fact, and the goals supporting this criteria and Decision. **Bill Orr** seconded the motion. Lori at this time advised that at some point it had been read into the record that the roads would be built to City of Pocatello standards, that was not the case, they will be built to Bannock County standards. A roll call vote was taken, with all voting in favor.

Agenda Item G - Dudenake Appeal

Mr. Dudenake was not present but Lori advised Mr. Dudenake had applied to subdivide 3 acres and did not know what to do to help him. Everyone said no.

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MINUTES, PLANNING AND DEVELOPMENT COUNCIL MEETING APRIL 23, 1996

Agenda Item H

Bailey advised concerning a joint City-County meeting wherein it was asked that each agency appoint two committee members to discuss P&Z items and make recommendations. Kay Merriam nominated Bill Orr and Floyd Johnson.

Agenda Item I - ITEMS OF INTEREST

Lori discussed the Ordinance which said whose ordinances applied in the agreement. There is a separate site agreement for how subdivisions are done. The County will do the concept phase including the public hearing because the City does not have a hearing on a subdivision. The City will do the preliminary plat. The final lat is approved by the Board of Commissioners and the City Council. The Planned Unit Development Review is the same. The preliminary plat process does not go to the City Council. A commercial development is approved by the County with input from the City staff. Lori issued 4 citations, one to a man on Marsh Creek who is blending fertilizer (DEQ can't do anything until he spills it); two citations were issued on Morgan Road.

There being no further business before the Council, the meeting adjourned at approximately 10:10 p.m.

Respectfully submitted,

_____

Cindy Fisher, Secretary

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BANNOCK COUNTY BOARD OF COMMISSIONERS
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
APPEAL OF DECISION, WILDHORSE RIDGE SUBDIVISION

APPELLANTS:

1182 E. Merrill Road Extension
McCammon, Idaho 83250

Permit Address: 1182 E. Merrill Rd. Extension, McCammon

PUBLIC HEARING: February 22, 1994
DECISION: March 22, 1994

[redacted]

INTRODUCTION

The matter of approval of a preliminary plat for Wildhorse Ridge Subdivision decided by the Planning and Development Council on April 23, 1996. Members of the Commission present were: Kay Merriam, Floyd Johnson, Bill Orr, Bob Bergendorf and Richard Steffens. Bannock County staff members present were Lori Bergfeld, Planner, and Terry Bailey, County Engineer. The concept for the subdivision was approved in a public hearing before the Council on March 26, 1996.

The Council's decision to approve the preliminary plat was appealed on May 2, 1996 by Everett D. Diller and Richard Hollingsworth. The reasons for the appeal were set forth in a letter dated April 30th, 1996.

At the public hearing before the Council to consider the concept plan, all interested parties were given an opportunity to ask questions and to submit written evidence in the Planning and Development Services office prior to the hearing, and were given an opportunity to present written and oral evidence and to ask questions at the hearing. A work session was conducted by the Council on March 18 to consider the evidence presented at the February 27, 1996 Hearing where testimony was entered opposing the application. The Commission deferred its decision to the March 26, 1996 meeting, and scheduled a visit and work session for that date. Commission members Bergendorf, Brown, Merriam and Steffens attended that site visit, work session and meeting, as did staff members Bailey, Bergfeld and Ned Thomas. At the March 22, 1994 meeting, the Commission adopted the following Findings of Fact, Conclusion of Law and Decision after having considered and deliberated on all the oral and written testimony:

TENTATIVE FINDINGS OF FACT

1. Developer has applied to develop a 37-lot subdivision to be called Wildhorse Ridge Subdivision.

2. The proposed subdivision would be developed according to the

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application and preliminary plat, Exhibit 2, submitted deed restrictions, Exhibit #3. and this staff report. The subdivision would be phased as follows:

Phase 1: Lots 1 thru 7
Phase 2: Lots 8 thru 17
Phase 3: Lots 18 thru 24
Phase 4: Lots 19 Thru 37

Infrastructure, including wells, would be developed by phase.

3. Comments from reviewing agencies include Idaho Department of Fish and Game concerning deer winter range, County Highway Department concerning snow easement of 70 feet, paving and provisions for extension of road.

4. The subdivision will be served by multi-party wells, provided by the developer who has drilled a test well which has yielded 20 gallons per minute and produced no measurable drawdown in a well located 1350 feet away [John Welhan, Feb. 12, 1996.

4.a New wells drilled in the area are producing adequate water supplies.

5. Individual septic systems are proposed by the developer. Such a system must be approved by the District Health Department, and sanitary restrictions released on a lot-by-lot basis.

6. Bannock County Planning and Development Council has required a right-of-way to connect to adjacent land to the north, and may consider an additional access to the west.

7. The developer proposes to build all new internal roads to City of Pocatello standards, with a 50' right of way, 30' paved section; maximum grade of 8%. Gibson Jack Road right-of-way will be 70' wide at development's frontage.

8. The developer will extend electrical power and telephone utilities to the subdivision from existing services along Gibson Jack Road. Natural Gas may be provided.

9. All post-development storm water flows to be detained on site.

10. Developer will cooperate with County to improve some sections of Gibson Jack Road. Participation to be based on development's proportion of traffic on Gibson Jack Road. County Engineer will determine that amount.

11. Pocatello Valley Fire Protection District has approved the subdivision design and developer will negotiate water storage amounts and sites with the District. A second emergency access has been provided for fire suppression equipment.

CONCLUSIONS OF LAW [PRELIMINARY PLAT]:

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1. The Zoning Map of Bannock County, Appendix A of the 1984 Interim Bannock County Land Use Ordinance, designates the property "Residential Suburban" zone.

2. The submittal requirements in Section D-406 have been met.

3. The design requirements of the Appendix D-506 and 507 [the subdivision ordinance] have been met.

5. The criteria for approving a preliminary plat have been met:

1. The proposed tentative plan is in conformance with the Bannock County Comprehensive Plan, [determined by the Bannock County Planning and Development Council].

2. The proposed tentative plan is in conformance with all applicable provisions of this Ordinance, other County ordinances, and Idaho Code.

3. The proposed roads will be designed and constructed according to Bannock County Standards.

4. The proposed partitioning of land does not prohibit the extension of dedicated streets or roads.

5. The proposed partitioning will not conflict with legally established easements or access within or adjacent to the proposed land partition.

6. The parcels are located and laid out to properly relate to adjoining or nearby lot or parcel lines, utilities, streets, or other existing or planned facilities.

7. The proposed property is physically suitable for the type and proposed density of development and conforms to existing zone standards.

DECISION

The Bannock County Board of Commissioners concludes that, based on the foregoing Findings of Fact and Conclusions of Law, the Preliminary Plat for Wild Horse Ridge Subdivision will not violate the standards found in Section D-404 of the 1984 Interim Bannock County Land Use Ordinance, provided that the following conditions are met:

1. That the developers provide fire protection with fire resistant vegetative strips around the residences, and on the perimeters of the development as approved by the Pocatello Valley Fire district, or the State Fire Marshall, and provide water storage tanks adequate as determined by Fire Chief to suppress structure fires.

2. Areas over 20% slope be indicated on the plat. Such areas are

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subject to the following restrictions, to be noted on the plat:

a. No fencing, structures or roads can be developed in such areas.

b. A vegetative fire-resistant cover be provided between the structures on the lot and restricted areas.

c. Pasturing, uncontrolled household pets, vegetative alterations and manipulations, and other activities which would impede the free travel of deer and other game in those areas of the lots, or their natural feeding on native plants is prohibited.

3. A snow storage easement be imposed on each lot which will have the effect of creating a 70 foot wide right of way on the subdivision street.

4. A right-of-way be reserved to the land adjoining to the west and north.

5. Lots 4 and 5 shall access Silver Sage Lane.

6. Idaho Code requirements for filing a plat are met, as determined by County Engineer, prior to recording, and submittal requirements for preliminary plat are made according to Applicant's testimony at this meeting.

7. Snowberry Circle be shortened to create more depth to lot 21. **The depth should be specified**

8. Developer cooperate with Bannock County Road and Bridge Department to improve Gibson Jack Road as specified by County Engineer.

9. Disturbed soils will be revegetated with native grasses and native wildflower seeds no later than six months after construction.

10. Dust and weeds shall be abated by developer until lots are *occupied*.

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Agenda # 3

SUBDIVISION APPLICATION

[redacted]MMUNITY DEVELOPMENT & RESEARCH DEPARTMENT

STAFF REPORT

GENERAL

SUBDIVISION: **WILDHORSE RIDGE SUBDIVISION**

TYPE:

Preliminary:XXX	Final:	Short:

DATE: For CDC meeting to be held April 24, 1996

APPLICANT: Gibson Jack Joint Venture

TITLE REPORT: None
LOTS/UNITS: 37
PRIMARY PUBLIC ACCESS: Gibson Jack Road

IMPACTS

PERSONS PER HOUSEHOLD: 3.34
ADDITIONAL PERSONS: 124
PERCENT SCHOOL AGED: 30%
ADDITIONAL STUDENTS: 38
AVERAGE DAILY VEHICULAR TRIPS: 370
SEWAGE GPD: 13,600
WATER GPD: 33,400

PROPERTY TAX REVENUE

Taxing Dist.	Levy	Value	Revenue	Units	Total
Bannock Co.	005631683	$120,000	$675	37	$24,975
School Dist.	008030194	$120,000	$964	37	$34,668
Co. Road & Bridge	000842921	$120,000	$101	37	$3,737
Ambulance	000249921	$120,000	$299	37	$11,063
Total	025363614	$120,000	$3,043	37	$112,591

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A. General Background

Gibson Jack Joint Venture, represented by Guy Anderst (mailing address: P.O. Box R, Pocatello, ID 83206), has submitted an application and preliminary plat for the above mentioned subdivision. The proposal calls for the platting of 37 single-family residential lots on a 119.3 acre parcel located within the Area of City Impact (AOCI). The developer is proposing a four-phased project with specific details described in **Exhibit 1**. The following outlines additional details of this subdivision proposal:

a) The site is located approximately 9/10ths of a mile from Bannock Highway.

b) The site abuts private property owned by McDevitt on the north and western boundaries. Said property does not share a boundary with Bureau of Land Management.

c) The smallest lot in the submitted plat measures 2.5 acres, the largest is 6.1 acres with the average lot size being approximately 3.0 acres.

d) **Sewage disposal** - developer proposes septic systems.

e) **Water - The developer plans to establish** [redacted] **community wells for water usage** [redacted] **to be 400 feet in depth.**

f) **Drainage** - Developer indicates that all storm water will be detained on-site. Plat depicts a total of six (6) runoff control facilities (retention ponds). **Natural drainage location**: Minor drainage (approximately 1/4 section) becoming ephemeral stream between ridge and northwest corner. There is a stream running northeast.

Easements

g) The developer plans to establish a combination drainage/utility//nature/walkway easement. Said easement will begin at the southern cul-de-sac of Wild Horse Ridge Rd. and continue North/Northwest along Lots 10-16, Lots 25 & 26 and Lots 33-35 with a total length of 3,650.87 feet or .69 miles.

h) There exists an old Mink Creek water line across this property, however, it is apparently in the process of being vacated.

h) A 15 foot easement will be provided adjacent to all property lines with additional easements provided as needed for utilities.

i) Two emergency (fire) access roads will be provided and specifically located between Lots 6-8 & 13 and Lots 1, 2, 19, & 20. A 5000 gallon fire storage area will be located at the southeast corner of Lot 10.

Right-Of-Way

j) Primary ingress/egress to Wild Horse Ridge will be via Gibson Jack Road. Said R.O.W. will be 70 feet in width with 50 feet being paved. The remaining area will be used as snow easement.

k) Street R.O.W. within the project will consist of typical 50 foot right-of-way with 30 feet of this being paved. Silver Sage Lane will intersect with Gibson Jack to provide primary ingress/egress into subdivision. Steepest road grade is 8 percent located near the intersection of Silver Sage Lane and Gibson Jack with average grade of all other streets combined being approximately 3 percent in grade.

B. Slope and Soils

The land area proposed for development has an average slope ranging between 6-26 percent. Steepest slopes exist on Lots 10 - 12, Lot 25, Lots 36 & 37 and the western half of Lot 15. Soil types consist of Ririe-Watercanyon complex. Permeability of both soil types is moderate. Runoff is rapid, and the hazard of water erosion is high. The main limitations for homesite development are slope and susceptibility to erosion. Slope is a concern in installing septic tank absorption fields. Access roads should be designed to control surface runoff and keep soil losses to a minimum. Preserving the existing plant cover during construction helps control erosion. The risk of erosion is increased if the soil is left exposed during site development. Therefore to stabilize erosion risk immediate efforts should be made to re-seed disturbed areas. The potential natural vegetation on the Ririe soil consists of mountain big sagebrush and bluebunch wheatgrass. Watercanyon soils may support mountain big sagebrush, bluebunch wheatgrass, Thurber needlegrass, and arrowleaf balsamroot. This unit is also suited to the use of mechanical equipment such as rangeland plows and drills.

C. Zoning

The subject property encompasses a land area of 119.3 acres (more or less). Bannock County zoning dictates; this land is designated as Residential-Suburban.

D. Site Plan Review Committee

Site Plan Review Committee members reviewed the preliminary plat at their regularly scheduled meeting held on April 3, 1996. The

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requirements for the subject subdivision are listed in the following table:

SUBDIVISION PLAN REVIEW COMMITTEE SUMMARY

Department	Status	Comment
ENGINEERING	Approve	a. Due to lot area and width, it is recommended that curb, gutter, and sidewalk be waived. b. Proper & adequate provisions shall be made for the disposal of storm water. Existing, designed and approved water courses or holding ponds shall be maintained and protected by easement. c. Further subdivision of lots in this subdivision shall be prohibited unless the subdivision is re-platted and all urban infrastructure standards are met. These restrictions shall be recorded on the initial plat and be included as a deed restriction for each parcel or lot.
WATER	Approve	a. Culinary water shall be provided from one-well per four lots. Restrictive covenants shall prohibit further well drilling.
STREET	Approve	a. Thirty (30) foot wide paved streets are recommended to the Council due to the width of lot frontages. However, a fifty (50) foot public R.O.W shall be noted on the plat as well as a ten (10) foot utility easement on each side of the dedicated public R.O.W.
SANITATION	Approve	
FIRE	Approve	a. All rural district or County fire protection standards shall be complied with.
BUILDING	Approve	

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Exhibit 1

Wildhorse Ridge Subdivision

A development proposal

Gibson Jack Joint Venture would propose the following schedule for the development of Wildhorse Ridge Subdivision.

The *Developer* would furnish *The City of Pocatello* documents outlining the "Restrictive Covenants" for *Wildhorse Subdivision*. These covenants would include the following restrictions:

1. Require each lot to provide on site retention of any post development storm water generated by their hard surface areas.
2. Each lot will not irrigate more than ½ acre as provide by State Law.
3. No Lot will be allowed to have more than two large animals as defined by *Bannock County*.
4. There would be restrictions on height and square footage of buildings.

A. Phase One would be built as submitted. These lots would be developed with all improvements required by *Bannock County* and the *City of Pocatello*. The Developer is in the process of designing a bermed entry area. *The City of Pocatello* will be furnished with drawings depicting these areas. This area will include the use of large treated logs at each corner of Silver Sage Lane and Gibson Jack Road. This area would include the use of some type of wood fence with three rail intersecting alternating bermed areas. The *Developer* would drill wells as proposed to provide water service to each lot. As wells are drilled and booster pump/storage facilities are built, the *Developer* will provide access easements for well houses and water lines to each lot. Underground utilities would be provided to each lot. (Electricity, telephone, cable) The *Developer* would propose to provide an area dedicated to *Pocatello Valley Fire District* for the use of water storage tanks. The road right of ways and all storm water retention areas for Phases II, III, &IV will be brought to rough grade by the fall of 1996. At this time the developer will reseed all land areas disturbed by construction before the winter season starts.

B. Phase Two would be built as submitted. These lots would be developed with all improvements required by *Bannock County* and the *City of Pocatello*. Prior to *The City of Pocatello* accepting and recording the plat of Phase II, 50% of the required improvements to the lower area of Gibson Jack Road would be completed by the *Developer*. The *Developer* would drill wells as necessary to provide water service to each lot. As wells are drilled and booster pump/storage facilities are built, *Developer* will provide access easements for the well houses and water lines serving each lot. Underground utilities would be provided to each lot. (Electricity, telephone, cable)

C. Phase Three would be built as submitted. Prior to *The City of Pocatello* accepting and recording the plat of Phase III, the balance of improvements as agreed will be made by the *Developer* to lower Gibson Jack Road. These lots would be developed with all improvements required by *The City of Pocatello* and the *City of Pocatello*. The developer would drill wells as necessary to provide water service to each lot. As wells are drilled and booster pump/storage facilities are built, developer will provide access easements for the well houses and water lines serving each lot. Underground utilities would be provided to each lot. (Electricity, telephone, cable)

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D. Phase Four would be built as submitted. These lots would be developed with all improvements required by *Bannock County* and the *City of Pocatello*. The *Developer* would drill wells as necessary to provide water service to each lot. As wells are drilled and booster pump/storage facilities are built, *Developer* will provide access easements for the well houses and water lines serving each lot. Underground utilities would be provided to each lot. (Electricity, telephone, cable)

The Developer is negotiating with Intermountain Gas Company to bring Natural Gas Service to the Gibson Jack area. We feel there is a very good possibility of obtaining gas service for the entire area.

The Developer plans to sell individual lots complete with a water hookup from shared wells. The information available at this time indicates good availability of water to provide for multi-party wells. The water systems proposed for each facility will have a well house. Each facility will have a three to five thousand gallon storage tank and a booster pump to provide adequate pressure to each household. Each water hook up would be metered. This structure will be designed to blend into the existing landscape through the use of low height roof lines and natural colors.

Please consider this information as we proceed into the Preliminary Plat process. If you have further questions, please call.

Best regards,

Guy Anderst
Gibson Jack Joint Venture

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WPC	Approve	a. Septic systems, with state approval, will be allowed. Two separate drainage fields for each lot, protected by easement, shall be required.
LEGAL	Approve	a. An annexation covenant that runs with the land shall be required of property owners involved in any re-platting.
CD&R	Approve	See following for addl. conditions

E. **Recommendation**

Hold Over:	Deny:	Approve:	Approve w/ conds.:XXXXXXX

CONDITIONS:

1. Each condition of the Site Plan Review Committee's conditions/comments noted in this report be complied with;

2. A title report be submitted prior to final plat application;

3. All disturbed areas with slopes of 10 percent or greater be immediately seeded with native grasses to control erosion;

4. That there be no more than 12 or no less than 9 wells to serve residents of this subdivision

5. That a site grading plan be submitted to the Site Plan Review Committee for review and approval prior to stripping of land.

6. That the applicant satisfy concerns related in a letter dated April 8, 1996 from U.S. West officials. Specifically, U.S West is seeking an easement within one of the lots to accomodate digital carrier facilities in addition to front lot a easement for placing pedestals, poles. etc.

Respecfully Submitted

Matthew G. Lewis
Principal Planner

MGL

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In the Matter of UPHOLDING THE PLANNING AND DEVELOPMENT COUNCIL'S DECISION, WITH STIPULATIONS, CONCERNING THE PRELIMINARY PLAT APPROVAL FOR WILDHORSE RIDGE SUBDIVISION)

R.S. No. 1996-83
June 17, 1996

[redacted]

R E S O L U T I O N

WHEREAS, Richard M. Hollingsworth and Everet[redacted] appealed the decision of the Bannock County Planning and Development Council to approve the Preliminary Plat for Wildhorse Ridge Subdivision as provided in Section 550 of Zoning Ordinance NO. 1990-1; and

WHEREAS, pursuant to public notice the Board of Bannock County Commissioners held a meeting to review the record upon which the Planning and Zoning Commission made its decision; and

WHEREAS, the Preliminary Plat approved by the Planning and Development Council conforms to the Concept Plan approved on March 26, 1996; and

WHEREAS, the developer has agreed to improve the safety of Gibson Jack Road by cooperating with the County Road and Bridge Department to widen Gibson Jack Road in areas specified by the County Engineer but not quantified in the decision of the Planning and Development Council's Decision; and

WHEREAS, Planning and Development Council conditioned its approval on the shortening of Snowberry Circle and added depth to lot No. 21, but did not specify the lengths and distances; and

WHEREAS, the Board of County Commissioners has made Findings, examined the Conclusions of Law , and reached a Decision based on the evidentiary record established by the Planning and Development Council as follows:

FINDINGS:

1. Developer has applied to develop a 37-lot subdivision to be called Wildhorse Ridge Subdivision, located on a 119 acre tract of land in the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian. Average lot size (gross) is 2.53 acres. Concept stage was subject of a public hearing on February 27, 1996; a work session was held March 18, 1996, and the Plan was approved March 26, 1996. Preliminary plat approval is a business item, and was approved by the Council on April 23, 1996.

2. The proposed subdivision would be developed according to the application and preliminary plat, Exhibit 2, submitted deed restrictions, Exhibit #3. and staff report submitted to Planning and Development Council on April 23, 1996, as amended. The subdivision would be phased as follows:

Phase 1: Lots 1 thru 7
Phase 2: Lots 8 thru 17
Phase 3: Lots 18 thru 24
Phase 4: Lots 19 Thru 37

Infrastructure, including wells, would be developed by phase.

3. Comments from reviewing agencies include Idaho Department of Fish and Game concerning deer winter range, County Highway Department concerning snow easement of 70 feet, paving and provisions for extension of road. Oral testimony addressed improving safety of Gibson Jack Road not adjacent to subdivision.

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4. The subdivision will be served by multi-party wells, provided by the developer who has drilled a test well which has yielded 20 gallons per minute and produced no measurable drawdown in a well located 1350 feet away. [John Welhan, Feb. 12, 1996.] Drilled to 460' No increase in water flow - it is in Wells Limestone College opinion Dec.

4.a New wells drilled in the area are producing adequate water supplies, as testified to in the appeal meeting of June 10, 1996.

5. Individual septic systems are proposed by the developer. Such a system must be approved by the District Health Department, and sanitary restrictions released on a lot-by-lot basis.

6. Bannock County Planning and Development Council has required a right-of-way to connect to adjacent land to the north and west.

7. The developer proposes to build all new internal roads to Bannock County standards, with a 50' right of way, 30' paved section; maximum grade of 8%. Gibson Jack Road right-of-way will be 70' wide at development's frontage.

8. The developer will have electrical power and telephone utilities extended to the subdivision from existing services along Gibson Jack Road. Natural Gas may be provided.

9. All post-development storm water flows to be detained on site.

10. Developer will cooperate with County to improve some sections of Gibson Jack Road. Participation to be based on development's proportion of traffic on Gibson Jack Road. County Engineer will determine that amount.

11. Pocatello Valley Fire Protection District has approved the subdivision design and developer will negotiate water storage amounts and sites with the District. A second emergency access has been provided for fire suppression equipment.

12. Bannock County Planning and Development Council reached the following CONCLUSIONS OF LAW concerning approval of a PRELIMINARY PLAT:

(1) The Zoning Map of Bannock County, Appendix A of the 1984 Interim Bannock County Land Use Ordinance, designates the property "Residential Suburban" zone.

(2) The submittal requirements in Section D-406 have been met.

(3) The design requirements of the Appendix D-506 and 507 [the subdivision ordinance] have been met.

(4) The criteria for approving a preliminary plat have been met:
(a) The proposed tentative plan is in conformance with the Bannock County Comprehensive Plan, [determined by the Bannock County Planning and Development Council].

(b) The proposed tentative plan is in conformance with all applicable provisions of this Ordinance, other County ordinances, and Idaho Code.

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(c) The proposed roads will be designed and constructed according to Bannock County Standards.

(d) The proposed partitioning of land does not prohibit the extension of dedicated streets or roads.

(e) The proposed partitioning will not conflict with legally established easements or access within or adjacent to the proposed land partition.

(f) The parcels are located and laid out to properly relate to adjoining or nearby lot or parcel lines, utilities, streets, or other existing or planned facilities.

(g) The proposed property is physically suitable for the type and proposed density of development and conforms to existing zone standards.

13. Bannock County Planning and Development Council approved the Preliminary Plat subject to the following conditions:

(1) That the developers provide fire protection with fire resistant vegetative strips around the residences, and on the perimeters of the development as approved by the Pocatello Valley Fire district, or the State Fire Marshall, and provide water storage tanks adequate as determined by Fire Chief to suppress structure fires.

(2) Areas over 20% slope be indicated on the plat. Such areas are subject to the following restrictions, to be noted on the plat:

(a) No fencing, structures or roads can be developed in such areas.

(b) A vegetative fire-resistant cover be provided between the structures on the lot and restricted areas.

(c) Pasturing, uncontrolled household pets, vegetative alterations and manipulations, and other activities which would impede the free travel of deer and other game in those areas of the lots, or their natural feeding on native plants is prohibited.

(3) A snow storage easement be imposed on each lot which will have the effect of creating a 70 foot wide right of way on the subdivision street.

(4) A right-of-way be reserved to the land adjoining to the west and north.

(5) Lots 4 and 5 shall access Silver Sage Lane.

(6) Idaho Code requirements for filing a plat are met, as determined by County Engineer, prior to recording, and submittal requirements for preliminary plat are made according to Applicant's testimony at this meeting.

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(7) Snowberry Circle be shortened to create more depth to lot 21.

(8) Developer cooperate with Bannock County Road and Bridge Department to improve Gibson Jack Road as specified by County Engineer, prior to development of Phase II.

(9) Disturbed soils will be revegetated with native grasses and native wildflower seeds no later than six months after construction.

(10) Dust and weeds shall be abated by developer until lots are *occupied*.

NOW, THEREFORE, BE IT RESOLVED in a motion made by Commissioner J. O. Cotant, seconded by Commissioner Carolyn Meline, that the Board of Bannock County Commissioners hereby upholds the decision of the Planning and Zoning Commission to approve the Preliminary Plat for Wildhorse Ridge Subdivision as conditioned above, and with the following stipulations:

(a) That Snowberry Circle be shortened by a minimum of 100 feet to create an equally deeper lot 21, per the plat approved 4-26-96.

(b) That developer agree to participate in the improvement of Gibson Jack Road as specified by County Engineer, and that it be commenced prior to the start of Phase 2 and completed prior to development of Phase 3. Extent of developer's participation is based on the traffic increase created by the subdivision. The formula for determining the developer's participation will be the percentage the new 37 lots represent of the existing developed residences, plus estimated number of presently buildable lots, served by Gibson Jack Road. [37 lots] divided by [the residences existing at 6-17-96 plus buildable] = percent of participation]. Existing residences will be determined by the official county addressing map, attached.

The motion passed and carried with Commissioners Meline and Cotant voting in the affirmative. Commissioner Katsilometes, having been advised by County attorney, abstained due to a possible conflict of interest as his brother lives on Heather in Gibson Jack Subdivision.

BOARD OF BANNOCK COUNTY COMMISSIONERS

Carolyn Meline, Member

J. O. Cotant, Member

ATTEST: LARRY W. GHAN

Larry W. Ghan, Clerk

By Cindy Fisher, Deputy Clerk

APR 2 8 1996

[redacted]

WILDHORSE RIDGE
RESTRICTIVE COVENANTS
PRELIMINARY PLAT DRAFT

Gibson Jack Joint Venture would like to submit an outline for the restrictive covenants of Wildhorse Ridge Subdivision. The following issues will be addressed in the final draft.

MINIMUM HOME SIZE--All lot owners will be required to submit one set of plans for approval by the Architectural Control Committee for any structure to be built on a lot. There will be limiting factors to provide for uniform property values throughout the subdivision.

UTILITIES--All utilities will be required to be underground.

VIEW EASEMENTS--The Architectural Control Committee will have authority to limit the height of structures to reasonably prevent blockage of views. There will be a maximum height spelled out in the covenant.

STORM WATER DETENTION--All lots will require owner to submit site drainage plan to Architectural Control Committee detailing how post development drainage will be retained on site. Included in this plan will be details of landscaped area, and completion date. Al lot owners will have a specific length of time to reseed disturbed land areas.

FENCING--Fencing of any lot in this subdivision will be required to be approved by the Architectural Control Committee. All lots with nature path or Emergency Fire Access easements will not be allowed to fence within these easements. There will be a uniform fencing requirement throughout subdivision.

WELLS--Each lot owner shall become a member of a water group. There will be a defined set of rules governing water use and maintenance of each three tofour party water system. There will be measures to insure maximum irrigated land[redacted] to conform with Idaho State Law governing water use by culinary wells.

ANIMALS--Large animals such as horses or cattle will be limited to two animals as required by Bannock County. There will be provisions governing other animals such as dogs and cats, and exotic pets.

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NATURE PATH EASEMENT--There will be Rules and regulations detailing the maintenance and usage of common areas by lot owners.

HOMEOWNERS ASSOCIATION--All lot owners will be required to be a member of a homeowners association responsible for any maintenance of areas designated as common area. These areas will include Nature Path, fire access roads, and storm water detention/retention areas.

SUBDIVISION--There will be a deed restriction prohibiting the subdivision of any lot. Only one single family home, and two accessory buildings will be allowed per lot.

FIRE CODE--All lot owners will be required to conform to the governing fire district rules. This will include fire breaks and accessability to structures. There will be provision detailing maximum driveway length without providing a fire vehicle turnaround area.

HEALTH DEPARTMENT REGS.--All lot owners will be required to designate two areas suitable for septic system drain field areas. These areas will be designated as unbuildable land. Each lot owner will be required to maintain these individual septic disposal systems. Pumping of these septic tanks at regular intervals will be recommended.

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Agenda #_____8_____

SCHEDULE OF IMPROVEMENT REQUIREMENTS

RURAL ACREAGE & RURAL ESTATE DEVELOPMENTS
(New 16.32.225)

PURPOSE: The Rural Acreage and Rural Estate designations are established to promote the orderly development and maintenance of ranchette style neighborhoods where residents can enjoy the peace and aesthetics of a more open and rural lifestyle. These standards are to apply to those lots legally created after the adoption of this ordinance.

A. DEFINITIONS: For purposes of this section and as pertaining to Rural Estate and Rural Acreage Developments, the following definitions shall apply:

1. Lot Width: The distance between the side lot lines, measured at the street frontage.

2. Central Water System: A system used to service a multi-dwelling development (i.e., four lots or more) and consisting of a central pump source (well) and storage facility, as well as a system of distribution mains, valves, and hydrants located in platted rights-of-way, roadways, or access easements.

B. DESIGNATIONS

1. Rural Acreage: Single-family residential development with minimum frontage lot widths of **270 feet with minimum front setback of 50 feet, and a minimum lot area of 217,800 square feet (5 acres)** or more.

2. Rural Estate: Single-family residential development with minimum frontage lot widths of **200 feet with a minimum front setback of 25 feet, or 150 feet when the front setback is 50 feet, and a minimum lot area of 108,900 square feet (2.5 acres) up to five acres.**

3. Minimum Buildable Lot: Lot area for both designations require a minimum of 18,500 square feet of buildable lot area. Buildable lot area is determined as follows:

a.	Gross site area determined by on-site survey	=_____
b.	Subtract land having 20% slope or greater	-_____
c.	Subtract land constituting roads, rights-of way, or easements	-_____
d.	Subtract any other "restricted use" land (e.g., wetlands, flood plain, etc.)	-_____
e.	Subtract land required for two separate drainage fields if septic systems are to be used	-_____
f.	Subtract land not contiguous to proposed building site	-_____
g.	Subtract land necessary for resource protection (e.g., in most circumstances, a 100-foot setback from water courses, steep slopes, etc., is required)	-_____
Building lot area		=_____

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9. Nothing in this section shall preclude the Site Plan Review/Subdivision Review Committee of the City of Pocatello from adding or amending (insofar as the Committee is able) standards or requirements as is reasonable to preserve or further the health, safety, and general welfare of the public.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WELL DRILLER'S REPORT

that this report be filed with the Director, Department of Water Resources
in 30 days after the completion or abandonment of the well.

USE TYPEWRITER OR BALLPOINT PEN

1. WELL OWNER

Name Everett Diller

Address 2917 N. Stephanie Lane Pocatello

Drilling Permit No. _____

Water Right Permit No. 29-7766

2. NATURE OF WORK

■ New well ☐ Deepened ☐ Replacement
☐ Well diameter increase ☐ Modification
☐ Abandoned (describe abandonment or modification procedures such as liners, screen, materials, plug depths, etc. in lithologic log, section 9.)

3. PROPOSED USE

■ Domestic ☐ Irrigation ☐ Monitor
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

■ Rotary ☐ Air ☐ Auger ☐ Reverse rotary
☐ Cable ☐ Mud ☐ Other _____ (backhoe, hydraulic, etc.)

5. WELL CONSTRUCTION

Casing schedule: ■ Steel ☐ Concrete ☐ Other _____

Thickness	Diameter	From	To
.250 inches	6" inches	+ 1 feet	163 feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ■ Yes ☐ No
Was a packer or seal used? ☐ Yes ■ No
Perforated? ☐ Yes ■ No
How perforated? ☐ Factory ☐ Knife ☐ Torch ☐ Gun
Size of perforation? _____ inches by _____ inches

Number	From	To
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ■ No
Manufacturer _____ Type _____
Top Packer or Headpipe _____
Bottom of Tailpipe _____

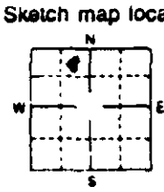
Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Gravel packed? ☐ Yes ■ No ☐ Size of gravel _____
Placed from _____ feet to _____ feet

Surface seal depth 20 Material used in seal: ☐ Cement grout
☐ Bentonite ■ Puddling clay ☐ _____
Sealing procedure used: ☐ Slurry pit
☐ Temp. surface casing ☐ Overbore to seal depth
Method of joining casing: ☐ Threaded ■ Welded
☐ Solvent Weld ☐ Cemented between strata

Describe access port Well Cap

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

County Bannock

Address of Well Site _____ (give at least name of road)

NE ¼ NW ¼ Sec. 19, T. 7 N ☐ or S ■, R. 35 E ■ or W ☐

7. WATER LEVEL

Static water level 65' feet below land surface.
Flowing? ☐ Yes ■ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature 52 °F. Quality Good
Describe artesian or temperature zones below.

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Air ■ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped
30	100'	1 Hour

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
6"	0	1	Top Soil		X
	1	62	Clay & Boulders		X
	62	150	Clay & Boulders & Gravel	X	
	150	165	Gravel, Streaks of Clay	X	

10.

Work started _____ finished _____

11. DRILLER'S CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name Cushman Drilling Firm No. #94
Address 1405 South Broadway Blackfoot, Idaho Date _____
Signed by Drilling Supervisor Del Cushman
and
(Operator) Everett Diller
(If different than the Drilling Supervisor)

USE ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT

Form 238-7
4/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

USE TYPEWRITER OR BALLPOINT PEN

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name Everett Diller

Address 2917 N. Stephanie Lane Pocatello

Drilling Permit No. 24-88-E-41

Water Right Permit No. 29-07905

2. NATURE OF WORK

■ New well ☐ Deepened ☐ Replacement
☐ Well diameter increase ☐ Modification
☐ Abandoned (describe abandonment or modification procedures such as liners, screen, materials, plug depths, etc. in lithologic log, section 9.)

3. PROPOSED USE

☐ Domestic ■ Irrigation ☐ Monitor
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

■ Rotary ☐ Air ☐ Auger ☐ Reverse rotary
☐ Cable ☐ Mud ☐ Other _____ (backhoe, hydraulic, etc.)

5. WELL CONSTRUCTION

Casing schedule: ■ Steel ☐ Concrete ☐ Other _____

Thickness	Diameter	From	To
.250 inches	8" inches	+ 1 feet	255 feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ■ Yes ☐ No
Was a packer or seal used? ☐ Yes ■ No
Perforated? ■ Yes ☐ No
How perforated? ☐ Factory ■ Knife ☐ Torch ☐ Gun
Size of perforation? 1/4 inches by 2 inches

Number		From	To
50	perforations	130 feet	135 feet
100	perforations	155 feet	180 feet
100	perforations	245 feet	255 feet

Well screen installed? ☐ Yes ■ No
Manufacturer _____ Type _____
Top Packer or Headpipe _____
Bottom of Tailpipe _____

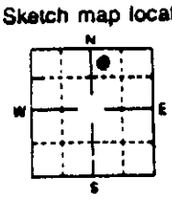
Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Diameter ____ Slot size ____ Set from ____ feet to ____ feet
Gravel packed? ☐ Yes ■ No ☐ Size of gravel _____
Placed from _____ feet to _____ feet

Surface seal depth 20 Material used in seal: ☐ Cement grout ■ Bentonite ☐ Puddling clay ☐ _____
Sealing procedure used: ☐ Slurry pit ■ Overbore to seal depth ☐ Temp. surface casing
Method of joining casing: ☐ Threaded ■ Welded ☐ Solvent Weld ☐ Cemented between strata

Describe access port Well Cap

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

County Bannock

Address of Well Site _____ (give at least name of road)

NW ¼ NE ¼ Sec. 19, T. 7 N ☐ or S ■, R. 35 E ■ or W ☐

7. WATER LEVEL

Static water level 75' feet below land surface.
Flowing? ☐ Yes ■ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature 53 °F. Quality Good
Describe artesian or temperature zones below.

8. WELL TEST DATA

☐ Pump ☐ Bailer ■ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped
80	220'	1 Hour

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
8"	0	50	Boulders & Clay		X
	50	95	Yellow Clay		X
	95	140	Clay & Gravel	X	
	140	145	Clay & Boulders	X	
	145	245	Clay & Gravel	X	
	245	255	Sand & Gravel	X	

10.

Work started 8/8/88 finished 8/12/88

11. DRILLER'S CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name Cushman Drilling Firm No. #94
Address 1405 South Broadway Blackfoot, Idaho Date 8/12/88
Signed by Drilling Supervisor Bob Cushman
and
(Operator) _____
(If different than the Drilling Supervisor)

WHITE COPY TO THE DEPARTMENT

THIS WATER RIGHT APPLICATION IS IN THE PROCESS OF APPEAL TO THE DISTRICT COURT

Chris Pein, d/b/a/ Gibson Jack Joint Venture,
a/k/a Wildhorse Ridge Subdivision

Bannock County Case No. CVOC 97-02001

See Phil Rassier regarding this appeal.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183 AND 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE AKA WILDHORSE RIDGE SUBDIVISION	**ORDER DENYING PETITIONS FOR RECONSIDERATION**

On October 30, 1997, the Director of the Idaho Department of Water Resources (Director) issued an Amended Final Order in connection with the above captioned matter.

On November 13, 1997, Gibson Jack Joint Venture aka Wildhorse Ridge Subdivision filed a petition for reconsideration (petition) of the Amended Final Order with the department.

On November 14, 1997, protestants Everett D. Diller and Richard M. Hollingsworth also filed a petition for reconsideration (petition) of the Amended Final Order with the department.

The Director has reviewed the petitions and has determined that the petitions do not present any additional information for the Director to consider than was available to the Director when issuing his Amended Final Order.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Petitions for Reconsideration of the Director's Amended Final Order are **DENIED.**

Dated this 25th day of November, 1997.

KARL J. DREHER
Director

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 28th day of November, 1997, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F RANDALL CLINE
F RANDALL CLINE CHARTERED
PO BOX 397
427 MAIN STE L
POCATELLO ID 83204

CLARK KELLY
9685 HEATHER RD
POCATELLO ID 83204

RICHARD HOLLINGSWORTH
9502 GIBSON JACK
POCATELLO ID 83204

EVERETT DILLER
2917 N STEPHANIE RD
POCATELLO ID 83204

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 29-08175

Proposed Priority: July 12, 1996 Maximum Diversion Rate: 0.05 CFS

This is to certify, that **GIBSON JACK JOINT VENTURE**
PO BOX R
POCATELLO ID 83206
has applied for a permit to appropriate water from: **GROUNDWATER**

and a permit is **APPROVED** for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
DOMESTIC	01/01 to 12/31	0.05 CFS

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 19, Township 07S, Range 35E
BANNOCK County

PLACE OF USE: DOMESTIC

TWN	RGE	SEC	
07S	35E	19	NENW

CONDITIONS OF APPROVAL AND REMARKS

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

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this

29th day of October, 1997.

for Karl J. Dreher, Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE, a.k.a. WILDHORSE RIDGE SUBDIVISION.	)	**AMENDED FINAL ORDER**

On July 12, 1996, Gibson Jack Joint Venture (applicant) filed ten applications for permit to appropriate water for domestic purposes with the Department of Water Resources (department). Guy Anderst, Chris Pien and Tom Iverson are partners in Gibson Jack Joint Venture. The applications were protested by Richard Hollingsworth. Everett Diller and Clark Kelly also filed untimely protests. The department granted intervenor status to Everett Diller and Clark Kelly. Richard Hollingsworth, Everett Diller and Clark Kelly will hereafter be referred to as "protestants."

A hearing was conducted on October 22, 1996, in Pocatello, Idaho. At the end of the day, the protestants had not presented their evidence. The hearing was continued and completed on October 30, 1996. A Recommended Order was issued on February 4, 1997. Exceptions were filed by Richard Hollingsworth and Everett Diller.

A Final Order was issued on July 11, 1997. The Final Order denied the application because the development would injure other water rights, the water supply is insufficient for the proposed uses, and the use proposed by the applications is not in the public interest because the quantity of water under existing water rights would be reduced. On July 28, 1997, the applicant filed a Petition for Reconsideration of the Final Order. The petition was not timely filed, and the director denied the petition for reconsideration. However, the director exercised his discretion to withdraw the Final Order to allow further review of several issues raised by the applicants. A partial transcript of the testimony of John Welhan and Sherl Chapman, expert witnesses for the applicant, was also prepared.

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ANALYSIS OF EXPERT TESTIMONY

Finding of Fact No. 12 of the Final Order misstates John Welhan's testimony. John Welhan did not testify that wells east and north of the proposed subdivision could experience problems during low water years.

Both John Welhan (Welhan) and Sherl Chapman (Chapman) concluded that there is sufficient water in the aquifer for the domestic uses proposed by the applications, including one-half (½) acre of irrigation per lot. However, background testimony and evidence either weakly supported or conflicted with the conclusion that there is sufficient water. For instance, Welhan testified that "changes in storage from ground water levels on the Gibson Jack bench were significant, both seasonally and over the period of the drought. . . ." (Transcript, pp. 5-6).

Welhan further testified:

> It [water] is coming from storage in the aquifer itself, because the ability of that aquifer appears to be limited as far as providing an amount of water moving through it that would not be sufficient to rely on for any extended period of time. What we do know is that there is an awful lot more water, ten times more water, that is available right now in storage that [sic] is being exploited right now by existing homes, and that causes a seasonal decline in the rebound on a yearly basis. (Transcript, pp. 6-7).
>
> [T]he storage capacity of the aquifer is the primary concern. It is the thing we know least about and the source of my caveat to my original opinion about the ability of the system to supply the required amount of water. (Transcript, p. 12).
>
> [T]he amount of water that actually flows through is a tenth of what people are withdrawing from storage. So the potential of the aquifer is extremely important. It is what you depend on today and what you have depended upon as an existing well owner up there for your water on a year round basis to carry you through the summer months and to carry you through the drought years. There is only a certain amount of water that gets recharged through that system and for the rest of the time of the year you are pulling water out of that bank account. (Transcript, pp. 29-30).
>
> [Y]ou are drawing that water ninety (90) percent or more of it from storage. And if you didn't have that spring recharge every year, you wouldn't even last more than a year. (Transcript, p. 34).

Welhan's testimony implies that sufficient water is available for domestic use during high and average precipitation years. It also implies that there is insufficient water for the proposed uses,

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including landscape irrigation, during low precipitation years. During low precipitation years, the proposed uses, including landscape irrigation, will injure other water users.

The director agrees with the hearing officer that limited household use would not injure other water users. An approval by the Department of Water Resources, however, must be realistically enforceable, and future homeowners must be apprised of the limited use of water. The water right can be approved with the following conditions:

1. The subdivision covenants and restrictions must limit water use to in-house use and water for domestic animals only as set forth in the water right permit.

2. A homeowners association must be formed by the developer and the association must actively enforce bylaws which set forth the water use restrictions.

3. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.

4. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals only as set forth in the water right permit.

5. Diversion of water for irrigation or any other purpose outside the culinary and domestic animal uses authorized, is cause for the director of the department to prevent delivery of water from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

If the applicant wants to seek water for irrigation or other uses, it may conduct additional studies that demonstrate sufficient water is available and may reapply to appropriate water for those purposes in the future.

ANALYSIS OF PROTESTANTS EXCEPTIONS

Richard Hollingsworth (Hollingsworth) asked for oral argument regarding the exceptions filed. The issues raised by the exceptions do not justify granting oral argument.

Hollingsworth and Everett Diller (Diller) argue three main themes in their exceptions: (1) there is insufficient water to supply domestic use for homes and one-half acre of irrigation as proposed by the applicants; (2) the recommended order conflicts with an earlier denial by the Bannock County Commission of a subdivision proposal that was affirmed by Judge Wallace M. Transtrum on appeal; and (3) if there are water shortages in the future, who will regulate the diversions of water to insure that earlier-in-time-priority water right holders are protected?

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Sufficiency of Water Supply

Finding of fact no. 26 of the recommended order states that ". . . in-house culinary use will not significantly reduce water supplies available to holders of earlier-in-time water rights, because the use is essentially non-consumptive." Conclusion of law nos. 5 and 6 of the recommended order state that "[t]otal fulfillment of the expectations of the applicant's successors would injure earlier-in-time water uses" but "[t]here is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built . . . ." The order portion of the recommended order approved "diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only." The recommended order denied the request to irrigate any portion of the lots in the subdivision proposed by the applicants.

The provisions of the Recommended Order when clarified are adequate to prevent injury to prior rights because the consumption of water for in-house culinary use and for domestic animals will be insignificant.

Conflict with Prior District Court Decision

A subdivision was proposed several years ago at the location described by the pending applications for permit. The Bannock County Commission denied the subdivision proposal, and the denial was appealed to the district court. Judge Wallace Transtrum upheld the Bannock County Commission's decision denying the subdivision proposal. After the decision, the owners of the property submitted another proposal to Bannock County/City of Pocatello that was approved. At the time of the hearing, the decision by the local governments was being appealed again, this time by those who were opposed to the subdivision.

The first decision by the district court does not forever prevent the owner of property from proposing another subdivision that is acceptable to the local governments. The prior decision of the district court does not prevent the department from approving a water right after the local governments approved another subdivision plan.

Regulation of Water Use

Sufficient regulation of water use will occur by requiring the additional conditions of the Amended Final Order.

Based on the testimony and evidence presented at the hearing, the director issues the following findings of fact, conclusions of law, and order:

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FINDINGS OF FACT

1. Application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 propose diversion of ground water to serve the domestic needs of up to four residential homes per domestic well.

2. The applications propose to cumulatively supply water to a 119-acre, 38-lot subdivision in the Gibson Jack Creek drainage, tributary to the Portneuf River, located southeast of the City of Pocatello. The proposed points of diversion and places of use are all located in Section 19, T7S, R35E, B.M. The exact location of the proposed points of diversion and places of use within Section 19 are described as follows:

Water Right No.	Point of Diversion	Place of Use
29-08175	NENW	NENW
29-08176	SENW	SENW
29-08177	SWNW	SWNW
29-08178	SWNW	SWNW
29-08179	SWNW	SWNW
29-08180	NENW	NENW
29-08181	NENW	NENW
29-08182	NWNW	NWNW
29-08183	NWNW	NWNW
29-08184	NWNW	NWNW

3. The 119-acre parcel was previously considered for a subdivision in the mid-1980's. The Bannock County Commission rejected the proposal, and the rejection was confirmed by the district court of the State of Idaho.

4. The applicant proposed a new subdivision to both the City of Pocatello and Bannock County. The proposal was approved by both the city and the county commission. The approvals were being appealed at the time of the hearing for the proposed water rights.

5. The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the potential for well interference, the applicant decided that one well for every three or four residences would reduce the potential for local well interference and would also promote better maintenance by the owners. However, whether one well is drilled for each residence, or whether one well is drilled for every three or four residences, has no effect on whether the water supply is sufficient or insufficient for the purpose for which it is sought to be appropriated.

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6. Each of the residential lots within the subdivision would be two to three acres in size. The applications propose one-half acre of irrigation per residential lot. The remainder of each lot would remain in natural vegetation.

7. The protestants are owners of nearby residences and lots from three to sixteen acres in size. The protestants allege that approval of the applications and diversion of water as proposed would result in a reduction in ground water levels and depletion of a limited aquifer to their injury.

8. Because of concerns of water availability, the applicant drilled a test well referred to as the Iverson well. The Iverson well is located in the SENW, Section 19, T07S, R35E. The applicants hired John Welhan (Welhan), a professional geologist to determine the effect pumping would have on other wells and to generally determine ground water availability in the Gibson Jack Creek drainage.

9. The Iverson well was tested on January 11, 1996. It pumped between 20 and 38 gallons per minute for 7.3 hours, resulting in a drawdown of 136 feet in the Iverson well.

10. A recording device was placed in a well owned by Chad Nelson. The Nelson well is located approximately one-quarter mile away from the Iverson well. The water level in the Nelson well declined 0.02 feet during pumping of the Iverson well.

11. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that pumping from the wells proposed by the applicants would not cause local drawdown interference if the proposed wells are constructed at least 600 feet from other wells. He also concluded that most of the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer and refills the aquifer to the approximate level of the previous year.

12. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deep aquifer if they deepened their wells. However, Welhan was uncertain about the existence or capacity of the deep aquifer.

13. Welhan stated that during normal and high precipitation years, the precipitation would recharge the storage in the aquifer to satisfy existing uses and the proposed use. He also testified that during low water years, particularly during an extended drought, there may not be sufficient water for the proposed use.

14. Sherl Chapman (Chapman), a geologist representing the applicant, testified that he is familiar with water levels in the area, and that he had also derived some aquifer values

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based on tests he had conducted. He concluded that there is sufficient water for ten domestic wells, each with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer would not produce sufficient water for irrigation of all the lands within the proposed subdivision.

15. Both Chapman and Welhan testified that there would be sufficient water for the proposed use. Testimony of Welhan either conflicted with this conclusion, or was uncertain to support the conclusion. The conclusion of Chapman was not supported by sufficient evidence.

16. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The locations of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

17. Richard Hollingsworth testified that water levels in his domestic well have declined 63 feet based on comparing a measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

18. Everett Diller (Diller) stated that he had lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square foot front lawn in the summer with his domestic well.

19. Diller stated that he also owns an irrigation well that irrigates approximately four acres. Diller testified that he has not experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

20. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver redrilled his well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after redrilling his domestic well. Oliver irrigates a 5,000 square foot lawn.

21. Harvey Pickens (Pickens) testified that he owns both a domestic well and an irrigation well located south of the proposed place of use. Both of the wells are approximately 300 feet deep.

22. Pickens testified that his domestic well was drilled in 1969. Pickens purchased the property in 1972. Pickens testified that his domestic well produced sufficient water during the first few years. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

23. Pickens' irrigation well was drilled in 1992. Pickens testified that in the spring of 1996, he could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

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24. Mary Harling (Harling) owns a well that is 115 feet deep. Harling testified that when her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. Harling testified that during late 1996, she could not run a clothes washer and a dish washer at the same time because her pump would not produce enough water.

25. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulty in diverting sufficient water.

26. The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses. Domestic uses, particularly in-house culinary use, are not amenable to curtailment during periods when the water supply is not adequate.

27. During periods of low precipitation, the domestic uses proposed would remove water from the system that should be delivered to earlier-in-time water right holders.

28. Diversion of water by a new domestic water user for in-house culinary use and water for domestic animals would not significantly reduce water supplies available to holders of earlier-in-time water rights.

29. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the

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area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor . . . .

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some landscaping associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty in irrigating landscaping associated with their homes.

5. Future lot owners should not be mislead into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier-in-time water uses.

6. There is sufficient water for strict, limited, in-house culinary use and water for domestic animals associated with future homes that will be built in the proposed development.

7. According to the testimony, there is insufficient water for irrigation of any land in the proposed place of use.

8. The applicant has sufficient financial resources to develop the proposed project.

9. The applicants are not seeking a permit for speculation or delay.

10. The use proposed by the applications is in the public interest, if limited to in-house culinary use and water for domestic animals, and is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are

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PARTIALLY APPROVED to allow diversion for domestic purposes limited to in-house culinary use and water for domestic animals.

IT IS FURTHER ORDERED that the permits are conditioned as follows:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 2003.

2. The approved permits are subject to all prior water rights.

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

4. The permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

5. A well drilled pursuant to this permit must be located at least 600 feet from any existing well. Well spacing closer than 600 feet must be approved by the Department of Water Resources.

6. The subdivision covenants and restrictions must limit water use to in-house culinary use and water for domestic animals only.

7. A homeowners association must be formed by the developer and actively enforce bylaws which set forth the water use restrictions.

8. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.

9. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals.

10. Diversion of water for irrigation or any other purpose outside the authorized culinary use and water for domestic animals is cause for the director of the department to prevent delivery of water from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

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1. Well #1 is located between Lots 1 & 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.

2. Well #2 is located between Lots 3 & 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.

3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14 , and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.

4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.

5. Well #5 is located between Lots 11 & 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.

6. Well #6 is located between Lots 16 & 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.

7. Well #7 is located between Lots 23 & 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.

8. Well #8 is located between Lots 33 & 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.

9. Well #9 is located between Lots 30 & 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.

10. Well #10 is located between Lots 26 & 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

IT IS FURTHER ORDERED that the use of water under this permit for purposes other than in-house culinary use and water for domestic animals is hereby DENIED.

IT IS FURTHER ORDERED that if the applicants want to seek water for irrigation or other uses, they may conduct additional studies that demonstrate sufficient water is available and may reapply for appropriation in the future for those purposes.

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Dated this 29th day of October, 1997.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I do hereby certify that on this 30th day of October, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing AMENDED FINAL ORDER to the following:

F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204

Deborah Drew-Ellis
DEBORAH DREW-ELLIS
Legal Secretary

APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE, aka WILDHORSE RIDGE SUBDIVISION.	)	ORDER VACATING CONFERENCE

On August 6, 1997, the Idaho Department of Water Resources (department) issued an Order Denying Petition For Reconsideration and Withdrawing Final Order in this matter. The withdrawn final order, issued July 11, 1997, rejected the applications for permit to appropriate water filed by Gibson Jack Joint Venture (the applicant).

The August 6, 1997 order denied the applicant's petition for reconsideration of the final order, withdrew the final order, and identified two issues to be further considered by the director at a conference with the parties set for August 27, 1997. The issues identified for further consideration included (1) the means available to strictly enforce an in-house only restriction on the use of water under the permits; and 2) whether other sources of water supply, including but not limited to water service from the City of Pocatello, are available to supply the subdivision.

On August 22, 1997, the applicant filed a Request For Consideration of Additional Issues. The additional issues concern (1) the availability of existing ground water supplies, (2) the reasons for varied well performance in the area, and (3) the potential impact of the

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proposed wells on existing wells. The applicant also requests that the testimony of its expert witnesses, Dr. Welhan and Sherl Chapman, be reviewed regarding the identified issues and that a transcript of the testimony be made available.

The director, having considered the applicant's request and having determined that it would be helpful to review the hearing testimony prior to further consideration of this matter, issues the following order.

ORDER

IT IS HEREBY ORDERED that the conference before the director set for Wednesday, August 27, 1997, at 1:30 p.m. is vacated, and may be rescheduled at the director's discretion following the director's review of testimony submitted at the hearing before the department in this matter.

IT IS FURTHER ORDERED that all other provisions of the August 6, 1997 order in this matter remain effective.

DATED this 25th day of August, 1997.

KARL J. DREHER
Director

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

F. Randall Kline
F. Randall Kline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
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2917 N. Stephanie Rd.
Pocatello, ID 83204

Deborah Drew-Ellis

DEBORAH DREW-ELLIS
Legal Secretary

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APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE, aka WILDHORSE RIDGE SUBDIVISION.	ORDER DENYING PETITION FOR RECONSIDERATION AND WITHDRAWING FINAL ORDER

On July 11, 1997, the Idaho Department of Water Resources (department) issued a Final Order rejecting the applications for permit in this proceeding. Pursuant to I.C. § 67-5246 and IDAPA 37.01.01740 (Rule 740 of the department's Rules of Procedure) a petition for reconsideration is required to be filed with fourteen (l4) days of the service of the order. Gibson Jack Joint Venture (the applicant) filed a Petition for Reconsideration with the department on July 28, 1997, more than fourteen days following service of the order. The applicant's petition for reconsideration, therefore, must be denied as untimely.

Unless stayed by a timely petition for reconsideration, a petition for judicial review must be filed with the district court within twenty-eight (28) days of the service of the final order. Because the petition for reconsideration was not timely filed it does not stay the running of the twenty-eight day period to file an appeal with the district court. However, the untimely petition for reconsideration raises matters which should be considered. Therefore, the final order will be withdrawn pursuant to IDWR Rule of Procedure 760 to allow further consideration of specific

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issues. Thereafter, a new final order will be issued and will be subject to further petition for reconsideration and judicial review.

ORDER

IT IS HEREBY ORDERED that applicant's Petition for Reconsideration filed on July 28, 1997, is denied as untimely.

IT IS FURTHER ORDERED that the Final Order issued by the department on July 11, 1997, is withdrawn and shall be replaced by a new final order following further consideration by the director. The specific issues to be further considered are (1) the means available to strictly enforce an in-house only restriction on the use of water under the permits; and (2) whether other sources of water supply, including but not limited to water service from the City of Pocatello, are available to supply the subdivision.

A conference before the director to discuss these issues is set for Wednesday, August 27, 1997, at 1:30 p.m. in Conference Room D, at the department's office at 1301 N. Orchard, Boise, Idaho. A representative of the applicant or applicant's counsel is asked to attend in person. For the convenience of other participants, arrangements may be made to participate in the conference by telephone. Please call the department at (208)327-7920 to give notice of intent to appear by telephone.

DATED this 6th day of August, 1997.

KARL J. DREHER
Director

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APR 2 8 1998

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

F. Randall Kline
F. Randall Kline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
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Pocatello, ID 83204

Deborah Drew-Ellis

DEBORAH DREW-ELLIS
Legal Secretary

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APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE, aka WILDHORSE RIDGE SUBDIVISION.	)	**FINAL ORDER**

On July 12, 1996, Gibson Jack Joint Venture (applicant) filed ten applications for permit to appropriate water for domestic purposes with the Department of Water Resources (department). Guy Anderst, Chris Pien and Tom Iverson are partners in Gibson Jack Joint Venture. The applications were protested by Richard Hollingsworth. Everett Diller and Clark Kelly filed untimely protests. The department granted intervenor status to Everett Diller and Clark Kelly. Richard Hollingsworth, Everett Diller, and Clark Kelly will hereafter be referred to as "protestants."

A hearing was conducted on October 22, 1996 in Pocatello, Idaho. The hearing was continued and completed on October 30, 1996 to allow the protestants to present evidence. A recommended order was issued on February 4, 1997. Exceptions were filed by Richard Hollingsworth and Everett Diller.

ANALYSIS OF EXCEPTIONS

Richard Hollingsworth (Hollingsworth) asked for oral argument regarding the exceptions filed. The issues raised by the exceptions do not justify granting oral argument.

Hollingsworth and Everett Diller (Diller) argue three main themes in their exceptions: (1) There is insufficient water to supply domestic use for homes and one-half acre of irrigation as proposed by the applicants; (2) The recommended order conflicts with an earlier denial by the Bannock County Commission of a subdivision proposal that was affirmed by Judge Wallace M. Transtrum on appeal; and (3) If there are water shortages in the future, who will regulate the diversions of water to insure that earlier-in-time-priority water right holders are protected?

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Sufficiency of Water Supply

Finding of fact no. 27 of the recommended order states that "[i]n-house culinary use will not significantly reduce water supplies available to holders of earlier-in-time water rights, because the use is essentially non-consumptive." Conclusion of law nos. 5 and 6 of the recommended order state that total fulfillment of a domestic user's expectation would injure earlier in time water uses, but "[t]here is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built . . . ." The order portion of the recommended order approved "diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only." The recommended order denied the request to irrigate any portion of the lots in the subdivision proposed by the applicants.

The provisions of the recommended order are not adequate to prevent injury to prior rights if the waste water from in-house uses is not returned to the aquifer(s) from which the domestic water was pumped. The record does not provide sufficient information to determine whether the septic tanks or other means of disposing of waste water will return the water to the aquifer(s) at a time and location to prevent injury to prior rights.

Administration of Water Rights

The proposed use will only be non-consumptive if the conditions of the recommended order limiting the use to in-house culinary uses are strictly followed. The recommended order did not include, the applicants have not proposed, and on further reflection, the department is not able to suggest a practical plan for administration that will assure that only in-house uses will occur as the subdivision is built and the properties are resold over the coming years.

Regulation of water use by homeowners who may not be apprised of the water use restriction will be difficult. Homeowners expect to be able to irrigate a lawn, a garden, and shrubbery. A water source for a subdivision should be adequate for both the in-house and out-of-house domestic uses. In this case, even if there were sufficient water for the in-house use, the application should be denied.

Conflict with Prior District Court Decision

A subdivision was proposed several years ago at the location described by the pending applications for permit. The Bannock County Commission denied the subdivision proposal, and the denial was appealed to the district court. Judge Wallace Transtrum upheld the Bannock County Commission's decision denying the subdivision proposal. After the decision, the owners of the property submitted another proposal to Bannock County/Pocatello City that was approved. At the time of the hearing, the decision by the local governments was being appealed again, this time by those who were opposed to the subdivision.

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The first decision by the district court does not forever prevent the owner of property from proposing another subdivision that is acceptable to the local governments. The prior decision of the district court does not prevent the department from approving a water right after the local governments approved another subdivision plan.

Based on the testimony and evidence presented at the hearing, the director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 propose diversion of ground water to serve the domestic needs of up to four residential homes per domestic well.

2. The applications propose to cumulatively supply water to a 119 acre, 38 lot subdivision in the Gibson Jack Creek drainage, tributary to the Portneuf River, located southeast of the City of Pocatello. The proposed points of diversion and places of use are all located in Section 19, T7S, R35E, B.M.[1] The exact locations of the proposed points of diversion and places of use within Section 19 are described as follows:

Water Right No.	Point of Diversion	Place of Use
29-08175[2]	NENW	NENW
29-08176	SENW	SENW
29-08177	SWNW	SWNW
29-08178	SWNW	SWNW
29-08179	SWNW	SWNW
29-08180	NENW	NENW
29-08181	NENW	NENW
29-08182	NWNW	NWNW
29-08183	NWNW	NWNW
29-08184	NWNW	NWNW

3. The 119 acre parcel was previously considered for a subdivision in the mid-1980's. The Bannock County Commission rejected the proposal, and the rejection was affirmed by the district court of the State of Idaho.

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[1]The acronym "B.M." is an abbreviation for "Boise Meridian" and will be eliminated in the remainder of the text.

[2]The absence of the quadrant identifier implies that the fraction "1/4" should be read into the description.

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4. The applicant proposed a new plan for a subdivision to both the City of Pocatello and Bannock County. The proposal was approved by both the city and the county commission. The approvals were being appealed at the time of the hearing.

5. The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the availability of water in the area, the applicant decided that one well for every three or four residences would reduce the chance of local well interference and would also promote better maintenance by the owners. However, whether one well is drilled for each residence, on whether one well is drilled for every three or four residences, has no effect or whether the water supply is sufficient or insufficient for the purpose for which it is sought to be appropriated.

6. The application proposes that each of the residential lots within the subdivision will be two to three acres in size. The application proposes that only one-half acre of each lot be irrigated by the domestic well and that the remainder of each lot will not be irrigated.

7. The protestants are owners of nearby residences and lots of three to sixteen acres in size. The protestants allege that approval of the applications and diversion of water as proposed will result in a reduction in ground water levels and depletion of a limited aquifer to their injury.

8. Because of concerns about water availability, the applicant drilled an eight inch, 300 foot deep test well identified as the Iverson well. The Iverson well is located in the SENW, Section 19, T07S, R35E. The applicants retained John Welhan (Welhan), a professional geologist, to evaluate the effect on other wells of pumping the Iverson well and to generally determine ground water availability in the Gibson Jack Creek drainage.

9. The Iverson well was tested on January 11, 1996. During the test, between 20 and 38 gallons per minute were diverted for 7.3 hours, resulting in a drawdown of 136 feet in the Iverson well.

10. A recording device was placed in a well owned by Chad Nelson, located approximately one-quarter mile away from the Iverson well. The water level in the Nelson well declined 0.02 feet during pumping of the Iverson well.

11. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that pumping from the wells proposed by the applications would not cause local drawdown interference if the proposed wells are constructed at least 600 feet from other wells. He also concluded that the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the

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ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer to the approximate level of the previous year.

12. Welhan stated that the storage in the aquifer might not be sufficient to satisfy all the uses if there are extended droughts or if a large number of water users divert additional water from the aquifer. Welhan testified that the local aquifer in the mouth of the Gibson Jack Creek drainage will sustain the withdrawals from existing wells and also the additional ten wells proposed by these applications during normal to high precipitation years. Welhan stated that wells east and north of the proposed subdivision could experience problems during low recharge years.

13. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deep aquifer if they deepened their wells. Welhan was uncertain about the existence or capacity of the deep aquifer, however.

14. Sherl Chapman, a geologist retained by the applicant, testified that he is familiar with water levels in the area. Chapman derived some aquifer values based on tests he had conducted. He concluded that there is sufficient water for ten domestic wells, each with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer will not produce sufficient water for irrigation of the entire 119 acres within the proposed subdivision.

15. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The location of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

16. Richard Hollingsworth testified his domestic well water levels have declined 63 feet from the first measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

17. Everett Diller (Diller) stated that he has lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square foot (0.16 acre) front lawn in the summer with his domestic well.

18. Diller also owns an irrigation well that irrigates approximately four acres. Diller hasn't experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

19. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver drilled a

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new well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after drilling a new domestic well. Oliver irrigates a 5,000 square foot (0.11 acre) lawn.

20. Harvey Pickens (Pickens) owns both a domestic well and an irrigation well located south of the proposed place of use. Both of the wells are approximately 300 feet deep.

21. Pickens' domestic well was drilled in 1969. Pickens purchased the property in 1972. During the first few years, Pickens' domestic well produced sufficient water. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

22. Pickens' irrigation well was drilled in 1992. In the spring of 1996, Pickens could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

23. Mary Harling (Harling) owns a well that is 115 feet deep. When her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. During late 1996, Harling could not run a clothes washer and a dish washer simultaneously because her pump would not produce enough water.

24. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulties in diverting sufficient water.

25. The testimony of the experts retained by the applicant and the testimony of the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought or lower than average precipitation, the limited ground water supply in the Gibson Jack drainage will not supply sufficient water for both the proposed use and existing uses. Domestic uses, particularly in-house culinary uses, are not amenable to curtailment during periods when the water supply is not adequate.

26. During periods of low precipitation, the domestic uses proposed will consume ground water that should be delivered to earlier-in-time water right holders.

27. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

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CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor . . . .

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some greenery associated with their homes. Domestic water users have an absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty irrigating greenery associated with their homes.

5. Future lot owners should not be misled into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier in time water uses.

6. There is insufficient water for the uses proposed by the applications.

7. The applicant has sufficient financial resources to develop the proposed project.

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8. The applicant is not seeking a permit for speculation or delay.

9. The use proposed by the applications is not in the public interest because the quantity of water under existing water rights would be reduced, and the water supply is not sufficient for the purpose for which it is sought to be appropriated.

10. The use proposed by the applications is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are REJECTED and issuance of permits for the applications is REFUSED.

Dated this 11th day of July, 1997.

KARL J. DREHER
Director

MICROFILMED
APR 2 8 1998

CERTIFICATE OF SERVICE

I do hereby certify that on this 11th day of July, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing FINAL ORDER to the following:

F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary

MICROFILMED
APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE, aka WILDHORSE RIDGE SUBDIVISION.	**ORDER DENYING PETITIONS FOR RECONSIDERATION**

A recommended order for the above-listed applications for permit was issued on February 4, 1997, and was mailed to the parties on February 5, 1997. On February 24, 1997, the Department of Water Resources (IDWR) received a letter from Everett & Fran Diller, who were protestants in the contested water right matter, objecting to portions of the recommended order. On February 25, 1997, the department received a letter from Richard M. Hollingsworth, another protestant, objecting to the recommended order. The letter from Hollingsworth stated that the letter was a petition for reconsideration. Diller's letter did not state that he was seeking reconsideration.

Rule 720.02.a. of IDWR's Rules of Procedure states that a party may file a petition for reconsideration with the hearing officer within 14 days of the service date of the recommended order. Rule 720.02.a. also states that if the hearing officer does not dispose of a petition for reconsideration within 21 days, it is denied. Rule 720.02.b. states that exceptions to a recommended order may be filed with the director within 21 days after the recommended order is issued, or a petition for reconsideration is denied.

The letters from the protestants were received by IDWR later that 14 days after service of the recommended order. The petitions for reconsideration should be denied.

ORDER

IT IS HEREBY ORDERED that, to the extent the letters from the protestants were intended to be petitions for reconsideration, the petitions are DENIED.

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IT IS FURTHER ORDERED that the documents submitted by the protestants will be considered as exceptions filed within 21 days after the issuance of the recommended order.

IT IS FURTHER ORDERED that the parties have 21 days from the date of this order to file further exceptions with the department.

Dated this 20th day of March, 1997.

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I do hereby certify that on this 20th day of March, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER DENYING PETITIONS FOR RECONSIDERATION to the following:

F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
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Harold Jones
Department of Water Resources
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Richard Hollingsworth
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9685 Heather Rd.
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204

SUE TAYLOR
Senior Secretary

MICROFILMED
APR 28 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE, aka WILDHORSE RIDGE SUBDIVISION.	)	**RECOMMENDED ORDER**

On July 12, 1996, Gibson Jack Joint Venture (applicant) filed 10 applications for permit to appropriate water for domestic purposes with the Department of Water Resources (department). Guy Anderst, Chris Pien and Tom Iverson are partners in Gibson Jack Joint Venture. The applications were protested by Richard Hollingsworth. Everett Diller and Clark Kelly also filed untimely protests. The department granted intervenor status to Everett Diller and Clark Kelly. Richard Hollingsworth, Everett Diller and Clark Kelly will hereafter be referred to as "protestants."

A hearing was conducted on October 22, 1996 in Pocatello, Idaho. The hearing was continued and completed on October 30, 1996.

Based on the testimony and evidence presented at the hearing, the hearing officer recommends the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 propose diversion of ground water to serve the domestic needs of up to four residential homes per domestic well.

2. The applications propose to cumulatively supply water to a 119 acre 38 lot subdivision in the Gibson Jack Creek drainage, tributary to the Portneuf River, located southeast of the City of Pocatello. The proposed points of diversion and places of use are all located in Section 19, T7S, R35E, B.M. The exact location of the proposed points of diversion and places of use within Section 19 are described as follows:

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Water Right No.	Point of Diversion	Place of Use
29-08175	NENW	NENW
29-08176	SENW	SENW
29-08177	SWNW	SWNW
29-08178	SWNW	SWNW
29-08179	SWNW	SWNW
29-08180	NENW	NENW
29-08181	NENW	NENW
29-08182	NWNW	NWNW
29-08183	NWNW	NWNW
29-08184	NWNW	NWNW

3. The 119 acre parcel was previously considered for a subdivision in the mid-1980's. The Bannock County Commission rejected the proposal, and the rejection was confirmed by the district court of the State of Idaho.

4. The applicant proposed a new subdivision to both the City of Pocatello and Bannock County. The proposal was approved by both the city and the county commission. The approvals are currently being appealed.

5. The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the availability of water in the area, however, the applicant decided that one well for every three or four residences would reduce the chance of local well interference and would also force better maintenance by the owners.

6. Each of the residential lots within the subdivision will be two to three acres in size. The applications propose one-half acre of irrigation per residential lot. The remainder of each lot will remain in natural vegetation.

7. The protestants are owners of nearby residences and lots from three to sixteen acres in size. The protestants allege that approval of the applications and diversion of water as proposed will result in a reduction in ground water levels and depletion of a limited aquifer to their injury.

8. Because of concerns of water availability, the applicant drilled a test well referred to as the Iverson well. The Iverson well is located in the SENW, Section 19, T07S, R35E. The applicants hired John Welhan (Welhan), a professional geologist, to evaluate the effect pumping from the well would have on other wells and to generally determine ground water availability in the Gibson Jack Creek drainage.

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9. The Iverson well was tested on January 11, 1996. It pumped between 20 and 38 gallons per minute. A recording device was placed in a well owned by Chad Nelson. The Nelson well is located approximately one-quarter mile away from the Iverson well.

10. Based on the well test, Welhan estimated the aquifer's water holding capacity, its transmissivity, and the possibility of interference with other wells. He concluded that there would be very little local interference caused by the proposed wells. He also concluded that most of the ground water is diverted from storage that recharges annually to an aquifer of limited capacity. He concluded that pumping during the irrigation season decreases the ground water level in the aquifer, but precipitation during the non-irrigation months recharges the aquifer and refills the aquifer to the approximate level of the previous year.

11. Welhan stated that the storage in the aquifer might not be sufficient to satisfy all the uses if there are extended droughts or if a large number of water users divert additional water from the aquifer. Welhan testified that the local aquifer in the mouth of the Gibson Jack Creek drainage will sustain the withdrawals from existing wells and also the additional ten wells proposed by these applications during normal to high precipitation years. Welhan stated that wells east and north of the proposed subdivision could experience problems during low recharge years.

12. Welhan's report speculates that there may be a shallow and a deep aquifer, and that some of the water users presently pumping from the shallow aquifer might be able to pump from the deeper aquifer if they deepened their wells. Welhan was uncertain about the existence or capacity of the deeper aquifer, however.

13. Sherl Chapman, a geologist representing the applicant, testified that he is familiar with water levels in the area, and that he had also derived some aquifer values based on tests he had conducted. He concluded that there was sufficient water for domestic wells with a production rate of between 25 and 35 gallons per minute. He concluded that the aquifer would not produce sufficient water for irrigation of all the lands within the proposed subdivision.

14. Several owners of residential or agricultural properties surrounding the proposed place of use testified regarding declining ground water levels in existing wells. The location of most of the wells are depicted on Figure 1 of applicant's exhibit no. 4.

15. Richard Hollingsworth testified his domestic well water levels have declined 63 feet from the first measurement in July 1978 to a measurement in July 1993. He testified that he cannot irrigate his one-half acre of lawn during the summer. He also testified that sometimes there is insufficient water to flush a toilet during the summer.

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16. Everett Diller (Diller) stated that he had lived in the Gibson Jack Creek area since 1978. He testified the water supply was good until a few years ago. He testified he can only irrigate a 7200 square feet front lawn in the summer with his domestic well.

17. Diller also owns an irrigation well that irrigates approximately four acres. Diller hasn't experienced any pumping problems with his irrigation well. The irrigation well is 265 feet deep, approximately 100 feet deeper than the domestic well.

18. Michael Oliver (Oliver) testified that a domestic well was drilled on his property in 1991 to a depth of 180 feet. During 1994, the well was pumping air, and Oliver redrilled his well in December 1994 to a depth of 300 feet. Oliver did not testify that he experienced any water shortages after redrilling his domestic well. Oliver irrigates a 5,000 square foot lawn.

19. Harvey Pickens (Pickens) owns both a domestic well and an irrigation well located south of the proposed place of use. Both the wells are approximately 300 feet deep.

20. Pickens' domestic well was drilled in 1969. Pickens purchased the property in 1972. During the first few years, Pickens' domestic well produced sufficient water. During the last six to eight years, however, the domestic well has not produced sufficient water for domestic use.

21. Pickens' irrigation well was drilled in 1992. In the spring of 1996, Pickens could only pump for four hours. In the fall of 1996, he could only pump for 30 minutes.

22. Mary Harling (Harling) owns a well that is 115 feet deep. When her domestic well was drilled in 1978, the water level was within 50 feet of the land surface. Since 1978, Harling has lowered her pump 20 feet, and in 1996, began experiencing problems again. During late 1996, Harling could not run a clothes washer and a dish washer at the same time because her pump would not produce enough water.

23. Michael Nix testified his well was drilled in 1986 to a depth of 260 feet. Larry Bybee testified he owns a domestic well drilled to a depth of 180 feet. Both testified about declines in ground water levels and difficulty in diverting sufficient water.

24. The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought or lower than average precipitation, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses.

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25. During periods of low precipitation, the domestic uses proposed will remove water from the system that should be delivered to earlier-in-time water right holders.

26. Diversion of water by a new domestic water user for in-house culinary use will not significantly reduce water supplies available to holders of earlier in time water rights, because the use is essentially non-consumptive.

27. The protestants stipulated that the applicant has sufficient financial resources to develop the project and that the applications are not proposed for purposes of speculation or delay.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor . . . .

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some greenery associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for in-house culinary use; water to drink, to shower with, to wash clothing, or to flush a toilet.

4. These absolute expectations are held by individuals who may buy lots from the applicant, by the protestants, and by other water users. Present water users are already experiencing in-house culinary water delivery problems and difficulty in irrigating greenery associated with their homes.

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5. Future lot owners should not be mislead into believing that an approval of a water right permit will satisfy their absolute expectation of delivery of domestic water on demand. At times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights. Total fulfillment of the expectations of the applicant's successors would injure earlier in time water uses.

6. There is sufficient water for strict, limited, in-house culinary use and water consumption for stock associated with future homes that will be built in the proposed development.

7. According to the testimony, there is insufficient water for irrigation of any land in the proposed place of use.

8. The applicant has sufficient financial resources to develop the proposed project.

9. The applicants are not seeking a permit for speculation or delay.

10. The use proposed by the applications is in the public interest, except where injury or insufficiency of the water supply relates to the public interest.

11. The use proposed by the applications is consistent with principles of conservation of the water of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-8183, and 29-08184 are PARTIALLY APPROVED to allow diversion for domestic purposes for in-house culinary use and direct water consumption by stock associated with a domestic dwelling only.

IT IS FURTHER ORDERED that the permits are conditioned as follows:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before the date in the Final Order.

2. Subject to all prior water rights.

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

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4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

5. A well drilled pursuant to this permit must be located at least 500 feet from any existing well. Well spacing closer than 500 feet must be approved by the Department of Water Resources.

IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

1. Well #1 is located between Lots 1 & 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.

2. Well #2 is located between Lots 3 & 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.

3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14 , and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.

4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.

5. Well #5 is located between Lots 11 & 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.

6. Well #6 is located between Lots 16 & 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.

7. Well #7 is located between Lots 23 & 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.

8. Well #8 is located between Lots 33 & 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.

9. Well #9 is located between Lots 30 & 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.

10. Well #10 is located between Lots 26 & 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

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Dated this 4th day of February, 1997.

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I do hereby certify that on this 5th day of February, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing RECOMMENDED ORDER to the following:

F. Randall Cline
F. Randall Cline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Harold Jones
Department of Water Resources
Eastern Region
900 N. Skyline
Idaho Falls, ID 83402

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204

JULIE L. YARBROUGH
Senior Secretary

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APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO INTERVENE IN PROTESTED APPLICATIONS FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178 29-08179, 29-08180 29-08181, 29-08182, 29-08183 & 29-08184 IN THE NAMES OF BOB TRIPP & ROBERT THOMPSON DBA GIBSON JACK	**ORDER GRANTING PETITION TO INTERVENE**

On August 17, 1996, Clark Kelly (petitioner) submitted to the Department of Water Resources (department) a petition for an order to intervene in the Matter of Applications for Permit Authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350).

Petitioner has shown sufficient direct and substantial interest in the above captioned matter without unduly broadening the issues for the department to grant the petitioner intervention into the matter.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Clark Kelly requesting intervention in any conference and/or hearing scheduled by the department in connection with the above captioned matter is **GRANTED.**

Dated this 17th day of October, 1996.

Gary Spackman

GARY SPACKMAN
HEARING OFFICER

MICROFILMED

APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO INTERVENE IN PROTESTED APPLICATIONS FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178 29-08179, 29-08180 29-08181, 29-08182, 29-08183 & 29-08184 IN THE NAMES OF BOB TRIPP & ROBERT THOMPSON DBA GIBSON JACK	**ORDER GRANTING PETITION TO INTERVENE**

On August 12, 1996, Everett D Diller (petitioner) submitted to the Department of Water Resources (department) a petition for an order to intervene in the Matter of Applications for Permit Authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350).

Petitioner has shown sufficient direct and substantial interest in the above captioned matter without unduly broadening the issues for the department to grant the petitioner intervention into the matter.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Everett D Diller requesting intervention in any conference and/or hearing scheduled by the department in connection with the above captioned matter is **GRANTED.**

Dated this 17th day of October, 1996.

Gary Spackman

GARY SPACKMAN
HEARING OFFICER

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APR 2 8 1998

Certificate of Mailing

I hereby certify that I mailed a true and correct copy, postage prepaid, of Order Granting Petition to Intervene to the following Person(s):

Everett D. Diller
2917 N. Stephanie
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Richard M. Hollingsworth
PO Box 4
9502 Gibson Jack
Pocatello, ID 83204-0004

F. Randall Kline, Chartered
PO Box 397
427 N. Main Suite L
Pocatello, ID 83204

Chris Pine
PO Box R
Pocatello, ID 83206

IDWR - Eastern Region
H. W. Jones

Dated this 18th day of October, 1996.

Roberta Loveall

Roberta Loveall
Water Distribution Section

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Well #1

FORM 202
2/96

Ident. No. 29-8175

RECEIVED
JUL 12 1996
Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Gibson Jack Joint Venture Phone 208-237-8180
   Mailing address P.O.Box R Pocatello Idaho 83206
2. Source of water supply groundwater which is a tributary of n/a
3. Location of point of diversion is Township 7S Range 35E Sec. 19, in the NE 1/4, NW 1/4, _____ 1/4, Govt. Lot _____, B.M., Bannock County;
   additional points of diversion if any: _____
4. Water will be used for the following purposes:
   Amount ~~0.02~~ 0.05 cfs for ~~culinary~~ Domestic purposes from ~~8/1~~ 1-1 to ~~8/1~~ 12-31 (both dates inclusive)
   (cfs or acre-feet per annum)
   Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)
   Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)
   Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)
   Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)
   Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) ~~0.02~~ 0.05 cfs and/or (b) _____
   cubic feet per second acre feet per annum
6. Proposed diverting works:
   a. Describe type and size of devices used to divert water from the source each domestic well to serve up to 4 households. 3 horsepower pump with water storage, and booster pump to serve each household.
   b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
   c. Proposed well diameter is eight inches; proposed depth of well is 300 feet
   d. Is ground water with a temperature of greater than 85°F being sought? no
   e. If well is already drilled, when? 10/95; Drilling firm Cushman;
   Well was drilled for (well owner) _____; Drilling Permit No. 29-95-E-0101
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (*minimum 1 year*)
8. Description of proposed uses (*if irrigation only, go to item 9*):
   a. Hydropower; show total feet of head and proposed capacity in KW. _____
   b. Stockwatering; list number and kind of livestock. _____
   c. Municipal; show name of municipality. _____
   d. Domestic; show number of households. 4 household per well. Irrigation will be limited to ½ acre per home
   e. Other; describe fully. Restrictive Covenant will limit each home to ½ acre of irrigation per home, and each home will have water meter.

MODIFIED

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9. Description of place of use:

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

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7S	35E	19					D												D

Total number of acres to be irrigated _____

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

11. a. Who owns the property at the point of diversion? Gibson Jack Joint Venture

b. Who owns the land to be irrigated or place of use? Gibson Jack Joint Venture

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

12. Remarks: _____

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

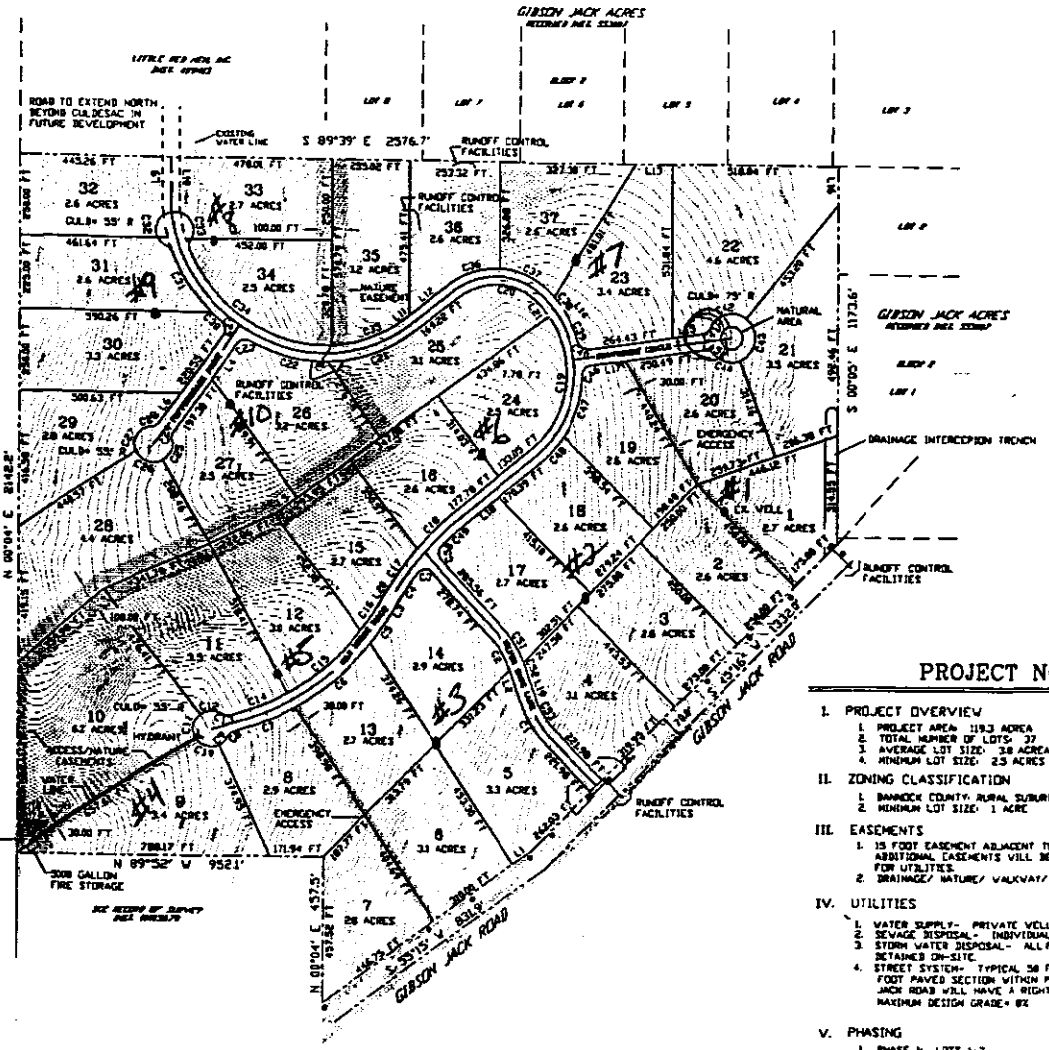
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APR 2 8 1998

Signature of Applicant (and title, if applicable)

Received by HWJ Date 7-12-96 Time _____ Preliminary check by _____
Fee $ 50.00 Receipted by HWJ # E022381 Date 7-12-96
Publication prepared by RB Date 8-1 & 8-96 Published in Id State Journal
Publication approved _____ Date _____

PRELIMINARY PLAT FOR:
WILD HORSE RIDGE SUBDIVISION

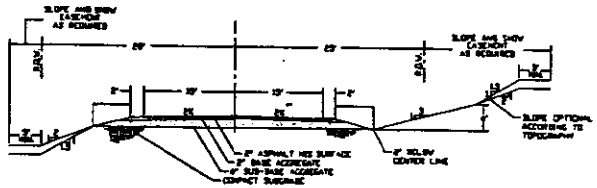
NW 1/4 SECTION 19
T. 7 S., R. 35 E., B.M.
BANNOCK COUNTY, IDAHO





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APR 2 8 1998

TYPICAL ROAD SECTION



CURVE TABLE

NUMBER	L FT
C1	114.12
C2	93
C3	3
C4	.32
C5	7.08
C6	312.79
C7	287.12
C8	26.77
C9	38.37
C10	78.83
C11	82.36
C12	68.57
C13	154.14
C14	206.79
C15	108.40
C16	181.98
C17	169.12
C18	44.94
C19	323.06
C20	289.01
C21	262.86
C22	44.31
C23	26.01
C24	73.60
C25	92.78
C26	161.78
C27	26.01
C28	44.01
C29	41.34
C30	264.72
C31	127.90
C32	127.74
C33	599.12
C34	269.43
C35	373.70
C36	198.53
C37	31.59
C38	318.79
C39	42.77
C40	30.58
C41	337.73
C42	77.36
C43	
C44	
C45	
C46	
C47	.8
C48	1210.64
C49	98.38
C50	47.02
C51	328.23
C52	81.31
C53	118.56

LINE TABLE

NUMBER	DISTANCE
L1	73.16 FT
L2	105.12 FT
L3	24.61 FT
L4	132.05 FT
L5	82.82 FT
L6	100.00 FT
L9	184.36 FT
L10	124.00 FT
L11	7.27 FT
L12	144.95 FT
L13	115.69 FT
L14	17.43 FT
L15	94.86 FT
L16	117.60 FT
L17	100.00 FT
L18	148.45 FT
L19	105.18 FT
L20	24.61 FT
L21	9.67 FT

PROJECT NOTES:

I. PROJECT OVERVIEW
1. PROJECT AREA: 119.3 ACRES
2. TOTAL NUMBER OF LOTS: 37
3. AVERAGE LOT SIZE: 3.8 ACREAS
4. MINIMUM LOT SIZE: 2.5 ACRES

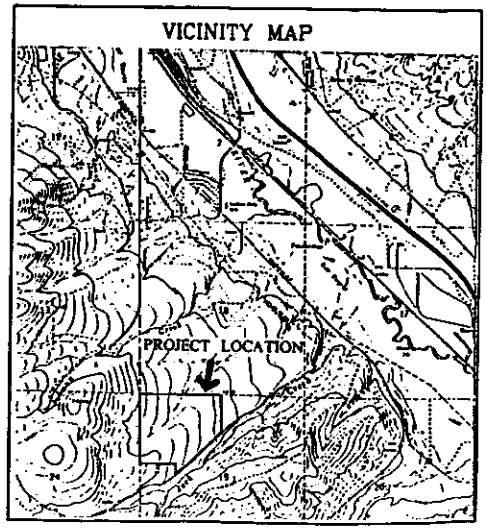
II. ZONING CLASSIFICATION
1. BANNOCK COUNTY: RURAL SUBURBAN
2. MINIMUM LOT SIZE: 1 ACRE

III. EASEMENTS
1. 15 FOOT EASEMENT ADJACENT TO ALL LOT LINES. ADDITIONAL EASEMENTS WILL BE PROVIDED AS NEEDED FOR UTILITIES.
2. DRAINAGE/ NATURE/ WALKWAY/ UTILITY EASEMETS

IV. UTILITIES
1. WATER SUPPLY- PRIVATE WELLS SERVING UP TO FOUR RESIDENCES.
2. SEWAGE DISPOSAL- INDIVIDUAL SUBSURFACE DISPOSAL SYSTEMS.
3. STORM WATER DISPOSAL- ALL POST-DEVELOPMENT FLOWS TO BE RETAINED ON-SITE.
4. STREET SYSTEM- TYPICAL 30 FOOT RIGHT OF WAY WITH A 30 FOOT PAVED SECTION WITHIN PROJECT. (SEE DETAIL) GIBSON JACK ROAD WILL HAVE A RIGHT OF WAY WIDTH OF 78 FEET. MAXIMUM DESIGN GRADE= 8%

V. PHASING
1. PHASE I: LOTS 1-7
2. PHASE II: LOTS 8-17
3. PHASE III: LOTS 18-26
4. PHASE IV: LOTS 19-37

VICINITY MAP

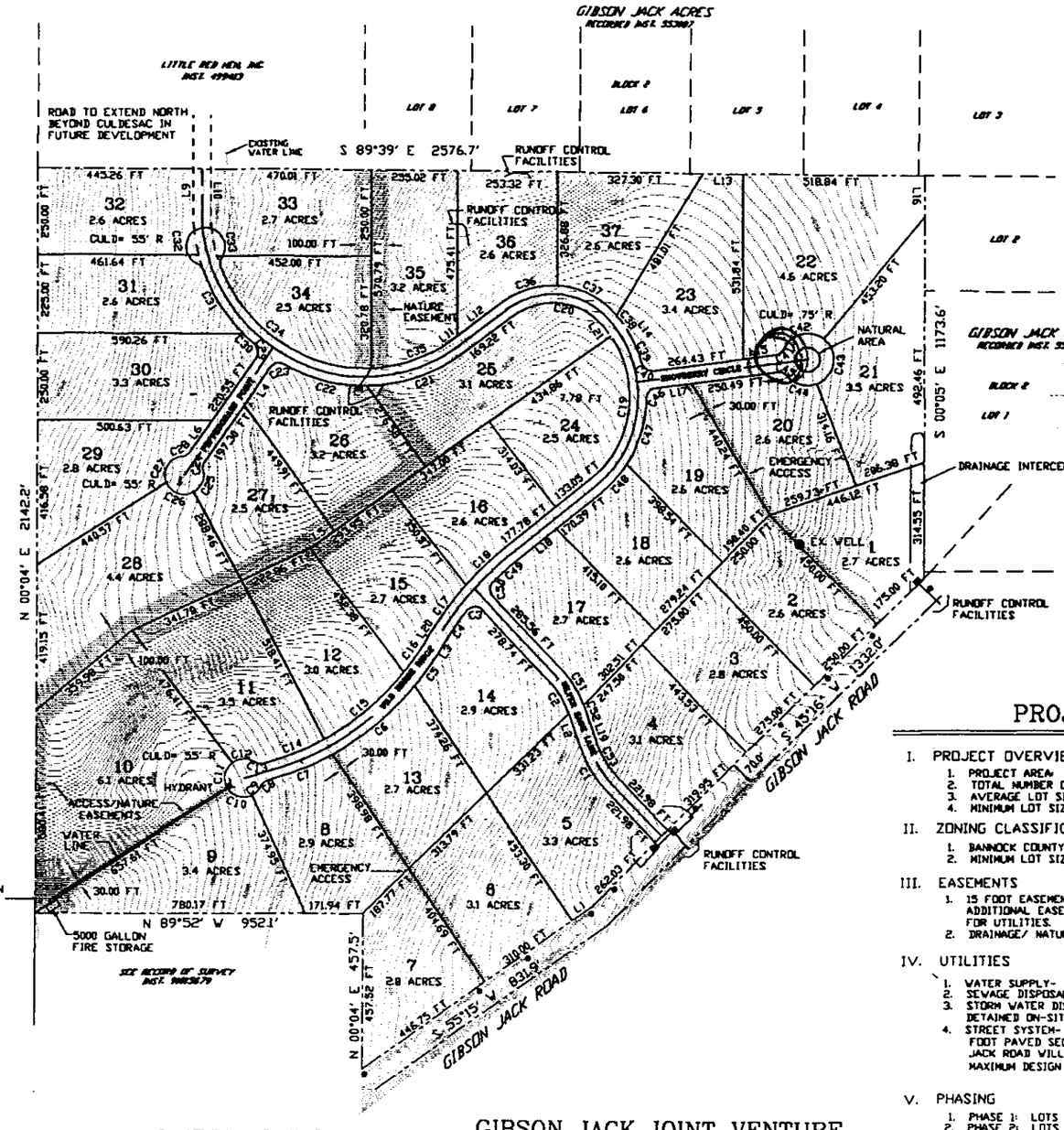


SHEPHERD ENGINEERING INC.
203 S GARFIELD AVE.
POCATELLO, ID. 83204
PHONE (208) 233-9793

GIBSON JACK JOINT VENTURE
GUY ANDERST
TOM IVERSON
CHRIS PEIN
P.O. BOX "R"
POCATELLO IDAHO 83206
(208) 237-8180

PRELIMINARY PLAT FOR:
WILD HORSE RIDGE SUBDIVISION

NW 1/4 SECTION 19
T. 7 S., R. 35 E., B.M.
BANNOCK COUNTY, IDAHO



CURVE TABLE

NUMBER	L FT
C1	140.12
C2	115.53
C3	50.73
C4	121.82
C5	117.08
C6	312.79
C7	207.12
C8	26.77
C9	38.37
C10	78.83
C11	82.36
C12	68.57
C14	194.14
C15	306.79
C16	100.40
C17	181.98
C18	169.12
C19	449.14
C20	323.06
C21	289.01
C22	282.88
C23	44.01
C24	26.01
C25	73.60
C26	92.78
C27	101.78
C28	26.01
C29	44.01
C30	41.34
C31	262.72
C32	127.08
C33	127.74
C34	599.12
C35	269.43
C36	173.70
C37	198.53
C38	31.59
C39	110.79
C40	42.77
C41	30.58
C42	137.73
C43	157.36
C44	93.45
C46	42.77
C47	200.90
C48	110.64
C49	98.38
C50	47.02
C51	128.23
C52	8.31
C53	118.56

LINE TABLE

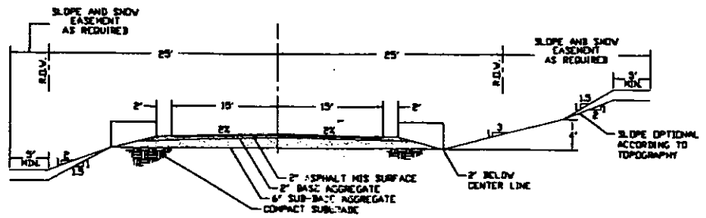
NUMBER	DISTANCE
L1	75.18 FT
L2	105.12 FT
L3	26.61 FT
L4	132.05 FT
L5	82.82 FT
L6	108.80 FT
L9	124.38 FT
L10	124.08 FT
L11	7.27 FT
L12	161.95 FT
L13	115.69 FT
L14	17.45 FT
L15	94.86 FT
L16	117.68 FT
L17	108.80 FT
L18	140.45 FT
L19	105.12 FT
L20	26.61 FT
L21	9.67 FT

N

200 0 200 600

Scale 1" = 200 ft
Contour Interval = 2 ft
DATE: March 29, 1996

TYPICAL ROAD SECTION



PROJECT NOTES:

I. PROJECT OVERVIEW
1. PROJECT AREA= 119.3 ACREA
2. TOTAL NUMBER OF LOTS= 37
3. AVERAGE LOT SIZE= 3.0 ACREAS
4. MINIMUM LOT SIZE= 2.5 ACRES

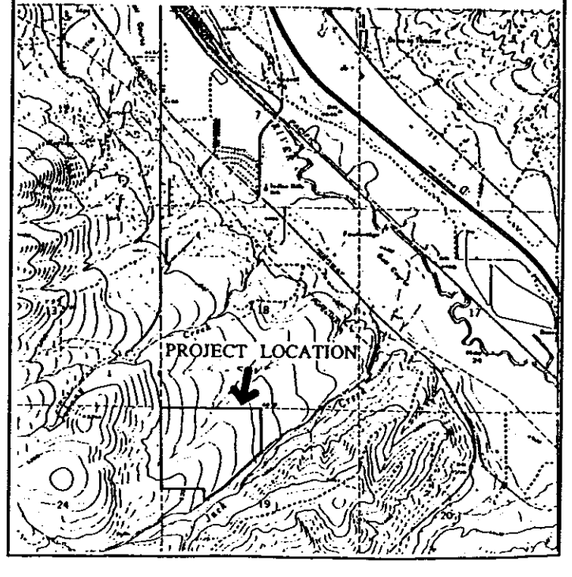
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2. MINIMUM LOT SIZE= 1 ACRE

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V. PHASING
1. PHASE 1: LOTS 1-7
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3. PHASE 3: LOTS 18-24
4. PHASE 4: LOTS 19-37

VICINITY MAP



SHEPHERD ENGINEERING INC.
203 S GARFIELD AVE.
POCATELLO, ID. 83204
PHONE (208) 233-9793

GIBSON JACK JOINT VENTURE
GUY ANDERST
TOM IVERSON
CHRIS PEIN
P.O. BOX "R"
POCATELLO IDAHO 83206
(208) 237-8180

PRELIMINARY PLAT FOR:
WILD HORSE RIDGE SUBDIVISION

NW 1/4 SECTION 19
T. 7 S., R. 35 E., B.M.
BANNOCK COUNTY, IDAHO

N

200 0 200 600

Scale 1" = 200 ft
Contour Interval = 2 ft
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ANGELO TRAVIS JR & CHRISTINE TRAVIS JOHSON INST. 516795

GIBSON JACK ACRES RECORDED INST. 553987

LITTLE RED HEN, INC INST. 499483

ROAD TO EXTEND NORTH BEYOND CULDESAC IN FUTURE DEVELOPMENT

EXISTING WATER LINE

S 89°39' E 2576.7'

RUNOFF CONTROL FACILITIES

NATURE EASEMENT

EMERGENCY ACCESS

NATURAL AREA

DRAINAGE INTERCEPTION TRENCH

EX. WELL 1

ACCESS/NATURE EASEMENTS

WATER LINE

HYDRANT

100'X100' FIRE SUPRESSION STORAGE AREA

5000 GALLON FIRE STORAGE

SEE RECORD OF SURVEY INST. 548579

GIBSON JACK ROAD

LOT 8 LOT 7 LOT 6 LOT 5 LOT 4 LOT 3 LOT 2 LOT 1

BLOCK 2

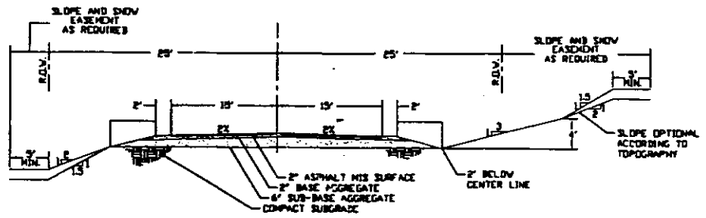
CURVE TABLE

NUMBER	L FT
C1	140.12
C2	115.53
C3	50.73
C4	121.82
C5	117.08
C6	312.79
C7	207.12
C8	26.77
C9	38.37
C10	78.83
C11	82.36
C12	68.57
C14	194.14
C15	306.79
C16	100.40
C17	181.98
C18	169.12
C19	449.14
C20	323.06
C21	289.01
C22	282.88
C23	44.01
C24	26.01
C25	73.60
C26	92.78
C27	101.78
C28	26.01
C29	44.01
C30	41.34
C31	262.72
C32	127.08
C33	127.74
C34	599.12
C35	269.43
C36	173.70
C37	198.53
C38	31.59
C39	110.79
C40	42.77
C41	30.58
C42	137.73
C43	157.36
C44	93.45
C46	42.77
C47	200.90
C48	110.64
C49	98.38
C50	47.02
C51	128.23
C52	8.31
C53	118.56

LINE TABLE

NUMBER	DISTANCE
L1	75.18 FT
L2	105.12 FT
L3	26.61 FT
L4	132.05 FT
L5	82.82 FT
L6	108.80 FT
L9	124.38 FT
L10	124.08 FT
L11	7.27 FT
L12	161.95 FT
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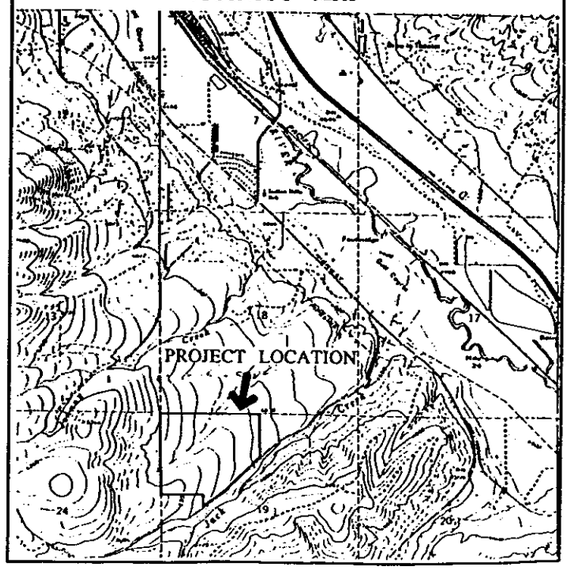
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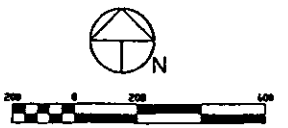


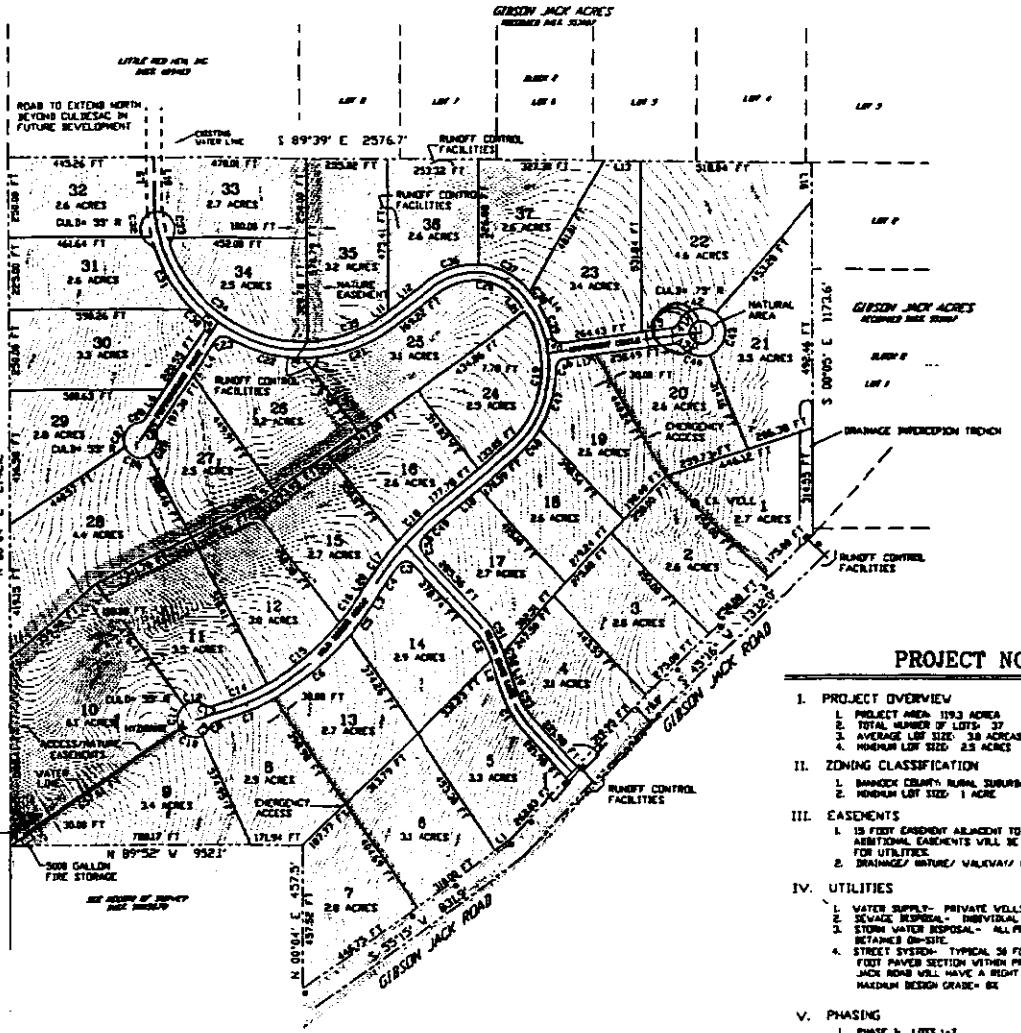
SEI
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PRELIMINARY PLAT FOR:
WILD HORSE RIDGE SUBDIVISION

NW 1/4 SECTION 19
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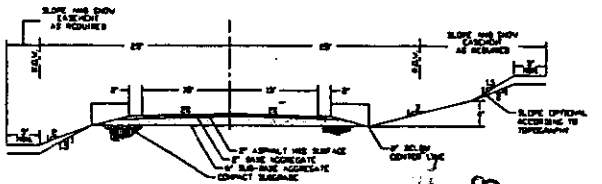
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C28	26.84	
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TYPICAL ROAD SECTION



MICROFILMED
APR 28 1998

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VICINITY MAP



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GIBSON JACK JOINT VENTURE
GUY ANDERST
TOM IVERSON
CHRIS PEIN
P.O. BOX "R"
POCATELLO IDAHO 83206
(208) 237-8180

IDWR

Memo

To: File

From: Lisa Hall

CC:

Date: 08/24/00

Re: Water Right No. 29-08175

I received a call today from Lauri Moncrief. She requested a copy of Applicant's Exhibit #4. This exhibit is a fourteen page document from the Idaho Geological Survey. After clearing this request with Phil Rassier, I mailed a copy to her at:

HC 79 Box 102A
Melba ID 83641

Peppersack, Jeff

From: Spackman, Gary
Sent: Friday, August 18, 2000 4:35 PM
To: Peppersack, Jeff
Subject: Request for Information

Jeff,

I wrote a decision several years ago for a subdivision in the Pocatello area in a little drainage called Gibson Jack Creek. The water right filings were 29-08175 through 29-08184. The director issued a final decision for the contested case.

A party to a contested case in Western Region requested a copy of the final order. I don't have a copy here. Could someone in your section mail a copy? The name and address are:

Lori Moncrief
HC Box 102A
Melba, ID 83641

Thanks.

Gary Spackman

Please send a copy of the Directors "Amended Final Order"

Mailed 8.22.00 KT

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

RECEIVED
DEC 9 1999
Department of Water Resources

COPY

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

December 7, 1999

Clerk of the Court
BANNOCK COUNTY COURTHOUSE
P. O. Box 4847
Pocatello, Idaho 83205

Re: Chris Pein et al. v. Idaho Department of Water Resources
Case No. CVOC-97-02001

Dear Clerk:

Enclosed for filing please find the Notice of Withdrawal of Appeal regarding the above-referenced matter. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

F. Randall Kline

FRK:ljw

Encl

c: Chris Pein
Richard Hollingsworth
Everett Diller
Clark Kelly
Phillip Rassier, Esq.

Re: W.R. No. 29-08175

COPY

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

Attorney for Petitioner

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHRIS PEIN d/b/a GIBSON JACK JOINT VENTURE a/k/a WILD HORSE RIDGE SUBDIVISION, Plaintiffs/Appellants, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Defendants/Respondent.	Case No. CVOC-97-02001 Judge: William Woodland **NOTICE OF WITHDRAWAL OF APPEAL**

COMES NOW the Appellants, by and through their counsel of record, F. Randall Kline of F. Randall Kline, Chartered, and hereby provides notice to the Court of withdrawal of the appeal. The Appellants have located alternate outside irrigation sources and the only significant remaining issue was the limitation and outside irrigation, together with the requirement of a "encased" outside facet from the foundation. Because of the additional outside sources for surface irrigation, not utilizing the wells which are the subject matter of this litigation, there is no basis for the continuation of the appeal, and, therefore, the same should be dismissed.

Each party agrees to bear their own costs and fees.

DATED this 12 day of December, 1999.

F. Randall Kline
Attorney for Chris Pein d/b/a
Gibson Jack Joint Venture a/k/a
Wild Horse Ridge Subdivision

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7 day of December, 1999, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax
Clark Kelly 9685 Heather Rd. Pocatello, Idaho 83204	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax
Everett Diller 2917 N. Stephanie Rd. Pocatello, Idaho 83204	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax
Phillip J. Rassier Deputy Attorney General P. O. Box 83720 Boise, Idaho 83720-0098	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax

Licensed Attorney

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

April 2, 1999

Phillip J. Rassier
Deputy Attorney General
Natural Resources Division
Water Resources Unit
1301 N. Orchard Street
Boise, Idaho 83706-2237

RECEIVED
APR 0 5 1999
Department of Water Resources

Re: Chris Pein d/b/a Gibson Jack Joint Venture v. Idaho Department of Water Resources; Case No. CVOC-97-02001

Dear Mr. Rassier:

Enclosed please find an Agreement which has been reached between the developers for Wild Horse Ridge Subdivision, known as Gibson Jack Joint Venture. The Agreement provides for domestic irrigation needs outside the home of Wild Horse Ridge Subdivision. With the additional water from the City, specifically the surface water rights of Gibson Jack Creek and Mink Creek, and water transmission lines appurtenant thereto, the finding that there is insufficient water for irrigation of any land in the proposed place of use, seems no longer to be applicable.

Additionally, condition no. 6 at page 10 of the Order states that the subdivision covenants and restrictions must limit use to in house culinary use and water for domestic animals also seems non-applicable given the agreement with the City of Pocatello. The provision that all outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in emergency also seems not applicable. The provision that all deeds executed by the permit holder to the original lot owners must contain a restriction that water right is limited to in house use and water for domestic animals also seems non-applicable given the Agreement with the City of Pocatello.

It is the intention that the wells will be used for in house culinary use and water for domestic animals. Outside irrigation will be accomplished with the water purchased from the City of Pocatello. That seems to be in compliance with the provision.

"It is further order that if the applicants want to seek water for irrigation or other uses, then they can deduct additional studies that demonstrates official water is available, and may reapply for appropriation in the future for those purchases. "

In as much as said water has been secured by the City of Pocatello, that issue seems moot.

By the efforts of the Gibson Jack Joint Venture group developing Wild Horse Ridge Subdivision it would appear that they will actually augment the availability of water, not further deplete it. Therefore, this matter seems ripe for resolution and agreement.

Please advise.

Sincerely,

F. Randall Kline

FRK:ljw

Encl

c: Clients

Glen

COPY

AGREEMENT

This Agreement is made and entered into this 28th day of December, 1998, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as "City," and Wild Horse Ridge Subdivision Water User Association, a home/land owner association established pursuant to recorded covenants, hereinafter referred to as "Association."

WHEREAS, the City owns surface water rights on Gibson Jack Creek and Mink Creek in Bannock County, Idaho, together with water transmission lines appurtenant thereto; and

WHEREAS, the Association needs a source of water to supply the domestic irrigation needs outside of the homes within the Wild Horse Ridge Subdivision and the subdivision is located within the area of City impact; and

WHEREAS, the City provides water to citizens within its service area;

NOW, THEREFORE, the parties do mutually agree as follows:

1. The City agrees to do the following:

a. Provide the Association up to a maximum quantity of two (2) cubic feet per second of non-potable, untreated surface water from its Gibson Jack Creek/Mink Creek gravity fed transmission system "as available" at its permitted diversion works located south of Gibson Jack Road.

b. Provide a filter for the diversion system.

2. The Association agrees to do the following:

a. Pay for the water diverted for use by the Association at the price set out hereinafter.

b. Construct the water delivery system within the boundaries of the subdivision.

c. Take all steps necessary to ensure that only Association members utilize the water diverted and only for purposes within the subdivision.

d. Pay for the costs of maintenance of the City surface water delivery system attributable to servicing the Association pursuant to this Agreement.

e. Pay for the costs of maintaining all main and service lines within the boundaries of the Association's subdivision.

f. Pay for the costs of construction of a filter house, necessary piping, and attendant parts.

g. Provide an area under easement protection for said filter house, piping, etc.

h. Construct and maintain a drainage system pursuant to plans submitted and approved by the City.

I. Provide adequate access and maintenance arrangements protected by easements for inspection, repair, replacement, and maintenance of said water system.

3. TERM. The term of this Agreement shall be twenty (20) years from the above date with an option to renew for two additional twenty (20) year periods. The option must be exercised by the Association by providing the City with written notice a minimum of ninety (90) days prior to the expiration of the initial or first additional period.

4. The rate paid for water delivered to the Association shall be based on the costs involved in maintaining the water delivery system, the amount of water delivered, plus an additional cost for out-of-city water users. The City will include this outside irrigation-only system in its water rate water rate studies. All

Association accounts will be subject to normal city payment collection and shut-off procedures as set out in the City's Municipal Code.

The initial water rate fee shall be $0.20 per thousand gallons plus $0.10 per thousand gallons as a surcharge for out-of-city water users, plus a meter service charge (each lot in the subdivision will be individually metered). The meter service charges are based on water meter size. Late fee charges and delinquent accounts will be handled in the same manner as in-city customer accounts. The $0.30 per thousand gallons rate shall be utilized for a period of three (3) years from the date of this Agreement. This three year period will provide information regarding the costs of the water delivery system. The parties will review all system use information available at the end of this three year period. The parties understand the rates may be renegotiated to reflect the true costs associated with this water delivery system. Both parties reserve the right to negotiate the water rate fee at the end of the initial three year period. If the parties cannot reach an agreement as to water rate fees within ninety (90) days of

the end of this initial three year period, either party may terminate this Agreement by giving the other party ninety (90) days' written notice of termination. The water rate fees will be set by City Council Resolution once this irrigation-only system has been included in the City rate study.

5. DISCLAIMER. The Association acknowledges that the City's duty to deliver water under this Agreement is subject to variables beyond the control of the City. These variables include, but are not limited to, seasonal weather conditions affecting the availability of water at the City's diversion works, senior water right owners making a call on junior water right holders, power outages which affect the City's ability to deliver water, acts of God, etc.

6. USE OF WATER. The Association agrees that the water delivered by the City is non-potable and untreated and is to be used solely for the irrigation of lawns or pastures within the subdivision and for fire protection purposes and not for any culinary/drinking water purposes.

7. INDEMNIFICATION. The Association agrees to indemnify and hold harmless, defend, and indemnify the City,

its agents, officials, and employees from any and all claims, actions, causes of action, suits, charges and judgments whatsoever arising out of the use of water delivered pursuant to this Agreement or arising out of the City's inability to deliver water due to circumstances beyond the control of the City or due to the circumstances set out in paragraph five (5) of this Agreement.

8. ASSIGNMENT. The Association shall not have the right to assign any of its rights or obligations under this Agreement without the prior written consent of the City.

9. WAIVER OF DEFAULT. The failure by either party to require the strict performance of any covenant, promise, or condition of this Agreement shall not affect said party's right to subsequently enforce the same, nor shall a waiver of default be construed to be a waiver of any succeeding default or a waiver of this clause. To be effective, any waiver must be in writing.

10. MERGER CLAUSE. This writing represents the entire Agreement between the parties. No prior promises, representations, or agreements, written or oral, shall

amend, change, or add to any of the express provisions herein.

11. CONSTRUCTION. This Agreement shall be construed pursuant to the laws of the State of Idaho. Venue shall be Bannock County. The parties agree that no construction of this Agreement shall be made in a court of competent jurisdiction against the interest of any party to the Agreement on the basis that the party had primary responsibility for drafting the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

CITY OF POCATELLO, a municipal corporation of Idaho

GREGORY R. ANDERSON, Mayor

ATTEST:

RHONDA L. JOHNSON, City Clerk

WILD HORSE RIDGE SUBDIVISION WATER USER ASSOCIATION

CHRIS PEIN, President

ATTEST:

GUY ANDERST, Secretary

STATE OF IDAHO)
:
County of Bannock)

On this 28th day of December, 1998, before me, the undersigned, a Notary Public in and for the State, personally appeared Gregory R. Anderson and Rhonda L. Johnson, known to me to be the Mayor and City Clerk of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing in : Pocatello
My commission expires: 4/26/2003

STATE OF IDAHO)
:
County of Bannock)

On this 28th day of December, 19 98, before me, the undersigned, a Notary Public in and for the State, personally appeared Chris Pein and Guy Anderst, known to me or proved to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing in : Preston
My commission expires: 4/28/2003

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION	)	**ORDER SETTLING TRANSCRIPT**

TO: ALL PARTIES OR THEIR COUNSEL OF RECORD

YOU ARE HEREBY NOTIFIED, That pursuant to I.R.C.P. 84(o), the transcript of the testimony and proceedings of the hearing before the Department of Water Resources in this matter has been lodged with the Department and made available to the parties on March 19, 1998. No timely objections to the transcript were filed before the Department.

NOW, THEREFORE, IT IS HEREBY ORDERED that no objections being made to the transcript in this proceeding before the Department; the transcript is hereby settled pursuant to the provisions of I.R.C.P. 84(o).

DATED This 6th day of April, 1998.

KARL J. DREHER
Director

MICROFILMED

APR 2 8 1998

CERTIFICATE OF SERVICE

I hereby certified that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on the 7th day of April, 1998.

Document served: ORDER SETTLING TRANSCRIPT

Persons served:

F. Randall Kline
F. Randall Kline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Deborah Drew-Ellis

Deborah Drew-Ellis
Legal Secretary

C:\DATA\WPDOCS\GIBSONJA\SETTLE.ORD

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APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION	**AGENCY'S CERTIFICATE OF RECORD**

STATE OF IDAHO)
) ss
County of Ada)

I, Karl J. Dreher, Director of the Idaho Department of Water Resources, do hereby certify that the above and foregoing record in the above-entitled matter was compiled and bound under my direction, and is a true and correct record of the pleadings, papers and proceedings therein as shown in the index to this record.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed the seal of the Department of Water Resources at Boise, Idaho this 8th day of April, 1998.

KARL J. DREHER
Director

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APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION	**NOTICE OF LODGING OF TRANSCRIPT**

TO: ALL PARTIES OR THEIR COUNSEL OF RECORD

YOU ARE HEREBY NOTIFIED, pursuant to I.R.C.P. 84(o), that the transcript of the testimony and proceedings of the hearing before the Department of Water Resources in this matter has been lodged with the Department in accordance with I.R.C.P. 84(k)(1).

YOU ARE FURTHER NOTIFIED, that the appellant, Chris Pein, dba Gibson Jack Joint Venture has paid the transcript preparation fee, and that the Department is enclosing with this notice a copy of the transcript to counsel for the appellant and to protestant/respondent Everett Diller;

THAT the parties have fourteen (14) days from the date of this notice in which to file any objection to the transcript;

THAT any objections to the transcript shall be made in writing to the Department and shall be determined thereby;

THAT upon failure of the parties to file any objection within such 14-day period, the transcript shall be deemed settled; and,

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APR 2 8 1998

THAT upon the settlement of the transcript, the Department shall file with the district court to which appeal has been made the original of the transcript together with a copy of the agency record and all exhibits offered or admitted in the proceeding.

DATED this 19th day of March, 1998.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 1998, I mailed a true and correct copy, postage prepaid, of the foregoing document to the following:

F. Randall Kline
F. Randall Kline, Chartered
P.O. Box 397
427 Main, Suite L
Pocatello, ID 83204

Richard Hollingsworth
9502 Gibson Jack
Pocatello, ID 83204

Everett Diller
2917 N. Stephanie Rd.
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Deborah Drew-Ellis
Legal Secretary

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APR 2 8 1998

RECEIVED
MAR 12 1998
Department of Water Resources

Everett D. & Fran Diller
2917 North Stephanie Road
Pocatello, Idaho 83204

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION	Case No. CVOC 97-02001
CHRIS PEIN d/b/a GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION Applicant-Appellant, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Respondent.	NOTICE OF APPEARANCE AND REQUEST FOR NOTICE

Comes now Everett D. & Fran Diller appears in the above entitled matter. Everett D. & Fran Diller further requests to receive notice of all filings in this matter pursuant to Idaho Code and I. R. C. P..

DATED this 10 day of March, 1998.

Everett D. Diller

Fran Diller

MICROFILMED
APR 28 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of March, 1998, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Document Served: **NOTICE OF APPEARANCE AND REQUEST FOR NOTICE**
Case No. 97-02001

Harold Jones
Department of Water Resources
Eastern Region
900 North Skyline
Idaho Falls, Idaho 83402

Karl J. Dreher, Director
Department of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098 By U.S. Mail

Phillip J. Rassier
Deputy Attorney General
Idaho Dept. of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098

F. Randall Kline
Post Office Box 397
Pocatello, Idaho 83204

Everett Diller

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APR 2 8 1998

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MAR 1 2 1998
Department of Water Resources

Richard M. Hollingsworth
Post Office Box #4
9502 Gibson Jack
Pocatello, Idaho 83204-0004

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION	Case No. CVOC 97-02001
CHRIS PEIN d/b/a GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION Applicant-Appellant, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Respondent.	NOTICE OF APPEARANCE AND REQUEST FOR NOTICE

Comes now Richard M. Hollingsworth appears in the above entitled matter. Richard M. Hollingsworth further requests to receive notice of all filings in this matter pursuant to Idaho Code and I. R. C. P..

DATED this 10 day of March, 1998.

Richard M. Hollingsworth

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APR 2 8 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of March, 1998, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Document Served: **NOTICE OF APPEARANCE AND REQUEST FOR NOTICE**
Case No. 97-02001

Harold Jones
Department of Water Resources
Eastern Region
900 North Skyline
Idaho Falls, Idaho 83402

Karl J. Dreher, Director
Department of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098

Phillip J. Rassier
Deputy Attorney General
Idaho Dept. of Water Resources
Post Office Box 83720
Boise, Idaho 83720-0098

F. Randall Kline
Post Office Box 397
Pocatello, Idaho 83204

Richard M. Hollingsworth

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APR 2 8 1998

COPY

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

January 8, 1998

RECEIVED
JAN 12 1998
Department of Water Resources

Clerk of the Court
BANNOCK COUNTY COURTHOUSE
P. O. Box 4847
Pocatello, Idaho 83205

Re: Chris Pein d/b/a Gibson Jack Joint Venture v. Idaho Department of Water Resources; Case No. CVOC-97-02001

Dear Clerk:

Enclosed for filing please find the Statement of Issues on Appeal regarding the above-referenced matter.

Thank you for your assistance in this matter. If you have any questions, please do not hesitatet to contact me.

Sincerely,

F. Randall Kline

FRK:ljw

Encl

c: Chris Pein
Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller
Karl J. Dreher, Director

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APR 2 8 1998

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

Attorney for Petitioner

COPY
RECEIVED
JAN 12 1998
Department of Water Resources

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHRIS PEIN d/b/a GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION, Plaintiff, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Defendants.	Case No. CVOC-97-02001 Judge: Smith **STATEMENT OF ISSUES ON APPEAL** Rule IRCP 84(f)(5)

COMES NOW Chris Pein d/b/a Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision, by and through his attorney of record, F. Randall Kline, and submits the Statement of Issues on Appeal pursuant to statute.

1. The Order Denying the Petition for Reconsider was done arbitrarily, capriciously, and with an abuse of discretion. It is requested that additional information be allowed to be presented. The hearing officer has apparently misconstrued the clarification of issues. It is, therefore, submitted that the Order Denying the Petition for Reconsideration dated November 25, 1997 violated the applicant's rights.

2. There is no justifiable or legitimate basis for the conclusion that there is insufficient water to permit up to 1/2 acre of yard watering.

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3. In the Amended Final Order dated October 29, 1997, finding of fact #13 is not supported in the record, but is an arbitrary and capricious assumption made by the director.

4. Finding #15 is not supported by the evidence, is arbitrary and capricious, and made upon unlawful procedure.

5. Although several land owners testified that they had problems with the wells, none of them provided any objective information with regard to problems with the wells, why they were having difficulties with their wells, or why their wells had drawn down. The director acted arbitrary and capriciously in not requiring objective evidence to be submitted, demonstrating why and how, and showing some degree of measurement of decrease of other land owner's wells. Several land owners and even some of the protestants testified that their wells were working fine. There should have been a requirement of the protestants, to some degree of objective measurement, to determine why some of their wells were not currently functioning, whether they be silted in, problems with hard water, or obtaining objective measurements as to well draw downs and well pumping rates of the alleged problem wells.

6. It is submitted that the only objective statements made as to availability of water indicated that there would be sufficient water to comply with the applicant's request which is in-house use, plus up to 1/2 acre per lot.

7. It is further submitted that the review was made upon unlawful procedure based upon information and belief, and representations made by one of the protestants that were inappropriate ex parte communications with the Department, which may have had an impact on the conclusion reached by the director.

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8. At finding #27 and #28, it indicates a:

> "diversion of water by new domestic water user for in-house culinary use and water for domestic animals would not significantly reduce water supplies available to holders of earlier-in-time water rights".

With that statement, the applicants agree. However, there have been no objective showing how water or lawn irrigating of up to 1/2 acre would interfere with earlier-in-time water rights, or the degree or volume of water would impact degree of removal, or the volume of water removed from the aquifer would cause any impact on earlier-in-time users.

9. Conclusion #5 states that:

> "at times, there will not be sufficient water to satisfy their expectations and the expectations of domestic and irrigation users with earlier uses and earlier priority water rights".

Nothing in the record indicates that the wells proposed by the applicant would have an adverse affect on other users. Nothing in the record indicates that there will be insufficient water for the proposed use of in-house and up to 1/2 acre. As such, the conclusion reached is arbitrary, capricious, and an abuse of discretion as it is based upon pure speculation and conjecture and not upon any objective facts set forth in the record.

10. Conclusion #7 which states that there is insufficient water for irrigation of any land in the proposed place of use, is not supported by the record, is based upon speculation, is arbitrary, capricious, and an abuse of discretion.

11. The approval with the condition that the subdivision's covenants and restrictions limit water use to in-house culinary use and water for domestic animals only, that all outside spigots on the homes on the subdivision be contained with breakable enclosures

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and are only to be used in emergency, and that the deeds require a restriction that the water is to be used only for in-house and domestic water animal purposes and the restriction for any outside watering be cause for the director of the department to prevent delivery of water from the well until the illegal use is curtailed and the civil penalties are paid, and those conclusions and the order is a violation of the constitutional and statutory provisions, is in excess of the statutory authority of the agency, is made upon unlawful procedure, and/or is arbitrary, capricious, and abuse of discretion.

12. The speculation that there may possibly be an adverse impact on established users (1) is not supported by the record, (2) is based upon speculation, and (3) contrary to the testimony provided by the only experts that testified in this matter.

13. Apparently, someone in the Department of Water Resources and/or the director utilized information which was not part of the record, therefore, the decision is in violation of constitutional statutory provisions, is in excess of the statutory authority of the agency, and made upon unlawful procedure and/or arbitrary, capricious and abuse of discretion.

14. It is further submitted that the finding that there is insufficient water to meet the applicants proposed use is not supported by substantial evidence in the record as a whole.

15. It is submitted that the findings by the Department will render the development unmarketable and as such the agency's determination has substantially prejudiced the rights of the applicant.

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APR 2 8 1998

16. The agency has failed, refused and neglected to consider other options, including allowing the applicant to immediately establish up to six wells and engage in "staged" or phased development to determine if in fact there is an injury or damage to others. The agency's refusal for additional hearings or considering other options is arbitrary, capricious, and an abuse of discretion.

DATED this 7 day of January, 1998.

F. Randall Kline
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of January, 1998, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones Department of Water Resources Eastern Region 900 N. Skyline Idaho Falls, Idaho 83402	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Clark Kelly 9685 Heather Rd. Pocatello, Idaho 83204	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Everett Diller 2917 N. Stephanie Rd. Pocatello, Idaho 83204	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Karl J. Dreher, Director Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098	X U.S. Mail _____ Express Mal _____ Hand Delivery _____ Fax

Licensed Attorney

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APR 28 1998

Filed 12/18/97

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

Attorney for Petitioner

COPY
RECEIVED
DEC 22 1997
Department of Water Resources

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHRIS PEIN d/b/a GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION, Plaintiff, vs. IDAHO DEPARTMENT OF WATER RESOURCES, Defendants.	Case No. CVOC-97-02001 Judge: **PETITION FOR JUDICIAL REVIEW** Fee Category: R-2 Fee: $ 72.00

JURISDICTION: Judicial review is sought pursuant to the Idaho Rules of Civil Procedure, including Rule 84 I.R.C.P.; Idaho Code § 67-5270 et seq.; and § 67-6501 et seq. This action arises in Bannock County and, therefore, it is appropriate to bring this matter before the Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock.

GENERAL STATEMENT OF CASE CATEGORY:

This case arises from an applications for water permit. On July 12, 1996, Gibson Jack Joint Venture applicant filed ten (10) applications for permit for domestic water for domestic purposes with the Department of Water Resources seeking to have wells drilled in the Gibson Jack area.

The applications were protested by Richard Hollingsworth and, ultimately, Clark Kelley and Everett Diller were permitted to intervene. The hearing was conducted on October 22, 1996 in

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Pocatello, Idaho and continued on October 30, 1996. The uncontroverted testimony of two expert witnesses indicated that there was sufficient water for domestic purposes including the irrigation of 1/2 acre per lot. The Department of Water Resources partially approved the application subject to conditions.

> "IT IS HEREBY ORDERED that application for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184 are PARTIALLY APPROVED to allow diversion for domestic purposes limited to in-house culinary use and water for domestic animals.
>
> IT IS FURTHER ORDERED that the permits are conditioned as follows:
>
> 1. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 2003.
>
> 2. The approved permits are subject to all prior water rights.
>
> 3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
>
> 4. The permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
>
> 5. A well drilled pursuant to this permit must be located at least 600 feet from any existing well. Well spacing closer than 600 feet must be approved by the Department of Water Resources.
>
> 6. The subdivision covenants and restrictions must limit water use to in-house culinary use and water for domestic animals only.
>
> 7. A homeowners association must be formed by the developer and actively enforce bylaws which set forth the water use restrictions.
>
> 8. All outside spigots on homes built in the subdivision must be contained in breakable enclosures and are only to be used in an emergency.

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APR 2 8 1998

9. All deeds executed by the permit holders to original lot owners must contain a restriction that the water right is limited to in-house use and water for domestic animals.

10. Diversion of water for irrigation or any other purpose outside the authorized culinary use and water for domestic animals is cause for the director of the department to prevent water delivery from a well until the illegal use is curtailed, civil penalties (if any) are paid, and mitigation (if any) for injury to senior water rights is made as required by the director.

IT IS FURTHER ORDERED that points of diversion and places of use within Wildhorse Ridge Subdivision are further defined as:

1. Well #1 is located between Lots 1 and 2, and serves Lots 1, 2, 19, and 20 under Permit No. 29-08175.

2. Well #2 is located between Lots 3 and 17, and serves Lots 3, 4, 17, and 18 under Permit No. 29-08176.

3. Well #3 is located at the common corner of Lots 5, 6, 13, and 14, and serves Lots 5, 6, 13, and 14 under Permit No. 29-08177.

4. Well #4 is located within Lot 9, and serves Lots 7, 8, and 9 under Permit No. 29-08178.

5. Well #5 is located between Lots 11 and 12, and serves Lots 10, 11, 12, and 15 under Permit No. 29-08179.

6. Well #6 is located between Lots 16 and 24, and serves Lots 16, 24, and 25 under Permit No. 29-08180.

7. Well #7 is located between Lots 23 and 37 and serves Lots 21, 22, 23, and 37 under Permit No. 29-08181.

8. Well #8 is located between Lots 33 and 34, and serves Lots 33, 34, 35, and 36 under Permit No. 29-08182.

9. Well #9 is located between Lots 30 and 31, and serves Lots 29, 30, 31, and 32 under Permit No. 29-08183.

10. Well #10 is located between Lots 26 and 27, and serves Lots 26, 27, and 28 under Permit No. 29-08184.

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IT IS FURTHER ORDERED that the use of water under this permit for purposes other than in-house culinary water and water for domestic animals is hereby DENIED.

IT IS FURTHER ORDERED that if the applicants want to seek water for irrigation or other uses, they may conduct additional studies that demonstrate sufficient water is available and may reapply for appropriation in the future for those purposes."

The limitations imposed would not allow any yard watering under this final order.

A Motion for Reconsideration was filed and an Order Denying the Petition for Reconsider was issued November 25, 1997.

Venue is proper in this manner before the District Court of the Sixth Judicial District, State of Idaho, in and for the County of Bannock, as the land is located within Bannock County and the application was processed in Bannock County.

The name of the entity for which the judicial review is sought is the Idaho Department of Water Resources.

The title of the District Court to which the action is taken is the Sixth Judicial District, State of Idaho, in and for the County of Bannock.

The appeal is taken from the Amended Final Order and the Order Denying the Petition for Reconsideration, together with all prior orders. The conditions are not supported by the record and are not arbitrary and capricious. All administrative remedies have been exhausted.

The last order appealed from was dated November 25, 1997. The matter was recorded and transcripts have been requested.

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The statement of issues will be filed within fourteen (14) days from the date of this Petition.

DATED this 18th day of December, 1997.

F. Randall Kline
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of December, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones Department of Water Resources Eastern Region 900 N. Skyline Idaho Falls, Idaho 83402	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax
Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax
Clark Kelly 9685 Heather Rd. Pocatello, Idaho 83204	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax
Everett Diller 2917 N. Stephanie Rd. Pocatello, Idaho 83204	X U.S. Mail ____ Express Mail ____ Hand Delivery ____ Fax
Karl J. Dreher, Director Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098	X U.S. Mail ____ Express Mal ____ Hand Delivery ____ Fax

Licensed Attorney

APR 28 1998

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

November 28, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for Permit Nos. 29-08175 through 29-08184 in the name of Gibson Jack Joint Venture aka Wildhorse Ridge Subdivision

Dear Interested Parties:

I have enclosed an order which denies your petitions for reconsideration in connection with the above referenced matter.

Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter of district court by filing a petition in the district court of the county in which:

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

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within 21 days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Region

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APR 2 8 1998

Karl— Norm Ney cc: Phil & Gary

RECEIVED
NOV 14 1997
Department of Water Resources

Received by fax 11/13/97.

EVERETT D. DILLER
2917 North Stephanie
Pocatello, Idaho 83204
208-234-2202

Richard M. Hollingsworth
9502 Gibson Jack
Pocatello, Idaho 83204
208-234-2234

Residents next to Gibson Jack Joint Venture aka Wildhorse Ridge Subdivision

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS 29-08175, 29-08176, 29-08177, 28-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08194, IN THE NAME OF GIBSON JACK JOINT VENTURE AKA WILDHORSE RIDGE SUBDIVISION.	PETITION FOR RECONSIDERATON

First: our questions and concerns in the past have never been answered. Questions and concerns have been asked by Richard Hollingsworth and Everett Diller, and other surrounding residents - why have they not been answered or at least given direction on how to go about getting answers ?

Question: on the AMEND FINAL ORDER page 10. Under this title: IT IS FURTHER ORDERED that the permits are conditioned as follows:

We don't completely understand Items number #1, #2, and #3. Especially on Item #2, with reference to all prior water rights, when we feel that ours are soon to be violated and taken away by your department.

Item #1 - does this mean they have six years to play with the permits.

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APR 28 1998

COMES NOW - the residents surrounding the Gibson Jack Joint Venture aka Wildhorse Ridge Subdivision, and hereby ask, that you disallowed any further drilling in our area and go back to your original order. The developers have not proven that adequate water exist for their purposes and yet, the surrounding residents, have given testimony showing the water difficulties that are presently existing. It is wrong to allow additional wells, when you even stated in your AMENDED FINAL ORDER on page nine, and I quote "Domestic water users are intolerant of deficiencies in water supply. Most domestic water users expect to be able to irrigate some landscaping associated with their homes. Domestic water users have an almost absolute expectation that there is sufficient water for inhouse culinary use; water to drink; to shower with, to wash clothing or to flush a toilet." end of quote.

With this statement, why are you allowing the permits ?? In the future your present decision will affect all of us who are presently surrounding this subdivision, because we will have to pick up the cost to bring in the city water into our area, when the existing water table is depleted. The cost of future court actions, to retain our water rights, and the cost pushed on us if you allow these permits. Bring in the city water - do it right.

Mr. Karl Dreher, you have so many red flags out, waving infront of you, that the water needed for this subdivision is not there. On your AMENDED FINAL ORDER page 8, part #26. The testimony established that during periods of drought, the limited ground water supply in the Gibson Jack drainage may not supply

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APR 2 8 1998

sufficient water for both the proposed use and existing uses". Again - red flag - MAY NOT BE THERE - the testimony of all of us who have lived here, some for 15 years, should show and account for something, we are presently having problems with the present water situation. (OUR ARE HAS EXPERIENCED 15 TO 20 YEARS OF STRAIGHT DROUGHT - THIS YEAR HAS BEEN THE BEST FOR MOISTURE - BUT WHAT IF WE HAVE ANOTHER 10-15-20 YEAR DROUGHT PERIOD - WHEN EXISTING WELLS ARE SUCKING AIR AL-READY- DO NOT ALLOW THE PERMITS) LET THE DEVELOPER HOOK INTO CITY WATER AND RESOLVE THE PROBLEM OF WATER USEAGE AND FIRE PROTECTION.

On your AMENDED FINAL ORDER, page 8 item #29. No one has stated - as a protestant, or even stipulated that the developers have sufficient financial resources to develop this project. On the contrary it has been just the opposite - THE DEVELOPERS INVESTED MONEY RECEIVED FROM TOM IVERSON FROM A UNION PACIFIC RAILROAD SETTLEMENT - THEY ARE PROPOSING TO DO THE SUBDIVISION IN PHASES, BECAUSE THE FINANCES ARE NOT THERE. In the very first meeting held with Mr. Spackman, held at the Pocatello Airport, Richard Hollingsworth wanted to make a statement on there money situation, and Randy Kline the attorney got all upset, and stated it was not an issue. But your department sent me a questionnaire reflecting this before the meeting was held. The developers and their attorney would not allow us to go into this subject. It is on record what was said - the developers do not have the money to complete the project - only if the sales of the lots go through, which makes the money available. Mr. Guy Anderst has stated several times to Richard Hollingsworth and others at meetings -

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that if this project doesn't go through he'll loose everything he has. At one time Mr. Anderst was on vacation during the summer months during the 1997 year, and it was reported that he stated, if the well permits did not go through he and Chris Pein were going to pull out and leave Tom Iverson (the individual who put up the money to purchase the ground) and leave Mr. Iverson hanging alone. This comment came from Mr. Kelly Clark (who lives near the proposed subdivision) and other railroad workers.

Now with reference to YOUR FINAL ORDER DATED 11 JULY 1997, WAS WITHDRAWN AND HAS BEEN REPLACED BY A NEW FINAL ORDER.

AS MR. KARL DREHER, THE DIRECTOR OF DEPARTMENT OF WATER RESOURCES FOR THE STATE OF IDAHO, INDICATED IN HIS "ORDER DENYING PETITION FOR RECONSIDERATION AND WITHDRAWING FINAL ORDER" DATED 6TH OF AUGUST 1997 WHERE HE MAKES THE COMMENTS THAT THE APPLICANTS PETITION FOR CONSIDERATION WAS UNTIMELY, THEREFORE, MUST BE DENIED - THIS DENIAL SHOULD HAVE BEEN UPHELD DUE TO THE FACT THAT MR. KLINE IS AN ATTORNEY, WELL VERSED IN THE TIME LIMITS, AND THE PROCEDURES AS OUTLINED BY THE DEPARTMENT OF WATER RESOURCES. BEING THAT THE REQUEST WAS UNTIMELY AND IT WASN'T EVEN SIGNED BY MR. KLINE, SO IT SEEMS TO SHOW THAT IT WAS SIMPLY A DELAY TACTIC OR AN ATTEMPT TO DISCREDIT PREVIOUS TESTIMONY OF THE PRESENT HOME OWNERS, BORDERING THE PROPOSED SUBDIVISION.

THE DIRECTOR THEN SET A CONFERENCE TO DISCUSS THEIR ISSUES WAS SCHEDULED FOR WEDNESDAY, 27 AUGUST 1997 AT 1:30 PM, THIS WAS CANCELLED WHICH WAS A GREAT INCONVIENCE FOR MOST OF THE RESIDENCE

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THAT PLANNED TO ATTEND, DUE TO THE FACT, THEY HAD TO USE VACATION TIME TO GET THE TIME OFF FROM THEIR PRESENT EMPLOYMENT AND MAKE OTHER ARRANGEMENTS IN ORDER TO ATTEND.

WITH REFERENCE TO LETTER DATED 22ND AUGUST 1997, BY MR. KLINE, SENT TO YOUR OFFICE. I QUOTE "1. THE AVAILABILITY OF WATER AND ALLEGING THAT THERE IS SUFFICIENT QUANTITY TO MEET THE NEEDS OF THE DEVELOPMENT AND ALSO PRIOR APPROPRIATORS IN THE WELL CONFIGURATION PURPOSED", END OF QUOTE. PEOPLE ON THE NORTH, SOUTH AND THE EAST SIDE OF THE PROJECT HAVE GIVEN TESTIMONY OF HAVING WATER PROBLEMS IN THE PAST, AND THAT THIS HAS BEEN A CONTINUING PROBLEM.

I OBJECT TO MR. KLINE REHASHING THE TESTIMONY ALREADY GIVEN BY THOSE WHO KNOW ABOUT THE WATER SITUATION AT FIRST HAND, AND BEING THE RESIDENCE'S WHO HAS LIVED AROUND THE SUBDIVISION USING WATER FOR YEARS HAVE TESTIFIED TO. I OBJECT TO ALLOWING A CONTINUING PERIOD OF MORE TESTIMONY. THAT WHICH HE STATES IN THIS SECTION MARKED AS NUMBER ONE, HAS ALL READY BEEN GONE OVER, AS THE RECORD SHOWS.

I HAVE SPOKEN WITH MR. BYBEE, WHO RESIDES NORTH OF THE PROPOSED SUBDIVISION, IN SEPTEMBER OF 1997, AND HE RELATED TO ME THAT HIS WELL HAS BEEN BREAKING SUCTION, (OR SUCKING AIR), AND THAT HE WAS UNABLE TO WATER HIS LAWN IN THE LAST COUPLE OF MONTHS, AND THAT IT WAS DRYING UP EVEN THOUGH IT HAS BEEN A VERY DAMP YEAR, CONSIDERED TO THE PAST YEARS OF DROUGHT WE'VE BEEN HAVING.

I HAVE ALSO TALKED WITH MIKE NIX, WHO LIVES NORTH EAST OF THIS SUBDIVISION. HE HAS STATED THE CERTAIN TIMES HE CAN RUN

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WATER AND WHILE DOING SO, HE HAS BEEN EXPERIENCING DISCOLORATION OF WATER FLOW THROUGH HIS WATER LINES. EVEN THOUGH HIS LAWN IS VERY SMALL AND HAS A FEW SMALL TREES TO WATER, THE WATER RECHARGE HAS NOT BEEN THEIR. HIS WELL IS ROUGHLY UNDER 2 YEARS OLD.

WITH REFERENCE TO NUMBER #2, AND I QUOTE "A DETERMINATION OF THE REASONS WHY OTHER WELLS IN THE AREA HAVE FUNCTIONED SATISFACTORILY, YET OTHERS HAVE NOT", END OF QUOTE.

THIS ALSO HAS BEEN DETERMINED AND GONE OVER, AND DISCUSSED AT THE MEETING HELD BY MR. SPACKMAN. THEY KEEP PUTTING THE BLAME ON THE WAY THE WELLS WERE DRILLED AND THE CONSTRUCTION OF THE WELLS, AND POOR MAINTENANCE, YET, THE MAN WHO DRILLED THEIR TEST WELL, WHICH WAS BOB CUSHMAN OF BLACKFOOT, IDAHO, WAS THE SAME INDIVIDUAL WHO DRILLED MY WELLS. AND HIS TESTIMONY WAS GIVEN AT THE HEARING, WHICH MR. KLINE DID NOT REQUEST A TRANSCRIPT OF, THAT PORTION OF HIS TESTIMONY IS AS MUCH REVELANT AS WHAT HE HAS REQUESTED.

WITH REFERENCE THE LAST ITEM, MARKED AS #3, AND I QUOTE "THE IMPACT OF THE PROPOSED WELLS ON OTHER EXISTING WELLS IN THE AREA", END OF QUOTE. THIS HAS ALSO BEEN TESTIFIED TO AT THE HEARING, WITH NO EVIDENCE, JUST SPECULATIONS. TO GIVE A EXAMPLE, THEIR IS 100 TO 150 FEET BETWEEN MY TWO WELLS, AND YET ON MY HOUSE WELL IT IS BREAKING SUCTION, AND YET ON MY IRRIGATION WELL, I AM HAVING NO PROBLEMS. THAT SHOWS ME THAT THEIR IS DIFFERENT LEVELS ON THE AQUIFER. THEREFORE, EVEN THE TEST WELL OF CHAD NIELSEN'S WELL MIGHT BE ON THE SAME ELEVATION LEVEL, THEY WOULD PROBABILITY BE ON DIFFERENT AQUIFER'S.

THE TEST WELL THEY DRILLED, SHOWN ON THE WELL LOG AS

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IVERSON'S WELL. IT WAS STATED BY THE WELL WITCHER, THAT THE DEVELOPERS USED, THAT IF THEY DRILLED DEEPER, AFTER GETTING 20 GALLONS PER MINUTE, THE WATER WOULD JUST COME GUSHING OUT, OVER FLOWING OUT OF THE PIPE. WELL, THE DEVELOPERS DID IT, AND NOTHING CHANGED AT ALL. BUT A PROBABLE DECREASE IN WATER FLOW. POINT BEING, THE AQUIFER IS AT ONE LEVEL AT THE TEST WELL, WHICH SHOOTS DOWN THE TESTIMONY BY THEIR EXPERTS THAT MORE AQUIFERS EXIST BELOW OTHERS. IT IS ALL SPECULATION, IN MY OPINION, NO FACTS, BUT THEIR SPECULATIONS AFFECT MY FUTURE WATER AVAILABILITY.

ON THE TEST WELL, I WOULD LIKE YOU TO REVIEW THE TESTIMONY OF MR. CUSHMAN, WHEN HE STATED WHY HE PUT 2 INCH PERFORATIONS AND 1 INCH AND SO FORTH. MR CUSHMAN STATED, THE DEVELOPERS WANTED TO MAKE SURE THAT THE WATER FLOW WAS HIGH. AND YET WHEN ASKED WHY MY WELL RECEIVED NONE, HE STATED IT DIDN'T NEED ANY PERFORATIONS.

THE TEST THAT THEY CONDUCTED ON THESE TWO WELLS, ONE BEING THE TEST WELL AND THE OTHER BEING CHAD NEILSONS WELL. THE NIELSON WELL HAD INSUFFICIENT WAITING TIME AFTER DRILLING TO RECORD A STABLE WATER LEVEL. THE NIELSEN WELL HAD NEVER BEEN USED FOR DOMESTIC USE, OR WATERING OF STOCK OR YARD USAGE. IT WAS A IDLE WELL.

IT IS MY OPINION THAT THE DEVELOPERS HAVE USED EVERY MEANS TO SNOW BALL THE FACTS, AND EVEN DECEIVE YOU IN ORDER TO PUSH THIS PROJECT THROUGH INCORRECTLY, AND CAUSING A GREAT HARDSHIP ON THE FUTURE RESIDENCE AND PRESENT RESIDENCE SURROUNDING THE SUBDIVISION.

I AM OPPOSED TO THE USE OF A PARTIAL TRANSCRIPT OF THE

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PROCEEDINGS. BECAUSE IT WAS A TWO DAY HEARING, AND THIS IS ONLY A SMALL PART OF THE EVIDENCE AND TESTIMONY GIVEN BY ALL THOSE INVOLVED. TO EXTRACT TESTIMONY OF TWO EXPERT WITNESSES, IS NOT A ACCURATE PICTURE, AND I FEEL THEY ARE TRYING TO DECEIVE YOU FOR A CHANGE OF YOUR PAST FINAL ORDER.

MR. WELHAM'S REPORT WAS TAKEN FROM THE EXISTING WELL LOGS OF THE SURROUNDING RESIDENTS, WHICH REFLECTS THE CONDITIONS AT THAT TIME WHEN THE WELL WAS FIRST DRILLED. ALL OF HIS CHARTS AND GRAPHS REFLECT THAT CONDITION - WHEN THE WELLS WERE ORIGINALLY DRILLED. HIS REPORT - OR AS YOU AND THE DEVELOPERS REFER TO IT AS A "EXPERTS REPORT" IS FALSE AND WRONG. IT DOES NOT SHOW THE EXISTING WELLS SURROUNDING THIS SUBDIVISION, AND REAL PRESENT WATER SITUATION AS IT IS NOW IN 1997. HIS REPORT DOES NOT REFLECT THE DRAWDOWN PROBLEM WHEN EXISTING WELLS ARE IN USE, NOR THE RECALL TIME TO REBUILD THE WELL BACK TO A PROPER WATER LEVEL (AS TO NOT BURN UP THE SUBMERGIBLE PUMPS). THERE REPORT WAS TO DECEIVE YOU -,AND IT APPEARS THEY HAVE SUCCEEDED. HIS REPORT DOES NOT SHOW THE PRESENT SITUATION - EVEN AT THE TIME OF YOUR DEPARTMENTS FIRST HEARING. WE HAVE REQUESTED, OVER AND OVER AGAIN, THAT A PROPER STUDY SHOULD BE DONE - BEFORE EVER ISSUING THESE WELL PERMITS. I FEEL THAT YOUR DEPARTMENT IS GOING HALF COCKED ON THE ISSUANCE OF THESE PERMITS, WITH NO CONSIDERATION TO THE COST AND PROBLEMS AND HARDSHIPS FOR THOSE WHO ARE PRESENTLY LIVING AROUND THIS SUBDIVISION - WHO HAVE WELLS, AND HAVE GIVEN TESTIMONY TO THE WATER DIFFICULTIES WE ARE EXPERIENCING.

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I FEEL VERY STRONGLY, TO BE FAIR WITH BOTH SIDES, THAT A FULL TRANSCRIPT SHOULD OF BEEN PROVIDED FOR YOU. TO GIVE YOU A FULL VIEW OF THE TESTIMONY GIVEN AND SUBMITTED. COMMON SENSE SHOULD TELL YOU AS IT DOES ME, THAT THEY ARE ATTEMPTING TO TAKE YOUR MIND OFF THE WHOLE PICTURE AND JUST FOCUS ON THE TESTIMONY OF TWO PEOPLE, A PARTIAL TRANSCRIPT IS WRONG. MR KLINE REQUESTED AND INSISTED THAT MR. HOLLINGSWORTH AND I PROVIDE THE COURT WITH A FULL TRANSCRIPT OF ALL THE MEETINGS BEFORE OUR APPEAL PROCESS WOULD BE ACCEPTED BY THE BANNOCK COUNTY COMMISSIONERS. HE QUOTED LAW AND BYLAWS STATING IT NEEDED TO BE DONE. SO I QUESTION WHY THIS PROCEDURE OF HIS IS ALLOWED BY YOUR DEPARTMENT.

PLEASE REFER TO ADDITIONAL INFORMATION SUBMITTED WITH THIS REQUEST - A SEPARATE ATTACHMENT. REFER TO ITEMS MARKED WITH WHITE TABS, AND ARE HIGH LIGHTED IN YELLOW. THANK YOU FOR YOUR CONSIDERATION.

EVERETT D. DILLER

RICHARD M. HOLLINGSWORTH

DATED: 11 NOVEMBER 1997

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The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

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Department of Water Resources

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

November 12, 1997

Karl J. Dreher, Director
State of Idaho
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83720-0098

VIA: FEDERAL EXPRESS

Re: In the Matter of Application for Permit Nos. 29-08175 through 29-08194 in the name of Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision

Dear Mr. Dreher:

Enclosed for please find the Petition for Reconsideration of the Amended Final Order dated October 30, 1997, which I am filing on behalf of my clients, Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision.

If you have any questions, please do not hesitate to contact me.

Sincerely,

F. Randall Kline

FRK:ljw

Encl

c: Chris Pein/Guy Anderst
Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller

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P.O. Box 397
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Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

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

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 28-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08194 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION.	**PETITION FOR RECONSIDERATION**

An Amended Final Order was issued on the 30th day of October, 1997. Pursuant to Idaho Code § 67-5246(4), a Petition for Reconsideration may be filed within fourteen (14) days of the service of that order. The applicants Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision request that the matter be reconsidered prior to seeking judicial review.

The basis for the request for reconsideration is there is nothing in the record which disputes that which was concluded by John Welhan and Sherl Chapman that there is sufficient water in the aquifer for the uses proposed by the application, including one-half acre of irrigation per lot.

The assertion that there is by implication "insufficient water" for the proposed use to include landscape irrigation during low precipitation years is not supported in the record. Mr. Welhan clarified his testimony at page 43 by saying:

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"So, no, I'm definitely not saying that we've got a long term problem. As long as we have annual recharge and replenishment, it appears that the aquifer is capable of replenishing itself and sustaining the kind of usage we are talking about". (What is proposed in the application).

A specific exception is made with regard to finding of fact #15 as mischaracterizing the testimony of the parties. Both Chapman and Welhan testified that there was sufficient water for the proposed use and no evidence was ever presented to challenge that. The assertion that "the testimony of Welhan either conflicted with this conclusion or was uncertain to support the conclusion" is not supported by the record. Further, the conclusion of Chapman "not being supported by sufficient evidence" is patent nonsense. He did present his information. Any challenge with regard to that information should have been done by the protestants. Chapman did indicate that he was familiar with the ground. He had studied it years before. He had reviewed Welhan's report and it was his conclusion that there would be and was sufficient water to support the proposed development including the irrigation of one-half acre.

What is unsupported is the adjacent lot owners who are opposing the development of the subdivision, none of whom provided any objective evidence, in any context, and in fact they sustained declines. None of the protestants produced objective findings with regard to nonavailability of water; none of them produced any evidence as to why they had sustained any decrease in water, if any; none had their well tested or inspected; and, none could produce any logs, data, records, or measurements showing decrease in water, decrease in water quality or quantity, or any other

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objective data. They could not testify whether their well decreased production, if in fact they had, because of hard water, because of settling, or because of a variety of other potential reasons. None of the protestants were able to demonstrate, in any fashion, any objective information or data as to why they were having problems with their wells, if in fact they were having problems with their wells, which remains an item of dispute.

The applicants in this matter are not seeking to irrigate all the lands within the proposed subdivision. They are seeking to irrigate or have availability for watering up to one-half acre of land surrounding their adjacent residential houses. Sherl Chapman concluded that there was sufficient water for ten (10) domestic wells, each with a production rate of between 25 and 30 gallons per minute. None of the protestants were able to demonstrate that his values were in error.

Further, the concerns regarding an extended drought seem to be ill-founded. Dr. Welhan testified that there was sufficient water with regard to the test well and Pocatello had recently completed an extended drought period, yet there seems to be sufficient water at the conclusion of the drought. I direct the attention to page 12 and 13 wherein Mr. Welhan testified:

> "Kline: Do you think there is sufficient water?
>
> Welhan: Yes I do. As long as you realize that water, most of it being withdrawn from storage, so we have to understand what that storage, that bank account is. As long as our estimates right now are somewhere in the right ball park, close to the actual values that we should be using, then yes we do have enough water in it.
>
> Kline: Is there evidence to indicate that there is insufficient water for the purpose that this applicant is seeking?

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Welhan: No.

Kline: Is the proposed use contrary to the conservation of Water Resources within the State of Idaho?

Welhan: It's consistent with. . ."

It is additionally requested that the Request for Reconsideration filed by the applicants on June 24, 1997 additionally be reviewed.

It is further requested that the Petitioners have the opportunity to augment and supplement the record with regard to additional information from Mr. Welhan and Mr. Chapman, the only experts who testified in this matter.

At page 7 of the transcript, Dr. Welhan indicates:

". . .I have to give my expert opinion. Which is, I believe there is enough water based on the information we have in hand today."

At pages 42 and 43 of the record, when questioned about drought periods and declines, apparently the fact finder is making assumptions which again appear not to be supported by the record. Welhan testified:

"No. No. It appears to be continually recharged, replenished. . .As long as we have annual recharge and replenishment, it appears that that aquifer is capable of replenishing itself and sustaining the kind of usage we are talking about".

It is asserted that anyone can take a matter to extremes, but after the periods of drought recently sustained in Pocatello, it appears that based on Dr. Welhan's testimony a typical six or seven year drought would not significantly adversely effect the availability of water. Even with that typical drought, there would be sufficient water to meet the proposed use.

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CONCLUSION

The uncontradicted testimony of experts suggests that there is sufficient water in the aquifer as testified by both Mr. Welhan and Mr. Chapman. That information was supported by credible evidence and was unchallenged by the protestants. The protestants have made statements, yet have provided absolutely no objective evidence to support their allegations. None have engaged in any well testing; none have engaged in well inspection; none have attempted to determine how or why their wells have declined in production, if in fact they have; and, none have presented any objective information that their wells have in fact declined in production.

The testimony of the experts indicate that the criteria required by State code for granting wells indicates that there is a sufficient quantity of water for the proposed use that remains uncontroverted. While one may speculate an extended drought may cause a depletion of water, the extreme is that any extended drought may have an impact on residential water users.

The fact is that in usual and customary situations, even for a six to seven year drought period, there would be sufficient water to meet the applicants proposed use of in-house use and outside watering of up to one-half acre. It is submitted that to limited the matter to exclusively in-home use with no outside yard watering permitted is not consistent with the record as it exists.

It is further requested that the record remain open for additional clarification by both Mr. Chapman and Mr. Welhan.

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It is further submitted that the record, as it exists, supports the assertion that the applicants' proposed use should be granted, consistent with Idaho State law.

DATED this 12th day of November, 1997.

F. Randall Kline, Attorney for Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision (the applicants)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones Department of Water Resources Eastern Region 900 N. Skyline Idaho Falls, Idaho 83402	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Clark Kelly 9685 Heather Rd. Pocatello, Idaho 83204	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Everett Diller 2917 N. Stephanie Rd. Pocatello, Idaho 83204	X U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Karl J. Dreher, Director Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098	X U.S. Mail _____ Express Mal _____ Hand Delivery _____ Fax

Licensed Attorney

11/12/97[d:\frk\97-1031.pei\reconsider.wpd]

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Telephone: (208) 232-9007

Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

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

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 28-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08194 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION.	**PETITION FOR RECONSIDERATION**

COMES NOW the applicants, Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision, and hereby give notice and requests that there be a reconsideration of the final order dated July 11, 1997, issued by Karl J. Dreher, Director.

1. This Petition for Reconsideration is timely, in as much as it is filed within fourteen (14) days of the service of the Order. A specific exception is taken to the determination that there is insufficient water for the proposed use. The proposed use sought to limit use of the water for culinary use and for approximately one-half acre of lands immediately adjacent to a residential dwelling. The same would be enforced through the terms of restrictive covenants, deed and plat restrictions. The Proposed Order limited water usage to in-home culinary use and stock water. The provisions to allow stock watering as defined under Idaho law would be more than sufficient to accommodate the watering of approximately one-acre of shrubbery and lawn. The assertion that

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home owners may not be appraised of the water restrictions apparently suggests that the agency does not understand deed restrictions, restrictive covenants for plat limitations placed facially on the plat.

2. Further, discussion with regard to prior court decisions seem not to be relevant. The initial proposal called for much higher density of development and irrigation of the entire 119 acres. This is not the case nor has it ever been the proposal of this applicant to do so.

3. In regard to "findings of fact #4", it should be noted that the approvals were appealed at the time of the hearing. However, under the current status, all approvals have been granted by the City of Pocatello and County of Bannock.

4. Also, factually, item #4 is not consistent with the record. It was not the applicant who decided one well for every three or four residents would be better, but was a suggestion made by the Department of Water Resources.

5. It should be further noted that at "findings of fact #12", Welhan testified that he believed there would be sufficient water to meet the needs of the proposed use as it was suggested. At no time did Welhan indicated that he did not think that there would be sufficient water to meet the proposed use together with the existing uses. Further, proper well spacing would <u>not</u> adversely affect prior wells.

6. In regard to "findings of fact #14", Sherl Chapman did, in fact, testify that he was familiar with the water levels in the area and he concluded that there was sufficient water for ten domestic wells, each with a production rate of between 25 and 35

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gallons per minute and that those were sustainable. Although he concluded that the aquifer would not produce sufficient water for irrigation of the entire 119 acres within the proposed subdivision, that is not what this applicant is proposing and is, therefore, irrelevant.

7. In regard to "findings of fact #16", Richard Hollingsworth did not testify as to why his well had declined, what the problems of his well were, nor how it had been tested. Everett Diller said that he had some problems with his well, but, again, it is a shallow well and he did not indicate that his well had been tested or determined as to why its reduced productivity. Diller did testify, as stated in "findings of fact #18", that he has not experienced problems with his irrigation wells.

8. In regard to "findings of fact #25", it is disputed that the ground water supply in Gibson Jack would not be sufficient for proposed use and existing uses during drought or lower than average precipitation uses. Pocatello has recently completed an extended drought period and, at the conclusion of that drought, the test well indicated that there would be sufficient water. Other wells in the area did not experience the problems experienced by a few with their wells, and it is uncertain why those others experienced problems.

9. The applicants take exception to "findings of fact #26" in that there would be sufficient water in the area to meet the proposed use and the existing uses. With the proposed use including use of storage tanks, there would be sufficient water to provide in-house culinary use and provide for up to one-half acre immediately adjacent to the residences for an appropriate yard.

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Although present water users may be experiencing in-house culinary problems, it is unknown whether that is because their wells are simply too shallow, whether their wells are plugged because of calcification or settling, or for whatever other reasons and virtually none had their wells inspected or tested to determine why there was a decrease in the productivity of their wells.

10. Both experts testified that there would be sufficient water to meet the proposed applicant's request and that it would not have a significant impact on adjacent wells. That fact remains undisputed in the record. The protestants offered no expert testimony.

11. Therefore, it is specifically requested that a finding be made that there is sufficient water to meet the proposed application and requested that the issuance of permits be granted.

12. It is also requested that a transcript of the hearing held on October 22, 1996 and continued on October 30, 1996, before the hearing officer Gary Spackman, be forwarded to F. Randall Kline, attorney for Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision.

DATED this 24th day of July, 1997.

F. RANDALL KLINE, Attorney for
Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of July, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones Department of Water Resources Eastern Region 900 N. Skyline Idaho Falls, Idaho 83402	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Clark Kelly 9685 Heather Rd. Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Everett Diller 2917 N. Stephanie Rd. Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Karl J. Dreher, Director Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098	__X__ U.S. Mail _____ Express Mal _____ Hand Delivery _____ Fax

Licensed Attorney

07/24/97[d:\frk\97-1031.pei\reconsider.pet]

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 30, 1997

RE: In the Matter of Application for Permit Nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 in the name of Gibson Jack Joint Venture, a.k.a. Wildhorse Ridge Subdivision

Dear Interested Parties:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

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

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

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(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

NORMAN C. YOUNG
Administrator
Water Management Division

Enclosure
cc: IDWR - Region, Dick Larsen

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APR 2 8 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

RECEIVED
SEP 15 1997
WATER RESOURCES
WESTERN REGION

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

September 10, 1997

Gary Spackman, Hearing Officer
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: Wildhorse Ridge Subdivision - Application for Water Permit

Dear Mr. Spackman:

Please note that with regard to the tapes that were forwarded to me from the Department of Water Resources, we have been unable to transcribe those to make any sense of them. Please advise as to the status of the transcription at your end.

Additionally, there was a discussion that the hearing, once the transcription is completed, would be rescheduled. Please advise as to the date for that hearing, if one is, in fact, necessary after the director's review of the transcript.

I appreciate your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

F. Randall Kline

FRK:ljw

c: clients

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APR 28 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

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AUG 2 5 1997
Department of Water Resources

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

August 22, 1997

Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

Re: In the Matter of Application for Permit Nos. 29-01875-29-01894 in the name of Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision

Dear Clerk:

Enclosed for filing please find the Request for Consideration of Additional Issues regarding the above-referenced matter.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Lisa Jo Woolsey
Secretary for F. Randall Kline

FRK:ljw

Encl

c: Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller
Karl J. Dreher, Director
Gary Spackman, Hearing Officer
Chris Pein

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APR 2 8 1998

RECEIVED
AUG 25 1997
Department of Water Resources

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007
Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 28-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08194 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION.	**REQUEST FOR CONSIDERATION OF ADDITIONAL ISSUES**

COMES NOW Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision, by and through their attorney of record, F. Randall Kline of F. Randall Kline, and hereby requests that additional issues for consideration are:

1. The availability of water and alleging that there is sufficient quantity to meet the needs of the development and also prior appropriators in the well configuration purposed.

2. A determination of the reasons why other wells in the area have functioned satisfactorily, yet others have not.

3. The impact of the proposed wells on other existing wells in the area.

It is additionally specifically requested that the testimony be reviewed again regarding Dr. Welhan and Sherl Chapman and transcripts be made available and reviewed regarding those issues.

DATED this 22nd day of August, 1997.

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APR 28 1998

for F. Randall Kline

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of August, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones Department of Water Resources Eastern Region 900 N. Skyline Idaho Falls, Idaho 83402	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Clark Kelly 9685 Heather Rd. Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Everett Diller 2917 N. Stephanie Rd. Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Karl J. Dreher, Director Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098 Fax: (208) 327-7866	__X__ U.S. Mail _____ Express Mal _____ Hand Delivery __X__ Fax
Gary Spackman, Hearing Officer Department of Water Resources 2735 Airport Way Boise, Idaho 83705 Fax: (208) 334-2348	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery __X__ Fax



Licensed Attorney

08/22/97[d:\frk\97-1031.pei\request.iss]

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APR 2 8 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

COPY

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

RECEIVED
AUG 25 1997
Department of Water Resources

August 22, 1997

Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098

Re: In the Matter of Application for Permit Nos. 29-01875-29-01894 in the name of Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision

Dear Clerk:

Enclosed for filing please find the Request for Consideration of Additional Issues regarding the above-referenced matter.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Lisa Jo Woolsey
Secretary for F. Randall Kline

FRK:ljw

Encl

c: Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller
Karl J. Dreher, Director
Gary Spackman, Hearing Officer
Chris Pein

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APR 28 1998

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

Attorney for Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

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JUL 2 8 1997
Department of Water Resources

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

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 28-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08194 IN THE NAME OF GIBSON JACK JOINT VENTURE a/k/a WILDHORSE RIDGE SUBDIVISION.

PETITION FOR RECONSIDERATION

COMES NOW the applicants, Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision, and hereby give notice and requests that there be a reconsideration of the final order dated July 11, 1997, issued by Karl J. Dreher, Director.

1. This Petition for Reconsideration is timely, in as much as it is filed within fourteen (14) days of the service of the Order. A specific exception is taken to the determination that there is insufficient water for the proposed use. The proposed use sought to limit use of the water for culinary use and for approximately one-half acre of lands immediately adjacent to a residential dwelling. The same would be enforced through the terms of restrictive covenants, deed and plat restrictions. The Proposed Order limited water usage to in-home culinary use and stock water. The provisions to allow stock watering as defined under Idaho law would be more than sufficient to accommodate the watering of approximately one-acre of shrubbery and lawn. The assertion that

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home owners may not be appraised of the water restrictions apparently suggests that the agency does not understand deed restrictions, restrictive covenants for plat limitations placed facially on the plat.

2. Further, discussion with regard to prior court decisions seem not to be relevant. The initial proposal called for much higher density of development and irrigation of the entire 119 acres. This is not the case nor has it ever been the proposal of this applicant to do so.

3. In regard to "findings of fact #4", it should be noted that the approvals were appealed at the time of the hearing. However, under the current status, all approvals have been granted by the City of Pocatello and County of Bannock.

4. Also, factually, item #4 is not consistent with the record. It was not the applicant who decided one well for every three or four residents would be better, but was a suggestion made by the Department of Water Resources.

5. It should be further noted that at "findings of fact #12", Welhan testified that he believed there would be sufficient water to meet the needs of the proposed use as it was suggested. At no time did Welhan indicated that he did not think that there would be sufficient water to meet the proposed use together with the existing uses. Further, proper well spacing would <u>not</u> adversely affect prior wells.

6. In regard to "findings of fact #14", Sherl Chapman did, in fact, testify that he was familiar with the water levels in the area and he concluded that there was sufficient water for ten domestic wells, each with a production rate of between 25 and 35

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gallons per minute and that those were sustainable. Although he concluded that the aquifer would not produce sufficient water for irrigation of the entire 119 acres within the proposed subdivision, that is not what this applicant is proposing and is, therefore, irrelevant.

7. In regard to "findings of fact #16", Richard Hollingsworth did not testify as to why his well had declined, what the problems of his well were, nor how it had been tested. Everett Diller said that he had some problems with his well, but, again, it is a shallow well and he did not indicate that his well had been tested or determined as to why its reduced productivity. Diller did testify, as stated in "findings of fact #18", that he has not experienced problems with his irrigation wells.

8. In regard to "findings of fact #25", it is disputed that the ground water supply in Gibson Jack would not be sufficient for proposed use and existing uses during drought or lower than average precipitation uses. Pocatello has recently completed an extended drought period and, at the conclusion of that drought, the test well indicated that there would be sufficient water. Other wells in the area did not experience the problems experienced by a few with their wells, and it is uncertain why those others experienced problems.

9. The applicants take exception to "findings of fact #26" in that there would be sufficient water in the area to meet the proposed use and the existing uses. With the proposed use including use of storage tanks, there would be sufficient water to provide in-house culinary use and provide for up to one-half acre immediately adjacent to the residences for an appropriate yard.

APR 2 8 1998

Although present water users may be experiencing in-house culinary problems, it is unknown whether that is because their wells are simply too shallow, whether their wells are plugged because of calcification or settling, or for whatever other reasons and virtually none had their wells inspected or tested to determine why there was a decrease in the productivity of their wells.

10. Both experts testified that there would be sufficient water to meet the proposed applicant's request and that it would not have a significant impact on adjacent wells. That fact remains undisputed in the record. The protestants offered no expert testimony.

11. Therefore, it is specifically requested that a finding be made that there is sufficient water to meet the proposed application and requested that the issuance of permits be granted.

12. It is also requested that a transcript of the hearing held on October 22, 1996 and continued on October 30, 1996, before the hearing officer Gary Spackman, be forwarded to F. Randall Kline, attorney for Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision.

DATED this 24th day of July, 1997.

F. RANDALL KLINE, Attorney for
Gibson Jack Joint Venture a/k/a
Wildhorse Ridge Subdivision

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APR 2 8 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of July, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones Department of Water Resources Eastern Region 900 N. Skyline Idaho Falls, Idaho 83402	X	U.S. Mail Express Mail Hand Delivery Fax
Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	X	U.S. Mail Express Mail Hand Delivery Fax
Clark Kelly 9685 Heather Rd. Pocatello, Idaho 83204	X	U.S. Mail Express Mail Hand Delivery Fax
Everett Diller 2917 N. Stephanie Rd. Pocatello, Idaho 83204	X	U.S. Mail Express Mail Hand Delivery Fax
Karl J. Dreher, Director Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098	X	U.S. Mail Express Mal Hand Delivery Fax

Licensed Attorney

07/24/97[d:\frk\97-1031.pei\reconsider.pet]

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APR 2 8 1998

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 11, 1997

RE: In the Matter of Application for Permit No. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 in the name of Gibson Jack Joint Venture, aka Wildhorse Ridge Subdivision

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

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

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

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APR 2 8 1998

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

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APR 2 8 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

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Department of Water Resources

RECEIVED
MAR 1 0 1997
WATER RESOURCES
WESTERN REGION

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

March 3, 1997

Mr. Karl J. Dreher
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

FACSIMILE: (208) 327-7866

Re: Application for Permit Nos. 29-08175-29-08184 in the name of Gibson Jack Joint Venture a/k/a Wildhorse Ridge Subdivision

Dear Mr. Dreher:

Enclosed for filing please find the Objection to the Request for Reconsideration regarding the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

Sincerely,

F. Randall Kline/ljw
F. Randall Kline

FRK:ljw

Encl

c: Harold Jones
Richard Hollingsworth
Clark Kelly
Everett Diller
Chris Pein

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Department of Water Resources

F. Randall Kline, Esquire
F. RANDALL KLINE, CHARTERED
427 N. Main St., Suite L
P.O. Box 397
Pocatello, Idaho 83204-0397
Telephone: (208) 232-9007

Attorney for Gibson Jack Joint Venture

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE, aka WILDHORSE RIDGE SUBDIVISION.	**OBJECTION TO THE REQUEST FOR RECONSIDERATION**

A request has been made by Richard M. Hollingsworth, requesting that the matter be remanded for further factual development of the record prior to issuing the final order.

The same is specifically objected to on the basis and for the reason that Mr. Hollingsworth is offering to present no additional or new testimony or additional evidence that he did not have readily available before, but is simply asking to rethink what has already been thought about and to represent what has already been presented.

Mr. Hollingsworth is continuing to assert that the matter should be connected to city water, yet that is not now nor has it ever been the issue before the Department of Water Resources. The evidence presented at the hearing was well addressed by Mr. Spackman in his determination.

It is further asserted that the request for reconsideration is simply another delay tactic on the part of Mr. Hollingsworth and a blatant attempt to increase costs and expenses for the applicants.

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Mr. Hollingsworth continues to assert that there is a judicial case which offers any presidential value at all. Apparently what Mr. Hollingsworth fails, refuses and neglects to acknowledge is that the prior case dealt with a vastly different proposed development than what is being proposed currently. The experts that were present and testified at the prior hearings indicated, in their professional opinions, that there was sufficient water to service the development as it is proposed.

The fact that Mr. Hollingsworth wishes to argue about and present the same evidence again that he presented previously, does not merit a request for reconsideration. As such, costs, attorney's fees and other appropriate sanctions should be levied against Mr. Hollingsworth, as his request is not well grounded and is simply a pretext for elevating the costs and creating additional delays.

There is absolutely nothing that is contained within Mr. Hollingsworth's request that could not have been argued at the last hearing or was in fact argued at the last hearing.

DATED this 3rd day of March, 1997.

For F. Randall Kline, Attorney for
Gibson Jack Joint Venture

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APR 28 1998

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of March, 1997, I served a true and correct copy of the foregoing document to the following parties, postage prepaid thereon, in the manner indicated below:

Harold Jones Department of Water Resources 900 North Skyline Idaho Falls, Idaho 83402	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Richard Hollingsworth 9502 Gibson Jack Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Clark Kelly 9685 Heather Road Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax
Everett Diller 2917 N. Stephanie Road Pocatello, Idaho 83204	__X__ U.S. Mail _____ Express Mail _____ Hand Delivery _____ Fax

Licensed Attorney

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APR 2 8 1998

POOR QUALITY

RECEIVED
FEB 25 1997
Department of Water Resources
Eastern District Office

RICHARD M. HOLLINGSWORTH
9502 GIBSON JACK
POST OFFICE BOX #4
POCATELLO, IDAHO 83204-0004
1-208-234-2234

MR. KARL J. DREHER
DIRECTOR - STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
900 NORTH SKYLINE
IDAHO FALLS, IDAHO 83402

RECEIVED
FEB 28 1997
WATER RESOURCES
WESTERN REGION

February 21, 1997

RE: In the matter of Application for Permit Nos. 29-08175 through 29-08184 in the name of Gibson Jack Joint Venture, aka Wildhorse Ridge Subdivision.

Dear Mr. Dreher:

On the "recommended order" issued by the your department pursuant to Section 67-5243, Idaho Code, signed by Mr. Gary Spackman on the 4th of February 1997. There are provisions in this order which I want to file this petition for reconsideration before you issue a final order.

I am asking for a scheduled time for oral argument in this matter before issuing a final order. I do understand that this is at your discretion, and if authorized will be held in Boise, Idaho, at a set time and place by you.

I strongly feel that the State of Idaho, Department of Water Resources should remand this matter for further factual development of the record before issuing a final order.

On the Recommended Order, page #1, under "FINDINGS OF FACT", NO 1.

If a well is drilled, and the use of this well is to supply water for the service of domestic needs of up to four residential homes, and the well experiences the problems that the surrounding existing wells are having, and the recall is not there, and the well water level continues to drop, and the well is no longer capable of producing the demand of water supply needed for four homes, what alternatives will the home owners have then ? "City Water hook up".

The application proposes to cumulatively supply water for 119 acres with 33 lots, using 10 wells. Right now their are domestic wells surrounding this subdivision which are having recall problems. Some residence had to redrill new wells because the original ones could not produce enough of their

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APR 28 1998

domestic use.

POOR QUALITY

On Page #2
NO 3.

There is a court order signed by District Judge Wallace M. Transtrum, case number #39322-C, for this same parcel of land, stating that no additional wells will be drilled, and that the water supply will come from the City of Pocatello. I strongly ask you to review the filed or records for confirmation. The present developers were awhere of this my there own admittance, but yet denied its existence at the first meeting which was held with the City of Pocatello in its first stages of approval of the subdivision.

The Bannock County Commissioners did reject the proposal and this rejection was upheld by the District Court of the Sixth Judicial District Courts, in the 1980's. (This is the same land Mr. Dreher, that the present developer is using.)

Mr. Dreher, can your department override a court order, that runs with this existing land and allow the proposed wells against the court order ?

NO 5.
A quote:

"The applicant originally proposed one well and one septic tank for each residence. After initially analyzing the availability of water in the area, however, the applicant decided that one well for every three or four residences would reduce the chance of local well interference and would also force better maintenance by the owners." End of Quote.

This tells me, that they know the problem exist, and in my opinion have no concern for the families who will be buying there lots, and later not having the water there for home usage.

NO 6.
A quote:

"Each of the residential lots within the subdivision will be two to three acres in size. The applications propose one-half acre of irrigation per residential lot. The remainder of each lot will remain in natural vegetation." End of Quote.

Fire's, the developers are not even complying with state fire marshal guidelines, and can not meet with the required gallons of water needed for such protection. Unless something has changed since November 1996.

Who is going to control that the residents are going to comply with the irrigation of a half acre ? By law, who can stop them, if they don't ? Who is going to monitor it ? And if the

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restrictions are broken. who can act on it ?

The developers. I think not they will have there money and be done with it. The problem will fall on the new land owners, and the existing surrounding residence.

Mr. Dreher, if a single well, supplying water to four residents, cannot supply the needed water. Can those residents, who are now land owners, sink there own individual well, and pull off the community well ? The 38 lots will turn into 38 wells ? Can this happen ? Resulting in the final outcome of the water being gone to those who live on top of Gibson Jack. We will have to hook into City Water, and each residence being responsible for the cost to do so, because the water will be depleted ? While the developers walk away from it ?

City water is there, for their hook up. Lets do it right, and have the city water brought in as the court order has spelled out. Then the water will be there for all user's, and their needs, including fire protection.

NO 8.

I was given the understanding that Mr. Welham was not paid. The testing they did was not proper nor did it prove that sufficient water is there. They pumped water Mr. Dreher for 2 1/2 days straight, one day after the other, they pumped for approx. 6-7 hours on the first day, 5-6 hours on the second day, then approx. 4 hours on the last day.

The recall in this area is slow to act. the month in the year they did this was when the water should of been high to my understanding. How could this sort of testing really show the effects of water supply or the effect of it. I say this due to your own departments knowledge when I asked for help or guidance in 1984, and I quote:

"THE TIME OF MAXIMUM WATER RECHARGE AND MAXIMUM WATER DRAWDOWN WILL LAG THE TIME OF SURFACE WATER RECHARGE BY A TIME PERIOD DEPENDENT UPON THE DEPTH, POROSITY OR PERMEABILITY AND SLOPE OR GRADIENT. IN ORDER TO DETERMINE THE TREND OF GROUNDWATER RISE OR DECLINE,

DATA SHOULD BE COLLECTED FOR A LONG ENOUGH TIME PERIOD TO SHOW THE SEASONAL FLUCTUATIONS AND THE ANNUAL CHANGES IN BOTH THE PEAKS AND MINIMUM LEVELS ASSOCIATED WITH NON-STATIC GROUNDWATER LEVELS.

THE WATER LEVEL OF A CONFINED AQUIFER IS DEPENDENT UPON THE RECHARGE MINUS THE WITHDRAWALS FROM THAT SYSTEM."

This was a document from Lyle Swank, PE, the Assistant Watermaster, dated May 18, 1984.

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APR 2 8 1998

POOR QUALITY

Again, they pump water for three days straight Mr. Dreher, and say there is water. When we, the residents who have lived here for 3 to 20 years plus have testified of our water problems. As if our comments mean nothing and that our actual experiences hold no merit. I have asked for such a study as Mr. Swank stated, to put my mind at peace as well as the surrounding residents, that the water will sustain the additional wells, and not effect my water, nor my neighbors. But it seems to go unheard.

Mr. Welhan's report, is a report taken from the existing wells that were drilled near this subdivision. He makes charts and graphs from our well logs, and says, plenty of water. Well logs that are 20 years plus old, representing conditions in the 1970's, not the present situation. Most of the well logs are estimates, I have heard this from even individuals in your own department. Out puts are not accurate, they are estimates in most cases. In my opinion, Mr. Welhan's report is not proper nor valid, due do the means inwhich he got his information, well logs from our wells, data that does not show the problem as it is now.

On Page #3
NO 9.

My comment on this Mr. Dreher, is simply this, it was reported to the Bannock County Planning and Zoning that the final output was 20 gallons per minute. Not 38 gallons per minute.

NO 13.

District Judge Wallace M. Transtrum, on the 13th of November 1987, in his MEMORANDUM DECISION AND ORDER, case No #39122-C, stated in the second paragraph, and I quote:

....."In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivision plan filed by plaintiffs/petitioners (developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System" ....end of Quote.

Then in the fifth paragraph of this same document, and I quote:

....."According to petitioner's (Mr. Bob Tripp d/b/a Gibson Jack, 1st Addition) own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the board. The finding by the Board that domestic wells will not be capable of producing sufficient water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal"..... end of Quote.

On Page #4.
NO 24.

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POOR QUALITY

"The testimony of both the experts retained by the applicant and the protestants' witnesses established that there is water available for appropriation during normal-to-high precipitation years, at least during the early part of the summer. Testimony established that during periods of drought or lower than average precipitations, the limited ground water supply in the Gibson Jack drainage may not supply sufficient water for both the proposed use and existing uses."

Mr. Dreher, our area has more drought years than the other. Records are available for this as fact. I submitted documentation on this matter, showing the years of drought, one after the other.

On Page #5.
NO 26.

I disagree with this statement, completely.

Illustration:

It takes approx. 5 gallons to flush a toilet, 38 Lots, and since most homes being built now, are two bathroom residence and a two more occupants in each residence. The toilets get flushed, lets go low, and say 4 times a day in each house hold.

5 gallons per flush X four flush's = 20 gallons of water a day

20 gallons of water a day X 38 residents = 760 gallons of water a day.

760 gallons of water a day X 7 days = 5,320 gallons of water a week

5,320 gallons of water a week X 52 weeks = 276,640 gallons of water per year.

Then add in showers, dishwashers, drinking water, clothswashers, bathtubs; and watering a lawn. Millions of gallons of water, taken from the underground off 119 acres of land.

To my memory, your department has a form, titled "Notice of Claim to a Water Right" acquired under state law for domestic and or stock water purposes. For daily use is less than 13,000 gallons per day. If this is a average for one residential home use, that is allot of water for people who don't understand the problems in an area where water is declining.

13,000 gallons of water a day X 7 days = 91,000 gallons of water a week per resident.

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POOR QUALITY

91,000 gallons of water a week X 38 residents = 3,458,000 gallons of water per week

3,458,000 gallons of water a week X 52 weeks = 179,816,000 gallons of water a year

And this does not include those of us who are presently using the ground water supply.

The City of Pocatello has put two new large wells in the area, one of which is at the end of Gibson Jack Creek Road, to the South East. Comments from the City of Pocatello, it will supply new water demands.

Now look at the reports reflecting all the drought years we have had, replenishing the water supply is not there. That is why our existing wells have dropped from our usage.

There is not sufficient water, and to increase the millions of gallons of water on our current water table per year, is not right.

Mr. Dreher, I feel that I have tried to ask for conformation to ease my mind, that the existing water table will supply the water needed for this proposed subdivision, as Mr. Swank stated. Especially when the existing users are having water problems, slow recall, water drop age, and having to put new wells in.

If these additional wells are allowed, and if my residence is affected by it, I have every intention of filing a law suite against the developers, as well as your department. For I feel that I have gone out of my way, to ask my neighbors to testify of our water problems, and to show your department that studies are not proper, nor is the water supply sufficient for the additional burden that might be put on it.

I also feel, that this will not be monitored at all, but just over looked. I fore see Neighbor against Neighbor in water usage if this goes through with the well idea.

The locations of the proposed wells are given on Page #7. What if, they sink a well, and it doesn't give the water needed to supply water for four residence. Will they be allowed to keep sinking a well in that general area, until they hit the volume they attempt to get ? Will the first well be used, since it has been drilled.

I have tried to locate existing laws to bring to your attention. But I feel you should al-ready be familiar with past situations and rulings of law, being the Director for the State of Idaho, Water Resource's.

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APR 2 8 1998

POOR QUALITY

I have quoted a case law which stands, on this same land already, with the Sixth Judicial District Court.

Other case's before the Department of Water resources of the State of Idaho, in 1991 in the matter of applications for permits nos 13-7427 in the name of Von N. Simonson, 13-7451 in the name of Richard or Ila Holsten, 13-7458 in the name of Dwain K. Christensen, 29-7605 in the name of M & M Central Dairy, 29-7636 and 29-7637 in the name of Don C. Rigby, 29-7618 in the name of Golden Grain Farms, and 29-7608 in the name of Terry Rindlisbaker.

I went to the County Law Library, and have found remarks which I feel are similar to my petition.

(Utah 1969) Wayman vs Murray City Corp., 458 P 2d 861, 23 Utah 2d 97.

(Or. App. 1973) Vandehey vs Wheeler, 507 P.2d 831, 13 Or. App. 25.

(Colo. 1974) Kuiper vs Lundvall

(Colo. 1968) Felhauer vs People

(Colo. 1963) Whitten vs Coit

(Idaho 1977) Nettleton vs Higginson

(Idaho 1973) DeRousse vs Higginson

(N. M. 1964) Reynolds vs Wiggins

(Okl. App. 1974) City of Stillwater vs Oklahoma Water Resources Bd.

(Idaho 1976) Briggs vs Golden Valley Land & Cattle Co.

Dated this 21 of February 1997.

RICHARD M. HOLLINGSWORTH
9502 GIBSON JACK
POST OFFICE BOX #4
POCATELLO, IDAHO 83204-0004

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APR 2 8 1998

POOR QUALITY

I do hereby certify that on this 21 day of February, 1997, I mailed a true and correct copy postage prepaid, of the foregoing Petition, Exceptions and Briefs to the following:

F. Randall Cline
Post Office Box 397
427 Main, Suite L
Pocatello, Idaho 83204

Harold Jones
Department of Water Resources
Eastern Region
900 North Skyline
Idaho Falls, Idaho 83402

Clark Kelly
9685 Heather Road
Pocatello, Idaho 83204

Everett Diller
2917 North Stephanie Road
Pocatello, Idaho 83204

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

Richard M. Hollingsworth

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APR 2 8 1998

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 5, 1997

RE: In the matter of Application for Permit Nos. 29-08175 through 29-08184 in the name of Gibson Jack Joint Venture, aka Wildhorse Ridge Subdivision

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or © the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

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APR 2 8 1998

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

C: IDWR - Region

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APR 2 8 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184 IN THE NAME OF GIBSON JACK JOINT VENTURE aka WILD HORSE RIDGE SUBDIVISION	NOTICE OF HEARING

On July 12, 1996, Gibson Jack Joint Venture filed with the Department of Water Resources applications for permit nos. 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183 and 29-08184. On August 14, 1996, Richard M. Hollingsworth protested the applications. On August 29, 1996, Clark Kelly filed a petition to intervene. On September 12, 1996, Everett D. Diller also filed a petition to intervene. The Department will rule on the petition to intervene by separate order.

THE DEPARTMENT HAS SCHEDULED THE MATTER FOR HEARING ON OCTOBER 22, 1996, AT 9:30 A.M. TO 5:00 P.M. IN THE UPPER CONFERENCE ROOM AT THE POCATELLO AIRPORT, POCATELLO, IDAHO. The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of the exhibits to each party and to the presiding officer. The hearing officer will be Gary Spackman.

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

Dated this 3rd day of October, 1996.

Gary Spackman

Gary Spackman
Hearing Officer

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APR 2 8 1998

Certificate of Mailing

I hereby certify that I mailed a true and correct copy, postage prepaid, of Notice of Hearing to the following person(s):

Everett D. Diller
2917 N. Stephanie
Pocatello, ID 83204

Clark Kelly
9685 Heather Rd.
Pocatello, ID 83204

Richard M. Hollingsworth
PO Box 4
9502 Gibson Jack
Pocatello, ID 83204-0004

F. Randall Kline, Chartered
PO Box 397
427 N. Main Suite L
Pocatello, ID 83204

Chris Pine
PO Box R
Pocatello, ID 83206

IDWR - Eastern Region
H. W. Jones

Dated this 3rd day of October, 1996.

Roberta Loveall
Roberta Loveall
Water Distribution Section

MICROFILMED
APR 2 8 1998
APR 2 8 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

October 1, 1996

RECEIVED
OCT 0 2 1996
Department of Water Resources
Eastern Region

Harold Jones
Water Rights Supervisor
Idaho Dept. of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Gibson Jack Joint Venture
Application Permit Nos. 29-01875 thru 29-08184

Dear Mr. Jones:

Please note and be advised that we have not received verification of the hearing date regarding the appeal from Gary Spackman, which is tentatively scheduled for October 22, 1996. Please advise.

Sincerely,

F. Randall Kline

FRK:ljw

c: Chris Pein

MICROFILMED
APR 2 8 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

September 17, 1996

RECEIVED
SEP 18 1996
Department of Water Resources
Eastern Region

Harold Jones
Water Rights Supervisor
Idaho Dept. of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Permit Nos. 29-01875 thru 29-08184
Applicant: Gibson Jack Joint Venture
Objectors/Intervenors:
Richard Hollingsworth (August 10, 1996)
Clark Kelly (August 17, 1996)
Everett D. Diller (August 12, 1996)

Dear Mr. Jones:

This is a response to the objections filed by Richard M. Hollingsworth, Clark Kelly and Everett D. Diller on behalf of Gibson Jack Joint Venture.

1. Will the proposed use reduce the quantity of water under existing water rights?

Response: Pursuant to the engineered studies done, the quantity of water will not be reduced.

2. Is the proposed water supply insufficient for the purpose intended?

Response: With the restriction of watering not more than one-half an acre of property for the culinary use of the well, there should be adequate water available as determined by the engineered studies.

3. Is the application made in good faith or for delay or speculative purposes?

Response: The application is made consistent with the application for subdivision development.

4. Has the applicant sufficient financial resources with which to complete the project?

Response: The applicant has sufficient financial resources to fully complete the project.

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5. Will the proposed use conflict with the local public interest?

Response: The proposed use will not conflict with the local public interest and will simply utilize the water resource that is available in the area.

6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

Response: The applicant submits that the proposed use is in harmony with conservation of water resources within the State of Idaho.

In further response, Mr. Hollingsworth makes reference to a Memorandum Decision and Order, Case No. 39322-C, which provides no benefit or authority in these proceedings. The facts and information presented in that case were not as well engineered or tested as they have been with regard to the information presented to the Bannock County Land Development Board.

Additionally, the ultimate finding of Judge Transtrum supported the findings of the Bannock County Land Development Board. In this case, both the Bannock County Land Development and the County Commissioners have made a determination which supports the approval and the development of the Wildhorse Ridge Subdivision a/k/a Gibson Jack Joint Venture. Therefore, the reliance upon Judge Transtrum's decision is of no precedential value. The applicants intend to present evidence which refute the claims made by Hollingsworth.

Regarding the protest by intervenor, Clark Kelly, Mr. Kelly suggests that the development connect to city water. However, he fails to mention that city water is presently not available in the area. Further, he fails to cite any specific evidence which indicates that this development will, in fact, impact on his water. Unfortunately, some people feel that you can drill a well and not approve it for twenty years and it continues to function the same as the date it was drilled. However, that does not comport with the reality of wells. Additionally, his well may not be into the depths of the best water sources.

With regard to the protest filed by Everett D. Diller and his request to intervene, Mr. Diller has made no showing that there will, in fact, be an impact on his well by reducing the quantity of the water, nor has he made a showing as to any of the six items to be considered, other than his well is not pumping as effectively as it once did.

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Wherefore, it is requested that (1) the objections be dismissed and held for naught, (2) appropriate permits be granted to the petitioners, (3) costs and fees be awarded pursuant to regulations, and (4) such further relief as deemed appropriate under the circumstances.

Sincerely,

F. Randall Kline
Attorney for Petitioners
Gibson Jack Joint Venture

FRK:ljw

c: Chris Pein
Richard Hollingsworth
Clark Kelly
Everett D. Diller

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APR 2 8 1998

⟹ Petition to intervene

Receipt # E022588

FROM: Mr. Everett D. Diller
2917 North Stephanie Road
Pocatello, Idaho 83204
1-208-234-2202

RECEIVED
SEP 1 2 1996
Department of Water Resources
Eastern Region

TO: Mr. Harold W. Jones
Water Rights Supervisor
Idaho Department Of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Gibson Jack Joint Venture
Application for permit # 29-08175 thru 29-08184

12 August 1996

Dear Mr. Jones:

In reference to the issues of domestic well permits to the Gibson Jack Joint Venture, I wish to protest against the approval due to the water quantity available to the residents already established in the near vicinity of the development .

I have two wells, one for domestic use which was drilled in 1978. The well was drilled at 165 feet, with a static water level of 65 feet, putting out 30 gallons per minute with a pumping level of 100 feet. When first drilled, I had enough water to irrigate my lawn and pasture, now I can only run four or five small sprinklers on the lawn at one time. But when my family members wish to take a bath, we have to turn off the sprinklers because the pump will start breaking suction for lack of water.

A few years later I drilled a second well for the purpose of irrigation, but I will eventually have to connect to the house water system, which I feel will occur if more wells are drilled in the near vicinity. Because my first well, the domestic well, is breaking suction all-ready as I have indicated.

Being that the sub division (Wild Horse Ridge Subdivision) is in the Pocatello City impact area. There's no reason for them not to connect to city water systems and let the established home owners continue to use what under ground water resources they now have available for their home usage.

My water rights are #29-7766 and P 29- 07905. I feel that my rights are being violated by the issuances of any new wells in or near my residence, which is 2917 North Stephanie Road, (Bannock County), Pocatello, Idaho 83204. What guarantee do I have that my water will still be there if additional wells are drilled behind my property? Where I am experiencing problems now with the underground water.

I would like to know from your agency, what my water rights are legally. If you were to allow additional wells behind my

APR 2 8 1998

residence, causing my wells to go dry, or prevent the usage of my present water availability. Does the First Come really hold as I was lead to believe from the Department of Water Resources when my permits were given and established ?

I would appreciate any response to this matter, and to my concerns which you might be able to render. Please inform me of any future meetings with your department, so that I may attend.

Sincerely yours,

Everett D. Diller

APR 28 1986

Richard M. Hollingsworth
9502 Gibson Jack
Post Office Box #4
Pocatello, Idaho 83204-0004
1-208-234-2234

RECEIVED
AUG 14 1996
Department of Water Resources
Eastern Region

August 10th, 1996
Saturday

Reference: Gibson Jack Joint Venture (aka)
Wild Horse Ridge Subdivision

Dear Mr. Karl J. Dreher,
(Director of the Department of Water Resources, for the State of Idaho)

The City of Pocatello's newspaper, named "The Idaho State Journal", in the (F6) Thursday, August 8, 1996 issue, in the "Legals" section, there is several adds requesting "Ground Water" (Domestic) permits, I need to strongly protest them, as indicated by the ad; "Protest must be filed with the applicant and Director, Dept. of Water Resources,...". These were brought to my attention, by my neighbor Mr. Everett Diller. (copy attached, marked as #2). I have also mailed a copy of this to the applicant by certified mail.

I protest the following, as shown in the "Idaho State Journal Newspaper" and in the same order as they appeared in the Legals section, (Copy attached, marked as #1): 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, 29-08184, 29-08175, 29-08176, 29-08177, 29-08178, 29-08179, 29-08180, 29-08181, 29-08182, 29-08183, and 29-08184. (It appears they repeated themselves. Why ??) Is it due to the filing dates, and if so, why two separate filing dates, or are they met to be the same ??

If any other permits have been filed, with reference to the "Wild Horse Ridge Subdivision", or aka "Gibson Jack Joint Venture", that the "Idaho State Journal" did not reflect, I wish to be notified, so I may be able to file a protest on them or ask you to include them if possible and I need to inform the court.

The residence which live surrounding this subdivision need to be informed, so that they may show and express there views as I am now.

District Judge Wallace M. Transtrum, on the 18th of November, 1987, in his MEMORANDUM DECISION AND ORDER, Case No #39322-C, stated in the second paragraph, and I quote:

....."In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivision plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water

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System".....end of quote. (A complete copy of this signed document is attached to this protest for your review, marked as #3).

Also in the fifth paragraph, of same document, and I quote:

..... "According to petitioner's (Mr. Bob Tripp d/b/a Gibson Jack, 1st Addition) own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficient water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal."..... end of quote.

Also attached (marked as #3), is a Final Order of the court dated on 14 September, 1988. Where I quote the last paragraph as follows;

....."IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause"..... end of quote.

The appeal filed on April 30th, 1996, addressed to the Bannock County Commissioners, with reference to the Wild Horse Ridge Subdivision aka Gibson Jack Joint Venture, is attached and marked as #4.

In the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock, case no# 39322-C, where the Plaintiffs are BOB TRIPP, ROBERT THOMPSON, d/b/a GIBSON JACK, 1ST ADDITION, VS BANNOCK COUNTY COMMISSIONERS, this is the same property as the Wild Horse Ridge Subdivision aka Gibson Jack Joint Venture !!

Around the 15th of June, 1994, Mr. Bob G. Tripp & Mrs. La Rae Tripp, sold the property to Mr. Guy Anderst, Mr. W. Chris Pein, and Mr. Thomas Iverson. (Attached & Marked as #5), Documents indicated as Exhibit "A" 94011108, and Warranty Deed 94011108.

Attached and marked as #6, titled as Schedule B, Order No 18682-B, Policy No. J 259391, P4, number #6, I quote, ..."REAL ESTATE MORTGAGE dated June 15, 1994 to secure an indebtedness in the principal sum of $169,000.00, and any other amounts and/or obligations secured thereby.

Recorded: June 16, 1994, Instrument No. 94011109

Mortgagor: W. CHRIS PEIN, a married man dealing with his sole and separate property and GUY ANDERST, a married man dealing with his sole and separate property, and THOMAS IVERSON, an unmarried person.

Mortgagee: BOB G. TRIPP and LA RAE TRIPP, husband and wife."..... end of quote.

I have this matter presently before the District Court of

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APR 28 1998

the Sixth Judicial District of the State of Idaho, In and For the County of Bannock, case no #CV OC 96-01023, filed in July of 1996. Notice of Appeal For Judicial Review, and Petition For Review of Administrative Proceedings, Plaintiff: Richard M. Hollingsworth vs Defendants: Bannock County Commissioners, Carolyn Meline, J. O. Contant, Tom Katsilometes. In reference to the Wild Horse Ridge Sub. aka Gibson Jack Joint Venture. Which is attached and marked as #7.

Mr. Chris Pine, Mr. Guy Anderst, and Mr. Tom Iverson had a well drilled behind by residence a few hundred feet West of my property. This well was drilled by Cushman Drilling in Blackfoot, Idaho. After the well was completed, Mr. Pine brought in a portable pump and pumped water out for 4 to 7 hours periods each day for two / three days straight. Then Mr. Pine and Mr. Anderst testified that there was enough water, because the single well was supposedly pumping 20 gallons per minute (to my memory). Which they indicated was going to supply water for three or four residents. I was told by the drillers it was being drilled for the future residence of Mr. Thomas Iverson.

A few months later, Cushman Drilling came back up and drilled the same well deeper, another 160 feet, (the well depth I believe is 460 feet now), and they are not getting or hitting any additional water at all. They went through clay, and then hit boulders, the water at the 1st level they hit, is probably seeping out down to a lower depth from there efforts of going deeper, what a waste. The well's walls were collapsing in, so it is now caped and dead. The well permit was in the name of Mr. Thomas Iverson.

It would be wrong to allow additional wells in this area, and also to allow the number of septic drain fields over the water table in such a small area.

I have not spoken with my neighbors for permission to include them in this document, but I strongly ask for an audience if necessary with you, in allowing myself and by neighbors to tell you of our problems with reference to water and concerns of sewage drainage, where our county has already experience problems in a near by area, and yet showed no concern for this area.

Since the Court Order by the District Judge, our wells have dropped in water levels, some as much as 75 feet. Mrs. Harding stated to me, that there well since they drilled it, has dropped 50 feet. Presently, my well has started pumping air, if I have more than three sprinklers running. My lawn is dry, and brown looking, it crunches under your feet when walked upon, and on some of my trees, the leafs are turning yellow from lack of water.

I thank you in advance, for your attention in this matter, and appreciate any guidance or assistance you can render. If you require any additional information, or copies of documents with

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APR 2 8 1998

reference to this matter, please let me know, and I will make every attempt in getting them to you.

Would you please let me know what procedure will follow after you have received this protest, so that I will know what is expected of me. My filing fee is attached.

Sincerely,

Richard M. Hollingsworth
Post Office Box #4
9502 Gibson Jack
Pocatello, Idaho 83204-0004
1-208-234-2234

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APR 2 8 1998

Page 4 of 4

FILED
LARRY W. GHAN
CLERK OF DISTRICT COURT
BANNOCK COUNTY IDAHO

'87 NOV 24 A9:42

BY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, d/b/a/ GIBSON JACK, 1st ADDITION, Plaintiffs, vs. BANNOCK COUNTY COMMISSIONERS, Defendants.	CASE NO. 39322-C MEMORANDUM DECISION AND ORDER

The court has reviewed the file, record and transcript of the county hearings, statement of position, and points and authorities filed by counsel.

In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivison plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System. Developer's petitioned for judicial review and in January 1985, Judge McDermott remanded to the Board for further hearing. At this additional hearing the Board issued the modified findings of facts and conclusions of law but adhered to its prior decision requiring connection to the municipal water system. A second petition has been filed with this court asking for judicial review and additionally for the presentation of additional evidence. Developers complain that the Board had given approval to other proposed subdivisions without requiring the developers to demonstrate the availability of water as they

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had required of these petitioners. The testimony of petitioner's expert, Mr. Chapman, is requested to clarify the record because of "inaudible" gaps in the transcript.

Notwithstanding the allegation that the Board may have approved other subdivision proposals without the scrutiny given to available water supply as it has to the present application, there is nothing in the record which would indicate that the conditional approval of this plate was arbitrary or otherwise improper. The burden is on the petitioner to demonstrate the infirmity of the Board's decision and they have not sustained this burden.

It is clear from the transcript that the availabilty of adequate water was very much in dispute. Several expressions of concern were made to the Board about the sufficiency of water, availability and the possibile impact of additional users and in light of these concerns it is not arbitrary nor unreasonable for the Board to require the developer to guarantee the availability of an adequate water supply before accepting the proposed subdivison. A local governing Board may be impowered to act to promote and preserve the general welfare of the community, and in providing for an adequate water supply as one of the means by which to do so. City of Lewiston vs Knieriem, 107 Idaho 80, 685 P.2d 821 (1984).

Once it is recognized that the Board is empowered to require the Developer to demonstrate that sufficient water is available,

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APR 2 8 1998

the inquirY then focuses on whether or not there was substantial evidence to support the Board's findings that adequate ground water was not available in this case. According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficent water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal.

The fact that there are a number of "inaudible" gaps in the transcript does not require further testimony by Mr. Chapman. The transcript is, while not ideal, sufficient to allow the court to evaluate the reasonableness of the board's findings.

IT IS THEREFORE ORDERED that the petition for Judicial Review of Administrative Proceedings and For Leave To Present Additional Evidence each are denied and the decision of the Bannock County Commissioners herein is affirmed.

DATED this 18th day of November, 1987.

WALLACE M. TRANSTRUM
District Judge

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CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 24 day of November, 1987, I mailed/served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):	Method of Service:
Charles C. Just, Esq. WEINPEL, WOOLF, JUST, COMBO & DAVIS Box 935 Idaho Falls, ID 83402	U.S. Mail
Eric Storm, Esq. Deputy Prosecuting Attorney Bannock County Courthouse Pocatello ID 83201	U.S. Mail

LARRY GHAN, CLERK
by: Cindy Brandfel

Judgment Docket #19, 12/22/87, gaa

MICROFILM
APR 28 1998

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, dba GIBSON JACK, 1st ADDITION, Plaintiff, vs. BANNOCK COUNTY COMMISSIONERS, Defendant.	Lodged 9/14/88 Wm Kinnaird District Judge P. Richard CASE NO. 39322-C MINUTE ENTRY AND ORDER

Following this court's Minute Entry and Order of September 22, 1987, the parties filed their briefs and upon review the court entered its Memorandum Decision and Order of November 18, 1987. Subsequently the petitoners advised the court that they had misunderstood the court's order concerning oral argument, and were then permitted to present oral argument to the court and review their position.

The court again thoroughly review the file, the transcript of proceedings, the points and authorities filed and oral argument and is again unpersuaded of the merit of petitoner's position.

IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause.

DATED this 14 day of September, 1988.

Wm Kinnaird
WALLACE M. TRANSTRUM
District Judge

MICROFILM
APR 28 1998

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 15th day of September, 1988, I mailed/served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):	Method of Service:
Charles C. Just, Esq. WEINPEL, WOOLF, JUST, COMBO & DAVIS 545 Shoup Avenue, Suite 227 P O Box 936 Idaho Falls, ID 83402-0936	U.S. Mail
Eric Storm, Esq. Attorney At Law P O Box P Pocatello ID 83205	U.S. Mail

MYRNA W. ARCHIBALD, CLERK

by: Vela Mascareñas
Deputy Clerk

MICROFILMED
APR 28 1998

Attachment Comm #4

RECEIVED MAY 1 1996

C Fisher

TO: Bannock County Commissioners
Bannock County Court House
Pocatello, Idaho 83201

Copy Received
CD 4/2
Dirkgli

FROM: Richard M. Hollingsworth
9502 Gibson Jack Creek
Post Office Box #4
Pocatello, Idaho 83204-0004

REFERENCE: Wildhorse Ridge Subdivision

April 30th, 1996

Dear Commissioners:

We hereby appeal the decision which was revealed by the Land Development Board of Bannock County in reference to the **WILDHORSE RIDGE SUBDIVISION** and ask for an amended and overturned decision pertaining to the proposed development.

Residents living near the proposed South Pocatello development have expressed and testified about the affect this will have on our water supply. The water table in Gibson Jack is deep and the water there fluctuates "***considerably***" with current water demands. A specific concern is that the master plan does not incorporate a central water system nor city water usage in its development.

No complete, proper or current study has been done on the water table. The developer is more or less guaranteeing adequate water even though most residents now living there are experiencing difficulties. This concern has been expressed at every meeting by the residents around this proposed subdivision.

A document was given to the Board in February of 1984, signed by 14 individuals having well problems, who have given testimony before the board of their problems and concerns dealing with water.

This document from Lyle Swank, PE, the Assistant Watermaster, dated May 18, 1984, where he stated and I quote:

"The time of maximum water recharge and maximum water drawdown will lag the time of surface water recharge by a time period dependent upon the depth, porosity or permeability and slope or gradient. In order to determine the trend of groundwater rise or decline, data should be collected for a long enough time period to show the seasonal fluctuations and the annual changes in both the peaks and minimum levels associated with non-static groundwater levels. The water level of a confined aquifer is dependent upon the recharge minus the withdrawals from that system." To this date - no proper study has been done, as it should be to determine the trend of groundwater rise and decline.

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In a separate letter from the State of Idaho, Department of Water Resources, Mr. Kenneth Dunn and Mr. Glen Saxton, Chief of Operations Bureau, expressed this - and it was submitted to the Bannock County Commissioners, and the Land Development Board for Bannock County, in 1984, and we quote:

"*...the department does have the authority to designate groundwater management areas or critical areas.....if determined to be appropriate. To be more specific, in an area designated as critical, the only type of water appropriation that can be made is single family domestic or stockwater use from wells.*

A central deep domestic well possibly would have less effect on existing wells than numerous small wells...

...an area as a groundwater management area raises a FLAG that the area may be approaching critical conditions but provides more alternatives as far as monitoring and management."

Proof was also presented to the Land Development Board and Bannock County Commissioners on the amount of precipitation the area receives. The United States Weather Bureau classified this area as a drought or critical supply area for water. This information came from records of Meteorological Data for Current Years, and Normals, Means, and Extremes in Precipitation in inches, by Water equivalent and Snow, Ice pellets.

It was requested in October of 1984, that Paul M. Castelin (Hydrogeologist - for the State of Idaho, Department of Water Resources, State Office, out of the Governor's office and through the Director), to personally send Commissioner Carolyn Meline a letter - which he did and we quote from his letter:

..."*the proposed Gibson Jack subdivision is in an area thought to be underlain by the Salt Lake Formation, a geologic formation that is unpredictable in yielding water to wells; yields can be fairly high in places, but often are quite poor.*

Drillers logs that supply well test information including drawdown as well as discharge data, have only been somewhat helpful in determining aquifer characteristics. These data indicate relatively POOR AQUIFERS developed by wells in the vicinity of Sections 18 and 19, T7S, R35E....

....drillers describe it as a relatively poor yielding aquifer which underlies the area to depths of up to 200 feet. As a result, more severe interference effects can be expected between new and existing wells than if the aquifer was more productive.

....source of water for the subdivision is the city of Pocatello. Perhaps the most obvious source of groundwater (to a geologist) is the alluvium of the Portneuf River Valley.

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Individual wells providing irrigation water are likely to be marginal in production capacity and would have more serious potential drawdown effects on water levels in surrounding wells, due to their higher pumpage rate and more continuous pumping schedule.

A competent hydrogeologic consulting firm with excellent references should be retained to conduct aquifer tests in the Gibson Jack area, analyze the results of the tests and provide projections of pumpage effects based on those analyses .....A consultant should be retained to perform appropriate well tests, develop well construction specifications, supervise the drilling and development of a test well in the alluvium and to provide a comprehensive report to the Bannock County Commission.....

END OF QUOTE.

Chris Pine had a well drilled behind Hollingsworth's home by Cushman Drilling from Blackfoot. After the well was completed, Mr. Pine brought in a portable pump and pumped water out for 4 to 7 hour periods each day to our memory, for two or three days.

After which this well was not rated for four households but two, and was drilled the same old fashion way every other well was drilled up here.

Modern technology was not used during the drilling and observation of this well. Information given during the drilling process, was that it initially pump 78 gallons per minute and reduced to 35 gallons per minute.

Chris Pine claims that 35 gallons is sufficient for seven households, but according to architectural standards 15 gallons per household is a minimum with out unusual storage facilities. At this point please recall what has been indicated above from the Assistant Watermaster, in paragraph six (6).

District Judge Wallace M. Transtrum, on the 18th of November, 1987, in is MEMORANDUM DECISION AND ORDER, stated in the second paragraph, and we quote:

..."In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivision plan filed by plaintiffs/ petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System".... end of quote. A complete copy of this signed document is attached to this appeal for your review.

Also attached is a Final Order of the court dated on 14 September, 1988. Where we quote the last paragraph as follows:

...."IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause".... end of quote

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A report issued by John Welhan, Idaho Geological Survey, "The Lower Portneuf River Valley Aquifer, A Geologic / Hydrologic Model and its Implications for Wellhead Protection Strategies" - in their Final Draft, states:

As a result of the survey the water table is based on runoff and seasonal in nature. It is greatly affected by drought, and the discharge is rated extremely low, and is very high in minerals and chemicals due in part of leeching of septic systems, nitrates from fertilizers and extreme salt content from unknown sources.

As Alpine Engineering did in 1984, the same tactics were done by Mr. Pine. The "well test" Mr. Pine performed was not run in accordance with established methods of testing aquifers to determine their characteristics; but perhaps, as with Alpine Engineering in 1984, that was not the intent at all by Mr. Pine. And the data as you might call it, is very misleading.

Commissioners - please look at the whole picture of what is going to happen in the future. To the West of this proposed subdivision, are hundreds of acres to be developed in the future by Mr. McDevitt, (location - driving up Johnny Creek Road, and at the end of it, is the property that ties into Gibson Jack).

To the South West, Bob Tripp's property, also hundreds of acres, (location is South of Gibson Jack Road, near Pocatello's water shed).

In this proposed subdivision - approximately 10,416 gallons of water will be used a day, just for domestic use with the number of proposed dwellings.

If you think about the City of Pocatello - and their Annex of ground around their boundaries, it really makes sense to do it right. Bring the city water in now, and the Engineering Departments, construct a plan for the future developments around this proposed one. When the City of Pocatello pulls us into the their city limits, it will be done with proper affects - as the Old Orchard area is at the base of Gibson Jack, and what is being presently done at the end of Johnny Creek Road in that new development.

Tom Decker, with the City Engineering Water Department, stated it cost $18.00 per foot for a 12 inch pipe for running water.

When looking at the total cost for construction of bringing water into the area, for materials consisting of pipe, digging trenches, and labor, it would cost approximately $25.00 per foot. Since the City is involved, I feel it could be a joint venture in cost for the implementing of water into this subdivision by the Contractor and the City of Pocatello. Where the City receives moneys for the use of the water, they will have their pay back -

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and any maintenance for the water line should be free for several years to recover their cost.

The Bannock County Planning and Development Counsel conducted a public hearing on Tuesday (April 23, 1996), the Chair aloud unlimited time for the developers to speak and allowed three minutes a piece for apposing opinion. The Counsel obliviously favor the developers opinion. In fact prime agriculture land use was completely skip over when in fact the ground is prime agriculture ground that has been held by a developer for twenty years. The vote to pass appeared to be predetermined when in fact board member Floyd Johnson, stated on record that he was glad this sub division was up Gibson Jack and not by his residence. After which he voted to pass the preliminary Plat.

This board does not follow standards to which it should be held and conducted itself in a unprofessional ineffective manner.

Some of the residents who presently live up Gibson Jack have every intention, after speaking with legal Counsel from Jones Chartered in Pocatello, to file a law suite against Bannock County, and Developers of the Wildhorse Ridge Subdivision when their wells start having problems with water levels and pumping air.

With reference to Mr. Guy Anderst, Chris Pein, and Mr. Tom Iverson, they had to of known about the past rulings and concerns of the property owners before purchasing this ground from Mr. Bob Tripp. Knowing they would need to bring city water in.

Attached is a copy from the Subdivision Plan Review Committee (Department Review and Approval Summary), first page, center section - quote.."Water System to be constructed to City Standards - Need plan for review - Connect to City Water" -.... end of quote. This is dated 6-21-95. Yet - this comment was never brought up in the public meetings.

Chris Pein is a member of the Community Development Committee for the City of Pocatello, some of us ask the question - Is this why the city has approved this preliminary plat with so few conditions ?

Some of us feel, that these developers want to come in, do as little as possible, sell for big bucks, and be gone to leave the county and us with the mess they leave behind. Fire-prevention, water retention, ingress and egress improvement, traffic problems and etc.

The Idaho Supreme Courts have made several rulings with regards to "FIRST GETS WATER RIGHTS" meaning, first in time is first in right. These decisions have been unanimously upheld.

We would appreciate any consideration you can give this

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request and would greatly appreciate a response to this appeal.

We the undersigned have expressed our concerns in all meetings, and respectfully request this appeal in behalf of these concerns, and ask that the Court Order signed on 14th September 1988 by District Judge Wallace M. Transtrum be up-held as well as the decision by the Bannock County Commissioners in 1984 & 1985 who were in office at that time.

Thank you for your attention in this matter.

Richard M Hollingsworth	9502 Gibson Jack	234-2834
Mary Hanks	9588 Heather Rd.	233-8298
Paula Hug	9559 HEATHER RD	2339647
[illegible]	9806 W. Gibson Jack Rd.	232-1403
Ernest R Pulley	2917 N. Stephanie Rd	234-2202
Joyce I Pulley	2917 N. Stephanie Rd.	234-2202
Mark Kelly	9685 W Heather Rd	233-7288
Damara Kelley	9685 Heather Rd	233-7288
Kathy Musetti	9663 W. Heather Rd	233-0516
[illegible]	9663 W. Heather Rd	233-0516
Michael A Olivier	9530 W. Heather Rd	232-2864
Sadie Hacking	9588 W Heather Rd	233-8298
Linda Pielsticker	9431 W. Heather Rd	232-5936
[illegible]	236 Cadoon	235-2364
Jordan [illegible]	75 Valley View Dr.	232-8134
[illegible]	75 Valley View Dr.	232-8134
[illegible]	3118 N Stephanie Rd	232-3089
[illegible]	3118 N. Stephanie Rd	232-3089
Stan Seaman	9259 W Gibson Jack Rd	232-1615
Donna M Seaman	9259 W. Gibson Jack Rd	233-7930

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SUBDIVISION PLAN REVIEW COMMITTEE

DEPARTMENT REVIEW AND APPROVAL SUMMARY

SUBDIVISION Wild Horse Ridge (ACCI)

SKETCH____

PRELIMINARY X

SHORT____

FINAL____

BUILDING DEPARTMENT
APPROVE____
DISAPPROVE____
APPROVE W/CONDITIONS____ REVIEWED BY_____ DATE_____

WATER DEPARTMENT
APPROVE____
DISAPPROVE____
APPROVE W/CONDITIONS X REVIEWED BY JH DATE 6-21-95
~~the pro~~ Water system to be constructed to City Standards - Need plan for review - Conect to City water -

ENGINEERING/STREETS DEPARTMENTS
APPROVE____
DISAPPROVE____
APPROVE W/CONDITIONS ✓ REVIEWED BY JTB DATE 6-26-95
Curb and Gutter and 40 ft section for road design ~~was~~ as shown on plans. Storm water to be retained on site. Gibson Jack Road to be paved in front of all lots with curb and gutter.
- Sidewalk is not required.

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ATTACHMENT
Page 5

3-2

94011108

EXHIBIT "A"

Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, Section 19: E½NW¼, Lots 1 and 2.

EXCEPT: A parcel of land situated in the South Half of the Northwest Quarter of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

Commencing at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal centerline of said Section 737.50 feet to the TRUE POINT OF BEGINNING; said point being marked by a half inch iron pin tagged LS 968; thence continuing along said latitudinal centerline South 89°54'16" West, 885.00 feet to a half inch iron pin tagged LS 968, said point being on the South line of Gibson Jack Road, said line being measured at right angles to and paralleling 25 feet South of centerline of said road; thence North 55°01'27" East along said South line 858.93 feet to a half inch iron pin tagged LS 968; thence South 20°15'35" East, 523.26 feet to the latitudinal centerline of said Section, said point also being the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A parcel of land situated in the South Half of the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO. More particularly described as follows:

Beginning at the West Quarter Corner of said Section, said point being marked by a 5/8" rebar with a 2" Aluminum Cap stamped LS 968; thence North 89°54'16" East along the latitudinal Centerline of said Section 874.64 feet more or less to a point on the Northwesterly line of Gibson Jack Creek Road, said point being marked by a ½" iron pin stamped LS 968; thence North 55°01'27" East along said Northwesterly line of Gibson Jack Creek Road 94.36 feet to a ½" iron pin stamped LS 968; thence South 89°54'16" West parallel to the latitudinal centerline of said Section 952.10 feet more or less to a point on the West line of said Section, said point being marked by a ½" iron pin stamped LS 968; thence South 0°09'18" East along said West line 53.96 feet more or less to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A tract of land in the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, described as follows: BEGINNING at the West Quarter Corner of Section 19, Township 7 South, Range 35 East, Boise Meridian, said Corner marked by an iron pin with an aluminum cap stamped LS 968, as depicted on the Record of Survey Map recorded in the records of BANNOCK COUNTY as Instrument 658184; thence Northeasterly and Easterly along the West and North boundaries of the land depicted on the Record of Survey Map recorded in BANNOCK COUNTY as Instrument 657503, for the following two (2) courses:

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B. T.
L. T.

3-3

1. North 60°17'36" East for a distance of 109.21 feet; thence
2. North 89°54'16" East for a distance of 857.10 feet to the Northeast Corner of the said land; thence

North 00°09'18" West for a distance of 457.52 feet; thence South 89°54'16" West for a distance of 952.10 feet to an intersection with the West line of said Section 19; thence South 00°09'18" East along the West line of Section 19 for a distance of 511.48 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A parcel of land in the E½NW¼ of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal center line of said Section, 325 feet; thence North 3°47'21" West, 1,017.78 feet to a point on the South line of Gibson-Jack Road; said point being measured and parallel 25 feet South of the Center line of Gibson-Jack Road; thence North 45°2'37" East along said Section line of Gibson-Jack Road, 543.49 feet to the Intersection of said Section line and the meridional center line of said Section. Said point being marked by a ½" aluminum pin LS 968; thence South 00°19'33" East along said meridional center line 1,399.03 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:
A parcel of land located in the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO and is more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section 19, Township 7 South, Range 35 East, Boise Meridian. Said Corner being an aluminum cap tagged L.S. 968; thence S 89°54'16" W along the center latitudinal line of said Section 325.00 feet to the TRUE POINT OF BEGINNING; thence continuing S 89°54'16" W along said center latitudinal line, 412.50 feet; thence N 20°15'35" W, 523.26 feet to the South right of way of Gibson Jack Creek Road; thence N 45°02'37" E along said South right of way, 743.50 feet; thence S 3°48'21" E, 1017.78 feet to the POINT OF BEGINNING.

B. T.
L. R. T.

MICROFILMED
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ATTACHMENT #6

FIRST AMERICAN

SCHEDULE B

Order No. 18682-B Policy No. J 259391

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

SECTION 1

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

3. Easements, claims of easement or encumbrances which are not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

SECTION 2

1. General Taxes for 1994 are an accruing lien and not yet due and payable. Taxes which may be assessed and extended on any subsequent roll for the tax year 1994 with respect to new improvements and the first occupancy which may be included on the regular assessment roll and which are an accruing lien not yet due or payable.

2. Easement for PIPE LINE granted to CITY OF POCATELLO recorded November 8, 1916, in Book 31, as No. 324.

3. Right-of-way granted to AMERICAN TELEPHONE AND TELEGRAPH COMPANY recorded as Instrument No. 279186.

continued on page 2

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SCHEDULE B
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 2

4. Right-of-way granted to MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY recorded as Instrument No. 398605.

5. Right-of-way for GIBSON JACK ROAD running across the Southeast side of subject property.

6. REAL ESTATE MORTGAGE dated June 15, 1994 to secure an indebtedness in the principal sum of $169,000.00, and any other amounts and/or obligations secured thereby.
   Recorded: June 16, 1994, Instrument No. 94011109
   Mortgagor: W. CHRIS PEIN, a married man dealing with his sole and separate property and GUY ANDERST, a married man dealing with his sole and separate property, and THOMAS IVERSON, an unmarried person
   Mortgagee: BOB G. TRIPP and LA RAE TRIPP, husband and wife

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FIRST AMERICAN

LEGAL DESCRIPTION
Order No. 18682-B
Policy No. J 259391

SCHEDULE "C"

Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, Section 19: E½NW¼, Lots 1 and 2.

EXCEPT: A parcel of land situated in the South Half of the Northwest Quarter of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

Commencing at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal centerline of said Section 737.50 feet to the TRUE POINT OF BEGINNING; said point being marked by a half inch iron pin tagged LS 968; thence continuing along said latitudinal centerline South 89°54'16" West, 885.00 feet to a half inch iron pin tagged LS 968, said point being on the South line of Gibson Jack Road, said line being measured at right angles to and paralleling 25 feet South of centerline of said road; thence North 55°01'27" East along said South line 858.93 feet to a half inch iron pin tagged LS 968; thence South 20°15'35" East, 523.26 feet to the latitudinal centerline of said Section, said point also being the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land situated in the South Half of the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO. More particularly described as follows:

Beginning at the West Quarter Corner of said Section, said point being marked by a 5/8" rebar with a 2" Aluminum Cap stamped LS 968; thence North 89°54'16" East along the latitudinal Center-line of said Section 874.64 feet more or less to a point on the Northwesterly line of Gibson Jack Creek Road, said point being marked by a ½" iron pin stamped LS 968; thence North 55°01'27" East along said Northwesterly line of Gibson Jack Creek Road 94.36 feet to a ½" iron pin stamped LS 968; thence South 89°54'16" West parallel to the latitudinal centerline of said Section 952.10 feet more or less to a point on the West line of said Section, said point being marked by a ½" iron pin stamped LS 968; thence South 0°09'18" East along said West line 53.96 feet more or less to the TRUE POINT OF BEGINNING.

continued on page 2

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LEGAL DESCRIPTION
ORDER NO. 18682-B
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PAGE 2

ALSO EXCEPTING THEREFROM:

A tract of land in the Southwest Quarter of the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, described as follows: BEGINNING at the West Quarter Corner of Section 19, Township 7 South, Range 35 East, Boise Meridian, said Corner marked by an iron pin with an aluminum cap stamped LS 968, as depicted on the Record of Survey Map recorded in the records of BANNOCK COUNTY as Instrument 658184; thence Northeasterly and Easterly along the West and North boundaries of the land depicted on the Record of Survey Map recorded in BANNOCK COUNTY as Instrument 657503, for the following two (2) courses:

1
North 60°17'36" East for a distance of 109.21 feet; thence
2
North 89°54'16" East for a distance of 857.10 feet to the Northeast Corner of the said land; thence
North 00°09'18" West for a distance of 457.52 feet; thence South 89°54'16" West for a distance of 952.10 feet to an intersection with the West line of said Section 19; thence South 00°09'18" East along the West line of Section 19 for a distance of 511.48 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land in the E½NW¼ of Section 19, Township 7 South, Range 35 E.B.M., BANNOCK COUNTY, IDAHO, more particularly described as follows:

BEGINNING at the Center Quarter Corner of said Section, said point being marked by an aluminum cap stamped LS 968; thence South 89°54'16" West along the latitudinal center line of said Section, 325 feet; thence North 3°47'21" West, 1,017.78 feet to a point on the South line of Gibson-Jack Road; said point being measured and parallel 25 feet South of the Center line of Gibson-Jack Road; thence North 45°2'37" East along said Section line of Gibson-Jack Road, 543.49 feet to the Intersection of said Section line and the meridional center line of said Section. Said point being marked by a ½" aluminum pin LS 968; thence South 00°19'33" East along said meridional center line 1,399.03 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land located in the Northwest Quarter of Section 19, Township 7 South, Range 35 East, Boise Meridian, BANNOCK COUNTY, IDAHO and is more particularly described as follows:

continued on page 3

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FIRST AMERICAN

SCHEDULE B
ORDER NO. 18682-B
POLICY NO. J 259391
PAGE 3

BEGINNING at the Center Quarter Corner of said Section 19, Township 7 South, Range 35 East, Boise Meridian. Said Corner being an aluminum cap tagged L.S. 968; thence S 89°54'16" W along the center latitudinal line of said Section 325.00 feet to the TRUE POINT OF BEGINNING; thence continuing S 89°54'16" W along said center latitudinal line, 412.50 feet; thence N 20°15'35" W, 523.26 feet to the South right of way of Gibson Jack Creek Road; thence N 45°02'37" E along said South right of way, 743.50 feet; thence S 3°48'21" E, 1017.78 feet to the POINT OF BEGINNING.

APR 2 8 1998

3-1

WARRANTY DEED

94011108

For Value Received **BOB G. TRIPP and LA RAE TRIPP, husband and wife**

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

GUY ANDERST, A MARRIED MAN DEALING WITH HIS SOLE AND SEPERATE PROPERTY AND W. CHRIS PEIN, A MARRIED MAN DEALING WITH HIS SOLE AND SEPERATE PROPERTY AND THOMAS IVERSON, AN UNMARRIED MAN

whose address is: P.O. Box R Pocatello, Idaho 83206

Hereinafter called the Grantee, the following described premises situated in BANNOCK County, Idaho, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: JUNE 15, 1994

BOB G. TRIPP

LA RAE TRIPP

STATE OF IDAHO)
: ss
COUNTY OF BANNOCK)

On This 15TH day of JUNE, in the year 1994, before me, a Notary Public in and for said State, personally appeared BOB G. TRIPP and LA RAE TRIPP, known or identified to me to be the person(s) whose name(s) ARE subscribed to the within Instrument, and acknowledged to me that THEY executed the same.

94011108
NO. REQUEST OF
FIRST AMERICAN TITLE
'94 JUN 16 A9:26

Notary Public of Idaho
Residing at POCATELLO, ID.
Commission Expires: 4-28-99

OFFICIAL RECORD BOOK NO 617
BANNOCK COUNTY IDAHO
LARRY W. GRAN RECORDER
FEE 9.00 DEPUTY

APR 28 1998

FILED
LARRY W. GHAN
CLERK OF DISTRICT COURT
BANNOCK COUNTY IDAHO

'87 NOV 24 A9:42

BY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, d/b/a/ GIBSON JACK, 1st ADDITION, Plaintiffs, vs. BANNOCK COUNTY COMMISSIONERS, Defendants.	CASE NO. 39322-C MEMORANDUM DECISION AND ORDER

The court has reviewed the file, record and transcript of the county hearings, statement of position, and points and authorities filed by counsel.

In September 1984, the Bannock County Commissioners (Board) approved a conceptual subdivison plan filed by plaintiffs/petitioners (Developers) on the condition that the subdivision would be connected to the Pocatello Municipal Water System. Developer's petitioned for judicial review and in January 1985, Judge McDermott remanded to the Board for further hearing. At this additional hearing the Board issued the modified findings of facts and conclusions of law but adhered to its prior decision requiring connection to the municipal water system. A second petition has been filed with this court asking for judicial review and additionally for the presentation of additional evidence. Developers complain that the Board had given approval to other proposed subdivisions without requiring the developers to demonstrate the availability of water as they

APR 28 1988

had required of these petitioners. The testimony of petitioner's expert, Mr. Chapman, is requested to clarify the record because of "inaudible" gaps in the transcript.

Notwithstanding the allegation that the Board may have approved other subdivision proposals without the scrutiny given to available water supply as it has to the present application, there is nothing in the record which would indicate that the conditional approval of this plate was arbitrary or otherwise improper. The burden is on the petitioner to demonstrate the infirmity of the Board's decision and they have not sustained this burden.

It is clear from the transcript that the availabilty of adequate water was very much in dispute. Several expressions of concern were made to the Board about the sufficiency of water, availability and the possibile impact of additional users and in light of these concerns it is not arbitrary nor unreasonable for the Board to require the developer to guarantee the availability of an adequate water supply before accepting the proposed subdivison. A local governing Board may be impowered to act to promote and preserve the general welfare of the community, and in providing for an adequate water supply as one of the means by which to do so. City of Lewiston vs Knieriem, 107 Idaho 80, 685 P.2d 821 (1984).

Once it is recognized that the Board is empowered to require the Developer to demonstrate that sufficient water is available,

APR 2 8 1989

the inquirY then focuses on whether or not there was substantial evidence to support the Board's findings that adequate ground water was not available in this case. According to petitioner's own expert, Mr. Chapman, the ground water supply is inadequate to meet the requirements that had been established by the Board. The finding by the Board that domestic wells will not be capable of producing sufficent water to supply the lots is reasonable is supported by substantial evidence and will not be disturbed on appeal.

The fact that there are a number of "inaudible" gaps in the transcript does not require further testimony by Mr. Chapman. The transcript is, while not ideal, sufficient to allow the court to evaluate the reasonableness of the board's findings.

IT IS THEREFORE ORDERED that the petition for Judicial Review of Administrative Proceedings and For Leave To Present Additional Evidence each are denied and the decision of the Bannock County Commissioners herein is affirmed.

DATED this 18th day of November, 1987.

WALLACE M. TRANSTRUM
District Judge

APR 2 8 1988

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 24 day of November, 1987, I mailed/served a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):	Method of Service:
Charles C. Just, Esq. WEINPEL, WOOLF, JUST, COMBO & DAVIS Box 935 Idaho Falls, ID 83402	U.S. Mail
Eric Storm, Esq. Deputy Prosecuting Attorney Bannock County Courthouse Pocatello ID 83201	U.S. Mail

LARRY GHAN, CLERK
by: Cindy Brandley

Judgment Docket #19, 12/22/87, gaa

APR 28 1988

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

BOB TRIPP, ROBERT THOMPSON, dba GIBSON JACK, 1st ADDITION, Plaintiff, vs. BANNOCK COUNTY COMMISSIONERS, Defendant.	Lodged 9/14/88 District Judge CASE NO. 39322-C MINUTE ENTRY AND ORDER

Following this court's Minute Entry and Order of September 22, 1987, the parties filed their briefs and upon review the court entered its Memorandum Decision and Order of November 18, 1987. Subsequently the petitoners advised the court that they had misunderstood the court's order concerning oral argument, and were then permitted to present oral argument to the court and review their position.

The court again thoroughly review the file, the transcript of proceedings, the points and authorities filed and oral argument and is again unpersuaded of the merit of petitoner's position.

IT IS THEREFORE ORDERED that this court's Memorandum Decision and Order of November 18, 1987, is affirmed as the final order of this court and this cause.

DATED this 14 day of September, 1988.

WALLACE M. TRANSTRUM
District Judge

APR 28 1989

C39322
MINUTE ENTRY AND ORDER 1

Legals

NOTICE OF APPLICATION FOR WATER RIGHT

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

29-08174
RUSH, EVELEE HILL
PO BOX 4905
POCATELLO, ID 83205
Source: SPRING
Tributary: PORTNEUF RIVER
Diversion Pt: LOT 1 (SESE) Sec 21 T 09S R 38E in BANNOCK County.
Use: COMMERCIAL
Total Diversion: (1.510 CFS)
Date Filed: 7/11/1996
In: BANNOCK County
T09S R38E S21 Lot 1 (SESE)

29-08175
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08176
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SENW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SENW

29-08177
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08178
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08179
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08180
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08181
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08182
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08183
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08184
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08185
BECKSTROM, KELLY
4464 HOLLOW RD
NIBLEY, UT 84321
Source: SPRING
Tributary: SINKS
Diversion Pt: NESWNW Sec 21 T 06S R 38E in CARIBOU County.
Use: DOMESTIC (0.040 CFS)
STOCKWATER (0.020 CFS)
Total Diversion: (0.060 CFS)
Date Filed: 7/9/1996
In: CARIBOU County
T06S R38E S21 SWNW
The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a $25.00 filing fee, Eastern Region, 900 N. Skyline, Idaho Falls, Idaho 83402 on or before AUGUST 19, 1996.
KARL J. DREHER, Director
August 1, 8, 1996

Date Filed: 7/11/1996
In: BANNOCK County
T09S R38E S21 Lot 1 (SESE)

29-08175
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08176
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SENW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SENW

29-08177
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08178
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08179
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: SWNW Sec 19 T 07S R 35 E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 SWNW

29-08180
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08181
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NENW

29-08182
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08183
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

29-08184
GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206
Source: GROUND-WATER
Diversion Pt: NWNW Sec 19 T 07S R 35E in BANNOCK County.
Use: DOMESTIC
Total Diversion: (0.050 CFS)
Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW

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APR 28 1998

ATTACHMENT 2
Qmy #2

Date Filed: 7/12/1996
In: BANNOCK County
T07S R35E S19 NWNW
29-08185
BECKSTROM, KELLY
4464 HOLLOW RD
NIBLEY, UT 84321
Source: SPRING
Tributary: SINKS
Diversion Pt: NESWNW Sec 21 T 06S R 38E in CARIBOU County.
Use: DOMESTIC (0.040 CFS)
STOCKWATER (0.020 CFS)
Total Diversion: (0.060 CFS)
Date Filed: 7/9/1996
In: CARIBOU County
T06S R38E S21 SWNW
The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a $25.00 filing fee, Eastern Region, 900 N. Skyline, Idaho Falls, Idaho 83402 on or before AUGUST 19, 1996.
KARL J. DREHER,
Director
August 1, 8, 1996
LN1658

525-7161 I.F.
327-7900 Boise

MICROFILMED
APR 2 8 1998

Pt # E022531

RECEIVED
AUG 2 9 1996
Department of Water Resources
Eastern Region

August 17, 1996

Clark Kelly
9685 Heather Road
Pocatello, ID 83204
1-208-233-7288

Department of Water Resources
150 Shoup Suite 15
Idaho Falls, ID 83402

Dear Mr. Karl J. Drecher,

Petition to intervene on

I wish to ~~protest~~ water permit applications 29-08175, 29-08176, 2908177, 29-08178, 29-08179, 29-08180, 29-008181, 29-08182, 29-08183, 29-08184 applied for by Gibson Jack Joint Venture and known as Wild Horse Ridge Subdivision. Simply stated, there is not enough water!

On August 8, 1984 the Bannock County Commissioners ruled that the water was suspect and city water and sewer was a requirement. The commissioners decision was upheld in court May 22, 1985, November 24, 1987, and finally September 14, 1988. (Case # 39322-C).

New owners, Gibson Jack Venture, breezed through the city and county commissioners who fear lawsuits. They appear to be politically connected.

Even though much evidence of water problems was produced it was agreed to four households per well by the commissioners.

First of all, wells that produce as little as fifteen G.P.M. will not support four households.

Secondly, all testing was done in the spring. All our wells are proven (February, 1995 Draft Final Report by John Welhan, Chris Meehan, and Ted Reid of Idaho State University) to be base on runoff. Fall tests are much worse. Recharge can be extremely low and neighboring wells greatly effect others.

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Finally, water quality is poor according to Janet Crockett, Senior Advisor to State Water Quality Board. My hardness rating the 478 and nitrates sometimes exceed 12.

Gibson Jack Ventures claim I do not have a water right, although I have an approved and paid for permit # 29-07846 dated August 8, 1988. If more permits are issued up Gibson Jack I will have no choice but to drill a new well.

I am already spitting air despite having a near artesian well in 1988. My water table is down near 100 feet in eight years. (Total depth 200 feet).

Since the Wild Horse Subdivision is in the city impact zone of Pocatello, and since the lots are small by country standards, I see no reason why a connection to city water should not be a requirement.

Sincerely,

Clark Kelly

MICROFILMED

APR 2 8 1998

The Law Offices of
F. Randall Kline, Chartered
A Professional Corporation

P.O. Box 397
427 N. Main, Suite L
Pocatello, Idaho 83204
Telephone (208) 232-9007
Fax (208) 234-4654

August 26, 1996

RECEIVED
AUG 2 7 1996
Department of Water Resources
Eastern Region

Harold W. Jones
Water Rights Supervisor
Idaho Department of Water Resources
900 N. Skyline Drive
Idaho Falls, Idaho 83402-1718

Re: Gibson Jack Joint Venture
Application for Permit No. 29-08175 thru 29-08184

Dear Mr. Jones:

In reference to the protest filed by Richard Hollingsworth, let me offer the following.

1. Having dealt with Mr. Hollingsworth substantially in the past, there is no benefit in contacting Mr. Hollingsworth directly or attempting to resolve the protest, as he appears to be of the opinion, "don't confuse me with facts, my mind is made up".

2. Richard Hollingsworth has demonstrated an ability to do whatever he can to prevent this development from taking place.

3. It is requested that a hearing before a hearing officer be scheduled as soon as possible to proceed with this matter. It appears that one of Mr. Hollingsworth's tactics is to cause delay for delay sake.

4. The basis for Mr. Hollingsworth's contentions seem to be based primarily on another development based upon different density and other information.

On behalf of the Gibson Jack Joint Venture and the placement of their domestic wells for the residential subdivision, they are now prepared to address each of the issues presented in conformance with Idaho Code § 42-203. As such, it is requested that a hearing before a hearing officer be expedited in this matter, seeking to obtain final approval of the application for the domestic wells. Thank you for your courtesies in this matter. If you have any comments or questions, please do not hesitate to contact me.

Sincerely,

F. Randall Kline

FRK:ljw
c: Chris Pein
Richard Hollingsworth

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APR 2 8 1998

29-08175

GIBSON JACK JOINT VENTURE
PO BOX R
POCATELLO, ID 83206

Source: GROUNDWATER

Diversion Pt: NENW Sec 19 T 07S R 35E in BANNOCK County.

Use: DOMESTIC (0.050 CFS)
Total Diversion: (0.050 CFS)

Date Filed: 7/12/1996

In: BANNOCK County
T07S R35E S19 NENW

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APR 2 8 1998