

State of Idaho

Department of Water Resources

Application
ASSIGNMENT OF ~~PERMIT~~

RECEIVED

JUN 26 1989

Department of Water Resources
Eastern District Office

I, CITY OF POCA TELLO, hereby assign to TURNER WELL ASSOCIATION

of 2339 So. 2nd POCA TELLO, IDAHO
Address

All my right, title, and interest in and to Permit No. 29-7700
to appropriate the public waters of the State of Idaho.

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

(Describe that portion of the permit being assigned by listing the acreage
within each 40 acre subdivision, the point of diversion and the amount of
water in cubic feet per second for direct diversion, or acre feet for storage)

ALL 0.69 CFS

Made this 20th day of JUNE, 19 89.

Richard L. Lingen, Mayor
Permit Holder

Spouse of Permit Holder

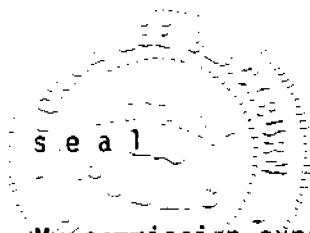
State of Idaho)
County of Bannock) ss

On this 20th day of June, 19 89, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

Loraine Lee Blackburn
Notary Public residing at
Pocatello, Idaho

My commission expires:

8-18-91



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

*ASSIGNED TO:
Turner Well Association
2339 S. 2nd
Pocatello, ID 83204
6/26/1989

To appropriate the public waters of the State of Idaho

1. Name of applicant kw --CITY OF POCATELLO--* Phone (208) 232-4311

Post office address -P.O.-BOX-4169-~~PO Box 4169~~ PO Box 4169 83205 *

2. Source of water supply GROUND WATER which is a tributary of _____

3. Location of point of diversion is SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 36 Township 6S

Range 34 E B.M. BANNOCK County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount .69 CFS for IRRIGATION purposes from March 15 to Nov. 15 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 0.69 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. _____
WELL, PUMP, MOTOR & PIPE.

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

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

c. Proposed well diameter is 16" inches; proposed depth of well is 70 feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 2 years (minimum 1 year — maximum 5 years).

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M.

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

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

(4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.

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

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

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6 S	34 E.	23						.70						1.22					1.92
6 S	34 E.	35													.04				.04
6 S	34 E.	36									5.42	3.22							8.64
7 S	34 E.	1		20.1	.86		.53								2.38				23.87

Total number of acres to be irrigated 34.47

c. Describe any other water rights used for the same purposes as described above. Land irrigated by Fort Hall water at present. Will be replaced with water from this permit.

9. a. Who owns the property at the point of diversion Mrs. Evelyn Turner

b. Who owns the land to be irrigated or place of use See Attached sheet

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing City of Pocatello will be purchasing the well site from Mrs. Evelyn Turner.

10. Remarks

4/27/83

Received by OW Date 4-27-83 Time 3:35p
Preliminary check by KCW Fee \$ 4500
Receipted by OW Date 4-29-83 # 28125
Publication prepared by RB Date 6-6-89
Published in Idaho State Journal
Publication dates 6-15 & 22, 89
Publication approved OW Date 7-05-89
Protests filed by: none

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for (approval) denial by HWT

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 29-7700, and said application is hereby APPROVED.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 19 91.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.

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

The issuance of this permit in no way grants any right-of-way or easement across the land of another.

Witness my hand this 20th day of July, 1989.

A. Glen Saxton

NAME	ADDRESS	ACRES	DESCRIPTION
Loel Tonks	1844 South 2nd	1.12	Lot 24 & W $\frac{1}{2}$ Lot 23, Blk.3, Keystone Subd. and tax #27 in NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec.36, T.6S., R.34 E.
John T. Ratliff	445 Roosevelt	.62	Lots 7-10, Blk. 6, Keystone Subd.
Rose Mary McCuan	1655 South 3rd	.62	Lot 19-22, Blk.2, Keystone Subd.
L.A. Montague	1534 South 2nd	.50	Lots 36-39, Blk.2, Keystone Subd.
Knute L. Johansen	1635 South 3rd	.37	Lots 16-18, Blk.2, Keystone Subd.
George Stuart Walker	1609 & 1645 South 5th	.85	Lots 1-6, Blk.6, Keystone Subd.
Larry B. Gonzales	1525 South 4th	.21	Lot 4 & N $\frac{1}{2}$ Lot 5, Blk.3, Keystone Subd.
Michael G. Phillips	337 Stansbury	.27	Lot 7, Bremer Subd.
Wm. A. Morrison	549 Stansbury	.38	Part of Lots 22 & 23, Bremer Subd.
Orris R. Eyler	535 Crescent	.36	Part of Lots 22 & 23, Bremer Subd.
James A. Stitt	507 Crescent	.29	Lot 25, Bremer Subd.
Tony Martin	1860 South 3rd	.32	South 108' of lot 33, Bremer Subd.
James M. Robinson	353 Crescent	.33	Part of lot 37, Bremer Subd.
Clarence W. Smith	1857 South 4th	.50	Lot 40 & part of lot 27, Bremer Subd.
Cole Reed Associates	441 Stansbury	.31	Lot 1, Bremer Subd.
Henrietta Butler %			
Geraldine Sorrell	460 Crescent	.20	Lot 19, Bremer Subd.
Marilyn F. Aucourt	1863 South 3rd	.14	Lot 34 & SE. 30' of lot 35, Bremer Subd.
Harold Anderson	308 East Lawton	.04	Part of lot 9, Blk.1, Park Drive Subd.
Daniel C. Green	1531 South 2nd	.25	S. $\frac{1}{2}$ lot 2, Blk.2, Park Drive Subd.
Joel D. Robinson		.24	Lot 8, Blk.2, Park Drive Subd.
Modern Cinema Inc.	310 East Oak	.33	Lots 18-20, Blk.4, Gove Community Center
Alva Jean Simpson	265 Warren	.23	Lots 8 & 9, Blk.1, Gove Community Center
Arden F. Whitworth	255 Warren	.22	Lots 10 & 11, Blk.1, Gove Community Center
Jerry Holverson	239 Warren	.22	Lots 14 & 15, Blk.1, Gove Community Center
Joseph Devere Stoddard	273 Warren	.22	Lots 6 & 7, Blk.1, Gove Community Center
J.L. & L. Trust %			
Lois Anne Stewart	2445 South 2nd	1.76	Lot 8 except W. 150', Blk.2, MacDonald Acres
Robert Takigawa	2535 South 2nd	1.15	Part of lots 4 & 5, Blk.2, MacDonald Acres
H.F.I.	2517 South 2nd	1.12	Part of lot 6, Blk.2, MacDonald Acres
Michael H. Hawks	2427 South 2nd	1.73	Part of lot 9, Blk.2, MacDonald Acres
Leonard H. Carlson	2721 South 2nd	3.36	Lot 11 & 12 except W.200', Blk.2, MacDonald
R. Lloyd Bybee	2645 South 2nd	2.66	Part of lots 1 & 2, Blk.2, MacDonald Acres
Rusty L. Jackman	2645 South 2nd	.20	Part of lot 2, Blk.2, MacDonald Acres
Logan Robinson	2607 South 2nd	3.22	Part of lots 3-6, Blk.2, MacDonald Acres
R.J. Myler	2555 South 2nd	.54	Part of lot 4, Blk.2, MacDonald Acres
George W. Hargraves %			
Logan Robinson	2607 South 2nd	.55	Part of lots 3 & 4, Blk.2 MacDonald Acres
Thomas Loren Marley	2647 South 2nd	.84	Part of lots 1 & 2, Blk.2, MacDonald Acres

NAME	ADDRESS	ACRES	DESCRIPTION
Elden Jacobsen % Sunkiss School	2325 South 2nd	2.11	Lots 1 & 2 and S.½ lot 3, Blk.1, Rovera Subd.
Burnell J. Jayne	2254 Oliver	.53	Part of lots 3 & 4, Blk.1, Rovera Subd.
Elwood Pence	2242 Oliver	.52	Part of lot 4, Blk.1, Rovera Subd.
Joseph K. Simons		1.20	Part of lot 10, Blk.2, MacDonald Acres
Mrs. Evelyn Turner	End of South 2nd	1.63	Tract of land in NE¼ SE¼, Sec.1, T.7S., R.34 E.
C.E. Dissault	End of South 2nd	.75	Tract of land in NE¼ SE¼, Sec.1, T.7S., R.34 E.
Ray Bistline		.76	Tract of land in W½ NW¼ SW¼, Sec.36, T.6S., R.34 E.
Guy Neilsen		.70	Tract of land in E½ NW¼ NW¼, Sec.23, T.6S., R.34 E.

PROOF OF PUBLICATION

STATE OF IDAHO

County of Bannock

ss.

Department of Water Resources
Eastern District Office

Sandra K. Wann

being first duly sworn on oath deposes and says: That she
was at all times herein mentioned a citizen of the United States of America, more than 21 years of age, and the Principal Clerk of THE IDAHO STATE JOURNAL, a daily newspaper, printed and published at Pocatello, Bannock County, Idaho, and having a general circulation therein.

That the document or notice, a true copy of which is attached, was published in the said IDAHO STATE JOURNAL, on the following dates, to-wit:

15 June	1989	19
22 June	19 89	19
	19	19
	19	19
	19	19

That said paper has been continuously and uninterruptedly published in said County for a period of seventy-eight weeks prior to the publication of said notice or advertisement and is a newspaper within the meaning of the laws of Idaho.

Sandra K. Wann

STATE OF IDAHO

COUNTY OF Bannock

On this 22nd day of June in the year of 1989, before me,
a Notary Public, personally appeared Sandra K. Wann,
known or identified to me to be the person whose name subscribed to the within instrument,
and being by me first duly sworn, declared that the statements therein are true, and
acknowledged to me that he executed the same.

John L. Larson
Notary Public for Idaho

Residing at Pocatello

My commission expires: July, 1991

LIBRA (Sept. 2)
hours, and spoil
ing in and staying
your permission.
financial jacket. M
You'll have more re
VIRGO (Aug. 23)
Pisces in picture.
Legal agreement is
Emphasis on spirit
despite insistence
LEO (July 23-
is semi-retired
and will see this
xation, house or
change of plans. I
is plans that we
sage. Focus on fam
CANCER (June
ts are often an
we are sure it
sister. Virgo involv
e this problem to
communication, imp
You'll be working
nd work into our
burden. Greater de
FIRE PROTECTION (.080 CFS)
Date Filed: 5-19-1983
In: T06S R34E S12 SWNW SENW
NESW NWSW
4.0 ACRES TOTAL
29-07729
SPRAKER, IRVIN L.
INKOM, ID 83245
Source: PORTNEUF RIVER
Tributary: SNAKE RIVER
Diversion Pt:
SENE Sec 34 T 07S R 36E
Use: IRRIGATION (.200 CFS)
Date Filed: 6-14-1983
In: T07S R36E S34 SENE
S35 SWNW
14.0 ACRES TOTAL
29-07730
FUHRIMAN RANCH, INC.
BOX 103
DOWNEY, ID 83423
Source: MARSH CREEK
Tributary: PORTNEUF RIVER
Diversion Pt:
SWNE Sec 11 T 11S R 36E
Use: IRRIGATION (.760 CFS)
Date Filed: 6-13-1983
In: T11S R36E S11 NWNE SENW
38.0 ACRES TOTAL
29-07731
FUHRIMAN RANCH, INC.
BOX 103
DOWNEY, ID 83234
Source: GROUNDWATER
Diversion Pt:
SESE Sec 35 T 10S R 36E
Use: IRRIGATION (3.750 CFS)
Date Filed: 6-13-1983
In: T10S R36E S35 NESE NWSE
SWSE SESE
T11S R36E S02 NENE NWNE SWNE
SENE
NWSE
288.0 ACRES TOTAL
The permit(s) will be subject to all
prior water rights. Protests may be
submitted based on the criteria of
Sec. 42-203A, Idaho Code and/or the
new public interest criteria of Sec.
42-203C, Idaho Code. Protests must
be filed with the Director, Dept. of
Water Resources, 150 Shoup Ave.,
Suite 15, Idaho Falls, Idaho 83402, on
or before JULY 3, 1989.
S/R. Keith Higginson, Director
June 15, 22, 1989
No. 157

May 2, 1990

TURNER WELL ASSN.
2339 S. 2ND
POCATELLO, ID 83204

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 29-07700

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls at (208)525-7161.

Sincerely,

Rita Fleck
Secretary/Records Manager

c: IDWR - Region

1/00

PROOF OF BENEFICIAL USE

ANALYSIS SHEET

Permit No. 29-7700

Date: 4-30-90

General Considerations:

- ☒ Name same as permit
☒ Signature the same as permit holder
☒ Address change If yes, prepare a data entry
☒ Proof received timely
☐ Reinstated

Source of Water:

- ☐ Surface water
☒ Groundwater
NO 1. well log in file June 1985
NA 2. drilling permit
NA A. amount of drilling fee paid for proposed uses

Extent of Use and Rate of Diversion:

- ☒ Rate of diversion appropriate for uses
☒ Is rate or volume and fee appropriate?
☒ Has permit holder indicated when water was first put to a beneficial use?

Measuring Device:

- NO Is a measuring device or access port required?
☐ Has one been installed?
☐ Waiver or modification of measuring device requested

Remarks:

Proof acceptable

Priority Calculation:

Date proof received	<u>NA</u>	
Date proof due		
No. of days late		
Priority date		
NEW PRIORITY DATE		

SEND FILES TO DATA ENTRY AND THEN TO MICROFILM

RECEIVED

FEB 7 1990

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

For Office Use Only

Fee Received 400.00Date 3/7/90Receipt # C 014464Receipt by L. J. HarrisonReviewed by APR 4-30-90Sent to region

PROOF OF BENEFICIAL USE

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

Permit No. 29-7700Name(s) of Permit Holder: TURNER WELL ASSOCIATIONPost Office Address: 2339 SOUTH 2ND AVEPOCATELLO IDAHO 83204 Telephone No. 233-3427Source of Water: GROUND WATER

Extent of Use:

Domestic (number of households) Stockwater (number and type of stock)Irrigation 34.47 (acres) Other/Remark Total rate and/or volume for which proof is submitted 69 cfs 3 acre-feetShow the date water was first diverted and beneficially used under this permit: JUNE 1985Measuring Device: Required? Yes ☒ No
Installed? Yes ☒ NoFee enclosed \$ 100.00
(See License Examination Fee Schedule)Flow Measurement Port: Required? Yes ☒ No
Installed? Yes ☒ No

Person to contact to accompany the Department representative during the field examination:

PRES. OF ASSOC. LEONARD H. CARLSON 233-3427
(Name) (Telephone Number)2339 S. 2ND AVE. POCATELLO Id. 83204
(Address)

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

2-5-90
DateLeonard H. Carlson Pres. of Assoc.
Signature of Permit Holder (and title, if appropriate)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
COMMENCEMENT OF WORKS

Permit No. 29-07700

Name(s) of Permit Holder(s): Turner Well Association

Post Office Address: PRES. LEONARD H. CARLSON
2339 South 2nd Ave. Pocatello, ID 83244 Tel. No. 233-3427

☒ I hereby certify that construction of diversion works for the above referenced permit began on 4-27-83 (date). I understand that I must

continue to develop the water system with due diligence to maintain a valid permit.

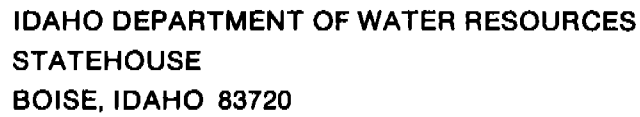
☐ I hereby certify that construction of diverting works on the above referenced project has not yet begun due to the following reason beyond my control*:

*Note: A financing difficulty is not an acceptable reason.

Aug 12-87
Date

Turner Well Association
Leonard H. Carlson Pres.
Signature of Permit Holder

PLACE
STAMP
HERE



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

Statehouse
Boise, Idaho 83720
(208) 334-7900
July 20, 1989

CITY OF POCATELLO
P.O. BOX 4169
POCATELLO, ID 83201

P E R M I T A P P R O V A L N O T I C E

RE: PERMIT NO. 29-07700

Dear Permit Holder:

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

You should be aware that the groundwater you propose to divert is located within a drainage basin where surface waters are regulated during the months of low flow. It is possible that diversion of groundwater may have an adverse impact on these surface water flows. Information available to us at this time does not warrant refusing to issue permits in your area, but we do caution that diversions of groundwater are not allowed to deplete flows available for surface water users with earlier priority dates. Siting your well as far from surface sources as possible and casing out upper water producing zones may reduce the potential of interference.

Section 42-235, Idaho Code, requires that a "drilling permit" must be obtained from the department for all wells constructed after July 1, 1987. A drilling permit is a separate permit that must be issued in addition to your permit to appropriate water. Commencement of well construction or diversion of water under your permit to appropriate water is prohibited unless a drilling permit is obtained.

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

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

Sincerely,

GARY SPACKMAN, Supervisor
Water Right Permits Section

GS: SC
Enclosures

State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: KC Wilson

APPLICATION NUMBER: 29 7700

CHECK:

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

Field check by: _____

Date: _____

Comments: _____

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: _____

SEND COPIES TO:

- ☐ Idaho State Health Department.
☐ Idaho Fish and Game Department.
☐ Idaho Department of Lands.
☐ U.S. Bureau of Land Management.
☐ U.S. Forest Service.
☐ Other _____

Copies sent by: _____ Date: _____

PROCESSING:

- ☐ Yes ☒ No Platted by: _____ Map No. _____
☐ Yes ☒ No Other rights on same place of use. _____
☒ Yes ☐ No* In form for advertising.
Final date for protests: 7-3-89
☐ Yes ☒ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 6-23-89
☒ Application published correctly. If not, record action taken: _____
☒ Fee amount, receipt date & number, recorded on application.
☒ Publication dates and paper, recorded on application.
☒ Protests, dates, withdrawal, etc., recorded on application.
☒ Recommendation & initial, recorded on application.
☐ Yes ☒ No Measuring device required.
☐ Yes ☒ No Access port required.
☒ Yes ☒ No Will water be delivered by watermaster? If yes, what district? 29-705
4-27-89 Date of priority recommended.
Special conditions of approval or cover letter. _____

App. in NON-TRUST area -
OK to allow 2 yrs. to develop

By: HLW

Date: 7-6-89

STATE OFFICE REVIEW:

P05, P23

P17

48 49 46 26 04

REC

- ☐ See attached sheet for more information.

By: KW

Date: 7/18/89

JUL 08 1989

Department of Water Resources

POINT OF DIVERSION AND STREAM INDEX INFORMATION

TRACT SEC TWP RGE gov't rediv.
lot (R) REACH

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv.
lot (R) REACH

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv.
lot (R) REACH

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv.
lot (R) REACH

IDAHO STREAM CODE INDEX

TRACT SEC TWP RGE gov't rediv.
lot (R) REACH

IDAHO STREAM CODE INDEX

ACTION REQUIRED

FROM: H.W. Jones IDWR

TO: Gary Thornton - City of Pocatello

Attached is an assignment form for Applica 29-7700.
If this well is now owned by a home owner or
water users group the applic. should be in their name.

Please note the assignment needs to be notarized.
I've also attached a copy of the Applica. For your information.
If you have any questions please give me a call.
HWF

Made this _____ day of _____, 19____.

Permit Holder

Spouse of Permit Holder

State of Idaho)
County of _____) ss

On this _____ day of _____, 19____, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

s e a l

Notary Public residing at

My commission expires:

07-Jun-1989

City of Pocatello
P.O. Box 4169
902 E. Sherman
Pocatello, ID 83205

RE: Application for Permit No. 29-7700

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the Idaho State Journal. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region
150 Shoup Ave., Suite 15

Idaho Falls, Idaho 83402
(208) 525-7161

JUNE 6, 1989

IDAHO STATE JOURNAL
P.O. BOX 431
POCATELLO, ID 83204

Gentlemen:

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

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

Please send the affidavit of publication and publication billing to this office before JULY 3, 1989.

Yours truly,

Rita Bodell
Secretary

Encl.

NOTICE OF APPLICATION FOR WATER RIGHT

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

29-07700

CITY OF POCA TELLO
P.O. BOX 4169
POCA TELLO, ID 83201

Source: GROUNDWATER

Diversion Pt: SESW Sec 36 T 06S R 34E

Use: IRRIGATION (.690 CFS)

Date Filed: 4/27/1983

In: T06S R34E S23	NWNW	SESW		
S35	NESE			
S36	NESW	NWSW		
T07S R34E S01	NWNE	SWNE	NENW	NESE

40.0 ACRES TOTAL

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before JULY 3, 1989.

R. Keith Higginson, Director

Published 6/15/1989 & 6/22/1989

City of Pocatello • Water Department

P.O. Box 4169 • 902 E. Sherman • Pocatello, Idaho 83201 • (208) 232-4311



August 21, 1985

AUG 23 1985

Department of Water Resources
Eastern District Office

Ernest Carlsen
Assistant Regional Supervisor
State of Idaho
Dept. of Water Resources
150 Shoup
Idaho Falls, Idaho 83402

Dear Mr. Carlsen:

In response to your letter dated 8-12-85, regarding application for permit #29-7700. As indicated on application for permit, this permit will be for an existing well that was purchased from Mrs. Evelyn Turner. This well will supply water to irrigate land that was being irrigated by Fort Hall water.

Enclosed is a copy of an agreement on Fort Hall Water and an agreement with users to replace Fort Hall Water with well water.

Sincerely,

Gary E. Thornton
Water Superintendent

Enclosures

GET/jl

08/85

DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE SURVEY

29-2200-

AUG 23 1985

Department of Water Resources
Eastern District

CITY OF POCA TELLO

P.O. BOX 4169, POCA TELLO, ID 83201

Source: GROUNDWATER

Date Filed: 04/27/1983

Diversion Pt: SESW Sec 36 T 06S R 34E

Use: IRRIGATION (0.69 CFS)

In: NWNW SESW Sec 23 T 06S R 34E NESE Sec 35 T 06S R 34E NESH NWNW
Sec 36 T 06S R 34E NWNE SWNE NENW NESE Sec 01 T 07S R 34E
FOR 40 ACRES

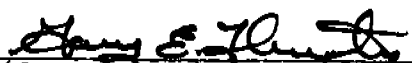
Check the box to the left of the paragraph which accurately describes the status of the project described by the application and then sign on the line at the bottom of the page.

A. ☐ Prior to October 1, 1984, the source of water listed on application for permit No. _____ was not being diverted and put to beneficial use as represented by the application.
SEE ENCLOSED LETTER OF AGREEMENTS.

B. ☐ Prior to October 1, 1984, the source of water listed on application for permit No. _____ was being diverted and put to beneficial use as represented by the application.

If paragraph "B" was selected return the form with documentation confirming beneficial use occurred prior to October 1, 1984. This documentation should include a sworn statement from you as applicant, plus other evidence that will substantiate beneficial use.

Additional information is not required for paragraph "A".

 8-21-85
(Signature)

WATER SUPERINTENDENT

291 P.2d 282

1. Waters and Water Courses ⇨158(2)

Lew COX, Willard Walters, Max Peterson, William McAughey, A. R. Dick, Howard B. Hildreth, Howard Lee, Harold Anderson, and R. Stanford Pugmire, and all these other persons similarly situated, Plaintiffs-Respondents,

v.

CITY OF POCATELLO, Ray Hunter, Harry Yearsley, Steve Rhoads, Fred Burton, Ezra Hawkes, Grant Stowell and Mel Deaton, Defendants-Appellants.

No. 8244.

Supreme Court of Idaho.

Dec. 7, 1955.

Action against city for injunction and for damages on account of city's alleged failure to fulfill contractual obligation to conduct irrigation water through townsite. The Fifth Judicial District Court, Bannock County, R. W. Beckwith, P. J., rendered judgment for plaintiffs, and defendants appealed. The Supreme Court, Smith, J., held, inter alia, that fact that water users wrote letter to city, which had contracted to deliver irrigation water, apprising city of commission of damages resulting from city's failure to deliver required water, satisfied statutory requirement that claim for damages against city be filed within 30 days after accrual of damage.

Decree and judgments affirmed.

77 Idaho—15

Contract requiring city, for an indefinite term, to convey irrigation water through townsite was construed, to render it enforceable, as a contract to remain in force at will of parties, or for a reasonable time.

2. Waters and Water Courses ⇨158(1)

City which was bound by contract, to remain in force at will of parties or for a reasonable time, to convey irrigation water through townsite could not terminate contract except upon due and timely notice to water users, with opportunity afforded them to be heard on any asserted right, as well as opportunity to protect their vested rights to, and resulting from and dependent upon, the use of allotted irrigation water.

3. Waters and Water Courses ⇨158(3)

Where a city, which has contracted to convey irrigation water through townsite, terminates contract, water users are still entitled to delivery of irrigation water, with a right in city to impose and collect a reasonable charge. I.C. §§ 50-144, 50-1104, 50-1112, 50-1123, 50-1141.

4. Waters and Water Courses ⇨158(3)

City which had contracted to convey irrigation water through its townsite could, at its expense and in its sole discretion, alter or change channel of waterway. I.C. § 50-1112.

5. Waters and Water Courses ⇨158(3)

In view of fact that city could choose alternate course for conduct of water, that concrete pipes through which it was conducting water, under contract, for irrigation purposes, obstructed and interfered with construction of curbs, sidewalks and streets did not render the pipe a nuisance or warrant city's action in failing to deliver water.

6. Municipal Corporations ⇨605

The city's power to declare, prevent or abate a nuisance does not include power to declare anything a nuisance which is not one in fact or one per se.

7. Municipal Corporations ⇨741(2)

That water users wrote letter to city, which had contracted to deliver irrigation water, apprising city commission of damages resulting from city's failure to deliver required water, satisfied statutory requirement that claim for damages against city be filed within 30 days after accrual of damage. I.C. § 50-162.

8. Municipal Corporations ⇨741(2)

Statute requiring that claim for damages against a city be filed with city clerk within 30 days after accrual of damage did not require a statement of circumstances showing absolute liability, but rather of such information that city authorities may be able to make a full investigation of cause of damage and determine city's liability therefor. I.C. § 50-162.

9. Municipal Corporations ⇨741(1)

Statute requiring that claim for damages against city be filed within 30 days after date of damage is intended to give city notice of claim and opportunity to ascertain extent of damage, and should not be given a construction which will defeat the ends of justice. I.C. § 50-162.

10. Waters and Water Courses ⇨158½(2)

In action against city for injunction and for damages for failure to fulfill contractual obligation to conduct irrigation water through townsite, evidence sustained finding that city by willful action had interfered with flow of water and deprived water users of the use thereof.

11. Stipulations ⇨18(1)

A stipulation is not necessarily binding upon parties as to conclusions of law embraced therein.

Ben Peterson, City Atty., Pocatello, for appellant.

All claims for damage against the city must be filed with the city clerk within thirty days after the time when such claim for damages shall have accrued, specifying the time, place, character and cause of said damage. No action shall be maintained against the City for any claim for damages until the same has been presented to the city council, and until sixty days have elapsed after such presentation. The allowance of

any and all damage claims against the city shall be by ordinance, and not otherwise. Idaho Code § 50-162; *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507.

The holder of a permit to install an obstruction in a public street or thoroughfare for a private purpose, acquires no property or contractual right by reason of the issuance to him of such permit, and whenever the city authorities, in their discretion, deem it necessary as a proper police measure, to vacate and revoke such permit, the holder of the same has no alternative, but must comply with such order of revocation. *Boise City v. Sinsel*, 72 Idaho 329, 241 P.2d 173.

Anderson & Anderson, Pocatello, for respondent.

The section requiring that a claim be filed before damages could be allowed against the city does not apply in this instance, as such statute was enacted subsequent to the Idaho Code § 7-312, which governs issuance of Writ of Mandate. *Carter v. Niday*, 46 Idaho 505, 269 P. 91.

It is well established that a city or state or the United States cannot take an existing water right without payment of just compensation therefor. *Twin Falls Salmon River Land & Water Co. v. Caldwell*, 9 Cir., 242 F. 177; *Wilder Irrigation Dist. v. Jorgensen*, 64 Idaho 538, 136 P.2d 461.

Where an act is a direct affirmative one by the city, then it is not necessary to file

such notice of claim, because the city presumptively had knowledge of the consequences which would flow from such an action. 63 C.J.S., *Municipal Corporations*, § 923, p. 348; 38 Am.J.P. §§ 678-82.

SMITH, Justice.

Respondents in a single action seek mandate to compel appellants, during irrigation seasons to permit the flow of respondents' allotted irrigation water through a ditch or canal extending southerly through the townsite of the City of Pocatello, and to deliver the water to respondents' ditch at the city's south boundary; and for recovery of damages to their gardens and crops, allegedly caused by the city's refusal so to deliver the water during the forepart of the 1952 irrigation season.

The action was tried upon a stipulation of facts, evidence adduced and affidavits filed by stipulation.

Respondents' predecessors in interest acquired rights to the use, for irrigation purposes, of three acre feet of water per acre of their lands irrigated. They acquired those rights, dating variously during the years 1913-1918, under contracts with the United States, acting through the superintendent of irrigation of the U. S. Indian service, as authorized by the Department of the Interior. Those contracts evidenced a plan of sale and distribution of waters for use for agricultural purposes under

Fort Hall Irrigation Project, constructed and operated on Fort Hall Reservation.

The stipulation of facts sets forth a contract dated June 3, 1922, between the City of Pocatello, and named landowners of whom respondents are successors in interest; that Fort Hall Irrigation Project is obligated to deliver the three acre feet of water per acre, measured at the city's north boundary where a part of the Project's distribution system enters the city limits; that from that point, a city-owned ditch extends southerly through the city, "which receives and conveys water distributed to it as a part of the Fort Hall Irrigation Project and is known as 'Lateral Y.'"; that it is necessary that the landowners use the city ditch thereby to convey such irrigation water to their lands.

The contract provides in effect that, in consideration of payment to the city by the named landowners of an annual charge, called rental, of 50 cents an acre of their land irrigated by water carried through the ditch, and the landowners' promises to provide a ditch or get-away for excess city water, and to save the city harmless from liability for damage caused by such excess water to property situate south of the city, the city agrees, each irrigation season, to receive at its north boundary into the city ditch, the landowners' irrigation water as delivered by Fort Hall Irrigation Project, and to conduct such water through its town-site and deliver it to the landowners' ditch at the city's south boundary.

The contract does not provide a date of termination.

The parties stipulated that respondents have paid to the city the sums of money provided in the contract.

The stipulation sets out that the city was to convey to 141.32 acres of lands, owned by the original landowners named in said contract, water as allotted by Fort Hall Irrigation Project, distributed over the irrigation season of 150 days at the rate of three acre feet of water per acre which amounts to 1.42 cubic feet per second; that by the spring of 1952 the original acreage of 141.32 acres had decreased, by relinquishment of rights by successors in interest to the original named landowners to 43.53 acres which receive water under such irrigation project through the city ditch.

The city has conveyed the irrigation water (three acre feet per acre) through the city ditch and delivered it to the extension of said ditch at the city's south boundary, for use on lands of respondents, during each irrigation season, from the inception of the contract until the spring of 1952, by means of a 36-inch concrete pipe laid along the streets of the city. The parties stipulated that such pipe interfered with construction of "curbs and sidewalks, and streets upon a portion of North 14th Avenue in the City of Pocatello." During April 1952, the city, in order to improve certain of its streets, replaced 180 feet of

the 36-inch pipe with 14-inch pipe. This resulted in a decreased flow of water through the city ditch and in a decreased amount of water delivered for use on respondents' lands as compared to deliveries made during previous years.

Prior to June 4, 1952, no actual measurement was ever made of the water so conveyed and delivered; but, as stipulated, during the irrigation season, water in excess of three acre feet per acre was delivered to respondents, and those similarly situated, or their predecessors. Such portion of the stipulation is interpreted as referring to irrigation seasons prior to the year 1952.

The parties then stipulated as to the 1952 season, that the city did not receive any water from Fort Hall Irrigation Project May 27, May 31, and June 1, 1952, nor did respondents; that the city delivered to respondents and those similarly situated, water measured in cubic feet per second of time on dates as follows:

6-4-52 to	.70 to
6-19-52,	2.58,
inclusive,	varying
each date	on the
being set forth,	different dates,

and to the ditch of respondents, water so measured on dates as follows:

6-19-52 to	
6-25-52, inclusive,	1.8 approximately,
6-27-52 to	
9-23-52, inclusive,	2.15.

About June 27, 1952, the city installed a pump near its south boundary and, by

pumping water into the ditch, augmented the flow to the second feet measurement then and thereafter shown. No damage thereafter occurred to respondents' gardens and crops.

June 3, 1952, respondents' counsel demanded of the city in writing in effect, that it continue to live up to its obligation to deliver the irrigation waters under the contract of June 3, 1922; that its failure so to do already had caused considerable damage and that if the water be not delivered in two days, the water users would hold the city strictly accountable for all resultant damages. The city commission at its meeting of June 5, 1952, caused that letter to be read and filed.

June 12, 1952, the five respondents, Cox, Walters, Peterson, McAughey and Lee, filed their verified petition for a writ of mandate to require the city to convey through its city ditch and deliver respondents' irrigation water, alleging that June 5, 1952, the city refused to deliver the water; each claimed crop damage suffered due to lack of water. Subsequently, December 3, 1952, two additional respondents, Hildreth and Dick, joined in the action and thereupon the seven respondents filed their verified amended petition for writ of mandate; each claimed crop damage in substantially the same form as the original petition.

December 20, 1952, appellants by their answer acknowledged that the City of Pocatello entered into the contract of June

3, 1922, but alleged invalidity of the contract; they denied the balance of respondents' amended petition, and set out that respondents had not filed any claim for damages against the city as required by I.C. sec. 50-162.

The seven respondents, Cox, Walters, Peterson, McAughey, Dick, Hildreth and Lee, each testified as to his ownership or occupancy of certain lands for which, prior to the 1952 irrigation season, he had received allotted irrigation water from Fort Hall Irrigation Project, delivered by the city; also as to his crop damage due to lack of water during the 1952 irrigation season.

The parties thereafter stipulated into the record the claims for damage in affidavit form, of respondents Harold Anderson and H. Stanley Pugmire, in which each sets forth his ownership of certain lands situate south of the City of Pocatello, for which he receives the irrigation water from Fort Hall Irrigation Project, his crops grown on the lands, and his claimed crop damage due to lack of water during the 1952 irrigation season; also stipulated like testimony and objections to those claims, as relate to the claims of other respondents.

The parties also stipulated into the record, the affidavit of Mr. Draper, project manager of Fort Hall Irrigation Project, relating to the time when such irrigation water is normally made available during the irrigation season, and when made available

during the 1952 irrigation season for the Pocatello lateral or ditch.

The trial court ruled in favor of respondents; particularly, the court ruled that appellants are obligated by the agreement of June 3, 1922, to convey respondents' irrigation water through the city ditch at times when the water is delivered by Fort Hall Irrigation Project.

The trial court's decree requires appellants to deliver three acre feet of water per acre to respondents through the city ditch extending southerly through the City of Pocatello, whenever the water is received from Fort Hall Irrigation Project in the ditch at the city's north boundary; also, if the ditch be not of sufficient capacity to carry three acre feet of water per acre for respondents, that appellants supplement said flow of water by pumping into respondents' ditch at or near the south boundary of the city, a sufficient amount of water to place in respondents' ditch at the city's south boundary, the three acre feet of water per acre, during each year.

The trial court also ruled that by reason of the arbitrary action of appellants in obstructing the flow of water through the city ditch during the spring of 1952, which resulted in failure of or damage to respondents' crops, the city is liable in damages to each respondent in amounts given, together with interest. The court entered judgments accordingly.

Appellants assign error of the trial court in according validity to the contract of June 3, 1922.

Appellants interposed the defense that the contract is ultra vires since it attempts to obligate the city perpetually.

The contract does not provide a period of duration other than in perpetuo by implication; nor for any alteration of the contract charge of 50 cents an acre, called rental.

The parties up to the spring of 1952 had recognized the obligations of the contract for approximately 30 years. During such time the city had delivered to respondents' predecessors and to respondents their allotted irrigation water through the city ditch for a charge, called rental, of 50 cents per acre of land irrigated by waters delivered through the city ditch. The record shows that then, commencing with and during the forepart of the irrigation season of the year 1952, the city, without notice to respondents, obstructed the flow of respondents' irrigation water with resultant failure of or damage to respondents' gardens and crops.

Nothing is contained in Idaho's Constitution or statutes limiting the period of time for which a municipal corporation may bind itself by contract, except I.C. sec. 30-801, which does not have application here.

The rules are generally stated at 63 C.J.S., Municipal Corporations, § 979 b, pp. 533-534, as follows:

"In the absence of limitation either by charter or general statute, contracts have been sustained as valid when made for a reasonable term of years, three, five, ten, fifteen, twenty, twenty-one, twenty-five, thirty, and even thirty-one, years being held not unreasonable in view of the expense of preparation. However, in other cases twenty-five or thirty years have been held an unreasonable term for a grant of an exclusive privilege by a municipality; * * *. Even in the exercise of their proprietary functions, municipalities may, in the absence of express statutory permission, contract only for a reasonable time.

"Contracts to continue for an unlimited time, if construed to continue in perpetuo, are generally considered invalid, although some courts have held such contracts valid in the absence of any constitutional limitations. Contracts for an indefinite time are sustained where construed as continuing in force only at the will of the parties or for a reasonable time only, and in some jurisdictions the reasonable time for which such contracts are allowed to run is determined by analogy to constitutional provisions limiting the terms of franchises."

See also *Thrift v. Town Com'rs of Town of Elizabeth City*, 122 N.C. 31, 30 S.E. 349, 44 L.R.A. 427; *Westminster Water Co. v. Mayor, etc., City of Westminster*, 98 Md.

551, 56 A. 990, 64 L.R.A. 630; *Daly v. Stokell*, Fla., 63 So.2d 644; *Horkan v. City of Moultrie*, 136 Ga. 561, 71 S.E. 785; *City Council of Augusta v. Richmond County*, 178 Ga. 400, 173 S.E. 140; *Griffin v. Oklahoma Natural Gas Corporation*, 10 Cir., 37 F.2d 545; *Gardner v. City of Dallas*, 5 Cir., 81 F.2d 425; *Stevenson v. City of Abilene*, Tex.Civ.App., 67 S.W.2d 645.

[1-3] We hold the general rule applicable, under the circumstances shown here, that the contract, having an indefinite term, must be construed as an existing contract, to remain in force at the will of the parties, or for a reasonable time. The city cannot be allowed to terminate the contract except upon due and timely notice to respondents, with opportunity afforded them to be heard on any asserted right of the city to declare the contract at an end, as well as opportunity afforded them to protect their vested rights to, and resulting from and dependent upon, the use of their allotted irrigation water. If the contract be so terminated, respondents still would be entitled to delivery of their irrigation water during irrigation season through the city ditch, or other waterway the city may select at its expense, with the right in the city to impose and collect a reasonable charge for maintenance, to be determined by the city from time to time or by negotiations with the parties interested.

Appellants assign error of the trial court in ruling in effect that respondents are enti-

tled to have their irrigation water conveyed by the City of Pocatello by use of the city ditch or other means. They contend that under no theory are respondents entitled to have their irrigation water flow through the townsite of the city even though they are willing to pay reasonable maintenance charges to the city.

Appellants strenuously advance the premise that the city may establish, lay out, repair and otherwise control and maintain streets and alleys, I.C. secs. 50-1104, 50-1121, 50-1123, 50-1141, as well as alter or otherwise control sewers and drains, I.C. sec. 50-144; also, that the city has unlimited control of the streets and alleys to the exclusion of any permissive use thereof which may exist in favor of respondents; citing *Splinter v. City of Nampa*, 70 Idaho 287, 215 P.2d 999, 17 A.L.R.2d 665, and *Boise City v. Sinsal*, 72 Idaho 329, 241 P.2d 173.

The assignment is not well taken since respondents do not and cannot assert any permissive or other use or occupancy or any control or right of control, nor have they ever in anywise obstructed, any of the city's streets or alleys, or interfered with any of the city's construction. Respondents assert only the city's duty to allow transmission of respondents' irrigation water through the city's townsite, via the city ditch or other waterway as the city may select, either pursuant to the terms of the contract and upon payment to the city of

the amounts therein provided; or as respondents stated in oral argument, if the contract should become terminated, then upon payment by respondents to the city of reasonable maintenance charges.

[4] Moreover, the city, in the exercise of its control over property dedicated to public use, in and upon which the city ditch is situate, may at its expense and in its sole discretion, alter or change the channel of the waterway which conducts respondents' irrigation water through the city's townsite, I.C. sec. 50-1112.

[5, 6] Next, appellants contend that the city ditch became a nuisance in that, as stipulated, the 36-inch concrete pipe "did obstruct and interfere with the construction of curbs and sidewalks, and streets upon a portion of North 14th Avenue." It does not follow that the city ditch is or was a nuisance merely because of such reason assigned. Appellants admitted that they remedied the complained of obstruction by replacing the 36-inch pipe with a 14-inch pipe laid along a portion of the course of the city ditch; but, as respondents' counsel aptly stated, appellants could have placed the 36-inch pipe in the ground to a sufficient depth so as to overcome the complaint of surface obstruction, or they could have installed an additional smaller pipe in the particular locality where they installed but one such pipe, in either case thereby to conduct a larger flow of the irrigation water. Ap-

pellants do not otherwise assert nuisance, and the record is devoid of any showing that the city ditch is a nuisance in fact or per se. The power of a city to declare, prevent or abate a nuisance does not include the power to declare anything a nuisance which is not one in fact nor one per se. *City of Twin Falls v. Harlan*, 27 Idaho 769, 151 P. 1191.

Appellants assign error of the trial court in finding that respondents are entitled to damages, asserting that respondents failed to file with the City of Pocatello any claim for damages as required by I.C. sec. 50-162 and thereby deprived the city of the statutory protection which such section of the statute affords.

The Legislature enacted I.C. sec. 50-162 as Idaho Sess., Laws 1913, c. 74, sec. 28, p. 312, as part of an act providing for the organization, government and powers of cities of the first class. Such section of the statute reads:

"All claims for damages against the city must be filed with the city clerk within thirty days after the time when such claim for damages shall have accrued, specifying the time, place, character and cause of said damage. No action shall be maintained against the city for any claim for damages until the same has been presented to the city council, and until sixty days have elapsed after such presentation. The allowance of any and all damage claims

against the city shall be by ordinance, and not otherwise."

The letter of respondents' counsel of June 3, 1952, (Exhib. B), demanded the continued delivery of the irrigation water and referred to the contract of June 3, 1922, which sets forth the land descriptions; also sets out that damages for failure to deliver the water had accrued and, should the city fail to deliver the water in two days that it would be held strictly accountable for resultant damages. Such letter apprised the city and its officers of the time, place, character and cause of claimed damage. The city commission made no response to that letter, although at its regular meeting held June 5, 1952, it caused the letter to be read and filed. Thereafter, December 3, 1952, seven of respondents in their amended verified petition for a writ of mandate, each set forth his claim for damages against the city; as to time, the 1952 irrigation season; the place, his land; the character, loss of certain designated and amount of garden and other crops; the cause, lack of irrigation water brought about by the city's failure to convey through the city ditch and deliver to respondents' ditch, the said irrigation water; each such respondent set forth the amount of his alleged damage. Later, the two remaining respondents were permitted to file in the proceeding their claims in affidavit form, each likewise setting forth the time, place, character, cause and amount of damage.

[7] Appellants, under such circumstances were afforded all the protection contemplated by I.C. sec. 50-162 within a short time after respondents had conformed substantially to the legal requirements thereof, i. e., the city and its officers were afforded ample opportunity to investigate respondents' alleged damage claims, thereby to determine the city's liability with respect thereto.

[8, 9] The purpose of I.C. sec. 50-162 is to give the city notice of the claim and the consequent opportunity to ascertain the extent of damage, investigate the cause and determine the liability of the city. The statute does not require a statement of circumstances as to show an absolute liability but rather, of such information that the city authorities may be able to make a full investigation of the cause of the damage and determine the city's liability therefor. The object of the statute must be kept in mind and should not be given a construction as will defeat the ends of justice. *Dunn v. Boise City*, 45 Idaho 362, 262 P. 507. Appellants' said assignment is not well taken.

[10] Appellants lastly assign error of the trial court in ruling that in April or May, 1952, the city by willful action (the ruling is arbitrary action) interfered with the flow of respondents' irrigation water thereby depriving respondents of the use thereof. They assert the insufficiency of the evidence in support thereof, and contend that the evidence establishes only the

fact that at some time the city replaced in the city ditch a portion of the 36-inch pipe with 14-inch pipe, without any resulting damage to respondents.

The affidavit of Mr. Draper, project manager of Fort Hall Irrigation Project for 16 years, shows that normally, the irrigation water was made available for the Pocatello lateral commencing May 5th to 10th of each year; that in 1952 the water for such lateral was not made available until May 24th because the lateral was blocked and could not receive water; that said water, had it been turned in, would have overflowed the lateral and, that *if the lateral had been capable of receiving said water in Pocatello, the water would have been made available to its users.*

The stipulation shows that during April, 1952, repair work in and upon the streets of Pocatello was in progress including the matter of tearing up 180 feet of the 36-inch pipe and replacing it with 14-inch pipe.

The testimony of Mr. Fuger, the city's water superintendent, shows that the city, prior to May 24, 1952, had torn up the city ditch a distance of about one and one-half blocks; that the city substituted a section of the 36-inch pipe with 14-inch pipe; also, that the city ditch was not in condition to carry water prior to May 24, 1952. He knew that water was in the city ditch May 25th but had no record of whether water went into the ditch from then on to June 6th.

The stipulation of the parties sets forth that no measurement of water in the city ditch was made prior to June 6th, which was after respondents' counsel had made a demand on the city to deliver the water, and just prior to the time the original petition for writ of mandate was filed, and which sets forth the damage claims of the first five respondents.

The testimony of each respondent, as to when and whether, during the 1952 irrigation season, he received his irrigation water through the ditch at his outlet, is as follows: Cox (the water enters his land at the city limits), Walters and Peterson, during the latter part of June when the city installed the pump; McAughey, the latter part of June; Dick, about June 23rd; Hildreth, about June 11th or 12th; Lee (whose land is within the city limits) about a week or two after the people above him got their water; Anderson and Pugmire, no water during the season.

Respondents also testified as to cleaning their ditch where needed.

Respondents further testified in effect that their crop damages commenced during May, 1952, in some instances about or shortly after May 1st, and in others not later than May 15th, and continued due to lack of irrigation water.

The record further shows that during the spring of 1952 respondents put in gardens and crops, expecting to have delivered

to their ditch their irrigation water; whereas, in no instance does the record show that the city gave any notice to any respondent, water user, that it intended to cease for a time, or otherwise interfere with, the conveyance of such water.

While appellants stress the point that respondents did not have a watermaster or ditch rider to look after the distribution of the water, the record shows that the city always had delivered plenty of water to respondents during irrigation seasons of previous years, and never had they needed the services of a ditch rider; that the spring of 1952 they planted and attended their crops, looking forward to the usual agricultural use of their irrigation water which, without warning the city failed to deliver through the city ditch or otherwise deliver at the times when needed to prevent loss of or damage to the crops. Under such circumstances the services of a ditch rider would have been useless.

Further, instead of obstructing the flow of respondents' irrigation water in the city ditch, had the city observed its mandatory duty of altering or changing the channel of such waterway thereby to convey the water through the city's townsite, or otherwise arranged for its delivery to respondents' ditch, in accordance with I.C. sec. 50-1112, there would not have occurred the arbitrary interference with and taking of the vested water rights of respondents as here shown,

with the consequent damages to gardens and crops.

[11] The May 3, 1954 stipulation of facts sets forth various measurements of water, commencing June 4, 1952, and thereafter during that irrigation season, delivered through the city ditch, which if considered alone could be subject to interpretation unfavorable to respondents; whereas, each respondent testified in a manner inconsistent with the stipulation, thereby indicating that he did not choose to rest thereon. A stipulation is not necessarily binding upon the parties as to the conclusions of law embraced therein. *Lyon v. Robert Garrett Lumber Co.*, 77 Kan. 823, 92 P. 589; *In re Davidson's Estate*, 21 Cal.App. 118, 131 P. 67; *Hart v. Turner*, 39 Idaho 50, 226 P. 282; *Gorman v. Wilson*, 186 Okl. 435, 98 P.2d 600; *Hahn v. National Casualty Co.*, 64 Idaho 684, 136 P.2d 739.

It is implicit in the decree that respondents are required to pay to the city the charges as fixed by the contract so long as the contract remains in force, in return for the performance required of the city by the decree. The decree as so construed is affirmed.

The judgments of the trial court for damages in favor of respondents against appellants are affirmed.

Costs to respondents.

TAYLOR, C. J., and KEETON, PORTER and ANDERSON, JJ., concur.

MEMORANDUM AGREEMENT

AUG

Department of
Easement

THIS MEMORANDUM AGREEMENT is entered into this 7th day of July, 1983, by and between the CITY OF POCA TELLO, a municipal corporation of Idaho, herein referred to as the "City," and the TURNER WELL ASSOCIATION, INC., a nonprofit corporation, herein referred to as the "Association."

Witnesseth:

WHEREAS, on the 3rd day of June, 1922, the City of Pocatello entered into a contract, herein the "1922 contract," with J. M. Bistline, J. B. Bistline, C. E. M. Cox, E. M. Purkey, T. B. Smith, and Olive J. McDonald, a copy of which contract is attached hereto as Exhibit "A"; and

WHEREAS, the members of the Association are among the successors in interest to those persons referred to above who were named as water users in the 1922 contract; and

WHEREAS, the parties differ as to the rights and obligations resulting from the 1922 contract and the decision entered by the Supreme Court, titled Cox vs. City of Pocatello, 77 Idaho 225 (1955), the parties acknowledge that whatever those rights and obligations are, it is the intent of the parties to hereby compromise and settle them; and

WHEREAS, the City has notified all of those persons, herein the "water users," who are successors in interest to the original property owners who were parties to the 1922 contract, of the City's intention to terminate the delivery of water under the 1922 contract; and

WHEREAS, many of the water users have resisted the City's intention to terminate the delivery of water and, in addition, have banded together to form the Association, which is a party to this agreement, for the purpose of negotiating the dispute with the City; and

WHEREAS, subject to the terms of this agreement, the City has agreed to provide all water users a substitute source of water and the Association has agreed to make available to

all the water users a substitute source of water and to cause its members to release the City from any and all liability under the 1922 contract and under the Cox decision;

NOW, THEREFORE, in consideration of the mutual covenants entered into herein, the parties hereby agree as follows:

1. The City will acquire the "Turner Well," located in the vicinity of Fredregill and South Second and convey said well to the Turner Well Association, Inc., a non-profit corporation.
2. The City is to furnish and install an appropriate submersible pump for this well with the capacity to pump at least 310.5 gallons per minute into a main line with 4-inch valves on each side of a "T" to direct water north and south.
3. The City is to obtain a permit from the Department of Water Resources to pump water from the well to the extent specified in the preceding paragraph and then to transfer said permit to the Association.
4. Until the permit is obtained, the City agrees to provide a substitute source of water in order that the Association's members will have water at all times for the 1983 irrigation season.
5. The City will replace the line that is presently located on the easterly side of South Second by installing a new pipe on the west side of South Second. This will be a 4-inch, Schedule 40 PVC with taps set out for the user properties in this area. This will eliminate any laterals crossing Second Street and will facilitate the preserving of the street. The lines will be laid in accordance with the attached drawing, marked Exhibit "B."

12. The Association hereby agrees to maintain the well and the distribution system described above and to distribute the water from the Turner Well to all water users who become members of the Association. The Association expressly agrees that all water users may become members of the Association, providing that they pay their appropriate share of the fees established by the Association, all as more particularly set out in the Association's bylaws.

13. The Association further agrees to release, and to cause its members to release, the City from any and all claims and liability under the 1922 contract and under the Cox decision.

14. The City understands that not all of the water users are, or likely will, become members of the Association. Nevertheless, the City agrees that the Association shall not be required to obtain the releases of those who are not members.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF POCA TELLO, a municipal
corporation of Idaho

BY: 

L. ED BROWN, Mayor

ATTEST:


PETER B. MCDOUGALL, City Clerk

TURNER WELL ASSOCIATION, INC.

BY: 

ATTEST:

STATE OF IDAHO)
 : ss
County of Bannock)

On this 7th day of July, 1983, before me, the undersigned, a Notary Public in and for the State, personally appeared L. Ed Brown and Peter B. McDougall, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for and on behalf of said municipal corporation.

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

Bonnie Lee Blackburn
NOTARY PUBLIC FOR IDAHO
Residing in Pocatello, Idaho.

STATE OF IDAHO)
 : ss
County of Bannock)

On this 13th day of July, 1983, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jim Stitt, known to me to be the Treasurer of TURNER WELL ASSOCIATION, INC., 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.

Jayna M Smith
NOTARY PUBLIC for Idaho
Residing at Pocatello

(SEAL)

INSTRUMENT NO. 93609

AGREEMENT

THIS AGREEMENT, Made and entered into this 3rd day of June, 1922, by and between CITY OF POCATELLO, a municipal corporation, party of the first part, and J. M. BISTLINE, J. B. BISTLINE, C. E. M. LOUX, E. M. PURKEY, T. B. SMITH and OLIVE J. McDONALD, all of the City of Pocatello, Bannock County, State of Idaho, parties of the second part.

WITNESSETH: WHEREAS, the party of the first part is the owner of a ditch known as the "City Ditch", which extends in a general southerly and southeasterly direction from about the intersection of Fifteenth Avenue and Hayden Street, through the said City of Pocatello to a point where Seventh Avenue (Extended) intersects the City limits at the southeast corner thereof, which said ditch receives and conveys water distributed to it as a part of the Fort Hall Irrigation Project and is known as "Lateral Y"; and

WHEREAS, the parties of the second part are the owners of various acreages southeasterly of the City of Pocatello, Bannock County, Idaho as follows, to wit:

J. M. BISTLINE, a tract of 20 acres situated in the Northwest Quarter of the Southwest Quarter and the West half of the Northeast Quarter of the Southwest Quarter of Section 36, T 6 South of Range 34 East of the Boise Meridian, in Idaho, west of the County Road.

J. B. BISTLINE, a tract of 34.26 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, Township 6 South of Range 34 East of the Boise Meridian, in Idaho, east of the County Road,

C. E. M. LOUX, a tract of ten acres situate in the E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 36, Township 6 South of Range 34 East of the Boise Meridian, in Idaho, north of the Idaho-Pocatello Highway.

E. M. PURKEY, a tract of 40.87, situate in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, Township 6 South of Range 34 East of the Boise Meridian, in Idaho.

T. B. SMITH, a tract of two acres, situate in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, Township 6 South of Range 34 East of the Boise Meridian, in Idaho.

OLIVE J. McDONALD, a tract of 34.19 acres, situate in Lots 2 and 3 and SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 1, Township 7 South of Range 34 East of the Boise Meridian, in Idaho.

For all of which said lands the said owners are under contract with the said Fort Hall Irrigation Project for the delivery, for irrigation purposes of three (3) acre feet of water per annum per acre with such additional quantities as the said Project may allot to cover losses in transit, measured at the north line of the City of Pocatello, to-wit; where said ditch enters the city limits at Hayden Street; and

WHEREAS, it is necessary for the said parties of the second part, to use the said city ditch in order to convey the water to which they are so entitled to their said lands aforementioned, and;

WHEREAS, said parties of the second part have extended said ditch from the southerly end of the alley in Block 247 of the City of Pocatello in a southerly direction for approximately one and three quarters miles, in order to convey water to and upon their said respective tracts; and

WHEREAS, the parties of this agreement desire to have a definite understanding with respect to the terms and conditions under which the parties of the second part shall be entitled to have their waters conveyed through the said city ditch (within the city limits;)

NOW THEREFORE, IT IS HEREBY AGREED:

(a) That the said parties of the second part shall, on or before the first day of May, of each and every year, pay to the City Treasurer of the City of Pocatello at the rate of fifty cents (50¢) per acre for each acre of land, irrigated by him by

water carried through said ditch.

(b) That said parties of the second part shall each spring, before the water is turned into said city ditch, cause the old ditch (so called to contradict it from the upper ditch heretofore constructed for the benefit of Theo Turner), to be thoroughly cleaned from the southerly boundary line of the City Cemetery to the Portneuf River, and said parties of the second part shall, during each irrigation season, maintain such ditch to the capacity of the city ditch within the city limits as the same now exists, all such work to be done at their own costs and expense, and that they will, at their own cost and expense, take care of all excess city water, that is to say, all city water turned into the city ditch by the Fort Hall Project and which is not necessary for use or is not used within the city limits by the city or its inhabitants, and all waste water and freshet and flood waters from the foot hills or elsewhere which find their way through said city ditch to the south boundary line of the city. The said parties of the second part to save the city harmless of and from all claims or causes of action which may arise or accrue or be asserted, against it by reason of such excess waste, flood or freshet waters overflowing or doing damage to any property, south of the City Cemetery.

Should any water be taken into the upper or Turner ditch, at or near the point where the city ditch intersects Fifth Avenue, by any party to this agreement, the parties so using said ditch agree to keep the same free from checks, dams or obstructions which would in any wise tend to back up the water flowing therein into the section of the city ditch which extends east and north from the city cemetery.

(c) In consideration of the covenants and agreements on the part of the parties of the second part, the party of the first part agrees that it will, each season, as soon as water is available and ready for delivery to the parties of the second part by the Fort Hall Irrigation Project, receive into the said city ditch at the north boundary line of the city, and so long as such water is available, during each irrigation season, will continue to receive into said ditch the full quantity delivered into said ditch for the parties of the second part and to which the parties of the second part are entitled and will conduct the same (save and except loss in transit) to the south boundary line of the city limits.

(d) It is further understood and agreed that if the parties of the second part, or any or either of them, shall fail to make the payments of rental as hereinabove provided, or shall fail in the performance of any of the obligations and covenants by them to be kept and performed, the party of the first part shall have the right to discontinue the taking into the said city ditch any of the waters of the Fort Hall Project which the said parties of the second part or any or either of them may claim the right to receive for their said lands.

This agreement shall bind the heirs, executors, administrators and successors in interest of the parties hereto.

WITNESS the hands of the parties hereto the day and year first above written.

CITY OF POCASTELLO, A Municipal Corporation

By Jesse R. S. Budge, Mayor

(CORPORATE SEAL)

Party of the First Part

Attest:

Laura S. Cough,
City Clerk

J. M. Eistline.
J. B. Eistline,
Olive J. MacDonald
C. E. M. Loux.
Mrs. E. M. Parkey.
T. B. Smith

Parties of the Second Part

Filed for record at the request of City of Pocatello, at 30 minutes past 10 o'clock A.M. this 9 day of March, 1923, and recorded in Book 6 of Agreements, page 115, Records of Blaine County, State of Idaho.

R. C. Lurley, Recorder

By L. Spongberg, Deputy

Fee \$2.00



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup — Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

August 12, 1985

RE: Application for Permit No. 29-7700

City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83201

Gentlemen:

In October of 1984, Idaho Power Company and the State of Idaho signed an agreement stating the Company's water rights would be subordinated to those persons who beneficially used water prior to October 1, 1984, and who filed an application or claim for said use by June 30, 1985.

To insure proper consideration of your application pursuant to the above agreement, follow the directions on the enclosed form and return it to this office when completed. For your benefit in identifying the point of diversion and place of use, included on the form is a description of the major items contained on the application.

Your cooperation in returning the completed form and supplemental documentation will expedite future administrative action on your application when processing of applications above Swan Falls resumes.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Enclosure

March 31, 1983

City of Pocatello
P.O. Box 4169
Pocatello, ID 83201

ATTN: John Postlewait:

Dear Mr. Postlewait:

As per our phone conversation on March 30, 1983, enclosed is an application for permit and check #92-23 for \$65.00 that were received by this office, a copy of the application with changes noted in red and a corrected application for permit for your review.

Upon receipt of the completed, signed application for permit and \$45.00 filing fee, processing will begin.

As we discussed, a letter from Idaho Power stating that they will supply power to the system, would facilitate processing in light of the Swan Falls Supreme Court decision.

Please feel free to contact this office for any additional assistance that may be needed.

Sincerely,

KEITH C. WILSON
Sr. Resource Agent

KCW:bp

Enclosures

29-2200-

CITY OF POCA TELLO

P.O. BOX 4169, POCA TELLO, ID 83201

Source: GROUNDWATER

Date Filed: 04/27/1983

Diversion Pt: SE5W Sec 36 T 06S R 34E

Use: IRRIGATION (0.69 CFS)

In: NWNW SE5W Sec 23 T 06S R 34E NESE Sec 35 T 06S R 34E NESW NWSW
Sec 36 T 06S R 34E NWNE SWNE NENW NESE Sec 01 T 07S R 34E
FOR 40 ACRES