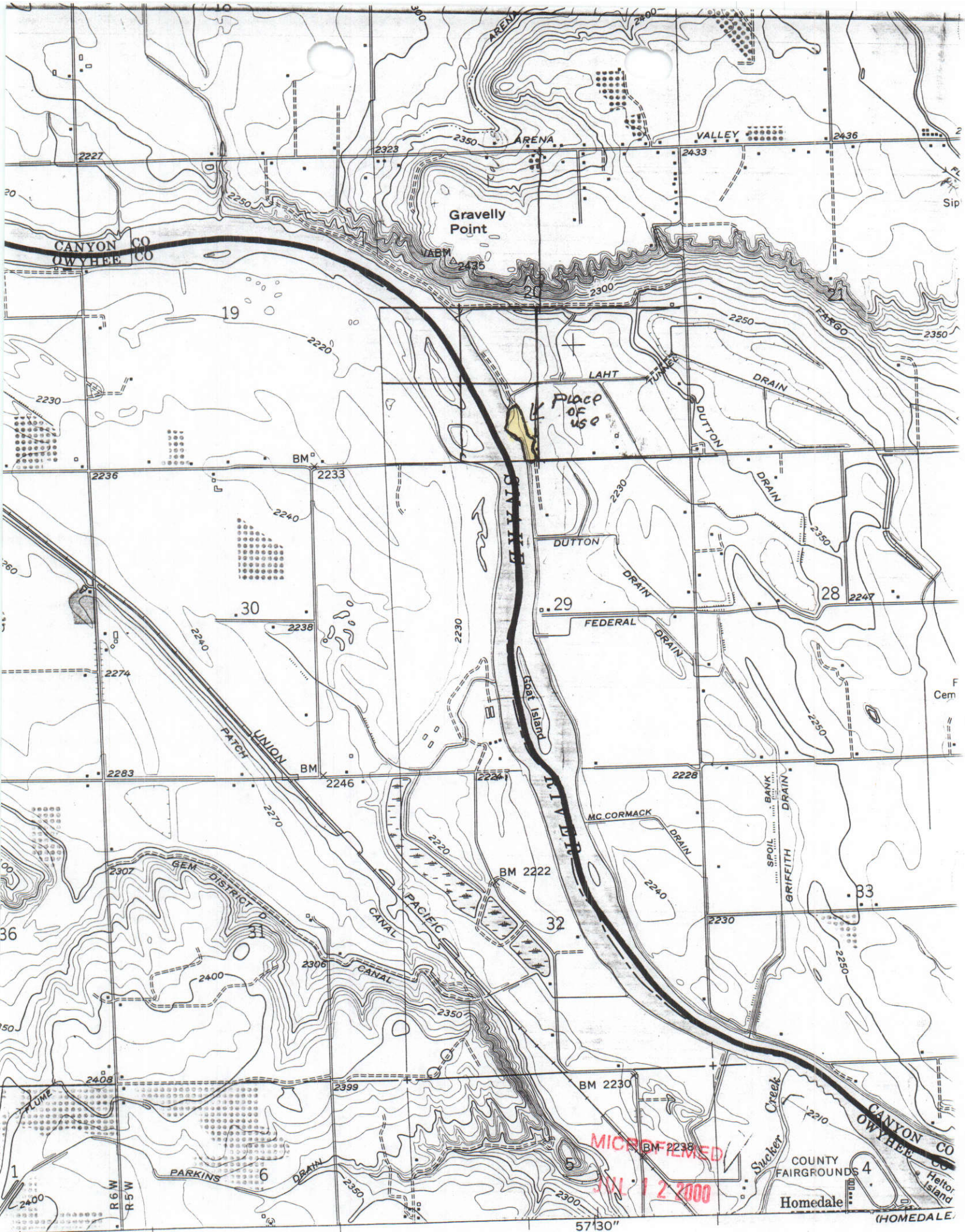




170 000 FEET

57130"

SCALE 1:2400

3

4

1 KE

c. 19

5

Sec. 20

Sec. 21

4

3

8

RIVER

2

1

MICROFILMED

JUL 12 2000

perm
327 7943

FOR OFFICE USE ONLY
Amt. of Fee \$: 50.00
Receipt No. 0052822
Receipt By: J. Barron
Date Received: 3/27/01

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAR 21 2001

Department of Water Resources

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have 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, when necessary, or be accompanied by a completed field examination report prepared by a certified water right examiner.

1. Permit No. 2-7477 Telephone No. 208 482 6560

2. Name of Permit Holder(s):
Howard Smallwood

3. Mailing Address: 28522 Lower Pleasant Rd
City Wilder State ID Zip 83676

4. Source of Water: Snake River If **GROUNDWATER** (well), Date Drilled: mo. _____ / yr. _____
Well Driller: _____ Drilling Permit Number: _____

5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): _____ Stockwater (No. and type of stock): _____

Irrigation (No. of acres): 6.0 Other: _____

6. Total rate of diversion and/or volume for which proof is submitted: 0.12 cfs OR _____ acre-feet

7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)

(This question is **not** optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required?

Yes _____ or No X

Has the measuring device been installed?

Yes _____ or No _____

8. Fee Enclosed: \$ _____ (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name: Howard Smallwood Telephone Number: 482 6560

Address: 28522 Lower Pleasant Rd Wilder ID 83676

10. The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted. I agree to relinquish any undeveloped portion of the permit to the State of Idaho.

Signature of permit holder: Howard Smallwood
(include your title, if on behalf of company of organization)

MICROFILMED

Date: 3/19/01
MAR 29 2001

State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 02-07477

Priority: March 22, 2000

Maximum Diversion Rate:

0.12 CFS

This is to certify, that **HOWARD SMALLWOOD**

28552 LOWER PLEASANT RD

WILDER ID 83676

has applied for a permit to appropriate water from:

SNAKE RIVER

tributary of **COLUMBIA RIVER**

and a permit is **APPROVED** for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
-----------------------	----------------------	--------------------------

IRRIGATION

03/01 to 11/15

0.12 CFS

LOCATION OF POINT(S) OF DIVERSION: Lot 2 (SESW), Sec. 20, Township 04N, Range 05W
CANYON County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
04N	05W	20	Lot 2 (SESW)	6.0		6.0

Total number of acres irrigated:

6.0

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of application of water to beneficial use shall be submitted on or before **May 1, 2001**.
2. Subject to all prior water rights.
3. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
4. After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
6. The right holder shall not assign or sell the permit without first securing the written approval of the Department of Water Resources.

MICROFILMED

State of Idaho
Department of Water Resources

Permit To Appropriate Water

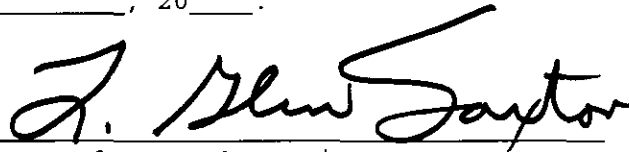
NO. 02-07477

CONDITIONS OF APPROVAL AND REMARKS

7. Water shall not be diverted under this right when flows in the Snake River are below established minimum flow amounts at any of the following locations: Weiser, 4750 cfs; Johnson Bar, 5000 cfs; Lime Point 13,000 cfs.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this

8th day of June, 2000.


Karl J. Dreher, Director
for

MICROFILMED

2001-12-28

RECEIVED

MAY 17 2000

FORM 202

1/96

Department of Water Resources
STATE OF IDAHOIdent. No. 02-07477

DEPARTMENT OF WATER RESOURCES

RECEIVED

APPLICATION FOR PERMIT

MAR 08 2000

WATER RESOURCES
WESTERN REGION

I made changes to
Below on this date
Shown BY Initials B/L
3-22-2000

1. Name of Applicant Howard Smallwood Phone 208 482 6560
Post Office address 28522 Lower Pleasant Road Wilder ID 83676
2. Source of water supply Snake River which is a tributary of Columbia River
3. Location of point of diversion is 1/4 of SE 3/22/40 of SW 1/4 Govt. Lot 2
Sec. 20 Township 4 North Range 5 West B.M. Canyon County; additional points of diversion if any: _____
4. Water will be used for the following purposes:
Amount .12 CFS for Irrigation purposes from 3/1 to 11/15 (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 is (a) .12 CFS and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Pump to sprinkler system
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____ to _____ inclusive.
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
d. Is ground water with a temperature of greater than 85°F being sought? _____
e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____
7. Time required for completion of works and application of water to proposed beneficial use is 1 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 if KW. _____
b. Stockwatering; list number and kind of livestock. _____
c. Municipal; show name of municipality. _____
d. Domestic; show number of households. _____
e. Other; describe fully. _____

MICROFILMED

MAY 12 2000

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	
4N	5W	20	LOT 2																6.00

Total number of acres to be irrigated 6.00 HAD

10. Describe any other water rights used for the same purposes as described above. Have 3.3 Shares of water in Wilder Irrigation DIST. B

11. a. Who owns the property at the point of diversion? Howard Smallwood

b. Who owns the land to be irrigated or place of use? Howard Smallwood

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

12. Remarks: I No Longer Have access To The water From The Canal that is supposed to serve this area. Need River water to make up For Lack of Canal water

13. MAP OF PROPOSED PROJECT ATTACHED ☒ Show clearly the proposed point of diversion, place of use, section number, township and range number.

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.

Howard Smallwood
(Applicant)

Received by Kh Date 3/8/00 Time 11:43 Preliminary check by DAN
 Fee \$ 3000 Receipted by Kh # 112026194 Date 3/8/00
 Publication prepared by Kh Date 3-6-13-00 Published in PRESS TRIBUNE
 Publication approved Kh Date 4-28-00

MICROFILMED

11 2 2000

Ident. No. 02-07477

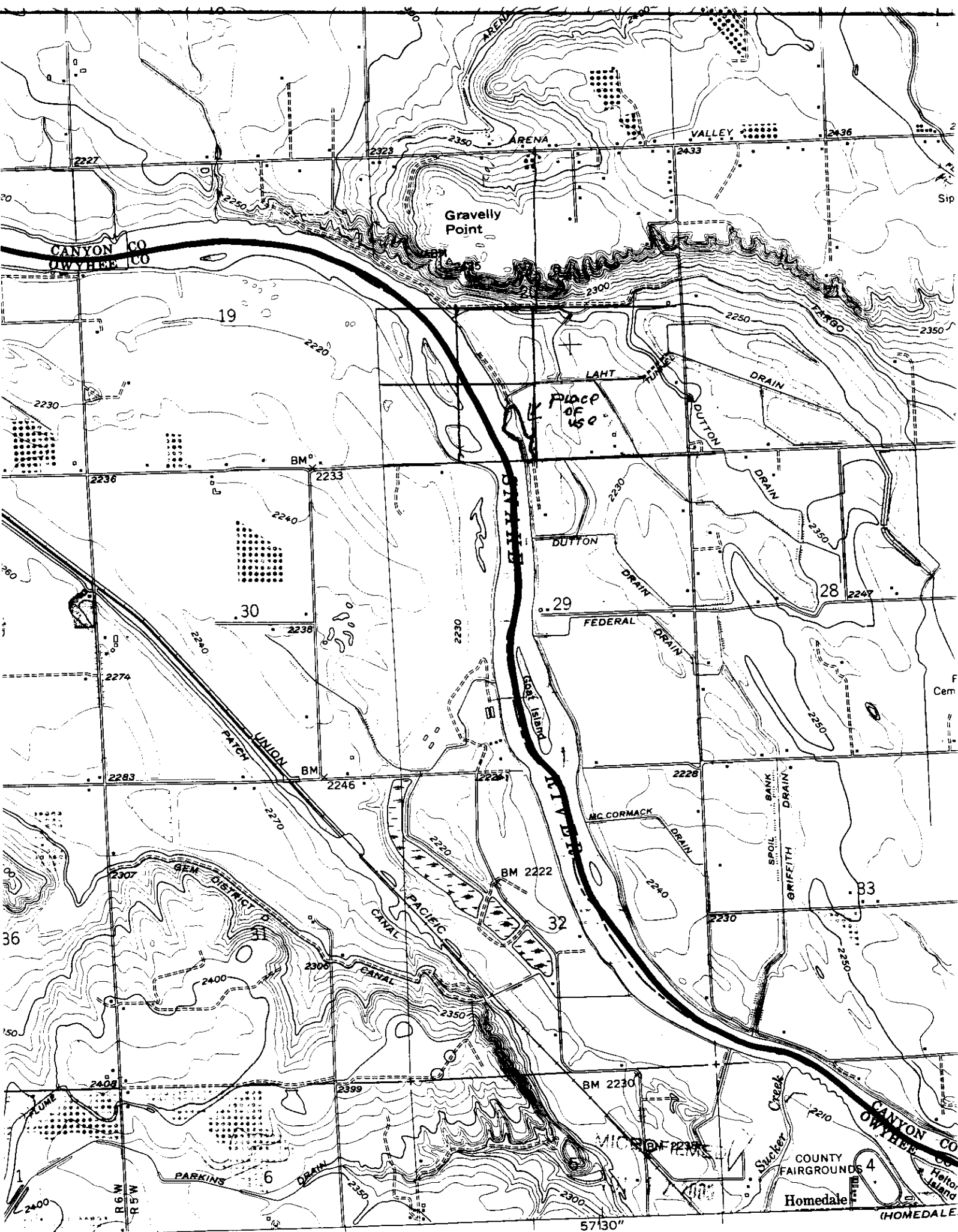
Comments: Date: 3/22/2000 User-ID: DNELSON

Subject: ADDITIONAL INFORMATION

APPLICANT: The applicant states that he has 3.3 shares of canal water, but that he can no longer access the water. Therefore, he applied for this application to use river water.

MICROFILMED

JUL 12 2000



170 000 FEET

57130"

SCALE 1:2400

... by the Geological Survey

Sec. 21

Sec. 20

MICROFILMED

101 12 105

WATER



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

March 22, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

HOWARD SMALLWOOD
28522 LOWER PLEASANT RD
WILDER ID 83676

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 02-07477

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 contact you to schedule a field examination to determine and confirm the use being made of the water, and that it meets the permitted beneficial use.

Be advised that Section 42-248, Idaho Code requires you or the owner of this water right to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office.

If you have questions concerning the field examination, please contact the **Western Regional Office** of the department in Boise at (208) 334-2190.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Encl.

c: IDWR - Regional Office

MICROFILMED

MAR 23 2001

ANALYSIS SHEET FOR PROOF OF BENEFICIAL USE

Permit No.: 02-7477

Reviewed By: dgibson

Date: March 22, 2001

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Proof received timely?	X		Drilling permit required?		X
License examination fee required?	X		Drilling permit No.:		
Appropriate fee submitted?	X		Drilling permit upgrade needed?		
Receipt No.:		C052822	Well driller's report filed?		X
Additional Amount Due:			Measuring device required?		X
Name and address same as permit?	X		Measuring device installed?		
Are the water uses correct?	X		Measure device waiver requested?		

Priority Calculation

Date proof received 03/21/2001

Date proof due - 05/01/2001

Lapse notice sent -

No. of days late = 0

Holiday allowance +

Priority date + 03/22/2000

New priority date = ~~05/02/2000~~

Deficiencies of Actions Items

Acknowledge proof.

MICROFILMED
MAR 29 2001

February 28, 2001

HOWARD SMALLWOOD
28552 LOWER PLEASANT RD
WILDER, ID 83676

PROOF DUE NOTICE

RE: PERMIT NO. 2-7477

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before May 01, 2001. (See last page of your approval permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a completed field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

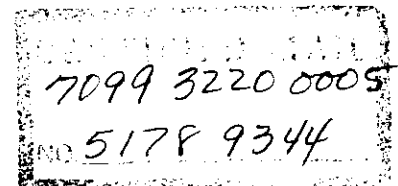
Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

Sincerely,

Deborah J. Gibson, Admin. Assistant
Water Allocation Bureau

Enclosures

MICROFILMED
MAR 23 2001





State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 23, 2001

HOWARD R SMALLWOOD
28522 LOWER PLEASANT RIDGE RD
WILDER ID 83676

RE: WATER RIGHT PERMIT NO. 02-07477

Dear Mr. Smallwood:

I am in receipt of your February 17, 2001 letter requesting an "extension of time to establish proof of beneficial use" for the above reference permit. I have enclosed the appropriate form along with an instruction page for your assistance. Please return the completed request for extension of time with a \$50.00 filing fee to me at the above address, before your proof due date of May 1, 2001.

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

Sincerely,

A handwritten signature in cursive script that reads "Deborah J. Gibson".

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

MICROFILMED

MAR 23 2001

HOWARD R. SMALLWOOD

RECEIVED

FEB 21 2001

Department of Water Resources

February 17, 2001

Ms. Shelley W. Keen
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard
P. O. Box 83720
Boise, ID 83720-0098

RE: Permit to Appropriate Water No. 02-07477

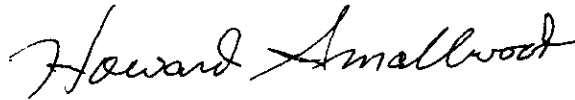
Dear Ms. Keen:

I am writing to you to ask for an extension of time to establish proof of beneficial use on permit No. 02-07477. I am requesting this extension due to unforeseen health problems.

Since last summer, I have had three major surgeries and I am currently undergoing chemotherapy. Due to this, I have not been able to make the progress I had originally intended on installing the pumping station. If you require corroboration of this, you may contact my primary care physician, Dr. Richard Augustus, Family Medical Clinic, 222 E. Logan, Caldwell, ID 83605, telephone: 459-7415.

Thank you for your consideration of my request.

Sincerely,



Howard R. Smallwood

HRS:ds

28522 LOWER PLEASANT RIDGE RD • WILDER, ID 83676
PHONE: 208-482-6560

MICROFILMED
MAR 29 2001



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

June 8, 2000

DIRK KEMPTHORNE
GOVERNOR

HOWARD SMALLWOOD
28552 LOWER PLEASANT RD
WILDER ID 83676

KARL J. DREHER
DIRECTOR

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 02-07477

Dear Permit Holder:

The Department of Water Resources (IDWR) has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a preliminary order issued by IDWR pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by IDWR unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

Enclosed is 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 licensed water right. Also enclosed is a form entitled "Proof of Beneficial Use". If your project is already completed, you should complete and submit this form immediately.

Please note that a separate stream channel alteration permit must be obtained from the IDWR prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

If you have any questions, please call me at 208-327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:klt
Enclosures

MICROFILMED

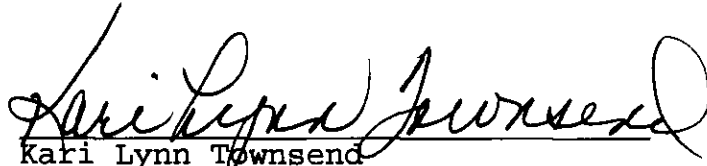
JUN 12 2000

CERTIFICATE OF MAILING

I hereby certify that on the **8th** day of **June, 2000**, I mailed
a true and correct copy, postage prepaid, of the foregoing
PRELIMINARY ORDER (Approved Permit) to the person(s) listed below:

Water Right No. 02-07477

**HOWARD SMALLWOOD
28552 LOWER PLEASANT RD
WILDER ID 83676**


Kari Lynn Townsend
Secretary

MICROFILMED

JUL 12 2000

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department 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 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period 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.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

MICROFILMED

JUL 12 2003

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 Director 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.

Section 67-5246(5), Idaho Code, provides as follows:

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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 of this preliminary order becoming final. 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.

MEMORANDUM

DATE: June 7, 2000

TO: Water Right File 02-07477

FROM: Shelley W. Keen *SWK*

RE: Local Public Interest

Application 02-07477 does not appear to conflict with the local public interest. While DEQ expressed concern about the cumulative impacts of applications like this one in the 2/25/2000 letter regarding application 02-07476, that agency did not say that approving a single permit for a few acres of irrigation will constitute a significant impact. Also, Wilder Irrigation District's concern that the applicant will apply to withdraw from the district is negated by the fact that he cannot receive water from the irrigation district. The ditch that formerly supplied irrigation district water to the land has been destroyed, the intervening landowner will not allow reconstruction of the ditch, and §42-1102, *Idaho Code*, is ineffectual because the ditch was destroyed prior to the effective date of the statute.

MICROFILMED

JUL 12 2000

June 6, 2000

RECEIVED

JUN 7 - 2000

Department of Water Resources

Ms. Shelley Walter Keen
Water Rights Supervisor
Idaho Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098

Dear Ms. Keen:

Thank you for your letter of May 17, 2000. I would like to bring to your attention the fact that I am unable to access any water that might have been delivered to this property by the Wilder Irrigation District. There has been an ongoing legal dispute between the former owners of this property, Ed and Pat Torrey and Mr. John Brown. I have enclosed copies of the correspondence between the lawyers involved in this conflict.

As near as I have been able to tell, the history of the water rights to this land is as follows. Mr. and Mrs. Torrey sold this property, along with the water rights to the Vassar family in approximately 1995 after owning it for 25 years. I then purchased this property from the Vassar family in 1997, again with the water rights. When I attempted to have the water delivered to this property after I took possession, I was informed that the ditch had been plowed closed and there was no water available for this property subsequent to that action being taken by Mr. Brown.

Everyone I have talked to about opening the ditch has told me that it cannot be done, primarily because Mr. Brown will not allow access across his property. As far as I can tell, no one has been able to legally force Mr. Brown to allow access to repair the ditch. Due to the location of the weirs in this area, it will be necessary to cross Mr. Brown's land. There is no other way to access this water. Cost of repair and/or construction would also be prohibitive.

The pipeline which is referred to in the enclosed correspondence delivers water to a piece of property that Mr. Torrey still owns, which abuts my property. This pipeline actually belongs to Ron Ewing and there is not sufficient capacity for me to access this pipeline along with the Torreys.

MICROFILMED

JUN 12 2000

Ms. Shelley Walter Keen
June 6, 2000
Page 2

The comment made by DEQ regarding water quality of the Snake River is really not applicable in my case. This water will be used to sprinkle my property and therefore will not be reintroduced into the Snake River. There is a minimum of 20 feet of dry lands between where I will be sprinkling and the shoreline of the river. Any excess waters will be absorbed by this dry buffer area and will not reach the river. I am also very cautious with the use of herbicides, fertilizers, etc.

Pursuant to Mr. Henley's letter of May 11, I would be willing to withdraw application for the additional 3.30 acre feet of water.

Therefore, I respectfully request that you re-consider my application for a change in the diversion point of my water right from the Wilder Irrigation District to the Snake River. I await your response.

Sincerely,

A handwritten signature in cursive script that reads "Howard R. Smallwood".

Howard R. Smallwood

HRS:ds

MICROFILMED

JUL 12 2000

GIGRAY, MILLER & DOWNEN

LAWYERS

9TH & DEARBORN STS.

POST OFFICE BOX 640

CALDWELL, IDAHO 83606-0640

TELEPHONE (208) 459-0091

FAX (208) 459-0096

WM. F. GIGRAY, JR.
DEAN E. MILLER (1922-1983)

DONALD E. DOWNEN

August 6, 1996

Mr. and Mrs. Edwin Torrey
28524 Lower Pleasant Road
Wilder, ID 83676

Re: Torrey - Brown - Irrigation line

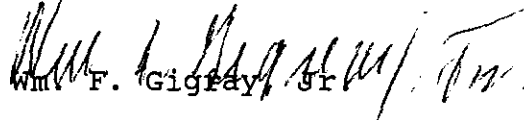
Dear Mr. and Mrs. Torrey:

Enclosed please find a copy of a letter that I received on August 5, 1996 from Mr. Glenn Coughlan, who is representing John Brown. I believe the letter is explanatory of the position of John Brown in this matter.

After you have reviewed the letter, please get in touch with me as to the next steps you may wish to take in this matter.

Very truly yours,

GIGRAY, MILLER & DOWNEN


Wm. F. Gigray, Jr.

WFG/do
Encl.

MICROFILMED

JUL 12 2000

GLENN A. COUGHLAN
JOSEPH M. COUGHLAN

Coughlan & Coughlan

Attorneys and Counselors at Law
608 Hays Street • Boise, Idaho 83702
Telephone (208) 342-3656
Fax (208) 342-5072

AUG - 5 1996

August 1, 1996

William F. Gigray Jr.
Attorney at Law
P.O. Box 640
Caldwell, ID 83606-0640

RE: Torrey v. Brown
Irrigation Line

Dear Mr. Gigray:

In order to respond to your letter dated July 24, 1996, I have had a meeting with Mr. John Brown. I have also contacted Mr. Ken Henley, manager of the Bureau of Reclamation; Mr. Jerry Jones, administrator of the Planning and Zoning Commission of Canyon County; and have researched the records of Canyon County regarding any easement across the property of Mr. Brown. I have also contacted the title company as to any record of easement across Mr. Brown's property.

It appears that there is no easement across Mr. Brown's property for the former irrigation ditch. Mr. Henley advises that any matters concerning the ditch beyond the weir on Mr. Brown's property is a matter between individuals and that the Bureau of Reclamation will not be involved in these matters.

Further investigation discloses that in the matter of the application by Mr. Torrey for a Conditional Use Permit the finding was made that the point of delivery of irrigation water for Mr. Torrey is at the southeast corner of the property.

Mr. Torrey obtains water for his irrigation needs through Mr. Ewing's pipeline and he is presently serviced in this manner. It is therefore established that Mr. Torrey does not need or require the ditch to be opened across Mr. Brown's property.

MICROFILMED

JUL 12 2000

GIGRAY, MILLER & DOWNEN

LAWYERS

9TH & DEARBORN STS.

POST OFFICE BOX 640

CALDWELL, IDAHO 83606-0640

TELEPHONE (208) 459-0091

FAX (208) 459-0096

WM. F. GIGRAY, JR.

DEAN E. MILLER (1922-1983)

DONALD E. DOWNEN

July 24, 1996

COPY

Glenn A. Coughlan
Coughlan & Coughlan
Attorneys at Law
608 West Hays Street
Boise, ID 83702

Re: John Brown irrigation line

Dear Mr. Coughlan:

Regarding the above captioned matter, I wrote you a letter on June 25, 1996, in response to your letter of May 31, 1996. To date I have not had a reply to my letter of June 25, 1996.

My clients would like to get this matter resolved and they need to know if Mr. Brown is going to refuse or permit the delivery of their water through his property to their property. May I please have an answer to my letter of June 25, 1996.

Very truly yours,

GIGRAY, MILLER & DOWNEN

Wm. F. Gigray, Jr.
Wm. F. Gigray, Jr.

WFG/do

~~cc:~~ Edwin Torrey

MICROFILMED

JUL 12 2000

GIGRAY, MILLER & DOWNEN

LAWYERS

9TH & DEARBORN STS.

POST OFFICE BOX 640

CALDWELL, IDAHO 83606-0640

TELEPHONE (208) 459-0091

FAX (208) 459-0096

WM. F. GIGRAY, JR.

DEAN E. MILLER (1922-1983)

DONALD E. DOWNEN

June 25, 1996

COPY

Glenn A. Coughlan
Coughlan & Coughlan
Attorneys at Law
608 West Hays Street
Boise, ID 83702

Re: John Brown irrigation line

Dear Mr. Coughlan:

Reference is made to your letter of May 31, 1996, inquiring if there was a written easement across John Brown's property which the Torreys are requesting to be re-established after Mr. Brown plowed it in last year. There is no written easement to my knowledge.

For your information, regarding the ditch as plowed in by Mr. Brown, the Torreys take water from a weir on Mr. Brown's property at the end of a pipeline installed across Mr. Brown's property by the Boise Project Board of Control and involving directly the Wilder Irrigation District. After Mr. Brown plowed in the ditch a meeting was held on John Brown's property. At the meeting was John Brown, Mr. and Mrs. Torrey, Steve K. Garman, a director of the Boise Reclamation Project, Ken Devlin, project manager, and Bob Walker, water master, Division Five of the Wilder Irrigation District.

At that meeting the matter of the plowed in ditch was discussed and the following resolution to it was agreed to by all parties. Mr. Brown would permit Torreys to go on his property to connect to the weir and running from the weir an underground pipeline in place of the plowed in ditch. The underground pipeline would proceed to a cement check box also on Mr. Brown's property. From the check box there is also an underground pipeline to the Torrey property serving a part of the Torrey property. Also from the check box was an open ditch going to another part of the Torrey property.

MICROFILMED

JUL 12 2000

Glenn A. Coughlan
June 25, 1996
Page - 2

My understanding is that after this agreement was reached Mr. Brown refused to permit the Torreys to come on his property to install the pipeline.

This matter can easily be resolved if Mr. Brown would permit the pipeline to be installed to replace the ditch. The pipeline would be far enough below the ground level that he could run his wheel line sprinklers over it and it would not interfere with his farming.

Apparently at this time Mr. Brown does not want to abide by his agreement.

I assume you will be discussing this matter further with Mr. Brown and perhaps he will reconsider his present position and permit the pipeline to be installed. Before taking any further action I will be awaiting Mr. Brown's reply.

Very truly yours,

GIGRAY, MILLER & DOWNEN

Wm. F. Gigray, Jr.

WFG/do

cc: Mr. and Mrs. Edwin Torrey

MICROFILMED

JUL 12 2000

Coughlan & Coughlan

Attorneys and Counselors at Law

608 Hays Street • Boise, Idaho 83702

Telephone (208) 342-3656

Fax (208) 342-5072

GLENN A. COUGHLAN
JOSEPH M. COUGHLAN

JUN 01 1996

May 21, 1996

CH 43
I.C.

William F. Gigray Jr.
Attorney at Law
P.O. Box 640
Caldwell, ID 83606-0640

RE: John Brown
Irrigation Line

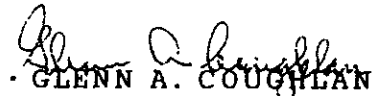
Dear Mr. Gigray:

I have been trying to determine whether or not there is a written easement across Mr. John Brown's property for the ditch which Mr. Tory claims should be open.

It would be very helpful if you would advise us to the existence of any such written easement and where we can examine such easement, if such exists.

Your assistance in the above matter would be appreciated.

Very truly yours,


GLENN A. COUGHLAN
Attorney at Law

GAC/lt

Mr. Olowinski

MICROFILMED

JUL 12 2000

GIGRAY, MILLER & DOWNEN

LAWYERS

9TH & DEARBORN STS.

POST OFFICE BOX 640

CALDWELL, IDAHO 83606-0640

TELEPHONE (208) 459-0091

FAX (208) 459-0096

WM. F. GIGRAY, JR.

DEAN E. MILLER (1922-1983)

DONALD E. DOWNEN

May 21, 1996

Mr. and Mrs. Edwin Torrey
28524 Lower Pleasant Road
Wilder, ID 83676

Re: John Brown

Dear Mr. and Mrs. Torrey:

Following my letter of May 13, 1996, to John Brown about the ditch coming through his property, which he filled in and has failed to restore, Mr. Brown came to my office and was very emphatic that you folks have never used that ditch during the past ten years and that you have never cleaned the ditch prior to his filling it in. He said did so in order to reduce the hazard of fire from the weeds in the ditch. He stated the only reason you wanted the ditch restored was that you had sold off three acres of ground and wanted that ditch for the delivery of irrigation water to the three acres rather than it being delivered through your property.

Mr. Brown was accompanied by an average height heavy man who verified everything that Mr. Brown said, but when I asked his name he would not tell me who he was.

I do not believe there is any way that your ditch can be restored without going to court.

Kindly let me know what you want to do.

Very truly yours,

GIGRAY, MILLER & DOWNEN

Wm. F. Gigray, Jr.
Wm. F. Gigray, Jr.

WFG/do

MICROFILM

101 12 2000

GIGRAY, MILLER & DOWNEN

LAWYERS

9TH & DEARBORN STS.

POST OFFICE BOX 640

CALDWELL, IDAHO 83606-0640

TELEPHONE (208) 459-0091

FAX (208) 459-0096

WM. F. GIGRAY, JR.

DEAN E. MILLER (1922-1983)

DONALD E. DOWNEN

May 13, 1996

COPY

John Brown
20275 Fish Road
Wilder, ID 83676

Dear Mr. Brown:

Please be advised that we are attorneys for Edwin and Pat Torrey, your neighbors. The Torreys have advised us that last August you plowed in the ditch that crosses your property and delivers water to their property.

The purpose of this letter is a request that you restore the ditch. In the event you fail to restore the ditch, which is your responsibility, the Torreys intend to take the appropriate legal steps for its restoration and obtain from you the cost of reestablishing the ditch. If you have any legal reason for not doing so, we would appreciate it if you would advise us of that reason.

If we do not hear from you within ten (10) days of the date of this letter, we will assume you are refusing to restore the ditch. In that event, we will have to undertake the appropriate legal steps for its restoration on behalf of the Torreys. Hopefully, this matter can be resolved in a neighborly manner without legal and/or other costs being incurred by you or the Torreys.

Very truly yours,

GIGRAY, MILLER & DOWNEN

Wm. F. Gigray, Jr.

WFG/do

cc: Edwin Torrey

MICROFILM

1996 12 2000

STEPHEN K. GARMAN
CHAIRMAN OF THE BOARD

RICHARD J. MURGOMIO
VICE CHAIRMAN OF THE BOARD

KENNETH HENLEY
PROJECT MANAGER

PAUL J. DEVEAU
ASSISTANT PROJECT MANAGER

JUDITH A. JEMMETT
SECRETARY-TREASURER

ELVA FISCHER
ASSISTANT SECRETARY -TREASURER

BOISE PROJECT BOARD OF CONTROLS

(FORMERLY BOISE U.S. RECLAMATION PROJECT)

214 BROADWAY
BOISE, IDAHO 83702

RECEIVED

JUN 7 - 2000

Department of Water Resources

OPERATING AGENCY FOR 167,000
ACRES FOR THE FOLLOWING
IRRIGATION DISTRICTS

NAMPA-MERIDIAN DISTRICT
BOISE-KUNA DISTRICT
WILDER DISTRICT
NEW YORK DISTRICT
BIG BEND DISTRICT

TEL: (208) 344-1141
FAX: (208) 344-1437

October 17, 1995

Planning & Zoning
454-7458

Mr. Jerry Jones
Canyon County Planning & Zoning
1115 Albany Street
Caldwell, Idaho 83605

Re: Edwin Torrey
(Conditional use permit) Case #95C00021-00/20-4N-5W

Dear Mr. Jones:

There are no project facilities located on site at 28522 Lower Pleasant Ridge Road. Dividing the 36.45 acres into two lots will have no impact on project operations.

This property possesses a valid water right and is serviced by our Weeks Lateral. The irrigation and drainage plan appears to be adequate in accordance with I.C. 31-3805.

If you have any questions, please call me at 344-1141.

Sincerely,

Ken Henley

Ken Henley
Project Manager

KH/ef

cc: Bob Watkins, Watermaster Div. #5
Donna Young, Wilder Irrigation District
Edwin Torrey, applicant

MICROFILM

JUL 12 2000



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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 2000

HOWARD SMALLWOOD
28552 LOWER PLEASANT RD
WILDER ID 83676

RE: Water Appropriation Application 02-07477

Dear Mr. Smallwood:

The Department of Water Resource (IDWR) is reviewing the water appropriation application you submitted for the irrigation of six acres in Canyon County with water diverted from the Snake River near Homedale. When reviewing water appropriation applications, IDWR must determine whether the proposal conflicts with the local public interest. Under Water Appropriation Rule 45.e.iii, compliance with applicable water quality standards is one of the local public interest criteria IDWR must consider. In 1998 the Idaho Division of Environmental Quality (DEQ) included the Snake River near Homedale in a list of water bodies not meeting state water quality standards. The listing was required under Section 303(d)(1) of the Clean Water Act. In a recent letter addressing another water right application from that reach of the Snake River, DEQ stated that the proposed water use would not by itself have a significant impact on water quality, but that "cumulative withdrawals and returns only exacerbate an already bad water quality problem." Given the water quality problem identified by DEQ, IDWR must evaluate whether it is in local public interest to authorize a new diversion of water in that reach of the Snake River, especially if water is already available to you from another water source.

According to your application, Wilder Irrigation District will provide water to you under existing water rights. In a letter IDWR, the South Project Board of Control (SPBOC), writing on behalf of Wilder Irrigation District, indicated that your request for irrigation water from the Snake River was precipitated by the removal of a private ditch that used to convey irrigation water to your property. I have enclosed a copy of SPBOC's letter for you. While the letter does not amount to a formal protest entitling SPBOC to a hearing, IDWR regularly considers any written comment when evaluating the local public interest.

The SPBOC suggests that your proposed diversion from the Snake River would be unnecessary if the private ditch were re-established and your use of water from Wilder Irrigation District were resumed. Before taking any action on your application, IDWR would like to know what steps you have taken to pursue reconstruction of the ditch, or construction of a new ditch, as an alternative to applying for a new water right from the Snake River. Please inform me in writing of

MICROFILMED

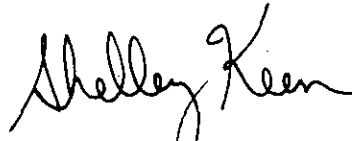
JUL 12 2000

Smallwood
May 17, 2000
Page 2

your efforts to maintain access to water from the Wilder Irrigation District. In addition, please provide me an assessment of the prospect of resuming your use of the Wilder water. You may want to discuss the matter with Wilder Irrigation District. You may also wish to review Section 42-1102, *Idaho Code*, which governs rights-of-way for ditches and canals. I have enclosed a copy of the statute for you to review.

If I do not receive the requested information or a request for additional time within 30 days, your application will be voided pursuant to Section 42-204, *Idaho Code*. If you need additional time to provide the requested information, or if you have any questions, please call me at 208-327-7946.

Sincerely,

A handwritten signature in black ink that reads "Shelley Keen". The signature is written in a cursive style with a large, stylized 'S' and 'K'.

Shelley Walter Keen
Water Rights Supervisor

Enclosures

MICROFILMED
JUL 12 2000



STATE OF IDAHO
DIVISION OF
ENVIRONMENTAL QUALITY

RECEIVED

FEB 28 2000

Department of Water Resources

1410 North Hilton • Boise, Idaho 83706-1255 • (208) 373-0502

Dirk Kempthorne, Governor
C. Stephen Allred, Administrator

February 25, 2000

Shelley Walter Keen
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard Street
PO Box 83702
Boise, ID 83702

To File
01-07477

S.W. Keen
6/7/2000

RE: Water Appropriation Application 01-07476 (Anton Merle)

Dear Mr. Keen:

The Idaho Division of Environmental Quality (DEQ) has reviewed the letter to Mr. Merle dated January 7, 2000, wherein you asked DEQ to comment on his request to draw water directly from the Snake River. After talking to Mr. Merle's wife and yourself, DEQ has determined that this application by itself will not likely contribute to worsening water quality conditions on the Snake River. We arrive at this conclusion given the intended use, irrigating 2-3 acres of lawn from a small fish pond.

However, we are concerned with the precedence this sets, using the Snake River when Mr. Merle has access and a water right through the Gem Irrigation District. While Mr. Merle's application by itself is small in comparison to the flow of the Snake River, cumulative withdrawals and returns only exacerbate an already bad water quality problem.

DEQ has no information or water quality data to substantiate Mr. Merle's claim regarding the condition of water he gets from the Gem Irrigation District. The question becomes where does the water that Mr. Merle would have used go? Additionally, DEQ assumes that all the water pulled from Mr. Merle's fish pond to water his lawn is used, in other words, there is no return flow to the Snake River. If the latter is not the case, our evaluation may be different.

Again DEQ does not see this potential change in use to constitute a significant impact on or to water quality in the Snake River. If you have any questions please call me at 373-0570.

Sincerely,

Michael McIntyre
Surface Water Program Manager

MJM:lg

cc: Mr. Merle
Craig Shepard, DEQ/Boise

MICROFILMED

JUL 12 2000

BENJAMIN WITTY
CHAIRMAN OF THE BOARD

PAUL WARRICK
VICE CHAIRMAN OF THE BOARD

KENNETH HENLEY
PROJECT MANAGER

PAUL J. DEVEAU
ASSISTANT PROJECT MANAGER

JUDITH A. JEMMETT
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ASSISTANT SECRETARY-TREASURER

BOISE PROJECT BOARD OF CONTROL

(FORMERLY BOISE U. S. RECLAMATION PROJECT)

2465 OVERLAND ROAD
BOISE, IDAHO 83705-3155

OPERATING AGENCY FOR 167,000
ACRES FOR THE FOLLOWING
IRRIGATION DISTRICTS

NAMPA-MERIDIAN DISTRICT
BOISE-KUNA DISTRICT
WILDER DISTRICT
NEW YORK DISTRICT
BIG BEND DISTRICT

RECEIVED

MAY 15 2000

May 11, 2000

Department of Water Resources

TEL: (208) 344-1141
FAX: (208) 344-1437

Sharla Curtis
State of Idaho
Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

RE: Objection to Application for Permit
Howard Smallwood
28522 Lower Pleasant Rd.
Wilder, ID 83676

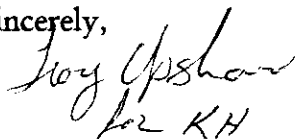
Dear Ms. Curtis:

The Boise Project Board of Control objects, in part, to Mr. Smallwood's application for permit to appropriate the public waters of the State of Idaho, # W026194. The property identified in the application as lying in the SE4 / SW4 / Sec. 20, T.4N, R.5W, BM has a water right for 3.30 acres within the Wilder Irrigation District. It is our opinion that the additional water right for this 3.30 acres should be denied.

Access to their irrigation water, as well as that of two other waterusers, amounting to 36.5 acres, has been curtailed because an upstream user has eliminated the private ditch which feeds these properties. Should these waterusers reestablish the private ditch they would again have access to the irrigation water.

If you have any questions or comments regarding this matter, please do not hesitate to contact me at (208) 344-1141.

Sincerely,



Ken Henley
Project Manager, BPBC

MICROFILMED

MAY 12 2000

MEMORANDUM

To: File 02-07477

FROM: Sharla

DATE: May 10, 2000

RE: Surface Water Access

In an effort to verify the applicant's statement that he no longer has access to the surface water through Wilder Irrigation District (WID), I spoke with Ken Henley at WID. He stated that one of Mr. Smallwood's neighbors plowed up and covered over the ditch that once supplied water to Mr. Smallwood.

He went on to say that Mr. Smallwood would have to construct 100'-200' feet of open ditch to again be able to receive water from the district. Ken had not seen this right in the weekly new water right listing that he receives so I sent a fax copy of the application to him for review. His only comment was that he feared Mr. Smallwood would now request to be let out of the district, which would be the natural thing to do at this point and he worries that situations like this will cause more people to opt out of the district too and of course that affects their revenue.

MICROFILMED
JUL 12 2000

NOTICE OF APPLICATION OF WATER RIGHT

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

02-07477 *st*

SMALLWOOD, HOWARD
28552 LOWER PLEASANT RD
WILDER, ID 83676

Source: SNAKE RIVER Tributary: COLUMBIA RIVER
Diversion Pt: LOT 2 (SESW) Sec 20 T 04N R 05W in CANYON County.
Use: IRRIGATION { 0.120 CFS)
Total Diversion: { 0.120 CFS)

Date Filed: 3/22/2000 *correct date*
In: CANYON County
T04N R05W S20 Lot 2 (SESW)
6.0 ACRES TOTAL

Applicant agrees to mitigate consumptive use in the future as needed.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 for each application on or before APRIL 24, 2000. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director
820

April 6, 13, 2000

RECEIVED

APR 14 2000

WATER RESOURCES
WESTERN REGION

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) SS.
County of Canyon)

Carolyn Roberson
of Nampa, Canyon County, Idaho, being first duly
sworn, deposes and says:

1. That I am a citizen of the United States, and at all times
hereinafter mentioned was over the age of eighteen years, and not a
party to the above entitled action.

2. That I am the Principal Clerk of the Idaho Press-Tribune, a daily
newspaper published in the City of Nampa and Caldwell, in the
County of Canyon, State of Idaho; that the said newspaper is in
general circulation in the said County of Canyon, and in the
vicinity of Nampa and Caldwell, and has been uninterruptedly
published in said County during a period of seventy-eight
consecutive weeks prior to the first publication of the notice, a
copy of which is hereto attached.

3. That the notice, of which the annexed is a printed copy, was
published in said newspaper two times in the regular and entire
issue of said paper, and was printed in the newspaper proper, and
not in a supplement.

4. That said notice was published the following dates:

April 6 and 13, 2000

Carolyn Roberson

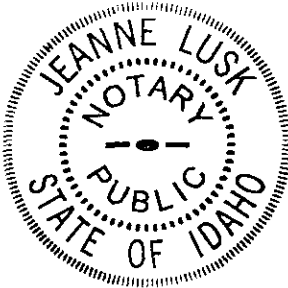
STATE OF IDAHO)

County of Canyon)

On this 13th day of April in the year of
2000 before me a Notary Public, personally appeared.
Carolyn Roberson, 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 acknowledge to me that she executed
the same.

Jeanne Lusk

Notary Public for Idaho
Residing at Nampa
My Commission expires June 21st, 2003



MICROFILMED

11-1-2000

RECEIVED

APR 14 2000

WATER RESOURCES
WESTERN REGION

Lisa

~~Taylor, Sue~~

From: Lester, Steve
Sent: Friday, April 07, 2000 2:38 PM
To: Taylor, Sue
Subject: FW: Applications for Permit to Appropriate Water

Sue:

Please file a copy of this reply in all files noted. Also, please send comment letter to Dave Parrish as noted by Scott for 61-07758. Would be ok to make cc of letter with application that was sent to Scott and attach a note to it and mail to Dave to save some work. Probably won't work to email Dave since he'll need to see the application.

Thanks for taking care of this.

-- Steve

-----Original Message-----

From: SCOTT GRUNDER [mailto:sgrunder@IDFG.STATE.ID.US]
Sent: Friday, April 07, 2000 11:45 AM
To: slester@idwr.state.id.us
Cc: CECE MANN; TERRY VERNHOLM
Subject: Applications for Permit to Appropriate Water

Dear Mr. Lester:

The Idaho Department of Fish and Game has reviewed the following applications for water rights and we do not anticipate significant adverse effects to fish, wildlife, or aquatic resources as a result of permitting them:

02-07477 Smallwood
65-13936 Jerome
67-08049 Branch
67-08050 Sidwell
67-08051 Eckhardt

You also sent us application for permit No. 61-07758 Riggs. This falls within our Magic Valley Region area of responsibility. Please contact Mr. Dave Parrish at 324-4350 or email dparrish@idfg.state.id.us. Thank you for the opportunity to comment.

Scott A. Grunder
Environmental Staff Biologist
Idaho Department of Fish and Game, Southwest Region Office
3101 South Powerline Road
Nampa, Idaho 83686
Phone (208)-465-8465
FAX (208)-465-8467
email address: sgrunder@idfg.state.id.us

W.C.F.C. 1111

APR 17 2000



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

April 3, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

SCOTT GRUNDER
STATE OF IDAHO
DEPT OF FISH & GAME
3101 S POWERLINE RD
NAMPA ID 83686

Re: Application for Permit No. 02-07477 in the Name of Howard Smallwood, Application for Permit No. 65-13936 in the Name of Art &/or David Jerome, Application for Permit No. 61-07758 in the Name of Double Anchor Ranch or Lynn &/or Elsie Riggs, Application for Permit No. 67-08049 in the Name of Weldon Branch, Application for Permit No. 67-08050 in the Name of Eugene &/or Myrtle Sidewell, and Application for Permit No. 67-08051 in the Name of James Eckhardt/Eckhardt Family Trust.

Dear Sir:

Enclosed are copies of the above-referenced applications that the proposed use is from surface water. Please review the applications and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by April 24, 2000.

If you have any questions regarding the application, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

Gary Spackman

GS:lm

Encl.

MIORC

APR 11 2000

MARCH 30, 2000

Legal Notices Department
Press-Tribune
P.O. Box 9399
Nampa, ID 83652

Dear Legal Dept.:

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 APRIL 24, 2000.

Yours truly,

SUE TAYLOR
Secretary/Office Coordinator

Encl.

MICRO
MAY 12 2000

NOTICE OF APPLICATION FOR WATER RIGHT

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

WATER

1931

02-07477

SMALLWOOD, HOWARD
28552 LOWER PLEASANT RD
WILDER, ID 83676

Source: SNAKE RIVER

Tributary: COLUMBIA RIVER

Diversion Pt: LOT 2 (SESW) Sec 20 T 04N R 05W in CANYON County.

Use: IRRIGATION (0.120 CFS)

Total Diversion: (0.120 CFS)

Date Filed: 3/22/2000

In: CANYON County
T04N R05W S20 Lot 2 (SESW)

6.0 ACRES TOTAL

Applicant agrees to mitigate consumptive use in the future as needed.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 for each application on or before APRIL 24, 2000. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

Published: 4/ 6/2000 & 4/13/2000

APR 13 2000
11:17 AM

REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE
THREE ALTERNATIVES BELOW

Name of Applicant

Howard Smallwood

Mailing Address

28522 Lower Pleasant Road
Wilder Id 83676

Application No.
(if known)

____ IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

____ PROPOSE MITIGATION NOW

Yes, I want my application processed and before it is advertised, I will amend my application to include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

☒ WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature

Howard Smallwood

Date

3/7/00

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

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State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

<DATE>

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

<NAME>

<ADDRESS>

<TOWN> ID <ZIP>

RE: APPLICATION FOR PERMIT <INSERT # IF ISSUED>

Dear Applicant:

You have filed the above referenced application for permit to appropriate water for a consumptive use. If the appropriation is completed as described in the application, it may result in some reduction in flows in the Snake River. As you are undoubtedly aware, various actions are being taken throughout the Snake River and Columbia River Basins to protect endangered and threatened anadromous fish. These actions include the acquisition of water supplies to maintain or enhance streamflows during migration periods.

Federal funds are being used to obtain the rights to both natural flow and stored water to augment flows in order to meet flow targets in the Snake and Columbia Rivers. While the necessity and value of flow augmentation has not yet been established, the State of Idaho has cooperated with the other states in the Pacific Northwest and with federal agencies to allow limited flow augmentation on a trial basis while additional data are gathered to determine the most appropriate way to stabilize and enhance fish populations.

Under Idaho law, an application to appropriate water cannot be granted unless the six criteria listed in Section 42-203A, Idaho Code, are satisfied. One of these criterion is that the proposed use must be in 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." If granting an application to appropriate would reduce flows in the Snake River such that additional water would have to be secured from other sources for flow augmentation, it may be difficult to show that granting the application would be in the local public interest. As a result, the Idaho Department of Water Resources (IDWR) has delayed processing applications which, without mitigation, may deplete flows in the Snake River.

Proposed appropriations of water, such as that described in your application, may also have value with respect to the local public interest and should be given consideration, provided salmon recovery efforts would not be affected and the appropriation would not result in additional flow augmentation being required. Consequently, IDWR is processing applications to appropriate water when the applicant either:

- (1) can demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish;

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<DATE>

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- (2) proposes adequate mitigation (or make-up water) as part of the proposed appropriation to offset anticipated depletions to flows in the Snake River during periods of anadromous fish migration; or
- (3) agrees to provide mitigation as needed in the future if it is determined that not mitigating depletions caused by the applicant's appropriation would result in additional water being required from other sources to augment flows during migration periods of anadromous fish.

The purchase or rental of storage water, which can be used for flow augmentation, may be the most available form of mitigation that could be used for mitigation, should mitigation be necessary. Under alternative 3 above, mitigation is not required when the application is processed, but may be required in the future based upon a finding by IDWR that depletions to Snake River flows resulting from appropriations made under permits issued after January 1, 1998 have increased the amounts of water required from other sources to augment flows for migrating anadromous fish. This alternative would entail including the following condition of approval if the application for a permit to appropriate water is approved:

The Director retains jurisdiction over this permit and any subsequent license to require the right holder to provide purchased or leased water from natural flow or storage, or other mitigation acceptable to the Director, to offset depletion of Lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit and any subsequent license.

For applications where one of the three conditions listed above is met, and the application is otherwise of proper form, IDWR will process the application. Alternatively, an applicant may choose to have IDWR continue to delay processing an application for permit until a later date. In that case, IDWR can hold your application pending changes in salmon recovery strategies, such as the potential elimination of flow augmentation requirements, and corresponding changes in IDWR policies. The priority date (seniority) of the proposed appropriation is protected for applications held because of IDWR policies. If you choose to have IDWR continue to hold your application at this time, you do not need to reply to this letter.

Please contact me if you have any questions about your application.

Sincerely,

<NAME>

<TITLE>

Enclosure

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