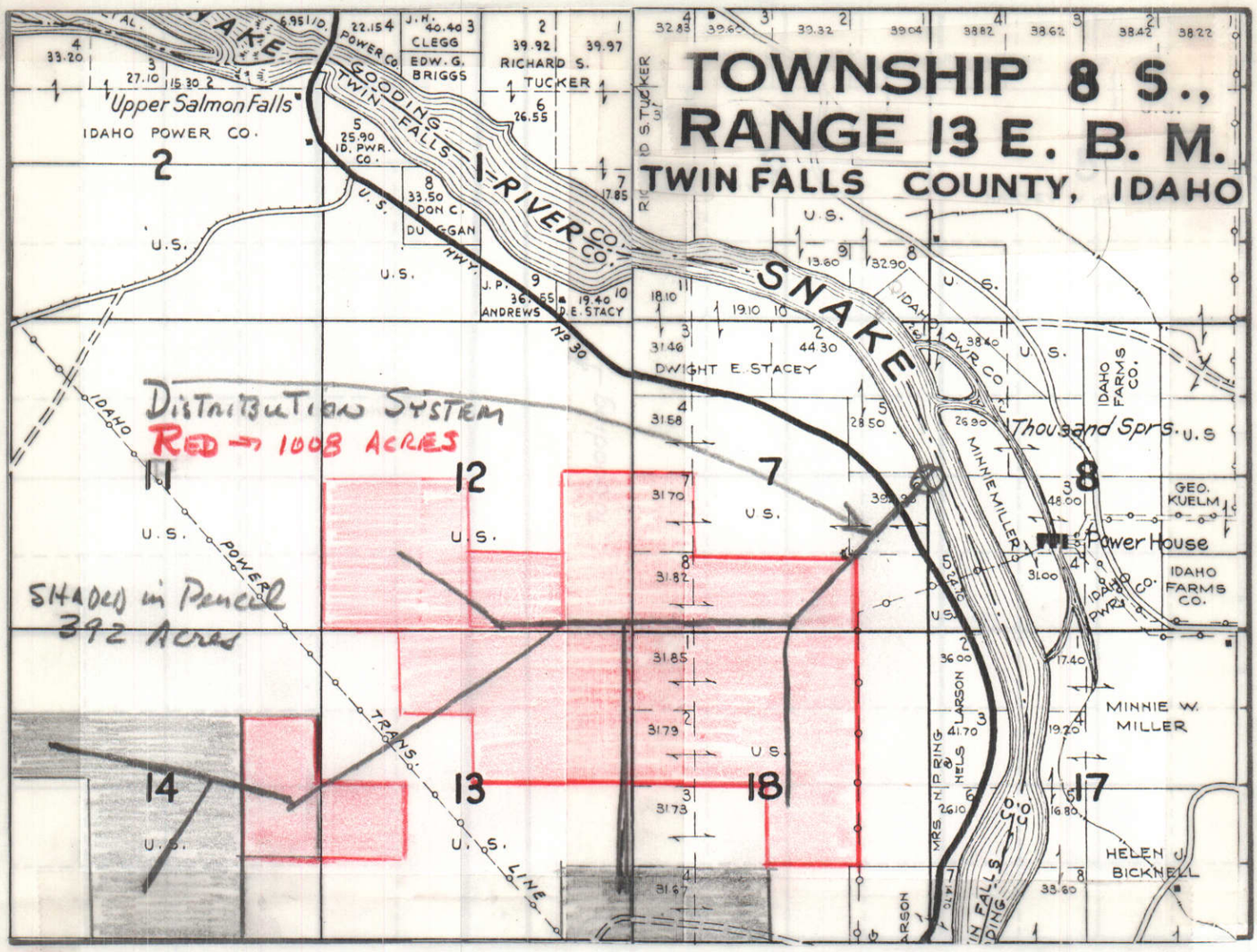
Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, this 19th day of October, 19 76.

Robert W. Bradshaw
(signature)

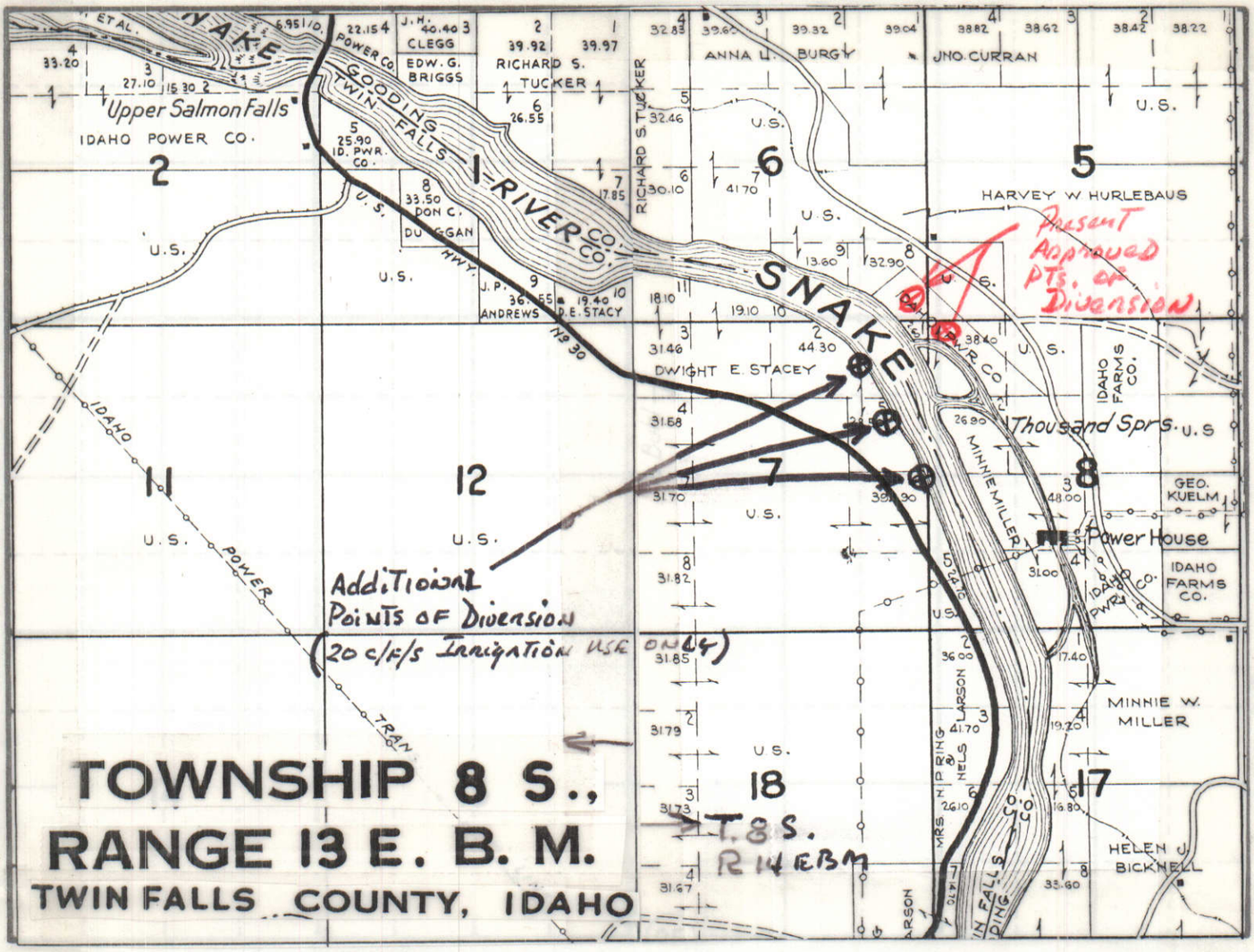
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

I, R. KEITH HIGGINSON, Director of the Department of Water Administration, hereby approve the foregoing application for amendment for Permit No. 36-7085 for a total of 1,007.16 acres of land pursuant to Order of this date.

Witness my hand this 2 day of December, 19 76.

R. Keith Higginson
Director

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, this 19th day of October, 1976.

Robert L. Brailsford
(signature)

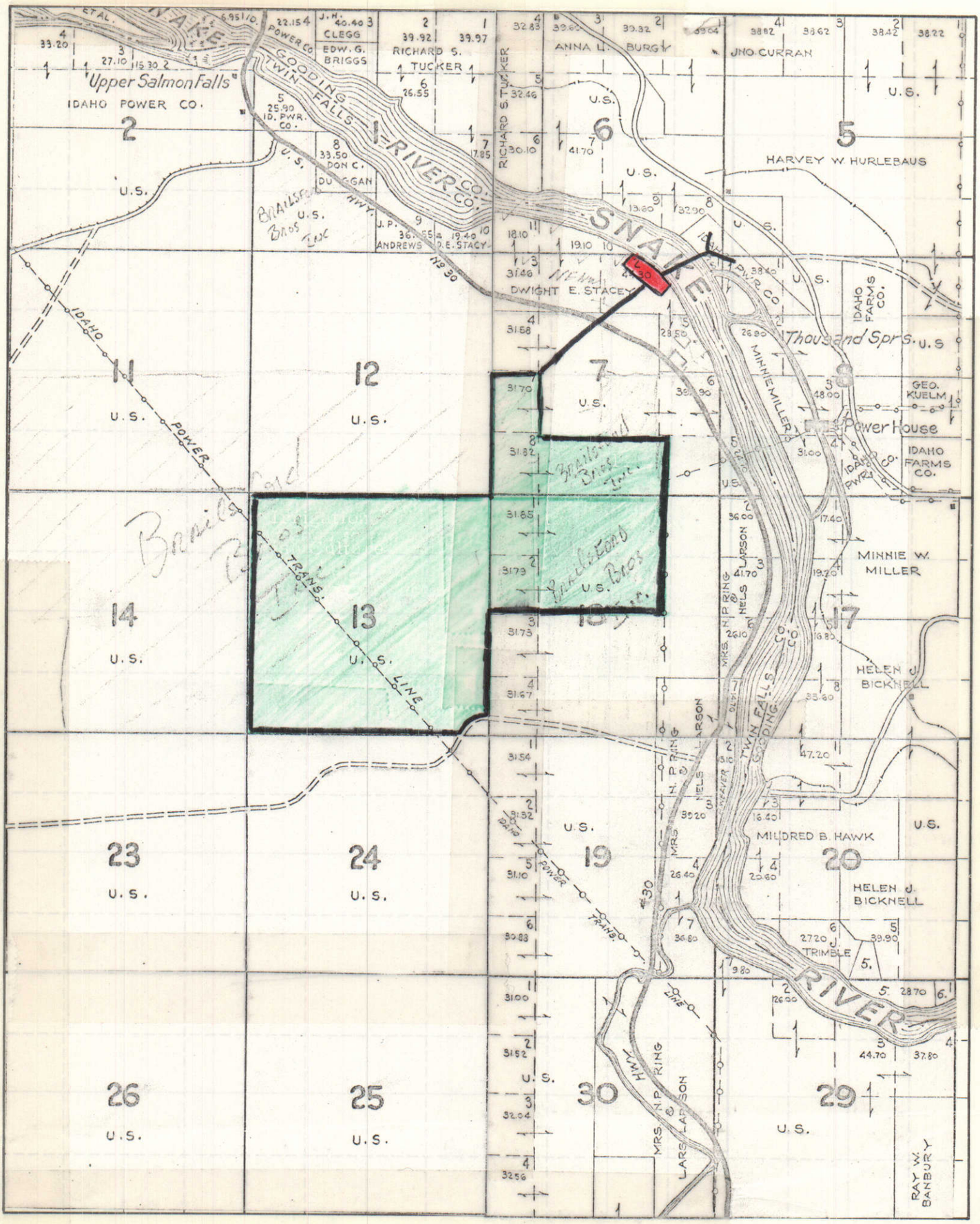
ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, R. KEITH HIGGINSON, Director of the Department of Water Resources hereby APPROVE the foregoing application for amendment for Permit No. 36-7085 subject to the following conditions: (1) that measuring devices be permanently installed and maintained at the point where Bickel Spring enters the Snake River and at the points of diversion from the Snake River so that no more water is taken from the Snake River than is released from Bickel Spring, and (2) that this approval in no way grants any right-of-way or easement across the land of another person.

Witness my hand this 26th day of October, 19 76.

R. Keith Higginson
Director

11. Map of proposed project:



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Robert W. Brailsford
(Applicant)
Pres. Brailsford Bros. Inc.

36 7085

Affidavit of Publication

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

No. 14590

RECEIVED
FEB 3 1970
Department of Reclamation

I, Carolyne Jennings, being first duly sworn upon oath, depose and say that I am principal clerk of the TIMES-NEWS, published daily, except Saturday, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Thursdays, commencing with the issue dated Jan. 22, 1970, and ending with the issue dated Jan. 29, 1970.

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

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

Carolyne Jennings

Subscribed and sworn to before me this 29th day of January, 1970.

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

NOTICE OF AMENDED APPLICATION FOR PERMIT

Notice is hereby given that Application for Permit No. 36-7085 in the name of the Brailsford Brothers, Inc. was filed for the diversion of 150 c.f.s. of water from Bickel Spring, tributary of the Snake River, with points of diversion within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼), Sec. 6; Lot 2 (SE¼NW¼), NE¼NW¼, Sec. 8, T. 8S, R. 14E, B.M., Gooding County, to be used for irrigation from April 1 to October 15 and for fish culture purposes from January 1 to December 31 and October 15 to April 1 in portions of Section 1, 11, 12, 13 and 14, T. 8S, R. 13E, B.M. and Section 7 and 18, T. 8S, R. 14E, B.M.

The applicants now propose to amend Application No. 36-7085, requesting 100 c.f.s of water from Bickel Spring, tributary of the Snake River, to be diverted within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼). Sec. 6, T. 8S, R. 14E, B.M., Gooding County, from April 1 to October 15 for irrigation and from January 1 to December 31 for fish propagation purposes in portions of Sec. 6, 7 and 18, T. 8S, R. 13E, B.M. and in all of Sec. 13, T. 8S, R. 13E, B.M.

Any protest to the proposed amending of the application may be filed with the Idaho Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Times-News, Twin Falls, Idaho, on January 22 and January 29, 1970

Bill submitted 2-4-70 dr

Affidavit of Publication

RECEIVED
OCT 24 1969
Department of Reclamation

STATE OF IDAHO,
COUNTY OF TWIN FALLS } ss.

No. 14363

I, Carolyne Jennings, being first duly sworn upon oath, depose and say that I am principal clerk of the TIMES-NEWS, published daily, except Saturday, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Thursdays, commencing with the issue dated October 16, 1969, and ending with the issue dated October 23, 1969.

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

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

Carolyne Jennings

Subscribed and sworn to before me this 23rd day of October, 1969.

R. Keith Higginson

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

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the Brailsford Brothers, Inc., Buhl, Idaho, have on September 29, 1969, applied for permit under Application No. 36-7085 to divert 200.0 cubic feet per second of water from Bickel Spring, tributary of the Snake River.

Water will be diverted by open ditch or pipeline within the NW¼NW¼ (Lot 1) of Sec. 8, T. 8S, R. 14 E, B. M., Twin Falls County and within the SE¼SE¼ (Lot 8) of Sec. 6; SE¼NW¼ (Lot 2), NE¼NW¼, Sec. 8; T. 8S, R. 14 E, B. M., Gooding County and is to be used from April 1 to October 15 for irrigation, from January 1 to December 31 and from October 15 to April 1 for fish culture in the S½SW¼, Sec. 1; S½, Sec. 11; S½, Sec. 12; all of Sec. 13; N½, E½SW¼, SE¼, Sec. 14, T. 8 S, R. 13 E, B. M. and in the SE¼SW¼ (Lot 10,) SW¼SE¼, Sec. 6; NW¼NE¼ (Lot 2), W½SW¼, SE¼SW¼, W½SE¼, Sec. 7; W½NE¼, W½, W½SE¼, Sec. 18, T. 8 S, R. 14 E, B. M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of this notice.

R. KEITH HIGGINSON,
State Reclamation Engineer

Published in the Times-News, Twin Falls, Idaho, on October 16 and October 23, 1969.

Bill submitted
10-24-69
ds

36 7085

7/1/79
Supersedes 10/15/78

...TION 8100
...RVE NO. 18-191A

LAYNE & BOWLER, INC.
MEMPHIS, TENN. 38108

Layne
A Mailey Company

No. Stages	Eff. Change
1	0
2	
3	
4	

MATERIAL	Eff. Change
IMP.—C.I.	–1
IMP.—NI-RI	–1
BOWL—SRZ.	–1
BOWL—NI-R.	–1

19GM 1770 R.P.M.

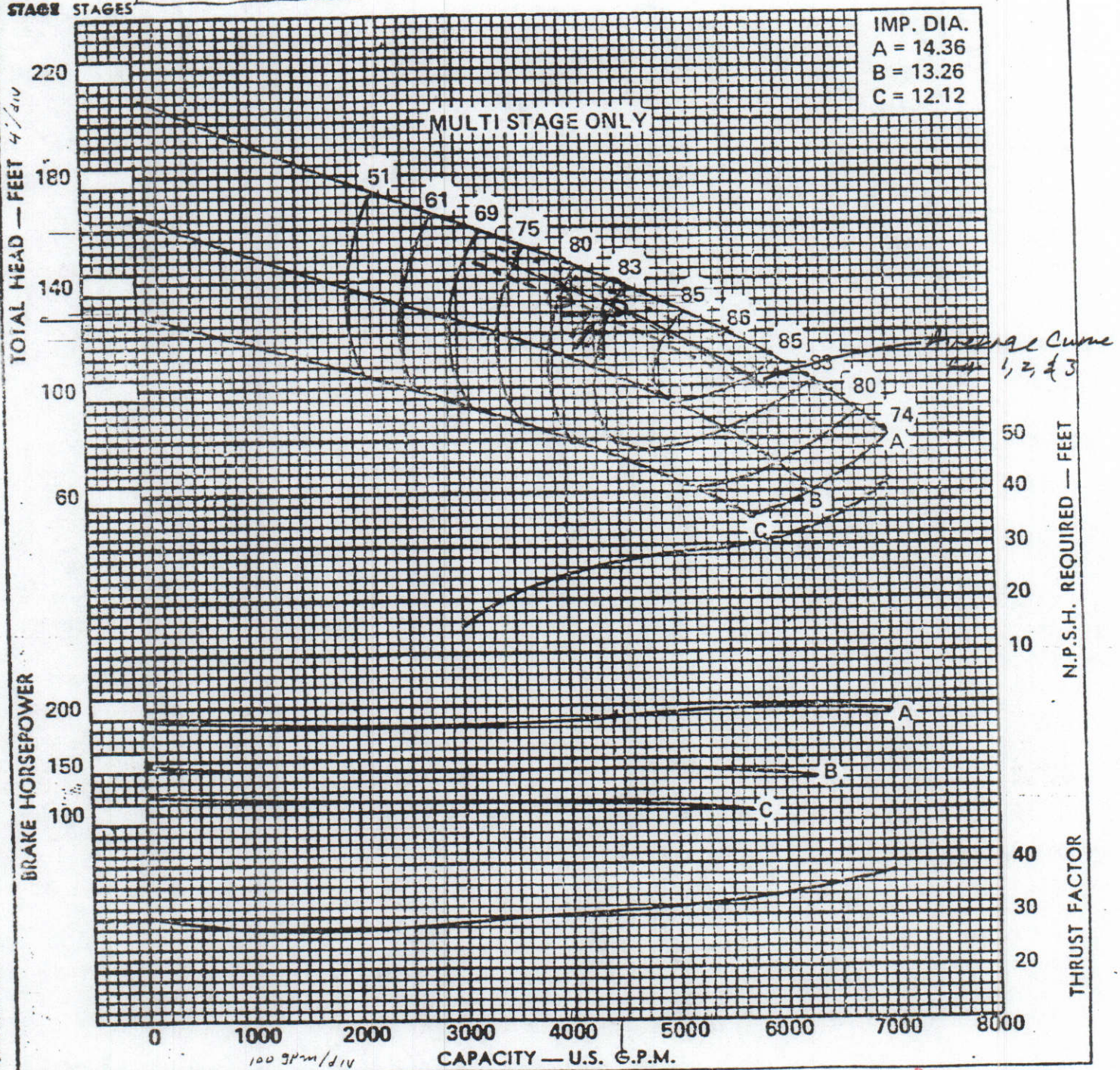
SINGLE STAGE LAB PERFORMANCE WITH STANDARD MATERIALS. EFFICIENCY SHOWN FOR 2 OR MORE STAGES. HORSE POWER SHOWN FOR ONE STAGE BASED ON 2 STAGE EFFICIENCY. CORRECTIONS SHOULD BE MADE FOR STAGES AND MATERIAL.

ONE ( ) STAGE STAGES

Pumps (1) (2) & (3)

4460 @ 3 STGE 128 = 384'

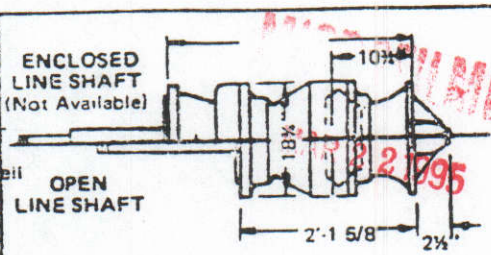
IMP. DIA.
A = 14.36
B = 13.26
C = 12.12



...E AREA — SQ. IN.	=	69.5	IMPELLER WT.-LBS.	=	58
...PER IMPELLER	=	7.45 LB.-FT.²	ONE STAGE WT.-LBS.	=	610
MAX. SPHERE SIZE	=	1.25 in.	ADD'L STAGE WT.-LBS.	=	350
MAX. NO. STD. STAGES	=	3	IMPELLER NUMBER	=	95G15
MAX. OPERATING P.S.I.	=	300	DISCH. SIZES	=	14, 16
STD. LATERAL	=	0.62 in.	SUCTION SIZES	=	17½" or 22½" Bell
STD. SHAFT DIA.	=	2.187 in.	MAX. LATERAL	=	– – – in.
MAX. SHAFT DIA.	=	– – – in.	BOWL CONN.		FLANGED – COLLET
MIN. SUBMERGENCE	=	32 in.	ADD 17 5/8 " PER ADDITIONAL STAGE		

ENCLOSED LINE SHAFT (Not Available)

OPEN LINE SHAFT



...IMED
...2 2 1995

NEW ISSUE [ ] 376 2175 River Pump CURVE NO. 18-1518

LAYNE & BOWLER, INC.
MEMPHIS, TENN. 38108

No.	Eff. Change	MATERIAL	Eff. Change
1		IMP.—C.I.	-1
2	0	IMP.—NI-RI	-1
3		BOWL—BRZ.	-1
4		BOWL—NI. R.	-1

14THC 1770 R.P.M.

SINGLE S[illegible]B PERFORMANCE WITH STANDARD MATERIALS. EF[illegible]IENCY SHOWN FOR 2 OR MORE STAGES. HORSE POWER SHOWN FOR ONE STAGE BASED ON 2 STAGE EFFICIENCY. CORRECTIONS SHOULD BE MADE FOR STAGES AND MATERIAL.

ONE (4) STAGE STAGES

Pump #4

CUSTOM PERFORMANCE 376'

IMP. DIA. 11.46

TOTAL HEAD — FEET 8'/div

BRAKE HORSEPOWER

65 68 74 78 82 84 85 84 82 79

Measurement

520 440 360 280 200 360 200 100

40 30 20 20 15 10

0 500 1000 1500 2000 2500 3000 3500

50 GPM/div

CAPACITY — U.S. G.P.M.

EYE AREA — SQ. IN.	[illegible]	IMPELLER WT. LBS.	31 [illegible]
WR² PER IMPELLER	[illegible]	ONE STAGE WT. LBS.	4[illegible]
MAX. SPHERE SIZE	[illegible]	ADD'L STAGE WT. LBS.	164
MAX. NO. STD. STAGES	[illegible]	IMPELLER MATERIAL	[illegible]
MAX. OPERATING P.S.I.	[illegible]	DISCH. SIZES	[illegible]
STD. LATERAL	[illegible]	SUCTION SIZES	[illegible]
STD. SHAFT DIA.	[illegible]	MAX. LATERAL	[illegible]
MAX. SHAFT DIA.	[illegible]	BOWL CONN.	FLANGED COLLET
MIN. SUBMERGENCE	[illegible]	ADD 13	PER ADDITIONAL STAGE

DEEP WELL TYPE

1 13/16

RECEIVED

MAR 2 2 1995

ISSUE [redacted] 1500 RPM Note pg 7/3/79 396'

SECTION 8100
CURVE NO. 18-13E

LAYNE & BOWLER, INC
MEMPHIS, TENN. 38108

Layne
A Morrison Company

	Eff Change	MATERIAL	Eff Change
1	6	IMP.—C.I.	1
2	3	IMP.—NI.RI	1
3	0	BOWL—BRZ.	1
4		BOWL—NI.R.	-1

130 1770 R.P.M.

SINGLE STAGE LAB PERFORMANCE WITH STANDARD MATERIALS. EFFICIENCY SHOWN FOR 3 OR MORE STAGES. HORSE POWER SHOWN FOR ONE STAGE BASED ON 3 STAGE EFFICIENCY. CORRECTIONS SHOULD BE MADE FOR STAGES AND MATERIAL

ONE 1 2 3 5
STAGE STAGES

CUSTOM PERFORMANCE

Pump # 5

Imp. Dia.
10.04

TOTAL HEAD — FEET 2 ft/div

BRAKE HORSEPOWER

60 68 74 78 81 83 84.6 83 81 78

MEASUREMENT

120 90 70 50 30

50 40 30 20

30 20 10

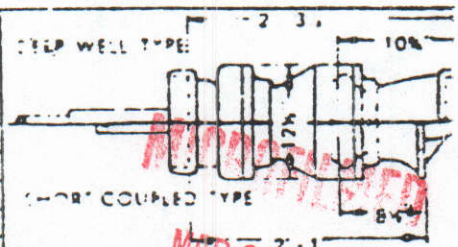
12 8 4

0 400 600 1200 1600 2000 2400

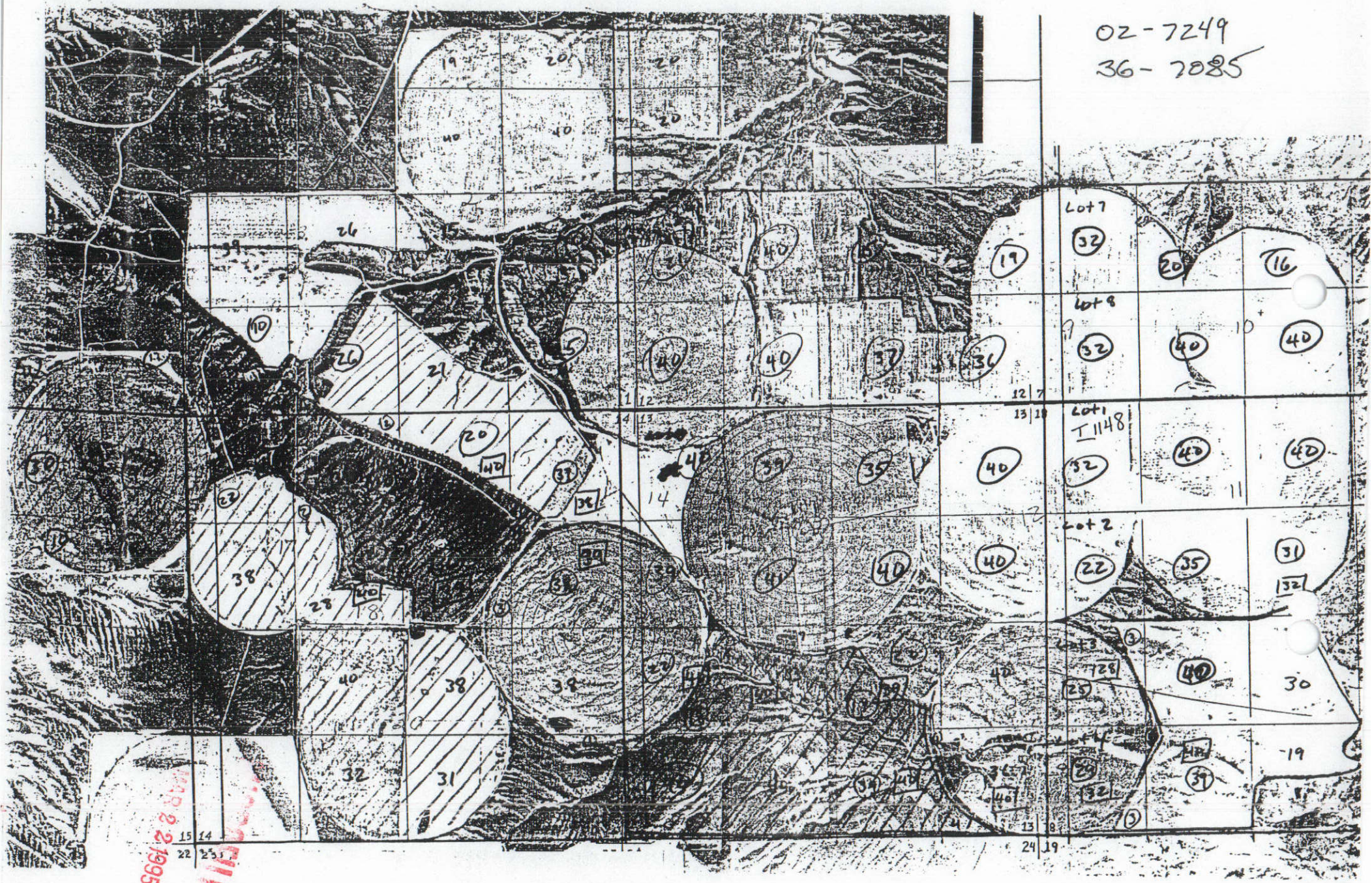
40 gpm/div

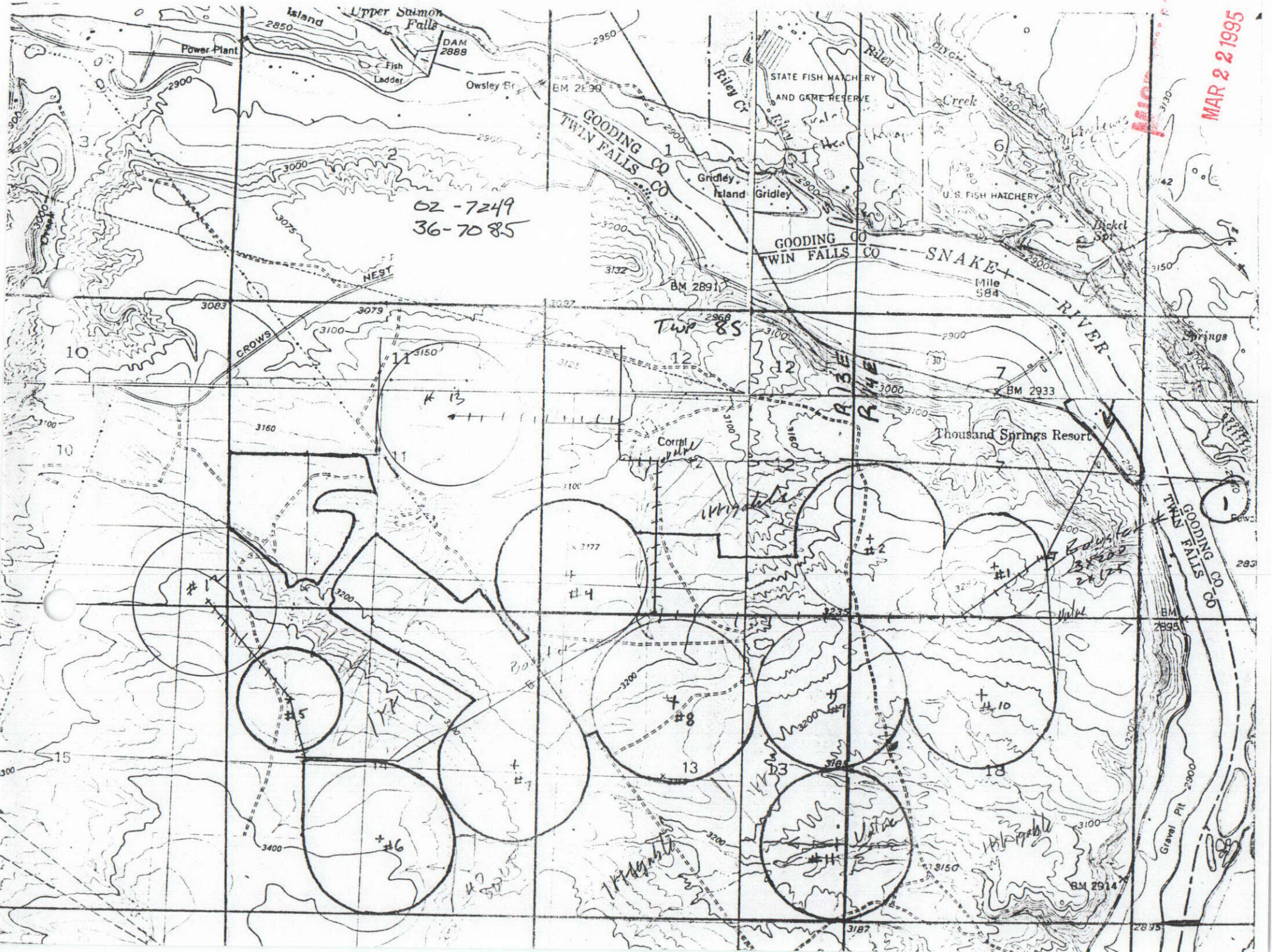
CAPACITY — U.S. G.P.M.

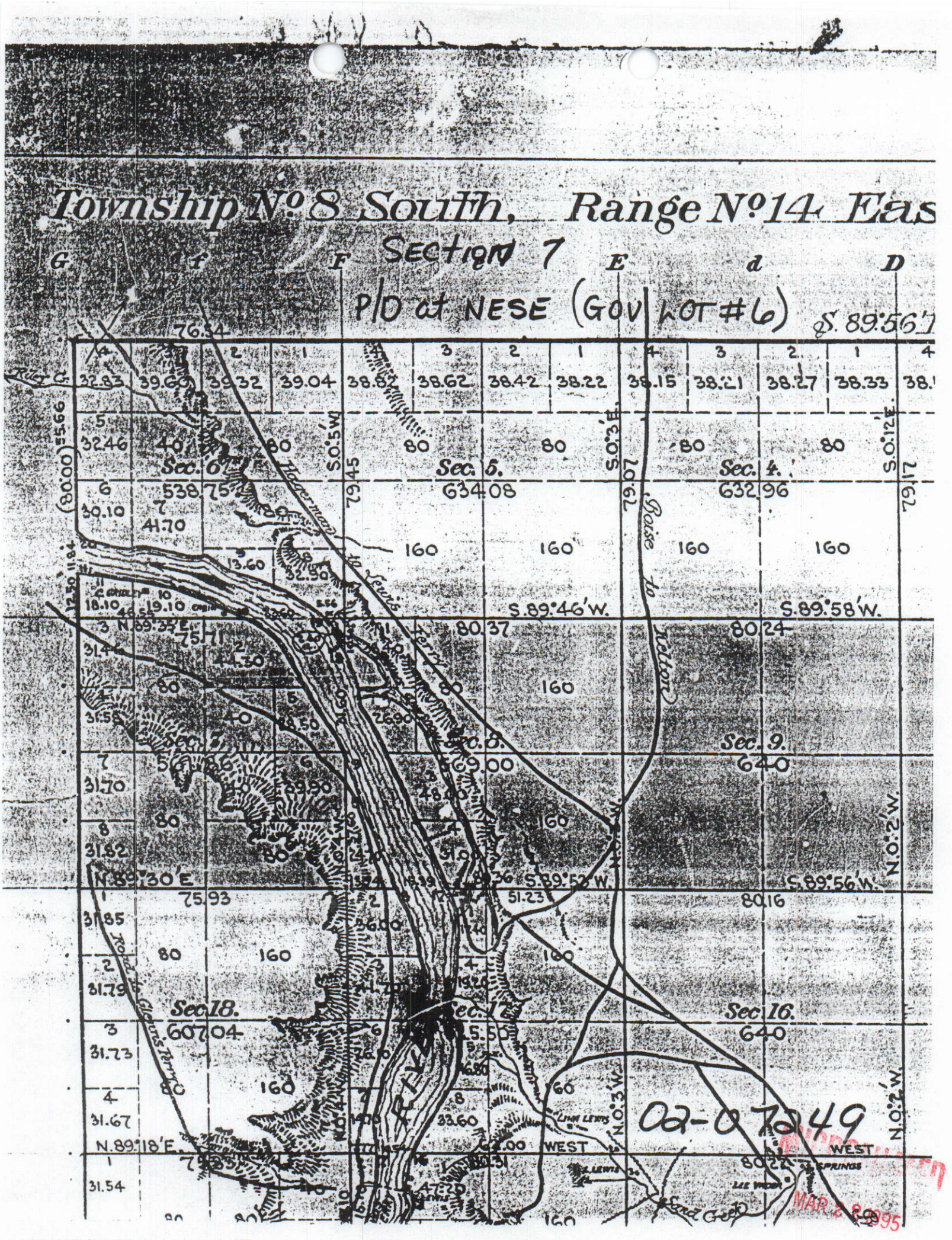
EYE AREA — SQ. IN.	26.5		IMPELLER WT LBS	11.5	
WR² PER IMPELLER	1.45	LB FT²	ONE STAGE WT LBS	21.8	
MAX. SPHERE SIZE	1.97	in	ADD'L STAGE WT LB	11.0	
MAX. NO STD STAGES	5		IMPELLER NUMBER	1	
MAX. OPERATING PSI	435		DISCH. SIZES	6.10	
STD. LATERAL	4	in	SUCTION SIZES	10	
STD. SHAFT DIA.	1.688	in	MAX. LATERAL	10	in
MAX. SHAFT DIA	1.937	in	BOWL CONN.	FLANGED	COLLET
MIN. SUBMERGENCE	23	ft	ADD 11.28	PER ADDITIONAL STAGE	

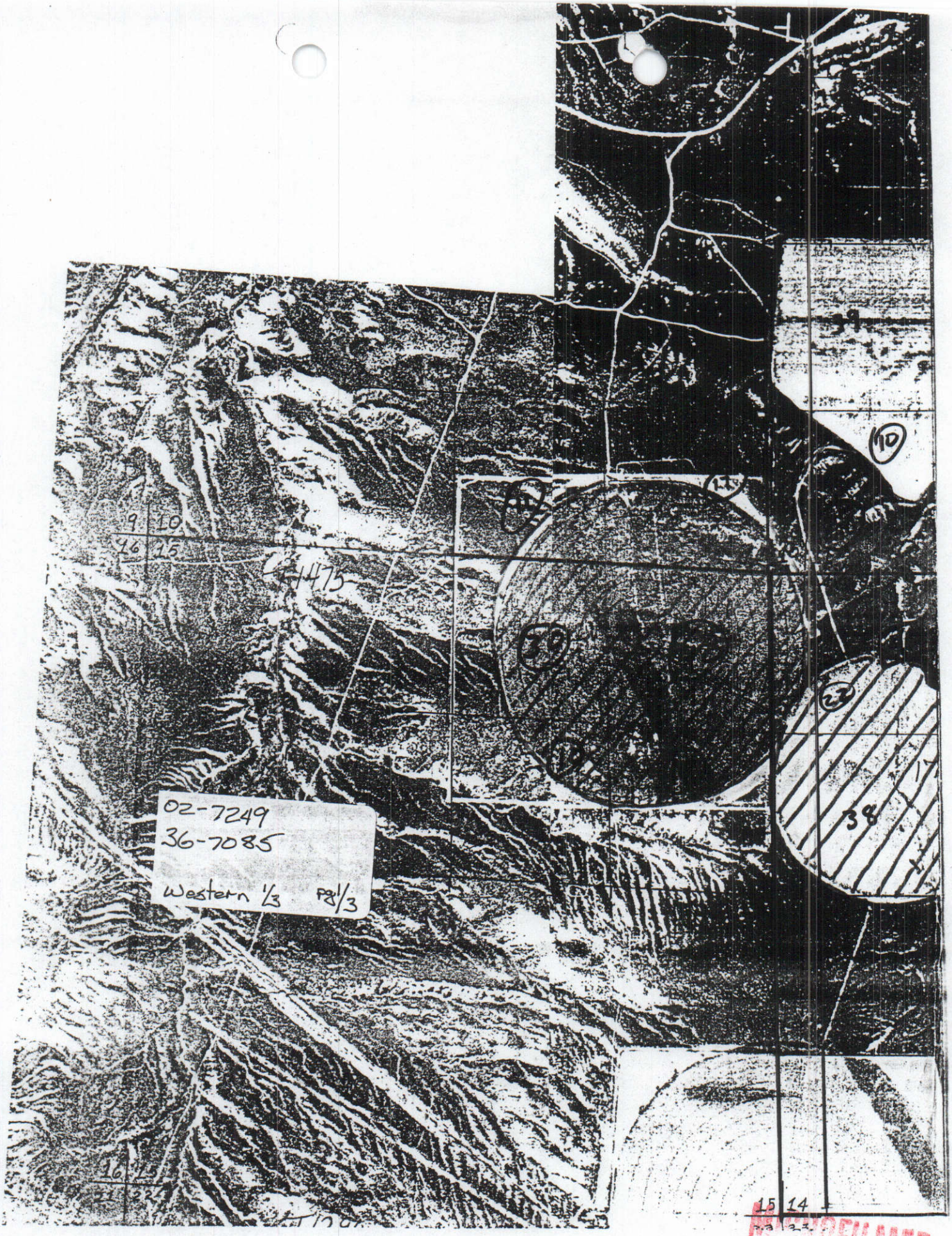


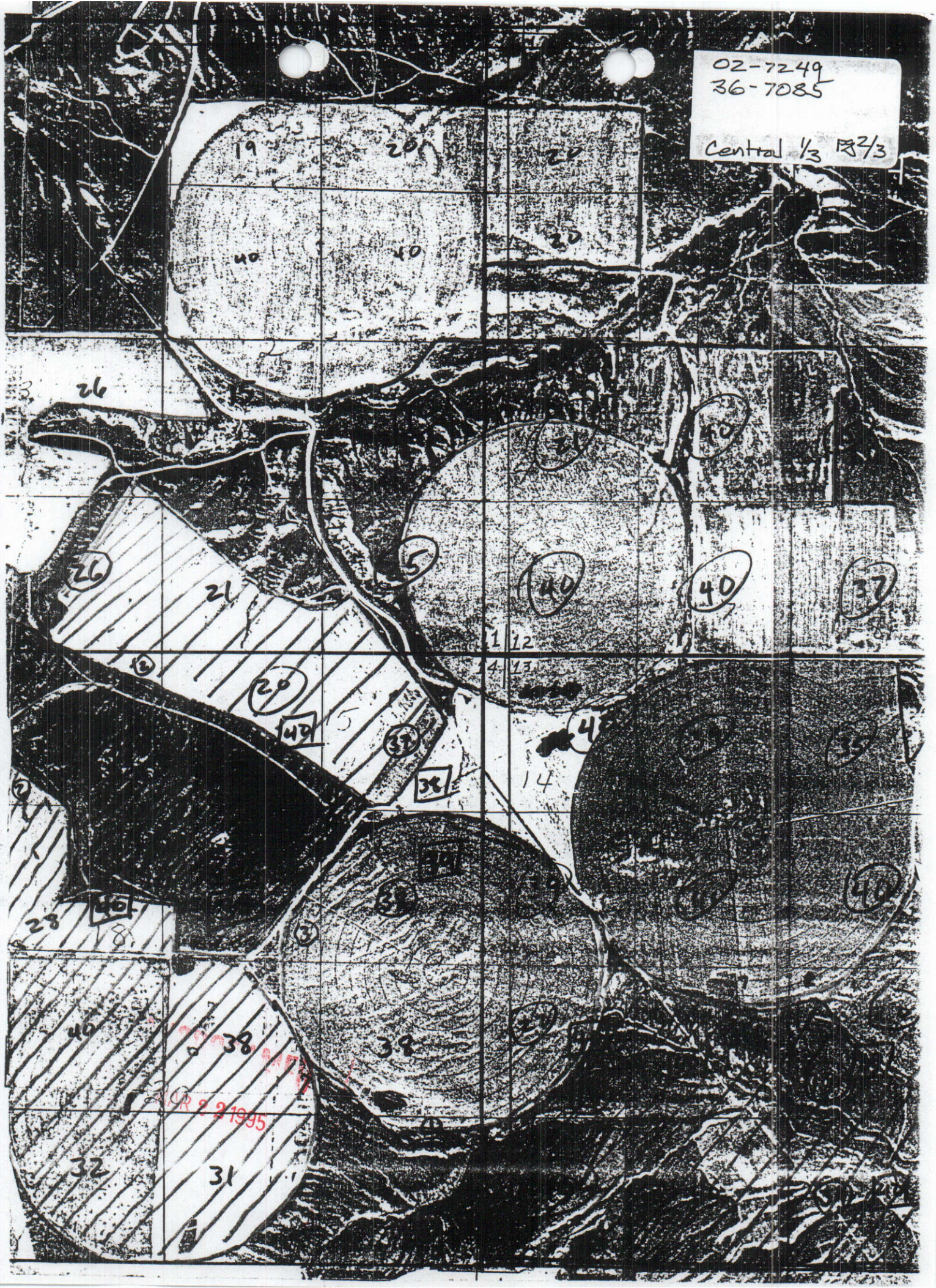
RECEIVED
MAR 22 1995

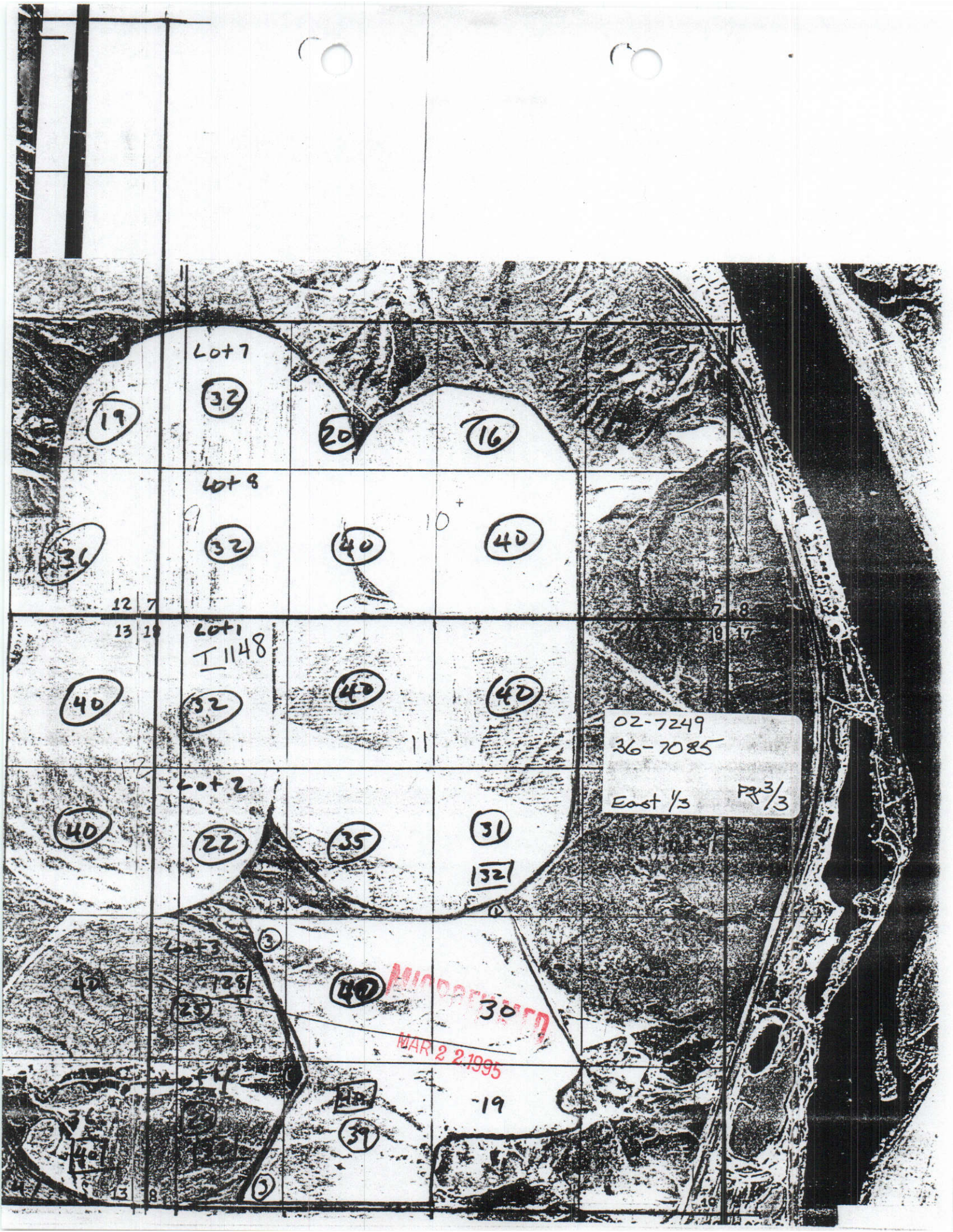

02-7249
36-7085
Lot 7
Lot 8
Lot 1
T 1148
Lot 2
Lot 3
Lot 4
30
19


Upper Salmon Falls
Island
DAM 2888
Power Plant
Fish Ladder
Owsley Br
BM 2890
GOODING CO
TWIN FALLS CO
Riley Cr
STATE FISH HATCHERY
AND GAME REFSERVE
Riley Creek
Gridley Island
Gridley
U.S. FISH HATCHERY
Dickel Spr
02-7249
36-7085
NEST
CROWS
BM 2891
Twp 8S
SNAKE RIVER
Mile 584
Springs
BM 2933
Thousand Springs Resort
Corral
#1
#2
#3
#4
#5
#6
#7
#8
#9
#10
#11
#12
#13
BM 2895
BM 2914
Gravel Pit
MAR 2 2 1995

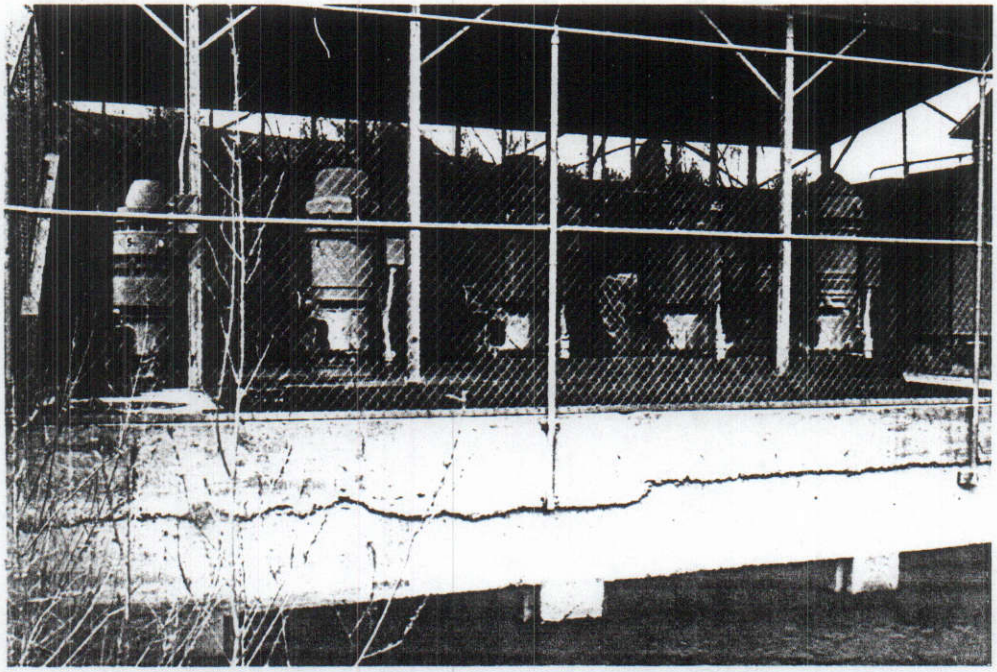

Township No. 8 South, Range No. 14 East
Section 7
P/O at NESE (GOV LOT #6)
S. 89°56'
Sec. 6.
Sec. 5.
Sec. 4.
Sec. 7.
Sec. 8.
Sec. 9.
Sec. 18.
Sec. 17.
Sec. 16.
Hagerman to Lewis
Boise to Nelson
Road to Glenns Ferry
S. 89°46'W.
S. 89°58'W.
S. 89°56'W.
N. 89°30'E
N. 89°18'E.
WEST
02-07049


02-7249
36-7085
Western 1/3 Pg 1/3
MAR 2 2 1995

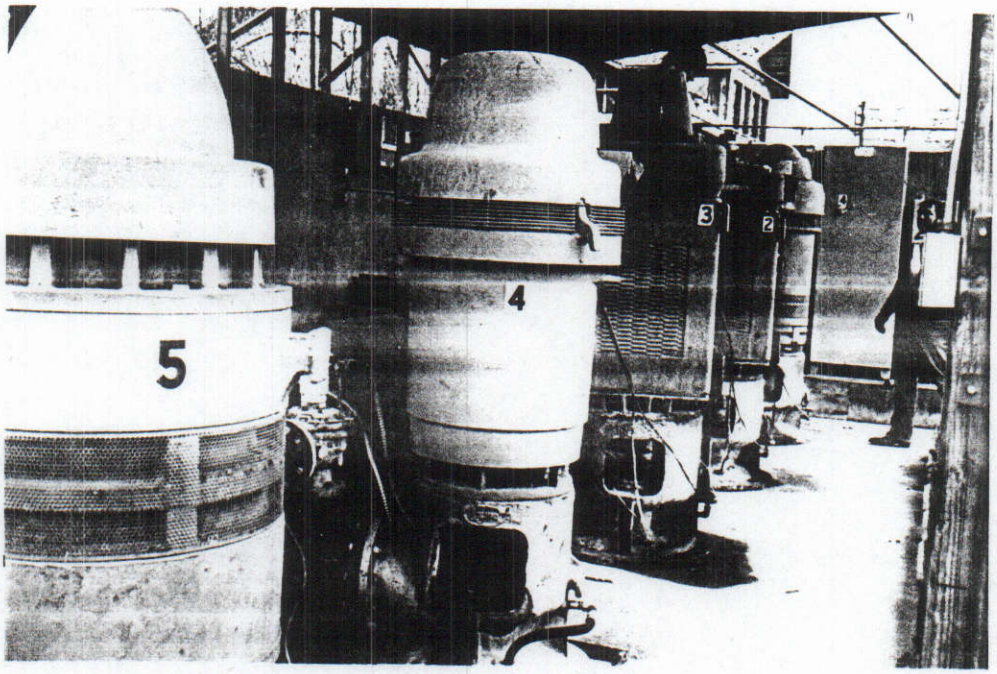

02-7249
36-7085
Central 1/3 Pg 2/3
19
20
20
40
40
20
26
40
5
26
21
40
40
37
1
12
4
13
20
40
5
33
35
38
14
40
28
40
40
38
38
APR 2 2 1995
32
31


Lot 7
32
19
20
16
Lot 8
36
32
40
40
12
7
13
18
Lot 1
T 1148
40
32
40
40
02-7249
36-7085
East 1/3
Pg 3/3
Lot 2
40
22
35
31
132
Lot 3
40
40
30
MAR 2 2 1995
Lot 4
19
39

02-7249
36-7085



River intake & Pumping Plant



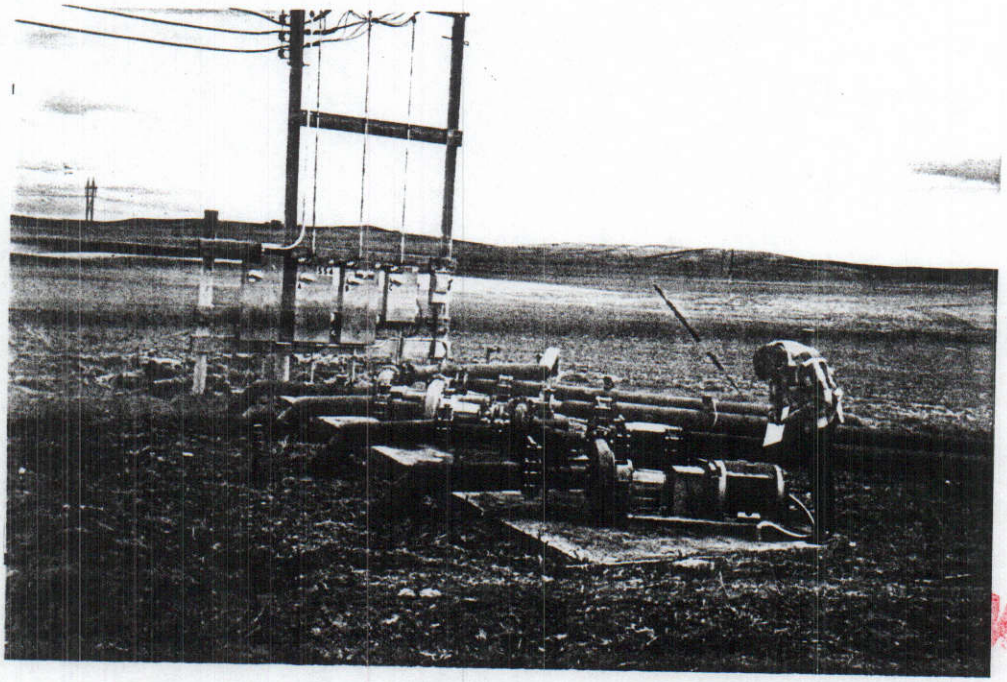
Intchior View of Pumping Plant.

MICROFILMED
MAR 2 2 1995

OZ-7249
36-7085



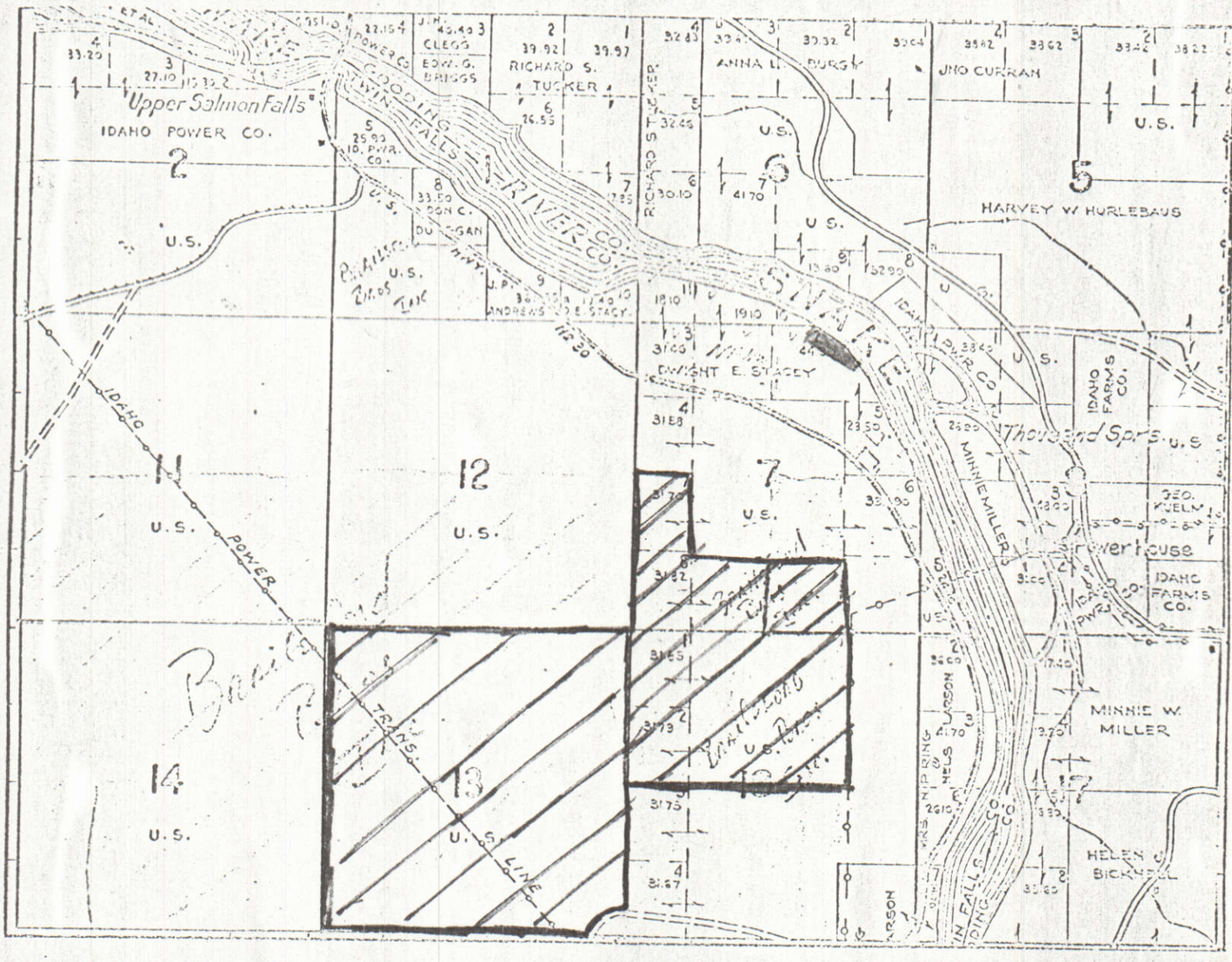
850 HP Booster Plant



170 HP Booster Plant.

MICROFILMED
MAR 22 1995

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40 acre subdivisions, sections, townships, ranges, and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, Idaho, this 28th day of November, 1969.

Robert D. Brailsford
(signature)

Brailsford Brothers Inc. President

ACTION OF STATE RECLAMATION ENGINEER

I, _____, State Reclamation Engineer of the State of Idaho,

hereby _____

_____

_____

_____

Witness my hand this _____ day of _____, 19_____.

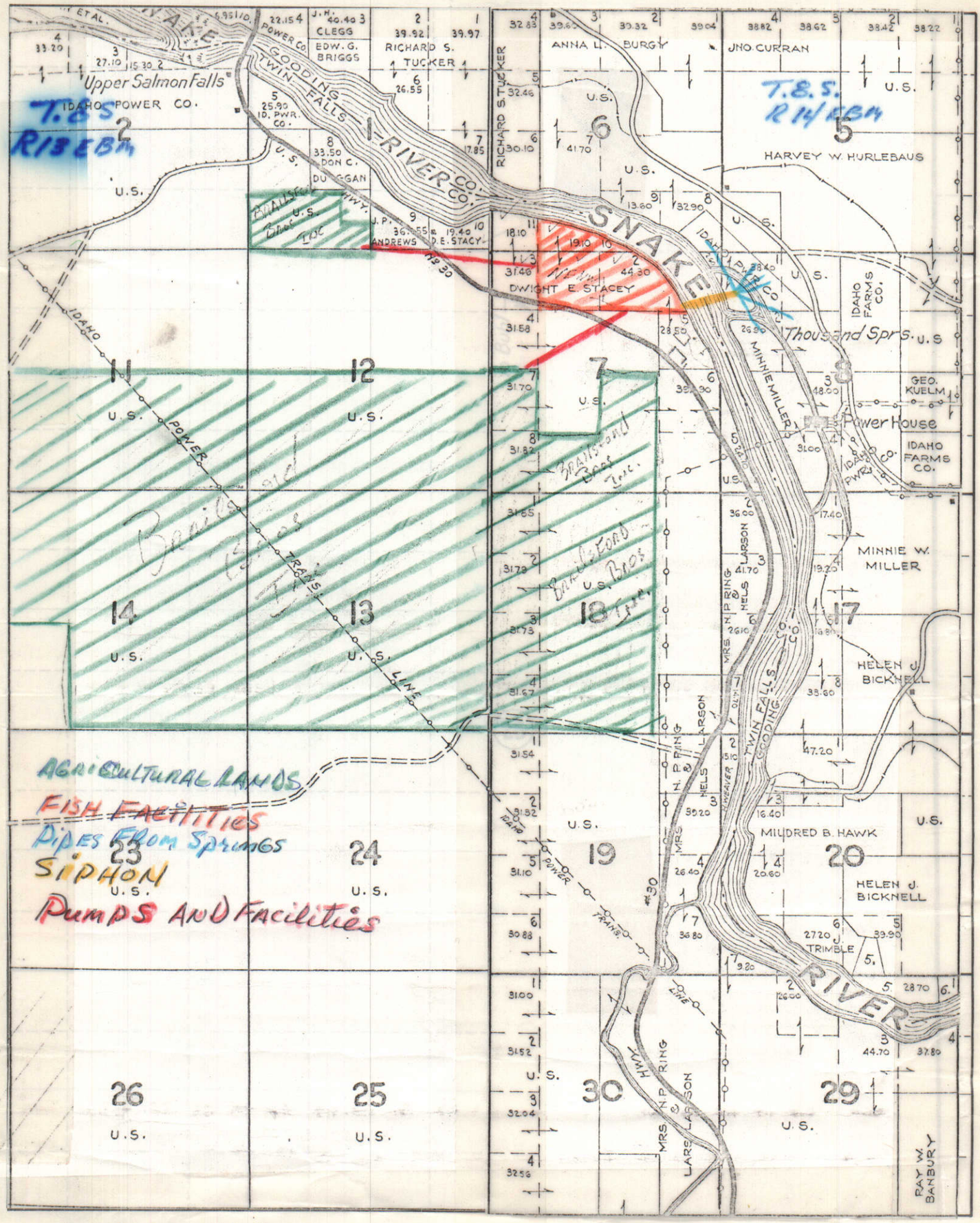
_____
State Reclamation Engineer

INFORMATION TRANSFERED BY APPLICANT TO AMENDED APPLICATION FORM.

36 708

36 7085

11. Map of proposed project:



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

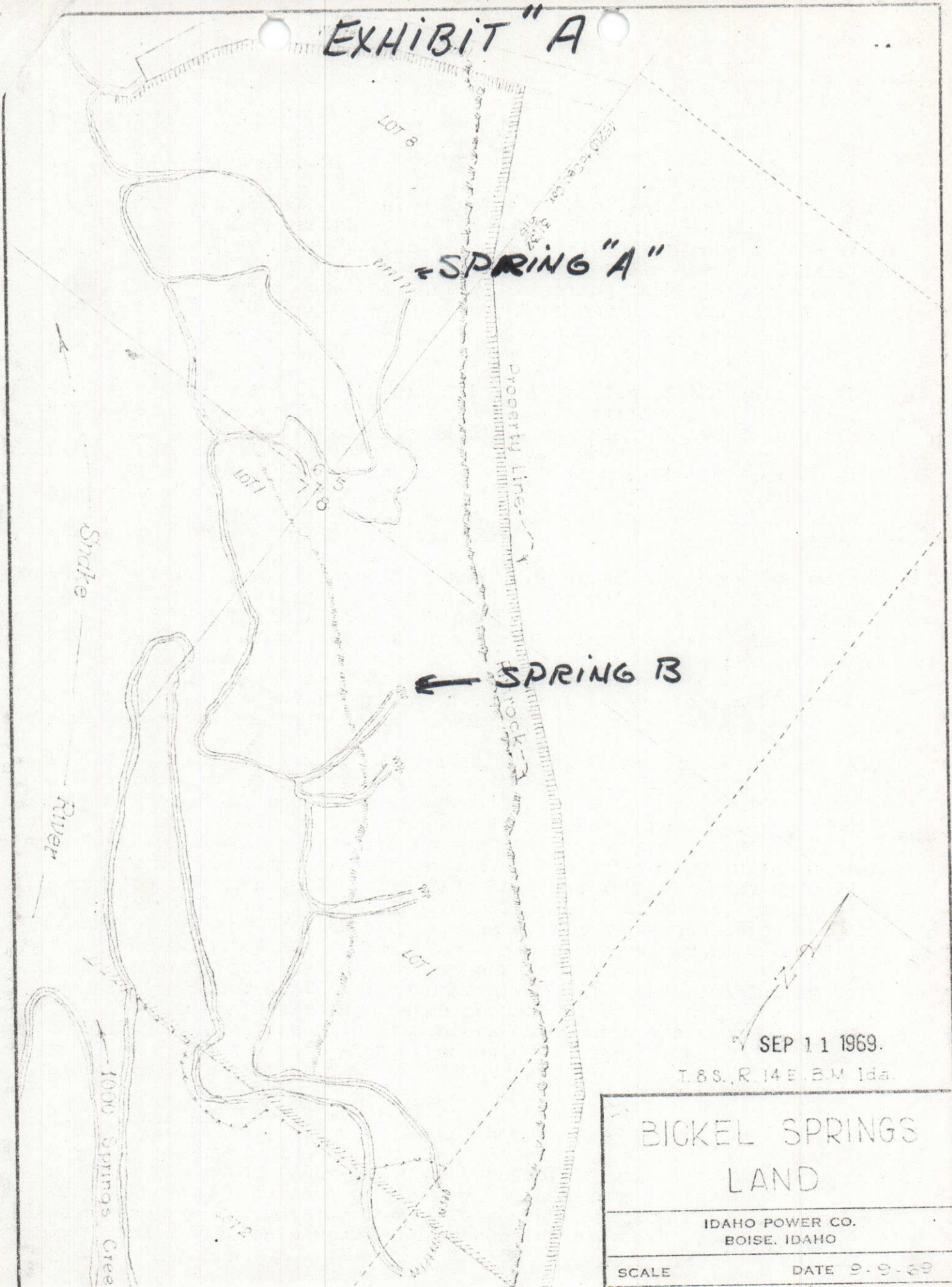
J. M. Brailsford
(Applicant)

Secretary, Brailsford Bros. Inc

36 7085


C
14.3
C
14.3
B
27.3
A-3
D
50.8
1.6
12.7
9.7
8.1
10.8
21.7
A
26.1
E
8.9
E
8.9
F
2.5
G
14.4
F
7.7
G
14.4
Spring A
Spring B
Thousand Springs
36 7085

EXHIBIT "A"



SEP 11 1969.

T. 8 S., R. 14 E. B.M. Ida.

BICKEL SPRINGS LAND

IDAHO POWER CO.
BOISE, IDAHO

SCALE

DATE 9-9-69

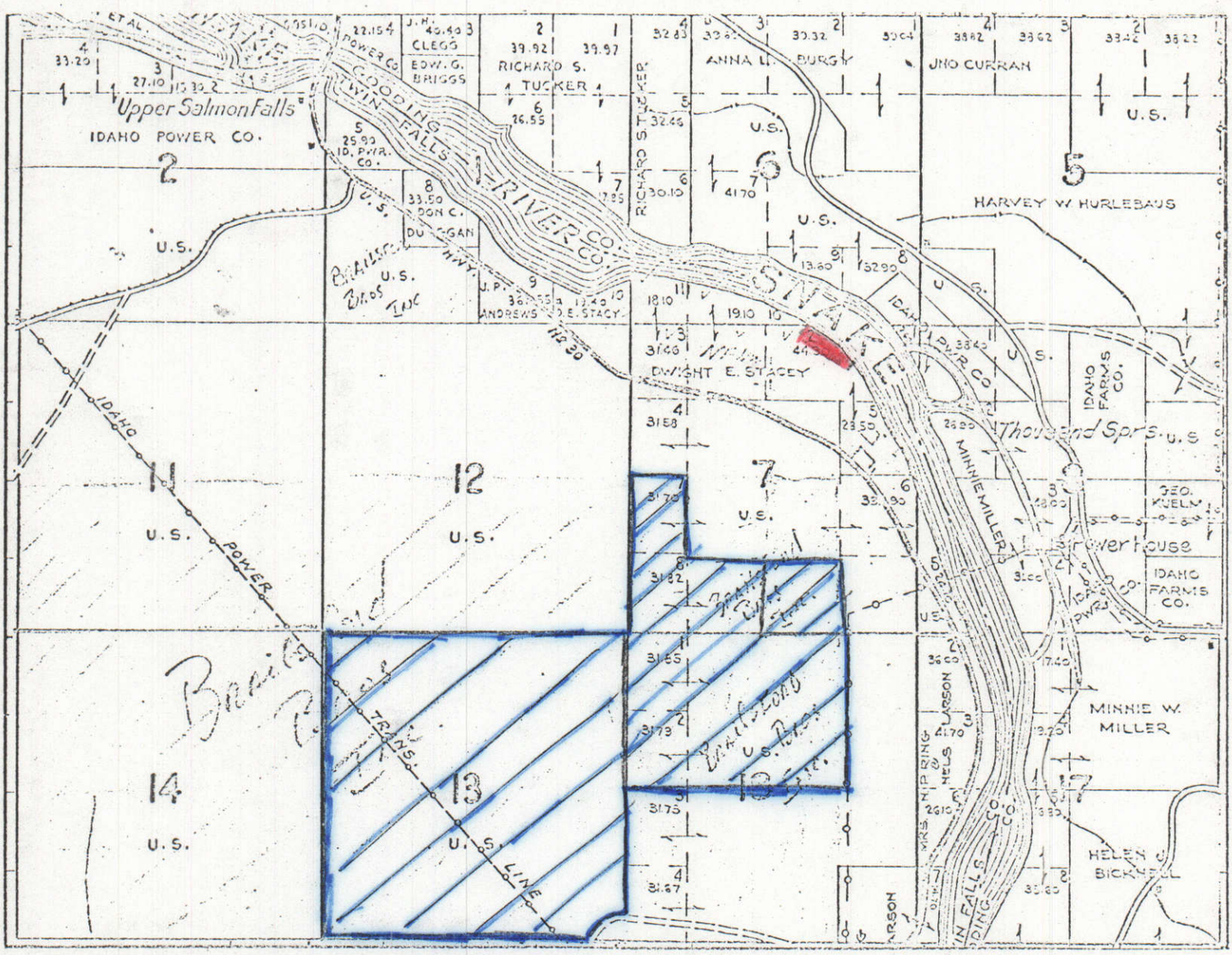
DR. B. O.

TR.

A-32569

36 7085

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40 acre subdivisions, sections, townships, ranges, and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, Idaho, this 28th day of November, 19 69.

Robert V. Brailsford
(signature)

Brailsford Brothers Inc. President

ACTION OF STATE RECLAMATION ENGINEER

I, _____, State Reclamation Engineer of the State of Idaho,

hereby _____

_____

_____

_____

Witness my hand this _____ day of _____, 19_____.

_____
State Reclamation Engineer

36 7085

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 02-07462

Priority: September 29, 1969 Maximum Diversion Rate: 20.00 CFS

This is to certify, that SALMON FALLS LAND & LIVESTOCK
C/O MIKE HENSLEE VP
123 BELL RAPIDS RD
HAGERMAN ID 83332 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated September 29, 1969; and has submitted Proof of Beneficial Use on June 26, 1985. An examination indicates that the works have a diversion capacity of 29.890 cfs of water from:

SNAKE RIVER tributary to **COLUMBIA RIVER**

source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	20.00 CFS	

LOCATION OF POINT(S) OF DIVERSION: Lot 6(NESE), Sec. 7, Township 08S, Range 14E
TWIN FALLS County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
08S	13E	10	SWSE	11	SESE	17			28
		11	NENE	20	NWNE	19	SWNE	40	
			SENE	40	SWNW	1	SENW	1	
			NESW	26	NWSW	39	SWSW	38	
			SESW	27	NESE	10	NWSE	15	
			SWSE	21	SESE	25			322
		12	NWNW	20	SWNW	20	NESW	40	
			NWSW	21	SWSW	40	SESW	40	
			NESE	19	NWSE	15	SWSE	37	
			SESE	36					288
		13	NENE	40	NWNE	35	SWNE	40	
			SENE	40	NENW	39	NWNW	40	
			SWNW	39	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	39	SWSE	40	
			SESE	40					632
		14	NENE	38	NWNE	40	SWNE	39	
			SENE	39	NENW	40	NWNW	40	
			SWNW	38	SENW	40	NESW	40	
			SESW	32	NESE	38	NWSE	38	
			SWSE	31	SESE	1			494
		15	NENE	40	NWNE	30	SWNE	10	
			SENE	18					98
	14E	7	NESW	20	Lot 7(NWSW)	32	Lot 8(SWSW)	32	
			SESW	40	NWSE	16	SWSE	40	180
		18	NWNE	40	SWNE	32	NENW	40	
			Lot 1(NWNW)	32	Lot 2(SWNW)	22	SENW	35	

MAR 2 2 1995

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 02-07462

PLACE OF USE: IRRIGATION

TWN RGE SEC		ACRES			ACRES			ACRES	TOTAL
	NESW	40	Lot	3(NWSW)	28	Lot	4(SWSW)	32	
	SESW	40		NWSE	30		SWSE	19	390

Total number of acres irrigated: 2432

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
5. Right 02-07249 is also diverted through the point of diversion described above.
6. Use of this right with Right 02-07249 is limited to a total combined diversion rate of 29.89 cfs, a total combined annual diversion volume of 9728 af, and to the irrigation of a combined total of 2432 acres in a single irrigation season.
7. This right is limited to the irrigation of 1007.2 acres within the place of use described above in a single irrigation season.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 3RD day of MARCH, 1995.

Acting for R. Keith Higginson, Director

APPROVED

State of Idaho
Department of Water Resources

RECEIVED
FEB 21 1995
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 02-07462

Date of Priority: September 29, 1969 Maximum Diversion Rate: 20.00 CFS

Comes now SALMON FALLS LAND & LIVESTOCK Co Inc
C/O MIKE HENSLEE VP
123 BELL RAPIDS RD
HAGERMAN ID 83332 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 02-07462, and requests that the permit be changed as follows:

Source: **SNAKE RIVER** tributary to **COLUMBIA RIVER**

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	20.00 CFS	

LOCATION OF POINT(S) OF DIVERSION: Lot 6(NESE), Sec. 7, Township 08S, Range 14E ~~COODING County~~ Twin Falls County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
08S	13E	10	SWSE	11	SESE	17			28
		11	NENE	20	NWNE	19	SWNE	40	
			SENE	40	SWNW	1	SENW	1	
			NESW	26	NWSW	39	SWSW	38	
			SESW	27	NESE	10	NWSE	15	
			SWSE	21	SESE	25			322
		12	NWNW	20	SWNW	20	NESW	40	
			NWSW	21	SWSW	40	SESW	40	
			NESE	19	NWSE	15	SWSE	37	
			SESE	36					288
		13	NENE	40	NWNE	35	SWNE	40	
			SENE	40	NENW	39	NWNW	40	
			SWNW	39	SENW	40	NESW	40	
			NWSW	40	SWSW	40	SESW	40	
			NESE	40	NWSE	39	SWSE	40	
			SESE	40					632
		14	NENE	38	NWNE	40	SWNE	39	
			SENE	39	NENW	40	NWNW	40	
			SWNW	38	SENW	40	NESW	40	
			SESW	32	NESE	38	NWSE	38	
			SWSE	31	SESE	1			494
		15	NENE	40	NWNE	30	SWNE	10	
			SENE	18					98
	14E	7	NESW	20	Lot 7(NWSW)	32	Lot 8(SWSW)	32	
			SESW	40	NWSE	16	SWSE	40	180
		18	NWNE	40	SWNE	32	NENW	40	
			Lot 1(NWNW)	32	Lot 2(SWNW)	22	SENW	35	
			NESW	40	Lot 3(NWSW)	28	Lot 4(SWSW)	32	

MAR 22 1995

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 02-07462

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
			SESW	40	NWSE	30	SWSE	19	390

Total number of acres irrigated: 2432

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

Signed at Hagerman, Idaho, this 15 day of February, 1995.

Salmon Falls Land & Livestock Co. Inc.
Mike Kenslee V.P.
(Signature)

RECEIVED
MAR 22 1995

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 02-07462

****

FOR DEPARTMENT USE ONLY

Preliminary check by ____ Fee = 50.00 Receipted by RT #003179 Date 2-21-95

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, R. Keith Higginson, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 02-07462 with the following;

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
5. Right 02-07249 is also diverted through the point of diversion described above.
6. Use of this right with Right 02-07249 is limited to a total combined diversion rate of 29.89 cfs, a total combined annual diversion volume of 9728 af, and to the irrigation of a combined total of 2432 acres in a single irrigation season.
7. This right is limited to the irrigation of 1007.2 acres within the place of use described above in a single irrigation season.

Witness my hand this 3rd day of March, 1998.

Acting for R. Keith Higginson, Director

MAR 2 2 1998

06/93

OFFICE USE ONLY
Amt. of Fee $25.00
Date 1/5/95
Receipt No. 5017660
Receipt by DJ

State of Idaho
DEPARTMENT OF WATER RESOURCES

JAN 0 - 1995
Department of Water Resources
Southern Region Office

ASSIGNMENT OF PERMIT

To change the ownership of a permit

I, Robert Brailsford (Permit Holder), hereby assign to Attn: Mike Henslee V.P. Salmon Falls Land + Livestock Co, Inc. of 123 Bell Rapids Rd Hagerman ID 83332 (Full Address)

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

OR (for partial assignments)

The following described portion of my right, title, and interest in and to Permit No. ~~36-07085~~ 02-07462 to appropriate the public waters of the State of Idaho.

Describe portion of the permit assigned listing the number of acres in each 40 acre subdivision, point of diversion location, and the amount of water in cubic feet per second.

All 20 cfs for irrigation purposes for use on 1007 acres from Bickel Springs.

Made this 5th day of January, 1995.

Robert Brailsford
Permit Holder(s)

State of Idaho)
ss
County of Twin Falls

On this 5th day of January, 1995, personally appeared before me the signer of the above instrument, duly acknowledged to me that he/she/they executed the same.

Mary A. Baldwin
Notary Public

SEAL

Signature

My commission expires: 10/18/1998

MAR 22 1995

Form 217
12/84

RECEIVED
JUN 28 1985

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
PROOF OF BENEFICIAL USE

RECEIVED
JUN 30 1985
Department of Water Resources
Southern District Office

Department of Water Resources

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has completed development under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below:

Permit No. 36-7085

Name(s) of Permit Holder: Robert H. Brailsford

Post Office Address: 300 Mattison Drive Twin Falls, ID 83301

Telephone No. 733-9161

Source of Water: Bickel Springs Tributary to Snake River

Extent of Use:

Domestic _____ (number of households)

Stockwater _____ (number and type of stock)

Irrigation 1400 (acres)

Other/Remarks _____

Indicate the date water was first diverted and beneficially used under this permit: March 10, 1981

Measuring Device: Required? ☐ Yes ☐ No
Installed? ☐ Yes ☐ No

Flow Measurement Port: Required? ☑ Yes ☐ No
Installed? ☑ Yes ☐ No

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

Permit Holder
(Name)

(Address) (Telephone Number)

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

Date 6/26/85

Robert H. Brailsford
Signature of Permit Holder (and Title, if appropriate)

MICROFILMED

INTER-DEPARTMENT MEMO —

DATE 8/6/80

FROM Dave Tuthill

TO

SUBJECT Send any correspondence, orders, etc. regarding this rt to:

Joe Kennedy

Federal Land Bank

Box 7646

Boise 83707

DRT

SIGNATURE

Form 204
5/78

Identification No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
JUL 2 1982
Department of Water Resources

REQUEST FOR EXTENSION OF TIME

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

Robert H. Brailsford (Name) of 1964 Filer Ave. East (Address)

State of Idaho, deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 19 82.

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

See Attachment #1

Costing $ _____

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: See Attachment #2 and #3

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to December 1, 19 87.

Robert H. Brailsford
(Signature)*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within which to submit the statement of beneficial use is extended to December 1, 1987.

Signed this 1st day of September, 19 82.

L. Glen Saxton
Chief, Operations Bureau

15.00 fee received by ~~JJ~~ 8-27-82 Receipt # 24423

** IF OTHER THAN HOLDER, Power of Attorney must be supplied.*

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REMOVAL OF THE MEASURING DEVICE REQUIREMENT FOR INFLOW INTO THE SNAKE RIVER FOR PERMIT NO. 36-7085	ORDER

WHEREAS, Permit No. 36-7085 was approved with a condition that a measuring device of a type approved by the Department be permanently installed and maintained at the point where Bickel Spring enters the Snake River; and,

WHEREAS, On July 17, 1980, the Department received a request for a waiver of the requirement to install this measuring device; and,

WHEREAS, it has been determined by the Department of Water Resources that a measuring device is not required at Bickel Spring because the rate of flow discharging from Bickel Spring and other commingled sources into the Snake River substantially exceeds the amount to be diverted from the Snake River under Permit No. 36-7085;

NOW THEREFORE, it is hereby ordered that the condition of approval on Permit No. 36-7085 requiring the permit holder to install a measuring device at the point where Bickel Spring enters the Snake River be and is REMOVED.

Dated this 19th day of August, 1980.

L. Glen Saxton

L. GLEN SAXTON
Chief, Water Rights Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF EXTENDING THE PROOF DUE DATE IN CONNECTION WITH PERMIT NO. 36-7085 IN THE NAME OF ROBERT BRAILSFORD	ORDER

WHEREAS, on September 29, 1969, Robert H. Brailsford, President of Brailsford Brothers, Inc. filed for an application to appropriate 100 cubic feet per second of water from Bickel Springs, tributary to the Snake River, to be diverted within the NW¼NW¼, Sec. 8; SE¼SE¼, Sec. 6; Twp. 8S, Rge. 14E, B.M., Gooding County, to be used for irrigation and fish culture purposes; and,

WHEREAS, on November 12, 1970, the Department approved said application and issued Permit No. 36-7085 with the condition that proof of construction of works and application of water to beneficial use be submitted to the Department on or before December 1, 1974; and,

WHEREAS, on November 25, 1974, the Department extended the time within which to submit proof of beneficial use of water to December 1, 1977; and,

WHEREAS, on September 2, 1976, the permit holders assigned this permit to Robert H. Brailsford; and,

WHEREAS, on October 26, 1977, the permit holder submitted an additional request for an extension of time; and,

WHEREAS, the existence of litigation has been specified as a basis for granting an extension of time in Section 42-204, Idaho Code; and,

WHEREAS, it appears that the permit holder has been prevented from proceeding with the completion of his project due to the pendency of litigation;

IT IS, THEREFORE, HEREBY ORDERED that the time within which to submit proof of beneficial use of water under Permit No. 36-7085 be extended to December 1, 1982.

Dated this 16 day of November, 1977.

A. KENNETH DUNN
Deputy Director

Filing Fee: $10.00
Receipt # 5415

RECEIVED
OCT 20 1976
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR AMENDMENT

Permit No. 36-7085

Comes now ROBERT H. BRAILSFORD of (address) 1748 Dora Drive, Twin Falls, Idaho 83301, and represents to the Director of the Idaho Department of Water Administration:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, and requests that the permit and permit map be changed as follows:

1. Point of diversity: _____ ¼ _____ ¼, Sec. _____ Twp. _____ Rge. _____, B.M., County of _____. Other points of diversion:

_____

_____

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

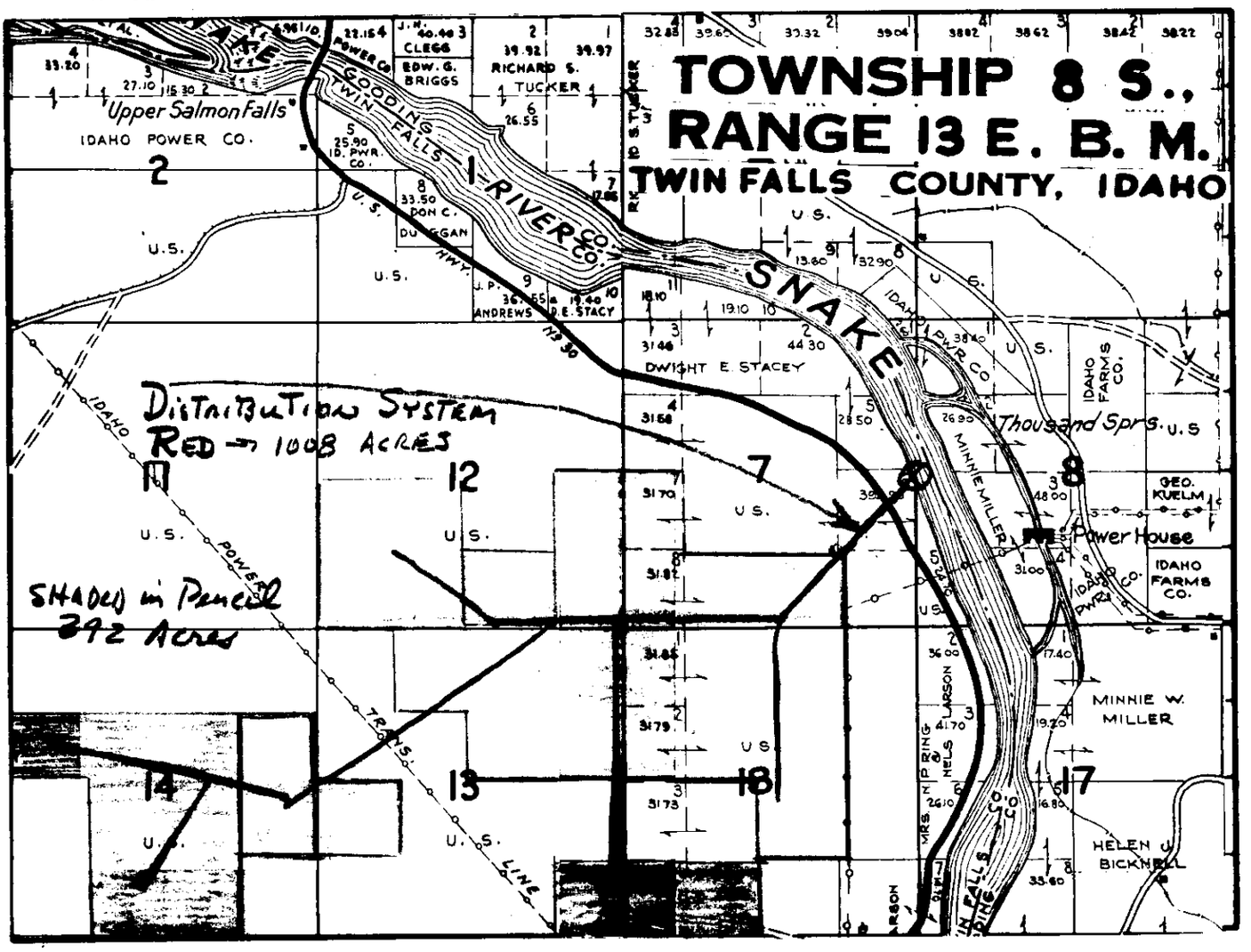
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs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

3. Place of use or land to be irrigated:

TWP	RANGE	SEC	NE ¼				NW ¼				SW ¼				SE ¼				TOTALS
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
8S.	14 EBM	18		40	40		40	32	32	40						40			264
		7										32	32	40			40		144
8S.	13 EBM	13	40	40	40	40	40					40							240
		12									40	40	40	40	40		40	40	280
		14				40									40				80
																SUBTOTAL			1008
8S.	14 E.	18											32	40					72
8S.	13 E.	13																40	40
		14			40				40	40	40			40		40	40		280
																			392
																			+1008
																			1400

Total number of acres to be irrigated

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, this 19th day of October, 19 76.

Robert K. Bracksford
(signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

I, R. KEITH HIGGINSON, Director of the Department of Water Administration, hereby approve the foregoing application for amendment for Permit No. 36-7085 for a total of 1,007.16 acres of land pursuant to Order of this date.

Witness my hand this 2 day of December, 19 76.

R. Keith Higginson
Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF: Amending Permit No. 36-7085 in the name of ROBERT H. BRAILSFORD	)	ORDER

WHEREAS, on November 12, 1970, the Department of Water Resources (formerly the Department of Reclamation) issued the above numbered permit for the appropriation of 80 cubic feet of water per second for fish propagation purposes and 20 cubic feet of water per second for the irrigation of 1,007.16 acres of land; and

WHEREAS, on October 26, 1976, the Department received an Application for Amendment to Permit No. 36-7085 proposing to change the place of use for irrigation purposes to 1,400 acres of land; and

WHEREAS, Section 42-211 of the Idaho Code provides for the approval of applications for amendment "if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby"; and

WHEREAS, the question arises as to whether the number of irrigated acres can be increased without enlarging the use of the right and without causing injury to other existing water rights; and

WHEREAS, the irrigation of an acre of land consumes a certain volume of water each season and the irrigation of additional acres of land would consume a greater volume of water each season; and

WHEREAS, the measure of an irrigation water right is not only the rate of diversion but also the total number of acres of land that the water right owner is entitled to irrigate in any given year; and

WHEREAS, it appears that the approval of said application for amendment would constitute an expansion of the original permit as issued;

IT IS, THEREFORE, HEREBY ORDERED that the Application for Amendment to Permit No. 36-7085 be approved, in part, for the irrigation of 1,007.16 acres of land as follows:

Twp. 8 S, Rge. 14 E, B.M.

Sec. 18	W½NE¼	80.00 acres
	E½NW¼	80.00 acres
	NW¼NW¼	31.85 acres
	SW¼NW¼	31.79 acres
	NW¼SE¼	40.00 acres
Sec. 7	NW¼SW¼	31.70 acres
	SW¼SW¼	31.82 acres
	SE¼SW¼	40.00 acres
	SW¼SE¼	40.00 acres

Twp. 8 S, Rge. 13 E, B.M.

Sec. 13	NE¼	160.00 acres
	NE¼NW¼	40.00 acres
	NW¼SW¼	40.0 acres
Sec. 12	SW¼	160.00 acres
	NE¼SE¼	40.00 acres
	S½SE¼	80.00 acres
Sec. 14	SE¼NE¼	40.00 acres
	NE¼SE¼	40.00 acres
	TOTAL	1,007.16 acres

Dated this 2 day of December, 1976.

R. KEITH HIGGINSON
Director

Filing Fee: $10.00
Receipt # 5826

RECEIVED
OCT 20 1976
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR AMENDMENT

Permit No. 36-7085

Comes now ROBERT H. BRAILSFORD of (address) 1748 Dora Drive, Twin Falls, Idaho 83301, and represents to the Director of the Idaho Department of Water Administration:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, and requests that the permit and permit map be changed as follows:

1. Point of diversion: (Lot 1) NW ¼ NW ¼, Sec. 8 Twp. 8 S. Rge. 14 E., B.M., County of Gooding. Other points of diversion: (Lot 8) SE¼ SE¼, Sec. 6, T.8S., R. 14 E.B.M., Gooding County, Idaho (Additional points for irrigation diversion of 20 c/f/s only are Lots 2, 5, and 6 of Sec. 7, T.8S., R.14 E.B.M., Twin Falls County, Idaho)

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

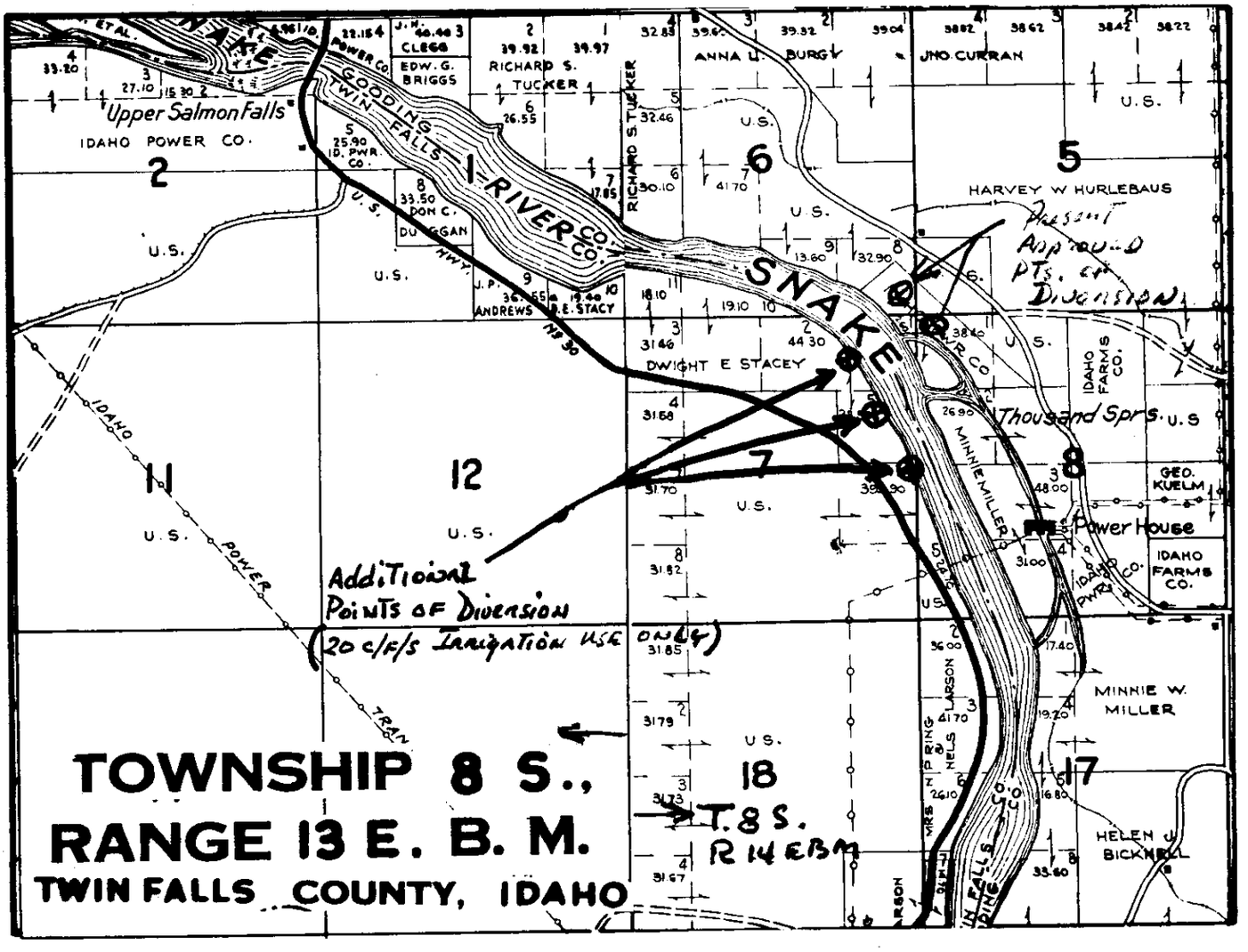
Amount 20 cfs for irrigation purposes from April 1 to Oct. 15 (both dates inclusive)
Amount 80 cfs for fish culture purposes from Jan. 1 to Dec. 31 (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
Land	to be	irrigated																	
T8S	R14E	7										31.70		40			40	-	143.52
												31.82							
T8S	R14E	18		40	40		40	31.85	31.79	40									223.64
T8S	R13E	13	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640.00
												TOTAL IRRIGATED							1,007.16
Location of Fish Culture Use:																			20.00
T8S	R14E	7		lot 2 20.00								TOTAL FISH CULTURE							20.00

Total number of acres to be irrigated

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, this 19th day of October, 1976.

Robert K. Davidson
(signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, R. KEITH HIGGINSON, Director of the Department of Water Resources

hereby APPROVE the foregoing application for amendment for Permit No. 36-7085 subject to the following conditions: (1) that measuring devices be permanently installed and maintained at the point where Bickel Spring enters the Snake River and at the points of diversion from the Snake River so that no more water is taken from the Snake River than is released from Bickel Spring, and (2) that this approval in no way grants any right-of-way or easement across the land of another person.

Witness my hand this 26th day of October, 19 76.

R. Keith Higginson
Director

State of Idaho
Department of Water Resources

ASSIGNMENT OF PERMIT

RECEIVED
SEP 2 1976
Department of Water Resources

I, Brailsford Bros., Inc., hereby assign to Robert H. Brailsford

of 1748 Dora Drive South, Twin Falls, ID 83301
Address

CHECK ONE

☒ All my right, title, and interest in and to Permit No. 36-7085 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)

Made this 2nd day of September, 19 76.

Robert H. Brailsford
Permit Holder
Robert H. Brailsford, President

~~Spouse of Permit Holder~~

State of Idaho)
ss.
County of Ada)

On this 2nd day of September, 19 76, personally appeared before me the signer(~~s~~) of the above instrument, who duly acknowledged to me that he (~~she~~) (~~they~~) executed the same.

Marcia L. Brown
Notary Public residing at
Boise, Idaho

seal

My commission expires:
8-10-79

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

RECEIVED
NOV 21 1974
Department of Water Resources

APPLICATION FOR EXTENSION OF TIME

State of Idaho)
County of Twin Falls)

Permit No. 36-7085

BRAILSFORD BROS. INC. of Route #4, Buhl, Idaho
(name) (address)

State of Idaho, being first duly sworn, upon his oath deposes and says:

That he is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 10, 19 75.

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

None

Costing $

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: Agriculture Industries has prior filing under 36-7072.

Agriculture Industries has been granted an extension of time.

Wherefore, he asks that the Department of Water Administration extend the time for the completion of obligations under said permit to December 10, 19 80.

Brailsford Bros. Inc.
Robt. H. Brailsford - Pres.
(signature)*

Subscribed and sworn before me this 20th day of November, 19 74.

seal

Lucile R. Thomas
(notary public)

My commission expires 10-10-76

ACTION OF THE DEPARTMENT OF WATER ADMINISTRATION
Operations Division

I, A. KENNETH DUNN, Admin., ~~Director~~ of the Idaho Department of Water Administration, State of Idaho, hereby approve the above application for extension of time for Permit No. 36-7085 to December 1, 1977.

Witness my hand this 25th day of November, 19 74.

A. Kenneth Dunn
~~Director~~ Administrator Operations Division

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Administration, Statehouse - Annex 2, Boise, Idaho, 83707.

MICROFILMED

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN STANDAL AND GEORGE LEMMON, and APPLICATION FOR PERMIT NO. 36-7085, ROBERT BRAILSFORD, PRESIDENT OF THE BRAILSFORD BROTHERS, INC., an IDAHO CORPORATION.	ORDER

The Director of the Department of Water Administration, State of Idaho, having entered Findings of Fact and Conclusions of Law herein, hereby enters the following ORDER thereon.

NOW THEREFORE IT IS HEREBY ORDERED:

1. That Application No. 36-7072 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriations for the use of water from the same source.

2. That Application No. 36-7085 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriators for the use of water from the same source and to the right of the holders of Application No. 36-7072 to proceed under a Permit to be issued thereon to divert and apply waters from the same source of supply to beneficial use.

3. That the Applicants to Application No. 36-7072 be given a period of two years from the date of the issuance of a Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.

4. That the Applicants to Application No. 36-7085 be given a period of four years from the date of the issuance of the Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.

5. That the Permits to be issued on Applications 36-7072 and 36-7085 shall be subject also to the following conditions:

A. That neither of the Permits be assigned or sold without written consent of the Department of Water Administration and that failure to receive such consent will be deemed by the Department of Water Admini-

stration to be admission that the Permit so sold or assigned was obtained for speculative purposes and as such will be subject to cancellation.

B. That permanent measuring devices of a type approved by the Department of Water Administration be placed and maintained at such locations as to accurately measure the amount of water diverted to the project and the effluent from the project.

C. That the applicants shall take all reasonable precautions in constructing the diversion works and hatchery facilities to protect the public interest in the enjoyment of the aesthetic and recreation quality of the springs and stream channels. Plans and specifications showing the location and type of structures to be installed and method of construction shall be submitted to this office for approval. The use of or alteration of stream channels shall be subject to all applicable provisions of state and federal law.

DATED this 9TH day of November 1970.

R. KEITH HIGGINSON
Director

36 7085

11-10-70 - Cert. Mail 22339
cc

Identification No. 36-7085

Application No. Amended

ASSIGNED TO:
Robert H. Brailsford
1748 Dora Drive South
Twin Falls, ID 83301

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

AMENDED

APPLICATION FOR PERMIT

APPROVED

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

1. Name of applicant Robert H. Brailsford, President of Brailsford Brothers, Inc. an Idaho Corporation

   post office address Buhl, Idaho 83316

2. Source of water supply Bickel Spring which is a tributary of Snake River

3. a. Location of point of diversion is (Lot 1)NW¼ of NW ¼ of Section 8 Township 8S. Range 14 E B.M. Twin Falls County; additional points of diversion if any: and (Lot 8) SE 1/4 SE 1/4, §6, T. 8S., R. 14 E. B. M., Gooding County, Idaho

   b. If water is not consumed, it will be discharged into Snake River at a point in SE ¼ of NE ¼ of Section 7 Township 8S Range 14 E B.M.

4. Water will be used for the following purposes:

   Amount 20 c/f/s (cfs or acre-feet per annum) for Irrigation purpose from April 1 to October 15 (both dates inclusive)

   Amount 80 c/f/s (cfs or acre-feet per annum) for Fish Culture purpose from January 1 to December 31 (both dates inclusive)

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

5. Total quantity to be appropriated:

   a. 100 cubic feet per second and/or

   b. _____ acre feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. open ditch or pipeline diversion at locations of two springs to siphon which will convey water across Snake River for beneficial use in Sections 6, 7, &18 of T. 8S , Range 14 E. B. M. and Section 13 of T. 8S, Range 13 E. B. M., all in Twin Falls County

   b. Height of storage dam none feet, active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet, materials used in storage dam: _____

   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.

   c. Proposed well diameter is none inches; proposed depth of well is _____ feet.

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.

   b. Estimated construction cost is $ 150,000 .

8. Description of proposed uses:

   a. If water is **not** for irrigation:

   (1) Give the place of use of water: lot 2 NW¼ of NE ¼ of Section 7 Township 8S Range 14E B.M. (Lot 10) SE 1/4 SW 1/4 & SW 1/4, SE 1/4 §6, T. 8S. R. 14EBM south of Snake River

   (2) Amount of power to be generated: none hp under _____ feet of head.

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

   (4) Name of municipality to be served none , or number of families to be supplied with domestic water _____ .

   (5) If water is to be used for other purposes describe: fish propagation in rearing ponds to be constructed.

36 7085

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	
Land	to be	irrigated																	
T8S	R14E	7										31.70	31.82	40			40	-	143.52
T8S	R14E	18		40	40		40	31.85	31.79	40									223.64
T8S	R13E	13	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640.00
												TOTAL IRRIGATED							1,907.16
Location of Fish Culture Use :																			20.00
T8S	R14E	7		lot 2 20.00								TOTAL FISH CULTURE							20.00

Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes none

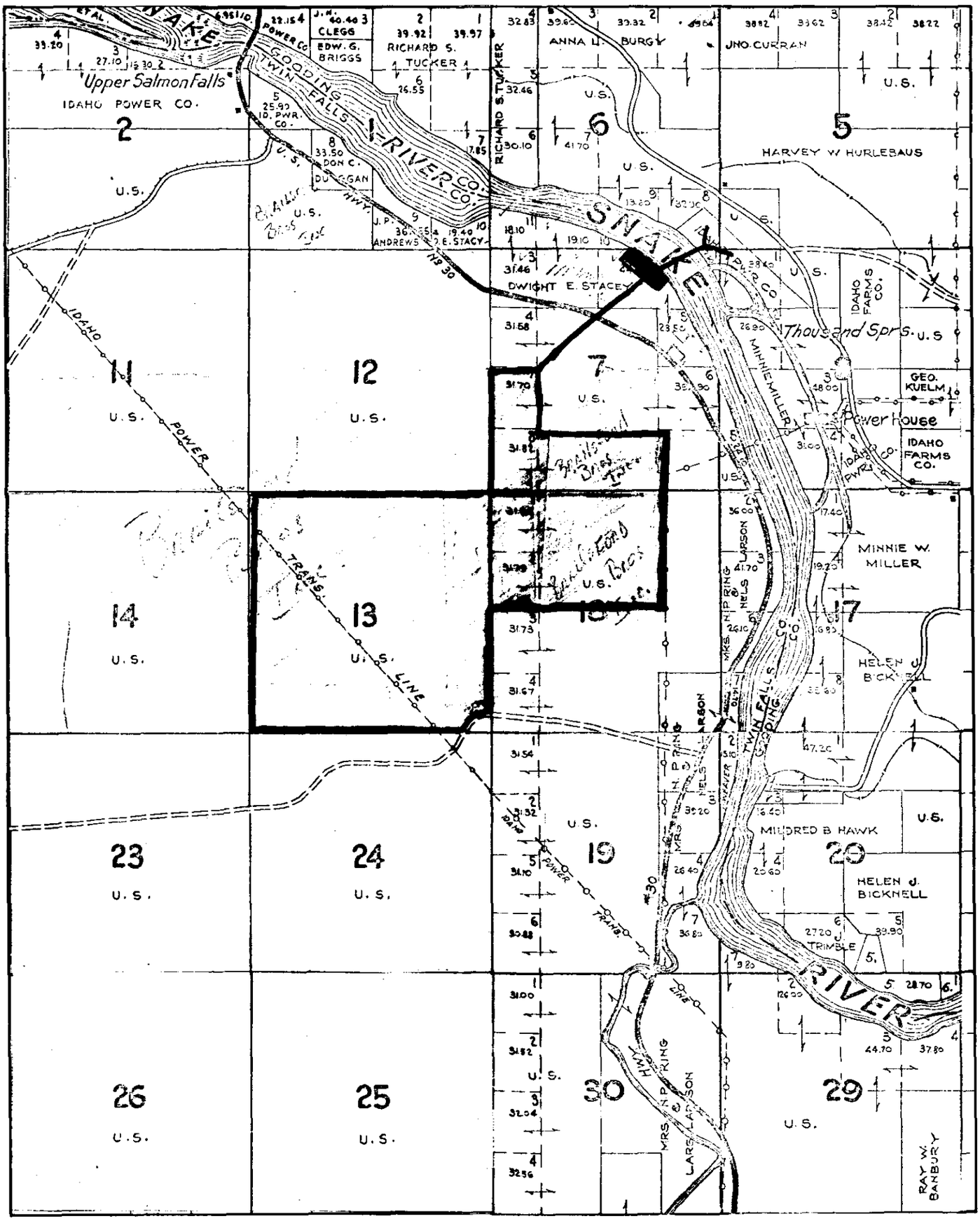
9. a. Who owns the property at the point of diversion Standall & Lemmon

b. Who owns the land to be irrigated or place of use Brailsford Brothers, Inc.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Will negotiate for lease of right of way with owner or file condemnation action if necessary.

10. Remarks Applicant will fully develop lands described above for agricultural uses. Waters might be non consumptively used in rearing ponds before being pumped to the majority of the agricultural lands. Excess over consumptive use requirements would return to Snake River.

11. Map of proposed project:



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Robert H. Brailsford
(Applicant)
Bros. Brailsford Bros. Inc.

36 7085

Proposed priority: 9-29-69

Received by LJ Date 12-11-69 Time 8:00 a.m.

Preliminary check by _____ Fee $_____

Receipted by _____ Date _____

Publication prepared by dw Date 1-12-70

Published in Gooding Leader & Times News

Publication dates 1-22 & 29-70

Publication approved dw Date 2-4-70

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by BDF

APPROVED

ACTION OF STATE RECLAMATION ENGINEER

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 36-7085, 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.

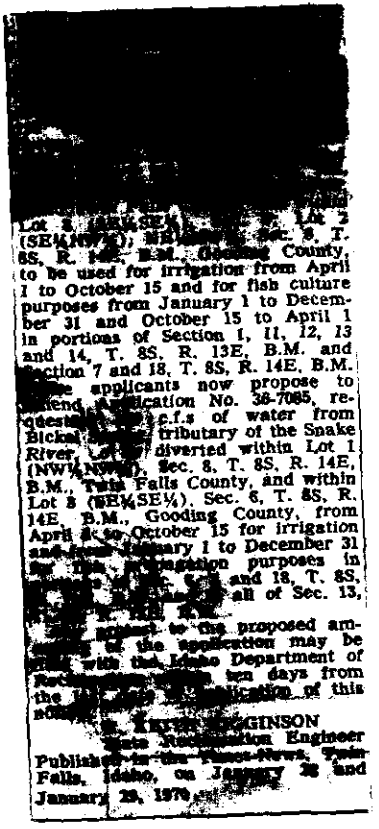
   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before December 1, 1974.

   c. Other: Subject to the conditions as set forth in the Order issued by this department on November 9, 1970.

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

Witness my hand this 12th day of November 1970.

Deputy State Reclamation Engineer



Lot 3 (SE¼NW¼), NE¼SW¼ Sec. 8, T. 8S, R. 14E. B.M., Gooding County, to be used for irrigation from April 1 to October 15 and for fish culture purposes from January 1 to December 31 and October 15 to April 1 in portions of Section 1, 11, 12, 13 and 14, T. 8S, R. 13E, B.M. and Section 7 and 18, T. 8S, R. 14E, B.M. The applicants now propose to amend Application No. 36-7085, requesting [illegible] c.f.s. of water from Bickel [illegible] tributary of the Snake River, [illegible] diverted within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 3 (SE¼SE¼), Sec. 6, T. 8S, R. 14E, B.M., Gooding County, from April 1 to October 15 for irrigation and from January 1 to December 31 for [illegible] irrigation purposes in [illegible] and 18, T. 8S, [illegible] all of Sec. 13, [illegible] R. 14E. B.M.

[illegible] to the proposed amendment of the application may be [illegible] with the Idaho Department of [illegible] ten days from the [illegible] publication of this notice.

[illegible] GINSON
State Reclamation Engineer

Published in the Times-News, Twin Falls, Idaho, on January 22 and January 29, 1970.

Affidavit of Publication

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

No 14590

I, Carolyne Jennings, being first duly sworn upon oath, depose and say that I am Principal Clerk of the TIMES-NEWS, published daily, except Saturday, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for Two consecutive Jennings, commencing with the issue dated Jan. 22, 1970, and ending with the issue dated Jan. 29, 1970.

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

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

Carolyne Jennings

Subscribed and sworn to before me this 29th day of January 1970.

M. Wellington

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

Affidavit of Publication

State of Idaho,
County of Gooding } SS.

Thomas D. [redacted] Miller being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement

was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 22 day of January, 19 70, and the date of the last publication was on the 29 day of January, 19 70

Thomas D. Miller

Subscribed and sworn to before me this 2

day of February, 19 70
(SEAL)

Audrey E. Belsher
NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

Number of Lines in Notice.....		
Number of Insertions		
——————Lines at 14c		
——————Lines at 10c		
	TOTAL COST	

Bill submitted 2-4-70 dr

COPY OF NOTICE

Title of Notice
Amended Application for Water

Title of Notice
Brailsford Brothers

Plaintiff Attorney

Defendant

Plaintiff

Bill to
State of Idaho
Dept. of Reclamation
Statehouse - Annex 2
Boise, Idaho
83707

PUBLICATION RATES:	
(Idaho Code, (Rev. Statutes)	1956
7 pt. per line, straight	14c
7 pt. per line, tabular	20c
7 pt. per line, successive insertions	10c
6 pt. per line, straight	15c
6 pt. per line, tabular	20c
6 pt. per line, successive insertion	10c

No 714

36 7085

NOTICE OF AMENDED APPLICATION FOR PERMIT

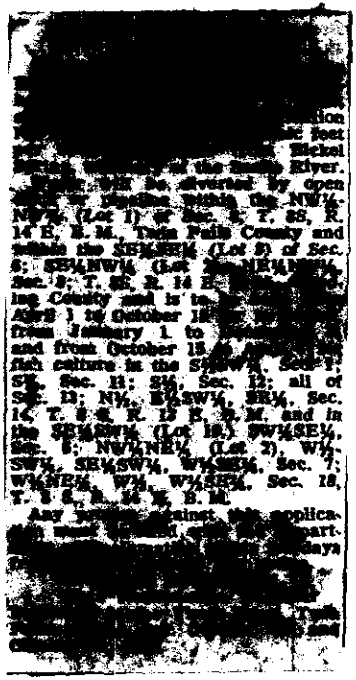
Notice is hereby given that Application for Permit No. 36-7085 in the name of the Brailsford Brothers, Inc. was filed for the diversion of 150 c.f.s. of water from Bickel Springs, tributary of the Snake River, with points of diversion within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼) Sec. 6; Lot 2 (SE¼NW¼), NE¼NW¼, Sec. 8, T. 8S, R. 14E, B.M., Gooding County, to be used for irrigation from April 1 to October 15 and for fish culture purposes from January 1 to December 31 and October 15 to April 1 in portions of Section 1, 11, 12, 13 and 14, T. 8S, R. 13E, B.M. and Section 7 and 18, T. 8S, R. 14E, B.M.

The applicants now propose to amend Application No. 36-7085, requesting 100 c.f.s. of water from Bickel Springs, tributary of the Snake River, to be diverted within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼), Sec. 6 T. 8S, R. 14E, B.M., Gooding County, from April 1 to October 15 for irrigation and from January 1 to December 31 for fish propagation purposes in portions of Sec. 6, 7 and 18, T. 8S, R. 13E, B.M. and in all of Sec. 13, T. 8S, R. 13S, B.M.

Any protest to the proposed amending of the application may be filed with the Idaho Department of Reclamation within ten days from the last date of publication of this notice.

R. Keith Higginson
State Reclamation
Engineer

1-22-2tc



Affidavit of Publication

RECEIVED
No. 14368
OCT
Department of Reclamation

STATE OF IDAHO,
COUNTY OF TWIN FALLS } ss.

I, Evelyne Jennings, being first duly sworn upon oath, depose and say that I am principal clerk of the TIMES-NEWS, published daily, except Saturday, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for June consecutive Tuesdays, commencing with the issue dated October 16, 1969, and ending with the issue dated October 23, 1969.

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

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

Evelyne Jennings

Subscribed and sworn to before me this 23rd day of October, 1969.

Al Cederlingson

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

Bid submitted 11-4-69 ds

36 7085

Affidavit of Publication

State of Idaho, County of Gooding } SS.

Thomas D. Miller, being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement

was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 16 day of October, 1969, and the date of the last publication was on the 23 day of October, 1969

Thomas D. Miller

Subscribed and sworn to before me this 23 day of October, 1969
(SEAL)

Audrey C. Belsher
NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

Number of Lines in Notice.....		
Number of Insertions		
——————Lines at 14c		
——————Lines at 10c		
TOTAL COST		

COPY OF NOTICE

Title of Notice: Application for Water

Plaintiff Attorney

Defendant: [redacted] Brothers Inc

Plaintiff: Buhl

Bill to:
State of Idaho
Dept. of Reclamation
Statehouse annex 2
Boise, Idaho
83707

PUBLICATION RATES:
(Idaho Code, (Rev. Statutes) 1956

7 pt. per line, straight	14c
7 pt. per line, tabular	20c
7 pt. per line, successive insertions	10c
6 pt. per line, straight	15c
6 pt. per line, tabular	20c
6 pt. per line, successive insertion	10c

36 7085
№ 620
Bill submitted
11-24-69 AV

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the Brailsford Brothers, Inc., Buhl, Idaho, have on September 29, 1969, applied for permit under Application No. 36-7085 to divert 200.0 cubic feet per second of water from Eickel Spring, tributary of the Snake River.

Water will be diverted by open ditch or pipeline within the NW¼NW¼ (Lot 1) of Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County and within the SE¼SE¼ (Lot 8) of Sec. 6; SE¼NW¼ (Lot 2), NE¼-NW¼ Sec. 8; T. 8S, R. 14E, B.M., Gooding County and is to be used from April 1 to October 15 for irrigation, from January 1 to December 31 and from October 15 to April 1 for fish culture in the S½SW¼, Sec. 1; S½, Sec. 11; S½, Sec. 12; all of Sec. 13; N½, E½SW¼, SE¼, Sec. 14, T. 8S, R. 13E, B.M. and in the SE¼SW¼ (Lot 10), SW¼SE¼, Sec. 6; NW¼NE¼ (Lot 2), W½-SW¼, SE¼SW¼, W½SE¼, Sec. 7; W½NE¼, W½, W½-SE¼ Sec. 18, T. 8S, R. 14E, B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of this notice.

R. Keith Higginson
State Reclamation
Engineer

10-16-2tc

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 6, 1995

SALMON FALLS LAND & LIVESTOCK
C/O MIKE HENSLEE VP
123 BELL RAPIDS RD
HAGERMAN ID 83332

RE: WATER RIGHT NO. 02-07462

Dear Water Right Holder(s):

Enclosed is a copy of the Water Right License issued on the above referenced permit along with a copy of your approved Application for Amendment.

Should you have any questions regarding these documents, please contact me.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

RECEIVED
MAR 22 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 7, 1995

SALMON FALLS LAND & LIVESTOCK
C/O MIKE HENSLEE VP
123 BELL RAPIDS RD
HAGERMAN ID 83332

RE: WATER RIGHT NO. 02-07462

Dear Water Right Holder(s):

The above referenced water right is in the process of being licensed. However, before a license can be issued, your permit must be amended to correspond with the findings of the Department's field examiner.

The enclosed Application for Amendment contains information that will be included on the license when it is issued. The amendment reflects a change in the location of the place(s) of use description. Please review carefully and if you concur, sign the amendment and return with the $50.00 filing fee within 14 days.

The last page of the Application for Amendment form contains a list of CONDITIONS/REMARKS proposed for the license when it is issued. These conditions/remarks may be modified upon further administrative review.

Also, please note that the source change from Bickel Springs to the Snake River required a basin number change. Right 36-07085 has been renumbered as 02-07462.

Thank you for your assistance and if you have any questions with this information, please contact me as soon as possible. My telephone number is (208) 327-7946.

Sincerely,

Shelley Watten Keen

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

MAR 2 2 1995

MEMORANDUM

TO: FILE NO. 02-07462

FROM: PAM SKAGGS/STATE OFFICE

SUBJECT: RIGHT RENUMBERED

DATE: FEBRUARY 6, 1995

This right was originally numbered 36-07085. License review found that the right should have been changed to basin 02 following amendment of the point of diversion to the Snake River. The right has been renumbered to 02-07462.

RECEIVED
MAR 2 2 1995

MEMORANDUM

RECEIVED
JAN 0 6 1995
Department of Water Resources

TO: Shelley Keen, Allocations

FROM: Douglas Jones

DATE: 1/5/95

RE: Lic. Review

Word has it that you get to do the licensing review on the rights under these assignments. BCQ says they are back in the vault.

New owners came in & said Cindy said they needed different assignments. You might check with her about this.

These exams are old ones Loren did & hadn't written up - I put them together, documented what I could, reviewed it with him before he got too bad, and sent them. My memo may be a little screwy, but call if you have questions (I don't have a copy).

Good Luck!

thx Douglas

MAR 2 2 1995

RECEIVED
JUL 25 1994
Department of Water Resources

MEMORANDUM

TO: FILES 36-7085 & 02-07249

FROM: DOUGLAS JONES, LOREN HOLMES

DATE: July 14, 1994

RE: FIELD EXAM RESULTS

During the development of these rights it has been apparent to the Department that the permit holder was not going to install a pipe from Bickel Springs (see '76 amendment), or from the effluent of Valley Trout ('77 amendment, '80 letter), to his pump system across the river. Bickel Springs water is collected and routed either through the fish facility, then into the Snake R. downstream of the pumping plant authorized by these permits; or through a pipeline owned by Brailsford and thence to a different farm. Bickle Springs water is NOT commingled with Snake River water and pumped by his system. All of the permit holder's rights pumped for this development are Snake River source water.

I recommend that the water right 36-7085 be reassigned a Basin "02-" number. I base this recommendation on the fact that all water which might have been conveyed across the river, had the pipe been installed, flows into the river, and that any priority cut that would affect a Snake River source would apply to Bickel Springs also (e.g. Weiser Gage minimum instream flow). Indeed, these rights were turned off during the 1992 enforcement of the MIF. Administration of these rights is clearer with a change in sources for 36-7085. Having approved the amendment switching the point of diversion to the Snake River it appears that there was a mistake made in not renumbering 36-7085.

Acreages for these rights are fully interconnected and are recommended as a permissible-place-of-use. Permit 02-7249 is for 1624 acres, permit 36-7085 is for 1007 acres. Analysis of permitted acreage indicates that there is 216 acres of overlap, resulting in a licensable farm of 2415 acres. Should a priority cut have to be made all acreages would have to cease irrigation.

Pumping plant capacity was measured to be 38.77 cfs. However, due to contract limitations with Idaho Power only two of the three 500 hp pumps can be operated at any time. Therefore a diversion rate equal to the capacity less the lowest producing 500 hp pump was recommended - 29.89 cfs.

APPROVED
MAR 2 2 1995

PERMITS 36-7085 & 02-7249
WATER MEASUREMENT AND CONCLUSION

PUMP #	HP	# STAGES	DESIGN Q gpm / cfs	DESIGN HEAD psi / ft	OBSERVED Q gpm (1) / cfs	OBSERVED HEAD psi / ft	AVG OBSERVED h in	MEASUREMENT TIME FROM - TO	PUMP PRESSURE psi	MP PRESSURE psi
5	200	5	1800 / 4.01	169 / 390	1992 / 4.44	165 / 381	.20	9:46 - 9:51	165	23
4	300	4	2575 / 5.74	163 / 376	2507 / 5.59	166 / 383	.32	9:51 - 9:55	166	25
3	500	3	4400 / 9.80	166 / 384	4455 / 9.93	170 / 393	1.00	9:55 - 9:58	170	29
1	500	3	4400 / 9.80	166 / 384	3985 / 8.88	173 / 400	.80	9:59 - 10:03	173	32
2	500	3	4400 / 9.80	166 / 384	4455 / 9.93	175 / 404	1.00	10:15 - 10:19	175	34

(1) computed from Q = (4.03)*(d**2)*(sqrt h), where d = 33.25 inches and h = observed differential head on air-water manometer

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MEASUREMENT PROCEDURE

The output of the main pumping plant was measured one pump at a time without the booster system in operation.

To make the measurements, observers were stationed at the pumping plant and at the measuring port (MP) at the top of the hill. An annubar was inserted in the MP and connected to an air - water differential manometer. Pressure gages were installed on the manometer and on the pump discharge manifold to measure static pressures.

As each pump was operated the time, differential head, and static pressure in the pipeline were noted by the observers.

As the testing progressed water was pumped beyond the booster plant up into the distribution system which resulted in increasing pressure readings at both the MP and at the pumping plant. The average observed difference in pressure between the pump manifold gage and the MP gage was 141.2 psi which is equivalent to 326 feet in elevation between the pump manifold and the MP. The lift from the river level and from the MP to the booster suction accounts for another 15 feet making the total static lift 341 feet.

ANALYSIS OF DATA

The measurements were interpreted by comparing the measured flows with the design output of the pumps. Design curves for these pumps were provided by Ben Neff of FarmMore Irrigation, which had installed the system. The measurements and comparison with design values is summarized in the above table.

CONCLUSION AND RECOMMENDATION

The observed flows agreed quite well with the design capacities.

It is therefore recommended that the sum of the design pump capacities (39.15 cfs) be adopted as the pumping plant capacity.

Recommended: Pumps 5,4,3,2: Total Q = 29.89 cfs

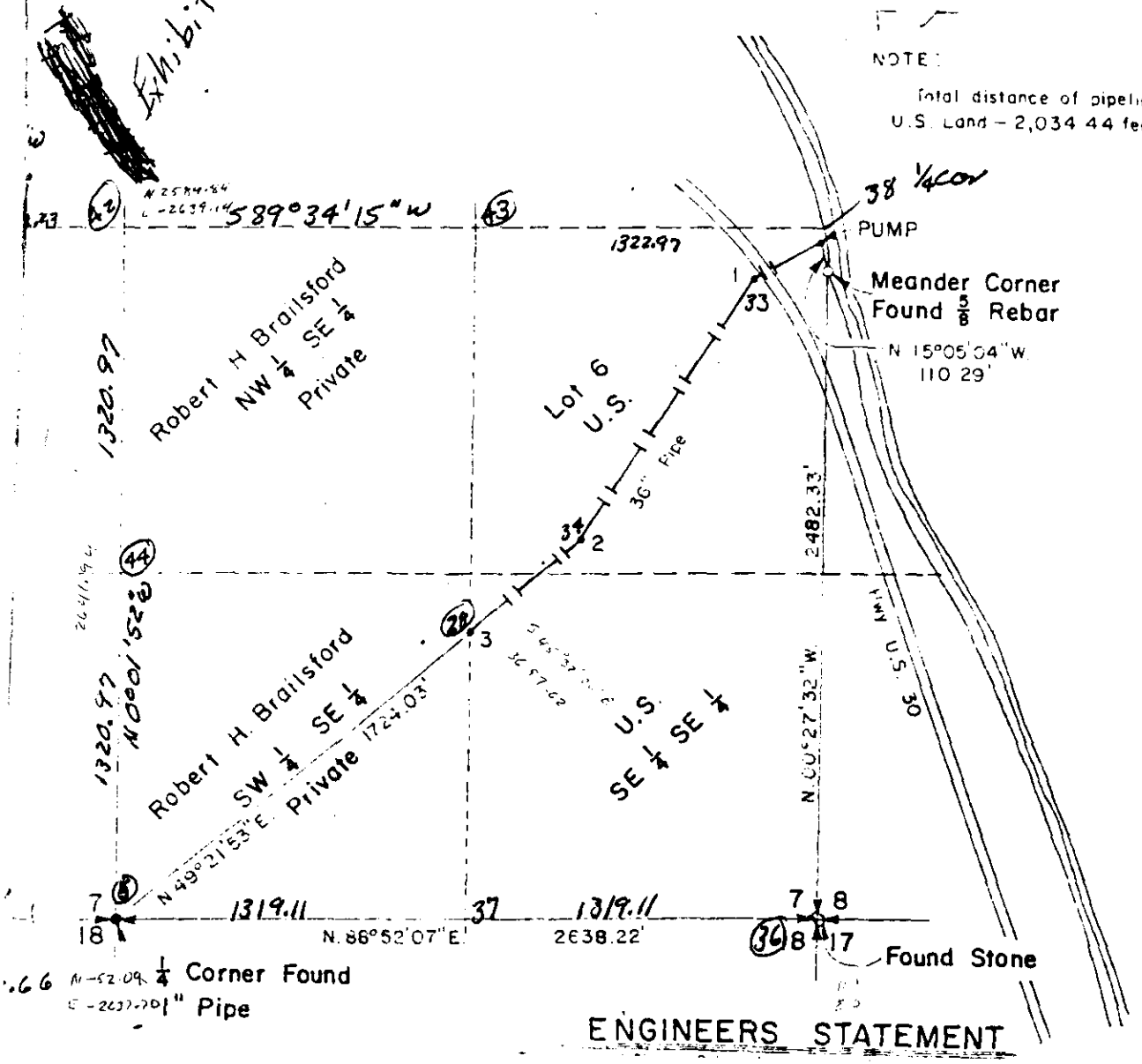
Capacity: Pumps 1-5: Total Q = 38.77 cfs

LH

Exhibit

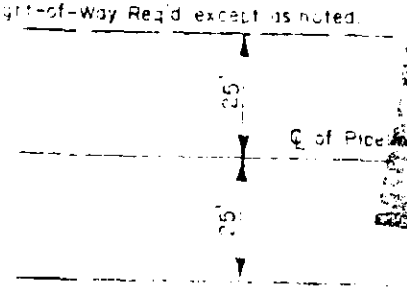
NOTE:

Total distance of pipeline across U.S. Land – 2,034.44 feet.



P.I. No.	Station No.	Bearing	Dist
Pump	0+00		
		S. 63°29'00" W.	28
1	2+87.16		
		S. 30°17'48" W.	118
2	14+74.65		
		S. 49°21'53" W.	55
3	20+34.44		

50' Right-of-Way Req'd except as noted.



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APPLICANT CERTIFICATE

This is to certify that A.T. Peterson and Sons has set the stations herein authorized to represent the undersigned applicant to prepare this map, which has been adopted by the applicant as the final location of the works thereby shown and this map is filed as a part of the complete application in order that the applicant may obtain the benefits of the Act of March 3, 1891 (26 Stat. 1095), as ammended, and I further certify that the right-of-way herein described is for an irrigation pipeline and appurtenances.

ENGINEERS STATEMENT

SURVEY OF

IRRIGATION PIPELINE RIGHT-OF-WAY

Situate in Section 7, T 8S, R 19 E, B M, Twin Falls County

MEMORANDUM

TO: File 36-07085 (renumbered to 02-07462)
Salmon Falls Land & Livestock

FROM: Brenda Chapman

DATE: January 20, 1995

RE: Recommendation Adjustment(s)

==========

The final licensing recommendations for the above referenced water right are based on the information below:

C. SYSTEM DESCRIPTION

2. Place of Use: The exam map, POU comparison chart (# 3 of 9) and the system total confirms 27 acres in the SESW of Section 11.

G. VOLUME CALCULATIONS

Because a "permissible place of use" scenario is being recommended, the entire 2432 acres are listed with the volume calculated accordingly. (Does not exceed the combined permitted amount of this right and 02-07249)

E. REMARKS AND OVERLAP REVIEW ANALYSIS

With a permissible place of use recommendation, a reduction of acres is not necessary. The total volume will be calculated based on 2432 acres being irrigated by the two permits. Each will have the permitted acre limitation addressed in remarks.

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use	Rate of Div	Annual Vol
Irrigation	4-01 to 10-31	.20	Not listed

The rate is limited by the permitted rate of .20 cfs. Volume recommendation is addressed in remarks.

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Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

36-7085
02-7249

A. GENERAL INFORMATION

Permit No. 02-7249

1. Owner: Robert H. Brailsford Phone No. _____

   Current Address: 300 Morrison Dr. Twin Falls, ID 83301

2. Accompanied by: Robert Brailsford - Owner Allen Merritt - IDWR
   Ben Neff - Fairmont Irrigation EXAM. DATE: 4/9/86

   Address: _____ Phone No. _____

   Relationship to Permit Holder: _____

3. Source: Snake River tributary to _____

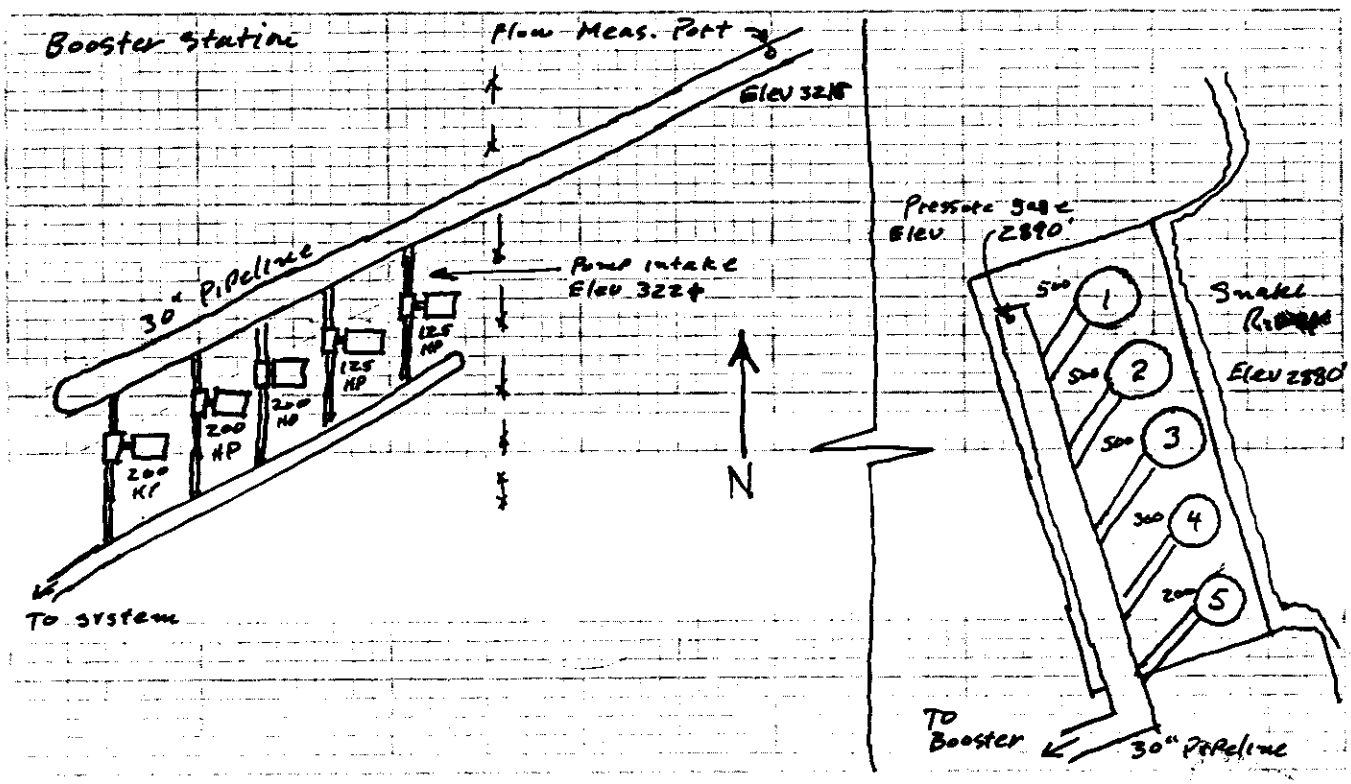
B. OVERLAP REVIEW

1. Other water rights with same place of use: Overlaps of these 2 Permits - No other Rts
   _____ ☐ Copies Attached

2. Other water rights with same point of diversion: _____
   _____ ☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



Scale: 1" = 20' (Approx)

2. ☐ Copy of U.S.G.S. Quadrangle Attached
   Showing location(s) of point(s) of diversion and place(s) of use (required).
   ☐ Aerial Photo Attached
   (required for irrigation of 10 acres or more).
   ☐ Photo of Diversion and System Attached
   (required for all but single household domestic groundwater, and stockwater.

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System Description (continued)

3. **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

A 2000 HP Pumping Plant made up of 3-500 HP Pumps, 1-300 HP, & 1-200 HP Pump lifts water from the Snake River. The conveyance system is 2100 ft of 33¼" dia steel pipe. Water is further pressurized by a 850 HP booster plant at the end of the steel penstock & a 170 HP Booster Plant on the farm. The farm is irrigated by 12 Center Pivots and numerous Portable sprinkler lines. When measured, the main Pumping plant was operated one unit at a time. The booster Plants were not operating.

☐ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
1	U.S. "Titan"	500	CH7846-822859-388	Layne	3 stage / 12 inch
2	Westinghouse	500	25-80	Layne	3 stage / 12 inch
3	Westinghouse	500	15-80	Layne	3 stage / 12 inch
4	Westinghouse	300	7710	Layne	4 stage / 10 inch
5	Westinghouse	200	8012	Layne	5 stage / 8 inch

**Code to correspond with No. on map and aerial photo*

5. **Point(s) of Diversion:**

Ident. No.	Gov't. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
	6	NE	NE	SE	7	8S	14E	Twin Falls	R.O.W. Survey by BLM

6. Place(s) of Use: [illegible] Indicate Method of Determination _____

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
8S	13E	10															11	17	28
*		11	20	19	40	40			1	1	26	39	38	37	10	15	21	25	322
		12						20	20		40	21	40	40	19	15	37	36	288
		13	40	35	40	40	39	40	39	40	40	40	40	40	40	39	40	40	632
		14	38	40	39	39	40	40	38	40	40			32	38	38	31	1	494
		15	40	30	10	18													98
8S	14E	7									20	32	32	40		16	40		180
		18		40	32		40	32	22	35	40	28	32	40		30	19		390

* See attached adjustment memo. BC

$ = 2432

MAR 2 2 1995

Do not use this space

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Annubar / Manometer	75				29.25"	

2. **Measurements:**

Output of each Pump was measured with only one pump operating at a time. Pipeline Pressure at the Pump Discharge & Measuring Port were observed & an annubar/manometer measurement made near the booster Plant intake.

See attached sheets for Summary & analysis of measurements.

E. FLOW CALCULATIONS

☒ Additional Computation Sheets Attached

1. Measured Method:
   See Attachment

2. Alternate Method for Checking Purposes:
   Measurements were compared with Pump design Capacities

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)
Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)
Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)
Meter Input HP: (6) x 1.34 = _____ (7)
Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Ampsx .001732 = _____ (6)
Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

* G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = 2415 * 4 = 9660 AFA

$V_{D.R.}$ = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = 29.89 * 214 * 1.9835 = 12,687

V = Smaller of $V_{I.R.}$ and $V_{D.R.}$ = $V_{I.R.}$ = 9660 AFA

2. Volume Calculations for Other Uses:

* See attached explanation memo. BC

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H. REMARKS AND OVERLAP REVIEW ANALYSIS

Analysis of overlap indicates (see page 9/9) that up to 24.5 acres can be licensed. The field exam found 24.32 acres were being irrigated, a difference of .17 acres. Volume recommendations were based on 24.5 acres. *

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
* Irrigation	4/1	10/31	29.89	9660
Totals:			29.89 cfs	9660 AFA

2. Recommended Amendments

☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None

☒ Change P.U. as reflected above ☒ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name: Loren O Holmes

Signature: Loren O Holmes

Certification Date: 4/13/94

Field Report Preparation Date: 7/21/94

CONSULTANT SEAL OF IDAHO — LOREN O HOLMES

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

* See attached explanation memo. BC

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SECTION 8100
CURVE NO. 18-191A

7/1/79
Supersedes 10/15/78

LAYNE & BOWLER, INC.
MEMPHIS, TENN. 38108

No. Stages	Eff. Change
1	0
2	
3	
4	

MATERIAL	Eff. Change
IMP.—C.I.	-1
IMP.—NI-RI	-1
BOWL—BRZ.	-1
BOWL—NI-R.	-1

19GM 1770 R.P.M.

SINGLE STAGE LAB PERFORMANCE WITH STANDARD MATERIALS. EFFICIENCY SHOWN FOR 2 OR MORE STAGES. HORSE POWER SHOWN FOR ONE STAGE BASED ON 2 STAGE EFFICIENCY. CORRECTIONS SHOULD BE MADE FOR STAGES AND MATERIAL.

ONE ( ) STAGE STAGES

Pumps (1) (2) & (3)

4460 @ 3 STGE 128 = 384'

IMP. DIA.
A = 14.36
B = 13.26
C = 12.12

MULTI STAGE ONLY

51 61 69 75 80 83 85 86 85 85 80 74

Average Curve 1, 2, & 3

A B C

A B C

TOTAL HEAD — FEET 4'/div

BRAKE HORSEPOWER

N.P.S.H. REQUIRED — FEET

THRUST FACTOR

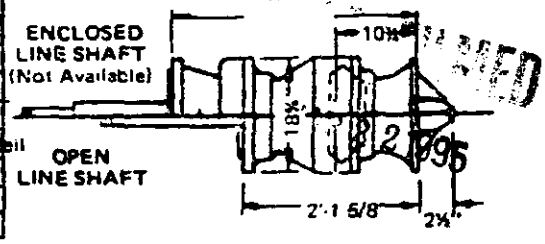
100 GPM/div

CAPACITY — U.S. G.P.M.

EYE AREA — SQ. IN.	=	69.5	IMPELLER WT.-LBS.	=	58
WR² PER IMPELLER	=	7.45 LB.-FT.²	ONE STAGE WT.-LBS.	=	610
MAX. SPHERE SIZE	=	1.25 in.	ADD'L STAGE WT.-LBS.	=	350
MAX. NO. STD. STAGES	=	3	IMPELLER NUMBER	=	95G15
MAX. OPERATING P.S.I.	=	300	DISCH. SIZES	=	14, 16
STD. LATERAL	=	0.62 in.	SUCTION SIZES	=	17½" or 22½" Bell
STD. SHAFT DIA.	=	2.187 in.	MAX. LATERAL	=	— — in.
MAX. SHAFT DIA.	=	— — in.	BOWL CONN.		FLANGED — COLLET
MIN. SUBMERGENCE	=	32 in.	ADD 17 5/8 " PER ADDITIONAL STAGE		

ENCLOSED LINE SHAFT (Not Available)

OPEN LINE SHAFT



EW ISSUE / RC1 — 3TU 23T" River Pump — CURVE NO. 18-1518

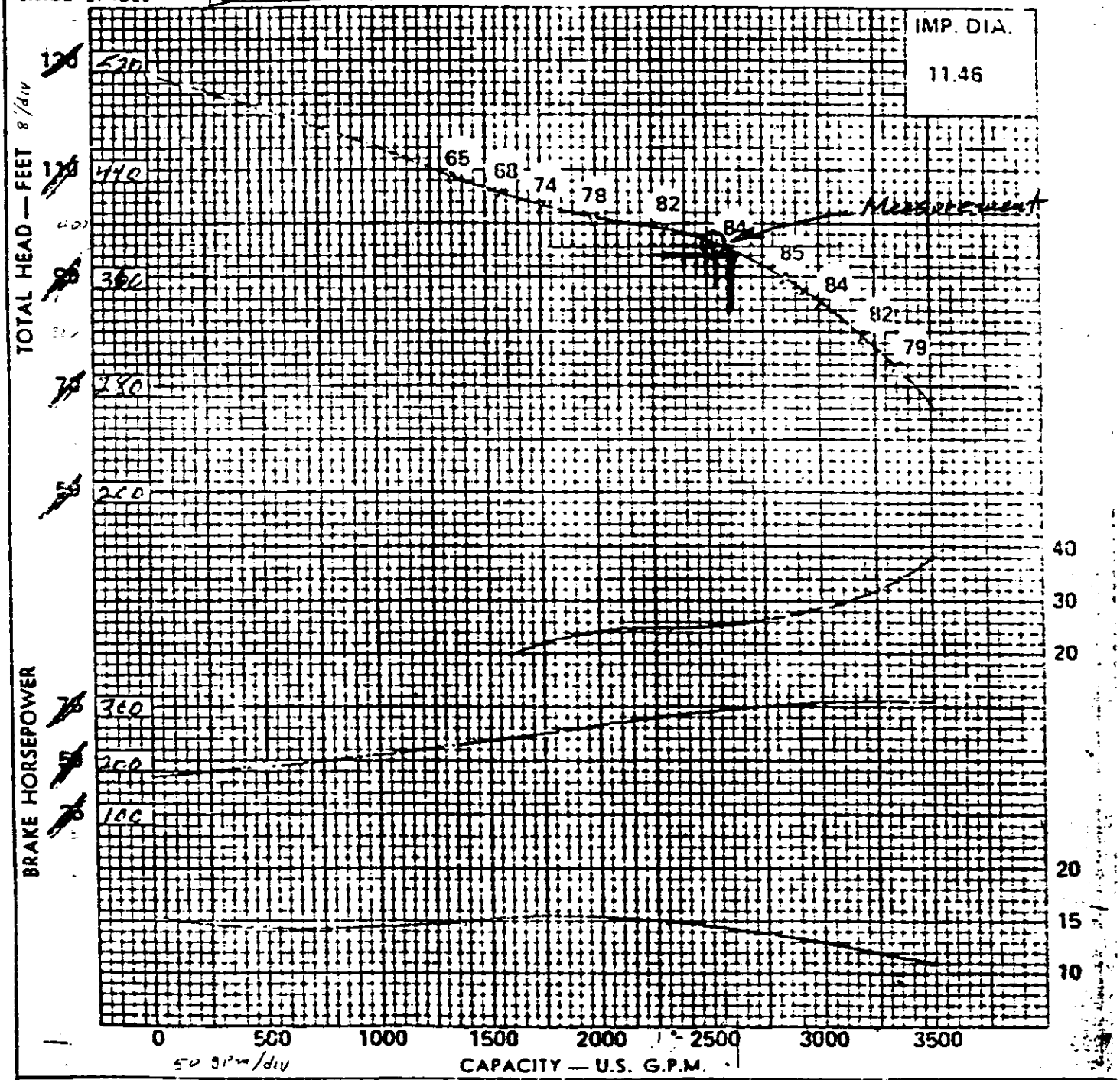
LAYNE & BOWLER, INC.
MEMPHIS, TENN. 38108

No.	Eff. Change	MATERIAL	Eff. Change
1		IMP.—C.I.	-1
2	0	IMP.—NI-RI	-1
3		BOWL—BRZ.	-1
4		BOWL—NI R.	-1

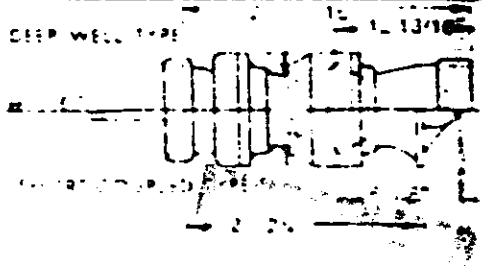
14THC — 1770 R.P.M.

SINGLE S[illegible], 8 PERFORMANCE WITH STANDARD MATERIALS. EF[illegible]IENCY SHOWN FOR 2 OR MORE STAGES. HORSE POWER SHOWN FOR ONE STAGE BASED ON 2 STAGE EFFICIENCY. CORRECTIONS SHOULD BE MADE FOR STAGES AND MATERIAL.

ONE (4) STAGE STAGES — Pump #4 — CUSTOM PERFORMANCE 376'



EYE AREA — SQ. IN.	[illegible]	IMPELLER WT. LBS.	31 [illegible]
WR² PER IMPELLER	[illegible]	ONE STAGE WT. LBS.	4[illegible]
MAX. SPHERE SIZE	[illegible]	ADD'L STAGE WT. LBS.	104
MAX. NO. STD. STAGES	[illegible]	IMPELLER NUMBER	[illegible]
MAX. OPERATING P.S.I.	[illegible]	DISCH. SIZES	[illegible]
STD. LATERAL	[illegible]	SUCTION SIZES	[illegible]
STD. SHAFT DIA.	[illegible]	MAX. LATERAL	[illegible]
MAX. SHAFT DIA.	[illegible]	BOWL CONN.	FLANGED COLLET
MIN. SUBMERGENCE	[illegible]	ADD [illegible]3	PER ADDITIONAL STAGE



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ISSUE

SECTION 6100
CURVE NO. 18-13E

LAYNE & BOWLER, INC
MEMPHIS, TENN. 38108

	Eff Change	MATERIAL	Eff Change
1	6	IMP — C.I.	1
2	3	IMP — NI RI	1
3	0	BOWL — BRZ.	1
4		BOWL — NI-R.	-1

130 — 1770 R.P.M.

SINGLE STAGE LAB PERFORMANCE WITH STANDARD MATERIALS. EFFICIENCY SHOWN FOR 3 OR MORE STAGES. HORSE POWER SHOWN FOR ONE S AGE BASED ON 3 STAGE EFFICIENCY. CORRECTIONS SHOULD B MADE FOR STAGES AND MATERIAL

CUSTOM PERFORMANCE

Pump # 5

Imp. Dia.
10.04

60 68 74 78 81 83 84.6 83 81 78

MEASUREMENT

TOTAL HEAD — FEET 20 ft/div

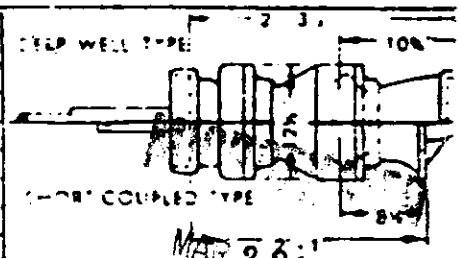
BRAKE HORSEPOWER

0 400 600 1200 1600 2000 2400

40 GPM/div

CAPACITY — U.S. G.P.M.

EYE AREA — SQ. IN.	2[illegible]	IMPELLER WT. LBS.	[illegible]
WR² PER IMPELLER	1.45 LB FT²	ONE STAGE WT. LBS.	2[illegible]
MAX. SPHERE SIZE	1.[illegible] in.	ADD'L STAGE WT. LB	[illegible]
MAX. NO. STD. STAGES	[illegible]	IMPELLER NUMBER	[illegible]
MAX. OPERATING P.S.I.	4[illegible]	DISCH. SIZES	6,10
STD. LATERAL	8[illegible] in.	SUCTION SIZES	10
STD. SHAFT DIA.	1.38[illegible] in.	MAX. LATERAL	10[illegible] in.
MAX. SHAFT DIA.	1.93[illegible] in.	BOWL CONN.	FLANGED COLLET
MIN. SUBMERGENCE	[illegible] ft.	ADD'L HP	PER ADDITIONAL STAGE



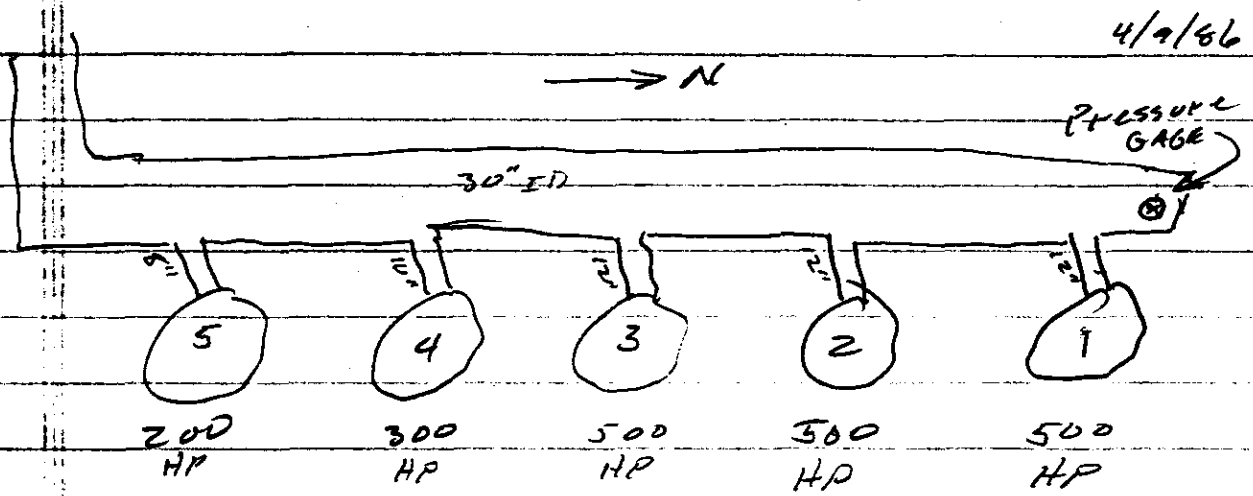
MAR 2 2 1995

02-7249
36-7085

Field Notes 1/5

Bridgeville Pumping Plant

4/9/66



#1 US [illegible]
Frame 500PM
460 V 1770 RPM
ID # CH 7846 - 822859 388
Layne # T [illegible]
3 stage

#2 Westinghouse
Model USW1
Frame 500B-P24
460V 1769 RPM
style 60F3116Z Set 25-80
Layne # T 81003
3 stage

#3 Westinghouse
Same as above
Set # 15-80
Layne # T 81002
3 stage

#4 Westinghouse
460 V 1775 RPM
Frame 449 TPH Model TUDP
Serial 7710 style 773872 4G13
Layne # T 81004
4 stage

#5 Westinghouse
Frame 440TPH Model GUDP
Set # 8012
style 773892 0G 4.6
Layne # T 81005
5 stage

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2/5

Pump Operating Times
Bristol Pumping Plant
4/9/86

Pump(s)	Time On	Time Off	Pressure
#5 Operating to Fill Pipe	≈ 9:20		
#5	9:46	9:51	165
#4	9:51	9:55	166
#3	9:57	9:59	170
#1	9:59	10:03	173
#2	10:15	10:19	175

Note: Line Holds 175 Psi static Pressure with Pumps off.

MAR 22 1995

7/19/96 Buzzfold Run 3/5

Inside Pipe Dia = 33¼"

Readings

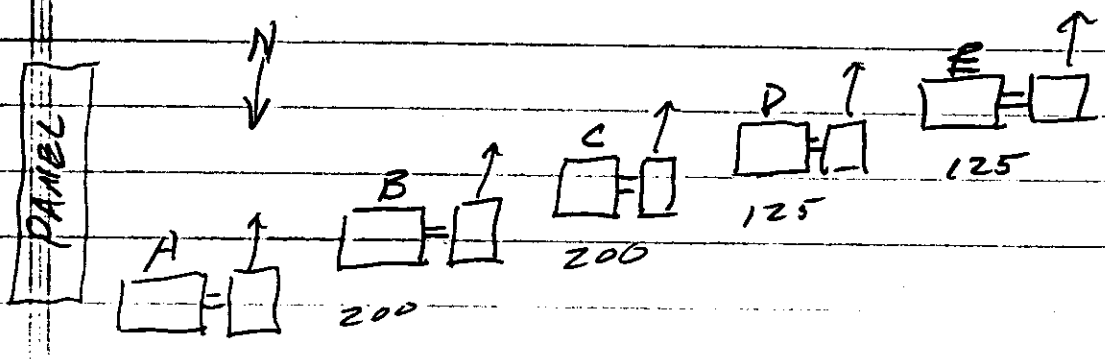
Time	H_1	H_2		Pressure Gage	Reactic Fillings
9:39	25.35	24.0		14	
9:49	33.6	33.4	.2	23	#5 ? (#5)
9:50	33.7	33.5	.2	23	~~1903~~ 1993*
9:53	34.25	34.50			#4
	35.0	34.7			
					2507*
9:57:15	37.5	36.5	1.0	29	~~4256~~ (#3)
9:58:01	37.7	36.7	1.0	29½	4455*
10:01:20	38.4	37.6	.8	31	
10:02:00	38.8	38.0	.8	32	~~3807~~ (#1)
10:07:23	39.3	38.5	.8	33	3985*
~~10:14:20~~				33½	
	39.8	38.8	1.0		
					4455*

* - Q using C = 4.03

MAR 2 2 1995

Brailsford

#1 Booster station 4/9/86



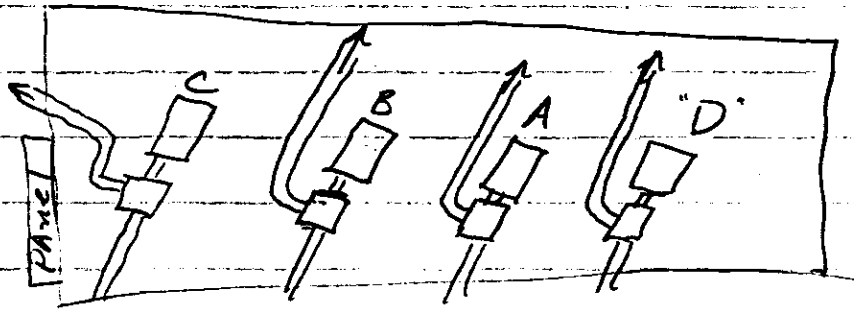
Unit	Motor	Pump
A	[illegible] Frame 445TS Mod. TBDP style 680B102G74	Peerless #80LI-15559 Mod. 8AD17 10" suction 16¼ Impeller 8" Discharge
B	Same As A.	"
C	Same As A	"
D	Westinghouse 1775 RPM Ser#8012 Frame 405TS Mod. TBDP style 680B102G59	Peerless #80LI-15560 Mod. 6AD16 10" suction 15½ impeller 6" Discharge
E	Same as D	"

MICROFILMED
MAR 22 1995

5/5

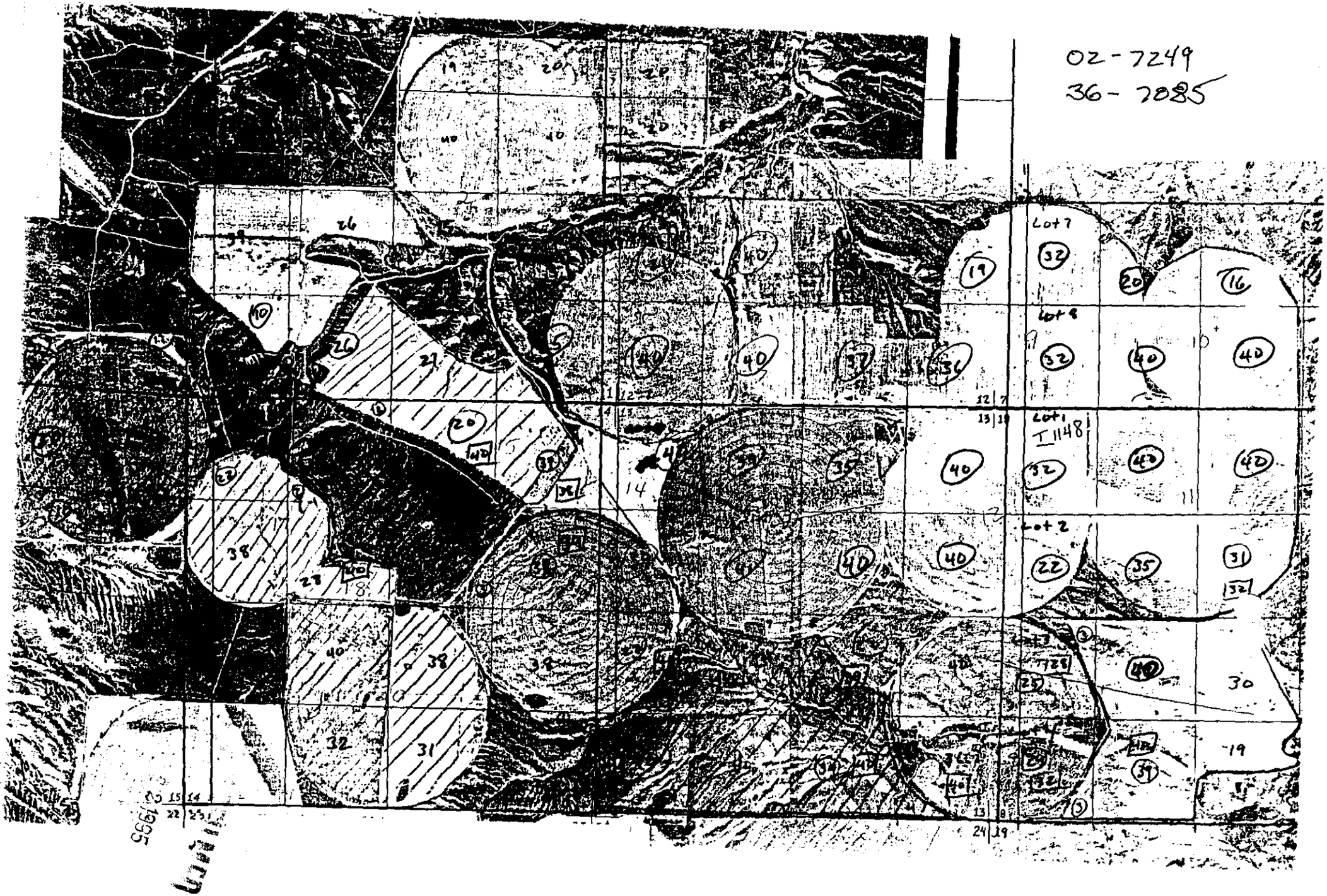
Btailsford #2 Booster station

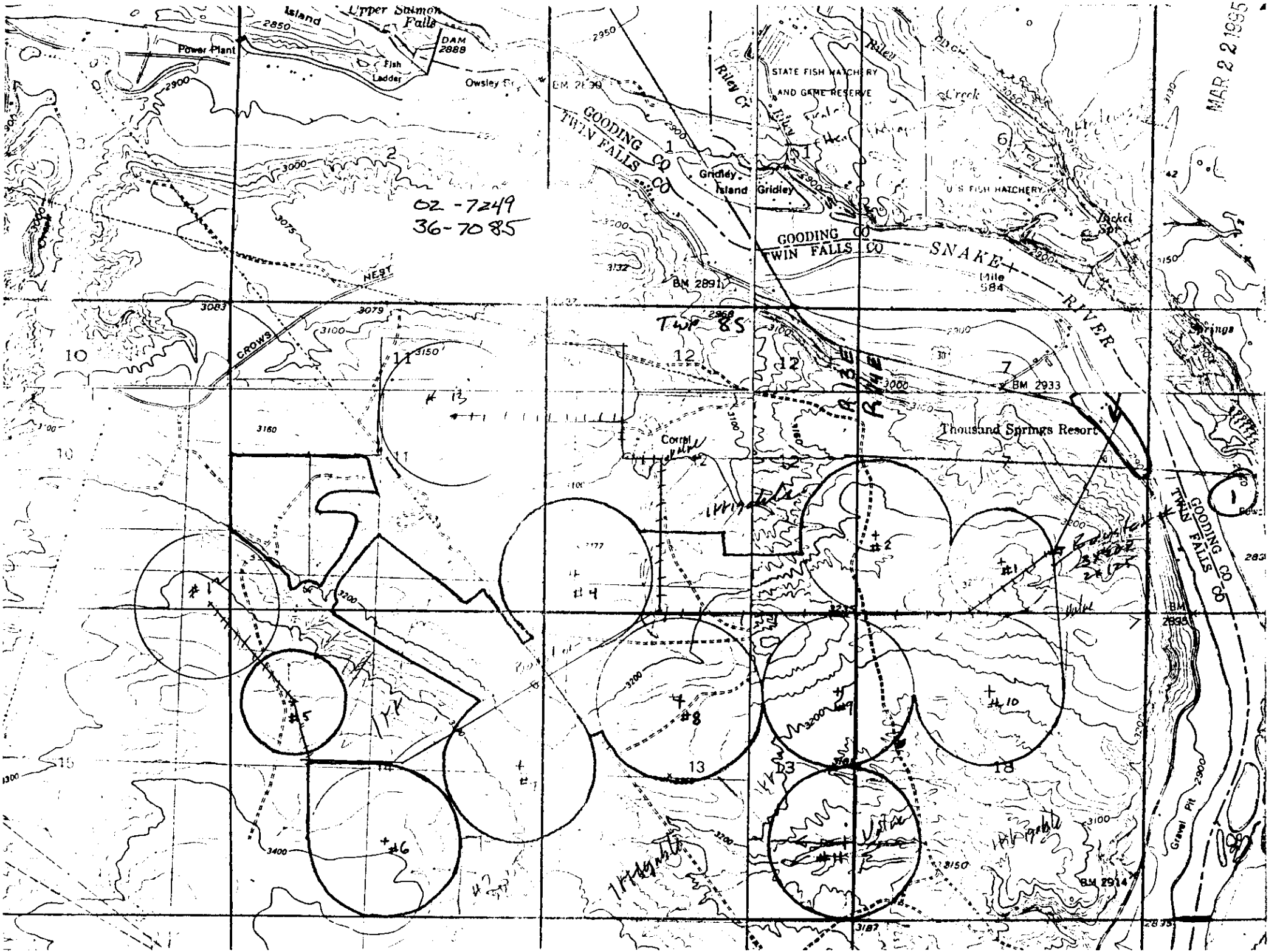
4/9/86



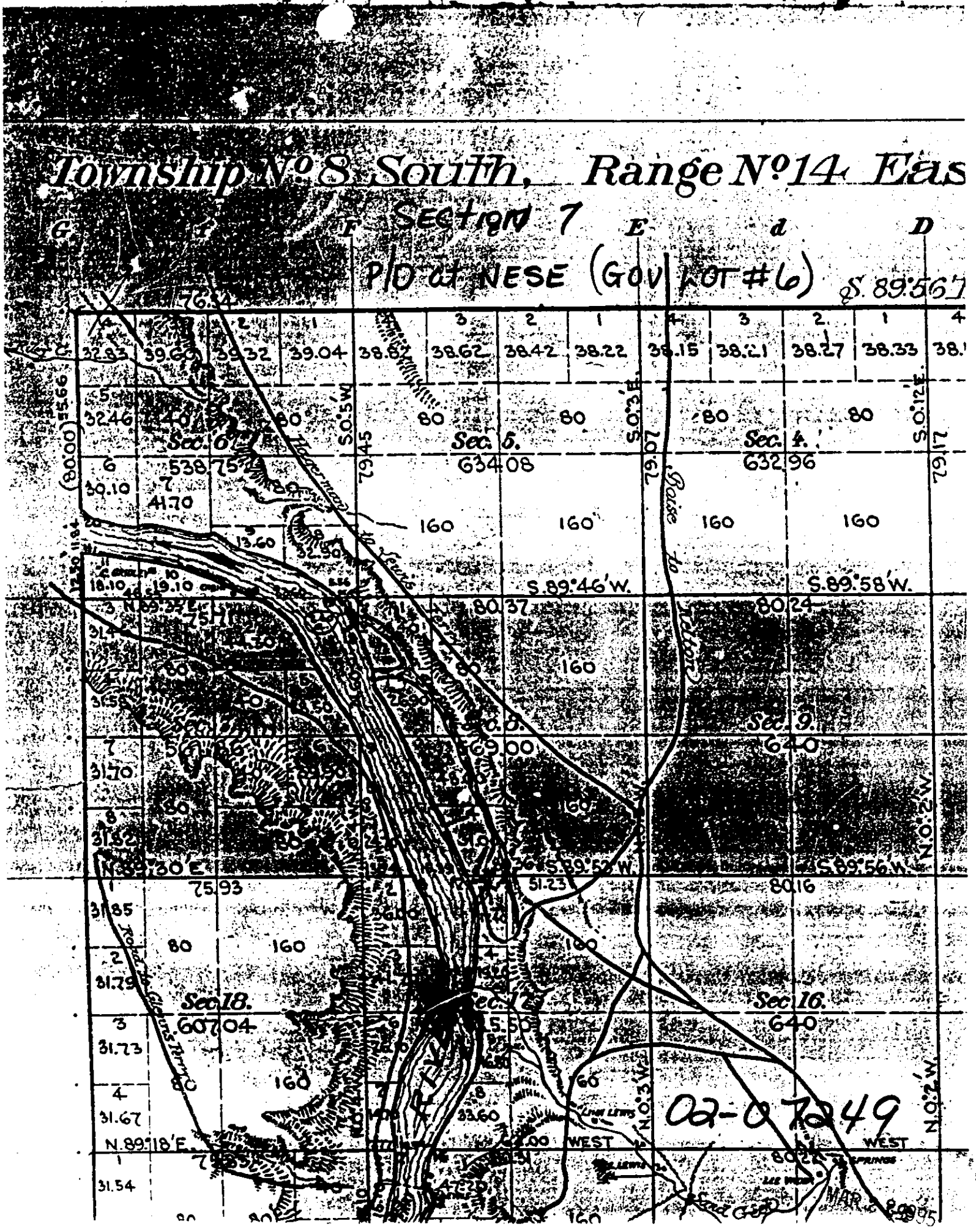
	Motor	Pump
Unit "D"	G.E. 50HP Frame 6[illegible] NL 205 No Set # No. CX 1775 RPM	Peerless # 8-LI-2647 13.815" impeller 4" suction 4" [illegible]
A	Westinghouse 50HP Set# 8203M 1765 RPM	Cornell # 45856 Dia 12 3/4 6" suction 4" Disch
B.	Same as A	Peerless # 80LI 15555 12 9/8 dia 5" suction 4" Disch
C	Westinghouse 20HP Set# 8009M 1760 RPM	Peerless 80LLI-15556 9 1/2 Dia 6" Suction 5" Disch.

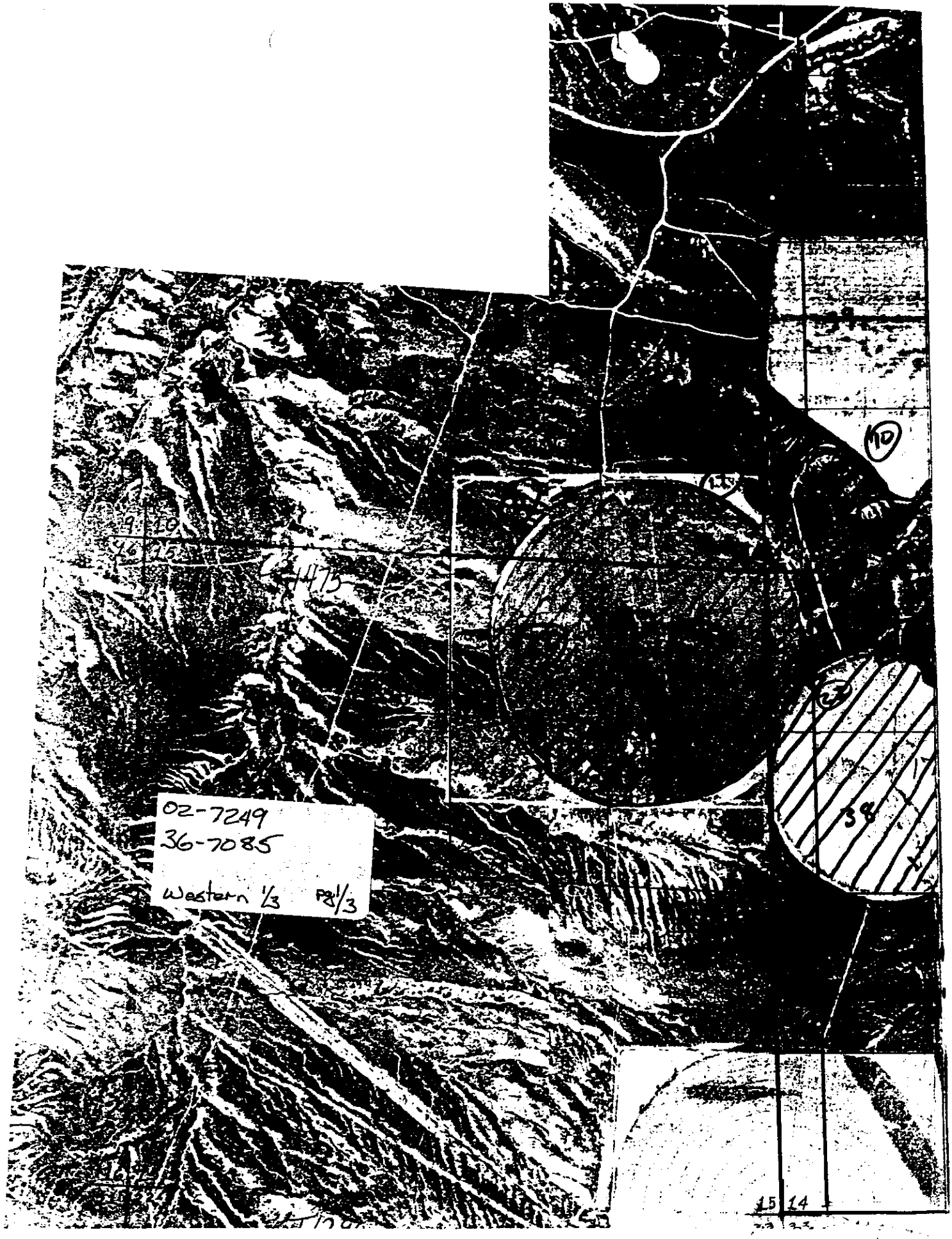
MICROFILMED
MAR 22 1995


02-7249
36-7085
Lot 7
Lot 4
Lot 1
T 1148
Lot 2
Lot 3
T 725
T 1925



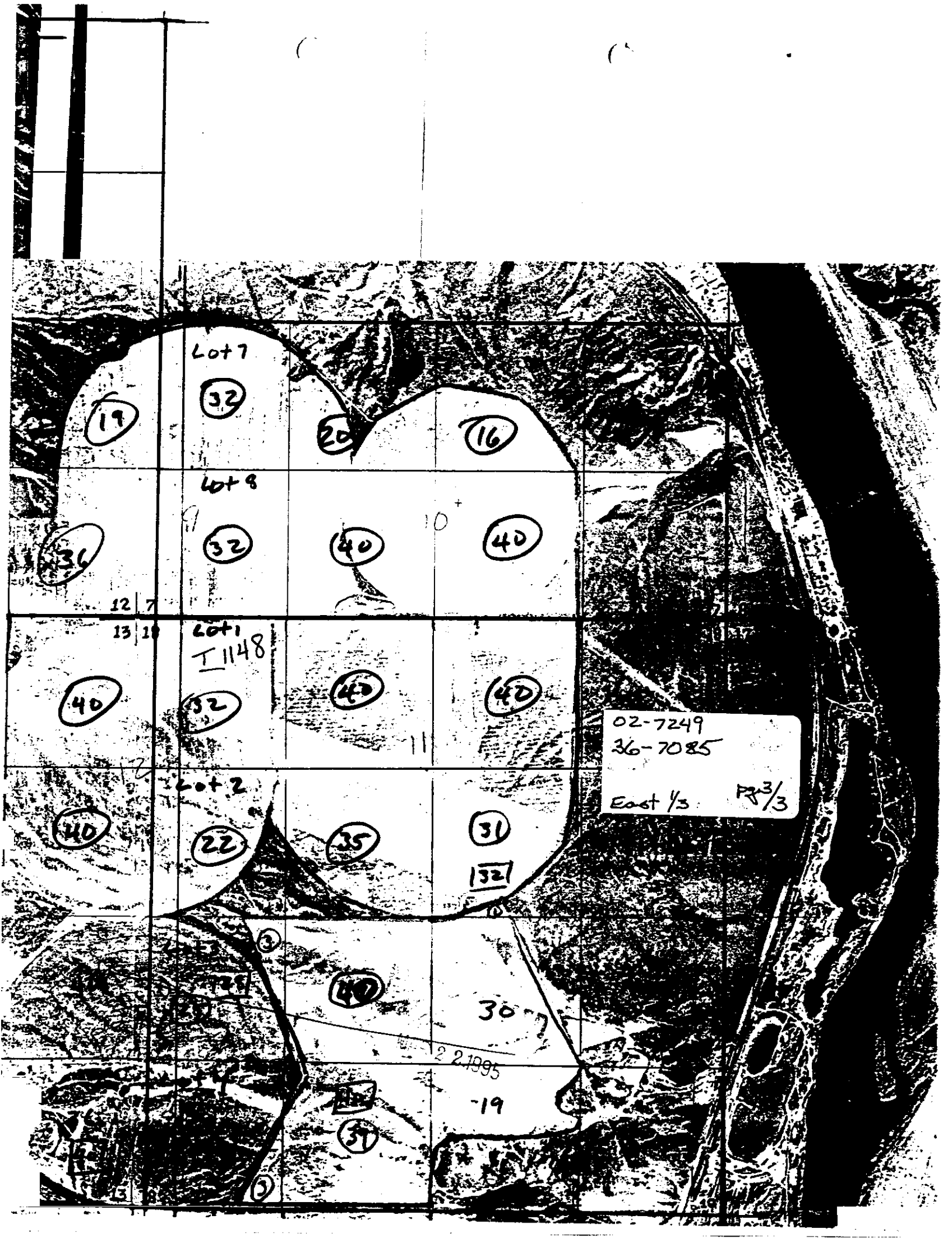
02-7249
36-7085


Township No. 8 South, Range No. 14 East
Section 7
Pld at NESE (GOV LOT #6)
S. 89°56'
Sec. 6.
Sec. 5.
Sec. 4.
Sec. 8.
Sec. 9.
Sec. 18.
Sec. 17.
Sec. 16.
S. 89°46' W.
S. 89°58' W.
S. 89°50' W.
S. 89°56' W.
N. 89°30' E.
N. 89°18' E.
Raise to water
Road to Glenns Ferry
WEST
MAR
02-07249



MAR 2 2 1995


02-7249
36-7085
Central 1/3 #2/3


Lot 7
32
19
20
16
Lot 8
32
40
40
36
12
13
Lot 1
T 1148
40
32
40
40
02-7249
36-7085
East 1/3
Pg 3/3
Lot 2
40
22
35
31
32
40
30
2 2 1995
19
31

T 8S R 13E Sec 1

TRACT	02-7249 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total Irrigated Acres
NENE						
NWNE						
SWNE						
SENE						
NENW						
NWNW						
SWNW						
SENW						
NESW						
NWSW						
SWSW	40					
SESW	30					
NESE						
NWSE						
SWSE						
SESE	10					
	80					

Overlap Analysis

02-7249

36-7085

RECEIVED

MAR 9 1995

T 8S R 13E Sec 10

TRACT	02-7249 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total irrigated Acres
NENE						
NWNE						
SWNE						
SENE						
NENW						
NWNW						
SWNW						
SENW						
NESW						
NWSW						
SWSW						
SESW						
NESE						
NWSE						
SWSE	20		11			11
SESE	20		17			17
	40		28			28

MICROFILMED
MAR 22 1995

2/9

T 8S R 13E Sec 11

TRACT	02-7244 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total Irrigated Acres
NENE	20		20			20
NWNE	20		19			19
SWNE	40		40			40
SENE	40		40			40
NENW						
NWNW						
SWNW			1			1
SENW			1			1
NESW	22		26			26
NWSW	40		39			39
SWSW	20		10	28		38
SESW	20		26	1		27
NESE	15		10			10
NWSE	21		15			15
SWSE	20		21			21
SESE	24		25			25
	302		293	29		322

MICROFILMED
MAR 22 1995
3/9

T 8S R 13E Sec 12

TRACT	02-7249 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total Irrigated Acres
NENE						
NWNE						
SWNE						
SENE						
NENW						
NWNW	20		20			20
SWNW	20		20			20
SENW						
NESW		40	40			40
NWSW		40	21			21
SWSW		40	40			40
SESW		40	40			40
NESE	32	40	19			19
NWSE	40		15			15
SWSE		40	37			37
SESE		40	36			36
	112	292	258			258

overlap 32

MICROFILMED
MAR 22 1995

T 8S R 13E Sec 13

TRACT	02-7249 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total irrigated Acres
NENE		40	40			40
NWNE		40	35			35
SWNE		40	40			40
SENE		40	40			40
NENW		40	39			39
NWNW	40		40			40
SWNW	40		39			39
SENW	40		40			40
NESW	40		7	33		40
NWSW		40	22	18		40
SWSW	40			40		40
SESW	40			40		40
NESE	40		40			40
NWSE	40		20	19		39
SWSE	40		1	39		40
SESE	40		36	4		40
	320	240	439	193		632

MAR 22 1995

5/9

T 9S R 13E Sec 14

TRACT	02-7249 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total Irrigated Acres
NENE	40		37	1		38
NWNE	5		20	20		40
SWNE	3		3	36		39
SENE	40	40	38	1		39
NENW	3		4	36		40
NWNW	13		22	18		40
SWNW	40		38			38
SENW	40		25	12		40
NESW	40		40			40
NWSW						
SWSW						
SESW	40		32			32
NESE		40	38			38
NWSE	40		38			38
SWSE	40		31			31
SESE	2		1			1
	346	80	370	124		494

Overlap 40

RECEIVED
MAR 22 1995

6/9

T 8S R.13E Sec 15

TRACT	02-7249 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total Irrigated Acres
NENE	40		40			40
NWNE	40		30			30
SWNE	20		10			10
SENE	20		18			18
NENW						
NWNW						
SWNW						
SENW						
NESW						
NWSW						
SWSW						
SESW						
NESE						
NWSE						
SWSE						
SESE						
	120		98			98

RECEIVED
MAR 2 2 1995

7/7

T 8S R 14E Sec 7

TRACT	02-7244 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total Irrigated Acres
NENE						
NWNE						
SWNE						
SENE						
NENW						
NWNW						
SWNW						
SENW						
NESW			20			20
Lot 7 NWSW	32	31.70	32			32
Lot 8 SWSW	32	31.82	32			32
SESW	40	40	40			40
NESE						
NWSE	40		16			16
SWSE	40	40	40			40
SESE						
	184	143.52	180			180

Overlap 144

MICROFILMED
MAR 22 1995

8/96

T 8S R 14E Sec 18

TRACT	02-7244 Acres	36-7085 Acres	Irrig Crop Acres	Irrig. Pasture Acres	Total permit Acres	Total Irrigated Acres
NENE						
NWNE		40	40			40
SWNE		40	31	1		32
SENE						
NENW		40	40			40
Lot 1 NWNW		31.85	32			32
Lot 2 SWNW		31.79	22			22
SENW		40	35			35
NESW	40		40			40
Lot 3 NWSW			3	25		28
SWSW			29	3		32
SESW			39	1		40
NESE						
NWSE		40	30			30
SWSE			19			19
SESE						
	40	263.64	360	30		390

Totl 1624 1007.16 2056 376

Found 2432 total Acres Irrig

Total overlap = 216 ac in permit

16.84 short.

Total Lands 1624 + 1007.16 - 216 = 2415.16

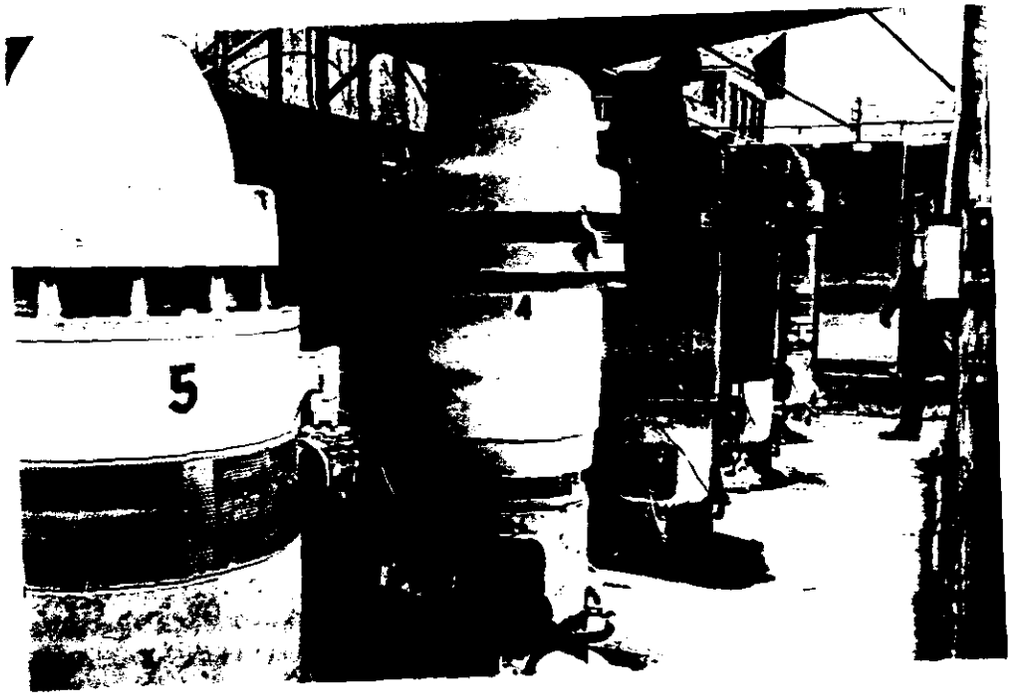
MISSOULA MAR 22 1995

9/96

02-7249
36-7085



River intake & Pumping Plant



Interior view of Pumping Plant.

APPROVED RELEASED
MAR 2 2 1995

OZ-7249
36-7085



850 HP Booster
Plant



170 HP Booster
Plant

MAR 2 2 1995

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW
1020 MAIN STREET
SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
TERRY R. McDANIEL
GARY D. SLETTE
JERRY V. JENSEN
F. BRUCE COVINGTON
BRUCE M. SMITH
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN O. FITZGERALD

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

May 23, 1991

RECEIVED
MAY 24 1991
Department of Water Resources
Southern Region

Mr. Loren Holmes
Southern Regional Manager
Idaho Department of
Water Resources
222 Shoshone Street, East
Twin Falls, Idaho 83301

Re: Permit Nos. 02-7249 and 36-7085

Dear Loren:

This is confirmation of our discussion on 5/22/91 regarding licensing of Permit Nos. 02-7249 and 36-7085 in the name of Robert H. Brailsford. As you know, Mr. Brailsford has sold the property to which these two water rights would be appurtenant. The new owners are in the process of obtaining a contract with Idaho Power.

Based on the Department's January 8, 1988 letter to Mr. Brailsford, it appears that the Department has recommended that these permits be licensed for 38.8 cfs. According to that letter, the Department inspected the system and measured the output of five pumps in the river. The Department measured three 500 hp pumps, one 300 hp pump and one 200 hp pump. However, one of the 500 hp pumps, based on Mr. Brailsford's contract with Idaho Power, is a standby pump, which can only be used in the event that one of the other 500 hp pumps or the 300 and the 200 hp pumps are down. Therefore, one of the 500 hp pumps whose capacity was measured by the Department cannot operate at the same time that the other pumps with a combined 1500 hp capacity are running. The net effect is that the Brailsford system can only pump water with a combination of pumps of 1500 hp capacity.

Licensing of these permits should not be for 38.8 cfs as this was the combined capacity of all the pumps, and Idaho Power objects to licensing of these permits for that amount.

MICROFILMED
MAR 2 2 1995

Idaho Power is in the process of developing a contract with the new owners of the Brailsford property and that contract will recognize only 1500 hp capacity. Based on our conversation, it is my understanding that the Department will be proceeding with a licensing procedure which incorporates these facts. Thus, any license would reflect a system capacity of 1500 hp, not 2000. If I am incorrect as to this situation, please contact me prior to the issuance of any license.

I appreciate your efforts in clarifying this matter.

Sincerely,

Bruce M. Smith

BMS/dj
62571
cc: Steve Herndon
Jim Thompson
Paul Bull
Bill Specht

RECEIVED
MAY 24 1991
Department of Water Resources
Southern Region Office
MAR 2 2 1995

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Southern Region

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

NOVEMBER 19, 1985

ROBERT H. BRAILSFORD
300 MORRISON DR.
TWIN FALLS ID 83301

RE: Permit No. 36-7085

Dear Permit Holder:

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

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

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

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

Sincerely,
s/Mary A. Newby
Secretary

MICROFILMED

MAR 2 2 1995

36-7085

PS Form 3575
Via, 19[illegible]

As soon as you know your new address, fill this card to all the people, businesses, and publishers who send you mail.

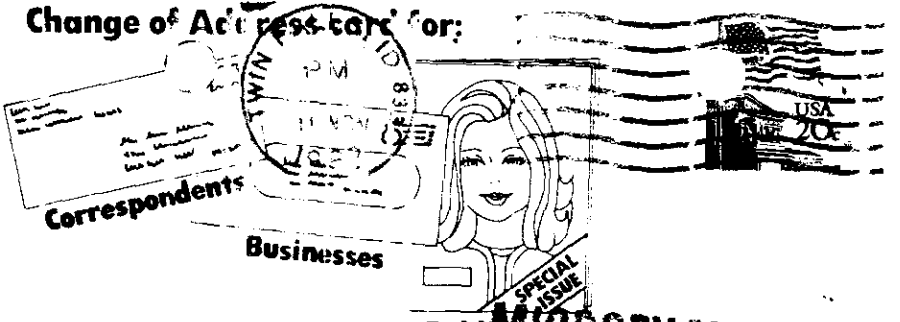
For publishers, paste old label over name and old address sections and complete new address section.

Your Name	Print or Type–Last Name, First Name, Middle Initial Brailsford Robert	New Area Code and Telephone No. if known
Old Address	No. and Street, Apt., Suite, P. O. Box or R.D. No. 1764 Filer Ave East City, State and ZIP Code Twin Falls, Idaho 83301
New Address	No. and Street, Apt., Suite, P. O. Box or R.D. No. (In care of) 300 Morris Drive #644 City, State and ZIP Code Twin Falls, Idaho 83301
Sign Here	Robert Brailsford	Date new address in effect 11-1-92 Account No. (If any)

Receiver: Be sure to record the above new address in your address book at home or office.

MAR 2 1995

Change of Address card for:



MICROFILMED
MAR 2 2 1995

Name ~~WR~~ Dept of Water Resources

Address Statehouse

City Boise State Idaho ZIP 83720

*GPO

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

SEPTEMBER 1, 1985

DEAR PERMIT HOLDER:

ACCORDING TO OUR RECORDS, YOU ARE THE HOLDER OF A WATER PERMIT ON WHICH PROOF OF BENEFICIAL USE OF WATER WAS NOT SUBMITTED BEFORE JULY 1, 1985, WHICH INDICATES YOUR PROJECT IS NOT COMPLETE. THEREFORE, YOU NEED TO BE AWARE OF CHANGES IN IDAHO LAW, EFFECTIVE JULY 1, 1985, WHICH IMPACT ALL WATER PERMITS ISSUED BY THIS DEPARTMENT.

SPECIFICALLY, PURSUANT TO SECTION 42-203D, IDAHO CODE, THE DEPARTMENT MUST REVIEW ALL PERMITS FOR WHICH DEVELOPMENT OF WATER USE WAS NO COMPLETED ON OR BEFORE JULY 1, 1985, TO DETERMINE IF THEY MEET THE NEW REQUIREMENTS OF CHAPTER 2, TITLE 42, IDAHO CODE. RULES AND REGULATIONS GOVERNING THE RE-EVALUATION OF PERMITS ARE NOT YET FINALIZED. HOWEVER, IF YOU COMPLETED THE DEVELOPMENT UNDER YOUR PERMIT BEFORE JULY 1, 1985, YOU SHOULD SUBMIT A PROOF OF BENEFICIAL USE STATEMENT, STATING THAT THE PROJECT WAS COMPLETED BEFORE JULY 1, 1985 SO THAT YOUR PERMIT WILL NOT BE SUBJECT TO THE REVIEW REQUIREMENTS OF SECTION 42-203D, WHICH READS AS FOLLOWS:

> 42-203D. REVIEW OF PERMITS - OPPORTUNITY FOR HEARING. - (1)THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THE EFFECTIVE DATE [JULY 1, 1985] OF THIS SECTION, EXCEPT TO THE EXTENT A PERMIT HAS BEEN PUT TO BENEFICIAL USE PRIOR TO JULY 1, 1985, TO DETERMINE WHETHER THEY COMPLY WITH THE PROVISIONS OF CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PROPOSED USE DOES NOT SATISFY THE CRITERIA OF CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL EITHER CANCEL THE PERMIT OR IMPOSE THE CONDITIONS REQUIRED TO BRING THE PERMIT INTO COMPLIANCE WITH CHAPTER 2, TITLE 42, IDAHO CODE. IF THE DEPARTMENT FINDS THAT THE PERMIT SATISFIES THE CRITERIA ESTABLISHED IN CHAPTER 2, TITLE 42, IDAHO CODE, THEN THE DEPARTMENT SHALL ENTER AN ORDER CONTINUING THE PERMIT. (2)THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR HEARING IN ACCORDANCE WITH SECTION 42-1701A, IDAHO CODE, AND SECTIONS 67-5209 THROUGH 67-5215, IDAHO CODE, FOR EACH HOLDER OF A PERMIT THAT IS PROPOSED EITHER TO BE CANCELLED OR MADE SUBJECT TO NEW CONDITIONS.

YOU MAY OBTAIN PROOF OF BENEFICIAL USE FORMS FROM THE DEPARTMENT. IF YOU HAVE ANY QUESTIONS, PLEASE LET US KNOW.

SINCERELY,

L. Glen Saxton

L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU

MICROFILMED

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

September 8, 1982

Robert H. Brailsford
1964 Filer Ave. East
Twin Falls, ID 83301

Dear Mr. Brailsford:

Re: Permit No.s 02-7249 and 36-7085

Enclosed is a copy of the approved requests for extension of time. The time within which to submit the statement of beneficial use is extended to: permit no. 02-7249, September 1, 1987, permit no. 36-7085, December 1, 1987.

Also enclosed is Receipt No. 24623 in the amount of $30.

Sincerely,

Rita I. Fleck

RITA I. FLECK
Sr. Secretary

Enclosures: 3

August 23, 1982

RECEIVED
AUG 26 1982
Department of Water Resources

RE. Water Right Permits Nos. 02-7249 and 36-7085

Jim Johnson
Water Distribution Supervisor
Idaho Water Resources Dept.
State House
Boise, Idaho 83720

Dear Mr. Johnson:

As an answer to your letter of August 13, 1982.

1. Valley Trout Co.has not proven beneficial use under Permit No. 36-7072.
2. Valley Trout Co. is in non-compliance With the Idaho Health Dept. regulations covering prevention of affluent from the fish ponds entering the Snake River. If compliance is not met the possibility of non-use of the water exists.
3. Valley Trout Farms is not in compliance with an order of the Water Resources Dept. of Novmmber 9, 1970 signed by the then Director, R. Kieth Higginson, order the original holders of Permit No. 36-7072 to comply with paragraph C. of the order. This has not been done. I assure you that before this matter is resolved I will see that part of the order will be fulfilled.
4. Several appraisals of the amounts of water applied for under Permit No.36-7072 have been made as a part of the suite for foreclosure instituted by Southern Idaho Production Credit Ass. against Valley Trout Co. Because this matter is in litigation theses appraisals were not available. The beginning date for this litigation, as given to me by the secretary of the Clerk of the 5th District Court, was December 16, 1981.

The circumstances as outlined above indicate that there are many questions concerning the eventual status of Permit No.36-7072 and I ask The Department to extend the period for proof of beneficial use on Permits Nos. 02-7249 and 36-7085 until the matter connected to Permit No. 36-7072 are resolved.

Sincerely,

Robert Drais

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

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

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

August 13, 1982

RE: Water Right Permits Nos. 02-7249 and 36-7085

Robert H. Brailsford
1964 Filer Ave. East
Twin Falls, ID 83301

Dear Mr. Brailsford:

Thank you for sending us the excellantly prepared description of the chain of events that led to the request for extension of time in which to submit proof to beneficial use of water under the above referenced permits.

After reviewing the circumstances you were faced with I believe the Department would be willing to approve the extension request under both permits for the period that was lost to delays caused by lack of right-of-way approval from BLM (2 years, 3 months) and the period between right-of-way approval from BLM to the time of agreement by Idaho Power to provide service to your irrigation system (1 year).

However, before the Department can recognize the litigation between South Idaho Production Credit Association vs. Valley Trout Farms Inc. as reason for development delay of permit 36-7085 it has to be demonstrated how the litigation has directly impacted the development of this permit. You should provide a copy of the beginning date of Case No. 34014 and copies of any additional documents which can demonstrate that development of your permit was delayed because of this litigation.

We will hold action on your extension request until August 30, 1982 so that you may have time to remit the above information. If we have not heard from you by then we will assume that you want us to approve the said extensions of time for the 3 years and 3 months as here-to-fore identified. If you have any questions on this matter, please let us know.

Sincerely,

JIM JOHNSON
Water Distribution Supervisor

JJ:kw

TO: FILES: 02-7249 & 36-7085

Extension of Time Summary of Delays caused by actions other than due diligence.

1). Lack of Right of Way Approval from BLM

7-29-1976 - Applied for Right of Way

9-26-1978 Received Approval

Period of Delay 26 months 2yr 2mo

2) Idaho Power Moritorium

9-26-1978 Approval by BLM

3-10-1981 Approval by Idaho Power

Period of Delay 30 months 2yr 6 mo

Sub Total 4yr 8mo

3) Litigation - Valley Trout Farm

12-16-1981 Dated Filed w/ court

Still Pending

Period of Delay 20 months 1yr 8mo.

Total 6yr 4mo

Summary:

Permit holder has shown proof of development delay caused by factors out of his control for the entire period in which he has had the permit.

Recommend: 5yr extension 8-27-82

Tim

Form 204-p
6/82

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

COMMENCEMENT OF WORKS

Permit No. 36-7085 & 02-7249
Name(s) of Permit Holder(s): Robert H. Brailsford
Post Office Address: 1964 Filer Ave. E. Twin Falls, Idaho 83301 Tel. No. 733-9161

☒ I hereby certify that construction of diversion works for the above referenced permit began on November 10, 1980 (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.

7-4-82
Date

Robert H. Brailsford
Signature of Permit Holder

Robert Brailsford
1964 Filer Ave E
Twin Falls, Idaho 83301





Department of Water Resources
JUL 8 1982

RECEIVED

IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

ROBERT BRAILSFORD
1964 Filer Avenue, East
Twin Falls, Idaho 83301

Idaho Dept of Water Resources
Statehouse Mail
Boise, Idaho
83720

RECEIVED
JUL 7 1982
Department of Water Resources

Dear Sir:

A few days ago I filed Request for Extension of Time for Permits #36-7085 and 02-7249. Inadvertantly I did not include the filing fee. Enclosed please find the check for the fee.

Yours very truly
Robert Brailsford

MICROFILMED

RECEIVED
JUL 9 1982
Department of Water Resources

June 28, 1982

Idaho Water Resources Department
State House Mail
Boise, Idaho 83720

Dear Sirs:

Please note the enclosed application covers two permits.

I would like to draw your attention to the fact that Permit #02-7249 has not had a request for an extention of time but is due to have beneficial use shown by September 1, 1982. Permit 36-7085 is due to show beneficial use December 1, 1982.

I would ask that the extension of time request for both Permits be considered simultaineously.

Yours very truly,

Robert Bridgford

Attachment #1

1. Installed a pumping station on the Snake River at point of diversion Lot 6, Sec. 7, Range 14E, Township 8S as directed under amended application Permit No. 36-7085 and approved October 26,1976 under the signature of R. Kieth Higginson then the Director of the Department of Water Resources.

   This pumping station is designed to serve both Permits #02-7249 and # 36-7085 with a first phase capacity of 1500 H.P. delivering 14,400 g.p.m., 1600 miners or 32c.f.s. A second phase capacity of 9225 g.p.m. or 20.5 c.f.s. is incorporated in the pumping station.

2. Installed 17,824 ft. of mainlinewhich is over-designed for the present first phase irrigated acres. As the main artery for eventual irrigated developement it will serve the total 2,540 acres area of use under the two above mentioned permits.
3. Installed ten center pivots, twenty two 1320 ft. handlines, and seventy acres of solid set lines.
4. Installed 16,098 ft. of underground lateral lines and 9000 ft. of aluminum lateral lines
5. Installed eight pressurizing pumps and motors and a broad assortment of valves risers, flanges, etc. to provide for an efficient sprinkler irrigation system.

   The total cost of the present irrigation system was $1,178,000. Much of this cost, particularly invested in the river pump station and the mainline, will be allocated to the second phase of the developement.

The above information relates to both Permits #36-7085 and #02-7249.

Attachment #2:

This is the first request for an extension of time under Permit #36-7085.

The Federal Land Bank of Spokane agreed to finance the irrigation development in phases and as economic conditions warranted. The Bank did provide funds for the installation of the pump station located on the Snake River and the main pipeline servicing the development with a capacity great enough to provide water in quantities great enough to irrigate the total of 2540 acres under Permits # 36-7085 and #02-7249. There has been developed in 1981 approxamately 750 acres of area of use under Permit #02-7249 and approxametly 800 acres of area of use under Permit #32-7085. The reason this was to deliver water to the areas that were immediately adjacent to the location of the mainline. The mainline bisects areas of use under both permits. The next phase will irrigate areas of use under both permits which will require only the extension of lateral lines.

Please refer to Attachment #3 the subject matter will relate to both Permits #36-7085 and #02-7249.

Attachment #3:

On July 29, 1976 I applied to the Bureau of Land Management, hereinafter called the Bureau, for an easement to place a river pump station on a location on the Snake River approved by the Idaho Department of Resources and located on Bureau land on Lot 6, Sec. 7, R 14E, T 8S, Boise Meridian and for an easement for an underground pipeline across 2,034.42ft. of Bureau property Lot 6, Sec 7, R14E, T8S and a corner of the SE¼,SE¼, Sec.7, R14E, T8S. See Exhibit #1.

On September 26, 1978 I received from the Bureau Right-of-Way-Grant #I-12511 or 26 months after the request for an easement was made. See Exhibit #2.

Because the easement described above was the first essential to the exercise of both Permits #02-7249 and #36-7085 it is important that you consider this time lag in reviewing my request for an extension of time for showing beneficial use under Permits #02-7249 and #36-7085.

On July 31,1976 I made a request for a Work Order for electrical service to the Idaho Power Co., hereinafter called the Power Co., to provide electrical service for the irrigation developement. See Exhibit #3. In order for the Power Co. to perform on this work order the Bureau would have to first agree to the Grant Easemeant and to grant an easement to the Power Co. to reach the river pump site.

On December 30,1977 I received a letter from James Bruce,then President of the Power Co., advising me that if I was not already hooked up for electrical service they would not provide that service until a resolution of a lawsuit the Power Co. had filed in the Idaho Fourth District Court to determine whether the Power Co. had protectable water rights in the Snake River and its tributaries and certain other areas with ground water potential; therefore because I did not have a hook up prior to the filing of the suit electrical service would not be provided to my proposed irrigation developement. See Exhibit #4.

Though the Bureau had not issued the grant easement to me the Power Co., on my insistance and with inferential legal ramifications and the agreement to the work order did agree to provide electrical service to the developement. See Exhibit #5.

After receiving the grant easement from the Bureau I began my negotiations with three financial institutions to provide capital for the cost of work and equipment for the developement. These negotiations took me to the early months of 1979 and because of the size of the developement my decision was tostart the developement in the fall of 1979 to be ready for the crop year of 1980. However

in April of 1979 the Idaho Public Utilities Commission placed a moratorium on any new electrical service to provide for pumping out of the Snake River, its tributaries, or ground water areas, before mentioned, and related to in Mr. Paul Jauregis, General Counsel for the Power Co., letter of September 27, 1979. Mr. Jauregi, in this letter, also took the position that my request for electrical service should be submitted to the Idaho Public Utilities Commission for its determination whether electrical service should be provided for the developement or not. See Exhibit #6.

The negotiations between myself and the Power Co. had become interminable and in early October of 1979 I retained the services of an attorney Mr. Tom Miller. His letter of October 9, 1979 to the Power Co. brought an immediate response from the Power Co. and they began their engineering plan to service the irrigation system. I provided, at their request, an airial survey and a detailed plan of the irrigation system in order for them to be able to locate all of the electrical installations necessary. It was not until September of 1980 that all of the Power Co. engineering and planning had been completed and an Electrical Service Agreement could be signed. See Exhibit #8. The installation of the irrigation system was begun immediately after the signing of the Electrical Service Agreement and was ready for use March 10, 1981.

As more support for my request for a time extension I would like to draw to the attention of the Water Resources Department the filing of a suit on December 16, 1981 by the Southern Idaho Production Credit Association as Plaintiff against Kenneth S. Ellis, Valley Trout Farms Inc., et. all as Defendendts. The suit is for foreclosure and attaches all real and personal assetts of the defendents. The suit is Number 34014 filed in the District Court-Fifth Judicial District, Twin Falls, Idaho.

Valley Trout Farms Inc. is holder of Idaho Water Resources Department Approved Permit #36-7072 on certain waters commonly known as Bickel Springs located in Hagerman Valley for the purpose of fish propogation. My Approved Permit #36-7085 for irrigation and fish propogation is suborinate in time to Permit #36-7249 on the same waters. The question of the viability of Valley Trout Farms Inc. is being attacked through litigation. It is my position that Permit #36-7085 should have an extention of time until the status of Valley Trout Farms is finally determined.

Form 1370-20
(November 1967)

Exhibit #1

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

No. 651877

July 29, 1976 — DATE

I-12511 — PARENT SERIAL NUMBER

Right of Way — SUBJECT

APPLICANT:

Robert H. Bamfleford
1748 Deer Drive South
Twin Falls, ID 83301

REMITTER IF DIFFERENT THAN APPLICANT:

PURPOSE		AMOUNT
FILING FEE EARNED	INFORMATION IN THIS COLUMN IS FOR OFFICE USE ONLY.	
ADVANCE FILING FEE AND/OR RENTAL		
Nonreturnable fee	142499	300 00

REFER TO THE ABOVE CASE SERIAL NUMBER IN ALL CORRESPONDENCE.

PLEASE INFORM THIS OFFICE OF ANY CHANGE IN ADDRESS

NOTE: This notice is a receipt for monies paid the United States. If these monies are for required fees in connection with your application to lease, purchase, enter, or otherwise acquire an interest in public lands or resources, this receipt is not an authorization to utilize the land applied for and it does not convey any right, title, or interest in the land for which application is made.

RECEIPT

[redacted] Exhibit 1

1748 Dora Drive S.
Twin Falls, Idaho
July 25, 1976

Chief, Division of Technical Services
Idaho State Office
Bureau of Land Management
Room 398, Federal Building
550 West Fort Street
Boise, Idaho

COPY

Dear Sir:

I hereby apply for an irrigation pipeline and pumping station. This application is made pursuant to the regulations of 43 CFR Group 2800, and I agree that the right of way, if approved, will be subject to the terms and conditions of the applicable regulations in 43 CFR Group 2800.

This application is made under the Act of March 3, 1891, (26 Stat. 1101), as amended.

I wish to construct an electrically powered water pumping plant on the Snake River and a steel pipeline to convey water to my land. The pumping plant will generate approximately 3,000 horsepower and the pipeline will be 36" (thirty-six inches) in diamater, and will cross 2,034.42 feet of public land. The pumping plant will cover a total of square feet.

I further request the use of a presently established access road from U.S. Highway No.30 located adjacent to the pump site and the extension of this road to allow service to the power sub-station site and the pump site.

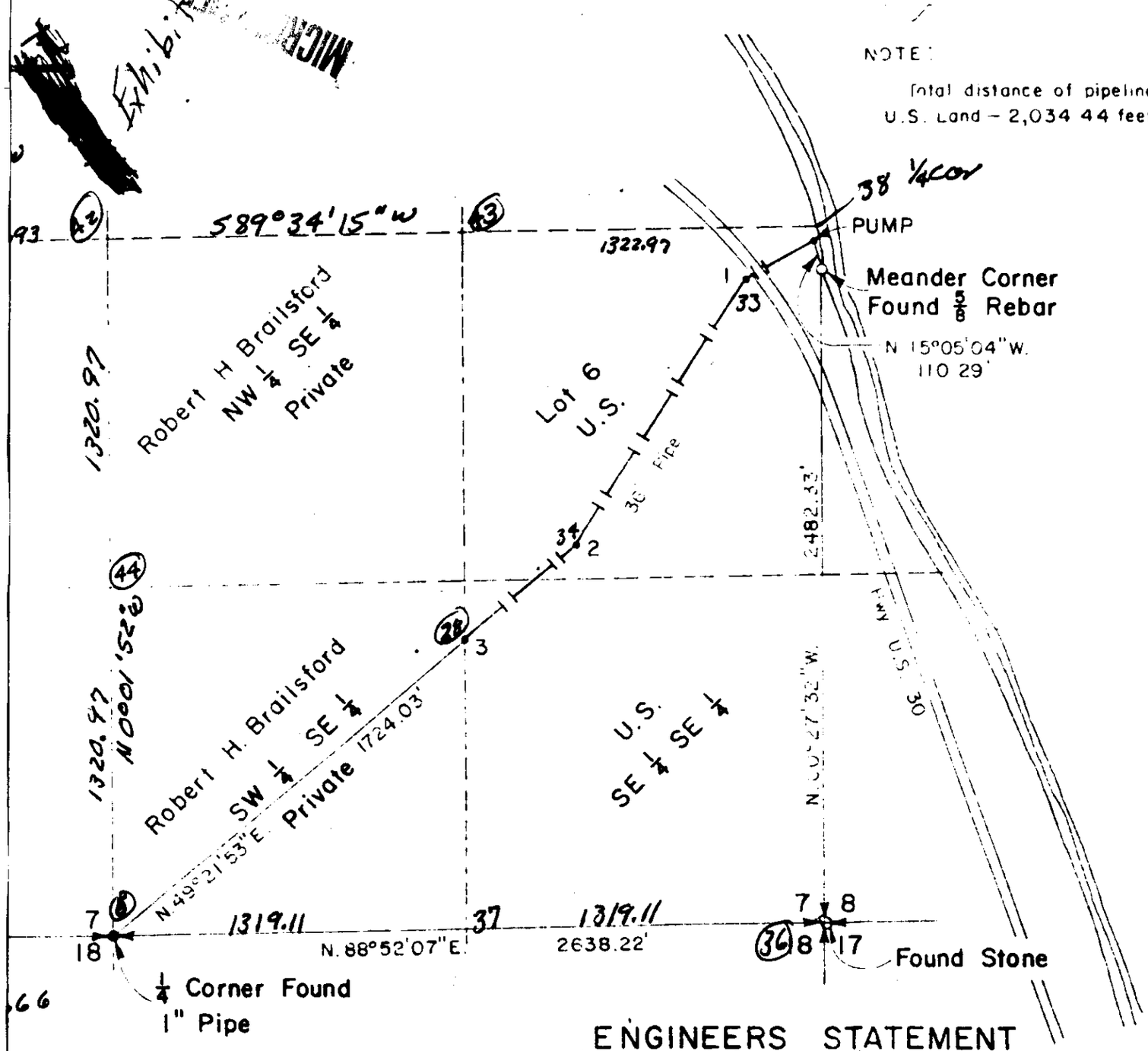
I also request that the easement for the pipeline and the service access road and the sub-station and pump site be for years.

Sincerely yours,

Robert H. Brailsford

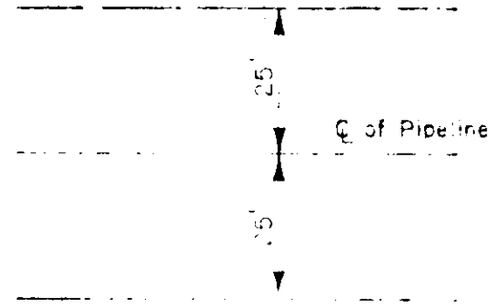
Robert H. Brailsford

RHB/mef



P. I. No.	Station No.	Bearing	Distan
Pump	0+00		
		S.63°29'00"W.	287
1	2+87.16		
		S.30°17'48"W.	1187
2	14+74.65		
		S.49°21'53"W.	559
3	20+34.44		

50' Right-of-Way Req'd except as noted.



APPLICANT CERTIFICATE

I hereby certify that I am [illegible] authorized to represent the above-described applicant to prepare this map, which I have adopted by the applicant as the final location of the works thereby shown and this map is filed as a part of the complete application in order that the applicant may obtain the benefits of the act of March 3, 1891, (26 Stat. 1101) as amended, and I further certify that the right-of-way herein described is for an irrigation pipeline and appurtenances.

ENGINEERS STATEMENT

SURVEY OF

IRRIGATION PIPELINE RIGHT-OF-WAY

Situate in Section 7, T 8 S, R. 14 E., B.M., Twin Falls County,

ISO 2800-9
(April 1978)

Exhibit #2

In reply refer to:
I-12511 (943)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Idaho State Office
Federal Building, Box 042
550 West Fort Street
Boise, Idaho 83724

JUL 2 1982

Department of Water Resources

September 26, 1978

DECISION
:
:
RIGHT-OF-WAY GRANTED

Details of Grant

Serial Number of Grant: I-12511

Name of Grantee: Robert H. Brailsford

Map showing the location and dimensions of grant:

Map designations: Irrigation Pipeline Right-of-Way and Proposed Pump Station (2 Maps)
Date Filed: July 29, 1976

Permitted use by grantee: Pump station, penstock, and access road.

Authority for grant: P.L. 94.579 (Oct. 21, 1976) Title V, 90 Stat. 2743

Regulations applicable to grant:

Code reference: 43 CFR Parts 2800 and 2870

Date of Grant: September 26, 1978

Expiration Date of Grant: 30 Years

Rental:

Amount: Interim five-year rental of $25 paid in accordance with Stipulation No. 19 of Exhibit A.
When payable by grantee: On or before the first day of each five-year period.

Terms and Conditions of Grant

Pursuant to the authority vested in the undersigned by Order No. 701 of the Associate Director, Bureau of Land Management, dated July 23, 1964 (29 F.R. 10526), as amended, a right-of-way, the details of which are shown above, is hereby granted subject to the following terms and conditions:

1. All valid existing rights existing on the date of grant.
2. All regulations specified above.
3. Filing of proof of construction within five years of the date of grant.
4. Further terms and conditions as follows:
   (a) Pursuant to 43 CFR 2801.1-5, the District Manager of the Boise District Office, 230 Collins Road Boise, Idaho, has the authority to conduct all business with the grantee with respect to use of lands and disposition of resources, and the grantee is requested to contact the above-designated official prior to the beginning of construction.
   (b) Stipulations of Exhibits A and B attached hereto and made a part hereof.

William E. Ireland

William E. Ireland, Acting Chief
Branch of L&M Operations

9. Permittee will use only drab colors matching or blending with surroundings in painting any equipment on the pump station, as designated by the authorized BLM officer. No shiny or chrome fixtures will be allowed. The roof over the pump motors should have as low a profile as possible, and be made of wood and shingles.

10. The concrete pump base, electric motors, panel boxes, and all other auxillary components must be constructed as low to the water as possible. Every effort must be made to design the station in such a way that equipment will be concentrated in a small area (possible consideration of installing panel boxes and transformers along the side of pump motor alignment). The entire complex must be constructed to convey a low profile (so panorama views will not be obstructed) and equipment placement must be condensed.

11. Permittee will locate pump station at the extreme northern boundary of the public land applied for, to preserve as much shore frontage as possible.

12. The access area to the pump station must be used in common with the Idaho Power Company for the maintenance of their sub-station, and for recreation pursuits conducted on the remainder of the tract.

13. Permittee will landscape around the perimeter of the pump site as follows: Russian olive or black locust trees, four-wing salt brush (2 lbs. per acre), and sagebrush (¼ lb. per acre) as specified by the authorized BLM officer. Native riparian vegetation along the water's edge must be preserved as much as possible. The lone tree growing between the proposed pump site and highway must be left undisturbed. The penstock pipe will be buried and backfill material around the pipe must be compacted to not less than the density of the natural soil to both eliminate a depression from settlement and prevent the need for "mounding" over and along pipe alignment. The right-of-way alignment must be restored to the original slope contours, hand seeded with crested wheatgrass at a rate of 3 lbs. per acre, 3 lbs. per acre of sodar streambank, and 3 lbs. per acre of basin wildrye, and smoothed over to obliterate construction equipment tracks and to cover the seed.

14. Electric powerline distribution to the pump facility will be via underground wires from an existing pole line corssing the subject land.

15. Permittee will smooth and reseed areas along the access road with crested wheatgrass at a rate of 10 lbs. per acre, and raked to cover the seed.

16. Excavated slopes around the pump station shall not exceed a 1:1 ratio and must be reseeded, by the permittee, with native species to establish good ground cover to prevent erosion; or permittee will construct a cement retaining wall around the inside perimeter of the excavation. The intersection of the cut must be rounded to a 3-foot radius.

17. A BLM official will be on hand during construction to monitor compliance with the above, and stipulations must be fulfilled to his satisfaction.

18. The right-of-way permittee will post a $5,000 performance bond, before starting construction, to assure compliance with these stipulations. The bond will be returned to the permittee upon proper project completion.

19. An interim rental of $25 for the first five-year period has been paid and this amount has been applied to the right-of-way. The permittee will be required to pay additional rental charges if determined to be greater than the $25 after an appraisal is made.

EXHIBIT A

STIPULATIONS
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY I-12511

1. The permittee agrees in all operations under this permit to comply with the applicable state and federal laws and regulations concerning the use of poisonous substances, including insecticides, herbicides, fungicides, rodenticides, and other similar substances. Prior to the use of such substances on or near the right-of-way, the permittee shall obtain from the District Manager approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application, the location for storage and disposal of pesticide containers, and such other information as he may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used. If use of a poison is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

2. Permittee shall survey and clearly mark the exterior limits of the right-of-way. All activities directly or indirectly associated with the construction or maintenance of the pump station, penstock, and access road must be conducted within the limits of the right-of-way.

3. There is reserved to the Secretary of the Interior, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under, or adjacent to the land involved in this grant.

4. This right-of-way may be renewed. If renewed, the right-of-way will be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary to protect the public interest.

5. This right-of-way is subject to all applicable regulations in 43 CFR Part 2800 and to future regulations to be promulgated by the Secretary pursuant to the provisions of the Act of October 21, 1976, P.L. 94579 (90 Stat. 2743).

6. Permittee will contact the area manager, Bureau of Land Management, prior to commencement of construction so that a BLM representative can field check and monitor building activities. A copy of these stipulations are to be made available to all supervisors and foremen in charge of field construction work on the project, which will be reviewed with the construction workers to insure compliance.

7. Permittee will dispose of construction waste material in a properly designated landfill, or burn it in accordance with the State of Idaho Air Pollution regulations.

8. Should any archaeological sites, ruins, or artifacts be discovered during construction activities, construction will immediately be suspended and the BLM District Manager shall be notified. If the district manager finds the damage or destruction to historic or prehistoric remains or artifacts cannot be avoided as a result of planned construction activities, the permittee will be required to provide, at his expense, proper scientific investigation. All investigation and salvage will be covered by an Antiquities Act Permit applied for by the agency doing the survey or salvage work.

20. The land is subject to the provisions of section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818) as amended, and to the condition that in the event the land is needed for the development of power any structures or improvements placed thereon found to interfere with such development shall be removed or relocated as necessary to eliminate such interference at no cost to the United States, its permittees or licensees.

21. Those lands withdrawn for transmission line purposes in lot 6, sec. 7, T. 8 S., R. 14 E., B.M., are subject to the Federal Power Commission's general determination of April 17, 1922 (2nd Ann. F.P.C. Report 128) and to the condition that existing transmission line structures will be protected.

22. The above stipulations are subject to reasonable modification and/or additions if, during engineering consultations, the need is recognized by the authorized BLM officer.

October 6, 1980

Mr. Robert Mitchell
Jarbidge Area Manager
Boise Director
Bureau of Land Management
3948 Development Avenue
Boise, Idaho 83708

Dear Mr. Mitchell:

This is to advise that this bank is holding our Cashier's Check No. 265246, dated today payable to the Bureau of Land Management in the amount of $5,000.00 in lieu of a bond as outlined in the stipulations of your right-of-way Claim No. I-12511

Very truly yours,

Helen McCallie
Senior Vice President

HMc:kg

MICROFILMED

Exhibit 2

Idaho Power Company
WORK ORDER REQUEST

RECEIVED
JUL 2 1982
Department of Water Resources

District Burley Date July 31 1976

GENERAL INFORMATION

Customer Robert Bradshaw 1000 Springs Ranch Nature of Business New pumping project

Mailing Address 1748 Dora Drive South Tele. 733-9161

General Contractor

Address Tele.

Electrical Contractor

Address Tele.

Date Temporary Service needed Date Permanent Service needed April 1st 1977

CO No. Did Customer sign? Power Billing during Construction: Customer Contractor

ENGINEERING INFORMATION

Location: Lot 6 Section 7 Township 7S Range 21E, 13. M

Address ● River side of hiway 30 S just North of Sinclair Swimming unit & 1000 Springs Golf Club.

Right-of-way: Private ✓ Corporate Federal ✓ Other Obtained?

Existing Peak demand Estimated demand New: 1ø 3ø 3

Desired Customer Voltage 2400 Volts Construction: Underground Overhead ✓ Step-down Transformer

FINANCING INFORMATION

Type of Load: Commercial Residential Irrigation Other

Underground WO Costs $ Up/Down Charge $

Overhead WO Costs $ How will Excess Cash be refunded?

OH/UG Difference $

Formula Cost $ GAR/GMR $

Excess footage Cost $ (EAR)/EMR $ 81,750 OC

Depreciation Form Cost $ No. Lots/Spaces

Step-down Transformer Cost $ No. Meters: Comm. Res.

Excess Cash $ Contract required

Facilities Charge: Annual $ Mo. $

IRRIGATION

Total HP 3270 hp

Well Sump Reservoir

River ✓ Sprinkler ✓ Wheel line ✓

Solid Gravity

No. Acres 1800 New Suppl.

Head

Seasonal Advance Required:

Monthly $ Annually $

Additional Information

The undersigned acknowledges that this form is for information purposes only and that Idaho Power Company has made no agreement to serve.

Dated this 2nd day of July, 1976

Robert N. Bradshaw

Prepared by Hall Walker

Approved by

813 8M 8-75

SNAKE RIVER



HYDRO POWER

Exhibit #4

IDAHO POWER COMPANY

BOX 70 BOISE, IDAHO 83721

RECEIVED
JUL 2 1982
Department of Water Resources

December 30, 1977

Dear Wateruser:

The records of the Idaho Department of Water Resources indicate that you have either filed an application or been granted a permit to appropriate waters of the Snake River, or surface or subterranean waters which are, or may be, tributary to the Snake River between Milner Dam and Hells Canyon in the State of Idaho.

In the summer of 1977, a complaint was filed against the Idaho Power Company with the Idaho Public Utilities Commission suggesting that the Company had been remiss in not protesting all applications to divert water which would deplete the flows in this reach of the Snake River and its tributaries. It was also alleged that this failure to protest water diversions has and will cause a reduction in the generating capacity of the Company's hydroelectric plants on the Snake River and its tributaries between Milner Dam and Hells Canyon. The complaint also alleges that this alleged failure to protest water diversions has and will increase electrical costs to the Company's customers.

Due to this controversy, the Company has filed a lawsuit in the District Court of the Fourth Judicial District of the State of Idaho for Ada County asking the Court to determine whether or not the Company has a protectable right in the waters of the Snake River and its surface and subterranean tributaries between Milner Dam and Hells Canyon, and the extent which the Company must attempt to prevent present and future water withdrawals. The Company also requested the Court, pending a decision, to temporarily prohibit any water applicant permit holder from requiring the Company to hook up electricity to an installation which would allow the pumping of water which may further deplete the flows in this reach of the Snake River and its tributaries.

If your contemplated electrical installation for water pumping has not been previously hooked up for electric service, be advised that until these matters have been ruled on by the Court an electrical hook up for your water pumping purposes, other than for domestic purposes, will not be made, unless ordered by the Court. Please understand that these proceedings are complex and are necessary to determine future water policies for the State of Idaho and the Company. Your patience and consideration in this matter will be appreciated.

Very truly yours,

James E Bruce

James E Bruce
President

JEB:mlm

Exhibit #5.

SNAKE RIVER
HYDRO POWER

IDAHO POWER COMPANY

RECEIVED
1978
Department of Water Resources

BOX 70 • BOISE, IDAHO 83721

January 13, 1978

Mr. Robert Brailsford
1748 Dora Dr.
Twin Falls, ID 83301

Dear Mr. Brailsford:

Because we received your application for electrical service dated July 31, 1976, prior to December 29, 1977, we will connect electrical service covered by that application. However, we have been advised by our legal counsel to advise you that Idaho Public Utilities Commission Case No U-1006-124 and Idaho Fourth District Court Case No 62237 may require the Idaho Power Company to contest your right to divert water from the Snake River or its surface or subterranean tributaries because it would cause a depletion of water which is subject to the prior water rights of the Company.

This letter shall constitute official notice to you that even though you have requested electrical service, you may have a water right inferior to the water rights of the Idaho Power Company and your water diversion could be enjoined in its entirety by a court or agency of competent jurisdiction. Neither this letter nor the electrical service connection shall in any respect be deemed a waiver by the Idaho Power Company of its right to contest your water right, or any of the other rights of the Idaho Power Company.

Very truly yours,

G. L. Elliott
Division Manager

Receipt Acknowledged:

Date 1-18-78

Applicant Robert Brailsford

Exhibit #6

RECEIVED
JUL 2 1982
Department of Water Resources



IDAHO POWER COMPANY

BOX 70 BOISE, IDAHO 83707

(208) 383-2678

PAUL L. JAUREGUI
Secretary and General Counsel

September 27, 1979

Mr Thomas A Miller
Hawley, Troxell, Ennis & Hawley
P O Box 1617
Boise, Idaho 83701

Dear Mr Miller:

On September 20, 1979, I met with Mr Robert Brailsford to discuss the status of his electric service application of July 31, 1976, for 1,700 horsepower of irrigation pumping at his proposed river pumping station near Thousand Springs plus an undetermined amount of horsepower pressurizing pumps and pivots. Our discussion included a review of the status of litigation regarding water rights and the Commission's April 1979 decision regarding the irrigation pumping moratorium. Following my conversation with Mr Brailsford, I received a telephone call from you whereupon we reviewed the plan to submit the question of Mr Brailsford's request for irrigation service to the Idaho Public Utilities Commission for its determination. You requested that I maintain a hold position at this time until it is determined whether that question should be submitted by the Company or by you on Mr Brailsford's behalf.

It is my understanding that Mr Brailsford intends to determine and to advise this Company's Twin Falls Office in the near future locations of irrigation and electrical facilities. Distribution engineering can then be carried out in a normal manner to determine whether transmission and/or substation engineering will be required. All of this engineering is dependent upon a determination being made as to whether service can be rendered in view of the time lapse, the court proceeding and the April 1979 Commission Order.

Very truly yours,

Paul L Jauregui

PLJ:slp

cc: Robert Brailsford
G L Elliott

Exhibit 7

RECEIVED
JUL 9 1982
Department of Water Resources

HAWLEY TROXELL ENNIS & HAWLEY
ATTORNEYS AND COUNSELORS
ONE CAPITAL CENTER
POST OFFICE BOX 1617
BOISE, IDAHO 83701
AREA CODE 208
TELEPHONE: 344-6000

October 9, 1979

ROBERT I. TROXELL
JESS B. HAWLEY, JR.
PAUL B. ENNIS
JOHN T. HAWLEY
THOMAS A. MILLER
M. NEAL NEWHOUSE
CRAIG L. MEADOWS
ROBERT L. BILOW
JOSEPH D. McCOLLUM, JR.
WAYNE B. SLAUGHTER, JR.
GARY D. BABBITT
P. CRAIG STORTI
RICHARD F. GOODSON
CARL W. HARDER
T. STEVE JOYCE
EDWIN V. APEL, JR.
KAREN L. LANSING
EUGENE A. RITTI
RICHARD G. SMITH

Mr. Paul Jauregui
Secretary and General Counsel
Idaho Power Company
222 North 13th Street
P.O. Box 70
Boise, Idaho 83707

RE: Robert H. Brailsford - application for electrical service for irrigation project

Dear Mr. Jauregui:

We write as attorneys for Mr. Robert H. Brailsford of Twin Falls regarding the above referenced matter. Attached for convenient reference are copies of the following:

1. Idaho Power Company Work Order Request dated July 31, 1976 (Brailsford application for electrical service).

2. Idaho Power Company disapproval letter to Mr. Brailsford of August 31, 1977.

3. Idaho Power Company commitment letter to Mr. Brailsford dated January 13, 1978.

4. Your letter to me dated September 27, 1979.

Since my initial telephone conversation with Mr. Brailsford and my call to you, I have had an opportunity to review this matter further, including voluminous documents which consist of only part of Mr. Brailsford's almost massive files regarding this project.

I understand that the BLM rights of way to Idaho Power Company and to Mr. Brailsford which were necessary conditions of the project were not granted until late in 1978 and that

Mr. Brailsford's grant of an easement across his subject property for Oregon Trail preservation purposes, which was a condition of the BLM grant of right of way to him, was not finalized until early in 1979. The time, effort and expense that both parties have devoted to these matters, alone, constitute legal consideration and indicate the commitment of each.

Mr. Brailsford has approved water permits for this project, with priority dates prior to the commencement of the Mullaney proceedings in the Public Utilities Commission and, of course, he has a commitment from Idaho Power Company which predates that litigation (Enclosure 3).

Mr. Brailsford wishes to press forward now with the project, looking to completion in mid-March of 1980.

Presenting the matter to the Idaho Public Utilities Commission, in our opinion, is neither necessary nor advisable in view of the circumstances.

In the first place, we are looking at a very considerable delay without any idea of what the PUC might decide. Any such proceedings in the PUC would have to be pursuant to a reservation of rights such as those stipulated to in the Charlie Marshall proceedings which led to the April 1979 decision referred to in your letter. The time spent in the PUC could be totally wasted.

Secondly, Mr. Brailsford has a commitment from Idaho Power Company predating the Mullaney proceeding, whereas in the Charlie Marshall proceeding the plaintiffs did not. It is our understanding that Idaho Power Company has followed a general policy of hooking up customers who had pending applications at the time the Mullaney proceedings were instituted, without PUC approval. We see no basis for discrimination here, wholly aside from principles of contract law. (We might add that Idaho Power Company has singled out irrigation projects for discriminatory treatment. It has not refused service to projects involving other uses of water, which also might tend to erode its hydrogeneration water rights.)

Mr. Brailsford intends to proceed with his engineering work and will cooperate with Idaho Power in every way possible to permit the project to be completed and energized prior to the 1980 irrigation season.

Unless I hear from you or from your independent counsel to the contrary, I will assume that you concur and that Idaho Power Company will honor its commitment in this case, without involving the Public Utilities Commission and without the necessity of other legal action.

Yours truly,

THOMAS A. MILLER

TAM:pe
cc: Mr. Robert H. Brailsford

Exhibit #4

RECEIVED
JUL 2 1982
Department of Water Resources
Southern Division

ELECTRIC SERVICE AGREEMENT

Buhl

1. ROBERT BRAILSFORD, herein called Customer, agrees to purchase, receive, and pay for, and IDAHO POWER COMPANY, herein called Company, agrees to supply electric service required by Customer for his irrigation operations at or near Hagerman, in Twin Falls County, State of Idaho, up to the amount of horsepower herein set forth, in the form of three phase, alternating current at approximately 60 cycles per second at 480 volts, in accordance with and subject to the Company's standard Rules and Regulations as now or hereafter in effect and on file with the Idaho Public Utilities Commission, and at the rates hereinafter provided for. All payments for service shall be made at the Company's office at Buhl, Idaho.

2. (a) All electric power and energy, up to the amount specified in Exhibit A, attached hereto and made a part hereof, shall be supplied and paid for in accordance with the Company's applicable irrigation pumping service rate schedule, as now or as may be hereafter modified and approved by the Idaho Public Utilities Commission.

(b) Points of delivery under this Agreement to be metered and billed separately are set forth in Exhibit A. In the event the Customer desires, subsequent to commencement of service at the above mentioned points of delivery, to move the location or change the size of a pump installation, Customer shall pay for any costs incurred by the Company for such change.

(c) The minimum monthly charge shall be the Demand Charge for the current month's maximum demand, but not less than $15.27 for each delivery point for any month that service is connected.

(d) The minimum annual charge shall be the higher of the following:

(i) An amount sufficient to make the total charge for service under this Agreement for the twelve-month period ending February 28 of each year, equal to $26.00 per horsepower for the total amount of horsepower shown on Exhibit A, or $71,760.00, whichever is the higher.

(ii) An amount sufficient to make the charge for service, at any one point of delivery shown on Exhibit A, under this contract for the twelve-month period, ending February 28 of each year, equal to $10.00 per horsepower.

MICROFILMED

#3

The minimum charges set forth above shall apply during the term of this Agreement and any renewals or extensions thereof, and shall be payable by the Customer's successors or assigns.

3. In consideration of charges specified under paragraph 2 above, Customer further agrees to pay a one-time connection charge in the amount of Forty-seven Thousand Eighty-five Dollars ($47,085.00), which connection charge is that portion of the capital investment required to serve Customer that is not financed by revenues collected under paragraph 2 above.

4. In addition to charges computed in accordance with paragraph 2 above, Customer further agrees to pay an annual Facilities Charge in the amount of six percent (6.0%) per year times the connection charge specified in paragraph 3, during the initial term and any renewals and extensions of this Agreement. It is understood that said Facilities Charge represents the annual costs of the unfinanced investment not recoverable from charges under paragraph 2.

5. It is further mutually understood and agreed, in consideration of the factors relating to the construction of this extension and facilities and the use of electrical service therefrom, that Customer will deposit a joint letter of instructions of the parties and U S Treasury Notes or equivalent securities in the aggregate principal amount of $26,000 with the Twin Falls Bank & Trust Co., P O Box 7, 102 Main Avenue South, Twin Falls, Idaho 83301, which amount represents the net cost (non-salvable part of the total cost) of installing and removing the lines and facilities required hereunder. After the sixth full year of service under the contract, such amount shall be reduced by approximately twenty (20) percent and by 20 percent for each full year thereafter until all of the instruments deposited by the Customer have been released. Said instruments remaining with the bank from time to time shall be released to the Company in the event of termination of service by the Customer or abandonment of operation.

6. In addition, Applicant agrees to pay Company thirty (30) days in advance of construction the Overhead-Underground Difference in the amount of $11,200.00, which payment shall be nonrefundable.

7. It is understood and agreed between the parties that:

(a) Customer shall make the advance payment required under Company's applicable irrigation pumping service rate schedule and the Facilities Charge in paragraph 4 above. Power and energy required will be measured and billed by meters at

MICROFILMED

each point of use and such use and billing will be for the operation of all facilities to supply water for Customer.

(b) Company will not be required to energize facilities for operation of pumps until the total advance payment has been received from Customer. Failure to make this advance payment each season shall be considered as termination or abandonment of the Agreement.

8. During the term of this Agreement and any renewals and extensions thereof, the Customer agrees to and will purchase from the Company all electric power and energy required for its operations at the above location, such power and energy, up to the amount hereinabove set forth, to be supplied and paid for at the rate set forth in paragraph 2(a) above, it being understood and agreed that when the Customer's horsepower exceeds such amount, it is the intention of the parties that new and superseding rates will be agreed upon, applicable to the Customer's load and service as then required.

9. This Agreement and the rates, terms and conditions of service set forth or incorporated herein, and the respective rights and obligations of the parties hereunder, shall be subject to valid laws and to the regulatory authority and orders, rules and regulations of the Idaho Public Utilities Commission and such other administrative bodies having jurisdiction.

10. Nothing herein shall be construed as limiting the Idaho Public Utilities Commission from changing any rates, charges, classifications or service, or any rules, regulations or conditions relating to service under this Agreement, or construed as affecting the right of the Company or the Customer to unilaterally make application to the Commission for any such change.

11. The initial term of this Agreement shall extend from March 1, 1981, to February 28, 1991, and such term shall be automatically renewed and extended from year to year thereafter, unless and until either party shall notify the other party in writing not less than twelve (12) months prior to any such expiration date of its intention to terminate this Agreement.

12. This Agreement shall be binding upon the parties and their respective personal representatives, heirs, devisees, successors and assigns.

Executed this 24th day of September, 1980.

ROBERT BRAILSFORD

ATTEST
WITNESS:

1964 Filer Avenue East
Twin Falls, Idaho 83301

MICROFILMED

IDAHO POWER COMPANY

By _____
Vice President

(CORPORATE SEAL)

ATTEST:

_____
Barton L Kline
Assistant Secretary
P O Box 70
1220 Idaho Street
Boise, Idaho 83707

MICROFILMED

BDF
ok to file

November 4, 1980

MEMO

TO: Files 36-7786 - 36-7787 - 36-7085

FROM: Loren O. Holmes LH

RE: Estimate of Flow of Bickel #2/Bridal Veil Springs
9-19-80

BICKEL SPRINGS #2

Diversion to Brailsofrd pipeline	10 cfs
Leakage over the North Falls	1
Diversion thru Valley Trout Upper ponds	49
TOTAL FLOW, BICKEL #2	60 cfs

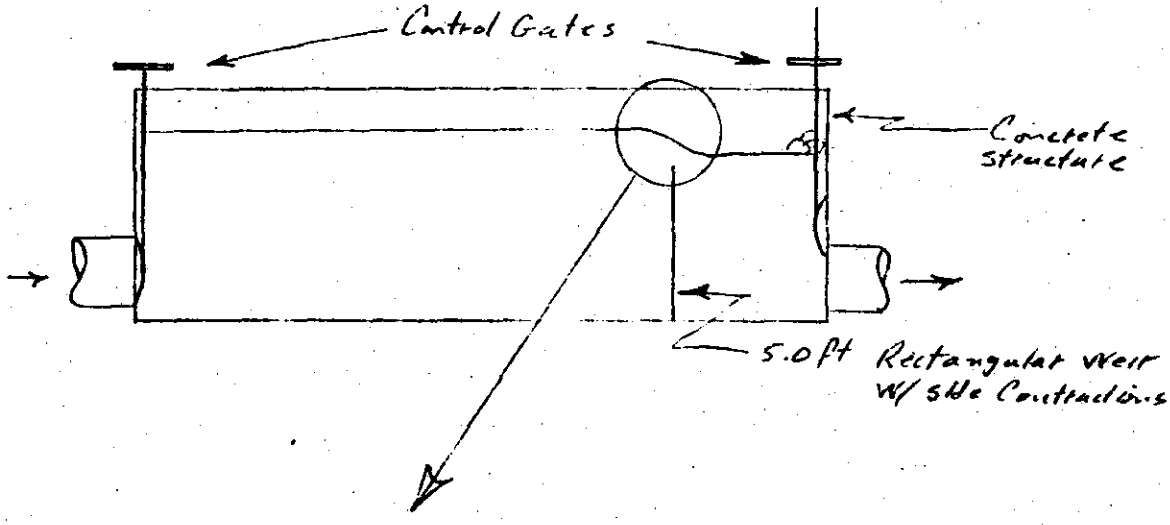
Total flow out of Valley Trout facility = 126 cfs

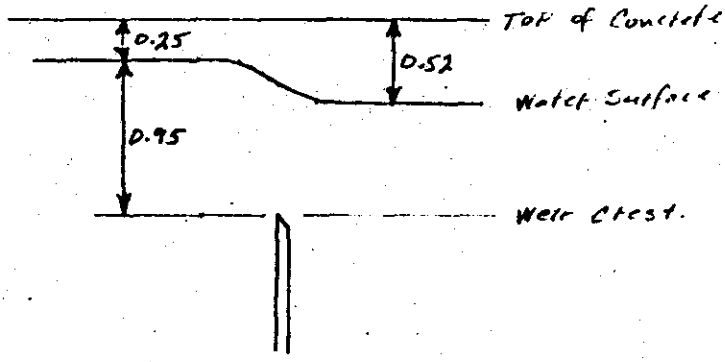
Total flow of Bickel #2/Bridal Veil Spgs= 137 cfs

Flow was estimated by a 5 feet rectangular weir operating under submerged conditions on the Brailsford pipeline and by reading the heads on 30 discharges on the upper Valley Trout raceways and on 104 discharges at the outlet of the Valley Trout facility. to the Snake River. All pond discharges are 4.3 feet wide.

Volumetric measurements were later made at another trout farm under similar conditions using a bucket and stopwatch. This information was used to derive an adjusted constant for use in the weir formula. The formula used to compute discharges from the raceways is $Q=(3.631)(4.3)H^{3/2}$.

Brailsford Pipeline Measuring Device 9-19-80

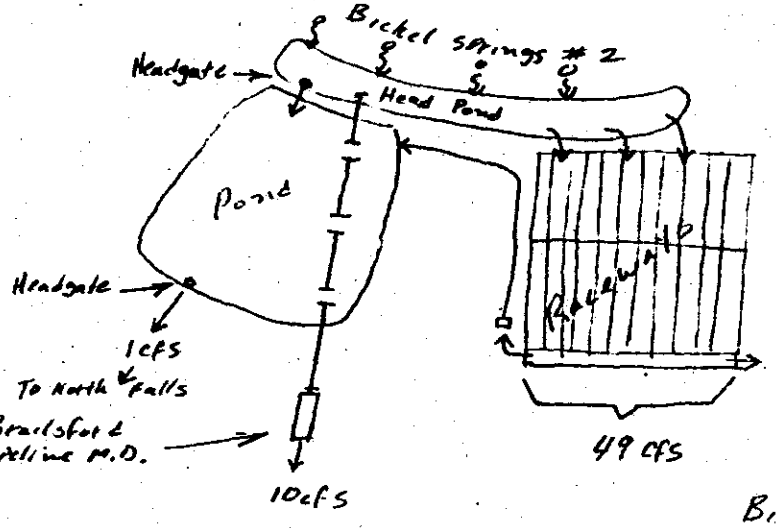




$Q = 3.33 H^{3/2} (L - .2H) \Rightarrow 14.83 cfs$

$d/H = .72 \Rightarrow C' = .68$ (Table 13, USBR Water Measurement manual)

$\therefore Q = \underline{10.08 \text{ cfs}}$



Bickel Springs # 2
Lot 8 Sec 6 T8S R14E
9-19-80

Determination of Discharge Coefficient
for 2" board Weirs at Trout raceway discharges

Volume of Bucket = .722 ft³

Width of Bucket = .84 ft

Width of Weir = 4.5 ft

Average Time to fill = 2.46 Sec

Average Head = .21 ft

$$\frac{.722\ ft^3}{2.46\ sec} \Rightarrow \frac{.293\ cfs}{.84\ ft} \Rightarrow .349\ cfs/ft$$

$$.349\ cfs/ft \times 4.5\ ft = 1.572\ cfs \quad @\ H = .21\ ft.$$

Weir formula: $Q = CLH^{3/2}$

$$C = \frac{Q}{LH^{3/2}} = \frac{1.572}{4.5(.21)^{1.5}} = \underline{\underline{3.631}}$$

MICROFILMED

ROUTING SLIP

DATE 7/18 TIME

TO: Bob Gleason BDF | REF. No. (if any)

FROM: (show title) Southern

FOR YOUR:	REVIEW AND:	PER:
☒ Information	☐ Call Me ☐ See Me	☐ Our Conversation
☐ Approval	☐ Comment & Return	☐ Your Request
☐ Signature	☐ Take Proper Action	☐ Boss's Request
	☐ Draft a Reply for Me	

RECEIVED
JUL 21 1980
Department of Water Resources

Jim L.

Here is a request for m.d. waiver from Mr. Braisford. I dont see any problem with this. I think an access port or m.d. should be required on pumping plant from river. Bob

ROBERT BRAILSFORD
1964 Filer Avenue, East
Twin Falls, Idaho 83301

RECEIVED
JUL 17 1980
Department of Water Resources
Southern District Office

July 18, 1980

Mr. Loren Holmes
Idaho Water Resources Dept.
1041 Blue Lakes Blvd. N.
Twin Falls, Idaho 83301

Dear Mr. Holmes:

The preliminary planning for the irrigation development which will use water under Water Permit 36-7085 is very nearly completed. The only agreement not consumated is with the Federal Land Bank, 333 North 13th Street, Boise, Idaho, represented by Mr. Joe Kennedy. Mr. Kennedy has requested of me as a part of the information for completion of a loan I have requested from the Bank that I ask the Water Resources Dept. for a waiver on the stipulation in the amendment to 36-7805 that refers to the requirement for an approved measuring device to measure the water from the Bickel Springs as it enters the Snake River. I request the waiver for the following reasons:

1. The spring which supplies the water for 36-7085 has, as a consequence of Valley Trout Co. comingling of all of the water in this series of what is known as a part of the Bickel Springs, lost its identity as it enters the Snake River. Valley Trout Co. under Amended Permit #36-7072 diverted the water through a stream alteration permit to comingle with the other springs in the area.

2. The non-consumptive use of the Bickel Springs permitted to Valley Trout under 36-7072 is 215c.f.s. The 20c.f.s. permitted to me under 36-7085 is a very small part of the total of the springs. On this matter and for substantiation of my request I invite personal observation by the Water Resources Department.

Verified per telecon/ Loren Holmes DRT 8/13/80

3. Present statutes require Valley Trout Co. to incorporate in their fish propogation facilities measuring devices suitable for measuring their non-consumptive use of these waters as it either enters or leaves their facilities but before it enters the Snake River. At this time it can be determined that the 20c.f.s. permitted to me will in fact be entering the river to be diverted by me

under 36-7085 for consumptive use. The fact that the measurement of these waters be done by 1983 and the fact that water under 36-7085 will be comingled with the much greater amount under 36-7072 should prove in fact that the 20c.f.s. has entered the river.

Thank you for your consideration.

Yours very truly,

Robert Brailsford

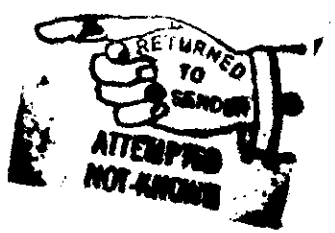
Robert Brailsford

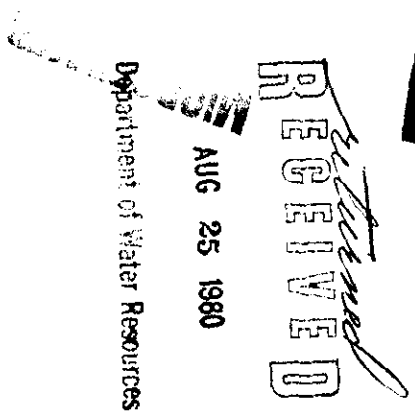
ROBERT BRAILSFORD
1964 Filer Avenue, East
Twin Falls, Idaho 83301

Mr. Loren Holmes
Idaho Water Resources Dept.
1041 Blue Lakes Blvd. N.
Twin Falls, Idaho 83301

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Statehouse
Boise, Idaho 83720

PRIORITY
FIRST-CLASS





Robert H. Brailsford
1748 Dora Drive
Twin Falls, Idaho 83301

1964 Filer Ave East
Twin
mailed 08-25-80
ID order remained

August 21, 1980

Robert H. Brailsford
1748 Dora Drive
Twin Falls, Idaho 83301

Dear Mr. Brailsford,

The enclosed Order removes the measuring device condition at the point where Bickel Springs enters the Snake River.

You should note however, that it does not remove the requirement that measuring devices be installed and maintained at the points of diversion located on the Snake River.

If you have any questions regarding this matter, please contact us.

Sincerely,

DAVID R. TUTHILL, JR.
Supervisor, Water Allocation Section

DRT:mr

Enclosure

cc: with Order
Joe Kennedy
Federal Land Bank
Box 7646
Boise, Idaho 83707

December 16, 1977 Re: Permit No. 36-7085

Robert Brailsford
1964 Filer Ave., East
Twin Falls, Idaho 83301

Dear Mr. Brailsford:

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

The time within which to submit proof of beneficial use of water has been extended to December 1, 1982.

Sincerely,

Jan Grover
Water Rights Supervisor

SNAKE RIVER



HYDRO POWER

IDAHO POWER COMPANY

P.O. Box 8
TW Falls, ID 83301
August 31, 1977

RECEIVED
Department of Water Resources

Mr Robert Brailsford
1748 Dora Dr
Twin Falls, ID 83301

Dear Mr Brailsford:

On September 21, 1976, you applied for service for 1700 HP of irrigation pumping at your proposed river pumping station near Thousand Springs, plus a presently undetermined amount of horsepower for pressurizing pumps and pivots. It is our understanding that you desire this service for the 1978 pumping season.

As you may be aware, a formal complaint has been filed against the Company by Matthew Mullaney and John Peavey, together with other irrigators and persons, which requests that the Public Utilities Commission of Idaho take action to compel the Company to prevent upstream depletion of the Snake River for irrigation purposes in order to avoid erosion of the Company's water supply for hydrogeneration purposes. The Commission apparently is of the opinion that this erosion causes the acquisition of more expensive thermal power generated by Idaho Power Company at its steam plant or purchased from other utilities. The Commission has determined that it will hear this complaint at a future date.

Until the apparent conflict between the diversion of water for agricultural purposes and the use of existing water supplies for hydroelectric purposes is resolved by either the Idaho Public Utilities Commission or the courts, the Company feels compelled to hold in abeyance any applications for new irrigation pumping, which have the effect of depleting existing water supplies for hydrogeneration on the Snake River.

Very truly yours,

G L Elliott
Division Manager
IDAHO POWER COMPANY

GLE/kd

cc: T A Spofford

October 25, 1977
1964 Filer Ave., East
Twin Falls, Ida

RECEIVED
OCT 28 1977
Department of Water Resources

C. Stephan Allred, Director
State of Idaho Dept. of Water Resources
373 West Franklin St.
Boise, Idaho

Dear Sir:

In answer to your letter of September 30, 1977, relating to Water Permit No. 36-7085, I request an extension of time before submitting proof of application of water to beneficial use. My request is based on the following conditions.

Permit No. 36-7085 was subject to the prior filing of Permit No. 36-7121 issued to Norman Standahl and Geo. H. Lemmon. The application of the water under this permit was challenged by Willis Ritter in the Idaho Judicial Fifth District Court. A judgment of this court held that Permit No. 36-7085 had been applied in an illegal manner. The judgment was then appealed to the Idaho Supreme Court and in July this court upheld the judgment of the Fifth District Court. Under Idaho statute, Standahl and Lemmon or their successors are allowed one year to apply the waters under Permit No. 36-7085 after the termination of the litigation, and as a consequence I could apply for an additional five years, or July, 1982, however.

A letter from the Department of Water Resources dated October 26, 1976, signed by R. Keith Higginson, was mailed to the law firm of Parry, Robertson, Daly & Larson, acting in my behalf, allowing an amendment for a change of point of diversion, under Permit No. 36-7085, from the Bickel Springs to the south bank of the Snake River permitting me to use the non-consumptive waters allowed under Standahl and Lemmon permit No. 36-7121 for consumptive agricultural use to the extent of 20 c.f.s. I assume that this date, October 26, 1976, would be a date upon which the five-year grace period for the filing of a beneficial use affidavit could be based, allowing me until October, 1981, to apply the water.

On July 26, 1976, I applied to the Bureau of Land Management for an easement to build a pumping plant on the south bank of the Snake River. This parcel of land is in the same location as one of the points of diversion allowed me in the above mentioned letter from the Dept. of Water Resources, and was requested for purposes of savings in construction costs and for considerable savings in electrical energy use. After an extended investigation in the preparation of an environmental impact statement, the Bureau has indicated that if certain steps are taken by me to preserve a section of the Oregon Trail that traverses my deeded ground, and if these steps are approved by Dr. Merle Wells of the

Idaho Historical Society and by the President's Advisory Council on Historic Preservation (1522 K Street, N.W., Washington, D.C.), the request for the easement for the pump station and a portion of my main line will be approved. I believe, after fifteen months of much correspondence and intensive negotiation, this matter is close to resolution. If this request is approved I would presume that this date would be eligible to be used for the beginning of the grace period before filing a proof of beneficial use permit.

Recently a group of Idaho citizens have applied for a hearing before the Idaho Public Utilities Commission for the purpose of determining whether or not the Idaho Power Co. was using all of the water they were entitled to out of the Snake River for electrical power generating purposes. As a consequence the Idaho Power Co. has advised me that my application for electrical power to operate a water pumping plant at one of the points of diversion will be held in abeyance until this question is resolved. A date the Idaho Power Co. will be able to deliver power to me is a matter of real conjecture. Enclosed is a copy of the letter from the Idaho Power Co. to me.

During the week of Oct. 17-24 the Idaho Power Co. filed a District Court suit in Ada County, asking the court to determine the rights of the various water users of the waters of the Snake River from the Swan Falls Dam to Milner Dam. I am presuming the Idaho Power Co. will hold my approved request for power in abeyance until these matters are resolved.

Bob Fleenor suggested that it might be well for me to trace this maze of circumstances as they apply particularly to my approved applications, and thereby provide a record for future reference.

The only date presently practicable to use as a base for an extension would be October 26, 1976, the day Keith Higginson approved the new points of diversion which, if the department will allow me the full grace period, would make my affidavit of proof of beneficial use due October, 1981. I apply for this date, understanding that I have the privilege because of litigation involving my water permits to request additional extensions.

Yours very truly,

Robert Brailsford

RB/mef
Enc.

September 30, 1977 CERTIFIED MAIL 138960

Re: Permit No. 36-7085

Robert Brailsford
1749 Dora Drive South
Twin Falls, Idaho 83301

Dear Mr. Brailsford:

One of the conditions of approval of your water Permit No. 36-7085 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before December 1, 1977. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

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

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

C. Stephen Allred

C. STEPHEN ALLRED
Director

CSA:jfr

Enc: Proof affidavit

cc: John Rosholt, Parry, Robertson, Daly & Larson
P. O. Box 525, Twin Falls, ID 83301

PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY.
  Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO: 36-7085

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
P. O. Box 525, Twin Falls, ID 83301

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	32659	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

Sherry Pace

4. DATE OF DELIVERY — POSTMARK

DEC 3 1976

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: — CLERK'S INITIALS

DEC 3 1976 TWIN FALLS, IDAHO

☆ GPO : 1975—O-568-047

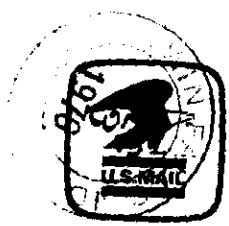
UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.
* Complete items 1, 2, and 3 on reverse side.
* Moisten gummed ends and attach to back of article.

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



RETURN TO

DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

December 2, 1976 CERTIFIED MAIL #32659

Re: Permit No. 36-7085 - Robert H. Brailsford

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
P.O. Box 525
Twin Falls, Idaho 83301

Dear Mr. Rosholt:

Enclosed herewith is a copy of the Application for Amendment for Permit No. 36-7085 which has been approved in part.

Also enclosed is receipt No. 5915 in the amount of $10.00 covering the amendment application filing fee.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:DR
Enc: Copy of amendment w/Order
Receipt #5915

bc: IDWR - Southern Region

RECEIVED
OCT 29 1976
Department of Water Resources

PARRY, ROBERTSON, DALY & LARSON
LAWYERS

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

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

TELEPHONE
(208) 733-3722

OUR FILE NUMBER

DIRECTOR	
PLANNING	
WATER PLAN	
TECH. STUDIES	
[illegible]	
ENGINEERING	
WATER RIGHTS	
INTERSTATE	
LEGAL	
FISCAL	
BOARD	
FILES	

October 28, 1976

Mr. R. Keith Higginson, Director
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Robert H. Brailsford, Permit No. 36-7085

Dear Keith:

Thank you for your favorable consideration of the Application for Amendment submitted concerning the above permit which allows the addition of 3 points of diversion. Pursuant to your letter of October 26th, my client would contemplate the installation of a measuring device.

Because of my misinterpretation of the last paragraph of your letter, and because of your absence, a few minutes ago I spoke with Bob Fleenor and Sharon Gass concerning its meaning. If you are asking as to whether or not we would appeal your action on the first application for amendment by which you approved the additional points of diversion, then obviously you can be assured that we have no intention of appealing that decision and if you would require, I would advise my client to execute a waiver of his right to appeal in that regard. You may treat this letter as our commitment that we will not appeal your decision on the Application for Amendment that you have approved.

We would ask you now to consider the Application for Amendment which would change the place of use. As requested in our letter of transmittal dated October 19, 1976, concerning the Application for Amendment involving the proposed change of place of use, we would ask that you now consider that application. I understand your letter of October 26, 1976, you would propose to approve the change insofar as the 1,008 acres are concerned, but would deny the inclusion of the 392 acres. I cannot project my client's inclination to appeal if this is the order that you issue, but in any event, the appeal would only be as to the portion involving the 392 acres and presumably the order would remain valid and binding and in full force and effect concerning the 1,008 acres. It would be my suggestion that a formal order be prepared in this regard with separate findings of fact, or the findings actually be included in the order so that if my client would desire to appeal a portion of the order that is unfavorable to him, that we could do so.

If there are any questions or this proposed procedure is not acceptable to you, please advise and I will do whatever is necessary to get this application on the changed land list in a form to be considered at your early convenience.

Sincerely,

John A. Rosholt

JOHN A. ROSHOLT

JAR:bg
cc: Bob Brailsford

October 26, 1976

Mr. John A. Rosholt
PARRY, ROBERTSON, DALY & LARSON
P.O. Box 525
Twin Falls, ID 83301

RE: PERMIT NO. 36-7085

Dear John:

This acknowledges receipt of your letter of October 19, 1976 with which you forwarded applications for amendment of permit no. 36-7085. Before considering the applications for amendment, I wish also to acknowledge that we have accepted and recorded the assignment of this permit from Brailsford Brothers to Robert H. Brailsford.

I am returning to you, approved, the first application for amendment by which Robert H. Brailsford added three points of diversion for the irrigation portion of the water proposed to be irrigated under the application. Under this amendment, it is our understanding that the waters sought to be appropriated will be allowed to flow into the Snake River and be diverted on the opposite bank at three new points. You should understand that this approval is upon the condition that Mr. Brailsford install a measuring device as necessary to show that the requisite amount of Bickel Springs water is delivered into the Snake River in order to be allowed to pump an equal amount from the river on the opposite bank.

With regard to the second application for amendment, we have considered the possible effect of the amendment by adding additional acres to the original permitted acreage. It is our determination that approval of the full application as proposed would constitute an enlargement in use of the original right.

Therefore, I find that I can not approve that portion of the amendment.

Since you asked that this matter be considered in two parts, and since we recognize that there is a right of appeal from any decision of the department, we will await written confirmation from you of your intent to appeal or the appeal period has expired before proceeding with the remaining portion of the requested amendment. In the event that no appeal is filed, or that you in writing indicate that you have no intention of appealing, we then will proceed with the approval of the application to provide for irrigation of the lands shown in red on the application form.

If you have any questions concerning this matter, please let me know.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH/sig

Enclosure

CC: IDWR - Southern Region
Robert H. Brailsford

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

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

OUR FILE NUMBER

October 19, 1976

RECEIVED
OCT 1976
Department of Water Resources

Mr. R. Keith Higginson, Director
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Permit No. 36-7085 - Application For Amendment - Place of Use

Dear Mr. Higginson:

We are herewith enclosing our check for $10.00 and an original Application for Amendment of Amended Permit No. 36-7085. Our purpose in the application is to request a change in the place of use of the lands to be irrigated. Amended Permit No. 36-7085 provided for the water to be applied to 1,007.16 acres in Section 13 of Township 8 South, Range 13 East, Boise Meridian, Twin Falls County, and in Sections 7 and 18 of Township 8 South, Range 14 East, Boise Meridian, Twin Falls County. On the map shown under paragraph 3 of the enclosed Application for Amendment, we have designated in red our first preference for lands to be designated under the Application for Amendment. The lands designated in red on the map approximate 1,007.16 acres. We have also designated additional lands in pencil. The lands both in red and in pencil would be irrigated by Mr. Brailsford with the 20 c/f/s designated for irrigation purposes under Amended Permit No. 36-7085 pursuant to a recent feasability study which he has conducted. Since the applicant proposes conversion from a gravity system to a closed system, no injury will occur and no more water will be utilized than would be utilized if the applicant proceeds to implement a gravity system for 1,007.16 acres.

We would ask that in your consideration of this amendment, to consider it in two parts:

1. Consider allowing the inclusion of all lands designated on the map (both in red and in pencil) as shown in paragraph 3 hereof as the place of use for the 20 c/f/s of irrigation water permitted in Amended Permit No. 36-7085; or

2. If it is the position of the Department that they cannot approve the use of the water on more than the 1,007.16 acres at this time, we ask that the Application for Amendment be approved for the same number of acres as shown in paragraph 3 of the application which are designated in red.

At all times since the filing of original application for permit No. 36-7085, the permit holder has owned all of the lands designated as a place of use.

We request your prompt consideration and approval of this Application for Amendment.

Respectfully submitted,

John A. Rosholt

JOHN A. ROSHOLT
Attorney for Robert H. Brailsford

JAR:bg
Enclosures

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

OUR FILE NUMBER

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

October 19, 1976

'76

Mr. R. Keith Higginson, Director
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Permit No. 36-7085

Dear Mr. Higginson:

We are herewith enclosing an original Application for Amendment of Amended Permit No. 36-7085. Our purpose in the application is to request additional points of diversion which would be utilized by the permit holder for the diversion of the 20 c/f/s designated for irrigation purposes. Since the 20 cubic feet in question flows from the Bickel Springs into the river, we would submit that no injury occurs by reason of the approval of the additional points of diversion.

From looking at the map on this Application for Amendment, you will note that we do not ask for a change in point of diversion for the 80 c/f/s previously approved for fish propagation purposes.

Mr. Brailsford is the owner of Lot 2 and that portion of Lot 5 where additional points of diversion are marked on the map. Mr. Brailsford has made an application for a right of way permit from the BLM to locate a pump site in Lot 6.

Under separate cover, we are also submitting another Application for Amendment to the same permit which pertains only to the lands intended for the place of use. We would ask that this enclosed Application be considered first and separately.

We request your prompt consideration and approval of the enclosed Application for Amendment.

Respectfully submitted,

John A. Rosholt

JOHN A. ROSHOLT
Attorney for Robert H. Brailsford

JAR:bg
Enclosures

P.S. It is my information that Mr. Brailsford has previously submitted the $10.00 filing fee and we would ask that his check be applied to this application.

October 15, 1976

Re: Permit No. 36-7085

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
P.O. Box 525
Twin Falls, ID 83301

Dear Mr. Rosholt:

We are herewith returning the application for amendment submitted in behalf of Robert Brailsford in connection with the above referenced permit.

Please be advised that the amendment proposes an expansion of the right and, therefore, could not be approved. We are enclosing a copy of the permit for your review; please note that it was issued for the irrigation of 1,007.16 acres.

The application should also indicate the point(s) of diversion and place of use for fish culture purposes. Please make the necessary corrections and resubmit the application at your earliest convenience.

Mr. Brailsford previously paid the $10.00 filing fee, therefore your check is also returned.

Sincerely,

D. DARLENE REICH
Water Rights Supervisor

DDR:mef

Enc: Amendment w/check No. 92-39
Copy of permit

RECEIVED
OCT 14
Department of Water Resources

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

OUR FILE NUMBER

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

October 13, 1976

Mr. R. Keith Higginson, Director
Department of Water Resources
Statehouse
Boise, Idaho 83720

Re: Permit No. 36-7085

Dear Mr. Higginson:

We are herewith enclosing our check for $10.00 and the original Application for Amendment of Amended Permit No. 36-7085. Our purpose in the application is to request an additional point of diversion which would be utilized by the permit holder for the diversion of the 20 c/f/s designated for irrigation purposes. Since the 20 cubic feet in question flows from the Bickel Springs into the river, we would submit that no injury occurs by reason of the approval of the additional point of diversion.

In addition, the application includes a new map indicating the lands intended for beneficial use of the 20 c/f/s for irrigation purposes. The permit holder has recently had a feasibility study conducted which indicates that the project is probably not feasible as a gravity system irrigating the lands in Section 7 and 18 of Township 8 South, Range 14 East, Boise Meridian, or in Section 13 of Township 8 South, Range 13 East, Boise Meridian, all in Twin Falls County, as represented in the original application. We would request that the permit be amended to show the place of beneficial use as shown on the map attached to the Application for Amendment. The maps shows portions of the lands originally designated to be utilized. All the lands shown shaded in pencil on the map are deeded and have been throughout the existence of Permit No. 36-7085. Those shaded in red are under a request for withdrawal by BLM so as to be open for entry by applicant. Since applicant proposes conversion from a gravity system to a closed system, again no injury will incur and no more water will be utilized than would be utilized if the applicant proceeds to implement a gravity system for the lands previously indicated.

We request your prompt consideration and approval of the Application for Amendment.

Respectfully submitted,

John A. Rosholt

JOHN A. ROSHOLT
Attorney for Robert H. Brailsford

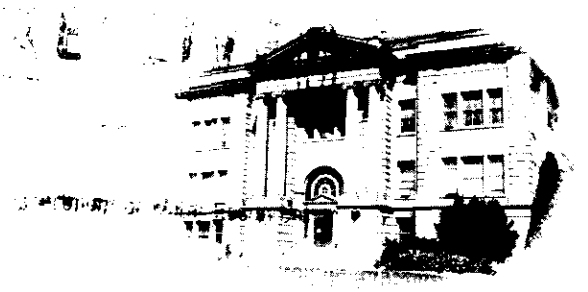
JAR:bg
Enclosures

Phone 734-3300

OFFICE OF

Twin Falls County Assessor

P. O. Box 265 Twin Falls, Idaho 83301



October 12, 1976

Ron Taylor
Assessor

These are parcel that Robert H. Brailsford & Brailsfor Brothers, Inc

Robert H. Brailsford

TAX Receipts

Sec 6 T 8 R 14 Lots 11 & 10 (12796)
Sec 1 T 8 R 13 Lot 10 (12753)
Sec 1 T 8 R 13 SW SW ; W½ SE SW; SE SE SW (12754)

Sec 11 T 8 R 13 S½ of Section (12764)
Sec 12 T 8 R 13 S½ of Section (12765)
Sec 13 T 8 R 13 All of Section (12766)
Sec 14 T 8 R 13 N½ of Sec; SW;SE¼ (12767)

Sec 7 T8 R 14 Lots 2; Ot 5, Exc SE 9.75A & EXC Hwy; NE NW Exc Hwy; Lot 3 Exc Hwy. (12797)

Sec 7 T 8 R 14 Lots 7 & 8: SE SW; W½ SE (12799)

Sec 1 T 10 R 13 SW¼ (13874)
Sec 18 T 9 R 14 SE NW; E½ Sw; SW SE (13064)
Sec 19 T 9 R 14 NE¼ NW¼ (13070)
Sec 19 T 9 R 14 S .5A in Lot 2; SE NW exc W 25' Rd. (13072)

Sec 1 T 10 R 13 S½ Nw (13873)

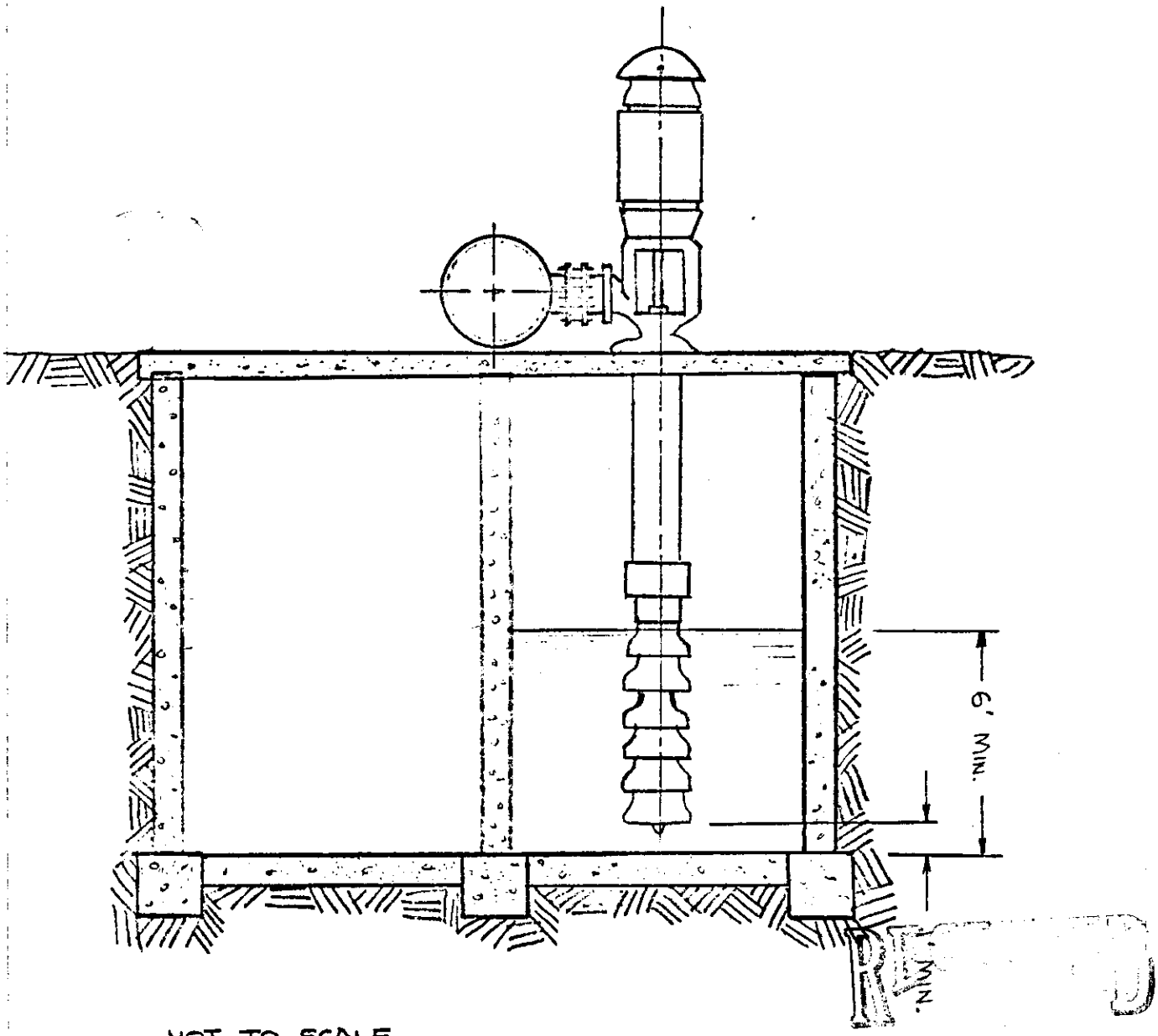
Brailsford Brothers, Inc.

Sec 18 T 8 R 14 W½ E½; E½ W½; Lots 1, 2, 3 & 4 (12802)

Thank you,
Kay Williams

BRAILSFORD RANCH

PROPOSED RIVER STATION CROSS SECTION



NOT TO SCALE

DRAWN BY: G. RINEBOLD

G.T. NEWCOMB, INC.

TWIN FALLS, ID
SEPT. 1976

MICROFILMED

OH-2109 [illegible]-7

APPLICATION AND PERMIT TO USE RIGHT OF WAY

STATE OF IDAHO DEPARTMENT OF HIGHWAYS

RULE: S & P MANUAL 2-445 AND 2-615 PARAGRAPH SERIES AND P & I MANUAL 1-12-450 AND 1-12-600 SERIES.

DISTRICT NO. _____

PERMIT NO. _____

THE UNDERSIGNED REQUESTS PERMISSION TO CONSTRUCT THE FOLLOWING ITEM(S) ON STATE HIGHWAY RIGHT OF WAY:

☐ APPROACH

QUANTITY	WIDTH	TYPE - RESIDENCE, BUSINESS, FIELD, ETC.	TYPE OF BUSINESS

☒ UNDERGROUND UTILITY

36-inch Water Line 42-inch Casing
KIND - GAS LINE, TELEPHONE LINE, WATER LINE, ETC.

☐ OVERHEAD UTILITY

KIND - POWER LINE, TELEPHONE LINE, ETC.

☐ OTHER: EXPLAIN

DISTANCE FROM:
CENTER LINE _____
RIGHT OF WAY LINE _____

BURIED PIPE OR CABLE:
DEPTH 3-foot min.
SIZE 36-inch
POTENTIAL OR PRESSURE 130 psi

POLE LINE:
POTENTIAL _____
VERTICAL CLEARANCE _____

A SKETCH OF PROPOSED WORK MUST BE ATTACHED.

SPECIAL PROVISIONS:
Casing to extend 5 feet beyond toe of slope

679 +90
STATION TO STATION

F-2361(12)
PROJECT NUMBER

US 30
HIGHWAY ROUTE NO.

165.83
MILEPOST TO MILEPOST

Twin Falls
COUNTY

5 miles south of Hagerman
DISTANCE AND DIRECTION FROM NEAREST CITY, TOWN OR VILLAGE

I CERTIFY THAT I AM THE OWNER OR AUTHORIZED REPRESENTATIVE OF THE PROPOSED FACILITY OR PROPERTY TO BE SERVED AND AGREE TO DO THE WORK REQUESTED HEREON IN ACCORDANCE WITH THE GENERAL PROVISIONS PRINTED ON THE REVERSE SIDE AND THE IDAHO DEPARTMENT OF HIGHWAYS STANDARD APPROACH POLICY OR UTILITY ACCOMMODATION POLICY, WHICHEVER IS APPLICABLE.

DATE Sept. 7, 1976

Robert H. Brailsford
APPLICANT - PLEASE TYPE OR PRINT

Robert H. Brailsford
SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED
SEP 8 1976
Department of Water Resources

1748 Dora Drive South, Twin Falls
APPLICANT'S POST OFFICE ADDRESS

SUBJECT TO ALL TERMS, CONDITIONS AND PROVISIONS SHOWN ON THIS FORM OR ATTACHMENTS, PERMISSION IS HEREBY GRANTED TO THE ABOVE NAMED APPLICANT TO PERFORM THE WORK DESCRIBED ABOVE.

STATE HIGHWAY ENGINEER

DATE _____

BY _____
DISTRICT ENGINEER

MICROFILMED

UTILITIES

1. Boring What will be the method of installation? (Boring, Jacking, etc.)
2. 3 foot Min What will be the minimum cover over the utility?
3. Yes Will freezing conditions affect this facility?
4. No Is any future highway construction being planned for this area at this time?
5. No During installation, will normal traffic movements be interrupted?
6. Yes Have adequate provisions been made for flagging, slowing, or detouring, etc. of traffic? Attach traffic control plan.
7. No Will this facility interfere with normal maintenance operations, cleaning ditches, backslopes, drainage or irrigation facilities, etc?
8. Yes Does the proposed utility and installation conform to Department policies? See Administrative Directive
9. N/A What will be the minimum vertical clearance?
10. N/A What will be the distance from the highway shoulder to the nearest support or anchor?
11. N/A What will be the maximum span length?
12. N/A If in urban area has City Officials' approval been obtained?

If Any of the Above is Not Applicable, Indicate N.A.

For Other Encroachments - Attach Additional Sheets to Describe if Necessary

✓ (YES) (NO) District Representative's Recommendation for Approval

D J Schierman SIGNATURE

( ) Forward to Boise Office _____ District Engineer

DISTRICT STAFF REVIEW				
To be reviewed by:	✓	Reviewer's Initials	Recommended Yes	Recommended * No
Traffic Engineer				
Maintenance Engr.				
Design Engineer				
Construction				
Right of Way				

** BOISE STAFF REVIEW				
To be reviewed by:	✓	Reviewer's Initials	Recommended Yes	Recommended * No.
Planning & Traffic				
Survey & Plans				
Maintenance				
Right of Way				
Construction				

* *Explain reason for recommendation.*

** *Only required for special situations and when a revision to access control is proposed.*

DH 21[illegible] 7 70
[illegible]
Form [illegible] 2103

REPORT ON APPLICATION FOR PERMIT TO USE RIGHT OF WAY

LOCATION OF WORK

District No._____

Application No._____

F-2361(12) _____ 679+90 _____ 165.83 _____
Project No. Station Milepost

_____
Other Description; Section, Township, Range if Station is Not Available Date

TYPE OF ACCESS CONTROL

Full_____ Partial_____ Standard Approach Policy_____

APPROACH

1. _____ If the approach is located witnin the limits of a city, town or village, has approval been granted by the city, town or village?
2. _____ What is the approach angle (in degree) as shown on attached sketch?
3. _____ At this location, what is the sight distance? Posted speed?_____
4. _____ Will the approach adversely affect the operation of the highway?
   If yes, explain:_____
5. _____ Is any future highway construction being planned for this area at this time?
6. _____ What is the estimated daily volume of traffic that will use this approach?
   How many of these are trucks?_____
7. _____ Have you checked to see that the proposed approach conforms to our "Approach Policy"?
8. _____ In the event of adjoining approaches in an urban area is the minimum distance of 10 feet provided between approaches for pedestrian protection?
9. _____ In the event of adjoining approaches, can the space between approaches be divided into adequate parking spaces approximately 20-23 feet long?
10. _____ Is a distance of 5 feet or more provided between the approach and the adjoining property line?
11. _____ In the event the proposed approach is located near an intersection, will the approach avoid encroachment on the corner radius?
12. _____ If the proposed approach is within 200 feet of an intersection, what is the distance from the centerline of the approach to the centerline of the intersection, measured along the highway shoulder?
13. _____ If the approach grade is steeper than 5%, is a flat stopping zone provided at the highway shoulder?
14. _____ If a drainage pipe is needed, what kind of pipe will be required?
    Size_____; Length_____
15. _____ Will the approach drain away from the traveled-way?

If Any of the Above is Not Applicable, Indicate N A

For Additional Remarks Attach a Separate Sheet if Necessary

CONTINUED ON REVERSE SIDE

GENERAL CONDITIONS

1. If required by the Department's District Engineer, the Permittee shall give at least _____ hours advance notice prior to commencing initial work or any future work which would restrict the flow of traffic.

2. During the progress of the work such barricades, lights and other traffic control devices shall be erected and maintained as may be necessary or as may be directed for the protection of the traveling public. Said barricades, lights and other traffic control devices shall conform to the current issue of the Manual on Uniform Traffic Control Devices for Streets and Highways.

3. In accepting this permit, the Permittee, its successors and assigns, agrees to hold the State of Idaho harmless from any and all liability on account of the erection, installation, construction, maintenance or operation of the facilities located under this permit.

4. Except as herein authorized, no excavation shall be made or obstacle placed within the right of way of the State highway in such a manner as to interfere with the travel over said highway.

5. If the work done under this permit in any manner involves the disturbance of the traveled surface of the road and/or traffic control devices, said items shall be restored to the satisfaction of the State Highway Engineer at the completion of the authorized work either by the Permittee or by the Highway Department at the Permittee's expense.

6. If the work done under this permit interferes in any way with the drainage of the State highway, the Permittee shall wholly and at his own expense make such provision as the State Highway Engineer may direct to take care of said drainage.

7. On completion of said work herein contemplated all rubbish and debris shall be immediately removed and the roadway and roadside shall be left neat and presentable and to the satisfaction of the State Highway Engineer.

8. All of the work herein contemplated shall be done to conform with current government and industry standards under the supervision and to the satisfaction of the State Highway Engineer, and the entire expense of said supervision shall be borne by the Permittee.

9. The State Highway Engineer hereby reserves the right to order the change of location or the removal of any structure(s) or facility(ies) authorized by this permit said change or removal to be made at the sole expense of the Permittee, or its successors and assigns, unless such structure(s) or facility(ies) have been located pursuant to the Special Provisions of form DH-2111.

10. All such changes, reconstruction or relocation by the Permittee shall be done in such manner as will cause the least interference with any of the State's work.

11. This permit or privilege granted under form DH-2109 shall not be deemed or held to be an exclusive one and shall not prohibit the State from granting other permits or franchise rights of like or other nature to other public or private utilities, nor shall it prevent the State from using any of its roads, streets, or public places, or affect its right to full supervision and control over all or any part of them, none of which is hereby surrendered.

12. The State Highway Engineer may revoke, annul, change, amend, amplify, or terminate this permit or any of the conditions herein enumerated if Permittee fails to comply with any or all of its provisions, requirements or regulations as herein set forth or through willful or unreasonable neglect, fails to heed or comply with notices given, or if the utility herein granted is not installed or operated and maintained in conformity herewith.

13. The Permittee shall maintain at his or their sole expense the structure or object for which this permit is granted in a condition satisfactory to the State Highway Engineer.

14. Neither the acceptance of this permit nor anything herein contained shall be construed as a waiver by the Permittee of any rights given it by the Constitution or laws of the State of Idaho or of the United States.

15. Adequate drawings or sketches shall be included showing the existing and/or proposed location of the facility with respect to the existing and/or planned location of the highway improvement, the traveled way, the rights of way lines, and where applicable, the control of access lines and approved access points.

16. If trench or pavement settlement should occur within one year from the date of installation, repairs shall be made by the Permittee as directed by the State Highway Engineer and at no cost to the Highway Department.

17. No work shall be started until an authorized representative of the Department of Highways has given notice to the Permittee to proceed.

18. A bond in the amount of $_____ is required for the protection of the State as set forth in the terms of the bond.

19. This permit shall be void unless the work herein contemplated shall have been completed before June 1, 1977.
date

Request for purchase county
needs speed development

070

92-38/1241

Sept. 7 1976

PAY TO THE ORDER OF Idaho Dept of Transportation $10 00

Ten and no/100 DOLLARS

B&T Twin Falls Bank & Trust
MAIN OFFICE, Post Office Box 7, Twin Falls, Idaho 83301

ROBERT BRAILSFORD RANCHES
1748 DORA DRIVE SOUTH
TWIN FALLS, IDAHO 83301

Robert W. Brailsford

FOR _____

⑈124⑈0038⑈ 80 03946 8⑈

Filing Fee: $10.00
Receipt # 5826
mcb 9-8-76

RECEIVED
SEP 9 1976
Department of Water Resources

Replacement for permit 10-20-76.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR AMENDMENT

Permit No. 36-7085

Comes now Robert H. Brailsford of (address) 1748 Dora Drive South, Twin Falls, ID 83301, and represents to the Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, and requests that the permit and permit map be changed as follows: CHANGE IN POINT OF DIVERSION FOR IRRIGATION PORTION OF PERMIT ONLY

1. Point of diversion: ____ ¼ Lot 6 ¼, Sec. 7 Twp. 8 S Rge. 14 E, B.M., County of Twin Falls. Other points of diversion:
(Water will be diverted at this point from the Snake River; the same amount of water to be released from Bickel Spring into the Snake River)
Points of diversion for fish culture to remain the same.

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)
NO CHANGE

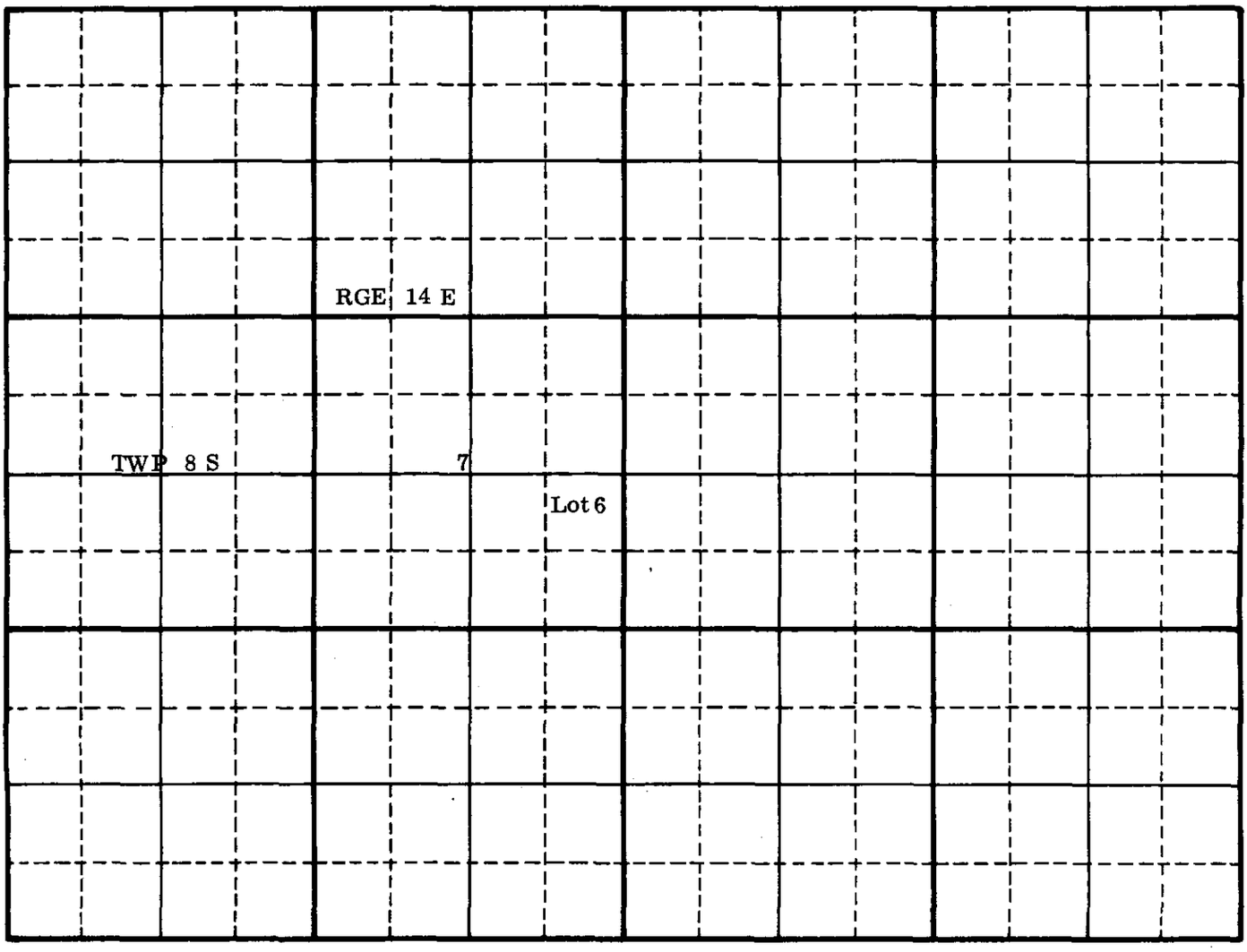
Amount ____ for ____ purposes from ____ to ____ (both dates inclusive)
Amount ____ for ____ purposes from ____ to ____ (both dates inclusive)
Amount ____ for ____ purposes from ____ to ____ (both dates inclusive)
Amount ____ for ____ purposes from ____ to ____ (both dates inclusive)
(cfs or acre feet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

3. Place of use or land to be irrigated: NO CHANGE

TWP	RANGE	SEC	NE ¼				NW ¼				SW ¼				SE ¼				TOTALS
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total number of acres to be irrigated

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Boise, this 8 day of September 19 76.

Robert H. Braithwaite
(signature)

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, _____, Director of the Department of Water Resources

hereby Replaced by amendment app rec'd 10-20-76.

Witness my hand this _____ day of _____, 19 _____.

_____
Director

September 8, 1976

RECEIVED
SEP 8 1976
Department of Water Resources

Director
Dept. of Water Resources
Boise, ID 83720

Re: Permit 36-7085

I hereby request permission to assign permit 36-7085 to Robert H. Brailsford. This assignment will merely change the name and in no way will decrease my personal liability for the development of this project.

Attached is a division agreement of the property of Brailsford Bros., Inc. and also a proposed assignment of this permit.

Robert H. Brailsford

Robert H. Brailsford

RECEIVED
Department of Water Resources

A G R E E M E N T

THIS AGREEMENT, Made and entered into this 13 day of April, 1976, by and between ROBERT H. BRAILSFORD, hereinafter called "BRAILSFORD", and FREDERICK G. BRAILSFORD, as Personal Representative of the Estates of Frederick M. Brailsford, deceased, and Bernadette Brailsford, deceased, hereinafter called "ESTATES",

WHEREAS, the parties hereto are the partners of a partnership known as Brailsford Brothers, hereinafter called "PARTNERSHIP", which partnership owns all of the issued and outstanding stock of Brailsford Bros., Inc., an Idaho corporation, and Brailsford Farms, Inc., an Idaho corporation, hereinafter called "CORPORATIONS", and

WHEREAS, the parties hereto have entered into an agreement providing that within five days of the execution of said agreement, Brailsford and Estates shall cause to be held a stockholders and directors meeting of Corporations and at said meeting adopt a plan of dissolution to dissolve said Corporations under the provisions of Section 333 of the Internal Revenue Code, which plan of dissolution shall provide that all assets of Corporations subject to all liabilities of Corporations shall be distributed to Partnership,

W I T N E S S E T H:

IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. That following said distribution of the assets of Corporations, Partnership shall pay all expenses of the present receivership (excluding legal fees incurred by each party) and all expenses of disollution of Corporations and Partnership and Partnership shall then be dissolved and its assets distributed to the partners, as follows:

(a) Upon dissolution, Robert H. Brailsford shall

receive three ranches or farms known as 1000 Springs, Lucerne and Castleford and the personal property listed on Schedule A.

(b) Estates shall receive all other assets of partnership, subject to all remaining indebtedness of partnership other than tax liability. All tax liability attributed to dissolved Corporations shall be borne one-half by Brailsford and one-half by Estates, unless otherwise agreed by the parties.

2. The value of all land and personal property received by each partner shall be that as set forth in appraisals of said assets by Elbert G. Davis.

3. Following said distribution of assets and using the values as set forth above, the capital accounts of the partners shall be adjusted. If one partner receives in distribution less in net value of assets, the other partner shall pay him in cash one-half of the difference in net value received on or before fifteen (15) days from date of this agreement. The amount of such difference shall be established by Elbert G. Davis.

4. Included in the assets being received by Estates are certain grazing rights known as Saylor Creek Rights, Devil Creek Rights and Wendell Allotment. Estates agree that if they desire to sell said rights independent of any other property (real or personal) which Estates own, that Brailsford shall have the right to purchase the same on the same terms, conditions and at the same price as Estates propose to sell to any third person, partnership, corporation or other entity. This first right of refusal granted Brailsford must be exercised by him within ten (10) days from the date the option is conveyed to him. Estates further agree that if said rights are to be sold in conjunction with the sale of other land which Estates are to receive under the terms of this division. then such first right of

refusal shall extend to Brailsford in connection with the property proposed to be sold which includes said above-mentioned rights.

It is agreed in either case that should Brailsford elect not to exercise said option, then Estates are free to sell the property proposed to be sold to any other person or entity on the same terms and conditions and at the same price offered to Brailsford but may not sell to another at a lesser price or more favorable terms without first giving Brailsford the first right of refusal.

Nothing herein shall be construed to limit Estates' right to sell any of the property which they receive under this division free of any rights of Brailsford so long as the property sold does not encompass the grazing rights referred to above nor does this agreement restrict Estates' rights to make land exchanges which may or may not include grazing rights, nor does this agreement restrict the right of the beneficiaries of Estates to make exchanges between themselves.

It is agreed Brailsford shall have ten (10) days from receipt of written notice of an option provided for herein within which to accept it, and if within said ten (10) day period no written notice of acceptance of option is received by Estates, it shall be conclusively presumed that it has been rejected.

It is further agreed that the first right of refusal granted Brailsford herein shall not continue beyond five (5) years from date of this agreement and in any event shall terminate upon his death.

5. This Agreement shall be binding upon the parties hereto, their heirs, representatives, distributees and successors.

IN WITNESS WHEREOF, the parties hereto have executed

this Agreement the day and year first above written.

Robert H. Brailsford

"BRAILSFORD"

Frederick G. Brailsford, as Personal Representative of the Estates of Frederick M. Brailsford, deceased, and Bernadette Brailsford, deceased.

"ESTATES"

RECORDED
SEP 3 1975
Department of Water Resources

GRANT DEED

FOR VALUE RECEIVED, BRAILSFORD BROTHERS, a partnership, herein called "Grantor", does hereby grant and convey to ROBERT H. BRAILSFORD, an unmarried man, herein called "Grantee", all of the following described real properties located in Twin Falls County, Idaho, to-wit:

1000 SPRINGS FARM AND PASTURE

Township 8 South, Range 13 East, Boise Meridian, Twin Falls County

Section 1: SW¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, Lot 10
Section 11: S½
Section 12: S½
Section 13: All
Section 14: N½, E½SW¼, SE¼

Township 8 South, Range 14 East, Boise Meridian, Twin Falls County

Section 6: Lots 10 and 11
Section 7: NE¼NW¼, Lots 2, 3, 5, 7, and 8, SE¼SW¼, W½SE¼, EXCEPT those portions of the above described property which have been deeded to the State of Idaho for Highway Right-of-Way. ALSO EXCEPT: All of that portion of Lot 5 of Section 7, Township 8 South, Range 14, East of the Boise Meridian, lying anywise South and West of Snake River as it traverses said Lot 5 and lying anywise North or East of U. S. Highway No. 30 as it traverses said Lot 5 and lying anywise South or East of the two follow ing described parcels of land in said Lot 5:

Parcel I: Commencing at the Southeast corner of Section 7, Township 8, South, Range 14 EBM, Twin Falls County, Idaho, and proceed North along the east section line of Section 7, Township 8 South, Range 14 EBM, a distance of 2481.6 feet to the meander corner of the West side of the Snake River:
Thence North 65° 12' West a distance of 414.2 feet to a point;
Thence North 39° 06' West a distance of 695.4 feet to a point;
Thence North 50° 54' East a distance of 200.0 feet to the real point of beginning;
Thence South 39° 06' East a distance of 9.0 feet to a point;
Thence North 54° 22' East a distance of 214.6 feet to a point;
Thence North 31° 00' West a distance of 15.4 feet to a meander corner west side of the Snake River;
Thence North 32°30' West a distance of 279.1 feet to a point on meander line;
Thence South 50° 27' West a distance of 476.7 feet to a point;
Thence South 50° 42' East a distance of 68.0 feet to a point;
Thence North 50° 54' East 214.9 feet to a point;
Thence South 39° 06' East 200.0 feet to real point of beginning.

Parcel II: AND, THAT PORTION OF LOT 5 in Section 7, Township 8 South, Range 14 EBM, Twin Falls County, Idaho, described as follows:
Beginning at a point on the North right-of-way boundary of U.S. Highway 30, from which the meander corner of Sections 7 and 8, Township 8 South, Range 14 EBM, bears South 50° 02' East 974 feet distant;
Thence North 50° 36' East 200 feet;
Thence North 39° 24' West 200 feet;
Thence South 50° 36' West 200 feet to the highway right-of-way;
Thence South 39° 24' east 200 feet along the highway right-of-way to the place of beginning, all in Twin Falls County, Idaho.

LUCERNE FARM

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County

Section 18: SE¼NW¼, E½SW¼, SW¼SE¼
Section 19: NE¼NW¼, the south 16' of Lot 2, SE¼NW¼ except the westerly 16 feet thereof.

CASTLEFORD FARM

Township 10 South, Range 13 East, Boise Meridian, Twin Falls County

Section 1: SW¼, S½ NW¼

Subject to taxes and assessments for 1976 and subsequent years

Together with all appurtenances.

IN WITNESS WHEREOF, These presents have been executed by the partners of the Grantor.

BRAILSFORD BROTHERS,
A Partnership

Robert K. Brailsford
Partner

Frederick G. Brailsford
Partner

Frederick G. Brailsford, Executor and Personal Representative under the Wills of Bernadette Brailsford, deceased, and Frederick M. Brailsford, deceased.

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 4th day of May, 1976, before me, a Notary Public in and for said State, personally appeared ROBERT H. BRAILSFORD and FREDERICK G. BRAILSFORD, as Executor and Personal Representative under the Wills of Bernadette Brailsford, deceased, and Frederick M. Brailsford, deceased, known to me to be the partners in BRAILSFORD BROTHERS, a partnership, and the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that they executed the same in said partnership name.

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

Notary Public for State of Idaho
Residing at Twin Falls, Idaho.

C. G. McINTYRE
NOTARY PUBLIC - STATE OF IDAHO
Residing at Twin Falls, Idaho
Commission for Life Term

INDEXED
DIRECT
REVERSE

693277

TWIN FALLS CO. IDAHO
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT THE REQUEST OF

'76 MAY 7 PM 3:53

RECORDED IN BOOK 224 OF DEEDS
PAGE 384
FEE $3.00
COUNTY RECORDER

Brailsford Burdick
to
Robert H Brailsford

Instrument No 345080

DEFINITION AND LIMITATION OF WATER RIGHT

WHEREAS, by deed dated November 19, 1927, and recorded December 2, 1927 in Book 6 of Deeds, page 590, records of Gooding County, Idaho Power Company is the owner of certain lands in Gooding County upon which rise certain waters and springs, including those known as Bickel Springs, which said deed contains the exception of "all waters heretofore lawfully appropriated and used by Dwight E Stacy and his predecessors in interest on lands across Snake River for irrigation and domestic uses," said lands referred to being in Twin Falls County, State of Idaho; and

WHEREAS said water right has never been defined or limited of record;

NOW THEREFORE IT IS STIPULATED:

1. That the point of diversion of said waters is in Lot 8, of Section 6, Township 8 South, Range 14 East, Boise Meridian, at the intake of a ditch and pipe line, approximately located North 11° 27' West 344.7 feet from meander corner on or near the north bank of Snake River, in Gooding County; that the land upon which said waters are and have been used are located across Snake River, and comprise what is known as the Stacy Ranch, consisting of Lots 10 and 11 of Section 6, and Lots 2, 3 and 5 and the Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$) of Section 7, Township 8 South, Range 14 East, and Lot 10 of Section 1, Township 8 South, Range 13 East, Boise Meridian, in Twin Falls County, Idaho; that said water is conveyed from the point of diversion by means of a pipe line and ditches to and across Snake River to the lands upon which the same are used.

2. That the quantity of water heretofore diverted, appropriated and used

138
97 PAGE 333
RECEIVED
SEP
FILE
OF
36-7085
Department of Water Resources

by the said Dwight E Stacy and his predecessors, and the right to the use of said waters, including all rights as the successor under that certain water notice by Maranda A Herron, dated December 10, 1901, and recorded in Book A of Water Rights, page 412, Records of Gooding County, are hereby defined as and limited to ten and one-half cubic feet per second (10.5 cfs) of said waters, at the said point of diversion and intake, for irrigation and domestic use on the lands aforesaid.

IN WITNESS WHEREOF, the parties hereto, for themselves and their successors and assigns, have executed this stipulation defining and limiting said water right, this 21st day of October, 1944.

Witness:

S T Hamilton
Attorney for Stacys

Dwight E Stacy
Dwight E Stacy

Stennece Stacy
Stennece Stacy

Husband and Wife

IDAHO POWER COMPANY

By C J Strike
C J Strike, President

STATE OF IDAHO,)
) ss.
COUNTY OF Twin Falls)

On this 21st day of October, in the year A D 1944, before me, the undersigned, a Notary Public in and for said State, personally appeared DWIGHT E STACY and STENNECE STACY, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

(S T Hamilton, Notary Public
State of Idaho
(NOTARIAL SEAL))

S T Hamilton
Notary Public.
Residing at Twin Falls, Idaho.

November 27, 1974

Re: Permit No. 36-7085

Brailsford Bros., Inc.
Attn: Robert H. Brailsford, Pres.
Route #4
Buhl, ID 83316

Dear Mr. Brailsford:

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

The time within which to submit proof of beneficial use has been extended to December 1, 1977.

Sincerely,

D. Darlene Reich
Water Rights Supervisor

DDR:JG
Enclosure

MICROFILMED

November 14, 1974

Re: Permit No. 36-7085

Brailsford Bros., Inc.
Attn: Robert H. Brailsford, Pres.
Route #4
Buhl, ID 83316

Dear Mr. Brailsford:

We are in receipt of your letter dated November 10, 1974, in which you request an extension of time for the above referenced permit.

However, in order for this request to be processed, additional information is needed. The enclosed application for extension of time form will give us this necessary information.

Please complete this application and return it to our office on or before the date set for proof, December 1, 1974. If you have any questions, please contact us.

Sincerely,

D. Darlene Reich
Water Rights Supervisor

DDR:JG
Enclosure

MICROFILMED

RECEIVED
NOV 13 1974
Department of Water Resources

November 10,1974

Idaho Water Resources Board
State House
Boise, Idaho

Dear Sirs:

On behalf of Brailsford Bros. Inc. I request an extension of time on water Permit # 36-7085.

Aquaculture Industries has a prior filing under Permit #36-7072 on the same waters that Permit #36-7085 was issued on. Aquaculture Industries was granted an extension on their permit #36-7072 to December 10, 1975.

Ihereby request an extension on Brailsford Bros. Permit # 36-7085 for five (5) years from Dec. 10,1975 to Dec. 10, 1980 or for the legal time extenson time limit whichever is applicable in this circumstance.

Very truly yours,

President
Brailsford Bros Inc
R,R,#4, Buhl, Idaho 83316

MICROFILMED

PS Form 3811, Nov. 1973

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1 and 2.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered..... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery ..... 85¢

2. ARTICLE ADDRESSED TO:

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	26069	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE

4. DATE OF DELIVERY

POSTMARK
OCT 2 1974

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

☆ GPO : 1974 O - 527-803

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

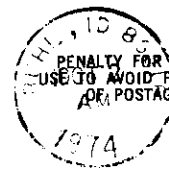
SENDER INSTRUCTIONS

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

- Complete items 1 and 2 on reverse side.
- Moisten gummed ends and attach to back of article.

RETURN
TO

DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720





September 30, 1974 CERTIFIED MAIL #260069

Re: Permit No. 36-7085

Robert H. Brailsford, Pres.
Brailsford Brothers
Buhl, ID 83316

Dear Mr. Brailsford:

One of the conditions of approval of your water Permit No. 36-7085 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before December 1, 1974. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

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

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

R. W. Higginson

R. KEITH HIGGINSON
Director

RKH:jg
Enc: Proof affidavit

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

22339

INSURED NO.

DATE DELIVERED

12/12/70

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

Robt. H. Bradford

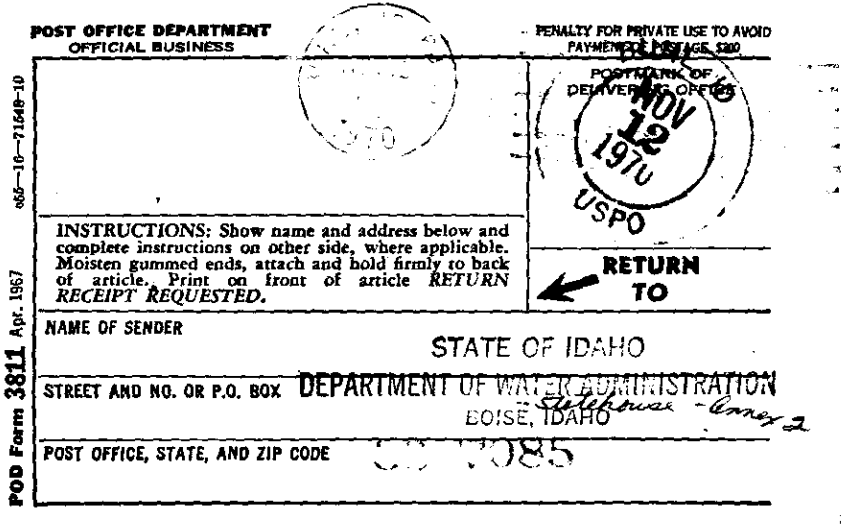
2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

by JM Bradford

3 SHOW WHERE DELIVERED (*only if requested*)

36 7085

c55—16—71348-10 GPO



POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

POSTMARK OF DELIVERING OFFICE

NOV 12 1970 USPO

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

STATE OF IDAHO

STREET AND NO. OR P.O. BOX DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Copy 2

BOISE, IDAHO

POST OFFICE, STATE, AND ZIP CODE 83?085

POD Form 3811 Apr. 1967 865—10—71548-10

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

22238

INSURED NO.

DATE DELIVERED

11-13

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

Standal and Lemmon

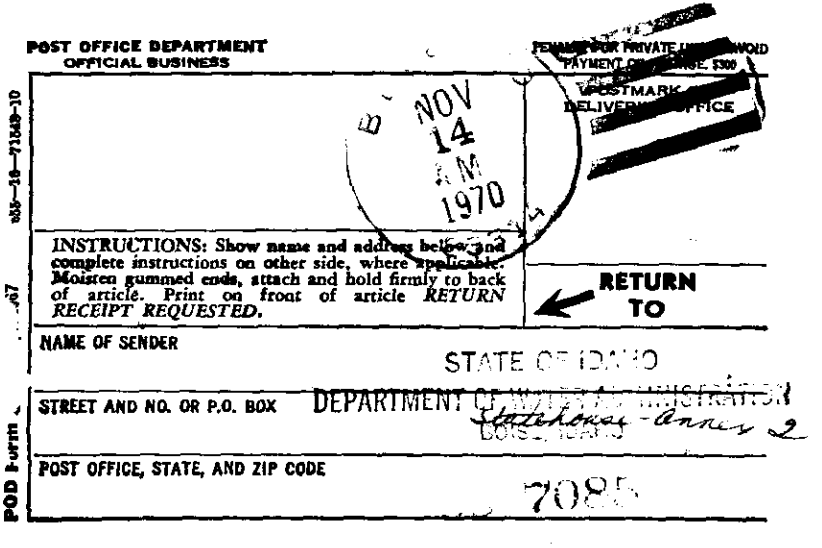
2 **SIGNATURE OF ADDRESSEE'S AGENT, IF ANY**

Mrs Norman Standal

3 **SHOW WHERE DELIVERED** (*only if requested*)

[illegible] 7085

c55—10—71548-10 GPO



POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

POSTMARK OR DELIVERING POST OFFICE

NOV 14 1970 P.M.

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

STATE OF IDAHO

STREET AND NO. OR P.O. BOX

DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2

POST OFFICE, STATE, AND ZIP CODE

7085

POD Form 3547

935-16-71649-10

NAME AND ADDRESS OF SENDER: Idaho, Dept. of Water Adm.

Indicate type of mail:
☐ REGISTERED ☐ REGISTERED C.O.D.
☒ CERTIFIED

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
POSTMARK AND DATE OF RECEIPT

	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS	POSTAGE	FEE	R. R. FEE	REST. DEL. FEE	ACTUAL VALUE	SURCHARGE	REMARKS*
1	22338	Norman Standal + George Simmons Star Rt. Box 2 Bliss Ida.		.30	.15				36-7072
2	22339	Robert Brailsford, Brailsford Brothers Box 66 Burley Ida.		.30	.15				36-7085
3									
4									
5									
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8									
9									
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11									
12									7085
13								36	
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19									
20									

TOTAL NO. OF PIECES LISTED BY SENDER | TOTAL NO. OF PIECES REC'D AT P. O. | POSTMASTER, PER (*Name of receiving employee*)

*Show under "Remarks" class postage paid if other than first or if international

POD Form 3877, Nov. 1968

APPLICATION FOR REGISTRATION OR CERTIFICATION

(Surcharges are not required on international registered mail)

c48—16—8792-15 U.S. GOVERNMENT PRINTING OFFICE

JOHN C. TUCKER
OFFICIAL COURT REPORTER
TWIN FALLS, IDAHO 83301

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN STANDAL AND GEORGE LEMMON, AN APPLICATION FOR PERMIT NO. 36-7085, ROBERT BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., AN IDAHO CORPORATION.	CASE NO. 24011 MEMORANDUM OPINION

The above-entitled matter is before me for decision under the provisions of Section 67-5215, Idaho Code, providing for judicial review of administrative orders. I have been furnished with a copy of pleadings, affidavits, various letters and other written documents filed with the Department of Water Administration of the State of Idaho and the briefs of counsel submitted to that Department in its "permit files Nos. 36-7085 and 36-7072." By stipulation of counsel and the appropriate statutes, I am given authority to conduct a judicial review of the above-entitled matter based upon the record set out above.

Section 67-5215(g), Idaho Code, provides some guide lines for this judicial review, namely, "the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." And unless the rights of Brailsford Brothers, Inc., have been prejudiced because the Department's Findings of Fact, Conclusions of Law, and Order

JOHN C. TUCKER
OFFICIAL COURT REPORTER
TWIN FALLS IDAHO 83301

are "in violation of Constitutional or statutory provisions" or "Affected by other error of law" or "clearly erroneous in view of * * * * the whole record," I am required to affirm the Department's decision.

Assignment of Error No. 1 is directed to Finding of Fact No. VIII which appellant states is not based upon facts in the record. However, this particular Finding of Fact is almost a verbatim transcript of Paragraph 7 of the affidavits of Norman S. Standal and George Lemmon dated June 23, 1970, and June 16, 1970. The agency apparently gave enough weight to this portion of the affidavits to transform it into a Finding of Fact. I do not believe I have authority to substitute my judgment for that of the Department in this regard.

Assignment of Error No. 2 complains of the failure of Finding of Fact No. IX to find that Standal's and Lemmon's application for permit was made for speculative purposes. Since I have recently been "burned" because of my inability to distinguish a Finding of Fact from a Conclusion of Law (see Warner C. Mills v. James G. Holliday, Capital Reports, Vol.18, No. 6), I am somewhat hesitant to mention it, but I suspect this particular Assignment of Error has reference to a Conclusion of Law as distinguished from a Finding of Fact. In any event Finding of Fact IX does set forth that "applicants (Standal and Lemmon) did not own or have any right to use of occupancy of the land where they intended to use the water" at the time their application was filed. Since both parties concede this, I do not see why either party should complain about it now turning up as a Finding of Fact.

Assignments of Error Nos. 4 and 5 go to the heart of Brailsford Brothers, Inc., complaint mentioned in the

foregoing paragraph, and that is Conclusion of Law No. 2 in which the Department held that the failure of the applicants for permit to have any interest in the real property on which they intended to use the water applied for will not, in and of itself, support the conclusion that the application for permit was made for speculative purposes. I have no quarrel with the Department's conclusion.

It seems to me that to hold otherwise would place a much too narrow definition upon the phrase "speculative purposes." Whether the venture is speculative depends almost entirely upon the true intentions of the applicants. Those intentions may be hidden away in the minds of the applicants, but judges and juries frequently determine an individual's intention by considering the person's acts, communications, and myriads of surrounding circumstances. It seems to me that ownership or lack of ownership of the land upon which the water is to be used is just one of the many circumstances to be considered in arriving at the applicants' intentions on the road to the ultimate question of speculation. I believe the facts and circumstances considered by the Department, including the lack of interest in the land on which the water is to be used at the time of filing, is sufficient to support the conclusion that this is not a speculative venture so far as Standal and Lemmon are concerned.

Assignment of Error No. 1 goes to the failure of the Department to find that applicants will be unable to beneficially use the amount of water applied for on fifteen acres of land. The proposed use of most of the water applied for was, until recent years, a unique use -- it is nonconsumotive use. I do not believe the amount of water which can be beneficially

JOHN C. TUCKER
OFFICIAL COURT REPORTER
TWIN FALLS, IDAHO 83301

used in the production of fish on 15 acres of ground can satisfactorily be determined at this time except within very broad limits, and I do not believe that the Department went beyond these broad limits in its order. Upon proof of beneficial use, the precise amount of water needed can be determined with some degree of precision and thereafter awarded. Until that time, however, I do not think the Department is in error in allowing 100 c/f/s.

I believe that what has already been said takes care of Assignment of Error Nos. 6 and 7.

It seems to me that application No. 36-7085 was made in good faith and that the decision of the Department should be and is affirmed.

Dated this 12th day of April, 1971.

District Judge

36 7085

January 6, 1971

Re: Permit No. 36-7085
Permit No. 36-7072

I hereby certify that this is a true and correct copy of the records of the Idaho Department of Water Administration.

C. STEPHEN ALLRED
Deputy Director

36-7085

January 6, 1971

Mr. H. A. Lancaster
Clerk of the District Court
Fifth Judicial District
Twin Falls County
Box 126
Twin Falls, Idaho 83301

Dear Mr. Lancaster:

Pursuant to Section 42-203, Idaho Code, the State Reclamation Engineer conducted hearings and issued a decision approving applications for Permit No. 36-7072 and 36-7085 authorizing the diversion of water from Bickel Springs or Thousand Springs in Gooding County, Idaho. The matters were consolidated for hearing purposes. The decision to issue the permits was based upon briefs submitted to the department by the parties concerned, pursuant to a stipulation that the matter be decided on the material contained in those briefs and within the records of the department. On December 14, 1970, the department received a Praecipe for Transcript on Judicial Review and notice of appeal from Mr. John A. Rosholt of the firm of Parry, Robertson, Daly & Larson. Pursuant to Section 42-203 and 67-5215, Idaho Code, and Mr. Rosholt's request, we submit copies of the applications filed by the applicants, associated documents, pertinent correspondence, briefs and reply briefs as follows:

Permit File No. 36-7085 (Up to the time of consolidation)

Amended application for permit in the name of Robert H. Brailsford, President of Brailsford Brothers, Inc., an Idaho Corporation, dated November 12, 1970.

Order dated November 9, 1970 signed by R. Keith Higginson approving Application for Permit No. 36-7085.

Affidavit of Publication No. 714, Gooding County.

Affidavit of Publication No. 14590, Twin Falls County.

Letter of January 30, 1970, Norman S. Standal and George Lemmon.

Application for Permit from Brailsford Brothers, Inc., received September 29, 1969.

Affidavit of Publication No. 14363, Twin Falls County.

Affidavit of Publication No. 620, Gooding County.

Letter of October 28, 1969, Norman S. Standal and George H. Lemmon.

Letter of December 9, 1969 signed by John A. Rosholt, with exhibits.

Letter dated November 25, 1969 from John A. Rosholt.

Letter of November 28, 1969 from John A. Rosholt, with attachments.

Letter of November 12, 1969 from James E. Bruce.

Exhibit B - November 26, 1969. Brailsford Bros., Inc. Proposed Irrigation and Fisheries Project, Project Profile.

Permit File No. 36-7072 (Up to time of consolidation)

Letter dated October 28, 1970 from R. Keith Higginson.

Letter of November 5, 1970, John C. Hepworth.

Application for Permit in the name of Norman S. Standal and George Lemmon, received July 17, 1969.

1000 Springs Trout Facilities Layout Plan - Lemmon-Standal-Sheet No. 3.

Bickel Springs Trout Facilities Layout Plan - Lemmon-Standal.

Order dated November 9, 1970, R. Keith Higginson, approving Application for Permit No. 36-7072.

Affidavit of Publication No. 553, Gooding County.

Letter dated August 11, 1969 from Robert Brailsford.

Letter dated August 3, 1969, John R. LeMoyne.

Letter dated August 6, 1969, Snake River Ski Club.

Letter of September 26, 1969, C. Stephen Allred.

To Whom It May Concern, December 15, 1969.

Letter dated October 28, 1969, Norman S. Standal and George Lemmon, with attachments.

Consolidated file (Identical for each case)

Notice of Conference, dated December 4, 1969, C. Stephen Allred.

Memo from C. Stephen Allred, dated December 24, 1969.

Roster of attendance sheet, December 16, 1969.

Pre-hearing Conference Order, dated April 27, 1970, R. Keith Higginson.

Notice of Hearing, dated April 27, 1970, from C. Stephen Allred.

Stipulation Vacating Hearing Setting, dated May 13, 1970, John C. Hepworth.

Letter of June 16, 1970, enclosing Stipulation, Michael H. Felton.

Affidavit dated June 16, 1970, Norman S. Standal.

Affidavit dated June 23, 1970, Norman S. Standal.

Brief of applicants, Standal and Lemmon, July 16, 1970, John C. Hepworth.

Affidavit, July 13, 1970, Richard J. Gooby.

Brief of Brailsford Brothers, Inc., July 20, 1970, John A. Rosholt.

Reply Brief of Standal and Lemmon, August 18, 1970, John C. Hepworth.

Application for Permit, Norman Standal and George H. Lemmon, received February 24, 1970.

Affidavit, June 25, 1970, Dave Erickson.

Letter dated June 9, 1970, J. David Erickson (Exhibit A).

Letter dated August 18, 1970, John A. Rosholt, with attachment (Reply Brief of Brailsford Brothers, Inc.

Findings of Fact and Conclusions of Law, November 9, 1970, R. Keith Higginson.

If you have any questions, please feel free to contact me.

Very truly yours,

C. STEPHEN ALLRED
Deputy Director

enclosure

Ex. No 3 Dupp

Dept wants some type of appearance, answer & agrees to let it. Two other hearings pending.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN STANDAL AND GEORGE LEMMON, AN APPLICATION FOR PERMIT NO. 36-7085, ROBERT BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., AN IDAHO CORPORATION.	PETITION FOR JUDICIAL REVIEW

Brailsford Brothers, Inc., petitions as follows:

I.

For Judicial Review of the above-entitled matter pursuant to the provisions of the Idaho Administrative Procedures Act, and specifically Idaho Code Section 67-5215.

II.

For Judicial Review of the Findings of Facts and Conclusions of Law (Exhibit "A" hereto) and Order (Exhibit "B" hereto) of the Director of the Department of Water Administration in the above-entitled matter, specifically as follows:

1. Finding of Fact No. VIII is improper and irrelevant because not based upon facts in the record and therefore clearly erroneous.

2. Finding of Fact No. IX is improper inasmuch as applicants Lemmon and Standal had the burden of proof to show some interest in land upon the date of filing their original application and it is also improper for the Director of th

36 7085

Department to conclude that the failure of such proof does not constitute speculation under Idaho Code Section 42-203.

3. The Director failed to take Judicial Notice of the physical characteristics of the land and the physical impossibility of applicants Lemmon and Standal utilizing 15 acres of land for the construction of fish ponds as stated in Finding of Fact No. XI.

4. Contrary to Conclusion of Law II, and based upon a proper application of the law to the facts, the Director of the Department of Water Administration must conclude that George Lemmon and Norman Standal must have some interest in the land at the point of use at the time their application was filed to comply with Idaho Code Section 42-203.

5. Contrary to Conclusion of Law II, and based upon a proper application of the law to the facts, the Director of the Department of Water Administration must conclude that the evidence was sufficient to constitute speculation on the part of Norman Standal and George Lemmon and that said Director should have denied said application or advance the priority date on said application until the time that the applicants acquired some interest in the land where they alleged they would beneficially apply said water.

6. That Paragraph 1 of the Order, as issued by the Director of the Department of Water Administration, improperly orders approval of Permit No. 36-7072 based upon the above erroneous Findings of Fact and Conclusions of Law.

7. That Paragraph 3 of said Order is improper since Application No. 36-7072 should have properly been denied or at best been given a priority date of October 8, 1969, the date upon which Norman Standal and George Lemmon purchased some property.

WHEREFORE, Petitioner prays that after Judicial Review of this matter by the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, that the Court will make an appropriate order as follows:

36 7085

1. Ordering revocation of Application No. 36-7072 or in the alternative issuing Permit No. 36-7072 with a priority date inferior to that of Petitioner's on Application No. 36-7085.

Dated this 16th day of December, 1970.

BRAILSFORD BROTHERS, INC.

By Parry, Robertson, Daly & Larson
P.O. Box 525
Twin Falls, Idaho 83301
Attorneys for Petitioner

John K. Robertson

36 7085

November 23, 1970

Re: Permit No. 36-7072 - Norman S. Standal and George Lemmon
36-7085 - Robert H. Brailsford, President
Brailsford Brothers, Inc.

Mr. Earl Hardy
1220 Vista Avenue
Boise, Idaho

Dear Mr. Hardy:

Pursuant to your request, please find enclosed a copy of approved permit no. 36-7072 and 36-7085, as well as the order approving these permits.

If we may be of any further assistance in this matter, please do not hesitate to contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:CM

Enclosure

36 7085

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
Statehouse – Annex 2
Boise, Idaho 83707
(208) 384-2215

R. Keith Higginson
Director

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Irrigation and
Flood Control Districts

November 20, 1970

Re: Permit Nos. 36-7072 - Norman S. Standal and George Lemmon
36-7085 - Robert H. Brailsford, President,
Brailsford Brothers, Inc.

Mr. T. J. Jones
Box 1003
Boise, Idaho 83701

Dear Mr. Jones:

Pursuant to your request, please find enclosed copies of the above referenced permits and the order approving these permits.

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

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM/DG

Enc: copies of permits
copy of order

36 7085

November 17, 1970

Re: Permit No. 36-7085

Brailsford Brothers, Inc.
Mr. Robert H. Brailsford, President
Buhl, Idaho 83316

Dear Mr. Brailsford:

Enclosed is a copy of your approved Application for Permit No. ~~36-7085~~. We direct your attention to the conditions of approval as listed on the fourth page.

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

Very truly yours,

C. Stephen Allred
Deputy Director

CSA:kh
Enclosures: Copy of permit
Order
1 informational letter
Receipt No. 3670 for $100
Receipt No. 4043 for $10
cc. John A. Rosholt

36 7085

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN STANDAL AND GEORGE LEMMON, and APPLICATION FOR PERMIT NO. 36-7085, ROBERT BRAILSFORD, PRESIDENT OF THE BRAILSFORD BROTHERS, INC., an IDAHO CORPORATION.	ORDER

The Director of the Department of Water Administration, State of Idaho, having entered Findings of Fact and Conclusions of Law herein, hereby enters the following ORDER thereon.

NOW THEREFORE IT IS HEREBY ORDERED:

1. That Application No. 36-7072 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriations for the use of water from the same source.

2. That Application No. 36-7085 be and is hereby approved and that a Permit be issued therefore subject, however, to the rights of prior appropriators for the use of water from the same source and to the right of the holders of Application No. 36-7072 to proceed under a Permit to be issued thereon to divert and apply waters from the same source of supply to beneficial use.

3. That the Applicants to Application No. 36-7072 be given a period of two years from the date of the issuance of a Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.

4. That the Applicants to Application No. 36-7085 be given a period of four years from the date of the issuance of the Permit thereon to construct the facility and apply all the water to beneficial use with the understanding that an extension of time could be granted under Idaho Code, Section 42-218.

5. That the Permits to be issued on Applications 36-7072 and 36-7085 shall be subject also to the following conditions:

A. That neither of the Permits be assigned or sold without written consent of the Department of Water Administration and that failure to receive such consent will be deemed by the Department of Water Admini-

MICROFILMED

stration to be admission that the Permit so sold or assigned was obtained for speculative purposes and as such will be subject to cancellation.

B. That permanent measuring devices of a type approved by the Department of Water Administration be placed and maintained at such locations as to accurately measure the amount of water diverted to the project and the effluent from the project.

C. That the applicants shall take all reasonable precautions in constructing the diversion works and hatchery facilities to protect the public interest in the enjoyment of the aesthetic and recreation quality of the springs and stream channels. Plans and specifications showing the location and type of structures to be installed and method of construction shall be submitted to this office for approval. The use of or alteration of stream channels shall be subject to all applicable provisions of state and federal law.

DATED this 9TH day of November 1970.

R. KEITH HIGGINSON
Director

11-10-70
Cert. Mail 22338

MICROFILMED

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN STANDAL AND GEORGE LEMMON, AND APPLICATION FOR PERMIT NO. 36-7085, ROBERT BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., an IDAHO CORPORATION.	)))))	FINDINGS OF FACT and CONCLUSIONS OF LAW

This matter came before the Director of the Department of Water Administration, State of Idaho, (formerly the Department of Reclamation), upon the protest of Robert Brailsford, to Application for Permit to Appropriate the Public Waters of the State of Idaho, Application No. 36-7072, filed by Norman Standal and George Lemmon, and upon the Protest of Norman Standal and George Lemmon, to Application for Permit to Appropriate the Public Waters of the State of Idaho, Application No. 36-7085, filed by Robert Brailsford. Hearings upon the respective Protests to the Applications were consolidated upon agreement of counsel. Norman Standal and George Lemmon were represented by John Hepworth of the firm of Hepworth, Walker, Nungester and Felton. Robert Brailsford was represented by John Roshalt of the firm of Parry, Robertson, Daly and Larson. A pre-hearing conference was held December 16, 1969, at which time the issues and facts in dispute were settled and incorporated into the Pre-hearing Conference Order entered by State Reclamation Engineer on April 27, 1970. Upon Stipulation of the parties received June 29, 1970, the parties herein agreed that the respective Protests to the Applications should be heard upon a stipulation of the facts therein contained, briefs, affidavits, and material on file with the State Reclamation Engineer's office in connection

with this matter.

The record in this matter consists of Application for Permit to Appropriate the Public Waters of the State of Idaho, Application No. 36-7072, filed by Norman Standal and George Lemmon and the additional information provided in responce to the Department's letter of September 26, 1969, which is considered part of the Application; the Protest to Application 36-7072 filed by Robert Brailsford; the Application for Permit to Appropriate the Public Waters of the State of Idaho, Application No. 36-7085, filed by Robert Brailsford and the additional information provided in responce to the Department's letter of October 9, 1969, which is considered part of the Application; the Protest to Application 36-7085 filed by Norman Standal and George Lemmon; the Amendment to Application No. 36-7085 filed by Robert Brailsford and the Protest thereto filed by Norman Standal and George Lemmon; Application No. 36-7121 filed by Norman Standal and George Lemmon received February 24, 1970, from another water source for use in connection with the same facilities proposed in Application No. 36-7072; Stipulation between the parties received by the Department of Water Administration on June 29, 1970; the Affidavit of Norman Standal and George Lemmon, dated June 23, 1970; the Affidavit of Theodore Heikes, dated June 18, 1970; the Affidavit of Dave Erickson, dated June 25, 1970; the Affidavit of Norman Standal and George Lemmon, dated June 16, 1970; and the Affidavit of Richard Gooby, dated July 13, 1970. Each of the parties submitted an original brief and a reply thereto. The Director of the Department of Water

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Administration being fully advised in the premises hereby enters Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Norman Standal and George Lemmon, are signatories to Application for Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072 which was filed in the office of the Reclamation Engineer for the State of Idaho on the 17th day of July, 1969, at 2:00 o'clock P. M. In such application, Standal and Lemmon request permission to appropriate 215.2 cubic feet per second for fish propagation and domestic purposes from the water source described as Thousand Springs, tributary of the Snake River, in Gooding County, the points of diversion more particularly described as:

> Northwest Quarter of the Northwest Quarter (NW ¼ NW¼) of Section 8, the Northeast Quarter of the Northeast Quarter (NE ¼ NE¼) of Section 7, and the Southeast Quarter of the Southeast Quarter (SE¼ SE¼) of Section 6, all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho.

Application No. 36-7072 indicated that the property at the point of diversion and the place of use was owned by the Idaho Power Company and that the applicants were negotiating for the purchase of said property. A protest against said application was filed by Brailsford Brothers, Inc., said protest dated the 11th day of August, 1969.

II.

On September 29, 1969, Brailsford Brothers, Inc., an Idaho Corporation with their principal place of business in Buhl, Idaho, submitted Application for Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, which application was received in the State Reclamation Engineer's office at 9:00 A.M.

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In said application, Brailsford Brothers, Inc., sought authority to divert 150.0 cubic feet per second of the water from the Bickel Springs, tributary of the Snake River in Gooding County, Idaho. The points of diversion were specified as (Lot 1) Northwest Quarter Northwest Quarter (NW¼ NW¼), Section 8; (Lot 8) Southeast Quarter Southeast Quarter (SE¼ SE¼), Section 6; Northeast Quarter of the Northwest Quarter (NE¼ NW¼), Section 8; all property described being in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The application specified that Brailsford Brothers, Inc., owned the property at the place of use and that the property at the point of diversion was owned by the Idaho Power Company, and further specified that the applicant would either purchase property at the point of diversion from the Idaho Power Company at public auction, negotiate for lease with the successful purchaser, or file a condemnation action to gain access to the intended points of diversion. Application No. 36-7085 indicated that 150.0 cubic feet per second of water would be used for the irrigation of 2,542 acres of land owned by the Brailsford Brothers, Inc., and that 50 cubic feet per second of water would be used for fish culture or fish propagation purposes. On October 28, 1969, a protest against the issuance of a permit under Application No. 36-7085 was filed by Norman Standal and George Lemmon.

III.

On October 8, 1969, Norman Standal and George Lemmon submitted the highest and best bid to the Idaho Power Company for the purchase of the property described in Application No. 36-7072 and on October 20, 1969, did enter into a contract for

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a period up to ten years with interest at 8% per annum with the Idaho Power Company for payment of the unpaid balance of the purchase price.

IV.

On December 10, 1969, Brailsford Brothers, Inc., filed with the State Department of Reclamation an Amended Application for Permit. This amended application asked for authority to reduce the amounts requested under the original application No. 36-7085 from 150.0 cubic feet per second to 100.0 cubic feet per second from the Bickel Springs, tributary of the Snake River. Only two points of diversion were listed in the amended application, being, (Lotl) Northwest Quarter Northwest Quarter (NW¼ NW¼) of Section 8; and (Lot 8) Southeast Quarter Southeast Quarter (SE¼ SE¼) of Section 6; both in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The amended application indicated that Brailsford Brothers, Inc., owned the property at the intended place of use and that the property at the point of diversion was then owned by Standal and Lemmon, and further specified that the applicant would negotiate for the lease of an appropriate right of way or file a condemnation action if necessary. The amended application specified that 20 cubic feet per second would be used for irrigation purposes on 1,007.16 acres of land and that 80 cubic feet per second would be used for fish culture or propagation purposes on 20 acres of land.

V.

At all times during 1969, George Lemmon served as watermaster for Water District 63 which district includes the Hagerman Valley including those points of diversion in the application herein referred to.

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VI.

That Norman Standal and George Lemmon on June 1, 1969, contacted a representative of the Idaho Power Co. for the purpose of purchasing the property which is referred to in their Application as the place of use. The power company was unwilling to negotiate a sale with these Applicants at this time because of their existing plans to make a sale under sealed bids. No agreement was reached for the sale, lease, or use of these lands by the Applicants until after their Application had been filed.

VII.

That in September of 1969, the Idaho Power Company gave notice of intent to sell the lands by bid on October 8, 1969, and that the Applicants, George Lemmon and Norman Standal bid for the purchase of the lands over which a use was to be made under their Application and a contract of sale was consumated on October 18, 1969. That under the contract of sale Norman Standal and George Lemmon purchased approximately 62 acres at the location of the place of use named in their Application and that of the 62 acres purchased approximately 15 acres are suitable for fish ponds.

VIII.

That Norman Standal and George Lemmon have, since the purchase of land from Idaho Power Co., purchased and hatched eggs for approximately one-quarter million fish to be raised on the property. Approximately 75% of the work necessary to prepare the ponds, ditches and other facilities is completed. That these Applicants are in the process of completing the project.

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IX.

That the only evidence presented tending to show that the Application of Norman Standal and George Lemmon was filed for speculative purposes is that at the time of the filing, the Applicants did not own or have any right to the use or occupancy of the land where they intended to use the water, nor had they been assured of any right thereto by the owner. There is no evidence in the record which would show that;

(1) The Applicants did not intend to proceed under their Application toward acquiring the land necessary for placing the water to beneficial use,

(2) That the Applicants did not intend to proceed under their Application without assuming the financial responsibility therefore,

(3) That the Applicants filed the Application with the intent to sell the permit to another without proceeding toward commencment of the work necessary under the Application to put the water into beneficial use or,

(4) That the Applicants did not have the financial resources available with which to proceed under the Application.

X.

That the Application of Norman Standal and George Lemmon, No. 36-7072, and the Application of Robert Brailsford, No. 36-7085, are competing applications for the same source of water, commonly known as Bickel Springs which has an apparent average flow of approximately 215 cubic feet per second. There is insufficient water to satisfy the demands of both Application 36-7072 and Application No. 36-7085.

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XI.

There is no evidence in the record which would indicate that either the Application of Standal and Lemmon, No. 36-7072, or the Application of Brailsford, 36-7085, calls for a quantity of water in excess of what can be beneficially used. The Affidavit of Lemmon and Standal, dated June 23, 1970, which is uncontradicted by the Protestant Brailsford, states that approximately 15 acres of land, purchased from the power company, is available for fish ponds. The Application of Lemmon and Standal bases its demand upon a facility with water requirements of 215.2 c.f.s., 5.2 c.f.s. for domestic use in the hatchery and for hatchery troughs and 210 c.f.s. for use in 27 large fish ponds. The large fish ponds as planned have a total capacity of approximately 1,071,700 cubic feet. The rate of turnover of water as proposed is well below the amount advocated by the Protestant's affiant, Erickson.

In addition to Application 36-7072, Lemmon and Standal have applied for a second permit from another source, Application No. 36-7121, received February 24, 1970, for an additional 150 c.f.s. of water for use in the facility proposed in Application 36-7072 making a total demand of 365.2 c.f.s. This quantity of water is also within the amount considered necessary by the Protestant's affiant, Erickson, when considered in light of the plans for development as proposed by Lemmon and Standal.

CONCLUSIONS OF LAW

I.

Application No. 36-7072 is not void for having been filed by one of two individuals who is a water master of the State of Idaho elected to his posisiton under Chapter 6, Title 42, Idaho.

Under Article XV, Section 3 of the Idaho Constitution it is provided that the right to appropriate the unappropriated waters of any natural stream to beneficial use shall never be denied. In the case of Tappan v. Smith, 92 Idaho 451, 444 P. 2d 412 (1968), it was held that the right to appropriate water as granted in the Idaho Constitution was subject to reasonable regulation by the legislature. However, there does not appear to be a statute restricting or preventing a water master from initiating a right to the appropriation of water. Absent any such legislation and in light of the authority contained in Idaho Code, Section 42-202, permitting any person, association or corporation to file a permit to appropriate the public waters of the State, George Lemmon, as a duly elected water master of the State of Idaho, would not be prohibited from filing an application to appropriate public waters of the State.

II.

The application of George Lemmon and Norman Standal, No. 36-7072, for a permit to appropriate the public waters of the State is not void for having been filed without the applicants owning or possessing any right to the land where

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the point of diversion is located or the place of use is to be made.

No provision is found in the statutes relating to the permit procedure which requires the applicant to own either the land upon which his point of diversion is located or the land upon which his place of use is to be accomplished. It appears to be universally held by the states following the appropriation doctrine that, except for the State of Arizona (Tattersfield v. Putnam, 45 Ariz. 156, 41 P.2d 228 (1935), ownership of the land upon which the place of use is to be made is not in and of itself a prerequisite to either filing an application for a permit to appropriate water or finally consumating that right upon diversion and application to beneficial use. The important consideration is that all steps taken in connection with the appropriation must be taken in a lawful manner.

It is stated in 2 Kinney, Irrigation and Water Rights § 686 (2d ed. 1912), as follows:

> "In the discussion of the Arid Region Doctrine of appropriation it must be borne in mind that the ownership of water rights, in the Western States, does not depend upon a legal title, or, in fact, any title to lands bordering upon a stream, or upon the title or ownership to any lands elsewhere, but is simply a possessory right, acquired by an appropriation and diversion of the waters of a stream and consummated by its application to some beneficial use or purposes, either by the appropriator himself or by some consumer acquiring his right from the appropriator. The appropriator need not be the owner of any land in order to make a valid appropriation. Corporations may be organized for the express purpose of appropriating the waters of some stream and selling the right to use the water to consumers, without the title or ownership of any land, except for the bare easement over the lands of others for their ditches and other works." (Citations omitted.)

The law of appropriation developed through the activities of persons who were originally trespassers on the public domain. The right to use the water was later recognized by congress against the claims of subsequent entrymen. 14 Stat. L. 253, § 9 (1866); 16 Stat. L. 218 (1870); 19 Stat. L. 377 (1877). It is further stated in 2 Kinney, Irrigation and Water Rights, § 687 (2d ed. 1912), as follows:

> "A squatter or settler upon the unsurveyed lands of the United States has never been regarded as a trespasser, and in many instances the settlement upon the lands has been the inception of his title, a preference right being given him to make his proper filing within a specified time after the lands are opened for settlement. Again, no title to the land being required to obtain the right to make appropriations of water, a squatter may make a valid appropriation of the waters of the natural streams for the purpose of irrigating the public lands occupied by him, or for any other beneficial use or purpose." (Citations omitted)

It is further stated in 2 Kinney, Irrigation and Water Rights, Sec. 688 (2d ed. 1912), as follows:

> "Even trespassers upon the lands owned by others may make valid appropriations of water, provided that the appropriation has the requisite priority, and the water is used for some beneficial purpose. The water may be used for the irrigation of the lands trespassed upon while the trespasser has possession of the same, and after he has been ejected he may change the place of use to other lands. As was said by the Utah Court (Patterson v. Ryan, 37 Utah 410, 108 P. 1118); "But the authorities are to the effect that even trespassers upon land may acquire the exclusive right to the use of water that is used either to irrigate such land or is used thereon for other purposes, and that such a right, when once acquired, is paramount to the rights of the true owner or claimant, when he is dispossessed of the land, and the water claimant may divert and use the water elsewhere than on the land if he can so divert and use it." (Citations omitted)

Of similar import is the conclusion of Hutchins, Misc. Pub. No. 418 U. S. Dept. Of Agr., Selected Problems in the Law of Water Rights in the West, p. 311 (1942), wherein he states:

"The general rule, in any event, is that one at least rightfully in possession of land, even though not the owner, may make a valid appropriation in connection with such land, which water right remains his property and does not become the property of the landowner. The appropriative right is property distinct from an estate in land, and it exists without private ownership in the soil or without perfect title thereto, as against all persons except the Government or its grantees. As the right can be acquired separate and apart from the land, an uncompleted title to the land on which beneficial use is to be made does not bar the acquisition of the right. A lessee, then, can make an appropriation in his own behalf, which is his property unless he is acting as agent for the lessor; and his right to transfer the appropriation to other land on the conclusion of his lease will then depend upon the State rule governing transfers of place of use and perhaps point of diversion and upon the physical feasibility of making the change." (Citations omitted).

Hutchins, The California Law of Water Rights, P. 71 (1956) states as follows:

"The California Supreme Court held in one of its earliest cases dealing with water rights that the right to running water exists "without private ownership of the soil--upon the ground of prior location upon the land, or prior appropriation and use of the water." (Hill v. Newman, 5 Calif. 445, 446 (1855). The ownership of water "as a substantive and valuable property" is "distinct, sometimes, from the land through which it flows." (McDonald v. Bear River & Auburn Water & Min. C., 13 Calif. 220, 232 (1859). Title or the right to acquire title in the place of intended use has never been a necessary element of the right to appropriate water. (Santa Paula Water Works v. Peralta, 113 Calif. 38, 43, 45 Pac. 168 (1896). And so, said the supreme court in 1929: (Joerger v. Pacific Gas & Elec. Co., 207 Calif. 8, 34, 276 Pac. 1017 (1929).

> 'There can be no question that an appropriator of water may acquire a prescriptive right to divert and use the same from a stream on land that he does not own, and this user may be either by the claimant or by one holding under him, as a lessee or tenant."'

The rule as announced by the above authorities appears to be the rule adopted in Idaho. It was held by the Idaho Supreme Court in the Case of Mahoney v. Neiswanger, 6 Idaho 750, 59 P. 561 (1899), that one who was technically a trespasser could

initiate a water right by diversion and application to beneficial use on the public domain even though the land was subsequently acquired by another.

In the case of First Security Bank v. State, 49 Idaho 740, 291 P. 1064 (1930), an application to change point of diversion and place of use was filed on behalf of one who purchased the water right from an individual who had diverted and applied water to land he did not own. The original appropriator had applied the water to beneficial use on school land prior to the time that it was surveyed by the federal government and continued to apply the water to beneficial use after survey and execution of a lease with the State. The State subsequently sold the land to another individual and claimed that the water applied to the land by the original appropriator was appurtenant and passed with the conveyance. The Court held that the original appropriator or his successor could, absent any agreement with the State to the contrary, transfer the place of use to other lands reasoning that the water appropriated for beneficial use was the sole property of the appropriator. The Court stated as follows:

> Water may be appropriated for beneficial use on land not owned by the appropriator and this water right becomes the property of the appropriator. (Sarrett v. Hunter, 32 Ida. 536, 185 Pac. 1072; Sanderson v. Salmon River Co., 34 Ida. 145, 199 Pac. 999; Kinney, supra, secs. 686, 689, 767.) This has been held in cases where the water was appropriated for use on land on which the appropriator was a mere trespasser (Seaweard v. Pacific Live Stock Co., 49 Or. 157, 88 Pac. 963); where the appropriator had leased the land on which he intended to use the water (Hays v. Buzard, 31 Mont. 74, 77 Pac. 423; Cooper v. Shannon, 36 Colo. 98, 118 Am. St. 95, 85 Pac. 175); and where the appropriator was a lessee of state school lands. (Sayre v. Johnson, 33 Mont. 15, 81 Pac. 389. See, also, Sowards v. Meagher, 37 Utah, 212, 108 Pac. 1112; St. Onge v. Blakely, 76 Mont. 1, 245 Pac. 532; First State Bank v. McNew, 33 N. M. 414, 269 Pac. 56;

Long on Irr., sec 176; secs. 2339, 2340, Rev. Stats. U. S. C. S., secs. 4647, 4648); 30 U. S. C. A., secs. 51, 52; 43 U. S. C. A., sec. 661).

In the case of Sarret v. Hunter, 32 Idaho 536, 185 P. 1072 (1919), it was contended that one could not obtain a permit to appropriate water when he had no interest in the land upon which he proposed to divert and use the water.

> "In determining whether a valid appropriation of water has been made, or the respective priorities of contending appropriators, the law does not concern itself with disputes relative to the title to the lands for which it is claimed the water was appropriated. The test of a valid appropriation of water is its diversion from the natural source and its application to a beneficial use. (Kinney on Irrigation, 2d ed., sec. 725). When one diverts water hitherto unappropriated and applies it to a beneficial use, his appropriation is complete, and he acquires a right to the use of such water, which is at least coextensive with his possession, and so when one makes application for a permit to divert and appropriate water, the query is not upon whose lands does he intend to apply it, but upon what lands he intends to apply it and to what use does he expect to put it when so applied. His right to possession, or the character of his occupancy as between claimants to the right to the use of the public waters of the state, is not in issue.
>
> Title to land will not be determined in fixing priorities to water between water claimants. One may initiate a right to the use of waterupon vacant lands by securing a permit therefor, and when the application for such permit is bona fide and coupled with a present intention that the water which it is sought to appropriate under the permit is to be applied to a beneficial use, if the water is so applied during the limitations of the permit, the appropriation is valid and relates back to the date of the permit.
>
> ***
>
> We hold that a water right may be acquired by completion of works under a permit and the application of water to a beneficial use, and that when this is properly done, the priority will date from the issuance of the permit without regard to whether the permit-holder was at the date of his application in any way connected with the legal title to the land upon which he proposed to apply the water." (32 Idaho at 541-543).

The Court's holding in the case of Sarrett v. Hunter was followed in the case of Sanderson v. Salmon River Canal Co.,

34 Idaho 145, 199 P. 999 (1921).

The reasoning in the Sarrett v. Hunter case is similar to that of the case of Sowards v. Meagher, 37 Utah 212, 108 P. 1112 (1910), where in it was contended that a permit could not issue to an individual who had no interest in the property upon which he intended to place the water to beneficial use. In the Sowards case, the application was filed at a time when no one could lawfully enter upon, occupy, possess, cultivate, farm or otherwise use the land proposed to be irrigated. The court stated as follows:

> If, therefore, an application is made with a present design and an actual bona fide intention to appropriate unappropriated public waters for the irrigation of certain designated lands, a beneficial purpose, at a time when the applicant has no present right, title, or interest in or to the lands proposed to be irrigated therewith, and, too, when such lands are then unoccupied and unclaimed and a part of a reservation, but it fairly is made to appear that when the proposed diverting channels and work prosecuted with reasonable diligence and dispatch are completed within the time fixed by the statute, or allowed by the engineer, the lands may then be lawfully claimed and occupied, and the water applied to the beneficial purpose for which the appropriation is proposed, we see no good reason why the application should not be received and the applicant protected in his inceptive right. One filing an application under such circumstances, commencing the construction of the works within six months from the approval of his application, prosecuting such proposed works to a completion within the time fixed by the statute or allowed by the engineer, and incurring the necessary expense to divert and conduct the water to the lands proposed to be irrigated, takes the risk that when such works are so completed, and the water diverted and conducted to such lands, they may then be lawfully claimed and occupied by some one who is willing to take the water and use it and apply it to the beneficial purpose for which the application was made to appropriate it.

In the case of Bassett v. Swenson, 51 Idaho 256, 5 P. 2d 722 (1931), the Court held that a permit could be issued to one who did not own the land where the point of diversion was located if there had been no trespass by the applicant in preparing

the application as distinguished from the case where the applicant had obtained the information for the application by trespassing across the land, Marshall v. Niagra Springs Orchard Co., 22 Idaho 144, 125 P. 208 (1912). In the Marshall Case it was stated that the initiation of the right to appropriate public water on private land is void as against the landowner and that a permit from the state engineer was of no effect if the facts stated in the application were secured by entrance upon the land in trespass. In the Bassett Case the application was filed by obtaining the necessary information without trespassing across the land. The Court, however, made the broad statement that a water right initiated in trespass was void.

> "It is quite generally held that a water right initiated by the trespass is void. That is to say, one who diverts water and puts it to beneficial use by aid of a trespass does not, pursuant to such trespass, acquire a water right. Any claim of right thus initiated is void." (51 Idaho at 259).

The above language is dictum and was not necessary for the Court to reach its decision. The language is in conflict with the prior opinions of the Supreme Court cited above. The point actually decided was that the attempted appropriation was void as against the owner of the land upon which the trespass was committed.

It should be further noted, that the issuance of a permit does not confirm the existence of a water right or grant any right to the holder to trespass across the land either over which he seeks to divert the water or where he seeks to place it to beneficial use. A permit only gives the holder the right to initiate a water right which, upon completition of the terms and conditions of the permit, allows the holder to receive a priority

as of the date of the filing of the application.

Under the above cases and under Idaho Code, Section 42-202, there appears to be no requirement that the permit holder have, at the time of filing of the application, either the consent of the owner of the land where his proposed point of diversion is located or where his proposed place of use is located.

It may well be said that the fact that an applicant does not own land at either the point of diversion or the place of use or have any right to the possession of such land is evidence which might be cited for the proposition that the application was filed for speculative purposes. However, absent any showing that the applicants did not intend to place the water to beneficial use, did not intend to proceed toward acquiring a right to the use of the land at the point of diversion and place of use were located, had insufficient financial resources available with which to place the water to beneficial use, or intended to sell the permit to another without attempting to comply with the terms and conditions of the permit, there is insufficient evidence upon which to conclude that the application was filed for speculative purposes.

It is further noted that under the provisions of Idaho Code, Section 42-301, that any person holding a permit postdating another permit may petition the Department of Water Administration to cancel the earlier permit for failure of the permit holder to complete one-fifth of the construction work within one-half the time allowed for completion of the project or for failure to complete all of the construction work for the project

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within the time allowed by the permit. Such a remedy would further permit a subsequent permit holder the opportunity of contesting the permit in the event that the holder is not proceeding to acquire the necessary interests in the land at the point of diversion or the place of use.

III.

The application of Robert Brailsford, 36-7085, for a permit to appropriate the public waters of the State is not void for having been filed without the applicant owning the land upon which the point of diversion is proposed.

DATED this 9TH day of November, 1970.

R. KEITH HIGGINSON, DIRECTOR
DEPARTMENT OF WATER ADMINISTRATION

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER ADMINISTRATION

OF

THE STATE OF IDAHO.

In the Matter of Application for Permit No. 36-7085, Robert H. Brailsford, President of Brailsford Brothers, Inc., an Idaho Corporation, and Application for Permit No. 36-7072, Norman S. Standal and George Lemmon	REPLY BRIEF OF BRAILSFORD BROTHERS, INC.

ARGUMENT

In the brief submitted by Applicants Standal and Lemmon on July 20, 1970, in support of their Application No. 36-7072 and in opposition to Application No. 36-7085 of Brailsford Brothers, Inc., four disputed facts were briefed and argued. Summarized they are; speculative purposes, insufficient water, inability to apply the water requested to beneficial use, and that George Lemmon is not a proper applicant, the latter point relating again to speculation.

Idaho Code Section 42-203 specifically enumerates the criteria from which the Director of the Department of Water Administration may use his discretion in approving, denying, or conditioning an Application for Permit to Appropriate the Waters of the State of Idaho. The appropriate portion of Idaho Code Section 42-203 is as follows:

> "The state reclamation engineer shall find and determine from the evidence presented to what use or uses the waters sought to be appropriated can be and are intended to be applied, and where such proposed use is such that it will reduce the quantity of water under existing water rights, or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or that the applicant has not sufficient financial resources with which to complete the work involved therein, the state reclamation engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for, or may grant permit upon conditions."

There is a dearth of case law and precedent on the appropriate portion of this section which presently binds the Department of Water Administration.

The language referred to in the above quote was first included in the Idaho Code in 1935 by an amendment to the then Section 41-203. Said Section as amended is found in the Idaho Session Laws of 1935, Chapter 145, at page 357-360. Prior to 1935, the language above quoted, which is now a portion of Idaho Code Section 42-203, was not included. The amendment made in 1935 by the Idaho Legislature to then Section 41-203, included for the first time, the following language:

> "* * * * * or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, that the applicant has not sufficient financial resources with which to complete the work involved therein or if a renewal permit, that such applicant has not proceeded diligently in applying the waters involved therein to any beneficial use or purpose, * * * * *"

All of the criteria which have been disputed concerning Applications No. 36-7072 and 36-7085 were included by the 1935 amendment. Prior to this time, no Idaho statute included such criteria as speculation, insufficient unappropriated water available for the purpose, financial resources, or diligence in applying the water to a beneficial use.

In the case most heavily relied on by Standal and Lemmon, Sarrett v. Hunter, 32 Ida. 536, 185 Pac. 1072 (1919) a contention similar to the contention of Brailsford Brothers, Inc. was raised. However, in that case the applicant was in fact the holder of a desert entry, which of course gave him some right to exclude all members of the general public from that desert entry so long as he complied with the then current requirements of the B.L.M. Although Hunter had no recordable legal title until patent was obtained, he still had more right in the property than any other person. Hunter in fact had a better right to that portion of the public lands as a desert entrymen than Standal and Lemmon had in our present analogous case at the time they made their application. On the date of Application No. 36-7072 submitted by Lemmon and Standal, the only right they had was to submit a competitive bid

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some months. We submit that every member of the public had the same right. In the Hunter case, the following quote is found at page 539:

> "All of the lands involved herein were, at the date of the issuance of the various permits to the parties to this litigation a part of the Lemhi Forest Reserve and unsurveyed public land. The respondents filed homestead entries and the appellants made desert entries."

The Hunter case was decided in 1919. Hunter predated by 16 years the appropriate language of the Idaho Code which is in question here. In 1919 it was certainly to the benefit of Idaho to promote reclamation development. In fact, today, the particular situation of the desert entry is a unique one. In order to promote continued reclamation development, the Director's office will issue permits to the entrymen so that a water right may be developed to enable said entrymen to obtain patent to the lands from the Bureau of Land Management. The B.L.M. cannot patent lands to an entrymen without a water right, and by the statutes of the State of Idaho the Director of the Department of Water Administration cannot issue a permit without the applicant having some property interest in the property at the place of beneficial use. However, in only this particular situation, the Director has allowed permits to be issued so as to promote continued reclamation development in Idaho. Brailsford Brothers, Inc. contend that a bona fide desert entrymen has a license to develop the desert entry lands to the exclusion of every other person so long as he complies with the provisions of the statute. These are not situations where a potential desert entrymen obtains a permit to appropriate water and then competes with some number of other applicants so as to enter the described lands.

Lemmon and Standal cite the case of Sanderson v. Salmon River Canal Company, Ltd. 34 Ida. 145, 199 Pac. 999 (1921). In this case Sanderson was a settler on a portion of land originally segregated to the State under the Carey Act. At page 1000 of 199 Pac. the following quote appears:

> "He owns, as against everybody except the United States Government, and is in possession of, and entitled to the possession of, a certain tract of land in the Carey Act segregation known as the Salmon River Tract, and watered by the irrigation system constructed by the construction company and operated by the defendant."

The Court determined that the water right which Sanderson owned was a vested right. In our case under consideration, we are not dealing with vested rights but merely with applications to obtain permits. Brailsford Brothers, Inc. argue that the interest of Sanderson in public lands in the 34 Idaho case was indeed more than applicants Lemmon and Standal had until they became the successful bidder and contract purchasers of the Bickel Springs land. Sanderson proceeded under rights given him through the Carey Act and through the Department of Interior. Had he been a mere trespasser, he would have had more interest in that property than Standal and Lemmon had in the Bickel Springs land before their successful bid.

The case of First Security Bank of Blackfoot v. State and Wood Livestock Company, 49 Ida. 740, 291 Pac. 1064 (1930) does not go to the question of "standing" at the time of making the application but it is a case concerning an application for a change of place of use. The question was whether or not the water right could be perfected by a lessee of state land for use in connection with that land. Brailsford Brothers, Inc. would contend that a lessee has a certain property right, which would give him standing to make an Application to Appropriate Water. Perhaps a mere trespasser who is in possession would have this right. The prime question in the First Security case was whether or not a water right was separable and could be transferred from one point to another for use. We submit that a lessee of state lands has some legal property interest in the lands as long as he is lessee. The First Security case was also decided five years before the amendment of Idaho Code Section 41-203.

The final case cited by Lemmon and Standal is the case of Bassett v. Swenson, 51 Ida. 256, 5 Pac. 2d 722 (1931). The question was whether or not a water right was initiated in trespass. The court did not get to the question as to whether or not the application was void because of the fact the applicant would have to condemn lands to divert and make use of the water. However, this case was also decided 4 years prior to the amendment of the Idaho Code Section which is concerned in the instant matter.

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Although some of the cases cited by Lemmon and Standal might be construed to be analogous to the instant dispute, they were all decided prior to the enactment of the language of the statutue which the Director of the Department of Water Administration must construe. The amendment of an existing statute indicates that a change was intended. Hopson v. North American Insurance Company, 71 Ida. 461, 233 Pac. 2d 799 (1951) at page 464. Wright v. Headrick, 65 Ida. 149, 139 Pac. 2d 761 (1943). Stewart v. Common School District #17 of Owyhee County, 66 Ida. 118, 156 Pac. 2d 194 (1945). It is obvious from the reading of the language included in then Section 41-203 that the amendment made in 1935 was intended to give the State Reclamation Engineer additional authority over and above that which he previously possessed for the purpose of making a determination as to whether or not an Application to Appropriate Water should be permitted. Prior to 1935, the State Reclamation Engineer had no authority to deny an application although the same was speculative in nature. We submit that under the existing statute Director of the Department of Water Administration has said authority. We further submit that the applicants under No. 36-7072 do not meet all of the criteria of Section 42-203. They are mere speculators. They had no "standing" to file the application until they became the successful bidders for the purchase of the Bickel Springs property.

We submit that the application of Brailsford Brothers, Inc., 36-7085, being in good order, should be approved in all respects in accordance with the amended application 36-7085.

John A. Rosholt

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CERTIFICATE OF MAILING

I hereby certify that on the 18th day of August, 1970, I served the foregoing Reply Brief of Brailsford Brothers, Inc., by causing to be deposited a copy thereof in the post office at Twin Falls, Idaho, enclosed in an envelope with postage prepaid addressed to attorneys Hepworth, Nungester, & Felton at P. O. Box 259 in Buhl, Idaho.

Of Parry, Robertson, Daly & Larson

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Attorneys for Applicants Standal & Lemmon

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

* * * * * * * * * * * * * * *

IN THE MATTER OF THE APPLICATION FOR PERMIT No. 36-7072, NORMAN S. STANDAL AND GEORGE LEMMON, AND APPLICATION FOR PERMIT NO. 36-7085, ROBERT H. BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., AN IDAHO CORPORATION.	REPLY BRIEF OF STANDAL AND LEMMON

* * * * * * * * * * * * * * *

FACTS

The facts are stipulated and are, therefore, not set forth in this reply brief. In Brailsford Brothers, Inc.'s, hereafter referred to as Brailsfords, brief, the following objections are raised:

(1) That Standal and Lemmon's application should be denied because it is speculative;

(2) That there is not sufficient unappropriated water available as applied for by Standal and Lemmon;

(3) That Standal and Lemmon cannot apply the amount of water requested to a beneficial use;

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(4) That George Lemmon is not a proper applicant and Standal and Lemmon's application is for speculative purposes.

Standal and Lemmon believe that none of the four objections are valid for the following reasons.

I.

Application for Permit No. 36-7072 to appropriate the waters is not speculative and should not be denied. An applicant can make application for a water permit before owning the land upon which the applicant intends to place the water.

The first case cited by Brailsfords was City and County of Denver vs. Northern Colorado Water Conservation District, 276 P2d 992 (Colo. 1954). Headnote number 22, which covered the speculative issue, reads as follows:

> "Water claim, which had been made for speculative purposes by parties who did not have any expectation themselves of actually constructing works and applying waters to some useful purpose, did not give such parties any right against subsequent appropriations made in good faith."

The above is certainly a true and correct statement of the law which should be applied in this case. The appropriators who were the defendants in that Colorado case were truly speculators. At 276 P2d 1008, the court stated the criteria for determining whether or not their application was speculative as follows:

> "Here, neither Galloway nor George had any 'claim of appropriation;' neither owned or intended to procure any land for irrigation or any power plant for power use. Neither represented any municipality for domestic use. Neither had an 'enterprise' for 'financing and construction'. Neither attempted to finance or intended to build the system of ditches, reservoirs

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and tunnel which they platted. They did only token work to give pretense of a right which they might sell. Mr. Galloway testified: 'A. Did you price the project to any of these people, or your interest in it? A. No, we wanted them to construct it.' Mr. George testified: 'Q. The whole purpose was to develop the project for the purpose of eventually disposing it to someone else? A. I think that is right, yes, who could utilize the water.' They were promoters and speculators - not appropriators. A claim for mere speculative purposes by parties having no expectation themselves of actually constructing works and applying the waters to some useful purpose, gives them no rights against subsequent appropriations made in good faith."

The court went on to cite the Colorado case of Taussig v. Moffat Tunnel Company, 106 P2d 363, which involved an application to appropriate by a corporation with powers and purposes allowing it to develop and construct ditches and reservoirs. The Court held the application was valid and not speculative if the applicant had entered into negotiations with ditch companies and individuals for the sale of water for which it had applied. In other words, the Colorado Supreme Court has rightly determined that the intent of the appropriators must be determined in order to determine whether or not their applications were filed for "speculative purposes". The defendants in the City and County of Denver case had made an application to appropriate waters but subsequent thereto, did not follow through by the construction of diversions and conduits, but merely intended to acquire and then sell a valuable water right. They did not endeavor to negotiate with the owners of the land upon which the water would be applied, but simply hoped that someone would come along to buy their water right and develop a canal or ditch company to carry the water from the river to the lands where the water would

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necessarily be used. In the Taussig case, a water or canal company made application prior to the time that work was done to divert the water, it obviously did not own the lands upon which the water was to be applied, but the difference is that the canal company in the Taussig case had surveyed and platted to determine that the project could be accomplished and furthermore had negotiated with the owners of the lands to which the water would be applied. It seems that it is an inescapable conclusion that the standard is "diligence." We simply suggest that the State Reclamation Engineer consider the cases of City and County of Denver v. Northern Colorado Water Conservation District and Taussig v. Moffat Tunnel Company and apply the rule which necessarily will develop from such a comparison and that it determines the "diligence" of the applicants, Standal and Lemmon.

A person would be a complete and utter fool to make expenditures toward construction of diversion works or purchase of the place of beneficial use, which he did not already otherwise own, unless and until he could justify such construction or acquisition expenditures with the assurance that the water would be available within the five (5) year period allowed to put it to beneficial use. Standal and Lemmon would certainly be running a high risk of losing many thousands of dollars if they were to have first purchased the Bickel Springs property from Idaho Power Company and then have found that all of the waters of Bickel Springs had been applied for by Brailsford or others. Certainly, not even Brailsford would contend that the price paid by Standal

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and Lemmon for the Bickel Springs property would be justified for any other use than for fish propagation purposes.

The second case cited by Brailsford is Scherk v. Nichols, 95 P2d 74 (Wyo., 1939). In that case, the plaintiff sued to have the defendant's application and appropriation declared null and void and judgment was rendered for the defendant, the Court finding that his application was not made for "speculative purposes." It appears that the defendant's predecessors in interest who filed the original application for permission to appropriate did not own the lands upon which their application indicated that water would be beneficially applied. Interestingly enough, in the Scherck case, the issue of trespass was raised. The Idaho case of Bassett v. Swenson, 51 Idaho 256, 5 P2d 722, was mentioned in that regard. The Court concluded as follows:

> "A more correct statement is contained in Weil on Water Right, third edition, section 221, in which it is stated that an initiation of a water right by trespass on another's land is void as against the owner of the land. * * * In the case at bar, we find no complaint on the part of the owner of the land on which the springs and ditch rights are located. In fact, the present owner thereof testified that water is diverted with her consent. The plaintiff is not the one to object."

The Court in Scherck cited as authority Sowards v. Meagher, 108 Pac. 1112 (Utah). In that case, Meagher and an assoiate filed an application with the State Engineer to appropriate water for lands embraced in an Indian reservation, which was hoped or expected to be opened for settlement. The direct question decided by the Court was stated as follows: "May an application be made to appropriate water for a beneficial purpose

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so contemplated in the future?" (Emphasis ours) The Court answered the question in the affirmative as follows:

> "We have, however, with some hesitancy, reached the conclusion that such an application may properly be made when it is made in good faith and with an actual bona fide intention and a present design to appropriate the water for a beneficial use, though contemplated in the future, and when it is not made for the purposes of mere speculation or monopoly.
>
> "The Court considered the point that the applicant might never be able to apply the water to his own lands, quoted at length from an Oregon case (hereafter mentioned), which held that the intention of an appropriator 'may comprehend the use to be made by or through another person,' and further stated that the applicant takes the risk that the lands may fall into the hands of another who might or might not be willing to take the water sought to be appropriated by the applicant."

The Court remarked further:

> "In other words, if the proposed appropriator is not able to complete and finally establish his appropriation by applying the water to, and using it for, the beneficial purpose for which it was proposed to be appropriated, either by himself or through the agency of some user, his appropriation fails."

It seems that the lesson to be learned from the Scherck case then is that you do not need to own the land which you identify in your application as being the place of beneficial use, that you may proceed to divert and apply to a beneficial use, and that in the event you are not able to follow such plan through to completion, then you will necessarily lose your water right. Therefore, the application, if it does not appear to be speculative on its face, must be judged upon the diligence and intent of the applicant. We quote from the Scherck case on page 79 as follows:

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"After all, as stated in Nevada Ditch Co., v. Bennett, supra, that no matter who may initiate the right, if it is perfected that general purpose of an appropriation is accomplished. In Sowards vs. Meagher, supra, the Court stated that 'the final step, and the most essential element, to constitute a completed valid appropriation of water is the application of it to a beneficial purpose.' Our statute seems to lay the main stress on the beneficial use, and in the case of irrigation by direct flow from the stream, on the place of use. Other elements seem to be of more or less secondary importance, except, of course, that the prior applicant and permitee, who is diligent otherwise, has the prior right. No good reason, accordingly, appears, if the law is complied with in other respects, why a man should be forbidden to act as a volunteer for another in connection with the steps leading up to a perfected appropriation. If Hill wanted to act as a benefactor of Ryan and Dickenson, and Ryan wanted to act as a benefactor of Dickenson, sound policy does not, we think, require that this should be forbidden merely to give another who has no greater right to the unappropriated waters of this state, and who has been tardy, the chance to obtain it." (Emphasis ours)

The final case cited in the Brailsford's brief on the issue of speculation is Toohey vs. C mpbell, 60 Pac. 396 (Mont. 1900). In that case, the plaintiff brought an action to foreclose a neighboring water user from the right to enjoy a joint ditch fed by the East Gallatin River. Montana State Supreme Court reversed the District Court which had foreclosed any right of the defendant and allowed the defendant such right as he was able to show that he had applied to beneficial use; however, he was not allowed additional water where he was able to show no more than a bare alleged intent to apply to beneficial use additional water to additional lands some time in the future. With this, of course, we agree entirely. We also agree with the following quote from that case:

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"One of the rules in the system of law of water rights is that no one man can, by prior appropriation, obtain exclusive control of an entire stream, unless his appropriation is made for some beneficial purpose presently existing or contemplated. (Emphasis added He is restricted in the amount that he can appropriat to the quantity needed for such beneficial purposes. 'The intention of the claimant is, therefore, a most important factor in determining the validity of an appropriation of water. (Emphasis ours) When that is ascertained, limitation of the quantity of water necessary to effectuate this intent can be applied according to the acts, diligence, and needs of the appropriator.' Power vs. Switzer, 55 Pac. 32 (Mont.). The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. We recognize the doctrine that right to the use of water may be owned without regard to the title to lands upon which the water is to be used; that is, that a right to the use of water is a possessory one, that may be obtained by actual appropriation and diversion, perfected by application of the water so appropriated to a beneficial use then present or contemplated, and made before appropriation and use by another. But as every appropriation must be made for a beneficial or useful purpose, it becomes the duty of the courts to try the question of the claimant's intent by his acts and circumstances surrounding his possession of water, its actual or contemplated use and the purposes thereof. * * * Neither of them ever enclosed but few acres of the Toohey ground, or irrigated more, or defined the boundaries of any greater tract, or otherwise did any act evincing an intent to use water upon any larger area than the portion actually cutlivated from 1868 to 1876."

How then can Brailsford challenge the intent or the "diligence" of Standal and Lemmon in view of the events which have occurred subsequent to the filing of application for Permit No. 36-7072?

See U.S. vs. Kettenbach 208 F. 209, 213 (Ida. 1913) for definition of speculation; see also Webster's Dictionary for definition quoted in the conclusion to this brief.

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Standal and Lemmon needed the water before the land was available to them for their intended purpose. They followed the only procedure which any reasonable person could by first obtaining the water permit and then purchasing the land. The reverse would have been foolhardy and stupid.

II.

There is sufficient water available to fulfill Standal and Lemmon's application.

With respect to the allegations of Brailsford that there is insufficient, unappropriated water available to satisfy the application of Standal and Lemmon under Application 36-7085, we submit that it is the duty of the Reclamation Engineer to grant the Application for Permit and issue a permit for any amount applied for unless the evidence conclusively shows that such amount is not available and cannot be placed to a beneficial use. In such an event, the permit must be granted for the amount which the evidence shows is available and can be put to a beneficial use. It should also be remembered that Standal and Lemmon use is nonconsumptive. Certainly, the Engineer must consider the plans and specifications submitted by the applicant and unless and until the Application, on its face, shows that the water applied for is either unavailable or cannot be utilized, the State Reclamation Engineer should issue the permit with the thought that either the proof of completion of works or proof of beneficial use portions of the procedure will raise the deficiency in the source of supply of water. As soon as the actual inability of the applicants is established upon the completion of works o

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proof of beneficial use, then the water license should reflect only the amount which is diverted and put to beneficial use.

The prior right in the amount of 10 c.f.s. claimed by Brailsford could, in no way, be prejudiced by granting application No. 36-7072. The bare and unsupported allegations of Brailsford with respect to the quantity of water available from the springs identified in application No. 36-7072 should not be considered by the State Reclamation Engineer in determining the validity of said application. The record shows that there is sufficient water available for Standal and Lemmon's intended use.

III.

Standal and Lemmon can apply all of the waters they have applied for to beneficial use. Even if they cannot, the time for this determination is when they must make their proof of works and beneficial use.

With respect to the allegation of Brailsford that applicants Standal and Lemmon have applied for more water than they can put to a beneficial use, it seems that all of the authority cited by the brief of Brailsford may be nullified in light of the fact that none of the cases therein cited apply to the facts in the case presently before the Reclamation Engineer. In all of the cases cited, either the time for completion of works or the time for proof of beneficial use had passed. In our present case the time for proof of completion of works has not expired. We agree with and support the cases cited by Brailsford to the effect that when the time comes for proof of beneficial use, then, and only then, must the State Reclamation

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Engineer or the Court, as the case may be, determine whether the applicant has properly applied the water to a beneficial use.

In the Washington State Sugar Company v. Goodrich case, 27 Idaho 26, 147 Pac. 1073 (1915) the Idaho Supreme Court did say:

> "An appropriator of water after conducting the same to the point of intended use has a reasonable time in which to apply said water to such intended use."

No Idaho cases have been located by this writer which hold that the works must be completed or that conclusive proof must be offered that all of the water applied for may be "beneficially" used before the time that proof of completion of works and of beneficial use must be made under the terms of the permit. The cases cited by Brailsford all involve facts where little or no work has been done. In the case at bar thousands of dollars have been expended toward the development of a large scale fish propagation facility and hardly one year has expired since the time of the filing of the application for the permit. The inquiry invited by Brailsford might be justifiable if no work or very little work had been done by applicants Standal and Lemmon. Such is not the case.

Brailsford cites the 1909 case of Farmers' Co-op Ditch Company v. Riverside Irrigation District, et al, 16 Idaho 525 102 Pac. 481, which is another illustration of the point we have attempted to make. The Court will not, and the State Reclamation Engineer should not, attempt to accelerate, by employment of guesses or estimates the end result which will be secured by the expiration of the time allowed in the permit to appropriate. In the Farmers' Co-op case, the Supreme Court determined that the

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record was quite incomplete, that accurate measurements were available upon retrial of the case and that justice, therefore, required that the case be retried with accurate measurements being employed to determine just how much water was needed for the land. In that case, the water had been applied to the soil and the action was brought to determine priorities as to one hundred thirty-five thousand (135,000) acres of farm land in the Boise, Idaho, area. Likewise, applicants Standal and Lemmon simply ask that they be given the amount of time allowed in their permit in which to apply the water which they have filed upon to a beneficial use.

In the affidavit of David Erickson and in his accompanying attached letter which are relied upon by Brailsford, we do not find exact measurements but simply approximations. The affidavit of Richard J. Dooby states that Standal and Lemmon need the water applied for. Standal and Lemmon are entitled to a great deal more than Mr. Erickson's educated guess. Their own expert, by affidavit, feels that the space available will permit the application of all of the water applied for to a beneficial use. We too cite Farmers Co-operative Ditch Company v. Riverside Irrigation District, et al, supra, as authority that accurate measurements should be made and "the duty of water" determined as to this particular situation. Upon expiration of time for proof of beneficial use, those waters applied for but not beneficially used will be subject to applications for appropriation.

IV.

No statute or case of the State of Idaho says or holds that a watermaster may not be the holder of a water permit.

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Brailsford suggests that by virtue of the fact that George Lemmon served as an assistant water master in the area in which Bickel Springs is located a higher duty is placed on him and inferentially would limit him to an inferior right in the waters of Bickel Springs. We do not agree that the principles announced by the cases as cited in subdivision 4 of Brailsford's brief are in point nor do they support this conclusion. The facts therein are not similar in any respect to the facts in the case before the State Reclamation Engineer at this time.

Section 42-607 of the Idaho Code is entitled "Distribution of Water" and reads as follows:

> "It shall be the duty of said water master to distribute the waters of the public stream, streams, or water supply, comprising his district, among the several ditches taking water therefrom according to the prior rights of each respectively, in whole or in part, and to shut and fasten, or cause to be shut or fastened, under the direction of the Department of Reclamation, the headgates of the ditches heading from such stream, streams or water supply, when in times of scarcity of water it is necessary to so do in order to supply the prior rights of others in such stream or water supply, so long as the duly elected water master is charged with the administration of the waters within a water district, no water user within such district can adversely possess the right of any other water user."

From the foregoing, there is no limitation applied to George Lemmon or any water master in applying for a water permit. Chapter 6 of Title 42 of the Idaho Code also provides that there is a limitation in payment of the assistant water masters in the amount of $5 per day. Had the Legislature intended that those serving as water masters or assistant water masters could not participate, personally, in the appropriation of the public waters of this state, then the Legislature should and would have specifically so provided by statute. There is no conflict betwee

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that which is expected of George Lemmon and his acts in concert with Norman Standal in applying for 365.2 c.f.s. of the waters of Bickel Springs. The Idaho Supreme Court, in the case of Nampa and Meridian Irrigation District v. Berkley, 56 Idaho 13, 42 P2d 916, demonstrated this as follows:

> "A water master is only an administrative officer and has no interest in the subject matter of litigation involved in the water under his control. His only duty is to distribute the waters of his district in accordance with the respective rights of the appropriators, judicated rights having preference over unjudicated rights."

Therefore, as long as the application of Standal and Lemmon is not allowed to interfere with any prior rights of Brailsford, the claimed ten inches of the waters of Bickel Springs, then there is no conflict between Mr. Lemmon's position as assistant water master and his application with Mr. Standal.

CONCLUSION

It is the hope of the protestants that application No. 36-7072 will fail upon the issue of "speculative purposes" as set out in Section 42-203 of the Idaho Code as amended. Webster's Third New International Dictionary defines speculation as follows:

> "An act of speculating (as by engaging in business out of the ordinary, by dealing with a view to making a profit from conjectural fluctuations in the price rather than from earnings of the ordinary profit of trade, or by entering into a business venture involving unusual risks for a chance of an unusually large gain or profit) or the condition of being speculated in, contrasted with investment."

We note with interest the distinction made in the foregoing definition between "making a profit from conjectural fluctuations in the price rather than from earnings of the

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ordinary profit of trade." Certainly, it cannot be argued that there is any evidence that Standal and Lemmon have had any intent or have done any act evidencing an intent to do anything other than to develop a fish propagation facility and thereafter to raise and sell fish. By virtue of the foregoing definition, it would seem that they would have need to have planned to secure a water right and then sell the same before setting about developing a facility.

The only case which this writer could find dealing with the theory of speculation concerning appropriation of property was the Idaho Federal District Court case of the United States v. Kettenbach, 208 F. 209, 213 (1913). In that case, the Court did not decide the case on the issue of speculation, but at least something might be garnered from the Court's consideration of that issue which we quote in full as follows, to wit:

> "It is contended by the complainant in this Court that the patents described in these three cases should be declared fraudulent and void on the single ground that the evidence establishes the fact that the entrymen applied to purchase the lands described in their entrys for the purpose of speculation. Section 2 of the Act of June 3, 1878, does require the entryman to set forth in his sworn statement, among other things:
>
> > 'That he does not apply to purchase the same (the land) on speculation, but in good faith to appropriate it to his own exclusive use and benefit.'
>
> "The definition of the word 'speculation' is given by Webster as follows:
>
> > 'The act or practice of buying land, goods, shares, etc., in expectation of selling at a higher price.'
>
> "It may be conceded that, when the entryman made entry

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> of the lands in controversy, it was with the expectation that they would sell them at a higher price; but we are not required to dispose of these appeals upon these words of the statute."

In any event, we do have an applicable judicial interpretation and definition of the word 'speculation'. It may not be forcefully nor convincingly argued that speculation applies to the fact surrounding application for permit No. 36-7072. For that reason, we submit that cases cited by Brailsford simply do not support the allegation that the application of Standal and Lemmon was made for 'speculative purposes.' The cases cited by the protestants are simply cases where a great deal of time was allowed to pass subsequent to the application for permit and were simply a restatement of the rule requiring diligence in the pursuit of construction of works and application of water to a beneficial use. Counsel cited the Wyoming case of Scherk v. Nichols for the proposition of 'speculation'. It seems after reading that case that it should have been cited by Standal and Lemmon because the Scherk case adopted the language of Sowards v. Meagher, supra, which simply held that one need not own land at the time he files an application for a permit to appropriate and that he will be allowed to pursue application to a beneficial use in spite of the fact that he may never own the property upon which the water is to be used. The case also indicates that he is allowed to run the risk of losing any water right he may have attempted to secure by failure to use some of the water applied for or all of said water for a beneficial purpose. That, too, seems to be very much in point on the third issue raised by protestants, Brailsford.

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Finally, as to the issue of speculation, protestants cite Toohey v. Campbell, supra, which clearly states that "the intention of the claimant is, therefore, a most important factor in determining the validity of an appropriation of water." How may we determine the intent other than by analyzing the actions taken by the applicants subsequent to the filing of their application for permit? If we consider those facts, we find that the applicants have, with great diligence and at no small expense, proceeded to develop a very large fish propagation facility.

So far as the question of sufficiency of unappropriated water available from Bickel Springs is concerned, Standal and Lemmon are entitled to take whatever amount is available up to the amount that their application calls for. If Brailsford has an established right to 10 c.f.s. of said waters and said right is prior, then Standal and Lemmon should take what is left up to the amount asked for in their permit. The Engineer has promulgated a study of the springs in the Hagerman area of the Snake River and consideration should be given to the amount of water determined by that study to be available from Bickel Springs, but in the final analysis, the available water supply will control.

Brailsford would have the application denied by virtue of the alleged inability of Standal and Lemmon to effectively and economincally utilize all of the water which they have applied for, yet Brailsford failed to cite a single case which is in any way relevant or applicable to the facts presently before the State Reclamation Engineer. All of the cases cited by the protestant deal with situations occurring not shortly after the filing

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of the application for permit nor near the time for proof of completion of works, but they all deal with factual situations concerning the time for proof of beneficial use or times subsequent thereto. As it was cited in the Washington State Sugar Company v. Goodrich case, supra, "an appropriator does have a reasonable time, after completion of works to apply the water to a beneficial use." The cases simply hold that an applicant must be "diligent" or be found in "abandonment" of the right which he attempted to perfect. No applicant can be allowed to tie up water indefinitely, but all applicants are given at least five (5) years in which to place water to a beneficial use. It is certainly obvious to anyone who might observe the Bickel Springs development of Standal and Lemmon that they have been most diligent in prosecuting the establishment of a substantial fish propagation facility. The Engineer should take a "view" of the facilities as the idea of a "view" is extensively recognized in Idaho law and especially in the area of water rights cases. Certainly, such a view might be taken prior to the rendition of a decision in this case so that the Engineer might thoroughly familiarize himself with the extent of the work and the expenditures made by the applicants under application No. 36-7072.

The observations of fisheries biologist, David Erickson, are interesting, but are certainly not offered in satisfactory depth supported by computations nor an expression of the affiant Erickson that he has a sufficient thorough knowledge and understanding of the plans of the applicants in developing the Bickel Springs property for the State Engineer to give any great weight to the thoughts of said fisheries biologist.

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Section 42-607 of the Idaho Code and the Idaho case of Nampa and Meridian Irrigation District v. Berkley, supra, demonstrated that the water master is an administrative officer but no statute nor any of the cases cited support the allegation that by virtue of his employment as an assistant water master, George Lemmon should be disqualified from individually and personally pursuing the development of a large hatchery and trout rearing facility. It is the stated intent of the legislature to encourage Idaho's citizens in developing the water resources of this state.

Allow me to close with just this one thought. What would be the case if Standal and Lemmon applied only for a minimum amount of water and then, after applying all applied for to a beneficial use, had additional lands upon which to construct ponds? What would be the reply of Brailsford if they were asked to allow an amendment of Standal and Lemmon's original application, to date back to the original date thereof, for additional waters?

Dated this 18th day of August, 1970.

Respectfully submitted,

HEPWORTH, WALKER, NUNGESTER & FELTON
Attorneys for Applicants Standal & Lemmon

By John C. Hepworth
John C. Hepworth

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July 20, 1970

Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Attention: R. Keith Higginson

Re: Standal and Lemmon vs.
Brailsford Brothers, Inc.

Dear Mr. Higginson:

I am enclosing an Affidavit of Norman S. Standal and George Lemmon and an Affidavit of Richard J. Gooby and a Brief in support of the petition of Standal and Lemmon. Copies of the same are this same date being sent to John Rosholt of Parry, Robertson, Daly & Larson.

You will recall that a stipulation was entered into between the applicants and protestants in this matter that the case would be submitted on affidavits and written briefs and the records now on file with the Department. John Rosholt and I have agreed that each shall have an additional 15 days within which to reply to the brief filed by the other. Thank you for your consideration.

Very truly yours,

HEPWORTH, WALKER, NUNGESTER & FELTON

John C. Hepworth

JCH/pw

Enclosures

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BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

* * * * * * * * * * * * *

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN S. STANDAL AND GEORGE LEMMON, AND APPLICATION FOR PERMIT NO. 36-7085, ROBERT H. BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., an IDAHO CORPORATION.	BRIEF OF APPLICANTS, STANDAL AND LEMMON

* *

F A C T S

Since the stipulation of the parties as to the disputed facts has adequately set out the dates of the filing and other pertinent related information, it appears that recitation of the stipulated facts would be unnecessarily repetitious and for that reason, this writter will confine himself, in this memo, to brief observations concerning the four (4) items identified as disputed facts in the aforementioned stipulation.

With respect to the claim that George Lemmon was water master for District No. 63, which includes Hagerman Valley and the points of diversion in the applications of Standal and Lemmon, we submit that there is no statutory prohibition against an employee of the Department of Reclamation filing for a permit to appropriate the waters of the State of Idaho. There being no such prohibition, the applications of Standal and Lemmon are in no way inferior to the application of Brailsford Brothers, Inc.

With respect to the allegation that there is insufficient unappropriated water available as applied for, it appears that the

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State Reclamation Engineer may take judicial knowledge of the figures published by the Department relative to the water available in the sources of supply identified in the applications for permits herein involved.

With respect to the allegation that the applicants, Standal and Lemmon, cannot apply the amount of water requested to beneficial use, we must refer to the affidavits of the applicants and of Richard J. Gooby, on file herein.

Finally, it is contended that the application of Standal and Lemmon, No. 36-7072 was filed for speculative purposes. The balance of this brief shall be devoted to consideration of that question.

L A W

In the fall of 1968, the University of Idaho Law School, Board of Editors of the University of Idaho Law Review, reviewed and updated the comprehensive "Idaho Law of Water Rights" originally published by Wells A. Hutchins. This work, at page 14, which is found in volume 5 of the Idaho Law Review, discusses initiation of water right upon land owned by another:

> "Water may be appropriated for beneficial use on land not owned by the appropriator, which water right becomes a property of the appropriator."

The subdivision of the article entitled " Private Lands" continues on page 15 thereof with a quote from the 1919 Idaho Supreme Court case of Sarret vs. Hunter, 32 Idaho 536, 541-542:

> "In determining whether a valid appropriation of water has been made, or the respective priorities of contending appropriators, the law does not concern

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> itself with disputes relative to the title to the lands for which it is claimed the water was appropriated. The test of a valid appropriation of water is its diversion from the natural source and its application to a beneficial use. * * * When one diverts water hitherto unappropriated and applies it to a beneficial use, his appropriation is complete, and he acquires a right to the use of such water, which is at least coextensive with his possession, and so when one makes application for a permit to divert and appropriate water, the query is, not upon whose lands does he intend to apply it, but upon what lands he intends to apply it, and to what use does he expect to put it when so applied. His right to possession, or the character of his occupancy as between claimants to the right to the use of the public waters of the State, is not in issue.
>
> "Title to land will not be determined in fixing priorities to water between water claimants. * * *
>
> "We hold that a water right may be acquired by completion of works under a permit and the application of water to a beneficial use, and that when this is properly done the priority will date from the issuance of the permit <u>without regard to whether the permit holder was at the date of his application in any way connected with the legal title to the land upon which he proposed to apply the water</u>." (Emphasis added.)

In the Sarret case, it was successfully argued that it is not necessary for the appropriator to have title to or a legal interest in the intended place of beneficial use of the water in order to properly qualify his application for permit which, when perfected, would necessarily date back to the date of his written application.

In the case now before the State Reclamation Engineer, the applicants, Standal and Lemmon, did not own the real property described in their application as being the place of beneficial use at the time of the filing of the application; however, subsequent to the filing of their applications for permits, they

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submitted a sealed bid to the then owner, Idaho Power Company, and were successful and did, on the 8th day of October, 1969, purchase the lands described in their applications from Idaho Power Company, which said lands, as purchased, contain the property described as the points of diversion and the property described as the places for beneficial use. Hence, applicants Standal and Lemmon were not impaired by their nonownership of the property later purchased from Idaho Power Company in making their applications for permits; however, any question raised by nonownership was taken care of when they purchased both the points of diversion and application to beneficial use shortly after the filing of their applications for permits.

In the 1921 Idaho Supreme Court case of Sanderson vs. Salmon River Canal Company, 199 Pacific 999, an action is reported wherein the defendant canal company was sued upon its refusal to deliver water to one who held shares of stock in said company but did not own the land to which said shares were appurtenant. In this case, the plaintiff had not secured a patent from the Federal Government, which was the owner of the land in question. The Court cited Sarret vs. Hunter as authority for its holding as follows:

> "C. S. # 3018, providing that water rights to all Carey Acts lands shall attach to and become appurtenant to the land as soon as title passes from the United States to the state, does not, and cannot, have the effect of making the water right an inseparable appurtenance of the land."

In 1930 the case of First Security Bank of Blackfoot vs. State 49 Idaho 740, 291 Pacific 1064, in an action where the lessee of state owned school lands attempted to secure a water

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right for water used on the leased lands, it was said as follows:

> "This Court has repeatedly held that a water right is not necessarily appurtenant to the land on which it is used and may be separated from it, and this is the general rule."

With respect to the point of diversion, rather than the place of beneficial use, the Idaho Supreme Court, in the case of Bassett vs. Swenson, 51 Idaho 256, 5 Pacific Second 722 (1931) determined that a case of diversion and application to beneficial use for a nonconsumptive use, i.e., power purposes, the applicant had a right to make application for permit to put waterfall to beneficial use although he had no right or title in land on which waterfall was situated.

A R G U M E N T

From the case of Sarett vs. Hunter, Sanderson vs. Salmon River Canal Company and First Security Bank of Blackfoot vs. State, it can be seen that the Idaho Supreme Court has repeatedly held that it is not necessary for one to be owner of the place of beneficial use in order to make a valid application to appropriate the waters of this State. It being acknowledged public policy of the State of Idaho to completely develop the material resourses of the State and as said in Bassett vs. Swenson, supra,

> "We are convinced that power in the streams of this State capable of being developed into electric energy is one of the material resources of this State and that the use of land necessary to its development constitutes under our Constitution a public use for which condemnation will lie."

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It logically follows that development of waters suitable for fish propagation is also a public purpose favored by this State.

The Bassett case was also authority for the contention of Standal and Lemmon that it was not necessary that they own the points of diversion as described in their applications for permits to appropriate at the time that their permits were filed. They had been negotiating with the Idaho Power Company for the purchase of property as stated in their affidavit on file herein and furthermore, their subsequent purchase of both the points of diversion and application to beneficial use should settle the matter once and for all.

It also follows that applicants Standal and Lemmon own both the points of diversion and places of beneficial use while applicants Brailsford Brothers, Inc., own only the places of beneficial use identified in their application.

To review the other points hereinbefore considered in this brief, it should stand to reason that since there is no statutory prohibition restricting employees from the Department of Reclamation from applying to beneficially use the waters of this State, there cannot properly be raised any question as to the propriety of Mr. Lemmon being a party to the applications of Standal and Lemmon.

The contention that there is insufficient water to satisfy the application of Standal and Lemmon, even if it be prior, is not supported by tables promulgated by the Department of Reclamation of this State showing the available water at the

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points of diversion listed in Application for Permit No. 36-7072. Further, there is an affidavit supporting the position of Standal and Lemmon that there is adequate land available, and owned by Standal and Lemmon, on which to beneficially use all of the water for which they have applied. Hence, the application of Standal and Lemmon should be approved and that of Brailsford Brothers, Inc., should be denied.

Dated: July 16, 1970.

Respectfully submitted,

HEPWORTH, WALKER, NUNGESTER & FELTON

By _____
John C. Hepworth, of the firm
Attorneys for Applicants Standal and Lemmon
Residing at Buhl, Idaho

CERTIFICATE OF MAILING

The undersigned, a resident attorney of the State of Idaho, with offices in the Professional Center, 1020 Main, Buhl, Idaho, 83316, and one of the attorneys for the applicants Standal and Lemmon in this action, certifies that he caused to be mailed a copy of the foregoing Brief of Applicants, Standal and Lemmon, and a copy of the Affidavit of Richard J. Gooby to Parry, Robertson, Daly & Larson, P. O. Box 525, Twin Falls, Idaho, 83301, on the 20th day of July, 1970.

HEPWORTH, WALKER, NUNGESTER & FELTON

By _____
John C. Hepworth, of the firm

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BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

* * * * * * * * * * * * *

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN S. STANDAL AND GEORGE LEMMON, AND APPLICATION FOR PERMIT NO. 36-7085, ROBERT H. BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., an IDAHO CORPORATION.

AFFIDAVIT

* *

STATE OF IDAHO)
) ss.
County of Twin Falls)

Richard J. Gooby, being first duly sworn on oath, deposes and says as follows:

That your affiant holds the title of District Conservationist with the United States Soil Conservation Service and is stationed at the Gooding Work Unit, Gooding, Idaho.

That your affiant was graduated from the University of Idaho, with a degree in agriculture.

That your affiant is familiar with the filings numbered 36-7072 and 36-7071 filed before the State Reclamation Engineer by Norman S. Standal and George Lemmon.

That your affiant is advised that the total of the two (2) applications amounts to 365.2 c.f.s. of water and that your affiant is fully familiar with the layout of ponds and structures to be utilized by applicants Standal and Lemmon on the property described in the aforementioned applications for permits.

That your affiant is familiar with the water and cite

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requirements for trout propagation and has been called upon on numerous occasions to analyze, develop and plan fish propagation facilities for residents of the Magic Valley and Idaho.

That based upon your affiant's education and his practical experience in the layout and development of fish propagation facilities, he feels that the 365.2 c.f.s. of water can and will be beneficially used pursuant to the drawings and specifications of the applicants and further that said applicants have, in the lands described in the said applicat ons, more than sufficient land to utilize the total water applied for in said applications for the purpose of fish propagation.

Further your affiant saith not.

Dated this 13 day of July, 1970.

Richard J. Gooby

Richard J. Gooby - Affiant

SUBSCRIBED AND SWORN to before me this 13 day of July, 1970.

Notary Public for Idaho
Residing at Buhl, Idaho

Commission Expires 8-7-73.

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AND
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PARRY, ROBERTSON, DALY & LARSON
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JOHN H. DALY (1913-1968)
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

July 20, 1970

Mr. R. Keith Higginson, Director
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Re: Application for Permit Nos. 36-7072 and 36-7085

Dear Keith:

Enclosed is our brief on behalf of Brailsford Brothers, Inc., concerning the above two applications.

Mr. Hepworth and I have agreed that we will file rebuttal briefs to each other's brief in the near future. Hopefully, you will be in receipt of them within the month and you may then make your final determination.

Thanks for your consideration in this matter.

Sincerely,

JOHN A. ROSHOLT

JAR:mer
Enclosure

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BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit No. 36-7085, Robert H. Brailsford, President of Brailsford Brothers, Inc., an Idaho Corporation, and Application for Permit No. 36-7072, Norman S. Standal and George Lemmon.	BRIEF OF BRAILSFORD BROTHERS, INC.

STATEMENT OF FACT

IT HAS BEEN STIPULATED THAT THE UNDISPUTED FACTS IN THIS MATTER ARE:

1. Norman S. Standal and George Lemmon, are signatories to Application for Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072 which was filed in the office of the Reclamation Engineer for the State of Idaho on the 17th day of July, 1969, at 2:00 o'clock P.M. In such application, Standal and Lemmon request permission to appropriate 215.2 cubic feet per second for fish propagation and domestic purposes from the water source described as Thousand Springs, tributary of the Snake River, in Gooding County, the points of diversion more particularly described as:

> Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section 8, the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 7, and the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 6, all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho.

2. Application No. 36-7072 indicated that the property at the point of diversion and the place of use was owned by the Idaho Power Company and that the applicants were negotiating for the purchase of said property. A protest against said application was

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filed by Brailsford Brothers, Inc., said protest dated the 11th day of August, 1969.

3. On September 29, 1969, Brailsford Brothers, Inc., an Idaho corporation with their principal place of business in Buhl, Idaho, submitted Application for Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, which application was received in the State Reclamation Engineer's office at 9:00 A.M. In said application, Brailsford Brothers, Inc., sought authority to divert 150.0 cubic feet per second of the water from the Bickel Springs, tributary of the Snake River in Gooding County, Idaho. The points of diversion were specified as (Lot 1) Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4), Section 8; (Lot 8) Southeast Quarter Southeast Quarter (SE 1/4 SE 1/4), Section 6; Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4), Section 8; (Lot 2) Southeast Quarter Northwest Quarter (SE 1/4 NW 1/4), Section 8; all property described being in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The application specified that Brailsford Brothers, Inc., owned the property at the place of use and that the property at the point of diversion was owned by the Idaho Power Company, and further specified that the applicant would either purchase property at the point of diversion from the Idaho Power Company at public auction, negotiate for lease with the successful purchaser, or file a condemnation action to gain access to the intended points of diversion. Application No. 36-7085 indicated that 150.0 cubic feet per second of water would be used for the irrigation of 2,542 acres of land owned by the Brailsford Brothers, Inc., and that 50 cubic feet per second of water would be used for fish culture or fish propagation purposes. On October 28, 1969, a protest against the issuance of a permit under Application No. 36-7085 was filed by Norman Standal and George Lemmon.

4. On October 8, 1969, Norman Standal and George Lemmon submitted the highest and best bid to the Idaho Power Company for the

purchase of the property described in Application No. 36-7072 and on October 20, 1969, did enter into a contract for a period up to ten years with interest at 8% per annum with the Idaho Power Company for payment of the unpaid balance of the purchase price.

5. On December 10, 1969, Brailsford Brothers, Inc., filed with the State Department of Reclamation an Amended Application for Permit. This amended application asked for authority to reduce the amounts requested under the original application No. 36-7085 from 150.0 cubic feet per second to 100.0 cubic feet per second from the Bickel Spring, tributary of the Snake River. Only two points of diversion were listed in the amended application, being, (Lot 1) Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4) of Section 8; and (Lot 8) Southeast Quarter Southeast Quarter (SE 1/4 SE 1/4) of Section 6; both in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The amended application indicated that Brailsford Brothers, Inc., owned the property at the intended place of use and that the property at the point of diversion was then owned by Standal and Lemmon, and further specified that the applicant would negotiate for the lease of an appropriate right of way or file a condemnation action if necessary. The amended application specified that 20 cubic feet per second would be used for irrigation purposes on 1,007.16 acres of land and that 80 cubic feet per second would be used for fish culture or propagation purposes on 20 acres of land.

6. At all times during 1969, George Lemmon served as water-master for Water District #63 which district includes the Hagerman Valley including those points of diversion in the application herein referred to.

THE DISPUTED FACTS ARE:

1. Application Nos. 36-7072 and 36-7085 were filed for speculative purposes.

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2. There is not sufficient unappropriated water available as applied for, by Lemmon and Standal.

3. The applicants, Lemmon and Standal cannot apply the amount of water requested to beneficial uses.

4. Applicant, George Lemmon, is not a proper applicant and consequently application for Permit No. 36-3072 was made for speculative purposes.

POINTS AND AUTHORITY

I.

APPLICATION FOR PERMIT NO. 36-7072 TO APPROPRIATE THE WATERS OF THE STATE IS FOR SPECULATIVE PURPOSES AND SHOULD BE DENIED.

Idaho Code § 42-203

City and County of Denver vs. Northern Colo. W.C. Dist. 276 P.2d 992, 1008 (Colo. 1954)

Scherck v. Nichols, 92 P.2d 74, 78 (Wyo. 1939)

Toohey v. Campbell, 60 P. 396 (Mont. 1900)

Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1, 25 (1968)

93 C.J.S. Waters, Sec. 172, p. 915

Clark, Water and Water Rights, Vol. 1, Sec. 22.9, p. 122 (1967)

II.

THERE IS NOT SUFFICIENT UNAPPROPRIATED WATER AVAILABLE AS APPLIED FOR BY APPLICANTS LEMMON AND STANDAL.

Idaho Code § 42-203

III.

THE APPLICANTS FOR PERMIT NO. 36-7072 CANNOT APPLY THE AMOUNT OF WATER REQUESTED TO A BENEFICIAL USE.

Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1, 38, 39 (1968)

Coulson v. Aberdeen - Springfield Canal Co. 39 Idaho 320, 323-324, 227 P.29 (1924)

Twin Falls Land & Water Co. v. Twin Falls Canal Co., 7 Fed. Supp. 238, 245, 251 (D. Idaho 1933)

Burley Irr. Dist. v. Ickes, 116 F. 2d 529, 535 (CAD. Columbia 1940)

Idaho Code § 42-220

Washington State Sugar Co. v. Goodrich, 27 Idaho 26, 44, 147 P. 1073 (1915)

Farmers' Co-Operative Ditch Co. v. Riverside Irr. Dist. 16 Idaho 525, 535, 102 P. 481 (1909)

Martiny v. Wells, 91 Idaho 215, 219, 419 P. 2d 470 (1966)

Ward v. Kidd , 87 Idaho 216, 226, 392 P.2d 183 (1964)

IV.

APPLICANT GEORGE LEMMON IS NOT A PROPER APPLICANT AND CONSEQUENTLY APPLICATION FOR PERMIT NUMBER 36-3072 IS FOR SPECULATIVE PURPOSES.

Idaho Code §42-605

Big Wood Canal Co. v. Chapman, 45 Idaho 380, 390, 363 P.45 (1927).

Bailey v. Idaho Irr. Co., Ltd., 39 Idaho 354, 359-360, 227 P. 1055 (1924).

State v. Cohill, 293 P.2d 169 (Or. 1956)

ARGUMENTS

I.

APPLICATION FOR PERMIT NO. 36-7072 TO APPROPRIATE THE WATERS OF THE STATE IS FOR SPECULATIVE PURPOSES AND SHOULD BE DENIED.

Idaho Code § 42-203 sets forth the pertinent criteria by which the Idaho State Reclamation Engineer may approve, deny, partially approve, or condition an application for permit to appropriate waters of the State of Idaho. The pertinent part of the current Idaho Code § 42-203 is as follows:

> "The State Reclamation Engineer shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied, and where such proposed use is such that it will reduce the quantity of water under existing water rights, or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or where it appears to the satisfaction of the department that such application is not made

> in good faith, is made for delay or speculative purposes, or that the applicant has not sufficient financial resources with which to complete the work involved therein, the State Reclamation Engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for, or may grant permit upon conditions." (Emphasis added)

It should be pointed out that Idaho Code § 42-203 or its predecessor did not always include language which would put the matter of speculation in issue. The predecessor of Idaho Code §42-203 is §41-203 and in 1935 it was amended to include in its pertinent part, the language which is hereafter underlined:

> ". .The commissioner shall find and determine from the evidence presented what use or uses the waters sought to be appropriated * * *can be and are intended to be applied, and* * * *where such proposed use is such that it will reduce the quantity of water under existing water rights, * * * or that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, that the applicant has not sufficient financial resources with which to complete the work involved therein, or if a renewal permit, that such applicant has not proceeded diligently in applying the waters involved therein to any beneficial use or purpose, the commissioner may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for. Upon the approval of any application in whole or in part, the fees prescribed by Section 41-202 shall be paid to the department prior to the issuance of any permit thereon. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant."

Since 1935 this language has been incorporated in the appropriate portions of the Idaho Code and even though the State Reclamation Engineer has previously denied applications for permits to divert water solely on the basis of "speculation" as a criteria, no case of record has been decided by an Idaho court on the precise question. Since no judicial determination is of record, the Idaho State Reclamation Engineer must establish

guidelines from which he may make a decision on an alleged speculative application. In establishing these general guidelines, each application must be considered on a case by case basis when the question of "speculation" is involved. For guidelines the State Reclamation Engineer must look to the decisions of other states involving the same point. Although, the cases on the issue of "speculation" are not numerous, three decisions from the highest courts of "appropriation" states have been discovered. Those cases are as follows:

City and County of Denver vs Northern Colo., W.C. Dist, 276 P. 2d 992 (Colo. 1954) was a case in which two proceedings were brought: one for adjudication of water rights for irrigation, and the other for adjudication of rights for purposes other than irrigation. The dispute involved conflicting claims to waters tributary to the Colorado River on the western slope of the Continental Divide. The Colorado River Water Conservation District and others protested the awarding of a decree to the water in question in favor of the City and County of Denver for the reason that the Water Conservation District claimed an appropriation of the water prior in time to the City and County of Denver. The City and County of Denver maintained, among other things, that the appropriation of the Water Conservation District was for speculative purposes. On the question of speculation the Supreme Court of the State of Colorado stated at page 1008 of 276 P 2d:

> "* * * A claim for mere speculative purposes by parties having no expectation themselves of actually constructing works and applying the water to some useful purpose gives them no rights against subsequent appropriations made in good faith. Weaver v. Eureka Lake Water Company, 15 Cal. 271, 272; Nevada County and Sacramento Canal Company v. Kidd, 37 Cal. 282 at 314."

Scherck v. Nichols, 95 P.2d 74 (Wyo. 1939) was an action to declare certain water rights null and void. One of the issues in the case was the priority of an appropriation of water for speculative purposes. At page 78 of 95 P. 2d the Supreme Court of the State of Wyoming said:

> "* * *It is true that it is a policy of this state, along with that of all the arid regions that its waters should be put to the highest possible use. And as stated in Toohey v. Campbell, 24 Montana 13, 60 P. 396 cited by counsel for plaintiff, no one should be able to get control of any part of it for mere future speculative profit or advantage." (Emphasis Added)

Toohey v. Campbell, 60 P. 396 (Mont. 1900) states at page 397 of 60 P.:

> "* * * Certain principals controlling the law of water rights direct as to this conclusion. One of the rules in the system of the law of water rights is that no one man can, by prior appropriation obtain exclusive control of an entire stream, unless his appropriation is made for some benefial purpose presently existing or contemplated. He is restricted in the amount that he can appropriate to the quantity needed for such beneficial purposes. 'The intention of the claimant is, therefore, a most important factor in determining the validity of an appropriation of water. When that is ascertained, limitation of the quantity of water necessary to effectuate his intent can be applied according to the acts, diligence, and needs of the appropriator.' Power v Switzer, 21 Mont. 523, 55 Pac. 32. The Policy of the law is to present a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage without regard to existing or contemplated beneficial uses." (Emphasis Added)

93 C.J.S., Waters, Section 172 states at page 915:

> "The appropriation of water must be for actual or intended application to some useful or beneficial purpose allowed by law; an appropriation for mere purposes of speculation is nugatory; it must also be one which confers some exclusive benefit in the nature of a property interest on the person claiming as appropriator." (Emphasis Added)

In our interpretation, Idaho Code §42-203 would require the State Engineer to make findings and determinations as regards every application for a permit whether or not a protest is filed on

the application. We think it fair to assume that the State Reclamation Engineer must find that the application affirmatively satisfies every requirement of Idaho Code §42-203 before the permit can be issued. In this regard, two of the foremost authorities on water law are quoted as follows:

Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1 (1968) states at page 25:

> "The State Reclamation Engineer upon receipt of an application to appropriate the waters of the state is required to give notice thereof; if no protest is filed, he may approve the application if it is in proper form; if a protest is filed, a hearing must be held. When the State Reclamation Engineer finds that the proposed use will reduce the quantity of water under existing rights, or that the water supply is insufficient, or that the application <u>is made for delay or speculative purposes</u> and not in good faith, or that the application is lacking in financial resources, or in the case of applications referred to in the Idaho water resources board under the provisions of Section 42-1737, Idaho Code, if approval would not be in the public interest or would conflict with the establishment or execution of a state water plan or policy, he may reject the application or may issue a permit for less than the quantity of water applied for or may grant the permit upon conditions. Appeal may be taken to the appropriate district court by any party who has formally appeared at the hearing."

Clark, Water and Water Rights, Volume 1, Section 22.9, states at page 122:

> "The authority of the chief administrative water official has not been prescribed and litigated with equal throughness in all appropriation permit states. But in the states that fully exercised the administrative function of supervising acquisition of water rights, it is the <u>privilege</u> of a citizen to appropriate water if he acquires a permit--a very different matter from the inherent right to appropriate that still holds in nonadministration jurisdictions. This permission will and must be granted if all statutory prerequisites are fulfilled. But the fundamental distinction here is that one condition of the appropriation privilege is that the administrative branch has the discretion, subject to judicial review, in any question that arises concerning the probable effect of the proposed project on the public welfare--a wide field of inquiry and decision

> that is not too well charted by reliable guide posts. The public supervising agency must act upon the matter, yes or no, and before approving the proposal must be satisfied that the public interest will not be better served by some alternative proposal, present and foreseeable. And if the administrative agency decides, on plausible grounds, that the alternative proposal shall not be granted even though unappropriated water be available, it is more than likely that that judicial branch will be loath to disturb it simply because the judge's concept of public welfare may not coincide completely with that of the engineers."

Assuming the State Engineer has all of the authority as set forth in the statute, we think it logically follows that each of the independent grounds as set out in the pertinent portion of Idaho Code § 42-203, is sufficient to allow the State Engineer the authority to reject an application, partially approve it, grant a permit for a lesser quantity of water, or grant the permit upon conditions. We submit that the use of the word "or" preceding the words "speculative purposes" is disjunctive and sets forth "speculative purposes" as an independent basis for the denial or conditioning of a permit. Although the State Engineer has the authority to examine each application on an independent basis, we would submit that he must have some established criteria as a guideline. Brailsford Brothers, Inc., asserts that the primary criteria to give an applicant "standing" to file an application to appropriate the public waters of the State of Idaho, must be an ownership in land at the place of beneficial use. If this or similar criteria is not adopted by the State Engineer for use in considering water application, it would be possible for any person, whether or not a resident of the State of Idaho, to make application to appropriate all the water of all lakes, streams, creeks, springs, etc., within the State of Idaho by merely paying the filing fee and filing an application with the Idaho Department of Reclamation which meets the remaining criteria of Idaho Code §42-203. Consequently, by spending approximately $5,000 on filing fees and advancing some money for engineering expenses, it would be possible to assume that the waters of the Snake River, the Clearwater River, the

Salmon River, and the waters of our large northern Idaho lakes could be the subject of permits issued by the State Engineer, which unless otherwise conditioned, could tie up these waters for a period of five years and effectively block future development by any other "would-be good faith" appropropriator.

Brailsford Brothers, Inc., submit that the Idaho State Reclamation Engineer has recognized the problems which could result if no criteria were established concerning the interpretation of the words "speculative purposes" in Idaho Code §42-203. We would further submit that perhaps the State Reclamation Engineer has recognized the rule as contended for by Brailsford Brothers, Inc.. We call your attention to the proceedings in Application for Permit #36-7086, and attached hereto as Exhibit "1" the letter of C. Stephen Allred, Deputy State Reclamation Engineer, dated December 3, 1969, addressed to Mr. Richard Kaster. In this particular case, Mr. Kaster submitted an application to appropriate waters from the land of another but Mr. Kaster did own the land at the intended place of beneficial use. Unfortunately, the State Engineer's Office improperly determined that Mr. Kaster did not own the land at the point of intended beneficial use. Thus the letter of December 3, 1969, was transmitted to Mr. Kaster indicating that application # 37-7086 would be denied as submitted for "delay and speculative purposes" unless Mr. Kaster could show cause. It would appear from this record that the State Engineer has previously adopted as a guildeline the criteria as contended for by Brailsford Brothers, Inc. We submit that the applicants under application # 36-7072 did not have "standing" to file their application on July 17, 1969. Because they did not acquire any property interest in the lands which they represented in the application as the place of

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beneficial use of the water until October 8, 1969. Until October 8, 1969, when the applicants, Standal and Lemmon submitted the highest and best bid to the Idaho Power Company and did acquire the property interest of a contract purchaser in the land which they had previously represented in their application as the point of intended beneficial use, they did not have "standing". (See Exhibit 2). They owned no land and did not have standing to file any application to use the water of Bickel Springs until they required some interest. In the interim, the good faith application #36-7085 of Brailsford Brothers, Inc., filed on September 29, 1969. Since all requisites had been complied with, #36-7085 is in fact the prior application for the diversion of water from the Bickel Springs.

If the State Reclamation Engineer is to remain consistent in his determination as to what constitutes "standing" to file an application to divert water, it would appear that he could either have required the applicants to submit a new application on October 8, 1969, or he might adopt a rule which would allow the applicants a priority date as of the time that they acquired "standing" as proper applicants. In this case, "standing" was not acquired by applicants Standal and Lemmon until October 8, 1969. Brailsford Brothers, Inc., by reason of the ownership of their lands at the intended point of beneficial use under application number 36-7085, had "standing" to file their application when they did file on September 29, 1969. Although, Brailsford Brothers, Inc., did not own the land at the point of intended diversion, the Idaho constitution provides a manner for private citizens to obtain access.

Article 15, Section 1 of the Idaho Constitution declares the use of waters to be a public use.

> "Use of waters a public use. The use of all waters now appropriated, or that may hereafter also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold,

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rented, or distributed, is hereby declared to be a public use and subject to the regulation and control of the state in the manner prescribed by law." (Emphasis Ours).

Since Article 1, Section 14 of the Idaho Constitution provides that necessary rights of way may be obtained. It follows that Brailsford Brothers, Inc., is constitutionally authorized to condemn a right of way for the construction of facilities to permit the conveyance of the water. Article 1, Section 14 of the Constitution is as follows:

> "Right of eminent domain.--The necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, or for rights of way for the construction of canals, ditches, flumes or pipes, to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.
>
> Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor. " (Emphasis Ours).

As enumerated in application for permit number 36-7085, Brailsford Brothers, Inc. recognize that just compensation must be paid for any taking.

Idaho Code §42-101 is cited for the proposition that all waters flowing in natural channels are the public property of the State of Idaho and subject to appropriation. That section reads as follows:

> "Nature of property in water.--Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing

in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose, and the right to the use of any of the waters of the state for useful or beneficial purposes is recognized and confirmed; and the right to the use of any of the public waters which have heretofore been or may hereafter be allotted or beneficially applied, shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of the land or other thing to which, through necessity, said water is being applied; and the right to continue the use of any such water shall never be denied or prevented from any other cause than the failure on the part of the user thereof to pay the ordinary charges or assessments which may be made to cover the expenses for the delivery of such water." (Emphasis Ours.)

To substantiate the constitutional right to condemn a right of way to the point of diversion, Chapter 11 of Title 42, Idaho Code provides the particular statutory framework.

There is some case law in Idaho which states that "an appropriation initiated in trespass is void". Idaho Power Company v. Buhl , 62 Idaho 351, 111 P. 2d 1088 (1941). The Courts have generally held that the right to enter private land for the purpose of obtaining data needed in applying for a permit to appropriate water should have been obtained from the land owner either by agreement or by condemnation proceedings. Marshall v. Niagara Springs Orchard Co.,22 Idaho 144, 125 Pac. 208 (1912). In our particular situation, Brailsford Brothers, Inc., already have the right to the use of ten cubic feet per second from the Bickel Springs and could visit the property at the point of diversion by the reasonable use of their existing right of way.

We understand the State Reclamation Engineer's Office has previously accepted and approved permits although the applicant did not have a written right of way, or had not condemned a right of way prior to the time the permit was issued. Because of the "chicken

and egg" situation involved, we think the procedure adopted by the State Engineer's Office is indeed proper because proof of the "right to appropriate" in the form of a permit, would in most instances be necessary to meet the burden of proof in a court proceeding to condemn a right of way to the point of diversion. By authorizing this procedure, the State Reclamation Engineer, effectively says that there is no such thing as a right initiated in trespass, unless a technical trespass can be proved as against the applicant.

In order to have "standing" to file an application for a permit, it would seem that the rule must logically be that the applicant must own land at the point of intended use, and meet the remaining statutory criteria of Idaho Code §42-203. If a permit is then issued, the permit holder pursues with diligence both the acquisition of his right of way and the construction of the works as indicated in the permit. Brailsford Brothers, Inc., submits that on the day they filed application # 36-7085, that they were in fact an applicant in good "standing" and owned land at the represented place of beneficial use and who, if #36-7085 is granted, Brailsford Bros., Inc., will proceed to either negotiate a right of way or to bring a private condemnation action for the acquisition of such.

At the time that application #36-7072 was filed by Standal and Lemmon, they were in fact speculators because they owned no interest in the lands located at the intended point of beneficial use. (See Exhibit #2 attached). Having no land ownership, they had no "standing". Having no "standing", their application was made in speculation that they would acquire the Idaho Power Company lands at a sealed bid opening in October. The fact that the lands were later acquired is not relevant. The fact is, Standal and Lemmon did not have "standing" as applicants and were in fact "speculators" on July 17th, 1969. They did not acquire standing until October 9, 1969, the date their bid for the purchase of the property was accepted. It would appear in this case

that an equitable result can be reached by granting application number 36-7085 with a priority date of September 29, 1969, and that application number 36-7072 should be granted a priority date of the date the land was purchased, October 9, 1969. A permit issued pursuant to Application #36-7072 should be conditioned to protect the rights of Brailsford Brothers, Inc., to the use of 10.5 cubic feet per second with a priority date of December 10, 1901, and to further recognize the prior application (#36-7085) of Brailsford Brothers, Inc., to the use of 100 cubic feet per second from the northern most Bickel Springs for the purposes of irrigation and fish propagation.

II.

THERE IS NOT SUFFICIENT UNAPPROPRIATED WATER AVAILABLE AS APPLIED FOR BY APPLICANTS LEMMON AND STANDAL.

The pertinent portion of Idaho Code Section 42-203 which applies to this portion of this brief reads as follows:

> ". . If the water supply itself is insufficient for the purpose for which it is sought to be appropriated, ".

Technically, as the best measurements have so far indicated, the sources of water flowing from what has been designated as the "Bickel Spring" in fact produce approximately 215 cubic feet per second.

The views of Brailsford Brothers, Inc., as applied to this criterion and the authority of the State Reclamation Engineer to deny or condition a permit for the above stated reason is technical in nature. Brailsford Brothers, Inc., presume that if the State Reclamation Engineer is in agreement with their theory advanced under "I" above, that Brailsford Brothers, Inc., have the prior rights to 10 cubic feet per second with a 1901 priority and 100 cubic feet per second with a September 29, 1969, priority. Thereafter, there is "an insufficient water supply arising from the Bickel Spring to award applicants, Standal and Lemmon 215 cubic feet per second under application number 36-7072. If the State Reclamation

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Engineer elects to find as contended for by Brailsford Brothers, Inc., in "I" above, there are approximately 105 cubic feet per second or the remaining total flow of the springs above Brailsford's entitlements, which might be beneficially utilized by applicants, Standal and Lemmon.

Brailsford Brothers, Inc., further contend that if the total flow of the spring is to be beneficially applied, in an economic manner as contended in "III" hereafter, that there is technically a sufficient water supply for all of the present applications on the total flow of the spring. An equitable distribution of these rights based upon the amounts which can be beneficially applied would further substantiate the arguments of Brailsford Brothers, Inc., for the issuance of a permit for 100 cubic feet per second pursuant to application number 36-7085 with a priority date ahead of any permit issued pursuant to application number 36-7072.

III.

THE APPLICANTS FOR PERMIT NO. 36-7072 CANNOT APPLY THE AMOUNT OF WATER REQUESTED TO A BENEFICIAL USE.

No water user is entitled to make an application to appropriate more water than can be put to a beneficial use at the time of the application. In addition to application for permit number 36-7072, Norman Standal and George H. Lemmon, have made application for permit number 36-7121 (Exhibit 3) to convey 150 cubic feet per second of water to the fish rearing ponds described in application for Permit No. 36-7072. That is, the total applications of Standal and Lemmon to appropriate the public waters of the State of Idaho to be used in the fish rearing ponds amounts to a total of 365 cfs. As stated in the affidavit of J. David Erickson, which is attached hereto and marked Exhibit "4", 365 cfs. of water used in fish rearing ponds on the land available to Standal and Lemmon would amount to 3.35 turnovers per hour. Trout in a dense population require flowing water to supply oxygen to the gills and remove toxic

metabolic by-products from their environment. 3.35 water exchanges per hour is three times as much water as is needed for these functions in adult trout rearing ponds. It is true that growing fingerling trout require a greater exchange rate than adult trout. However, trout farms require only ten to eighteen percent of capacity to rear fingerlings. Therefore, at least four-fifths of the ponds would not require an exchange rate of 3.35 turnovers per hour. It is believed that the Niagara Springs Steelhead Hatchery, which holds juvenile fish, has one of the highest exchange rates of water of any trout hatchery. That facility holds only juvenile fish which require a maximum in exchange rate for efficiency of food utilization. The maximum exchange rate at the Niagara Springs Steelhead Hatchery is 2.6 turnovers per hour. It is submitted that the applications of Standal and Lemmon for 365 cfs of water to be used in trout rearing farms represents three times the quantity of water needed by the applicants in the trout rearing ponds.

Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1 (1968) states at page 38:

> "The intending appropriator may acquire a right to the use of as much water as is necessary to satisfy his lawful requirements; but no water user is permitted to take more of the water to which he is entitled under his appropriation than is necessary at the time for the beneficial use for which he has appropriated it. (Emphasis Added)

Coulson v. Aberdeen--Springfield Canal Company, 39 Idaho 320, 227 P.29 (1924), states at pages 323-324 of 39 Idaho:

> "***It is against the public policy of of the state, as well as against express enactments, for a water user to take from an irrigation canal more water, of that to which he is entitled, than is necessary for the irrigation of his land and for domestic purposes.***It follows, therefore, that no legal duty devolves upon any water user to divert any more of the water to which he is entitled than he can put to a beneficial use.***"

Twin Falls Land and Water Company v. Twin Falls Canal Company, 7 F. Supp. 238 (D. Idaho 1933) states at page 254:

> "It is tried to observe that water is the life blood of the arid portion of the western states. So essential is it to existence that it is administered as a public trust. Constitutional and statutory provisions are set as wardens to guard the supply. Waste is criminal. On the other-hand, beneficial use of water is the foundation of the prosperity of these arid states."

An at page 251:

> "However, in view of the policy announced as to beneficial use of water in the constitution of Idaho, no unit holder is entitled to make a wasteful use of the water, *"

Burley Irr. Dist. v. Ickes, 116 F. 2nd 529 (Cad. Columbia 1940) states at page 535:

> "Every reasonable measure of conservation is required to protect both and to secure the rights of individual water users. Although the doctrine of prior appropriation fixes priorities among individual appropriators in the use of water according to the maximum, qui prior in tempore, prior in jure est, it confers no right upon the prior appropriator to waste water. His right is qualified by the limitation, made in favor of subsequent appropriators and the widest possible use of water on arid lands, that all of the water he uses must be beneficially applied and with reasonable economy in view of the conditions under which the application must be made. Hence, a use which is wasteful may be restricted in the interest of subsequent appropriators and thus of the conservation of water. Shortages make the elimination of water imperative." (Emphasis Added).

Idaho Code Section 42-220 states in pertinent part:

> "***No such license or decree of the court alloting such water shall be issued confirming the right to the use of more than one second foot of water for each fifty acres of land so irrigated, unless it can be shown to the satisfaction of the Department of Reclamation in granting such license, and to the court in making such decree, that a greater amount of water is necessary, and neither such license nor anyone claiming a right under such decree, shall at any time be entitled to the use of more water can be beneficially applied on the lands for the benefit of which such water right may have been confirmed.***"

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Idaho Code Section 42-220 is a pronouncement by the legislature of the State of Idaho that the State Reclamation Department should not issue a license to appropriate the waters of the state where the amount of water appropriated cannot be beneficially applied for the benefit of which such water right may have been confirmed. The applications of Standal and Lemmon, totalling 365 cfs amounts to three times the amount of water necessary for use in their proposed trout rearing ponds.

In addition to beneficial use, the factors of economy and reasonableness of use of water have been imposed upon the applicator. Hutchins, Idaho Law of Water Rights, 5 Idaho Law Review 1, 39 (1968). An application for a permit to appropriate three times the amount of water that can be put to beneficial use at the time of the application is manifestly unreasonable and an uneconomic use of the water.

Washington State Sugar Co. v. Goodrich, 27 Idaho 26, 147 P. 1073 (1915) states at page 44:

> "It is the settled law of this state that no person can, by virtue of a prior appropriation, claim or hold more water than is necessary for the use of the appropriation, and the amount of water necessary for the purpose of irrigation of the lands in question and the condition of the land to be irrigated should be taken into consideration.**A prior appropriator is only entitled to the water to the extent that he has use for it when economically and reasonably used. It is the policy of the law of this state to require the highest and greatest possible duty from the waters of the state in the interest of agriculture and for useful and beneficial purposes." (Emphasis Added)

In Farmers' Co-Operative Ditch Co. v. Riverside Irr. Dist., 16 Idaho 525, 102 P. 481 (1909), the Supreme Court of the State of Idaho said at page 535 of 16 Idaho:

> "In Abbott V. Reedy, 9 Idaho 581, 75 Pac. 765, this Court said: 'The law only allows the appropriator the amount actually necessary for the useful or

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> beneficial purpose to which he applies it. The inquiry was therefore, not what he had used but how much was actually necessary.' This was in reference to the quantity of water necessary to irrigate a given tract of land.
>
> ***Economy must be required and demanded in the use and application of water. Water users should not be allowed an excessive quantity of water to compensate for and counter balance their neglect or indolence in the preparation of their lands for the successful and economical application of the water".

It would violate the public policy of the State of Idaho for an application for a permit to appropriate water to be approved if such application would prove to be a wasteful use of water.

Martiny v. Wells, 91 Idaho 215, 419 P. 2nd 470 (1966) states at page 218 of 91 Idaho:

> "Wasting of irrigation water is disapproved by the constitution and laws of this state. Idaho constitution, Art. 15; I.C. §§43-104, 42-222, 18-4302."

Ward v. Kidd, 87 Idaho 216, 392 P.2d 183 (1964) states at pages 226-227 of 87 Idaho:

> "***These cases hold that it is the policy of the law to prevent waste and to secure the maximum benefial use of the waters of the state, and that when and to the extent that a prior appropriator has not been officially using the water appropriated, it becomes public water, and he must allow it to flow past his diversion for the use of junior appropriators."

In determining the quantity of water which an appropriator is entitled to divert from a stream, the questions of the reasonableness or unreasonableness of the appropriation is a proper subject for inquiry in granting or denying the application for a permit. Hutchins, the Idaho Law of Water Rights, 5 Idaho Law Review 1, 40 (1968); Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966).

Uhrig v. Coffin, 72 Idaho 271, 240 P. 2d. 480 (1952) states at page 274 of 72 Idaho:

> "Many factors enter into a determination of the duty of water, which is based upon two primary considerations; beneficial and

economic use. A determination of this question is a determination of a fact."

The fact is that the applications for permits filed by Standal and Lemmon request permits totalling 365 cfs. Application #36-7121 asks the diversion of 150 cfs above the request of 36-7072 for beneficial use at the same point. This total quantity of water represents an amount of water which cannot be economically put to beneficial use by the applicants. The quantity of water for which Standal and Lemmon have applied cannot economically and reasonably be used in its entirety. Not only because of financial considerations in developing the water, but because of physical "space" problems which do exist at their present site. Amended application for permit number 36-7085, filed by Brailsford Brothers, Inc., specifies a diversion point at the northern-most springs of Bickel Springs. The application for permit filed by Standal and Lemmon also specify diversions from all the springs of Bickel Springs. These points of diversion contended for by Brailsford are farther from the property presently being developed by Standal and Lemmon than any of the other points of diversion which they have specified. Water from the points of diversion not applied for by Brailsford represents a quantity of water sufficient for the intended purpose. Is would be uneconomical for Lemmon and Standal to attempt to Build diversion works at the northern-most Bickel Springs and would be an unreasonable use if all of the water applied could be diverted to the same point.

IV.

APPLICANT, GEORGE LEMMON IS NOT A PROPER APPLICANT AND CONSEQUENTLY APPLICATION FOR PERMIT NO. 36-3072 IS FOR SPECULATIVE PURPOSES.

In the instant matter, at the time application for permit number 36-7072 was made applicant George Lemmon was a duly elected watermaster of the state of Idaho. As a duly elected watermaster

36 7085

applicant George Lemmon was an administrative officer of the State of Idaho and an agent of the Department of Reclamation in the administration of the waters of this State. An application by such a state official for speculative purposes should be denied.

Idaho Code § 42-605 states in pertinent part:

> "Before entering upon the duties of his office, said watermaster shall take and subscribe an oath before some officer authorized by the laws of the State to administer oaths, to faithfully perform his duties to this office, and shall file with the Department of Reclamation said oath and his official bond in the penal sum of $500.00, unless the amount of said bond be otherwise fixed in a greater amount by such meeting with not less than two sureties to be approved by the Department of Reclamation and conditioned for the faithful discharge of the duties of his office."

Big Wood Canal Company v. Chapman, 45 Idaho 380, 363 P. 45 (1927) states at page 390 of 45 Idaho:

> "A watermaster is a public administrative officer. (Bear Lake County v. Budge, 9 Ida. 703, 108 Am. St. 179, 75 Pac. 614; Roberson v. People ex rel. Soule, 40 Colo. 119, 90 Pac. 79.)"

Dailey v. Idaho Irr. Co. Ltd., 39 Idaho 355, 227 P. 1055 holds that a watermaster is the agent of the State Reclamation Department. The Supreme Court of the State of Idaho held at pages 359-360 of 39 Idaho:

> "He was acting under C.S., sec. 5609, which provides for the election of the watermaster at a meeting of persons having adjudicated rights to use the waters of a stream, and for the appointment of a watermaster if such meeting is not held. It does not appear from the record whether he was elected or appointed, but at any rate the uncontradicted evidence is to the effect that he was the watermaster in 1919 and also a special deputy of the Commissioner of Reclamation.* * *He was therefore not the agent of appellant or respondent but a ministerial officer."

It is the duty of the State Reclamation Department to administer the unappropriated waters of the State of Idaho in the most economical and efficient manner possible. An application for a permit by an agent of the State Reclamation Department which

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indicates that the application is for speculative purposes should be closely scrutinized and denied if the facts indicate the water will be used for uneconomical or speculative purposes.

Although the case of the State v. Cahill, 293 P.2d 169 (Or. 1956) is distinguishable on its facts it is applicable to the instant matter by analogy for the reason that at page 181 of 293 P.2d the Supreme Court of the State of California held that an officer of a water district occupies a position of trust with respect to the other members of the water district and the citizens of the state.

The files on record with the State Reclamation Department will show that applicant George Lemmon was watermaster for the year 1969. The application of George Lemmon should be closely scrutinized and denied if it is for uneconomical or speculative purposes for the reason that he was an agent of the State Reclamation Department and occupied a position of trust with respect to the other members of the water district and citizens of the State of Idaho.

CONCLUSION

We submit that the word "speculation" has some meaning and was inserted in Idaho Code §42-203 by the Legislature for some reason. We contend that it is within the discretion of the State Reclamation Engineer to set a criteria for determining when an application is submitted for speculative purposes and when one is not. We submit that Application #36-7072 was filed for speculative purposes under any guideline which might be adopted by the State Reclamation Engineer.

We contend that an applicant must have committed himself in some respect to show his good faith and to qualify as a proper applicant in "good standing". It is of course possible that "sham" real estate transactions could be entered for the purpose of providing the applicant with "standing". However, the discretion

given to the State Reclamation Engineer in Idaho Code §42-203 is sufficiently broad in scope to authorize said Engineer to investigate on his own and determine when in fact the applicant has a proper or valid real property interest. Again we submit that if an applicant need not have any property interest in the lands where he would represent to use water, then it would appear that Idaho waters are the subject of speculation by profiteers. If the State Engineer can be forced into the position of issuing water permits to persons who have nothing but a contingent expectation or mere possibility of acquiring an interest in the land where they represent they will use the water, then it seems to follow that the next logical step is to require the State Engineer to issue a permit even though other contingent factors, for example, such as financial responsibility are in issue. Can a pauper demand a permit pursuant to an application in which he represents to be able to divert the Moyie River to the Owyhee Desert for irrigation purposes? Should he have to show something more than a mere possibility to enable him to tie up the State's water resources?

We contend for "land ownership at the place of use" as a rule in determining the "standing" of Standal and Lemmon under 36-7072 and further submit that Brailsford Brothers, Inc. meet the requirements of "standing".

Brailsford Brothers, Inc., submit that there is sufficient unappropriated water to supply the foreseeable needs of both applicants under 36-7072 and 36-7085, but not 215 cfs for 36-7072 because 36-7085 is in fact prior. Brailsford Brothers, Inc. submit that inasmuch as the amounts requested by Standal and Lemmon are far beyond their beneficial use needs, that a permit issued to Brailsford Brothers, Inc. with a September 29, 1969, priority for the use of 100 cubic feet per second of the waters of the northern-most Bickel Springs would be in order, and that a permit should be issued subsequent to 36-7072 in the name of Standal and Lemmon for

36 7085

115 cubic feet per second of the other Bickel Springs sources with a priority date of October 9, 1969.

Brailsford Brothers, Inc., contend that to award applicants the total flow of the Bickel Springs under 36-7072 plus 150 cfs under Application No. 36-7121 would provide them with more water than any other hatchery in Idaho utilizes. Brailsford Brothers, Inc. would submit that it is not possible for the applicants under 36-7072 to utilize 365 cfs on the land area where the applicants represent that they will beneficially use the water.

In Summary, applicant, Brailsford Brothers, Inc., finally alleges that any duly elected watermaster is in a position of trust to the state and to its residents. Although, we acknowledge that Lemmon is indeed a proper applicant to utilize the waters of the State of Idaho on an individual basis, we would contend that because of his official position and the greater duty placed upon him, that he should be prohibited to being a party to an application which remotely taints of "speculation", and that perhaps he should be held to a higher standard in complying with the requirements of the statutes than an ordinary citizen applying for the use of Idaho's water resources.

John A. Rosholt

Parry, Robertson, Daly & Larson
P. O. Box 525
Twin Falls, Idaho 83301

I hereby certify that on the 20th day of July, 1970, I served the foregoing Brief of Brailsford Brothers, Inc., by causing to be deposited a copy thereof in the post office at Twin Falls, Idaho, enclosed in an envelope with postage prepaid addressed to Mr. John Hepworth, Hepworth, Walker, Nungester & Felton, Attorneys at Law, P. O. Box 269, Buhl, Idaho 83316.

Of Parry, Robertson, Daly & Larson
P. O. Box 525
Twin Falls, Idaho 83301

36 7085

EXHIBIT 4

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit No. 36-7085, Robert H. Brailsford, President of Brailsford Brothers, Inc., an Idaho Corporation, and Application for Permit No. 36-7072, Norman S. Standal and George Lemmon.

AFFIDAVIT

STATE OF IDAHO)
) ss.
County of Twin Falls)

COMES NOW, DAVE ERICKSON, deposes and says:

That he is a fishery bioligist and fish hatchery superintendent for the Snake River Trout Company and the Idaho Springs Trout Company located in Gooding County, Idaho.

That your affiant is a graduate of Montana State College and obtained a degree in fish and wild life management with an option in fish culture; and that as an employee of the above named trout companies, his duties consist of overseeing production of fish from both a nutritioned and diseased control standpoint, and production planning.

He resides and has been employed at the Snake River Trout Company for the past nine years.

This affidavit has been solicited by Brailsford Brothers, Inc., and the affiant is informed and agrees that this affidavit may be used in regard to proceedings before the State Reclamation Engineer of the State of Idaho concerning permits No. 36-7085, and 36-7072.

A letter of June 9, 1970, on the letterhead of the Snake River Trout Company, a copy of which is attached hereto, marked exhibit A and made a part hereof as if set out at length herein, contains the personal opinion of your affiant in regard to hypothetical facts as posed by Brailsford Brothers, Inc.

36 7085

and said letter and this affidavit are not necessarily the opinions of the owners of the Snake River Trout Company.

Ralph Erickson

SUBSCRIBED and SWORN to before me this 25th day of June, 1970.

Notary Public
Residing at Burley, Idaho

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

* * * * * * * * * * * *

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN S. STANDAL AND GEORGE LEMMON, AND APPLICATION FOR PERMIT NO. 36-7085, ROBERT H. BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., AN IDAHO CORPORATION.

AFFIDAVIT

* *

STATE OF IDAHO)
) ss.
County of Twin Falls)

Norman S. Standal and George Lemmon, being first duly sworn on oath, depose and say as follows:

That your affiants are the applicants in Application No. 36-7072 for permit to appropriate public waters of the State of Idaho filed in the office of the reclamation engineer for the State of Idaho on the 17th day of July, 1969.

That prior to the filing of the aforementioned application for permit to appropriate water, your affiant George Lemmon, on the 1st day of June, 1969, contacted Idaho Power Company and discussed and negotiated for the purchase of the property known as Bickle Springs, more properly dscribed as the points of diversion and application to beneficial use as shown in the aforementioned application for permit. That the Idaho Power Company did tell your affiant George Lemmon that said company was disposed to sell said property, but at the time of said meeting, no formal agreement for purchase and sale was entered into.

36 7085

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

That on several occasions thereafter, one or both of your affiants discussed the purchase of the property aforesaid in said application for permit with representatives of the Idaho Power Company and that finally, your affiants, on the 8th day of October, 1969, bid for the purchase of said property and their bid was accepted and shortly thereafter your affiants entered into a formal, written contract for the purchase of said property with representatives of the Idaho Power Company. That your affiants, by virtue of said contract, purchased some sixty-two (62) acres of property, the location of which is shown on said application for permit to appropriate public waters of the State of Idaho; that of said sixty-two (62) acres, fifteen (15) acres are suitable for fish ponds for fish propagation and are below the level of the source of water identified in said application for permit.

That the demand for water created by fifteen (15) acres of fish ponds will be far greater than the 215.2 c.s.f. of water can satisfy; that your affiants have filed another application for permit to appropriate water being Permit No. 36-7121 for 150 c.s.f. of the waters of the State of Idaho and that the total of the water applied for in both applications will still be insufficient to support the fish in the fish ponds to be constructed upon the fifteen (15) acres of land owned by applicants and suitable for the construction of fish ponds.

That your affiants, as aforesaid, were negotiating diligently for the purchase of the aforementioned sixty-two (62) acres prior to the filing of Application for Permit No. 36-7072

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

and filed said application for permit prior to entering into a contract for the purchase of said land or otherwise the purchase of said land would have been entirely speculative since the only reasonable use for the property, considering the price paid therefor, would be for the purpose of fish propragation.

Your affiants have, since the purchase of the hereinbefore described real property from Idaho Power Company, purchased and hatched eggs for approximately one and one-quarter (1¼) million fish to be raised upon the property and with the water described in application for permit no. 36-7072 and have completed seventy-five percent (75%) of the work necessary to prepare ponds, ditches, and other facilities for transporting the water to the fish and raising the fish.

That your affiants are in the process of completing a total project which will utilize the total water filed upon to facilitate the raising of substantially more fish than the one and one-quarter (1¼) million which they expect to raise to marketable size within the next twelve (12) months.

That your affiants have been advised by the United States Soil Conservation Service engineer from Gooding, Idaho, that the facilities planned for the land described in the hereinbefore mentioned permits of affiants is capable of utilizing in excess of the total water filed upon in permits no. 36-7072 and 36-7121.

Dated this 23rd day of June, 1970.

Further your affiants saith not.

Norman S. Standal

36 7072

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

Geo. H. Lemmon
George Lemmon

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

Ada Gannon
Notary Public for Idaho
Residing at Buhl, Idaho

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

EXHIBIT 2

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit No 36-7085, Robert H Brailsford, President of Brailsford Brothers, Inc, an Idaho Corporation, and Application for Permit No 36-7072, Norman S Standal and George Lemmon

AFFIDAVIT

STATE OF IDAHO)
) ss
County of Ada)

COMES NOW, THEODORE R HEIKES, deposes and says:

That he is an employee of Idaho Power Company and is in charge of all power plants, including certain lands which were held for potential power sites.

That he is familiar with Norman Standal and George Lemmon, the applicants who are parties to Application for Permit to Appropriate Water #36-7072 and of his own knowledge states that said applicants did approach said Company in an effort to purchase the lands commonly referred to as the "Bickel Springs Lands" in the summer of 1969, but that the Idaho Power Company did not sell, lease, grant a license, or in any other manner negotiate with Norman Standal and George Lemmon for the use of said lands for the reason that the Company was then planning to sell by sealed bids said properties.

That in early September, 1969, the Idaho Power Company did give notice of a sale of said lands referred to as Bickel Springs, and on the 19th day of October, 1969, the said Norman Standal and

George Lemmon did purchase the lands known as the Bickel Springs Lands which are the subject of Application #36-7072 and did then make the downpayment, enter into a contract of sale, and do all other things necessary to comply with the sale provisions as advertised by the Idaho Power Company on the 90% balance of said purchase price.

Theodore R. Heikes

Theodore R Heikes

SUBSCRIBED AND SWORN to before me this 18th day of June, 1970.

Mary L. Morton
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires 4-1-72

36 7085

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

* * * * * * * * * * * * *

IN THE MATTER OF THE APPLICATION FOR PERMIT NO. 36-7072, NORMAN S. STANDAL AND GEORGE LEMMON, AND APPLICATION FOR PERMIT NO. 36-7085, ROBERT H. BRAILSFORD, PRESIDENT OF BRAILSFORD BROTHERS, INC., an IDAHO CORPORATION.

AFFIDAVIT

* *

STATE OF IDAHO)
) ss.
County of Twin Falls)

Norman S. Standal and George Lemmon, being first duly sworn on oath, depose and say as follows:

That your affiants are the applicants in Application No. 36-7072 for permit to appropriate public waters of the State of Idaho filed in the office of the reclamation engineer for the State of Idaho on the 17th day of July, 1969.

That prior to the filing of the aforementioned application for permit to appropriate water, your affiant George Lemmon, on the 1st day of June, 1969, contacted Idaho Power Company and discussed and negotiated for the purchase of the property known as Bickle Springs, more properly described as the points of diversion and application to beneficial use as shown in the aforementioned application for permit. That the Idaho Power Company did tell your affiant George Lemmon that said company was disposed to sell said property, but at the time of said meeting, no formal agreement for purchase and sale was entered into.

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

36 7085

That on several occasions thereafter, one or both of your affiants discussed the purchase of the property aforesaid in said application for permit with representatives of the Idaho Power Company and that finally, your affiants, on the 8th day of October, 1969, bid for the purchase of said property and their bid was accepted and shortly thereafter your affiants entered into a formal, written contract for the purchase of said property with representatives of the Idaho Power Company. That your affiants, by virtue of said contract, purchased some sixty-two (62) acres of property, the location of which is shown on said application for permit to appropriate public waters of the State of Idaho; of said sixty-two (62) acres, fifteen (15) acres are suitable for fish ponds for fish propagation and are below the level of the source of water identified in said application for permit.

That the demand for water created by fifteen (15) acres of fish ponds will be far greater than the 215.2 c.s.f. of water can satisfy; that your affiants have filed another application for permit to appropriate water being Permit No. 36-7121 for 150 c.s.f. of the waters of the State of Idaho and that the total of the water applied for in both applications will still be insufficient to support the fish in the fish ponds to be constructed upon the fifteen (15) acres of land owned by applicants and suitable for the construction of fish ponds.

That your affiants, as aforesaid, were negotiating diligently for the purchase of the aforementioned sixty-two (62) acres prior to the filing of Application for Permit No. 36-7072

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

36 7072

and filed said application for permit prior to entering into a contract for the purchase of said land or otherwise the purchase of said land would have been entirely speculative since the only reasonable use for the property, considering the price paid therefor, would be for the purpose of fish propragation.

Your affiants have, since the purchase of the hereinbefore described real property from Idaho Power Company, purchased and hatched eggs for approximately one and one-quarter (1¼) million fish to be rasied upon the property and with the water described in application for permit no. 36-7072 and have completed seventy-five percent (75%) of the work necessary to prepare ponds, ditches, and other facilities for transporting the water to the fish and raising the fish.

That your affiants are in the process of completing a total project which will utilize the total water filed upon to facilitate the raising of substantially more fish than the one and one-quarter (1¼) million which they expect to raise to marketable size within the next twelve (12) months.

That your affiants have been advised by United States Soil Convervation Service engineers from Boise, Idaho, and Gooding, Idaho, that the facilities planned for the land described in the hereinbefore mentioned permit of affiants is capable of utilizing in excess of the total water filed upon in permits no. 36-7072 and 36-7121.

Dated this 16th day of June, 1970.

Further your affiants saith not.

Norman S. Standal

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

36 7085

Geo. G. Lemmon

George Lemmon

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

John C. Hepworth

Notary Public for Idaho
Residing at Buhl, Idaho

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LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

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

JOHN C. HEPWORTH
LLOYD J. WALKER
WM. L. NUNGESTER
MICHAEL H. FELTON

OTHER OFFICES AT
P. O. BOX 23
TWIN FALLS, IDAHO 83301
(208) 733-3083
SUN VALLEY, IDAHO 83353
(208) 726-5861

June 16, 1970

R. Keith Higginson
State Reclamation Engineer
Statehouse - Annex 2
Boise, Idaho 83707

Re: Permit No. 36-7085 -
Robert H. Brailsford &
Permit No. 36-7072 -
Norman S. Standal &
George Lemmon

Dear Mr. Higginson:

Enclosed please find Stipulation relative to the above-captioned matter which has been signed by the attorneys for the parties.

Very truly yours,

HEPWORTH, WALKER, NUNGESTER & FELTON

Michael H. Felton

Michael H. Felton

Enclosure

cc: Parry, Robertson, Daly & Larson

36 7085

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit No. 36-7072, Robert H. Brailsford, President of Brailsford Brothers, Inc., an Idaho Corporation, and Application for Permit No. 36-7072, Norman S. Standal, and George Lemmon.

STIPULATION

IT IS HEREBY stipulated by and between the parties hereto that the controversy involved herein will be submitted upon briefs, affidavits, and legal memoranda to the State Reclamation Engineer for disposition upon the facts stipulated by the parties to be as follows:

FACTS

Norman S. Standal and George Lemmon, are signatories to Application for Permit to Appropriate the Public Waters of the State of Idaho No. 36-7072 which was filed in the office of the Reclamation Engineer for the State of Idaho on the 17th day of July, 1969, at 2:00 o'clock P.M. In such application, Standal and Lemmon request permission to appropriate 215.2 cubic feet per second for fish propagation and domestic purposes from the water source described as Thousand Springs, tributary of the Snake River, in Gooding County, the points of diversion more particularly described as:

> Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section 8, the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of Section 7, and the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 6, all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho.

Application No. 36-7072 indicated that the property at the point of diversion and the place of use was owned by the Idaho Power Company and that the applicants were negotiating for the purchase of said property. A protest

against said application was filed by Brailsford Brothers, Inc., said protest dated the 11th day of August, 1969.

On September 29, 1969, Brailsford Brothers, Inc., an Idaho Corporation with their principal place of business in Buhl, Idaho, submitted Application for Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, which application was received in the State Reclamation Engineer's office at 9:00 A.M. In said application, Brailsford Brothers, Inc., sought authority to divert 150.0 cubic feet per second of the water from the Bickel Springs, tributary of the Snake River in Gooding County, Idaho. The points of diversion were specified as (Lot 1) Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4), Section 8; (Lot 8) Southeast Quarter Southeast Quarter (SE 1/4 SE 1/4), Section 6; Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4), Section 8; (Lot 2) Southeast Quarter Northwest Quarter (SE 1/4 NW 1/4), Section 8; all property described being in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The application specified that Brailsford Brothers, Inc., owned the property at the place of use and that the property at the point of diversion was owned by the Idaho Power Company, and further specified that the applicant would either purchase property at the point of diversion from the Idaho Power Company at public auction, negotiate for lease with the successful purchaser, or file a condemnation action to gain access to the intended points of diversion. Application No. 36-7085 indicated that 150.0 cubic feet per second of water would be used for the irrigation of 2,542 acres of land owned by the Brailsford Brothers, Inc., and that 50 cubic feet per second of water would be used for fish culture or fish propagation purposes. On October 28, 1969, a protest against the issuance of a permit under Application No. 36-7085 was filed by Norman Standal and George Lemmon.

On October 8, 1969, Norman Standal and George Lemmon submitted the highest and best bid to the Idaho Power Company for the purchase of the property described in Application No. 36-7072 and on October 20, 1969, did enter into a contract for a period up to ten years with interest at 8% per annum with the Idaho Power Company for payment of the unpaid balance

36 7085

of the purchase price.

On December 10, 1969, Brailsford Brothers, Inc., filed with the State Department of Reclamation an Amended Application for Permit. This amended application asked for authority to reduce the amounts requested under the original application No. 36-7085 from 150.0 cubic feet per second to 100.0 cubic feet per second from the Bickel Spring, tributary of the Snake River. Only two points of diversion were listed in the amended application, being, (Lot 1) Northwest Quarter Northwest Quarter (NW 1/4 NW 1/4) of Section 8; and (Lot 8) Southeast Quarter Southeast Quarter (SE 1/4 SE 1/4) of Section 6; both in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The amended application indicated that Brailsford Brothers, Inc., owned the property at the intended place of use and that the property at the point of diversion was then owned by Standal and Lemmon, and further specified that the applicant would negotiate for the lease of an appropriate right of way or file a condemnation action if necessary. The amended application specified that 20 cubic feet per second would be used for irrigation purposes on 1,007.16 acres of land and that 80 cubic feet per second would be used for fish culture or propagation purposes on 20 acres of land.

At all times during 1969, George Lemmon served as watermaster for Water District #63 which district includes the Hagerman Valley including those points of diversion in the application herein referred to.

DISPUTED FACTS

(1) Application Nos. 36-7072 and 36-7085 were filed for speculative purposes.

(2) There is not sufficient unappropriated water available as applied for.

(3) The applicants cannot apply the amount of water requested to beneficial uses.

(4) The applicants are not proper applicants and consequently the applications were made for speculative purposes.

IT IS HEREBY FURTHER stipulated that the State Reclamation Engineer may consider the facts as above stipulated, the contents of the material on file with the State Reclamation Engineer's office in connection with this matter, the briefs, memoranda, affidavits and reply briefs submitted in connection herewith, in effecting a determination as to both Application Nos. 36-7072 and 36-7085.

Respectfully Submitted,

Hepworth, Walker, Nungester & Felton

by _____
Attorneys for Applicants Standal & Lemmon

Parry, Robertson, Daly & Larson

by _____
Attorneys for Applicants Brailsford Bros. Inc.

36-7085

June 11, 1970

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
P. O. Box 525
Twin Falls, Idaho 83301

Dear John:

Thank you for your letter of June 8, 1970. The applications to which you refer have not yet been acted upon by this Department. Application No. 36-7066 is filed in the name of Lemon & Standal, and Application No. 36-7069 is filed in the name of Donald Minze.

Off hand, I can't think of any permit which has been denied based on the points involved in the Brailsford Brothers-Lemon & Standal matter. There have, of course, been permits denied based on our evaluation that they interfered with prior established rights or that they were filed for speculation purposes.

The two applications to which you refer are set for hearing or conference at the Twin Falls City Hall on June 23, 1970. Application No. 36-7066 is set for 1:00 a.m., and Application No. 36-7069 is set for 1:00 p.m. I am sure that the points which will be discussed will be very similar to those involved in the Brailsford Brothers-Lemon & Standal matter.

If I can be of any further assistance, please feel free to call on me.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jm

7085

RECEIVED
JUN 9 1970
Department of Reclamation

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

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

June 8, 1970

Mr. C. Stephen Allred
Deputy State Reclamation Engineer
Statehouse -- Annex 2
Boise, Idaho 83702

RE: Permit No. 36-7066, 36-7069

Dear Steve:

In attempting to put together a brief in the Brailsford Brothers-Lemmon & Standal matter, I have been advised that perhaps your department refused an Application for Permit on one of the above two numbered permits based upon approximately the same criteria which I am contending in the Brailsford Brothers matter.

Would you please have one of your clerks review the above files and in the event that there is a letter decision denying an application on the basis that the applicant did not own the land at the point of intended beneficial use, that a copy of that letter, together with any other related documents be sent to me.

If you can kindly accomplish this, I would very much appreciate it, and please send a bill for the copies and we will remit by return mail.

Sincerely,

JOHN A. ROSHOLT

JAR/clm

36 7085

Ex. A

EXHIBIT "A"
to Exhibit 4

SNAKE RIVER TROUT COMPANY, Box 232 / Buhl, Idaho 83316
Phone / Area Code 208 / 543-4311 ROCKY MOUNTAIN RAINBOW TROUT

PARRY, ROBERTSON, DALY & LARSON
RECEIVED
JUN 11 1970
PM

June 9, 1970

Mr. John Rosholt
Box 525
Twin Falls, Idaho 83301

SUBJECT: Thousand Springs water filing

Dear John:

Whether or not the applicants could use 365 cfs for fish culture would depend on 1) their intentions and 2) engineering ability. These requirements are especially important due to the limited amount of land on which to build rearing facilities.

As a hypothetical example, let's say the intentions of the applicants were as follows: Build with a plan of maximum acreage utilization for trout rearing; no buildings; minimum of roadway; no "wasteland" such as swampy or rocky ground; minimum acreage required for canals and springwater collection basins. This would obviously require extensive engineering and planning. They would have to utilize well over one half of the square feet available for actual trout ponds (not including banks or concrete).

A three acre utilization could be described thusly: 130,680 square feet x 3 feet average depth = 392,040 cubic feet. 365 cfs = 1,314,000 cubic feet per hour. Water exchange rate, therefore = $\frac{1,314,000}{392,040}$ = 3.35 turnovers per hour.

I do not believe the applicant can demonstrate that this quantity of water is necessary for commercial trout farming. The crucial point is this: Trout in a dense population require flowing water to supply oxygen to the gills and remove toxic metabolic by-products from their environment. Three and a half water exchanges per hour is three times as much as is needed for these functions in adult trout rearing ponds. If he were an experienced fish culturist, the applicant could possibly argue well for this exchange rate in growing fingerling trout. This is due to the greater quantity of food required by young fish and correspondingly greater oxygen demand and a higher rate of excretion. However, trout farms require only 10 to 18% of capacity to rear fingerlings. Therefore, at least 4/5 of the ponds would not require an exchange rate of 3 1/2 per hour.

36 7085

I doubt that any water exchange rate in trout hatcheries exceeds that used at Niagara Springs Steelhead Hatchery. This facility holds only juvenile fish which require a maximum in exchange rate for efficiency of food utilization. Furthermore, it is desirable in this facility to hold the juvenile steelhead in swift water to "acclimatize" them to stream conditions. However, the maximum exchange rate used is 2.6 per hour.

Sincerely,

J. David Erickson
Hatchery Biologist

JDE:mb

USS 7085

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301
TELEPHONE
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C. G. McINTYRE
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THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

May 8, 1970

Mr. C. Stephen Allred
Deputy State Reclamation Engineer
Department of Reclamation
State House -- Annex 2
Boise, Idaho 83701

Dear Steve:

Enclosed is a stipulation vacating hearing set on Standal-Lemmon and Brailsfords.

We are considering submitting this on briefs and affidavits for determination by the State Engineer and we will be in touch with you probably sometime within ten days as to what Mr. Hepworth and myself have agreed to do.

Sincerely,

John A. Rosholt
JOHN A. ROSHOLT

JAR/clm
Encl.

cc/w. encl. John Hepworth

NAME AND ADDRESS OF SENDER: Dept. of Reclamation

Indicate type of mail: ☐ INSURED ☐ C. O. D. ☒ CERTIFIED

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✓ 1	21807	Norman S. Standal + George Lemmon	06	30			15			36-7072+85
2		Star Route, Bliss, Idaho								
✓ 3	21808	Robert H. Brailsford, Brailsford Bros.	06	30			15			36-7072+85
4		Inc., Buhl Idaho								
✓ 5	21809	John A. Peshall Co. Box 525,	06	30			15			36-7072+85
6		Twin Falls, Idaho								
7	21810	Dept of Fish + Game, Mr. Robert Bell	06	30			15			36-7072185
8		Regional Fisheries Biologist, Box 138								
9		Jerome Idaho								
✓ 10	21811	Dept of Fish + Game, Bob Salter,	06	30			15			36-7072185
11		Asst Director, Boise Idaho								
✓ 12	21812	Parry, Robertson, Daly + Larson,	06	30			15			36-7072185
13		Attn: John R. Coleman Co. Box 525,								
14		Twin Falls Idaho								
15										
16										
17										
18								36 7085		
19										
20										

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Ida. Fish & Game

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Linda Okren

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

Idaho Fish and Game Dept.
Box 25. 600 So. Walnut St.
Boise, Idaho 83701

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Jack R. Austin

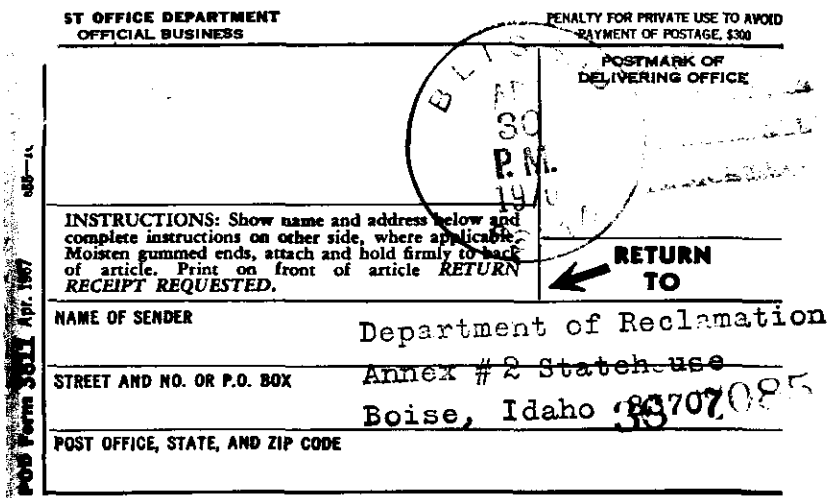
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21807

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4-30-70

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

Standal and Lemmon

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Mrs. Norman Standal

3 SHOW WHERE DELIVERED (*only if requested*)

36 7085

c55—16—71548-10 GPO

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21808

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F. G. Braid

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Robert H Braid

DATE DELIVERED

APR 29 197[illegible]

3 SHOW WHERE DELIVERED (*only if requested*)

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

John A Poskett

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

By Eloise Skeen

3 SHOW WHERE DELIVERED (*only if requested*)

SS 7085

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OFFICIAL BUSINESS

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

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Received the numbered article described below.

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21812

INSURED NO.

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

Barry Robertson Daly + Larson

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

by Eloise Skeen

DATE DELIVERED

APR 2 0

3 SHOW WHERE DELIVERED (*only if requested*)

36 7085

655—10—71548-10 GPO

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)

Permit No. 36-7085, ROBERT H. BRAILSFORD, President of BRAILSFORD BROTHERS, INC., an Idaho Corporation, and Application for) STIPULATION VACATING HEARING SETTING

Permit No. 36-7072, NORMAN S. STANDAL and GEORGE LEMMON)

COMES NOW, John C. Hepworth of the firm of Hepworth, Walker, Nungester & Felton, attorneys for Norman S. Standal and George Lemmon, and John Rosholt of the firm of Parry, Robertson, Daly & Larson, attorneys for Brailsford Brothers, Inc., and stipulate that the hearing scheduled in the matter of Application for Permit No. 36-7085, Robert H. Brailsford, President of BRAILSFORD BROTHERS, INC., an Idaho Corporation, and Application for Permit No. 36-7072, NORMAN S. STANDAL and GEORGE LEMMON, scheduled to be heard in Twin Falls, Idaho, on the 13th day of May, 1970, be vacated.

HEPWORTH, WALKER, NUNGESTER & FELTON
1020 Main, Buhl, Idaho 83316
Attorneys for Standal and Lemmon

By John C. Hepworth

36 7085

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

PARRY, ROBERTSON, DALY & LARSON
Box 525, Twin Falls, Idaho 83301
Attorneys for Brailsford Brothers, Inc.

By Frank A. Rosholt

O R D E R

Upon reading the above stipulation,

IT IS ORDERED that the hearing schedule for Twin Falls, Idaho, on the 13th day of May, 1970, regarding the protest filed concerning the above-captioned applications be vacated.

State Reclamation Engineer

38 7085

LAW OFFICES
HEPWORTH
NUNGESTER
AND
FELTON
BUHL, IDAHO

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit No. 36-7085, Robert H. Brailsford, President of BRAILSFORD BROTHERS, INC., an Idaho Corporation, and Application for Permit No. 36-7072, NORMAN S. STANDAL and GEORGE LEMMON	NOTICE OF HEARING

On July 17, 1969, the Department of Reclamation received from Norman S. Standal and George Lemmon an application to appropriate the public waters of the State of Idaho. The Department of Reclamation received protests against approval of Application No. 36-7072 from the following people: Mr. John R. LeMoyne, protest received August 5, 1969; Idaho Power Company, protest received August 6, 1969; Mr. Farrell Harwood, in behalf of Snake River Ski Club, protest received August 11, 1969; and from Mr. Fred M. & Mr. Robert Brailsford, protest received August 13, 1969.

On September 29, 1969, Brailsford Brothers, Inc., Buhl, Idaho, filed with the Department of Reclamation an application to appropriate the public waters of the State of Idaho. On October 29, 1969, the Department of Reclamation received a protest filed by Norman S. Standal and George Lemmon, Bliss, Idaho.

On December 16, 1969, a conference was held concerning the two applications and it was agreed to combine the applications into one hearing since both applications included the same parties.

The Department of Reclamation has set the matter of protests for a hearing on May 13, 1970 at 8:00 a.m., in the District Court Room, Twin Falls County Court House, Twin Falls, Idaho. The hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Reclamation. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

Failure to appear at the time and place set for hearing by the applicants or protestants may allow the Department of Reclamation without prejudice to dismiss the protests or the applications. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 27th day of April, 1970.

C. STEPHEN ALLRED
Assistant State Reclamation Engineer

Mailed April 28, 1970 to Norman S. Standal & George Lemmon, Star Route, Bliss, Idaho by certified mail No. 21807; Robert H. Brailsford, Brailsford Brothers, Inc., Buhl, Idaho, by certified mail No. 21808; John A. Rosholt, P.O. Box 525, Twin Falls, Idaho, by certified mail No. 21809; Dept. of Fish and Game, Mr. Robert Bell, Regional Fisheries Biologist, Box 138, Jerome, Idaho by certified Mail No. 21810; Dept. of Fish and Game, Bob Salter, Asst. Director, Boise, Idaho by certified Mail No. 21811; Parry, Robertson, Daly & Larson, Attn: John R. Coleman, P.O. Box 525, Twin Falls, Idaho by certified mail No. 21812.

By Kaye Henderson

36 [illegible]

All parties advised by phone that hearing cancelled. 5-3-70 KH

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit No. 36-7085, Robert H. Brailsford, President of BRAILSFORD BROTHERS, INC., an Idaho Corporation, and Application for Permit No. 36-7072, NORMAN S. STANDAL and GEORGE LEMON	PRE-HEARING CONFERENCE ORDER

A pre-hearing conference was held on December 16, 1969, at 2:00 o'clock p.m. at the Twin Falls City Hall, Twin Falls, Idaho, to consider the above Applications for Permit. It was decided at that conference to combine both matters, in that both parties had protested the other's application and that both applications and both protests were based upon the same issues. Mr. Robert Brailsford, President of Brailsford Brothers, Inc., and John Rosholt, of the firm of Parry, Robertson, Daly & Larson, appeared for Brailsford Brothers, Inc.; and Norman Standal and George Lemmon, appeared on their own behalf.

Mr. John R. LeMoyne and Mr. Farrell D. Harwood, who submitted protests against the application of Norman Standal and George Lemmon, were also present and appeared on their own behalf.

AGREED FACTS

On July 17, 1969, at 2:00 o'clock p.m., Norman S. Standal and George Lemmon acting on their own behalf submitted Application No. 36-7072 to appropriate 215.2 cubic feet per second of water for fish propagation and domestic purposes from a water source described as Thousand Springs, tributary of the Snake River in Gooding County. The points of diversion in Application No. 36-7072 were listed as the Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section 8, the Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of Section 7, and the Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section 6, all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The Applicants, Standal and Lemmon, also specified that the property

36 7085

at the point of diversion and the place of use was owned by the Idaho Power Company and that they were negotiating for the purchase of the property. Protests against the issuance of the permit were filed by Robert H. Brailsford, John R. LeMoyne, and Farrell Harwood.

On September 29, 1969, at 9:00 o'clock a.m., Application for Permit No. 36-7085 was submitted to the State Reclamation Engineer's office by Brailsford Brothers, Inc., an Idaho Corporation, for authority to divert 150 cubic feet per second of the water from Bickel Spring, tributary of the Snake River in Gooding County, Idaho. The points of diversion were specified as (Lot 1) Northwest Quarter Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$), Section 8; (Lot 8) Southeast Quarter Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$), Section 6; North-eastQuarterof the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$), Section 8; (Lot 2) Southeast Quarter, Northwest Quarter, Section 8; all property described being in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The application specified that Brailsford Brothers, Inc., owned the property at the place of use and that the property at the point of diversion was owned by the Idaho Power Company, and further specified that the applicant would either purchase from the Idaho Power Company at public auction, negotiate for lease with the successful purchaser, or file a condemnation action to gain access to the intended points of diversion. Application for Permit No. 36-7085 indicated that 150 cubic feet per second of water would be used for the irrigation of 2,542 acres of land owned by Brailsford Brothers, Inc., and that 50 cubic feet per second of water would be used for fish culture or propagation purposes. On October 28, 1969, a protest against the issuance of a permit under Application No. 36-7085 was filed by Norman Standal and George Lemmon.

On December 10, 1969, Brailsford Brothers, Inc., filed with the State Department of Reclamation an Amended Application for Permit. This amended application asked for authority to reduce the amounts requested under original Application No. 36-7085 from 150 cubic feet per second to 100 cubic feet per second from the Bickel Spring, tributary of the Snake River. Only two points of diversion were listed in the

amended application, being (Lot 1) Northwest Quarter Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$), Section 8; (Lot 8) Southeast Quarter Southeast Quarter ($SE\frac{1}{4}SE\frac{1}{4}$) Section 6; all in Township 8 South, Range 14 East, Boise Meridian, Gooding County, Idaho. The amended application indicated that Brailsford Brothers, Inc., owned the property at the intended place of use and that the property at the point of diversion was then owned by Standal and Lemmon, and further specified that the applicant would negotiate for the lease of an appropriate right of way or file a condemnation action if necessary. The amended application specified that 20 cubic feet per second would be used for irrigation purposes on 1,007.16 acres of land and that 80 cubic feet per second would be used for fish culture or propagation purposes on 20 acres of land.

DISPUTED MATTERS

At the prehearing conference, the following issues were delineated and are those issues upon which evidence will be heard at a formal hearing on Application No. 36-7072 and Application No. 36-7085 as amended. In accordance with Idaho Code Section 42-203, the State Reclamation Engineer has a right to grant both Applications for Permit, may reject both applications and refuse the issuance of the permit therefore, or may partially approve and grant either or both permits for a lesser quantity of water than applied for, or may grant either or both permits upon conditions, as determined by evidence on the following issues:

(1) Application Nos. 36-7072 and 36-7085 were filed for speculative purposes.

(2) There is not sufficient unappropriated water available as applied for.

(3) The applicants cannot apply the amount of water requested to beneficial uses.

(4) The applicants are not proper applicants and consequently, the applications were made for speculative purposes.

Applicants Standal and Lemmon further contend that Application No. 36-7072 should be acted upon prior to any decision regarding Application No. 36-7085 and that any subsequent granting of Permit No. 36-7085 should be accomplished with sufficient conditions to protect alleged prior Application No. 36-7072. Applicant Brailsford Brothers, Inc., further contends that because Application No. 36-7072 was filed when applicants Standal and Lemmon had no standing to file an application, that Application

No. 36-7085 is, in fact, prior and that their application as amended should be approved for the requested amount, and that all flows other than at those points of diversion as requested by Brailsford Brothers, Inc. should be granted to the applicants under Permit No. 36-7072 under a priority date corresponding with the dates applicants Standal and Lemmon had standing to properly apply for a permit.

IT IS HEREBY ORDERED, that the matters of Application Nos. 36-7072 and 36-7085 be combined for hearing purposes and that the respective applicants may present evidence on the above delineated and disputed issues at a formal hearing to be held on the 13th day of May, 1970 at 8:00 a.m., in the District Court room at Twin Falls, Idaho.

IT IS HEREBY FURTHER ORDERED, that the protests submitted against Application No. 37-7072 by Mr. John R. Lemoyne and Mr. Farrell D. Harwood be dismissed since they raised no issues within the purview of Idaho Code Section 42-203.

Dated this 27TH day of April, 1970.

R. KEITH HIGGINSON
State Reclamation Engineer

36 7085

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

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

Department of Reclamation

December 4, 1969

Mr. Stephen Allred, Deputy
State Reclamation Engineer
Department of Reclamation
State House -- Annex 2
Boise, Idaho 83707

RE: Brailsford Brothers, Inc.

Dear Steve:

I have been attempting to locate Mr. Brailsford. I am informed that he is at his ranch near Salmon and cannot be reached by telephone until the weekend.

As soon as I am able to get hold of him, I will have him compile the additional information which you requested.

Sincerely,

John

JOHN A. ROSHOLT

JAR/clm

36 7085

36 7085

DON SAMUELSON
GOVERNOR

E. REMINGTON
State Reclamation Engineer

EXHIBIT 1

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE – ANNEX 2
BOISE, IDAHO 83707

December 3, 1969

Re: Application for Permit No. 37-7086

Mr. Richard Kaster
Route 4
Buhl, Idaho 83316

Dear Mr. Kaster:

On November 18, 1969, I requested information as to your relationship with, or interest in, the Box Canyon Trout Co., Inc. I also requested an explanation of your plans to use the water for which you have applied. One of the criteria for judging the approval or denial of an application is whether or not the applicant has the ability to place the water to the intended use. This would mean that the applicant would have to have the necessary government right-of-ways and the ability to use the ground upon which the hatcheries are to be located. As I said in my letter of November 18th, we have been advised by Idaho Power Company, the former owner of the ground, that the property has been sold to Box Canyon Trout Company.

You are hereby ordered to show cause, on or before December 15, 1969, why this application for permit should not be denied. It appears that you do not have the ability to apply the water to the uses described in your application no. 37-7086; therefore, it appears that your application was submitted for delay and speculative purposes.

Very truly yours,

C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh

36 7085

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

APPLICATION FOR AMENDMENT

Department of Reclamation

Permit No. 36-7085

Comes now Robert H. Brailsford, President of Brailsford Brothers, Inc. an Idaho Corporation of (address) Buhl, Idaho 83316, and represents to the State Reclamation Engineer of the State of Idaho:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, and requests that the permit and permit map be charged as follows:

1. Point of diversion: (Lot 8) SE ¼ SE ¼, Sec. 6, T. 8 S, R. 14E, B.M. Other points of diversion Northern - most of Bickel Springs in NW 1/4 NW 1/4 §8, T.8.S., R 14 E B.M. Both points of diversion in Gooding County, Idaho (see Exhibit "A" for detail of diversion points, Exhibit B for pipeline profile)

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

		mo. - day		mo. - day	
For	20 c/f/s/ for Irrigation	purposes from	April 1	to	October 15 (both dates incl.)
For	80 c/f/s/ for fish culture	purposes from	January 1	to	December 31 (both dates incl.)
For		purposes from		to	(both dates incl.)
For		purposes from		to	(both dates incl.)

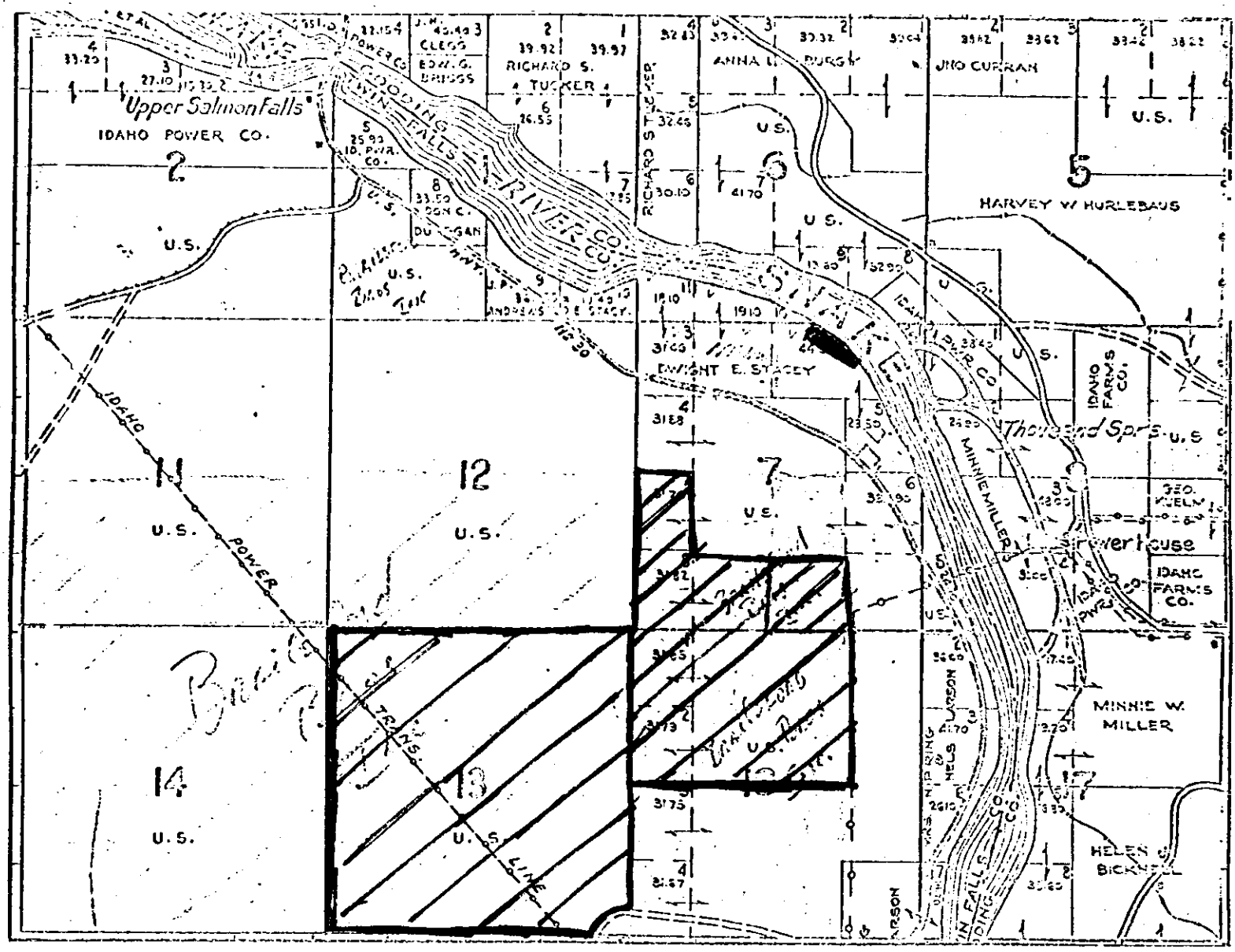
3. Place of use or land to be irrigated: (Exhibit "C" shows fish operation)

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
Land to be irrigated:																			
T8S	R14E	7										31.70	31.82	40			40		143.52
T8S	R14E	18		40	40		40	31.85	31.79	40									223.64
T8S	R13E	13	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640.00
													TOTAL IRRIGATED						1,007.16
Location of Fish Culture Use:																			
T8S	R14E	7		Lot 2 20.00															20.00
												TOTAL FISH CULTURE							20.00

Total number of acres to be irrigated

36 7085 36 7085

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40 acre subdivisions, sections, townships, ranges, and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, Idaho, this 28th day of November, 19 69.

Robert V. Brailsford
(signature)

Brailsford Brothers Inc. President

ACTION OF STATE RECLAMATION ENGINEER

I, _____, State Reclamation Engineer of the State of Idaho,

hereby _____

_____

_____

_____

Witness my hand this _____ day of _____, 19_____.

_____
State Reclamation Engineer

INFORMATION TRANSFERED BY APPLICANT TO AMENDED APPLICATION FORM.

36 708

36 7085

DON SAMUELSON
GOVERNOR

R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE – ANNEX 2
BOISE, IDAHO 83707

October 24, 1969

Re: Application for Permit No. 36-7085 - Brailsford Brothers
36-7086 - Richard Kaster

George Lemmon and Norman S. Standal
Star Route
Bliss, Idaho 83314

Gentlemen:

Enclosed please find a copy of Richard Kaster's filing no. 36-7086. Please remit $.75 to the Department to cover the charge for this copy.

On October 22, 1969, we forwarded a copy of the Brailsford Brothers filing no. 36-7085 to Norman Standal at Hagerman, Idaho. If you want another copy of this application, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

36 7085

DWM:DR

Enc: Copy of 36-7086

cc: Accounting Dept.

36-7085

DON SAMUELSON
GOVERNOR

R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE – ANNEX 2
BOISE, IDAHO 83707

October 22, 1969

Re: Application for Permit No. 36-7085 - Brailsford Brothers, Inc.

Mr. Norman Standal
Hagerman,
Idaho

Dear Mr. Standal:

Enclosed please find a copy of the above referenced application pursuant to your request.

This is to advise that the Department requires a fee of 25¢ per page for copies, therefore, wou d you please remit $.75 to cover the charge for this copy.

If we may be of further assistance, please advise.

Very truly yours,

Paid

Donald W. McEldowney
Appropriation Examiner

DWM:DR Rec't #3908 given

Enc: Copy of 36-7085

cc: Accounting Dept.

36 7085

36 7085

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

In the Matter of Application for Permit No. 36-7085, Robert H. Brailsford, President of BRAILSFORD BROTHERS, INC., an Idaho Corporation, and Application for Permit No. 36-7072, NORMAN S. STANDAL and GEORGE LEMON	PRE-HEARING CONFERENCE ORDER

A pre-hearing conference was held December 16, 1969, at 2:00 p.m. in Twin Falls City Hall, Twin Falls, Idaho, to consider the above Applications for Permit. It was decided at that conference to combine both matters, in that both Applications and protests were based upon the same issues. Mr. John Rosholt of the firm Parry, Robertson, Daly & Larson, appeared for Brailsford Brothers, and Norman Standal and George Lemon acted on their own behalf. Mr. John R. LeMoyne and Farrell D. Harwood, who submitted protests against the Lemon and Standal Application, were also present, appearing on their own behalf.

Agreed Facts

On July 17, 1969, at 2:00 p.m., Norman S. Standal and George Lemon submitted Application No. 36-7072 to appropriate 215.2 cubic feet per second of water for fish propagation and domestic purposes, from a water source known as Thousand Springs, tributary of the Snake River in Gooding County. The points of diversion were listed as being within the NW¼NW¼ of Section 8, within the NE¼NE¼ of Section 7, and within the SE¼SE¼ of Section 6, all in T. 8 S., R. 14 E. The applicants Standal and Lemon also specified that the property at the point of diversion and place of use was owned by Idaho Power Company and that they were negotiating for the purchase of the property. Protests against the issuance of permit were filed by Robert Brailsford, John R. LeMoyne, and Farrell Harwood.

On September 29, 1969, at 9:00 a.m., Application for Permit No. 36-7085 was submitted by Brailsford Brothers, Inc., for authority to divert 150 cubic feet per second of water from Bickel Spring, tributary of the Snake River. Various points of diversion were specified in Sections 6 and 8 of T. 8 S., R. 14 E., in Gooding County. The Application indicated that Brailsford Brothers owned the property at the place of use and that the property at the point of diversion was owned by Idaho Power Company, and further specified that the applicant was negotiating to purchase the property at the point of diversion. Water was to be used for irrigation of 2,542 acres of land and for fish propagation purposes. On October 28, 1969, a protest against issuance of a permit under Application No. 36-7085 was filed by Norman Standal and George Lemon.

Following discussion at a pre-hearing conference, the following issues were controverted and are hereby set forth as protestants' claims against both applications as denied by each applicant for the purpose of setting forth those issues upon which evidence will be heard at a formal hearing on Application No. 36-7072 and Application No. 36-7085:

1. That in accordance with Idaho Code, Section 42-203, the Applications Nos. 36-7072 and 36-7085 were filed for speculative purposes.
2. That there is not sufficient unappropriated water available for the Applications.
3. That the applicants cannot apply the amount of water requested to beneficial use.
4. That the applicants are not proper applicants.

Idaho Code 42-203 states that the State Reclamation Engineer may deny or may partially approve and grant a permit for a lesser quantity of water than applied for, or may grant a permit upon conditions. Applicants Lemon and Standal contend that Permit No. 36-7072 should be acted upon prior to any decision regarding Application No. 36-7085 and that any subsequent granting of Permit No. 36-7085 should be accomplished with sufficient conditions to protect their prior right. Applicants Brailsford contend that their permit should be approved and that of Lemon and Standal denied.

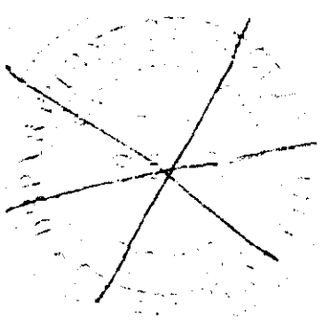
Order

It is hereby ordered that the matters of Applications Nos. 36-7072 and 36-7085 be combined for hearing purposes and that the applicants may present evidence on the above delineated and disputed issues at a formal hearing to be held at _____.

It is further ordered that the protests submitted against Application No. 36-7072 by Mr. LeMoyne and Mr. Harwood be set aside, since they do not contain issues which can be considered in acting upon the application.

Dated this _____ day of February 1970.

R. KEITH HIGGINSON
State Reclamation Engineer



36 7085

February 10, 1970

Re: Applications Nos. 36-7085 and 36-7072

Mr. John A. Rosholt
Parry, Robertson, Daly & Larson
P. O. Box 525
Twin Falls, Idaho 83301

Dear John:

Enclosed you will find a draft of a pre-hearing order covering the points to be heard at a hearing on the above numbered permits. I would appreciate your comments regarding the content and wording of the order.

I have tentatively set the hearing for March 11, 1970, at Twin Falls. Please advise me if that date meets with your approval.

As of this date I have not received any word from Mr. Hepworth regarding the pre-conference order on Application for Permit No. 36-7071. I would hope that it would be possible to schedule a hearing on that application in the same time period as the Brailsford Brothers and Norman Standal hearing.

If you have any questions regarding the draft, please contact me.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jlb

Enclosure

36 7085

January 30, 1970

R. Keith Higginson
State Reclamation Engineer
Statehouse - Annex 2
Boise, Idaho 83707

Dear Mr. Higginson:

We protest Brailsford Brothers, Inc. amended water Permit #36-7085 on the grounds that there is insufficient water at the intended point of diversion to supply this application and prior permits and applications.

We also protest the amendment of #36-7085 on the grounds that the amendment may detrementally affect our prior application for Permit #36-7072.

Thank you,

Norman S. Standal
George Lemmon
Star Route
Bliss, Idaho 83314

36 7085

RECEIVED
1970
Department of Reclamation

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301
TELEPHONE
(208) 733-3722

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

January 27, 1970

Mr. C. Stephen Allred
Deputy State Reclamation Engineer
Department of Reclamation
State House -- Annex 2
Boise, Idaho 83707

RE: Application Nos. 36-7085 & 36-7072
Brailsford Brothers -- Standall & Lemmon

Dear Steve:

Bob Brailsford has referred to me your letter of January 21, 1970. We have talked about dates for the hearing.

No time seems to be a good time but we would be at the hearing at the dates you set. The best times would appear to be either the last week in February or some time after the 10th of March. I anticipate being out of the office between March 1 and March 10 to attend the winter meeting of the NWRA. Bob will be in the middle of calving season probably at either time.

We would request also that you send a copy of the pre-hearing conference order when it is available.

Sincerely,

John A. Rosholt
JOHN A. ROSHOLT

JAR/clm

36 7085

January 21, 1970

Re: Applications Nos. 36-7085 and 36-7072

Brailsford Brothers, Inc.
c/o Robert H. Brailsford
Buhl, Idaho 83316

Dear Sirs:

This office would like to set Applications Nos. 36-7085 and 36-7072 for hearing during the month of February. I would appreciate your suggestions as to a date for that hearing. I would anticipate that both parties would like to have available expert witnesses and will require some time to prepare for the hearing.

I had hoped to set this matter at the same time as the hearing involving Jones and Sandy Livestock Company; however, it appears that it will not now be possible to do that.

I would appreciate your comments as to what days you might be available.

Very truly yours,

C. STEPHEN ALLRED
Deputy State Reclamation Engineer

CSA/jlb

January 12, 1970

Re: Application for Permit No. 36-7085 - Brailsford Brothers

Gooding Leader
Box 56
Gooding, Idaho 83330

Gentlemen:

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

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

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

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

_____
(Signature of the claimant)

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR
Enc: Legal notice

36 7085

NOTICE OF AMENDED APPLICATION FOR PERMIT

Notice is hereby given that Application for Permit No. 36-7085 in the name of the Brailsford Brothers, Inc. was filed for the diversion of 150 c.f.s. of water from Bickel Springs, tributary of the Snake River, with points of diversion within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼-SE¼) Sec. 6; Lot 2 (SE¼-NW¼), NE¼NW¼, Sec. 8, T. 8S, R. 14E, B.M., Gooding County, to be used for irrigation from April 1 to October 15 and for fish culture purposes from January 1 to December 31 and October 15 to April 1 in portions of Section 1, 11, 12, 13 and 14, T. 8S, R. 13E, B.M. and Section 7 and 18, T. 8S, R. 14E, B.M.

The applicants now propose to amend Application No. 36-7085, requesting 100 c.f.s. of water from Bickel Springs, tributary of the Snake River, to be diverted within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼), Sec. 6 T. 8S, R. 14E, B.M., Gooding County, from April 1 to October 15 for irrigation and from January 1 to December 31 for fish propagation purposes in portions of Sec. 6, 7 and 18, T. 8S, R. 13E, B.M. and in all of Sec. 13, T. 8S, R. 13S, B.M.

Any protest to the proposed amending of the application may be filed with the Idaho Department of Reclamation within ten days from the last date of publication of this notice.

R. Keith Higginson
State Reclamation Engineer

January 12, 1970

Re: Application for Permit No. 36-7085
Brailsford Brothers

Times News
Box 548
Twin Falls, Idaho 83301

Gentlemen:

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

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

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

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

_____
(Signature of the claimant)

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR
Enc: Legal notice

0

36 7085

NOTICE OF AMENDED APPLICATION FOR PERMIT

Notice is hereby given that Application for Permit No. 36-7085 in the name of the Brailsford Brothers, Inc. was filed for the diversion of 150 c.f.s. of water from Bickel Spring, tributary of the Snake River, with points of diversion within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, (NW'NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼), Sec. 6; Lot 2 (SE¼NW¼), NE¼NW¼, Sec. 8, T. 8S, R. 14E, B.M., Gooding County, to be used for irrigation from April 1 to October 15 and for fish culture purposes from January 1 to December 31 and October 15 to April 1 in portions of Section 1, 11, 12, 13 and 14, T. 8S, R. 13E, B.M. and Section 7 and 18, T. 8S, R. 14E, B.M.

The applicants now propose to amend Application No. 36-7085, requesting 100 c.f.s of water from Bickel Spring, tributary of the Snake River, .o be diverted within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼), Sec. 6, T. 8S, R. 14E, B.M., Gooding County, from April 1 to October 15 for irrigation and from January 1 to December 31 for fish propagation purposes in portions of Sec. 6, 7 and 18, T. 8S, R. 13E, B.M. and in all of Sec. 13, T. 8S, R. 13E, B.M.

Any protest to the proposed amending of the application may be filed with the Idaho Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Times-News, Twin Falls, Idaho, on January 22 and January 29, 1970

NOTICE OF AMENDED

APPLICATION FOR PERMIT

Notice is hereby given that Application for Permit No. 36-7085 in the name of the Brailsford Brothers, Inc. was filed for the diversion of 150 c.f.s. of water from Bickel Spring, tributary of the Snake River, with points of diversion within Lot 1 (NW¼NW¼), Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County, and within Lot 8 (SE¼SE¼), Sec. 6; Lot 2 (SE¼NW¼), NE¼NW¼, Sec. 8, T. 8S, R. 14E, B.M., Gooding County, to be used for irrigation from April 1 to October 15 and for fish culture purposes from January 1 to December 31 and October 15 to April 1 in portions of Section 1, 11, 12, 13 and 14, T. 8S, R. 13E, B.M. and Section 7 and 18, T. 8S, R. 14E, B.M.

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Any protest to the proposed amending of the application may be filed with the Idaho Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON

State Reclamation Engineer

Published in the Gooding Leader, Gooding, and Times News, Twin Falls

on January 22 and January 29, 1970

36 7085

Identification No. 36-7085

Application No. _____

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
APPLICATION FOR PERMIT
To Appropriate the Public Waters of the State of Idaho

1. Name of applicant Brailsford Brothers, Inc,

   post office address Buhl, Idaho 83316

2. Source of water supply Bickel Spring which is a tributary of Snake River

3. a. Location of point of diversion is (Lot 1) NW¼ of NW ¼ of Section 8 Township 8S. Range 14 E B.M. Twin Falls County; additional points of diversion if any: (Lot 8) SE 1/4 SE 1/4, §6, T. 8S., R. 14 E.B.M., Gooding County, Idaho NE 1/4, NW 1/4, §8, T. 8S., R. 14 E.B.M., Gooding County Idaho. (Lot 2) SE 1/4, NW 1/4, §8, T. 8S, R. 14 E.B.M. Gooding County, Idaho

   b. If water is not consumed, it will be discharged into Snake river at a point in SE ¼ of NE ¼ of Section 7 Township 8S Range 14E B.M.

4. Quantity to be appropriated:

   a. 150 cubic feet per second and/or

   b. ---------- acre feet per annum will be stored.

5. Water will be used for the following purposes:

   50 c/f/s Irrigation purpose from April 1 to October 15 (both dates inclusive)

   100 c/f/s Fish culture purpose from January 1 to December 31 (both dates inclusive)

   150 c/f/s Fish culture purpose from October 15 to April 1 ep (both dates inclusive)

   *Total 150 c/f/s for fish culture during non-irrigation season

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. open ditch or pipeline diversion at locations of springs to siphon which will convey water across Snake River for beneficial use in Sections 6, 7, & 18 of T. 8S, Range 14 E.B.M. and Sections 11, 12, 13 & 14 of T. 8S, Range 13 E.B.M., all in Twin Falls, County

   b. Height of storage dam none feet; active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet; materials used in storage dam: _____

   c. Proposed well diameter is none inches; proposed depth of well is _____ feet.

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.

   b. Estimated construction cost is $ 150,000 .

8. Description of proposed uses:

   a. If water is **not** for irrigation:

   (1) Give the place of use of water: lot 2 NW ¼ of NE ¼ of Section 7 Township 8S. Range 14E B.M. and (Lot 10) SE 1/4 SW 1/4 & SW 1/4, SE 1/4, §6, T. 8S. R. 14EBM south of Snake River

   (2) Amount of power to be generated: none hp under _____ feet of head.

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

   (4) Name of municipality to be served none, or number of families to be supplied with domestic water _____.

   (5) If water is to be used for other purposes describe: Fish propagation in rearing ponds to be constructed

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	
8S	13E	1											40	30					70
8S	13 E	11									40	40	40	40	40	40	40	40	320
8S	13 E	12									40	40	40	40	40	40	40	40	320
8S	13E	13	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640
8S	13 E	14	40	40	40	40	40	40	40	40	40			40	40	40	40	40	560
8S	14	7										32	32	40		40	40		184
8S	14	18		40	40		40	32	32	40	40	32	32	40		40	40		448

Total number of acres to be irrigated 2542

c. Describe any other water rights used for the same purposes none

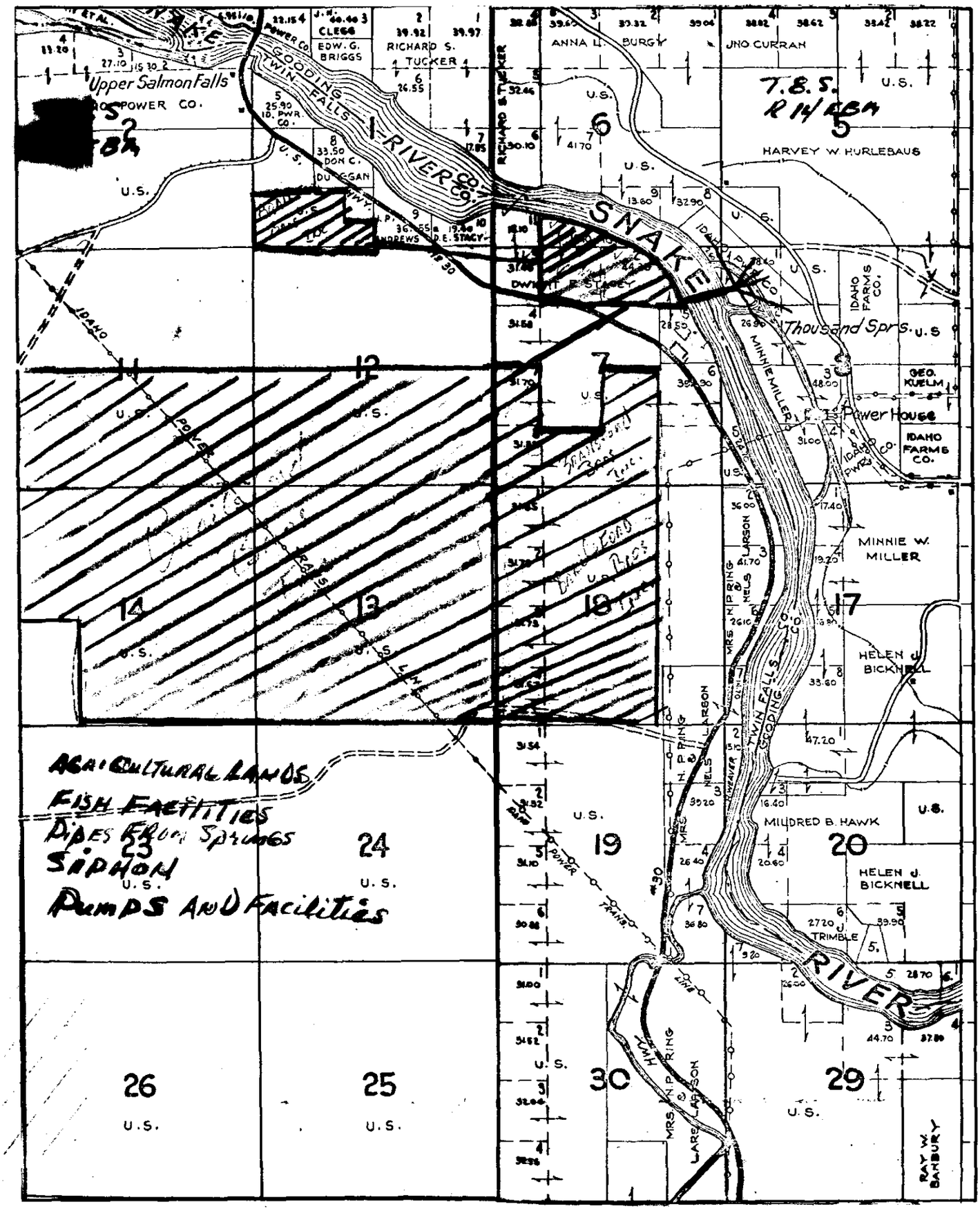
9. a. Who owns the property at the point of diversion Idaho Power Company

b. Who owns the land to be irrigated or place of use Brailsford Bros. Inc.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Applicant may be successful bidder from Idaho Power Co. sale of these lands in October of 1969. If not will negotiate for lease with Purchaser or file condemnation action of necessary.

10. Remarks Applicant will fully develop lands described above for agricultural uses. It is hoped that waters might be non-consumptively used in rearing ponds before being pumped to the majority of the agricultural lands. Excess over consumptive use requirements would return to Snake River.

11. Map of proposed project:



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

J. M. Brailsford
(Applicant)

Secretary, Brailsford Bros. Inc

36 7085

Received by CJ Date 9-29-69 Time 9:00 a.m.

Preliminary check by CA Fee $ 100

Receipted by CJ Date 9-29-69

Publication prepared by dr Date 10-8-69

Published in Gooding Leader and Times News

Publication dates 10-16-23-69

Publication approved dr Date 10-24-69

Priority reduced to _____ Reason _____

Protests filed by: Norman Stanfel and George Lemmon

Copies of protests forwarded by dr 10-31-69

Hearing held by _____ Date _____

Recommended for approval denial by _____

ACTION OF STATE RECLAMATION ENGINEER

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

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 _____, 19____.

   c. Other: _____

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

Witness my hand this _____ day of _____ 19____.

_____

State Reclamation Engineer

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

FIDELITY BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

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

December 31, 1969

Mr. R. Keith Higginson
State Reclamation Engineer
State House -- Annex 2
Boise, Idaho 83707

RE: Brailsford Brothers, Inc. Amended Application

Dear Keith:

Enclosed is a $10 check to cover a billing that was sent to Brailsford Brothers, Inc. for what was termed "readvertising." We presume that the reason for the readvertising is because Standell would not stipulate to allow us to amend even though we asked for less water in our amended application. We assume that this is more for our protection than anything else.

If there is another reason for readvertising, please advise so that I can be informed for the future.

Sincerely,

JOHN A. ROSHOLT

JAR/clm
Enclosure

December 26, 1969

Re: Application for Permit No. 36-7085

Brailsford Brothers, Inc.
Buhl,
Idaho 83316

Gentlemen:

This is to advise that we will require a $10.00 re-advertising fee for the above referenced application for permit.

If you have any questions regarding this matter, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

36 7085

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

FIDELITY BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

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JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

December 9, 1969

Mr. C. Stephen Allred, Deputy
State ReclamationEngineer
Department of Reclamation
State House - Annex 2
Boise, Idaho 83707

RE: Application of Brailsford Brothers, Inc

Dear Steve:

Enclosed is an executed Amended Application for Permit which shows the changes that further engineering studies have dictated for Brailsford Brothers, Inc.

Following our conference on last Tuesday, I will attempt to set forth in this letter answers to the three questions which you raised, namely:

1. A showing of the amount of fish to be raised to justify the application for the use of 80 cubic feet of water per second for fish culture.

2. A more specific identification of the precise points of diversion.

3. An estimated schedule of construction.

1. In the previous data which was supplied at the request of your office, we enclosed some drawings of hatchery raceways as exhibit "C". As stated in Mr. Brailsford's letter, three separate units of ten raceways would be constructed. Each one of the 30 total raceways would be eight or nine feet wide and three hundred feet long. Each raceway would be designed for the use of between three and five cubic feet per second of water. Using the fish people's rule of thumb, one cubic foot per second of water will support ten thousand pounds of trout, or an approximate total of eight hundred thousand pounds of trout per year. As Mr. Brailsford previously pointed out, he is informed by fish biologists that based upon the sizes of the proposed raceways, a beneficial use of the water would be between three and five cubic feet per raceway.

2. I am attaching to this letter an aerial photograph of the area commonly known as the Bickel Springs, which is immediately adjacent to the Brailsford properties across the river. A close investigation of the spring area indicates that those portions marked on the map as Spring A and Spring B are the points from which Brailsford Brothers, Inc. would propose to divert the water in accordance with the provisions of their amended application. Spring B presently flows from its source into the inlet below and, consequently, into Snake River. Spring A presently flows in two directions from its source and again reaches Snake River at two points. Brailsford Brothers, Inc. propose a pipeline which would divert the waters of Spring B to the pool below Spring A where their present pipeline exists. They would propose small concrete structures below Spring B and below the southern most outlet of Spring A to force all of the flows of both Spring B and Spring A to the point where their present pipeline is installed. At that point, a structure would be installed for the diversion of one hundred cubic feet per second underneath the river to the Brailsford properties by the use of a siphon. The structure will provide an accurate measurement of the flows of Spring A and B at the point where it is to be diverted and permit any amounts of water in excess of Brailsford's application to overflow into Snake River. If the Brailsford Brothers, Inc. application be approved, or approved upon certain conditions, we will then be in a position to negotiate for the property rights required to build the diversion structures, the pipeline, and the new siphon. Failing negotiations, appropriate legal action would necessarily have to be instituted.

3. Insofar as a construction schedule can be estimated at this point, we would suggest that the proposed project of Brailsford Brothers could be completed within the five year period from the date that the application might be approved. It is contemplated that substantial engineering and design work would have to be contracted before the actual construction could start, possibly delaying the initiation of construction for a period in excess of one year. In the event the application were to be approved specifying other construction schedule conditions, Brailsford Brothers, Inc. would do whatever is necessary to comply with those conditions. Presently an engineering firm and a fish biologist have been retained on a stand-by basis pending the approval of this application.

I trust that the information contained in the Amended Application for Permit which is enclosed, and this letter will suffice to answer those questions which you have. If additional information is desired, you may contact me or the Brailsfords directly.

We thank you for the consideration of the matters raised in this letter.

Sincerely,

JOHN

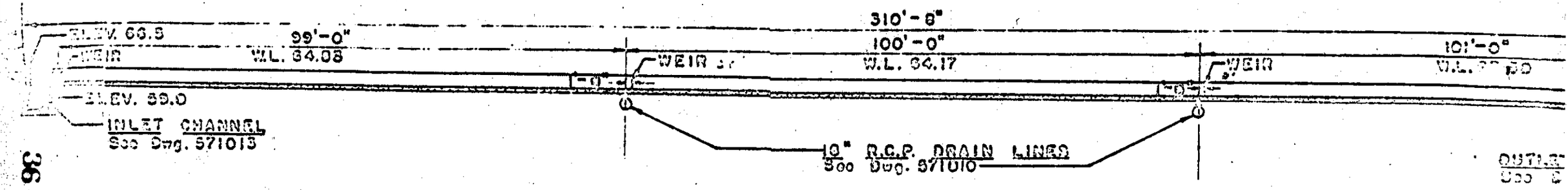
JOHN A. ROSHOLT

JAR/clm
Enclosure

Exhibit C

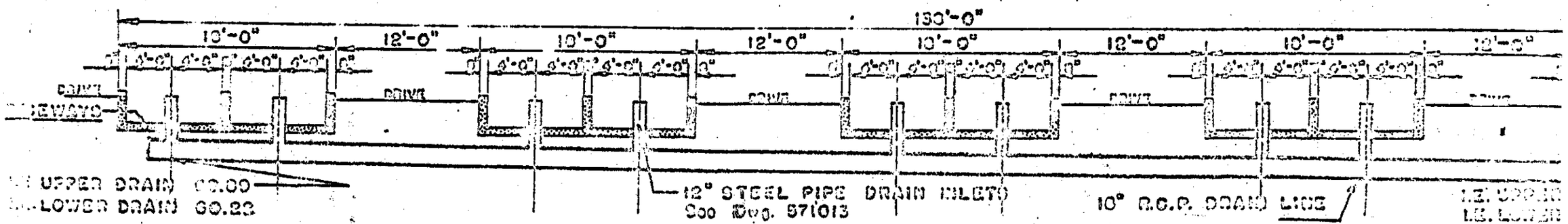
0+00 — ℄ OF INLET CHANNEL
See Dwg. 571013

℄ OF OUTLE
See Dwg. 57



SECTION A—A

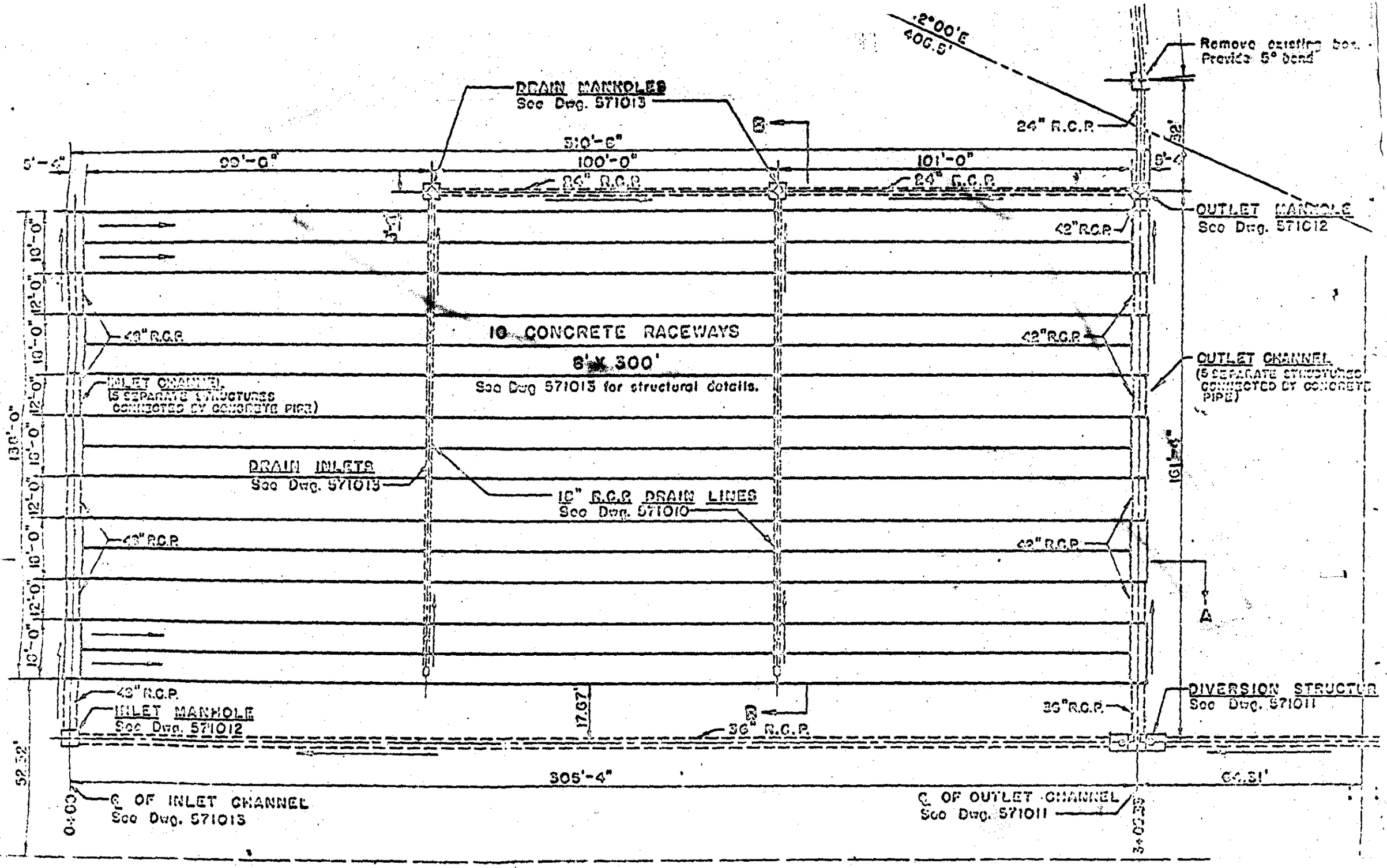
Scale 1" = 20'



SECTION B—B

Scale 1" = 10'

36 7085


DRAIN MANHOLES
See Dwg. 571013
B
5'-4"
99'-0"
100'-0"
101'-0"
5'-4"
5'0"-6"
24" R.C.P.
24" R.C.P.
24" R.C.P.
42"R.C.P.
Remove existing box.
Provide 5° bend
OUTLET MANHOLE
See Dwg. 571012
42" R.C.P.
10 CONCRETE RACEWAYS
6' x 300'
See Dwg 571013 for structural details.
42"R.C.P.
OUTLET CHANNEL
(5 SEPARATE STRUCTURES CONNECTED BY CONCRETE PIPE)
INLET CHANNEL
(5 SEPARATE STRUCTURES CONNECTED BY CONCRETE PIPE)
138'-0"
10'-0"
12'-0"
10'-0"
12'-0"
10'-0"
12'-0"
10'-0"
12'-0"
10'-0"
DRAIN INLETS
See Dwg. 571013
12" R.C.P. DRAIN LINES
See Dwg. 571010
42" R.C.P.
42" R.C.P.
A
42" R.C.P.
INLET MANHOLE
See Dwg. 571012
17.67'
36" R.C.P.
36"R.C.P.
DIVERSION STRUCTUR
See Dwg. 571011
52.32'
305'-4"
64.31'
0+00
℄ OF INLET CHANNEL
See Dwg. 571013
℄ OF OUTLET CHANNEL
See Dwg. 571011
3+00.36

36 7085

MEMO

Re: Application for Permit Nos. 36-7085 and 36-7072

Dated: December 24, 1969

By: C. Stephen Allred

For the purpose of conference, on December 16, 1969, at Twin Falls, the above applications were combined in that both applications included the same parties.

The general matters covered were the protests submitted by Mr. John R. LeMoyne and Mr. Farrell D. Harwood. Each objected to the issuance of a permit and contended that it was not in the public interest. They were advised that the department would take their protest under advisement and would issue a decision prior to the hearing, as to whether or not their protests were valid and whether that point could be considered.

Matters were discussed between Brailsford Brothers, represented by John A. Rosholt, and by Mr. George H. Lemmon and Mr. Norman S. Standal and it was decided that the points at issue could best be settled at a hearing and that the department would issue a prehearing order setting forth the points to be covered. Those points generally are as follows:

1. That the application was filed for speculative purposes and not in good faith and that the applicant did not own the land at the time the application was submitted.

2. That Mr. Lemmon is technically an employee of the State of Idaho and as such may have a conflict of interest.

3. Whether or not the water is available in the amounts requested.

4. That there is not sufficient area within which to build the proposed project.

5. That the design, as submitted, is not feasible and, therefore, is speculative.

6. Whether the applicant can use the quantity of water requested for the purposes intended.

A hearing should be set, as soon as possible, allowing sufficient time for gathering of expert witnesses and testimony.

36 7085

36-7085 - Brailsford Brothers, Inc.

Twin Falls City Hall, Twin Falls, Idaho

December 16, 1969 at 3:00 p.m.

ROSTER OF ATTENDANCE

Name	Address	Representing

SEE ROSTER FOR 36-7072

Both Applications Consolidated for Conference.

36 7085

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

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

December 4, 1969

Mr. Stephen Allred, Deputy
State Reclamation Engineer
Department of Reclamation
State House -- Annex 2
Boise, Idaho 83707

RE: Brailsford Brothers, Inc.

Dear Steve:

I have been attempting to locate Mr. Brailsford. I am informed that he is at his ranch near Salmon and cannot be reached by telephone until the weekend.

As soon as I am able to get hold of him, I will have him compile the additional information which you requested.

Sincerely,

John

JOHN A. ROSHOLT

JAR/clm

36 7085

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
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BERT LARSON
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JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER

November 25, 1969

Mr. Stephen Allred, Deputy
State Reclamation Engineer
Department of Reclamation
State House - Annex 2
Boise, Idaho 83707

RE: Application for Permit No. 36-7085, 367072

Dear Steve:

This office represents Brailsford Brothers, Inc. We have been supplied a copy of your letter of November 18, 1969 in regard to their application for permit number 367085. We advise that the Brailsfords are having additional engineering drawings made for your information in accordance with your letter. We will try to get this information to you by December 1, if at all possible.

In the meantime, I presume separate hearings will be held on application of Standal and Lemmon and the application of Brailsford Brothers, Inc.

Planned 12-8-69

If for some reason your department is going to consolidate the hearings since they have both applied and both protested each other's application, I would appreciate being advised. In any event, please advise as to the dates for the hearings on both applications when they are set so that we might have some advance notice.

As you know, Brailsford Brothers Inc. are the successors to a right of way and a water right presently on the premises, and have used water from the spring through the pipeline which is presently installed since 1901. If additional right of way would be required to utilize the water for which they have applied, I presume condemnation would be in order. These things we can better determine after the original engineering work has been done and we will provide you with this information as soon as possible.

Enjoyed seeing you at the Reclamation meeting and talking over some of our common problems. Unfortunately at those meetings we never seem to have enough time and it is my hope we can get together in the near future.

Sincerely,

JOHN A. ROSHOLT

JAR/clm

36 7085

DON SAMUELSON
GOVERNOR

R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE – ANNEX 2
BOISE, IDAHO 83707

October 22, 1969

Re: Application for Permit No. 36-7085 - Brailsford Brothers, Inc.

Mr. Norman Standal
Hagerman,
Idaho

Dear Mr. Standal:

Enclosed please find a copy of the above referenced application pursuant to your request.

This is to advise that the Department requires a fee of 25¢ per page for copies, therefore, would you please remit $.75 to cover the charge for this copy.

If we may be of further assistance, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR rec'd #3908 gmw

Enc: Copy of 36-7085

cc: Accounting Dept. ✓

36 7085

NAME AND ADDRESS OF SENDER: Dept. of Reclamation

Indicate type of mail: ☐ INSURED ☐ C. O. D. ☒ CERTIFIED

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

POSTMARK AND DATE OF RECEIPT

	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	DUE SENDER IF C. O. D.	ENDORSEMENT [1]	R. R. FEE	S. D. FEE	S. H. FEE [2]	RESTRICTED DELIVERY FEE / REMARKS
✓ 1	21454	Eddie Schultz, Rte 3, Buhl Idaho	.06	.30			.15			47-7014
✓ 2	21455	John C. Athendsen, Rte 3, Buhl Idaho	.06	.30			.15			47-7073
✓ 3	21456	Frame Trout Farm, Rock Creek Canyon Rd., Twin Falls, Idaho	.06	.30			.15			47-7070
4										
✓ 5	21457	Paul A. Schmidt, Rte 3, Buhl Ida	.06	.30			.15			47-7081
✓ 6	21458	Lawrence and/or Gladys Jess, Rte 3, Buhl Idaho	.06	.30			.15			47-7082
7										
✓ 8	21459	John C. Athendsen, Rte 3, Buhl Ida	.06	.30			.15			47-7018
✓ 9	21460	Parry, Robertson, Daly & Larsen, P.O. Box 525, Twin Falls, Idaho Attn John A. Rashorst.	.06	.30			.15			36-7085
10										
11										
✓ 12	21461	Norman L. Standal & George Lemmon, Star Route, Bliss, Idaho	.06	.30			.15			36-7085
13										
✓ 14	21462	Brailsford Brothers Inc, Buhl Ida	.06	.30			.15			36-7085
✓ 15	21463	Keith R Parkinson, 100 S. 1st E. St. Anthony, Idaho	.06	.30			.15			32-7025
16										
✓ 17	21464	Mary Smith, Attorney at Law, 30 So. Second West, Rexburg, Idaho	.06	.30			.15			32-7025
18										
✓ 19	21465	Fremont-Madison Irrigation Dist. L.C. Anderson, Asst Sec. St. Anthony	.06	.30			.15			32-7025
20										

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POD Form 3877-A—July 1958

U. S. GOVERNMENT PRINTING OFFICE

C—16—

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☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

21460

INSURED NO.

DATE DELIVERED

DEC 8 19[illegible]

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

[illegible]

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

[illegible]

3 SHOW WHERE DELIVERED (*only if requested*)

c55—16—71548-10 GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

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NAME OF SENDER

STREET AND NO. OR P.O. BOX Department of Reclamation
Annex # 2 Statehouse

POST OFFICE, STATE, AND ZIP CODE Boise, Idaho 83707

POD Form 3811 Apr. 1967

055—10—71648-10

INSTRUCTIONS TO DELIVERING EMPLOYEE

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(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

21461

INSURED NO.

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

Norman S Standal

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

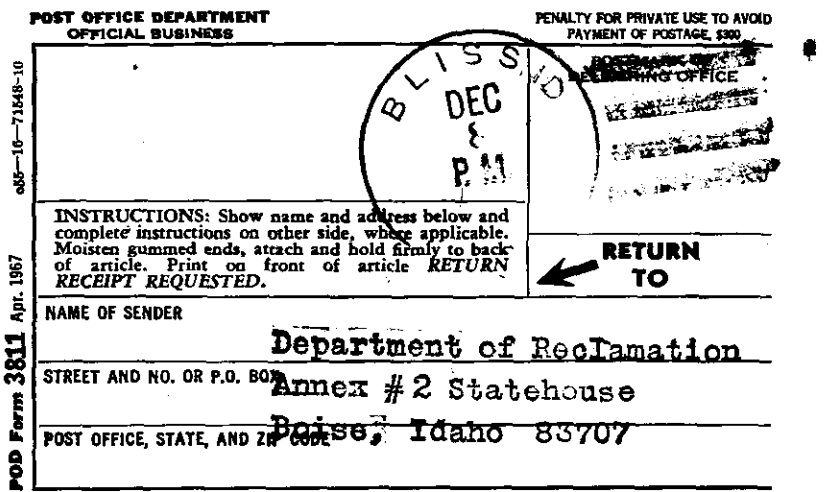
Mrs Norman Standal

DATE DELIVERED

12-8-69

3 SHOW WHERE DELIVERED (*only if requested*)

o55—16—71548-10 GPO



POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

BLISS, IDAHO
DEC
P.M.

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NAME OF SENDER

Department of Reclamation

STREET AND NO. OR P.O. BOX

Annex #2 Statehouse

POST OFFICE, STATE, AND ZIP CODE

Boise, Idaho 83707

POD Form 3811 Apr. 1967

o65—16—71548-10

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

21462

INSURED NO.

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

Bradford Bros

2. SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

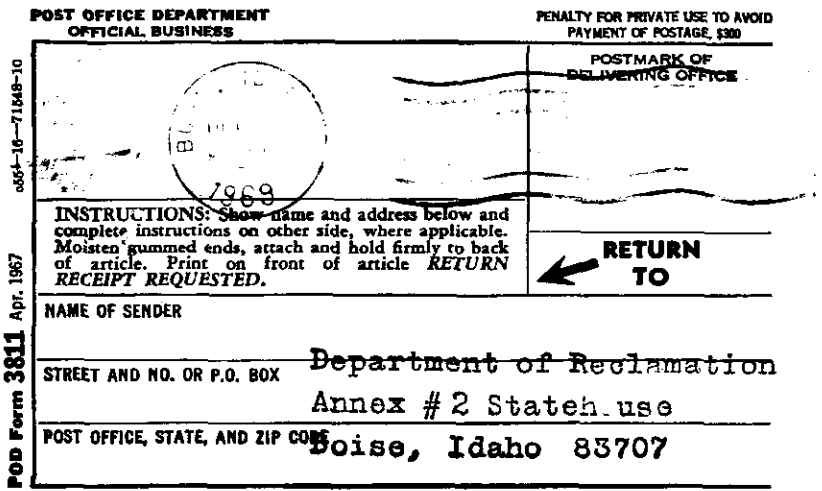
J. M Bradford

DATE DELIVERED

12/8/69

3. SHOW WHERE DELIVERED (*only if requested*)

c55—16—71548-10 GPO



POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

POSTMARK OF DELIVERING OFFICE

1969

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

STREET AND NO. OR P.O. BOX

Department of Reclamation
Annex # 2 Stateh. use

POST OFFICE, STATE, AND ZIP CODE

Boise, Idaho 83707

POD Form 3811 Apr. 1967

0554-16—71548-10

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 36-7085 in the name of)
BRAILSFORD BROTHERS, INC.)
) CONFERENCE

On September 29, 1969, Brailsford Brothers, Inc., Buhl, Idaho, filed with the Department of Reclamation an application to appropriate the public waters of the State of Idaho. On October 29, 1969, the Department of Reclamation received a protest filed by Norman S. Standal and George Lemmon, Bliss, Idaho.

The Department of Reclamation has set the matter of protest for an informal conference on December 16, 1969, at 3:00 p.m., at the Twin Falls City Hall, Twin Falls, Idaho. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

Dated this 4th day of December, 1969.

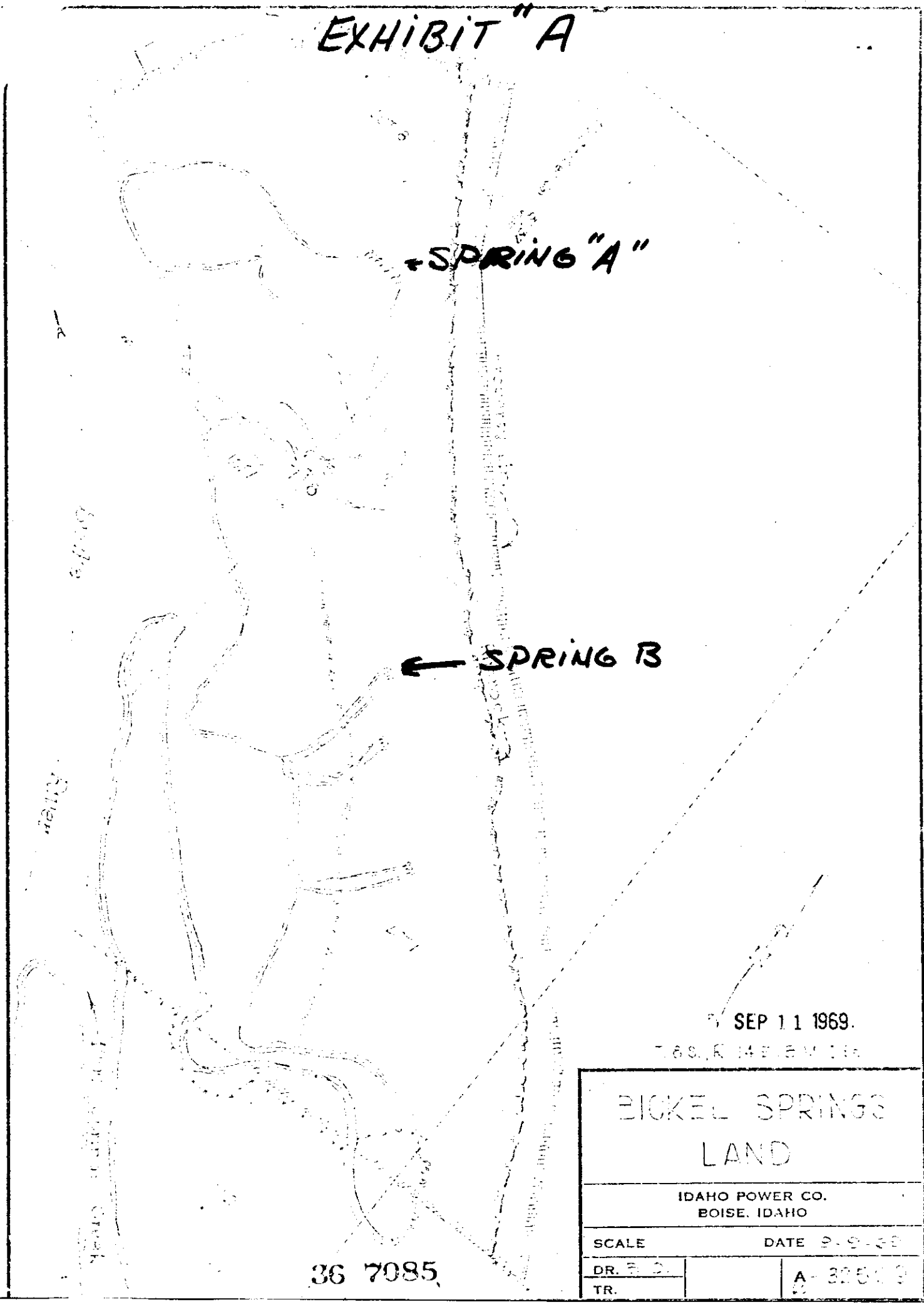
C. Stephen Allred, Deputy
State Reclamation Engineer

Mailed this 5th day of December, 1969, to Parry, Robertson, Daly & Larson, Attn: John A. Rosholt, P.O. Box 525, Twin Falls, Idaho; certified No. 21460; Norman S. Standal & George Lemmon, Star Route, Bliss, Idaho 83314 - certified No. 21461; Brailsford Brothers, Inc., Buhl, Idaho certified No. 21462

By Kaye Henderson

36 7085

EXHIBIT "A"



SEP 11 1969.

T 6S., R 14 E., B.M., Ida.

BICKEL SPRINGS LAND

IDAHO POWER CO.
BOISE, IDAHO

SCALE

DATE 9-9-69

DR. E. J.

TR.

A-3251.9

36 7085

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
FIDELITY BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

R. P. PARRY
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C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE

November 28, 1969

Mr. C. Stephen Allred, Deputy
State Reclamation Engineer
Department of Reclamation
State House - Annex 2
Boise, Idaho 83707

RE: Application for Permit No. 36-7085

Dear Steve:

Enclosed is an application for amendment of permit No. 36-7085 prepared by Brailsford Brothers, Inc. the applicant.

Please note that further study has disclosed that the project proposed by Brailsford Brothers, Inc. is more feasible as outlined in the application for amendment.

The application for amendment has been documented with some exhibits which we trust will suffice to answer your letter of November 18, 1969. After you have reviewed the material, we would appreciate it if you would deliver it to Don McEldowney, so it might be appropriately filed with the application for permit.

Brailsford Brothers, Inc. is most serious about their proposal and feel that it is in fact feasible because of the location of their lands and the continuity of the proposed project. If you need to be supplied additional information on any facet, please advise and we will attempt to comply.

Thank you for your continuing cooperation.

Sincerely,

John

JOHN A. ROSHOLT

JAR/clm
Encl

36 7085

DESCRIPTION

Lot 1 of said Section 7.

In Lot 1, said Section 8: All that portion of said Lot 1 lying south and west of a line described as follows: Beginning at a point on the north line of said Section 8, which is 100 feet east of the intersection of said north line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said Rim Rock at a distance of 100 feet to a point 100 feet north of the intersection of the east line of Lot 1 with the upper Rim Rock of Snake River Canyon.

In the NE¼NW¼, said Section 8: All that portion of the said NE¼NW¼ lying south and west of a line described as follows: Beginning at a point on the west line of said subdivision which is 100 feet north of the intersection of said line with the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling said Rim Rock at a distance of 100 feet to a point on the south line of said subdivision which is 100 feet east of the intersection of said south line with the upper Rim Rock of Snake River Canyon.

In the SW¼SW¼, said Section 5: Beginning at the SW corner of said Section 5; thence north on the west line of said Section 5 to a point 100 feet north of the precipice of the upper Rim Rock of Snake River Canyon; thence southeasterly paralleling the said rim rock at a distance of 100 feet to a point 100 feet east of the intersection of the south line of said Section 5 with the precipice of the upper Rim Rock of Snake River Canyon; thence west along the south line of said Section 5 to the point of beginning.

In Lot 8, said Section 6: Beginning at the Southeast corner of said Lot 8, being the corner common to said Sections 5, 6, 7 and 8; thence north on the east boundary line of said Lot 8 to a point 100 feet north of the precipice of the upper Rim Rock of Snake River Canyon; thence northwesterly paralleling the said Rim Rock at a distance of 100 feet to the strip of land in said Lot 8 granted by the grantors herein to the Twin Falls North Side Land and Water Company by deed dated January 17, 1912, and recorded in Book J of Deeds, at page 331, in the records of Gooding County, Idaho, and by said company and its successor occupied with a ditch to convey waste water to Snake River; thence southwesterly along the southern boundary of said strip of land to its intersection with Snake River and thence continuing to the thread of said stream; thence southeasterly following the thread of Snake River upstream to its intersection with the south line of said Lot 8; thence east along the south boundary of said Lot 8 to the place of beginning.

Bickel Springs: This site is located approximately four miles south of Hagerman, Idaho, via U S 30 and the U S Fish Hatchery Road. The property has approximately one-half mile of river frontage that is at an elevation of 2890 feet above sea level, rising to approximately 3120 feet along the face of the rim. The site encompasses five large springs and waters from these charge a Lagoon which encompasses approximately seven acres. The production of these springs has been

figured into the overall yield; however, it has been estimated that they will produce a yearly average of approximately 150 cfs. At the 3000 foot level, there is a 12-acre bench area that is made up of a pond, a number of small springs, and which, at one time, had been farmed.

To the extreme westerly boundary, a right-of-way has been acquired for a waste canal from runoff from farm land above the rim. To form the Lagoon mentioned earlier, a peninsula protrudes from the south boundary in a northerly direction, to wall off the river-flow from the spring flow. This area measures 3.3 acres in size and its outlet, in the most northern extremity, measures 150 feet in length.

Access to the site can be acquired by an old, established road through the U S Fish Hatchery site which extends well into the interior of the subject area. The only available means of reaching the peninsula is either by trespass on the adjoining property or by use of a boat.

The highest and best use for the property is for a commercial Trout Farm site. The springs provide an abundant flow of water and there are adequate, adaptable lands for the construction of concrete fish-races and, by the utilization of the Lagoon, very inexpensive fish-rearing ponds could be developed. By the development of these two areas, a very efficient, cheaply constructed trout-rearing site could be developed.

Bickel Springs Water Filings: Upon investigation of records in the Idaho State Reclamation Office, there is a filing on these springs, although it is named as "Thousand Springs," rather than "Bickel Springs," as follows:

George Lemmon & Norman Standal

Application	36-7072
Date	July 17, 1969
Purpose	Fish Propagation
Amount	215 cfs
Application	In Process (2 protests)

In addition, there has been, for many years, a steel pipe approximately sixteen inches in diameter diverting water to the west side of the river for irrigation and domestic purpose on the Brailsford Ranch.

BICKEL SPRINGS - Total Acres 62.66

A parcel of land including a bench area and peninsula with a large, spring-charged Lagoon. This property has good access and encompasses a large flow of Spring Water:

22.3 Acres

Lands including areas which is Rim, steep, rocky slopes:

40.30 Acres

Appraisal

Copy of an appraisal report on this property by Idaho Land and Appraisal Service may be examined at the Idaho Power Company office, 1220 Idaho Street, Boise, Idaho.

CONDITION OF SALE

Sealed bids will be received at the Idaho Power Company office in Boise, Idaho, on or before Wednesday, October 8, 1969.

Bids should be addressed as follows:

T R Heikes, Superintendent of Power
Idaho Power Company
P O Box 70
Boise, Idaho 83707

TERMS

A certified check for 10% of the bid price must accompany the bid. Checks from unsuccessful bidders will be returned. The balance of the bid price shall be covered on or before October 20, 1969 by check or by a contract for a period of up to 10 years with interest at 8% per annum on the unpaid balance. In the event of failure to pay the remaining 90%, or in case of default on the contract, the 10% downpayment will be retained as liquidated damages.

The foregoing information is believed to be complete and accurate with no essential facts withheld, however, none of the information is guaranteed. The information with respect to water filings was compiled from records in the Idaho State Reclamation office. However, there may be filings subsequent to those listed under Water Filings. No right-of-way over other property of Idaho Power Company or of others is guaranteed with this sale. The property is subject to a Mortgage and Deed of Trust which will require approximately three months to release. Idaho Power Company will obtain the release of this property from this Mortgage and Deed of Trust.

Idaho Power Company reserves the right to reject any and all bids.

ADDENDUM

BICKEL SPRINGS LAND

The following information is supplied in addition to the statement appearing on Page 2. The pipe line diversion is made in accordance with a water notice by Maranda A Herron, dated December 10, 1901, and recorded in Book A of Water Rights, Page 412, Records of Gooding County, Idaho. A Definition and Limitation of this Water Permit was executed between Idaho Power Company and Dwight E Stacy and Stennece Stacy on October 21, 1944, recorded in the records of Gooding County, Idaho in Book 2 of Water Rights on Page 409, which Definition and Limitation of Water Rights defined and limited the water right to 10.5 cfs of water at the intake of the ditch and pipe-line in Lot 2 of Section 6, T8S, R14E, BM, which ditch and pipe line intake is approximately located North 11° 27' West 344.7 feet from the meander corner on or near the north bank of Snake River, that the lands upon which said waters are used is located across the Snake River in Lots 10 and 11 of Section 6 and Lots 2,3,& 5, and the $NE\frac{1}{4}$ $NW\frac{1}{4}$ of Section 7; all in T8S, R14E BM, and Lot 10 of Section 1 of T8S, R13E, BM, in Twin Falls County, Idaho

November 28, 1969

Mr. R. Keith Higginson
State Reclamation Engineer
Boise, Idaho

Resume of Brailsford Brothers, Inc. Application for Amendment of 36-7085

At the outset I wish to thank the State Reclamation Engineers office for it's affirmative consideration of our letter asking for an extension of time for filing our Application.

We have studied all of the information available from the available records of the Idaho Power Company and Mr. Standal, and Mr. Lemmon's filing on the Bickel Springs. We find great discrepancies as to what the actual flow of the Bickel Springs is. The flow can only be finally determined when the waters of the various springs are impounded and released from the impoundment in a fashion by which an accurate measurement can be made. If the State Reclamation Engineer can avail himself of the time for a cursory examination of the springs and the manner in which the water flows from them; in spreading fan shaped flows, percolating through lava rubbel whose depth is impossible to determine by visual observation, with no evidence whatsoever that any attempt has been made, at least in the immediate past, to collect or divert the water into confining channels so that presently used measuring devices and practices would be applicable. We believe he might well agree that my contentions are substantially correct.

In our original application, because of the reasons mentioned above, we applied for 150 c/f/s of water from these springs leaving, according to Mr. Standalls and Mr. Lemmons calculations, 65 c/f/s. These 65 c/f/s were not applied for because it did not appear at that time to be practicable for us to use them. Because of the extension of time allowed us by the State Reclamations Engineer's office, we have been able to determine that there is an additional 40 c/f/s that it is impracticable for us to use. Thus, we are herewith filing an Application for Amendment. Brailsford Brothers, Inc., herewith apply for all of the waters of Spring "A" located in lot #8 as shown in Exhibit "A" of this amended application, and all of those waters of Spring "B", the most northern spring in lot #1, as shown in Exhibit "A" of our amended application. The legal description of both of these lots is included in the advertisement of sale of the Bickel Springs area by the Idaho Power Company and is included in Exhibit "A" of this amended application. Under present measuring conditions, the present flow of these two springs is estimated to be 110 c/f/s. Brailsford Brothers Inc., ask for an amended filing of 100 c/f/s from Spring "A" located in lot #8 and from Spring "B" located in lot #1, as shown in Exhibit "A" of our Application for Amendment. We presently have access to the waters of the lake fed by Spring A, as noted in the Addendum issued by the Idaho Power Company, subsequent to the

sale offer of the lands surrounding Bickel Springs and herein a part of Exhibit "A". We would ask for an easement for a buried pipeline to bring the waters of Spring "B" into the basi of the small lake formed by the waters of Spring A. We would certinaly expect to compensate the holders of title to the area traversed by the pipeline in an amount commensurate to the value of the land involved. Our Application for Amendment in no way precludes the use of the land purchased by Mr Standal and Mr. Lemmon from the Idaho Power Company. We propose using the waters of Spring "A" and Spring "B" by transferring it through buried pipelines except where the pipelines leave the relative flat area and drop over a very nearly vertical wall and into the Snake River. In no way would we interfer with their access to or movement over any part of their property.

We propose to install the pipeline as shown in Exhibit "B" of our amended application in much the same manner as our present pipeline. We propose to weld the sections (to be under the surface of the river) together on the bank of the river that forms one boundary of our present ranch; float these sections into a predetermined position marked by buoys attached to cables which in turn are attached to 1500 lb. reinforced concrete blocks acting as anchors on the bottom of the river, weld this section to the section coming from the lake and down the almost verticle wall, slowly fill the pipeline with water and sink it into position on the bottom of the river. We have sounded our present pipeline at intermittent points across the river and it lies at an average depth of fourteen feet. The present pipeline installation has proven to be a very satisfactory one with practically no maintanence in the eighteen years since its installation. It has been inspected by an experienced diver intermittently over the past several years and he has reported to us that the portion under the surface of the water remains in excellent condition. Our present pipeline depends upon its supply of water from the lake fed by Spring "A" of Exhibit "A" and any lowering of the level of the lake affects the head on the pipeline and as a consequence the amount of water delivered by this pipeline. Any alterations of this lake's water level for any reasons would bring immediate and strong legal resistance from Brailsford Brothers, Inc.

Exhibit "B" shows a profile view of a preliminary engineering study and design of our propsed pipeline installation to deliver the 80 c/f/s to the proposed fish hatchery and 20 c/f/s to the propsed irrigation development. A detailed drawing of the hatchery raceways, inlet chanels, measuring weirs and drain lines is shown as a part of Exhibit "C". The raceways are designed for the best and efficient use of water and feed and are a result of extensive research by the Wyoming Fish and Game Commission at the Spey Rearing Station, Casper, Wyoming. The Hagerman area is blessed with the amount and kind of water which has proven most efficient for trout rearing and as a consequence other areas have done extensive research on efficient use of their waters. These raceways are designed to use 3 to 5 c/f/s each. We propose to construct three batteries of 10 raceways, therby allowing a small tolerance on the water availabl.e

Our ranch has located on it a combination shop and warehouse constructed of cinder blocks 50 x 150 in area, three modern homes, for use by fish hatchery and ranch personnel.. The hatchery would be located less than one quarter of a mile from U. S. Highway #30 and fifteen miles from Buhl, Idaho, being very accessible to bring in feed and supplies and take out products of production. The proposed agricultural development is also located only one quarter of a mile from U.S. Highway #30 on the opposite or south side of the highway. We propose to place under irrigation the area as indicated in the application for Amendment. This described land amounts to 1000 acres. All of this ground was at one time filed on for agriculture development under the Desert Entry Act but during the time Brailsford Brothers, Inc. was negotiating with the Bureau of Land Management for a trade of other property owned by us for the above described property and other properties surrounding it. The filings were dissallowed. This property is suitable for surface irrigation, practically rock free, with very deep soil.

We are sure that the State Reclamation Engineer's office will understand the reason for my request for a time extension. I hope I have used this time to make a clear, devinitive, and well-thought out Application for Amendment and one that clearly fulfills all of the requirements of the Idaho State Constitution and the Legal Statutes of the State of Idaho covering the applications for water filings.

We respectfully submit to you this Application for Amendment.

Brailsford Brothers, Inc.

Robert H. Brailsford

Robert H. Brailsford, President

FINANCIAL STATEMENT

OF

F. M. BRAILSFORD AND ROBERT H. BRAILSFORD

as of September 1, 1969

Owners of Brailsford Bros., Inc.

ASSETS

	Amount	
Cash	$ 13,879.00	
Livestock	225,821.00	
Feed	44,668.00	
Cash crops	19,589.00	
Real estate	688,859.00	
Equipment	30,900.00	
Stocks and bonds	22,434.00	
Earned subsidy	9,360.00	(due Apr. 1st)
Annual income	15,000.00	(from trust)
Balance due	34,465.00	(on contract of sale)
TOTAL	$1,104,975.00	

LIABILITIES

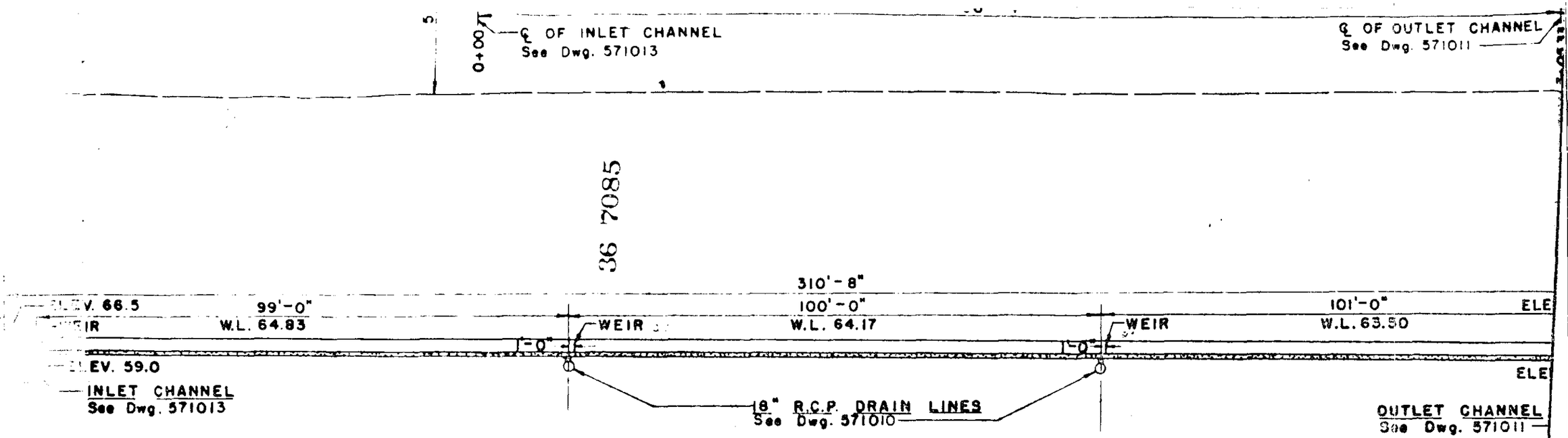
Notes payable to Bank	$ 95,545.00
Open accounts due	6,700.00
Mortgages on real estate	82,155.00
TOTAL	$ 184,400.00

NET WORTH - MARKET VALUE $ 920,575.00

Robert H. Brailsford

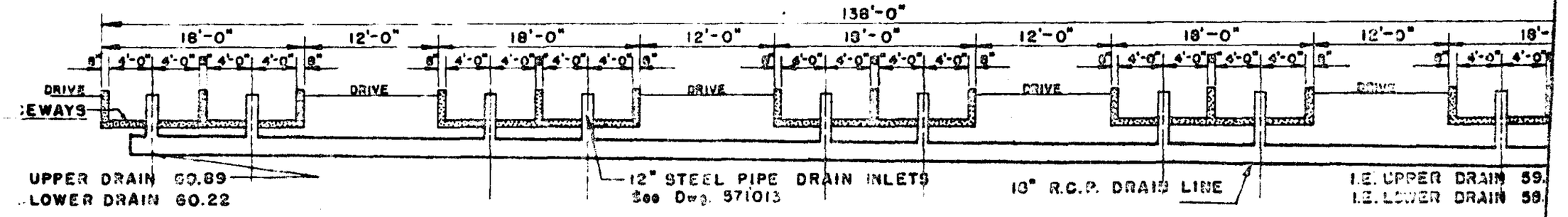
EXHIBIT C

36 7085



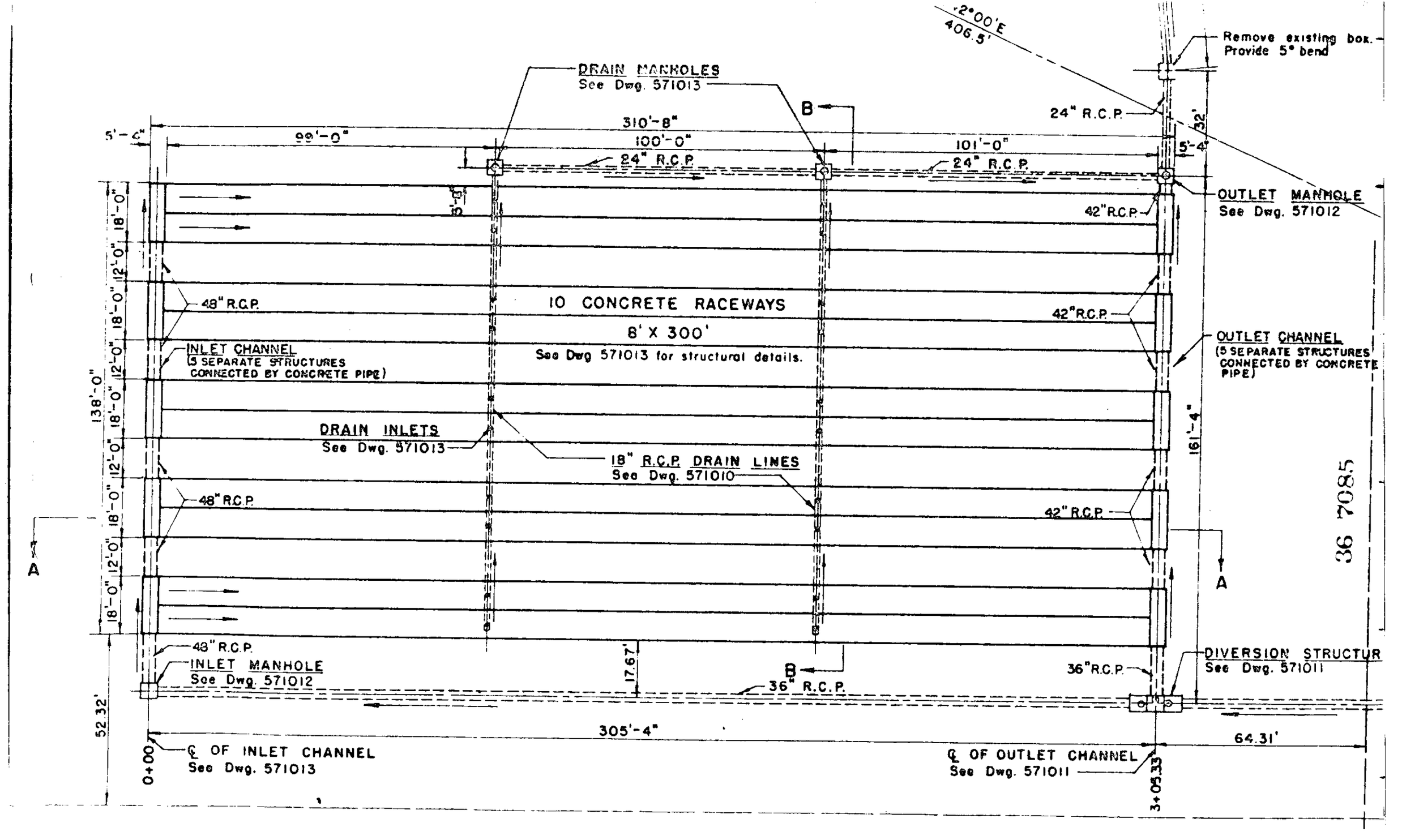
SECTION A–A

Scale 1" = 20'



SECTION B–B

Scale 1" = 10'


DRAIN MANHOLES
See Dwg. 571013
B
310'-8"
99'-0"
100'-0"
101'-0"
5'-4"
24" R.C.P.
24" R.C.P.
24" R.C.P.
5'-4"
32'
Remove existing box.
Provide 5° bend
OUTLET MANHOLE
See Dwg. 571012
42" R.C.P.
48" R.C.P.
10 CONCRETE RACEWAYS
8' X 300'
See Dwg 571013 for structural details.
42" R.C.P.
OUTLET CHANNEL
(5 SEPARATE STRUCTURES CONNECTED BY CONCRETE PIPE)
INLET CHANNEL
(5 SEPARATE STRUCTURES CONNECTED BY CONCRETE PIPE)
138'-0"
18'-0"
12'-0"
18'-0"
12'-0"
18'-0"
12'-0"
18'-0"
12'-0"
18'-0"
DRAIN INLETS
See Dwg. 571013
18" R.C.P. DRAIN LINES
See Dwg. 571010
48" R.C.P.
42" R.C.P.
161'-4"
A
A
48" R.C.P.
INLET MANHOLE
See Dwg. 571012
17.67'
B
36" R.C.P.
36" R.C.P.
DIVERSION STRUCTUR
See Dwg. 571011
52.32'
305'-4"
64.31'
℄ OF INLET CHANNEL
See Dwg. 571013
0+00
℄ OF OUTLET CHANNEL
See Dwg. 571011
3+05.33
36 7085

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

APPLICATION FOR AMENDMENT

Permit No. 36-7085

Comes now Robert H. Brailsford, President of Brailsford Brothers, Inc. an Idaho Corporation of (address) Buhl, Idaho 83316, and represents to the State Reclamation Engineer of the State of Idaho:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 36-7085, and requests that the permit and permit map be changed as follows:

1. Point of diversion: (Lot 8) SE ¼ SE ¼, Sec. 6, T. 8 S, R. 14E, B.M. Other points of diversion Northern - most of Bickel Springs in NW 1/4 NW 1/4 §8, T.8.S., R 14 E B.M. Both points of diversion in Gooding County, Idaho (see Exhibit "A" for detail of diversion points, Exhibit B for pipeline profile)

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

		mo. - day		mo. - day	
For	20 c/f/s/ for Irrigation	purposes from	April 1	to	October 15 (both dates incl.)
For	80 c/f/s/ for fish culture	purposes from	January 1	to	December 31 (both dates incl.)
For		purposes from		to	(both dates incl.)
For		purposes from		to	(both dates incl.)

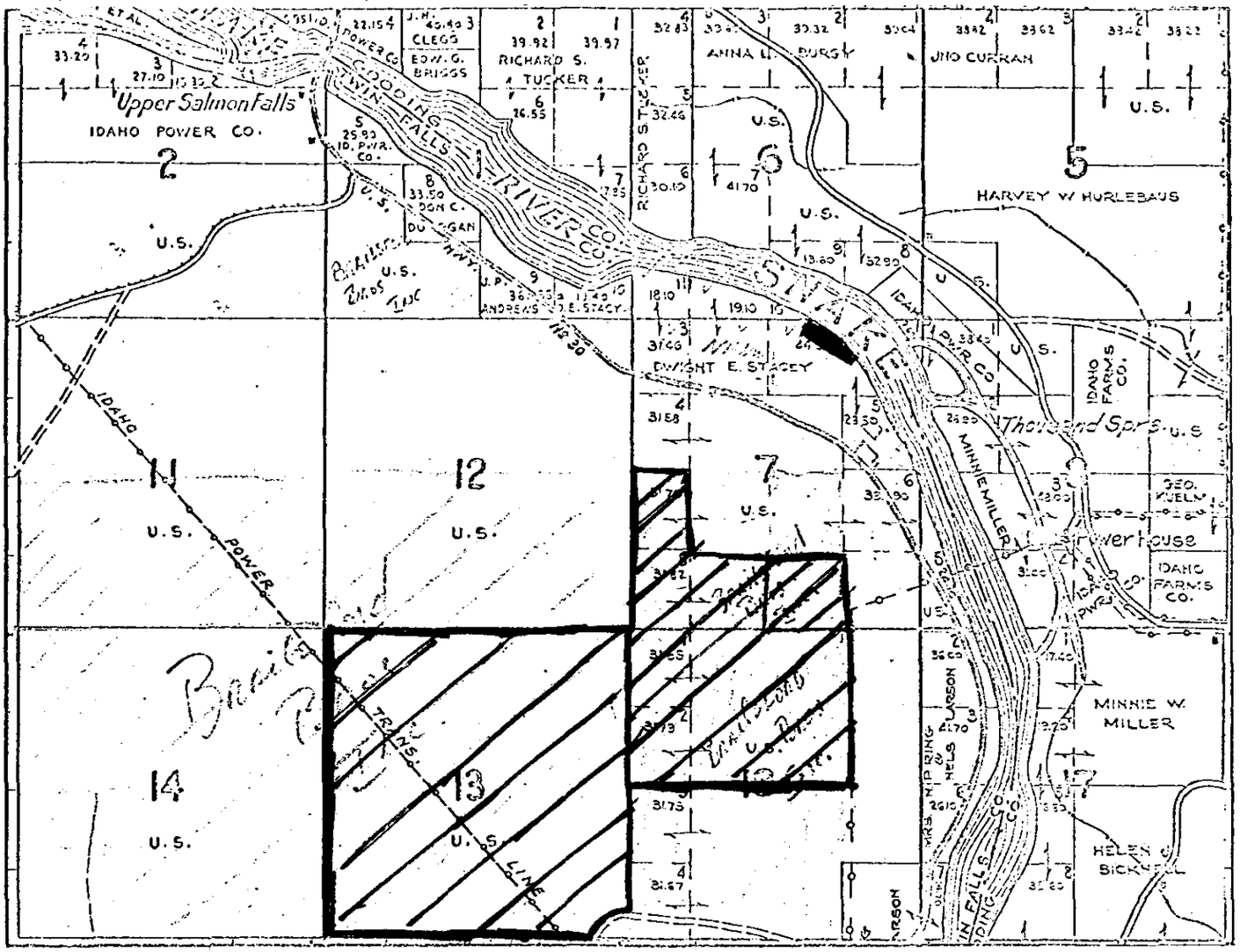
3. Place of use or land to be irrigated: (Exhibit "C" shows fish operation)

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
Land to be irrigated:																			
T8S	R14E	7										31.70	31.82	40			40		143.52
T8S	R14E	18		40	40		40	31.85	31.79	40									223.64
T8S	R13E	13	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	40	640.00
													TOTAL IRRIGATED						1,007.16
Location of Fish Culture Use:																			
T8S	R14E	7		lot 2 20.00															20.00
												TOTAL FISH CULTURE							20.00

Total number of acres to be irrigated

36 7085

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 40 acre subdivisions, sections, townships, ranges, and ditches.



Scale: 2 inches equal 1 mile

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

Signed at Twin Falls, Idaho, this 28th day of November, 19 69.

Robert K. Brailsford
(signature)

Brailsford Brothers Inc. President

ACTION OF STATE RECLAMATION ENGINEER

I, _____, State Reclamation Engineer of the State of Idaho,

hereby _____

_____

_____

_____

Witness my hand this _____ day of _____, 19_____.

_____
State Reclamation Engineer

RECEIVED
OCT 28 1969
Department of Reclamation

October 28, 1969

State of Idaho

Department of Reclamation
Statehouse Annex 2
Boise, Idaho 83707

ATTN: R. Keith Higgenson

Dear Mr. Higginson:

We protest the Brailsford water filing #36-7085 on the grounds that all of the water at this source is filed on by our application #36-7072 and there is insufficient water to fill both applications.

By careful measurement of the above water at two different times we found the total supply to be 210 and 215 second feet respectively. This did not include the water that was being taken out by the existing Brailsford irrigation pipe line.

Sincerely,

Norman S. Standal

Norman S. Standal

Geo. H. Lemmon

George Lemmon

36 7085

November 18, 1969

Re: Application for Permit No. 36-7085

Brailsford Brothers, Inc.
Buhl,
Idaho 83316

Gentlemen:

On November 14, 1969, this office received confirmation from Idaho Power Company that they had sold their property at Bickel Springs in Gooding County to: George Lemmon and Norman Standal, Route 1, Hagerman, Idaho.

Since you have applied for a permit to appropriate water for use on these lands, I would appreciate being advised, by December 1, 1969, as to whether or not you are associated with George Lemmon and Norman Standal. If you are not associated with these people, what plans do you have to utilize the water for which you have applied.

To insure that your application will remain in good standing, you should supply this information, as soon as possible, certainly prior to December 1, 1969.

Very truly yours,

C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh

36-7085

SNAKE RIVER
HYDRO POWER

IDAHO POWER COMPANY

BOX 770 • BOISE, IDAHO 83701

November 12, 1969

JAMES E. BRUCE
Secretary and General Counsel

RECEIVED
NOV 14 1969
Department of Reclamation

Mr C Stephen Allred, P E
Deputy State Reclamation Engineer
State of Idaho
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Dear Mr Allred:

In answer to your question with respect to the sale of three parcels of land, the Company has completed the sale of two of these parcels, as follows:

1. Box Canyon - sold to Box Canyon Trout Co, Inc
   1522 Vista Avenue, Boise, Idaho
   Earl M Hardy, President
   Description: located about 8 miles South of Hagerman and 11 miles North of Buhl.
   $NW\frac{1}{4}$, Section 27
   $E\frac{1}{2}NE\frac{1}{4}$, Section 28
   $SW\frac{1}{4}NE\frac{1}{4}$, " "
   Lot 2, " "
   That part of Lot 5 which lies West of the North-South center line of Section 28.
   All of the above in T8S, R14E, BM, Idaho.

2. Bickel Springs - sold to George Lemmon and Norman Standal of Hagerman, Idaho
   Description: Part of the $SW\frac{1}{4}SW\frac{1}{4}$, Section 5
   " " Lot 8, " 6
   All of Lot 1, " 7
   Part of Lot 1, " 8
   " " the $NE\frac{1}{4}NW\frac{1}{4}$, " "
   All of the above in T8S, R14E, BM.

3. Briggs Springs - (Not sold)
   Description: Located 12 miles South of Wendell and 7 miles Northwest of Buhl on North and East of Snake River.
   Irregular parcels of land lying in Sections 3 and 4, T9S, R14E, BM.

36 7085

If any further information is required, please contact me.

Very truly yours,

James E Bruce
Vice President and Secretary

JEB:mlm

October 31, 1969

COPY

Re: Application for Permit No. 36-7085

Brailsford Brothers Inc.
Robert Brailsford
Buhl, Idaho 83316

Dear Mr. Brailsford:

We have enclosed a copy of the protest filed against the issuance of a permit pursuant to your application no. 36-7085 by Norman S. Standal and George Lemmon. You should be aware that the following are items which, under Section 42-203 of the Idaho Code, we can consider at a hearing in approving or denying an application for permit. You will be notified at a later date as to the time and place of hearing.

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed supply insufficient for the purposes intended?

3. Is the application made in good faith or for delaying or speculative purposes?

4. Has the applicant sufficient financial resources to complete the project?

The Department cannot allow a permit for irrigation purposes which would entail the use of more than a continuous flow of 0.02 cubic foot per second of water or an annual amount of five acre feet of water per acre of land, unless the applicant can show that more is required due to soil or climate conditions. (Sec. 42-202, I.C.)

The waters intended to be appropriated must be public water of the State of Idaho or, if private waters as defined under Sec. 42-212, Idaho Code, the applicant must have authority from the owner of the land on which the water lies to divert the water.

36 7085

The Department of Reclamation may reject an application for permit or may partially approve or grant the permit upon conditions.

A permit issued by this office is subject to all prior water rights and does not in any way convey or establish right-of-ways over private, state or federal lands. Right-of-ways or easements must be obtained by the applicant through action outside of the water right proceedings.

Legal counsel is not mandatory at any proceeding before the Department, although you may desire to employ an attorney in your behalf.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:mjl

Enc: Copy of protest

October 31, 1969

Re: Application for Permit 36-7085 - Brailsford Brothers Inc.

Norman S. Standal and
George Lemmon
Star Route
Bliss, Idaho 83314

Gentlemen:

Gentlemen are in receipt of your correspondence concerning the above referenced application. You should be aware that the following are items which, under Section 42-203, of the Idaho Code, we can consider at a hearing in approving or denying an application for permit. You will be notified at a later date as to the time and place of hearing.

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed supply insufficient for the purposes intended?

3. Is the application made in good faith or for delaying or speculative purposes?

4. Has the applicant sufficient financial resources to complete the project?

Please bear in mind that the State Reclamation Engineer may reject such application and refuse issuance of permit therefor, or may partially approve and grant permit for a less quantity of water than applied for, or may grant permit upon conditions.

A permit issued by this office does not in any way convey or establish right-of-ways over private or governmental lands. Right-of-ways or easements must be obtained by the individuals concerned through action outside of the water right proceedings.

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

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:mjl

36 7085

October 29, 1969

Re: Application for Permit 36-7085

Brailsford Bros., Inc.
Robert Brailsford
Buhl, Idaho 83316

Dear Mr. Brailsford:

Thank you for your letter of October 23, 1969. We will withhold any further action on your permit application for an additional 30 days, within which time you may submit the information as requested by our letter of October 9, 1969.

Thank you for your co-operation.

Very truly yours,

C. Stephen Allred, Deputy
State Reclamation Engineer

CSA:kh

36 7085

RECEIVED
Department of Reclamation

RECEIVED
Department of Reclamation

Oct. 23, 1

Mr. Donald Mc Eldowney
Appropriation Examiner
State Reclamation Engineers Office
614 State Street,
Boise, Idaho 83700

Dear Sir:

I visited your office Monday Oct.20th. to ask for an extension in time for the application for permit mo. 36_7085 to allow me to gather the information you asked for in your letter to Brailsford Bros. Inc. of Oct. 9, received by me on Oct. 14.

My job is a full time one,to obtain the information and profer to you the design and other information requested by you would take considerably more time then the eight days allowed.

The Assistant State Reclamation Engineer, Mr. Dunn agreed that information of this nature would take considerable time. He agreed to an extemsion but advised me to inform you of a definite date by which time I could have the information in your hands. I have contacted a hydraulics engineer to work on this information and he advised me it could take until Dec. 1st. for him to compile the information in this respect. Information with regard to a financial statement is readily available. The preliminary design and the amount of water needed is done.

I will have the information in your office by Dec. 15. Before if possible.

Very truly yours,

Robert Brailsford

Brailsford Bros. Inc.
Buhl, Idaho 83316

36 7085

October 24, 1969

Re: Application for Permit No. 36-7085 - Brailsford Brothers
36-7086 - Richard Kaster

George Lemmon and Norman S. Standal
Star Route
Bliss, Idaho 83314

Gentlemen:

Enclosed please find a copy of Richard Kaster's filing no. 36-7086. Please remit $.75 to the Department to cover the charge for this copy.

On October 22, 1969, we forwarded a copy of the Brailsford Brothers filing no. 36-7085 to Norman Standal at Hagerman, Idaho. If you want another copy of this application, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

Enc: Copy of 36-7086

cc: Accounting Dept.

36 7085

October 22, 1969

Department of Reclamation
State of Idaho
Statehouse Annex #2
B oise, Idaho 83707

ATTN: Mr. D. McEldowney

Dear Mr. McEldowney:

Please send us a copy of Brailsford's water filing #36-7085 and Dick Kaster's filing #36-7086.

Thank you,

George Lemmon

Norman S. Standal
Star Route
Bliss, Idaho 83314

36 7085

October 22, 1969

Re: Application for Permit No. 36-7085 - Brailsford Brothers, Inc.

Mr. Norman Standal
Hagerman,
Idaho

Dear Mr. Standal:

Enclosed please find a copy of the above referenced application pursuant to your request.

This is to advise that the Department requires a fee of 25¢ per page for copies, therefore, would you please remit $.75 to cover the charge for this copy.

If we may be of further assistance, please advise.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

Enc: Copy of 36-7085

cc: Accounting Dept.

36 7085

October 9, 1969

Re: Application for Permit No. 36-7085

Brailsford Brothers, Inc.
Buhl,
Idaho 83316

Gentlemen:

In order to further consider your application for permit, we will require additional information not included with your application.

1. A financial statement indicating the resources available to complete the project as described in the application (see Section 42-203, IC).

2. A preliminary design of the hatchery facilities, indicating the size of raceways, general layout, the size of pipelines or other diversion works and such other information as will fully describe the method and means of diversion and verify the need for the quantity of water you have asked to appropriate.

3. A justification, based upon the preliminary design and the estimated production of the hatchery, for the amount of water requested.

4. An estimated schedule of construction giving dates for the start of construction, the finish of construction, and the date that full operation of the hatchery is anticipated.

You should be aware that all applications, if approved, will require the installation and maintenance of adequate measuring devises, both at the point of diversion and the point of return of the water to the creek. These devices must be of a type approved by the Department of Reclamation; they can be of any generally recognized standard measuring device type. You should include the installation of these devices in your preliminary plans for construction.

I would appreciate receiving this information by October 22, 1969. Thank you for your cooperation.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:sc

36 7085

October 8, 1969

Re: Application for Permit No. 36-7085 - Brailsford Brothers, Inc.

Times News
Box 548
Twin Falls, Idaho 83301

Gentlemen:

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

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

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

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

_____
(Signature of the claimant)

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

Enc: Legal notice

36 7085

DON SAMUELSON
GOVERNOR

R. KEITH HIGGINSON
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION
STATEHOUSE – ANNEX 2
BOISE, IDAHO 83707

October 8, 1969

Re: Application for Permit No. 36-7084 - Mrs. Willie Anderson
36-7085 - Brailsford Brothers, Inc.
37-7052 - John N. Madsen

Gooding Leader
Box 56
Gooding, Idaho 83330

Gentlemen:

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

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

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

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

_____
(Signature of the claimant)

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:DR

Enc: Legal notices (3)

36 7085

OVER

MORTY TAPE — LEGALS ... .

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the Brailsford Brothers, Inc., Buhl, Idaho, have on September 29, 1969, applied for permit under Application No. 36-7085 to divert 200.0 cubic feet per second of water from Bickel Spring, tributary of the Snake River.

Water will be diverted by open ditch or pipeline within the NW¼NW¼ (Lot 1) of Sec. 8, T. 8S, R. 14 E, B. M., Twin Falls County and within the SE¼SE¼ (Lot 8) of Sec. 6; SE¼NW¼ (Lot 2), NE¼NW¼, Sec. 8; T. 8S, R. 14 E, B. M., Gooding County and is to be used from April 1 to October 15 for irrigation, from January 1 to December 31 and from October 15 to April 1 for fish culture in the S½SW¼, Sec. 1; S½, Sec. 11; S½, Sec. 12; all of Sec. 13; N½, E½SW¼, SE¼, Sec. 14, T. 8 S, R. 13 E, B. M. and in the SE¼SW¼ (Lot 10,) SW¼SE¼, Sec., 6; NW¼NE¼ (Lot 2), W½SW¼, SE¼SW¼, W½SE¼, Sec. 7; W½NE¼, W½, W½SE¼, Sec. 18, T. 8 S, R. 14 E, B. M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of this notice.

R. KEITH HIGGINSON,
State Reclamation Engineer

Published in the Times-News, Twin Falls, Idaho, on October 16 and October 23, 1969.

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the Brailsford Brothers, Inc., Buhl, Idaho, have on September 29, 1969, applied for permit under Application No. 36-7085 to divert 200.0 cubic feet per second of water from Eickel Spring, tributary of the Snake River.

Water will be diverted by open ditch or pipeline within the NW¼NW¼ (Lot 1) of Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County and within the SE¼SE¼ (Lot 8) of Sec. 6; SE¼NW¼ (Lot 2), NE¼-NW¼ Sec. 8; T. 8S, R. 14E, B.M., Gooding County and is to be used from April 1 to October 15 for irrigation, from January 1 to December 31 and from October 15 to April 1 for fish culture in the S½SW¼, Sec. 1; S½, Sec. 11; S½, Sec. 12; all of Sec. 13; N½, E½SW¼, SE¼, Sec. 14, T. 8S, R. 13E, B.M. and in the SE¼SW¼ (Lot 10), SW¼SE¼, Sec. 6; NW¼NE¼ (Lot 2), W½-SW¼, SE¼SW¼, W½SE¼, Sec. 7; W½NE¼, W½, W½-SE¼ Sec. 18, T. 8S, R. 14E, B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of this notice.

R. Keith Higginson
State Reclamation Engineer

10-16-2tc

NOTICE OF APPLICATION FOR WATER

Notice is hereby given that the Brailsford Brothers, Inc., Buhl, Idaho, have on September 29, 1969, applied for permit under Application No. 36-7085 to divert 200.0 cubic feet per second of water from Bickel Spring, tributary of the Snake River.

Water will be diverted by open ditch or pipeline within the NW¼NW¼ (Lot 1) of Sec. 8, T. 8S, R. 14E, B.M., Twin Falls County and within the SE¼SE¼ (Lot 8) of Sec. 6; SE¼NW¼ (Lot 2), NE¼NW¼, Sec. 8; T. 8S, R. 14E, B.M., Gooding County and is to be used from April 1 to October 15 for irrigation, from January 1 to December 31 and from October 15 to April 1 for fish culture in the S½SW¼, Sec. 1; S½, Sec. 11; S½, Sec. 12; all of Sec. 13; N½, E½SW¼, SE¼, Sec. 14, T. 8S, R. 13E, B.M. and in the SE¼SW¼ (Lot 10), SW¼SE¼, Sec. 6; NW¼NE¼ (Lot 2), W½SW¼, SE¼SW¼, W½SE¼, Sec. 7; W½NE¼, W½, W½SE¼, Sec. 18, T. 8S, R. 14E, B.M.

Any protest against this application must be filed with the Department of Reclamation within ten days from the last date of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Times News, Twin Falls, Idaho, AND Gooding Leader, Gooding, Idaho, on October 16 and October 23, 1969.

K.H.

36 7085

PAYEE: DETACH THIS STATEMENT BEFORE DEPOSITING CHECK

PARRY, ROBERTSON, DALY & LARSON
TWIN FALLS, IDAHO 83301

DATE	INVOICE NO.	DESCRIPTION	GI	AMOUNT	DEDUCTIONS	NET AMOUNT
9/26/69		110 - Brailsford Brothers, application for water permit				$100.00

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

FIDELITY BANK BUILDING

P. O. BOX 525

TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

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

September 26, 1969

Department of Reclamation

Mr. R. Keith Higginson
State Reclamation Engineer
Statehouse - Annex 2
Boise, Idaho 83707

Attention Water Rights Department

Gnetlemen:

Enclosed is an application for permit on behalf of Brailsford Bros. Inc. Also enclosed is a $100.00 check for the filing fee. If any portion of the permit is defective, please notify so that it might be corrected.

Thanks for your continuing cooperation.

Sincerely,

John A. Rosholt

JOHN A. ROSHOLT

JAR:ps
Enclosures

Certified Mail
Return Receipt Requested

36 7085