Form 203
6-85

RECEIVED
JUN 15 1987
Department of Water Resources
Eastern District Office

Ident. No. 11 7367

APPROVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant * Copenhagen Hills Association % John P. Nelson Phone (H) 801-563-5219 752-8328

Post office address 24 west 200 north, Hyde Park, Utah. 84318

2. Source of water supply Spring which is a tributary of N/A * sinks

3. Location of point of diversion is ~~NORTH 1/2~~ NW1/4 of S.W. ¼ of S.W. ¼, Govt. Lot N/A *

Sec. 25 Township 12 South Range 42 EAst B.M. Bear Lake County; additional points of diversion if any: None.

4. Water will be used for the following purposes:

Amount ~~0.20~~ 0.16 cfs * for Domestic purposes from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount *.12 for *-irrigation purposes from *-4/15 to *-10/15 pursuant to Proposed Memorandum Decision & Order (both dates inclusive)
(cfs or acre-feet per annum)

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

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

5. Total quantity to be appropriated is (a) ~~0.20 cfs~~ 0.16 cfs and/or (b) ------
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Spring water collection in a 4" P.V.C. perforated pipe enveloped in 12" of washed rock with a 60 mil thick P.V.C. liner at the top and side locations to prevent percolation of contaminated matter into the water supply.
Collected water will be stored in a 3,000 gallon concrete resivior prior to entering into the property owners distribution system.

b. Height of storage dam ~~4-feet~~ * feet; active reservoir capacity ~~3,000-Gal.~~ * ~~acre-feet~~; total reservoir capacity ~~3,000-Gal.~~ * ~~acre-feet~~; period of year when water will be diverted to storage: ~~January 1~~ * to ~~December 31~~ * inclusive.

c. Proposed well diameter is N/A inches; proposed depth of well is N/A feet.

d. Is ground water with a temperature of greater than 90°F being sought? No

7. Time required for the completion of the works and application of the water to the proposed beneficial use is Three (3) years (*minimum 1 year*).

* changes as per tele con June 24, 1987 - KCW

8. Description of proposed uses (*if irrigation only, go to item 9*):

a. Hydropower; show total feet of head and proposed capacity in KW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. 12 Seasonal mountain cabins.

e. Other; describe fully. _____

9. Description of place of use:

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

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
12 S.	42 E.	25		Pursant to Proposed Memorandum Decision and Order.								~~2*~~ 40	~~2*~~ ~~40~~	~~2*~~ ~~40~~					~~6*~~ ~~120~~
		25										D	D	D					

Total number of acres to be irrigated ~~None~~ 6*
~~All Domestic~~

10. Describe any other water rights used for the same purposes as described above. ~~None~~ _____

11. a. Who owns the property at the point of diversion? John P. Nelson

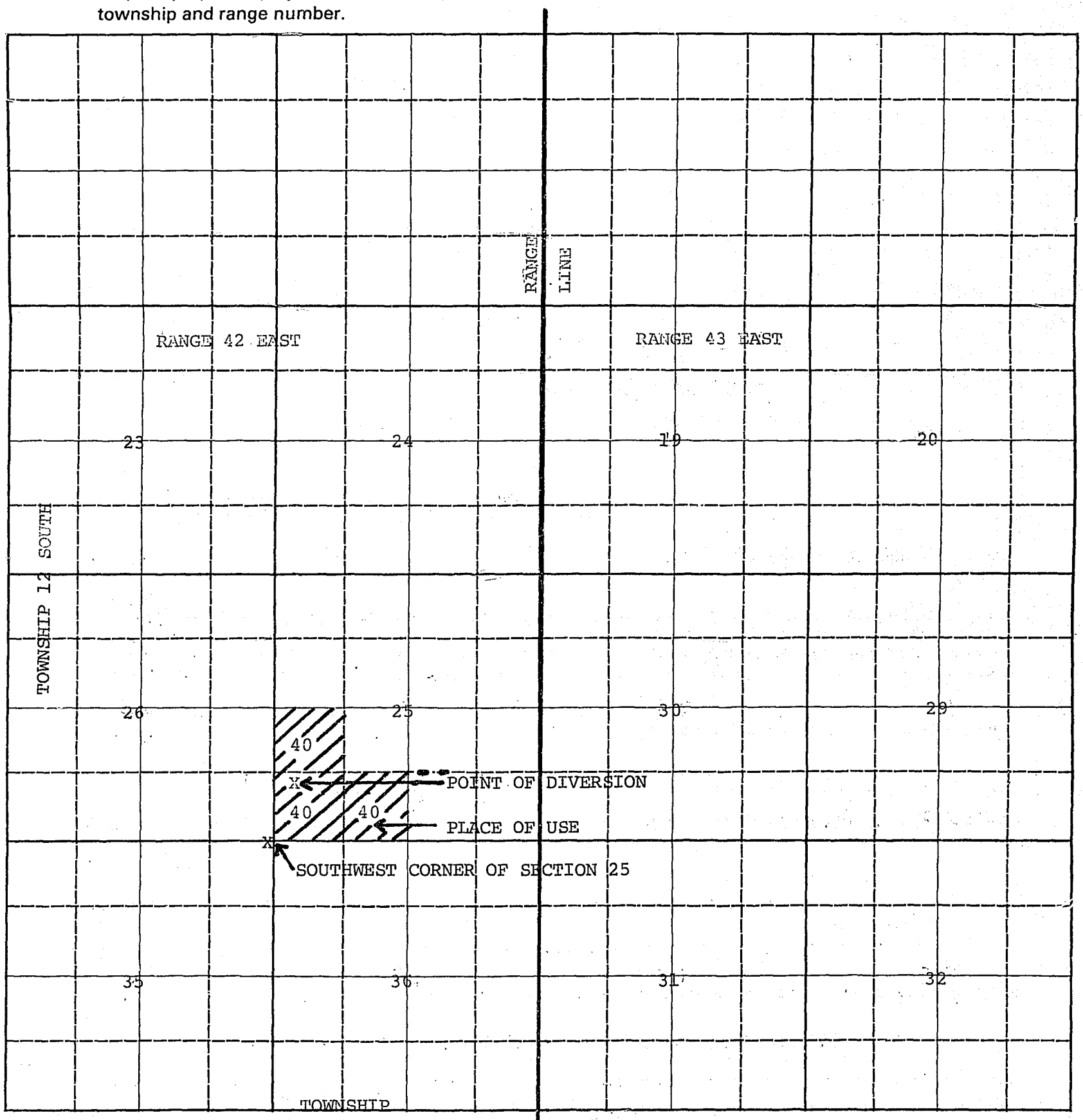
b. Who owns the land to be irrigated or place of use? See property owners list on agreement

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

12. Remarks: 1/12 share of spring flow given in property owner association agreement

* changes as per tel[illegible]on June 24, 1987 - KCW

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



Scale: 2 inches equal 1 mile.

NOTE: SEE LEGAL DESCRIPTION OF POINT OF DIVERSION FOR SPRING FLOWS.

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.

Joan C. Nelson
(Applicant)
Secretary

Received by dg Date 6-15-87 Time _____ Preliminary check by KAW

Fee $ 30.00 Receipted by dg # 41263 Date 7-9-87 ~~8-6~~ & ~~8-13-87~~

Publication prepared by dg Date 7-29-87 Published in News-Examiner 8-20 + 8-27-87

Publication approved dg Date 10-13-87

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 11-7367, 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 November 1, 19 92.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other: PURSUANT TO PROPOSED MEMORANDUM DECISION AND ORDER AND FINAL ORDER.

Dated this 24TH day of OCTOBER, 1989.

R. KEITH HIGGINSON
Director

№ 3362

AUG 3 6 1987

AFFIDAVIT OF PUBLICATION

RECEIVED
SEP 4 1987
Department of Water Resources
Eastern District Office

STATE OF IDAHO,
County of Bear Lake } ss.

Therese Stamm
being duly sworn,

deposes and says:

That he is the Editor of THE NEWS-EXAMINER, a weekly newspaper published at Montpelier, in the County of Bear Lake and State of Idaho; and said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Montpelier; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period and time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

August 20, 19 87, and ending

with the issue of August 27, 1987

Therese Stamm

Fees, $35.49

Subscribed and sworn to before me this 30th day

of Aug, 19 87

Kim D. Allen

Notary Public, Residing at ~~Montpelier~~, Idaho

My Commission Expires Jan 7, 19 92

NOTICE OF APPLICATION FOR WATER RIGHT

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

11-7367
COPENHAGEN HILLS ASSOCIATION
C/O JOHN P. NELSON, 24 WEST 200 NORTH, HYDE PARK, UT 84318
Source: SPRING trib. to SINKS
Diversion Pt: NWSWSW Sec 25 T 12S R 42E
Use: IRRIGATION (0.160 CFS)
DOMESTIC (0.120 CFS)
Date Filed: 06/15/1987
In: NESW NWSW SWSW Sec 25 T 12S R 42E NWSW SWSW SESW Sec 25 T 12S R 42E FOR 6 ACRES

11-7368
HARDING, STAN R. &/ or BETTY G.
STAR RT. BOX 8012, FRAZIER PARK, CA 93225
Source: SPRING trib. to SINKS
Diversion Pt: SWNENE Sec 07 T 12S R 43E
Use: DOMESTIC (0.020 CFS)
Date Filed: 07/28/1987
In: NENE Sec 07 T 12S R 43E

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Eastern Region, 150 Shoup, Suite 15, Idaho Falls, Idaho 83402 on or before AUGUST 24, 1987.

KEN DUNN, Dir.

Legal No: 3362 —39L— Published August 20 and 27, 1987.

No. 3385

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,
County of Bear Lake } ss.

Therese Stamm
being duly sworn,

deposes and says:

That he is the Editor of THE NEWS-EXAMINER, a weekly newspaper published at Montpelier, in the County of Bear Lake and State of Idaho; and said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Montpelier; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for 2 consecutive weeks in the regular and entire issue of said paper during the period and time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with September 17, 1987, and ending with the issue of September 24, 1987

Therese Stamm

Fees, -0-

Subscribed and sworn to before me this 25th day of Sept, 1987

Kim D. Call

Notary Public, Residing at ~~Montpelier~~, Idaho

My Commission Expires January 7, 1992

RECEIVED
OCT 8 1987
Department of Water Resources
Eastern District Office

NOTICE OF CORRECTION

Notice is hereby given that Application No. 11-7367 in the name of Copenhagen Hills Assoc., Hyde Park, Utah, and 11-7368 in the name of Stan and Betty Harding, Frazier Park, California, was advertised incorrectly on August 20 and August 27, 1987. The protest date was advertised as being August 24, 1987.

Whereas, the actual protest date should have been September 8, 1987.

Any protests against the granting of this application as a result of this correction must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before October 5, 1987.

R. Keith Higginson
Director

Legal No: 3385 —21L— Published September 17 and 24, 1987.

DRAFT COPY

5 January 1987

AGREEMENT OF LAND OWNERS

This agreement is made and entered into by and between Nelson Associates, Campbell/Nelson, R. K. Nelson, Glen Jay Thornley, John P. Nelson, V. Dennis Mitton, C. J. Dunn, Guy W. Jardine, , Ross G. Lapray, and Gary Larsen, who shall be called "owners" in this agreement for the purpose of establishing certain rights, guidelines, and procedures, governing administration of ingress and egress as well as culinary water connections and usage rights on and within the exterior boundaries of the said owners' property.

This agreement is based on the following:

1. The owners have individually and/or collectively purchased in fee simple real property in the form of recreational subdivision lots in "Copenhagen Hills Subdivision" which consist of the following described real property located in Bear Lake County, Idaho:

   The South Half of the Southwest Quarter and the Northwest Quarter of the Southwest Quarter of Section 25, Township 12 south, Range 42 East of the Boise Meridian, containing 120 acres, be there more or less. Together with any and all water and water rights thereunto belonging or in anywise appertaining.

   Said property being bordered and adjoining the United States

   Forest Service property.

B. Pursuant to the wishes and authority of the owners, we agree to and enact a property owner association with the following rights and privileges given for each member, being the owner of each undivided original lot as shown on the official plat, not to exceed a total of the twelve (12) original subdivision lots and/or twelve (12) members:

1. Rights and Privileges of Members

a. For the purpose of establishing order and control of development practices, imminent or future, each owner listed in this agreement shall be deemed a member and shall have and maintain one (1) voting right, twelve (12) total, to be asserted in person or by authorized agent in writing for the intent to make the members concerns known in and on any decision to proceed as made by the collective members.

In the event of the absence of a particular owner or owners, it must be shown that notice was given to all owners before a vote can be called for. Failure to notify any or all owners shall nullify and invalidate any action taken by the owners present.

Voting rights do not extend beyond the one vote per original undivided lot. In the event of joint ownership or further subdivisions of the original lot, one (1) representative and one (1) representative only shall convey the one (1) vote associated with the original lot in behalf of the other owner(s) of the same subdivided lot.

b. Each owner listed here-in shall warrant ingress and egress rights over and above his or her said property for the purpose of allowing **all owners** of Copenhagen Hills Subdivision and authorized guests access by motorized and/or non-motorized vehicles to each individual lot or lots and the United States Forest Service property adjoining said properties via the existing roads or travel-ways.

In the event of changing the location of existing roads and travel-ways, permission in writing must first be granted by the affected owners and a majority vote from the twelve (12) members of the property owners association.

c. As legally described and conveyed in all fee simple real property conveyances via warrantee deed by John P. Nelson to the grantee listed, each owner shall have and maintain a individual right (one [1] per each original lot) to access, develop, use, and maintain spring flows on the grantor's property shown in approximate location on the final plat of said subdivision.

Water shall be distributed on an equal-share basis during occupancy of the said property. In the absence of any owners, the remaining shares of water shall be prorated equally among the occupied owners until such time as all owners are occupying their respective parcels, then it shall be a one-twelfth (1/12) share each.

Each owner shall warrant easements over and on said owners' property for the installation, maintenance, and care of individual and/or collective water distribution systems from said spring along a mutually agreed upon location by all affected parties.

It is the intent of all participating owners in this agreement to work together in good faith and friendship to define easement courses and locations for this distribution of culinary spring flows.

d. All other petitions and actions for improvements by the owners on a cooperative and/or individual level affecting any or all other owners shall first be approved by the majority vote as defined in the procedures listed here-in.

2. Cost of Enforcement

All owners agree to pay all costs of enforcement, including reasonable attorney's fees, in the event of their (singular or collective) failure to preform the terms of this agreement including any proceedings and/or efforts necessary to enforce this agreement and/or complete the approved and required improvements.

3. Effective Date

The effective date of this agreement shall be the date of approval by the owners of the final plat for Copenhagen Hills Subdivision.

4. Waiver

No default of any provision of this agreement shall be deemed or constitute a waiver of any other provision, nor shall such default be deemed or constitute a continuing waiver unless expressly provided for in writing, nor shall any waiver of any default under this agreement be deemed a waiver of any subsequent default.

5. Amendment

No amendments or modifications to this agreement shall be binding upon the parties unless in writing and duly executed by all owners.

6. Other Current and Future Land Owners

a. In the event that the owners (singularly or collectively) sell or transfer all or part of the subdivision as shown on the final plat, the rights, interests, and obligations of the owners under this agreement shall be transferred with the title.

7. Successors

This agreement shall be binding upon, and the benefits hereof inure to, the parties and their heirs, personal representatives, assigns, and successors in interest.

8. Entire Agreement

This agreement contains the entire agreement between the owners and no statement, promises, or inducements made by any

party or the agent of any party that are not contained in this written agreement shall be binding.

9. Applicable Law

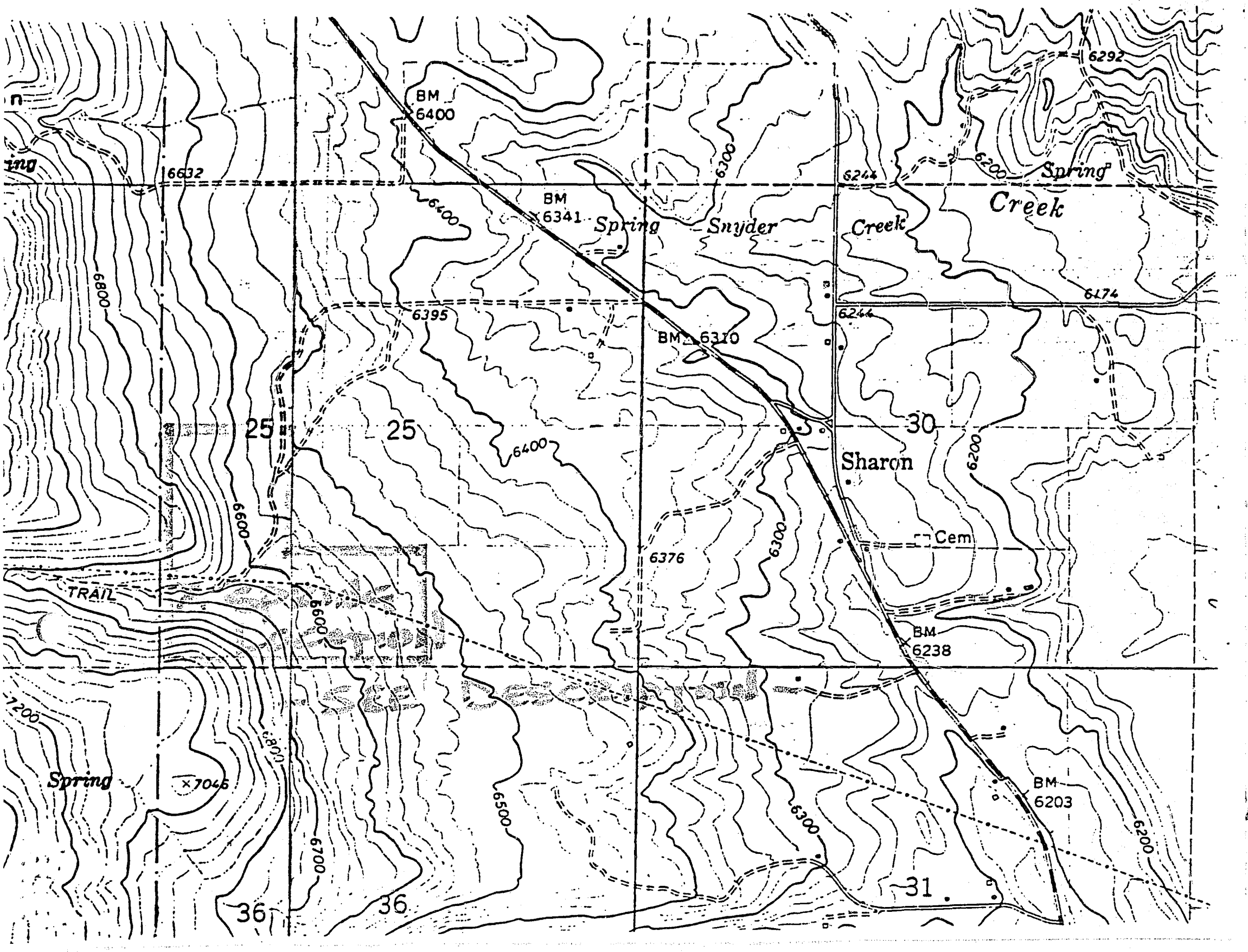
This agreement shall be construed under and governed by the laws of the State of Idaho.

In witness whereof the parties hereto have executed this agreement, certified copies of which shall be deemed an original as provided and distributed to each original lot owner with the owners executing the same on the _____ day of _____, 19____.

Nelson Associates - Lot 1	V. Dennis Mitton - Lot 7
Campbell/Nelson - Lot 2	C. J. Dunn - Lot 8
R. K. Nelson - Lot 3	Guy W. Jardine - Lot 9
Glen Jay Thornley - Lot 4	Jerry L Jackson - Lot 10
John P. Nelson - Lot 5	Ross G. Lapray - Lot 11
John P. Nelson - Lot 6	Gary Larsen - Lot 12

ATTESTED BY:

Notary Public	My Commission Expires


BM
6400
6632
6400
BM
6341
Spring
Snyder
Creek
6300
6292
6200
Spring
Creek
6244
6174
6244
6800
6395
BM
6310
25
25
30
Sharon
6400
6200
6600
6300
Cem
6376
TRAIL
6600
BM
6238
7200
Spring
7046
6800
6500
6300
6200
BM
6203
6700
36
36
31

POINT OF DIVERSION / SPRING COLLECTION

The point of diversion of the culinary spring flows for the COPENHAGEN HILLS PROPERTY OWNERS ASSOCIATION is described as follows:

Said point of diversion is located 613.42 feet south and 840.25 feet west of the Northeast corner of the Southwest one quarter of the Southwest one quarter of Section 25, Township 12 South, Range 42 East of the Boise Meridian.

Surveyed: May 15, 1987

Notice

Is hereby given that I intend to commence work on the
said claim and appropriate Two hundred and eighty
eight inches of water measured under a four inch pres-
sure of what is known as Copenhagen Creek situate about
three miles North West of Liberty in Bear Lake County Idaho
Territory, or so much of the waters of said Creek and streams
and springs flowing into it above the ditch of the under-
signed as will flow through a ditch two feet wide and one
foot deep with a fall of three inches to the rod.

Said water to be taken out and diverted at or near a point
three fourths of a mile west and one fourth of a mile north
of the South West corner of Section No 30 in Township
No 12 South of Range 43 East, Boise Meridian, it being the
point where this notice is posted. The purpose for which said
water is claimed and appropriated is the irrigation of the S.E¼ of
N.E¼, The E½ of S.E.¼ Sec. 30 and N.W¼ of S.W¼ Sec. 29 T 12
S. of Range 43 East Boise Meridian, the same being the
land embraced in the Homestead Entry of the undersigned
Thomas C. Orr. The means by which the said Thomas C.
Orr intends to divert and conduct the said water to the said
land is a ditch two feet wide and one foot deep

Dated this 24th day of May A.D. 1887.

Thomas C. Orr

Territory of Idaho }
County of Bear Lake }

Ephriam Crossley of Liberty, Bear Lake Co. Idaho, being
duly sworn according to law deposes and says that he posted up
a notice of which the foregoing is a full and correct copy at the
point of diversion mentioned in said notice on the 24th
day of May 1887

eight inches of water measured under a four inch pressure of what is known as Copenhagen Creek situate about three miles North West of Liberty in Bear Lake County Idaho Territory, or so much of the waters of said Creek and streams and springs flowing into it above the ditch of the undersigned as will flow through a ditch two feet wide and one foot deep with a fall of three inches to the rod.

Said water to be taken out and diverted at or near a point three fourths of a mile west and one fourth of a mile north of the South West corner of Section No 30 in Township No. 12 South of Range 43 East, Boise Meridian, it being the point where this notice is posted. The purpose for which said water is claimed and appropriated is the irrigation of the S.E¼ of N.E¼, The E½ of S.E.¼ Sec. 30 and N.W¼ of S.W¼ Sec. 29 T 12 S. of Range 43 East Boise Meridian, the same being the land embraced in the Homestead Entry of the undersigned Thomas C. Orr. The means by which the said Thomas C. Orr intends to divert and conduct the said water to the said land is a ditch two feet wide and one foot deep

Dated this 24th day of May A.D. 1887.

Thomas C. Orr

Territory of Idaho }
County of Bear Lake }

Ephriam Crowley of Liberty, Bear Lake Co. Idaho, being duly sworn according to law deposes and says that he posted up a notice of which the foregoing is a full and correct copy, at the point of diversion mentioned in said notice on the 24th day of May 1887.

Subscribed and sworn to before me this 24th day of day of May A.D. 1887

Ephriam Crowley

S. H. Hays, Clerk of District Court.

Exhibit "A"

DEED RECORD.

48-242

Blank Manufacturers, Stationers, Portland, Or.

THIS INDENTURE, made this Thirteenth day of March in the year of our Lord one thousand nine hundred and five between Thomas E. Orr and Emily J. Orr of Sharon County of Bear Lake State of Idaho parties of the first part, and Edward T. Shepherd of Paris County of Bear Lake State of Idaho party of the second part:

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of Three Hundred and no/100 DOLLARS, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said parties of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, alienated and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described lot, piece or parcel of land, situated in the County of Bear Lake and State of Idaho and known and described as follows, to-wit:

The East half of the South East Quarter and the South East Quarter of the North East Quarter of Section thirty and the North East Quarter of the South West Quarter of Section twenty nine in Township three South of Range forty three East of Boise Meridian in Idaho Containing one hundred and forty Also the South west quarter of the North East Quarter of Section thirty(30) in Township twelve(12) South of Range forty three East of Boise Meridian in the State of Idaho Containing forty(40) acres of land be the same more or less. Also all that certain lot piece or parcel of land situate lying and being in the South East Quarter of Section twenty nine(29) in Township twelve(12) South of Range forty three East of Boise Meridian Containing forty acres of land Also Commencing at the North East Corner of the North West Quarter of the South East Quarter of Section thirty Township twelve south of Range forty three East of the Boise Meridian and running thence West on the section line forty and two tenths rods, thence North one rod, thence East one hundred and seven tenths rods, thence North one rod to the place of beginning Containing three fourths of an acre) Together with all the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining, and particularly 288 inches of the water of the Spring Creek and also the water of said Thomas E. Orr as recorded in Book 1 of Miscellaneous Records, Bear Lake County, Idaho.

TOGETHER WITH ALL AND SINGULAR, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said parties of the first part, either in law or equity, of, in and to the above bargained premises with the hereditaments and appurtenances.

TO HAVE AND TO HOLD, the said premises above bargained and described, with the appurtenances, unto the said party of the second part his heirs and assigns forever.

And the said parties of the first part, for themselves heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said party of the second part his heirs and assigns, that at the time of the ensealing and delivering of these presents they are well seized of a good perfect sure absolute and indefeasible estate of inheritance in law, in fee simple, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in the manner and form aforesaid; and that the same are free and clear of all former or other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever, ~~except~~ and the above bargained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part of the first part shall and will warrant and forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in presence of

Jas. J. Cahoon

Thomas E. Orr (SEAL)

Emily J. Orr (SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF IDAHO, County of Bear Lake, } ss.

On this 14th day of March A. D. 1905, before me James E. Bond Clerk of the District Court in and for said County, personally appeared Thomas E. Orr and Emily J. Orr his wife, personally known to me (satisfactorily proved to me on the oath of a competent and creditable witness by me duly sworn for that purpose), to be the persons whose names are subscribed to the within instrument, the said Emily J. Orr described as a married woman, and the said Thomas E. Orr and Emily J. Orr his wife, each of them, acknowledged to me that they respectfully executed the same.

And on this 14th day of March A. D. 1905, before me, the officer above described, personally appeared the said Emily J. Orr known to me (satisfactorily proved to me on the oath of a competent and creditable witness by me duly sworn for that purpose), to be the person whose name is subscribed to the within instrument, described as a married woman and the wife of the said

State of Idaho County of ... of the second part:

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of ... Three Hundred ... DOLLARS, in hand paid by the said part y of the second part, the receipt whereof is hereby acknowledged, and the said parties of the second part forever released and discharged therefrom, ... have granted, bargained, sold, remised, released, alienated and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said part y of the second part, and to ... heirs and assigns forever, all the following described lot, piece or parcel of land, situated in the County of ... and State of Idaho and known and described as follows, to-wit:

The East half of the South East Quarter and the South East Quarter of the North East Quarter of Section Thirty and the North West Quarter of the South West Quarter of Section Twenty nine in Township Three South of Range Forty Three East of Boise Meridian in Idaho Containing one hundred and sixty acres more or less. Also the South West quarter of the North East Quarter of Section Thirty (30) in Township Twelve (12) South of Range Forty three (43) East of Boise Meridian in the State of Idaho Containing forty (40) acres of land be the same more or less. Also the South East Quarter of Section twenty six (26) in Township twelve (12) South of (Range) forty three East of Boise Meridian Containing forty acres of land. Also Commencing at the North East Corner of the North West Quarter of the South East Quarter of Section Thirty Township twelve South of Range forty three East of the Boise Meridian and running thence West one rod, thence South one rod, thence East one hundred and seven feet, thence North one rod to the place of beginning containing three fourths of an acre. Together with all the rights privileges and appurtenances to the same belonging or in any wise appertaining, and particularly 288 inches of the water of Spring Creek and also the entire North West of Bear Lake, Ground Rights being all of the water right that ... of said Thomas E. Orr as recorded in ... Records of Bear Lake County, Idaho.

TOGETHER WITH ALL AND SINGULAR, the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim or demand whatsoever of the said part ies of the first part, either in law or equity, of, in and to the above bargained premises with the hereditaments and appurtenances.

TO HAVE AND TO HOLD, the said premises above bargained and described, with the appurtenances, unto the said part y of the second part ... heirs and assigns forever.

And the said parties of the first part, for themselves heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said part y of the second part ... heirs and assigns, that at the time of the ensealing and delivering of these estate of inheritance in law, in fee simple, and have good right, full power ... the same in the manner and form aforesaid; and that the same are free and clear of all former or other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever, except ... and the above bargained premises in the quiet and peaceable possession of the said party of the second part ... heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part of the first part shall and will warrant and forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seal the day and year first above written.

Signed, sealed and delivered in presence of

James E. Carlson

Thomas E. Orr (SEAL)

Emily J. Orr (SEAL)

(SEAL)

(SEAL)

(SEAL)

STATE OF IDAHO, County of Bear Lake, } ss.

On this 1st day of April A. D. 1905 before me James E. Hood Clerk of the District Court in and for said County, personally appeared Thomas E. Orr and Emily J. Orr his wife, personally known to me (satisfactorily proved to me on the oath of ... a competent and creditable witness by me duly sworn for that purpose), to be the persons whose names are subscribed to the within instrument, the said Emily J. Orr described as a married woman, and the said Thomas E. Orr and Emily J. Orr his wife, each of them, acknowledged to me that they respectfully executed the same. And on this 1st day of April A. D. 1905, before me, the officer above described, personally appeared the said Emily J. Orr known to me (satisfactorily proved to me on the oath of ... a competent and creditable witness by me duly sworn for that purpose), to be the person whose name is subscribed to the within instrument, described as a married woman and the wife of the said Thomas E. Orr and upon an examination without the hearing of her husband, I made her acquainted with the contents of the said instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

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

James E. Hood

Clerk Dist Court

My commission expires ... 190...

Filed for record on the 3rd day of April A. D. 1905, at 3 o'clock P. M., at the request of ... Exhibit "B".

James E. Hood County Recorder.

By Clarence Hood Deputy.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR BEAR LAKE COUNTY.

L. T. SHEPHERD, as EXECUTOR of the ESTATE OF EDWARD TO. SHEPHERD, Deceased, PLAINTIFF, vs. HILL CANYON NORTH CANAL COMPANY, a corporation, R. D. ORR and DAVID KING, DEFENDANTS, and C. H. MOREHOUSE, Substituted Defendant.	DECREE

This cause came on regularly to be heard on this 19 day of February, 1929, Geriant Humphreys, Esq., of Montpelier, Idaho, appearing as attorney for plaintiff, and D. C. Kunz, Esq., appearing as attorney for the defendants and cross-complainants. It appearing to the Court that on the 16th day of February, 1929, a a stipulation of facts was entered into, signed and filed herein, which it was agreed between the parties should be and the same is hereby adopted as the Findings of Fact herein, and the Court,-from said stipulation and findings of fact,- being fully advised in the premises, and conclusions of law being waived:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the respective parties hereto be, and each of them is hereby accorded and decreed the quantity of water hereinafter specified, with date of priority and for the irrigation of lands as hereinafter set forth:

L. T. SHEPHERD AS EXECUTOR OF THE ESTATE OF EDWARD T. SHEPHERD, DECEASED:

APRIL 15th, 1898 - One and one-half cubit foot per second to be taken from and through the natural channel of Copenhagen Creek, and by the construction thereof by such ditches and canals as have been used and built, and are now used, for the conveyance and use of water from said Copenhagen Creek for the irrigation of the following described lands, to-wit:

The South Half of the Southeast Quarter, and the Southeast Quarter of the Northeast Quarter, and the Southwest Quarter and the of the Northeast Quarter of Section 30, and the Northwest Quarter of the Southwest Quarter of Section 29, Township 12 South, Range 43 East Boise Meridian, in Idaho.

DAVID C. KING:

APRIL 15th, 1908 - One-half cubic foot per second to be diverted through ditches ans swales from said Copenhagen Creek, having their intake at or near a point about rods north from the southeast corner of the northeast quarter of the southwest quarter of Section 25, Township 12 South, Range 43 East Boise Meridian, and also at a point about rods east of the aforesaid point of diversion, for the irrigation of twenty-five acres of land in the Southeast Quarter of the Northeast Quarter of Section 25, Township 12 South, Range 43 East Boise Meridian, in Idaho.

C. H. MOREHOUSE, Substituted defendant for R. D. ORR:

APRIL 15th, 1908- One-half cubic foot per second to be diverted through ditches and swales from said Copenhagen Creek at a point near the Southeast Corner of the Southeast Quarter of the Northwest Quarter of Section 25, Township 12 South, Range 42 East Boise Meridian, for the irrigation of approximately twenty-four acres of land in the Southwest Quarter of the Northeast Quarter of Section 25, Township 12 South, Range 42 East Boise Meridian, and approximately four acres in the Southeast Quarter of the Northwest Quarter Section and Township aforesaid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all rights hereinbefore decreed shall have date of priority as of April 15th of the respective years hereinbefore specified, and that all such rights shall be fore the irrigation season each and every year, to-wit, from May 1st to October 1st.

In accordance with said stipulation. IT IS HEREBY ADJUDGED that all pleadings have and are been deemed amended to conform to said stipulation and proof, and that pleadings have been filed as a basis for the awards made to C. H. Morehouse substit uted defendant for the defendant and cross-complainant R. D. Orr.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the several per sons to whom water is awarded under this decree shall at his own cost and expense install and maintain a measuring device at or near each point of diversion in order that it may be readily determined what quantity of water is being used and diverted. Such measuring devices shall be under the exclusive control of those who install or own the same and all others are hereby restrained and enjoined from molesting, tampering or interfering with (but may at any time inspect) any such device.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party pay its own costs herein.
Dated this 19 day of February, 1929.

DEFENDANTS,)
and)
C. H. MOREHOUSE,)
Substituted Defendant.)

This cause came on regularly to be heard on this 19 day of February, 1929, Geriant Humpherys, Esq., of Montpelier, Idaho, appearing as attorney for plaintiff, and D. C. Kunz, Esq., appearing as attorney for the defendants and cross-complainants. It appearing to the Court that on the 16th day of February, 1929, a a stipulation of facts was entered into, signed and filed herein, which it was agreed between the parties should be and the same is hereby adopted as the Findings of Fact herein, and the Court,-from said stipulation and findings of fact,- being fully advised in the premises, and conclusions of law being waived:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the respective parties hereto be, and each of them is hereby accorded and decreed the quantity of water hereinafter specified, with date of priority and for the irrigation of lands as hereinafter set forth:

L. T. SHEPHERD AS EXECUTOR OF THE ESTATE OF EDWARD T. SHEPHERD, DECEASED:

APRIL 15th, 1898 - One and one-half cubit foot per second to be taken from and through the natural channel of Copenhagen Creek, and by the construction thereof by such ditches and canals as have been used and built, and are now used, for the conveyance and use of water from said Copenhagen Creek for the irrigation of the following described lands, to-wit:

The South Half of the Southeast Quarter, and the Southeast Quarter of the Northeast Quarter, and the Southwest Quarter and the of the Northeast Quarter of Section 30, and the Northwest Quarter of the Southwest Quarter of Section 29, Township 12 South, Range 43 East Boise Meridian, in Idaho.

DAVID C. KING:

APRIL 15th, 1908 - One-half cubic foot per second to be diverted through ditches and wales from said Copenhagen Creek, having their intake at or near a point about rods north from the southeast corner of the northeast quarter of the southwest quarter of Section 25, Township 12 South, Range 43 East Boise Meridian, and also at a point about rods east of the aforesaid point of diversion, for the irrigation of twenty-five acres of land in the Southeast Quarter of the Northeast Quarter of Section 25, Township 12 South, Range 43 East Boise Meridian, in Idaho.

C. H. MOREHOUSE, Substituted defendant for R. D. ORR:

APRIL 15th, 1908- One-half cubic foot per second to be diverted through ditches and wales from said Copenhagen Creek at a point near the Southeast Corner of the Southeast Quarter of the Northwest Quarter of Section 25, Township 12 South, Range 42 East Boise Meridian, for the irrigation of approximately twenty-four acres of land in the Southwest Quarter of the Northeast Quarter of Section 25, Township 12 South, Range 42 East Boise Meridian, and approximately four acres in the Southeast Quarter of the Northwest Quarter Section and Township aforesaid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all rights hereinbefore decreed shall have date of priority as of April 15th of the respective years hereinbefore specified, and that all such rights shall be fore the irrigation season each and every year, to-wit, from May 1st to October 1st.

In accordance with said stipulation. IT IS HEREBY ADJUDGED that all pleadings have been deemed amended to conform to said stipulation and proof, and that pleadings have been filed as a basis for the awards made to C. H. Morehouse substit uted defendant for the defendant and cross-complainant R. D. Orr.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the several per sons to whom water is awarded under this decree shall at his own cost and expense install and maintain a measuring device at or near each point of diversion in order that it may be readily determined what quantity of water is being used and diverted. Such measuring devices shall be under the exclusive control of those who install or own the same and all others are hereby restrained and enjoined from molesting, tampering or interfering with (but may at any time inspect) any such device.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party pay its own costs herein.
Dated this 19 day of February, 1929.

Jay L. Downing
District Judge.

Filed March 8, 1929
AMY MUNK, Clerk District Court,
By W. Smith Hess, Deputy

Exhibit "C"

Claim No. 11 4047

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Section 42-225a, Idaho Code

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. The filing of this claim does not confirm the water right but will serve for information purposes only. It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that Edward G. Shepherd (name of claimant)

of P.O. Box 160, Georgetown, Idaho 83239 (mailing address), claims a right to the diversion and beneficial use of the public water of the State of Idaho

The extent and nature of said claim is as follows:

(1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Copenhagen Creek, tributary to, Emmigration Creek

(2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount	5.76	Use	Irrigation	Period of Use: From	Apr. 15	To Oct. 31
Amount	0.04	Use	Domestic	Period of Use: From	Jan. 1	To Dec. 31
Amount	0.04	Use	Stockwater	Period of Use: From	Jan. 1	To Dec. 31
	(cfs, gpm or a/f)		(dom., irri., stock, etc.)			(both dates inclusive)

(3) Total quantity of water claimed: 5.76 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.

(4) Priority claimed: (the date water was first applied to beneficial use) May 24, 1887

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

(5) A) Point of diversion: (give location of point where water is diverted from its source)

NE ¼ SW ¼, Sec. 25 Twp. 12S Rge. 42E B.M. County of Bear Lake

Additional points of diversion: NE¼SW¼, Sec. 30, T. 12S, R. 43E, B.M.

B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. Diversion dams and 1½ miles of ditches 2 ft. wide by 1 ft. deep.

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
12S	43E	29										15							15
		30			33	20									35			40	128

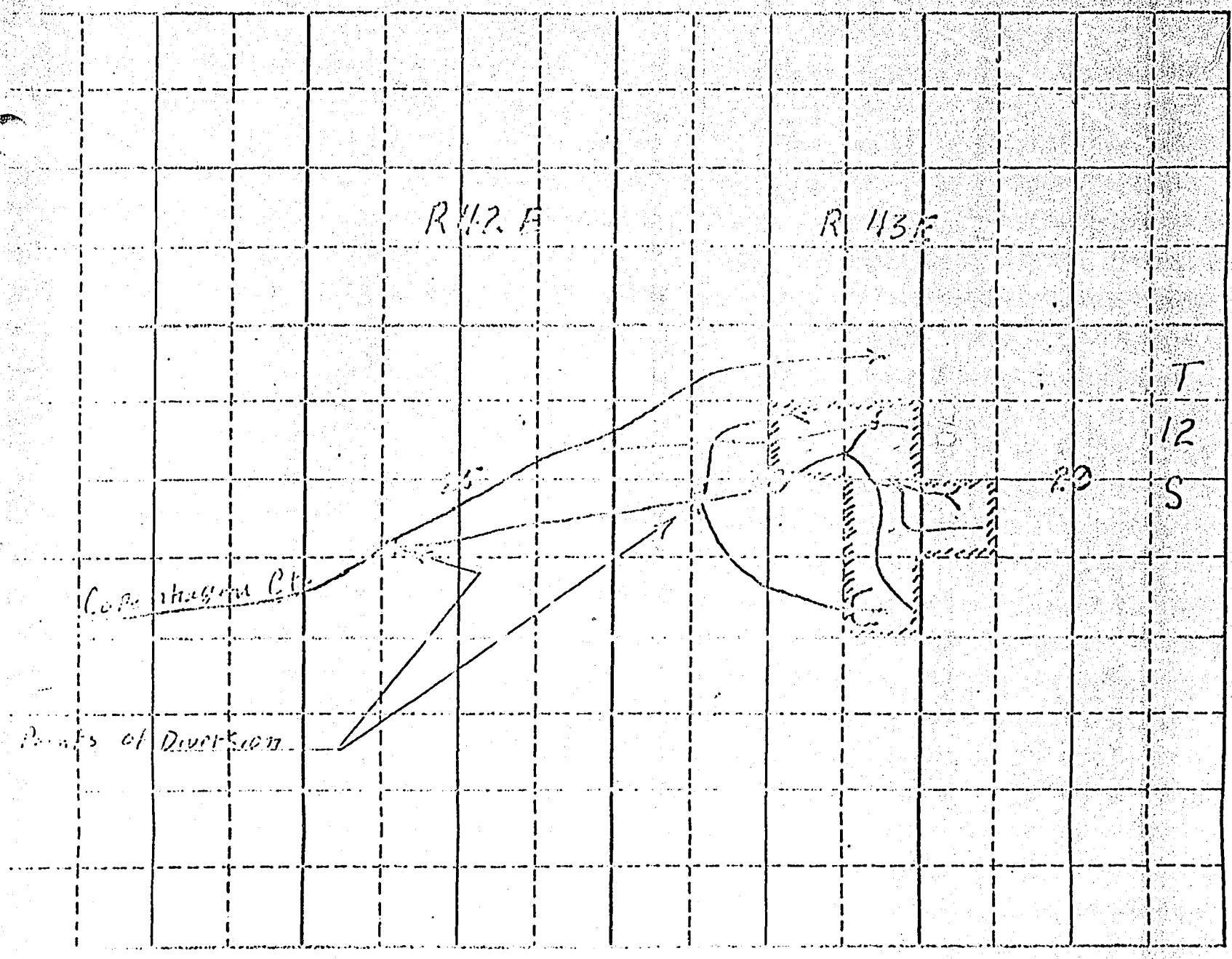
Total No. of acres 143

B) If the water is used for other than irrigation, fully describe that use, being as specific as possible: Stockwater and domestic purposes. One family & one hundred head beef cattle.

(7) If you are claiming water as a member of an organization, list name of organization: _____

Exhibit "D"

(8) Remarks This claim is evidenced by a notice posted by Thomas C. Orr, May 24, 1887. Recorded on Page 150, Misc. Book, in the Bear Lake County Courthouse.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of Bonneville)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Edward L. Shaw
(Claimant)

Sworn to before me this 6th day of March, 1976.

Dawn N. Crane
Notary Public
Residing at Georgetown

My commission expires 8-22-78

For Department Use Only

Received by	Date	Exception filed by:	Forwarded to claimant by:	Date
Prelim. check by	Date			
$10.00 fee received by	Date			
Approved for publication by				
Published in				
Dates				

April 22 + 29, 1976

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-07367 IN THE NAME OF COPENHAGEN HILLS ASSOCIATION	ORDER ISSUING PROPOSED MEMORANDUM DECISION

R. Keith Higginson, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by this appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Sec. 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Sec. 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Sec. 42-1701A. If oral agruments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.
CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.
FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 12th day of September, 19 89.

R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this the 24th day of October, 1989, a true and correct copy of the ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER was mailed, postage prepaid to:

Copenhagen Hills Association
c/o John P. Nelson
24 W,. 200 N.
Hyde Park, UT 84318

Clyde G. Nelson
Attorney at Law
P. O. Box 797
Soda Springs, ID 83276

Edward L. and Leila Shepherd
440 S. 7th St.
Montpelier, ID 83254

Rita L. Fleck

RITA L. FLECK
Secretary/Records Manager
Idaho Department of Water Resources

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-07367	SOURCE: Spring COUNTY: Bear Lake
COPENHAGEN HILLS ASSOCIATION, Applicant;	
EDWARD L. SHEPHERD, LEILA SHEPHERD, Protestants.	

PROPOSED MEMORANDUM DECISION AND ORDER
APPROVING APPLICATION FOR PERMIT

BY HEARING OFFICER BOBBY D. FLEENOR

Copenhagen Hills Association (applicant) having filed with the Department of Water Resources an application for permit No. 11-07367; a protest having been received; and a hearing having been held, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

The Application

1. On June 15, 1987, Copenhagen Hills Association applied to the Department of Water Resources for a permit to appropriate water from a spring in the NW1/4SW1/4SW1/4, Section 25, Township 12 South, Range 42 East. The application seeks 0.16 cubic feet per second for year around domestic use in twelve (12) seasonal, mountain cabins and 0.12 cubic feet per second for irrigation of six (6) acres between April 15 and October 15. The water would be used within the NW1/4SW1/4, SW1/4SW1/4, SE1/4SW1/4, Section 25, Township 12 South, Range 42 East.

2. Notice of the application was published in the News Examiner on August 20 and 27, 1987.

Protests

3. A protest against approval of the application for permit was received from Clyde G. Nelson, Attorney at Law, on behalf of Edward Shepherd and Leila Shepherd.

4. The protestants raised objections to the new appropriation by alleging that:

(a) The water supply from the spring is insufficient for the purposes for which it is sought to be appropriated; and,

(b) The diversion of water from the spring will reduce the quantity of water available to supply existing water rights of the protestants.

5. A hearing on the protested application was started on November 17, 1987, in Paris and finished on March 16, 1988, at Preston. John D. Nelson, Secretary of Copenhagen Hills Association, was present and represented the applicant. Protestants, Edward L. Shepherd and Leila Shepherd, were present and represented by Clyde G. Nelson, Attorney at Law.

Record

6. The head of the spring is approximately 5 to 10 feet above the elevation of the creek and around 30 feet from the creek channel.

7. The head of the spring is below the level of an old road bed which lies between the spring and the creek channel.

8. R. K. Nelson purchased the property where the spring is located in the early 1950's. For many years he used the property for summer range for cattle. He relied on the spring to furnish drinking water for the cattle after the flow in Copenhagen Creek receded.

9. Neither R. K. Nelson nor John Nelson recall a time when they saw water from the spring flowing into Copenhagen Creek.

10. The spring was not flowing into Copenhagen Creek in the spring of 1987 when John Nelson, Ross Lapray, and Dennis Mitton excavated the area around the spring using hand tools.

11. Efforts to develop the spring in June of 1987 produced an initial flow of 3 to 3 1/2 gallons per minute. A measurement in November of 1987 revealed the flow had decreased to one quart per minute.

12. In June, 1975, Edward Shepherd was unable to drive up the old road bed because of water flowing across the road.

13. In June of 1986, Vince Lamarra, who owns a home at the mouth of Copenhagen Canyon, observed water seeping from the hill, running across the road and down the hill towards Copenhagen Creek.

14. After the initial excavation in June of 1987, Copenhagen Hills Association had a 3,000 gallon tank constructed below the old road, for the purposes of storing water from the spring. The area excavated to hold the tank had to be drained prior to construction of the tank.

15. Historically, the protestant has used all the available water of Copenhagen Creek for irrigation purposes during the irrigation season. The rights for this use were decreed in the case of L. T. Shepherd -vs- Mill Canyon North Canal Company, dated February 19, 1929, and are also recorded by Notice of Claim to a Water Right identified by No. 11-04047.

16. In most years, around mid-July to the first part of August, Copenhagen Creek dries up prior to reaching the protestant's point of diversion. The creek flows return once the weather starts to cool, usually in mid-August to the beginning of September.

17. The Bear Lake County zoning ordinance only allows construction of seasonal, secondary dwellings on the lots in Copenhagen Hills Subdivision. Access to the lots is limited from November through May with the primary use of the cabins expected to occur during the summer months.

CONCLUSIONS OF LAW
APPLICABLE LEGAL PRINCIPLES

1. Idaho Code, Section 42-212 identifies private water as:

> Waters of any lake not exceeding five (5) acres in surface area at high water mark, pond, pool or spring in this state, which is located or situated wholly or entirely upon the lands of a person or corporation.

2. Idaho Code, Section 42-203A (5), (1988 supp.) states in part:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) 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 (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) it will conflict with the local public interest; the director of the department of water resources may reject such application and refuse issuance of a permit therefore, or may partially approve and grant a permit for a smaller quantity of water than applied for or may grant a permit upon conditions.

3. The Idaho Constitution, Article XV, Sec. 3, states:

> The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural

purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution.

APPLICATION OF LEGAL PRINCIPLES

Private Water

3. There is differing testimony concerning whether or not the spring is tributary to Copenhagen Creek. These contradictions are apparently due to the spring being visited during different years and different times of the year by the parties testifying.

4. It appears that the old road bed intersected an area where springs emanated from an aquifer. Therefore, even though there are times when the water doesn't flow over the road, the water from the same aquifer that created the spring continues to seep through the road base and flows into Copenhagen Creek.

5. The spring source is tributary to Copenhagen Creek and is, therefore, not a private source of water.

Sufficient Supply

6. Water from the spring is available for appropriation during the non-irrigation season and during the irrigation season when Copenhagen Creek does not reach the protestant's point of diversion or when there is no impact on the protestant's water right.

7. Based on historical flow patterns, there would be water available for appropriation for domestic use prior to the beginning of the irrigation season and until there is not sufficient water to satisfy the protestant's decreed water rights. Water would be available again for domestic use when the flow of Copenhagen Creek no longer reaches the protestant's point of diversion. During the period when water is not available the cabin owners would have to rely on the water stored in their tank or water brought in from another source. There is not sufficient water available for an additional irrigation use. The applicants may also wish to make use of Article XV, Sec. 3, of the Idaho Constitution to secure a domestic water supply during the summer irrigation season. This supply cannot be secured without just compensation to the protestant. The periods of time when water is available from the spring for domestic purposes are sufficent for the granting of a permit but the water is not available a sufficient amount of time during the irrigation season to grant a permit for irrigation purposes.

ORDER

IT, THEREFORE, HEREBY ORDERED and Application for Permit No. 11-07367 is APPROVED subject to the following conditions:

1. Subject to all prior water rights.

2. The water shall be used only for culinary purposes within the house and shall not be used for any outside watering.

3. The rate of diversion shall not exceed 0.16 cfs.

4. Use of water under this permit is subject to control by the watermaster of State Water District, No. 11, Bear River.

5. Proof of constuction of works and application of water to a beneficial use shall be submitted on or before the date indicated on the final order.

Dated this 12 day of SEPTEMBER, 1989.

Bobby D. Fleenor
BOBBY D. FLEENOR
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on this the 12th day of September, 1989, true and correct copies of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER were mailed, postage prepaid to:

Copenhagen Hills Association
c/o John P. Nelson
24 W. 200 N.
Hyde Park, UT 84318

Clyde G. Nelson
Attorney at Law
P. O. Box 797
Soda Springs, ID 83276

Edward L. and Leila Shepherd
440 S. 7th St.
Montpelier, ID 83254

Rita I. Fleck
RITA I. FLECK
Secretary/Records Manager

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-07367 IN THE NAME OF COPENHAGEN HILLS ASSOCIATION	)))	ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources having issued and served a copy on the parties on September 12, 1989, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order and Application for Permit No. 11-7367 be APPROVED and proof of construction of works and application of water to beneficial use shall be submitted on or before November 1, 1992.

Dated this 24TH day of OCTOBER, 1989.

R. KEITH HIGGINSON
Director

11-7367

COPENHAGEN HILLS ASSOCIATION

C/O JOHN P. NELSON, 24 WEST 200 NORTH, HYDE PARK, UT 84318

Source: SPRING trib. to SINKS

Diversion Pt: NWSWSW Sec 25 T 12S R 42E

Use: IRRIGATION (0.160 CFS)
DOMESTIC (0.120 CFS)

Date Filed: 06/15/1987

In: NESW NWSW SWSW Sec 25 T 12S R 42E NWSW SWSW SESW Sec 25 T 12S R 42E
FOR 6 ACRES

NOTICE OF APPLICATION FOR WATER RIGHT

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

11-7367
COPENHAGEN HILLS ASSOCIATION
C/O JOHN P. NELSON, 24 WEST 200 NORTH, HYDE PARK, UT 84318
Source: SPRING trib. to SINKS
Diversion Pt: NWSWSW Sec 25 T 12S R 42E
Use: IRRIGATION (0.160 CFS)
DOMESTIC (0.120 CFS)
Date Filed: 06/15/1987
In: NESW NWSW SWSW Sec 25 T 12S R 42E NWSW SWSW SESW Sec 25 T 12S R 42E FOR 6 ACRES

NOTICE OF APPLICATION FOR WATER RIGHT

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

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Eastern Region, 150 Shoup, Suite 15, Idaho Falls, Idaho 83402 on or before AUGUST 24, 1987.

KEN DUNN, Dir.

Published 8/6 & 8/13/87.

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
Eastern Region

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

JULY 29, 1987

The News-Examiner
P. O. Box 279
Montpelier, Idaho 83254

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review 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 along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before AUGUST 24, 1987.

Yours truly,

Michele Davis
Office Secretary

Encl.

8-14: TF Teresa at News-Examiner; she just rec'd legal notice so it will be advertised on 8-20 + 8-27-87 instead of 8-6 + 13.

To _____

Date _____ Time _____

WHILE YOU WERE OUT

Ted Shepherd

of _____

Phone 847-1687

Telephoned		Please call	
Called to see you		Will call again	
Wants to see you		Returned your call	

Message _____

440 So. 9th
Montpelier, Idaho
83254

_____
Operator

Soda Springs -

CLYDE G. NELSON

ATTORNEY AT LAW

172 SOUTH MAIN STREET
P.O. BOX 797
SODA SPRINGS, IDAHO 83276

CLYDE G. NELSON

TELEPHONE
(208) 547-2135

September 4, 1987

Director
Department of Water Resources
Eastern Region
150 Shoup, Suite 15
Idaho Falls, ID. 83402

RECEIVED
SEP 8 1987
Department of Water Resources
Eastern District Office

Re: Copenhagen Hills Association
Application No. 11-7367

Dear Sir:

Enclosed you will find the Protest against the above referenced application, said Protest being filed on behalf of Edward L. Shepherd and Leila Shepherd.

It is our understanding that you will cause hearing to be scheduled according to law and will provide us with notice of not less than ten (10) days. Please contact me prior to setting the same for hearing so that we can determine dates that will be available on my schedule.

Thank you for your attention to this matter.

Sincerely,

CLYDE G. NELSON

CGN:js

IN THE OFFICE OF THE
IDAHO DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 8 1987
Department of Water Resources
Eastern District Office

IN THE MATTER OF THE APPLICATION)
OF)
COPENHAGEN HILLS ASSOC.) PROTEST
% JOHN P. NELSON)
to appropriate water from a spring located in Bear Lake County, Idaho.)
Application No. 11-7367)

COME NOW the Protestants Edward L. Shepherd and Leila Shepherd, husband and wife, hereinafter referred to as "Protestants", by and through their attorney Clyde G. Nelson, P. O. Box 797, 172 S. Main Street, Soda Springs, Idaho, 83276, and hereby protest the above referenced application as follows:

1. That the spring referred to in the application of Copenhagen Hills Association is allegedly located in the NW SWSW of Section 25, Township 12 South, Range 42 East. That said spring is a tributary to Copenhagen Creek.

2. That Thomas C. Orr and Emily J. Orr, husband and wife, were the owners of property located in Bear Lake County, Idaho, to which all of the water of said Copenhagen Creek, including the spring tributary, has been applied for irrigation purposes since 1887. A copy of a Notice of Claim and Appropriation of Water Rights was filed by Thomas C. Orr for the waters from Copenhagen Creek on May 24, 1887, on page 150, Book 1, of Miscellaneous Records, Bear Lake County, Idaho, wherein Mr. Orr did claim from said Copenhagen Creek 288 inches (5.76 cubic feet) of water for application to his property for irrigation purposes. The Notice is attached as Exhibit "A" to this Protest.

3. On March 13, 1905, Thomas C. Orr and Emily J. Orr did convey to Edward T. Shepherd his property located in Bear Lake County, Idaho, together with the 288 inches (5.76 cubic feet) or all of the water from Copenhagen Creek. A copy of that deed is attached hereto as Exhibit "B". That your Protestants are the succesors in interest to Edward T. Shepherd, being the owners of said property to which all of the water of Copenhagen Creek has been applied since 1887. In addition thereto, the water rights within Copenhagen Creek have been adjudicated in the matter of L. T. Shepherd, as executor of the Estate of Edward T. Shepherd, deceased, plaintiff, vs. Mill Canyon North Canal Company, a corporation, R. D. Orr and David King, defendants, and C. H. Moorehouse, substituted defendant, in the Fifth Judicial District of the State of Idaho, in and for the County of Bear Lake, by decree entered by Judge J. L. Downing, District Judge, on February 19, 1929, as recorded in Book C, page 348, of the Judgment Records of Bear Lake County, Idaho, on March 8, 1929. Said decree is attached hereto as Exhibit "C".

4. In addition to the above notice, transfer, and decree, the Protestants are the holders of Claim No. 11-4047, dated March 6, 1976, and filed with the State of Idaho, Department of Water Resources, pursuant to which the Protestants claim the amount of 5.76 cfs of water from Copenhagen Creek for irrigation purposes from April 15 to October 31 of each and every year, the amount of .04 cfs for domestic useage from January 1 to December 31, and the amount of .04 cfs of water for stock water useage from January 1 to December 31. The total amount of water claimed under said right is 5.76 cubic feet and the protestants claim a priority date of May 24, 1887. The claimants in this particular matter did not make protest to said claim to water rights or exception thereto. Said Claim of Water Right is attached hereto as Exhibit "D".

5. The Protestants further claim all of said rights in Copenhagen Creek and the spring which is a tributary thereto pursuant to the Idaho Constitution by diversion and application to a beneficial use continuously since May 24, 1887, and so used by Protestants and their predecessors in interest.

6. Copenhagen Creek and all of its tributaries are fully appropriated, pursuant to the above notice and claim and appropriation of rights, pursuant to the above mentioned decree, pursuant to the above mentioned claim to water right, and pursuant to the constitutional application and diversion of said water to beneficial use since May 24, 1887 by the Protestants and their predecessors in interest. Accordingly, the water supply is insufficient for the purposes for which it is sought to be appropriated by applicant and will reduce the quantity of water available to supply the existing water rights of the Protestants.

7. Protestants further complain that the applicant has caused a holding tank to be constructed over said spring and has dug a trench with a backhoe from said holding tank which said trench has removed the top soil and grass cover for the natural water course from the spring leaving a gravel base. That the construction of said storage tank and the digging of said trench has stopped the flow of water from said spring, and if the flow were resumed, the same would very likely sink into the gravel sub-base of the trench dug by the applicant causing further damage to the Protestants and an interference and obstruction of their water rights. Further, that the applicant has also placed a metal culvert over the natural channel of Copenhagen Creek to gain access for equipment to the spring, caused gravel to be placed over said culvert, and the culvert has been crushed to the point where it blocks the natural channel thereby preventing water

from flowing through its natural channel. That all of said actions were taken by the applicant without permit or sanction by the Department of Water Resources, State of Idaho, without authority, and are contrary to law, and have damaged and continue to damage the Protestants, and the applicant should be required to remove all of said obstructions, holding tank and to properly cause said trench to be resodded and planted so that water can again flow from said spring into Copenhagen Creek.

8. Said spring is not absorbed into any sink area, except such sink area as may have been created by the applicant through its removal of top soil and ground cover which may have allowed the water to sink into the gravel base.

DATED: This 4 day of September, 1987.

CLYDE G. NELSON

CERTIFICATE OF MAILING

I hereby certify that on this 4 day of September, 1987, I mailed a true and correct copy of the following Protest, postage prepaid, to the following:

Director
Department of Water Resources
Eastern Region
150 Shoup, Suite 15
Idaho Falls, ID. 83402

Copenhagen Hills Association
% John P. Nelson
24 W. 200 N.
Hyde Park, UT. 84318

July 30, 1987

Copenhagen Hills Association
c/o John P. Nelson
24 West 200 North
Hyde Park, Utah 84318

RE: Application for Permit No. 11-7367

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right application for permit. The application has been assigned identification no. 11-7367 . Please refer to this number in all further correspondence.

This office is currently in the process of advertising the application in The News-Examiner. The advertisement will be published for two weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

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

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

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

Sincerely,

Ernest Carlsen
Assistant Regional Manager

EC/dg

July 30, 1987

Pete Peterson, Watermaster
Water District #11
2483 Riverdale Road
Preston, Idaho 83263

Re: Application for Permit No. 11-7367, Copenhagen Hills Assoc.,
& 11-7368, Harding

Gentlemen:

We are enclosing a copy of an application that may be of interest to you. Please review the application and submit any comments you may have to our Department as soon as possible. The last date for protest is August 24, 1987, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

Ernest Carlsen
Assistant Regional Manager

EC/dg

Enclosure

NOTICE OF CORRECTION

Notice is hereby given that Application No. 11-7367 in the name of Copenhagen Hills Assoc., Hyde Park, Utah, and 11-7368 in the name of Stan and Betty Harding, Frazier Park, California, was advertised incorrectly on August 20 and August 27, 1987. The protest date was advertised as being August 24, 1987.

Whereas, the actual protest date should have been September 8, 1987.

Any protests against the granting of this application as a result of this correction must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before October 5, 1987

R. Keith Higginson

Director

Published September 17 & 24, 1987

NOTICE OF CORRECTION

Notice is hereby given that Application No. 11-7367 in the name of Copenhagen Hills Assoc., Hyde Park, Utah, and 11-7368 in the name of Stan and Betty Harding, Frazier Park, California, was advertised incorrectly on August 20 and August 27, 1987. The protest date was advertised as being August 24, 1987.

Whereas, the actual protest date should have been September 8, 1987.

Any protests against the granting of this application as a result of this correction must be filed with the Idaho Department of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 on or before October 5, 1987.

R. Keith Higginson
Director

Legal No: 3385 —21L— Published September 17 and 24, 1987.

September 9, 1987

The News-Examiner
P.O. Box 278
Montpelier, Idaho 83254

Gentlemen:

We are re-submitting a legal notice to be published on September 17 and 24, 1987. This notice was originally published in your paper on August 20 and 27, 1987. Unfortunately, it was advertised incorrectly.

The notice was originally submitted on July 29 to be published August 6 and 13, 1987. However, it was somehow overlocked by your paper and not published until August 20 and 27. The protest date within the notice was not changed accordingly to account for the changed publication date. Therefore, we request this be re-advertised again at your expense.

An affidavit of publication must be submitted to this office by October 5, 1987. Your cooperation in this matter is greatly appreciated.

Sincerely,

Deena Green
Office Secretary

Enclosure

September 15, 1987

Copenhagen Hill Association
c/o John P. Nelson
24 West 200 North
Hyde Park, UT 84318

Dear Mr. Nelson:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to your application No. 11-7367. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest have been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (§42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest.

If this office can be of further assistance, please contact us.

Very truly yours,

ERNEST CARLSEN
Water Rights Supervisor

EC:CW

Enclosure

cc: IDWR - State Office

September 16, 1987

RE: Application for Permit No. 11-7367 COPENHAGEN HILLS ASSOC.

Mr. Clyde G. Nelson
Attorney at Law
P.O. Box 797
Soda Springs, ID 83276

Dear Mr. Nelson:

Your protest against the approval of the above referenced application, filed in behalf of Edward L. and Leila Shepherd, has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (§42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resource with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

If this office can be of further assistance, please contact us.

Very truly yours,

ERNEST CARLSEN
Water Rights Supervisor

EC:CW

cc: IDWR - State Office
Edward L. & Leila Shepherd

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

CECIL D. ANDRUS
Governor

A. KENNETH DUNN
Director

RECEIVED
SEP 21 1987
Department of Water Resources
Eastern District Office

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

September 14, 1987

Clyde G. Nelson
186 South Main
Soda Springs, ID 83276

Re: Applications to Appropriate Water Nos. 11-7367 and 11-7368

Dear Clyde:

In response to your inquiry regarding the above numbered applications, the advertisement in the Montpelier newspaper incorrectly listed the date on or before which a protest to the application must be received by the Department. The last day for filing should have been listed as September 8, 1987.

In discussing this matter further with our eastern regional office, eastern region has decided to readvertise the filings. The notice of correction will be printed and an additional period of time will be allowed for the filing of protests. If you have already filed a protest, no further action is necessary.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Allocation Section

GS:jf

CC: Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-7367 IN THE NAME OF COPENHAGEN HILLS ASSOC.	)	NOTICE OF HEARING &/OR CONFERENCE

On June 16, 1987, Copenhagen Hills Association filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On September 8, 1987, a protest was received by the Department from Clyde G. Nelson, Attorney at Law, representing Edward L. and Leila Shepherd.

The Department has set the matter of protest for hearing for 11:00 a.m., Tuesday, October 27, 1987, in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing will be held in accordance with provisions of Chapter 2, Title 42, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 5th day of October, 1987.

RONALD D. CARLSON
Eastern Regional Manager

NAME AND ADDRESS OF SENDER

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE.
IDAHO FALLS, IDAHO 83401

Indicate type of mail
☐ Registered
☐ Insured
☐ COD
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1	0100	Copenhaver Bills 244 W. 200 N. Hyde Park	.22	.75					.70			11-7367
2	0101	Clyde Nelson, P.O Box 799 Soda										"
3	0102	Edward & Leola Shipherd P.O Box 160 Georgetown										11-7367
4	0103	City of Preston 80 N. Main Preston										22-7259
5	0104	D. Ray Peterson, P.O Box 501 D.F.										"
6	0105	Jane Betty Nelson Rt 1 Box 3325 Preston										"
7	0106	Ira Kaplan Rt 1 Box 3310 Preston										"
8	0107	Wm Ray Nelson 22 S 10th W Montpelier										"
9	0108	Jon Rivin, 111 Bear Rt 2 Scott Bailey Co.										"
10	109	Robert & Betty Bartholomew Preston										"
11	0110	Richard Thorn, Rt 1 Box 3303 Preston										22-7259
12	0111	Ronald Ray Hammond Box 79 Victor										T22-4039
13	0112	Ted Wood P.O Box 29 D.F.										"
14	0113	Dale Thomson, P.O Box 70 Lewisville										T22-4039
15	0114	Marvin Caldwell Star Route Preston										T34-0862 etc T22-4039

OCT 6 1987
POST OFFICE ROOM ANNEX USPO IDAHO FALLS

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The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is $50,000 per piece subject to a limit of $500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is $500. The maximum indemnity payable is $25,000 for Registered Mail, $400 for COD and $400 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels. Special delivery service also includes special handling service.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

☆ U.S. G.P.O. 1985-478-804

PS Form 3811, July 1983 447-845

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SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1. ☐ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:
Copenhagen Hills Assoc.
c/o John L Nelson
240 W. 200 N
Bountiful, Ut 84318

4. Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number: 0100

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X John L Nelson

6. Signature – Agent
X

7. Date of Delivery
10-9-87

8. Addressee's Address *(ONLY if requested and fee paid)*

11-7367

PS Form 3811, July 1983 447-845

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SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1 ☐ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:
Clyde G Nelson
Atty at Law
P.O Box 707
Soda Springs Id 83276

4. Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number: 0101

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X J Stewart

6. Signature – Agent
X

7 Date of Delivery
10-7-87

8. Addressee's Address *(ONLY if requested and fee paid)*

11-7367

PS Form 3811, July 1983 447-845

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1 ☐ Show to whom, date and address of delivery.
2. ☐ Restricted Delivery.

3. Article Addressed to:
Edward & Reda Shepherd
P.O Box 160
Georgetown, Id. 83239

4. Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Article Number: 0102

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X E L Shepherd

6. Signature – Agent
X

7. Date of Delivery
10-8-87

8. Addressee's Address *(ONLY if requested and fee paid)*

11-7367

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

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- Endorse article "Return Receipt Requested" adjacent to number.

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OCT 13 1987

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
IDAHO FALLS, IDAHO 83401

(Name of Sender)

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

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OCT 8 1987

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
IDAHO FALLS, IDAHO 83401

(Name of Sender)

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

PENALTY FOR PRIVATE USE, $300

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- Endorse article "Return Receipt Requested" adjacent to number.

RETURN TO

RECEIVED

OCT 9 1987

Department of Water Resources
Eastern District Office

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
IDAHO FALLS, IDAHO 83401

(Name of Sender)

(No. and Street, Apt., Suite, P.O. Box or R.D. No.)

(City, State, and ZIP Code)

PENALTY FOR PRIVATE USE, $300

U.S.MAIL

October 6, 1987

Agriculture Extension Service
Franklin County Courthouse
Preston, ID 83263

Dear Secretary:

This is to confirm the use of the Ag Room in the Franklin County Courthouse for a water right conference to be held by this Department on Tuesday, October 27, 1987, beginning at 11:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

CLYDE G. NELSON

ATTORNEY AT LAW

172 SOUTH MAIN STREET
P.O. BOX 797
SODA SPRINGS, IDAHO 83276

CLYDE G. NELSON

TELEPHONE
(208) 547-2135

October 8, 1987

RECEIVED
OCT 9 1987
Department of Water Resources
Eastern District Office

Mr. Ron Carlson
Department of Water Resources
Eastern Region
150 Shoup, Suite 15
Idaho Falls, ID. 83402

Re: In the Matter of the Application for
Permit No. 11-7367 - Copenhagen Hills Assoc.

Dear Ron:

Please be advised that I represent Ted Shepherd, a protestant to the above mentioned application. The hearing of protest has been set for October 27, 1987 at 11:00 A.M. I received your notice on October 7, 1987. Unfortunately, unknown to me, in the last two days the Court set some Child Protection Hearings on that date which I must attend in my role as Prosecuting Attorney. Therefore, I am requesting that the same be continued to another date. The present dates which I have available for the hearing are:

November 2, 3, 16, 17, 20, 23, and 24, 1987.

Please advise as quickly as possible as to which of these dates would be available as my schedule fills up rapidly due to Court settings for prosecution related work. I apologize for any inconvenience this may cause you, but I am sure that you understand.

Sincerely,

CLYDE G. NELSON

CGN:js

c: Ted Shepherd/w/enc

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-7367 IN THE NAME OF COPENHAGEN HILLS ASSOCIATION	NOTICE OF CANCELLATION

Notice is hereby given that the Department of Water Resources has cancelled the hearing concerning the above referenced application scheduled for Tuesday, October 27, 1987, at 11:00 a.m. in Preston, Idaho. When the hearing is rescheduled, you will be notified of the time and place.

Dated this 26th day of October, 1987.

Ronald Carlson

RONALD D. CARLSON

Eastern Regional Manager

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-7367 IN THE NAME OF COPENHAGEN HILLS ASSOC.	))))	NOTICE OF HEARING &/OR CONFERENCE

On June 16, 1987, Copenhagen Hills Assoc. filed with the Department of Water Resources application No. 11-7367 to appropriate the public waters of the State of Idaho. On September 8, 1987, the Department received a protest rrom Clyde G. Nelson, Attorney at Law, in behalf of Edward L. and Leila Shepherd.

The Department has set the matter of protest for hearing for 2:00 p.m., Tuesday, November 17, 1987, in the Commissioner's Room, Bear Lake County Courthouse, Paris, Idaho. The hearing will be held in accordance with provisions of Chapter 2, Title 42, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 3rd day of November, 1987.

Ronald D Carlson

RONALD D. CARLSON
Eastern Regional Manager

NAME AND ADDRESS OF SENDER

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE.
IDAHO FALLS, IDAHO 83401

Indicate type of mail
☐ Registered
☐ Insured
☐ COD
☒ Certified ☐ Express Mail

Check appropriate block for Registered Mail:
☐ With Postal Insurance
☐ Without Postal Insurance

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

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1	0118	J. Randall Kline PO Box 4758 Pocatello	22	75					70			22-0275B
2	0119	Jack L. Christopherson 1022 E. Forest Dr. Mesa										"
3	0120	John P. Nelson 24W 200N Hyde Park Ut										11-7367
4	0121	Clyde Nelson P.O Box 797 Preston										"
5	0122	Edward + Leila Shepherd PO Box 160 Geo. Idaho										"
6	0123	Ralph Miller PO Box 60 Chester										21-0022
7	0124	Mary Smith PO Box 427 Lerburg St. Anthony										"
8	0125	Fremont Madison PO Box 15										21-0022
9				# 13.36								
0												
1		Sent Not Certified										
2		Pete Peterson, WD #1										11-7367
3												
4												
5												

IDAHO FALLS, IDAHO ★ NOV 4 1987 ★ EAGLE ROCK ANNEX U.S. P.O.

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8	Eight	

The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is $50,000 per piece subject to a limit of $500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is $500. The maximum indemnity payable is $25,000 for Registered Mail, $400 for COD and $400 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels. Special delivery service also includes special handling service.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

★ U.S. G.P.O. 1985-478-804

PS Form 3811, July 1983 447-845

SENDER: Complete items 1, 2, 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for service(s) requested.

1 ☐ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:
Copenhagen Hills Assoc.
c/o Joyce P. Nelson
24 W 200 North
Hyde Park, Ut 84318

4. Type of Service: | Article Number
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail
0120

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X Joyce P Nelson

7 Date of Delivery
11-2-87

8. Addressee's Address *(ONLY if requested and fee paid)*

DOMESTIC RETURN RECEIPT

PS Form 3811, July 1983 447-845

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1. ☐ Show to whom, date and address of delivery.

2. ☐ Restricted Delivery.

3. Article Addressed to:
Clyde G Nelson
P O Box 197
Soda Springs, Id 83276

4. Type of Service: | Article Number
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail
0128

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X

7. Date of Delivery
11-5-87

8. Addressee's Address *(ONLY if requested and fee paid)*

DOMESTIC RETURN RECEIPT

11-7367

PS Form 3811, July 1983 447-845

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1 ☐ Show to whom, date and address of delivery.

2 ☐ Restricted Delivery.

3. Article Addressed to:
Lavaid & Reeta Shepherd
P O Box 160
Georgetown, Id. 83239

4. Type of Service: | Article Number
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail
0122

Always obtain signature of addressee or agent and DATE DELIVERED. 11-6-87

5 Signature - Addressee
X Reeta Shepherd

6. Signature – Agent
X

7 Date of Delivery

8. Addressee's Address *(ONLY if requested and fee paid)*

DOMESTIC RETURN RECEIPT

11-7367

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

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- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

RETURN TO

RECEIVED

NOV 20 1987

Department of Water Resources
Eastern District Office

PENALTY FOR PRIVATE USE, $300

DEPARTMENT OF WATER RESOURCES
(Name of Sender)
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
(No. and Street, Apt., Suite, P.O. Box or R.D. No.)
IDAHO FALLS, IDAHO 83401
(City, State, and ZIP Code)

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

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RETURN TO

NOV 6 1987

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Eastern District Office

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UNITED STATES POSTAL SERVICE

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RETURN TO

NOV 9 1987

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Eastern District Office

PENALTY FOR PRIVATE USE, $300

DEPARTMENT OF WATER RESOURCES
(Name of Sender)
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
(No. and Street, Apt., Suite, P.O. Box or R.D. No.)
IDAHO FALLS, IDAHO 83401
(City, State, and ZIP Code)

November 9, 1987

Bear Lake County Courthouse
Bear Lake County Clerk's Office
Paris, ID 83261

Gentlemen:

This is to confirm the use of the Commissioner's Room in the Bear Lake County Courthouse Annex for a water right conference to be held by this Department on Tuesday, November 17, 1987, beginning at 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

11-7367 - COPENHAGEN HILLS

Commissioner's Room, Bear Lake County Courthouse
Paris, Idaho
Tuesday, November 17, 1987 - 1:00 p.m.

ROSTER OF ATTENDANCE

Hearing Officer: Bob Fleenor & Ernest Carlsen

Name	Representing	Address
Edward J. Shepherd		440 So 7th Montpelier, Ida. 83254 547-1687
Clyde Nelson	Edward Shepherd	Box 797 Soda Springs, Idaho 83276
Ross Capray	Copenhagen Hills	47 River Circle Dr. Logan, Utah 84321
Dennis Mitton	Copenhagen Hills	7304 S 3600 W Mt Sterling Ut 84339
John P. Nelson	Copenhagen Hills	Box 84 Hyde Park, Utah 84318
R.K. Nelson		1256 W 10775 So So Jordan, Ut. 84065

11-7367. 17 Nov '87

attorney for ~~Applicant~~ Clyde Nelson.
Protestant. Edward Shephard.
Applicant. Copenhagen Hills Assoc.
present John P. Nelson.
present Ross Lapray
present. Dennis Milton.

- Reviewed application.
- Asked for any changes - None.
- Asked applicant to explain project.

- John N.
  - Purchased property in 1986. prior to purchase belonged to his father. since 1951.
  - Association has applied to Bear Lake Cty for subdivision.
  - Initial enquiries ~~had~~ indicated there were no filings on the spring.
  - 1987 installed 3,000 gal concrete tank, below ground level.
  - No permanent dwellings have been constructed.
  - Spring is approximately 100 ft from creek - Water would have to flow up to 150 ft to reach creek.
  - No appearant channel from spring to creek.
  - Old road bed ~~f~~ is situated between spring & creek.
  - 15 Nov. '87 - spring flow measured at 9 gal/min.

- Spring has flow up to 3½ gal/min following development ~~but~~ with instalation of a perforated ~~line~~ tile.
- 4" collection pipe reduced to 2" which empties into tank.

"Clyde Nelson -

- concerns ~~of~~ spring is tributary to Copenhagen Creek.
- ~~which~~ Rights from creek adjudicated in 1929.
- Creek is low producer and water must be supplemented with water from Mill Creek for ~~irrigation~~.
-

Lapray - 3,~~000~~ gal / ~~day~~ individual / month.

HEARING.

11-7367. 17 Nov. '87

Issues - Is the source private water.
Is the water supply adequate for the intended purpose.

←

- Motion by C. Nelson protesting hearing. because notice of publication was incorrect. preventing Mr Shepherd from properly preparing.
Q- by Bob Fleenor. Would it have made a difference.?

John N. Secretary - Copenhagen Hills.
- 120 ac. of 10 ac lots.
- Property owned by his father in 1950's.
- John bought 90 acres in 1986 and subsequently sold 9 lots.
- Spring is 150 ft from Creek.
- Historically spring used for watering stock late in year when Copenhagen Creek was dry.
- Developed spring in 1987 - installed perforated tile to collect water.
- Familiar with spring since 1951 or 1952 - helped family farming until 1958. perpodically since then.
- Highest flow measured this year was 3½ gal/minute.
- Have installed a 3000 gal storage tank. with overflow to creek.
-

X-exam - property was summer range for cattle. Visited property regularly to maintain cattle.
- Left cattle on property until late August early Sept.

- R.K. Nelson Associates 3 ten acres parcels in 1970's
- Ross Lapray is president of Copenhagen Hills. Association.
- John Nelson still owns 2 10 acre parcels.
- ~~Present owners~~ Seven remaining lots sold in 1987.
- Intended use is for max. of 12 households.
- Did not know the availability of water when application was filed.
- County zoning ordinance granted for seasonal 2nd any dwellings.
- Assess to lots limited from Nov. thru May.
- Approx. 20 ft of solid pipe from spring to 3000 gal tank.
- Irrigation for lawn & garden.
- Measured last Sunday for 1 quart/minute.
- 300 gal/day/family.
-

R.K. Nelson-

- Stock ranged a property 50 to 60 head.
- Cleaned out spring area when flow in Copenhagen Creek recorded.
- Spring below level of old road bed which layed between it and the creek.
- Never observed a channel that would indicate the spring flowed over the crest of the road.
- Purchased property 1951.
- Visited property regularly.
- Snow melt off of hillside would drain into spring area.

X-exam-

- "Reasonably sure" water didn't flow into Copenhagen Creek.
- Area below road, opposite side of spring was not marshy.

- Never witness water flowing from spring to Copenhagen Creek.
- R.K. Nelson owns 1 lot.

Direct.

Ross Lapray. - Employeed by North Logan City as City Engineer. Technician
- Property owner and president of Copenhagen Hills.
- First on property Memorial Day 1983.
- 2ND time year ago 1986. - Visited location of spring - was only a wet spot.
- Estimates spring is approximately 10ft ~~above~~ higher than elevation of creek channel.
- Visited area in June. - excavated site with shovels, - channeled water across road bed.
- Water went up with equipment and exposed water bearing strata. Layed collection system of perforated pipe and washed gravel. Covered with visqueen and 2ft of earth
- 4" pipe reduced to 2" dia pipe emptied on downhill side of road, "north".
- measured 3½ gal/min.
- Contractor installed 3000 gal tank at end of 2" pipe. - poured concrete.
- Prior to excavation - no flowing water - water was standing in depressions made by boot prints & cattle.
- Soil profile - loam top soil, gravel over dense clay.

- Exhibits.

photo #1 - taken from road looking S.W. towards spring - standing water is visible.
photo #2 - spring site with standing water.
photo #3 - shows spring looking in S.E. direction.
photo #4 = initially excavated area with water present.
photo #5 - excavation after 2 hours of digging. water.
photo #6 - completed excavation - flowing water.

X-exam -

- One year ago flow in Copenhagen Creek was approximately 20 gal/min. - Guess.
- ~~D~~ Acknowledges 1987 was a low water year.
- Measurement of 3½ gpm made in June. 1987.
- Method of measurement - stop watch and container.
- July 24th measurement around 3 gal/min.
- ~~Helped~~ ~~pre~~
-
-

Tape #2

- Not certain ~~about~~ that supply is insufficient for demand.
- Amount filed on is recommended amount.
- Demand is unknown at present time.

Redirect - Has transversed area where tank is located, didn't notice area to be boggy.

Direct -

Dennis Mittan.

- Lot owner
- Has been to spring sight. - no excavations at time.
- Was present when photo's where taken.
- Couldn't measure standing water - used back hoe to dig channel across road to get water flowing.
- Crest of road hard and difficult to dig with hand tools.

X-exam ———

———

- Request for continuance - Has approximately 4 witnesses. Take at least 4 hours.

11-7367 11-17-87

Applicant
Copenhagen Hills Assoc. — John P. Nelson

Protestant
Edward & Leila Shepherd — Attorney — Clyde Nelson

Conference
Property in the family for 35 years —
12 - 10 acre parcels —
Early in this year spring was developed
Tank has been installed — 3,000 gallons

Highest Flow 3½ gpm —
Lowest Flow at present 0.25 gpm —>

— Concern —
Max use — 3000 gals would be sufficient for use during the weekend.

~~gpm~~ .02

Issues —
1. Private Water
2. Is Water Sufficient

3T

4,333 gal per day
.3 | 13000
12
10

(2)

John P Nelson →

11-7367 —

Hearing —

-0.16cfs 0.12cfs reversed →

→ ☒ Objection taken under consideration

Water has been applied for 12 homesites —

— No filings on this spring —

— The sping has been used for cattle watering for many years —

— Elam —

— Flow 3½ gals/min —

—

X-exam —

-47 years old —

- Cashe Co. Corporation —

- Asseciation — ~~[illegible]~~ Utah partnership —

- Ross Lapray, President →

1480 - 0.16 cfs — was the desired amount —

- Subdivision will not be useable Nov 1 to May 15 —

- Spring — to tank is about 20 feet —

- Irrigation — lawn, flowers lanscaping —

- .25 gpm is it sufficient →

That amount is not sufficient —

9 gpm = 9/13,000 ⟌1444

1 gpm = 9/13,000 = 9/13 / 10

R.K. Nelson —

— Cattle — 50 to 60 head watered from Copenhagen Ck. and later —

— from the spring that was shoveled out.

2290 — No surface flow from spring to

— 1951 —

X-exam —

2930 — No channel noted from the spring

Ross Glen Lapray
- Employed by North Logan City -
- President of the Association -
- First visited property Memorial Day 1983 -
- Didn't even know there was a spring -
- Found a wet spot next visit - about a year ago -
- Elevation difference - about 10 feet between spring & creek
- June - the area was visited -
- Took pictures - of the spring area -
- Max flow 3½ gpm - taken in June 1987 -
- 3000 gal reservoir built
- Water in the tank area
-

Applicants exhibits 1 - 6 - Admitted - over the objection -
1. - Taken from old road - Spring Area -
2. - Spring area - closer - water near the spring -
3. - Spring from different angle - in a SEerly direction -
4. After some digging
5. After 2 hrs of excavation -
6. At end of work that day -

X-exam -
- Flow of Creek a year ago 20 gpm →
- 1 shows water has flowed from the area - may be -
- 2 " " flowing -
- 1st meas about 3 gpm - increased to 3½ during next two weeks -
- July 24th meas. 3 minus gpm -
Now the flow is about ¼ gpm -

Tape 2 — The amount filed upon is the recommended amount —

— The demand is unknown at the present time —

—

Redirect >

· No water below the road —

evidence →

Dennis Mitton

— Purchaser of a lot —

— No movement of the water —

— Work done during June or July

—

Hearing Continued

November 19, 1987

RE: Stream Channel Alteration - Copenhagen Creek

Copenhagen Hills Association
c/o John P. Nelson
24 West 200 North
Hyde Park, UT 84318

Dear Mr. Nelson:

Prior to installing a culvert in Copenhagen Creek, a stream channel alteration permit should be obtained from this Department. For your convenience the pertinent permit application is enclosed. The completed form should be mailed to the Department's Western Regional Office for processing. The address for that office is:

Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

Questions regarding the alteration or completion of the application should be directed to Ervin Ballou [Phone No. (208) 334-2190].

At the administrative hearing on water right application 11-7367 held 17 November 1987, there was a discussion concerning a culvert which had already been placed in the creek channel by a member of Copenhagen Hills Association. Representatives of the association committed to the removal of this culvert and the gravel which had been dumped in the creek channel. We would expect that every effort be made to complete the removal project prior to the 1988 spring runoff.

Respectfully submitted,

ERNEST CARLSEN
Water Rights Supervisor

EC:cw

Enclosure

cc: Ervin Ballou
Clyde Nelson
Edward L. Shepherd

State of Idaho
DEPARTMENT OF WATER RESOURCES
Eastern Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mailing Address:
150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

December 10, 1987

RE: Application #11-7367, Copenhagen Hills Association
Continuance of Hearing

Mr. John P. Nelson
24 West 200 North
Hyde Park, Utah 84318

Dear Mr. Nelson:

This letter will serve to confirm the decision to defer completion of the hearing for the above captioned application. This action is based on your representation that the association is in the process of developing a proposal to resolve the differences between it and Edward Shephard.

You stated the presentation of this proposal to Mr. Shephard is expected to occur within the next six weeks. To permit adaquate time for evaluating the proposal, consideration of when to finish the hearing will be delayed until February. However, if it is obvious an agreement is unlikely, the hearing could be scheduled sooner.

Respectfully submitted,

Ernest Carlsen

ERNEST CARLSEN
Water Rights Supervisor

cc: Clyde Nelson
Edward Shephard

bc: Bob Fleenor

APPLICATION No. 11-7367

24 February 1988

Ed L. Shepherd
440 South 7th Street
Montpelier, Idaho 83254

RECEIVED
FEB 29 1988
Department of Water Resources
Eastern District Office

Dear Mr Shepherd,

I am writing regarding the water application which I have filed on behalf of Copenhagen Hills Homeowners Association. I appreciate your attitude of wanting to settle this matter however, you never have made any type of offer for settlement.

The Association is in need of a water source to be used primarily for domestic use. It is not our desire to make a hardship upon you nor to take from you any of the water which you have been using for actual irrigation purposes. We have considered drilling a well, either vertical or horizontal. If a horizontal well was successful in obtaining water, then there would not be a need for mechanical pumping. However, if a vertical well was drilled it would require power to pump the water. We have checked on the cost of drilling and also the cost of running power to the sight. Both costs are substantial. The big problem however is that there is a minimum cost for pumping of about $3,000.00 per year required because of the minimum charge that Utah Power charges. This probably would go on forever and probably would increase as the cost of power increases.

We therefore propose that if you desire us to drill a horizontal well that you pay us $3,000.00 as a one time payment and we will proceed in that manner and hope we get the needed amount of water. If however you desire us to drill a vertical well, you pay us $29,000.00 as a one time payment and we will proceed in this manner and hope we obtain the needed amount of water.

I trust you will make a decision and let us know so we will be able to proceed.

Sincerely,

Original Signed

John P Nelson
P O Box 84
24 West 200 North
Hyde Park, Utah 84318

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-7367 IN THE NAME OF COPENHAGEN HILLS ASSOCIATION	NOTICE OF HEARING

On June 16, 1987, Copenhagen Hills Association, filed with the Department of Water Resources application No. 11-7367 to appropriate the public waters of the State of Idaho. On September 8, 1987, the Department received a protest against approval of said application from Clyde G. Nelson, Attorney at Law, in behalf of Edward L. and Leila Shepherd..

The Department has set the matter for hearing for 9:30 a.m., Wednesday, March 16, 1988, in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing will be held in accordance with provisions of Chapter 2, Title 42, of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 29th day of February, 1988.

RONALD D. CARLSON
Eastern Regional Manager

NAME AND ADDRESS OF SENDER

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE.
IDAHO FALLS, IDAHO 83401

Indicate type of mail:
☐ Registered
☐ Insured
☐ COD
☑ Certified ☐ Express Mail

Check appropriate block for Registered Mail:
☐ With Postal Insurance
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1	0151	Adrienne Hoff 16205 N Cleveland Rd Thatcher	39	75					70			11-0600/0602 13-7449
2	0152	Lorine Hooper 44 Rt 1 Box 62 Preston	22									13-7449
3	0153	J.D. Williams P.O. Box 191 Preston										11-0600/0602
4	0154	Junior White 1551 6 N Cleveland Rd Preston										" "
5	0155	Copenhagen Dues Don Wilson 24 11200 N Hyde Pk										11-7367
6	0156	Edward Shepherd 440 So 7th Montpel	22									"
7	0157	Clyde Nelson P.O. Box 1797 Soda Spgs	39									11-7367 B-0027/0028
8	0158	City of Preston City Hall Preston	22									B-0027/0028
9	0159	Pub Rents Irrig Preston Dist.										" "
10	160	Angus Wheeler Preston Whitney Rt 3 Preston										" "
11	0161	Williams & Carlston P.O. Box 191 Preston										" "
12	0162	Mitt Campbell Box 601 Lava										29-7837
13	0163	Archie Service P.O. Box 4883 Lava										"
14	0164	Stephen Larsen P.O. Box 845 Lava										"
15	0165	William Decker P.O. Box 1725 Lava	22									29-7837

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FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

☆ U.S. G.P.O. 1985-478-804

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3. Article Addressed to:
Copenhagen Hills Assoc.
C/o John P. Nelson
24 West 200 North
Hyde Park, Ut 84318

4. Article Number
0155

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X John Nelson

6. Signature — Agent
X

7. Date of Delivery
3-5-88

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form 3811, Feb. 1986 11-7367 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

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3. Article Addressed to:
Edward - Reila Shepherd
#40 So. 7th
Montpelier, Id. 83254

4. Article Number
0156

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X E T Shepherd

6. Signature — Agent
X

7. Date of Delivery
3-2-88

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3. Article Addressed to:
Clyde G Nelson
Atty at Law
P O Box 797
Soda Springs, Id 83276

4. Article Number
0157

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X J Stewart

6. Signature — Agent
X

7. Date of Delivery
3-2-88

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form 3811, Feb. 1986 11-7367 + 13-0027/28 DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
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MAR 7 1988

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PENALTY FOR PRIVATE USE, $300

Department of Water Resources
Eastern District Office

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
IDAHO FALLS, IDAHO 83401

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RECEIVED
MAR 3 1988

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
IDAHO FALLS, IDAHO 83401

Department of Water Resources
Eastern District Office

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RECEIVED
MAR 3 1988

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
150 SHOUP AVE. #15
IDAHO FALLS, IDAHO 83401

Department of Water Resources
Eastern District Office

March 1988

Information Copy. .

Copies Furnished to all Bp & Stake Pres Concerned

I am writing this letter because of my concern that you know the other side of a water dispute in the community of Sharon located in Bear Lake County, Idaho. I have been informed by the other party that he intends to contact his Bishop and Stake President and have them contact my Bishop and Stake President with the intent of questioning my integrity and respect for my fellowman.

In about 1952 my father R K Nelson purchased 120 acres of pasture and farm land which was adjacent to the US Forest Service. This property is located in the mouth of Copenhagen Canyon and has a natural creek flowing out of the canyon and through the piece of property. The creek has a good flow during the spring and early summer but gradually dries up and usually has no flow through our property in the fall of the year. It is fed primarily by springs located on up the canyon and as the flow decreases in the springs the creek naturally slows until the water is insufficient to flow a long distance.

The family used the property mainly for pasture of cattle and I remember well fencing and having to be concerned about water during the late summer and fall. We were fortunate to have a spring on our property located about 200 feet above the creek. It was small and would not flow any distance but if we kept it dug out and made a basin of about 5 feet in diameter, the water would pond there in sufficient quantity to supply the cattle when the creek stopped flowing.

In 1986 the family farm was in dire need of operating capital and money to make the mortgage payment. About the only piece of property the family owned which was not under the mortgage was this 120 acres in Sharon. We tried to sell it but had no offers. Finally late in 1986, I decided to purchase it and try to sell it in 10 acre pieces for mountain cabins and see if I could recover the purchase price. This would solve the dilemma of the family farm problem and also my problem, provided I could sell the individual pieces. With this in mind I purchased the property and immediately sought zoning approval from the County Planning and Zonning Commission which would enable me to sell the 10 acre sites for cabins. We also checked with the Idaho Dept of Water Resources on the status of the spring on our property. We discovered that it had never been filed on. The Dept of Water Resources advised us on how to proceed with the filing and how to protect ourselves in case someone protested the filing.

With these two items in mind we proceeded to sell the 10 acre cabin sites and file on the spring. Because the spring was completely tromped in and no water was visible from the spring, we hired a backhoe and dug the spring out, laid in about 100 feet of spring liner (heavy duty type poly), 75 feet of perforated pipe graded into a collection box and surrounded with washed gravel, wrapped the gravel and pipe, covered the area back up with natural soil, and installed a pipe out of the collection box. Our plan was to let it flow freely and hopefully develop

water aquifers and thus a flowing spring. During the summer of 1987 we could see that a water storage tank would be a necessity because of the small amount of water the spring was producing. So we constructed a underground concrete storage tank with the capacity of about 3000 gallons.

After the above items were completed I received a phone call from Mr Ed L Shepherd, 440 South 7th Street, of Montpelier, Idaho 83254, informing me that he owned the spring and requesting me to remove the items we had placed in the mountain and return the water to him. When I questioned him about where he obtained the water right, he informed me that his grandfather had obtained the rights for "all water" flowing out of Copenhagen Canyon. One thing led to another until late in 1987 a formal water hearing was conducted by the Idaho Dept of Water Resources to determine whether or not Mr Shepherd does have right to the spring. The hearing lasted for about 5 hours and because no conclusion was reached the hearing was postponed until a later date. (They are now talking of continuing the hearing on 16 Mar 88). Mr Shepherd said he would like to settle this manner. We agreed with him and ask for his proposal. He offered none. Late in February 1988 we made him a cash offer requesting his assistance with well development.

During the evening of 29 Feb 88, I received a phone call from Mr Shepherd informing me he had no intention of paying any amount on the well and demanding me to return to him his water. He claims the Idaho Dept of Water Resources has told him it is his water. I questioned him why the hearing is being continued and he had no answer. He also informed me he had visited with his bishop and told him that he could not afford any more money to pay his attorney and he would have to take the attorney fee out of his tithing. He also said he was going to his stake president and have him contact my stake president and bishop as indicated above.

May I state my position and the position of the Copenhagen Hills Homeowners Association. We have no intention of taking anything which is not ours. If we had intended to do so, we would not have gone through the process of filing. We also do not intend to make a hardship on Mr Shepherd. We only want to use the water which we have developed. I'd like to point out that we have up to 3 gallons per minute and as low as 1 quart per minute in the fall. If Mr Shepherd is awarded this water he will have to transport it through an open ditch for about one mile before it reaches his property. It is common knowledge that a stream of 3 gallons per minute or even less when the volume reduces, will evaporate and dissipate before it travels a mile.

We hope this may answer any questions which may arise. Please feel free to contact me, should you desire to do so.

With love,

Original Signed

John P Nelson
Box 84, 24 W. 200 N.
Hyde Park, Utah 84318

RECEIVED
MAR 4 1988
Department of Water Resources
Eastern District Office

cc:/Bp Howell
Pres Rasmussen
Bp Boer

March 8, 1988

Ag Room
Franklin County Courthouse
Preston, ID 83263

Dear Secretary:

This is to confirm the use of the Ag Room in the Franklin County Courthouse, Preston, Idaho, for water right hearings and/or conferences to be held by this Department on Tuesday, March 15, 1988, beginning at 1:00 p.m. and on Wednesday, March 16 beginning at 9:30 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

11-7367 - COPENHAGEN HILLS

Ag Room, Franklin County Courthouse, Preston, Idaho
Wednesday, March 16, 1988 - 9:30 a.m.

ROSTER OF ATTENDANCE

Hearing Officer: Bob Fleener & Ernest Carlson

Name	Representing	Address
John P. Nelson	Applicant	Hyde Park, Utah 84318
Rob Balcom	Nelson's	South Jordan, Utah
VINCE LAMARRA	Shepherd	755 Canyon Rd, Logan
Ken Hukill	"	RT1 Box 26 Ovid Ida
JOAN Hukill	"	
Lejia Shepherd	Shepherds	440 S. 7 Montpelier, Ida 83254
Clyde Nelson	Shepherd	Box 797 - Soda Springs 83276
Edward S. Shepherd		440 So. 7th St. Montpelier, Ida. 83254
~~Ross~~ G. LAPRAY		LOGAN UTAH 84321
~~Dennis Mitton~~		mt sterling ut 84339
Mary L Larsen		WELLSVILLE UT. 84339

Continuation of the Hearing

11-7367 March 16, 1988

Copenhagen Hills Association

-John P. Nelson, Secretary of Copenhagen Hills

Protestant -

-Ed Shephard, -Ross Lampray-

-Attorney- Clyde Nelson

-Opening statement

Will show this would reduce available water-

Will show water is tributary

" " water is inadequate

Ed. Shepherd-

-Irrigates Acre

Purchased property in 1975 from mother

~~Mother~~ Father began purchasing property 1948

Grandfather purchased property in 1905

Been in the family since 1905

Decree of 1929 - for the property-

First right

11-4047 March 6, 1976

Water is

Water flows more than 5.76 in May; Reduces to Less than 1.5 during June-

Ray Hymas- Leased the farm 1953 to 1975 and irrigated-

85 to 90 year old - ill health - not able to attend

Crops- Alfalfa, Barley, Wheat, Meadow Hay, I

Flood irrigate-

Water right from Mill Canyon Canal Co. 9 days out of 20

how many acres irrigated with Copenhagen Ck

200 acres

3-16-88

30 acres of pasture -
Reduction of Flow would reduce pasture -
George Lyon - affidavit
About 70 years old -
Became aware of work in August 1987
Visited the site in 1975 -
Time of year? 1st part of June
-This spring was flowing across the road

Exhibit A	Hymas		Admitted
Exhibit B	Hymas supplemental		Admitted
Exhibit C	George Lyon		Admitted
Exhibit D.	Pictures on 3 pages 1 - 12	taken, Nov 23, 1987	Admitted
	13 - 24	August 8, 1987	
Exhibit ~~A~~ E			Admitted

old picture 1 & 2 a = old road
b - holding tank
c. spring
d - Copenhagen Ck
e - New road -

Holding tank is about 25 feet from the stream

5 min recess -

What has been the ~~result~~ of digging a trench
May have caused the water to sink -

X-exam -

Q has not been measured -
Estimate amounts at the point of diversion

Water from Copenhagen Creek and Mill Creek join together before the land is irrigated —

~~Same~~ No culvert across the old road —

~~Tank is 5 feet above the Creek~~

Tank is 5 feet above the Creek —

Water flowing in Picture 9 with no flow from spring box

In August less than 1/10 of cfs was flowing from the spring area — about the same amount was flowing in Copenhagen Creek.

Doesn't Know that the water Copenhagen Creek dries up most years in ~~Middle~~ of July or 1st of August — Flow begin when weather cools —

Re-direct —

Protestant uses all the water of Copenhagen Creek —

Vince Lamarra — Principle in Ecosystem ——

Specilist in Hydrology

B.S. Fresno State / MS in Limnology from U of Minnesota

Purchaser of an old house near the mouth of the Canyon —

Visits the general area every week —

In July 1986 observed water seeping from the hill running across the road and down the hill.

→ Opposite opinion on whether water from the spring ran across the road. —

Opinion that the springs are all from the same aquifer —

X-exam

- Doesn't remember details of water flow - many channels or single channel.

Rebuttal —

Two affidavits —

John Nelson - Summary Statement —

- Agree that this is a general spring type of development —
- This spring was used in the past for stockwatering
- Area of the tank had to be drained to construct the tank
- Position that the flow from the springs into the Creek has been enhanced:
- Disagree on photos that show a lot of water pictures 18, 19, 20 are spring —
- 1986 was a wet year —
- Lamarra testimony that head of spring below the road?
- Q varied 3 gpm to 1 quart per minute —

Clyde Nelson —

- Pictures reflect that this area is a general spring area that flows into Copenhagen Creek.
- Water flows across the road at different
- Water supply is inadequate →

16 March 88
11-7637

Issues.
Protestant.
- reduce Q available to fill existing rights.
- not sufficient water for the intented purpose.
-

Applicant-
- Source is private water
- have no effect on exting rights.

Findings of Fact-
Recon
- ~~Define private water.~~
- Delcan testimony spring not tributary in late summary.
- In July 87 - prior to development by applicant spring not tributary.
- ~~Flow from spring as a result~~ Efforts by applicant to develop spring produced initial flow of 3 gpm dropped to 1 gpm/min in 1987.
- ~~Spring site is approximately 40ft south of channel and 5 ft higher~~
- Elevation of spring is 5 ft higher than creek channel a south a distance of 40 ft.
- An old road bed is situated ~~between~~ next to the spring, a ~~creek channel~~ passes between it and the creek channel.
- ~~Applicant installed creek~~ pipe across r

~~In~~ June 1975, and July 1986

~~Applicant drove to a dozer old road to~~

~~spring site. where he encountered~~ water flowing over the road crest, ~~down north~~ and eventually into Copenhagen Creek.

List protestants water rights.

~~Legal Principles.~~ ~~water flow~~

- In normal years Copen. Cr ~~is dry~~ ~~ceased to~~ reach protestant p.o.d. ~~starting~~ between mid July & first part of August to last part of August first part of Sept.

Legal Principles,

- Define "private water": section 42- quote.
- quote 42-203.- 5 criteria.

Conclusions of Law.

Analysis - Although there is differing testimony concerning the flow of the spring prior to develope by applicant these ~~differences~~ apparent contradictions are principly due to the different time frame the spring was visited by the parties testifying.

~~The spring is not private water because~~ The old road likely intersected ~~and~~ the spring area. ~~There~~ So even though ~~water was not~~ there are times when the water didn't flow over the road, it was continually ~~flow~~ seeping through the subsurface medium below the road bed forming the foundation of the road.

- The spring is not private water.

- Water from the spring is available for appropriation during those periods when Copenhagen Creek ceases to meet the protestants p.e.d.

~~The duration of~~ Those periods when the spring is available for appropriation are ~~not often~~ long enough nor frequent enough to meet the ~~protestants~~ ~~people~~ applicants needs.

11-7367 Continued. 16 March 88.

Applicant
Copenhagen Hills
present John P. Nelsan. represents applicant.
Protestant
present Edward Shephard
present. Clyde Nelson. (attorney.) represent protestant.

Clyde Nelsan - ① cause reduction in quantity of water available to fill existing rights.
② speculation.

Direct. - Edward Lee Shephard -
- 4 exhibits attached to protest.
- NW SW 1/4 29 Sec 30 - purchased in 1975. from mother - she owned since 1953.,
Edward T. Shephard, grand father, purchased property in 1905 from Mr Thomas Ore. Ore homesteaded property in 1887. - He filed Notice of Claim dated 1887. Source of claim "all springs, streams and tributaries of copenhagen cr."
- Decree dated Feb 19, 1929.
- Claim 11-4049 filed 1976, by protestant.
- Historicall, since 1905 has used all waters of Copenhagen Cr.
- Spring runoff (May) will exceed 5.7 c/s. In June flows declined to less than 1.5 c/s. (g. for decree).
- Ray Hymas started operating Shephard farm in 1953 or 54. - age between 85 & 90. - furnished affidavit.

-1-

16 March 88
11-7367

Crops - alfalfa, barley, grass. 30 acres
Flood irrigate. - entire farm.
- spring runoff distributed % pastures - soil in suspended in water acts as nutrients. -
- Water right from Mill Canyon Canal Co. - 9 days out of 20. -
George Lyon - affidavit.
Copenhagen Hills applied for variance with county to build homes. - land has been subdivided, spring box has been constructed. inspected sit 8 Aug 1987. - saw excavation at spring site. - spring box & pipe line from Copenhagen Creek.
- distance between spring box and Copen. Cr. 25 ft. ~~or 100 ft~~
- During one visit 1975 to site saw water flowing across the road into area where spring box is located. -
- There was water bubbling up at spring box site - combined flows entered Copenhagen Cr.

what season? June 1975 (x-exam).

- Move to introduce exhibits.

Ad Exhibit A - Affidavit Ray L Hymas.
Ad Exhibit B - Supp. " " " "
Ad. Exhibit C - " George Lyon.

Ad Exhibit D - photo's 1 & 2 - shows Copenhagen Cangon. Taken 23 Nov 1987
- Tank (B) is approximately 25' from channel (D)
photo 3 - spring near end of trench.
photo 4 - below B of photo 1 & 2.
photo 5 - bottom % photo 15 ft. from cr. channel.
photo 6 -
photo 7 -
photo 8 -
photo 9 -

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11-7367

photo 10 -
photo 11
photo 12
photo 13 - taken in Aug 1987.
photo 14 thru 24
- When photos were taken there ~~were~~ was overflow from the tank. Believes it was about 3 gpm. -
photo 16. - flows pictured include: overflow from tank plus springs contributing to flow.

- Trenching activity ~~cold~~ by applicant may have removed surface seal causing water to sink. - (comment - photo's reveal additional flows into trench - doesn't substantiate assertion.).

x- exam - Ed. Shephard - never measured creek. : ~~amounts~~ flows are estimations at applicants p.d. approximately 200 yds below trench.
- Tank was ~~the~~ full in Aug. 1987.
- ~~he~~ Went up there in June 1975
- Old road traverses spring head. giving appearance there are ~~that~~ two springs. one above road one below road.
- Saw water coming from around spring box.
- Co-mingles water from Copenhagen Cr. & mill ~~Canal~~ Canyon Canal for irrigation of 200 acres.
- In June 1975 drove on old road for approximately 100 ft. encountered water flowing over road crest. prevented driving further, had to back out to new road.

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11-7367.

- Spring box elevation 5ft higher than creek channel.
  ± 25 ft. from channel.
- No culvert across old road to drain off spring water.
- Canyon goes east and west. ω
- Picture 9- water in trench arises below tank - no water flowing from tank.

(Sketch direction is downhill in photo 1 & 2.)

- 8 Aug 1987 - flow in creek above spring - estimated at .1 c/s.
  ~~spring~~ flows in creek below spring area. estimated at .2 c/s.
- no photo of flows in creek on 8 Aug 1987.
- ~~Telephone conversations~~.
- Drive up new road yearly between 1975 & 1982. - Did not visit spring site.
- Mill Canyon Canal Co. May. 1 to 1.5 c/s.
  June. ± .5 c/s. -
  ~~It~~ ~~sole~~ is more reli

Copenhagen Creek dries up mid July to 1 Aug.
flow returns in mid August used for irrigation

Redirect - Watermaster on Mill Cr. Ca. Co. regulates rediversion of Copenhagen Cr. after it is co-mingled with Mill Cr.

16 March 88
11-7367.

Direct - V. LaMarra
Eco-Systems
- primary hydrologist & stream eco systems.
P.H.D. in Liminology.
- purchased home ¼ mi below site. - new road is main access into U.S.F.S.
- is knowledgable of "old road."
- visits area frequently - weekly to monthly.
- in July 1986 witnessed water flowing over road at spring site. into wetland area or series of springs.
prior to construction
- early Summer 1987 some location was damp with ruts in road.
- late summer 1987 visited site - saw ~~spring~~ holding tank and excavation.
- no technical studies. - observed 3 sets of springs. set typical for undeveloped springs not unusual for several outlets to exist.
- Spring developed by applicant would be considered head of source - highest and furthest from creek channel.
- 1986 observation - ~~at armored substrate stream location above~~ spring system around area contributed observedly more ~~more~~ water to creek. with in 200 yd reach.

There was no snow in area when he visited site is July, 1986.

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11-7367.

x-examin -
- Does not know subsurface topography. - Guesses in drier years less flow at spring. ~~-HK-~~

Rebuttal Testimony -

Applicant - Summery Statement. -
- Submitted pictures -
- General spring type area -
- Testimony from A.K. Nelson - late summer would dig at site to provide ~~wat~~ stockwater.
- Did trench overflow.
- Belicve they have enhanced flows of springs both above & below road (Developed water?).
- Quantity ~~available would not have~~ developed contributes an indiscernable amount to creek ~~then~~ after flowing down to the applicants p.d.

Protestant - - Photos depict ~~area is~~ a general spring area in vicinity of development.
- Different times of observations accounts for ~~dif~~ contridictory testimony concerning flows over crest of road.
- Flows of ~~@~~ 1 gt./min inadequate to support domestic use filed on by applicant.
- Even if 1 gt./min. would not reach creek it is also inadaquate for the intended purpose.

Protestant's
Exhibits

Submitted 3/16/88

Department of Water Administration
PROTESTANT'S
Exhibit A
Date Admitted 16 March 88 EWC

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-7367 IN THE NAME OF COPENHAGEN HILLS ASSOC.	AFFIDAVIT OF RAY L. HYMAS

STATE OF IDAHO)
: ss
County of Bear Lake)

RAY L. HYMAS, being first duly sworn, on oath, deposes and says:

1. That your affiant is a resident of Bear Lake County, Idaho.

2. For a period of approximately thirty (30) years your affiant did lease and operate all of that property being located in Sections 29 and 30, Township 12 South, Range 43 East, B.M., Bear Lake County, Idaho, from Julia Shepherd Nye, the mother of Edward L. Shepherd, of Montpelier, Idaho, who is protestant to that application filed by Copenhagen Hills Association under application for Permit No. 11-7367.

3. That during all of said period, I did use all of the water from Copenhagen Creek, and all tributaries thereto, for the purpose of irrigation of the farm property owned by the Shepherds as well as for domestic purposes and for stock watering. The only period of time that the entire supply of water was not used from Copenhagen Creek on the Shepherd property was during the early spring runoff at which time the water exceeded the 288 inches to which the Shepherds were entitled. During the high water runoff in the spring, any excess water not being diverted to the Shepherd property was being used on the King property, of which none of the King property is part of the applicant's property.

4. In my opinion, based upon my numerous years of experience of running the Shepherd property and being familiar with the water rights in said area, to allow the applicants the diversion of water requested would reduce the

quantity of water available under existing water rights to Shepherds, and would interefere with their irrigation and stock watering upon said property established through decades of usage.

Further your affiant sayeth not.

Ray L. Hymas
RAY L. HYMAS

SUBSCRIBED AND SWORN to before me this 16th day of November, 1987.

Wendell R. Bitter
NOTARY PUBLIC FOR IDAHO
Residing at Montpelier

(SEAL)

Department of Water Administration
PROTESTANT'S
Exhibit B
Date Admitted 16 March 88 EMC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 11-7367 IN THE NAME OF COPENHAGER HILLS ASSOC.	SUPPLEMENTAL AFFIDAVIT OF RAY L. HYMAS

STATE OF IDAHO)
: ss
County of Bear Lake)

RAY L. HYMAS, being first duly sworn, on oath, deposes and says:

1. That this is a supplemental affidavit to that affidavit made by your affiant on November 16, 1987.

2. That due to your affiant's operation of the Shepherd farm, and your affiant's familiarity with the area where the springs are located, your affiant is well aware that for the period that your affiant did operate the Shepherd farm that there was water flowing across the old road from the spring which the applicants have tapped for their water supply located above the old road. Your affiant is also aware that there was water flowing from a spring located where the applicant Copenhagen Hills has placed its storage box. Your affiant is further aware that all of said water from both locations did flow into Copenhagen Creek.

Ray L. Hymas
RAY L. HYMAS

SUBSCRIBED AND SWORN to before me this 16th day of March, 1988.

Wendy B. Bittee
NOTARY PUBLIC FOR IDAHO
Residing at Montpelier
Comm. Expires: 8-26-91

(SEAL)

Department of Water Administration
PROTESTANT'S
Exhibit C
Date Admitted 16 March 88 EMC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 11-7367 IN THE) AFFIDAVIT OF
NAME OF COPENHAGER HILLS) GEORGE LYON
ASSOC.)
)

STATE OF IDAHO)
: ss
County of Bear Lake)

GEORGE LYON, being first duly sworn, on oath, deposes and says:

1. That your affiant is a resident of the Bennington, Bear Lake County, Idaho.

2. That your affiant is very familiar with the location where the applicant Copenhagen Hills has dug its spring located above the old road on which they have placed a pipe to their water storage box located below the road. Your affiant's father did operate a lead mine in the general area when your affiant was a young man, and further your affiant has hunted in this area every year for many years.

3. I am aware that water has flowed for many years from a spring where the applicant has dug and placed its pipe located above the old road leading to the box below the road prior to the applicant digging the same. Further, your affiant is aware and did observe that the location where the applicant has placed its water storage box did have spring water flowing from that location which flowed into Cophenagen Creek for many years prior to applicant causing the same to be constructed.

X George Lyon
GEORGE LYON

SUBSCRIBED AND SWORN to before me this 11th day of March, 1988.

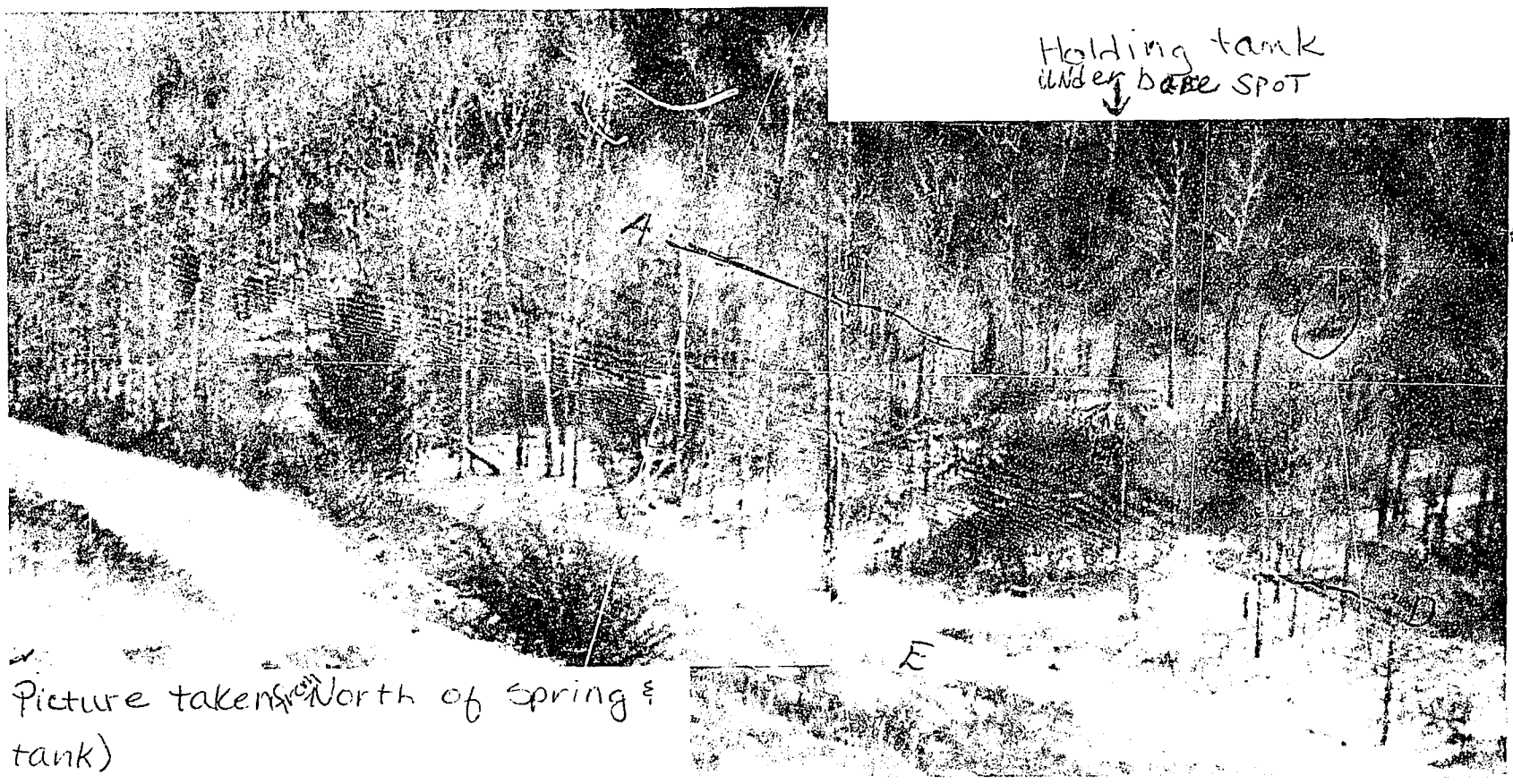
Cindy B. Ritter
NOTARY PUBLIC FOR IDAHO
Residing at: Montpelier
Comm. Expires: 2-26-91

(SEAL)

Pictures TAKEN
Nov. 23, 1987

D 3-16-88 BDH

(1)



Picture taken North of Spring & box (holding tank)

(3)



LOOKING DOWN CANYON - WATER COMING OUT OF GROUND BETWEEN MAIN PART OF SPRING (Right) AND CREEK (Left). WATER COMES OUT IN WHOLE AREA, AND SPRING TYPE WILLOWS & GROWTH INDICATE THE SAME.

4



BELOW SPRING AREA - WATER COMING OUT BETWEEN CHANNEL & CREEK; ← WATER FROM CHANNEL; COPENHAGEN CREEK →

(5)



Looking towards holding tank

(6)



← WATER LEAVES TRENCH here & FOLLOWS NATURAL CHANNEL TO LEFT.

Taken from top of holding tank Looking down towards Channel.

(7)



↑→ where water leaves trench flowing in natural channel towards creek.

(8)



↑ Water coming through brush in it's natural channel - emptying into creek at arrow.

(9)



Water running in trench melting snow

(10)



where I walked in snow showing spring water flowing under snow.

(11)



Spring Flow ↑ ↑ Copenhagen Cr.

Department of Water Administration
PROTEST EXHIBITS
Exhibit D
Date Admitted 3-16-88 BDF

(12)

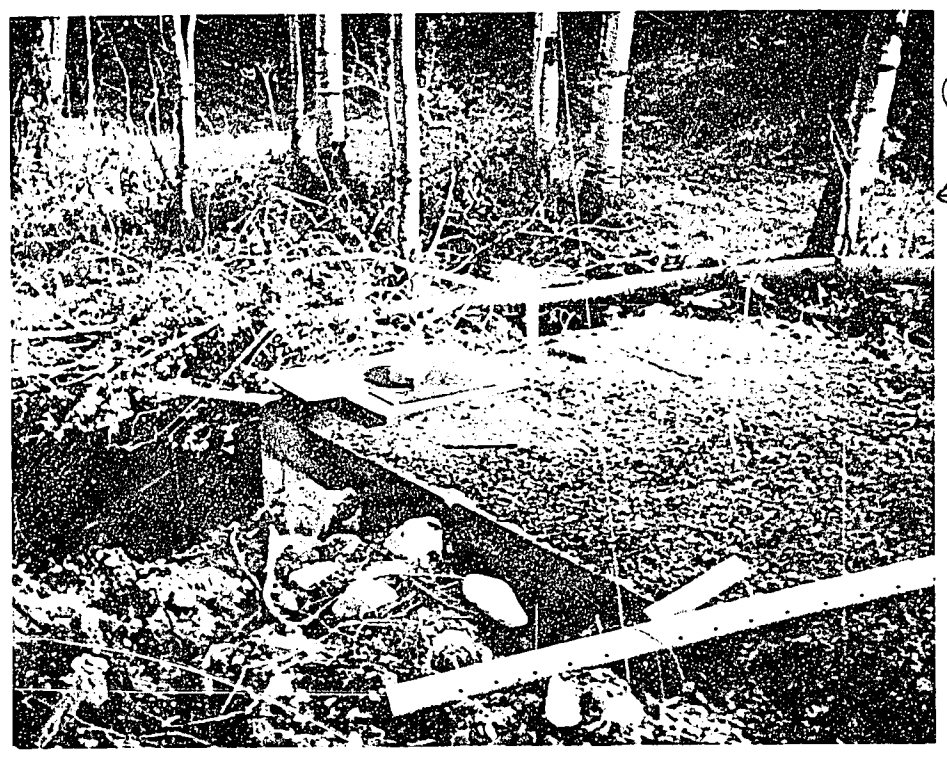


natural channel of spring water flowing into creek

(13) upper spring area now piped into holding tank. Old road area above tank still wet.



Pictures taken Aug 8, 1987



(14) old road

(15)



View from holding tank, trench, to point where water leaves trench in natural channel & enters creek.

(16)



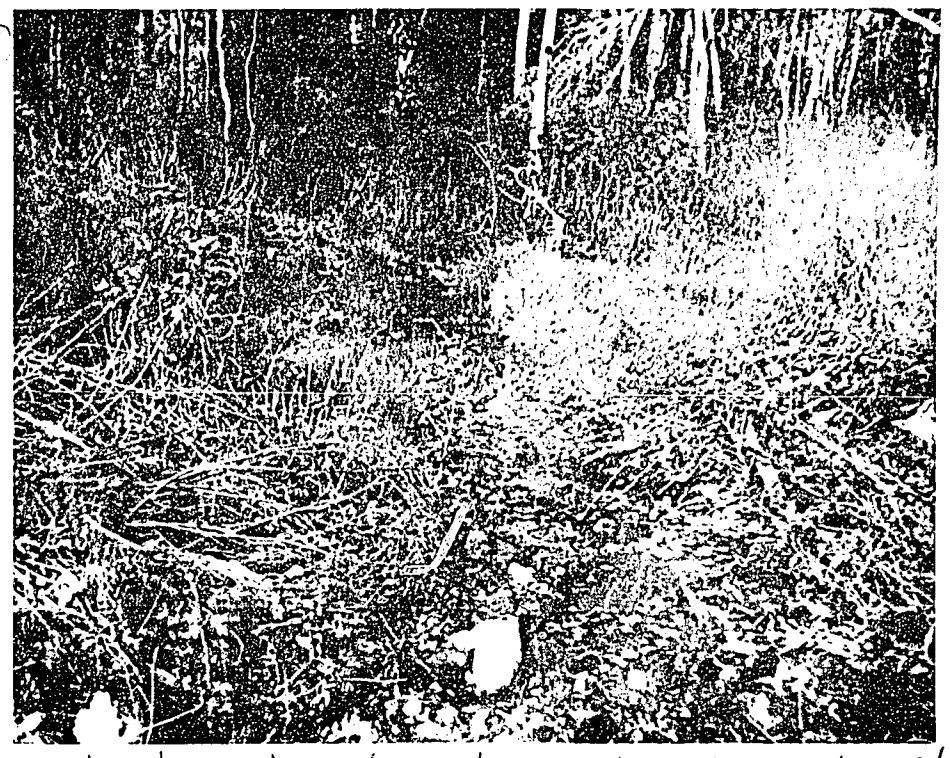
Slow water leaving trench entering natural channel before coming to end of trench.

(17)



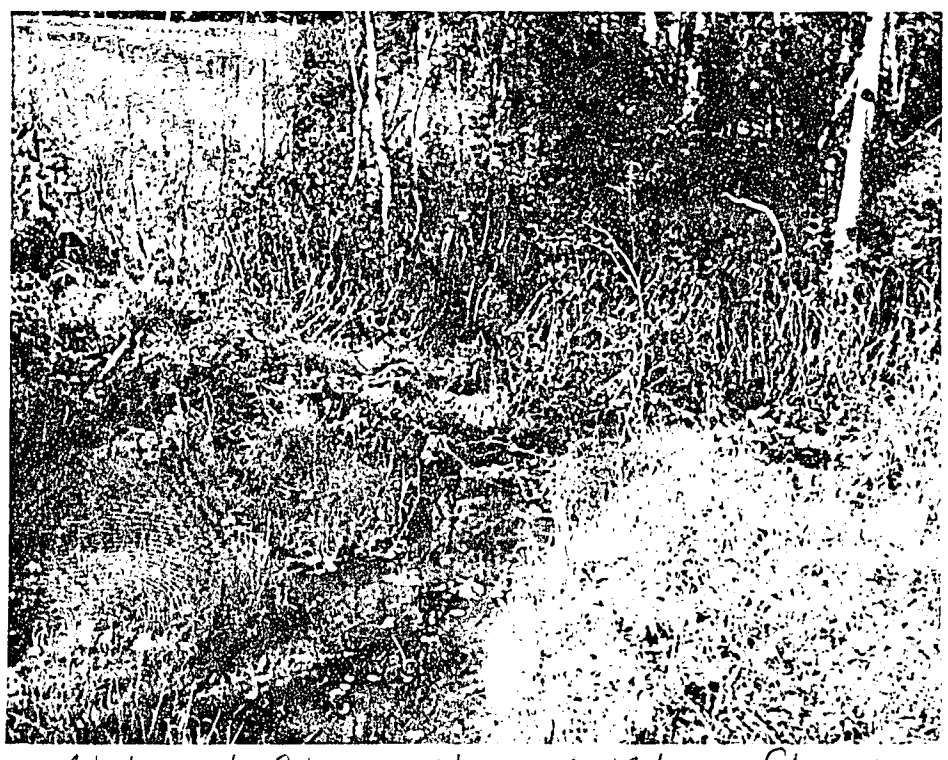
Looking downstream from trench

(18)



Water leaving trench in natural channel flowing through willows into Copenhagen Creek.

(19)



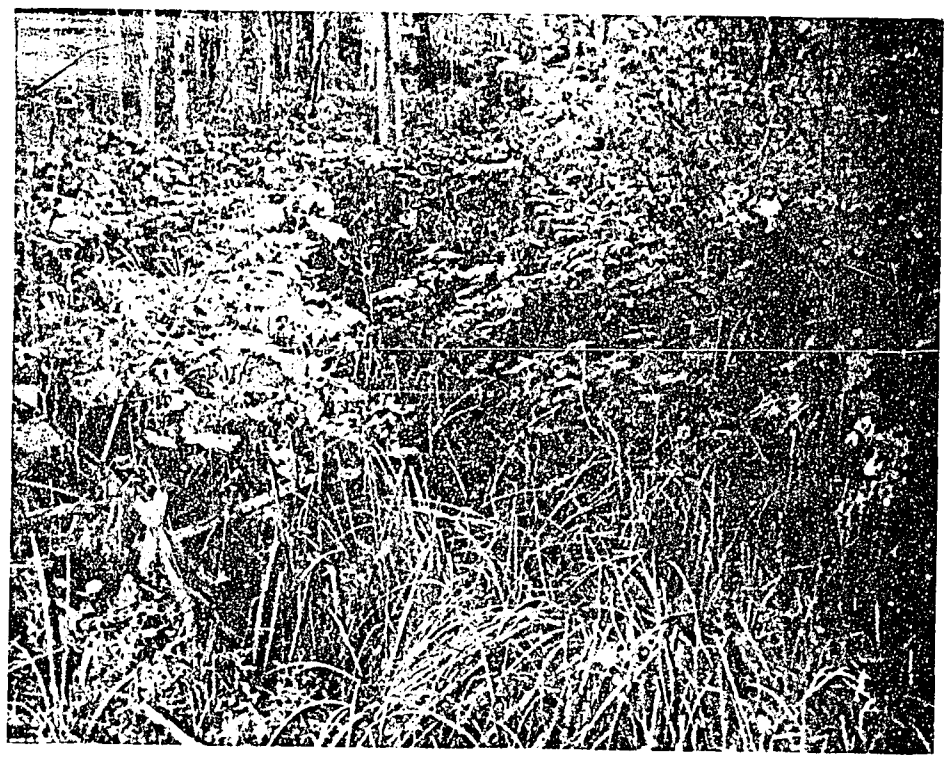
Natural Channel - water flows through willows & meets creek

(20)

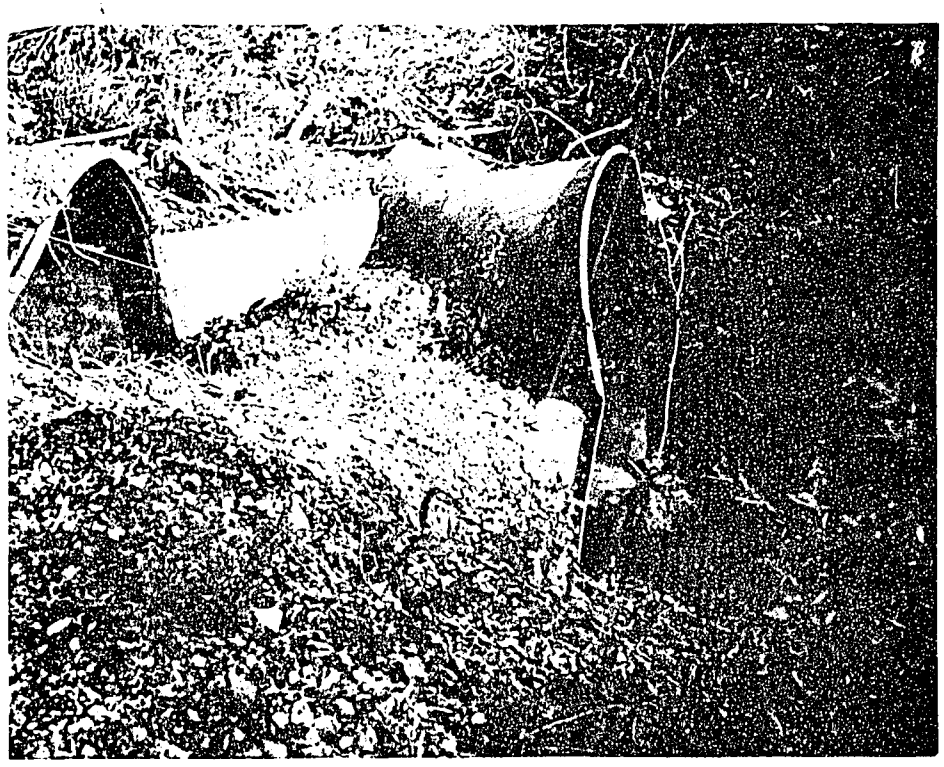


Same as picture #10 looking up canyon ← channel creek →

Department of Water Resources
PROTESTANT'S
Exhibit P
Date Admitted 3-16-88 BDF







Department of Water Administration
PROTESTANT'S
Exhibit E
Date Admitted 16 March 88 EWC

Description of photographs taken 23rd day of November, 1987:

Pictures 1 and 2 show the canyon where Copenhagen Creek flows, the old road is in background, new road in foreground, bare spot were applicants buried pipe to spring above the road, holding tank below old road, and shows water has no other place to run but into narrow canyon.

Picture 3 looking down the canyon shows water coming out of the ground between the main part of the spring (Right) and the creek (Right). Water seeps out of all the surrounding area which is indicated by the type of growth.

Picture 4 shows water from main spring area (left) running towards creek (right).

Picture 5 shows trench toward holding tank and water leaving trench flowing towards creek at the bottom.

Picture 6 is the reverse of #5 taken from the top of storage tank looking down trench to point were water leaves trench and flows in natural channel left towards creek. (A CLOSE up OF NATURAL SPRING CHANNEL
Picture 7 shows natural channel leaving the trench to run right before coming to the end of the trench dug by applicants.

Picture 8 shows the water coming through the brush in it's natural channel- emptying into creek at bottom.

Picture 9 shows a substantial amount of water running in trench to melt snow. There was no water flowing from the tank at this time, this water was seeping from the ground.

Picture 10 shows that there was water flowing underneath the snow in natural channel towards the creek.

Pictures 11 and 12 are where the spring channel (left) and creek (right) intercept.

The next group of photos were taken the 8th of August, 1987:

Picture 13 shows the storage tank and spring area above the road. The road was still wet from this spring on a dry year even though the applicants pipe carried a substantial amount of water to the tank. There was water coming out of the tank overflow.

Picture 14 shows old road.

Picture 15 and 16 opposite views of trench and points the water left trench. Picture 16 same as picture #7.

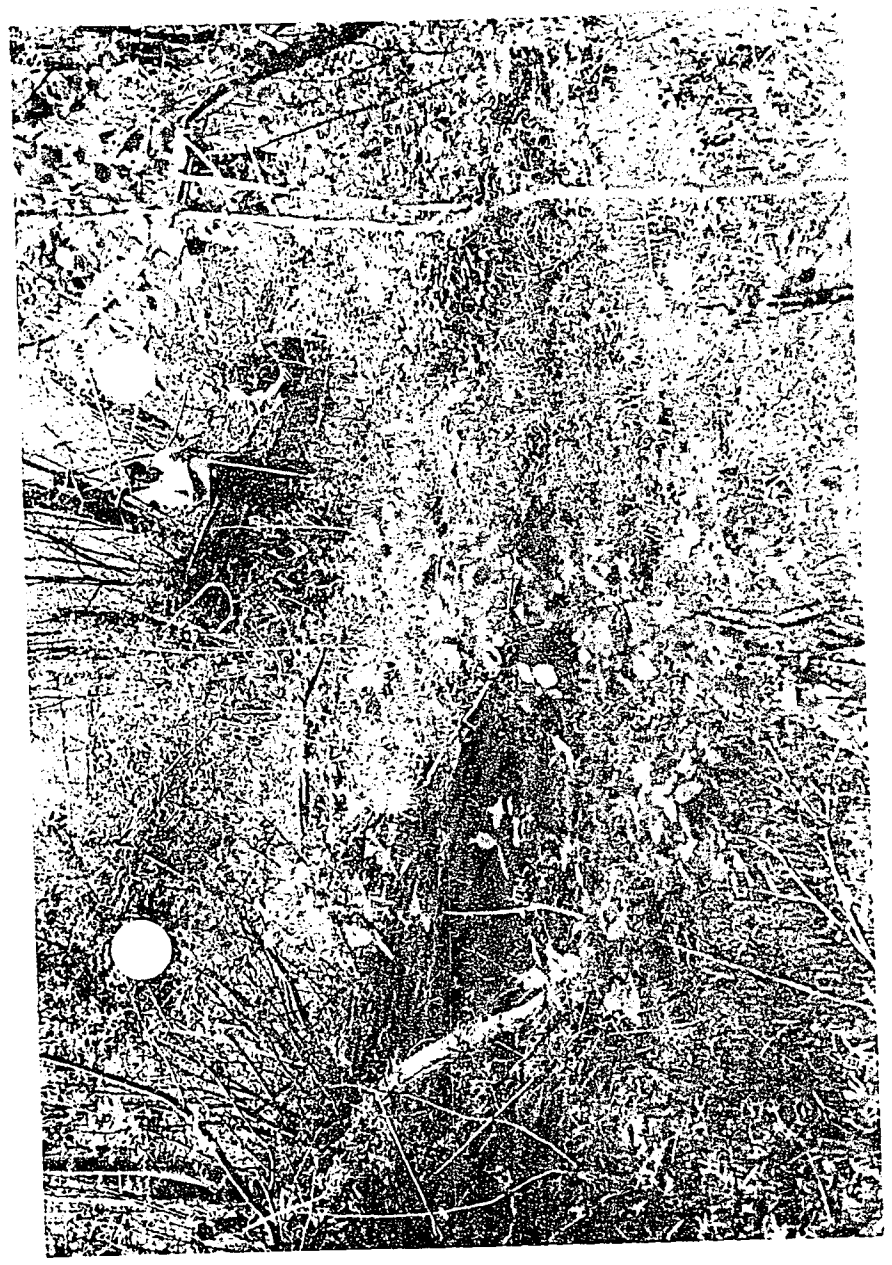
Pictures 17, 18 and 19 are views down stream from spring and storage tank showing the water leaving the trench (#18) before it reaches the end of the trench, flowing into the natural channel toward Copenhagen Creek.

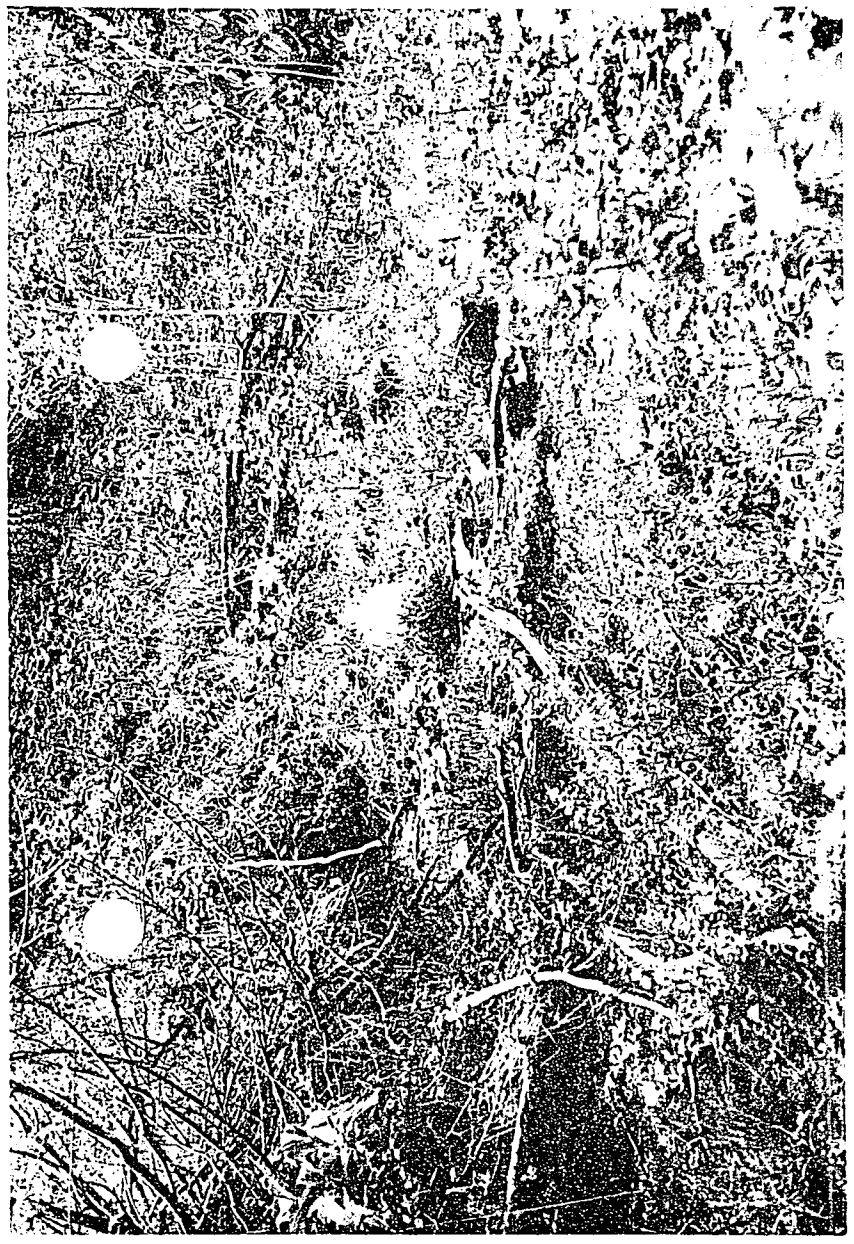
Picture 20 same as #10, shows spring channel to the left and the creek is to the right.

Pictures 21 and 22 show the rich vegetation growing in August, on a dry year, from a point approximately one hundred feet from holding tank, where the water is leaving the trench and flows in a natural channel towards the creek.

Pictures 23 and 24 show old pipe and fill placed by applicants in the Copenhagen Creek, which was not removed.

Applicant's
Exhibits
Submitted 3/16/89













For Clarity of Photographs Filmed Please See File

RECEIVED
MAR 31 1988
Department of Water Resources
Eastern District Office

28 March 1988

RE: Application #11-7367, Copenhagen Hills Association

State of Idaho
Dept of Water Resources
150 Shoup Ave., Suite 15
Idaho Falls, Idaho 83402

Copenhagen Hills Association hereby requests that the above water application hearing be reopened.

This request is being made in interest of equity and fairness, and for additional information and arguments, and availability of supplemental evidences crucial to our case. We feel both parties should be allowed to be present and a hearing will allow the other party to respond openly.

If a further hearing is not reconvened, Copenhagen Hills Association requests that the Dept of Water Resources accept supplemental evidence in a written form pertaining to the above referenced application.

We further request a copy of the hearing record be forwarded to the below listed address. If there is a charge for this service we will be happy to remit it.

Copenhagen Hills Association has contacted legal council and we request sufficient time to allow council to be brought up to date, perform clerical duties, and properly prepare for the hearing.

Thank you for your consideration.

Sincerely,

Copenhagen Hills Association
John P Nelson, Secretary
25 West 200 North, P O Box 84
Hyde Park, Utah 84318

RECEIVED
APR 11 1988
Department of Water Resources

April 28, 1988

John P. Nelson, Secretary
Copenhagen Hills Association
P. O. Box 84
Hyde Park, UT 84318

Dear Mr. Nelson:

Your request to reopen the record on Application No. 11-7367 has been considered and that request is denied.

The request is denied since both parties have had several hours to present their information. As you will recall, the hearing was held on two seperate days with some months between them which should have afforded you ample time to gather evidence and to retain an attorney if you felt that was necessary. The hearing has been held and the record has been closed and a decision is pending.

Both parties will have an opportunity to file exceptions to the Proposed Memorandum Decision, if they feel we misunderstood your testimony or if they feel that the Director of the Department would reach a different decision after hearing the same evidence. Both parties will also have an opportunity to request a rehearing after the Final Decision is issued if you have uncovered new evidence that was not available during the original hearing or if the department erred in the conclusions reached in decision.

You also requested that supplemental evidence be allowed to be submitted in written form. We have no objection as long as a copy of the written material is sent to the other party and his attorney and they have no objection. You are allowed until May 16, 1988 to submit the evidence to all the parties.

Please let us know if you have any questions.

Sincerely,

BOBBY D. FLEENOR,
Hearing Officer

c: Clyde G. Nelson, Attorney

October 24, 1989

Copenhagen Hills Association
c/o John P. Nelson
24 W. 200 N.
Hyde Park, UT 84318

Gentlemen:

Re: Application for Permit No. 11-7367

Enclosed is a copy of the approved Application for Permit No. 11-7367 along with a copy of the Order Adopting Proposed Memorandum Decision and Order and a copy of the Proposed Memorandum Decision and Order. Please note the conditions of approval as set forth in the Proposed Memorandum Decision and Order.

Enclosed is a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must eventually take further action to develop this permit into a license. The proof due date is indicated on the final order and last page of the permit.

Any person who does not agree with the decision of the department may request a rehearing before the Director within 20 days, or may appeal directly to the district court within 30 days of the date the decision is mailed.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosures

c: Clyde G. Nelson
Edward L. and Leila Shepherd

RECEIVED
OCT 30 1992
Department of Water Resources

Form 554
11-91

For Office Use Only
$15 Fee Receipted by [illegible]
Date 11-2-92
Receipt No. C025893

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time in which to complete development of water right under the provisions of Section 42-204, Idaho Code.

Permit No. 11-07367

Name(s) of Permit Holder: COPENHAGEN HILLS ASSN. C/O JOHN P. NELSON

Mailing Address: 24 WEST 200 NORTH HYDE PARK, UTAH 84318

Date Proof is Due NOVEMBER 1, 1992 Telephone No. 801-563-5219 H. 801-752-8328 W.

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

SPRING DEVELOPEMENT IS COMPLETE - RESERVOIR HAS BEEN INSTALLED. DISTRIBUTION MANIFOLD VALVING @ THE RESERVOIR IS COMPLETE BUT NO DISTRIBUTION SYSTEM TO THE 12 LOTS IS COMPLETE ONE LOT ONLY Costing $ 6,000.00

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

LITIGATION OF THE WATER RIGHT, SHORT CONSTRUCTION SEASON & DIFFICULT SOIL CONDITIONS (ROCKY)

Permit holder(s) request an extension to NOVEMBER 1, 19 97.

FEE: $15.00

COPENHAGEN HILL ASSN. By: John P. Nelson
(Signature)*
*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

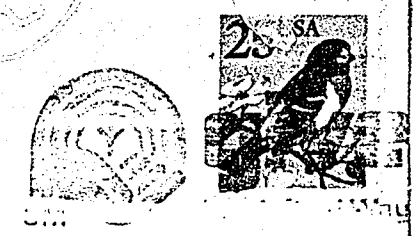
IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to November 1, 1994.

Signed this 3rd day November, 19 92

R. Gene Sutton
Chief, Water Allocation Bureau

Copenhagen Hills Assn
% John P Nelson, Sec
P O Box 84
Hyde Park, Utah 84318





Idaho Dept of Water Resources
ATTN; L Glen Saxton, Chief
1301 N. Orchard Street
Boise, Idaho 83706-2237

1 November 1989

SUBJECT: Form Shortage - Permit No 11-7367

FROM: Copenhagen Hills Assn
% John P Nelson
24 W 200 N, Box 84
Hyde Park, Utah 84318

RECEIVED
NOV 07 1989
Department of Water Resources

TO: Idaho Dept of Water Resources
ATTN: L. Glen Saxton, Chief
1301 N Orchard Street
Boise, Idaho 83706-2237

Today I received your letter dtd 24 Oct 89. It referred to an enclosed form "Instructions for Proof of Beneficial Use". This enclosure was not with the material. I assume it was an oversight.

Please send a copy to us so we can take the appropriate action.

Sincerely,

John P Nelson

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

November 17, 1989

Copenhagen Hills Association
c/o John P. Nelson
24 W. 200 N., Box 84
Hyde Park, UT 84318

Gentlemen:

Re: Permit No. 11-7367

I apologize for the oversight. Enclosed is the instruction sheet/fee schedule for submitting proof of beneficial use.

If I can be of further assistance, please feel free to contact me.

Sincerely,

RITA I. FLECK
Secretary/Records Manager

Enclosure

August 31, 1992

COPENHAGEN HILLS ASSN.
C/O JOHN P. NELSON
24 W. 200 N.
HYDE PARK UT 843180000

PROOF DUE NOTICE

RE: PERMIT NO. 11-07367

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before November 1, 1992. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

Karen L. Gustafson
Secretary/Records Manager

Enclosures

CERTIFIED MAIL
No. 139439

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

November 3, 1992

Copenhagen Hills Association
c/o John P Nelson
24 W 200 N
Hyde Park, UT 84318

Re: Permit No. 11-07367

Dear Permit Holder:

Enclosed is a copy of the approved request for extension of time. The time within which to submit proof of beneficial use is extended to November 1, 1994. Please note that the department has granted this extension based on due diligence. It is important that you work diligently toward the completion of this project during the construction period allowed. The department may not be able to grant additional requests.

If you have any questions or if I can be of any further assistance, please feel free to contact this office.

Sincerely,

Karen L. Gustafson

Karen L. Gustafson
Secretary/Records Manager

Enclosure

C: IDWR-Regional Office

Form No. 217
7/94

RECEIVED
OCT 14 1994
Department of Water Resources

FOR OFFICE USE ONLY
Amt. of Fee $: 50
Receipt No. C031461
Receipt By: RT
Date Receipted: 10-14-94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 11-07367 Telephone No. 801-770-1919

2. Name(s) of Permit Holder(s): Copenhagen Hills Assoc. c/o John P. Nelson

3. Mailing Address: 24 West 200 North, Hyde Park, UT 84319

4. Source of Water: Spring If **GROUNDWATER** (well), Date Drilled: mo. _____ / yr. _____

   a. Well Driller: _____ Drilling Permit Number: ____ - ____ - ____ - ____

   b. *OPTIONAL:*
   Pump Horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft): _____

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

   Domestic (No. of households): 12 Stockwater (No. and type of stock): _____

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

6. Total rate of diversion and/or volume for which proof is submitted: .020 cfs **OR** 20 acre feet

7. Measuring Device Requirement: **(refer to the approval conditions on your permit and respond accordingly)**
   (This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

   Measuring Device: Is a measuring device required? Yes ____ or No X
   Has the measuring device been installed? Yes ____ or No X

   Flow Measurement Port: Is a flow measurement port required? Yes ____ or No X
   Has the measurement port been installed? Yes ____ or No X

8. Fee Enclosed: $ 50.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)

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

   Name: Ross G. Lapray Telephone Number: Home 801-752-8048
   Office 801-752-1310
   Mobile 801-770-1919

   Address: 47 River Circle Drive, Logan, UT 84321

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

Signature of permit holder: _____ (PRESIDENT) Date: OCT. 11, 1994
(include your title, if on behalf of company of organization)

August 31, 1994

COPENHAGEN HILLS ASSN.
C/O JOHN P. NELSON
24 W. 200 N.
HYDE PARK UT 843180000

PROOF DUE NOTICE

RE: PERMIT NO. 11-07367

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before November 1, 1994. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

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

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

SINCERELY,

JULIE L. YARBROUGH
Senior Secretary

Enclosures

CERTIFIED MAIL
NO. 141554

November 2, 1994

COPENHAGEN HILLS ASSN.
C/O JOHN P. NELSON
24 W. 200 N.
HYDE PARK UT 843180000

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 11-07367

Dear Permit Holder:

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

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

Sincerely,

JULIE L. YARBROUGH
Senior Secretary

c: IDWR - Region