

RECEIVED

OCT 10 1979

Department of Water Resources  
Eastern District Office

**NOTICE OF APPLICATION  
FOR WATER RIGHT**

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

13-7259

SIMONSON, VON N.  
ROUTE 1, BOX 37, GRACE, ID  
83241

Source: GROUNDWATER  
Date Filed: 09-20-1979

Amount: 2.00 CFS  
Diversion Point: SWNW Sec 27  
T 09S R 40E, CARIBOU Co.

Use: IRRIGATION (2.00 CFS)  
from 04-01 to 11-01

Place of Use: NENE NWNE  
SWNE SENE Sec 27 T 09S R

40E FOR 120 ACRES  
Diversion Means: WELL, PUMP

& SPRINKLER SYSTEM

13-7260

CHRISTENSEN, DWAIN K.  
ROUTE 1, BOX 43, GRACE, ID

83241

Source: GROUNDWATER  
Date Filed: 09-10-1979

Amount: 1.30 CFS  
Diversion Point: NWNW Sec 32  
T 09S R 40E, CARIBOU Co.

Use: IRRIGATION (1.30 CFS)  
from 04-01 to 11-01

Place of Use: NESW SESW  
NWSE SWSE Sec 29 T 09S R

40E FOR 89 ACRES  
Diversion Means: WELL, PUMP

& SPRINKLER SYSTEM

13-7261

CHRISTENSEN, DWAIN K.  
ROUTE 1, BOX 43, GRACE, ID

83241

Source: GROUNDWATER  
Date Filed: 09-10-1979

Amount: 2.00 CFS  
Diversion Point: SWSW Sec 20 T

09S R 40E, CARIBOU Co.  
Use: IRRIGATION (2.00 CFS)

from 04-01 to 11-01  
Place of Use: NESE NWSE

SWSE SESE Sec 19 T 09S R 40E

FOR 160 ACRES  
Diversion Means: WELL, PUMP

& SPRINKLER SYSTEM

If issued, the permit(s) will be  
subject to all prior water rights.

Protests against the granting of  
any permit must be filed with the

Director of the Idaho Department  
of Water Resources, 1515 Lincoln

Road, Idaho Falls, Idaho 83401  
on or before October 15, 1979.

C. STEPHEN ALLRED  
Director

Published Sept. 27, and Oct 4,  
1979 in the Caribou County Sun.

**Affidavit of  
Publication**

County of Caribou } ss.  
State of Idaho }

Mark Steele

being first duly sworn on his  
oath, states:

That he is Publisher  
of the Caribou County Sun, a  
newspaper of general circula-  
tion in Caribou County, Idaho,  
published weekly at Soda  
Springs in said County that said  
newspaper has been published  
in said County uninterruptedly  
and continuously for over sev-  
enty-eight consecutive weeks,  
prior to the first publication of  
the annexed notice or advertise-  
ment;

That the annexed notice was  
published as per clipping at-  
tached in the regular and entire  
edition of said newspaper and  
not in any supplement thereof

for 2 successive weekly  
issues thereof, the date of the  
first publication being the

27th day of  
September, 1979

The date of the last publication

being the 4th day of  
October, 1979

Subscribed and sworn to be-

fore me this 5th day

of October, 1979

William D. Steele

Notary Public, residing  
at Soda Springs, Idaho  
(SEAL)

My Commission expires the

1st day of March

1980.

COUNCIL  
Marjorie Christenson  
H. C. Wheelock  
Frank Barker  
Fred Modorsitzki

CITY OF BANCROFT

P. O. Box 39  
IDAHO 83217

Phone 648-7648

MAYOR  
A. L. Hatch

RECEIVED  
CITY CLERK  
Eval. Davis

OCT 5 1979

Department of Water Resources  
Eastern District Office

October 4, 1979

Mr. C. Stephen Allred, Director  
Department of Water Resources  
1515 Lincoln Road  
Idaho Falls, Idaho 83401

Dear Mr. Allred

The City of Bancroft formally protests the issuance of permits for irrigation wells in the Central-Lund area, specifically permits to Von Simonson (No. 13-7259) and Dwain K. Christensen (Nos. 13-7260 and 13-726k).

The water table in and about our city seems to be dropping since irrigation east and south of Bancroft has become extensive, and we feel there is a correlation between increased use of underground water for irrigation and a lowering of the water table.

Respectfully

*A. L. Hatch*  
A. L. Hatch, Mayor

PROTEST TO APPLICATION FOR WATER RIGHT

TO: Director, Idaho Dept.  
Water Resources

FROM: John K. Looze,  
Attorney for Protestants

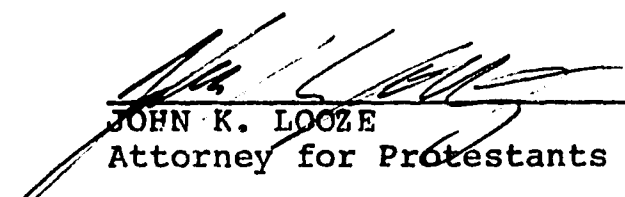
PLEASE TAKE NOTICE that Protest is hereby made against the Application for Water Rights filed on behalf of Von N. Simonson, Route 1, Box 37, Grace, Idaho 83241, No. 13-7259.

The names and addresses of the persons making this Protest are: Warren Lloyd, Star Route, Bancroft, Idaho 83217; Everett Smith, Box 62, Grace, Idaho 83241; Don Campbell, Star Route, Bancroft, Idaho 83217; Keith Lloyd, Star Route, Bancroft, Idaho 83217.

The reasons for this Protest are that the proposed appropriation of water by Von N. Simonson, Route 1, Box 37, Grace, Idaho 83241, will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

DATED: This 4 day of October, 1979.

  
JOHN K. LOOZE  
Attorney for Protestants

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OCT 9 1979

Department of Water Resources  
Eastern District Office

RECEIVED

OCT 11 1979

Department of Water Resources  
Eastern District Office

October 9, 1979

Director  
Idaho Dept. Water Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

Dear Sir:

I am writing to protest the following applications for water rights:

Von N. Simonson, Route 1, Box 37, Grace  
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7261.

The reasons for this protest are that the above proposed appropriation of water will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

Sincerely,

*(Signature)*  
Barrick, Idaho 83407

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OCT 16 1979

Department of Water Resources  
Eastern District Office

October 9, 1979

Director  
Idaho Dept. Water Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

Dear Sir:

I am writing to protest the following applications for water rights:

Von N. Simonson, Route 1, Box 37, Grace  
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7261.

The reasons for this protest are that the above proposed appropriation of water will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

Sincerely,

*Wendell - G - Farris Inc.*  
*Paul A. Lawrence Inc.*

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OCT 12 1969

Department of Water Resources  
Eastern District Office

Lynn E. Smith  
Box 61 Route #1  
Grace, Idaho 83241

To: Eastern Idaho District Office Water Resources

I am writing this letter in formal protest of the following irrigation well permits:

Permit No. 13-7260 - - Dwain K. Christensen  
Permit No. 13-7261 - - Dwain K. Christensen

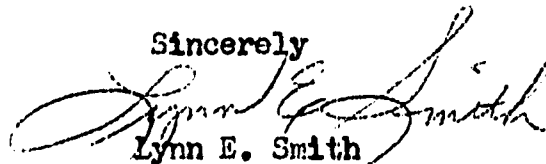
Permit No. 13-7259 - - Von Simonson

It is my opinion that the above permits not be issued for the following reasons:

1. Over the last five years the Snow Pac and Rainfall has not been sufficient to restore underground water tables to allow the continued drain of underground water for new irrigation wells.
2. I have two domestic wells, one of which I had to re-dig and lower to reclaim water for my house and livestock. This was done eighteen months ago. My neighbor re-dug and deepened his domestic well this Spring. The other domestic well that I have is on the other side of this neighbor, and I AM NOT willing to dig a new domestic well for this place as well.
3. It has been brought to my attention that some of the latest irrigation well permits issued are being used to put underground water via irrigation on ground not owned by the individual that was granted the permit. I question the legality of this practice.
4. The individuals filing for the above permits already have irrigation wells and should be stopped from further drilling until the underground water situation in this area has been fully and completely monitored to protect all domestic and previous filings of underground wells.
5. I have also been made aware that other wells are in trouble as to having sufficient water to operate. This should also be considered in the issuance of new permits.

I trust adequate steps will be taken to honor this protest. I am enclosing a duplicate of this letter to your office. One of the other copies will be on record with my attorney.

Sincerely

  
Lynn E. Smith

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OCT 15 1979

Department of Water Resources  
Eastern District Office

October 7, 1979

Gentlemen

Would like to protest all future water applications, feel prior water rights are being reduced as to quantity of water.

Namely,

Dwain K. Christensen RT. 1, Box 43 Grace,  
Idaho 83241, Application no. 13-7260.

Dwain K. Christensen RT. 1 Box 43 Grace  
Idaho 83241, Application No. 13-7261

Von N. Simonson RT 1 Box 37  
Grace Idaho 83241, Appl. No 13-7259

Underground water in this area is to its limit, any future well permits are going to seriously hurt prior established wells. I feel it would be of best interest if water resource board would restrict water permits for this area in Carbon County.

Sincerely  
Landon Yart

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OCT 19 1979

Department of Water Resources  
Eastern District Office

October 9, 1979

Director  
Idaho Dept. Water Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

Dear Sir:

I am writing to protest the following applications for water rights:

Von N. Simonson, Route 1, Box 37, Grace  
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7261.

The reasons for this protest are that the above proposed appropriation of water will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

Sincerely,

*Dale E. Yost.*  
*Bancroft, Id.*  
*83217*

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR )  
PERMIT NO. 13-7259 IN THE NAME )  
OF VON N. SIMONSON )

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 16th day of May, 1980, true and correct  
copies of the foregoing ORDER ISSUING PROPOSAL FOR DECISION and PROPOSED MEMORANDUM  
DECISION AND ORDER, were mailed, postage prepaid to:

Von N. Simonson  
Route 1, Box 37  
Grace, ID 83241

Date E. Yost  
Bancroft, ID 83217

Gordon Yost  
Bancroft, ID 83217

Lynn E. Smith  
Route 1, Box 61  
Grace, ID 83241

Paul R. Durrance  
Diamond G. Farms, Inc.  
Bancroft, ID 83217

John K. Looze, Attorney  
DIAL, LOOZE & MAY  
P. O. Box 207  
Pocatello, ID 83201

Leonard O. Kingsford  
160 S. Main  
Soda Springs, ID 83276

Fred Yost  
170 S. 2nd E.  
Soda Springs, ID 83276

Everett Smith  
Box 62  
Grace, ID 83217

Warren Lloyd  
Star Route  
Bancroft, ID 83217

Don Campbell  
Star Route  
Bancroft, ID 83217

Keith Lloyd  
Star Route  
Bancroft, ID 83217

A. L. Hatch, Pres.  
City of Bancroft  
P. O. Box 39  
Bancroft, ID 83217

  
RITA I. FLECK

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.

CERTIFICATION OF SERVICE

A. All exceptions, briefs, requests for oral arguments 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

A. Following the submission of all exceptions and 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 16 day of May, 1980.



C. STEPHEN ALLRED  
Director  
Department of Water Resources

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

B. Exceptions not in compliance with the above stated requirements will not be considered and will be deemed an acceptance of the proposed decision.

## 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. Any party desiring to file a brief in response to any exceptions filed by any other party may do so by filing such brief with the Director on or before the 15th day following the last day any exceptions by any other party were served upon that party desiring to respond.

## III.

### ORAL ARGUMENTS

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 exceptions.

B. If oral arguments have been properly requested by a party filing exceptions, any other party shall have the right to present oral arguments in response to the exceptions filed, provided that party files a request with the Director on or before the 15th day following the day the last exceptions by any other party were served upon that party.

C. After all exceptions, briefs and requests for oral arguments have been received by the Director and if oral arguments have been properly requested, the Director will, within a reasonable time, set the case for oral arguments and notify each party of the place,

BEFORE THE DIRECTOR OF THE DEPARTMENT  
OF WATER RESOURCES OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 13-7259 IN THE )  
NAME OF VON N. SIMONSON )

ORDER ISSUING  
PROPOSAL FOR DECISION  
I.C. SECTION 67-5211

C. Stephen Allred, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, Bobby D. Fleenor, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposal for decision pursuant to Idaho Code, Section 67-5211 and orders that said proposed decision and a copy of this order be served upon each of the parties to these proceedings who appeared at the hearing on January 9, 1980, of this matter or upon their attorneys in accordance with Rule 7.3 of the Rules of Practice and Procedure of this Department.

Each party to these proceedings who appeared at the hearing is hereby afforded the opportunity, pursuant to Idaho Code Section 67-5211, to file exceptions to the attached proposed decision and to present briefs and oral arguments in accordance with the provisions of this order. Exceptions may not be filed and briefs and oral arguments may not be presented by parties who did not appear at the hearing of this case. If no timely and proper exceptions are received, an order by the Director will be entered adopting and issuing 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, and

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Von N. Simonson Phone 425-3510

Post office address Rt. #1, Box 37, Grace, Idaho 83241

2. Source of water supply ground water which is a tributary of \_\_\_\_\_

3. Location of point of diversion is SW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of Section 27 Township 9S

Range 40E B.M. Caribou County, additional points of diversion if any: \_\_\_\_\_

4. Water will be used for the following purposes:

Amount 2.00 for Irrigation purposes from Apr. 1 to Nov. 1 (both dates inclusive)  
(cfs or acre-feet per annum)

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

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

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

5. Total quantity to be appropriated:

a. 2.00 cubic feet per second and/or b. \_\_\_\_\_ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. pump and sprinkler system

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

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

c. Proposed well diameter is 20 inches; proposed depth of well is 300 feet.

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

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: \_\_\_\_\_  $\frac{1}{4}$  of \_\_\_\_\_  $\frac{1}{4}$  of Section \_\_\_\_\_ Township \_\_\_\_\_

Range \_\_\_\_\_ B.M.

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

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

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

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

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

| TWP | RANGE | SEC. | NE¼ |     |     |     | NW¼ |     |     |     | SW¼ |     |     |     | SE¼ |     |     |     | TOTALS |
|-----|-------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------|
|     |       |      | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ | NE¼ | NW¼ | SW¼ | SE¼ |        |
| 9S  | 40E   | 27   | 40  | 20  | 20  | 40  |     |     |     |     |     |     |     |     |     |     |     |     | 120    |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |
|     |       |      |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |        |

Total number of acres to be irrigated 120

c. Describe any other water rights used for the same purposes as described above. \_\_\_\_\_

None

9. a. Who owns the property at the point of diversion Applicant

b. Who owns the land to be irrigated or place of use Mr. Bob Bolton

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

10. Remarks The well from which water will be appropriated under this

permit supplies water to 280 acres and is permitted by

13-7084. By expanding his rotation schedule the applicant

proposes to irrigate his additional 120 acres without

changing the amount of water diverted from the well.

R40E

[illegible]

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.

(Applicant)

Received by dh Date 9-20-79 Time \_\_\_\_\_  
Preliminary check by HC Fee \$ 45.00  
Receipted by jf Date 9-20-79  
Publication prepared by dh Date 9-21-79  
Published in Caribou County Sun  
Publication dates 9/27 & 10/4/79  
Publication approved JD Date 10/10/79  
Protests filed by: A. L. Hatch, Mayor, City of Bancroft; Warren Lloyd, Everett Smith, Don Campbell, Keith Lloyd (John K. Looze, Atty.); Fred Yost, Diamond G Farms, Lynn E. Smith, Gordon Yost,  
Date E. Yost  
Copies of protests forwarded by cal  
Hearing held by Ed Florence Date Sept 2, 1980  
Recommended for approval denial by EMC

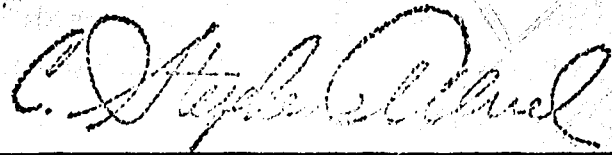
**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 13-7259, 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 June 1, 19 85.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: PURSUANT TO PROPOSED MEMORANDUM DECISION AND ORDER

Witness my hand this 19th day of May, 19 80.



Director

issued or it is determined by the director that the information is no longer necessary.

6. The Director retains jurisdiction over this permit and may immediately cancel this permit if he has reason to believe that the rights of any senior right holder is being injured by use of water hereunder.

7. Proof of construction of works and application of water to beneficial use shall be submitted to this Department on or before June 1, 1985.

Dated this 19 day of May, 1980.

  
BOBBY D. FLEENOR  
Hearing Officer

interference or excessive pumpage drawdown.

Observation well records from three wells from 1967 to present show no significant declines in their particular areas, nor does a comparison of water levels in specific wells for the years 1928-29, 1968 and 1979. Since none of the observation wells in question are located in the immediate area of this application, and as a result of local interest in water level trends, the IDWR in cooperation with the U.S. Geological Survey established three more observation wells in the southern part of the valley in late January of 1980. Insufficient record exists on water levels in these newly established observation wells at present upon which to draw any site specific conclusions regarding short or long-term trends. Existing observation well records, however, indicate there has not been significant well interference in the area of applicant's proposed appropriation.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Permit No. 13-7259 be and is APPROVED subject to the following conditions:

1. Use of water under this permit is subject to all prior existing water rights.

2. An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

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

4. This permit shall not be assigned or sold without first securing the written approval of the Department of Water Resources.

5. Permit holder shall measure the static, non-pumping, depth to water in his well on a bi-weekly basis and shall forward those measurements to the Department once a month through the irrigation season each year until either a water right license is

years is proposed by this application.

2. Testimony and available evidence do not show that appropriation of groundwater from the applicant's point of diversion will reduce the quantity of groundwater available to existing rights.

3. The applicant is entitled to approved permit from the Department of Water Resources.

#### ANALYSIS

The Gem Valley area once had a broad channel along its western margin filled with interbedded sediments and basalt to an approximate depth of 300 feet. Lakebed sediments of a pre-existing lake were later deposited throughout the valley and were later exposed to erosion. Basalt which flowed down Ten-Mile Pass and Bear River and from vents within Gem Valley flooded the valley to approximately its present elevation.

Recent basalts such as occur in Gem Valley are very permeable and often yield large quantities of water to wells with little drawdown. Driller's logs in the area confirm this conclusion. Wells having little drawdown also are not prone to significant interference with other wells. Fine-grained lakebed sediments, on the other hand, generally yield little water to wells and are prone to pumpage effects of wells developed in them. Wells which penetrate an alternating sequence of fine sediments and basalts will have characteristics ranging between these two extremes, which seems to be the case along the western margin of the valley, approximately along the alignment of the buried channel.

Interference effects between wells near the middle of the valley will be less pronounced also than along the margins of the valley, where the relatively impermeable rocks of the valley walls allow little or no groundwater recharge to the wells from that direction. The applications in question all seems to be predominantly in areas underlain by basalts near the middle of the valley and should, therefore, have little problem with well

testants have irrigation wells which have not been affected, even though one of the wells is only one-half mile from the applicant's well. Testimony of the protestants also indicates problems have been evident in those wells drilled to depths less than 200 feet, except for Diamond G Farms, whose wells are 280 and 390 feet deep. Those wells are located over twelve miles from the applicant's wells, however.

There were two main issues presented by the protestants which they wished the Department to consider in taking action on this application for permit:

1. The application was speculative since the applicant does not own the place of use under the application.
2. The applications will severely reduce the quantity of water which is necessary to satisfy prior existing water rights.

#### FINDINGS OF FACT

1. The proposed place of use under this application has previously been irrigated with water diverted from the well owned by the applicant.
2. Agreements exist, whether verbal or written, between the applicant and Bob Bolten, relative to use of the well under this application.
3. The wells in the immediate area which have been experiencing problems are less than 200 feet in depth. The applicant's well was drilled to a depth of 370 feet.
4. The protestant's water rights are senior in priority to any priority that could be established by the applicant under this application.
5. Two out of the last three years have been much below normal in precipitation and therefore there has been little recharge to the groundwater system.

#### CONCLUSIONS OF LAW

1. The application is not speculative in nature since no change in the practice that has occurred during the last four

their concerns. The City of Bancroft, another protestant, was not present.

Testimony by the applicant revealed the proposed point of diversion is actually an existing well located on his property. The well was drilled to a depth of 370 feet and in 1977 was capable of diverting 1,800 gallons per minute (approximately 4.0 cubic feet per second). Measurement by the applicant of the water level in this well, indicate an average depth to water of 183 feet below land surface for the period of July, 1977 to January 5, 1980, with no more than two and one-half to three feet fluctuation. The applicant also testified that water from this well had been used to irrigate the proposed place of use for the past four years. This property is owned by Bob Bolten, and the applicant intends to operate it again based on a verbal lease with Mr. Bolten. Although, the irrigation system was designed to irrigate the applicant's deeded property on a eleven-day rotation, with the addition of Mr. Bolten's property, the applicant stated this would be increased to a thirteen-day rotation, and would not require diverting additional water.

The protestants and their witnesses testified that around June, 1977, the following problems began to occur with their irrigation wells:

- a. Pumping sand
- b. Loss of pressure
- c. Pumping air
- d. Significant and severe drops in water tables
- e. Damage to equipment as a result of pumping sand, i.e., holes in mainlines, damage to sprinkler heads and a destroyed pump.

The protestants also testified that numerous domestic wells had dried up or developed characteristics similar to the irrigation wells during this period. They attributed these problems to a series of years with below normal precipitation and increasing demand on the available groundwater. Two of the pro-

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                                      |   |                     |
|--------------------------------------|---|---------------------|
| IN THE MATTER OF APPLICATION FOR     | ) |                     |
|                                      | ) | PROPOSED            |
| PERMIT NUMBER 13-7259 IN THE NAME OF | ) |                     |
|                                      | ) | MEMORANDUM DECISION |
| VON N. SIMONSON                      | ) |                     |
| -----                                | ) | AND ORDER           |

On September 20, 1979, Von N. Simonson applied to the Department of Water Resources for a permit to appropriate 2.00 cubic feet per second, from a groundwater source to be diverted within the SW1/4 NW1/4, Section 27, Township 9 South, Range 40 East, B.M., Caribou County, to be used from April 1 to November 1 for the irrigation of 120 acres within the NW1/4, Section 27, Township 9 South, Range 40 East, B.M.

Notice of this application was published in the Caribou County Sun on September 27 and October 4, 1979, and on October 5, 1979 was protested by the City of Bancroft. Additional protests were also received on October 9, 1979 from John K. Looze, Attorney at Law, representing Warren Lloyd, Everett Smith, Don Campbell, and Keith Lloyd; on October 12, 1979 from Lynn E. Smith; October 15, 1979 from Gordon Yost; October 16, 1979 from Diamond G. Farms; October 17, 1979 from Fred Yost; and October 19, 1979 from Date E. Yost.

On January 9, 1980, a hearing was held in Soda Springs, Idaho, and was conducted in accordance with the rules and regulations of practice and procedure of the Department. The applicant was present and represented by Leonard O. Kingsford, Attorney at Law. The protestants, Warren Lloyd, Everett Smith and Keith Lloyd were present and represented by John Looze, Attorney at Law. Protestants Fred Yost, Lynn Smith, Gordon Yost, and Date E. Yost were present and represented themselves. The protestant Diamond G Farms was present and Kirk Larsen, Secretary, presented

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NO'S.  
13-7260 AND 13-7261 IN THE NAME OF DWAIN K.  
CHRISTENSEN AND APPLICATION FOR PERMIT NO.  
13-7259 IN THE NAME OF VON N. SIMONSON

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 24th day of July, 1980, true and correct  
copies of the foregoing RESPONSE TO EXCEPTION TO PROPOSED ORDER, was mailed,  
postage prepaid to:

Von Simonson  
Route 1, Box 37  
Grace, ID 83241

Date E. Yost  
Bancroft, ID 83217

Gordon Yost  
Bancroft, ID 83217

Lynn E. Smith  
Route 1, Box 61  
Grace, ID 83241

Paul R. Durrance  
Diamon G Farms, Inc.  
Bancroft, ID 83217

John K. Looze, Attorney  
DIAL, LOOZE & MAY  
P. O. Box 207  
Pocatello, ID 83201

Leonard O. Kingsford  
160 S. Main  
Soda Springs, ID 83276

Fred Yost  
170 S. 2nd E.  
Soda Springs, ID 83276

Everett Smith  
Box 62  
Grace, ID 83217

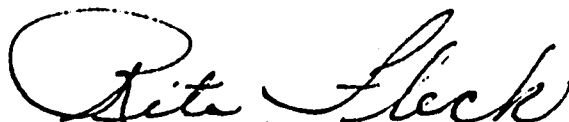
Warren Lloyd  
Star Route  
Bancroft, ID 83217

Don Campbell  
Star Route  
Bancroft, ID 83217

Keith Lloyd  
Star Route  
Bancroft, ID 83217

A. L. Hatch, Pres.  
City of Bancroft  
P. O. Box 39  
Bancroft, ID 83217

Dwaine K. Christensen  
Route 1, Box 43  
Grace, ID 83241

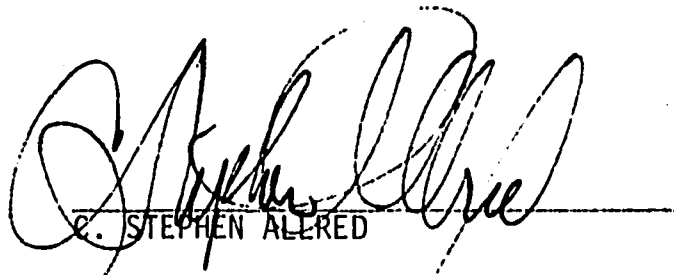
  
RITA I. FLECK

general comments were made about the series of dry years just past and the department, using the common knowledge that 1977 was a drought year and that 1979 was also a low water year, made it's finding.

Exception No. 3 -- The protestants argue that we did not consider the evidence presented concerning interference between wells. In reply, we state that the evidence given was considered. The effects testified to were very general in nature and no direct cause of well problems was established to the permitted well. The one protestant that had little trouble with his irrigation well owns the well nearest the protested well and the domestic well that went dry is near Bancroft, several miles away.

Exception No. 4 -- The protestants argue that the Hearing Officer relied on evidence not introduced at the hearing and that the protestants must be given an opportunity to contest the same. In reply, we state that the Hearing Officer did not base his proposed decision on evidence not introduced and that further, the protestants were given the opportunity to file exceptions to the proposed decision which they failed to file timely. The parties will also have the opportunity to request a rehearing before the department or to appeal the decision to the district court.

Dated this 21 day of July, 1980.

  
C. STEPHEN ALLRED  
Director

## STATE OF IDAHO

RESPONSE TO EXCEPTION  
TO PROPOSED ORDER

An exception to the proposed decision was received on June 5, 1980 from John K. Looze, attorney for protestants Everett Smith, Warren Lloyd and Keith Lloyd. This exception was not timely filed and, therefore, is rejected and the proposed decision on Applications for Permit No's. 13-7260 and 13-7261 is hereby adopted as the Director's decision.

Exception No. 1 -- The protestants argue that a possessory interest in the place of use is required by case law Lemmon vs Hardy and by statutory law in Sections 42-212 and 42-213, Idaho Code. In reply, we must state that in the case of Lemmon vs Hardy, the court affirmed the finding of the Director that an application was speculative until a place of use of the water was obtained. This decision speaks only of the place of use and cannot be construed to require possessory interest in the land at the point of diversion. There is much case law on this subject which when summarized, indicates that an application may be filed but no actual development can occur until access to the point of diversion is obtained.

Exception No. 2 -- The protestants argue that no evidence was submitted on the amount of precipitation in the past three years. In reply we state that several

State of Idaho  
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: John C.

13-11257  
APPLICATION NUMBER: 13 7259

CHECK:

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

Field check by: \_\_\_\_\_

Date: \_\_\_\_\_

Comments: \_\_\_\_\_

\*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT: \_\_\_\_\_

SEND COPIES TO:

- ☐ Idaho State Health Department. Copies sent by: \_\_\_\_\_ Date: \_\_\_\_\_  
☐ Idaho Fish and Game Department. \_\_\_\_\_  
☐ Idaho Department of Lands. \_\_\_\_\_  
☐ U.S. Bureau of Land Management. \_\_\_\_\_  
☐ U.S. Forest Service. \_\_\_\_\_  
☐ Other \_\_\_\_\_

PROCESSING:

- ☒ Yes ☐ No Platted by: JC Map No. 13-9:406  
☐ Yes ☒ No Other rights on same place of use. \_\_\_\_\_  
☒ Yes ☐ No\* In form for advertising.  
Final date for protests: OCTOBER 15, 1979  
☒ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 12-10-79  
☒ Application published correctly. If not, record action taken: \_\_\_\_\_  
☒ Fee amount, receipt date & number, recorded on application.  
☒ Publication dates and paper, recorded on application.  
☒ Protests, dates, withdrawal, etc., recorded on application.  
☒ Recommendation & initial, recorded on application.  
☐ Yes ☒ No Measuring device required.  
☒ Yes ☐ No Access port required.  
☐ Yes ☒ No Will water be delivered by watermaster? If yes, what district? \_\_\_\_\_  
3/20/1979 Date of priority recommended.  
Special conditions of approval or cover letter. \_\_\_\_\_

By: Ernest Carlson Date: 7/4/1980

STATE OFFICE REVIEW:

- ☐ See attached sheet for more information.  
By: \_\_\_\_\_ Date: \_\_\_\_\_

May send to Lawrence

NOTICE OF APPLICATION FOR WATER RIGHT

Notice is hereby given that the following application(s) have been submitted for permit to appropriate the public waters of the State of Idaho:

12-7352

SIMONSEN, WDM N.

ROUTE 1, BOX 27, BRACE, ID 83241

Source: GROUNDWATER

Date Filed: 09/20/1979

Amount: 2.00 CFS

Diversion Point: SEWM Sec 27 T 09S R 40E CARIBOU Co.

Use: IRRIGATION (2.00 CFS) from 04/01 to 11/01

Place of Use: NENE NINE SEWE SEWE Sec 27 T 09S R 40E FOR 120 ACRES

Diversion Means: WELL, PUMP & SPRINKLER SYSTEM

If issued, the permit(s) will be subject to all prior water rights. Protests against the granting of any permit must be filed with the Director of the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho 83401 on or before October 15, 1979.

C. STEPHEN ALLRED

Director

Published &. 9/27 and 10/04/79

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Eastern Region

---

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7185

SEPTEMBER 21, 1979

Caribou County Sun  
P. O. Box 915  
Soda Springs, Idaho 83276

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 sales 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 . October 15, 1979,

Yours truly,

RONALD D. CARLESON  
Supervisor  
Eastern Region

Encl.

DIAL, LOOZE & MAY

ATTORNEYS AT LAW

216 W. WHITMAN

POCATELLO, ID. 83201

T. F. DIAL  
J. K. LOOZE  
C. C. MAY

(208) 233-0132  
P. O. BOX 207

October 4, 1979

Director  
Idaho Dept. Water  
Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

Dear Sir:

Enclosed you will find Protests to the following Applications  
for Water Right:

Von N. Simonson, Route 1, Box 37, Grace,  
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace,  
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace,  
Idaho 83241, Application No. 13-7261.

If there are any questions with these Notices of Protest,  
please feel free to call me.

Sincerely,

JOHN K. LOOZE

ch  
cc: Mr. Warren Lloyd  
Mr. Everett Smith  
Mr. Don Campbell  
Mr. Keith Lloyd

CERTIFIED RRRPO7 6452573

RECEIVED

OCT 9 1979

Department of Water Resources  
Eastern District Office

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES  
Eastern Region

JOHN V. EVANS  
Governor  
C. STEPHEN ALLRED  
Director

1515 Lincoln Road  
Idaho Falls, ID 83401  
(208) 523-7186

October 9, 1979

Von N. Simonson  
Route 1, Box 37  
Grace, Idaho 83241

RE: Your App/Permit 13-7259

Dear Sir:

Enclosed is a copy of a protest filed against the approval of a permit pursuant to the above-referenced application. The Department suggests you contact the protestants directly in an effort to determine the nature of the protest and 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 hearings. 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 (Section 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 purposes 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 conflict with the local public interest?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of further assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Supervisor, Eastern Region

RDC:dh

Encl.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Eastern Region

JOHN V. EVANS  
Governor  
C. STEPHEN ALLRED  
Director

1515 Lincoln Road  
Idaho Falls, ID 83401  
(208) 523-7186

October 9, 1979

A. L. Hatch, Mayor  
City of Bancroft  
P. O. Box 39  
Bancroft, Idaho 83217

RE: Apps/Permit 13-7253, 13-7260 and 13-7261

Dear Sir:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 hearings. At such a conference and/or hearings, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?

You will be notified at a later date of the time and place of the conference and/or hearings. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Regional Supervisor

RDC:dh

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Eastern Region

JOHN V. EVANS  
Governor  
C. STEPHEN ALLRED  
Director

1515 Lincoln Road  
Idaho Falls, ID 83401  
(208) 523-7196

October 10, 1979

John K. Looze, Attorney  
Dial, Looze & May  
P. O. Box 207  
Pocatello, Idaho 83201

RE: App/Permit 13-7258, 13-7260 & 13-7261

Dear Sir:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 hearings. At such a conference and/or hearings, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 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 speculation?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?

You will be notified at a later date of the time and place of the conference and/or hearings. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Regional Supervisor

RDC: dh

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES  
Eastern Region

JOHN W. EVANS  
Governor  
C. STEPHEN ALLRED  
Director

1515 Lincoln Road  
Idaho Falls, ID 83401  
(208) 523-7188

October 10, 1979

Keith Lloyd  
Star Route  
Bancroft, Idaho 83217

RE: App/Permit 13-7259, 13-7260 & 13-7261

Dear Sir:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 hearings. At such a conference and/or hearings, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Regional Supervisor

RDC: dh

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Eastern Region

JOHN V. EVANS  
Governor  
C. STEPHEN ALLRED  
Director

1515 Lincoln Road  
Idaho Falls, ID 83401  
(209) 531-7188

October 10, 1979

Don Campbell  
Star Route  
Bancroft, Idaho 83217

RE: App/Permit 13-7259, 13-7260 & 13-7261

Dear Sir:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the Applicant. The Department suggests that 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 hearings. 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 (Section 42-203, IDAHO CODE):

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You will be notified at a later date of the time and place of the conference and/or hearings. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Regional Supervisor

RDC:hh

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Eastern Region

JOHN V. EVANS  
Governor  
C. STEPHEN ALLRED  
Director

1515 Lincoln Road  
Idaho Falls, ID 83401  
(208) 523-7188

October 10, 1979

Warren Lloyd  
Star Route  
Bancroft, Idaho 83217

RE: App/Permit 13-7259, 13-7260 & 13-7261

Dear Sir:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 hearings. At such a conference and/or hearings, the following are the principle items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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You will be notified at a later date of the time and place of the conference and/or hearings. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Regional Supervisor

RDC:dh

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
Eastern Region

JOHN V. EVANS  
Governor  
C. STEPHEN ALLRED  
Director

1515 Lincoln Road  
Idaho Falls, ID 83401  
(208) 523-7186

October 10, 1979

Everett Smith  
Box 62  
Grace, Idaho 83217

RE: App/Permit 13-7259, 13-7260 & 13-7261

Dear Sir:

Your protest against the approval of the above-referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 hearings. At such a conference and/or hearings, the following are the principal items the Department can consider in either approving or denying the application for permit (Section 42-203, IDAHO CODE):

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Sincerely,

RONALD D. CARLSON  
Regional Supervisor

RDC: dh



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

October 19, 1979

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

RE: APPLICATION FOR PERMIT NO. 13-7259, 13-7260 and 13-7261

Fred Yost  
170 S. 2nd E.  
Soda Springs, Idaho 83276

Dear Sir:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 the application for permit (Section 42-203, IDAHO CODE):

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You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:cw

cc: IDWR - State Office



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

October 19, 1979

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

RE: APPLICATION FOR PERMIT No. 13-7259, 13-7260 and 13-7261

Mr. Paul R. Durrance, Pres.  
Diamond G. Farms, Inc.  
Bancroft, Idaho 83217

Dear Sir:

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

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Sincerely,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:cw



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

October 19, 1979

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

C. Stephen Allred  
Director

RE: Application for Permit No. 13-7259, 13-7260, 13-7261

Mr. Lynn E. Smith  
Rt. #1, Box 61  
Grace, Idaho 83241

Dear Sir:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 the application for permit (Section 42-203, IDAHO CODE):

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Sincerely,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:cw



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

October 19, 1979

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

C. Stephen Allred  
Director

RE: Application for Permit No. 13-7259, 13-7260, 13-7261

Mr. Gordon Yost  
Bancroft,  
Idaho 83217

Dear Sir:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 the application for permit (Section 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 speculation?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:cw

RECEIVED

OCT 31 1979

Department of Water Resources  
Eastern District Office

October 9, 1979

Director  
Idaho Dept. Water Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

Dear Sir:

I am writing to protest the following applications for water rights:

Von N. Simonson, Route 1, Box 37, Grace  
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7261.

The reasons for this protest are that the above proposed appropriation of water will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

Sincerely,

*Dale E. Yost.*  
*Bancroft, Ida.*  
83217



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

October 19, 1979

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

RE: Application for Permit No. 13-7259, 13-7260, 13-7261

Date E. Yost  
Bancroft,  
Idaho 83217

Dear Sir:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests that 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 the application for permit (Section 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 speculation?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?

You will be notified at a later date of the time and place of the conference and/or hearing. If we can be of any assistance, please contact us.

Sincerely,

RONALD D. CARLSON  
Supervisor,  
Eastern Region

RDC:cw



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

October 19, 1979

RE: Application for Permit No. 13-7259

Mr. Von N. Simonson  
Rt. #1, Box 37  
Grace, Idaho 83241

Dear Mr. Simonson:

Enclosed please find additional protests filed against the above referenced application.

If you have any questions concerning this matter, please feel free to contact this office.

Very truly yours,

RONALD D. CARLSON  
Supervisor  
Eastern Region

RDC:CW

Enclosures (5)

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF )  
APPLICATIONS FOR PERMIT NOS. 13-7257, 13-7260, )  
13-7261 IN THE NAME OF DWAIN K. CHRISTENSEN )  
AND 13-7259 IN THE NAME OF VON SIMONSON AND )  
APPLICATION FOR AMENDMENT NO. 29-7264 IN THE )  
NAME OF VERG E. &/OR MAUDE C. HANSEN )

NOTICE OF CONFERENCE

AND/OR HEARING

On August 21, 1979, Dwain K. Christensen filed with the Department of Water Resources Application for Permit to appropriate the public waters of the State of Idaho. On September 12, 1979, the Department received a protest against approval of said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

On September 10th and 20th, 1979, Dwain K. Christensen and Von Simonson, respectively, filed with the Department of Water Resources Applications for Permits to appropriate the public waters of the State of Idaho. On October 5, 1979, the Department received a protest against approval of said application from the City of Bancroft. On October 9, 1979, the Department received protest from Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd through their attorney, John K. Looze. Additional protests were received on October 12, 1979, from Lynn E. Smith; on October 15, 1979, from Gordon Yost; on October 16, 1979, from Diamond G. Farms, Inc.; on October 17, 1979, from Fred Yost; and on October 19, 1979, from Dale E. Yost.

On September 18, 1979, Verg E. &/or Maude C. Hanson filed with the Department Application for Amendment of Permit No. 29-7264 to amend the point of diversion. On October 22, 1979, the Department received a protest against approval of the said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

Considering the similarity of the issues involved the Department has set the matter of protests for combined conference and/or hearing for Wednesday, January 9, 1979, at 9:00 a.m., in the Legion Room, Caribou County Courthouse, Soda Springs, Idaho. Any hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, 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.

In accordance with Idaho Code, Section 42-222, the following issues are involved in the consideration of the applications and protests:

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes 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 conflict with the local public interest?

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 67-5211.

By written stipulation, the parties may waive compliance with Idaho Code, Section 57-5211. If the hearing is conducted by a hearing officer, the hearing office will ask the parties at the close of the hearing whether they would like to make such a stipulation.

Failure to waive compliance with Idaho Code, Section 67-5211 will not prejudice the Director's review of the party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 67-5211 is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance

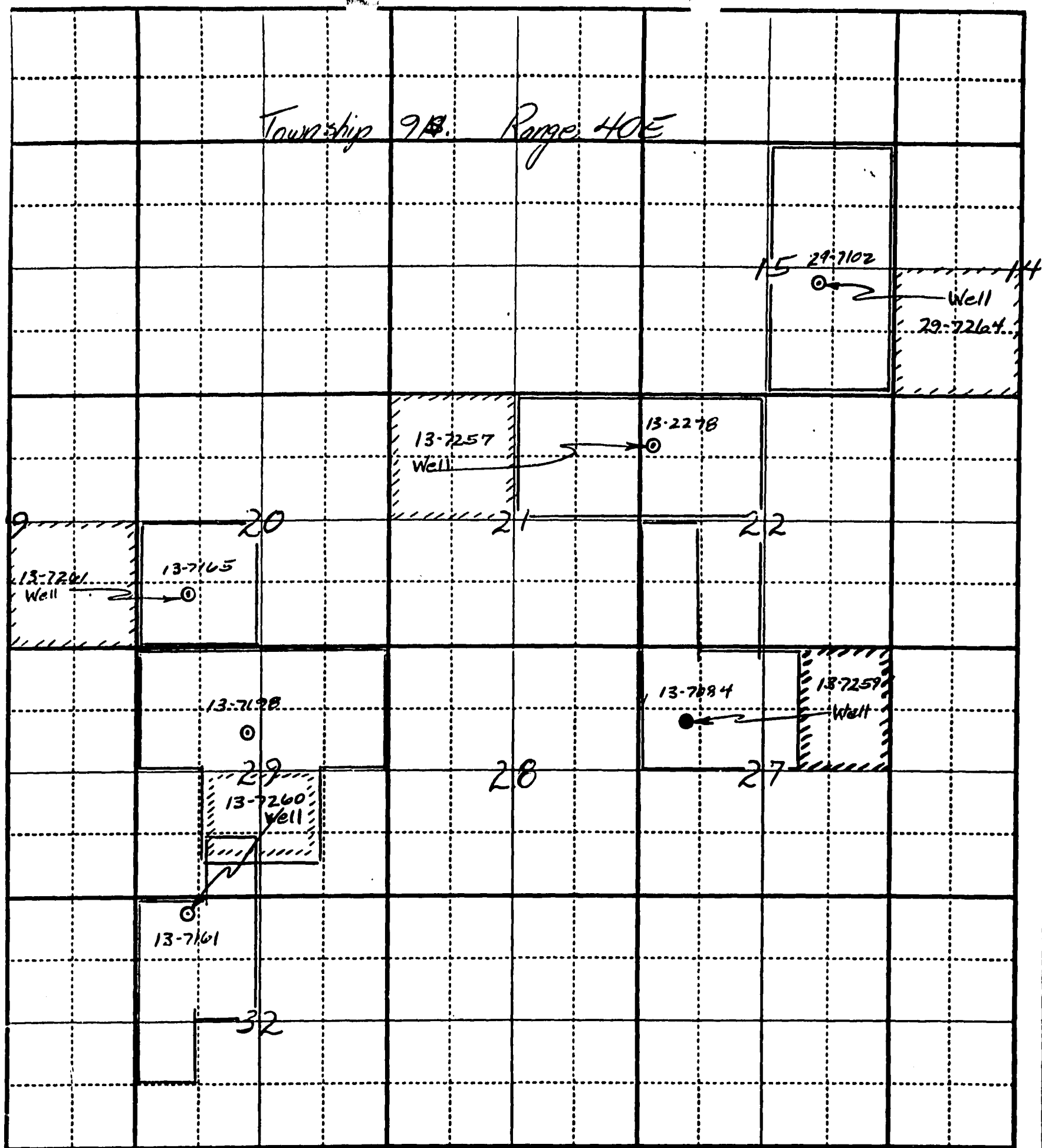
may be assessed against such non-appearing parties.

Dated this 28<sup>th</sup> day of December, 1979.

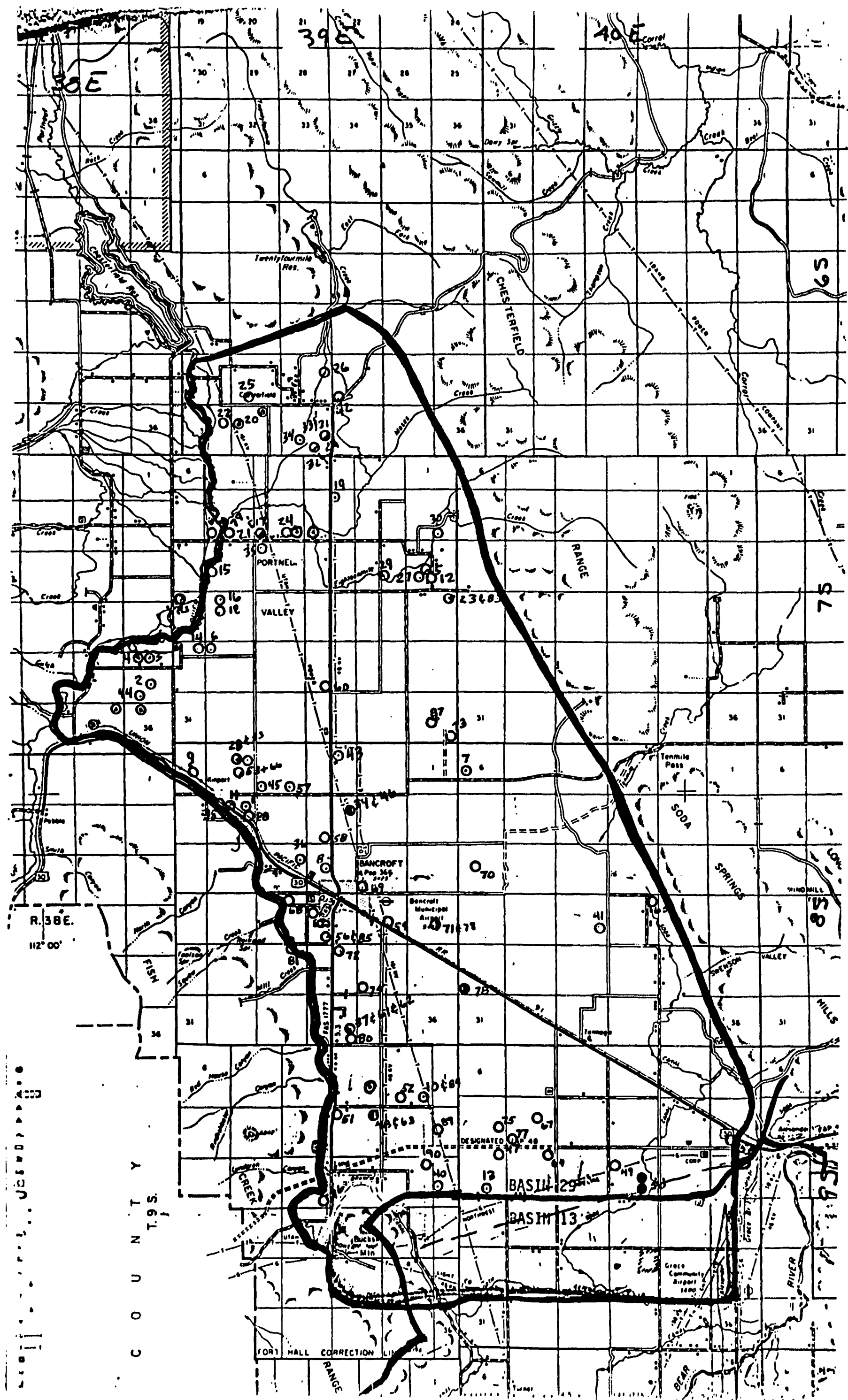
  
RONALD D. CARLSON  
Eastern Region Supervisor

NAME OF APPLICANT.....

Form No. 0



|         |         |                                                                                                                                                                                                   |
|---------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| License | 13-2278 | Priority Aug. 6, 1965 Q = 5.50 cfs. P.O.D. NW NW Sec 22 9S 40E<br>P.O.U. NE $\frac{1}{4}$ Sec 21, NW $\frac{1}{4}$ Sec 22 9S 40E 308 acres.                                                       |
| Permit  | 13-7165 | Priority April 6, 1977 Q = 3.20 cfs. P.O.D. SW SW Sec. 20 9S 40E<br>P.O.U. SW $\frac{1}{4}$ Sec 20 9S 40E 160 acres.                                                                              |
| Permit  | 13-7084 | Priority Oct. 7, 1974 Q = 5.6 cfs. P.O.D. SW NW Sec. 27 9S 40E<br>P.O.U. W $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ Sec 27 W $\frac{1}{2}$ SW $\frac{1}{4}$ Sec 22 9S 40E 280 acres.     |
| Permit  | 13-7198 | Priority June 20, 1977 Q = 6.7 cfs. P.O.D. SE NW Sec 29 9S 40E<br>P.O.U. N $\frac{1}{2}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 29 9S 40E 440 acres.           |
| Permit  | 29-7102 | Priority Oct. 17, 1972 Q = 6.40 cfs P.O.D. NW SE Sec 15 9S 40E<br>P.O.U. E $\frac{1}{2}$ Sec 15 9S 40E. 320 ac.                                                                                   |
| Permit  | 13-7161 | Priority April 15, 1977 Q = 4.80 cfs. P.O.D. NW NW Sec 32 9S 40E<br>P.O.U. SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 29, NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 32 9S 40E 240 ac. |



Name and Address of Sender  
 Address  
 Sender

DEPARTMENT OF WATER RESOURCES  
 EASTERN DISTRICT OFFICE  
 1515 LINCOLN ROAD  
 IDAHO FALLS, IDAHO 83401

Indicate type of mail:  
☐ REGISTERED  
☐ C.O.D.  
☒ CERTIFIED

Affix stamp here if issued on certificate of mailing or for additional copies of this bill.  
 POSTMARK AND DATE OF RECEIPT

| NUMBER OF ARTICLE | NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS | POSTAGE | FEES | R.R. FEE | INSURANCE | ACTUAL VALUE | HANDLING CHARGE | REMARKS |
|-------------------|---------------------------------------------------|---------|------|----------|-----------|--------------|-----------------|---------|
| 1430              | John K. George, 211 W. Livingston, Boatsville     | 15      | 80   | 45       |           | 13-7357 etc. |                 |         |
| 1431              | South Plains, the Rt. Boncrest                    |         |      |          |           |              |                 |         |
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| 1500              | John E. Smith, Boncrest                           |         |      |          |           |              |                 |         |



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 APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL  
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 PS Form 3877, Dec. 1972

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

January 18, 1980

RE: Combined Hearing 13-7257, 13-7260, 13-7261, 13-7259  
and 29-7264

John K. Looze  
Attorney at Law  
P. O. Box 207  
Pocatello, ID 83201

Dear Mr. Looze:

To assure that the Department considers all of the facts which the attorneys involved in the above referenced water right hearings feel are pertinent, we are requesting that each provide the Department appropriate findings of fact and conclusions of law. To prevent undue delays we ask that these be submitted no later than February 15th. The Department will prepare a decision in this matter as soon as both attorneys have responded to this request or on February 15th, whichever comes first.

Very truly yours,

  
RONALD D. CARLSON  
Eastern Region Supervisor

RDC:kw



**STATE OF IDAHO**  
**DEPARTMENT OF WATER RESOURCES**  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

January 18, 1980

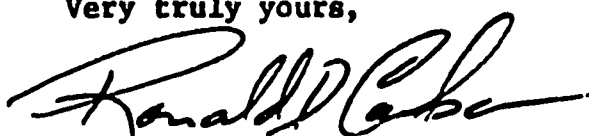
RE: Combined hearing 13-7257, 13-7260, 13-7261 and 13-7259

Leonard O. Kingsford  
Attorney at Law  
160 S. Main  
Soda Springs, ID 83276

Dear Mr. Kingsford:

To assure that the Department considers all of the facts which the attorneys involved in the above referenced water right hearings feel are pertinent, we are requesting that each provide the Department appropriate findings of fact and conclusions of law. To prevent undue delays we ask that these be submitted no later than February 15th. The Department will prepare a decision in this matter as soon as both attorneys have responded to this request or on February 15th, whichever comes first.

Very truly yours,

  
RONALD D. CARLSON  
Eastern Region Supervisor

RDC:kw

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT )  
13-7259 IN THE NAME OF VON N. SIMONSON )  
AND APPLICATIONS FOR PERMITS NO. 13-7260 )  
AND 13-7261 IN THE NAME OF DWAIN K. )  
CHRISTENSEN )  
\_\_\_\_\_) SHOW CAUSE ORDER

On September 10, 1979, Dwain K. Christensen filed two applications for permits No. 13-7260 and 13-7261, and on September 20, 1979, Von N. Simonson filed application for permit No. 13-7259, each to appropriate the public waters of the State of Idaho. Notice of these proposed appropriations were published in the Caribou County Sun, Soda Springs, Idaho, on September 27 and October 4, 1979.

WHEREAS, on October 5, 1979, the Department received a protest from the City of Bancroft. On October 9, 1979, additional protests were received from John K. Looze, Attorney at Law, representing Warren Lloyd, Everett Smith, Don Campbell, and Keith Lloyd; on October 12, 1979 from Lynn E. Smith, October 15, 1979 from Gordon Yost; October 16, 1979 from Diamond G Farms; October 17, 1979 from Fred Yost; and October 19, 1979 from Date E. Yost.

A hearing was held in the matter on January 9, 1980, at which time the protestant, City of Bancroft, failed to appear.

IT IS, THEREFORE, HEREBY ORDERED that the City of Bancroft show cause on or before April 21, 1980, why their protest should not be set aside for failure to appear at the hearing.

Dated this 4<sup>th</sup> day of April, 1980.

  
RONALD D. CARLSON  
Eastern Region Supervisor

LEONARD O. KINGSFORD  
Attorney at Law  
160 South Main Street  
Soda Springs, Idaho 83276

Telephone No. 547-4321

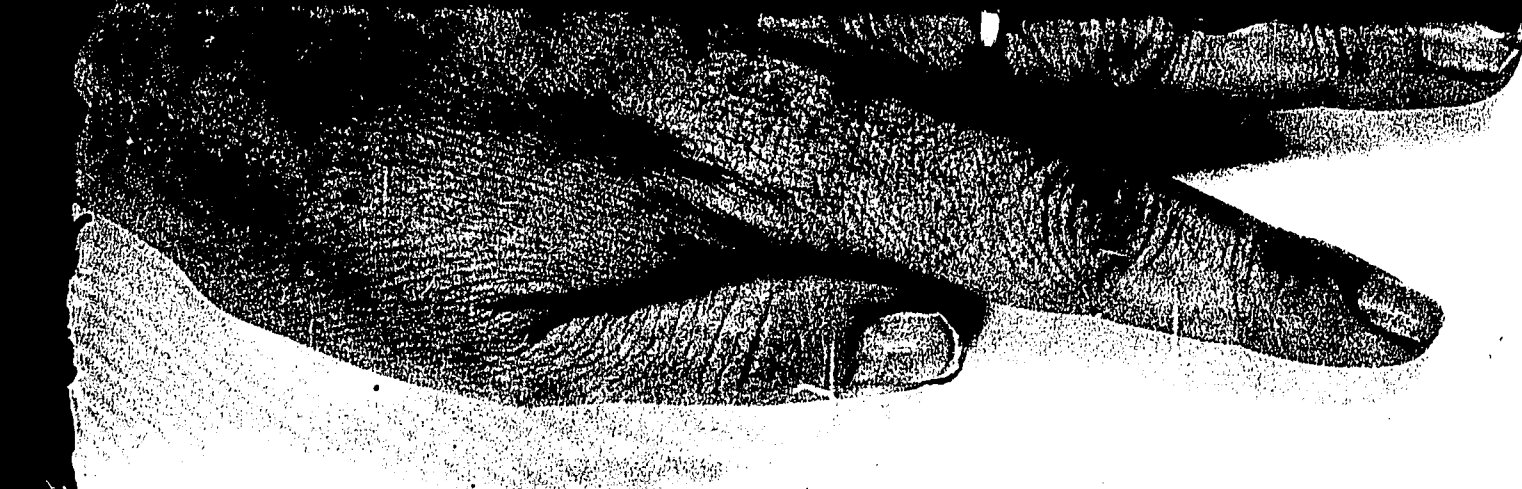
BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                                        |   |                      |
|----------------------------------------|---|----------------------|
| In the Matter of Protests Against      | ) |                      |
| Approval of Applications for Permit    | ) |                      |
| Nos. 13-7257, 13-7260, 13-7261 in      | ) | FINDINGS OF FACT AND |
| the Name of Dwain K. Christensen       | ) |                      |
| and 13-7259 in the Name of Von         | ) | CONCLUSIONS OF LAW   |
| Simonson and Application for           | ) |                      |
| Amendment No. 29-7264 in the Name of   | ) |                      |
| <u>Verg E. and/or Maude C. Hansen.</u> | ) |                      |

The Hearing Officer makes the following findings of fact from the testimony given at the Hearing on January 9, 1980, in the above captioned matter, and by taking official notice of applications, permits and licenses affecting the wells of applicants and protestants, and of official department studies of the aquifer underlying the area in question, and on file with the department.

FINDINGS OF FACT

1. Application No. 13-7257 was withdrawn by Dwain K. Christensen.
2. With reference to Application No. 13-7259, the applicant, Von Simonson, has an existing well upon land which he presently owns. Said well is 370 feet deep. He proposes to water from said well, 90 acres of land owned by Robert Bolton, and operated under lease by the applicant. No written lease was shown in evidence. Applicant testified that he would water the lands owned by him in an 11 day cycle, or that he could water both the deeded and leased land in a 13 day cycle, using the same water in either operation.
3. With reference to Application No. 13-7260, the applicant, Dwain K. Christensen, proposes to provide water from a well owned by Clynn H. Christensen to water 89 acres owned by applicant, but leased to said Clynn H. Christensen. This well is 385 feet deep. Applicant testified that he has water available to water said 89 acres, under Permit No. 13-7198; but that it would be more convenient for his tenant, Clynn H. Christensen to water the 89 acres from his own well, during the term of the lease.
4. With reference to application No. 13-7261, the applicant, Dwain K. Christensen proposes to water 152 acres of land owned by applicant from a well owned and located on land owned by Leo Christensen. This well is 530 feet deep. This land is presently leased by Clynn H. Christensen, a son of Leo Christensen.



Clynn H. Christensen testified that he and his father approved this arrangement, as it was to their advantage as well as to the advantage of the applicant. Dwain K. Christensen testified that the application was made in his name upon the advice of Mr. Stephen Allred, of the Department of Water Resources.

5. The area most affected by these Applications and Protests is  $8\frac{1}{2}$  miles long by  $6\frac{1}{2}$  miles wide. Within that area lie all of the points where the Applicants propose to make their diversions and applications. Also within this area lie all the wells which the protestants and witnesses own or testified regarding. The affected area contains approximately 23 irrigation wells, as well as numerous culinary wells and the domestic water supply for the City of Bancroft. The City of Bancroft was not represented at the hearing.

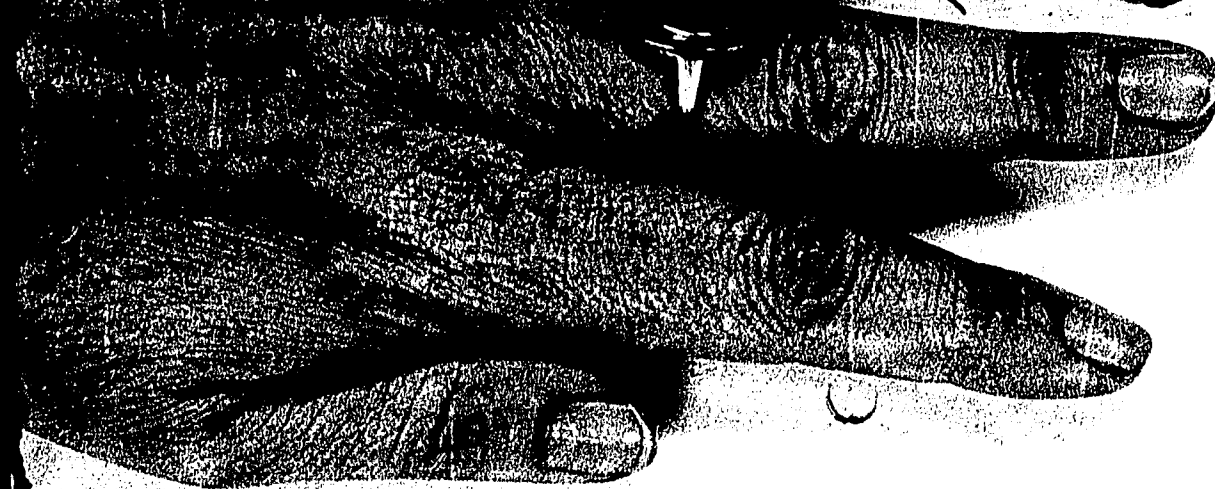
6. According to Protestants and their witnesses, the following problems started to occur with irrigation wells lying within the above mentioned area, in or about June, 1977:

- A. Pumping sand.
- B. Loss of pressure.
- C. Pumping air.
- D. Significant and severe drops in water tables.
- E. Damage to equipment as a result of pumping sand, e.g., holes in main lines and damage to sprinkler heads, and a destroyed pump.
- F. Crop failure due to lack of water. Particularly, Everett Smith lost many thousands of dollars due to a lack of water.
- G. Warren Lloyd expended substantial additional amounts in labor and energy costs to remove sand from his lines, and also experienced a loss of one crop of hay due to a lack of water.

7. There is some conflict in the testimony as to water levels in the various wells. However, Von Simonson testified from records kept over several years that there was only minimal fluctuation in the water level in his well. One of the protestants, Date Yost, also testified that he has had no problem with his irrigation well, which is located near the wells of the applicants. He did testify that his culinary well, near Bancroft, and several miles from the wells of the applicants, had gone dry.

8. All of the wells reported to have had problems, except that of Everett Smith, are located North and West of the applicant's wells, and at some distance from the applicant's wells. There was no evidence to directly connect the problems of other wells with the use of the wells of the applicants. Any finding thereon must rest upon the mere fact that other wells have problems; and as noted in Finding No. 7, the Date Yost well, located near the applicant's wells, has had no problem.

9. Protestants gave some general testimony that hard feelings existed because of the alleged water problems in the area. However, when given an opportunity to specify anything more than generalizations, one protestant, Date Yost, only smiled. The only apparent animosity displayed by any of the witnesses on the stand was that displayed by Bishop Lynn E. Smith, whose testimony was belligerent, but otherwise consisted of generalities.



10. Several of the witnesses testified that the area has had several dry years. None had specific data thereon, however.

11. Each of the applicants testified that they have had sufficient water for their use and contemplated use during the past several years.

12. Priority for use of the various wells does and will depend upon the priority dates established by the various water users at time of appropriation.

13. The applicant's wells, in each case, are in existence and in use, so that there is no question of financial resources being available. Each applicant testified to the desirability of watering the land, if permitted to do so. Fred Yost, a C.P.A., raised a question as to the financial advisability of irrigating land, but admitted he could produce no specific figures thereon.

14. The application of Verge E. Hansen, to amend Permit No. 29-7264, and application No. 13-7260 by Dwain K. Christensen, are, in effect, applications for temporary changes in points of diversion, for the benefit of tenants, and do not contemplate an enlargement of existing rights, or use of additional water.

15. Department studies of the aquifer in question do not indicate that the granting of the applications being protested would adversely effect any of the protestants with the possible exceptions of Everett Smith and Date Yost; and Date Yost has testified that his irrigation well has not been adversely affected.

#### CONCLUSIONS OF LAW

1. Application No. 13-7260, for the watering of 89 acres of land, is for the benefit, at least in part of Clynn H. Christensen, lessee under a written lease, although the application was made in the name of Dwain K. Christensen, owner of the leased land. Since Clynn H. Christensen testified in favor of said application, it cannot be said that such application is speculative nor dependent upon trespass.

2. The granting of the Hansen application to amend Permit No. 29-7264, and the granting of the Christensen application No. 13-7260, as temporary changes in the point of diversion of water during the term of leases covering the lands involved would appear to have no adverse effect on any water user, and should be granted.

3. Where all parties concerned with the taking and applying of water in connection with rented lands were before the hearing officer, and testified in favor of granting the rights requested, we cannot describe the requests as speculative, nor can a person holding under an oral lease be held to be a trespasser.

4. The case of Lemmon vs. Hardy, 95 Id. 778, 519 P.2nd 1168 (1974), relied on by the protestants, is distinguishable from the present case, both on the basis of facts, and the basis of law. It should be noted that in that case, both applications were ultimately allowed, and only dates of priority were subject to challenge. In the present case, as a matter of law, the most recent applicants are entitled only to the later priority dates. In such case, the earlier priorities are fully protected.

5. Idaho Code Sections 42-212 and 42-213, relied upon by the protestants, cover the diversion of private waters, only, and have no bearing upon the appropriation of the public waters of the State of Idaho.

6. The rights of all parties can be adequately protected upon the basis of the priority dates of the various permits and applications; and the applications now pending should be granted with the priority dates shown thereon.

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OCT 30 1979

Department of Water Resources  
Eastern District Office

October 9, 1979

Director  
Idaho Dept. Water Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

Dear Sir:

I am writing to protest the following applications for water rights:

Von N. Simonson, Route 1, Box 37, Grace  
Idaho 83241, Application No. 13-7259;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7260;

Dwain K. Christensen, Route 1, Box 43, Grace  
Idaho 83241, Application No. 13-7261.

The reasons for this protest are that the above proposed appropriation of water will:

1. Severely reduce the quantity of water which is necessary to satisfy prior existing water rights;
2. Conflict with the local public interest.

Sincerely,

*Dale E. Yost,*  
*Bancroft, Ida.*  
83217

BDF

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF )  
APPLICATIONS FOR PERMIT NOS. 13-7257, 13-7260, )  
13-7261 IN THE NAME OF DWAIN K. CHRISTENSEN )  
AND 13-7259 IN THE NAME OF VON SIMONSON AND )  
APPLICATION FOR AMENDMENT NO. 29-7264 IN THE )  
NAME OF VERG E. &/OR MAUDE C. HANSEN )

NOTICE OF CONFERENCE  
AND/OR HEARING

On August 21, 1979, Dwain K. Christensen filed with the Department of Water Resources Application for Permit to appropriate the public waters of the State of Idaho. On September 12, 1979, the Department received a protest against approval of said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

On September 10th and 20th, 1979, Dwain K. Christensen and Von Simonson, respectively, filed with the Department of Water Resources Applications for Permits to appropriate the public waters of the State of Idaho. On October 5, 1979, the Department received a protest against approval of said application from the City of Bancroft. <sup>not represented -</sup> On October 9, 1979, the Department received protest from Warren Lloyd, Everett Smith, Don Campbell <sup>no longer interested</sup> and Keith Lloyd through their attorney, John K. Looze. Additional protests were received on October 12, 1979, from Lynn E. Smith; on October 15, 1979, from Gordon Yost; on October 16, 1979, from Diamond G. Farms, Inc.; on October 17, 1979, from Fred Yost; and on October 19, 1979, from Dale E. Yost.

On September 18, 1979, Verg E. &/or Maude C. Hanson filed with the Department Application for Amendment of Permit No. 29-7264 to amend the point of diversion. On October 22, 1979, the Department received a protest against approval of the said application from John K. Looze, representing Warren Lloyd, Everett Smith, Don Campbell and Keith Lloyd.

Considering the similarity of the issues involved the Department has set the matter of protests for combined conference and/or hearing for Wednesday, January 9, 1979, at 9:00 a.m., in the Legion Room, Caribou County Courthouse, Soda Springs, Idaho. Any hearing will be held in accordance with provisions of Chapter 2, Title 42, and Chapter 52, Title 67, 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.



In accordance with Idaho Code, Section 42-222, the following issues are involved in the consideration of the applications and protests:

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes 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 conflict with the local public interest?

Any party may request in writing five (5) days before any hearing that the oral proceedings thereof be taken in the form of stenographic notes at the expense of the requesting party. Any party may have such stenographic notes of the oral proceedings, or part thereof, transcribed at his own expense. A taped record of the proceedings will be maintained for the appeal period.

If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director prior to the issuance of a final decision by the Director. This procedure is required by Idaho Code, Section 67-5211.

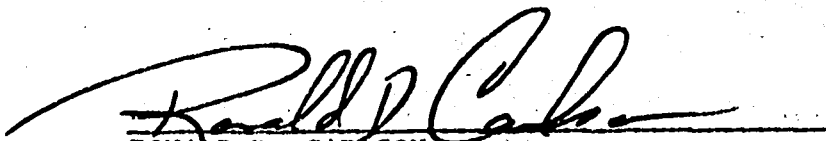
By written stipulation, the parties may waive compliance with Idaho Code, Section 57-5211. If the hearing is conducted by a hearing officer, the hearing office will ask the parties at the close of the hearing whether they would like to make such a stipulation.

Failure to waive compliance with Idaho Code, Section 67-5211 will not prejudice the Director's review of the party's evidence and arguments. However, such a waiver will shorten the decision-making process and may expedite substantially the issuance of a final decision. Whether compliance with Section 67-5211 is waived will not affect a party's right to petition for a rehearing of the final decision pursuant to Rule 11 of the Department's Rules of Practice and Procedure or affect a party's right to appeal the final decision to the District Court.

Failure to appear at the time and place set for hearing by the applicant or protestant(s) may allow the Department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance

may be assessed against such non-appearing parties.

Dated this 28<sup>th</sup> day of December, 1979.

A handwritten signature in dark ink, appearing to read "Ronald D. Carlson", written over a horizontal line.

RONALD D. CARLSON  
Eastern Region Supervisor

DIAL, LOOZE & MAY, Attorneys at Law

TELEPHONE: 233-0132 — P.O. BOX 207 — POCA TELLO, IDAHO 83201

DATE February 20, 1980

TO Mr. Ronald D. Carlson  
Eastern Region Supervisor  
State of Idaho, Dept. Water Resources  
1515 Lincoln Rd.  
Idaho Falls, Idaho 83401

SUBJECT

FOLD

Dear Mr. Carlson:

Enclosed please find the original Findings of Fact and  
Conclusions of Law.

Your patience is appreciated.

Sincerely,

JOHN K. LOOZE

ch

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FEB 21 1980

Department of Water Resources  
Eastern District Office

has presently leased approximately 80 acres, which is included  
in his original permit, to Mr. David Rupp. Mr. Rupp then  
applies water from his own well, located on his own land, to  
the land owned by the applicant. Rupp testified that the



arrangement is not permanent, and should he not use Hansen's land, he would not necessarily continue to use water from his own well on the land owned by Hansen. There were not any written agreements presented showing either:

A. That Rupp had a right to use the land of Hansen.

B. That Hansen had the right to go upon the land of Rupp to appropriate water.

✓ 4. With reference to Application No. 13-7259, the Applicant, Von Simonson, proposes to use water from a well existing on his own land on 90 acres owned by another person. That is, he does not own the land upon which he proposes to apply the water. He did not present any written agreement showing that he had the right to use or go upon the land where he proposes to apply the water.

✓ 5. The area most affected by these Applications is 8 1/2 miles long by 6 1/2 miles wide. Within that area lie all of the points where the Applicants propose to make their diversions and applications. Also within this area lie all the wells which the protestants and witnesses own or testified regarding. The affected area contains approximately 23 irrigation wells, as well as numerous culinary wells and the domestic water supply for the City of Bancroft.

✓ 6. Commencing on or about June 1977, the following problems started to occur with irrigation wells lying within the affected area:

A. Pumping sand.

B. Loss of pressure.

C. Pumping air.

D. Significant and severe drops in water tables.

E. Damage to equipment as a result of pumping sand, e.g., holes in main lines and damage to sprinkler heads, and a destroyed pump.

F. Crop failure due to lack of water. Particularly, Everett Smith lost many thousands of dollars due to a lack of water.

G. Warren Lloyd expended substantial additional amounts in labor and energy costs to remove sand from his lines, and also experienced a loss of one crop of hay due to a lack of water.

7. In addition to the problems experienced by irrigators, approximately six culinary wells have gone dry in the same



area and in the same period of time. Some of the culinary wells had been in use and had no problems for as far back as the early 1900's. Further, there was testimony that the City of Bancroft is experiencing a shortage of water in its well for the City's domestic needs.

8. There is conflicting testimony with regard to the levels of the water in the wells. The applicants generally testified that they were having no problems obtaining water, and that their water levels were not dropping. On the other hand, the remaining witnesses, with the exception of Date Yost, generally testified that they were experiencing a decrease in the levels in their irrigation and domestic wells. (However, Date Yost also did testify in this period of time he had a culinary well go dry.) It was also testified to that the level in the wells, even though they fell during the irrigation season, would generally come back up to near normal levels after the irrigation season was over. The applicants did not present any evidence to refute the testimony of the problems that a number of the irrigators and owners were having. Therefore, it is found that by virtue of the problems of shortages being experienced by some of the irrigators, coupled with their testimony as to falling in the levels of their wells and the loss of domestic wells, that there in fact has been insufficient water to fulfill the permits and licenses of the protestants and other witnesses at the hearing.

9. Pursuant to the official notice taken of the records of the Department, it is found that the protestants and witnesses called on their behalf have superior priority for their permits and licenses.

10. All of the protestants and witnesses called by them, as well as some of the applicants, testified that they were well aware that the water shortages being experienced by others than the applicants were causing a great deal of concern and problems between the persons in the area where the shortages were being experienced. That these problems included very hard feelings between the applicants and those persons with senior water rights, but who were unable to fill those rights, and persons who had been friendly and neighborly were no longer that way. These hard feelings were recognized in the community and are substantiated by the petitions, which the Department has taken official note of, which request the Department to come in and resolve the conflicting water rights by carrying out an adjudication.



These petitions are also signed by persons who apparently reside in either the affected area or the vicinity thereof; state that there are extreme hard feelings caused by the water shortages; and request that all further drilling and appropriation of underground water be stopped in the affected area. Thus, the public in the affected area appears to be very concerned, and as a matter of fact, a granting of any right would appear to be against what the general public believes is appropriate.

11. None of the applicants presented any testimony, nor indicated any knowledge on their part, if there was sufficient water to satisfy their applications; that their proposals would not interfere with existing rights through either the pumping of additional water or changing the method of application; and that they had the financial resources to undertake the proposals or that their proposed applications would provide an economic return. As to the latter question, there is testimony that the additional irrigation would not be economically sound, and that various lending agencies were being very cautious, and even in some instances, refusing to lend money for any additional development due to the very unstable water situation.

#### CONCLUSIONS OF LAW

1. With reference to all of the applicants except Hansen, a direct granting of of the applications would be a conflict with the local public interest of those persons directly in the affected area. The public interest is not served by perpetuating or increasing hard feelings, lack of cooperation, shortage of water to communities, loss of credit for borrowing needed moneys, or going against what the affected public believes t be appropriate.

2. With reference to Application No. 13-7259 (Simonson), it must also be denied because the Applicant does not own the land at the point he proposes to apply it. The law is well-settled in this State that a person cannot appropriate water through trespass. Further, it has been ruled, in Lemmon vs. Hardy, 95 Id. 778, 519 P.2d 1168 (1974), that if a person has not been shown to have a possessory right in the land designated as the place of use, it amounted to making an application for speculative purposes.

3. With reference to Application Nos. 13-7260 and 7261, the Applicant (Christensen) does not own the land

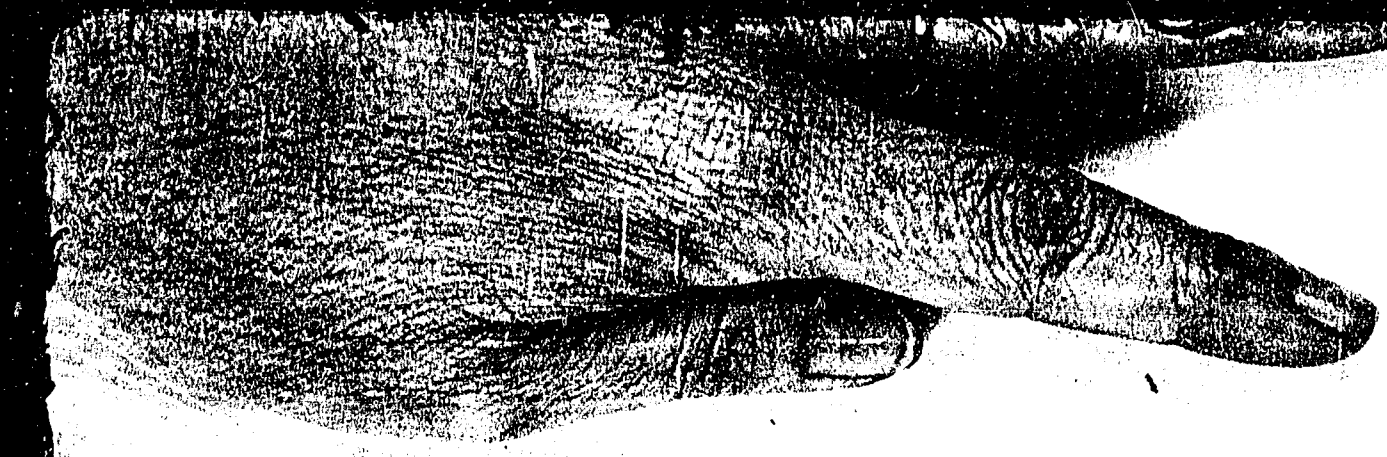


where the proposed point of diversion lies. By correlary, if it is speculative not to own the point where the water is to be applied certainly it would be speculative not to own the point where the proposed diversion is. The reasoning is the same. In Lemmon vs. Hardy, supra, the Court ruled that you could not give somebody a permit and then allow them to just look for a place to apply it. It makes just as much sense to say you cannot give somebody a permit and let them look for a place to take the water.

This position is substantiated by the intent of the Water Code as exhibited in I.C. §§42-212 & 213. Those Sections apply to a situation where a person is attempting to appropriate surface water lying wholly on another person's land. Before such a permit can be issued, the proposed appropriator must show that he has an enforceable right to go upon the other person's land to take the water. The showing that must be made is that he has written permission, and the written permission must be "executed and acknowledged as required for the conveyance of real estate."

I.C. §42-212. Therefore, based on this authority, the hearing officer concludes as a matter of law that Mr. Christensen has not presented any documents to show that he has the right to go upon the land at the proposed point of diversion, and that without such right, the appropriation of the water would be purely speculative.

4. In the matter of Application No. 29-7264 (Hansen), this is technically speaking only a petition to amend an existing Application. Under I.C. §42-211, the Code generally looks to only determining if the proposed amendment would result in a diversion of more water or adversely affect other persons. However, if the proposal would do violence to other requirements, it would not be in keeping with our water law to grant a right merely because it was an amendment. The Applicant does not own the land at the point of diversion. Further, he has testified that he is not even using the land upon which the water would be applied. In essence, the Applicant is trying to get a change in the point of diversion so a neighbor can use his water on the Applicant's land. The fact that Mr. Hansen does not own the point of diversion makes this matter one of speculation as in Application Nos. 29-7260 and 7261. The Applicant has not shown he has any right for access to the land where the point of diversion lies, and has testified that he does not even have any right



to use the land where it is to be applied. This is by reason of the fact he has leased it to other persons. This is extremely speculative, and does violence to the very intention of the Code. A person should not be allowed to obtain a water right, and then through an amendment look for a place to use it.

Of further interest is the fact that Mr. Hansen testified this arrangement for which he is requesting approval has been in existence for approximately two years. It is during that time that many of the problems which other irrigators have noticed have developed. Therefore, the change in the point of diversion may have contributed to the damage suffered by the protestants and other witnesses at the hearing. As a matter of law, then it is found that such a change would adversely affect other water users with senior water rights.

5. With regard to all of the Applications, it has not been shown that each individual has sufficient financial resources to undertake the proposed developments and changes. Therefore, as a matter of law it is found that they have not demonstrated financial capability for the proposals contained in their Applications.

6. With reference to all of the Applications except No. 13-7259, it is found as a matter of law that there is not sufficient water at this time to first satisfy all of the existing senior water users. Therefore, the granting of the Applications would result in a reduction of the amount available to satisfy those rights.

7. As stated in the Findings, there is conflicting testimony as to whether or not there is a sufficient supply of water in the affected area. However, when all of the evidence is taken together, including the difficulty irrigators have had in obtaining water and their testimony and the records of the Department showing that there has been a lowering of the water tables during irrigation season, it is concluded as a matter of law that there is not a sufficient supply to satisfy the Applicants.

COMBINED HEARING  
13-7257, 13-7260, 13-7261 - Dwain Christensen; 13-7259 - Von N. Simonson  
Amendment 29-7264 - Verg E. &/or Maude C. Hansen

Legion Room, Caribou County Courthouse, Soda Springs

January 10, 1980 - 9:00 am

ROSTER OF ATTENDANCE

Hearing Officer \_\_\_\_\_

| Name                 | Address             | Representing                     |
|----------------------|---------------------|----------------------------------|
| Warren Lloyd         | Bancroft, Ida.      | Smith & Lloyd                    |
| Myron                | Pocatello           |                                  |
| Everett              | Idaho               |                                  |
| Keith Lloyd          | Bancroft            |                                  |
| John N. Smith        | Bancroft 23217      |                                  |
| Lynn Smith           | Idaho               |                                  |
| J. E. Yost           | Bancroft            |                                  |
| Edna E. Yost         | Bancroft            |                                  |
| Gordon Yost          | Bancroft            |                                  |
| J. Terry Lamm        | Bancroft            |                                  |
| Kurt Lamm            | Bancroft            |                                  |
| Verg Hansen          | Idaho               |                                  |
| John H. Allen        | Bountiful, Utah     | Verg Hansen                      |
| D. Hansen            | Bountiful           | Verg Hansen                      |
| David Rupp           | GRACE               |                                  |
| Brent Simonson       | GRACE               |                                  |
| Von Simonson         | GRACE               |                                  |
| Leonard A. Ferguson  | Soda Springs, Idaho | Von Simonson & Dwain Christensen |
| Linda Christensen    | GRACE               |                                  |
| Dwain H. Christensen | GRACE               |                                  |
| Lynn H. Christensen  | GRACE               |                                  |

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JUN 5 1980

Department of Water Resources

DIAL, LOOZE & MAY  
ATTORNEYS AT LAW  
P. O. BOX 207  
POCATELLO, IDAHO  
83201  
(208) 233-0132

BEFORE THE DIRECTOR OF THE DEPARTMENT  
OF WATER RESOURCES OF THE  
STATE OF IDAHO

-----X  
In the Matter of Application                   x   EXCEPTIONS TO PROPOSED  
for Permit No. 13-7259 in the                   x                   ORDER  
Name of VON N. SIMONSON.                   x  
-----X

COMES NOW the Protestants, Everett Smith and Warren Lloyd and Keith Lloyd, and make exception to the proposed Order in the above matter. The exceptions are as follows:

1. As noted in the proposed Findings of Facts and Conclusions of Law, the Applicant does not own the land upon which he will apply the water. The Idaho Supreme Court in Lemmon v. Hardy, 95 Id. 778, 519 P.2d 1168 (1974) noted that a person must show that he has a possessory right in the land where the water to be appropriated is going to be applied. Failure to show such possessory interest means that the application for a permit is speculative.

The legislature in Idaho has made it very clear as to what is necessary to show possessory interest in order to establish a water right. In order to appropriate ground water lying on someone else's land, there must be a written agreement giving the applicant the right to go upon the person's land for the appropriation of water. Idaho Code §§42-212 & 213. This is in accord with the general law of the State of Idaho that interest in realty must be evidenced by a writing. There was absolutely no written documentation of any type introduced into evidence.



The Hearing Examiner attempts to rely upon some type of verbal agreement. All the verbal agreements which were testified to in the hearing were objected to on the grounds that they were irrelevant on the basis that they required written documentation. However, the Hearing Examiner overruled those objections and did allow the testimony. The testimony that was taken still did not establish a right to possession of the property. There was no definitiveness in the terms as to the term of the use. As far as the testimony went, it was quite clear that there was no term set in any agreement, rather whatever use was permitted could have been terminated at any time.

Even when verbal agreements are allowed, which they are not in these instances, they must meet certain requirements. This includes definitiveness as to the term, place and price of use. Not even any oral testimony was given on these points.

2. The Applicant did not present one scintilla of evidence with regard to ground water recharge or the actual amount of precipitation being experienced. There was no testimony as to the actual amount of precipitation in any of the years the various applicants and protestors have been irrigating. Also, there was no evidence with regard to how much, if any, water was being recharged into the system.

3. The only evidence as to the effect of the Applicant's pumping upon other persons was given by that of the Protestants. All of the Protestants testified that while the Applicant had been pumping, they had been experiencing very severe and adverse losses of water and damage to equipment. Even the one applicant who had little trouble with his irrigation well, testified that he had a culinary well go dry. There being no evidence introduced by the Applicant to rebutt this, the only conclusion that can be drawn is that granting of the application would damage senior water users.

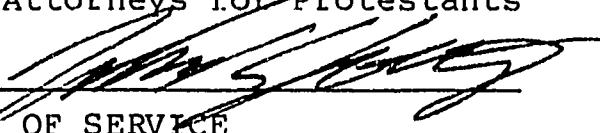
4. In the analysis of this case, the Hearing Officer has relied on evidence which was not introduced at the hearing. There is no question but that certain items are subject to official notice pursuant to I.C. §67-5210. However, unless the specific items of evidence are made known either before or during the hearing, they must be made known at least in the preliminary decision, and an opportunity given to the Protestants to contest the same. Idaho Code §67-5210(4). Therefore, the Department is required to allow the Protestants an opportunity to be heard and contest the evidence which has been officially noticed. Failure to do



so is a violation of law and due process requirements of the  
Idaho and U.S. Constitutions.

DATED: This 2 day of June, 1980.

DIAL, LOOZE & MAY  
Attorneys for Protestants

By 

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete  
copy of the foregoing was deposited in the U.S. Mail, postage  
prepaid to:

Von N. Simonson  
Route 1, Box 37  
Grace, Idaho 83241

Date E. Yost  
Bancroft, Idaho 83217

Gordon Yost  
Bancroft, Idaho 83217

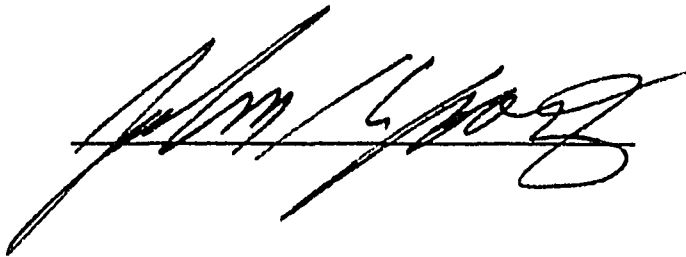
Lynn E. Smith  
Route 1, Box 61  
Grace, Idaho 83241

Paul R. Durrance  
Diamond G. Farms Inc.  
Bancroft, Idaho 83217

Leonard O. Kingsford  
160 S. Main  
Soda Springs, Idaho 83276

Fred Yost  
170 S. 2nd E.  
Soda Springs, Idaho 83276

A.L. Hatch, Pres.  
City of Bancroft  
P.O. Box 39  
Bancroft, Idaho 83217.



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JUN 5 1980

Department of Water Resources

(208) 233-0132  
P. O. BOX 207

DIAL, LOOZE & MAY

ATTORNEYS AT LAW

216 W. WHITMAN

POCATELLO, ID. 83201

June 3, 1980

T. F. DIAL  
J. K. LOOZE  
G. C. MAY  
J. E. HARWARD

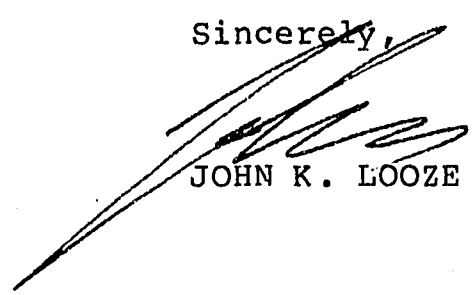
Mr. Bobby D. Fleenor  
Hearing Officer  
Dept. Water Resources  
Statehouse  
Boise, Idaho 83720

Re: VON N. SIMONSON, Permit No. 13-7259  
DWAINE K. CHRISTENSEN, Permit No. 13-7260 & 13-7261

Dear Mr. Fleenor:

Enclosed please find Exceptions to your Decisions in the  
above two referenced matters.

Sincerely,

  
JOHN K. LOOZE

ch  
encls

cc: Mr. Everett Smith  
Mr. Warren Lloyd  
Mr. Keith Lloyd

1. WELL OWNER

Name

Address

Owner's Permit No.

2. NATURE OF WORK

☐ New well
☐ Deepened
☐ Replacement
☐ Abandoned (describe method of abandoning)

3. PROPOSED USE

☐ Domestic
☐ Irrigation
☐ Test
☐ Other (specify type)
☐ Municipal
☐ Industrial
☐ Stock
☐ Waste Disposal or Injection

4. METHOD DRILLED

☐ Cable
☐ Rotary
☐ Dug
☐ Other

5. WELL CONSTRUCTION

Diameter of hole

Total depth

Casing schedule:

Thickness

Diameter

From

To

Was casing drive shoe used?

Was a packer or seal used?

Perforated?

How perforated?

Size of perforation

Well screen installed?

Manufacturer's name

Type

Diameter

Slot size

Set from

feet to

Diameter

Slot size

Set from

feet to

Gravel packed?

Placed from

feet to

Surface seal depth

Material used in seal

Sealing procedure used

7. WATER LEVEL

Static water level

Flowing?

Temperature

Quality

Artesian closed-in pressure

Controlled by

8. WELL TEST DATA

☐ Pump
☐ Bailor
☐ Other

Discharge G.P.M.

Draw Down

Hours Pumped

9. LITHOLOGIC LOG

Hole Diam.

Depth

Material

Water

| Date            | Water Level | Notes               |
|-----------------|-------------|---------------------|
| June 5, 1979    | 183'        | To top of vent pipe |
| July 25, 1979   | 182'        | " " " "             |
| Sept 28, 1979   | 183'        | " " " "             |
| Nov 12, 1979    | 182' 11"    | " " " "             |
| Dec 13, 1979    | 184' 4"     | " " " "             |
| January 5, 1980 | 184' 6"     | " " " "             |

OK - but in decision rejecting  
point out that proposed decision is  
to allow all parties to object within  
certain time limits - time limits  
are there to bring matter to a conclusion  
and to protect both sides of argument -  
and they must be adhered to in order  
for process to work -

However - make sure in decision  
that we answer his ~~objection~~ contentions  
as best we can -

Can we issue decision until  
other parties have filed answers? What  
procedure do we follow?

Norm

I suggest the exceptions be  
rejected as not being filed timely  
and then notify them of appeal

Process.

Bob

I agree not

— Alfred

In the Matter of Application  
for Permit No 13-7260 & 13-7261  
in the name of Dwaine K. Christensen  
and Permit No 13-7259 in the name of  
Von N. Simonson

Response to Exception to  
proposed order

A proposed memorandum decision and order was ~~24~~ sent to the applicants and the protestants on May 16, 1980 along with an order issuing the proposed decision which allowed 15 days to file ~~an~~ exceptions to the proposed decision. Any exceptions must have been filed by May 31 1980. This time limit is established to protect both sides against delay in bringing the matter to a conclusion.

An exception to the proposed decision was received on June 5, 1980 from John K. Looze, attorney for protestants Everett Smith, Warren Lloyd and Keith Lloyd. This exception was not timely filed and, therefore, ~~it~~ is rejected and ~~and permit no 13-7260~~

the proposed decision on application for permits nos 13-7260 & 13-7261 ~~is~~ hereby adopted as the Directors decision.

The exception to the proposed decision, <sup>however</sup> does raise several ~~questions~~ questions that ~~require~~ <sup>require</sup> a response. ~~Exception #1~~

Exception #1 - The protestants argue that a possessory interest in the place of use ~~must be~~ is required by case law Lemon vs Hardy and by statutory law in Sec. 42-212 & 213, Idaho Code. In reply, we must state that ~~the~~ <sup>case</sup> in the ~~statute~~ of Lemon v Hardy, the court affirmed the finding of the Director that an ~~app~~ application was speculative until a place of use of the water was obtained. This decision speaks only of the place of use and cannot be construed to require a possessory interest <sup>in the land at the</sup> point of diversion. There is much case law on this subject which when summarized, indicates that an application may be filed but no actual development can occur until access to the point of diversion is obtained. ~~At~~

As to the statutory requirement of Sec. 42-212 & 213, for permission we must reply that these sections apply to ~~the~~ the permission necessary to divert "private water" from another persons property. The source of these applications is groundwater which is public water and, therefore,

Section 42-212 & 213 are not applicable

Exception 2 - the protestants argued that no evidence was submitted on the amount of precipitation in the past three years. In reply we state that several general comments were made about the series of dry years just past and the department, using the common knowledge that 1977 was a drought year and that 1979 was also a low water year, made its finding.

Exception 3 - the protestants ~~also~~ argued that we did not consider the evidence presented concerning the interference between wells. In reply, we state that the evidence given was considered. The effects testified to were very general in nature and no ~~specific~~ direct cause of well problems was established to the ~~proposed~~ premitted well. The one protestant that had little trouble with his irrigation well ~~is~~ <sup>owns</sup> the well nearest the protested well and the domestic well that went dry is near Bancroft, several miles away.

Exception 4 - the protestants argued that the Hearing Officer relied on evidence not introduced at the hearing and that the protestant must be given an opportunity to contest the same. In reply we state that the Hearing Officer did not base his ~~decision~~ proposed decision on evidence not introduced and that further the protestants were given the opportunity to file exceptions to the <sup>proposed</sup> decision which they failed to file timely. ~~and that they~~ The ~~parties~~ <sup>parties</sup> will also have the opportunity to request a rehearing before the department or to appeal the decision to the District Court.

Signed at Boise

C.S.A.  
Director

April 27, 1981

Von N. Simonson  
Route 1, Box 37  
Grace, ID 83241

Dear Mr. Simonson:

Re: Application for Permit No. 13-7259

After reviewing our files, I found that we neglected to sent you a copy of the approved permit. Therefore, for your records, enclosed is a copy of the permit along with other orders describing action taken on this file.

I apologize for any inconvenience this may have caused you.

Sincerely,

RITA I. FLECK  
Sr. Secretary

Enclosures

DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources will consider this card as a statement that the permit holder(s) has completed development to the extent shown below of Permit No. 13-7259.

Name(s) of Permit Holder: Wm. Simpson

Post Office Address: Bl. 1 Box 37

Greene, Id. Tel. No. 425-3510

Source of Water: well

Extent of Use: ☐ Domestic (number of households)  
☐ Stockwater (number and type of stock)  
☒ Irrigation 120 (acres)  
☐ Other

Measuring Device: Required? ☒ Yes ☐ No Installed? ☒ Yes ☐ No  
Access Port: Required? ☒ Yes ☐ No Installed? ☒ Yes ☐ No

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

Aug. 21, 1981  
Date

Wm. Simpson  
Signature of Permit Holder

Don Simon  
141 5th St  
Boise, ID 83720



RECEIVED



AUG 27 1981

IDAHO DEPARTMENT OF WATER RESOURCES

Department of Water Resources

STATEHOUSE

BOISE, IDAHO 83720



STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
EASTERN REGION

John V. Evans  
Governor

C. Stephen Allred  
Director

1515 Lincoln Road  
Idaho Falls, Idaho 83401  
(208) 523-7186

December 8, 1981

RE: Permit No. 13-7259

Von Simonson  
Rt. #1, Box 37  
Grace, Idaho 83241

Dear Mr. Simonson:

We acknowledge receipt of the proof of beneficial use card submitted for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this department. We cannot tell just when this examination will be made, but our examiner will try to contact you at the time he makes the examination so that you may show him the system.

If you have any questions regarding the field examination, please contact our eastern regional office.

Very truly yours,

BOBBIE R. STEPHENS  
Principal Clerk

cc: IDWR - State Office

State of Idaho  
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 13-7259 Priority September 20, 1979 Amount 1.92 cfs

THIS IS TO CERTIFY, that Von N. Simonson  
of Grace, Idaho, has complied with the terms and conditions of Permit  
No. 13-7259 issued pursuant to Application for Permit dated September 20, 1979,  
and has submitted proof to the Department of Water Resources on August 27, 1981,  
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a  
capacity for the diversion of 4.36 cfs of water from a groundwater source,  
tributary to \_\_\_\_\_, and that the permit holder has applied to a beneficial use and  
established a right to use water as follows:

| Beneficial Use | Period of Use                            | Rate of Diversion      | Annual Volume          |
|----------------|------------------------------------------|------------------------|------------------------|
| Irrigation     | from <u>April 1</u> to <u>November 1</u> | at <u>1.92</u> cfs and | <u>288.0</u> acre feet |
|                | from _____ to _____                      | at _____ cfs and       | _____                  |
|                | from _____ to _____                      | at _____ cfs and       | _____                  |

(both dates inclusive)

Subject, however, to the condition that no more than 1.92 cfs of water be diverted at any one time, and  
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose  
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed  
288.0 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27,  
Twp 9S, Rge 40E in the County of Caribou

Description and location of place of use:

| Twp. | Range | Sec. | NE $\frac{1}{4}$ |                  |                  |                  | NW $\frac{1}{4}$ |                  |                  |                  | SW $\frac{1}{4}$ |                  |                  |                  | SE $\frac{1}{4}$ |                  |                  |                  | Totals |
|------|-------|------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|--------|
|      |       |      | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ | NE $\frac{1}{4}$ | NW $\frac{1}{4}$ | SW $\frac{1}{4}$ | SE $\frac{1}{4}$ |        |
| 9S   | 40E   | 27   | 38               | 20               | 7                | 31               |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  | 96     |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |
|      |       |      |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |        |

Total number of acres irrigated 96

This right when combined with Right No. 13-7084 shall not exceed 4.36 cfs.  
This right when combined with all other rights shall provide no more than .02 cfs  
per acre nor more than 3.0 afa per acre for the lands above.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho  
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use  
herein described, and is subject to all prior water rights, as provided by the laws of Idaho.

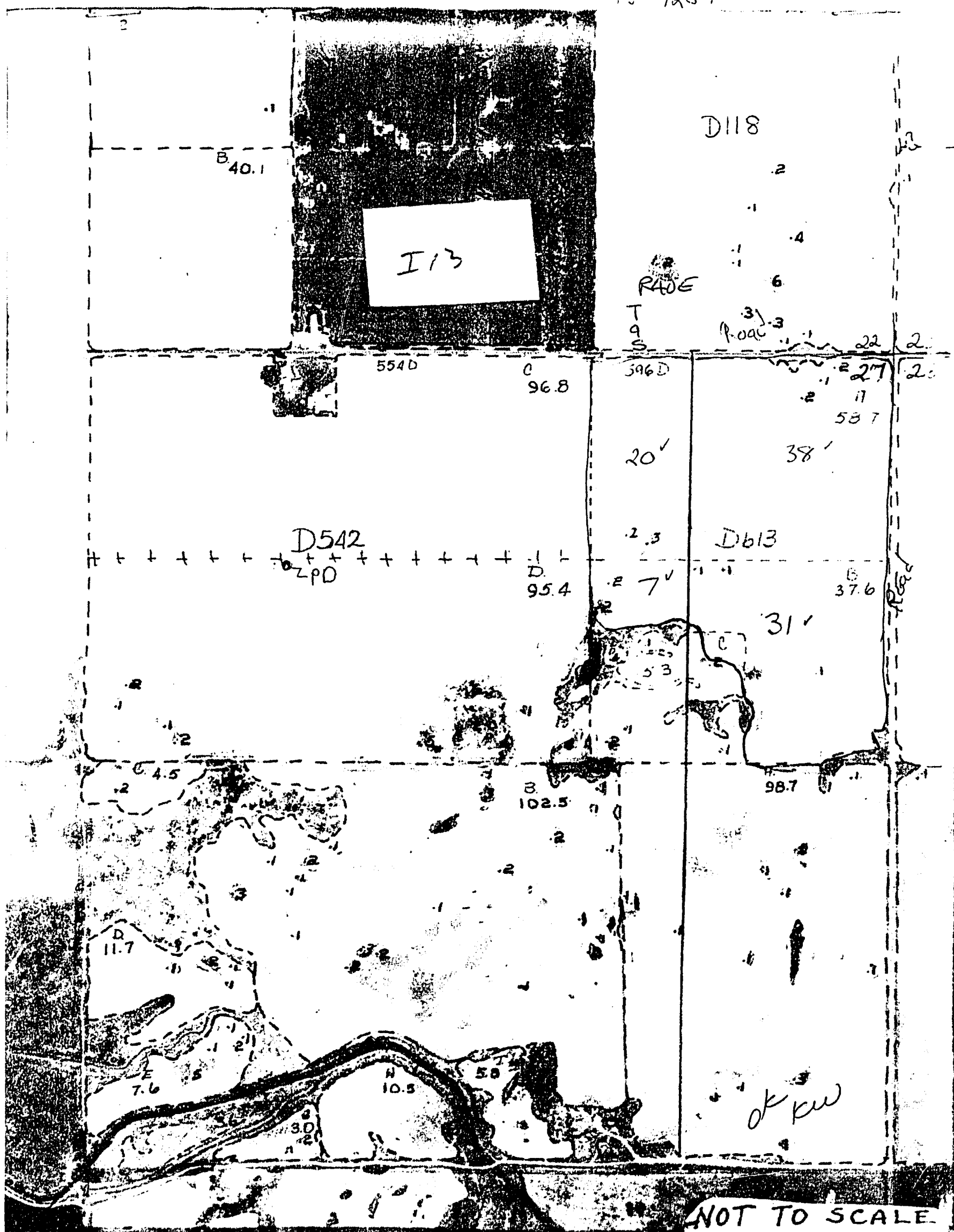
Witness the seal and signature of the Director, affixed at Boise, Idaho, this 5<sup>th</sup> day of

JANUARY, 19 84.

Acting for the Director

Roman C Young

~~\*R11 (137081, 1850.9 AF)~~

[illegible]

**Recommended Amendments:**

- ☐ Change P.D. as reflected above      ☐ Add P.D. as reflected above  
☐ Change P.U. as reflected above      ☐ Add P.U. as reflected above

☒ None

☐ Other

Examiner's Signature

Checked by

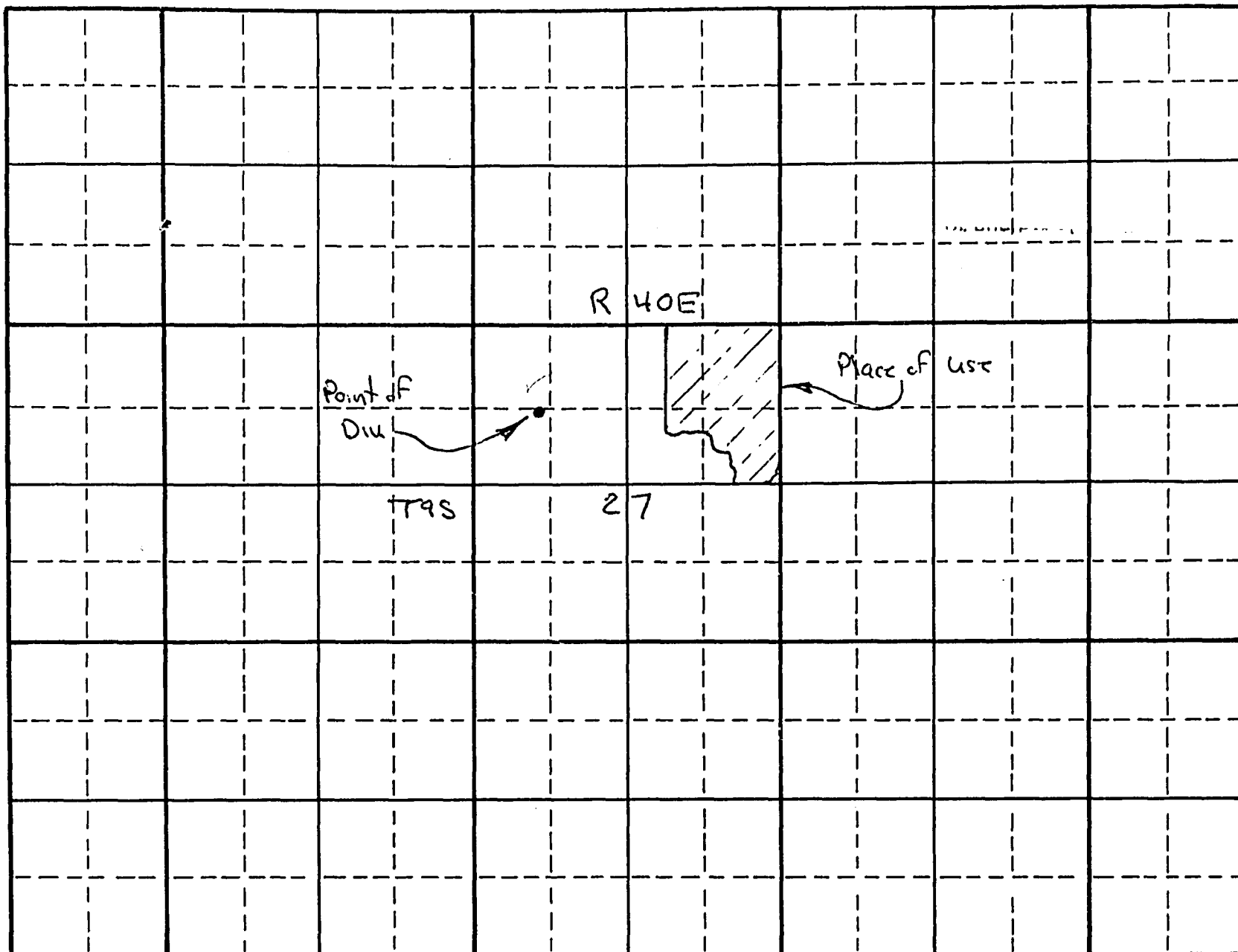
Approved by

Date \_\_\_\_\_

r e

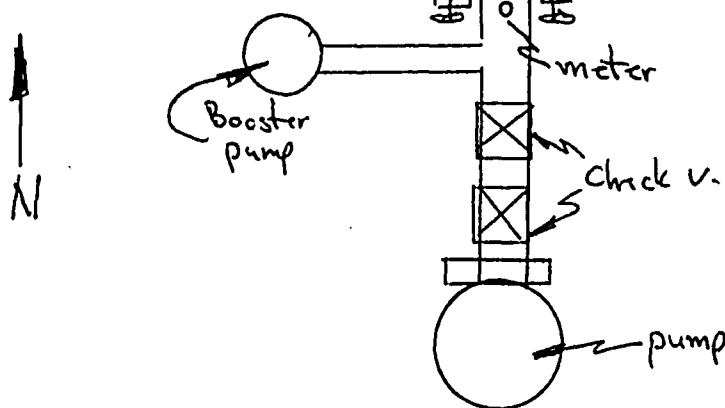
Late

MAP (Attach Aerial Photo)



# SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)



Point(s) of diversion: SW 1/4 NW 1/4 Sect. 27 T9S R40E

*✓ same as permit*

Place(s) of Use

*✓ same as permit per as above*

| TWP. | RGE. | SEC. | NE 1/4 |        |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |        | TOTALS       |
|------|------|------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------------|
|      |      |      | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |              |
| 9S   | 40E  | 27   | 38     | 20     | 7      | 31     |        |        |        |        |        |        |        |        |        |        |        |        | 96 <i>OK</i> |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |              |

## Recommended Amendments:

- ☐ Change P.D. as reflected above
- ☐ Change P.U. as reflected above

- ☐ Add P.D. as reflected above
- ☐ Add P.U. as reflected above

☒ None  
☐ Other

Examiner's Signature

Checked by

Approved by

*J.W. Jones*  
*Keith C. W. Jones*  
*Kay W. Jones*

Date

Date

Date

*12-09-82*

*30 NOV 1983*

*12/12/83*

Overlap Review 13-7084 & 13-7259

p/d overlap per micro-fische

~~13-7259~~ permit gw.

~~no overlap because right is in~~  
~~permit started~~ → NW 1/2 NE 1/4 S. 27

p/u overlap per micro-fische

W 1/2 SW 1/4 } 11-0531 A - Soda Ck. } no overlap  
Sec. 22 } 11-2109 - waste water } different  
source

W 1/2 NE 1/4 } 11-0259C - Bear River }  
Sec. 27 } 11-0432 - Big Spring Ck. } no overlap  
whole NE 1/4 } 11-0531A - Soda Ck. }  
none } ~~13-7259~~ - permit g.w.

NW 1/4 } 11-0259C - Bear River }  
Sec. 27 } 11-0432 - Big Spring Ck. } No overlap  
11-0531A - Soda Ck. } may be overlap  
13-2314 - permit Bear River

13-2314 & 13-7259 has no P/u overlap  
per review of field exams. Jim

OK no overlapping rights but  
permit should be limited  
w/ condition R16(3.0)

Licensing 13-7259 also <sup>add</sup> R17 - (4.36 cfs)  
\* R17 - (1805.7 AF)  
overlapping  
p/d  
12/12/83



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

JOHN V. EVANS  
Governor

A. KENNETH DUNN  
Director

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

December 19, 1983

RE: Permit No. 13-7259

Von N. Simonson  
Rt. 1, Box 37  
Grace, ID 83241

Dear Mr. Simonson:

A representative of the Department has made an examination of the works covered by your Permit No. 13-7259, and has found the following:

Amount of water that can be recognized as groundwater used under Idaho law: Source:

288.0

The maximum quantity diverted shall not exceed \_\_\_\_\_ acre feet per year.

Point(s) of diversion: SW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 27, Twp 9S, Rge 40E

Beneficial use: Irrigation of 96 acres within NE $\frac{1}{4}$  Sec. 27, Twp 9S, Rge 40E

Priority date established: September-20, 1979

Condition: This right when combined with Right No. 13-7084 shall not exceed 4.36 cfs. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.0 afa per acre for the lands above.

If you do not concur with these findings please contact us within 10 days, otherwise a water license will be issued as set forth above.

Sincerely,

JIM JOHNSON  
Water Distribution Supervisor

JJ:kw

10 DAY LICENSE REVIEW

License vs. Permit

- ☒ No. correct A & B
- ☒ Priority date correct
- ☒ Amount equal to or less than
- ☒ Name same
- ☒ Permit date correct
- ☒ - Proof due date correct
- ☒ Source correct
- ☒ Use correct
- ☒ Period of use/use correct
- ☒ Rate of diversion/use equal to or less than
- ☒ Point of diversion description same or different
- ☒ County same
- ☒ Place of use description same or different
- ☒ Other water used on p/u?

License vs. Field Exam

- ☒ Amount for rate of diversion correct
- ☒ Capacity correct
- ☒ Amount for each use correct
- ☒ Total amount correct
- ☒ Volume for each use correct
- ☒ Total volume correct
- ☒ Field exam showing p/d correct
- ☒ Field exam showing p/u correct
- Yes ☒ Does field exam show more land irrigated than permit allows? covered 13-7084
- ☒ Overlap review complete
- ☒ Conditions of approval correct
- ☒ Initial field exam

Cover Letter vs. License

- ☒ Name correct
- ☒ Number correct
- ☒ Amount correct
- ☒ P/D description correct
- ☒ P/U description correct
- ☒ Priority correct
- ☒ Conditions correct
- ☒ Initial license
- ☒ Sign letter

Name

*Jani*

Date

*12-20-83*

*23:32 min: sec*

January 10, 1984

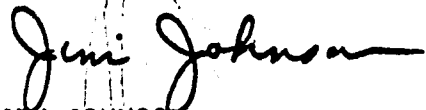
RE: Permit No. 13-7259

Von S. Simonson  
Rt. 1, Box 37  
Grace, ID 83241

Dear Mr. Simonson:

Enclosed herewith is a copy of the Water Right License issued on the above referenced Permit.

Sincerely,



JIM JOHNSON  
Water Distribution Supervisor

JJ:kw  
Enclosure