

No 1013

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }
County of Franklin } ss.

J. Walter Ross

being duly sworn,

deposes and says:

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

Such notice was published in the issue beginning with

December 6, 1979, and ending

with the issue of Dec 13, 1979.

Fee \$ 1440

Subscribed and sworn to before me this 31st day

of December, 1979.

Kenn O Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1982

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:

13-7269

OLSON, DELMER L. &/or JIMMIE D.

ROUTE 2, BOX 637, PRESTON, ID 83263

Source: UNNAMED DRAIN

Date Filed: 11/16/1979

Amount: 0.50 CFS

Diversion Point: SENW Sec 26 T 14S R 40E, FRANKLIN Co.

Use: IRRIGATION (0.43 CFS) from 04/01 to 11/01

STOCKWATER (0.03 CFS) from 01/01 to 12/31

DOMESTIC (0.04 CFS) from 01/01 to 12-31

Place of Use: NESE SESE Sec 27 T 14S R 40E FOR 80 ACRES

Diversion Means: PIPELINE, SPRINKLING AND CULINARY SYSTEMS & STORAGE POND.

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 DECEMBER 24, 1979.

C. STEPHEN ALLRED
Director

Legal No. 1013 - 40L - Pub. Dec. 6 and Dec. 13, 1979.

RECEIVED

JAN 3 1980

Department of Water Resources
Eastern District Office

AFFIDAVIT

David Terry Westerberg being first duly sworn,

deposes and says: I take exception to the application for Water Right #13-7269, submitted by Delmer L. &/or Jimmie D. Olson. My reasons are as follows: 1. The source of the water in the above mentioned application is a drain pipe which Mr. Olson installed in an existing spring. This spring is a tributary to Station Creek, the waters of which are already decreed. 2. The installation of the drain has in no way increased the flow of water from this source. His claim of producing "new water" is unfounded. 3. Mr. Olson, in his application, changes his diversion point. His original decree, #484, lists an entirely different diversion point than that in his application. There are only three water users on Station Creek. Allowing one user to change his diversion point, without giving the other two parties the same option, would jeopardize my water right.

RECEIVED

DEC 20 1979

Department of Water Resources
Eastern District Office

Daniel Terry Waterberg
(Signature)

Subscribed and sworn to before me this 17th day of December, 1979

Richard A. Westenberg
(Notary Public)

Residing at Kreston
My Commission Expires Five Years

8

13-2

DEPARTMENT OF RECLAMATION

In the District Court of the United States for the
District of Idaho, Eastern Division.

UTAH POWER & LIGHT COMPANY,

Plaintiff

vs.

THE LAST CHANCE CANAL COMPANY,

Limited, et. al.

Defendants.

In Equity

No. 203.

FINAL DECREE

Before HON. F. S. DIETRICH
District Judge.

Filed July 14, 1920.

W. D. McREYNOLDS,

Clerk

SEYMOUR ZANGER,

Deputy

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DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
481. <i>Elmer Larsen and Janeus Keller:</i> 1882—May 1	0.3 c.f.s.	For the irrigation of 5 and 10 acres re- spectively in Section 8, Township 14 South, Range 41 East.

STATION CREEK AND SPRINGS.

482. <i>Alfred Westerberg:</i> 1884—May 1: Apr. 20 to July 25 July 25 to Sept. 1 Sept. 1 to Sept. 30	0.62 c.f.s. 0.41 c.f.s. 0.31 c.f.s.	To be diverted from said creek and springs through a ditch diverting therefrom in Section 36, Township 14 South, Range 40 East, for the irrigation of 31 acres in said Section 36.
483. <i>D. P. Evans:</i> 1882—May 1	0.4 c.f.s.	To be diverted from said creek and springs in Section 36, Township 14 South, Range 40 East, for the irrigation of 20 acres in the Southeast quarter of said Section 21.
484. <i>Gustave Olsen:</i> 1898—May 1	0.06 c.f.s.	To be diverted from said springs in Sec- tion 35, Township 14 South, Range 40 East, for the irrigation of 33 acres in the Northeast quarter of said Section 36.

Sec.
26
34
27

BEAR CREEK SPRINGS.

485. <i>Nevada A. Larson and Martin Christensen:</i> 1888—May 1: Apr. 20 to July 25 July 25 to Sept. 1 Sept. 1 to Sept. 30	0.5 c.f.s. 0.33 c.f.s. 0.25 c.f.s.	To be diverted from said springs in Sec- tion 24, Township 14 South, Range 40 East, B.M. For the irrigation of 25 acres (two-thirds thereof to said Nevada A. <u>3332</u> Larson and one-third thereof to said Mar- <u>1666</u> tin Christensen), in the Northwest quarter of the Northeast quarter, the South half of the Northeast quarter and the North- west quarter of the Southeast quarter of Section 23, said Township and Range.
486. <i>Steffen C. Christensen and An- drew Jepson:</i> 1887—May 1	0.28 c.f.s.	To be diverted from said Bear Creek Springs in Section 24, Township 14 South, Range 40 East, for the irrigation of 14 acres (7 acres to each defendant) in the said Section 24.

Not on file

Not on file

SPRING IN THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 14 SOUTH,
RANGE 40 EAST.

487. <i>Charles Berquist and Edward Berquist:</i> 1890—May 1	0.04 c.f.s.	To be diverted at the said spring for the irrigation of 2 acres in Section 26, Town- ship 14 South, Range 40 East.
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Not on file

7

DATE 2-12-79

TO WHOM IT MAY CONCERN:

I am 58 years of age. I have been familiar with the operation of Preston, Riverdale & Mink Creek Canal Company most of my life. I am Water Master of Twin Lakes Canal Co. which divides water from the same source as Preston, Riverdale & Mink Creek Canal Co. It has always been my understanding that the Evans Ranch now owned by Theo L. Smith has had the use of so many inches of water as flowed into Preston, Riverdale & Mink Creek Canal from Station Creek.

SIGNED Theo L. Smith
LaRae E. Johnson, Notary Public

Subscribed & Sworn to before me a notary
public, State of Idaho, County of Franklin
this 15th day of Feb. 1979

My Commission expires Lifetime

6
Date 2-8-79

TO WHOM IT MAY CONCERN:

I am 74 years of age. I own the property where Station Creek joins the Preston, Riverdale & Mink Creek Canal which is located at the NW $\frac{1}{4}$, NE $\frac{1}{4}$ of Sec 27 Twp 14S Range 40 East of the Boise Meridian, County of Franklin. I have lived here my entire life. It has been my understanding that the Evans Ranch, owned by Theo L. Smith since 1947 has had the use of so many inches of water as flowed into the Preston, Riverdale & Mink Creek Canal throughout the entire irrigation season from Station Creek.

SIGNED

Samuel A. Westerberg

Subscribed & Sworn to before me a notary
public, State of Idaho, County of Franklin
this 8th. day of Feb. 1979

Paul L. Brown
Notary

My Commission expires 3/4/82

February 14, 1979

TO WHOM IT MAY CONCERN:

I was born and raised in the Station Creek Area. I was personally acquainted with Alfred Westerberg, D. P. Evans and Gustave Olsen. I was employed on the Gustave Olsen ranch in my youth. I have been on their ranches and am very familiar with them and have been throughout my lifetime. I am 93 years of age. D. P. Evans was the first settler of those three and had a ditch from Station Creek with which he irrigated his ranch. The Olsen ranch was never irrigated, to my knowledge. My twin sister was Olsens nearest neighbor.

Signed:

Clara A. Keller
Clara A. Keller

La Rae E. Johnson, Notary Public

Subscribed & Sworn to before me a notary
public, State of Idaho, County of Franklin
this 15th day of Feb. 1979

My commission expires

Lifetime

4

Transfer of Water Right.

This Certifies That I, Lars E. Olson have this day bargained, sold and do hereby Transfer to Alfred E. Westerberg all the Water arising in Station Creek (a tributary of Bear River, and situated in the Mink Creek Precinct in Oneida County, State of Idaho) above the Berquist Farm, which said farm is partly on said tributary, for the sum of Fifty dollars, to me in hand paid by the said Alfred E. Westerberg, the receipt of which is hereby acknowledged.

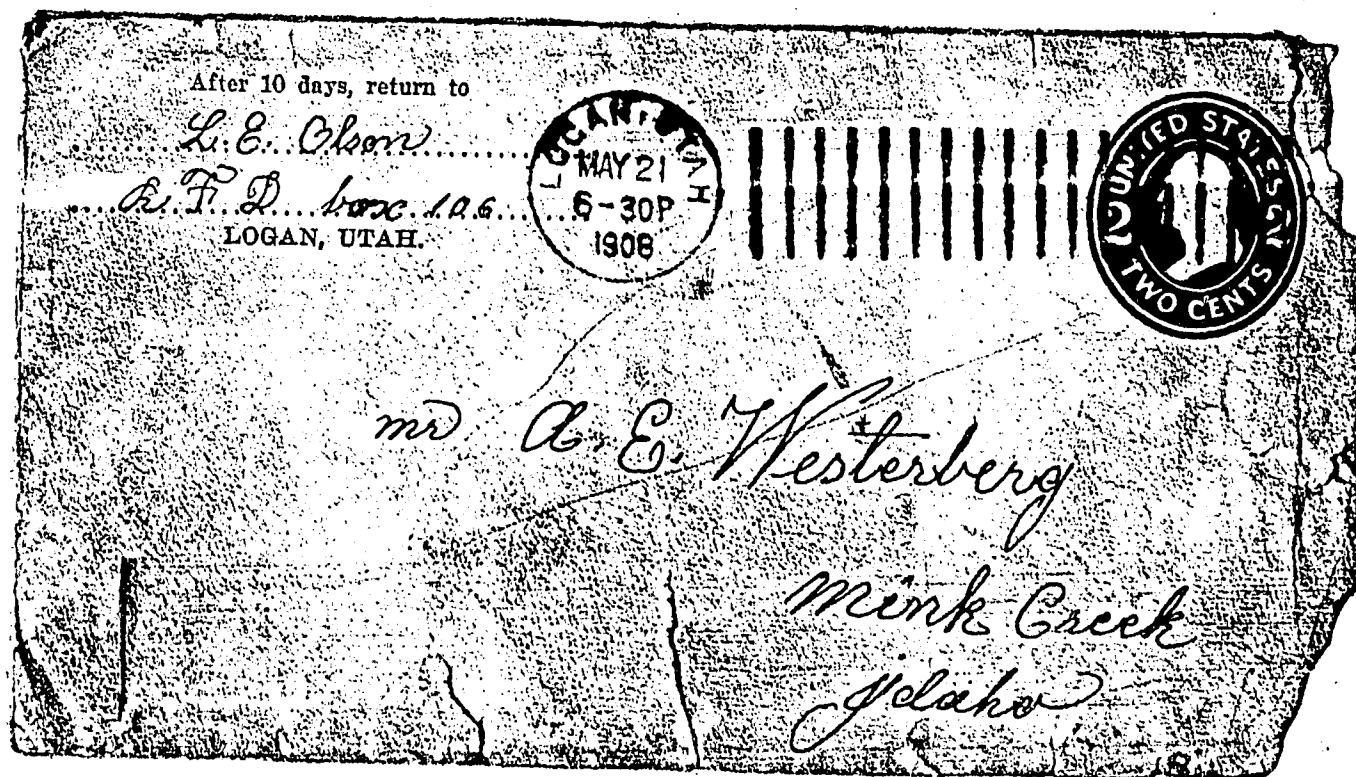
In Witness Whereof I have hereunto set my hand this 12th. day of May

A. D. 1908.

Signed in the presence of

Lars E. Olson

J. J. Stewart



3

AGREEMENT . .

THIS IS TO CERTIFY THAT THE UNDERSIGNED THEREBY DECLARES and acknowledges that he does not lay any claim to the waters of Station Creek, a tributary of Bear River, and situated in the Mink-Creek Precinct, County of Onieda State of Idaho, which said waters that arise above the Berquist Farm which said farm is partly on said tributary, and that the said undersigned, gave up his right to said waters above said point to Mr Lars E. Olson, during the year of 1901. .

But it is hereby declared that the undersigned does claim all the waters of said creek arising below said Berquist farm.

In witness whereof I, have hereunto set my hand this 16th, Day of January, 1906.

L. P. Evans

Signed in the presence of Joseph Davis, a Notary Public in and for the county, of Onieda, State of Idaho on this 16th day of January, 1906.

Joseph Davis

Agreement And Contract

This agreement, made the 25 day of June in the year of our lord 1896: Preston Riverdale & Mink Creek

Between The ~~Mink Creek Riverdale And Preston~~ Canal Company, whose place of business is at Preston, Ariz. Co. State of Idaho, the party of the first part. And David P. Evans of Mink Creek Precinct, County of Ariz. and State of Idaho, the party of the second part:—witnesseth: That the said party of the first part, in consideration of the covenants and agreements, on the part of the said party of the second part, herein after contained hereby covenants with the said party of the second part, that the said party of the first part, will deliver to the said party of the second part so many inches of water as shall flow into said Canal from Station Creek through out the entire irrigating season, in each and every year that said Canal is in working order, and has a legal existence at his Ranch (the same being situated and lying at the foot of what is known as Davis dugway)

And the said party of the second part, in consideration of the said covenants, on the part of the said party of the first part, herein before contained, agrees to, and with the said party of the first part, that the said party of the second part, will give and bequeath to the said party of the first part a right of way, and private ditch (the same having been constructed to carry water from Station Creek to his Ranch, the same being situated and lying at the foot of what is known as Davis Dugway.)

Public Notice

Notice is hereby given that George Davis of Franklin Precinct Oneida County Idaho Territory have on this ~~the~~ 10th day of March AD 1882 appropriated all the waters of Station Creek which is situated in the County of Oneida Territory of Idaho to be taken out of said Station Creek about one half mile from where said Creek empties into Bear River and at the point and monument where this notice is posted said water is to be used for agricultural and irrigating purposes and is conducted by means of a ditch which is three feet wide on the bottom five feet wide on the top and about two feet deep (said ditch being about one and one ~~four~~ miles long) to and on the S $\frac{1}{4}$ of the S $\frac{1}{4}$ and S $\frac{1}{4}$ of S $\frac{1}{4}$ of Sec 21st, N $\frac{1}{4}$ of N $\frac{1}{4}$ and N $\frac{1}{4}$ of N $\frac{1}{4}$ of Section No 28 in Township 14 South of Range 40 East Dated this 10th Day of } George Davis
March AD 1882

RECEIVED

DEC 26 1979

Department of Water Resources
Eastern District Office

Recorded at the
Register's Office
Gives this 16th
day of March
AD 1882 in Book
2nd of Records
page 162
Wm B Shew
Co. Recorder
by H R Evans
Atty

IN THE MATTER OF:

AFFIDAVIT

State of Idaho
County of Franklin

being first duly sworn,

deposes and says: There is no stock water problem for them because,
in addition to the water previously mentioned, both forks of Station
Creek run the complete distance through their property. The left
fork runs through their corrals and yards. It appears to me, their
claim for stock and domestic use is disguised for irrigation use.

Regarding the diversion point, I wish to protest for the following
reason: It is a small stream, approximately four miles in length,
with only three water users. In order not to have adverse effect
on the others if one diversion point is changed, the other two
should be allowed the same privilege. Since this is such a small
area, basin and hollow, I feel that any drain can take only existing
water.

I am submitting several more agreements and affidavits as evidence attached to this protest.

W. L. Smith
(Signature)

Subscribed and sworn to before me this 18 day of December, 1979.

Michael D. King
(Notary Public)

Residing at London, Ohio
My Commission Expires 1-2

RECEIVED

DEC 20 1979

Department of Water Resources
Eastern District Office

State of Idaho)
County of Franklin)

Last water season the Olsons attempted to use this water. Due to adverse affect it had on prior rights, I called Mr. Loy Johnson. He requested Mr. Russell Stoker to investigate the problem. Mr. Stoker checked the complete Station Creek drainage (consisting of three water users). He then had Mr. Olson and myself accompany him to this "unnamed Spring" which he now calls an "unnamed drain" and read from the Idaho Code to Mr. Olson. He ordered Mr. Olson to cease all interference and activity with this water or he would be subject to arrest, as this water is a tributary of Station Creek.

Chas. L. Smith
(Signature)

Michael D. Kwan
(Notary Public)

RECEIVED

Department of Water Resources
Page Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATION FOR PERMIT NO. 13-7269 IN THE)
NAME OF DELMER L. OLSON AND JIMMIE D. OLSON)

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 8th day of April, 1981, true and correct
copies of the foregoing MEMORANDUM DECISION AND ORDER, were mailed postage
prepaid to:

Delmer L. and Jimmie D. Olson
Route 2, Box 637
Preston, ID 83263

Kent W. Foster
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, ID 83401

Theo L. Smith
Route 2
Preston, ID 83263

Terry Westerberg
Route 2
Preston, ID 83263



RITA I. FLECK
Sr. Secretary
Idaho Department of Water Resources

Identification No. 13 7269

Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

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

1. Name of applicant Delmer L. Olson and Jimmie D. Olson Phone: 208-852-1643
208-852-1772
post office address Rte 2, Box 637, Preston, Idaho 83263
2. Source of water supply Unnamed drain (as per tele-con 11/21/79)
Ground Water which is a tributary of _____
3. a. Location of point of diversion is SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26 Township 14S.
Range 40E B.M. Franklin County; additional points of diversion if any: _____
- b. If water is not consumed, it will be discharged into _____ at a point in _____ $\frac{1}{4}$
of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount .43 for Irrigation purpose from April 1 to Nov 1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount .03 for Stockwater purpose from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount .04 for Domestic purpose from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. .5 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Enclosed 4 inch pipeline approxi-
mately 4000 feet from diversion to sprinkling and culinary systems
for two houses to be used directly or from storage pond. Underground
water is collected at the point of diversion by means of approximately
(*See below)
b. Height of storage dam 10 ft. feet, active reservoir capacity 2-3/4 acre feet; total reservoir
capacity 2-3/4 acre feet, materials used in storage dam: Earthen
Period of year during which storage will occur April 1 to Nov 1 inclusive.
(Mo. Day) (Mo. Day)
c. Proposed well diameter is 6 inches; proposed depth of well is 8 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years.
b. Estimated construction cost is \$ 5,000.00.
8. Description of proposed uses:
a. If water is not for irrigation: NE (as per tele-con 11/21/79)
(1) Give the place of use of water: SE SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 27 Township 14S
Range 40 E. B.M.
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered 100 cattle
(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water Two families
(5) If water is to be used for other purposes describe: _____

* 2590 lineal feet of buried perforated drain pipe and 705 lineal
feet of 6 inch perforated drain pipe. Applicants expect to install
approximately 850 lineal feet more of the 6 inch perforated drain
pipe.

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

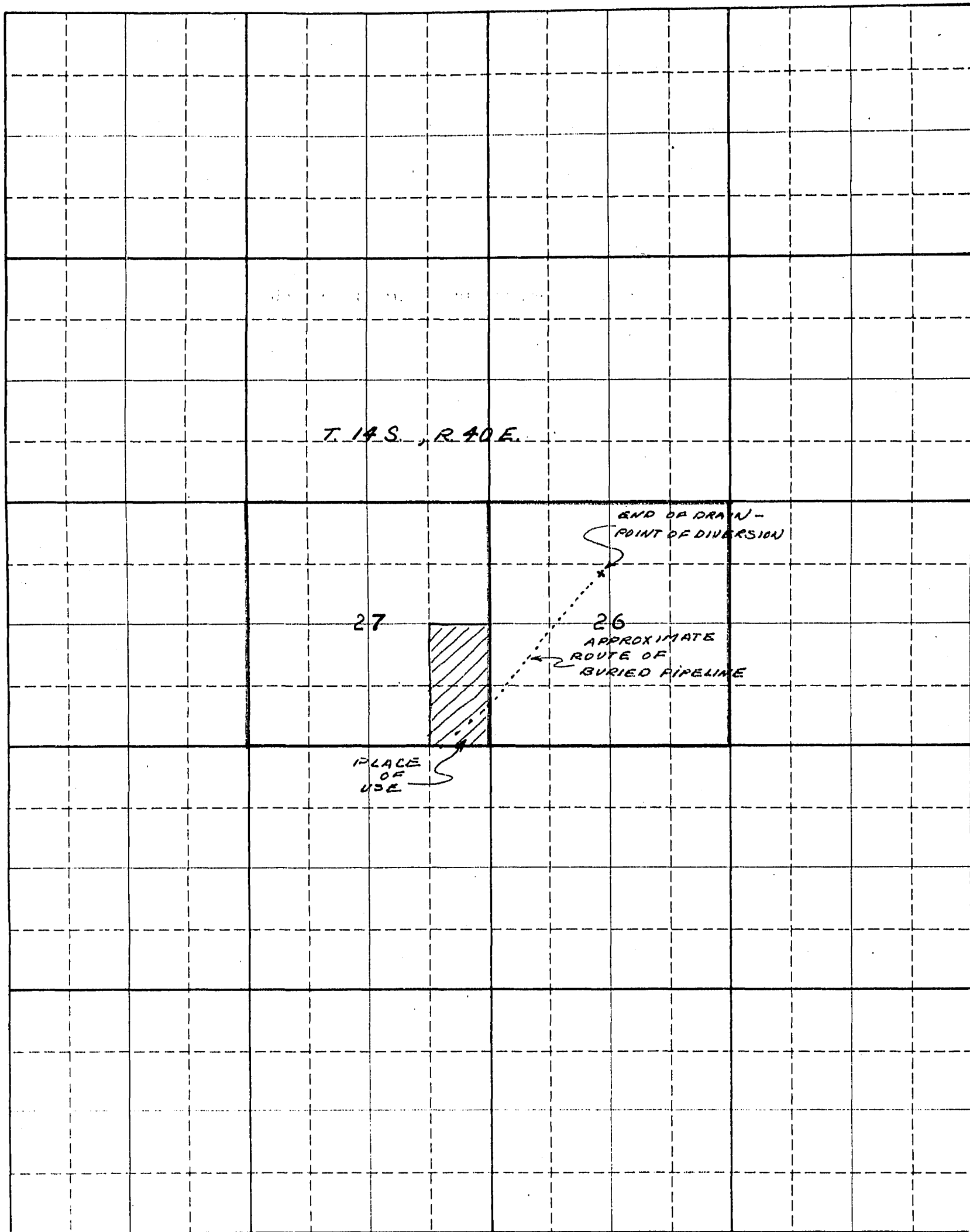
TWP.	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
14S.	40 E.	27													40	~~40~~	40		80
															(as per tele-con 11/21/79)				

Applicant has a small decreed right on Station Creek for ^{Total number of acres to be irrigated 80} 80 cfs which was originally decreed to Gustave Olsen, Delmer Olsen's grandfather. In addition, Delmer Olsen has recently filed a claim to a water right which was numbered by the Department 13-4088, setting forth the nature and extent of the use of water which he has practiced for many years and which was practiced by his predecessor.

9. a. Who owns the property at the point of diversion Delmer L. Olsen
b. Who owns the land to be irrigated or place of use Both applicants
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing _____

10. Remarks In 1976 Delmer Olsen undertook to drain certain wet boggy areas of the upper portion of his property. After the drainage pipes were installed, the discharge at the end created a flow of water which applicant has allowed to run into a small tributary of Station Creek and collect in a pond which has existed for many years and has been used by applicant and his predecessors to collect the waters of certain springs. From the small pond, the spring water as well as this developed water has been pumped for irrigation of applicant's land. Prior to the drainage work done by applicant, the only water that ever ran from applicant's fields into this small tributary to Station Creek consisted of spring run-off or snow melt and no water escaped from the wet or boggy areas. There are two or three boggy areas which applicant would still like to drain in the same area, which applicant would collect in the same system. Since there is approximately 90 feet of fall from the point of discharge of these drained waters down to where the water is used, applicant's intent is to put all of the water in a pipeline to utilize the pressure generated to operate some sprinkler heads. Also, because of the water master's recent efforts to terminate applicant's use of certain springs which have always been used by him and his predecessor for domestic water, it would be possible for applicant to utilize this water for certain domestic and stock water purposes as well.

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



Scale: 2 inches equal 1 mile

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.

Delmer L. Olson
(Applicant)
James D. Olson

Proposed priority: 11-16-1979

Received by BW Date 11-16-79 Time 11:45A

Preliminary check by _____ Fee \$ 35.00

Receipted by BW Date 11/19/79 # 15405

Publication prepared by kw Date 11/21/79

Published in Preston Citizen

Publication dates 12/6 & 12/13/79

Publication approved _____ Date _____

Priority reduced to _____ Reason _____

Protests filed by: Theo L. Smith, Mr. David

Jerry Westberg

Memo of Decision

Copies of protests forwarded by BW 1/3/80

Hearing held by _____ Date _____

Recommended for approval denial by EMC RA

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. 13-7269, and said application is hereby APPROVED.

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

- SUBJECT TO ALL PRIOR WATER RIGHTS.
- Proof of construction of works and application of water to beneficial use shall be submitted on or before April 1, 19 86.
- Other: _____

PURSUANT TO MEMORANDUM DECISION AND ORDER

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

Witness my hand this 7 day of April, 19 81.

Stephen Allen
Director

subject to the decreed water rights of the protestants.

2) No water shall be diverted from the drain located in the $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$, Sec. 26, Twp. 14S, Rge. 40E B.M., but the water from that drain shall be allowed to flow unrestricted into Station Creek.

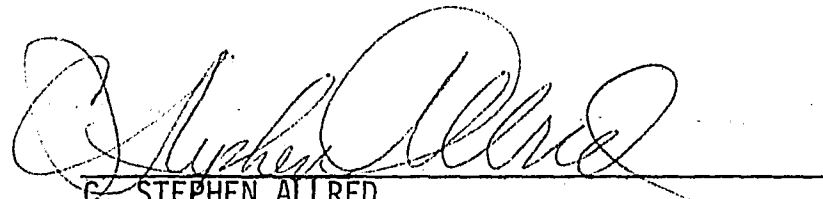
3) A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.

4) The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

5) Water collected for appropriation under this permit shall be limited to the drainage of those wet areas in the $SW\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$, which formed subsequent to the construction of Mink Creek Canal.

6) Proof of construction of works and application of water to beneficial use shall be submitted to the Department on or before April 1, 1986.

Dated this 8 day of April, 1981.


C. STEPHEN ALLRED
Director

3) Information provided at the conference and analysis of the NE $\frac{1}{4}$, Sec. 26, Twp. 14S, Rge. 40E indicates wet or boggy areas in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ are primarily a result of annual precipitation, irrigation practices, and seepage water from Mink Creek Canal which has developed subsequent to the construction of the canal around 1948. Seepage from Mink Creek Canal does not, because of the topography of the area, drain into the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said section; but that area is shown as a natural drainage to Station Creek on the U.S. Geological Survey maps for Riverdale, Idaho and Mink Creek, Idaho.

4) The water rights of the protestants were decreed on July 14, 1920 in the case of Utah Power and Light Company vs. The Last Chance Canal Company.

CONCLUSIONS OF LAW

1) Water developed by the applicants from wet areas which have formed since the construction of the Mink Creek Canal is not subject to prior rights on Station Creek.

2) The applicants are entitled to a permit for the appropriation of the public waters of the State of Idaho which they have developed and which are not tributary to Station Creek.

ANALYSIS

The Department has always recognized an individual's right to drain wet or boggy areas of his land to render it more suitable for use. If the water collected has traditionally been utilized to fill established water rights, then the individual is still entitled to appropriate the quantity of water required for the irrigation of land actually drained. Conversely, if the water collected is determined to be unappropriated, then the individual may appropriate it for any beneficial use. Since the application indicates the water will be used to irrigate land other than that drained and the applicants have stated they do not feel this application should be subject to watermaster control and prior water rights on Station Creek, the Department has limited the appropriation of water to those wet areas formed subsequent to the construction of Mink Creek Canal and not tributary to Station Creek. Therefore, water collected from wet areas in the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 26, 14S, Rge. 40E should be discharged into the natural drainage.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Application for Permit No. 13-7269 be and is APPROVED subject to the following conditions:

1) That this permit be and is subject to all prior existing water rights on the same water source which is seepage water from the Mink Creek Canal but is not

Mr. Theo Smith stated a branch of the system was constructed in a natural drainage which had been filled in. This drainage had historically been tributary to Station Creek and including it in Mr. Olsons' system would reduce the flow of water available to fill decreed rights on Station Creek.

At the conclusion of the conference, the parties agreed to allow the Department to reach a decision based on the information presented at the conference. Later that day, an agreement between the parties was submitted to the Department which reads as follows:

"We, the undersigned, have agreed that Delmer Olson and family may extend the drain to the three proposed wet spots. They would also be able to bring the water from that drainage system down to the farm for the proposed uses. This water would be brought down by a buried line. This line would be equipped with a valve at the end for the release of the water if prior water rights demand that release. This is in reference to Application for Permit No. 13-7269.

The Olsons also agreed to withdraw their objection to the Smiths' proposal to change their point of diversion. (11-0857)

The Olsons will be allowed, with no objection from Smith and Westerberg to change their diversion point.

All water rights owned by Delmer Olson and Jimmie Olson will be contained in the line from the drainage and the existing culinary line."

Although this agreement may be binding among the signers, the location change for Mr. Olsons' decreed point of diversion sanctioned by the agreement cannot be consummated by this application for permit. Such a change to a decreed water right must be initiated by filing an application for transfer with the Department of Water Resources, and is, therefore, not properly before the Director in his consideration of this application for permit. Furthermore, the agreement does not resolve the issue of whether or not Mr. Olsons' drain is a tributary to Station Creek. Since this is a primary consideration for the Department in proceeding with final action on this application, the Department's official files have been reviewed along with the available information presented at the conference, and based on the Director's understanding of the law, the Director of the Department of Water Resources makes the following Findings of Fact, Conclusions of Law, Analysis, and Order.

FINDINGS OF FACT

1) The applicants are the owners of the designated place of use and point of diversion.

2) Through the installation of buried drain pipes, the applicants intend to drain certain wet areas in the NE $\frac{1}{4}$, Sec. 26, Twp. 14S, Rge. 40E B.M., reclaiming five to seven acres for production of crops and to utilize the collected water for the irrigation of land in the E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 27, Twp. 14S, Rge. 40E.

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

IN THE MATTER OF PROTESTS AGAINST APPROVAL OF)
APPLICATION FOR PERMIT NO. 13-7269 IN THE NAME)
OF DELMER L. OLSON AND JIMMIE D. OLSON)

MEMORANDUM DECISION
AND ORDER

On November 16, 1979, Delmer L. Olson and Jimmie D. Olson filed with the Department of Water Resources an Application for Permit No. 13-7269 with the proposed point of diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 26, Twp. 14S, Rge. 40E B.M., Franklin County, for the appropriation of 0.43 cubic feet per second of water from an unnamed drain for the irrigation of 80 acres in the E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 27, Twp. 14S, Rge. 40E from April 1 to November 1; along with 0.03 cubic feet per second and 0.04 cubic feet per second from January 1 to December 31 for stockwater and domestic uses respectively, also to be used within the E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 27, Twp. 14S, Rge. 40E B.M.

Notice of this application was published in the Preston Citizen, Preston, Idaho on December 6 and 13, 1979 and on December 20, 1979 was protested by Theo L. Smith and David Terry Westerberg. The protestants alleged Mr. Olson installed the drain pipe in a spring which was tributary to Station Creek, that no water was developed by the drain, and that the application changed the point of diversion for the applicants' decreed right from Station Creek. On March 18, 1980, the Department conducted a conference in Franklin County Courthouse, Preston, Idaho. The applicants were present and represented by Attorney Kent Foster of HOLDEN, HOLDEN, HAHN AND CRAPO. The protestants were present and represented themselves.

Mr. Delmer Olson testified he began construction of the drain system in 1976 with the primary purpose of drying boggy areas in his fields, thereby creating an additional five to seven acres which could be farmed, and then using the developed water as proposed by the application. He estimated water presently flowing from the drain to be 0.25 cubic feet per second to 0.33 cubic feet per second and expects additional water to be developed when the project is completed. Mr. Olson stated surface water flow from the areas being drained occurred only during spring runoff.

Mr. David Westerberg stated he felt the application would have to be subject to all prior water rights on Station Creek. He also stated if the permit would allow Mr. Olson to change his decreed point of diversion from Station Creek then the other water users on Station Creek should be granted the same privilege.

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 129
IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

November 15, 1979

Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

RECEIVED

NOV 16 1979

Department of Water Resources
Eastern District Office

Gentlemen:

We are enclosing an Application for Permit on behalf of our clients, Delmer L. Olson and Jimmie D. Olson of Preston, Idaho. We are also enclosing with this letter our check in the amount of \$35.00 for the filing fee. We would appreciate it if you would process this application and keep our office advised as the matter develops.

Thank you for your kind assistance.

Yours very truly,

Kent W. Foster
Kent W. Foster

KWF:jt

Enclosures

November 28, 1979

RE: Application for Permit No. 13-7269
(Delmer L. Olson & Jimmie D. Olson)

Kent W. Foster
Holden, Kidwell, Hahn & Gtapo
P. O. Box 129
Idaho Falls, ID 83401

Dear Mr. Foster:

Attached herewith is Departmental Receipt No. 15405 in the amount of \$35.00
for the above referenced application.

Very truly yours,

KAY WALKER
Secretary

KW:k
Attachment

13-7263

OLSON, DELMER L. &/or JIMMIE D.

ROUTE 2, BOX 637, PRESTON, ID 83263

Source: UNNAMED DRAIN

Date Filed: 11/16/1979

Amount: 0.50 CFS

Diversion Point: SENW Sec 26 T 145 R 40E, FRANKLIN Co.

Use: IRRIGATION	(0.43 CFS)	from 04/01 to 11/01
STOCKWATER	(0.03 CFS)	from 01/01 to 12/31
DOMESTIC	(0.04 CFS)	from 01/01 to 12/31

Place of Use: NESE SESE Sec 27 T 145 R 40E FOR 80 ACRES

Diversion Means: PIPELINE, SPRINKLING AND CULINARY SYSTEMS & STORAGE POND.

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:

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 DECEMBER 24, 1979.

C. STEPHEN ALLRED

Director

Published 12/06 & 12/13/79.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

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

NOVEMBER 29, 1979

The Preston Citizen
P. O. Box 472
Preston, Idaho 83263

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billings to this office before DECEMBER 24, 1979.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

Delmer L. Olson
Jimmie D. Olson
January 3, 1980
Page 2

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

Very truly yours,

RONALD D. CARLSON
Eastern Region Supervisor

RDC:kw

Enclosure

cc: IDWR - State Office
Kent Foster

January 3, 1989

RE: Application for Permit No. 13-7269

Delmer L. Olson &
Jimmie D. Olson
Rt. #2, Box 637
Preston, Idaho 83263

Gentlemen:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to your Application No. 13-7269. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest 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 speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

January 3, 1980

RE: Application for Permit NO. 13-7269 OLSON

Mr. Terry Westerberg
Rt. #2
Preston, Idaho 83263

Dear Mr. Westerberg:

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 you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (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 speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

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

Very truly yours,

RONALD D. CARLSON
Eastern Region Supervisor

RDC:kw

cc: IDWR - State Office

January 3, 1980

RE: Application for Permit NO. 13-7269 OLSON

Mr. Theo L. Smith
Rt. #2
Preston, Idaho 83263

Dear Mr. Smith:

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 you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

If you do not advise us within twenty (20) days that the protest has been resolved, the matter will be scheduled for conference and/or hearing. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying an application for permit (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 speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?

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

Very truly yours,

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

March 3, 1980

Franklin County Courthouse
Preston,
Idaho 83263

Gentlemen:

This is to confirm the use of the Jury Room for conference and/or hearing to be held by this office on Tuesday, March 18, 1980, at 9:00 am.

Thank you for your cooperation in this matter.

Very truly yours,

KAY WALKER
Secretary

DEPARTMENT OF WATER RESOURCES

Name and Address of Sender

EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

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

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

NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET AND POST OFFICE ADDRESS	POSTAGE	FEE	R.R. FEE	REMARKS
1	Maurice Jorgel, Mayne, City of Idaho	15	80	45	13-7274
2	Theresa Fernandez, 1410 E. 1st, Idaho				"
3	Dean W. Arlio, Ste. R. 2, Montpelier				11-7170
4	Samuel E. Eide, P.O. Box 833, Soda Springs				"
5	Samuel A. Eide, 329 E. 3rd N., Soda Springs				"
6	Sam H. West, Sportswear Company, 1113 E. 1st				"
7	Ernest Newman, 1410 E. 1st, Idaho				11-7156
8	Samuel H. Eide, 1410 E. 1st, Idaho				"
9	Sam Eide, P.O. Box 129, E. 1				13-7269
10	Edmond E. Eide, P.O. Box 129, E. 1				"
11	A. J. West, 1410 E. 1st, Idaho				"
12	Wood S. Smith, R. 2, Idaho				"
13	Richard Newton, Ste. R. 2, Idaho				13-7118
14	1410 E. 1st, Idaho				"
15	1410 E. 1st, Idaho				13-7263
16	1410 E. 1st, Idaho				"
17	1410 E. 1st, Idaho				"
18	1410 E. 1st, Idaho				"
19	1410 E. 1st, Idaho				"
20	1410 E. 1st, Idaho				"
TOTAL NO. OF PIECES LISTED BY SENDER		20	20		
TOTAL NO. OF PIECES REC'D AT P.O.		20	20		
TOTAL NO. OF PIECES REC'D AT P.O.		20	20		

PS Form 3877, Dec. 1973

APPLICATION FOR REGISTERED, REGISTERED C.O.D. AND CERTIFIED MAIL

Declaration of value is required on international registered mail.

U.S. GOVERNMENT PRINTING OFFICE: 1974-532-725

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

PS Form 3811, Jan. 1979

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

1. The following service is requested (check one.)
☒ Show to whom and date delivered.....
☐ Show to whom, date and address of delivery.....
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery \$.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 David Terry Westerberg
 Rt. 2
 Preston, ID 83263

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 1473
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
David Terry Westerberg

4. DATE OF DELIVERY
 3-30-80
 POSTMARK
 10
 1980
 USPO

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS
 605

13-7269 ☆ GPO : 1979-288-848

PS Form 3811, Jan. 1979

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

1. The following service is requested (check one.)
☒ Show to whom and date delivered.....
☐ Show to whom, date and address of delivery.....
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery \$.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Kent W. Foster
 P. O. Box 129
 Idaho Falls, ID 83401

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 1471
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
Kent W. Foster

4. DATE OF DELIVERY POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

13-7269 ☆ GPO : 1979-288-848

PS Form 3811, Jan. 1979

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

1. The following service is requested (check one.)
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☐ Show to whom, date and address of delivery.....
☐ RESTRICTED DELIVERY
 Show to whom and date delivered.....
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery \$.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Delmer L. & Jimmie D. Olson
 Rt. 2, Box 637
 Preston, ID 83263

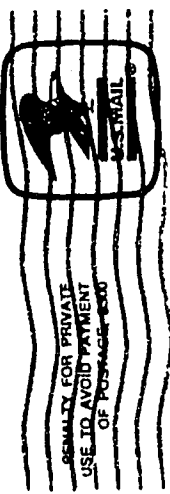
3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 1472
 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent
Delmer L. Olson

4. DATE OF DELIVERY POSTMARK
 3-30-80

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

13-7269 ☆ GPO : 1979-288-848



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS
SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, and 3 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.

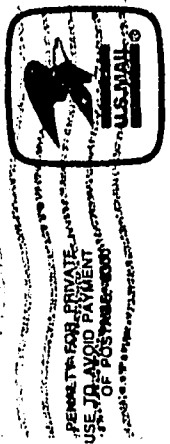
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401
(Name of Sender)

RETURN TO
RECEIVED
MAR 11 1980

(Street or P.O. Box)

(City, State, and ZIP Code)

Department of Water Resources
Eastern District Office



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS
SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, and 3 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.

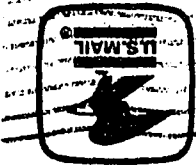
DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401
(Name of Sender)

RETURN TO
RECEIVED
MAR 11 1980

(Street or P.O. Box)

(City, State, and ZIP Code)

Department of Water Resources
Eastern District Office



UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS
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• Endorse article "Return Receipt Requested" adjacent to number.

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

1515 LINCOLN ROAD

IDAHO FALLS, IDAHO 83401

(Name of Sender)

(Street or P.O. Box)

(City, State, and ZIP Code)

Department of Water Resources
Eastern District Office

RETURN TO
RECEIVED
MAR 10 1980

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.

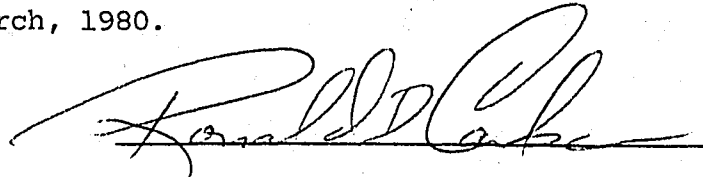
If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director 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 6th day of March, 1980.



RONALD D. CARLSON
Eastern Region Supervisor

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST)
)
APPROVAL OF APPLICATION FOR PERMIT)
)
NO. 13-7269 IN THE NAME OF DELMER)
)
L. OLSON AND JIMMIE D. OLSON)
)
_____)

NOTICE OF CONFERENCE
AND/OR HEARING

On November 16, 1979, Delmer L. Olson and Jimmie D. Olson filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On December 20, 1979, the Department received protests against approval of said application from Theo L. Smith and David Terry Westerberg.

The Department has set the matter of protest for conference and/or hearing for Tuesday, March 18, 1980, at 11:00 a.m., in the Jury Room of the Franklin County Courthouse, Preston, 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 42-203, the following issues are involved in the consideration of the application and protest(s):

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

#2.

- $1\frac{1}{2}$ " pipe for culinary water for Delmer Olson & Jimmie Olson property.
- Theo has marked pipe culvert for .2 cfs & .3 cfs, & water from Left Fork has not exceeded 0.2 cfs.

of Claim 13-4088.

- ~~Spring~~ Unnamed spring is below existing drain.

Concerns - Water developed from drain will reduce flow from left fork.

End of drain to creek - 3000' Left Fork to Smith Diversion $\frac{1}{2}$ mi.

- Application is for ~~less~~ a different source of water which may not prove to be 0.50 cfs.
- There is water entering the drainage below the ~~terminal~~ end of the drain.

* Need to make a finding on whether drain is ~~has~~ developed new water or if it was previously tributary to Left Fork of Station Creek.

#1

#13-7269.

Applicants - Delmer Olson & Jimmie Olson - present.
Attorney - Kent Foster - present.

Protestants - Theo Smith - present.
Terry Westenberg - present.

- 6" perforated drain pipe has been installed to drain lands which were boggy by nature. "difficult to farm". started in 1976. located at upper end of Station Creek Drainage. ~~9/10/1979~~
 - $\frac{1}{4}$ to $\frac{3}{4}$ cfs is the quantity presently being collected. Albert Jensen measured 0.184 cfs by a weir at lower end of drain. 9/10/1979.
 - 90' elevation difference from Olson home to beginning of drain.
 - Primary purpose is for domestic & stock ($\frac{1}{2}$ to $\frac{3}{4}$) balance would place in present irrigation system, i.e. pond to be pumped for irrigation.
 - Claim to water right ^{#13-4088} defines domestic & stock useage. Stock presently drink from spring.
 - A total of 5 to 7 acres have been diked up.
- ? Was there surface flow prior - At lower end of drainage there are seeps. One none tributary surface water at upper end.

- Westerberg - water diverted from main branch of Station Creek prior to left fork of Station Creek entering main stem.

Concerns

- Wants water subject to prior rights.
- ?'s change of p.d. location - feels other user on Station Creek should be allowed to do so.

- Smith.

- History: $4\frac{1}{2}$ miles of streams - after spring run off flow consists of water provided by springs.

George Davis 3/18/1882 Posted Notice, Davis ranch now owned by Theo Smith. P.D. has always been in the NW⁴NE⁴ Section 27

Ricks Packer - water master on ditch - after runoff flow in Station Creek is ~~0.7~~ to 0.3 cfs.

South Fork ~~to~~ of left fork now as Bergquist Spring in state decree. prior to drain approx. $\frac{2}{3}$ of left fork flow.

3 users on creek - Delmer Olson, Theo Smith, Terry Westerberg.

Existing decree is incorrect with respect to place of use & points of diversion. ^{Applications} have been filed by Smith & Westerberg to transfer rights

1948 - a canal was constructed to provide water for ~~call~~ Preston ~~canal~~ ^{Ditch}. In 1953 Theo Smith constructed Ditch for Delmer Olson to head of north fork of the left fork of Station Creek originating from Preston Ditch. Theo also ~~excavated~~ moved some earth into wet areas that previously could not be farmed.

Olson changed from 4 ~~horse~~^{horse} 7 pumps

Mr Smith

Mr Olson - Since the drains have been installed
has irrigated 10 acres - ~~with~~ ~~with~~ -

~~Olson~~

Finding on whether ~~this~~^{is} is new water -

Mr. Smith
My ? — When is spring runoff cease? Flows thru 1st hay cutting

- Davis 1st Settler - Has a posted notice

- ^{Theo} Smith now owns Davis place

Agreement for delivery of water

Sam Smith - Theo's son

0.30 to 0.70 per foot

Rex Packer - Water measurement -

Left Fork was decreed to Berquist

About $\frac{2}{3}$ of flow in Left Fork came from Berquist Property fork.

Evans is D.P. 2nd owner of Davis Ranch .

Lars Olsen sold his water to Westervang -

- Water of Station Creek decreed by Last Chance Decree -

- Decreed rights were described in ~~area~~ error

- Canal Built in 1948 - Preston Ditch Company - ~~These wet spot~~ being developed is probably leakage from ditch

- Smith feel water was under the ground and that drain was installed in a previously filled in natural drain -

Jiminies land just south of Theo's place -

When Olsen had 26 sprinkler heads running ~~Then~~ Smith flow was 0.20 cfs

Russel Stokker claimed the water was from a spring -

450/82.6

13-7269

Applicants - Delmer & Jimmie Olson
Attorney - Kent Foster

3-18-80

Preston, Idaho
Ernest Carlson
Bob Fleenor

Protestants - Theo Smith -
David Westerberg -

Source - Unnamed Drain

Pipe buried four to eight feet
Albert Jensen Sept ~~10~~ 10, 1979 0.184 cfs

Present flow 0.25 to 0.33 cfs expect additional water to be
developed by draining additional land.

Existing gully ~~the~~ that drain empties into picks up additional
water on the way down

Pond exists

Drain constructed in 1976

Primary use for domestic and stockwater -

My ? → How much land will be dried up. - about 5 acres

My ? → Was there flow out of that area to begin with - Surface water ^{flow} during
Spring runoff only -

Average no. of stock - ~~20~~ 75 to 100 head - Smith claims 30 head -

Second house built in 1975 - hooked onto domestic system -

Stockwater presently ^{drinks} from ~~the~~ Station Creek

13-4088

- Mr Westerburg -

1. Concerned that ^{this} right is subject prior water right - right is upstream. Mr Westerburg
2. P.D has been changed on the decreed 0.06 cfs right

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
)
PERMIT NO. 13-7269 IN THE NAME OF)
)
DELMER L. OLSON & JIMMIE D. OLSON)
)
_____)

STIPULATION

BY THIS STIPULATION, the undersigned parties to the above-captioned case waive compliance with the requirements of Idaho Code, Section 67-5211, including the right to a proposed decision, to file exceptions to a proposed decision and to present briefs and oral arguments to the Director of the Department of Water Resources and agree that the Director may render a final decision in this case without first submitting a proposed decision.

Dated this 18th day March, 1980.

Alvin L. Smith
Daniel T. Wetherly
Delmer L. Olson
Jimmie D. Olson

Notary

Application For Permit No 13-7269)
in the Name of Delmer L. & Jimmie D.)
Olson)

We the undersigned agree to allow the Director of the Department of Water Resources to reach a decision in this matter based upon the information obtained at the conference held in Preston, Idaho on March 18, 1980.

We understand that we are not waiving any right of appeal either to the Department of Water Resources or to the District Court concerning this application

Signed at Preston this 18th day of March, 1980

Delmer L. Olson
Jimmie D. Olson
David Terry Westberg
Walter L. Smith

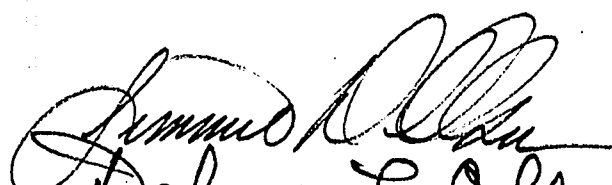
March 18, 1980

We, the undersigned, have agreed that Delmer Olson and family may extend the drain to the three ~~an~~ proposed wet spots. and They would also be able to bring the water from that drainage system down to the farm for the proposed uses. This water would be brought down by a buried line. This line would be equipped with a valve at the end for the release of the water if prior water rights demand that release. This is in reference to Application for permit No. 13-7269.

The Olsons also agree to withdraw their objection to the Smiths proposal to change their point of diversion. (11-0857)

The Olsons will be allowed, with no objection from Smith and Westerbergs to change their diversion point.

All water rights owned by Delmer Olson and Jimmie Olsson will be contained in the root line from the drainage and the existing culinary line.


Delmer L. Olson
Jeff E Olson (scribe)
Theo L Smith
David Terry Westberg
Samuel L. Smith

To whom it may concern.

Delmer L. Olson Disposes and says.

Preston, Idaho

March 2

RECEIVED

APR 10 1980

Department of Water Resources
Eastern District Office

Tuesday March 18, 1980 the principles of a water dispute, One Idaho State water resource man from Boise, one man from Idaho, Falls, my Council Mr Kent Foster, and spectators met in a hearing at Franklin County courthouse. Application # 13-7269 was read and the reasons for and against the issuing a permit were called for. Recordings of this hearing were taken so it is now a matter of record.

Mr Theo Smith stood before the group. and monopolized the time by drawing marks on the blackboard and speaking mostly of irrelevant things. Because so many of his statements were lies and because there was no time to give a rebuttal, I am writing this statement.

Mr Smith spoke of the early settlers of Station Creek as if he knew them personally. Some of his statements were true. No one questions that the predecessors who operated the farm he now owns appropriated waters of Station Creek in 1882. There were also

other people who lived and used water on their farm in these early days.

My Grandfather moved to Station Creek from Sweden in 1886. Among his children was my Father Gustaf E. Olson. These families homesteaded two tracts of land on a small stream which they named Snake Creek. Mr Smith referred to this stream or spring as The Bergquist Spring. My forbears immediately began to use the water from these springs for culinary and irrigation. They and I have continued to use this water until August of 1979. At that time my neighbor Mr. Smith called the Water Resource Board at Idaho Falls. They sent Mr Russell Stoker to tell me to turn the water down the main stream. It is true that Mr Smith had asked me to turn off my sprinklers prior to Mr Stokers telephone call. It is also true that Mr Smith and his daughter took pictures of my sprinklers. At that time I thought I had a valid right to use this water.

You see my Father and Grandfather were law abiding men. I purchased the farm from my Father Jan 19, 1945

We bought title insurance. I examined the abstract of title and found that this farm did have a right to .06 C. F. S. of water from the main station creek. I never used this water because the diversion point was not on my land. There are five (5) entries on this abstract (Only one of which is a signed affidavit) saying that certain springs are for use on this farm. They are located on this small stream of Snake Creek. These statements are recorded at the Franklin County Court house. Father told me that these springs were not figured in the Bear River decree of 1920. because they were used before they reached the main stream.

Therefore I am innocent of stealing water. Mr. Stoker's call and subsequent visit was the first time a man with authority had asked me to turn off the water.

Now as to the relevant statements by Mr. Smith concerning my claim #13-7269 I did hire Mr. Smith and his Bulldozer to push dirt for a proposed ditch. It is an undisputed fact that he pushed hawthorns, brush and noxious weeds and mired his cat in mud while leveling my land. One need only to examine photos of land prior to

7 to this time to dispute this claim. It is also an untruth that he worked for me driving his Uncle Sven's team and watered them in mud in my field. There are men still living who helped farm when we used horses. They can testify that it was necessary to come $\frac{3}{4}$ of a mile to our house where we had a watering trough.

It is very serious to me and upsetting when Mr. Smith tells me I have no right in a low water year to even use my house water. Does 90 years of ~~uninterrupted~~ use of culinary water have any valid claim?

When we drink, flush the toilet or do laundry the water is recycled and it runs on down to Mr Smith's Farm.

I hope the forgoing statements can be filed to counteract untruths recorded in the recent hearing

(signed) Delmer L. Olson
Address _____

Subscribed and sworn before me, a Notary Public, on the 28 day of March 1980

Commission expires _____

lifetime

Lois H. Hargreaves
State of Idaho
County of Franklin

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 129
IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

April 9, 1980

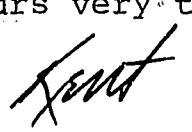
Mr. Ernest Carlsen
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Application for Permit No. 13-7267, Delmer L.
and Jimmie D. Olson

Dear Mr. Carlsen:

I am enclosing a notarized statement which Mr. Olson
sent to us and asked that we submit for inclusion in the file
in this matter. It appears to be self explanatory.

Yours very truly,


Kent W. Foster

KWF:jt

Enclosure

RECEIVED

APR 10 1980

Department of Water Resources
Eastern District Office

Mr. Ernest Carlsen
March 25, 1980
Page Two

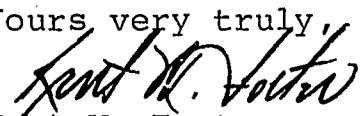
believe that the waters which presently flow from the end of the drain pipe augment the flows of the small tributary to Station Creek from what those flows were prior to the installation of the drain.

On the other hand, we understand that at least some of the protestants doubt that this is true. Although we did not hear any testimony or information which would tend to support that position, it seems clear to us that Mr. Theo Smith, in particular, has at least some personal belief or suspicion that the waters now exiting from the drain are indeed the same water which ultimately found its way into Station Creek or its tributaries formerly.

As we understand it, the parties probably did not intend to resolve that issue by this document which they all signed. For instance, when questioned, our clients responded that they had agreed to place a valve at the end of their system for handling this drainage water in order to placate Mr. Smith, because they believe he did not have any water rights which would be prior to this one, since it is a right to a source not tributary to Station Creek. In other words, in using this language, our clients did not believe they were really giving up anything with respect to their right to the use of the drain water in agreeing to install the valve.

In our judgment, therefore, one of the most important issues to be resolved in this case is whether the source of supply for this proposed water right is or is not legally tributary to the surface flows of Station Creek.

Yours very truly,


Kent W. Foster

KWF:jt

cc: Delmer Olsen

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
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TELEPHONE 523-0620
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ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

March 25, 1980

RECEIVED

MAR 26 1980

Mr. Ernest Carlsen
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Department of Water Resources
Eastern District Office

Re: Delmer and Jimmie Olsen - Application for
Permit No. 13-7269

Dear Mr. Carlsen:

I have just received from the Olsens a copy of an agreement which apparently was written and signed by the parties later the same afternoon of the hearing, which we all attended in Preston last Tuesday, March 18, 1980. We have also had an opportunity to review the specific terms of this agreement with our clients in some detail. After our conversations, it appears to us that the parties who signed the agreement may not have all intended the same thing and we therefore felt it might be appropriate to write to you and discuss the matter further.

We will refer specifically to the last sentence of the first paragraph of the document which was signed:

This line will be equipped with a valve at the end for the release of the water if prior water rights demand that release.

Our clients' position is obviously that the water supply for the right which they intend to appropriate is not presently tributary to the surface waters in the area, and specifically does not and has not contributed to the surface flows of Station Creek. They are convinced that the water supply for this right is subterranean water which formerly served only to create boggy wet areas on their farm ground and which presently continues to do so in two or three remaining spots.

We, of course, believe and contend that all of the information produced at the conference supports this position. In otherwords, the Olsens, who are most familiar with the matter.

Soil Conservation Service

24 5015 FARM NO. 177 DATE -75

SCALE 1" = 100' CRES

PHOTO NO.





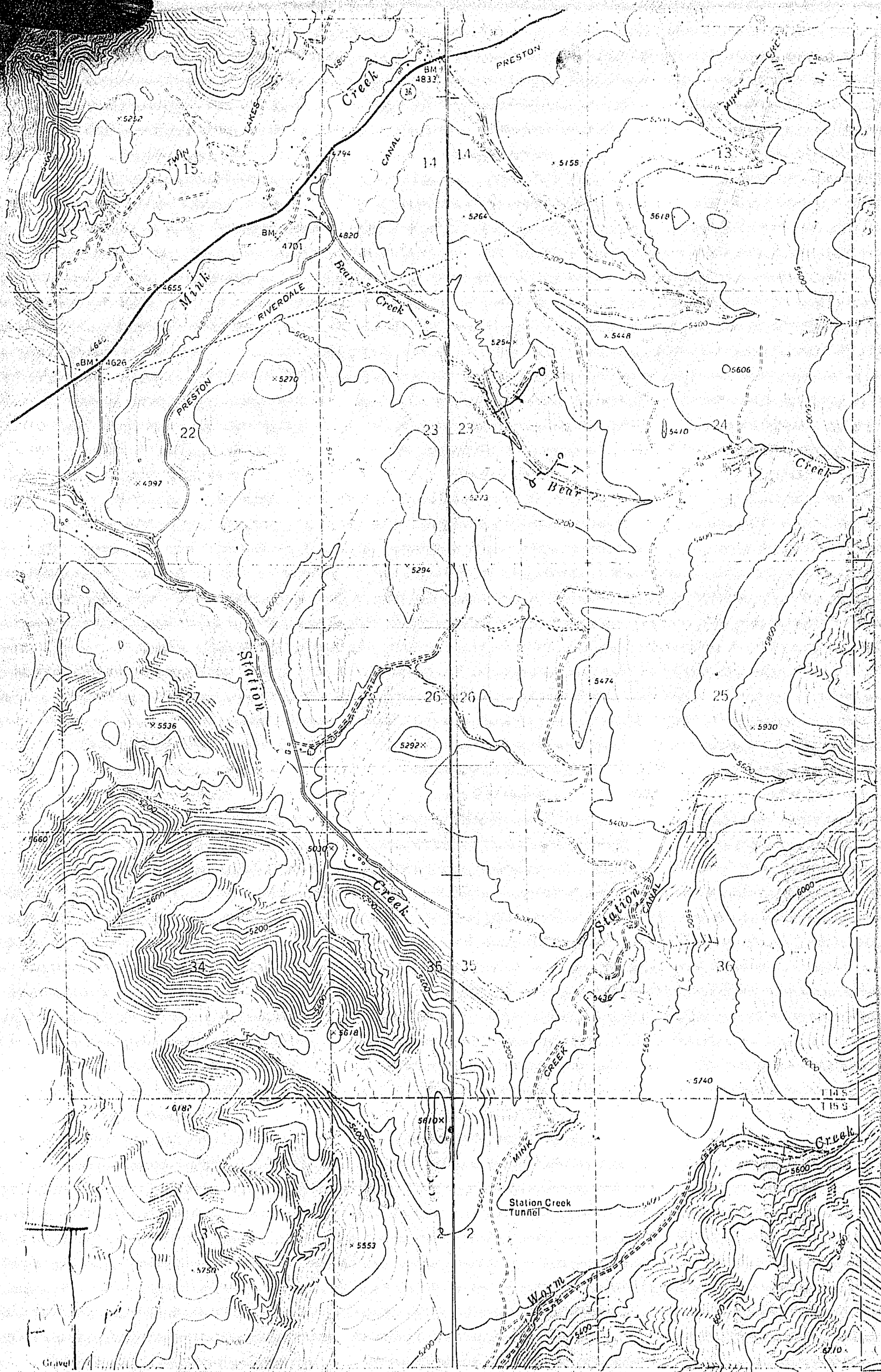
CONVERSATION MEMORANDUM

DATE 10-30-1980FILE 13-7269NAME OF PARTY Delmar OlsonEMPLOYEE Ernest

RE: Status of application: Mr. Olson & his wife visited the office ~~maining~~ ^{status} to discuss his application. In reviewing the file he was concerned with the last sentence in 1st paragraph of agreement, ~~the~~ which is further explained in a letter from Kent Foster dated March 25, 1980. He explained I in recommending final action on application the II would have I otherwise whether or not I source was tributary I Station Creek in conjunction with conditioning of I permit. I indicated we would try to draft to proceed with processing of I application as soon as possible.

Bob FlanneryErnest

RE: Course of Action: It was decided to write Kent Foster and advise him his client & the protestors will either need to resolve ~~difference~~ ^{differences} over agreement or withdraw agreement allowing the Dept. I proceed with decision.



State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: Ernest Carlson

APPLICATION NUMBER: 13-7269

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:

- ✓ During telecon. of Kent-Fisher, starting on November 1, discussed the possibility of changing "ground water" to "ground stored" and also indicated the permit was not consistent with the legal description for the place of use.
✓ Changes made in application per telecon with Kent-Fisher attorney for client.

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: _____ Map No. _____
☒ Yes ☐ No Other rights on same place of use. deeded rights on Station Creek & a constitutional use right, rather than different sources.
☒ Yes ☐ No* In form for advertising.
Final date for protests: 12/24/79 ✓
☒ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 1-3-1980. ✓
☒ 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? _____
11-16-1979 Date of priority recommended.
Special conditions of approval or cover letter. _____

See Memorandum Decisions

By: Ernest Carlson Date: 12-5-1980.

STATE OFFICE REVIEW:

- ☐ See attached sheet for more information.

By: Robyn Date: 1/13/81

Department of Water Resources

April 8, 1981

Delmer L. and Jimmie D. Olson
Route 2, Box 637
Preston, ID 83263

Gentlemen:

Re: Application for Permit No. 13-7269

Enclosed is a copy of your approved Application for Permit No. 13-7269 along with a copy of the Memorandum Decision and Order. We direct your attention to the conditions of approval as set forth in the Order.

Be sure to note the special condition requiring you to install and maintain a measuring device at your point of diversion prior to submitting proof of beneficial use of water. We have enclosed a letter describing the different types of measuring devices accepted by this office.

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

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enclosures

cc: Theo L. Smith
David Terry Westerberg
Kent Foster

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.

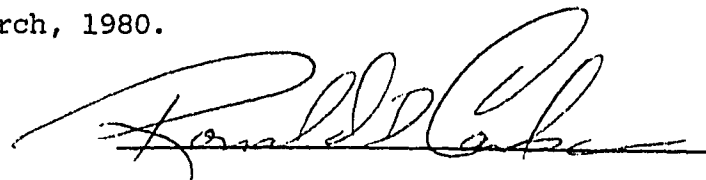
If the hearing is conducted by a hearing officer appointed by the Director, rather than the Director himself, a proposed decision will be submitted to the parties and the parties will be afforded an opportunity to file exceptions to the proposed decision and present briefs and oral arguments to the Director 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 6th day of March, 1980.



RONALD D. CARLSON
Eastern Region Supervisor

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST	)	
	)	
APPROVAL OF APPLICATION FOR PERMIT	)	
	)	
NO. 13-7269 IN THE NAME OF DELMER	)	
	)	
L. OLSON AND JIMMIE D. OLSON	)	NOTICE OF CONFERENCE
	)	AND/OR HEARING
	)	

On November 16, 1979, Delmer L. Olson and Jimmie D. Olson filed with the Department of Water Resources an application to appropriate the public waters of the State of Idaho. On December 20, 1979, the Department received protests against approval of said application from Theo L. Smith and David Terry Westerberg.

The Department has set the matter of protest for conference and/or hearing for Tuesday, March 18, 1980, at 11:00 a.m., in the Jury Room of the Franklin County Courthouse, Preston, 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 42-203, the following issues are involved in the consideration of the application and protest(s):

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

#2.

- $1\frac{1}{2}$ " pipe for culinary water to Delmer Olson & Jimmie Olson property.
- Theo has marked ~~pip~~ culvert for .2 cfs $\frac{1}{2}$ ' .3 cfs, $\frac{1}{4}$ water from Left Fork has not exceeded 0.2 cfs.

of Claim 13-4088.

- ~~Spring~~ Unnamed spring is below existing drain.

Concerns - Water developed from drain will reduce flow from left fork.

End of drain to creek - 3000' left Fork to Smith Overstan $\frac{1}{2}$ mi.

- Application is for ~~two~~ a different source of water which may not prove to be 0.50 cfs.
- There is water entering the drainage below the ~~terminal~~ end of the drain.

* Need to make a finding on whether drain is has developed new water or if it was previously tributary to Left Fork of Station Creek.

#1

#13-7269.

Applicants - Delmer Olson & Jimmie Olson - present.
Attorney - Kent Foster. present.

Protestants - Theo Smith - present.
Terry Westerberg present.

- 6" perforated drain pipe has been installed to drain lands which were boggy by nature. "difficult to farm." started in 1976. located at upper end of Station Creek Drainage. ~~Station Creek~~
- $\frac{1}{4}$ to $\frac{1}{2}$ cfs is the quantity presently being collected. Albert Jensen measured 0.184 cfs by a weir at lower end of drain. 9/10/1979.
- 90' elevation difference from Olson home to beginning of drain.
- Primary purpose is for domestic & stock ($\frac{1}{2}$ to $\frac{1}{3}$) balance would place in present irrigation system, i.e. pond to be pumped for irrigation.
- Claim to water right ^{#13-4088} defines domestic & stock usage. Stock presently drink from spring.
- A total of 5 to 7 acres have been drained up.
- ? Was there surface flow prior - At lower end of drainage there are seeps. One none tributary surface water at upper end.

- Westerberg - water diverted from main branch of Station Creek prior to left fork of Station Creek entering main stem.

Concerns

- Wants water subject to prior rights.
- ?'s change of p.d. location - feels other user on Station Creek should be allowed to do so.

- Smith.

- History: $4\frac{1}{2}$ miles of streams - after spring run off flow consists of water provided by springs.

George Davis 3/18/1882 Posted Notice, Davis ranch now owned by Theo Smith. P.D. has always been in the NW⁴NE⁴ Section 27

Ricks Packer - water master on ditch. - after runoff flow in Station Creek is ~~0.7~~^{0.7} to 0.3 cfs.

South Fork ~~to~~ of left fork now as Bergquist Spring in state decree. prior to drain approx. $\frac{2}{3}$ of left fork flow.

3 users on creek - Delmer Olson, Theo Smith, Terry Westerberg.

Existing decree is incorrect with respect to place of use & points of diversion. ^{Applications} have been filed by Smith & Westerberg to transfer rights

1948 - a canal was constructed to provide water ~~for~~^{call} Preston ~~canal~~^{Ditch}. In 1953 Theo Smith constructed Ditch for Delmer Olson to head of north fork of the left fork of Station Creek originating from Preston Ditch. Theo also ~~located~~ moved some earth into wet areas that previously could not be farmed.

Olson changed from 4 ~~horse~~^{horse} 7 pumps

Mr Smith

Mr Olsen - Since the drains have been installed
has irrigated 10 acres - ~~with~~^{with} -

Olson

Finding on whether ~~this~~ is new water -

Mr. Smith
M, ? — When is spring runoff cease? Flows thru 1st hay cutting

- Davis 1st Settler - Has a posted notice

- ~~Theo~~ Smith now owns Davis place

Agreement for delivery of water

Sam Smith - Theo's son

0.30 to 0.70 per foot

Rex Packer - Water measurement -

Left Fork was decreed to Berquist

About $\frac{2}{3}$ of flow in Left Fork came from Berquist Property fork.

Evans is D.P. 2nd owner of Davis Ranch.

Lars Olsen sold his water to Westerburg -

- Water of Station Creek decreed by Last Chance Decree -

- Decreed rights were described in ~~an~~ error

- Canal Built in 1948 - Preston Ditch Company - ~~These~~ wet spot being developed is probably leakage from ditch

- Smith feel water was under the ground and that drain was installed in a previously filled in natural drain -

Jiminies land just south of Theo's place -

When Olsen had 26 sprinkler heads running ~~then~~ Smith flow was 020 cfs

Russel Stokker claimed the water was from a spring -

450/82.65

13-7269

Applicants - Delmer & Jimmie Olson
Attorney - Kent Foster

3-18-80

Preston, Idaho
Ernest Carlsen
Bob Fleenor

Protestants - Theo Smith -
David Westerberg -

Source - Unnamed Drain

Pipe buried four to eight feet

Albert Jensen Sept 10, 1979 0.184 cfs

Present flow 0.25 to 0.33 cfs expect additional water to be
developed by draining additional land.

Existing gully ~~that~~ that drain empties into picks up additional
water on the way down

Pond exists

Drain constructed in 1976

Primary use for domestic and stockwater -

My ? → How much land will be dried up. - about 5 acres

My ? → Was there flow out of that area to begin with - Surface water ^{flow} during
Spring runoff only -

Average no. of stock - ~~20~~ 75 to 100 head - Smith claims 30 head -

Second house built in 1975 - hooked onto domestic system -

Stockwater presently ^{drink} from ~~that~~ Station Creek

13-4088

- Mr Westerburg -

1. Concerned that ^{this} right is subject prior water right - right is upstream. Mr. Westerburg
2. P.D has been changed on the decreed 0.06 cfs right

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
)
PERMIT NO. 13-7269 IN THE NAME OF)
)
DELMER L. OLSON & JIMMIE D. OLSON)
)
_____)

STIPULATION

BY THIS STIPULATION, the undersigned parties to the above-captioned case waive compliance with the requirements of Idaho Code, Section 67-5211, including the right to a proposed decision, to file exceptions to a proposed decision and to present briefs and oral arguments to the Director of the Department of Water Resources and agree that the Director may render a final decision in this case without first submitting a proposed decision.

Dated this 18th day March, 1980.

Philo L. Smith
Daniel Terry Webster
Delmer L. Olson
Jimmie Olson

Notary

Application For Permit No 13-7269)
in the Name of Delmer L. & Jimmie D.)
Olson)

We the undersigned agree to allow the Director of the Department of Water Resources to reach a decision in this matter based upon the information obtained at the conference held in Preston, Idaho on March 18, 1980.

We understand that we are not waiving any right of appeal either to the Department of Water Resources or to the District Court concerning this application

Signed at Preston this 18th day of March, 1980

Delmer L. Olson
Jimmie D. Olson
David Terry Westberg
Walter L. Smith

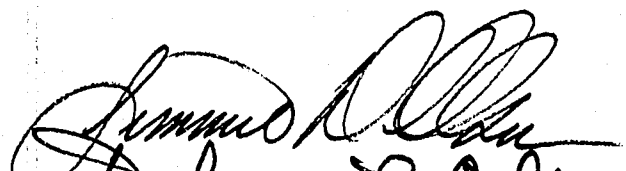
March 18, 1980

We, the undersigned, have agreed that Delmer Olson and family may extend the drain to the three ~~an~~ proposed wet spots. and They would also be able to bring the water from that drainage system down to the farm for the proposed uses. This water would be brought down by a buried line. This line would be equipped with a valve at the end for the release of the water if prior water rights demand that release. This is in reference to Application for permit No. 13-7269.

The Olsons also agree to withdraw their objection to the Smith's proposal to change their point of diversion. (11-0857)

The Olsons will be allowed, with no objection from Smith and Westerbergs to change their diversion point.

All water rights owned by Delmer Olson and Jimmie Olson will be contained in the ~~sub~~ line from the drainage and the existing culinary line.


Delmer L. Olson
Jeff E Olson (scribe)
Theo L Smith
David Tony Westberg
Samuel L. Smith

4 to this time, to dispute this claim. It is also an untruth that he "worked" for me driving his Uncle Sven's team and watered them in mud in my field. There are men still living who helped farm when we used horses. They can testify that it was necessary to come $\frac{3}{4}$ of a mile to our house where we had a watering trough.

It is very serious to me and upsetting when Mr. Smith tells me I have no right in a low water year to even use my house water. Does 90 years of ~~uninterrupted~~ use of culinary water have any valid claim?

When we drink, flush the toilet or do laundry the water is recycled and it runs on down to Mr Smith's Farm.

I hope the forgoing statements can be filed to counteract untruths recorded in the recent hearing

(signed) Delmer L. Olson
Address _____

Subscribed and sworn before me, a Notary Public, on the 28 day of March 1980

Commission expires _____

lifetime Ross H. Harniman
State of Idaho
County of Franklin

3

We bought title insurance. I examined the abstract of title and found that this farm did have a right to .06 C. F. S. of water from the main Station Creek. I never used this water because the diversion point was not on my land. There are five (5) entries on this abstract (Only one of which is a signed affidavit) saying that certain springs are for use on this farm. They are located on this small stream of Snake Creek. These statements are recorded at the Franklin County Court house. Father told me that these springs were not figured in the Bear River decree of 1920 because they were used before they reached the main stream.

Therefore I am innocent of stealing water. Mr. Stoker's call and subsequent visit was the first time a man with authority had asked me to turn off the water.

Now as to the relevant statements by Mr. Smith concerning my claim #13-7269 I did hire Mr. Smith and his Bulldozer to push dirt for a proposed ditch. It is an undisputed fact that he pushed hawthorn, brush and noxious weeds and mired his cat in mud while leveling my land. One need only to examine photos of land prior to

3/ other people who lived and used water on their farm in these early days.

My Grandfather moved to Station Creek from Sweden in 1886. Among his children was my Father Gustaf E. Olson. These families homesteaded two tracts of land on a small stream which they named Snake Creek. Mr Smith referred to this stream or spring as The Bergquist Spring. My forbears immediately began to use the water from these springs for culinary and irrigation. They and I have continued to use this water until August of 1979. At that time my neighbor Mr. Smith called the Water Resource Board at Idaho Falls. They sent Mr Russell Stoker to tell me to turn the water down the main stream. It is true that Mr Smith had asked me to turn off my sprinklers prior to Mr Stokers telephone call. It is also true that Mr Smith and his daughter took pictures of my sprinklers. At that time I thought I had a valid right to use this water.

You see my Father and Grandfather were law abiding men. I purchased the farm from my Father Jan 19, 1945

I

To whom it may concern.

Preston, Idaho
March 2

Delmer L. Olson Disposes and says.

RECEIVED

APR 10 1980

Department of Water Resources
Eastern District Office

Tuesday March 18, 1980 the principals of a water dispute, One Idaho State water resource man from Boise, one man from Idaho Falls, my Council Mr Kent Foster, and spectators met in a hearing at Franklin County courthouse. Application # 13-7269 was read and the reasons for and against the issuing a permit were called for. Recordings of this hearing were taken so it is now a matter of record.

Mr Theo Smith stood before the group and monopolized the time by drawing marks on the blackboard and speaking mostly of irrelevant things. Because so many of his statements were lies and because there was no time to give a rebuttal, I am writing this statement.

Mr Smith spoke of the early settlers of Station Creek as if he knew them personally. Some of his statements were true. No one questions that the predecessors who operated the farm he now owns appropriated waters of Station Creek in 1882. There were also

WILLIAM S. HOLDEN
R. VERN KIDWELL
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TERRY L. CRAPO
KENT W. FOSTER
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STEPHEN E. MARTIN
CHARLES A. HOMER
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CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 129
IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

April 9, 1980

Mr. Ernest Carlsen
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Application for Permit No. 13-7267, Delmer L.
and Jimmie D. Olson

Dear Mr. Carlsen:

I am enclosing a notarized statement which Mr. Olson
sent to us and asked that we submit for inclusion in the file
in this matter. It appears to be self explanatory.

Yours very truly,


Kent W. Foster

KWF:jt

Enclosure

RECEIVED

APR 10 1980

Department of Water Resources
Eastern District Office

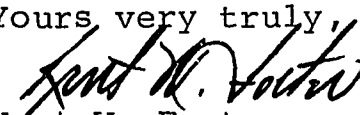
Mr. Ernest Carlsen
March 25, 1980
Page Two

believe that the waters which presently flow from the end of the drain pipe augment the flows of the small tributary to Station Creek from what those flows were prior to the installation of the drain.

On the other hand, we understand that at least some of the protestants doubt that this is true. Although we did not hear any testimony or information which would tend to support that position, it seems clear to us that Mr. Theo Smith, in particular, has at least some personal belief or suspicion that the waters now exiting from the drain are indeed the same water which ultimately found its way into Station Creek or its tributaries formerly.

As we understand it, the parties probably did not intend to resolve that issue by this document which they all signed. For instance, when questioned, our clients responded that they had agreed to place a valve at the end of their system for handling this drainage water in order to placate Mr. Smith, because they believe he did not have any water rights which would be prior to this one, since it is a right to a source not tributary to Station Creek. In otherwords, in using this language, our clients did not believe they were really giving up anything with respect to their right to the use of the drain water in agreeing to install the valve.

In our judgment, therefore, one of the most important issues to be resolved in this case is whether the source of supply for this proposed water right is or is not legally tributary to the surface flows of Station Creek.

Yours very truly,

Kent W. Foster

KWF:jt

cc: Delmer Olsen

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
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TELEPHONE 523-0620
AREA CODE 208

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

March 25, 1980

RECEIVED

MAR 26 1980

Mr. Ernest Carlsen
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Department of Water Resources
Eastern District Office

Re: Delmer and Jimmie Olsen - Application for
Permit No. 13-7269

Dear Mr. Carlsen:

I have just received from the Olsens a copy of an agreement which apparently was written and signed by the parties later the same afternoon of the hearing, which we all attended in Preston last Tuesday, March 18, 1980. We have also had an opportunity to review the specific terms of this agreement with our clients in some detail. After our conversations, it appears to us that the parties who signed the agreement may not have all intended the same thing and we therefore felt it might be appropriate to write to you and discuss the matter further.

We will refer specifically to the last sentence of the first paragraph of the document which was signed:

This line will be equipped with a valve at the end for the release of the water if prior water rights demand that release.

Our clients' position is obviously that the water supply for the right which they intend to appropriate is not presently tributary to the surface waters in the area, and specifically does not and has not contributed to the surface flows of Station Creek. They are convinced that the water supply for this right is subterranean water which formerly served only to create boggy wet areas on their farm ground and which presently continues to do so in two or three remaining spots.

We, of course, believe and contend that all of the information produced at the conference supports this position. In otherwords, the Olsens, who are most familiar with the matter.

Soil Conservation District

S.C. DISTRICT

Iser & Sons

FARM NO.

DATE 1-75

SCALE

CRES

Photo

PHOTO NO.

APPROXIMATE

APPROXIMATE

STATE





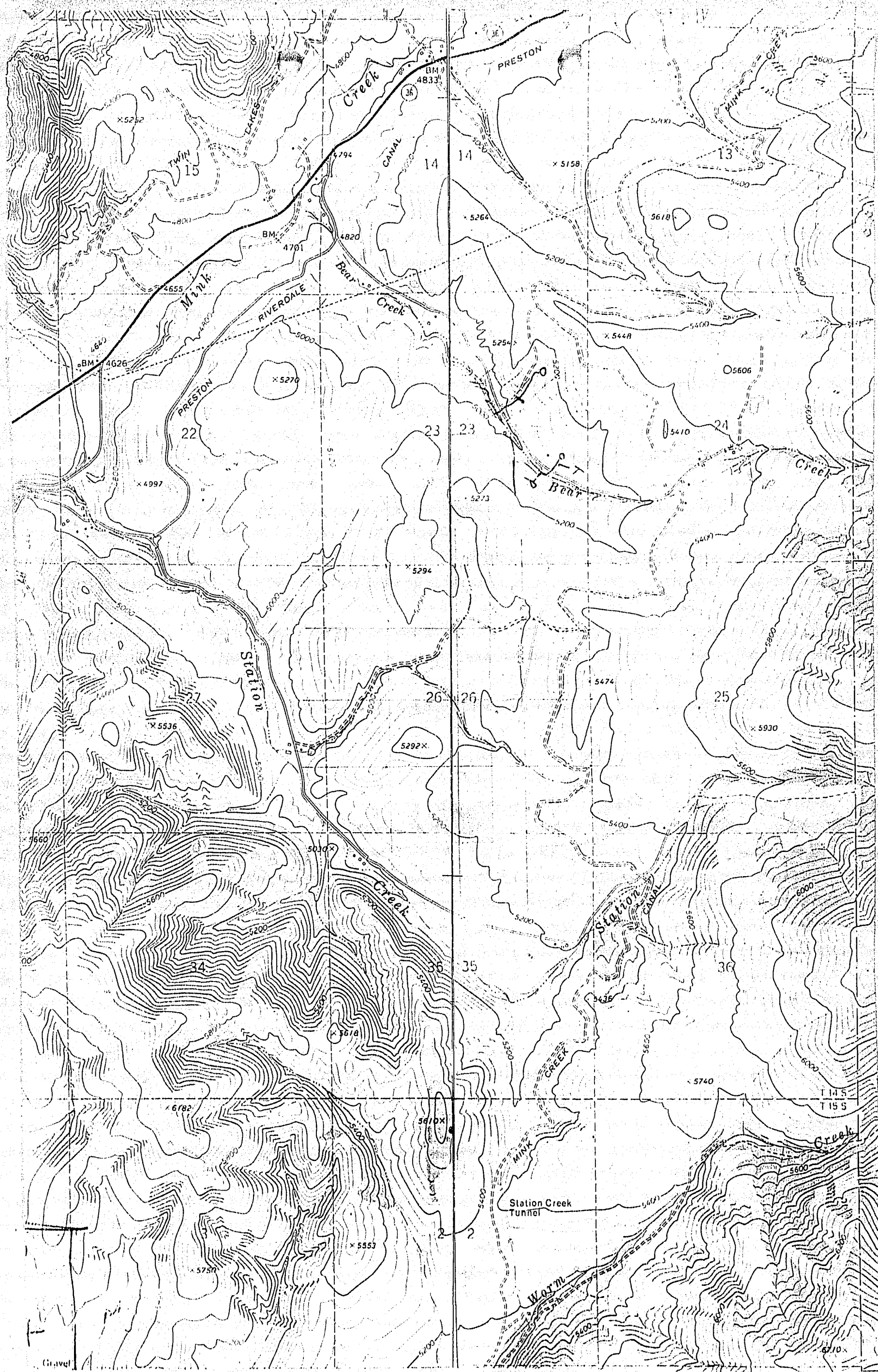
CONVERSATION MEMORANDUM

DATE 10-30-1980FILE 13-7269NAME OF PARTY Delman OlsenEMPLOYEE Ernest

RE: Status of application: Mr. Olsen & his wife visited the office ~~inquiring~~ ^{status} to discuss his application. In reviewing the file he was concerned with the last sentence in 1st paragraph of agreement, ~~the~~ which is further explained in a letter from Kent Foster dated March 25, 1980. He explained I in recommending final action on application the "I" would have I determine whether or not I source was tributary Station Creek in conjunction with conditioning of I permit. It indicated we would try to draft to proceed with processing of I application as soon as possible

Bob FlanneryErnest

RE: Course of Action: It was decided to write Kent Foster and advise him his client & the protectants will either need to resolve ~~the~~ ^{differences} over agreement or withdraw agreement allowing the Dept. I proceed with decision.



State of Idaho
Department of Water Resources

APPLICATION FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY: Ernest Carlson

APPLICATION NUMBER: 13-7209

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.

Field check by: _____
Date: _____
Comments: _____

- ☒ 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.

*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT:

- ✓ During telecon. of Post-Tested, attorney for applicant in discussed the possibility of changing "ground water" to "unadvised drained" and also indicated the plat map was not consistent with the legal description of the place of use.
✓ Changes made in application per telecon with Post-Tested attorney for client.

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: _____ Map No. _____
☒ Yes ☐ No Other rights on same place of use. derived rights on Station Creek & a constitutional one right, both from different sources.
☒ Yes ☐ No* In form for advertising.
Final date for protests: 12/24/79 ✓
☒ Yes ☐ No Protests received. If yes, record information on 4th page of application.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. Date: 1-3-1980. ✓
☒ 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? _____
✓ 11-16-1979 Date of priority recommended.
Special conditions of approval or cover letter. _____

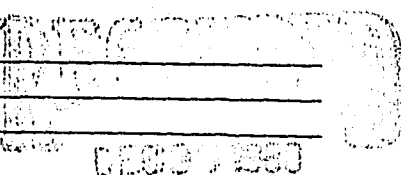
← See Memorandum Decisions

By: Ernest Carlson Date: 12-5-1980.

STATE OFFICE REVIEW:

- ☐ See attached sheet for more information.

By: Robyn Date: 1/13/81



Department of Water Resources

April 8, 1981

Delmer L. and Jimmie D. Olson
Route 2, Box 637
Preston, ID 83263

Gentlemen:

Re: Application for Permit No. 13-7269

Enclosed is a copy of your approved Application for Permit No. 13-7269 along with a copy of the Memorandum Decision and Order. We direct your attention to the conditions of approval as set forth in the Order.

Be sure to note the special condition requiring you to install and maintain a measuring device at your point of diversion prior to submitting proof of beneficial use of water. We have enclosed a letter describing the different types of measuring devices accepted by this office.

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

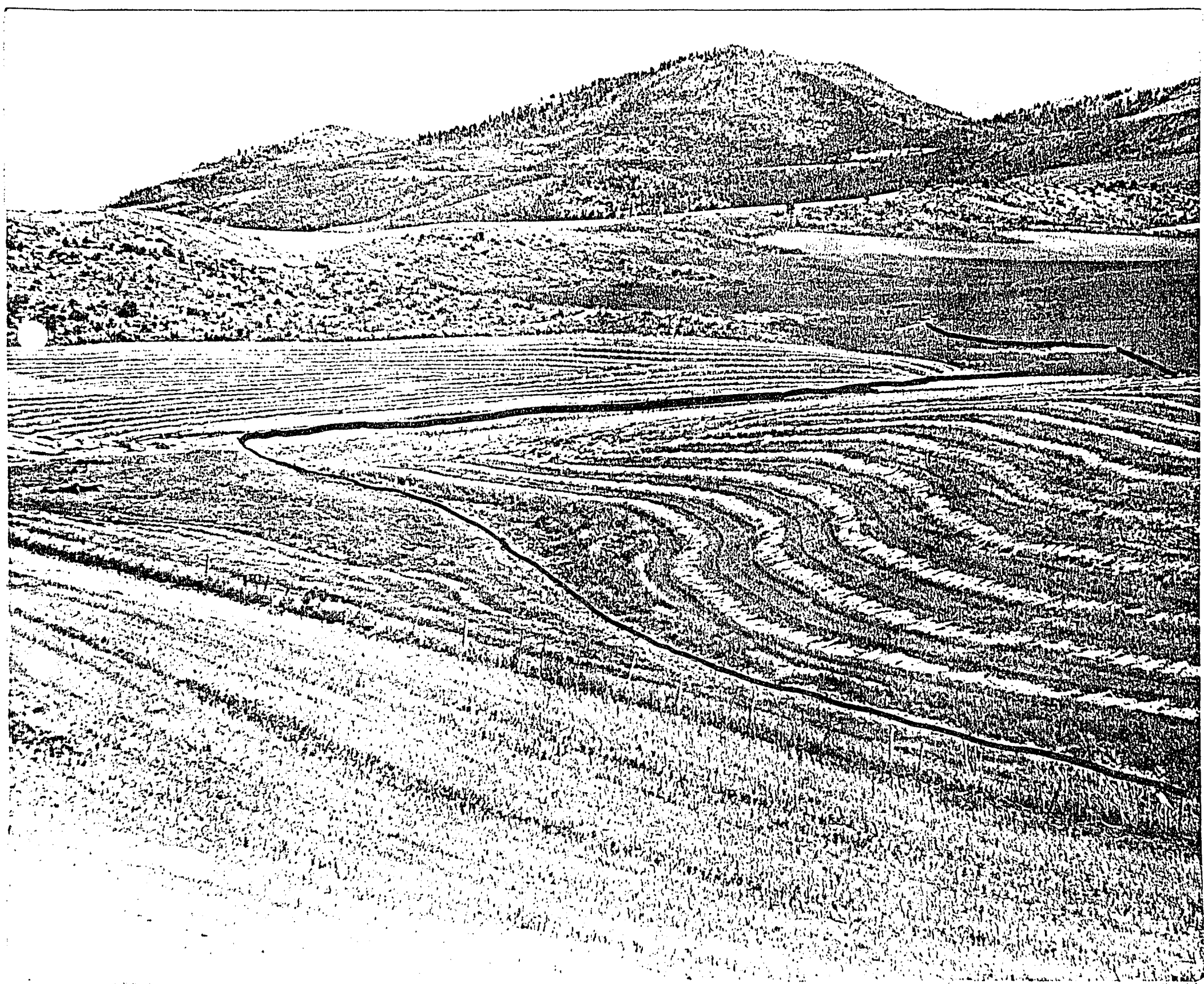
Sincerely,

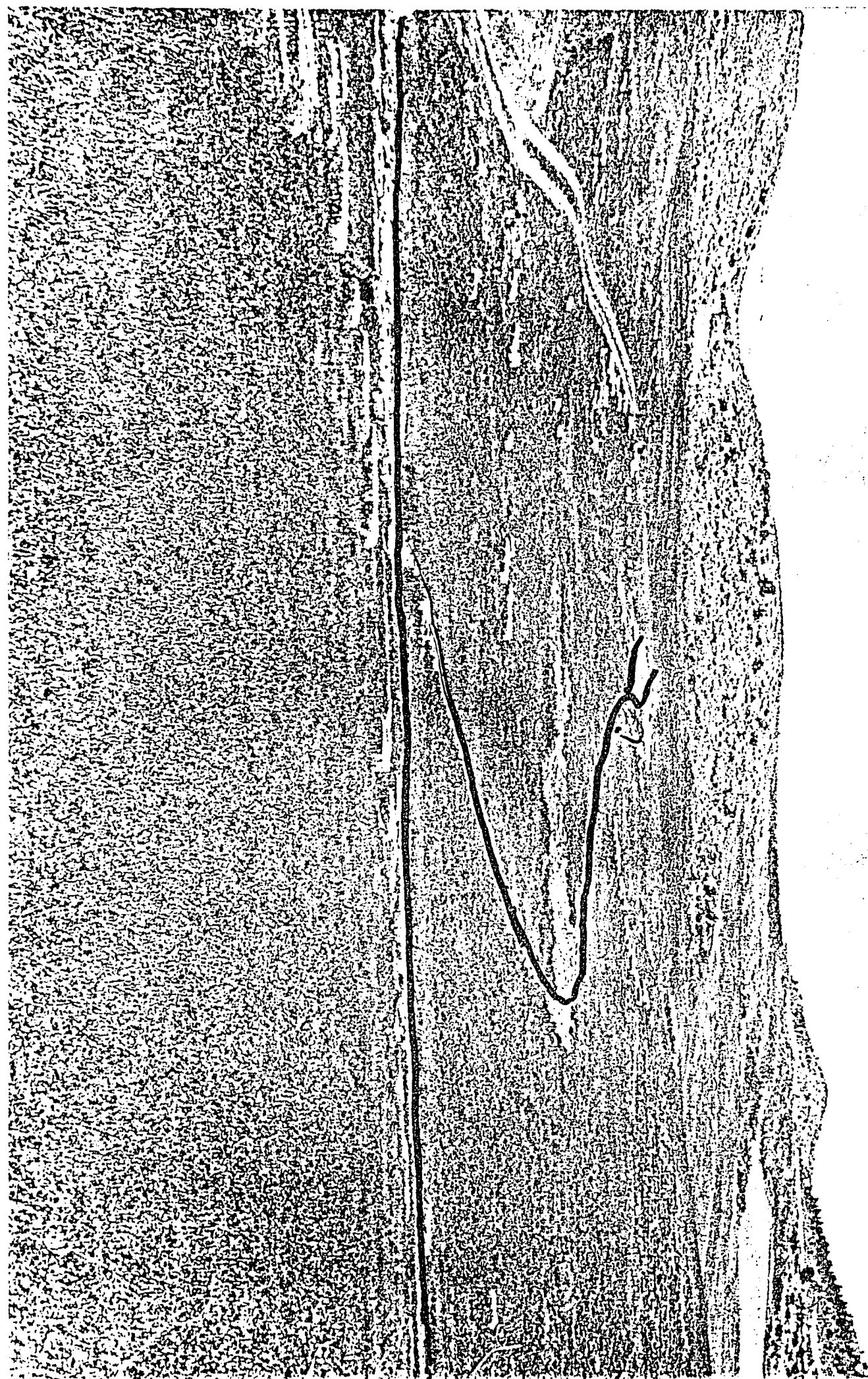
L. GLEN SAXTON
Chief, Operations Bureau

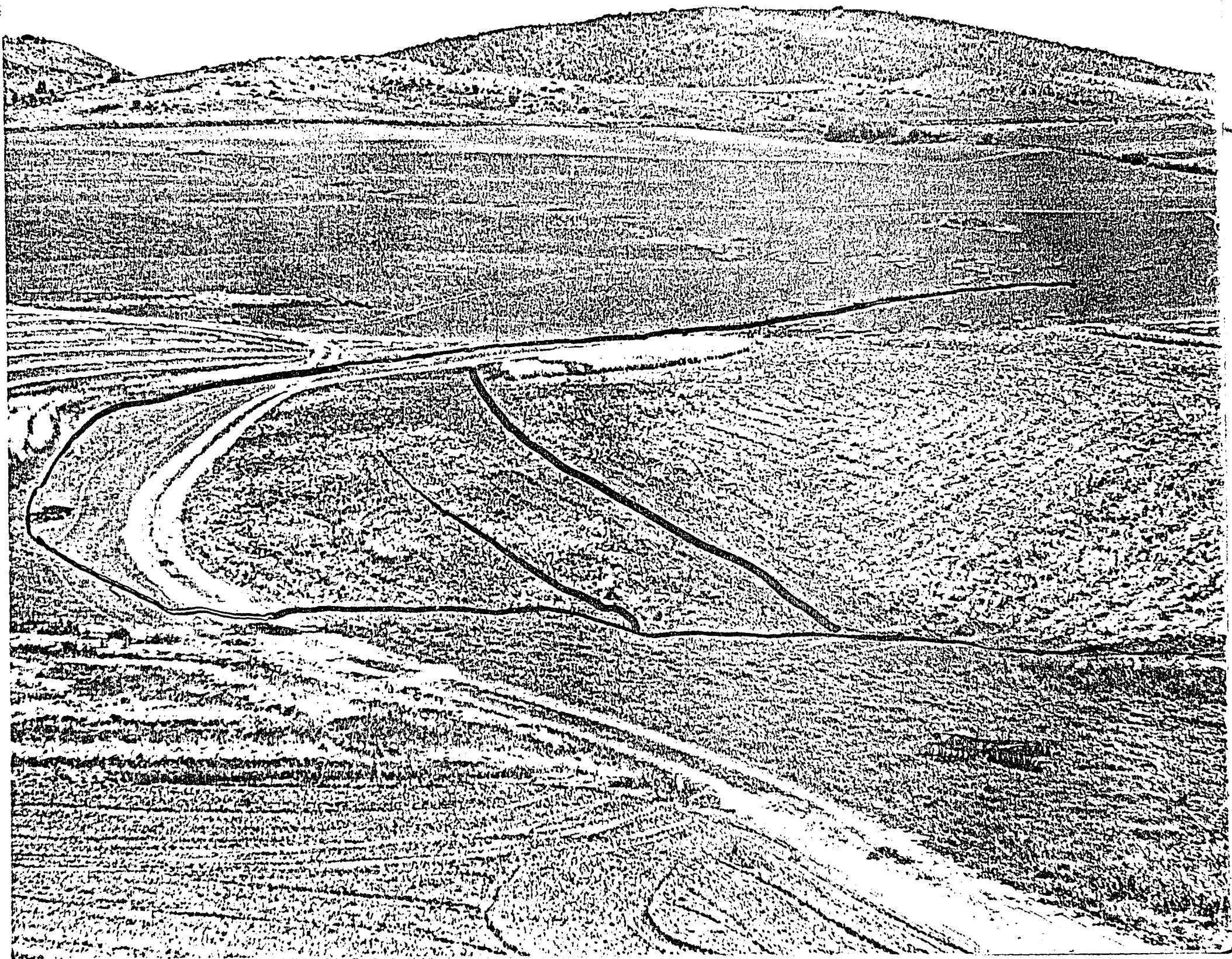
LGS:rf

Enclosures

cc: Theo L. Smith
David Terry Westerberg
Kent Foster









RECEIVED

MAR 4 1982

Department of Water Resources
Eastern District Office

Kent W. Foster, of
HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, Idaho 83402
Telephone: (208) 523-0620

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTESTS AGAINST	)	
	)	
APPROVAL OF APPLICATION FOR PERMIT	)	PETITION FOR MODIFICATION
	)	OF MEMORANDUM DECISION
NO. 13-7269 IN THE NAME OF DELMER	)	AND ORDER
	)	
L. OLSON AND JIMMIE D. OLSON	)	
	)	

COME NOW Delmer L. Olson and Jimmie D. Olson, and hereby petition the Director of the Department of Water Resources to modify that Memorandum Decision and Order entered in the above-entitled matter on the 8th day of April, 1981, to make said decision comply with certain facts discovered subsequent to the entry of said Order.

Said Decision and Order recites on page 4 thereof that:

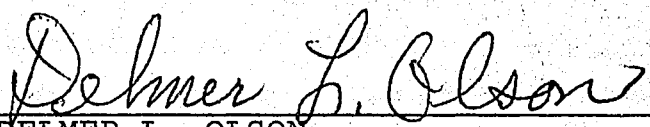
2) No water shall be diverted from the drain located in the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 26, Twp. 14S, Range 40 E.B.M., but the water from that drain shall be allowed to flow unrestricted into Station Creek.

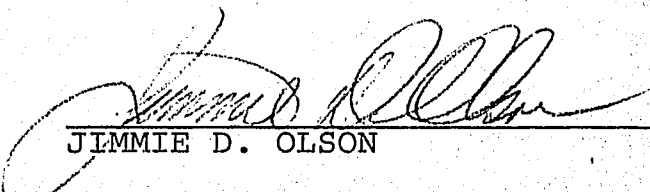
The Olsons understand that said legal description was based upon a review of a USGS quadrangle map of the area and that the personnel who prepared said description were under the assumption that an existing drain extended into and drained a portion of the above-described property. Subsequent review and investigation has shown that, in fact, there is no existing branch of the Olsons' drain which extends into or drains any wet or boggy spots in the

above-described real property which were not formed subsequent to the construction of Mink Creek Canal. In fact, a portion of the main trunk line of the Olsons' existing drain crosses the southernmost portion of the above-described property, but does not drain any wet areas that were not formed subsequent to the construction of Mink Creek Canal.

The Olsons have been assured that it was not the Director's intention to require removal of that portion of the Olsons' existing drainpipe which crosses the southern portion of the above-described real property.

The Olsons have agreed and do continue to agree that any wet areas which were not formed subsequent to the construction of Mink Creek Canal and which are located within the above-described real property, if drained, will be drained directly into the Station Creek tributaries and will not be connected with the existing drain structure.


DELMER L. OLSON

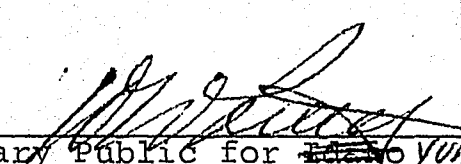

JIMMIE D. OLSON

STATE OF ~~IDAHO~~ ^{ARIZONA})
) ss.
County of ~~YUMA~~)

On this the 24 day of FEBRUARY, 1982, before me, the undersigned, a Notary Public, in and for said state, personally appeared DELMER L. OLSON, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

(seal)


Notary Public for ~~IDAHO~~ ^{YUMA Co, ARIZONA}
Residing at: EMERY 26 A Z
My commission expires: _____

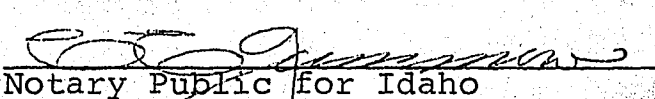
My Commission Expires Mar. 20, 1984

STATE OF IDAHO)
) ss.
County of Franklin)

On this the 18th day of FEBRUARY, 1982, before me, the undersigned, a Notary Public, in and for said state, personally appeared JIMMIE D. OLSON, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

(seal)


Notary Public for Idaho
Residing at: PRESTON ID.
My commission expires: Life

WILLIAM S. HOLDEN
R. VERN KIDWELL, P. A.
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER, P. A.
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
RANDALL K. BARTON
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 129
IDAHO FALLS, IDAHO 83402
TELEPHONE 523-0620
AREA CODE 208

March 3, 1982

RECEIVED
MAR 5 1982
Department of Water Resources
ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)

RECEIVED

MAR 4 1982
Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson, Watermaster
Department of Water Resources
Eastern District Office
150 Shoup Ave.
Idaho Falls, Idaho 83402

Re: Application for Permit No. 13-7269
in the Name of Delmer L. Olson and
Jimmie D. Olson

Dear Mr. Carlson:

We are enclosing a Petition for Modification of Memorandum Decision and Order of the Director. You will probably recall the discussions we have had about this matter, but if we can provide any additional information or be of any assistance, please feel free to call us at your convenience. In any event we would appreciate it if you would review this Petition and then forward it to the appropriate department officials in Boise for action.

Please keep us advised of the status.

Yours very truly,

Kent
Kent W. Foster

KWF:jpr

Enc.

August 23, 1982

Holden, Kidwell, Hahn & Crapo
Idaho First National Bank Building
P. O. Box 129
Idaho Falls, ID 83401

Attention: Kent Foster and Protestants

Gentlemen:

Re: Application for Permit No. 13-7269
Delmar L. and Jimmie D. Olson

On April 8, 1981, the Director of the Department of Water Resources issued a decision approving Application for Permit No. 13-7269 in the name of Delmar and Jimmie Olson subject to six conditions.

Condition two (2) stated that, "No water shall be diverted from the drain located in the W1/2NW1/4NE1/4, Sec. 26, Twp. 14S, Rge. 40E, B.M., but the water from that drain shall be allowed to flow unrestricted into Station Creek." This condition was imposed because of the information presented at the conference which indicated a lateral drain had been extended through this area.

Our review of the data revealed that such a lateral drain would intercept water that would reach Station Creek. We now understand that no such lateral drain was even installed, but that the main trunk line crosses through that area.

On March 4, 1982, Delmar and Jimmie Olson, through their attorney, requested that this condition be modified. While the Department did not intend for this condition to necessarily apply to the trunk line, it is important that the water from that area not be

drained or the flow in Station Creek diminished. Condition two is necessary to make it clear that Permit No. 13-7269 does not authorize the drainage of the W1/2NW1/4NE1/4, Sec. 26. Therefore, no amendment of the April 8, 1981 memorandum decision will be made.

Sincerely,

A. KENNETH DUNN
Director

AKD:rf

cc: Theo. L. Smith
David Westerberg
Eastern Region - IDWR

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. 13-7269.

Name(s) of Permit Holder: Delmer L. Olson ; Jimmie D. Olson

Post Office Address: Rt 2 Box 637 Preston,

Id. 83263 Tel. No. 852-1643
852-1772

Source of Water: Unnamed Drain.

Extent of Use: ☒ Domestic 2 (number of households)
☒ Stockwater 100 (number and type of stock)
☒ Irrigation 80 (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.

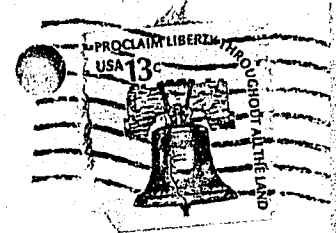
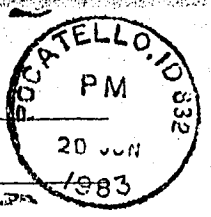
17 June 1983
Date

Delmer L. Olson
Jimmie D. Olson
Signature of Permit Holder

D.L. Olson

Rt. 2

Box 637, Preston, ID 83263



RECEIVED
JUN 21 1983



IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup
Idaho Falls, Idaho 83401
(208) 525-7161

July 27, 1983

Delmer L. Olson
Jimmy D. Olson
Rt. 2, Box 637
Preston, ID 83262

RE: Permit #13-7269

Dear Permit Holder:

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

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

_____ A field examination of your system has been scheduled for _____.

If this time and date is not convenient for you, please contact this office as soon as possible.

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

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

Sincerely,

HARODDDW. JONES
Sr. Resource Agent

HWJ:JK

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 13-7269

Priority: November 16, 1979 Amount: .20 CFS 73.7 AFA

This is to certify, that DELMER L. OLSON
JIMMIE D. OLSON

RT. 2 BOX 637
PRESTON, ID 83263

has complied with the terms and conditions of the permit issued pursuant to Application for Permit dated November 16, 1979, and has submitted proof to the Department of Water Resources on June 21, 1983, that water has been applied to a beneficial use; an examination by the Department indicates that the works have a diversion capacity of .20 cfs of water from;

UNNAMED DRAIN tributary to SINKS

and that a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>VOLUME</u>
Irrigation	04/01 to 11/01	.19 cfs	73.5 afa
Stockwater	01/01 to 12/31	.02 cfs	.2 afa
Totals		.20 CFS	73.7 AFA

LOCATION OF POINT OF DIVERSION(S): SENW , Sec. 26, Township 14S, Range 40E
Franklin County

PLACE OF USE: Irrigation

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
14S	40E	27	NESE 11	SESE 10			21

Total number of acres irrigated: 21

PLACE OF USE: Stockwater, same as Irrigation use

CONDITIONS/REMARKS:

1. The right to the use of the water hereby confirmed is limited to the amount which can actually be beneficially used and is restricted and appurtenant to the lands or place of use and to the purpose herein described, as provided by the laws of Idaho.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right is limited to water not tributary to Station Creek.

State of Idaho
Department of Water Resources

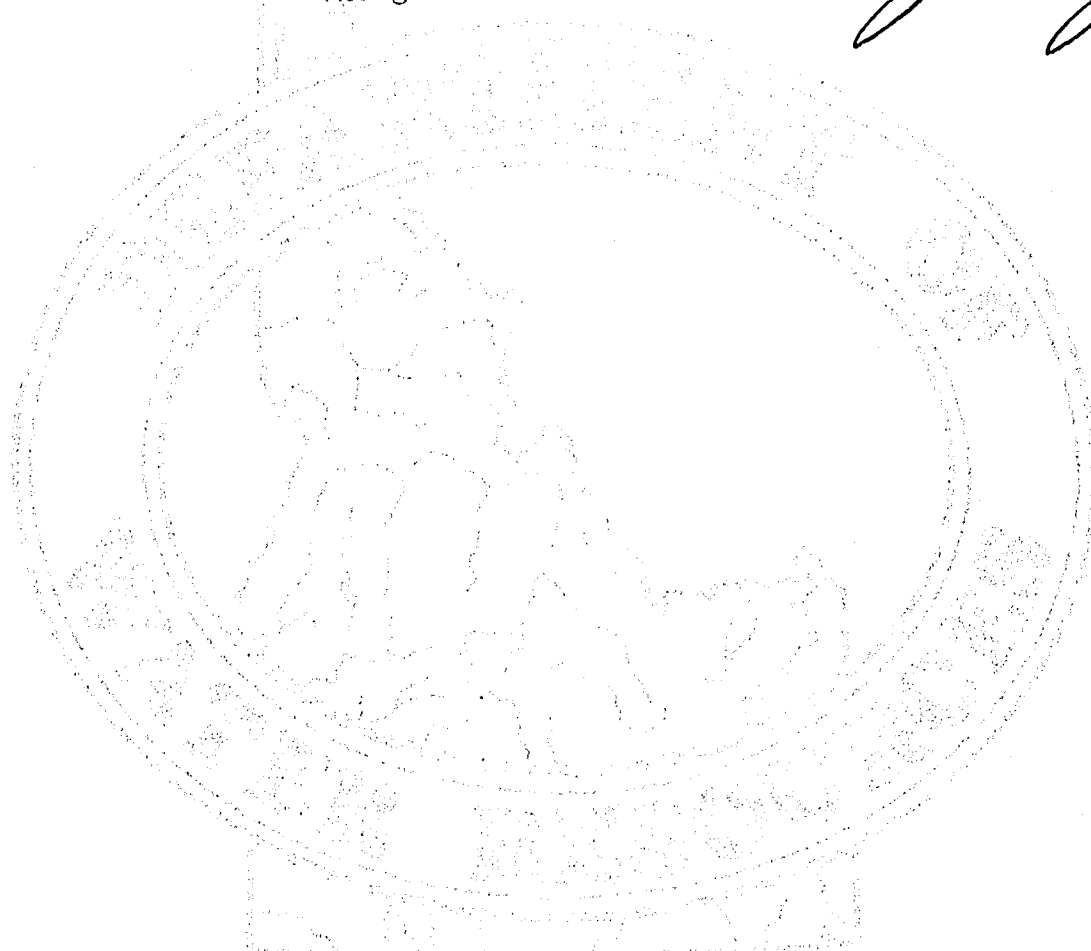
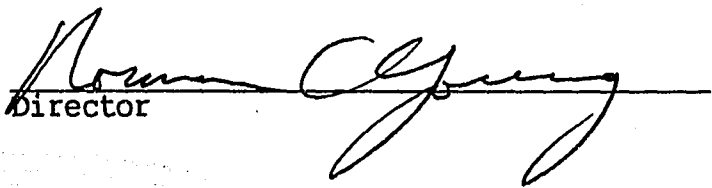
PAGE 2

WATER RIGHT LICENSE

WATER RIGHT NO. 13-7269

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 22nd day
of April, 1982.

Acting for the Director



RECEIVED
JAN 13 1986

Department of Water Resources

Permit No. 13-7269

Phone No.

1. Owner: Delmer & Jimmy Olson Phone No. _____
Current Address: Rt. 2 Box 637 Preston, ID. 83263
2. Accompanied by: Applicants EXAM. DATE: 7-25-84
Address: _____ Phone No. _____
Relationship to Permit Holder: _____
3. Source: F. Drain tributary to Station Creek

Well/Diversion* No.	Motor Make	HP	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

*Code with points of diversion, system diagram & photos on reverse side. Disregard if only one.

5. System Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)
 Drain field / to plastic pipe & Rockwell meter (Not working)
 to gravity flow to sprinklers (25 heads running)
 (Recent flooding seems to have jammed meter)
 Pressure Vary from 12 psi - 22 psi depending on valve opening

Cheryl Nimmerman Dreisone

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Pitot gauge						
For Irrig.						
Bucket + stopwatch						
For Domestic						

7. Measurements ☒ WWS - System ☐ Additional data/computation sheets attached
- 18 psi 19 birds Stockwater
2 psi 3/16 in etc 10 hrs
18 psi stabilized reading
8. Point(s) of Diversion: ☒ Domestic System ☐ approx overflow rate 2 gpm Callow 0.01 cfs Domestic For 2 hours
- Indicate Method of Determination ASCS Map

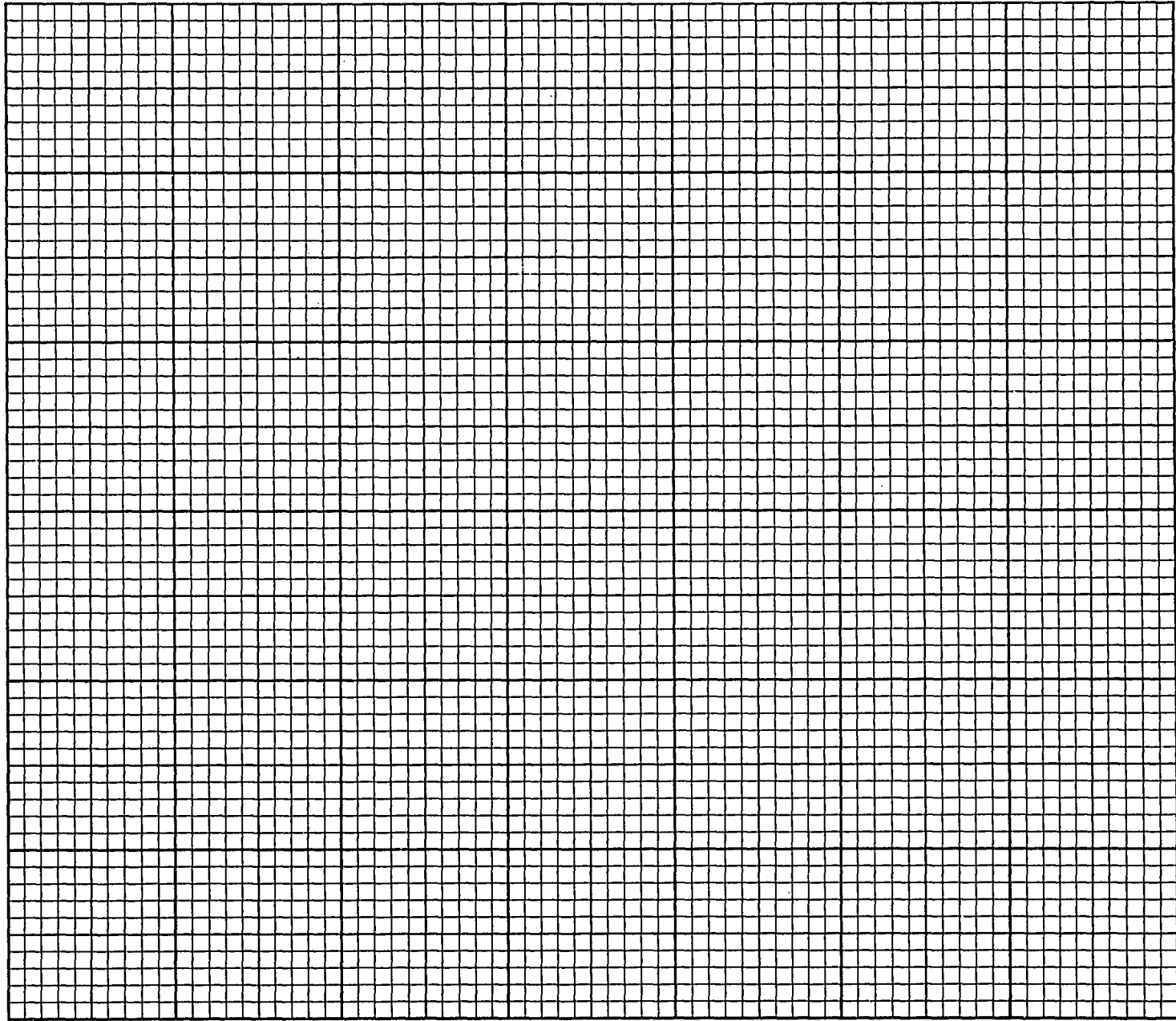
[illegible]

9. Irrigation - give acres served by system at time of exam.
 Place(s) of Use: _____ Indicate Method of Determination ASCS Map

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	
14S	40E	27																	21
															11			10	
															D/s			O/s	
			Total Acres <u>21</u>																

10. Other water rights on these lands Applicant says decree from Statton Creek
11. Other water right diverted from same p.d. N.A.

12. **Diversion and Delivery System Diagram:** Indicate all major components and distances between components. Indicate ditch size/pipe i.d. as applicable. Indicate on systems with measurement port the distance between the port and the nearest component/pipe bend/restriction both upstream and downstream, and the inside pipe diameter at the measurement port. On multiple diversion systems indicate how diversion systems are connected.



13. ☐ Photo of Diversion & System Attached

- ☒ Aerial Photo of Place of Use Attached
or Map of Irrigated Acreage Attached

14. Remarks Irrig system - Concrete collector with valve for gravity
flow line and over flow into unnamed drain.

- Domestic system - Spring house on drain sidehill to collector
box + over flow to gravity flow to 2 houses

15. Recommended Amendments

☐ Change P.D. as reflected above

☒ Add P.D. as reflected above

☐ None

☐ Change P.U. as reflected above

☐ Add P.U. as reflected above

☐ Other

16. Examiner's/Consultant's Signature Phil Jones Date 11-23-84

Consultant's License Number _____

IDWR Director's Authorization to Conduct

Beneficial Use Examination _____

Date

CONSULTANT SEAL

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
LICENSING REPORT

RECEIVED

JAN 13 1986

13-7269
Permit No.

Department of Water Resources

1. Measurement Calculations

- a) Field Measurement Calculations (Include theoretical capacities and system capacity)

By Pitot Gauge - 18 psi av., 3/16 Nozzles, 19 sprinklers

$$Q = A \sqrt{2gh}$$

$$= 0.0001917 \sqrt{2(32.2)(41.54)}$$

$$= 0.00915 \text{ cfs or } 4.45 \text{ gpm / per sprinkler}$$

$$19 \text{ sprinklers} \times 4.45 \text{ gpm} = 84.55 \text{ gpm or } \underline{0.19 \text{ cfs}} \text{ for irrigation}$$

Domestic system overflow was
2 gpm - allow 0.01 cfs
for Domestic use for 2 homes
+ 2.4 afa

Stockwater ok
10 head of cattle - allow
0.02 cfs + 0.2 afa

- b) Volume Calculations for Irrigation:

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 21 \text{ acres} \times 3.5 \text{ afa} = 73.5 \text{ afa}$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = 0.19 \text{ cfs} \times 214 \text{ d} \times 1.9835 = 80.6$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} = 73.5 \text{ afa}$$

- c) Volume Calculations for Other Uses:

2. Overlap Review

- a) Other water rights with same place of use: Applicant says derive from Station Creek
- b) Other water rights with same point of diversion: N.A.
- c) Analysis: R 16 (3.5)

RECOMMENDED AMOUNTS

3.	Permit No.	Priority	Amount	App. Date	Date Proof Submitted	System Capacity

4. Permit Holder: _____

Address: _____

5. Source: _____ tributary to _____

6. Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Irrigation	4-1	11-1	0.19	73.5
Stock	1-1	12-31	0.02	0.2
Domestic (2 units)	1-1	12-31	0.01	2.4

Allowable Maximums: 0.20 fs 76.1 afc

7. Point(s) of Diversion:

[illegible]

8. Place(s) of Use

[illegible]

9. Recommended Conditions/Remarks: _____

10. Recommended Amendments

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

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

11. Examiner's Signature John Jones

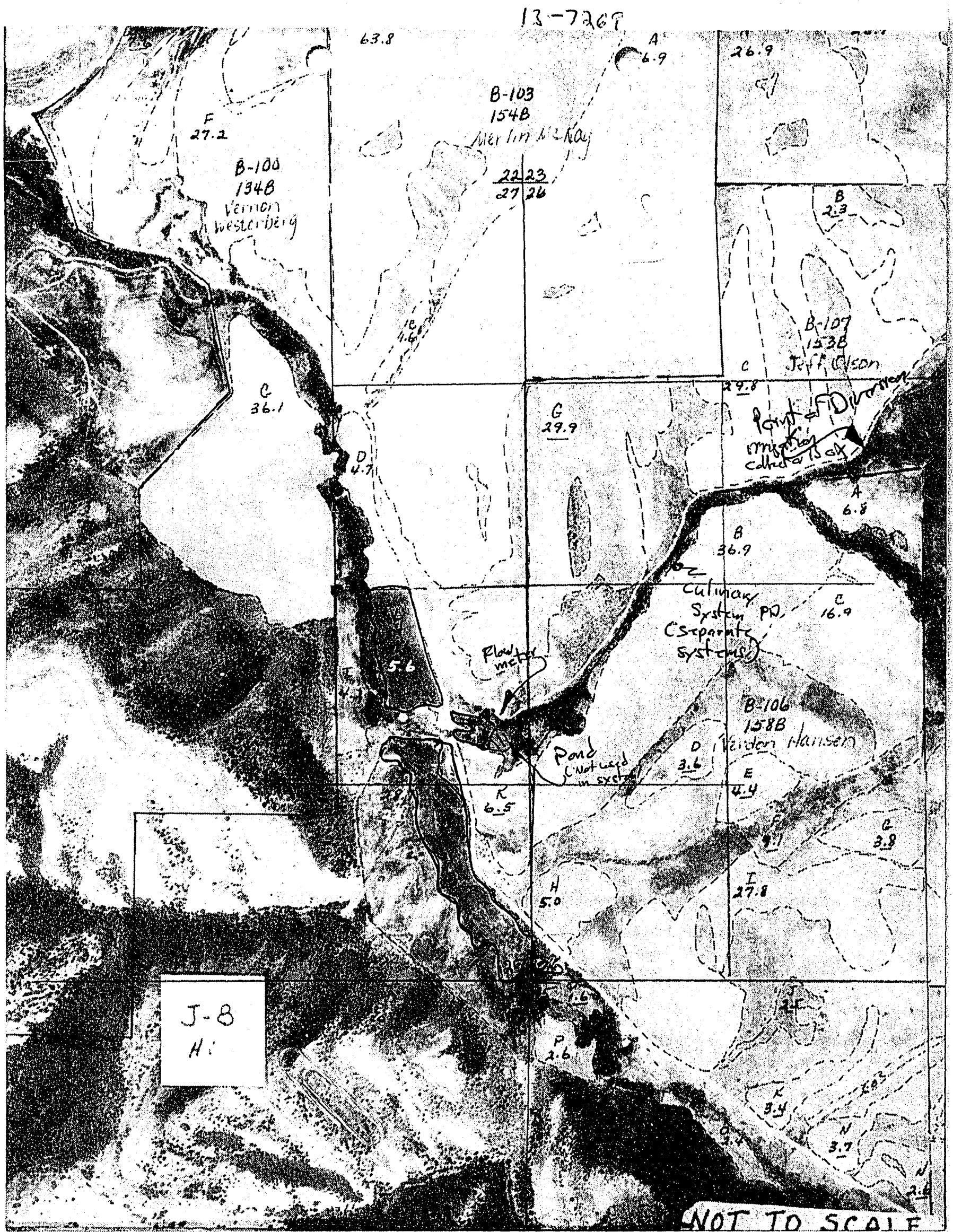
Date 11-23-84 ✓

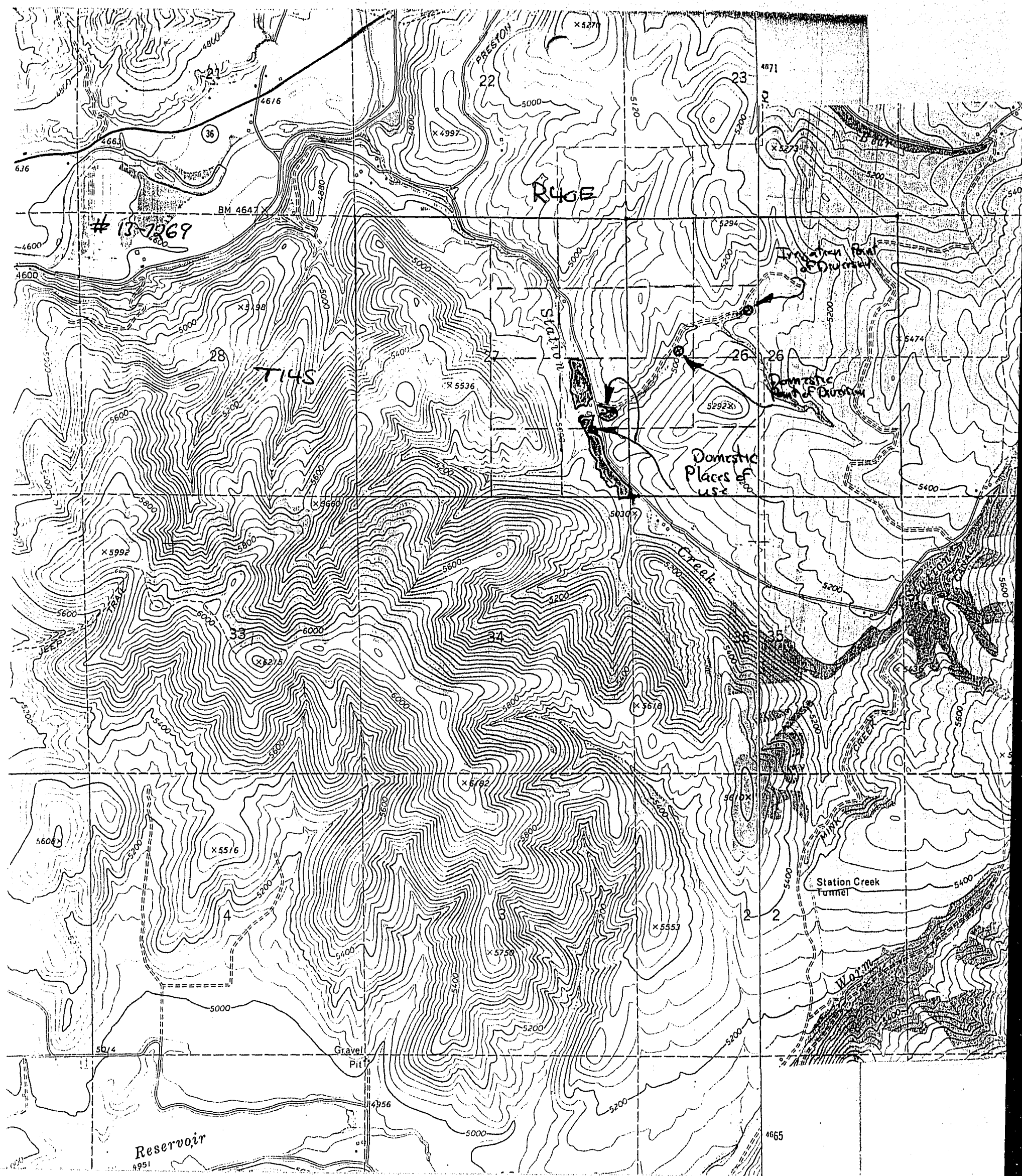
Checked in Regional Office by Bary Spackman

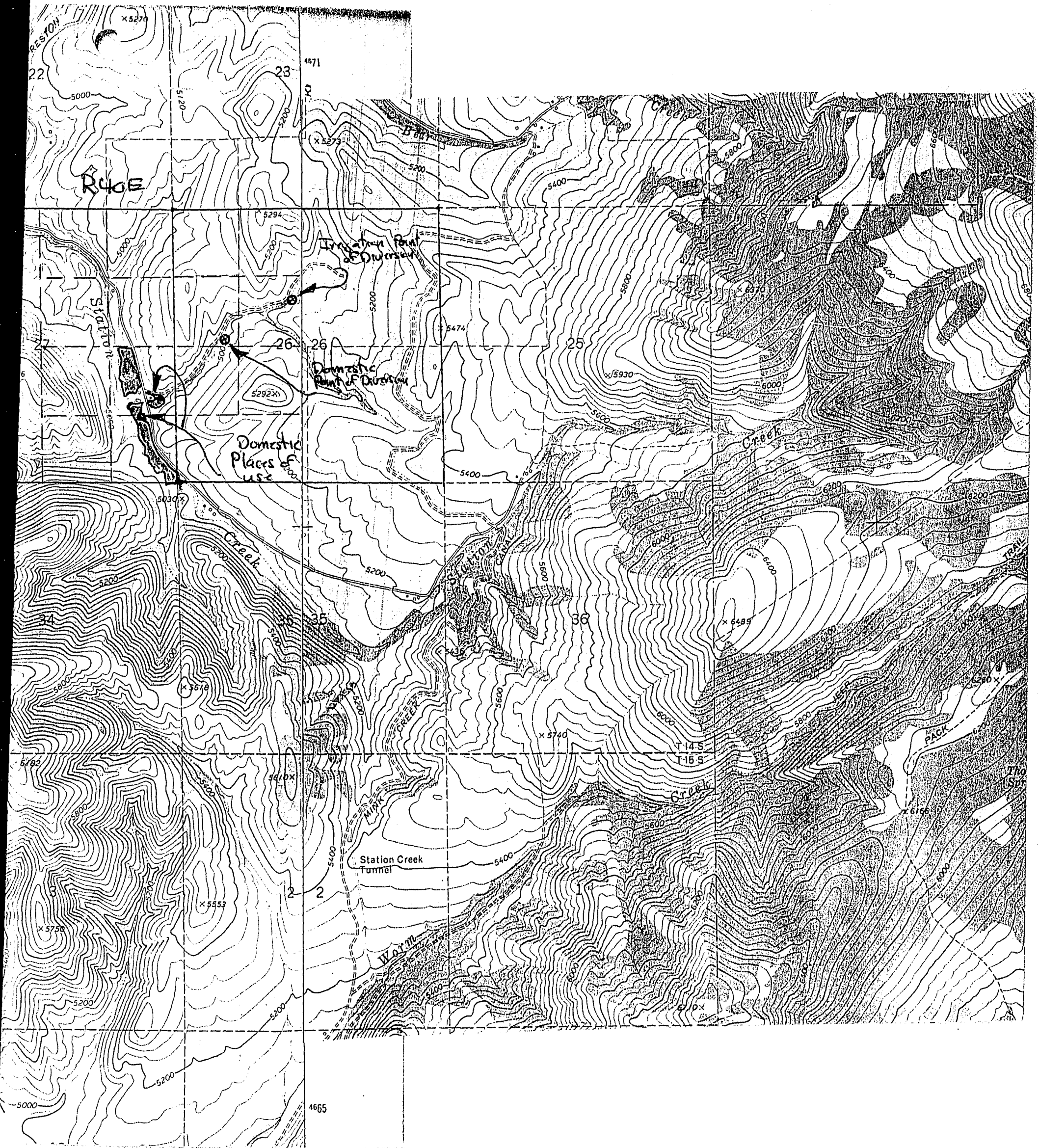
Date 1-08-86 ✓

Approved in State Office by Jim

Date 1-8-87









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

February 5, 1987

RE: Permit No. 13-7269

Delmer L. & Jimmie D. Olson
Rt. 2, Box 637
Preston, ID 83263

Dear Permit Holder(s):

Enclosed is a draft copy of the license proposed to be issued on the above referenced water right.

If you do not concur with the information shown on the draft license, please advise the Department within ten (10) days. If you have any questions, please let us know; otherwise, the license will be issued as identified on the draft copy.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS
Governor

A. KENNETH DUNN
Director

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

MEMORANDUM

FROM: Gary Spackman *Gary*
TO: File
RE: Water Right No. 13-7269
DATE: March 4, 1987

A question arose concerning the conditions imposed by the Memorandum Decision and Order for the approval of applications for Permit No. 13-7269, particularly condition 5 which stated that "water collected for appropriation under this permit shall be limited to drainage of those wet areas in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$. The field exam does not show exactly what area is drained.

On March 3, 1987, I spoke with Harold Jones of the Eastern Regional Office, the field examiner who examined Permit No. 13-7269. Harold stated that the point of diversion located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, T14S, R40E, was the end of the drain pipe, and that the drain pipe extended east from the located point of diversion for approximately 2,000 feet. Harold did not visually see the pipe since it was buried underground, but his statement is based upon representations of the permitholders.

The drain as located would probably drain the parcels to which development was limited in the Memorandum Decision and Order. By consulting the USGS quad map, it does not appear that water would collect surface water from the northern drainage area where collection was prohibited.

The domestic use of the permitholder is located downstream from the originally indicated point of diversion. The small diversion, however, should not significantly impact prior rights, and I recommend that an amendment be sent to the permitholders changing the point of diversion.



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

CECIL D. ANDRUS
Governor

A. KENNETH DUNN
Director

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

March 10, 1987

RE: Permit No. 13-7269

Delmer L. & Jimmie D. Olson
Rt. 2, Box 637
Preston, ID 83263

Gentlemen:

On February 5, 1987 this Department sent you correspondence stating that a license would be issued within ten days if you concurred with the proposed draft.

After additional review, we discovered that a second point of diversion used under this right was not within the legal description identified on the original permit. Before a license can be issued, an amendment of permit correcting the description is required.

The enclosed application for amendment contains information that will be included on the license when it is issued. Please review carefully and if you concur, sign the amendment and return with the \$20.00 filing fee within 30 days.

If you do not concur with these findings or if you have any questions, please contact us within the 30-day period.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

MEMORANDUM

TO: File 13-7269
FROM: Jim Johnson *hw*
DATE: March 27, 1987
RE: Meeting With Mr. Jim Olson Concerning the Licensing of This Right

In response to my letter of 3/10/87, Mr. Olson met with me to cover the reasons for requiring the amendment.

In our conversation, Mr. Olson further explained the use of water for domestic purposes from the "spring". Water from the spring is collected into a pipe which is buried underground in the same trench that was used to bury the pipe from the seep areas. The spring water is piped into the two homes for "in-house use only".

This permit, when it was filed, did not intend to include the water from the spring as part of the permit. Therefore, only one source, "unnamed drain" was identified on it.

Water from the unnamed drain is used on the "outside" of the homes for irrigation of lawns and gardens. However, Mr. Olson agreed that the irrigation use identified on the examination did appear to include these areas.

In conclusion, it was agreed that the spring water source should not be included on this right, making the need for filing the amendment of permit unnecessary.

The license should be issued for only the "unnamed drain" water and the domestic use should not be included since drain water is only used for irrigation and stockwater.



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

CECIL D. ANDRUS

Governor

A. KENNETH DUNN

Director

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

March 30, 1987

RE: Permit No. 13-7269

Jimmie D. Olson
Rt. 2, Box 637
Preston, ID 83263

Dear Mr. Olson:

In follow-up to our recent meeting, this correspondence is to provide you with a summary of items discussed and conclusions reached on the requirements for licensing the above referenced permit.

In our meeting, we determined that water used for in-house domestic purposes comes from a spring source which is separate from the water used for irrigation and stockwater identified under Permit 13-7269. Since the spring water usage represents a different source than what was intended under this permit, the request to amend the permit to include the spring is unnecessary.

We also discussed the fact that the unnamed drain water was used to irrigate the lawns and gardens of the two homes. Since this is included under the irrigation use, it is not necessary to include the domestic use on the license.

In conclusion, we determined that no amendment of the permit is necessary prior to licensing and that the license will only include irrigation and stockwater uses.

If you have any questions or if I can be of any further assistance, please let me know.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

DELMER L. & JIMMIE D. OLSON
RT. 2 BOX 637
PRESTON, ID 83263

April 23, 1987

RE: Permit No. 13-7269

Dear Permit Holder(s):

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

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure