

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident. No. 13-7495

To appropriate the public waters of the State of Idaho

1. Name of applicant D. PAUL JENKINS Phone 425-3660
Post office address 487 HWY 34 GRACE IDAHO 83241
2. Source of water supply COLD SPRINGS CREEK which is a tributary of Bear River
3. Location of point of diversion is SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Govt. Lot _____
Sec. 11 Township 11S Range 40E B.M. CARIBOU County; additional
points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 5 20 AF for STOCKWATER purposes from JAN 1 to DEC 31 (both dates inclusive)
(cfs or acre-feet per annum) Recreation
Amount 5 20 AF for FISH PROP purposes from JAN 1 to DEC 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) _____ and/or (b) 20 5
cubic feet per second acre feet per annum
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc. 5' DAM ACROSS DRAINAGE
 - b. Height of storage dam 5 feet; active reservoir capacity 5.0 acre-feet; total
reservoir capacity 5 acre-feet; period of year when water will be diverted to storage:
JAN 1 to DEC 31 inclusive.
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
 - d. Is ground water with a temperature of greater than 90°F being sought? _____
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
1 years (minimum 1 year).

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

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
11S	40E	11		X															

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. NONE

- Who owns the property at the point of diversion? APPLICANT
- Who owns the land to be irrigated or place of use? APPLICANT
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

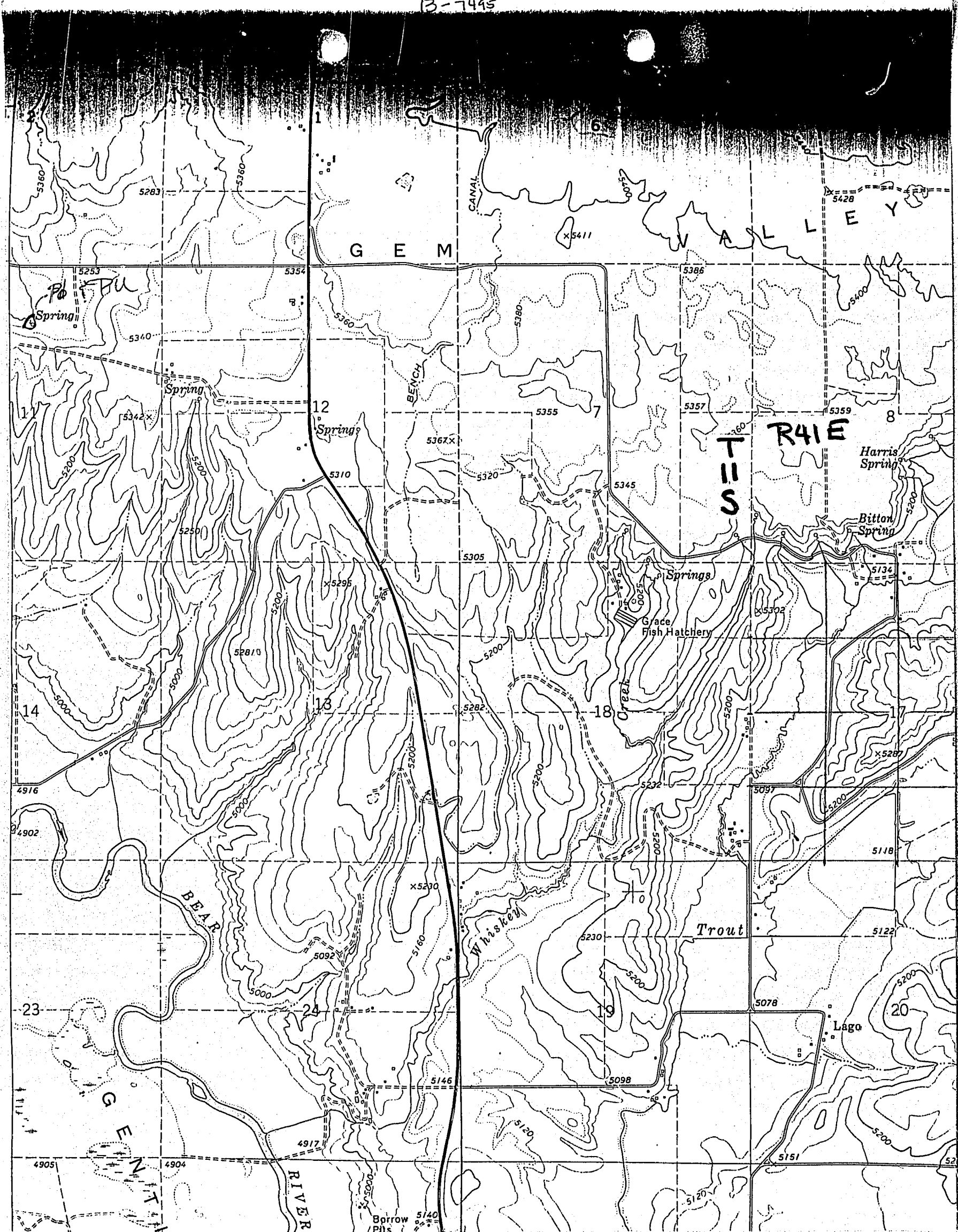
12. Remarks: THIS DAM WAS BUILT IN 1975 AND HAS BEEN USED EVER SINCE THAT TIME FOR STOCKWATER AND RAISING FISH FOR PRIVATE USE. THE APPLICATION IS MADE BECAUSE IT NOW APPEARS THAT THE LEGAL ENTITLEMENT TO MAINTAIN THE POND MAY BECOME AN ISSUE. NO WATER IS DIVERTED FROM THE POND

A full page of blank graph paper. The grid consists of 20 columns and 20 rows of squares, formed by thin black lines. There are no margins or other markings on the page.

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

(Applicant)

13-7445



RECEIVED
JUN 16 1992
Department of Water Resources
Eastern District Office

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.

D. Paul Jeebair
(Applicant)

Received by Jo Date 5-18-92 Time 1:00 P Preliminary check by _____
Fee \$ 30.00 Receipted by Jo # E017335 Date 5-18-92
Publication prepared by LB Date 7-25-92 Published in Capital City Sun
Publication approved _____ Date _____

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. _____, and said application is hereby _____.

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

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

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

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

e. Other:

Received by Jo Date 5-18-92 Time 1:00 P Preliminary check by _____
Fee \$ 30.00 Received by Jo # E017335 Date 5-18-92
Publication prepared by LB Date 7-29-92 Published in Caribou County Sun
Publication approved LB Date 8-24-92

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. _____, and said application is hereby _____.

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

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other:

Affidavit of Publication

County of Caribou }
State of Idaho } ss.

Mark Steele

being first duly sworn on his
oath, states:

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

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

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

2nd day of
July, 1992

The date of the last publication
being the 9th day of

July, 1992

On this 31st day of July

in the year of 1992 before

me, a Notary Public, personally
appeared

Mark Steele
known or identified to me to be the
person whose name subscribed to
the within instrument, and being
by me first duly sworn, declared
that the statements therein are
true, and acknowledged to me that
he executed the same.

Clayton H. Harte
Notary Public for Idaho
Residing at Soda Springs, Idaho
My commission expires:

March 11, 1994

PUBLIC NOTICE

First Time Published

NOTICE OF APPLICATION FOR WATER RIGHT

The following application(s)
have been filed to appropriate the
public waters of the State of Idaho:
13-07495

JENKINS, D. PAUL

487 HWY 34

GRACE, ID 83241

Source: COLD SPRINGS
CREEK Tributary: BEAR RIVER
Diversioin Pt: SWNWNE Sec 11
T 11S R 40E in CARIBOU
COUNTY.

Use: STOCKWATER (20.00
AF) RECREATION (20.00 AF)
Total Diversion: (20.00 AF)

Date Filed: 5/18/1992

In: CARIBOU COUNTY T11S
R40E S11 NWNE

The permit(s) will be subject to
all prior water rights. Protests must
be filed with the Director, Dept. of
Water Resources, Eastern Region,
150 Shoup Avenue, Suite 15, Idaho
Falls, Idaho 83402 on or before
JULY 20, 1992.

(s) R. KEITH HIGGINSON
Director

Published July 2 and 9, 1992 in
the Caribou County Sun.

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 13-07495

Proposed Priority: May 18, 1992

Maximum Storage Volume:

5.0 AF

This is to certify, that **D PAUL JENKINS**
487 HWY 34
GRACE ID 83241

has applied for a permit to appropriate water from:

COLD SPRINGS CREEK

tributary of **BEAR RIVER**

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
STOCKWATER	01/01 to 12/31		5.0 AF
RECREATION	01/01 to 12/31		5.0 AF
	Totals		5.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SWNWNE , Sec. 11, Township 11S, Range 40E
CARIBOU County

PLACE OF USE: STOCKWATER
TWN RGE SEC

11S 40E 11 NWNE

PLACE OF USE: RECREATION, same as STOCKWATER use

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **April 1, 1994**.
2. Subject to all prior water rights.
3. Use of water under this water right will be regulated by the watermaster of State Water District No. 11.
4. Recreation use is for a private, non-commercial fish pond.
5. Stockwater use is for 100 head of mixed stock.

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

3rd day of March, 1993

R. Keith Higginson
for R. Keith Higginson, Director

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
FRED J. LEWIS
KIRK B. HADLEY
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER

*ALSO MEMBER IL & WY BARS

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE
AREA CODE 208
232-6101
—
FAX
208-232-6109

May 12, 1992

RECEIVED

MAY 13 1992

Department of Water Resources
Eastern District Office

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Paul Jenkins
487 Highway 34
Grace, Idaho 83241

RE: Cold Springs Creek

Dear Mr. Jenkins:

Milton and Brad Smith have consulted with me concerning your storage of water from Cold Springs Creek upon your property where the creek arises in the N1/2 NE1/4 of Section 11, Township 11 S., Range 40 East, B.M.

I am informed by the Smiths that for a period of time during the early part of the 1991 irrigation season and thus far during the 1992 irrigation season, you have been storing water from Cold Springs Creek in a pond constructed on your property. In this regard, you have apparently informed some of the neighbors that you are or intend to utilize the ponds for fish propagation. The Smiths are concerned about your storage and use of the water because of the resulting losses due to evaporation and seepage into the groundwater which diminishes the natural flow and interferes with and impairs their early priority water rights.

The Smiths are the owners and holders of all of the water rights in Cold Springs Creek which were originally decreed to John W. Harrington as a part of the Dietrich Decree which adjudicated all the water rights in the Bear River and its tributaries. The Smiths' water right is identified as Right No. 307 under the Decree in the amount of 1.6 cfs with a priority date of September 10, 1980; the point of diversion being in the SW1/4 NE1/4 of Section 10 and the place of use being the Smith property located in Section 15, Township 11 South, Range 40 East, B.M.

John Paul Jenkins
Page 3
May 12, 1992

If you have any questions or wish to discuss this matter, please do not hesitate to contact me.

Sincerely,

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Milton Smith (w/encl.)
Brad Smith (w/encl.)
Pete Peterson, Bear River Watermaster
Ronald Carlson, Eastern Div. Director, IDWR

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
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TELEPHONE
AREA CODE 208
232-6101

FAX
208-232-6109

May 29, 1992

RECEIVED

JUN 01 1992

Department of Water Resources
Eastern District Office

Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
Eastern Division
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

Pete Peterson
Bear River Water Master
223 N. State
Preston, Idaho 83252

Re: Application for Permit No. 11-_____
D. Paul Jenkins

Gentlemen:

For your reference, I am enclosing a copy of my previous letter of May 12, 1992, sent to Don Paul Jenkins on behalf of Milton and Brad Smith requesting that Mr. Jenkins cease his illegal use of the waters of Cold Springs Creek, which was interfering with the decreed water rights of the Smiths under the Dietrich Decree.

In response, Mr. Jenkins filed an Application for Permit with IDWR, copy of which is enclosed. The Application apparently was filed on May 18 and is still being processed by the Department as a result of which a number has not been assigned and publication has not begun. I am enclosing for your information copies of the Protests that will be filed by the Smiths and Last Chance. Consistent with Utah Power's policy, we expect that they will similarly be filing a protest to this application.

The filing of the application on its face is an acknowledgment by Mr. Jenkins that he owns no water right in Cold Springs Creek. He continues to store water and has refused to release the same to the Smiths. The evaporation, percolation, and seepage from the pond diminishes the flow to Cold Springs Creek and interferes with the Smiths' early priority decreed water right. The amount the Smiths receive has been and continues to be

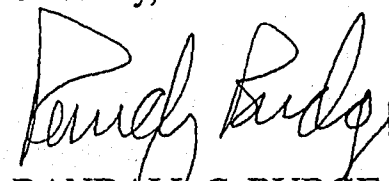
Harold W. Jones
Pete Peterson
Page 2
May 29, 1992

substantially less than the 1.6 cfs right they are entitled to.

Based on the foregoing, Mr. Jenkins' diversion and use is in violation of Idaho law, interferes with the Smiths' water rights and subjects him to the provisions of Idaho Code § 42-351. Accordingly, it is specifically requested that IDWR immediately issue a cease and desist order against Mr. Jenkins requiring that he cease his illegal use by draining the pond.

We would appreciate your immediate attention to this matter and thank you in advance for your assistance. If you have any questions, please do not hesitate to contact me.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Milton Smith
Bradley Smith

16457

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
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POCATELLO, IDAHO 83204-1391

TELEPHONE
AREA CODE 208
232-6101
—
FAX
208-232-6109

May 12, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

^{Don}
Mr. ~~John~~ Paul Jenkins
487 Highway 34
Grace, Idaho 83241

RE: Cold Springs Creek

Dear Mr. Jenkins:

Milton and Brad Smith have consulted with me concerning your storage of water from Cold Springs Creek upon your property where the creek arises in the N1/2 NE1/4 of Section 11, Township 11 S., Range 40 East, B.M.

I am informed by the Smiths that for a period of time during the early part of the 1991 irrigation season and thus far during the 1992 irrigation season, you have been storing water from Cold Springs Creek in a pond constructed on your property. In this regard, you have apparently informed some of the neighbors that you are or intend to utilize the ponds for fish propagation. The Smiths are concerned about your storage and use of the water because of the resulting losses due to evaporation and seepage into the groundwater which diminishes the natural flow and interferes with and impairs their early priority water rights.

The Smiths are the owners and holders of all of the water rights in Cold Springs Creek which were originally decreed to John W. Harrington as a part of the Dietrich Decree which adjudicated all the water rights in the Bear River and its tributaries. The Smiths' water right is identified as Right No. 307 under the Decree in the amount of 1.6 cfs with a priority date of September 10, 1980; the point of diversion being in the SW1/4 NE1/4 of Section 10 and the place of use being the Smith property located in Section 15, Township 11 South, Range 40 East, B.M.

John Paul Jenkins

Page 2

May 28, 1992

I have researched the records of the State of Idaho Department of Water Resources and find no decreed rights, license, permit or pending application in your name or any other with respect to the waters of Cold Springs Creek. Even if you had any such water right, it would be inferior and subject to the early priority right of the Smiths. Since you have no valid water right in this creek, your use of the water for storage or other purposes is illegal.

You are in violation of Idaho Code Section 42-201(2) which provides in pertinent part:

"No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from any natural water course or apply water to the land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists."

Pursuant to Idaho Code Section 42-237(g), your illegal use of the water as above-described is a criminal misdemeanor and any continuing violation constitutes a separate offense for each day during which such violation occurs.

Additionally your illegal diversion without a valid water right subjects you to the provisions of Idaho Code Section 42-351 which provides that the Idaho Department of Water Resources may file an action against you seeking injunctive relief or may issue a cease and desist order. Once a cease and desist order has been issued, your continued diversion and use of the water may subject you to civil penalties of \$100 per diversion for each day, pursuant to Idaho Code Section 42-352.

For your information and reference, I am enclosing copies of the applicable Idaho Code sections discussed above.

The Smiths request that you immediately cease your illegal use by draining the pond. Please understand that the Smiths do not intend to be unneighborly, but simply feel that they must protect their water rights in Cold Springs Creek by putting you on notice of your illegal use and requesting that it cease.

By copy of this letter, I am advising Bear River Watermaster Pete Peterson and Ronald Carlson, Director of the Eastern Division of the Idaho Department of Water Resources of the foregoing. In the event you do not immediately stop your illegal use as demanded above, it is the Smiths' intentions to submit a formal complaint to the Idaho Department of Water Resources and request that they issue a cease and desist order against you and/or pursue injunctive relief pursuant to Idaho Code Section 42-351.

John Paul Jenkins
Page 3
May 12, 1992

If you have any questions or wish to discuss this matter, please do not hesitate to contact me.

Sincerely,

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Milton Smith (w/encl.)
Brad Smith (w/encl.)
Pete Peterson, Bear River Watermaster
Ronald Carlson, Eastern Div. Director, IDWR

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
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*ALSO MEMBER IL & WY BARS

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TELEPHONE
AREA CODE 208
232-6101
FAX
208-232-6109

June 17, 1992

Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
Eastern Division
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

Re: Application for Permit No. 11-
D. Paul Jenkins

Dear Harold:

I am writing to follow up on a conversation we had following my letter to you of May 29 regarding the above matter. There appears to be some question whether or not the Director's recent moratorium about the processing of new water rights in the Bear River Basin would be applicable to this particular permit application, inasmuch as the proposed use may not be consumptive in nature.

I am attempting to secure some additional information on this based upon anticipated evaporation from the pond, as well as any seepage. At some point we will want to do some measurements with the pond full and empty to see what, if any, seepage we have. Also, we'd like to make some estimate of the evaporation during the irrigation season. In this regard, could you provide me whatever the department utilizes for purposes of calculating evaporation rates in this area. I understand the pond ranges something from 1 to 3 acres in size.

I will be out of the office until July 10 but would like to follow up on that when I return. Thanks for your help.

Sincerely,

RANDALL C. BUDGE

RCB:rr

ACTION REQUIRED

FROM: Dennis M. Dunn 16 June 1992

TO: Mr. A. Paul Jenkins

Mr. Jenkins, the application for permit that the Department of Water Resources received was not signed. Please sign the enclosed sheet and return it to this office as soon as possible.

Dennis M. Dunn



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

June 17, 1992

Randall Budge
P.O. Box 1391
Pocatello, ID 83204-1391

Mr. Dudge:

Enclosed are the protests for Last Chance Canal and Milton and Brad Smith filed against the D. Paul Jenkins application. Since the Jenkins application has not yet been advertized the protests cannot be accepted.

I would expect to advertize the Jenkins application in several weeks. You may submit the protests on or after the date the advertisement appears.

If you have any questions, please call me.

Sincerely,

Harold W. Jones
Harold W. Jones
Water Rights Supervisor

The permit(s) will be subject to all prior water rights. Protests must be filed with the Director, Dept. of Water Resources, Eastern Region, 150 Shoup Avenue, Suite 15, Idaho Falls, Idaho 83402 on or before JULY 20, 1992.

R. KEITH HIGGINSON, Director

Published: 7/ 3/1992 & 7/10/1992

13-07495

JENKINS, D PAUL
487 HWY 34
GRACE, ID 83241

Source: COLD SPRINGS CREEK

Tributary: BEAR RIVER

Diversion Pt: SWNWNE Sec 11 T 11S R 40E in CARIBOU County.

Use: STOCKWATER
RECREATION

(20.00 AF)
(20.00 AF)
(20.00 AF)

Total Diversion:

Date Filed: 5/18/1992

In: CARIBOU County
T11S R40E S11

NWNE

NOTICE OF APPLICATION FOR WATER RIGHT

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region
150 Shoup Ave., Suite 15

Idaho Falls, Idaho 83402
(208) 525-7161

JUNE 24, 1992

CARIBOU COUNTY SUN
P.O. BOX 815
SODA SPRINGS, ID 83276

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

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

Please send the affidavit of publication and publication billing to this office before JULY 20, 1992.

Yours truly,

Rita Bodell
Secretary

Encl.

01-Jul-1992

D PAUL JENKINS
487 HWY 34
GRACE ID 83241

RE: Application No. 13-07495

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the CARIBOU COUNTY SUN on 7-2 & 7-9-92. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

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

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

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

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

RECEIVED

JUL 23 1992

Department of Water Resources
Eastern District Office

Randall C. Budge
RACINE, OLSON, NYE, COOPER &
BUDGE, CHARTERED
P.O. Box 1391; 201 E. Center
Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
Facsimile: (208) 232-6109

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF THE APPLICATION)	PETITION FOR INTERVENTION
TO APPROPRIATE WATER FILED BY)	AND PROTEST OF MILTON
D. PAUL JENKINS, APPLICATION)	SMITH AND BRAD SMITH
NO. 13-07495)	

COME NOW Protestants, Milton Smith and Bradley Smith (hereinafter "Protestants")

and hereby protest the above application as follows:

1. Petitioners hold priority water rights decreed in the matter of Utah Power & Light Company v. Last Chance Canal Co., Ltd., et al., in Equity No. 203, July 14, 1920, more commonly known as the "Dietrich Decree". Petitioners' water rights were originally decreed to John W. Harrington as a part of the Dietrich Decree, are identified as Right No. 307 in the amount of 1.6 cfs with a priority date of September 10, 1980. The water of the Bear River and all of its tributaries, including Cold Springs Creek, were fully adjudicated in the Dietrich Decree. The Bear River below Stewart Dam and all of its tributaries are fully appropriated and there is no water available for additional diversion and use.

2. At various times during the normal irrigation season and particularly during

**PETITION FOR INTERVENTION AND PROTEST OF
BRADLEY SMITH AND MILTON SMITH - 1**

the recent years of severe drought, the water available to Protestants from Cold Springs Creek is inadequate to fully satisfy their right.

3. Protestants do not object to reasonable stock water use by Applicant in those areas where Cold springs Creek runs through Applicant's property, so long as Applicant's use for such purpose does not exceed historic use of stock watering purposes. Protestants do protest any and all storage for fish propagation or other purposes during the normal irrigation season which, by reason of evaporation, seepage and percolation, diminishes the flow of Cold Springs Creek and interferes with the water rights of these Protestants, as well as other decreed rightholders on the Bear River which rely upon return flow to the Bear River to satisfy their rights.

4. Additionally, the granting of the proposed Application would conflict with the local public interest by reducing inflow into the Bear River, by causing increased demand upon the water stored in Bear Lake, and by reducing the storage water available in Bear Lake, which adversely affects available water for irrigation, power production, recreation, wildlife and other recognized beneficial uses.

WHEREFORE, Petitioners respectfully request as follows:

A. That Petitioners be granted leave to intervene in the above matter and be allowed to participate as protestants in all subsequent hearings.

B. That the application be denied.

C. That Petitioners and their counsel be served with all filings and pleadings and be notified in advance of all hearings on the application. In this regard, Petitioners

**PETITION FOR INTERVENTION AND PROTEST OF
BRADLEY SMITH AND MILTON SMITH - 2**

respectfully request input with respect to scheduling of hearing dates to accommodate the
schedules of interested parties and necessary witnesses.

DATED this 22 day of July, 1992.

RACINE, OLSON, NYE, COOPER &
BUDGE, CHARTERED

By Randall C. Budge
RANDALL C. BUDGE
Attorney for Protestants

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of July, 1992, I mailed a true and
complete copy of the foregoing document, postage prepaid, to the following:

Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

Jody L. Williams
Carly Burton
Legal Department
Utah Power & Light Company
1407 W. North Temple, Suite 210
Salt Lake City, Utah 84140

D. Paul Jenkins
487 Highway 34
Grace, Idaho 83241

Don W. Gilbert, President
Last Chance Canal Company
P.O. Box 177
Grace, Idaho 83421

Randall C. Budge
RANDALL C. BUDGE

PETITION FOR INTERVENTION AND PROTEST OF
BRADLEY SMITH AND MILTON SMITH - 3

RECEIVED

JUL 23 1992

Department of Water Resources
Eastern District Office

Randall C. Budge
RACINE, OLSON, NYE, COOPER &
BUDGE, CHARTERED
P.O. Box 1391; 201 E. Center
Pocatello, Idaho 83204-1391

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF THE APPLICATION)	PETITION FOR INTERVENTION
TO APPROPRIATE WATER FILED BY)	AND PROTEST OF LAST CHANCE
D. PAUL JENKINS, APPLICATION)	CANAL COMPANY, LTD.
NO. 13-07495)	

COMES NOW Protestant, Last Chance Canal Company, an Idaho corporation with its principal place of business in Grace, Idaho, and in support of its Petition for Intervention and to protest the above-captioned application, states as follows:

1. Petitioner holds priority water rights decreed in the matter of Utah Power & Light Company v. Last Chance Canal Co., Ltd., et al., in Equity No. 203, July 14, 1920, more commonly known as the "Dietrich Decree".
2. The water of the Bear River and all of its tributaries were fully adjudicated in said Dietrich Decree. The Bear River below Stewart Dam is fully appropriated and there is no additional water available for new diversions and use.
3. It is Petitioner's practice to protest applications to appropriate water which may adversely affect its rights in the Bear River.
4. Petitioner relies upon its decreed water rights in the Bear River described above, together with supplemental water in Bear Lake acquired from PacifiCorp Electric Operations, dba Utah Power & Light Company, pursuant to a contract to provide irrigation

water to approximately 150 of its shareholders utilized to irrigate approximately 29,000 acres of fertile farm land in Caribou County, Idaho.

5. Due to drought conditions, Petitioner's natural flow rights in the Bear River have in recent years and continue to be severely curtailed and cut back to satisfy certain earlier priority rightholders downstream in Idaho and Utah. As a result, Petitioner has been forced to increasingly rely upon supplemental irrigation stored in Bear Lake. Due to six consecutive years of drought conditions and the resulting high irrigation demands, the level of Bear Lake has dropped to near record low levels. Presently, there is inadequate storage water in Bear Lake to satisfy the existing irrigation demand. All irrigators, including Petitioner, have had their Bear Lake storage water rights curtailed considerably for the 1992 irrigation season. Should the drought continue, little or no supplemental irrigation water is expected to be available from Bear Lake next year.

6. The applicant's proposed appropriation is in Cold Springs Creek, which is a tributary of the Bear River fully decreed in the Dietrich Decree. All water rights in Cold Springs Creek were originally decreed to John W. Harrington as Right No. 307 in the amount of 1.6 cfs with a priority date of 9/10/80, which right is believed to be currently owned in its entirety by Milton Smith and Brad Smith.

7. The Applicant's proposed appropriation would adversely affect the flows of the Bear River and consequently injure and impair the water rights of the Petitioner and other decreed right holders in the Bear River and its tributaries, as well as the right of Petitioner and other contract rightholders to receive supplemental water from Bear Lake.

8. Additionally, the granting of the proposed Application would conflict with the

local public interest by reducing ground water inflow into the Bear River, by causing increased demand upon water stored in Bear Lake, and by reducing the storage water available in Bear Lake which adversely affects available water for irrigation, power production, recreation, wildlife and other recognized beneficial uses.

9. Additionally, the process and approval of this new application for permit is presently barred by a moratorium order issued and effective May 15, 1992 by R. Keith Higginson, Director, IDWR, which order canceled all applications filed to divert and use surface or ground water in the Bear River drainage in Idaho.

WHEREFORE, Petitioner respectfully requests as follows:

- A. That Petitioner be granted leave to intervene in the above matter and be allowed to participate as a protestant in all subsequent hearings.
- B. That the application be denied.
- C. That Petitioner and its counsel be served with all filings and pleadings and be notified in advance of all hearings on the application. In this regard, Petitioner respectfully requests input with respect to scheduling of hearing dates to accommodate the schedules of interested parties and necessary witnesses.

DATED this 22nd day of July 1992.

RACINE, OLSON, NYE, COOPER &
BUDGE, CHARTERED

By Randall C. Budge
RANDALL C. BUDGE

CERTIFICATE OF MAILING

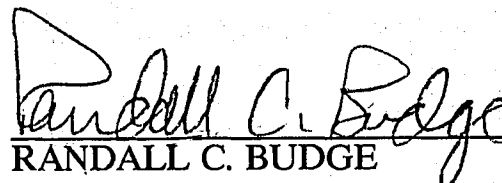
I HEREBY CERTIFY that on this 22nd day of July 1992, I mailed a true and complete copy of the foregoing document, postage prepaid, to the following:

Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

Jody L. Williams
Carly Burton
Legal Department
Utah Power & Light Company
1407 West North Temple, Suite 210
Salt Lake City, Utah 84140

D. Paul Jenkins
487 Highway 34
Grace, Idaho 83241

Don W. Gilbert, President
Last Chance Canal Company
P. O. Box 177
Grace, Idaho 83421


RANDALL C. BUDGE

July 24, 1992

Randall Budge
PO Box 1391
Pocatello ID 83201

Mr. Budge:

Enclosed are the petitions to intervene on the D. Paul Jenkins application #13-07495. There were no protests of the application which are necessary to accept a petition to intervene. Since the protest date expired at 5:00 p.m. on July 20, 1992 the application will be sent to our Boise office for normal processing.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

HWJ/jrk

Enclosures

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
FRED J. LEWIS
KIRK B. HADLEY
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER

*ALSO MEMBER IL & WY BARS

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

July 22, 1992

TELEPHONE
AREA CODE 208
232-6101
—
FAX
208-232-6109

RECEIVED

JUL 23 1992

Department of Water Resources
Eastern District Office

Harold W. Jones
Water Rights Supervisor
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

RE: D. Paul Jenkins
Application No. 13-07495

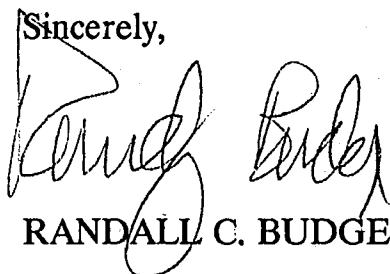
Dear Mr. Jones:

I am returning herewith for filing the Petitions for Intervention and Protests on behalf of Last Chance Canal Company, Ltd., and Milton Smith and Brad Smith with regard to the captioned Application. These were previously returned with your letter of June 17.

We are filing these Protests to protect the record and may be in a position to resolve the same after further investigation has been conducted and we have been able to determine the amount of consumptive use proposed by the Application, Mr. Jenkins. I have met with Mr. Jenkins who has indicated that there is no seepage and the only consumptive use would be minor as a result of evaporation. On site review and measurements may be necessary to confirm this, which likely will have to wait until the irrigation season has been completed.

If you have any questions, please call.

Sincerely,


RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Jody Williams
Paul Jenkins
Don Gilbert
Brad and Milton Smith

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
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FAX
208-232-6109

August 3, 1992

RECEIVED

AUG 04 1992

Department of Water Resources
Eastern District Office

Harold W. Jones
DEPARTMENT OF WATER RESOURCES
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

Re: D. Paul Jenkins/ No. 13-07495
Protest by Milton and Brad Smith, Last Chance Canal

Dear Harold:

I have received your July 24 letter with which you returned the Protest we filed on behalf of Last Chance Canal Company and Milton and Brad Smith and have forwarded the same on to Boise for filing.

Harold, I want to express my frustration and the "run-around" I feel I have received in the handling of these protests.

Based upon a copy of the Application for Permit we received for D. Paul Jenkins, we mailed these two protests to you for filing on May 29, 1992. I also wrote you on June 17, following our conversation concerning whether or not the Director's recent moratorium would apply to this application. In that letter I further indicated that I would be out of the office until July 10 and would follow up with you at that time. My letter probably crossed in the mail with your letter of the same date, June 17, returning the Petitions to Intervene and Protest, indicating they couldn't be accepted since the Application had not yet been advertised. You indicated in that letter "I would expect to advertise the Jenkins application in several weeks."

When I returned to the office, I learned that the advertising had already been completed July 2 and 9. This came to my attention July 22 and I immediately returned to you the Petitions for Intervention and Protests on the same date.

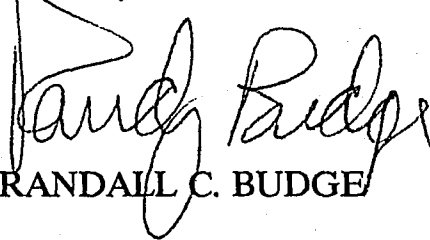
You again returned the Petitions to Intervene and Protests to me with your letter of July 24 indicating that the applications were sent to Boise for normal processing and that the Petition to Intervene couldn't be accepted since no protests had been filed.

Harold W. Jones
Page 2
August 3, 1992

I can hardly imagine that you can say that there were no protests filed as I've been trying to file a protest with you since May. Even if there were no protests, this is the first time I've ever had a Petition to Intervene acted upon ex parte and returned. Seemingly, the Petitions could have been simply sent along to Boise along with everything else.

I apologize for sounding frustrated, but it sure appears like a "smoke and mirror" game in jumping through the hoops. Furthermore, Rule 6 of IDWR's Rules of Practice and Procedure pertaining to intervention appears to have been fully complied with. I see nothing in the rule that indicates you can't accept such a Petition for Intervention if no other protests have been filed. That reason you are asserting not only does not have any support under the rules, but doesn't really make any sense at all anyway, as certainly the protests we desire to file may not necessarily have any relationship one way or another with other protests. In any event, I'll continue on with Boise.

Sincerely,


RANDALL C. BUDGE

RCB:rr

cc: Gary Spackman

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
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KIRK B. HADLEY
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ERIC S. HUNN
DAVID E. ALEXANDER

*ALSO MEMBER IL & WY BARS

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TELEPHONE
AREA CODE 208
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FAX
208-232-6109

August 3, 1992

RECEIVED

AUG 06 1992

Department of Water Resources

Mr. Gary Spackman
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

Re: D. Paul Jenkins; Application No. 13-07495

Dear Gary:

Please file the enclosed Petitions for Intervention and Protests on behalf of Milton and Brad Smith and Last Chance Canal Company pertaining to the captioned application.

Enclosed please find copies of my correspondence with Harold W. Jones dated May 29, June 17 and today, together with his letters to me dated June 17 and July 24.

In May we obtained from the Applicant a copy of his Application which he indicated he had filed with IDWR. We immediately filed the Protests and Petitions to Intervene, which I sent to the Eastern Office with my May 29 letter. I subsequently had discussions with Harold Jones over the Director's Moratorium Order issued on the Bear River Drainage on May 15, 1992. As you know, the order placed a moratorium on the processing and approval of presently pending and new applications for permit to appropriate water within the Bear River Drainage. A question exists whether or not the moratorium would apply to the Jenkins application based on whether or not it might fall within the non-consumptive use exception. Clearly, the seepage and evaporation from the pond would result in consumption. My letter of July 17 indicating I would be out of the office until after July 10 apparently crossed in the mail with Harold Jones' letter of the same date returning the protests on the basis that the application had not yet been advertised, indicating that they would be advertised in "several weeks".

I was out of the office for three weeks and when I returned it came to my attention from the client that there had been a publication July 2 and 9. I immediately re-submitted the Petitions for Intervention and Protests with my July 22 letter, which Harold Jones returned with his letter of July 24. He asserts that since there were no protests, they can't accept the

Mr. Gary Spackman
Page 2
August 3, 1992

Petition to Intervene. The Petition to Intervene fully complies with Rule 6 of the IDWR's Rules of Practice and Procedure governing intervention. There is nothing in that rule that would authorize the rejection and return of these Petitions to me on the basis that no other protests were filed or for any other reason for that matter.

Based on the foregoing, please accept and file the Petitions for Intervention. As a practical matter, I expect that at least one, if not both, of these Petitions and Protests will be withdrawn in any event in due course once we have had an opportunity to investigate the proposed use and confirm that there is not a seepage problem, as the quantity of water lost by evaporation is not significant.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

August 10, 1992

CECIL D. ANDRUS
GOVERNOR

RECEIVED
R. KETTERHOLM
DIRECTOR

AUG 14 1992

Department of Water Resources
Eastern District Office

Randall C. Budge
Attorney at Law
P.O. Box 1391
Pocatello, ID 83204-1391

RE: Application No. 13-07495 in the Name of D. Paul Jenkins

Dear Randy:

Thank you for your letter dated August 3, 1992. Harold Jones spoke to me about the facts which you recite.

The Department of Water Resources will recognize the first protest filed as a valid protest. The purpose of the new water rights listing, to which you subscribe, is to notify the subscriber of applications for the purpose of filing protests. The filing of the protest prior to publication in the newspaper is not fatal.

I will send a copy of this letter to Harold Jones.

Sincerely,

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Harold Jones

20-Aug-1992

D PAUL JENKINS
487 HWY 34
GRACE ID 83241

RE: Application for Permit No. 13-07495

Dear Mr. Jenkins:

Enclosed is a copy of protests filed against the issuance of a permit. The Department suggests you contact the protestants directly in an effort to determine the nature of the protests and to attempt to resolve the protests.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protests. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for transfer (Sec. 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 conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

D. Paul Jenkins
20-Aug-1992
Page 2

The applicant must be prepared to present evidence and/or testimony addressing each of the six items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

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

Sincerely,


HAROLD W. JONES
Water Rights Supervisor

HWJ:rb

pc: IDWR - State Office
Enc.

20-Aug-1992

RANDALL C BUDGE
ATTORNEY AT LAW
PO BOX 1391
POCATELLO ID 83204-1391

RE: Application for Permit No. 13-07495
D. PAUL JENKINS

Dear Mr. Jenkins:

Your protest against 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.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. 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 (Sec. 42-203, Idaho Code): the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203; Idaho Code):

1. Will the proposed use reduce the quantity of water under existing 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?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

Randall C. Budge
20-Aug-1992
Page 2

The protestant must be prepared to present proof of allegations involving one or more of the six items.

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

Sincerely,


HAROLD W. JONES *rb*
Water Rights Supervisor

HWJ:rb
pc: IDWR - State Office

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
FRED J. LEWIS
KIRK B. HADLEY
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER

*ALSO MEMBER IL & WY BARS

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE

CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE
AREA CODE 208
232-6101

FAX
208-232-6109

August 26, 1992

RECEIVED

AUG 28 1992

Department of Water Resources
Eastern District Office

Harold W. Jones
Water Rights Supervisor
State of Idaho
Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

RE: Application for Permit No. 13-07495
D. Paul Jenkins

Dear Harold:

Last Chance Canal Company, Ltd., hereby withdraws its previous Protest to the captioned Application of D. Paul Jenkins. After investigating the Application, it is the position of Last Chance that, given the present relatively small size of the pond involved, there would be but a minimum amount of water consumed via evaporation and/or seepage which would not have a substantial adverse affect on the natural flow of the Bear River or the water rights of Last Chance.

Sincerely,

Randy Budge
RANDALL C. BUDGE

RCB:rr

cc: D. Paul Jenkins
Craig W. Christensen
Last Chance Canal Company

31-Aug-1992

RANDALL C BUDGE
ATTORNEY AT LAW
PO BOX 1391
POCATELLO ID 83204-1391

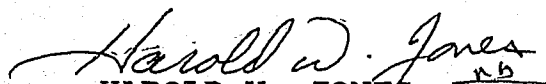
RE: App for Permit No. 13-07495
D. PAUL JENKINS

Dear Mr. Budge:

This letter acknowledges receipt of the withdrawal of protest
against the above referenced application.

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

Very truly yours,


HAROLD W. JONES ^{rb}
Water Right Supervisor

HWJ/rb

31-Aug-1992

D PAUL JENKINS
487 HWY 34
GRACE ID 83241

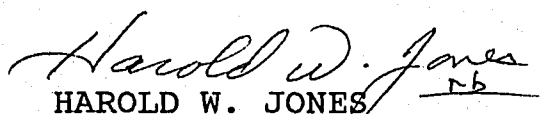
RE: App. for Permit To Appropriate Water No. 13-7495

Dear Mr. Jenkins:

This letter is to advise you that the protest filed by Randall C. Budge of Racine, Olson, Nye, Cooper, & Budge against approval of the above referenced application has been withdrawn.

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

Very truly yours,


HAROLD W. JONES
Water Rights Supervisor

HWJ/rb

Randall C. Budge
RACINE, OLSON, NYE, COOPER &
BUDGE, CHARTERED
P.O. Box 1391; 201 E. Center
Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
Fax: (208) 232-6109

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF THE	)	STIPULATION FOR
APPLICATION TO APPROPRIATE	)	WITHDRAWAL OF
WATER FILED BY D. PAUL JENKINS	)	PROTEST
APPLICATION NO. 13-07495	)	

COMES NOW Applicant D. Paul Jenkins (hereinafter "Jenkins") and Protestants Milton Smith and Bradley Smith (hereinafter "Smith"), and do hereby stipulate and agree as follows:

1. Smiths are the owners and holders of 1.6 cfs of water rights with a priority date of September 10, 1980 for irrigation purposes as decreed in the matter of Utah Power & Light Company vs. Last Chance Canal Co., Ltd., et al., in Equity No. 203, July 14, 1920, commonly known as the "Dietrich Decree". The waters of the Bear River and all of its tributaries, including Cold Springs Creek, were fully adjudicated in the Dietrich Decree. The Bear River below Stewart Dam and all of its tributaries are fully appropriated and there is no water available for additional consumptive diversion and use.

STIPULATION FOR WITHDRAWAL OF PROTEST - 1

2. On or about May 18, 1992, Jenkins filed with the State of Idaho Department of Water Resources ("IDWR") Application for Permit No. 13-07495 seeking to appropriate water from Cold Springs Creek tributary to the Bear River for stock watering purposes and for fish propagation. Jenkins previously constructed and has maintained since approximately 1975 a small pond of approximately 1 acre in size with a capacity of not more than 5.0 acre feet which he has used and desires to continue to use for stock watering of horses and livestock in accordance with historic practices, as well as for fish propagation.

3. Jenkins stipulates and agrees that the size of his described pond will not be expanded beyond the present size of approximately 1 acre, that no additional water will be diverted from Cold Springs Creek or the pond and that the present use for stock watering and fish propagation will not be expanded without first obtaining an additional permit from IDWR in accordance with Idaho law.

4. Based on the foregoing, the parties agree that Jenkins' Application is non-consumptive in nature, with only an insignificant amount of loss due to evaporation and seepage, which would not substantially impair or injure the Smiths' prior water rights.

5. Based on the foregoing, the Smiths hereby withdraw their Petition for Intervention and Protest and agree that IDWR may grant Jenkins' Application and issue a permit subject to all prior rights and the foregoing.

STIPULATION FOR WITHDRAWAL OF PROTEST - 2

DATED this 11th day of ^{December}~~November~~, 1992.

Milton R. Smith
MILTON SMITH

Brad Smith
BRAD SMITH

READ AND APPROVED:

RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED

By Randall C. Budge
RANDALL C. BUDGE
Attorney for Protestants

D. Paul Jenkins
D. PAUL JENKINS

READ AND APPROVED:

CRAIG W. CHRISTENSEN, CHARTERED

By Craig W. Christensen
CRAIG W. CHRISTENSEN
Attorney for Applicant

STIPULATION FOR WITHDRAWAL OF PROTEST - 3

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
BRENT O. ROCHE
FRED J. LEWIS
KIRK B. HADLEY
MITCHELL W. BROWN
ERIC S. HUNN
DAVID E. ALEXANDER

*ALSO MEMBER IL & WY BARS

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE
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POCATELLO, IDAHO 83204-1391

TELEPHONE
AREA CODE 208
232-6101

FAX
208-232-6109

December 14, 1992

RECEIVED

DEC 16 1992

Department of Water Resources
Eastern District Office

Harold W. Jones
Water Rights Supervisor
Idaho Department of Water Resources
150 Shoup Avenue, Suite 15
Idaho Falls, Idaho 83402

RE: D. Paul Jenkins
Application No. 13-07495

Dear Mr. Jones:

Enclosed please find the signed original Stipulation for Withdrawal of Protest executed by the Applicant, D. Paul Smith, and the Protestants, Milton Smith and Bradley Smith.

You will note that the Stipulation provides that the Smiths' protest is withdrawn upon condition that the pond not be enlarged beyond the present size, that the present use not be expanded without additional permit, based upon which the permit may be issued subject to all prior rights. This resolves this matter and the applicant's permit can be issued accordingly. Please incorporate the terms and conditions of the Stipulation in the permit and license when issued. Thank you.

Sincerely,

Randy Budge
RANDALL C. BUDGE

RCB:rr
Enclosure

cc: Craig Christensen (w/encl.)
Milton Smith (w/encl.)
Brad Smith (w/encl.)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 29, 1993

D PAUL JENKINS
487 HWY 34
GRACE ID 83241

Application for Permit No. 13-07495

Dear Mr. Jenkins:

The above referenced application reached the State Office for final review and processing in September; however, the file was misplaced with another group and not processed. Before the application process can continue, I will need some additional information.

One of the uses listed was for stockwater. I need to know the number and type of stock (dairy or range cattle, horses, etc.) using the pond.

I will hold the application from further processing pending your reply. I do apologize for any inconvenience this delay may have caused.

Sincerely,

Brenda L. Miller

BRENDA L. MILLER
Water Resource Agent

RECEIVED

FEB 5 1993

Department of Water Resources

13-7495

D. Paul Jenkins
487 Hwy 34
Grace, Idaho 83241

Feb. 2, 1993

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83721-9000

Ms. Brenda L Miller
Water Resource Agent

Dear Ms. Miller:

R.E. your letter dated January 29, 1993 in regards to number and type of stock using pond for watering.

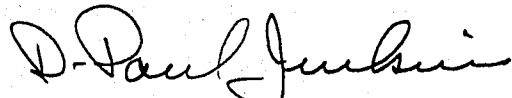
This varies some. There are both dairy and beef stock that use the water. However, the dairy animals that use the water are confined to steers, heifers, and dry stock as the pond is inaccessible to any dairy cows that are being milked.

As far as beef cattle are concerned. Both pairs and singles have access to the pond.

As far as numbers go we have had up to 100 head in the area. However, we normally run in the neighborhood of 35 to 50 head.

I hope this is the information that you need. If not feel free to contact me and I will be glad to help in any way I can.

Sincerely;


D. Paul Jenkins



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 9, 1993

D PAUL JENKINS
487 HWY 34
GRACE ID 83241

Application for Permit No. 13-07495

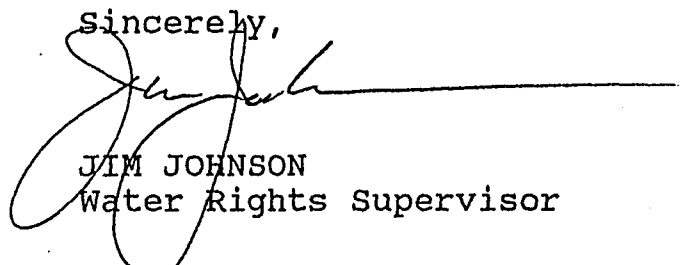
Dear Mr. Jenkins:

Thank you for your quick response to our information request concerning the number and type of stock your Application for Permit referred to.

Our office has become aware of a Stipulation for Withdrawal of Protest document signed by the Protestants, Milton and Bradley Smith, and yourself. The Stipulation states that your pond is approximately 1 acre in size with a capacity of not more than 5 acre feet. The application is for 20 acre feet. In order for us to approve the application, we will need to reduce the pond size to 5 acre feet.

I will hold the application from further processing for 15 days. If you do not respond or have any questions, we will issue the permit for the reduced amount.

Sincerely,


JIM JOHNSON
Water Rights Supervisor

RECEIVED

FEB 22 1993

Department of Water Resources

D. Paul Jenkins
487 Hwy 34
Grace, Idaho 83241

February 19, 1993

State Of Idaho
Department of Water Resources
1301 North Orchard Street, Statehouse Mail
Boise, Idaho 83720-9000

Application for water permit No. 13-07495

Mr. Jim Johnson
Water Rights Supervisor

Dear Mr. Johnson:

R.E. Letter dated 2-09-93

Concerning the matter of 5 acre feet verses 20 acre feet. As stipulated in the Withdrawal of Protest. As per stipulation of the agreement the pond can not be enlarged unless both parties agree to said change in pond size. Therefore as no anticipation of enlarging pond and as the pond is approximately 1 acre in size. With a depth of no more then 5 feet. I can see no need of having any more acre feet then what can be stored.

Therefore I concur that the permit should have the pond size reduced in acre feet from 20 acre feet to 5 acre feet. However, the pond it self should remain the same. Which is according to your letter approximately 1 acre in size.

Thank you for your help.

Sincerely,

D. Paul Jenkins
D. Paul Jenkins



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 3, 1993

D PAUL JENKINS
487 HWY 34
GRACE ID 83241

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 13-07495

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

Enclosed is a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit. Also enclosed is a form entitled "Proof of Beneficial Use". If your project is already completed you should complete and submit this form immediately.

Sincerely,

BRENDA L. MILLER
Water Resource Agent

BLM:cz

Enclosures

Form 217
11/91

RECEIVED

APR 16 1993

Department of Water Resources

OFFICE USE ONLY

Amt. of Fee \$ 50.00

Date 4-16-93

Receipt No. 0027239

Receipt by SW

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

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

1. Permit No. 13-07495 Telephone No. 208 425 3660

2. Name(s) of Permit Holder(s): D. Paul Jenkins

3. Mailing Address: 487 Hwy 34 Grace, ID 83241

4. Source of Water: COLD SPRINGS CREEK

If **GROUNDWATER**, Well Driller's Name: N/A Date Drilled: _____

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic _____ (No. of households) Stockwater 100 head mixed stock (No. and type of stock)

Irrigation N/A (No. of acres) Other _____

6. Total rate and/or volume for which proof is submitted _____ cfs OR 5.0 acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? _____ Yes x No Installed? _____ Yes x No

OR

Flow Measurement Port: Required? _____ Yes x No Installed? _____ Yes x No

8. Fee Enclosed: \$ 50.00 (See License Fee Schedule on back of Instruction Sheet)

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

D. Paul Jenkins 208 425 3660

Name Telephone No.

487 Hwy 34 Grace, Idaho 83241 5216

Address

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

4-14-93
Date

D. Paul Jenkins
Signature (and title) if on behalf of a company or organization)

April 23, 1993

D PAUL JENKINS
487 HWY 34
GRACE ID 83241

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 13-07495

Dear Permit Holder:

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

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

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region