33177

APPLICATION FOR PERMIT

To Appropriate the Subterranean Waters of The State of Idaho

Application No. G- 41717
Permit No. G- 33477
District No.

1. Name of Applicant: Harvey J. Harris

   Postoffice address: Stone County: Oneida State: Idaho

2. Quantity of water claimed:

   (a) Rate of withdrawal in cubic feet per second 3.82 or Idaho Miners' inches or gallons per minute

   (b) Annual withdrawal in acre feet per annum

3. Source of water supply: Subterranean

4. Location of point of diversion or well is in the NW ¼ of the SW ¼ of Section 14 Twp. 16 S , Rge. 32 E , B.M., County of Oneida

5. Water is to be used for: irrigation

6. If for municipal, industrial or recreational purposes, give:

   (a) Point of use of water is in the ¼ of the ¼ of Section , Twp. Rge. , B.M.

   (b) Waste water or sewage effluent is to be returned to at a point in the ¼ of the ¼ of Section , Twp. , Rge. , B.M.

7. Kind of works: pump, sprinklers and canals

8. Estimated cost of works: $ 12,000.00

9. (a) Is reservoir to be used? no

   (b) Capacity of reservoir:

10. The time required for the completion of such work and complete application of the water to the proposed use is years. 2

11. If applicant is a corporation, give:

   I. (a) Date and place of incorporation:

   (b) Amount of capital stock: $ (c) Amount paid in: $

   (d) Names and addresses of directors:

   II. The financial resources of the applicant are (a) Cash on hand: $

   (b) Treasury stock: (c) Bonds to be issued:

   (d) Other resources:

12. The land to be irrigated is described in the following tabulation:

13. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: none

   (a) none (cubic feet per second, inches or gallons per minute) of the water herein applied for is to be supplemental to the existing water rights.

   (b) 190 (~~cubic feet per second~~, inches ~~or gallons per minute~~) is for new lands.

Remarks:

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.

/s/ HARVEY J. HARRIS *Applicant.*

By *Agent.*

Date of first receipt at Department of Reclamation: February 20, 1967 8:00 A.M.

Returned to applicant for correction:

Correction application received:

Approval of State Reclamation Engineer

The number of this permit is G— 33477

Recorded in Book 117 Page 33477 Approved February 23, 1967

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of $ to be filed on or before

Work to begin on or before and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which the permit holder has no control.

One-fifth of the work above specified to be completed on or before February 23, 1968

The whole of said work to be completed and beneficial use of water appropriated in accordance herewith, to be made and proofs offered on or before February 23, 1969

Witness my hand this 23rd day of February, 1967. /s/ R. KEITH HIGGINSON
STATE RECLAMATION ENGINEER.

IN TESTIMONY WHEREOF, We, DON SAMUELSON, Governor of the State of Idaho, and EDSON H. DEAL, Secretary of State of the State of Idaho, have caused this instrument to be executed in the named of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 23rd day of February, 19 67

Countersigned:

(SEAL)

By /s/ EDSON H. DEAL
Secretary of State

STATE OF IDAHO

By /s/ DON SAMUELSON
Governor

12.

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16S	32 E	15													40				40
		14									40	34							74
		23					40												40
		22																37	37

Total number of acres to be irrigated:
191

Form No. 3
Reprint 5M-6-60

Address all communications to:

Harvey J. Harris

P. O. Stone, Idaho

APPLICATION FOR PERMIT

TO APPROPRIATE THE SUBTERRANEAN WATERS OF THE STATE OF IDAHO

Application No. G 41717

Permit No. G 33477

Water District No. _____

RECEIVED
FEB 20 1967
8:00 A.M.
Department of Reclamation

1. Name of applicant: Harvey J. Harris

   Post office address Stone County Oneida State Idaho

2. Quantity of water claimed: ~~190 miners inches~~ 3.82 cfs

3. Source of water supply: Subterranean

4. Location of point of diversion or well is in the NW ¼ of the SW ¼ of Section 14,

   Twp. 16 So. Rge. 32 E. B.M., County of Oneida

5. Water is to be used for: Irrigation

6. If for domestic, municipal, industrial or recreational purposes give:

   (a) Point of use of water is in the _____ ¼ of the _____ ¼ of Section _____,

   Twp. _____, Rge. _____, B.M.

   (b) Waste water or sewage effluent is to be returned to _____

   at a point in the _____ ¼ of the _____ ¼ of Section _____, Twp. _____, Rge. _____, B.M.

7. Kind of Works: Pump, sprinklers & Canals

8. Estimated cost of works: $ 12,000.00

9. (a) Is reservoir to be used? no

   (b) Capacity of reservoir: _____

10. The time required for the completion of such work and complete application of the water to the proposed use is

    2 yrs _____ years.

11. If applicant is a corporation, give:

    I. (a) Date and place of incorporation: _____

    (b) Amount of capital stock $ _____ (c) Amount paid in: $ _____

    (d) Names and addresses of directors: _____

KBLH
Desc

33477

(Continued)

II. The financial resources of the applicant are: (a) Cash on hand: $_____

(b) Treasury stock:_____ (c) Bonds to be issued:_____

(d) Other resources:_____

12. The land to be irrigated is described in the following tabulation:

(Give irrigable acreage in each 40-acre subdivision)

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16 So.	32 E.	15													40				40
16 So.	32 E.	14										40	34						74
16 So.	32 E.	23						40											40
16 So.	32 E.	22																37	37

13. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are:_____

none

(a) none (Cubic feet per second, inches or gallons per minute) of the water herein applied for is to be supplemental to the existing water rights.

(b) 190 In. (cubic feet per second, inches or gallons per minute) is for new lands.

33477

Remarks: _____

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.

Harvey J. Harris
Applicant

By _____, Agent

B-3477

Approval of State Reclamation Engineer

The number of this permit is G 33477 33477 FEB 23 1967

Recorded in Book 117 Page _____ Approved _____

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of $_____ to be filed before _____

One-fifth of the work above specified to be completed on or before February 23, 1968
The whole of said work to be completed and beneficial use of water appropriated in accordance herewith, to be made on or before February 23, 1969

Witness my hand this 23rd day of February, 19 67.

K. Keith Higginson
State Reclamation Engineer

IN TESTIMONY WHEREOF, We DON SAMUELSON, Governor of the State of Idaho, and EDSON L. BEAL, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this 23rd day of February, 19 67.

Countersigned:

By Edson L. Beal
Secretary of State

STATE OF IDAHO

By Don Samuelson
Governor.

No. G 33477

PERMIT

Date of first receipt at office of State Reclamation Engineer

February 20, 1967 8:00 A.M.

Returned to applicant for correction

Corrected application received

Fees, $ 5.75

FILING FEES FOR USE PERMIT:

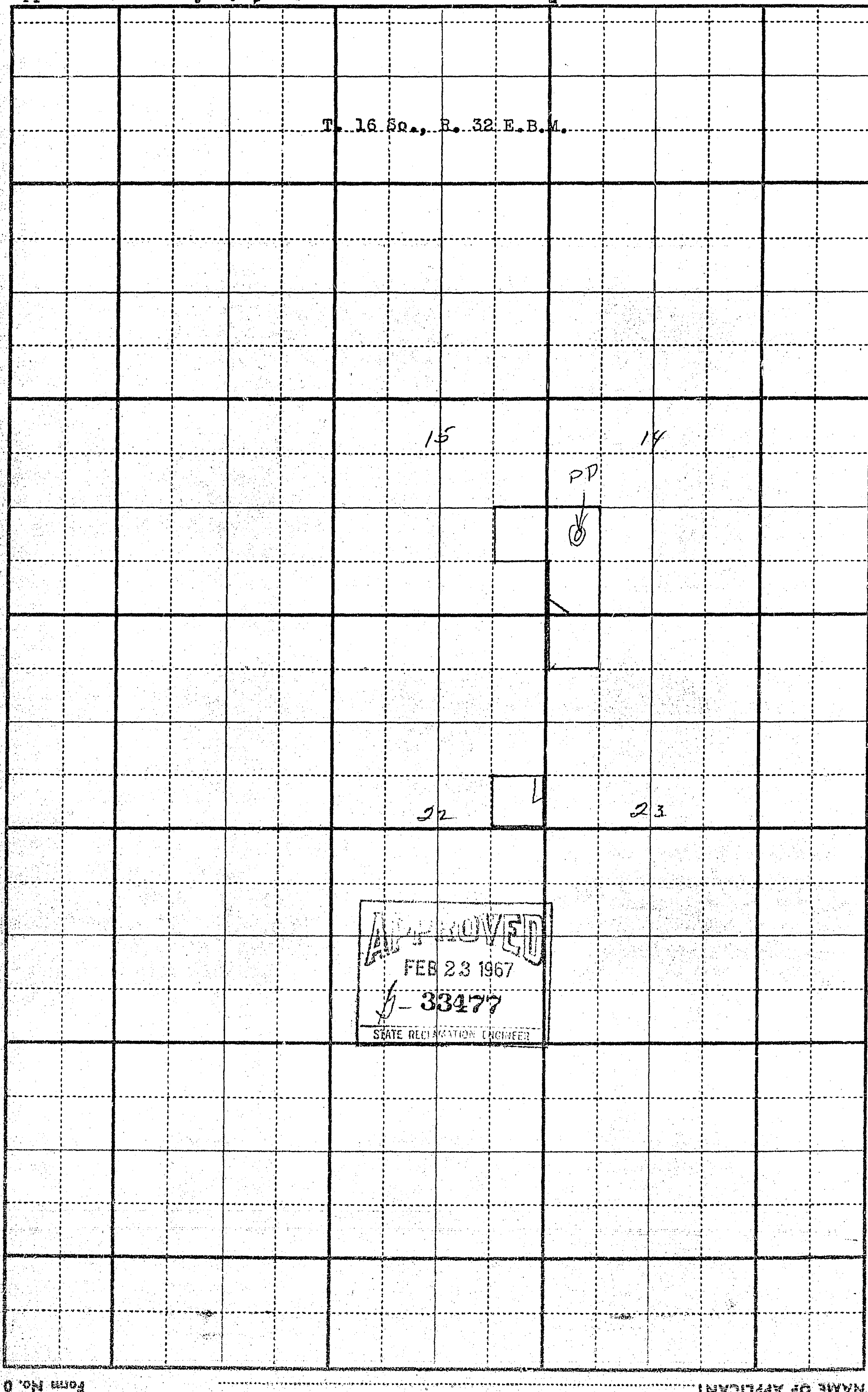
For the first Sec. Ft. $5.00

For each additional Sec. Ft. or Fraction Thereof ..... .25

33477

Applicant: Harvey J. Harris

SCALE: 2 Inches Equal 1 Mile. Draw Plan In Ink.



APPROVED
FEB 23 1967
33477
STATE RECLAMATION ENGINEER

Form No. 0

NAME OF APPLICANT

33477

February 28, 1967

Re: Permit No. G-33477

Harvey J. Harris
Stone, Idaho

Dear Mr. Harris:

We enclose Permit No. G-33477 in which we direct your attention to the limitations and conditions as given on the fourth page under approval of the State Reclamation Engineer.

We also enclose Departmental Receipt No. G-11350 which was issued covering payment in the amount of $ 5.75 for the filing fee of the above mentioned permit.

Very truly yours,

Enc.
permit, receipt

M. RUSSELL BOSCH
Office Manager

MRB:ejw

33477

December 2, 1968

Re: permit No. G-33477

Harvey J. Harris
Stone, Idaho

Dear Mr. Harris:

During the 1967 session of the Idaho Legislature, certain amendments were made in the law pertaining to the procedures for making proof of beneficial use of water. In order for the Department to comply with these changes, Rules of Practice and Procedure were adopted on August 1, 1968. Generally, these procedures and the amended law make it simpler for a person to make proof and relieve the permit holder from making separate proofs of completion of works and beneficial use of water.

The enclosed order modifies your permit to comply with those rules and regulations. As a part of the new procedure, you will be required to publish a notice at your expense for two consecutive weeks in a paper as prescribed by the Department, stating that you have been issued a permit and are now submitting proof of beneficial use. Previously, a permit holder had to publish a notice for four weeks when he submitted proof under his permit.

If you will complete the enclosed forms, we will cause the notice to be published. Should you require additional forms or information, we will be glad to supply it upon request at any time.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:tg
Enc: order
proof due notice
proof package
advertising package

33477

December 2, 1968

Re: Permit No. G-33477

Harvey J. Harris
Stone, Idaho

Dear Mr. Harris:

One of the conditions of the approval of your permit ~~G-33477~~ was that proof of application of the water to beneficial use be submitted to this office on or before ~~February 23~~, 19~~69~~.

Enclosed is an affidavit form which must be used to submit this proof. You may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, ICA.

Either the proof or a request for extension must be received by this department on or before the above mentioned date, otherwise the permit will lapse and be of no further force or effect.

R. Keith Higginson

State Reclamation Engineer

Enclosure: Proof form

Form 5

33477

NOTICE OF APPROVED APPLICATION FOR WATER

Notice is hereby given that Harvey J. Harris, Stone, Idaho

has received an approved permit No. G-33477 to divert ~~water~~ 3.82 cubic feet per second ~~acre/feet~~ of water from a ground water source. The priority to be established under this permit is February 20, 1967.

Water will be diverted by ~~canals,~~ / pump, sprinklers and well within the NW¼SW¼, Sec. 14, T. 16 S., R. 32 E., B. M., Oneida County

and is to be used for irrigation

in the NE¼SE¼, Sec. 15; W½SW¼, Sec. 14; NW¼NW¼, Sec. 23; SE¼SE¼, Sec. 22, T. 16 S., R. 32 E., B. M.

Any protests against the intent of the permit must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Idaho Enterprise, Malad, Idaho

on _____ and _____.

33477

BEFORE THE STATE RECLAMATION ENGINEER

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. G-33477)
in the name of Harvey J. Harris)
Stone, Idaho)

ORDER MODIFYING REQUIREMENTS FOR COMPLETION OF PERMIT TO APPROPRIATE WATER

WHEREAS, the 39th Idaho Legislature made certain amendments to the Idaho Water Law; and,

WHEREAS, these changes raised questions as to the procedures to be followed by holders of permits issued prior to the effective date of the amendments, May 31, 1967; and,

WHEREAS, on August 1, 1968, the Department of Reclamation adopted Rules of Practice and Procedures for the processing of such permits issued prior to May 31, 1967; and,

WHEREAS, Permit No. G-33477 was issued previous to that date;

NOW THEREFORE, the requirements for completion of the above-numbered permit are hereby modified to conform to the adopted Rules of Practice and Procedures as follows:

1. The above-numbered permit will be completed under the terms of Title 42, Chapter 2, Idaho Code, as amended by the 39th Idaho Legislature.

2. The conditions of the above-numbered permit are modified as follows:

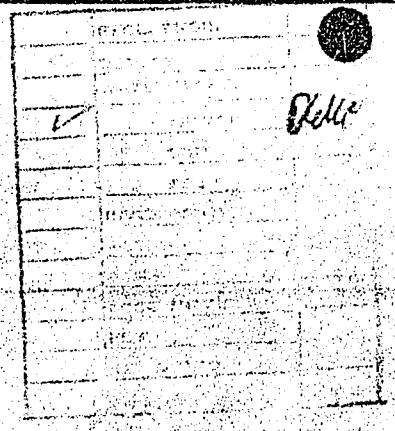
   a. Notice of the issuance of the permit will be published at the permit holders expense for two weekly issues in the official newspaper of the county in which the point of diversion lies.

   b. The permittee will not be required to submit proof of completion of works as originally specified, but will be required to submit proof to the Department of Reclamation of the application of the water to beneficial use on or before February 23, 1969. The permit holder should be aware that failure to complete one-fifth (1/5) of the works within one-half (1/2) of the time originally set for Completion of Works may be grounds for cancellation at the instance of the Department.

Dated this 3 day of December, 1968.

R. KEITH HIGGINSON
State Reclamation Engineer

33477



RECEIVED
DEC 16 1968
Department of Reclamation

December 13, 1968

State of Idaho
Department of Reclamation
Statehouse - Annex 2
Boise, Idaho 83707

Re: Permit No. G-33477
Harvey J. Harris

Gentlemen:

Proof of Completion of Works and Application to Beneficial Use is required before February 23, 1969, under the above Permit.

Application for extension of time within which to make the above proof is hereby applied for to February 23, 1971. It has been impossible to do the necessary land-levelling before February 23, 1969, for reasons beyond the control of Permit Holder.

We would also like to amend the Permit to include other lands under the provisions of said Permit. Please send us the necessary forms with which to accomplish this.

Thanking you kindly, I remain

Very truly,

Harvey J. Harris

Harvey J. Harris
Stone, Idaho

33477

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

POSTMARK OF DELIVERING OFFICE

DEC 6 196

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

STREET AND NO. OR P.O. BOX Department of Reclamation
Annex #2 Statehouse

POST OFFICE, STATE, AND ZIP CODE Boise, Idaho 83[illegible]7

D-30477

POD Form 3811 Apr. 1967 865—10—71845-10

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered ☐ Deliver ONLY to addressee

(Additional charges required for these services)

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO.

20542

INSURED NO.

SIGNATURE OR NAME OF ADDRESSEE (*Must always be filled in*)

1 Harvey J. Hall

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

12/6/68

3 SHOW WHERE DELIVERED (*only if requested*)

25—10—71843-10

A-334177

December 16, 1968

Re: Permit No. G-33477

Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

We are in receipt of your letter of December 13, 1968 concerning the above referenced permit. Before the department can consider an application for extension of time, the application must be submitted on forms of the departments. Enclosed are forms for your use. Please bear in mind that application for extension of time must be submitted prior to February 23, 1969.

As to your inquiry concerning the amending of Permit No. G-33477, the 191 acres which are proposed to be irrigated under this permit can be re-arranged for other acres totaling 191 acres. However, the maximum amount of land that can be irrigated under this permit must remain 191 acres. You may also wish to amend the point of diversion or the points of diversion of this permit.

If it should be necessary for you to irrigate lands not covered by this permit from a subterranean source, then you should file an application for permit. The supreme court decision of 1968 varifies that since March 25, 1963, the State of Idaho has been under a mandatory permit system. Therefore, all appropriations from ground water sources must be made by a valid permit.

We are enclosing both amendment and application forms along with an application for extension of time form for your use. If we may be of further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:ks

33477

RECEIVED

DEC 31 1968

Department of Reclamation

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

APPLICATION FOR EXTENSION OF TIME

State of Idaho)
County of Oneida)

Permit No. G-33477

Harvey J. Harris (name) of Stone, Idaho 83280 (address)

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

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Waters of the State of Idaho No. G-33477.

That under the terms and conditions of said permit, work thereunder was required to be completed by February 23, 19 69.

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

Drilled well and make partial application to beneficial use

Costing $ 7000.00

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:

Land levelling has been determined necessary before full beneficial use can be made of the water

WHEREFORE, he asks that the State Reclamation Engineer extend the time for the completion of obligations under said permit to February 23, 19 71.

Harvey J. Harris
(signature)

Subscribed and sworn to before me this 30th day of December, 19 68.

E. L. Scott
(notary public)

My commission expires 5/19/71.

Date of receipt at office of Department of Reclamation

ACTION OF STATE RECLAMATION ENGINEER

I, R. KEITH HIGGINSON, State Reclamation Engineer of the State of Idaho, hereby approve the above application for extension of time for permit G-33477 to February 23, 1971.

Witness my hand this 2nd day of January, 1969.

R. Keith Higginson
State Reclamation Engineer

* If other than the holder, Power of Attorney must be supplied.

Form 12

G-33477

January 10, 1969

Re: Permit No. G-33477

Harvey J. Harris
Stone, Idaho

Dear Mr. Harris:

Enclosed is a copy of the APPROVED application for extension of time for permit No. G-33477. You have been granted an extension until February 23, 1971.

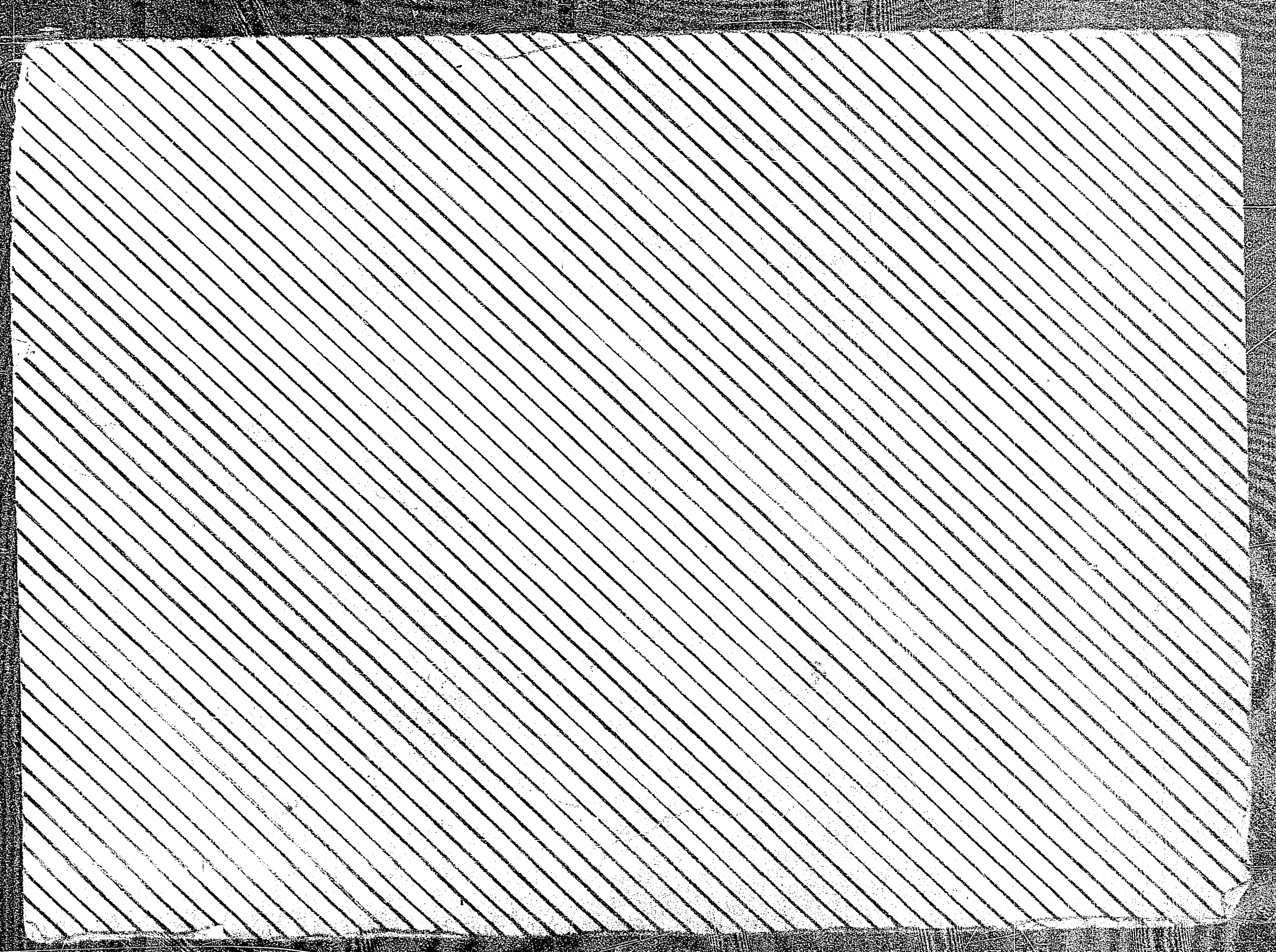
Very truly yours,

Donald W. McEldowney
Appropriation Examiner

DWM:TG

Enc: copy of extension

33477



December 1, 1970

Re: Permit No. G-33477 (New No. 17-2063)

Mr. Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

One of the conditions of the approval of your Permit No. G-33477/17-2063 was that proof of application of the water to beneficial use be submitted to this office on or before February 23, 1971.

Enclosed is an affidavit form which must be used to submit proof of beneficial use. You may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended.

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

R. Keith Higginson

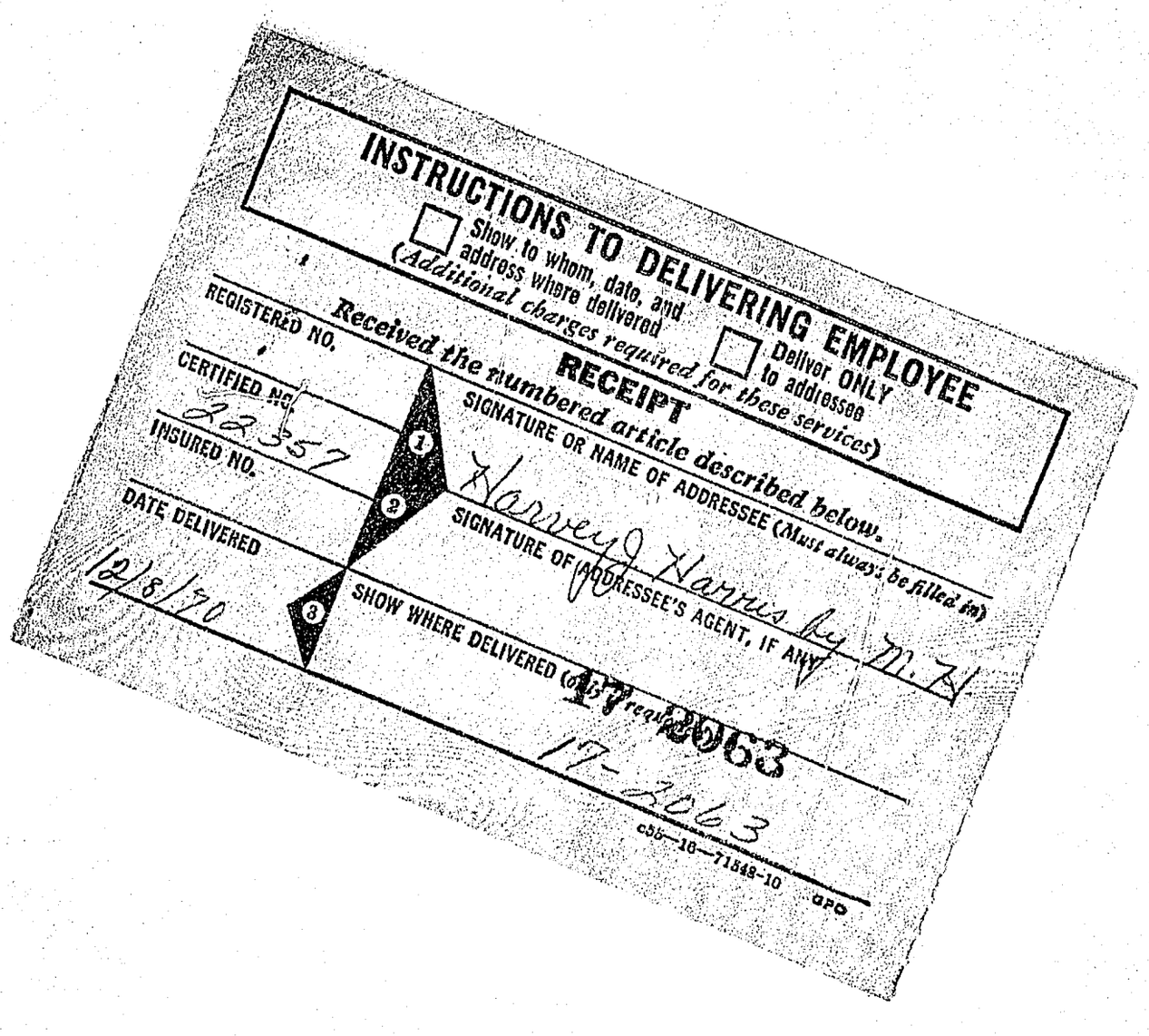
Director

Enc: Proof affidavit
dr

CERTIFIED MAIL

22357

17 2063



INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Show to whom, date, and address where delivered (Additional charges required for these services)

☐ Deliver ONLY to addressee

RECEIPT

Received the numbered article described below.

REGISTERED NO.

CERTIFIED NO. 22357

INSURED NO.

DATE DELIVERED 12/8/70

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) Norwood Harris by M.H.

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

3 SHOW WHERE DELIVERED (only if required) 17-2063

17-2063

c56—18—71548-10 GPO

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

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

POSTMARK OF DELIVERING OFFICE

DEC 8 1970

INSTRUCTIONS: Show name and address below and complete instructions on other side, where applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article *RETURN RECEIPT REQUESTED.*

RETURN TO

NAME OF SENDER

DEPARTMENT OF WATER ADMINISTRATION

STREET AND NO. OR P.O. BOX

STATEHOUSE - ANNEX #2
BOISE, IDAHO 83707

POST OFFICE, STATE, AND ZIP CODE

17 2063

POD Form 3811 Apr. 1967 555-16-71648-10

RECEIVED
FEB 22 1971
Department of Water Administration

NOTICE OF APPROVED APPLICATION FOR WATER

Notice is hereby given that Harvey J. Harris, Stone, Idaho

has received an approved permit No. G-33477 to divert ~~stock~~ 3.82 cubic feet per second ~~acre/feet~~ of water from a ground water source. The priority to be established under this permit is February 20, 1967. Water will be diverted by / canals, pump, sprinklers and well within the NW¼SW¼, Sec. 14, T. 16 S., R. 32 E., B. M., ~~Oneida~~ County and is to be used for irrigation in the NE¼SE¼, Sec. 15; W½SW¼, Sec. 14; NW¼NW¼, Sec. 23; SE¼SE¼, Sec. 22, T. 16 S., R. 32 E., B. M.

Any protests against the intent of the permit must be filed with the Department of Reclamation within ten days from the last date of publication of this notice.

R. KEITH HIGGINSON
State Reclamation Engineer

Published in the Idaho Enterprise, Malad, Idaho on _____ and _____.

State Reclamation Engineer: Permit No. G-33477

You are hereby authorized to have the attached notice published at my expense in the _____ of _____; published in the county in which the works are situated.

Harvey J. Harris
(signature)

Stone Idaho
(address)

Feb 19, 1971
(date)

17 2063

E. L. SCOTT
ATTORNEY AT LAW
26 COURT STREET
MALAD CITY, IDAHO 83252

TELEPHONE 766-4000

RECEIVED
FEB 22 1971
Department of Water Administration

February 19, 1971

17-2063

State of Idaho
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho

ATTENTION: Mr. McEldowney

I am enclosing "Proof of Application of Water to Beneficial Use" together with"Notice of Approved Application for Water" in connection with the above identified Permit.

Mr. Harris states that it will be necessary to change the lands being irrigated and requests application forms for this purpose.

Perhaps the publication of Notice should await the outcome of the amendment.

Thank you for your assistance.

Very truly,

E. L. SCOTT
By E L Scott

ELS/ee
Enclosure

17 2063

Identification No. _____

Permit No. G - 33477

ag 01C 2-23-71

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

RECEIVED
FEB 22 1971
Department of Water Administration

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

1. a) Name of Permit Holder HARVEY J. HARRIS

   b) Post Office Address STONE, IDAHO 83280

2. Permit Number G 33477 / 17-2063

3. Date of Priority that you are prepared to establish FEBRUARY 20, 1967

4. a) Source from which water was appropriated SUBTERRANEAN

   b) Location of the point of diversion: NW ¼ SW ¼, Section 14 Township 16 SOUTH, Range 32 EAST Boise Meridian, Other points of diversion: NONE

5. a) The amount of water and use to which the water has been applied:

   amount 3.82 cfs for IRRIGATION purposes from MAY 1ST to OCTOBER 1ST incl.
   (cfs and/or acre feet per annum) (Month-Day) (Month-Day)

   amount _____ for _____ purposes from _____ to _____ incl.
   (cfs and/or acre feet per annum) (Month-Day) (Month-Day)

   amount _____ for _____ purposes from _____ to _____ incl.
   (cfs and/or acre feet per annum) (Month-Day) (Month-Day)

   b) Total amount appropriated 3.82 cfs and/or acre feet per annum

   c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: BOWLER PUMPING AGENCY OF BURLEY, IDAHO MADE TEST BY INSTALLING TEST PUMP

6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:

   a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____

   b) Describe the agreement or understanding by which you take water from the works: _____

7. a) Breifly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give breif description of diversion structure and/or canal or ditch) 50 H.P. PUMP; ELEC. MOTOR; 18" WELL CASING; DEPTH OF WELL - 190';

   b) Describe the type and size of measuring device which you have installed at your point of diversion: NONE INSTALLED

   c) Give well drillers name and address and date the well was completed _____

   WAYNE YARBOUGH - BURLEY, IDAHO
   WELL WAS COMPLETED OCTOBER, 1967

Exam typed 5-21-71. CR

Re-Exam typed 1-16-73 by _____

17 2063

17 2063

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use _____

9. Irrigation uses: Describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision: _____

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16 S	32 E.	15													40				40
16 S	32E	14										40	31						71
16S	32E	23						40											40
16S	32E	22																40	40

Total number of acres irrigated 191

10. Remarks: PERMIT HOLDER WILL SUBMIT APPLICATION FOR AMENDMENT TO CHANGE LAND IRRIGATED

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

Feb 19, 1971
(Date)

Harvey J. Harris
(Signature)

State of Idaho)
County of Oneida) ss.

On this 19th day of February, 1971, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

E L Scott
Notary Public residing at Malad Idaho

My commission expires 5/19/71

February 23, 1971

Re: Permit No. G-33477/17-2063 - Harvey J. Harris

Mr. E. L. Scott
Attorney-at-Law
26 Court St.
Malad City, Idaho 83252

Dear Mr. Scott:

We acknowledge receipt of the affidavit of beneficial use submitted in connection with the above referenced permit.

As requested in your letter of February 19, 1971, we are enclosing an application for amendment form for Mr. Harris' use. We are withholding advertising of this permit until we are in receipt of the executed amendment.

If we may be of any further assistance, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM/DG
Enc: amendment form

17 2063

E. L. SCOTT
ATTORNEY AT LAW
26 COURT STREET
MALAD CITY, IDAHO 83252
TELEPHONE 766-4000

RECEIVED
MAR 3 1971
Department of Water Administration

March 2, 1971

State of Idaho
Department of Water Administration
Statehouse Annex 2
Boise, Idaho 1 83707

Re: Permit No. G-33477/17-2063
Harvey J. Harris

Att: Donald W. McEldowney
Appropriation Supervisor

Dear Mr. McEldowney:

I am enclosing application of Harvey J. Harris to amend the above identified Permit.

I didn't have a schedule of charges indicating any charge for this filing and am assuming there is none. However, if there is a charge for this filing, please advise and I will have Mr. Harris return his check to you.

If there is anything further to be done here, please advise.

Very truly,

E. L. Scott

E. L. Scott, Attorney

17 2063

March 9, 1971

Re: Permit No. 17-2063 - Harvey J. Harris

Mr. E. L. Scott
Attorney at Law
26 Court Street
Malad City, Idaho 83252

Dear Mr. Scott:

In reference to your letter of March 2, 1971, please be advised that we will need a $5.00 fee for the application for amendment. We should also wish to point out that the permit provides for a maximum of 190 acres of ground to be irrigated and the amendment proposes an expansion to 198 acres. We would request that you review the intent of the amendment and delete 7 acres of ground, inasmuch as the department has no procedure for expanding a water right by means of an amendment.

If this is not satisfactory, please contact us.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:cm

17 2063

E. L. SCOTT
ATTORNEY AT LAW
26 COURT STREET
MALAD CITY, IDAHO 83252

TELEPHONE 766-4000

March 22, 1971

State of Idaho
Dept. of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Donald W. McEldowney
Appropriation Supervisor

Re: Permit No. 17-2063
Harvey J. Harris

Dear Mr. McEldowney:

Thank you for your letter of March 9 relative to the above permit. A $5.00 check from Mr. Harris is enclosed to cover the fee.

Mr. Harris states that the acreage in the SW¼SW¼ of Section 14, Township 16 South, Range 32 E.B.M., can be reduced by 7 acres to bring the application for amendment within your standards.

Thanking you, I remain

Very truly,

E. L. Scott

ELS:eh

17 2063

March 24, 1971

Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

Returned herewith is your receipt No. 5804 in the amount of $5.00 for Application for Amendment No. 17-2063, which was received in this office under the above date.

Very truly yours,

M. RUSSELL BOSCH
Administrative Assistant

MRB:ejw

Enclosure

17 2063

March 26, 1971

Re: Permit No. G-33477/17-2063

Mr. Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

Enclosed please find a copy of the approved application for amendment in connection with the above referenced permit.

The legal notice for this permit is to be published in the Idaho Enterprise at Malad City, Idaho, on April 8th and 15th, 1971. You will be required to submit an affidavit of publication to this office; the affidavit may be obtained from the newspaper upon payment of the bill for publication.

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

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:DR
Enclosure

cc: E. L. Scott

17 2063

RECEIVED
MAR 3 1971
Department of Water Administration

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR AMENDMENT

Permit No. G-33477/17-2063

Comes now Harvey J. Harris of (address) Stone, Idaho, and represents to the State Reclamation Engineer of the State of Idaho:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. G-33477/17-2063, and requests that the permit and permit map be changed as follows:

1. Point of diversion: NW ¼ SW ¼, Sec. 14, Twp. 16 South, R. 32 East, B.M. Other points of diversion _____

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

		mo. - day		mo. - day	
For	Irrigation	purposes from	May 1st	to	October 1st (both dates incl.)
For		purposes from		to	(both dates incl.)
For		purposes from		to	(both dates incl.)
For		purposes from		to	(both dates incl.)

3. Place of use or land to be irrigated:

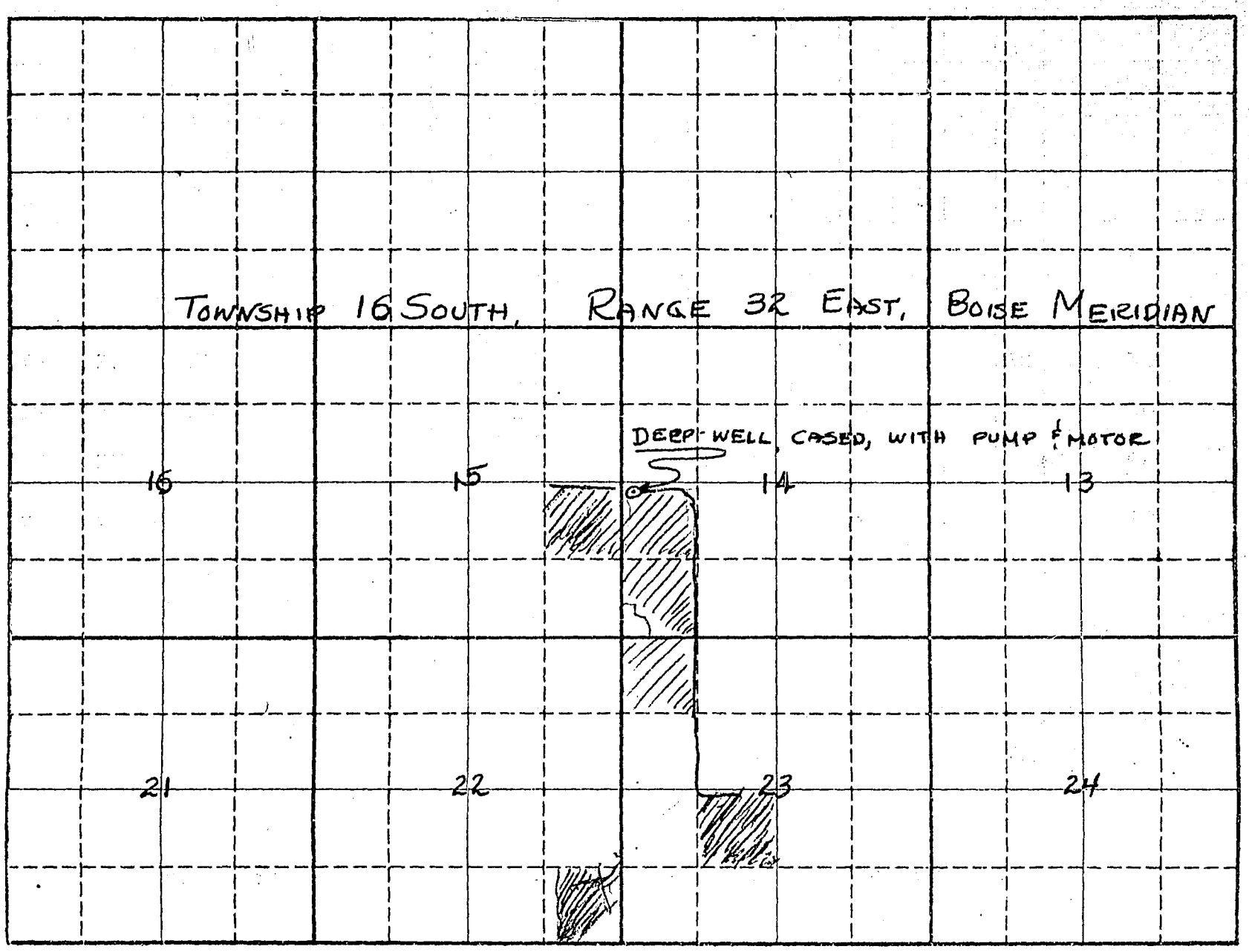
TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16 S	32 E.	15													39				39
16 S	32 E	14										38	24 ~~31~~						62 69
16 S	32 E	23						35			35								70
16 S	32 E	22																20	20

Total number of acres to be irrigated ~~198~~ 191

17 2063

17 2063

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



Scale: 2 inches equal 1 mile

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

Signed at Malad City, Idaho, this 2nd day of March, 1971.

Harvey J. Harris
(signature)

ACTION OF STATE RECLAMATION ENGINEER

I, R. KEITH HIGGINSON, Director, ~~State Reclamation Engineer~~ Dept. of Water Administration of the State of Idaho, hereby APPROVE the above application for amendment for Permit No. 17-2063.

Witness my hand this 26th day of March, 19 71

R. Keith Higginson
~~State Reclamation Engineer~~

NOTICE OF EXISTING WATER PERMIT

Notice is hereby given that **Harvey J. & Harris, Stone, Idaho,** has received an approved Permit No. **G-33477/17-2063** issued by the Idaho Department of Water Administration authorizing the diversion ~~of~~ of **3.82** cubic feet per second ~~per annum~~ of water from **a ground water source**.

The priority to be established under this permit is **February 20, 1967,** and the permit was approved **February 23, 1967**.

Water is to be diverted by **well and pump** from a point within the **NW¼SW¼ Sec. 14, T. 16S, R. 32E, B.M., Oneida County,** to be used for **irrigation purposes** in the **NE¼SE¼, Sec. 15; W½SW¼, Sec. 14; NW¼NW¼, NE¼SW¼, Sec. 23; SE¼SE¼, Sec. 22; T. 16S, R. 32E, B.M.**

Proof of the application of the water to beneficial use ~~shall be~~ was submitted to the Department on ~~or before~~ **February 22, 1971**. Any protests against the issuance of the license for the above referenced permit should be filed with the Idaho Department of Water Administration within ten (10) days of the last date of publication of this notice ~~of the permit, licensing may commence prior to the date beneficial use proof is due. Notice further noted.~~

R. KEITH HIGGINSON, Director
Idaho Dept. of Water Administration
STATEHOUSE, Boise, Idaho

Published in the **Idaho Enterprise, Malad City, Idaho,** on **April 8 and April 15, 1971**.

17 2063

March 26, 1971

Re: Permit No. 17-2063

Idaho Enterprise
P.O.Box 205
Malad City, Idaho 83252

Gentlemen:

Enclosed is a legal notice which we wish to have published for two consecutive weekly issues of your newspaper. We have inserted the publication dates, allowing ample time for you to submit to us a galley proof for our review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication date. If you cannot publish the notice on the proposed dates, please contact the Department of Water Administration immediately.

The expense of the publication is to be paid by Harvey J. Harris, Stone, Idaho, 83280, to whom you should furnish an affidavit of publication.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:DR
Enc: Legal notice

17 2063

RECEIVED
Department of Water Administration

Stone Idaho
April 20, 1971

IDF

Mr. R. Keith Higginson
Boise, Idaho.

Dear Sir:

We are entering a protest against the state issuance of a ~~license~~ permit to pump water from Well No. D-33477/17-2063. For the reason it is diffuntly dryout up my meadows. Some time ago I wrote you a letter asking your advise and to come by and see what it was doing while ~~the~~ pump was operating It as to date have not seen you

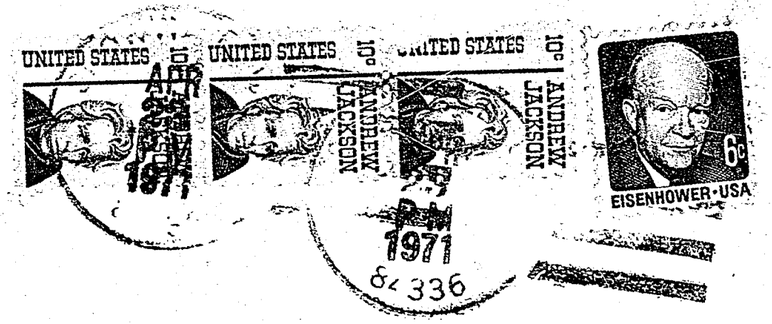
These meadows are my only source of feed for my cattle and my set up here ~~dies~~ is dependant on these meadows.

P.S. I regret to do this
But it is just killing my meadows.

Respectfully Your
Le Roll Neal

17 2063

Mr. L. Vell Neal
Stone, Idaho. 83280



Mr. R. Keith Higginson
Director of Idaho Department of Water Ad.
State House
Boise, Idaho
83707

CERTIFIED
No 534315
MAIL

April 28, 1971

Re: Permit No. G-33477/17-2063 - Harvey J. Harris

Mr. LeVell Neal
Stone,
Idaho 83280

Dear Mr. Neal:

We are in receipt of your protest against licensing of the above referenced permit and a copy of the protest has been sent to Mr. Harris. The protest will be placed on file and considered after the Department has conducted a field examination. If an agreement between you and the permit holder can not be reached before that time a conference and/or hearing will be necessary to resolve the protest. The points that may be considered at that time are:

1. Has the permittee diverted and beneficially used unappropriated public water?

2. Has the operation of the proposed water-right under the permit caused injury to a prior existing water-right?

3. Has the water been placed to beneficial use in accordance with the terms and conditions of the permit?

If a conference and/or hearing is necessary, you will be notified of the time and place. If we may be of further assistance, please contact us.

Very truly yours,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

17 2063

April 28, 1971

Re: Permit No. G-33477/17-2063

Mr. Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

Enclosed please find a copy of the protest filed by LeVell Neal against the above referenced permit. The protest will be placed on file and considered after the Department has conducted a field examination. If an agreement between you and the protestant cannot be reached before that time, a conference and/or hearing will be necessary to resolve the protest. The points that may be considered at that time are:

1. Has the permittee diverted and beneficially used unappropriated public water?

2. Has the operation of the proposed water right under the permit caused injury to a prior existing water right?

3. Has the water been placed to beneficial use in accordance with the terms and conditions of the permit?

If a conference and/or hearing is necessary, you will be notified of the time and place. If we may be of any assistance, please contact us.

Very truly yours,

BOBBY D. FLEENOR
Assistant Director

BDF:DR
Enc: Copy of protest

17 2063

Stone, Idaho
May 11, 1971

RECEIVED
MAY 12 1971
Department of Water Administration

State of Idaho
Department of Water Admin.
Boise Idaho.

Dear Sirs:

Please find enclosed Affidavit of Publication of Permit No. 63-33477 17-2063 for 3.82 cubic feet per second of water from a ground source.

I have received copy of protest by Le Vell Neal against the above permit. Please notify me of time and place of hearing.

Very truly Yours
Harvey J. Harris

17 2063

RECEIVED
MAY 19 1971
Department of Water Administration

NOTICE OF EXISTING WATER PERMIT

Notice is hereby given that Harvey J. Harris, Stone, Idaho, has received an approved Permit No. G-33477/17-2063 issued by the Idaho Department of Water Administration authorizing the diversion of 3.82 cubic feet per second of water from a ground source. The priority to be established under this permit is February 20, 1967, and the permit was approved February 23, 1967.

Water is to be diverted by well and pump from a point within the NW¼SW¼ Sec. 14, T. 16S, R. 32E, B.M., Oneida County, to be used for irrigation purposes in the NE¼SE¼, Sec. 15; W½-SW¼, Sec. 14; NW¼NW¼, NE-¼SW¼, Sec. 23; SE¼SE¼, Sec. 22; T. 16S, R. 32E, B.M.

Proof of the application of the water to beneficial use was submitted to the Department on February 22, 1971. Any protests against the issuance of the license for the above referenced permit should be filed with the Idaho Department of Water Administration within ten (10) days of the last date of publication of this notice.

R. KEITH HIGGINSON, Director
Idaho Dept. of Water Administration
STATEHOUSE, Boise, Idaho

Published in the Idaho Enterprise, Malad City, Idaho, on April 8 and April 15, 1971.

Affidavit of Publication

State of Idaho
County of Oneida, ss.

Norma Champney being first duly sworn on h.. oath, states: That .he is .Clerk..... of the Idaho Enterprise, a newspaper of general circulation in Oneida County, Idaho published weekly at Malad, in said county, that said newspaper has been published in said county uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement:

That said Idaho Enterprise was at all of the times of publication of said notice a newspaper of general circulation made up of at least four pages of at least five columns each, printed from type matter or stereotyped forms of at least seventeen and three fourths inches depth, and said newspaper during all of the times of publication aforesaid had more than 200 bonafide subscribers thereto living within the county of Oneida in which said newspaper was published at regular intervals not less frequently than once a week.

That the annexed notice was published per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof for ... successive weekly issues thereof the date of the first publication being the .8.. day of ...April.... 1971.. the date of the last publication being the 15... day of ..April... 19..71

..Norma Champney

Subscribed and sworn to before me this ...19... day of .....April....., 19 ....

.....

Notary Public, residing at Malad, Idaho

My Commission expires the .... day of ....., 19....

Costs: 41.. lines at 13c per line first insertion $. 5.33

..... lines tabulated at 20c per line $.....

10c per line each subsequent insertion $.4.10

TOTAL ..... $. 9.43

(Rates for legal notices are fixed by Idaho law)

17 2063

May 19, 1971

Re: Permit No. G-33477/17-2063

Mr. Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

We acknowledge receipt of the affidavit of publication submitted in connection with the above referenced permit.

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

The matter of the protest will not be taken up until such time as the field examination has been completed.

Very truly yours,

Donald W. McEldowney
Appropriation Supervisor

DWM:DR

17 2063

DEPARTMENT OF WATER ADMINISTRATION
FIELD REPORT

Permit No. 38-33477/17-2063
Examination for 3/4

1. Name of permit holder Harvey J. Harris

   Post office address Stone, Idaho Phone 698-2443

   Person to contact _____ Phone _____

2. Source of water supply: Groundwater [X] Surface water [ ] Subterranean
   (name spring, stream, etc.)

   Tributary to _____

3. Water will be used for the following purposes:

   Amount 3.82 c.f.s. for Irrigation
   _____ AF/Annum (nature of use)

   Period of Use: from May 1 to October 1
   (mo.-day) inclusive (mo.-day)

   Amount _____ c.f.s. for _____
   _____ AF/Annum (nature of use)

   Period of Use: from _____ to _____
   (mo.-day) inclusive (mo.-day)

   Amount _____ c.f.s. for _____
   _____ AF/Annum (nature of use)

   Period of Use: from _____ to _____
   (mo.-day) inclusive (mo.-day)

   Other uses: _____

4. Total amount to be appropriated:

   Max Rate of Diversion 3.82 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

   Township 16 N/S, Range 32E E/W, B.M., Section 14, Subdivision NW ¼ SW ¼, Oneida County

   Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

   Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

   Other Points of Diversions: _____

   Description of diverting works: 50 h.p. pump,; Electric motor; 18" well casing; depth of well, k90'.

   Measuring device required: yes [ ] no [X]

6. Lands to be irrigated or place of use.

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16 S	32 E	15													39				39
		14										38	24						62
		23						35			35								70
		22																20	20

17 2063 TOTAL ACREAGE 191

17 2063

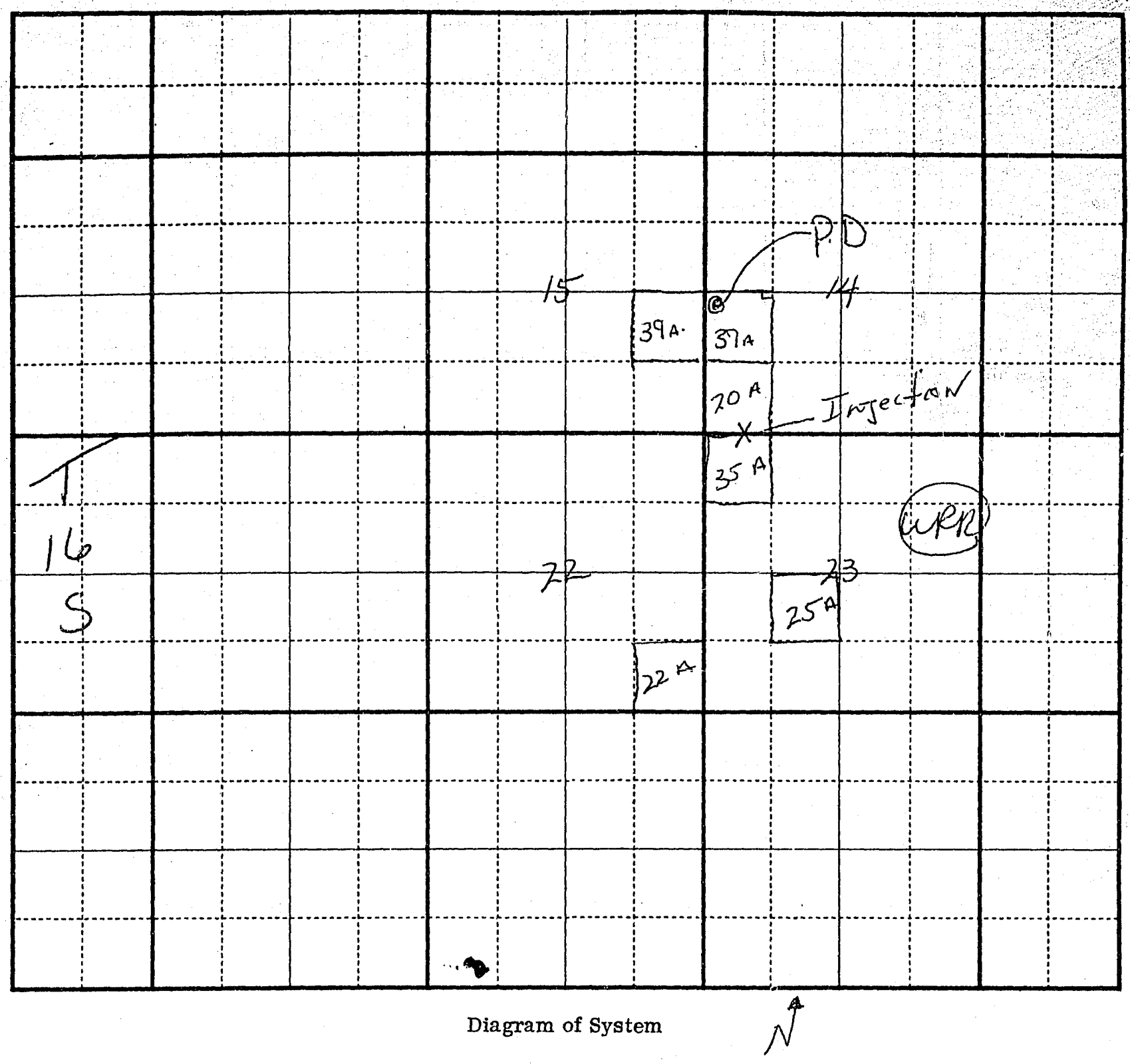
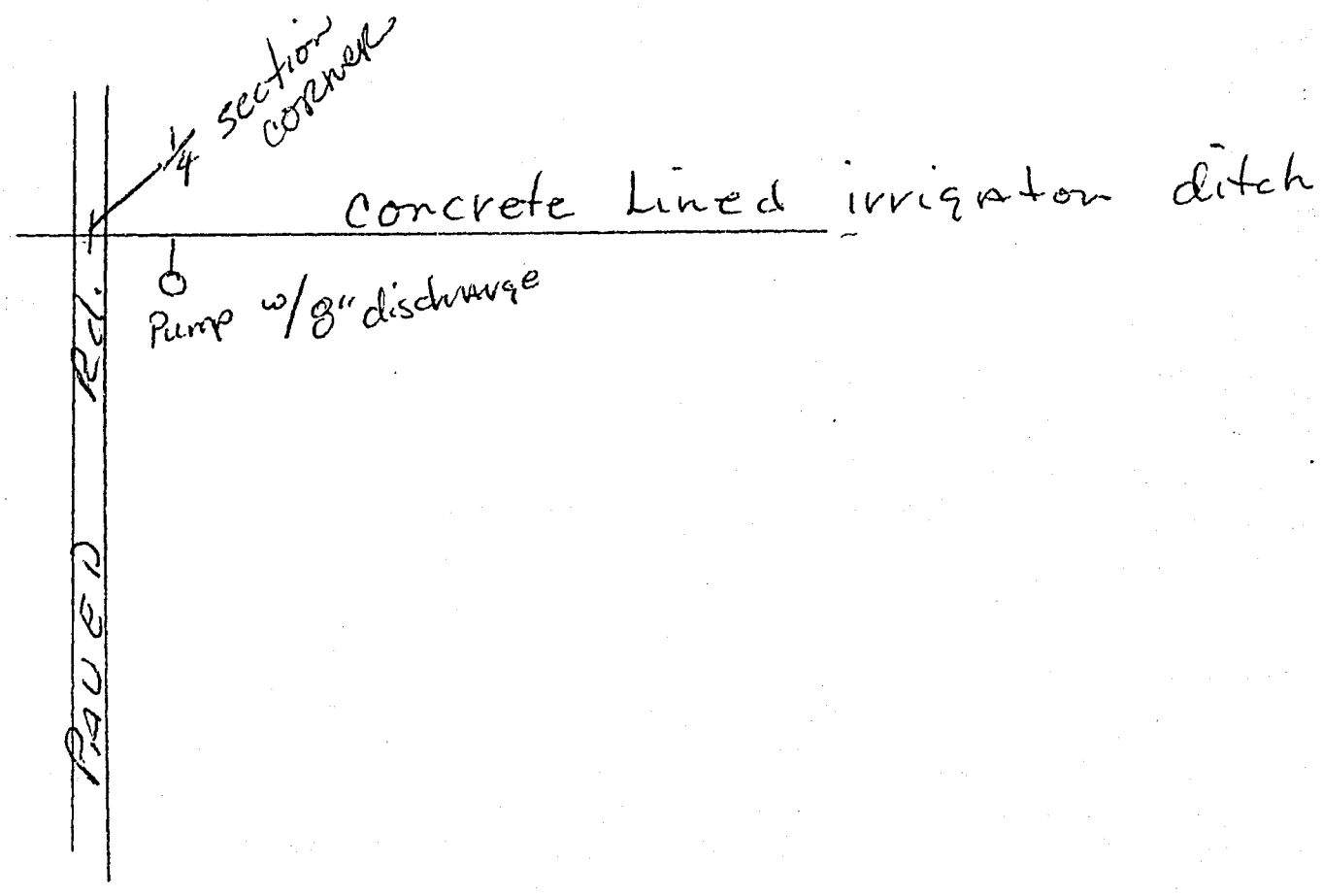


Diagram of System



DATE OF EXAM Aug 3, 1972

ACREAGE
Found 178
Recommended 178

Irrigation Requirement 3.5 Ac Ft/Ac

USE
Irrigation Q= 3.56 c.f.s. V= 623 AF/Ann. from May 1 to Oct 1
Domestic Q=_____c.f.s. V=_____ AF/Ann. from _____ to _____
Livestock Q=_____c.f.s. V=_____ AF/Ann. from _____ to _____

Is water co-mingled? yes_____ no ✓

Name source: N.A.
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Exchange? yes ✓ no_____

Name source exchanged with: Cureton Eastside canal
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Point of injection:
twp. 16S N/S, Rge 32E E/W, B.M., Sec. 23, Sub. NW ¼ NW ¼ Oneida
County

Point of exchange:
twp. 16S N/S, Rge 32E E/W, B.M., Sec. 23, Sub. NE ¼ SW ¼ Oneida
County

Total Q measured 4.80 Method of measurement Sprelng

Total Q recommended 3.56 Meter No. 54580 Type_____ Condition DWR's

Total V recommended 665.0 Af/Ann

Recommended Amendments:

P.D._____
Place of Use_____
Other Exchange
None_____

MEASUREMENT CALCULATION:

435.6 cuft. in 91 sec = 4.80 cfs

178 Ac (.02) = 3.56 cfs

SYSTEM DESCRIPTION:

G.E TRI-Clad 50 Hp Motor Ser # BBJ 216484

LAYNE & Bowler Pump 1800 gal @ 85' Ser # D18016

REMARKS:
1. Mr Harris was in attendance during inspection
2. No measuring device on Pt. of Injection or Exchange
3. Norm Young assisted in Inspection

Examiner's Signature William R. Rhoads Date Aug 5, 1972

Checked by Norman C. Young, P.E. Date 11-9-72

Approved by_____ Date_____

17 2063

May 10, 1971
Stone, Idaho

BDF

17-2063

Mr. Bobby D. Eleazor
Assistant Director
Boise, Idaho

Dear Sir

In regards to your letter of April 28, 1971, in regards to the protested water right permit #17-2063 held by Mr. Harvey Harris. Well operation of the proposed water right under existing water rights caused injury to your pumping the well. It does when Mr. Harris started springs on my property which I had benefited from for at least 30 years and they existed long before then, and at that time I wrote the State water director a letter explaining the situation and asked him to please come see for himself what was taking place. But he declined

I have sent Mr. Harris my intentions a proposal to buy me and my meadow I requested he give me part of the water from the canal, which Mr Harris has a number of hours in which I could irrigate meadow. If he will agree to the proposition I will immediately withdraw my protest. However should he disagree he leaves me no alternative than to file an injunction or suit to stop the well from being pumped in order to get the hay production back in order to feed my livestock as I explained to you before this is my only source of feed for my livestock Therefore

17-2063

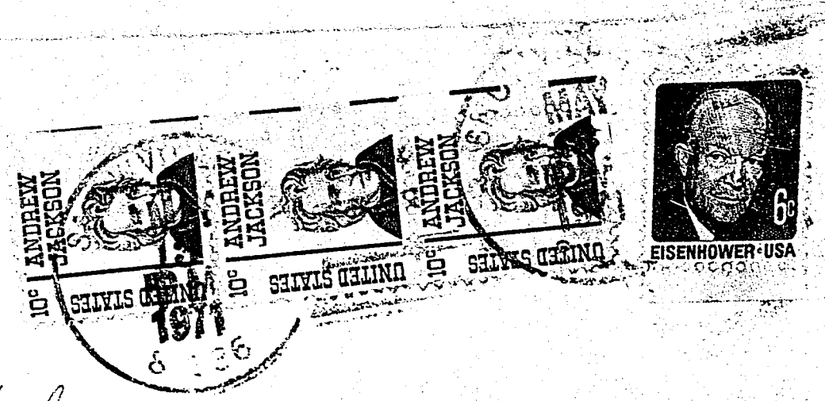
being essential to my life's work and my livelyhood. I need help to preserve it. I would also like to be present on your feild survey and I feel sure I could show you to what extent the pumping of the well causes. I delayed doing this thinking it might work out but it just wont as long as the pump pulls the water from under the meadow.

Thanking you for your attention

Sincerely Yours
Le Vell Neal.

17 2063

Mr. Le Vell Neal
Stone, Idaho 83280



CERTIFIED
No 534318
MAIL

Mr. Bobby R. Fleenor
Assistant Water Director
State of Idaho, Dept of Water Administration
State House, Annex 2
Boise Idaho 83707

36-7424
27-7564
17-2063

17 2063

November 15, 1972

Mr. LeVell Neal
Stone,
Idaho 83280

Re: Permit No. 33477/17-2063
Harvey J. Harris

Dear Mr. Neal:

In September of 1971, you filed a protest against issuance of a license in connection with the above referenced permit.

A representative of this Department has made an examination of the works covered by this permit and the Department is prepared to issue a water license as follows:

Quantity of water diverted: 4.80 cfs

Amount of water that can be recognized as beneficially used under Idaho law: 3.56 cfs

The maximum quantity diverted shall not exceed 623 acre feet per year.

Beneficial use: Irrigation of 178 acres within the W½SW¼ (57), Sec. 14; NE¼SE¼ (39), Sec. 15; SE¼SE¼ (22), Sec. 22; NE¼NW¼ (35), NE¼SW¼ (25), Sec. 23; Twp. 16 S, Rge. 32 E, B.M.

Point of diversion: NW¼SW¼, Sec. 14, Twp. 16 S, Rge. 32 E, B.M.

The priority date established: Feb. 20, 1967

Unless we hear from you within 20 days of the date of this letter, we will assume you wish to continue your protest against this license and the matter will be set for a conference and/or hearing.

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

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

cc: Harvey J. Harris

17 2063

January 16, 1973

Re: Permit No. 33477/17-2063 - Harvey J. Harris

Mr. LeVell Neal
Stone,
Idaho 83280

Dear Mr. Neal:

The Department will conduct another field examination in connection with the above referenced permit during the 1973 irrigation season.

The examination will be made by a representative from our Eastern District Office at Idaho Falls, Idaho. You and Mr. Harris will be contacted by the examiner at the time the examination is made.

A conference &/or hearing to discuss the matters of protest will be scheduled after the field exam is completed.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

17 2063

January 16, 1973

Re: Permit No. 33477/17-2063

Mr. Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

The Department will conduct another field examination in connection with the above referenced permit during the 1973 irrigation season.

The examination will be made by a representative from our Eastern District Office at Idaho Falls, Idaho. You and the protestant, Mr. LeVell Neal, will be contacted by the examiner at the time the examination is made.

A conference &/or hearing to discuss the matters of protest will be scheduled after the field exam is completed.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:DR

17 2063

Stone Idaho
Jan 19 1973

RECEIVED
JAN 22 1973
Department of Water Administration
SDF

Mr. Bobby D. Fleenor,
Boise, Idaho
Dear Sir:

In regards to your letter of Jan. 16, 1973 we wish to thank you for your interest But you agreed to that several years ago. We want to inform you we have turned the Case over to an attorney and he is authorized to do what is neccesary. Thanking You I remain. Sincerly Yours

Lowell Deal

17 2063

DEPARTMENT OF WATER ADMINISTRATION

FIELD REPORT

1. Name of permit holder Harvey J. Harris

Post office address Stone, Idaho Phone _____

Person to contact Harvey J. Harris & LeVell Neal (protestant) Phone _____

2. Source of water supply: Groundwater ☒ Surface water ☐ _____
(name spring, stream, etc.)

Tributary to _____

3. Water will be used for the following purposes:

Amount 3.82 c.f.s. for Irrigation
_____ AF/Annum (nature of use)

Period of Use: from May 1 to October 1
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Amount _____ c.f.s. for _____
_____ AF/Annum (nature of use)

Period of Use: from _____ to _____
(mo.-day) inclusive (mo.-day)

Other uses: _____

4. Total amount to be appropriated:

Max Rate of Diversion 3.82 cubic feet per second and annual volume _____ AF/Annum.

5. Location of Point(s) of Diversion:

Township 16 S N/S, Range 32 E E/W, B.M., Section 14, Subdivision NW ¼ SW ¼, Oneida County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

Township _____ N/S, Range _____ E/W, B.M., Section _____, Subdivision _____ ¼ _____ ¼, _____ County

Other Points of Diversions: _____

Description of diverting works: well, pump, motor

Measuring device required: yes ☐ no ☒

6. Lands to be irrigated or place of use.

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16S	32E	14										38	24						62
		15													39				39
		22																20	20
		23						35			35								70

17 2063

TOTAL ACREAGE 191

PRIORITY - Make during 1973 irrigation season

Permit No. 33477/17-2063 (Protest)

Re Examination for b/u

17 2063

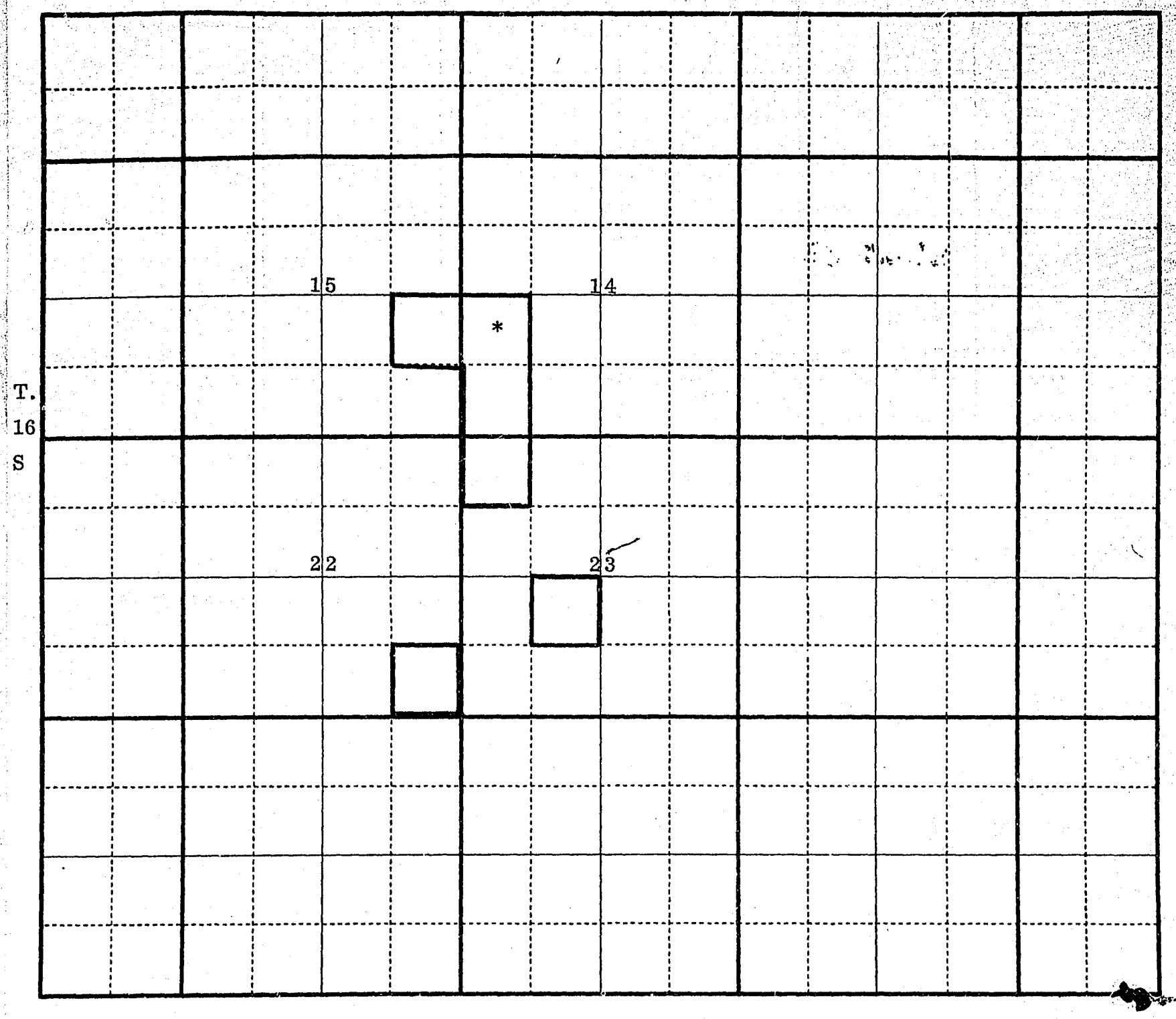
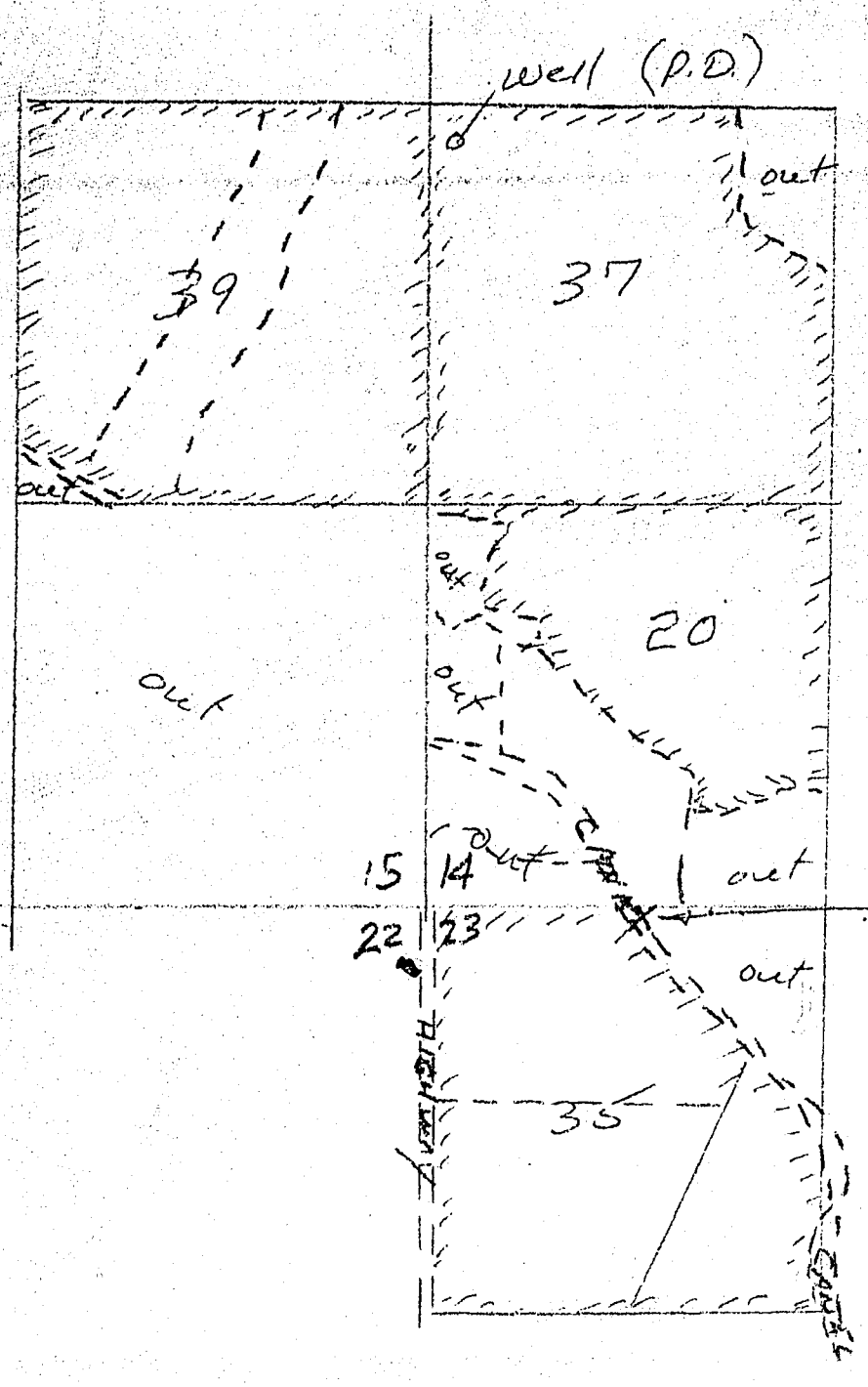
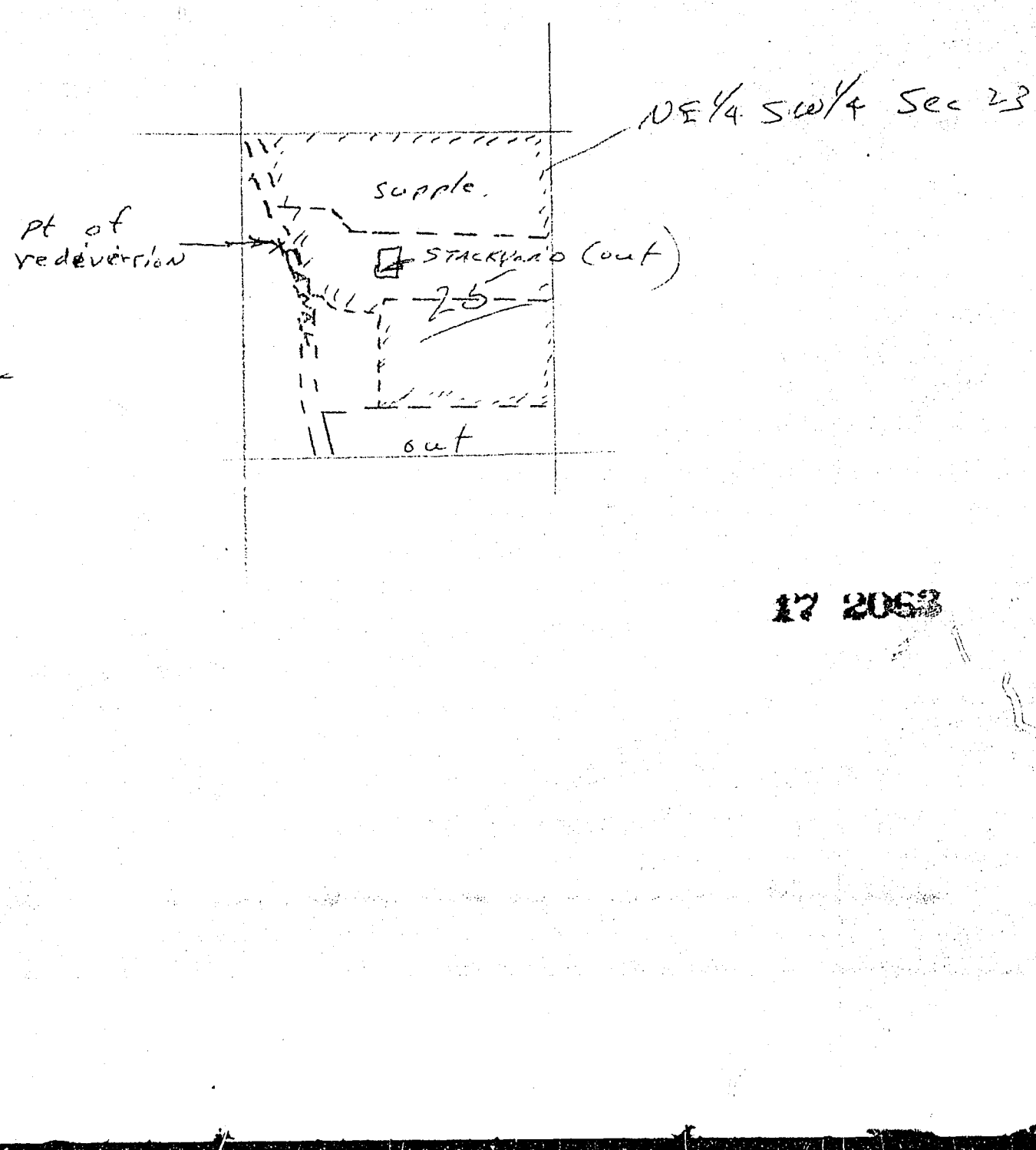


Diagram of System


well (P.D.)
39
37
20
out
15
14
22
23
35
pt of injection into canal (Curlew East)

HARVEY J. HARRIS
17-2063
COPIED FROM
ASCS PHOTO @ MALAD
SCALE = 8" = 1 mile
WRR Aug 5, 1972



17 2063

DATE OF EXAM 8/15/73

ACREAGE
Found _____
Recommended _____

Irrigation Requirement _____ Ac Ft/Ac

USE
Irrigation Q=_____c.f.s. V=_____ AF/Ann. from _____ to _____
Domestic Q=_____c.f.s. V=_____ AF/Ann. from _____ to _____
Livestock Q=_____c.f.s. V=_____ AF/Ann. from _____ to _____

Is water co-mingled? yes_____ no_____

Name source: _____
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Exchange? yes_____ no_____

Name source exchanged with: _____
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Point of injection:
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Point of exchange:
twp._____N/S, Rge_____E/W, B.M., Sec._____, Sub._____¼_____¼_____
County

Total Q measured _____ Method of measurement _____

Total Q recommended _____ Meter No._____ Type_____ Condition _____

Total V recommended _____

Recommended Amendments:

P.D. _____
Place of Use _____
Other _____
None _____

MEASUREMENT CALCULATION:
No measurement of water or review of land irrigated was made because the applicant indicated he was satisfied with the previous exam. The protestants were not interested in a re-exam, but rather only wanted to show effect of pumping on the water table in his meadow (see attached field report memo).
SYSTEM DESCRIPTION:

REMARKS: Probably will require a protest hearing before license can be issued.

Examiner's Signature Norman C. Young P.E. Date 8/21/73

Checked by _____ Date _____

Approved by _____ Date _____

17 2063

INTER-DEPARTMENT MEMO — 1

DATE 1/16/73

FROM Darlene

TO Norm

SUBJECT Permit 17-2063 (protest) - Harvey J. Harris

Please find attached a new exam report for the above subject permit. We have advised Mr. Harris and the protestant, Mr. Nell, that they would be contacted at the time the re-exam is made-----please invite them.

If you need the exam report you did in August, 1972, or any other information from this file, please let me know.

SIGNATURE

17 2063

RECEIVED

JAN 18 1973

Department of Water Administration
Eastern District Office

INTER-DEPARTMENT MEMO — 1

FROM Darlene

DATE 1/16/73

TO Norm

SUBJECT Permit 17-2063 (protest) - Harvey J. Harris

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If you need the exam report you did in August, 1972, or any other information from this file, please let me know.

ds 17 2063

SIGNATURE

17- 2063 Harvey Harris
Attorney - Ed. Scott

Protestant

Le Vell Neal

Attorney - Herman McDevitt

1st Issue - Consideration of other issues than the ~~use of~~ beneficial use of water

2nd Issue - Amendment was not proper in that it allowed irrigation of land not owned by the permittee.

3 Issue - Used Unappropriated

4. Issue - Not Injured

Right of protestants interferred with

~~Protest~~

Issue - Mr Scott

1. - Contend that licensing of permit 42-617 should be governed by statues in effect at time permit was issued.

- Protest is inadequate. - not notorized.

- Should have proceeded to ground water board -

Mr. McDevitt

- Mr. Neal has objected since 1967 -

- ~~If Ground Water Board~~

17 2063

2. Not made clear at time of amendment what ~~the~~ the effect was on the permit.

—— ? Was

Field Reports
Appls
Amendment
BU Form

} Send to both attorney

March 7 Thursday Reconvene Hearing

File with exam
17-2063
Copies of all
letters to attorney
NCY.

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

AREA CODE 208
TELEPHONE 233-4121

B. A. McDEVITT
HERMAN J. McDEVITT
~~XXXXXXXXXXXXXXXX~~
John K. Looze

BDF
copy sent to Eastern Dist.

January 31, 1973

RECEIVED
FEB 14 1973
Department of Water Administration
Eastern District Office

State of Idaho
Department of Water Administration
Statehouse Annex 2
Boise, Idaho 83707

Attention: Bobby D. Fleenor
Assistant Director

Re: Permit No. 33477/17-2063
Harvey J. Harris

Dear Mr. Fleenor:

As you have been informed by letter from my clients, Mr. and Mrs. LaVell Neal from Stone, Idaho (the complainants in the above matter) we will be representing them in all matters in conjunction with the field examination on the application for permit by Harvey J. Harris.

We request that advance notice be given by your representative to the undersigned, in order that we may be present at any meeting by the examiner with protestants and the applicant.

Sincerely,

HERMAN J. McDEVITT

HJM:js

P.S. - Along this same line please let Eric Lyon

17 2063

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

Rules and Procedures for Processing Outstanding Applications and Permits filed or issued prior to May 31, 1967

I PURPOSE

The 1967 session of the Idaho legislature repealed and amended several sections of Title 42, Chapter 2 of the Idaho Code, dealing with the procedure to be followed in processing applications for water permits and issuing water licenses by the Department of Reclamation. As a result of these amendments there is some question as to how applications and permits received and issued prior to the effective date of the new law are to be perfected.

In order to clarify the procedures to be followed by the holders of applications and permits received or issued prior to May 31, 1967, (the effective date of the new act), the State Reclamation Engineer hereby establishes the following Rules and Procedures, effective August 1, 1968.

II RULES AND PROCEDURES

A. Applications for permits to appropriate water received prior to May 31, 1967 but in connection with which permits have not yet been issued or denied.

1. Such applications shall be treated as if they were received after the effective date of the present statutes.
2. If the correct fees were received when the application was filed under the statutes in force prior to May 31, 1967, the fee requirements under the present statutes shall be deemed satisfied.
3. Notice of the application for permit shall be published at departmental expense as provided in Section 42-203 of the Idaho Code, as amended.
4. If a permit is issued, the permit holder shall perfect the right under the requirements of Title 42, Chapter 2, of the Idaho Code, as amended.

B. Permits issued prior to May 31, 1967, which require separate proof of completion of works and proof of beneficial use of the water and on which proof of completion of works has not yet been initiated by either (1) the permit holder filing with the Department a notice of intent to make such proof or (2) by the Department forwarding notice that proof is due.

1. A notice shall be sent to the holder of each such permit stating that he will not be required to submit proof of completion of works on his permit due to the repeal of such provisions but that his permit must comply with Section 42-311 of the Idaho Code or it may be subject to cancellation and that he may submit proof of application of the water to beneficial use at anytime up to the date originally set for such proof as required by his permit.
2. Each permit holder who was formerly required to file a bond with the Department shall be notified that he is released from such requirement.

17 2063

3. Proof of beneficial use of the water shall be made under the provisions of Title 42, Chapter 2, as amended, except as hereafter provided in Section C.

C. All permits issued prior to May 31, 1967 on which proof of beneficial use has not yet been initiated by either (1) the permit holder filing with the Department a notice of intent to file such proof or (2) by the Department forwarding notice that proof is due.

1. As soon as practical, each permit holder, whose permit has not previously been advertised, will be required to publish in a form prescribed by the Department of Reclamation at his own expense a notice in a legal newspaper of the county in which the point of diversion is situated stating that he has been issued a permit. The notice will be published in two consecutive weekly issues and shall state that anyone who wishes to object to the appropriation of water under the permit as issued may file a protest with the Department within 10 days from the last date of publication.

2. A copy of any protests received will be immediately forwarded to the person holding the permit and a copy will be placed in the files for consideration when licensing is pending upon the permit.

3. A conference or hearing may be held to discuss the terms of the protest among the permittees and the protestants if in the Departments opinion such conference would aid in resolving the issues set forth by such protest.

4. When proof of application of the water to beneficial use comes due, such proof shall be made and license issued under the amended provisions of Title 42, Chapter 2.

5. No additional fees for examination or licensing shall be required.

Stone Idaho
May 29 1973

State of Idaho.
Department of Water administration,
240 N. Holmes.
Idaho Falls, Idaho. 83401

RECEIVED
MAY 31 1973
Department of Water Administration
Eastern District Office

Gentlemen:

I will be glad to give you my full coöperation with your field examination in regards to issuance of a water license on Permit No. 17-2063

I started watering May 16th, will be through about June 6th 1973.

will start again about June 13, to June 30.

Will start again July 15 and continue until July 30th.

I will start again about Aug. 15 will continue to Aug. 30.

we will start irrigating again about Sept. 10th and will continue until about Sept. 25th.

I hope this information is what you want.

Very truly yours.
Harvey J. Harris

17 2063

RECEIVED
AUG 3 1973
Department of Water Administration
Eastern Central Office

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

AREA CODE 208
TELEPHONE 233-4121

B. A. McDEVITT
HERMAN J. McDEVITT
~~XOSEXKIXAXXOXXXXXX~~
John K. Looze

RECEIVED

August 1, 1973

Mr. Norm Young
State of Idaho
Water Administration Dept.
240 S. Holmes
Idaho Falls, Idaho 83401

Re: Lavell Neal

Dear Mr. Young:

I have tried to contact you in recent days, but due to your moving your offices, we have missed each other.

Some months ago your office agreed to go down and investigate the problem of the Harris well draining the water table under Mr. Neal's ranch.

It is my understanding that you were also going to let me know when a representative went down so that I could go with you.

I was down there last week with several persons experienced in the area, and the problem is really terrible.

Kindly advise what, if anything, we can plan and when a hearing can be held.

Sincerely,

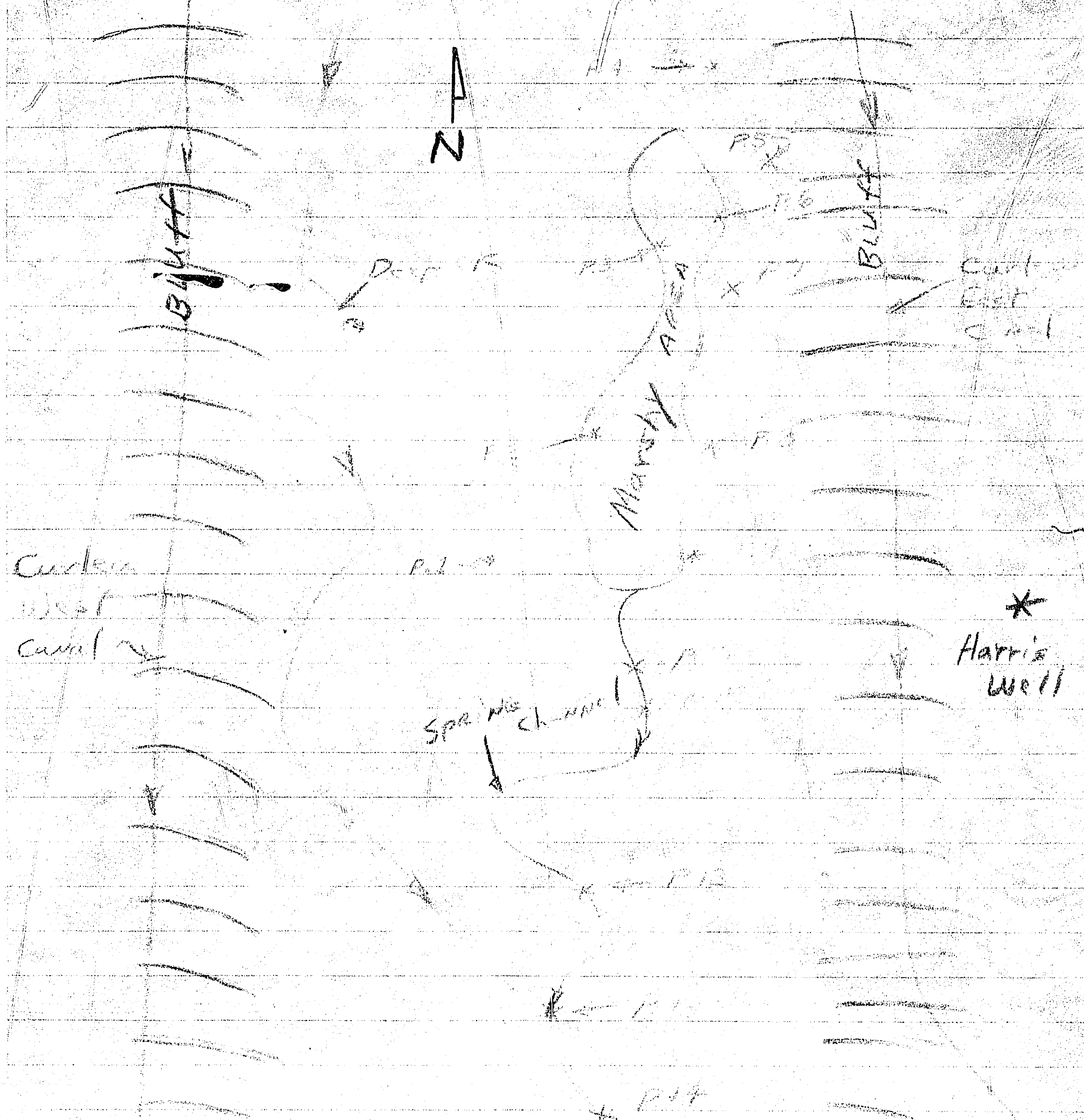
HERMAN J. McDEVITT

HJM:js

cc: Mr. Keith Higginson

17 2063

SKETCH OF LAVELL Neal MEADOW NEAR STONE
SHOWING APPROX. LOCATION of Photo's TAKEN
ON INSPECTION OF AUGUST 15, 1973.



17 2063

ⓐ Not to Scale
ⓑ DRAWN from memory - 8/22/73
ⓒ NCY

1/17/2063

Ratest

State of Idaho
Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. 33477/17-2063 Priority Feb. 20, 1967 Amount 3.56 cfs

THIS IS TO CERTIFY, that HARVEY J. HARRIS

of Stone, Idaho, has complied with the terms and conditions of Permit No. 33477/17-2063 issued pursuant to Application for Permit dated February 20, 1967, and has submitted proof to the Department of Water Administration on February 22, 1971, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity of 4.80 cfs, and that the water has in fact been applied to a beneficial use; a right to the use of water from a ground water source tributary of _____, is hereby confirmed in the following amounts:

Amount 3.56 cfs for Irrigation from May 1 to Oct. 1 (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Subject, however, to the condition that no more than 3.56 cfs of water be diverted at any one time, said waters to be diverted within the NW¼SW¼ Sec. 14, Twp. 16 S, Rge. 32 E, B.M. in the county of Oneida; and that the amount of water so diverted and to which such right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can actually be beneficially used and shall not exceed 623 acre feet per year or 3.5 acre feet per acre.

Description and location of place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16 S	32 E	14										37	20						57
		15													39				39
		23																22	22
		25					35				25								60

Total number of acres irrigated 178

Rough Draft

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this _____ day of _____, 19____.

_____
Director

17 2063

REPORT OF WELL DRILLER
State of Idaho

NOV 16 1967

Department of Reclamation

State law requires that this report shall be filed with the State Reclamation Engineer within 30 days after completion or abandonment of the well.

WELL OWNER:
Name Harvey Harris
Address Star Idaho

Owner's Permit No. G 33477 17-2063

NATURE OF WORK (check): Replacement well ☐
New well ☒ Deepened ☐ Abandoned ☐

Water is to be used for:

METHOD OF CONSTRUCTION: Rotary ☐ Cable ☐
Dug ☒ Other ☐ (explain)

CASING SCHEDULE: Threaded ☐ Welded ☒
16 "Diam. from 1 ft. to 180 ft.
"Diam. from ft. to ft.
"Diam. from ft. to ft.
"Diam. from ft. to ft.
Thickness of casing: 3/4 Material:
Steel ☐ concrete ☐ wood ☐ other ☐

PERFORATED? Yes ☐ No ☐ (explain) Type of perforator used:

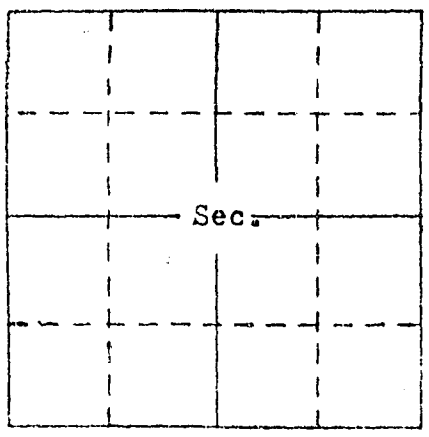
Size of perforations: 3/4 " by 6 " 5 rows
perforations from 40 ft. to 180 ft.
perforations from ft. to ft.
perforations from ft. to ft.
perforations from ft. to ft.
WAS SCREEN INSTALLED? Yes ☐ No ☐
Manufacturer's name
Type Model No.
Diam. Slot size Set from ft. to ft.
Diam. Slot size Set from ft. to ft.

CONSTRUCTION: Well gravel packed? Yes ☐ No. ☐ size of gravel Gravel placed from ft. to ft. Surface seal provided? Yes ☐ No ☐ To what depth? ft. Material used in seal:

Did any strata contain unusable water? Yes ☐ No. ☐ Type of water:
Depth of strata ft. Method of sealing strata off:

Surface casing used? Yes ☐ No. ☐
Cemented in place? Yes ☐ No ☐

Locate well in section



LOCATION OF WELL: County Boise
W ¼ SW ¼ Sec. 14 T. 16 N/S R. 32 E/W

Size of drilled hole: 18 Total depth of well: 210 Standing water level below ground: Temp. Fahr. ° Test delivery: gpm or cfs Pump? ☐ Bail ☐
Size of pump and motor used to make test:

Length of time of test: Hrs. Min.
Drawdown: ft. Artesian pressure: ft. above land surface Give flow cfs or gpm. Shutoff pressure:
Controlled by: Valve ☐ Cap ☐ Plug ☐
No control ☐ Does well leak around casing? Yes ☐ No ☐

DEPTH FROM FEET	DEPTH TO FEET	MATERIAL	WATER YES OR NO
0	40	Clay & Sand	
40	65	Sand & Gravel	
65	75	Clay	
75	78	Gravel artesian	
78	80	Sand stone 16'	
80	85	Gravel	
85	90	Sand stone	
90	105	Clay	
105	110	Gravel	
110	118	Clay	
118	125	Gravel	
125	128	Clay	
128	135	Gravel	
135	145	Clay	
145	150	Sand stone	
150	155	Clay	
155	175	Clay gravel	
175	185	Clay	
185	210	Blue Clay	

Work started: Apr
Work finished:

Well Driller's Statement: This well was drilled under my supervision and this report is true to the best of my knowledge.
Name: Wayman Yanbow Jr.
Address: Rt 5 Hailey Idaho
Signed by:
License No. 96 Date: 11/13/67

Use other side for additional remarks 17 2063

USGS

M E M O R A N D U M

TO: File

FROM: Norm NCY

RE: Application for Permit No. 17-2063 (Harvey Harris)

DATE: August 22, 1973

1. A field review of the protestants ranch meadow was made to evaluate the effect of pumping of the Harris well on the flow of springs and the level of the sub water table. The following individuals were present for the inspection:

   Protestants: Lavell Neal, Herman J. McDevitt, Attorney, and Merrill Myers;
   Department of Water Administration: Norman Young and Ron Carlson;

   For the applicant: not present during the inspection of the meadows but he was contacted afterward.

2. The protestant contends that pumping of the Harris well lowers the sub water table under his meadows (estimated 250 acres in area) and reduces the flow from his springs he has been using, and results in a reduction in yield of his wild hay crop of up to 70 to 80%.

3. Physical setting:

   A. Mr. Neal's ranch (Sec. 15, T. 16S, R. 32E) is located in the bottom land bordering Deep Creek, approximately 1½ to 2 miles below Curlew Reservoir. A number of marshy areas and several flowing springs are present on the ranch. Mr. Neal indicated that these springs resulted from the filling of Curlew Reservoir and did not exist before Curlew Dam was built.

   Mr. Neal irrigates mainly by subbing. Stream channels are dammed off using hay, topsoil, manure, and occassionally using wood or metal structures to force the water out of the channels and raise the water table. Because hay was being harvested at the time of the inspection

17 2063

the water was not being diverted and was running unrestricted into Deep Creek. I visually estimated that the total spring flow entering Deep Creek was 0.5 c.f.s. or less. No actual flow measurements were made during the inspection.

It is my opinion that the diversion structures have been used for many years. Mr. Neal claims a right by reason of diversion and beneficial use of both the spring flow and sub water.

B. The Harris well is located in the NW¼SW¼, Sec. 14, T. 16S, R. 32E; about ¼ to ½ mile east of the Neal Ranch. It was drilled in 1967 by Waymon Yarbrough. The driller's report on file with the department indicates the well is 210 ft. deep and is cased to a depth of 180 ft. The casing is perforated from 40 ft. to 180 ft. The aquifer material is reported as coarse sediment interlaid with layers of finer sediment. The pump discharge from this well has been measured by department personnel during August 1972, and is available in the licensing exam report. The water from the well is used on the land immediately south of the well location and on other land further south by injecting the water into the Curlew Irrigation Company East Canal.

4. Inspection notes: The following items were noticed during the inspection and the following photos were taken:(see sketch attached)

Photo No. 1: First augered hole. Mr. Neal has constructed, using a fence post auger, a number of 6-inch diameter holes to keep track of the sub water table. These holes were augered evidently during the early spring of this year. Water is standing at 26 inches below land surface datam, LSD.

Second augered hole. Water standing at 28 inches below LSD.

Photo No. 2: A spring area, not flowing at this time, but Mr. Neal indicates it would normally be flowing if the well were not pumped.

17 2063

Photo No. 3: Large spring that has just about stopped flowing. Mr. Neal says it should flow 50 inches or more at this time of year.

Photo No. 4: A third augered hole. Water standing at 29 inches below LSD. Note the washing around the hole that Mr. Neal indicates was caused by water flowing out of the hole at the time it was augered.

Photo No. 5: Old spring channel, dry at the time of inspection. Mr. Neal said it always flowed before at this time of the year.

Photo No. 6: A marshy area, dry.

Photo No. 7: A spring area, now dry.

Photo No. 8: Large springs, still flowing but the measuring stake which has been placed in the springs a few years ago shows high water marks several inches higher than the present water level. Mr. Neal feels that the springs should be flowing at about that level.

Photo No. 9: A dam in the main spring channel consists of a 15 inch culvert. The water depth was 8 inches at the time of the photo. A stick dropped in the water floated two feet in an estimated five seconds.

Photo No. 10: Dam below that shown in Photo No. 9. Estimated flow one-quarter c.f.s.

Photo No. 11: Old dam just below that in Photo 10. Below this point the sub is not significantly affected says Mr. Neal.

Photo No. 12: Its a hay dam at a tree about 200 yards above where the spring channel enters Deep Creek.

Photo No. 13: The spring channel enters Deep Creek.

Photo No. 14: Small springs entering Deep Creek below where the spring channel enters.

5. Miscellaneous notes:

A. The Harris well was not pumping the day of the inspection. Mr. Neal indicated that the sub was comming up by a few inches.

B. Mr. Neal does not believe that the pumping of any other well effects his sub, only the Harris well. He indicated that a visible effect could be noticed in four or five days after pumping was started.

C. Neal runs 228 beef cows with calves. He normally winters them on feed raised on this land. This is the first year, he indicated, he has had to buy hay.

D. Neal believes that Harris runs the pump nearly continuously because he sells water to other users of water from the Curlew East Canal. I looked briefly at other meadows downstream on Deep Creek. Some are wetter and some are drier, wet spots and dry spots occur in any and all of them.

E. Neal indicated that he knows of no changes in the way surface water has been used in the basin.

F. The Delmore and Curlew Canal Companies are concerned about Neal's use of the spring water now that it has been brought to their attention. They believe that the water was decreed to them and that Neal has no right to use it.

G. Neal feels that one solution to his problem is that Harris should make up the water that he is losing by diverting water from his shares in the Curlew East Canal down onto the Neal property. Neal approached Harris with this suggestion and was turned down.

6. Conclusions and recommendations:

A. It is difficult to draw any conclusions from the one day inspection as to the effect of the well on the sub water and the flow of the springs. The meadows are dry and it does appear that the hay yield is low over most of the meadow but without a controlled pumping test it cannot be determined how much of this is caused as a result of pumping the well.

B. Neal appears to have a use right on the flow of the springs. His priority has not be determined.

C. A protest hearing should be held this fall or winter concerning this matter. A license should not be issued on this permit without holding the hearing.

D. I recommend that a pump test be made on the Harris well prior to holding the hearing. It should be made during late September or October after the other wells are shut down and before the ground freezes up.

17 2063

INTER-DEPARTMENT MEMO — 1

DATE August 23, 1973

ok to file
DDF

RECEIVED
SEP 7 1973
Department of Water Administration

FROM Norm

TO Bob Fleenor

SUBJECT Permit No. 17-2063

We are forwarding the report on the field review concerning the protest against issuance of license on this permit.

Also enclosed is the licensing re-exam report. It was found during the visit that a re-exam was not necessary and that the exam done last year should be adequate.

Note, however, that I have recommended that a protest hearing be held before the license is issued and that a pump test to determine the effect of pumping the well on the level of the sub water in the meadow and the flow of the springs is recommended prior to the hearing.

17 2063

NCY
SIGNATURE

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

RDF

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF CONFERENCE AND/OR HEARING

On February 20, 1967, Harvey J. Harris, Stone, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On February 22, 1971, Harvey J. Harris submitted Proof of Application of Water to Beneficial Use. On April 10, 1971, LaVell Neal, Stone, Idaho, submitted a protest against licensing of this permit.

The Department has set the matter of protest for conference and/or hearing on October 23, 1973, at 2:30 p.m., in the Courtroom of the Oneida County Courthouse, Malad, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

Failure to appear at the time and place set for hearing by the permit holder or protestant may allow the Department without prejudice to dismiss the protest or the permit. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 28th day of September, 1973.

Norman C. Young

NORMAN C. YOUNG
District Engineer

17 2063

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

BDF

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING

On February 20, 1967, Harvey J. Harris, Stone, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On February 22, 1971, Harvey J. Harris submitted Proof of Application of Water to Beneficial Use. On April 10, 1971, LeVell Neal, Stone, Idaho, submitted a protest against licensing of this permit.

The Department has set the matter of protest for hearing on January 22, 1974, at 9:00 a.m., in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

Failure to appear at the time and place set for hearing by the permit holder or protestant may allow the Department without prejudice to dismiss the protest or the permit. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 20th day of December, 1973.

Ronald Carlson

RONALD D. CARLSON

17 2063

Assistant to the District Engineer

G-33477/17-2063 - Harvey J. Harris

Courtroom, Oneida County Courthouse, Malad, Idaho

January 22, 1974 - 9:00 am

ROSTER OF ATTENDANCE

Name	Address	Representing
Herman J. McDonald	P.O. 4747, Pocatello	Mr. Neal
Merle Meyers	454 Yellowstone Pocatello	Mr Neal
Lowell Neal	Idaho, Idaho	Mr Neal
E L Scott	PO Box 145 Malad Idaho	Mr Harris
Harvey J. Harris		
Stone Idaho		
Shirley Shelley	Box 469 Mt Pleasant, Utah	Mr. Neal
Ben Shelley	Box 469 Mt. Pleasant, Utah	Mr. Neal
R. Michael TURNIPseed	Box 381 Logan Ut.	State Engineer's Office (Utah)
Joseph T. Hird	Stone Idaho	Mr Harris
Ronald Likedmore	Stone Idaho	Mr. Harris
Keith C. Christensen	Box 469 Emmett Utah	
H Allen Hurd	Stone Idaho	Self

17 2063

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

BDF

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING

On February 20, 1967, Harvey J. Harris, Stone, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On February 22, 1971, Harvey J. Harris submitted Proof of Application of Water to Beneficial Use. On April 10, 1971, Levell Neal, Stone, Idaho, submitted a protest against licensing of this permit.

The Department has set a continuation of the hearing for March 6, 1974, at 1:00 p.m., in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

Failure to appear at the time and place set for hearing by the permit holder or protestant may allow the Department without prejudice to dismiss the protest or the permit. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 19TH day of February, 1974.

Norman C. Young

NORMAN C. YOUNG
District Engineer

17 2063

February 19, 1974

Re: Permit No. 17-2063 - Harvey J. Harris

Mr. Herman J. McDevitt
P. O. Box 4747
Pocatello, ID 83201

Dear Mr. McDevitt:

At the hearing held January 22, 1974, in Malad, questions were raised concerning the procedures being followed by the Department in the processing of Permit No. 17-2063. The Department was to answer these points of law by Memorandum Decision, prior to taking testimony and evidence on the availability of water, and whether an injury would be caused to an existing water right.

We have been advised by the Attorney Generals office that to avoid a delay in the final decision, the questions raised at the first hearing should be taken under advisement, and answered in one Memorandum Decision, after the hearing scheduled for March 6, 1974.

Enclosed are copies of the field reports, permit, amendment, and the beneficial use affidavit that you requested at the last hearing. We have also included the Order which modified the requirements for the completion of this permit.

If you have any questions in this matter, please let us know.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:jc

cc: Eastern District Office

17 2063

February 19, 1974

Re: Permit No. 17-2063 - Harvey J. Harris

Mr. E. L. Scott
P. O. Box 145
Malad, ID 83252

Dear Mr. Scott:

At the hearing held January 22, 1974, in Malad, questions were raised concerning the procedures being followed by the Department in the processing of Permit No. 17-2063. The Department was to answer these points of law by Memorandum Decision, prior to taking testimony and evidence on the availability of water, and whether an injury would be caused to an existing water right.

We have been advised by the Attorney Generals office that to avoid a delay in the final decision, the questions raised at the first hearing should be taken under advisement, and answered in one Memorandum Decision, after the hearing scheduled for March 6, 1974.

Enclosed are copies of the field report, permit, amendment, and the beneficial use affidavit that you requested at the last hearing. We have also included the Order which modified the requirements for the completion of this permit.

If you have any questions in this matter, please let us know.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:jc

cc: Eastern District Office

17 2063

1515 Lincoln Road

September 27, 1973

Oneida County Courthouse
Clerk of the District Court
Malad, Idaho 83252

Dear Sir:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Tuesday, October 23, 1973, at 2:30 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:mb

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF CONFERENCE AND/OR HEARING

On February 20, 1967, Harvey J. Harris, Stone, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On February 22, 1971, Harvey J. Harris submitted Proof of Application of Water to Beneficial Use. On April 10, 1971, LaVell Neal, Stone, Idaho, submitted a protest against licensing of this permit.

The Department has set the matter of protest for conference and/or hearing on October 23, 1973, at 2:30 p.m., in the Courtroom of the Oneida County Courthouse, Malad, Idaho. Any hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

Failure to appear at the time and place set for hearing by the permit holder or protestant may allow the Department without prejudice to dismiss the protest or the permit. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 28th day of September, 1973.

Norman C. Young

NORMAN C. YOUNG
District Engineer

NAME AND ADDRESS OF SENDER

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2	265	Harvey J. Harris, Eaton, Idaho	08	30	15				"
3	266	Norman O. McDevitt, First Security Bank Building, Pocatello, Id. 83201	08	30	15				"
4									
5						$1.59			
6	For Certified	E. L. Scott							
7									
8									
9									
10									
11									
12		Sent by Certified Mail mk 9-22-82							
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Nancy J. Harris

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Mary N. Harris

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

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Eastern District Office

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OCT 2 1973

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Eastern District Office

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EASTERN DISTRICT OFFICE
1515 LINCOLN RD.
IDAHO FALLS, IDAHO 83401

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McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT

AREA CODE 208
TELEPHONE 233-4121

September 28, 1973

~~XEOXAXXXXXXXXXXXX~~
John K. Looze

RECEIVED
OCT 1 1973
Department of Water Administration
Eastern District Office

Norman C,Young
State of Idaho
Water Administration Dept.
Eastern District
1515 Lincoln Road
Idaho Falls, Idaho 83401

Dear Mr. Young:

You asked that Mr. LaVell Neal inform you when the water came back in the meadow. I received a note this morning from Mr. Neal as follows:

> "Harris has quit pumping the well and the water has come up real well in the meadows. Now is the time to see it."

Sincerely yours,

HERMAN J. McDEVITT

HJM/cg

cc: LaVell Neal

P.S.: I understand Mrs. Neal is finally out of the hospital but is not doing too well.

XXXXXXXXXXXXXXXXX

1515 Lincoln Road

October 10, 1973

Mr. Herman J. McDevitt
McDevitt and McDevitt
Attorneys at Law
P.O. Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

We are in receipt of your letter of September 28, 1973, requesting that this Department again make a field inspection of the meadow of Mr. LaVell Neal. Looking at my schedule, it appears unlikely that I will be able to make such an inspection prior to the hearing set for October 23, 1973. However, if it is at all possible I will do so.

Your bringing this matter to my attention is appreciated.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:cw

1515 Lincoln Road

October 17, 1973

Re: ~~Application for~~ Permit No. 17-2063 Harvey J. Harris

Mr. E. L. Scott
Attorney at Law
26 Court
Malad, ID 83252

Dear Mr. Scott: - 766-4000

Pursuant to your request of this day, please find enclosed a copy of Mr. Neals' protest and a copy of Rules of Practice & Procedure.

In regards to C. H. Sweeten & Sons, Inc. application, this application has lasped and was not protested by Mr. Harris.

If we can be of any further assistance, please do not hesitate to contact us.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:mb

Enclosures

1515 Lincoln Road

October 18, 1973

Re: Permit No. 17-2063 Harvey J. Harris

Mr. E. L. Scott
Attorney at Law
26 Court
Malad, ID 83252

Dear Mr. Scott:

This is to confirm our telephone conversation of this morning, in which it was agreed to set back the date of hearing concerning protest against licensing the above referenced permit. At the request of the attorney for the protestant, Herman J. McDevitt, the hearing set for that date is hereby set aside and the hearing will be reset for a later date. You will be notified at least 10 days in advance by certified mail.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:mb

cc: Herman J. McDevitt
Harvey J. Harris
LeVell Neal

ERSATION MEMORANDUM

DATE 11/29/73

FILE 17-2063

NAME OF PARTY Mike Turnipseed

EMPLOYEE Colleen

RE: Called concerning the hearing on the Harvey Harris well. He wishes to be notified when a new hearing date has been scheduled so that he can attend to establish a water right on a reservoir in Utah.

XXXXXXXXXXXXXXXXXXXX

1515 Lincoln Road

November 30, 1973

Richard M. Turnipseed
Division of Water Rights
Northern Area Office
P. O. Box 381
Logan, Utah 84321

Dear Mike:

With regard to the hearing to be held on the licensing of the Harvey Harris well, Bob Fleenor and I have tentatively discussed holding a round of hearings during the third week of January, 1974. I would expect this hearing to be held at about that time. We will send you a copy of the hearing notice so that you will have the exact date and place of the hearing.

Best wishes,

NORMAN C. YOUNG
District Engineer

NCY:mb

1515 Lincoln Road

December 19, 1973

Oneida County Courthouse
Clerk of the District Court
Malad City, Idaho 83252

Dear Sir:

This is to confirm the use of the Courtroom for a hearing to be held by this office on Tuesday, January 22, 1974, at 9:00 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:mb

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing)
of Permit No. G-33477/17-2063 in the)
name of HARVEY J. HARRIS)

NOTICE OF HEARING

On February 20, 1967, Harvey J. Harris, Stone, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On February 22, 1971, Harvey J. Harris submitted Proof of Application of Water to Beneficial Use. On April 10, 1971, LeVell Neal, Stone, Idaho, submitted a protest against licensing of this permit.

The Department has set the matter of protest for hearing on January 22, 1974, at 9:00 a.m., in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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Failure to appear at the time and place set for hearing by the permit holder or protestant may allow the Department without prejudice to dismiss the protest or the permit. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 20th day of December, 1973.

Ronald Carlson

RONALD D. CARLSON

Assistant to the District Engineer

IDAHO DEPARTMENT OF WATER ADMINISTRATION
EASTERN DISTRICT OFFICE
1515 LINCOLN RD.
IDAHO FALLS, IDAHO 83401

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2	270	Herman J. McDevitt, P.O. Box 4747 Pocatello	.08	30	15				"
3	271	E.F. Sebby 26 Court, Malad Idaho	.08	30	15				"
4	272	LeVell Neal, Stow, Idaho	.08	30	15				"
5									
6									
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9		Sent by certified mail 12/24/73							
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14		Richard M Turnipseed - non-certfied							"
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17-2063

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Herman J. Middleditch

(2) SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
by Charlotte Middleditch

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17-2063

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DATE DELIVERED
12/26/73

(1) SIGNATURE OR NAME OF ADDRESSEE *(Must always be filled in)*
Lowell Neal

(2) SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Lewis Harris

(3) SHOW WHERE DELIVERED *(Only if requested, and include ZIP Code)*

17-2063

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CERTIFIED NO. 269

INSURED NO.

DATE DELIVERED
12/26/73

(1) SIGNATURE OR NAME OF ADDRESSEE *(Must always be filled in)*
Harvey J. Harris

(2) SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Mary Harris

(3) SHOW WHERE DELIVERED *(Only if requested, and include ZIP Code)*

17-2063

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CERTIFIED NO. 271

INSURED NO.

DATE DELIVERED
12-26-73

(1) SIGNATURE OR NAME OF ADDRESSEE *(Must always be filled in)*

(2) SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

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EASTERN DISTRICT OFFICE
1515 LINCOLN RD.
IDAHO FALLS, IDAHO 83401

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DEC 28 1973

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Eastern District Office

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EASTERN DISTRICT OFFICE
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MALAD CITY, ID DEC 26 AM 1973 83252

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EASTERN DISTRICT OFFICE
1515 LINCOLN RD.
IDAHO FALLS, IDAHO 83401

PS Form 3811 Sep. 1972 c55—16—81277-2

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
JOHN K. LOOZE

AREA CODE 208
TELEPHONE 233-4121

December 27, 1973

RECEIVED
DEC 28 1973
Department of Water Administration
Eastern District Office

Mr. Norman C. Young
District Engineer
Department of Water Administration
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Permit No. 17-2063
Harvey J. Harris

Dear Mr. Young:

We are wondering whether or not a new hearing date has been set in the above entitled matter. If possible, we would appreciate being notified of the date of the hearing at least 2 weeks in advance.

May we thank you for your courtesy in the matter.

Sincerely,

Herman J. McDevitt

HJM:chi

HERMAN J. McDEVITT
H.J.

XXXXXXXXXXXXXXXXXX

1515 Lincoln Road

January 2, 1974

RE: 17-2063 - Harvey J. Harris

Mr. Herman J. McDevitt
Attorney-at-Law
P.O. Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

We are in receipt of your letter of December 27, 1973 requesting information on the above referenced permit.

Please find enclosed a copy of the hearing notice. Evidently, our letters crossed in the mail, but am enclosing a second notice.

If you have any further questions, do not hesitate to contact this office.

Very truly yours,

RONALD D. CARLSON
Assistant to the
District Engineer

RDC:cb

Enclosure

RECEIVED
JAN 16 1974
Department of Water Administration
Eastern District Office

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-3477/17-2063 in the name of HARVEY J. HARRIS	REQUEST

Comes now E. L. Scott as Attorney for Harvey J. Harris and requests that the oral proceedings of the Hearing set for January 22, 1974, be taken in the form of stenographic notes.

Dated this 15th day of January, 1974.

E L Scott

Attorney

766-4000

253-4121

CONVERSATION MEMORANDUM

DATE 1/17/74

FILE 17-2063

NAME OF PARTY A.H. Scott

EMPLOYEE NCE

RE: I called him to see if he really wanted stenographic notes or if the transcript of the tape would suffice. He agreed that taping the hearing and then, if needed, typing from the tape would be adequate.

He also was concerned whether hearing was for a local ground water board or if a protest hearing then only could consider the items in the Notice of proofs. Either way hearing is not worthwhile because protest is defective.

XXXXXXXXXXXXXXXXXX

1515 Lincoln Road

January 30, 1974

Re: Permit No. 17-2063

Mr. E. L. Scott
Attorney at Law
26 Court
Malad, Idaho 83252

Dear Mr. Scott:

Enclosed please find a copy of the well log of the above referenced permit. We do not have copies of field exams in our office and we are asking our State office to send both you and Mr. McDevitt a copy.

If we may be of further assistance in this matter, please contact us.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:MB

Enclosure

XXXXXXXXXXXXXXXXX

1515 Lincoln Road

January 30, 1974

Re: Permit No. 17-2063

Mr. Herman J. McDevitt
Attorney At Law
P. O. Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

Enclosed please find a copy of the well log of the above referenced permit. We do not have copies of field exams in our office and we are asking our state office to send both you and Mr. Scott a copy.

If we may be of further assistance in this matter, please contact us.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:mb

Enclosure

XXXXXXXXXXXXXXXXXX

1515 Lincoln Road

February 15, 1974

Oneida County Courthouse
Clerk of the District Court
Malad City, Idaho 83252

Dear Sir:

This is to confirm the use of the Courtroom for a hearing to be held by this Department on Wednesday, March 6, 1974, at 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:mb

February 19, 1974

Re: Permit No. 17-2063 - Harvey J. Harris

Mr. Herman J. McDevitt
P. O. Box 4747
Pocatello, ID 83201

Dear Mr. McDevitt:

At the hearing held January 22, 1974, in Malad, questions were raised concerning the procedures being followed by the Department in the processing of Permit No. 17-2063. The Department was to answer these points of law by Memorandum Decision, prior to taking testimony and evidence on the availability of water, and whether an injury would be caused to an existing water right.

We have been advised by the Attorney Generals office that to avoid a delay in the final decision, the questions raised at the first hearing should be taken under advisement, and answered in one Memorandum Decision, after the hearing scheduled for March 6, 1974.

Enclosed are copies of the field reports, permit, amendment, and the beneficial use affidavit that you requested at the last hearing. We have also included the Order which modified the requirements for the completion of this permit.

If you have any questions in this matter, please let us know.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF:jc

cc: Eastern District Office

17 2063

XXXXXXXXXXXXXXXXXXX

1515 Lincoln Road

February 26, 1974

C

Oneida County Courthouse
Clerk of the District Court
Malad City, Idaho 83252

Dear Sir:

This is to confirm the use of the Courtroom for a hearing to be held by this Department on Wednesday, April 10, 1974, at 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:MB

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING

On February 20, 1967, Harvey J. Harris, Stone, Idaho, filed with the Department of Water Administration an application to appropriate the public waters of the State of Idaho. On February 22, 1971, Harvey J. Harris submitted Proof of Application of Water to Beneficial Use. On April 10, 1971, Levell Neal, Stone, Idaho, submitted a protest against licensing of this permit.

The Department has set a continuation of the hearing for March 6, 1974, at 1:00 p.m., in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

Failure to appear at the time and place set for hearing by the permit holder or protestant may allow the Department without prejudice to dismiss the protest or the permit. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 19TH day of February, 1974.

Norman C. Young

NORMAN C. YOUNG
District Engineer

NAME AND ADDRESS OF SENDER

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

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1	75	Lt. Col. Neal Stone, Ida.	08	30	15				
2	84	Thomas J. McDevitt, Box 747 Soc. Ida.	08	30	15				
3	85	Lt. Scott 36 Court, Malad Ida.	08	30	15				
4	86	Harvey J. Harris Stone, Id.	08	30	15				
5									
6						$2.10			
7									
8									
9									
10									
11		Post by Certified Mail							
12		2nd Lt. A.C. [illegible]							
13									
14		For certified - [illegible] Journal							
15		Dear Miss							
16									
17									
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20									

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(Surcharges are not required on international registered mail)

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by Charlotte Dozier

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2-20-74

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
E. L. Scott

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

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Department of Water Admin
Eastern District Office

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286

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DATE DELIVERED
2/20/74

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)
Harvey J Warner

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Mrs Harvey J Warner

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

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IDAHO DEPARTMENT OF WATER ADMINISTRATION
EASTERN DISTRICT OFFICE
1515 LINCOLN RD.
IDAHO FALLS, IDAHO 83401

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IDAHO FALLS, IDAHO 83401

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BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING DATE CHANGE

Notice is hereby given that the Department of Water Administration has delayed the hearing concerning the above permit at the request of the applicant's attorney, E. L. Scott, Malad, Idaho.

The Department has rescheduled the continuation of the hearing for April 10, 1974, at 1:00 p.m. in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration as previously indicated in the hearing notice dated February 19, 1974.

Dated this 26 TH day of February, 1974.

Norman C Young

NORMAN C. YOUNG
District Engineer

DEPARTMENT OF WATER ADMINISTRATION
DISTRICT OFFICE
[redacted] RD.
[redacted], IDAHO 83401

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4	[redacted]	08	30	15				
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12	Hon. [redacted]							
13	Rec'd [redacted] + B.F. IDAHO							
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FEB 26 1973 IDAHO

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Eastern District Office

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

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Harvey H. Harris

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

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2-27-74

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E L Scott

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IDAHO FALLS, IDAHO 83401

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EASTERN DISTRICT OFFICE
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PS Form 3811 Sep. 1972 e55—10—81277-2

information copy

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 233-4721

RECEIVED
Feb 27 1974
Department of Water Administration
Eastern District Office

February 26, 1974

Mr. LaVell Neal
Stone, Idaho 83280

Dear Mr. Neal:

I just received a phone call from Norman Young of the State Water Administration. They are postponing the hearing from the 6th of March until the last week of March or first week of April. They will let us know.

I told them this would be a problem because of Mr. Hickman in Wyoming, and several of our witnesses. They said there wasn't anything they could do about it.

I am not disappointed, if it doesn't keep us from getting all of our witnesses there. At least it will give us a chance to start that well up and see what effect it has on the groundwater.

Kindly let all the people know that they will not be needed on the 6th of March and we will advise them as soon as we know the new date.

In the meantime, have any of our witnesses call me and I will make arrangements to go over their testimony.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

RECEIVED
FEB 28 1974
Department of Water Administration

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

AREA CODE 208
TELEPHONE 233-4121

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

BDF

February 27, 1974

Mr. Norman C. Young
District Engineer
Department of Water Administration
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Protest against Licensing of
Permit No. G-33477/17-2063
in the name of Harvey J. Harris

COPY

Dear Mr. Young:

In the recent hearing in the above matter in Malad, about a month ago, you suggested that we file a claim to water rights or the same information as would be required on a claim to water rights, for the lands of LaVell Neal. I have attempted to do this and have had Mr. Neal sign a claim form.

As to water measurements, at 2 places and 2 separate springs, he had put in a 15 inch culvert years ago. It has always flowed about 1 inch from the top of the 15 inch culvert. I don't know how much water that is. The springs and diversions and use are in the sections and townships shown in the lands of the entire bottom lands and pasture ground. I don't know if we filled these out correctly. Kindly let me know if you need additional information.

Historically, there are several large springs on the eastern side of the valley that were diverted by the settlers to the hay-grounds. These had no regular outlet to Deep Creek. The outlet now in existence, which follows the eastern edge of the meadow, was dug by hand with shovels, and the excess water allowed to escape into Deep Creek. In addition, the groundwater level was right at the surface to 2 or 3 inches below the ground surface, which allowed most of the meadow to sub-irrigate. Mr. Neal claims all the water from the springs and right to a water table, as indicated. We may need some help from your Engineers in actually quantifying the water which runs through the culverts.

All the water that runs through the upper culvert is diverted onto the meadow, and additional water generates from springs and finds its way into the hand-dug outlet in

such a quantity as to again fill a 15 inch culvert about 300 yards downstream, where it is again diverted out onto the meadow.

Please feel free to fill in the engineering data on the enclosed application. If land descriptions are needed, we will have to take them from the aerial photographs.

This entire letter may be appended to the application under Part 8 (Remarks), and should be included as part thereof.

I am enclosing herein our check in the amount of $10.00 to cover your fee.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

Enclosures

cc: Bobby D. Fleenor

RECEIVED
JUL 10 1974
Department of Water Administration

E. L. Scott
P. O. Box 145
Malad City, Idaho
Tel. No. 766-4000

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	)	INTERROGATORIES

Permit Holder Harvey J. Harris direts the following interrogatories, as continuing interrogatories, to the above named Protestant LaVel Neal, pursuant to Rule 33, I.R.C.P., to be answered within 15 days of service hereof, which answers are to be amended or supplemented when and in the event that other or additional information becomes available to Protestant.

INTERROGATORY NO. 1. Describe all water rights claimed by Protestant which would be affected by the Licensing of the above-identified Permit, and describe the lands upon which such water rights are used.

INTERROGATORY NO. 2. How were the water rights described in your answer to interrogatory No. 1 acquired and give the dates of priority of any such water rights, and the persons from whom they were acquired.

INTERROGATORY NO. 3. Give the Permit Number and/or License Number and the person to whom issued, of any and all Permits to appropriate or Licenses issued by the State of Idaho, Department of Water Administration, for the appropriation of or right to use of the public waters of the State of Idaho.

INTERROGATORY NO. 4. State the name and address of each person whom Protestant expects to call to testify at the hearing of this matter, and with respect to each such person state briefly the subjects concerning which he is expected to testify.

INTERROGATORY NO. 5. List those exhibits which Protestant intends to offer in evidence at the hearing of this matter.

Dated this 18th day of March, 1974.

E. L. Scott

Attorney for Permit-Holder Harvey J. Harris
P. O. Box 145
Malad City, Idaho

I hereby certify that a copy of the foregoing interrogatories was mailed to the below named attorney at the below listed address on the 18th day of March, 1974.

Attorney: Herman J. McDevitt
P. O. Box 4747
Pocatello, Idaho 83201

E. L. Scott

E. L. SCOTT
ATTORNEY AT LAW
26 COURT STREET
MALAD CITY, IDAHO 83252

TELEPHONE 766-4000

RECEIVED
MAR 19 1974
Department of Water Administration

March 18, 1974

RECEIVED
MAR 20 1974
Department of Water Administration
Eastern District Office

State of Idaho
Department of Water Administration
State Office
614 State Street
Statehouse - Annex 2
Boise, Idaho 83720

Re: Permit No. 17-2063
Harvey J. Harris

Att: Bobby D. Fleenor
Assistant Director

Dear Mr. Fleenor:

I am enclosing copy of the Interrogatories I am mailing to Attorney McDevitt today. I am not sure but what these should not have been filed in the Idaho Falls office, but expect they will be properly filed.

I am wondering about Subpoenas for the hearing slated for April 10th in this matter. Can you supply me with four of these now in the event it becomes necessary? If so, I will appreciate having these.

Thanking you, I am,

Very truly,

E. L. Scott

E. L. Scott, Attorney

INTER-DEPARTMENT MEMO — 1

DATE March 20, 1974

FROM Norm Young

TO Nate Higer

SUBJECT Attached Correspondence

Attached is the letter and Interrogatories from Mr. E. L. Scott, Attorney at Law, Malad.

It is my understanding that you will supply the subpoenas that Mr. Scott requested if it is appropriate to do so. Thank you.

SIGNATURE

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING DATE CHANGE

Notice is hereby given that the Department of Water Administration has delayed the hearing concerning the above permit at the request of the applicant's attorney, E. L. Scott, Malad, Idaho.

The Department has rescheduled the continuation of the hearing for April 10, 1974, at 1:00 p.m. in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration as previously indicated in the hearing notice dated February 19, 1974.

Dated this 26 TH day of February, 1974.

Norman C. Young

NORMAN C. YOUNG
District Engineer

RECEIVED
JUN 19 1974
Department of Water Administration

L. Scott
P. O. Box 145
Malad City, Idaho
Tel. No. 766-4000

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	INTERROGATORIES

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INTERROGATORY NO. 1. Describe all water rights claimed by Protestant which would be affected by the Licensing of the above-identified Permit, and describe the lands upon which such water rights are used.

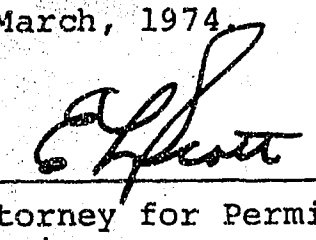
INTERROGATORY NO. 2. How were the water rights described in your answer to interrogatory No. 1 acquired and give the dates of priority of any such water rights, and the persons from whom they were acquired.

INTERROGATORY NO. 3. Give the Permit Number and/or License Number and the person to whom issued, of any and all Permits to appropriate or Licenses issued by the State of Idaho, Department of Water Administration, for the appropriation of or right to use of the public waters of the State of Idaho.

INTERROGATORY NO. 4. State the name and address of each person whom Protestant expects to call to testify at the hearing of this matter, and with respect to each such person state briefly the subjects concerning which he is expected to testify.

INTERROGATORY NO. 5. List those exhibits which Protestant intends to offer in evidence at the hearing of this matter.

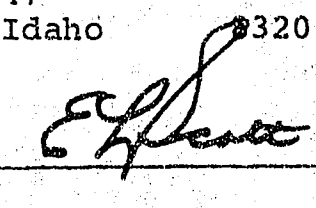
Dated this 18th day of March, 1974.



Attorney for Permit-Holder Harvey J. Harris
P.O. Box 145
Malad City, Idaho

I hereby certify that a copy of the foregoing interrogatories was mailed to the below named attorney at the below listed address on the 18th day of March, 1974.

Attorney: Herman J. McDebitt
P. O. Box 4747
Pocatello, Idaho 83201



E. L. SCOTT
ATTORNEY AT LAW
26 COURT STREET
MALAD CITY, IDAHO 83252

TELEPHONE 766-4000

RECEIVED
MAR 19 19[illegible]
Department of Water Administration

March 18, 1974

RECEIVED
MAR 20 1974
Department of Water Administration
Eastern District Office

State of Idaho
Department of Water Administration
State Office
614 State Street
Statehouse - Annex 2
Boise, Idaho 83720

Re: Permit No. 17-2063
Harvey J. Harris

Att: Bobby D. Fleenor
Assistant Director

Dear Mr. Fleenor:

I am enclosing copy of the Interrogatories I am mailing to Attorney McDevitt today. I am not sure but what these should not have been filed in the Idaho Falls office, but expect they will be properly filed.

I am wondering about Subpoenas for the hearing slated for April 10th in this matter. Can you supply me with four of these now in the event it becomes necessary? If so, I will appreciate having these.

Thanking you, I am,

Very truly,

E. L. Scott

E. L. Scott, Attorney

INTER-DEPARTMENT MEMO — 1

FROM Norm Young

DATE March 20, 1974

RECEIVED
MAR 21 1974
Department of Water Administration

TO Nate Higer

SUBJECT Attached Correspondence

Attached is the letter and Interrogatories from Mr. E. L. Scott, Attorney at Law, Malad.

It is my understanding that you will supply the subpoenas that Mr. Scott requested if it is appropriate to do so. Thank you.

NCY
SIGNATURE

RECEIVED
MAR 27 1974
Department of Water Administration
Eastern District Office

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST LICENSING OF PERMIT NO. G-33477/ 17-2063 IN THE NAME OF HARVEY J. HARRIS.	SUBPOENA

THE STATE OF IDAHO SENDS GREETINGS TO:

_____

_____

_____

WE COMMAND YOU, That all and singular business and excuses being laid aside, you appear and attend before the Department of Water Administration of the State of Idaho at a hearing before said Department to be held at the Oneida County Courthouse in Malad, Idaho on the 10th day of April, 1974 at 1:00 o'clock p.m., then and there to testify in the above-entitled matter now pending before said Department, on the part of Harvey J. Harris, and for failure to attend, you will be deemed guilty of contempt of said Department, and you will also forfeit to the party aggrieved the sum of one hundred dollars ($100.00), and all damages which he may sustain by your failure to attend.

WITNESS, R. Keith Higginson, Director, Department of Water Administration, State of Idaho.

DATED this 25th day of March, 1974.

R. KEITH HIGGINSON, Director
Department of Water Administration
State of Idaho

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
STATE OFFICE

Cecil D. Andrus
Governor

R. Keith Higginson
Director

614 State Street
Statehouse – Annex 2
Boise, Idaho 83720
(208) 384-2215

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Waste Disposal Wells
Stream Channel Protection
Geothermal Resources

March 25, 1974

RECEIVED
MAR 27 1974
Department of Water Administration
Eastern District Office

Mr. E.L. Scott
Attorney at Law
26 Court Street
Malad City, Idaho 83252

RE: PERMIT NO. 17-2063
HARVEY J. HARRIS

Dear Mr. Scott:

Please find enclosed the four Subpoenas that you requested. These Subpoenas are issued upon and subject to the condition that you advance witness fees and mileage to whomever you subpoena.

I trust that this is all that you will need in this matter.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH/slg

Enclosures

INTER-DEPARTMENT MEMO — 1

FROM SHARON GASS

TO NORM YOUNG

RECEIVED
MAR 27 1974
Department of Water Administration
District Office

SUBJECT PERMIT NO. 17-2063, IN THE NAME OF HARVEY J. HARRIS

Attached is the information you sent to the State office plus a copy of what we sent to Mr. Scott today.

Nathan has decided not to make up a legal file in this case, so I am sending all our information to you for safekeeping.

Keep Smiling!

Sharon
SIGNATURE

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 238-4121

RECEIVED
MAR 27 1974
Department of Water Administration
Eastern District Office

March 26, 1974

E. L. Scott, Esquire
Attorney at Law
P. O. Box 145
Malad City, Idaho 83252

Re: LaVell Neal - Harvey J. Harris

Dear Ed:

We are enclosing a copy of a Claim to Water Right, which was filed at the request of the Department of Water Administration for the purpose of identifying the places of diversion and the lands upon which the water had subbed and been diverted.

I am sure this answers most of your questions and is in accordance with the agreement at the previous hearing.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

Enclosure

cc: Dep. of Water Administration

COPY

RECEIVED
MAR 27 1974
Department of Water Administration
Eastern District Office

Herman J. McDevitt
McDEVITT & McDEVITT
Attorneys at Law
Seventh and Lander
P. O. Box 4747
Pocatello, Idaho 83201
Tel. 233-4121

Attorneys for: Protestant

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

IN THE MATTER of Protest Against Licensing of Permit No. G-33477/ 17-2063 in the name of HARVEY J. HARRIS	OBJECTION TO INTERROGATORIES

COMES NOW Protestant, LaVell Neal, and objects to a certain document recently submitted to his counsel, Herman J. McDevitt, of McDevitt & McDevitt, by E. L. Scott, labelled INTERROGATORIES, in that the same is in excess of the powers and jurisdiction of the Department of Water Administration and contrary to Rule 33 of the Idaho Rules of Civil Procedure which specifically require that Interrogatories may only be utilized in legal actions filed in court. Further, the Protestant LaVell Neal seeks a Protective Order, in that said Interrogatories are not within the scope or intent of the matters to be considered as determined in the previous hearing hereon, and are intended only for the purpose of harassment, annoyance and undue expense.

DATED this 26th day of March, 1974.

McDEVITT & McDEVITT

By: _____
Herman J. McDevitt
Attorneys for LaVell Neal, Protestant
Residence and P. O. Address: Seventh & Lander, Box 4747, Pocatello, Idaho

McDEVITT, McDEVITT
& DERBIDGE
ATTORNEYS-AT-LAW
FIRST SECURITY BANK
BUILDING
POCATELLO, IDAHO 83201

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Objection to Interrogatories was mailed to the attorney named below, on the 26th day of March, 1974:

E. L. Scott, Esquire
Attorney at Law
P. O. Box 145
Malad City, Idaho, 83252.

Herman J. McDevitt

McDEVITT, McDEVITT
& DERBIDGE
ATTORNEYS-AT-LAW
FIRST SECURITY BANK
BUILDING
POCATELLO, IDAHO 83201

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 233-4121

RECEIVED
MAR 27 1974
Department of Water Administration
Eastern District Office

March 26, 1974

Mr. Norman C. Young
District Engineer
Department of Water Administration
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Protest against Licensing of
Permit No. G-33477/17-2063
in the name of Harvey J. Harris

Dear Mr. Young:

Enclosed you will find the original Claim for Water Right, which I had forwarded to Mr. Neal for execution. I thought it had been returned to you previously but found it on my desk.

Also, I am enclosing an Objection to some Interrogatories which Mr. Scott submitted to us. If you or any of the people in the Department feel that you are prepared to proceed with the use of Interrogatories and Depositions and Requests for Admissions in these administrative matters, prior to hearing on the merits, kindly advise me, as I have a lot of things I have wanted to ask Mr. Harris for a long time.

The only thing upon your Claim to Water Right that I would object to would be the priority date of March 1, 1914. We know that the waters from the springs and the hand-dug ditches and the sub-irrigation waters because of the high water-table were in existence for many years prior to that date. Mr. Neal mentioned in a letter a period of 60 years, because of his age. Actually, when I went over the matter with him, from

his observations of the ground, it is apparent that the conditions that he described had already a long history as of the Spring of 1914. I don't see, though, how it could affect much under this proceedings.

Sincerely,

HJM:chi

Enclosures

HERMAN J. McDEVITT

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST LICENSING OF PERMIT NO. G-33477/17-2063 IN THE NAME OF HARVEY J. HARRIS.	ORDER

The protestant, Lavell Neal, by and through his counsel, Herman J. McDevitt, filed his motion on March 26, 1974 objecting to the interrogatories filed by the applicant's attorney, E.L. Scott and asking for a protective order.

Although the Director has not yet received any briefs on the point from either counsel, it is apparent, from a mere reading of the Department's rules and regulations, that the use of interrogatories in this administrative proceeding is not authorized by those rules and regulations nor by the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code.

Therefore, it is the order of the Director and this does order that:

1) The interrogatories previously filed in this matter are not proper and are ordered stricken from the record and the protestant is relieved of any obligation to answer the same;

2) The applicant is further ordered and directed to cease the use of any interrogatories or other discovery methods in this administrative hearing.

DATED this 29 day of ~~April~~ March, 1974.

/s/ R. Keith Higginson
R. KEITH HIGGINSON, Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29 day of ~~April~~ March, 1974, a true and correct copy of the foregoing ORDER was mailed, postage prepaid to:

Mr. Herman J. McDevitt
McDEVITT & McDEVITT
P.O. Box 4747
Pocatello, Idaho 83201

Mr. E.L. Scott
P.O. Box 145
Malad City, Idaho 83252

/s/ R. Keith Higginson
R. KEITH HIGGINSON

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST LICENSING OF PERMIT NO. G-33477/17-2063 IN THE NAME OF HARVEY J. HARRIS.	ORDER

The protestant, Lavell Neal, by and through his counsel, Herman J. McDevitt, filed his motion on March 26, 1974 objecting to the interrogatories filed by the applicant's attorney, E.L. Scott and asking for a protective order.

Although the Director has not yet received any briefs on the point from either counsel, it is apparent, from a mere reading of the Department's rules and regulations, that the use of interrogatories in this administrative proceeding is not authorized by those rules and regulations nor by the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code.

Therefore, it is the order of the Director and this does order that:

1) The interrogatories previously filed in this matter are not proper and are ordered stricken from the record and the protestant is relieved of any obligation to answer the same;

2) The applicant is further ordered and directed to cease the use of any interrogatories or other discovery methods in this administrative hearing.

DATED this 29 day of ~~April~~ March, 1974.

R. KEITH HIGGINSON, Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29 day of ~~April~~ March, 1974, a true and correct copy of the foregoing ORDER was mailed, postage prepaid to:

Mr. Herman J. McDevitt
McDEVITT & McDEVITT
P.O. Box 4747
Pocatello, Idaho 83201

Mr. E.L. Scott
P.O. Box 145
Malad City, Idaho 83252

R. KEITH HIGGINSON

RECEIVED
APR 1 1974
Department of Water Administration
Eastern District Office

INTER-DEPARTMENT MEMO — 1

DATE 3/29/74

FROM SHARON GASS

TO NORM YOUNG

SUBJECT PROTEST AGAINST LICENSING OF PERMIT, HARVEY J. HARRIS

Enclosed please find the ORDER and carbon signed by Keith.

I have today sent the appropriate carbons to Mr. McDevitt and Mr. Scott.

Sharon
SIGNATURE

D. James Manning
RACINE, HUNTLEY & OLSON
P. O. Box 1391 - Center Plaza
Pocatello, Idaho 83201
(208) 232-6101

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing)
of Permit No. G-33477/17-2063 in the) ORDER
name of HARVEY J. HARRIS)

Upon Petition of Curlew Irrigation Company and good cause appearing,

IT IS HEREBY ORDERED that Curlew Irrigation Company be and it is hereby permitted to intervene in the above-entitled proceedings,

Dated this ____ day of April, 1974.

IDAHO DEPARTMENT OF WATER ADMINISTRATION

BY_____

Lmd
Continue

D. James Manning
RACINE, HUNTLEY & OLSON
P. O. Box 1391 - Center Plaza
Pocatello, Idaho 83201
(208) 232-6101

RECEIVED
APR
Department of Water Administration

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	PETITION FOR LEAVE TO INTERVENE

COMES NOW CURLEW IRRIGATION COMPANY, A corporation, and pursuant to Rule 6, Rules and Regulations of the Idaho Department of Water Administration, Petitions said Department for leave to intervene in the above-entitled proceeding.

Petitioner represents as follows:

I.

That it is a corporation engaged in the business of irrigation and operation of reservoir and irrigation facilities, and having its address at: c/o Thomas Larkin, Secretary, Snowville, Utah.

II.

That it has a direct and substantial interest in these proceedings for the reason that it is one of the decreed water-right holders of all the natural flow of Deep Creek and its tributaries, Oneida County, Idaho, pursuant to decrees dated December 15, 1914, and June 28, 1937, attached hereto as Exhibits A and B, respectively. That petitioner has been informed and believes that LeVell Neal, protestant in the above matter, now claims a water right in and to springs tributary to said Deep Creek and claims the well of Harvey J. Harris will interfere therewith. That in fact, and by reason of

the aforesaid decrees, all right and interest in and too the waters of said Deep Creek and its tributaries, have been decreed to Petitioner and others having decreed rights, which does not include Protestant, LaVell Neal.

III.

That the claim of water right asserted by Protestant LaVell Neal, in these proceedings, has just recently come to the attention of the officers of the Petitioning corporation, and that a copy of said claim made by Protestant pursuant to Idaho Code section 42-225a was just received by Petitioner April 3, 1974, and that it is believed said claim has not been published in any newspaper in Oneida County, Idaho.

IV.

That intervention of Petitioner should be permitted here to allow it to submit proof regarding its decreed right to the waters of Deep Creek and its tributaries, and to avoid any implication that Protestant has a right to the use of the waters of the springs and tributaries thereof.

WHEREFORE, Petitioner prays that an Order be entered permitting it to intervene in these proceedings.

Dated this 4 day of April, 1974.

RACINE, HUNTLEY & OLSON

BY _____
D. James Manning
Attorneys for Petitioner

CERTIFICATE OF MAILING

I hereby certify that on the 4 day of April, 1974, I mailed a copy of the above and foregoing Petition for Leave to Intervene to Herman McDevitt, attorney for Protestant, LeVell Neal, and Ed Scott, attorney for applicant, Harvey J. Harris, with correct postage prepaid.

_____
D. James Manning

Herman J. McDevitt
P. O. Box 4747
Pocatello, Idaho 83201

Ed Scott
26 Court Street
Malad, Idaho

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON

D. JAMES MANNING

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE [208] 232-6101

RECEIVED
APR 8 1974
Department of Water Administration

April 4, 1974

AIRMAIL

Mr. Bobby D. Fleenor
Assistant Director
Idaho Dept. of Water Administration
614 State Street
State House Annex No. 2
Boise, Idaho 83702

Re: In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of Harvey J. Harris

Dear Mr. Fleenor:

Herewith, the original copy of a Petition to Intervene, copies of which have been served on the attorneys for the other parties involved. I am also enclosing a proposed Order.

We would appreciate your decision as soon as possible regarding our request to intervene as only a short time remains before the hearing. We are aware of the time and place of the hearing and it would not be necessary to send us any further notice in that regard.

Further, would you please advise whether the Department has a printed form for exceptions to claims of water right under I. C. 42-225a. If you have such a form, we would appreciate receiving one.

Very truly yours,

D. JAMES MANNING

DJM:jc

CC: Mr. Herman J. McDevitt
Mr. Edward L.Scott

Encl.

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON

D. JAMES MANNING

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE [208] 232-6101

RECEIVED
APR 8
Department of Water Administration

April 5, 1974

Mr. Bobby Fleenor
Assistant Director
Idaho Dept. of Water Administration
614 State Street - State House Annex #2
Boise, Idaho 83702

Re: In the Matter of Protest Against Licensing
of Permit No. G-33477/17-2063 in the name
of Harvey J. Harris:

Dear Mr. Fleenor:

Referring to the Petition to Intervene of Curlew Irrigation Company which we have just filed in the above matter, it occurred to me that perhaps I should point out the (Deep Creek) referred to in the claim of water right is the same stream as "Curlew Creek" referred to in the decrees.

I realize you are probably aware of this but felt I should bring it to your attention anyway.

Very truly yours,

D. JAMES MANNING

DJM:jc

CC: Mr. Herman J. McDevitt
Mr. Edward L. Scott

CONVERSATION MEMORANDUM

DATE 4/08/74

FILE No. 17-2063

NAME OF PARTY Nathan Higer

EMPLOYEE Norman C. Young

RE: PROTESTED APPLICATION FOR AMENDMENT No. 17-2063

Nate called indicating that a request to intervene had been received from the Curlew Irrigation District. Because of this motion to intervene, Nate indicated that he had taken the steps necessary to delay the hearing and has re-set it for May 28, 1974, in Malad, Idaho. He also indicated that he is proposing the necessary orders.

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST LICENSING OF PERMIT NO. G-33477/ 17-2063 IN THE NAME OF HARVEY J. HARRIS.	ORDER

Upon Petition of Curlew Irrigation Company and good cause appearing,

IT IS HEREBY ORDERED that Curlew Irrigation Company be and it is hereby permitted to intervene in the above-entitled proceedings, for and limited to the reasons and purposes set forth in the petition for intervention.

In the interest of fairness to the other parties, it is further ordered that this matter now set for hearing on April 10, 1974 at Malad, Idaho be and the same is hereby continued until May 28, 1974 at 1:00 p.m. in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration.

DATED this 8th day of April, 1974.

IDAHO DEPARTMENT OF WATER ADMINISTRATION

by R. KEITH HIGGINSON, Director

April 16, 1974

Re: Application for Amendment No. 17-2063

Mr. Harvey J. Harris
Stone
Idaho 83280

Dear Mr. Harris:

The Director of the Idaho Department of Water Administration needs to acquire data upon which he can base a decision in arbitrating Mr. LeVell Neal's protest against the above referenced application. These data can only be made by taking ground water elevation measurements several days before and during the time you first commence pumping this spring. Please contact this office one week before you start pumping so that these observations can be made.

We hope this information will expedite getting this matter resolved.

Very truly yours,

RONALD D. CARLSON
Asst. to the District Engineer

RDC:mb

CONVERSATION MEMORANDUM

DATE April 26, 1974

EMPLOYEE Norman C. Young

FILE #17-2063

I contacted Mr. Herman J. McDevitt, Attorney for Mr. LeVell Neal and Mr. E. L. Scott to see if it would be acceptable for us to install a recorder on Mr. Neal's property to record the level of the subwater before and after Mr. Harris turned on the well. All agreed it would be acceptable, although both attorney's pointed out that this would not be conclusive evidence because of other uncontrollable factors; such as rain and pumping of other wells. Mr. Harris agreed to record the time at which he turned his well on and off during the time which we were taking the measurements.

NCY

INTER-DEPARTMENT MEMO — 1

FROM Norm

TO Keith

SUBJECT Permit No. 17-2063

File in 17-2063

DATE April 26, 1974

RECEIVED

APR 29 1974

Department of Water Administration

We have decided it would be better to install a recorder rather than to have a man to into the area to make the measurements.

NCY/ms

SIGNATURE

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

RECEIVED
MAY 10 1974
Department of Water Administration

May 9, 1974

E. L. Scott, Esquire
Attorney at Law
P. O. Box 145
Malad City, Idaho 83252

Re: Hearing May 28, 1974
Harvey Harris Well Application

Dear Ed:

Last week when I met you, you expressed some concern and doubt as to whether or not you would continue as counsel in this case, in view of your appointment to the Judiciary.

If there is any reason to believe that you might not be available to continue as counsel, I would appreciate knowing, as some of our witnesses must come from a long distance, lay off work, and be paid professional fees.

Regardless of your decision, I congratulate you on your appointment and know you will be a fine Judge.

Sincerely,

HERMAN J. McDEVITT

HJM:chi

cc: Bobby Fleenor
cc: Norm Young

COPY

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING LOCATION CHANGE

Notice is hereby given that the Department of Water Administration has changed the location at which the hearing is to be held concerning the above permit.

The Department has rescheduled the continuation of the hearing for May 28, 1974, at 1:00 p.m., in Room 406 of the Student Union Building, Idaho State University, Pocatello, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration as previously indicated in the hearing notice dated February 19, 1974.

Dated this 16th day of May, 1974.

Norman C. Young

NORMAN C. YOUNG
District Engineer

M E M O R A N D U M

TO: File

FROM:: Ron

RE: 17-2063

DATE: May 3, 1974

On May 2, 1974 I contacted Harvey Harris. I gave him a notebook and he agreed to keep a record of when he starts and stops his pump.

Lavell Neal accompanied Mike Stubblefield and me to his meadow where we installed a Stevens - Type F stage recorder.

The meadow was a marsh with water standing on most of it.

RDC

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

E. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 233-4127

May 9, 1974

RECEIVED
MAY 10 1974
WATER ADMINISTRATION
Area Office

E. L. Scott, Esquire
Attorney at Law
P. O. Box 145
Malad City, Idaho 83252

Re: Hearing May 28, 1974
Harvey Harris Well Application

Dear Ed:

Last week when I met you, you expressed some concern and doubt as to whether or not you would continue as counsel in this case, in view of your appointment to the Judiciary.

If there is any reason to believe that you might not be available to continue as counsel, I would appreciate knowing, as some of our witnesses must come from a long distance, lay off work, and be paid professional fees.

Regardless of your decision, I congratulate you on your appointment and know you will be a fine Judge.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: Bobby Fleenor
cc: Norm Young

COPY

CONVERSATION MEMORANDUM

DATE May 15, 1974

FILE 17-2063

NAME OF PARTY Kent Foster & Herman McDevitt's Sec.

EMPLOYEE Norman C. Young NCY

RE: Water Right Hearing concerning File No. 17-2063

I called Kent Foster this date to get his approval to change the meeting place for the hearing. The meeting is now going to be held in Room 406, Student Union Building at Idaho State University, Pocatello, Idaho, 83209.

Also, I spoke with Mr. McDevitt's Secretary and she indicated he would return my call to let me know if he also approved of the change.

May 16, 1974

I spoke with Mr. McDevitt this date and he agreed to the change.

May 16, 1974

Ms. Huldah Bell
Student Union Bldg.
Box 8354
Idaho State University
Pocatello, Idaho 83209

Dear Ms. Bell:

This is to confirm the use of Room 406 of the Student Union Building for a water right hearing to be held by this office on Tuesday, May 28, 1974, at 1:00 p.m.

Thank you for your cooperation in this matter.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:MB

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING LOCATION CHANGE

Notice is hereby given that the Department of Water Administration has changed the location at which the hearing is to be held concerning the above permit.

The Department has rescheduled the continuation of the hearing for May 28, 1974, at 1:00 p.m., in Room 406 of the Student Union Building, Idaho State University, Pocatello, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Administration as previously indicated in the hearing notice dated February 19, 1974.

Dated this 16th day of May, 1974.

Norman C. Young

NORMAN C. YOUNG
District Engineer

...TMENT OF WATER ADMINISTRATION
...RICT OFFICE
... RD.
... IDAHO 83401

NAME AND ADDRESS OF SENDER

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

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1	336	...D. Manning, Atty, Box 1391, Pocatello	10	30	15				17-2063
2	337	...Foster, Atty, 301 Shoup Ave, Idaho Falls	10	30	15				"
3	338	...Hall Neal, Reno, Idaho	10	30	15				"
4	339	...Harris, Star, Idaho	10	30	15				"
5	340	...Scott, Atty, St Court, Mtd	10	30	15				"
6	341	...McDevitt, Atty, Box 4747, Pocatello	10	30	15				"
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IDAHO FALLS, IDA. MAY 17 1974 USPO

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POD Form 3877

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1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) James Manning

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY L S Rowland

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

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1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) Lekell Mead

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

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CERTIFIED NO. 337

INSURED NO.

DATE DELIVERED MAY 20

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) Kent Foster

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Lewis Cromwell

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

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REGISTERED NO.

CERTIFIED NO. 340

INSURED NO.

DATE DELIVERED 5/20/74

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) E Hunt

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

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Received the numbered article described below

REGISTERED NO.

CERTIFIED NO. 339

INSURED NO.

DATE DELIVERED 5/23/74

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) Harvey J. Harris

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Mary N. Harris

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

SENDER: Be sure to follow instructions on other side

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RECEIPT
Received the numbered article described below

REGISTERED NO.

CERTIFIED NO. 341

INSURED NO.

DATE DELIVERED MAY 20 1974

1 SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in) Herman McDevitt

2 SIGNATURE OF ADDRESSEE'S AGENT, IF ANY Pam Estep

3 SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

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IDAHO DEPARTMENT OF WATER ADMINISTRATION
EASTERN DISTRICT OFFICE
1515 LINCOLN RD.
IDAHO FALLS, IDAHO 83401

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OFFICIAL BUSINESS

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

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Eastern District Office

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EASTERN DISTRICT OFFICE
1515 LINCOLN RD.
IDAHO FALLS, IDAHO 83401

PS Form 3811 Sep. 1972
635—10—81277-3

CONVERSATION MEMORANDUM

DATE 5-23-74

FILE 17-2063

NAME OF PARTY Nate Higer

EMPLOYEE Norm Young

RE: Protested Permit No. 17-2063 - Harvey J. Harris

Nate called indicating that Herman J. McDevitt had requested in writing that the hearing concerning Permit No. 17-2063 be delayed. Keith had agreed to delay the hearing and that Nate wants us to call the parties involved to inform them of the delay. He indicated that the Boise Office would mail out the letters concerning the delay. The hearing will be re-set at a later undertermined date. He indicated that Mr. McDevitt had been informed of the cancellation.

I called Kent Foster and he agreed to the delay. I was unable to contact Jim Manning representing Curlew Irrigation District, but left a message with his Secretary advising him of the delay and asked that he return my call if he had any questions.

Mr. Manning returned my call and indicated that he agreed to the delay, but he would not be available during the period of June 3 to June 14, if the hearing was to be rescheduled during that time.

Student Union Bldg, Room 406 - Cancelled

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST LICENSING OF PERMIT NO. G-33477/ 17-2063 IN THE NAME OF HARVEY J. HARRIS.	ORDER VACATING HEARING

Mr. McDevitt requested that the hearing in this matter be vacated due to a conflict in his schedule. Although there have been numerous delays in this hearing, the Department believes that Mr. McDevitt's request is a valid one and should be granted.

Therefore, good cause appearing it is ordered and this does hereby order that the hearing in this matter scheduled for Tuesday, May 28, 1974, in Room 406, Student Union Building, Idaho State University, Pocatello, Idaho, be and the same is hereby vacated. All counsel are requested as soon as possible to provide the Department's Idaho Falls office with a list of their available dates for this hearing. As soon as these dates are received, the hearing will be rescheduled.

DATED this 23rd day of May, 1974.

A. KENNETH DUNN
Deputy Director
Idaho Department of Water
Administration

RECEIVED
MAY 20
Department of Water Administration

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF WITHDRAWAL AND SUBSTITUTION OF ATTORNEYS

- - - - - - - - - - - - - - - - - -

Please take notice that the undersigned E. L. Scott does hereby withdraw as attorney of record for the permittee Harvey J. Harris in the within matter and KENT W. FOSTER, Esq., Attorney at Law, P. O. Box 129, Idaho Falls, Idaho, is hereby substituted as such attorney.

Dated this 20th day of May, 1974

E. L. Scott

I hereby certify that I am a duly licensed attorney for the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the foregoing instrument by mailing a true and correct copy thereof to the following attorney, prepaying the postage thereon, this 24th day of May, 1974.

Kent W. Foster

Herman J. McDevitt, Esq.
McDevitt and McDevitt
P. O. Box 4747
Pocatello, Idaho 83201

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER

LAW OFFICES
HOLDEN, 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)

RECEIVED
MAY 28 1974
DEPARTMENT OF WATER ADMINISTRATION

May 24, 1974

SDF

Department of Water Administration
State of Idaho
Statehouse - Annex 2
Boise, Idaho 83720

Re: In the Matter of Protest against Licensing of Permit No. G-33477/17-2063 in the name of Harvey J. Harris

Gentlemen:

We are enclosing for filing in the above entitled matter a Notice of Withdrawal and Substitution of Attorneys.

Yours very truly,

Kent W. Foster

Kent W. Foster

KWF:bc

Enclosure

BDF

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

TELEPHONE 523-0620
AREA CODE 208

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER

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

May 30, 1974

RECEIVED
MAY 31 1974
Department of Water Administration

State of Idaho
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Re: In The Matter of Protest Against Licensing of Permit No. G-33477/17-2063 In the Name of Harvey J. Harris

Gentlemen:

Pursuant to your request, this letter is to advise you that the last two weeks of June would be the best time for a new setting for the hearing as far as our office is concerned. We will however try to make ourselves available when it is most convenient for everyone else.

Yours very truly,

Kent W. Foster

Kent W. Foster

KWF:bc

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON
—
D. JAMES MANNING, JR.

May 29, 1974

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CENTER PLAZA - CORNER FIRST STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE (208) 232-6101

RECEIVED
MAY 31 1974
Department of Water Administration
Eastern District Office

Mr. Norman Young
Department of Water Administration
240 South Holmes
Idaho Falls, Idaho 83401

Re: In the Matter of Protest/Harvey J. Harris

Dear Mr. Young:

Responding to the Department's Order vacating hearing in the above matter, please be advised that I will be out of the office on Navy duty from June 3, thru June 14. I also want to advise some other dates in the near future which appear to present a conflict for me at this time: June 19 thru 21; July 1 thru 4; July 10, 11 and 12.

Very truly yours,

D. JAMES MANNING

CC: Herman McDevitt & Kent Foster

HKD

DDF

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 233-4121

May 31, 1974

RECEIVED
JUN 3 1974
Department of Water Administration

A. Kenneth Dunn
Deputy Director
Idaho Department of
Water Administration
614 State Street -
State House Annex #2
Boise, Idaho 83702

Re: In the Matter of Protest Against Licensing Permit No. G-33477/17-2063 In The Name of Harvey J. Harris

Dear Mr. Dunn:

Responding to the Department's Order Vacating Hearing in the above matter of May 23, 1974, this is to inform you that I will not be available June 17th or 18th, and the week of June 24th I must be in Chicago on a business matter; I also have a conflict on July 9th.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: Norman C. Young
cc: D. James Manning, Esq.
cc: Kent W. Foster, Esq.

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
FIRST SECURITY BANK BUILDING
POST OFFICE BOX 1664
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
WARREN S. DERBIDGE

AREA CODE 208
TELEPHONE 233-4121

May 31, 1974

RECEIVED
JUN 3 1974
Department of Water Administration
Eastern District Office

A. Kenneth Dunn
Deputy Director
Idaho Department of
Water Administration
614 State Street -
State House Annex #2
Boise, Idaho 83702

Re: In the Matter of Protest Against Licensing Permit No. G-33477/17-2063 In The Name of Harvey J. Harris

Dear Mr. Dunn:

Responding to the Department's Order Vacating Hearing in the above matter of May 23, 1974, this is to inform you that I will not be available June 17th or 18th, and the week of June 24th I must be in Chicago on a business matter; I also have a conflict on July 9th.

Sincerely,

HERMAN J. McDEVITT

HJM:chi

cc: Norman C. Young
cc: D. James Manning, Esq.
cc: Kent W. Foster, Esq.

COPY

BDF

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 233-4121

June 4, 1974

A. Kenneth Dunn
Deputy Director
Idaho Department of Water Administration
614 State Street
State House Annex #2
Boise, Idaho 83702

Re: In the Matter of Protest Against Licensing
Permit No. G-33477/17-2063 in the Name of
Harvey J. Harris

Dear Mr. Dunn:

I have just learned that LaVell Neal was in an accident with a horse, and according to his neighbors was hurt quite badly.

I am hoping to go down Friday and check on this and will let you know if his condition will in any way affect the date to be selected for the hearing of the protest.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: Norman C. Young
cc: D. James Manning, Esq.
cc: Kent W. Foster, Esq.

RECEIVED
JUN 5 1974
Department of Water Administration

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

RECEIVED
JUN 7 1974
Department of Water Administration
Eastern District Office

AREA CODE 208
TELEPHONE 233-4121

June 4, 1974

A. Kenneth Dunn
Deputy Director
Idaho Department of Water Administration
614 State Street
State House Annex #2
Boise, Idaho 83702

Re: In the Matter of Protest Against Licensing
Permit No. G-33477/17-2063 in the Name of
Harvey J. Harris

Dear Mr. Dunn:

I have just learned that LaVell Neal was in an accident with a horse, and according to his neighbors was hurt quite badly.

I am hoping to go down Friday and check on this and will let you know if his condition will in any way affect the date to be selected for the hearing of the protest.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: Norman C. Young
cc: D. James Manning, Esq.
cc: Kent W. Foster, Esq.

COPY

RSATION MEMORANDUM

DATE 6-21-74

FILE 17-2063

NAME OF PARTY Herman McDevitt

EMPLOYEE Norm Young

RE: Mr. McDevitt called this date indicating that the recorder we had installed had been tampered with. I said that it had been repaired last week and we wanted to put a fence around it. He indicated that Mr. LeVell Neal is still being hospitalized periodically as a result of the accident.

He also indicated that putting a fence around the recorder was satisfactory with him.

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON
—
D. JAMES MANNING, JR.

July 24, 1974

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CENTER PLAZA - CORNER FIRST STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201
TELEPHONE (208) 232-6101

RECEIVED
JUL 26 1974
Department of Water Resources
Eastern District Office

Mr. Norman Young
Department of Water Administration
240 South Holmes
Idaho Falls, Idaho 83401

Re: In the Matter of Protest of Harvey J. Harris

Dear Mr. Young:

It is my clients understanding that Mr. Neal has recovered from his accident and I think we should consider setting the matter for hearing again soon. Regarding possible hearing dates, August 13, 14 and 15 are unavailable to me.

Very truly yours,

D. JAMES MANNING

CC: Mr. Kent W. Foster
Mr. Herman J. McDevitt

XXXXXXXXXXXXXXXXXXXXX RESOURCES

July 26, 1974

Re: Permit No. 17-2063 Harvey J. Harris

Mr. Herman J. McDevitt
Attorney at Law
P.O. Box 4747
Pocatello, ID 83201

Dear Mr. McDevitt:

We have received a letter from other parties involved indicating that your client, LeVell Neal, has recovered from his accident and requested that we reset the matter for a hearing as soon as possible. Please let us know by the end of this month which dates you have available during the month of August. If we do not hear from you, we will reschedule it at our convenience.

Very truly yours,

RONALD D. CARLSON
Asst. to District Engineer

RDC:mb
bc: R. K. Higginson - IDWR, State

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 233-4121

July 25, 1974

RECEIVED
JUL 29 1974
Department of Water Resources
Eastern District Office

Mr. Norman Young
Department of Water Administration
240 South Holmes
Idaho Falls, Idaho 83401

Re: In the Matter of Protest of Harvey J. Harris

Dear Mr. Young:

We notice Mr. Manning's note to you of July 24th.

Mr. Neal has been returning to the hospital regularly for treatment and possibly additional surgery.

As I previously told you, we will contact you immediately of the setting of this matter as soon as his doctors advise.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: D. James Manning, Esq.
cc: Kent W. Foster

bc: KWF, IDWR - 7-29-74

McDEVITT AND McDEVITT
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
ROBERT M. JOHNSON

AREA CODE 208
TELEPHONE 233-4121

July 29, 1974

RECEIVED
JUL 31 1974
Department of Water Resources
Eastern District Office

Ronald D. Carlson
Asst. to District Engineer
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Permit No. 17-2063 Harvey J. Harris

Dear Mr. Carlson:

Your letter of July 26, 1974 was received in our office today. I wish to inform you that Mr. McDevitt is out of the office till August 6th, attending a Judicial Conference in Reno, Nevada, and immediately thereafter the Bar Association Meeting and Idaho Trial Lawyers Conference in Coeur d'Alene, Idaho.

On July 25, 1974, our office had informed Mr. Norman Young of the Department, with copy to Kent W. Foster, that Mr. Neal was still under treatment and that we were awaiting his doctor's advice. We contacted Mr. Neal this morning and he informed us that he has to return to his doctor in Ogden on August the 9th.

Your letter will be presented to Mr. McDevitt upon his return from Coeur d'Alene, for his consideration.

Very truly yours,

Charlotte Irvin

Charlotte Irvin
Secretary to H. J. McDevitt

bc: RKM-Idaho

XXXXXXXXXXXXXXXXXX RESOURCES

August 2, 1974

RE: Permit No. 17-2063 - Harvey J. Harris

Mr. Herman J. McDevitt
McDevitt and McDevitt
Attorneys at Law
P.O. Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

This office is in receipt of your letters of July 24 and July 29 indicating that Mr. LaVell Neal still is not able physically to allow a hearing to be held on the above referenced permit. Our letter to you of July 26 was written in response to Mr. Manning's note of July 24, and evidently crossed in the mail with your letter.

I am sure that it is in the best interest of all concerned to hold a hearing at the earliest possible date with a decision to be reached in this matter. However, I feel that the timing of the hearing is of even more interest to your client than to the others involved because it is your client that is claiming injury by the on-going pumping of the protest well.

Therefore, we will delay setting the hearing until such time as you advise us that Mr. Neal is able.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:cb

cc: D. J. Manning
Kent Foster

bc: Keith Higginson
Bob Fleenor

ACK A. BARNETT – SHERL L. CHAPMAN
201 IDAHO BUILDING – BOISE, IDAHO 83702
Phone 344-1541
CONSULTANTS IN
GROUND-WATER HYDROLOGY WATER RIGHTS GEOLOGIC ENGINEERING GEOTHERMAL RESOURCES

August 15, 1974

RECEIVED
AUG 19 1974
Department of Water Resources
Eastern District Office

Mr. Norman C. Young, District Engineer
Department of Water Administration
240 South Holmes Avenue
Idaho Falls, Idaho 83401

Dear Norm:

Ron called yesterday and asked that I provide you with a formal request for the data you have collected on the Neal vs. Harris ground water problem.

The data I am most interested in are any depth to water measurements, frequency of pumping in the Harris well, the recorded data you have collected of those in the area, and any other information you feel would help me to arrive at a reasonable conclusion regarding this problem.

Thank you for your consideration in this matter.

Sincerely,

Sherl L. Chapman
Consultant

SLC:ed

October 29, 1974

Mr. Harvey Harris
Stone,
Idaho 83280

Dear Mr. Harris:

Please find enclosed a copy of the data that we have been collecting in Levell Neal's pasture during the past irrigation season. These data have also been sent, on request, to Sherl Chapman, a Consulting Geologist who has been hired by Mr. Neal.

We do appreciate your assistance in collecting these data. If you have any questions concerning these data, please feel free to contact us.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:cw

Enclosure

October 29, 1974

Mr. Ronald Skidmore
Stone,
Idaho 83280

Dear Mr.Skidmore:

Please find enclosed a copy of the data that we have been collecting in Levell Neal's pasture during the past irrigation season. These data have also been sent, on request, to Sherl Chapman, a Consulting Geologist who has been hired by Mr. Neal.

We do appreciate your assistance in collecting these data. If you have any questions concerning these data, please feel free to contact us.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:cw

Enclosure

October 29, 1974

Mr. Sherl Chapman
Consultant
201 Idaho Building
Boise, Idaho 83707

Dear Sherl:

Here are the data that you requested. I think the chart should be self-explanatory, but if you have questions let us know. Copies of the original recorder charts are available if you wish to see these data on a different scale.

I will treat you to a cup of Fish & Game coffee if you ever get over in this part of the state.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:cw

Enclosure

December 12, 1974

RE: Permit No. 17-2063 HARVEY J. HARRIS

Mr. Sherl Chapman
Consulting Engineer
201 Idaho Building
Boise, ID 83707

Dear Sherl:

On November 16, 1974, we removed our stage recorder from LaVell Neal's pasture. I am enclosing a copy of the last data we collected so you will have a complete copy of all the data.

If you have any questions, please contact us.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:mb

Enclosure

December 12, 1974

RE: Permit No. 17-2063 HARVEY J. HARRIS

Mr. Harvey J. Harris
Stone
Idaho 83280

Dear Mr. Harris:

On November 16, 1974, we removed our stage recorder from LaVell Neal's pasture. I am enclosing a copy of the last data we collected so you will have a complete copy of all the data.

If you have any questions, please contact us.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:mb

Enclosure

December 12, 1974

RE: Permit No. 17-2063 HARVEY J. HARRIS

Mr. Ron Skidmore
Stone
Idaho 83280

Dear Mr. Skidmore:

On November 16, 1974, we removed our stage recorder from LaVell Neal's pasture. I am enclosing a copy of the last data we collected so you will have a complete copy of all the data.

If you have any questions, please contact us.

Very truly yours,

RONALD D. CARLSON
Acting District Engineer

RDC:mb

Enclosure

June 16, 1975

Oneida County Courthouse
Clerk of the District Court
Malad, Idaho 83252

Dear Sir:

This is to confirm the use of the Courtroom for conference and/or hearing to be held by this office on Wednesday, July 9, 1975, at 9:00 a.m.

If the courtroom is not available in the afternoon, we have made arrangements to use the Commissioner's Room.

Thank you for your cooperation in this matter.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:MB

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	NOTICE OF HEARING

Notice is hereby given that the Department of Water Resources has rescheduled the continuation of the hearing concerning the above referenced permit for Wednesday, July 9, 1975, at 9:00 a.m., in the Courtroom of the Oneida County Courthouse, Malad, Idaho. This hearing will be held in accordance with the Rules and Regulations of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

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

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

Dated this 17th day of June, 1975.

Ronald D Carlson

RONALD D. CARLSON

District Engineer

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

NAME AND ADDRESS OF SENDER

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

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

	NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST OFFICE ADDRESS	POSTAGE	FEE	R. R. FEE	REST. DEL. FEE	ACTUAL VALUE	SURCHARGE	REMARKS*
1	683	D. James Manning, Atty, Box 1391, Pocatello	10	30	15				17-2863
2	684	Kent L. Foster, Atty, Box 129, Idaho Falls	10	30	15				"
3	685	Herman McDevitt, Atty, Box 4747, Pocatello	10	30	15				"
4	686	LeVell Neal, Stone	10	30	15				"
5	687	Harvey J. Harris, Stone	10	30	15				"
6									
7					$2.15				
8									
9									
10		Sent by certified mail 6/17/75 MB							
11									
12									
13									
14		Non-Certified to: Calvin Bredge							
15		Sherl Chapman							
16		Ronald Skidmore							
17		(Bob + Keith)							
18									
19									
20									

IDAHO FALLS, IDAHO JUN 17 1975 U.S.

TOTAL NO. OF PIECES LISTED BY SENDER: 5

TOTAL NO. OF PIECES REC'D AT P. O.:

POSTMASTER, PER (*Name of receiving employee*)

*Show under "Remarks" class postage paid if other than first or if international

POD Form 3877, Nov. 1968

APPLICATION FOR REGISTRATION OR CERTIFICATION

(Surcharges are not required on international registered mail)

c48—18—8792-15 U.S. GOVERNMENT PRINTING OFFICE

17-8063

PS Form 3811, Nov. 1973 — RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

1. The following service is requested (check one).
   - [x] Show to whom and date delivered............ 15¢
   - [ ] Show to whom, date, & address of delivery.. 35¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom and date delivered............ 65¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery .... 85¢

2. ARTICLE ADDRESSED TO: D. James Manning

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	683	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE D. J. Manning

4. DATE OF DELIVERY

POSTMARK: POCATELLO, IDAHO — JUN 18 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

★ GPO : 1974 O - 527-803

PS Form 3811, Nov. 1973 — RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

1. The following service is requested (check one).
   - [x] Show to whom and date delivered............ 15¢
   - [ ] Show to whom, date, & address of delivery.. 35¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom and date delivered............ 65¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery .... 85¢

2. ARTICLE ADDRESSED TO: Kent H. Foster

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	684	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Kent Foster by David Cooper

4. DATE OF DELIVERY JUN 16 1975

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

★ GPO : 1974 O - 527-803

PS Form 3811, Nov. 1973 — RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1 and 2.
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1. The following service is requested (check one).
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   - [ ] Show to whom, date, & address of delivery.. 35¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom and date delivered............ 65¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery .... 85¢

2. ARTICLE ADDRESSED TO: Herman McDevitt

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	685	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Herman McDevitt

4. DATE OF DELIVERY

POSTMARK: POCATELLO, IDAHO — JUN 18 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

★ GPO : 1974 O - 527-803

PS Form 3811, Nov. 1973 — RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

2. ARTICLE ADDRESSED TO: Harvey J. Harris

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	687	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Harvey J. Harris

4. DATE OF DELIVERY 6/18/75

POSTMARK: JUN 19 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

★ GPO : 1974 O - 527-803

PS Form 3811, Nov. 1973 — RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

1. The following service is requested (check one).
   - [x] Show to whom and date delivered............ 15¢
   - [ ] Show to whom, date, & address of delivery.. 35¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom and date delivered............ 65¢
   - [ ] DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery .... 85¢

2. ARTICLE ADDRESSED TO: [illegible]

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	686	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE [illegible]

4. DATE OF DELIVERY 6/18/75

POSTMARK: JUN 19 1975

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

★ GPO : 1974 O - 527-803

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- Moisten gummed ends and attach to back of article.

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EASTERN DISTRICT OFFICE
1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401

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JUN 19 1975

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JUN 19 1975
Department of Water Resources
Eastern District Office

UNITED STATES POSTAL SERVICE

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Department of Water Resources
Eastern District Office

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

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

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

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EASTERN DISTRICT OFFICE
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U.S. MAIL

RECEIVED
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Department of Water Resources
Eastern District Office

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

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

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RETURN TO

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

U.S. MAIL

RECEIVED
JUN 20 1975
Department of Water Resources
Eastern District Office

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

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

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RETURN TO

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

U.S. MAIL

RECEIVED
JUN 19 1975
Department of Water Resources
Eastern District Office

Harvey J. Harris - 17-2063

Courtroom, Oneida County Courthouse, Malad, Idaho

July 9, 1975 - 9:00 a.m.

ROSTER OF ATTENDANCE

Name	Address	Representing
Louise Harris	Redondo Beach, Calif.	LeVell Neal
Shirley Shelley	Mt Pleasant, Utah	"
Karl Holt	765 fo 19 Pocatello, Idaho	"
LeVell Neal		"
Mark Meyers	Bennett Creek, Idaho	"
C. Lyle Allen	Swan ville, Utah	"
Russell P. Rose	Stone Idaho	"
Howard Shelley	Mt. Pleasant, Utah	"
Kay E. Harris.	Redondo Beach Calif.	No one
Ron Skidmore	Stone, Idaho	Delmore Canal Co + M. Harris.
Archie Rose	534 So. 600 East Bringham City	
C E Harris	Stone Idaho.	
Ronald T. Harris	19 Stage Coach Inn Carson Nev.	
M. Alden Neal	Stone Idaho	Mr. Neal
George Neal	Stone Idaho	Delmore Canal Co and LeVell Neal
K. Carol Hickman	Rawlins Wyoming	
Calvin Sedgley	Malad Idaho	Curlew Dist.
James Merrill	Pocatello, Idaho	Atty for Intervenor
Harvey J. Harris	Stone Idaho.	
Kent M. Foster	Idaho Falls, Idaho	Applicant
LeVell Neal		
M. Jay Meyers	Pocatello	Protestant

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protest Against	)	
	)	
Licensing of Permit No. G-33477/17-2063	)	MEMORANDUM BRIEF
	)	
in the name of HARVEY J. HARRIS	)	
	)	
	)	

LeVell Neal is a rancher at Stone, Idaho, having lived on the same place for more than 40 years.

He has about 105 acres of natural meadow on which he raises meadow hay and waters approximately 300 head of beef cows and calves. The meadow hay is irrigated by means of sub-irrigation and diversion of water from springs.

Upon Mr. Neal's ranch rise several large springs. These springs have no natural outlet to Deep Creek. The outlet now in existence for excess spring water follows the eastern edge of the meadow and was dug by hand with shovels by the pioneers more than 61 years ago. Likewise, the hand-dug ditches for spreading the water over the meadow have been in existence for more than 61 years.

In February of 1967, Harvey J. Harris made application for a permit from the State of Idaho to appropriate the subterranean waters in the NW 1/4 SW 1/4, Section 14, Township 6 South, Range 32 East, Boise Meridian, Oneida County. On April 3, 1967, LeVell Neal wrote Mr. R. Keith Higginson of the Department of Water Administration about the problem caused by wells drilled around his land which depleted his sub-irrigation waters and springs. He particularly protested the well being drilled about a hundred rods from his main spring. On March 2, 1971, Harvey J.

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ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

Harris applied for a change of point of diversion to the present location of the well. On April 10, 1971, LeVell Neal filed a protest against the Harvey Harris well, and further protested in May, 1971, both to Mr. Bobby Fleenor, Assistant State Water Director, and to Harvey Harris.

The operation of the Harvey Harris well dries up the existing springs on the Neal property and depletes sub-irrigation waters.

Idaho, as a prior-appropriation-doctrine State in the area of water rights, recognizes that the first entitled to use of water is the first in right.

This matter today is whether to license Permit No. G-33477/17-2063 in the name of Harvey J. Harris and, if so, in what amount.

If there are rights prior to said permit that will be injured by the licensing, it is the duty and authority of the Department of Water Resources to refuse said licensing.

Furthermore, it is the duty of a permittee when seeking a change of point of diversion to show that appropriators will not be injured by the change of diversion.

A review of the law of the State of Idaho shows that spring water is subject to appropriation and the establishment of a water right. Idaho Code 43-212.

Jones v. McIntire, 60 Idaho 238, 91 P. 2d 323 (1939) holds that spring water that flows under natural conditions off the land of one onto another's is subject to appropriation by the latter. The Court indirectly recognizes natural seepage irrigation (and protects it) because it made findings that the springs, upon rising on the land of McIntire, spread out over

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the bottom of the basin, naturally sub-irrigating 8 to 10 acres of McIntire's land on its way to the land of Jones. Jones was given a right to the use of only whatever water, if any, flowed under natural conditions from McIntire's land onto his land.

The Court protected a person using spring water wholly on his land, and the property right in that spring water, while it naturally seeped off the land, sub-irrigating along the way.

The Jones v. McIntire holding, supra, was upheld in Maher v. Gentry, 67 Idaho 559, 186 P. 2d 870 (1947). Again the Court recognized natural seepage irrigation.

Nordick v. Sorenson, 81 Idaho 117, 338 P. 2d 766 (1959) holds that Idaho Code 42-212 prohibits the Department of Reclamation from granting a permit to divert or appropriate the waters of any spring situate entirely upon the lands of the owner, excepting to the owner, or with his consent.

> "It is only when the waters of natural springs flow off privately owned lands into a natural channel that such waters, when flowing in a natural channel, become public water subject to appropriation, diversion, and application to a beneficial use."

In this Nordick v. Sorenson case the Court allowed the use of an injunction to protect a water right.

Finally, Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 513 P. 2d 627 (1973), specifically finds that a senior appropriator is entitled to enjoin those junior appropriators who attempt to lower the water table below a reasonable level.

Under this decision, a right to a water table is allowed to the extent that it is a reasonable level. The Court, in so holding, construed Idaho's Groundwater Act found in Chapter 42, Sections 226 et sequa, of Idaho Code. Under this decision and I. C. 42-226, a water level is reasonable until a dirrerent level is established by the State Reclamation Engineer.

No different water level has been established by the

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7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

State Reclamation Engineer on the LeVell Neal land.

Baker v. Ore-Ida Foods, supra, attempts to clarify the law with regard to the right to a natural water table. In this case are discussed both Nampa and Idaho Irrigation District v. Petrie, 37 Idaho 45, 223 P. 2d 531 (1923) and Noh v. Stoner, 53 Idaho 651, 657, 26 P. 2d 1112 (1933).

In Petrie, the Court held that one who had been using underground seepage waters and not natural subterranean waters had no right to insist as against a drainage district that a water table be maintained at the existing level. The Court carefully limited its holding to seepage waste waters.

However, in Noh v. Stoner, supra, the Idaho Court recognized the right of a prior appropriator to a water table level, i.e., pumping level.

Baker v. Ore-Ida Foods, supra, thus states that one has a right to a water table when irrigating with natural water.

SUMMARY

Under the laws of the State of Idaho, LeVell Neal is protected in his use of the spring water. The laws insure his right to a water table and the right to divert from springs under the doctrine summarized in Baker v. Ore-Ida Foods, supra. Such a right as LeVell Neal's is further protected under the laws of the State of Idaho as summarized in Nordick v. Sorenson, supra, holding that a permit or license shall not be given by the Department of Reclamation to divert or appropriate privately owned springs.

RESPECTFULLY SUBMITTED this 9th day of July, 1975.

McDEVITT, McDEVITT & MEYERS
Attorneys for LeVell Neal

By: _____

McDEVITT & McDEVITT
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

July 15, 1975

RE: Permit No. 17-2063

COPY

Mr. Herman J. McDevitt
Attorney at Law
P.O. Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

Enclosed please find the copies which you requested at the hearing concerning the above referenced permit of Sherl Chapman's investigation and a copy of Department Bulletin #25.

The Department is now in the process of reviewing the exhibits and testimonies presented at the hearing, but will make no decision in the matter until the attorneys involved have had an opportunity to prepare and submit briefs to the Department pursuant to the agreement made at the hearing.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:mb

Enclosures

July 15, 1975

RE: Permit No. 17-2063

COPY

Mr. D. James Manning
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83201

Dear Mr. Manning:

Enclosed please find the copies which you requested at the hearing concerning the above referenced permit of Sherl Chapman's investigation and a copy of Department Bulletin #25.

The Department is now in the process of reviewing the exhibits and testimonies presented at the hearing, but will make no decision in the matter until the attorneys involved have had an opportunity to prepare and submit briefs to the Department pursuant to the agreement made at the hearing.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:mb

Enclosures

Herman J. McDevitt
McDEVITT, McDEVITT & MEYERS
Attorneys at Law
Seventh and Lander
P. O. Box 4747
Pocatello, Idaho, 83201

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of Protest Against Licensing of Permit No. G-33477/17-2063 in the name of HARVEY J. HARRIS	)	REQUEST FOR DECISION

COMES NOW LeVell Neal, by and through his counsel of record, Herman J. McDevitt, and moves and requests the Department for an immediate Decision of the matter of the licensing of Permit No. G-33477/17-2063 in the name of Harvey J. Harris on which hearing was had in the City of Malad, Idaho, on the 9th day of July, 1975, on the ground and for the reason that at said time and place Harvey J. Harris promised to secure a written report in testimonial form by a designated witness from Utah State University; that counsel for LeVell Neal objected stating it would cause an unreasonable delay; that counsel for Harvey J. Harris indicated that it might take one week to 10 days but that they would inform all parties immediately without delay of the expected date of the completion of the report, and the same would be accomplished and completed without any undue delay. That on behalf of LeVell Neal objection was made thereto and request that the pump in question be shut down and rendered inoperative pending such delay as is applicable to the Applicant.

An entire month having passed and no testimonial report having been submitted, no notice of any time of completion of

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7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

such a report having been given, and no notice of the contents thereof having been submitted, or any showing that the contents thereof would be competent or material herein,

COMES NOW the Protestant and requests immediate Decision pursuant to the evidence adduced in the said hearing.

DATED this 6th day of August, 1975.

McDEVITT, McDEVITT & MEYERS

By: _____
Herman J. McDevitt
Attorneys for Protestant
Residing at Pocatello, Idaho, 83201

McDEVITT & McDEVITT
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
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B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

RECEIVED
AUG 8 1975
Department of Water Resources
Eastern District Office

August 7, 1975

Ronald D. Carlson
District Engineer
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho, 83401

In re: Permit No. 17-2063
Harvey J. Harris

Dear Mr. Carlson:

In the above-entitled matter, I am filing herewith the enclosed REQUEST FOR DECISION.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

Enclosure

cc: Mr. Bobby Fleenor

cc: Kent W. Foster, Esq.

cc: D. James Manning, Esq.

cc: Sherl L. Chapman

cc: LeVell Neal

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

LAW OFFICES
HOLDEN, 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 (1911-1970)

RECEIVED
AUG 14 1975
Department of Water Resources
Eastern District Office

August 13,1975

Mr. Ronald D. Carlson
District Engineer
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Harvey J. Harris Permit

Dear Mr. Carlson:

Pursuant to our recent telephone conversation, I am writing this letter in response to protestant's "Request For Decision."

First, we wish to reaffirm what we have indicated to you earlier; we have been advised by Mr. Frank Hawes that his report will be available in approximately a week. We also apologize to Mr. McDevitt for not having been able to advise him sooner.

Our recollection is that we attempted to make it clear at the close of the hearing, that it would be impossible for us to predict how soon our expert would be able to prepare his report, until we had contacted him. We did not indicate that it might take a week to ten days, or any other amount of time. We did hope, as we think everyone hoped, that it would be possible to obtain it very soon.

Perhaps, we also came away from the hearing with some misunderstanding as to who we were to inform of the expected date of the completion of the report. We were able to contact the expert the day after the hearing, and our notes indicate that two days after the hearing we advised you that Mr. Hawes had a number of conflicts, but would make an effort to have the report in draft form by the end of the month (July). Since that date, Mr. Hawes has called a couple of times to apologize for having been called out of town, in connection with some prior committments which he had, which had delayed his completion of the report.

Perhaps you will also recall, that we advised sometime prior to the hearing, that our expert would be unable to attend and we elected not to request a continuance with the assurance that some means would be provided for submitting the testimony of our expert. Our intent was to be cooperative, and because there had been so many delays, we did not wish to add further to the scheduling problems for all of the other witnesses.

Finally, although there has been more delay than we had hoped, we cannot see how anyone has been seriously injured, and we hope that no one has been badly inconvenienced. Our recollection is that several continuances have been granted during the past couple of years, most of them at the request of the protestant. At this point in time, and in fact, even at the time of the hearing, an immediate decision by the department, in favor of the protestant, would not do much to alleviate the alleged injury for the 1975 crop season.

In any event, as we understand it, as soon as Mr. Hawes' report is available, it will be furnished to all parties, after which Mr. Chapman was to comment and then briefs or closing arguments would be submitted by counsel.

Yours very truly,

Kent W. Foster

KWF:jt
cc: D. James Manning, Esq.
Herman J. McDevitt, Esq.

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

RECEIVED
SEP 11 1975
Department of Water Resources
Eastern District Office

AREA CODE 208
TELEPHONE 233-4121

September 9, 1975

Ronald D. Carlson
District Engineer
Department of Water Resources
Eastern District Office
1515 Lincoln Rd.
Idaho Falls, Idaho 83401

Re: Permit #17-2063, Harvey J. Harris

Dear Mr. Carlson:

In the above-entitled matter we waited 30 days after the hearing, then filed a REQUEST FOR DECISION which states grounds and reasons therefore. Copies were sent to all counsel of record and to the hearing officer, Mr. Bobby Fleenor.

Now, over two months have elapsed and we have had no action nor any report in testimonial form by any expert adverse to Mr. Sherl L. Chapman. Additionally, as pointed out in the REQUEST FOR DECISION, no matter what such a report (if ever developed) contained, it would not have the factual experience and knowledge of prior participation as does Mr. Chapman, and would not be determinative of the issues in this cause. Equally important are the positive and clear testimonies of the lay witnesses presented in our behalf and the fact that the testimony of Mr. Harris was so inherently improbable, rambling and irrelevant. As you will recall, we did not even waste the hearing officer's time by cross-examining him.

The client is an older man and has been severely stressed by this entire matter. May we have a decision, please?

Sincerely,

Herman J. McDevitt

HJM:kem
CC: Mr. Bobby Fleenor
R. Keith Higginson
Kent W. Foster
D. James Manning
Sherl L. Chapman
LeVell Neal

RECEIVED
SEP 11 1975
Department of Water Resources

DIRECTOR
PLANNING
WATER PLAN
[illegible]
[illegible]
[illegible]
WATER RIGHTS
INTERSTATE
LEGAL
FISCAL
BOARD
FILES

Why No Decision?

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

AREA CODE 208
TELEPHONE 233-4121

B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

September 9, 1975

Ronald D. Carlson
District Engineer
Department of Water Resources
Eastern District Office
1515 Lincoln Rd.
Idaho Falls, Idaho 83401

Re: Permit #17-2063, Harvey J. Harris

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The client is an older man and has been severely stressed by this entire matter. May we have a decision, please?

Sincerely,

Herman J. McDevitt

HJM:kem
CC: Mr. Bobby Fleenor
R. Keith Higginson
Kent W. Foster
D. James Manning
Sherl L. Chapman
LeVell Neal

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

LAW OFFICES
HOLDEN, 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)

September 22, 1975

RECEIVED
SEP 23 1975
Department of Water Resources
Eastern District Office

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

Re: Permit 17-2063 - Harvey J. Harris

Dear Mr. Carlson:

We are enclosing with this letter, a copy of the completed report from the expert hired by Mr. Harvey Harris, Mr. Frank W. Haws.

We sent copies of this report to Mr. McDevitt and Mr. Manning.

My notes from the hearing reflect that McDevitt wished to reserve the right to have Mr. Chapman submit comments on Mr. Haw's report. It was also my understanding that after such comments, the schedule would be established for briefs of counsel.

Yours very truly,

Kent W. Foster

KWF:jt
cc: Herman J. McDevitt
D. James Manning

September 24, 1975

RE: Permit No. 17-2063 HARVEY J. HARRIS

Mr.D. James Manning
Attorney at Law
P.O. Box 1391
Pocatello, Idaho 83201

Dear Mr. Manning:

The Department has received a copy of a report prepared by Frank W. Haws of Logan, Utah. Because the protestant, his attorney, and expert witnesses did not have access to this report at the time of the hearing, it was agreed that they would have an opportunity to review this report and submit briefs of counsel before the Department prepares its decision in this matter.

The Department is aware that all parties involved are anxious to have a decision prepared. However, if there are additional data and arguments that should be considered in this matter the Department feels they should be heard, if submitted in a reasonable time, since irrigation for this season has, in general concluded.

The Department is, therefore, proceeding pursuant to the agreement reached at the hearing. We will delay action in this matter until October 20, 1975, to allow time for the attorneys involved to review the Haws' report and submit briefs. If you have objections to the Department delaying action for this additional period of time we would be happy to consider your reasons for objections.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:cw

September 24, 1975

RE: Permit No. 17-2063 HARVEY J. HARRIS

Mr. Herman J. McDevitt
Attorney at Law
P.O. Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

The Department has received a copy of a report prepared by Frank W. Haws of Logan, Utah. Because the protestant, his attorney, and expert witnesses did not have access to this report at the time of the hearing, it was agreed that they would have an opportunity to review this report and submit briefs of counsel before the Department prepares its decision in this matter.

The Department is aware that all parties involved are anxious to have a decision prepared. However, if there are additional data and arguments that should be considered in this matter the Department feels they should be heard, if submitted in a reasonable time, since irrigation for this season has, in general been concluded.

The Department is, therefore, proceeding pursuant to the agreement reached at the hearing. We will delay action in this matter until October 20, 1975, to allow time for the attorneys involved to review the Haws' report and submit briefs. If you have objections to the Department delaying action for this additional period of time we would be happy to consider your reasons for objections.

Please find enclosed Mr. Neal's deeds and financial statement. We have made copies of these documents for our files and feel the original should be returned to the owner's custody.

Very truly yours,

RONALD D. CARLSON
District Engineer

RDC:cw

Enclosures

cc: Kent Foster
bc; Bob Fleenor

September 25, 1975

Kent W. Foster, Esquire
Holden, Holden, Kidwell, Hahn & Crapo
Attorneys at Law
P. O. Box 129
Idaho Falls, Idaho, 83401

Re: Permit 17-2063 - Harvey J. Harris

COPY

Dear Mr. Foster:

We received a copy of Mr. Frank Haws' brief on general subject matter of Idaho Water Law, and his comments concerning Mr. Chapman's report.

We would appreciate an extra copy or two of the report so that we may send one to Mr. Chapman and to Mr. Neal for review. If not, kindly advise us and we will attempt to reproduce them locally.

We are enclosing copy of our objections to the use of this report for any purpose until Mr. Haws submits himself for cross-examination.

I think you will agree this is understandable in view of the fact that the majority of his report is not confined to an examination and verification of Mr. Sherl Chapman's report but rather is an extended lecture of Mr. Haws' viewpoints concerning Idaho Water Rights and general philosophy.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: D. James Manning, Esq.
cc: Ron Carlson
Department of Water Resources
cc: R. Keith Higginson, Director
Dep. of Water Resources, Boise

RECEIVED
SEP 26 1975
Department of Water Resources
Eastern District Office

Herman J. McDevitt
McDEVITT, McDEVITT & MEYERS
Attorneys at Law
Seventh and Lander
P. O. Box 4747
Pocatello, Idaho, 83201
Tel.: 233-4121

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of Protest Against Licensing Permit No. G-33477/17-2063 in the Name of HARVEY J. HARRIS	OBJECTION TO THE USE OF THE REPORT OF FRANK W. HAWS

COMES NOW the Protestant, LeVell Neal, by and through his attorneys of record, and protests and objects to the use of a report of Mr. Frank W. Haws submitted by the Applicant, Harvey J. Harris, on September 22, 1975. Said objection is based upon the following reasons and grounds:

1. The report was not submitted in a timely manner nor was in such a time frame as to be helpful or determinative in this matter;

2. That after the lapse of many months, the report does not show the performance of any substantive or original field work upon which an opinion could be based;

3. The report did not confine itself to an engineering evaluation of the previous testimony and report submitted by Mr. Sherl Chapman as was provided for at the hearing. It covers other matters, including Mr. Haws' philosophy and viewpoints concerning the requirements for and existence of water rights in the State of Idaho;

4. Objects to the use of the report for any purpose whatsoever in view of the foregoing unless and until Mr. Frank

McDEVITT & McDEVITT
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

W. Haws submits himself for cross-examination at a time and place convenient to the parties hereto and the Department of Water Resources. That such appearance be made at the cost of, and expense of the Permittee, and Protestant be indemnified for all costs and attorneys' fees incurred therein.

Respectfully submitted this 25th day of September, 1975.

LAVELL NEAL, Protestant

by: McDEVITT, McDEVITT & MEYERS

By: Herman J. McDevitt
Attorneys for Protestant LeVell Neal

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 25th day of September, 1975, a true and correct copy of the foregoing OBJECTION TO THE USE OF THE REPORT OF FRANK W. HAWS was mailed, postage prepaid to: Kent W. Foster, Esquire, of Holden, Holden, Kidwell, Hahn & Crapo, P. O. Box 129, Idaho Falls, Idaho, 83401.

Herman J. McDevitt

McDEVITT & McDEVITT
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

RECEIVED
SEP 26 1975
Department of Water Resources
Eastern District Office

September 25, 1975

Kent W. Foster, Esquire
Holden, Holden, Kidwell, Hahn & Crapo
Attorneys at Law
P. O. Box 129
Idaho Falls, Idaho, 83401

Re: Permit 17-2063 - Harvey J. Harris

COPY

Dear Mr. Foster:

We received a copy of Mr. Frank Haws' brief on general subject matter of Idaho Water Law, and his comments concerning Mr. Chapman's report.

We would appreciate an extra copy or two of the report so that we may send one to Mr. Chapman and to Mr. Neal for review. If not, kindly advise us and we will attempt to reproduce them locally.

We are enclosing copy of our objections to the use of this report for any purpose until Mr. Haws submits himself for cross-examination.

I think you will agree this is understandable in view of the fact that the majority of his report is not confined to an examination and verification of Mr. Sherl Chapman's report but rather is an extended lecture of Mr. Haws' viewpoints concerning Idaho Water Rights and general philosophy.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: D. James Manning, Esq.
cc: Ron Carlson
Department of Water Resources
cc: R. Keith Higginson, Director
Dep. of Water Resources, Boise

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

RECEIVED
SEP 26 1975
Department of Water Resources
Eastern District Office

AREA CODE 208
TELEPHONE 233-4121

September 25, 1975

Mr. Ronald D. Carlson
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho, 83401

Re: Harvey J. Harris
Permit No. G-33477/17-2063

Dear Mr. Carlson:

In the above-entitled matter, I am filing herewith the enclosed OBJECTION TO THE USE OF THE REPORT OF FRANK W. HAWS.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

Enclosure

cc: Kent W. Foster, Esq.
cc: Mr. Bobby Fleenor
cc: D. James Manning, Esq.
cc: R. Keith Higginson, Director
Department of Water Resources

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

LAW OFFICES
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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)

September 29, 1975

Mr. Herman J. McDevitt
Attorney at Law
McDevitt, McDevitt, & Meyers
P. O. Box 4747
Pocatello, Idaho 83201

RECEIVED
SEP 30 1975
Department of Water Resources
Eastern District Office

Re: Permit 17-2063

Dear Mr. McDevitt:

This letter is written in response to your letter written September 25, 1975, as well as the document entitled "Objection to the Use of the Report of Frank W. Haws."

We do not have any extra copies of Mr. Haws report and suspect there might be a delay in obtaining extra copies from Mr. Haws. However, if you were unable to have the report reproduced satisfactorily there in Pocatello, please advise us and we will be happy to try and obtain additional copies from Mr. Haws.

We certainly have no objections to cross examination of Mr. Haws. You will perhaps recall that that was our original suggestion and intention. In fact, since we were unable to have Mr. Haws present to aid us in the cross examination of Mr. Chapman, we would propose that Mr. Chapman also be present at any such hearing and that we have the right to examine Mr. Chapman at that time at the aid of our expert.

We most strenuously object to the proposal that such a hearing and examination be at the cost and expense of the permitee. It appears that it was a mistake to attempt to cooperate with the protestant and his counsel, to facilitate the holding of hearing in July even though it was impossible for our expert to be present. We certainly thought we had a clear understanding that we had foregone requesting another continuance only on condition that we have the right to submit the testimony of our own expert in some fashion at a later date. In fact, our understanding at the close of the hearing was that the protestant would have the right to have Mr. Chapman comment on Mr. Haws report. If the protestants now seek an additional hearing and an opportunity to cross examine, it would seem more appropriate

to us to place the burden for costs and expenses for such a hearing on the protestant.

As far as any of Mr. Haws view points with respect to Idaho Water Rights and general philosophy, we are confident that in the ability of the Department of Water Resources to take an independent decision based upon it's own understanding of Idaho law.

Yours very truly,

Kent

Kent W. Foster

KWF:jt
cc: D. James Manning, Esq.
cc: Ron Carlson
Dept. of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

OF IDAHO

IN THE MATTER OF APPLICATION FOR)	
)	
PERMIT NO. 17-2063 IN THE NAME OF)	MEMORANDUM DECISION
)	
HARVEY J. HARRIS)	AND ORDER
)	

On February 20, 1967, Harvey J. Harris, Stone, Idaho, applied to the Department of Reclamation (renamed Department of Water Resources) for a permit to appropriate 3.82 c.f.s. from a ground-water source by means of a well and pump located within NW¼SW¼, Sec. 14, T. 16S, R. 32E, B.M., Oneida County, for the irrigation of 191 acres of land. The application was reviewed by the Department and approved on February 23, 1967.

On December 30, 1968, Mr. Harris made application to the Department for an extention of the time requested to submit proof of beneficial use. The Director approved the request and extended the time to February 23, 1971. On February 22, 1971, Proof of Beneficial Use was submitted to the Department. The land list on the permit was modified through an amendment, and on April 8 and April 15, 1971, the notice of this appropriation was published in the Idaho Enterprise, Malad, Idaho.

On April 20, 1971, protest against the issuance of this license was submitted by LeVell Neal. The required licensing exam was completed on August 3, 1972. Due to several delays, the matter was not scheduled for conference and/or hearing until January 22, 1974. No agreement was reached at this conference and subsequently was continued to a later date.

On April 8, 1974, a request to intervene was received from Curlew Irrigation Co.

A hearing in the matter was held on July 9, 1975, in Malad, Idaho. The permittee, Harvey J. Harris, was present and represented by Kent W. Foster of the firm Holden, Holden, Kidwell, Hahn & Crapo of Idaho Falls. The intervenor, Curlew Irrigation Co., was represented by James Manning of the firm Rancine, Huntly & Olson of Pocatello. The protestant, LeVell Neal, was present and represented by Herman J. McDevitt of the firm McDevitt and McDevitt, Pocatello, Idaho.

Testimony on behalf of all parties was received and documentary evidence introduced. The Department then took the matter under consideration, and after having reviewed all testimonies and evidence offered for each of the parties and reviewing all pertinent information in the Department's official records, the Director of the

Department of Water Resources makes the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

(1) In November of 1967, the permittee drilled an 18 inch diameter well to a depth of 210 feet in the NW¼SW¼, Sec. 14, T. 16S, R. 32E. The well casing was perforated from the 40 foot to 180 foot depth. Water was found to stand in the well at an elevation of 4,560 feet. The permittee has used water from this well beneficially for the irrigation of 178 acres.

(2) The protestant owns 105 acres of meadow land which is approximately 3,700 feet from the applicant's well at its' nearest point. The meadow tends to be marshey and has visable spring activity along the east edge at an approximate elevation of 4,560 feet.

(3) Groundwater movement near the permittee's well is to the south-west.

(4) The protestant has certain undefined rights to use water which issues from springs located on his property. However, most of the water supplied to the meadow is not due to water diverted from the stream channel for irrigation, but rather occurs naturally due to the locally high water table that exists under that area.

(5) Data available to the Department indicate water levels under the protestant's meadow and spring flow tends to fluctuate during the year, with minimum levels occurring during the months of July and August. The cause of these fluctuations appears to be due largely to pressure changes in the aquifer. There have been many probable causes presented to explain these changes, but the data available are not conclusive in showing any positive relationships between the pumping of the permittee's well and a decline in spring flow.

Protested

CONCLUSIONS OF LAW

(1) The pumping of the permittee's well may be one of the factors contributing to seasonal declines in the flow of springs located on the property of the protestant. However, it appears that if the pumping of this well is a contributing factor in the declines in spring flows observed in the protestant's meadow, the extent of such dewatering is not likely to interfere with any water right the protestant has established through his inefficient methods of irrigation.

(2) The permittee has complied with the conditions of his permit and is entitled to a license from the Department of Water Resources.

ORDER

IT IS, THEREFORE, ORDERED that License No. 17-2063 be GRANTED subject to the conditions appearing on the approved permit and those arising from the Department's field examination of the project.

Dated this_____day of October, 1975.

Issued

R. KEITH HIGGINSON
Director

RDC:me

RECEIVED

OCT 3 1975

Department of Water Resources

DIRECTOR	
PLANNING	
WATER PLAN	
TECH. STUDIES	
OPERATIONS	
ENGINEERING	
WATER RIGHTS	
INTERSTATE	
LEGAL	
FISCAL	
BOARD	
FILES	

M E M O R A N D U M

TO: Ken Dunn

FROM: Ron Carlson RDC

RE: Permit No. 17-2063 HARRIS

DATE: October 1, 1975

Here is a copy of the proposed Memorandum Decision on Permit No. 17-2063, Harvey J. Harris, as you requested.

I am including a copy of Sheri's report, the Haws' report, my letter of September 24, 1975 to Herman McDevitt, Herman McDevitt's objections to the use of the report by Frank W. Haws and Kent Foster's reply to Herman McDevitt's objections.

I don't know how you want to proceed from here but at this point the last official Department response was my letter of September 24 indicating we would take no action until October 20, 1975 to allow the attorneys an opportunity to review the Haws' report and submit briefs.

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

RECEIVED
OCT 2 1975
Department of Water Resources
Eastern District Office

October 1, 1975

Kent W. Foster, Esquire
Holden, Holden, Kidwell, Hahn & Crapo
Attorneys at Law
P. O. Box 129
Idaho Falls, Idaho, 83401

COPY

Re: Permit 17-2063

Dear Mr. Foster:

In attempting to respond to your letter of September 29, we do not wish to appear, or in fact, to be uncooperative. My understanding at the time of the hearing was that Mr. Haws had not even conducted sufficient review of Mr. Chapman's report and had no first-hand knowledge of the area in question, and would have been unable to testify even had he been present at the hearing. We are happy that you agree that Mr. Haws should be cross-examined.

As it will be some indefinite time before Mr. Chapman will be available to reply and comment upon Mr. Haws' methodology and report, we suggest we go right ahead with the further hearing in this matter. We recollect no forbearance on the part of the applicant in any continuance or any agreements conditional thereon. It is my understanding that it was late on the date of the hearing before it was ever brought to our attention that an expert examination was desired by the applicant. In fact, if I remember correctly, it was the presence of Mr. Chapman that generated this response on the part of Mr. Harris' counsel.

We are in agreement that the Department of Water Resources (if it excludes persons who have had a past continuing relationship with Mr. Harris) can take an independent decision based on its understanding of Idaho water law if, and only if, proper opportunity for cross-examination is had

and allowed of Mr. Haws.

The delay having been occasioned by the failure of the applicants to have their expert available for testimony, or prepared to testify at the time of the hearing, they should bear the expense of this procedure. One need only refer to the report of Mr. Haws submitted to find it is in its entirety generated after the date of the hearing held in Malad.

Very truly yours,

HERMAN J. McDEVITT

HJM:chi

cc: D. James Manning, Esq.
cc: Ronald D. Carlson (for the purpose of forwarding to Bobby D. Fleenor, the Hearing Officer, Department of Water Resources)
cc: LeVell Neal

COPY

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

LAW OFFICES
HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO
IDAHO FIRST NATIONAL BANK BUILDING
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IDAHO FALLS, IDAHO 83401

TELEPHONE 523-0620
AREA CODE 208

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

3DT

October 7, 1975

RECEIVED
OCT 8 1975
Department of Water Resources
Eastern District Office

Mr. Herman J. McDevitt
Attorney at Law
P. O. Box 4747
Pocatello, Idaho 83201

Re: Permit 17-2063

Dear Mr. McDevitt:

I think we still need to respond to your letter of October 1, 1975. It is incorrect that Mr. Haws visited the site or performed any investigation subsequent to the time of the hearing. We explained at the hearing that his investigation was a limited one and that he had already indicated to us that in his opinion, additional study and investigation would be required before he could make a definitive report based on his own examination and study.

Because no discovery was allowed, we were not entirely certain what testimony we would need to be prepared to meet at the hearing. It was only by coincidence that we learned approximately two weeks before the hearing that Mr. Chapman had performed an examination and was prepared to testify. We felt that appropriate cross-examination of Mr. Chapman would require the presence of our expert. After we learned that Mr. Haws would be unable to attend the hearing, we discussed the problem with both the department and you and upon being assured that we would have the right to have our expert testify if we desired at a later date, we agreed not to request a continuance. We were primarily desirous of having Mr. Haws present at the hearing to aid us in the cross-examination of Mr. Chapman.

While it is true that Mr. Haws had not conducted a review of Mr. Chapman's report prior to the hearing, we wonder how that could have been done when we were not extended the courtesy of having been furnished with a copy of the report prior to the hearing. Mr. Haws certainly did have first hand knowledge of the area in question and although it was limited, he certainly would have been able to review Mr. Chapman's report at the hearing and testify concerning it as well as aid us in the cross-examination of Mr. Chapman.

We have never expressed, either late on the date of the hearing or at any other time, a desire to have an expert examination performed by our expert. We understood that the agreement for the submission by Mr. Haws of his report was an opportunity for him to comment upon his limited investigation, but more specifically to review and comment upon Mr. Chapman's report. It was our understanding that we all agreed that the protestant would have the right to have Mr. Chapman comment upon Mr. Haws report. In our opinion, that is adequate cross-examination and very little could be accomplished in another hearing. We still think that the cost and expenses including applicant's attorneys fees for such a hearing ought to be borne by the protestant. Again, we point out that this matter is not presently before a court, but rather before a department with substantial technical expertise in this field. Where we have already agreed to a procedure of allowing Mr. Haws to comment on the Chapman report and Chapman to reply, we question whether anything constructive can really be accomplished by a hearing for cross-examination of Mr. Haws.

We are becoming tired and somewhat resentful of counsel's repeated accusations that we have caused a delay. Had we not attempted to be cooperative and insisted upon a continuance because of the unavailability of our expert, the hearing might not yet have been held. These repetitions become even more ridiculous when compared to the several years of delay occasioned solely by the protestant.

Yours very truly,

Kent W. Foster

KWF:jt

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATE HOUSE BOISE, IDAHO 83720

October 31, 1975

Re: Permit No. 17-2063 - Harvey J. Harris

Mr. Herman McDevitt, Attorney
7th and Lander, Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

Your final brief on the protest against the licensing of Permit No. 17-2063 has not been received.

The report by Mr. Frank W. Haws will be considered as agreed to at the hearing, only to the extent that it offers engineering findings and an evaluation of Mr. Chapman's report. The other portions of the report will not enter into the determination made by the Director.

Please submit your final summary brief on or before November 10, 1975. The Department will make a determination in this matter on that date.

Sincerely,

Bobby D. Fleenor

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATE HOUSE BOISE, IDAHO 83720

October 31, 1975

Re: Permit No. 17-2063 - Harvey J. Harris

Kent W. Foster
Holden, Holden, Kidwell, Hahn & Crapo
Box 129
Idaho Falls, Idaho 83401

Dear Mr. Foster:

Your final brief on the protest against the licensing of Permit No. 17-2063 has not been received.

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Chief, Water Rights

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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATE HOUSE BOISE, IDAHO 83720

MEMORANDUM

TO: PERMIT NO. 17-2063

FROM: BOBBY D. FLEENOR

DATE: November 3, 1975

Jay Meyers from Herman McDevitt's office requested that a delay in reaching a decision on the water filing of Harvey Harris be made.

Mr. McDevitt will not be in his office until after November 10, 1975.

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

RECEIVED
NOV 4 1975
Department of Water Resources

November 3, 1975

Bobby D. Fleenor
Chief, Water Rights
State of Idaho
Department of Water Resources
State House
Boise, Idaho, 83720

Re: Permit No. 17-2063 - Harvey J. Harris

Dear Mr. Fleenor:

After talking with you this morning about final briefs due, I also called Mr. Kent Foster, attorney for Harvey J. Harris.

Even though he does not have my problem of the Senior Partner in the firm, who is handling this matter, being absent and unavailable this week, he indicated to me that he did have a scheduling problem.

After some conversation, we agreed that it would be best if we set a tentative date only to have briefs submitted somewhere around November 20th.

After the final briefs have been submitted to you, we welcome your determination of this matter.

Thank you.

Sincerely,

M. Jay Meyers

MJM:chi

cc: Kent W. Foster, Esq.

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

LAW OFFICES
HOLDEN, 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)

File
BSDF

November 4, 1975

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NOV 5
Department of Water Resources

Mr. Bobby D. Fleenor
Chief, Water Rights
Department of Water Resources
State House
Boise, Idaho 83720

Re: Permit No. 17-2063 - Harvey J. Harris

Dear Mr. Fleenor:

We have received your letter of October 31, 1975, requesting our brief by November 10, 1975. We received the letter on November 3, 1975, and on the same date, Mr. McDevitt's law partner called and advised that Mr. McDevitt was out of town until the date the final briefs are due. He indicated he had talked with you and you had discussed the possibility of a ten day extension.

This letter will acknowledge that we have tentatively agreed to the ten day extension because of some scheduling problems that I have as well. We have also tentatively agreed to the same extension for submission of our brief.

We will do our best to have the brief submitted as soon as possible and trust that this letter will make our understanding clear.

Yours very truly,

Kent W. Foster

Kent W. Foster

KWF:jt

Kent W. Foster of
HOLDEN, HOLDEN, KIDWELL, HAHN & CRAPO
P. O. Box 129
Idaho Falls, Idaho 83401
Telephone: 523-0620

RECEIVED
NOV 26 1975
Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST LICENSING PERMIT NUMBER G-33477/17-2063 in the name of HARVEY J. HARRIS.	BRIEF

COMES NOW the applicant in the above entitled matter, Harvey J. Harris, and by and through Holden, Holden, Kidwell, Hahn & Crapo, his attorneys of record, hereby submits the following brief for the aid of the Department in its decision in the above matter.

STATEMENT OF FACTS:

Harvey J. Harris filed his application for a permit to appropriate the public waters of the State of Idaho on February 20, 1967. On February 23, 1967, Permit Number G-33477/17-2063, was issued to Mr. Harris, permitting the drilling of a well for the irrigation of approximately 191 acres in Section 14, 15, 22, and 23, of Township 16 South, Range 32 E.B.M. The Harris well was drilled in April of 1967 in the Northwest Quarter of the Southwest Quarter of Section 14, Township 16 South, Range 32 E.B.M., Oneida County, Idaho. The well has a depth of approximately 210 feet and is cased with 18 inch steel casing to a depth of 180 feet.

An Order modifying the requirements for the completion of this permit was issued to Harris by the Department of Water Administration, dated December 3, 1968. The Order provided for compliance with Title 42, Chapter 2, of the Idaho Code, as amended

by the 39th legislature. Specific modifications included a requirement for publication of a notice of the issuance of the permit, a deletion of the need to submit proof of completion of works, and a requirement for submission of Proof of Application of Water to Beneficial Use on or before February 23, 1969. Pursuant to an appropriate application, this time period was extended to February 23, 1971, by the approval of the Department dated January 22, 1969.

Proof of Application of Beneficial Use was submitted by the applicant on February 22, 1971, and a subsequent application for amendment approved by the Department on March 26, 1971, resulted in certain changes in the place of the use of the water within the sections of land already mentioned. A "Notice of Existing Water Permit" was published by the Department in the Idaho Enterprise, Malad City, Idaho, on April 8, and April 15, 1971. The notice contained the following language:

> Any protests against the issuance of the license for the above referenced permit should be filed with the Idaho Department of Water Administration within ten (10) days of the last date of publication of this notice.

A written protest dated April 20, 1971, was filed with the Department by Mr. LeVell Neal. A number of dates for hearing were set and canceled or postponed. In April of 1974, the Curlew Irrigation Company filed a "Petition for Leave to Intervene" which was allowed by the Department on April 8, 1974.

The hearing on the protest was held on July 9, 1975, at the Oneida County Courthouse in Malad Idaho. The pertinent facts as we understand them from the testimony at the hearing and the records and exhibits before the Department, are summarized as follows:

The lands owned by the applicant, Mr. Harvey J. Harris, and the protestant, Mr. LeVell Neal, are located in the Curlew

Valley near Stone, Idaho. Harris owns property on the bench area to the east of Curlew or Deep Creek. Neal owns bottom land adjacent to the creek itself. The Curlew Irrigation Company is the owner of water rights which includes the decreed flow of all of the waters of Curlew or Deep Creek including tributaries thereto. The company also owns a delivery system including the usual canals, checks and headgates.

LeVell Neal claims that the operation of the Harris well has dried up his meadows. The property Neal refers to as his "meadows" is low or bottom land adjacent to Curlew Creek on the east side. Areas of this bottom land are marshy, with heavy cattail and sedge growth. Along the east side of the meadows there is a sharp rise up to the bench which is perhaps 20 to 30 feet high in elevation at this point. There is a canal upon and along the edge of this bench. Along the edge of this low land adjacent to the rise up to the bench land, there are various swampy areas, marked by cattail, sedge, and other wet land growth, where some water rises to the surface of the land. What little water flows away from these areas collects generally into a shallow depression along the east side of the meadows and eventually into a defined channel which meanders generally South and West until it empties into Curlew Creek.

Although the testimony was sketchy and unclear, Neal apparently acquired this "meadow land" in small parcels and at different times over a period of about 30 years. He identified approximately 7 separate pieces, starting at the northern most piece, respectively as the "Dewey Cottle Piece," the "Sterling Cottle Piece," the "Charles Cottle Piece," the "Leland Cottle Piece," the "Jesse Arbin Piece," the "Moroni Arbin Piece," and the "Hurd Piece." There are apparently marshy and swampy areas and some springs on most of these parcels of land. The depression or channel which carries water begins south of what

has been referred to as the "Cottle Land." At some point near where the channel empties into the Curlew Creek, there is evidence of an old wood check or headgate.

About 1970 or 1971, Neal installed either one or two culverts upstream from the old headgate. He apparently did this so he could check the water at the culvert and back the water up the channel, sometimes causing the channel to overflow onto the adjacent land, and primarily for the purpose of raising the water table in certain areas of the meadow. More recently, he has adopted the practice of placing additional temporary obstructions of hay and manure at other places in the channel to raise the water table in the meadow. Neal uses the meadows for pasture and also harvests some of the grass for "wild hay" or "meadow hay."

Neal believes the channel which carries the spring water through the meadows and empties into Curlew Creek, was originally man made and has been enlarged by erosion over the years. This was not established by any convincing evidence, but is pure speculation by Neal, or at best, based on hearsay. It is as likely that the channel is a completely natural channel. Or even if the channel has, at some time, been constructed or improved by one of Neal's predecessors, it was not shown whether some or all of the spring water previously found its way to Curlew Creek. Even if the channel was man made, or at least improved, it was not shown whether it was done so for drainage purposes, or for irrigation of the meadows.

Testimony of those formerly familiar with various portions of these meadows, based upon their recollection, was that 20 to 30 years ago, the meadows were more marshy or swampy than at present. During this period of time, certain other phenomena have occurred in Curlew valley which may have had an influence

on the marshy condition of the meadows. At least two substantial floods have occurred on Deep Creek or Curlew Creek, washing out debris, growth, and other obstructions and widening and deepening the channel. This, coupled with the advent and use of de-mossing chemicals, has increased the capacity or ability of the creek to carry away water. Also, approximately 44 wells have been drilled in the Curlew valley during this same time period. Studies made of the Curlew Valley indicate that the recharge to the ground water acquifer is not overly abundant. In fact, the Utah portion of Curlew valley has been designated by the State of Utah as a "critical ground water area."

LeVell Neal has been heard to complain in past years, prior to the drilling of the Harris well, that the "Holbrook wells" were drying up his meadows. He was apparently referring to a number of wells near the community of Holbrook, northeast of his land, which were drilled several years prior to the Harris well. Regardless, Neal is now convinced that the Harris well, drilled in 1967, is solely and independently responsible for drying up his "meadows."

The Harris well is located approximately 1800 feet directly east of the eastern edge of the Neal meadows up on the bench land. The well is used for the irrigation of approximately 191 acres of this land. The Curlew Irrigation Company claims ownership, by virtue of a decree, of all of the flow of Curlew or Deep Creek, including its tributaries.

In the spring of 1974, the Department of Water Resources installed a recording device in the Neal pasture at the eastern edge, a distance of about 1850 feet directly west of the Harris well. This procedure consisted of drilling a shallow hole and installing a device with a float attached to a recorder to

record fluctuations in the ground water level in this shallow hole. A chart was developed showing the daily fluctuations, and a record of the times the Harris pump was on during the same season, was also marked on the chart. On about three or four occasions, the recording device was disturbed and did not record for some period of time so that the chart contains some gaps on the ground water level in the shallow hole.

In addition to the examination made by the Department, the protestant hired Mr. Sherl Chapman to review this chart, and other available data and to express an opinion as to whether the pumping of the Harris well interfers with the water level in the Neal pasture. Harris hired Mr. Frank Haws, also for the purpose of reviewing the available data and expressing an opinion as to the interference issue as well as for the purpose of reviewing and commenting upon a written report prepared by Mr. Sherl Chapman.

While the chart or graph developed by the Department indicates an apparent visual correlation during the middle and later portions of the irrigation season between the pumping of the Harris well and ground water levels at the recorder, Mr. Haws points out that a statistical correlation does not exist because while the pump was operated at a constant rate, the fluctuations are not at all constant in magnitude. Of course, there is not even a visual correlation during the early part of the season and while Chapman suggests this may be attributable to precipitation, the record shows precipitation to have been lighter during this period than at later times during the irrigation season.

Both experts seem to agree that the small fluctuations which appear to have occurred during virtually every 24 hour period are diurnal fluctuations resulting from the decreased

amount of water used by the root systems of the nearby cattails, sedges, and other phreatophytes each evening when the amount of water required by these plants for the evapo-transpiration process lessens. The larger fluctuations, however, which occur over periods of several days, Haws suggests are more probably the effect of a combination of causes. Among these are: (1) at the times when Neal removed the hay, or manure dams and pulled the boards of checks from in front of the culverts allowing the water to flow down the channel to Curlew Creek and reduce the water level for harvesting purposes, in early July and in late August and early September, the ground water level near the recording device would of course, be reduced substantially. These levels would also come back up as the water was checked and backed up again after harvesting was completed; (2) this effect might be increased if, during the harvesting, areas of the phreatophytes, such as sedges and cattails were also cut down, because their water use would decrease, then increase as they grew back; (3) the presence of clouds, and temperature changes also have an effect on water use by the plants and hence the water level in the hole where the recorder was installed; (4) the physical characteristics of the installation of the recording device and the soil where it was located, made it particularly sensitive to atmospheric pressure changes. Such pressures can cause fluctuations of an even greater magnitude than shown on this particular chart or graph. Chapman admitted that he did not know and had made no attempt to determine what, if any, effect these may have had; and (5) the cumulative effect of the pumping of all of the 44 wells in the valley in a somewhat limited acquifer, would have some effect on the entire ground water table. It would be fair to assume that most of these wells

in this area are used on similar schedules and would be pumped heavily during dry periods and turned off during wet periods or for harvesting. Therefore, one would expect the ground water table to be lower during periods of heaviest use and to rise when use is reduced to some extent or ceased.

Perhaps the best evidence that the fluctuations shown by the recorder were caused by phenomena other than the pumping of the Harris well, are the calculations by Mr. Haws showing the area of influence of the Harris well to be less than 1100 feet in radius, substantially less than the 1800 plus feet from the Harris well to the Neal meadows.

We further submit that the facts do not establish that Mr. Neal has a water right because they do not show a diversion or application to beneficial use. Not only does the evidence fail to show that the Harris pump affects the water level in the Neal pasture, it affirmatively shows that the well does not have such an effect.

STATEMENT OF LAW

The Department stated in its letter to Mr. Harris, dated April 28, 1971, that the issues which may be considered at the hearing to resolve the protest are:

"1. Has the permitee diverted and beneficially used unappropriated public water?

2. Has the operation of the proposed water right under the permit caused injury to a prior existing water right?

3. Has the water been placed to beneficial use in accordance with the terms and conditions of the permit? "

With respect to numbers 1 and 3, we do not think these issues are raised by Neal's protest and there is no substantial dispute as to these items anyway. Neal's position is that the

operation of the Harris well under the permit, causes injury to his prior existing water right.

The preliminary question in this case is whether Neal has such a "prior existing water right." The records disclose that if Neal has such a right, it is not decreed, or evidenced by license or permit. If it exists then, it must be based upon a constitutional appropriation prior to the enactment of the mandatory permit system, a prescriptive or adverse use, or must exist by virtue of the ownership of private springs.

It is difficult to tell from the testimony and evidence presented, just what the claim is based on, but protestant's "Memorandum Brief" filed at the hearing, basically takes the position that the springs on the Neal property are private springs, not subject to appropriation by others, and therefore owned by Neal. The second position taken appears to be that in addition to the springs, Neal has acquired some right to the maintenance of a certain water table which he claimed existed in his pasture prior to the Harris well.

Taking these two positions separately, the first question is: are the springs on Neal's land tributary to Deep Creek or private springs only? It is clear that except for obstructions placed in the channel by Neal, the water which flows away from his springs would now flow into Deep Creek and would have for a substantial number of years.

When one asserts the existance of a water right, it is usually his burden to establish it, at least by a preponderance of the evidence. Village of Peck v. Denison, 92 I 747, 450 P 2d 310 (1969); Martiny v. Wells, 91 I 215, 419 P 2d, 470 (1966); Mountain Home Irrigation District v. Duffy, 79 I 435, 319 P 2d 965 (1958); Graham v. Leek, 65 I 279, 144 P 2d 475 (1944).

Neal claims that this channel is "hand dug, and enlarged through erosion through the years." No evidence, except Neals' "understanding" which is, or course, based on hearsay, was introducted to prove this contention. It is equally probable that the channel is entirely natural or that a natural channel, depression or swale was merely improved by hand. While considering the probabilities, we suggest that it is more probable that even if the channel was originally dug or improved by men, it was done for drainage purposes, not irrigation. The burden of proof in this instance is upon the protestant, as the one making the assertion, to show that the water flowing from the springs is not tributary to Deep Creek. Martiny v. Wells, supra. The protestant did not discharge this burden.

In the case we just cited, Martiny v. Wells, the court quoted and relied upon language from the Colorado Court in the case of Ogilvy Irrigating and Land Company v. Insinger, 19 Colo. App. 380, 75 P 598, at page 599 (1904). The following language is taken from 91 I 215 at page 218:

> It is probably safe to say that it is a matter of no moment whether water reaches a certain point by percolation through the soil, by a subterranean channel, or by an obvious surface channel. If by any of these natural methods it reaches the point, and is there appropriated in accordance with law, the appropriator has a priority in it which cannot be diversted by the wrongful diversion by another, nor can there by any substantial diminution. To hold otherwise, would be to concede to superior owners of and the right to all sources of supply that go to create a stream, regardless of the right of those who previously acquired the right to the use of the water from the stream below.

No evidence was introduced by Neal to show that even if the channel to Deep Creek was hand dug, the water from the springs could not previously have reached Deep Creek "by percolation through the soil, by subterranean channel, or by an obvious

surface channel."

One other question might be raised on this point. Assuming, without conceding,that the channel was man made, and that previously none of the water from the springs could escape in any manner to Deep Creek, and further assuming that the channel permitting the escape of the spring water was dug for drainage purposes and the water was not previously diverted and applied to irrigation, this drainage may constitute a dedication to a public use. It probably doesn't matter whether the waters escaped to Deep Creek, (clearly a natural watercourse), through a natural or man-made channel. To the extent that water from said springs enters or rather have historically entered, Deep Creek, they are tributary thereto. Professor Hutchins in his work entitled "Selected Problems in the Law of Water Rights in the West" states on page 266:

> Whether a landowner has the exclusive right to a spring on his land depends, in various jurisdictions, upon whether the flow from the spring remains on his land. If the spring waters have been dedicated to the public, prior to the acquisition of the private right of use, the only way in which the landowner can acquire an exclusive right of use is by appropriating the water, regardless whether it remains on his land. And if the spring water flows away from his land in a defined stream, which constitutes a watercourse, the law of watercourses is held to apply, which means that he has no exclusive right to use the spring solely by virtue of land ownership.

We have found no Idaho case which says that for a spring to be tributary to a natural watercourse, it must arrive there through a natural channel. If the waters from the spring flow into a natural watercourse, they are tributary thereto to the extent that they contribute to the waters of the natural stream.

The protestant has not shown that the springs rising on his property are not tributary to Deep Creek. In fact, the

evidence preponderates to the contrary. Neither has he shown a right to the use of the flow of these springs based upon a constitutional appropriation prior in time to the decreed rights of the intervenor to all the flow of Deep Creek (which includes tributaries), or a right based on prescriptive or adverse use. Insufficient evidence was introduced to show either a right based on the constitutional method of appropriation (see Head v. Merrick, 69 I 106, 203 P 2d 608 (1949) as an example of a case setting out the burden of proof required for establishing such a right), or a prescriptive or adverse use right (see Follett v. Taylor Bros. 77 I 416, 294 P 2d 1088 (1956), and Mountain Home Irrigation District v. Duffy, supra, for the proof required to establish this type of right). The evidence appears to show that Neal's diversions from this small channel by means of culverts and manure and hay dams have taken place subsequent to the amendment of Idaho Code, Section 42-201 in 1971, which purports to entirely eliminate further appropriation based on the constitutional method.

The second question is: has protestant shown a right to have the ground water level in his meadow maintained at a particular level? We wish to reemphasize that in our opinion, the evidence is insufficient to establish what, if any, reduction there has been in the water table in the meadow. Even assuming, again without conceding, that the water table has been lowered, the evidence certainly does not show that pumping of the Harris well is the sole cause or for that matter, even a contributing cause, much less the amount of any such contribution.

There are at least two legal reasons why protestant in this case, cannot have a right to have the ground water table

which he claims formerly existed under his meadows maintained at some particular height (whatever it may have been): (1) Protestant could have no appropriative right to the water table level because no diversion or application to beneficial use was shown, and (2) under Idaho Code, Section 42-226 and the case law construing it, he is entitled only to the maintenance of "reasonable pumping levels."

As we understand the state of the law in Idaho, it has been, and still is true, with respect to water for irrigation, that in order to have a valid appropriation under the "constitutional method," there must have been a diversion and application to beneficial use. Idaho constitution, Article 15, Section 2; Glenn Dale Ranches, Inc. v. Shaub, 94 I 585, 494 P 2d 1029 (1972). With respect to the natural water table under Neal's "meadows," the mere fact that it may have existed and that the grass in the meadow benefited from it does not amount to a diversion of the water from its natural source, or an application of that water. We doubt that the pasturing of the natural grass or the cutting thereof, constitutes a beneficial use of the water table under the pasture within the meaning of the constitutional provision requiring a beneficial use.

Under Idaho Code, Section 42-226, the legislature has determined that public policy in Idaho concerning ground water makes economic development a more important consideration than the maintenance of a ground water level of a prior appropriator. Even if Neal did have a prior right with respect to ground water, he is only entitled to the maintenance of a "reasonable ground water pumping level." The pertinent portion of Section 42-226 states:

> While the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of

> underground water resources, but early appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the Department of Water Resources as herein provided.

The case of Baker v. Ore-Ida Foods, Inc., 95 I 575, 513 P 2d 627 (1973) judicially reaffirms a legislatively declared policy. The court stated at page 584:

> A senior appropriator is only entitled to be protected to the extent of the "reasonable ground water pumping levels" as established by the IDWA. I.C. Section 42-226. A senior appropriator is not absolutely protected in either his historic water level or his historic means of diversion. Our Ground Water Act contemplates that in some situations senior appropriators may have to accept some modification of their rights in order to achieve the goal of full economic development ...
>
> In the enactment of the Ground Water Act, the Idaho legislature decided, as a matter of public policy, that it may sometimes be necessary to modify private property rights in ground water in order to promote full economic development of the resource. The legislature has said that when private property rights clash with the public interest regarding our limited ground water supplies, in some instances at least, the private interests must recognize the ultimate goal is the welfare of all our citizens ... We conclude that our legislature attempted to protect historic water rights while at the same time promoting full development of ground water. Priority rights in ground water are and will be protected insofar as they comply with reasonable pumping levels. Put otherwise, although a senior may have a prior right to ground water, if his means of appropriation demands an unreasonable pumping level his historic means of appropriation will not be protected.

We do not believe the protestant has shown that he has a right prior to the Harris well. But even if he did have such a right, we think the department has jurisdiction under 42-226 and Baker v. Ore-Ida Foods, Inc., supra, to determine a reasonable pumping level for Neal, as well as his neighbors. As Mr. Haws suggested in his report, it would be more economical and certainly more beneficial to Neal for him to lower the ground water table in his meadows by the use of a pump or pumps to overcome the marshy condition and use some of the water generated

for the appropriate irrigation of the land for the raising of more valuable crops or better pasture.

CONCLUSION

In conclusion, we maintain that (1) Neal has failed to establish the right to the use of the springs or to any particular ground water table underneath his meadows and is therefore not entitled to protection from interference by the Harris well; (2) the Harris well does not injure the flow of water from the Neal springs or the water table under the Neal pasture: and (3) under the Idaho Ground Water Statute, the director of the Department of Water Resources has jurisidiction to establish reasonable ground water pumping levels even though it may require a different means of appropriation for Neal.

Respectively submitted this 25 day of November, 1975.

Kent W. Foster

WILLIAM S. HOLDEN
R. VERN KIDWELL
FRED J. HAHN
TERRY L. CRAPO
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN C. MARTIN
CHARLES A. HOMER

LAW OFFICES
HOLDEN, 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)

RECEIVED
NOV 26 1975
Department of Water Resources
Eastern District Office

November 25, 1975

Mr. Ronald J. Carlson
District Engineer
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

DF

Re: Harvey J. Harris - Permit No. G-33477/17-2063

Dear Mr. Carlson:

We are enclosing with this letter, our Brief in the above entitled matter. It is our understanding that when the Department has received briefs from all the parties, the decision will be made.

Yours very truly,

Kent W. Foster

KWF:jt
Enclosure
cc: Herman J. McDevitt
James Manning
Harvey J. Harris

INTER-DEPARTMENT MEMO — 1

FROM Ron Carlson

DATE 11-28-75

TO Bob Fleenor

SUBJECT 17-2063 - Harvey J. Harris

Here is the brief that Kent Foster submitted in regards to Harvey J. Harris, 17-2063. In reading through the brief, he speaks at some length to the point that the water in Neal Meadow cannot be classified as private water. I think this is probably an additional finding of fact that should be addressed in the Memorandum Decision.

SIGNATURE

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of December, 1975, I mailed a copy of the within and foregoing Brief of Intervenor to Kent W. Foster, Holden, Holden, Kidwell, Hahn & Crapo, P.O. Box 129, Idaho Falls 83401, and Herman J. McDevitt, McDevitt, McDevitt & Meyers, P.O. Box 4747, Pocatello 83201, by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing addresses.

D. James Manning

RECEIVED
DEC 3 1975
Department of Water Resources
Eastern District Office

D. James Manning
RACINE, HUNTLEY & OLSON
Attorneys at Law
P.O. Box 1391 - Center Plaza
Pocatello, Idaho 83201
Telephone: 208 232-6101

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST LICENSING PERMIT NUMBER G-33477/17-2063 in the name of HARVEY J. HARRIS.

BRIEF OF INTERVENOR

STATEMENT OF FACTS

Hearing herein arises by reason of the protest of LeVell Neal to the well licensing permit sought by Harvey J. Harris.

Before the original scheduled hearing on this case, Curlew Irrigation Company sought leave of the Department to intervene for the reason that it had a direct and substantial interest in these proceedings in that it is one of the decreed water right holders of all the natural flow of Deep Creek and its tributaries in Oneida County, Idaho. The protestant claimed interference with a water right which would be in conflict with the prior decrees on this stream. The Department permitted such intervention, and hearing was held herein in July of this year.

As the Curlew Irrigation Company's purpose and intent in intervening in these proceedings was only to point out that the protestant in fact did not have a water right which could be the basis of an interference claim, it was unnecessary for Intervenor at the hearing, or in this brief, to get into the question of whether there actually was an interference. This issue is fully outlined in Applicant's brief, together with a thorough discussion of the question of whether protestant has a water right at all.

Intervenor at the hearing introduced into evidence decrees of Fifth District Court, Oneida County, dated December 15, 1914, and August 9, 1940. The first decree, at paragraph 1, provides as follows:

> That the said Plaintiff, Curlew Irrigation and Reservoir Company, is the owner of and entitled to the use of all the natural flow of said Curlew Creek (Deep Creek) . . .

The subsequent decree reaffirms the 1915 decree and also adjudicates certain issues relating to responsibilities of the water users for maintenance of the channel, delivery, etc.

Intervenor also offered at the hearing the testimony of Calvin Dredge, an officer of Curlew Irrigation Company, who testified that he was familiar with the course of Curlew Creek and the source of water for that stream. Mr. Dredge pointed out on the aerial photo (Intervenor's Exhibit "A") that the source of water for this stream is, in part, numerous springs which are tributaries to the stream, including those on Mr. Neal's property. Among the other evidence at hearing relative to the initial water right question is protestant's Exhibit 10, that being a study of water resources of western Oneida and southern Power Counties in Idaho prepared in part when protestant's witness, Sherrill Chapman, was in the employ of the Department of Water Resources. In that exhibit, at page 23, the authors note that the 1914 decree declared the natural flow of Deep Creek to be the property of Curlew Irrigation and Reservoir Company during the irrigation season. Also, the report, at page 54, notes that the existing and filed permits, licenses and court decrees encompass most, if not all, of the surface water available for appropriation. Further, at page 46, the authors note that water use by plants in the swampy areas along Deep Creek substantially reduced the actual outflow of the Curlew Valley. Hence, it would appear that these authors acknowledged that the swampy springs along Deep Creek are in fact the principal source of water for the

eventual outflow of Curlew Valley in Deep Creek and that these springs and swampy areas are thereby tributary to that stream. This technical evidence, then, supports the direct observation of witnesses Calvin Dredge and Harvey Harris that Neal's springs are tributary to Deep Creek.

At page 58 of the Water Resources Report, it is acknowledged surface water supplies in the Deep Creek area are already fully appropriated. Finally, relating to the issue of whether in fact these springs are tributary to Deep Creek, it is interesting to note the testimony about construction of dams by the protestant across the swales trending toward Deep Creek. Obviously, the purpose of such dams is to impede the flow of surface water down toward the creek.

DISCUSSION OF THE LAW

Particularly instructive here is the case of Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966). There, the principal issue was whether water from certain springs were tributary to Spring Creek. The Idaho Supreme Court disagreed with the trial court's finding that water collected by a ditch running from the springs to Spring Creek was not tributary to Spring Creek. The Supreme Court noted that the terrain involved sloped generally from the springs to the creek and that there were natural swales trending in that direction. The Court also noted that dykes or levees had been built across these swales to impound the flowing water and impede its progress toward the creek. The Supreme Court refused to adopt a limited construction of the term "tributary." The Court cited with approval an earlier Colorado case as follows (91 Idaho at 218):

> 'It is probably safe to say that it is a matter of no moment whether water reaches a certain point by percolation through the soil, by a subterranean channel, or by an obvious surface channel. If by any of these natural methods it reaches the point, and is there appropriated in accordance with law, the appropriator has a property in it which cannot be

> divested by the wrongful diversion by another, nor can there by any substantial diminution. To hold otherwise would be to concede to superior owners of land the right to all sources of supply that go to create a stream, regardless of the rights of those who previously acquired the right to the use of the water from the stream below.'

It has also been held in this state that a judgment determining rights and priorities to the use of the waters of a certain stream also controls rights and priorities to the tributary waters of that stream. Josslyn v. Daly, 15 Idaho 137, 96 Pac. 568 (1908) (headnote No. 5). In that case, the Court had before it the question of whether or not certain springs were tributary to a stream known as Seaman's Creek. Somewhat similar to our situation, the respondent there claimed that originally no waters from the springs ever reached the stream, but rather that waters from the springs simply spread out forming a marshy area around the springs and disappearing before reaching the channel of the stream. Respondent also contended that it was only by reason of his development work that water from the springs eventually reached Seaman's Creek. The Supreme Court noted the following however:

> In this connection, we think it well enough to call attention to the fact that if these springs are in the gulch or valley through which Seaman's Creek flows, and toward which their waters would naturally percolate and flow, then they must be in a sense and measure tributary to the stream . . .

In another case involving spring water tributary to a stream, the Idaho Supreme Court ruled that a water decree may validly decree "all" of the water from a certain source to certain appropriators, just as the Fifth District Court did in the 1914 decree here. Village of Peck v. Denison, 92 Idaho 747 at 751, 450 P.2d 310 (1969). There, incidentally, the Court also determined that springs located in a gully near Bear Creek were tributary to that stream since the waters from the springs formed a source of the stream particularly in wet weather.

The concept of appropriations of decrees relating to the main stream governing tributary sources of water was recently reaffirmed by the Idaho Supreme Court in the case of Shaub v. The District Court of the Fifth Judicial District, 22 ICR 515 at 516 and 517 (July 31, 1975). There, the Court quoted with approval from an earlier Idaho case:

> 'If persons can go upon the tributaries of streams whose waters have all been appropriated and applied to a useful and legitimate purpose, and can take and control the waters of such tributaries, then, indeed, the sources of supply of all appropriated natural streams may be entirely cut off, and turned away from the first and rightful appropriators. To allow this to be done would disturb substantial vested rights, and the law will not permit it. 2 Idaho at 415.' (22 ICR at 517)

In connection with the claim of water right of Mr. Neal here, there is also the threshold question of whether one could, prior to the statutory change, acquire a water right by the type of activity which Mr. Neal testified to, i.e., attempting to raise the general water table in an area by blocking natural drainage, as opposed to actual diversion in the usual sense. The case of Sherrill v. North Carolina State Highway Commission, 142 S.E.2d 653 (N.C., 1965), notes that ordinarily the "diversion" required to effect appropriation entails the actual removal of water from the water course in such a manner that it is not returned and available for use by lower appropriators. Thus, it would seem that the actions taken by the protestant to use the water are not sufficient to constitute a diversion and thereby an appropriation of the water under the constitutional method. Likewise, as developed by Mr. Haws in his report, it would appear dubious that the use made of the water by Mr. Neal, according to his own testimony, reaches the level of an application to beneficial use. The recent decision in Peck v. Sharrow, 22 ICR 97 (February 18, 1975), makes it clear that nothing less than clear and explicit evidence will permit a finding of application to a beneficial use. There, the Idaho Supreme Court affirmed

the action of the trial court in determining that the defendant-appellant's evidence was insufficient to establish a water right based on the constitutional method for the reason that the defendant-appellant's evidence failed to establish the amount of water beneficially used on their land.

As noted in Mr. Foster's brief on behalf of the Applicant, since the protestant does not claim a decreed right or a right based on the statutory method, he must rely on the constitutional method or a prescriptive right based on adverse use. It is clear in this jurisdiction that such use does not become adverse until such time as it interferes with use of the water by prior appropriators. Cite Head v. Merrick, 69 Idaho 106, 203 P.2d 608 (1949). Under the rule of the Head case, the burden of proof in this regard falls upon the party claiming the right by reason of adverse use. No evidence was offered at the hearing here to establish conclusively actual and adverse interference with the rights of other users of the water of Deep Creek.

In summary, then, Intervenor urges that the protestant, LaVell Neal, is not in a position to enter a valid protest to the well application for the reason that he does not have a water right which is being interfered with in the first place. It is submitted that the Department should conclude the matter and reach its decision on this basis, obviating the necessity of determining whether there is in fact an interference.

RESPECTFULLY SUBMITTED this 2 day of December, 1975.

RACINE, HUNTLEY & OLSON

By _____
D. James Manning
Attorneys for Intervenor

LAW OFFICES OF
RACINE, HUNTLEY & OLSON
CHARTERED
CENTER PLAZA - CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83201

LOUIS F. RACINE, JR.
ROBERT C. HUNTLEY, JR.
WILLIAM D. OLSON

D. JAMES MANNING
W. MARCUS W. NYE

TELEPHONE
AREA CODE 208
232-6101

RECEIVED
DEC 3 1975
Department of Water Resources
Eastern District Office

2 December 1975

Ronald J. Carlson
District Engineer
Department of Water Resources
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Harvey J. Harris
Permit No. G-33477/17-2063

Dear Mr. Carlson:

I enclose herewith Intervenor's Brief in the above matter. Copy of the same has been served this date on counsel for the other parties.

Yours very truly,

D. JAMES MANNING

DJM:sn
cc: Herman J. McDevitt
Kent W. Foster
Enc.

INTER-DEPARTMENT MEMO — 1

DATE 12-09-75

FROM Ron Carlson

TO Bob Fleenor

SUBJECT 17-2063 - Harvey J. Harris

Here is Manning's brief. I understand you have recieved McDevitt's. I would like to have a copy of McDevitt's brief if you would send me one. If you would like me to rewrite the decision in view of the other issues that have been addressed in the attorneys' briefs, send it back and I will work on it. Of course, if you find a rewrite unnecessary, want to do it yourself, or have talked Nate into doing it, I certainly won't feel insulted.

Ron

SIGNATURE

Herman J. McDevitt
McDEVITT, McDEVITT & MEYERS
ATTORNEYS-AT-LAW
SEVENTH AND LANDER
P. O. BOX 4747
POCATELLO, IDAHO 83201
TELEPHONE: (208) 233-4121

ATTORNEYS FOR: Protestant

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of Protest Against Licensing Permit No. G-33477/17-2063 in the Name of HARVEY J. HARRIS	BRIEF

On July 9, 1975, in the Courthouse at Malad, Idaho, the State Department of Water Resources held a public hearing on the protest of LeVell Neal to the licensing of the Harvey J. Harris water permit. The hearing officer declared that testimony that day would be centered around three issues:

1. Was there unappropriated water available?
2. Had there been injury to other appropriators?
3. Had official use of the water been made as per the permit?

Protestant LeVell Neal, at the time of the hearing, submitted a Memorandum of Law for the hearing officer's use. This Brief, with the exception of one further case, will be directed to a summarization of the relevant evidence produced that date, as well as a rebuttal to the report of Frank Hawes, witness for Harris.

The State Department of Water Resources should, in making a decision, refer to the case of Stevenson v. Steele, 93 Idaho 4, 453 P. 2d 819 (1969). This case is important in this decision in that the Idaho Supreme Court expressly recognized that the

watering of stock is a beneficial use and is entitled to the protection afforded by law. The Court in so holding based its decision on a prior 1894 water decree recognizing stock purposes as a beneficial use. The Court also set forth a basic philosophy for the Water Department to follow in recognizing and granting protection to prior appropriators.

Admitted into evidence at the Neal hearing was an August 6, 1896, decree of the District Court of Oneida County. In this Court decree, Deep Creek and Curlew Valley Irrigation Company, and Curlew Irrigation and Manufacturing Company were parties. This decree also determined other water users' rights to the waters of Deep Creek. The last page of said decree specifically points out that those persons engaged in the irrigation of meadows along the edge of the stream may hereafter, upon due and reasonable notice, apply to the Court for modification of this decree.

Such wording expressly admits that those meadows such as LeVell Neal's being irrigated were not included in the decree giving Curlew Irrigation and Reservoir Company and Platt Irrigation Company their rights. This 1896 decree recognizes the rights of meadow irrigators, such as LeVell Neal, to a water right to irrigate their meadows.

For further support of Neal's protest to the licensing of the Harvey Harris well, Harvey Harris was called as an adverse witness by Neal. On the stand, under oath, Harris admitted that his request was for 3.82 cubic feet per second of water. Thereafter, he admitted that the well, when pumped, produced more water than 3.82 cfs. He further admitted that no measuring device had been placed upon the well to assure that only 3.82 cfs would be pumped. Harris also admitted that in the past, contrary to the State of Idaho Department of Water Administration's field

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POST OFFICE BOX 4747
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report and his application, he had co-mingled the water pumped from the well with other water in a canal. He further admitted that he did not own part of the land upon which the water was used.

Clearly, the testimony of Harvey Harris alone shows that a use had not been made of the water as per the permit application and the permit granted. The licensing of the Harvey Harris well by the Department of Water Administration should be denied on this ground alone.

Thereafter, LeVell Neal, being called as a witness, testified to being 63 years old and intimately familiar with the land.

Neal testified that, before his lifetime, a ditch had been hand-dug along the eastern boundary of the land, following the base of the hill, to serve as a diversion and distribution channel and for excess drainage into Deep Creek. He testified that the water from the springs in question did not naturally flow to Deep Creek. Neal also testified to, and the photographs in evidence show, a ditch or dike referred to as the Pioneer Dike, also hand-dug, extending from the upper springs on the east to the west. This also did not reach Deep Creek and was used for diverting and spreading the water.

LeVell Neal testified that he and his predecessors diverted water from the ditches and dike by using hay, manure chips, and culverts from about March 1 on each year into fall. In this connection, he also specifically remembered the old head-gate diversion used at the south end of his property, as shown in some of the photographs.

Neal testified to a series of springs entirely on his land, each being less in size than five acres. In connection with the issue of injury being done to him, Neal had admitted into evidence a 1968 loan application showing his owning 300 tons of hay and 270 head of cattle. Neal testified that 300 tons of hay

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was his usual hay crop harvested each year, and that on this 105 acre meadow he only cut as much meadowland as needed to attain 300 tons and would leave the rest for winter pasturage of his cattle. He testified that his usual farming practice during his years of ranching was to move his cattle onto the property in September and again in January and move them off to summer pasture in March. Further testimony elicited showed that, until 1968, he would keep his calves and thereafter sell them as yearlings, but after 1968, because of the reduced hay crop due to a drier meadow, he was forced to sell his calves each fall.

LeVell Neal stressed that in 1973, while cutting as much of an area of this natural meadow as in prior years, he was able to harvest only about 50 tons of hay. He stated that the difference in hay crops was a direct result of the pumping of the Harvey Harris well and the subsequent drying up of the springs from which he had made diversions to water the hay.

Perhaps an even more detailed testimony of facts was elicited upon the cross-examination of LeVell Neal by counsel for Harris. There Neal testified to there being approximately 21 springs upon his meadow. Neal also testified that, after a well known as the Holbrook well to the north was drilled and commenced pumping, it dried up a big spring at the north end of his property. He stated that he was not counting this spring in the 21 springs he first testified to, however.

In further amplification of the various means of diversion of the spring water from the hand-dug ditches, Neal testified to using manure and dirt and other materials as a dike to spread the water across the meadow, and that at another place he had used a wooden headgate for more than 22 years, and before that there was a smaller headgate used at the same place by him and his predecessors. He also testified to there being a concrete

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culvert in the ditch from which water was diverted.

Neal explained that the direction of the spring water, after it had been diverted out of the hand-dug ditch, was to the southwest, and that the Neal springs' water did not naturally reach Deep Creek. Neal stated that no natural channels from the springs entered Deep Creek and that no water flowed subsurface to Deep Creek.

Neal testified that the act of turning on the Harvey Harris well produced an effect on the springs noticeable within a few hours at his place. It was his testimony that the springs would quickly diminish in flow and would dry up until several days after the pump was shut off, at which time the springs would again start flowing.

Mr. Lyle Arbon offered support to LeVell Neal's claim. Arbon in prior years had cropped hay on part of the properties now owned by Neal.

Arbon stated that Neal followed the same irrigation practices as practiced by his predecessors. Arbon remembered that there were no channels directly to Deep Creek from the springs. Arbon also testified that the spring water did not naturally reach Deep Creek. He further testified to the dikes placed in the ditch to divert and spread water over Neal's meadow for irrigation. Arbon also testified to the Pioneer Dike.

In further testimony to support the contention that LeVell Neal's water right was being infringed upon, Arbon stated that during the summer of 1974, he had driven upon the whole Neal meadow in a pickup. He testified that it was not possible to drive on the meadow in prior years with a pickup because of the general wetness of the land. Arbon explained that in prior years hay harvesting had to be done with horses due to the wetness of the meadow.

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Arbon particularly emphasized one instance in the summer of 1974 when he drove by the Harris pump, which at that time was not running, and thereafter went down and observed one of the springs upon the Neal property. He stated that while he was so observing the natural stillness of the spring, the water therein began "surging back and forth" and that he could also "hear it surging back and forth." He stated that thereafter he again, by way of the road, went to the Harris well, and found that it was then pumping.

Mr. Arbon further stated that in June of 1975, at the time of one of his visits, the meadow was wet, water was coming out of the springs, and the Harris well was not pumping water.

Mr. Blaine Hickman testified that it was on his well two miles to the south of LeVell Neal's property that the Idaho Department of Water Administration had conducted certain tests. Although no longer living in the area, Hickman testified to having made three trips back to LeVell Neal's place starting in May, 1973. Hickman testified to personally observing the Harris well pump not being turned on and thereafter observing the level of water fluctuating in LeVell's spring and, upon returning to the Harris well pump, finding it now operating. He stated that the water in the Neal springs lowered at the turning on of the Harris well.

Mr. George Neal, the next witness, testified to being a fully independent rancher from LeVell Neal. His familiarity with LeVell's meadows extends back more than 44 years. In connection with the Neal springs, he testified that they had never been dry in prior years. It was George Neal's testimony that the channels along the eastern end of the meadow had been cut to drain and divert water away from the springs and that diversions were placed in the channels by the use of chips of manure. He stated that the channel along the eastern end of the meadow was man-made

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and that the spring water did not naturally run to Deep Creek.

George Neal stated that the hay crop grown by LeVell had decreased significantly in 1974. He further stated that in prior years, the meadow was wet even after the hay was cut and removed from it.

In 1974, he stated, the meadow and springs were completely dry. However, he stated that during the 1974 summer irrigation season, several days after the Harris pump had been turned off and was no longer pumping water, the LeVell Neal springs were back and running water to their usual capacity. He stated that at this time there were no rains and it was the middle of summer.

Sherl Chapman was an expert witness called by Neal to establish injury to Neal's water right. Chapman, a graduate of Puget Sound University with a degree in Geology, had worked for the Idaho Department of Water Resources. In 1970, 1971, and 1972, Norman Young of the Department and Chapman had conducted an investigation into the Curlew Valley and nearby watersheds in Southeastern Idaho. Their observations and reports were adopted by the State of Idaho and published as Idaho Department of Water Administration Water Bulletin No. 25, March 1972. Thereafter he had been engaged as a private water consultant. Besides Chapman's prior research, which made him intimately familiar with Curlew Valley and its water resource characteristics, Chapman testified to his investigations on and visits to the LeVell Neal property.

Chapman prepared a report of his findings of the interrelation between the Harris well and the springs of LeVell Neal. He based his report upon the data from the Department of Water Resources, his visits to the property personally, information obtained from the U. S. Weather Service, and information obtained from the Soil Conservation Service.

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Chapman correlated the operational times of the Harris well, as supplied by Harris, to the level of water in one of LeVell's springs, as recorded by a Stevens type "F" water level recorder installed by the Department. He then checked out any anomalies.

Chapman testified in his expert opinion, and his report shows, the excellent correlation that is made between the pumping of the well and water level fluctuations of the spring, especially during the latter part of the summer. He does state that during the spring months correlation between the two is poor. He attributes this to the heavy precipitation occurring during that period. He also points out that several times during the spring months, the recorder was "out of commission," having been tampered with by unknown causes.

As one example of the excellent correlation found between operation of the Harris pump and the water level in the springs, Chapman testified that onJune 24, 1974, the well was shut off after ten days of running. That thereafter water levels in the springs recovered to their natural level. He stated that on June 28, 1974, the well pump was turned on again and that water levels in the springs again dropped. He testified that the well was turned off on June 29, after one and one-half days of pumping, and he personally observed the recovery in the springs.

As Figure 1 in his report shows, the record during the latter portion of the summer shows an almost immediate response of the recorder to initiation or cessation of pumping of the Harris well. Water level declines of more than 0.78 feet are shown by the recorder. Chapman does not have any idea as to the amount of water decline that finally occurred, as the shallow well in which the recorder was positioned went dry at that point.

It is Chapman's opinion, knowing the type of recorder

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and the recorder's location--somewhat on a hillside away from vegetation--that the small fluctuations shown by the recorder graph are probably due to changes in atmospheric pressure. He states that such small effects are common and would probably include most water level changes of 0.04 feet or less.

Chapman states that the snowpack recorded by the Soil Conservation Service and published in April, 1974, shows that runoff to Curlew Valley indicated an average of 103-108% of average water content. It is his opinion that this runoff would affect water levels beneath the valley floor early in the spring because of the coarse nature of the sediments involved and the shallow water table. Chapman states that this may be the reason for the poor correlation between pumping and water level decline in May and early June.

With snowpack being higher than usual, it could not cause a significant decline in the spring water. Chapman testified that the source of the spring waters is not Deep Creek, but rather the eastern side of the valley, and that any widening or deepening of the creek channel would have no effect upon the springs.

Chapman testified that the gound in question produced the effect of an open formation with less cone. It was his opinion that the cone extended to the springs, and he cited as an example the fact that in the Hickman well test to the south, a drawdown was observed in the Carl Steed well 35.0 feet away of one foot in 24 hours.

It was this acknowledged expert's opinion that there was a direct interference with the Neal springs by the operation of the Harvey Harris well.

To further illustrate the problems caused by the Harris well, a botanist was also called by Neal as a witness. Dr. Karl

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E. Holte, an Associate Professor of Botany at Idaho State University, Pocatello, Idaho, testified in the matter. Preliminarily, he indicated that he had received his Ph.D. in Botany at the University of Iowa in 1965, having done his research and dissertation on alkaline fens or marshes in Northwest Iowa, an area similar to Curlew Valley. Since that time, he indicated, he has been a consultant on a number of plant studies, including a plant production study in 1971 and 1972 in Curlew Valley in connection with the International Biological Project.

To illustrate his visits to the LeVell Neal property, Dr. Holte showed plant collections and slides from the area. Dr. Holte showed various invading plants coming into the meadow ground because of a recent general drying of the meadow.

Among the plants displayed was a saline plaintain, a broadleaf weed, collected on Neal's meadowground. As Dr. Holte explained, the saline plaintain cannot exist in wet marshes, and it was his opinion that it had moved in only during the last few years.

Dr. Holte also showed pictures taken in 1974 of pocket gopher mounds in Neal's meadow. Holte explained that these are not common to a marsh, yet marsh plants were growing around the pocket gopher mounds, indicating that at some time in the immediate past the area was marshy. His testimony indicated and the pictures show that there were no pocket gopher mounds from prior years in existence, again illustrating a drying of the meadow caused by the pumping of the Harris well.

To further buttress the testimony of prior witnesses as to the wetness of the marsh, Holte showed other grasses which cannot live in a saturated soil, nor in a completely dry area, moving toward the center of the meadow. Baltic rush and big-spiked rush were moving into the area. Dr. Holte explained that

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it would take a period of four to five dry years for this vegetation to move in. Saltgrass, which exists in a dry soil zone, was now on the borders of the meadow and just starting to move into the meadow itself. Watercress had been in the springs, but was there no more. Watercress appears only in permanently flowing springs, and the intermittency of the flow of the springs had killed it.

Holte showed greasewood found in the center of the meadow on a slight knoll. The three individual shrubs there were examined to determine their ages. Holte testified that the first plant, from its growth rings, had to be only two to three years old. The second plant was five years old, and the third plant was six years old. Holte stated that the meadow had to have had a lowered water table or drying only within the last six years, as greasewood just appears in the zone between sagebrush and marsh.

The kinds, numbers, and size of the respective plants and vegetation were conclusive proof to him, an expert botanist, that the meadow had experienced a loss of water and subsequent drying only during the last few years. Such a time sequence correlates with the pumping of the Harris well.

The Department should also examine the photographs admitted into evidence, supplementing and further showing a sparse haycrop, dry springs, hand-dug ditches, and diversions.

Contrary to the report of Chapman and to his own expert's hypotheses, Harvey Harris would attribute the drop in the LeVell Neal springs to a cleaning of the creek and floods having but the channel deeper. Harris would also hypothesize that a drying trend of at least thirty years' length in the Valley has caused the levels in the LeVell Neal springs to drop. This is contrary to all accepted records for this area, and is further demonstrated by the relatively constant level of Great Salt Lake. Harris did

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not explain why the interactions between his pump operation and the recorder were so well correlated.

Harris also called Joe Steed of Curlew Valley to buttress his position. Joe Steed owned 25 acres of Neal's meadow from 1959 to 1964. Steed had cropped hay off those acres during that time and could not remember any obstructions being placed in the water channel along the eastern edge of the meadow during that time. However, to get to his meadow, he would have had to cross the culvert in the eastern channel. On cross-examination, Steed admitted that the reputation in Curlew Valley of the relationship between him and LeVell Neal was that they were personal enemies. Testimony from Steed showed that he had rarely been on the land involved.

Harvey Harris has also submitted a report of Frank W. Haws of Frank Haws & Associates, Logan, Utah, for consideration. Regrettably, Mr. Haws does not give us any of his background, schooling, experience, or other information upon which he feels he is qualified to render an opinion as to the interference of Neal's irrigation by the Harris well operation. We do not dispute Mr. Haws' qualifications, as no opportunity to cross-examine him was ever available. Haws does not state the dates of his examination of the meadowland of Neal, the extent of his measurements, or if he was even on the property. Haws himself states that he made only a brief, cursory investigation, and that that investigation was after the hearing held July 9, 1975.

The pictures admitted into evidence and the testimony of Dr. Holte provide a much more detailed and credible testimony of the plants growing on the LeVell Neal meadow than Haws' comments. As Holte testified, there is much more to Neal's meadow than simply "sedges and cattails." Haws insinuates that sedges and cattails are worthless. Sedges, however, provide the major

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ingredient of meadow hay. The pictures show that there are cattails only around the springs themselves. Failure of Haws to note such ordinary things would lead one to wonder if he examined the right meadow. Haws does not mention anything about the beaked spikerush, tanglefoot grass, Nebraska sedge, or meadow barley, among others, testified to by Dr. Holte. He does not acknowledge or refute or even note that there are now moving into the area desert saltgrass, saline plaintain, and greasewood, all of which are poor cattle feed. Haws does admit that diversions exist.

Contrary to Haws' assertion that Neal has lost only cattails, a very real injury has been shown by Neal in terms of loss of hay and pasturage. A much greater idea as to the actual injury sustained by Neal would have been shown by the testimony of Merle Meyers, appraiser and real estate broker. However, Mr. Meyers' testimony was objected to and disallowed, as it was based on a monetary value. Such comments by Haws must therefore also be disallowed.

Mr. Haws, in connection with his supposition that wells on either side of Deep Creek could have an effect on the water table under the meadow if within a close enough proximity, fails to point out what other irrigation wells are close enough to have such an effect. He further fails to show how irrigation wells within a radius of 24 miles of the Neal springs could show such an immediate effect on the springs of LeVell Neal as does the pumping of the Harris well.

Haws contends that the most plausible explanation for the water level changes recorded is atmospheric pressure. It is his opinion that the recorder was set in a rather impermeable topsoil. However, as other data on this area show, the topsoil is a sandy, rather permeable soil. Further, Haws has made no effort to determine the kind of recorder used, nor any of its

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physical features. Haws has presented no evidence that a Stevens type "F" recording device will record changes of the magnitude shown here by reason of atmospheric pressure changes. On the other hand, Chapman, who has had extensive experience with this type of recorder, feels that changes of less than 0.04 feet are due to the changes in atmospheric pressure.

It would seem that one who is infinitely more familiar with the recording device, its physical features, and has observed the recorder actually in place--such as Chapman--would have a better knowledge and opinion of the effects of barometric pressure and of vegetation root absorption systems than one making only a "cursory examination" of the property after the recorder has been removed--such as Haws. Indeed, even Haws feels that his own explanation is merely supposition and cannot be proven by him.

Interestingly, Haws would, by theoretical formulae, show that the expected drawdown from the Harris well to the Neal meadow would be unmeasurable. However, in making such a calculation, Haws has not documented the pumping rate nor the drawdown. Haws further has made the assumption that the acquifer is unconfined, contrary to other authority. Thus, his expected drawdown is merely supposition, as even he states. In fact, it flies directly in the face of measured drawdown as testified to by Chapman. In this case, we are talking about a distance of 1850 feet from the well. Two miles farther south on the Hickman test, a specific drawdown was measured in the well of Carl Steed 3510 feet away from the Hickman well of one foot after 24 hours of pumping. Thus, Haws' admitted supposition, i.e., speculation, cannot stand.

In short, Haws signed an expert witness water report, a collection of his own legal opinions, vegetation analysis, theoretical formulae, and suppositions, and then has the

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brazenness to state that the matter needs further study.

SUMMARY

LeVell Neal has shown, through his own testimony and that of many other witnesses, that, not only has he acquired a water right to sufficient water to irrigate his meadow, but also that his water right has been infringed upon and he has suffered injury thereby.

LeVell Neal has shown an intent to appropriate, a diversion, and application to beneficial use of the spring waters of the meadow. Such a water right to irrigate the meadow has been recognized as far back as 1896 by Court decree.

LeVell Neal has shown injury by the operation of the Harvey Harris well. He has shown a coincidence of time between a drying of the springs and the pumping operation of the Harris well. He has shown that the geology of the area is such that it is more probable that the well operation is the cause of the springs' drying. LeVell Neal has shown that a drying of the meadows involved has come about only in the last several years after Harris began operation of his well, through the kinds of vegetation found in the area. He has shown by witnesses and expert opinion that a direct connection exists between the pumping of the Harvey Harris well and the drying of the springwaters.

Further, LeVell Neal has shown that Harvey Harris has been pumping more water than his permit allows, and he has co-mingled water pumped contrary to his own application. Neal has further shown that Harris does not own part of the land upon which the water is used. The licensing of the Harvey Harris well should be denied on the grounds of failure to follow the permit application alone.

Harvey Harris has not produced any credible evidence to support his hypotheses that the hand-dug channel was for drainage

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rather than distribution, that the springs are natural tributaries of Deep Creek, or that interruptions of the springs have been caused by any other than his own acts. Harris has not produced any testimony that states that the spring water would ever reach Deep Creek unless it came after flowing through the eastern ditch or from the Pioneer Dike.

The licensing of the Harvey J. Harris well should be denied, therefore, because of injury to prior appropriators, and because official use of the water has not been made as per the permit application.

RESPECTFULLY SUBMITTED this 4th day of December, 1975.

McDEVITT, McDEVITT & MEYERS
Attorneys for Protestant LeVell Neal

By: [signature]

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ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

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DEC 5 1975
Department of Water Resources
Eastern District Office

December 4, 1975

Mr. Ronald D. Carlson
District Engineer
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Dear Mr. Carlson:

Re: Protest to Permit No. G-33477/17-2063,
Harvey J. Harris

Enclosed herewith is our Brief in the above entitled matter.

We await the Department's decision.

Sincerely,

M. Jay Meyers

M. Jay Meyers

MJM:alh

Enclosure

cc: Kent W. Foster
D. James Manning
LeVell Neal
Sherl Chapman
Bobby D. Fleenor

RECEIVED
DEC 9 1975
Department of Water Resources
Eastern District Office

Herman J. McDevitt
McDEVITT, McDEVITT & MEYERS
ATTORNEYS-AT-LAW
SEVENTH AND LANDER
P. O. BOX 4747
POCATELLO, IDAHO 83201
TELEPHONE: (208) 233-4121

ATTORNEYS FOR: Protestant

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of Protest Against)
Licensing Permit No. G-33477/17-2063)
in the Name of HARVEY J. HARRIS) BRIEF
)
)

On July 9, 1975, in the Courthouse at Malad, Idaho, the State Department of Water Resources held a public hearing on the protest of LeVell Neal to the licensing of the Harvey J. Harris water permit. The hearing officer declared that testimony that day would be centered around three issues:

1. Was there unappropriated water available?
2. Had there been injury to other appropriators?
3. Had official use of the water been made as per the permit?

Protestant LeVell Neal, at the time of the hearing, submitted a Memorandum of Law for the hearing officer's use. This Brief, with the exception of one further case, will be directed to a summarization of the relevant evidence produced that date, as well as a rebuttal to the report of Frank Hawes, witness for Harris.

The State Department of Water Resources should, in making a decision, refer to the case of Stevenson v. Steele, 93 Idaho 4, 453 P. 2d 819 (1969). This case is important in this decision in that the Idaho Supreme Court expressly recognized that the

watering of stock is a beneficial use and is entitled to the protection afforded by law. The Court in so holding based its decision on a prior 1894 water decree recognizing stock purposes as a beneficial use. The Court also set forth a basic philosophy for the Water Department to follow in recognizing and granting protection to prior appropriators.

Admitted into evidence at the Neal hearing was an August 6, 1896, decree of the District Court of Oneida County. In this Court decree, Deep Creek and Curlew Valley Irrigation Company, and Curlew Irrigation and Manufacturing Company were parties. This decree also determined other water users' rights to the waters of Deep Creek. The last page of said decree specifically points out that those persons engaged in the irrigation of meadows along the edge of the stream may hereafter, upon due and reasonable notice, apply to the Court for modification of this decree.

Such wording expressly admits that those meadows such as LeVell Neal's being irrigated were not included in the decree giving Curlew Irrigation and Reservoir Company and Platt Irrigation Company their rights. This 1896 decree recognizes the rights of meadow irrigators, such as LeVell Neal, to a water right to irrigate their meadows.

For further support of Neal's protest to the licensing of the Harvey Harris well, Harvey Harris was called as an adverse witness by Neal. On the stand, under oath, Harris admitted that his request was for 3.82 cubic feet per second of water. Thereafter, he admitted that the well, when pumped, produced more water than 3.82 cfs. He further admitted that no measuring device had been placed upon the well to assure that only 3.82 cfs would be pumped. Harris also admitted that in the past, contrary to the State of Idaho Department of Water Administration's field

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report and his application, he had co-mingled the water pumped from the well with other water in a canal. He further admitted that he did not own part of the land upon which the water was used.

Clearly, the testimony of Harvey Harris alone shows that a use had not been made of the water as per the permit application and the permit granted. The licensing of the Harvey Harris well by the Department of Water Administration should be denied on this ground alone.

Thereafter, LeVell Neal, being called as a witness, testified to being 63 years old and intimately familiar with the land.

Neal testified that, before his lifetime, a ditch had been hand-dug along the eastern boundary of the land, following the base of the hill, to serve as a diversion and distribution channel and for excess drainage into Deep Creek. He testified that the water from the springs in question did not naturally flow to Deep Creek. Neal also testified to, and the photographs in evidence show, a ditch or dike referred to as the Pioneer Dike, also hand-dug, extending from the upper springs on the east to the west. This also did not reach Deep Creek and was used for diverting and spreading the water.

LeVell Neal testified that he and his predecessors diverted water from the ditches and dike by using hay, manure chips, and culverts from about March 1 on each year into fall. In this connection, he also specifically remembered the old head-gate diversion used at the south end of his property, as shown in some of the photographs.

Neal testified to a series of springs entirely on his land, each being less in size than five acres. In connection with the issue of injury being done to him, Neal had admitted into evidence a 1968 loan application showing his owning 300 tons of hay and 270 head of cattle. Neal testified that 300 tons of hay

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was his usual hay crop harvested each year, and that on this 105 acre meadow he only cut as much meadowland as needed to attain 300 tons and would leave the rest for winter pasturage of his cattle. He testified that his usual farming practice during his years of ranching was to move his cattle onto the property in September and again in January and move them off to summer pasture in March. Further testimony elicited showed that, until 1968, he would keep his calves and thereafter sell them as yearlings, but after 1968, because of the reduced hay crop due to a drier meadow, he was forced to sell his calves each fall.

LeVell Neal stressed that in 1973, while cutting as much of an area of this natural meadow as in prior years, he was able to harvest only about 50 tons of hay. He stated that the difference in hay crops was a direct result of the pumping of the Harvey Harris well and the subsequent drying up of the springs from which he had made diversions to water the hay.

Perhaps an even more detailed testimony of facts was elicited upon the cross-examination of LeVell Neal by counsel for Harris. There Neal testified to there being approximately 21 springs upon his meadow. Neal also testified that, after a well known as the Holbrook well to the north was drilled and commenced pumping, it dried up a big spring at the north end of his property. He stated that he was not counting this spring in the 21 springs he first testified to, however.

In further amplification of the various means of diversion of the spring water from the hand-dug ditches, Neal testified to using manure and dirt and other materials as a dike to spread the water across the meadow, and that at another place he had used a wooden headgate for more than 22 years, and before that there was a smaller headgate used at the same place by him and his predecessors. He also testified to there being a concrete

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culvert in the ditch from which water was diverted.

Neal explained that the direction of the spring water, after it had been diverted out of the hand-dug ditch, was to the southwest, and that the Neal springs' water did not naturally reach Deep Creek. Neal stated that no natural channels from the springs entered Deep Creek and that no water flowed subsurface to Deep Creek.

Neal testified that the act of turning on the Harvey Harris well produced an effect on the springs noticeable within a few hours at his place. It was his testimony that the springs would quickly diminish in flow and would dry up until several days after the pump was shut off, at which time the springs would again start flowing.

Mr. Lyle Arbon offered support to LeVell Neal's claim. Arbon in prior years had cropped hay on part of the properties now owned by Neal.

Arbon stated that Neal followed the same irrigation practices as practiced by his predecessors. Arbon remembered that there were no channels directly to Deep Creek from the springs. Arbon also testified that the spring water did not naturally reach Deep Creek. He further testified to the dikes placed in the ditch to divert and spread water over Neal's meadow for irrigation. Arbon also testified to the Pioneer Dike.

In further testimony to support the contention that LeVell Neal's water right was being infringed upon, Arbon stated that during the summer of 1974, he had driven upon the whole Neal meadow in a pickup. He testified that it was not possible to drive on the meadow in prior years with a pickup because of the general wetness of the land. Arbon explained that in prior years hay harvesting had to be done with horses due to the wetness of the meadow.

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Arbon particularly emphasized one instance in the summer of 1974 when he drove by the Harris pump, which at that time was not running, and thereafter went down and observed one of the springs upon the Neal property. He stated that while he was so observing the natural stillness of the spring, the water therein began "surging back and forth" and that he could also "hear it surging back and forth." He stated that thereafter he again, by way of the road, went to the Harris well, and found that it was then pumping.

Mr. Arbon further stated that in June of 1975, at the time of one of his visits, the meadow was wet, water was coming out of the springs, and the Harris well was not pumping water.

Mr. Blaine Hickman testified that it was on his well two miles to the south of LeVell Neal's property that the Idaho Department of Water Administration had conducted certain tests. Although no longer living in the area, Hickman testified to having made three trips back to LeVell Neal's place starting in May, 1973. Hickman testified to personally observing the Harris well pump not being turned on and thereafter observing the level of water fluctuating in LeVell's spring and, upon returning to the Harris well pump, finding it now operating. He stated that the water in the Neal springs lowered at the turning on of the Harris well.

Mr. George Neal, the next witness, testified to being a fully independent rancher from LeVell Neal. His familiarity with LeVell's meadows extends back more than 44 years. In connection with the Neal springs, he testified that they had never been dry in prior years. It was George Neal's testimony that the channels along the eastern end of the meadow had been cut to drain and divert water away from the springs and that diversions were placed in the channels by the use of chips of manure. He stated that the channel along the eastern end of the meadow was man-made

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and that the spring water did not naturally run to Deep Creek.

George Neal stated that the hay crop grown by LeVell had decreased significantly in 1974. He further stated that in prior years, the meadow was wet even after the hay was cut and removed from it.

In 1974, he stated, the meadow and springs were completely dry. However, he stated that during the 1974 summer irrigation season, several days after the Harris pump had been turned off and was no longer pumping water, the LeVell Neal springs were back and running water to their usual capacity. He stated that at this time there were no rains and it was the middle of summer.

Sherl Chapman was an expert witness called by Neal to establish injury to Neal's water right. Chapman, a graduate of Puget Sound University with a degree in Geology, had worked for the Idaho Department of Water Resources. In 1970, 1971, and 1972, Norman Young of the Department and Chapman had conducted an investigation into the Curlew Valley and nearby watersheds in Southeastern Idaho. Their observations and reports were adopted by the State of Idaho and published as Idaho Department of Water Administration Water Bulletin No. 25, March 1972. Thereafter he had been engaged as a private water consultant. Besides Chapman's prior research, which made him intimately familiar with Curlew Valley and its water resource characteristics, Chapman testified to his investigations on and visits to the LeVell Neal property.

Chapman prepared a report of his findings of the interrelation between the Harris well and the springs of LeVell Neal. He based his report upon the data from the Department of Water Resources, his visits to the property personally, information obtained from the U. S. Weather Service, and information obtained from the Soil Conservation Service.

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Chapman correlated the operational times of the Harris well, as supplied by Harris, to the level of water in one of LeVell's springs, as recorded by a Stevens type "F" water level recorder installed by the Department. He then checked out any anomalies.

Chapman testified in his expert opinion, and his report shows, the excellent correlation that is made between the pumping of the well and water level fluctuations of the spring, especially during the latter part of the summer. He does state that during the spring months correlation between the two is poor. He attributes this to the heavy precipitation occurring during that period. He also points out that several times during the spring months, the recorder was "out of commission," having been tampered with by unknown causes.

As one example of the excellent correlation found between operation of the Harris pump and the water level in the springs, Chapman testified that onJune 24, 1974, the well was shut off after ten days of running. That thereafter water levels in the springs recovered to their natural level. He stated that on June 28, 1974, the well pump was turned on again and that water levels in the springs again dropped. He testified that the well was turned off on June 29, after one and one-half days of pumping, and he personally observed the recovery in the springs.

As Figure 1 in his report shows, the record during the latter portion of the summer shows an almost immediate response of the recorder to initiation or cessation of pumping of the Harris well. Water level declines of more than 0.78 feet are shown by the recorder. Chapman does not have any idea as to the amount of water decline that finally occurred, as the shallow well in which the recorder was positioned went dry at that point.

It is Chapman's opinion, knowing the type of recorder

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and the recorder's location--somewhat on a hillside away from vegetation--that the small fluctuations shown by the recorder graph are probably due to changes in atmospheric pressure. He states that such small effects are common and would probably include most water level changes of 0.04 feet or less.

Chapman states that the snowpack recorded by the Soil Conservation Service and published in April, 1974, shows that runoff to Curlew Valley indicated an average of 103-108% of average water content. It is his opinion that this runoff would affect water levels beneath the valley floor early in the spring because of the coarse nature of the sediments involved and the shallow water table. Chapman states that this may be the reason for the poor correlation between pumping and water level decline in May and early June.

With snowpack being higher than usual, it could not cause a significant decline in the spring water. Chapman testified that the source of the spring waters is not Deep Creek, but rather the eastern side of the valley, and that any widening or deepening of the creek channel would have no effect upon the springs.

Chapman testified that the gound in question produced the effect of an open formation with less cone. It was his opinion that the cone extended to the springs, and he cited as an example the fact that in the Hickman well test to the south, a drawdown was observed in the Carl Steed well 3510 feet away of one foot in 24 hours.

It was this acknowledged expert's opinion that there was a direct interference with the Neal springs by the operation of the Harvey Harris well.

To further illustrate the problems caused by the Harris well, a botanist was also called by Neal as a witness. Dr. Karl

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E. Holte, an Associate Professor of Botany at Idaho State University, Pocatello, Idaho, testified in the matter. Preliminarily, he indicated that he had received his Ph.D. in Botany at the University of Iowa in 1965, having done his research and dissertation on alkaline fens or marshes in Northwest Iowa, an area similar to Curlew Valley. Since that time, he indicated, he has been a consultant on a number of plant studies, including a plant production study in 1971 and 1972 in Curlew Valley in connection with the International Biological Project.

To illustrate his visits to the LeVell Neal property, Dr. Holte showed plant collections and slides from the area. Dr. Holte showed various invading plants coming into the meadow ground because of a recent general drying of the meadow.

Among the plants displayed was a saline plaintain, a broadleaf weed, collected on Neal's meadowground. As Dr. Holte explained, the saline plaintain cannot exist in wet marshes, and it was his opinion that it had moved in only during the last few years.

Dr. Holte also showed pictures taken in 1974 of pocket gopher mounds in Neal's meadow. Holte explained that these are not common to a marsh, yet marsh plants were growing around the pocket gopher mounds, indicating that at some time in the immediate past the area was marshy. His testimony indicated and the pictures show that there were no pocket gopher mounds from prior years in existence, again illustrating a drying of the meadow caused by the pumping of the Harris well.

To further buttress the testimony of prior witnesses as to the wetness of the marsh, Holte showed other grasses which cannot live in a saturated soil, nor in a completely dry area, moving toward the center of the meadow. Baltic rush and big-spiked rush were moving into the area. Dr. Holte explained that

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it would take a period of four to five dry years for this vegetation to move in. Saltgrass, which exists in a dry soil zone, was now on the borders of the meadow and just starting to move into the meadow itself. Watercress had been in the springs, but was there no more. Watercress appears only in permanently flowing springs, and the intermittency of the flow of the springs had killed it.

Holte showed greasewood found in the center of the meadow on a slight knoll. The three individual shrubs there were examined to determine their ages. Holte testified that the first plant, from its growth rings, had to be only two to three years old. The second plant was five years old, and the third plant was six years old. Holte stated that the meadow had to have had a lowered water table or drying only within the last six years, as greasewood just appears in the zone between sagebrush and marsh.

The kinds, numbers, and size of the respective plants and vegetation were conclusive proof to him, an expert botanist, that the meadow had experienced a loss of water and subsequent drying only during the last few years. Such a time sequence correlates with the pumping of the Harris well.

The Department should also examine the photographs admitted into evidence, supplementing and further showing a sparse haycrop, dry springs, hand-dug ditches, and diversions.

Contrary to the report of Chapman and to his own expert's hypotheses, Harvey Harris would attribute the drop in the LeVell Neal springs to a cleaning of the creek and floods having but the channel deeper. Harris would also hypothesize that a drying trend of at least thirty years' length in the Valley has caused the levels in the LeVell Neal springs to drop. This is contrary to all accepted records for this area, and is further demonstrated by the relatively constant level of Great Salt Lake. Harris did

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not explain why the interactions between his pump operation and the recorder were so well correlated.

Harris also called Joe Steed of Curlew Valley to buttress his position. Joe Steed owned 25 acres of Neal's meadow from 1959 to 1964. Steed had cropped hay off those acres during that time and could not remember any obstructions being placed in the water channel along the eastern edge of the meadow during that time. However, to get to his meadow, he would have had to cross the culvert in the eastern channel. On cross-examination, Steed admitted that the reputation in Curlew Valley of the relationship between him and LeVell Neal was that they were personal enemies. Testimony from Steed showed that he had rarely been on the land involved.

Harvey Harris has also submitted a report of Frank W. Haws of Frank Haws & Associates, Logan, Utah, for consideration. Regrettably, Mr. Haws does not give us any of his background, schooling, experience, or other information upon which he feels he is qualified to render an opinion as to the interference of Neal's irrigation by the Harris well operation. We do not dispute Mr. Haws' qualifications, as no opportunity to cross-examine him was ever available. Haws does not state the dates of his examination of the meadowland of Neal, the extent of his measurements, or if he was even on the property. Haws himself states that he made only a brief, cursory investigation, and that that investigation was after the hearing held July 9, 1975.

The pictures admitted into evidence and the testimony of Dr. Holte provide a much more detailed and credible testimony of the plants growing on the LeVell Neal meadow than Haws' comments. As Holte testified, there is much more to Neal's meadow than simply "sedges and cattails." Haws insinuates that sedges and cattails are worthless. Sedges, however, provide the major

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ingredient of meadow hay. The pictures show that there are cattails only around the springs themselves. Failure of Haws to note such ordinary things would lead one to wonder if he examined the right meadow. Haws does not mention anything about the beaked spikerush, tanglefoot grass, Nebraska sedge, or meadow barley, among others, testified to by Dr. Holte. He does not acknowledge or refute or even note that there are now moving into the area desert saltgrass, saline plaintain, and greasewood, all of which are poor cattle feed. Haws does admit that diversions exist.

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Haws contends that the most plausible explanation for the water level changes recorded is atmospheric pressure. It is his opinion that the recorder was set in a rather impermeable topsoil. However, as other data on this area show, the topsoil is a sandy, rather permeable soil. Further, Haws has made no effort to determine the kind of recorder used, nor any of its

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LeVell Neal has shown, through his own testimony and that of many other witnesses, that, not only has he acquired a water right to sufficient water to irrigate his meadow, but also that his water right has been infringed upon and he has suffered injury thereby.

LeVell Neal has shown an intent to appropriate, a diversion, and application to beneficial use of the spring waters of the meadow. Such a water right to irrigate the meadow has been recognized as far back as 1896 by Court decree.

LeVell Neal has shown injury by the operation of the Harvey Harris well. He has shown a coincidence of time between a drying of the springs and the pumping operation of the Harris well. He has shown that the geology of the area is such that it is more probable that the well operation is the cause of the springs' drying. LeVell Neal has shown that a drying of the meadows involved has come about only in the last several years after Harris began operation of his well, through the kinds of vegetation found in the area. He has shown by witnesses and expert opinion that a direct connection exists between the pumping of the Harvey Harris well and the drying of the springwaters.

Further, LeVell Neal has shown that Harvey Harris has been pumping more water than his permit allows, and he has co-mingled water pumped contrary to his own application. Neal has further shown that Harris does not own part of the land upon which the water is used. The licensing of the Harvey Harris well should be denied on the grounds of failure to follow the permit application alone.

Harvey Harris has not produced any credible evidence to support his hypotheses that the hand-dug channel was for drainage

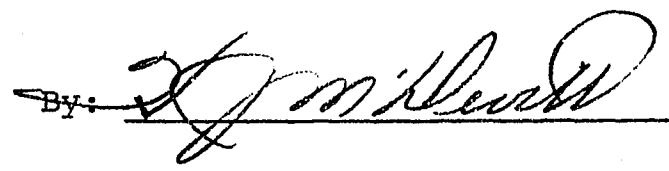
McDEVITT & McDEVITT
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

rather than distribution, that the springs are natural tributaries of Deep Creek, or that interruptions of the springs have been caused by any other than his own acts. Harris has not produced any testimony that states that the spring water would ever reach Deep Creek unless it came after flowing through the eastern ditch or from the Pioneer Dike.

The licensing of the Harvey J. Harris well should be denied, therefore, because of injury to prior appropriators, and because official use of the water has not been made as per the permit application.

RESPECTFULLY SUBMITTED this 4 day of December, 1975.

McDEVITT, McDEVITT & MEYERS
Attorneys for Protestant LeVell Neal

By: 

McDEVITT & McDEVITT
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

December 17, 1975

RECEIVED
DEC 19 1975
Department of Water Resources
Eastern District Office

Mr. Ronald D. Carlson
District Engineer
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho, 83401

Re: In the Matter of Protest Against
Licensing Permit No. G-33477/17-2063
in the Name of HARVEY J. HARRIS
BEFORE THE DEPARTMENT OF WATER
RESOURCES OF THE STATE OF IDAHO

Dear Mr. Carlson:

Our recent Brief submitted on December 4, 1975 in the above matter, contains a typographical error, to-wit: On page 9, line 25, our reference to the Carl Steed well indicates that it was 35.0 feet away from the pumping well. It's obvious that a period was struck on the typewriter instead of a "1", as this figure should be 3510 feet, as noted further on into the Brief.

Kindly take notice of this correction.

Sincerely,

HJM:chi

HERMAN J. McDEVITT

cc: Kent W. Foster
cc: D. James Manning
cc: LeVell Neal
cc: Sherl L. Chapman
cc: Bobby D. Fleenor

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 17-2063)
)
IN THE NAME OF HARVEY J. HARRIS) MEMORANDUM DECISION AND ORDER
)

On February 20, 1967, Harvey J. Harris applied to the Department of Water Resources (formerly the Department of Reclamation) for a permit to appropriate 3.82 cubic feet of water per second from a groundwater source by means of a well and pump to be located within the NW¼SW¼, Sec. 14, Twp. 16S, Rge. 32E, B.M., Oneida County, to be used for the irrigation of 191 acres of land. The application was reviewed by the Department and approved on February 23, 1967.

On December 30, 1968, Mr. Harris made application to the Department of Water Resources for an extension of time in which to submit proof of beneficial use of water. The Director approved the request and extended the time to February 23, 1971. On February 22, 1971, proof of beneficial use of water was submitted to the Department. The land list on the permit was modified through an amendment, and on April 8 and April 15, 1971, the notice of this appropriation was published in the Idaho Enterprise, Malad, Idaho.

On April 20, 1971, a protest against the issuance of this license was submitted by LeVell Neal. The required licensing exam was completed on August 3, 1972, and a conference was held on January 22, 1974. No agreement was reached at this conference and the matter was continued to a later date.

On April 8, 1974, a request to intervene was received from the Curlew Irrigation Company.

A hearing in the matter was held on July 9, 1975, in Malad, Idaho. The permittee, Harvey J. Harris, was present and represented by Kent M. Foster of Holden, Holden, Kidwell, Hahn & Crapo of Idaho Falls, Idaho. The intervenor, Curlew Irrigation Company, was represented by James Manning of Rancine, Huntley & Olson of Pocatello, Idaho. The protestant, LeVell Neal, was present and represented by Herman J. McDevitt of McDevitt and McDevitt, Pocatello, Idaho.

Testimony on behalf of all parties was received and documentary evidence introduced. The Department took the matter under consideration, and after having reviewed all testimony and evidence offered for each of the parties and reviewing all pertinent information in the Department's official records, the Director of the Department of Water Resources makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

(1) In November of 1967, the permittee drilled an 18 inch diameter well to a depth of 210 feet in the NW¼SW¼, Sec. 14, Twp. 16S, Rge. 32E. The well casing was perforated from the 40 foot to 180 foot depth. Water was found to stand in the well at an elevation of 4,560 feet or about 23 feet below the ground surface. The permittee has used water from this well beneficially for the irrigation of 178 acres.

(2) The well produces 4.80 cubic feet of water per second.

(3) The protestant owns 105 acres of meadow land located west of the applicant's well and approximately 1,700 feet from the applicant's well at its' nearest point. The meadow tends to be marshy and has visible spring activity along the east edge at an approximate elevation of 4,560 feet caused by the local high water table which is at the land surface. The water from the east side of the meadow is captured in a ditch or drain tributary to Deep Creek.

(4) The water from the marshy areas and springs have contributed to the flow of Deep Creek for many years and, therefore, are tributary. As such, they are subject to all prior appropriations of the waters of Deep Creek.

(5) The direction of groundwater movement near the permittee's well is to the southwest.

(6) The protestant may have certain undefined rights to the use of water from springs located on his property. However, most of the water supply of the meadow occurs naturally as sub-irrigation of the grass root zone due to the locally high water table that exists under the meadow.

(7) Data available to the Department indicates water levels under the protestant's meadow and spring flow tends to fluctuate during the year, with the minimum levels occurring during the months of July and August. These fluctuations may be due to several causes such as (a) atmospheric pressure changes (b) a general lowering of the water table in the entire area (c) an increased use of water by the vegetation during the late summer (d) the checking of the east ditch by the protestant to raise the water table for irrigation of the adjacent meadow (e) the pumping of the permittee's well. The data available is not conclusive in showing a definite relationship between the pumping of the permittee's well and a decline in spring flow.

CONCLUSIONS OF LAW

(1) The pumping of the permittee's well may be one of the factors contributing to seasonal declines in the flow of springs located on the property of the protestant. However, it appears that if the pumping of this well is a contributing factor in the declines in spring flows observed in the protestant's meadow, the extent

of such dewatering is not likely to interfere with the availability of water to the protestant, if the protestant would use a reasonably efficient method of irrigation.

(2) The springs of the protestant are not private waters and any water right that the protestant may have developed by diversion and beneficial use would be subject to all existing prior water rights.

(3) The protestant may not hinder the full economic development of the groundwater resource by requiring the groundwater level to remain at or near the ground surface. The protestant is entitled only to the maintenance of a reasonable pumping level.

(4) The permittee has complied with the conditions of his permit and is entitled to a license from the Department of Water Resources.

(5) The flow of the permittee's well must be restricted to 3.56 cubic feet per second of water under this permit for the irrigation of 178 acres of land.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that License No. 17-2063 be ISSUED with a priority of February 20, 1967, for the use of 3.56 cubic feet per second of water from a groundwater source located within the NW¼SW¼, Sec. 14, Twp. 16S, Rge. 32E, B.M., for the irrigation of 37 acres within the NW¼SW¼, 20 acres within the SW¼SW¼, Sec. 14; 39 acres within the NE¼SE¼, Sec. 15; 22 acres within the SE¼SE¼, Sec. 22; 35 acres within the NW¼NW¼, Sec. 23; 25 acres within the NE¼SW¼, Sec. 23; for a total of 178 acres all within the Twp. 16S, Rge. 32E, B.M., Oneida County.

IT IS FURTHER ORDERED that a measuring device of a type acceptable to the Department of Water Resources be permanently installed and maintained as part of the diverting works.

Dated this 19 day of December, 1975.

R. KEITH HIGGINSON
Director

McDEVITT, McDEVITT & MEYERS
ATTORNEYS-AT-LAW
SEVENTH AND LANDER
P. O. BOX 4747
POCATELLO, IDAHO 83201
TELEPHONE: (208) 233-4121

ATTORNEYS FOR: Petitioner

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ONEIDA

LE VELL NEAL, Petitioner, vs. HARVEY J. HARRIS, Respondent.	MOTION FOR WITHDRAWAL OF COUNSEL AND ORDER

COMES NOW M. Jay Meyers of the firm of McDevitt, McDevitt & Meyers, Pocatello, Idaho, and moves the Court, pursuant to Rule 11(b) of Idaho Rules of Civil Procedure, for its Order allowing his withdrawal as attorney of record for Petitioner in the above-entitled case. This Motion is made on the grounds and for the reasons that good cause exists and that there will not be any delay in the determination and disposition of the pending actions and the rights of the parties in that no Answer has been received to date after the filing of the Petition for Hearing and Notice of Appeal.

DATED this 7th day of April, 1976.

McDEVITT, McDEVITT & MEYERS
Attorneys for Petitioner

ORAL ARGUMENT REQUESTED.

By: _____
M. Jay Meyers

O R D E R

The foregoing Motion having been received and considered, the Court being fully advised in the premises, and good cause appearing therefor:

IT IS HEREBY ORDERED that M. Jay Meyers of the firm of McDevitt, McDevitt & Meyers, Pocatello, Idaho, be allowed to withdraw as attorney of record for the Petitioner, LeVell Neal.

DISTRICT JUDGE

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true copy of the foregoing MOTION FOR WITHDRAWAL OF COUNSEL and ORDER was mailed, postage prepaid, this 7th day of April, 1976, to each of the following:

Mr. Kent W. Foster
Attorney at Law
P. O. Box 129
Idaho Falls, Idaho 83401

Mr. D. James Manning
Attorney at Law
P. O. Box 1391
Pocatello, Idaho 83201

Mr. LeVell Neal
Stone, Idaho 83280

Mr. Bobby D. Fleenor
Chief, Water Rights
Dept. of Water Resources
Statehouse
Boise, Idaho 83720

Mr. Ronald D. Carlson
District Engineer
Dept. of WaterResources
1515 Lincoln Road
Idaho Falls, Idaho 83401

M. Jay Meyers

McDEVITT, McDEVITT
& MEYERS
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

RECEIVED
APR 8 1976
Department of Water Resources

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

BDF

April 7, 1976

Mr. Colen H. Sweeten, Jr.
Clerk of the District Court
Oneida County Courthouse
Malad City, Idaho 83252

Dear Mr. Sweeten:

Re: LeVell Neal vs. Harvey J. Harris

Enclosed for filing in the above action is MOTION FOR WITHDRAWAL OF COUNSEL.

Sincerely,

M.Jay Meyers

MJM:alh

Enclosure

cc: Mr. Kent W. Foster
Mr. D. James Manning
Mr. LeVell Neal
Mr. Bobby D. Fleenor
Mr. Ronald D. Carlson

M-2063

AUG 10 1976

Department of Water Resources

Herman J. McDevitt
McDEVITT, McDEVITT & MEYERS
ATTORNEYS-AT-LAW
SEVENTH AND LANDER
P. O. BOX 4747
POCATELLO, IDAHO 83201
TELEPHONE: (208) 233-4121

ATTORNEYS FOR: Petitioner

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ONEIDA

LeVELL NEAL, Petitioner, -vs- HARVEY J. HARRIS, Respondent.	)	Case No. 201 NOTICE OF CLAIM OF ATTORNEY'S LIEN

TO: LeVell Neal, Petitioner

YOU ARE HEREBY NOTIFIED that the undersigned claim an Attorney's Lien under provisions of Section 3-205, Idaho Code, upon this cause of action by reason of services performed and expenses advanced in the matter of Permit No. 17-2063, Before the Director of the Department of Water Resources, in the hearings, trials, and appeal thereof to this Court.

No payment for services has been received since 1974. We claim a lien upon the cause of action wherein we have appeared, and any judgment arising therefrom for legal services rendered in the above-entitled action, and in all subsequent actions and proceedings brought for the purpose of enforcing any judgment and upon the lands and water rights of Petitioner, his heirs and assigns.

You are hereby notified that we claim for professional services and expenditures, the sum of $5,029.47 previously owing

and outstanding since February 26, 1976.

McDEVITT, McDEVITT & MEYERS

By: _____
Herman J. McDevitt

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true copy of the foregoing NOTICE OF CLAIM OF ATTORNEY'S LIEN was mailed, postage prepaid, this 9th day of August, 1976, to each of the following:

Mr. Kent W. Foster
Attorney at Law
P. O. Box 129
Idaho Falls, Idaho, 83401

Mr. D. James Manning
Attorney at Law
P. O. Box 1391
Pocatello, Idaho, 83201

Mr. LeVell Neal
Stone, Idaho, 83280

Mr. Bobby D. Fleenor
Chief, Water Rights
Dept. of Water Resources
Statehouse
Boise, Idaho, 83720

Mr. Ronald D. Carlson
District Engineer
Dept. of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho, 83401

_____
Herman J. McDevitt

McDEVITT, McDEVITT
& MEYERS
ATTORNEYS-AT-LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT
M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

RECEIVED
AUG 10 1976
Department of Water Resources

August 9, 1976

File in 17-2063

Mr. Colen H. Sweeten, Jr.
Clerk of the District Court
Oneida County Courthouse
Malad City, Idaho, 83252

Re: Case No. 201
LeVell Neal vs. Harvey J. Harris

Dear Mr. Sweeten:

Enclosed herein please find Notice of Claim of Attorney's Lien, for filing in the above-entitled cause.

Sincerely,

HERMAN J. McDEVITT

HJM:chi

Enclosure

cc: Mr. Kent W. Foster
Mr. D. James Manning
Mr. LeVell Neal
Mr. Bobby D. Fleenor
Mr. Ronald D. Carlson

File 77-2063

KENNETH E. LYON, JR.
ATTORNEY AT LAW
SUITE M - YELLOWSTONE PLAZA
475 YELLOWSTONE - P. O. 4392
POCATELLO, IDAHO 83201
TELEPHONE 233-1240

RECEIVED
AUG 19 1976
Department of Water Resources

BDF

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ONEIDA

LeVELL NEAL, Petitioner, vs. HARVEY J. HARRIS, Respondent.	Case Number: 201 NOTICE OF APPEARANCE

TO: CLERK OF THE DISTRICT COURT and MR. KENT W. FOSTER, Attorney at Law, MR. JAMES MANNING, Attorney at Law, MR. BOBBY D. FLEENOR, Chief, Water Rights, and Mr. RONALD D. CARLSON, District Engineer.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned hereby makes an Appearance as Attorney of Record for the Plaintiff in the above-entitled action.

KENNETH E. LYON, JR.

K. E. Lyon

Attorney for the Plaintiff
Residing at P. O. Box 4392
Pocatello, Idaho 83201

I hereby certify that a true and correct copy of the foregoing Notice of Appearance was mailed, postpaid, to:

Mr. Kent W. Foster
Attorney at Law
P. O. Box 129
Idaho Falls, Idaho 83401

Mr. Bobby D. Fleenor
Chief, Water Rights
Dept. of Water Resources
Statehouse,
Boise, Idaho 83720

Mr. D. James Manning
Attorney at Law
P. O. Box 1391
Pocatello, Idaho 83201

Mr. Ronald D. Carlson
District Engineer
Department of Water Resources
615 Lincoln Road
Idaho Falls, Idaho 83401

Clerk of the District Court
Oneida County Courthouse
Malad City, Idaho 83252
(Original)

on this 18th day of August, 1976.

K. E. Lyon

KENNETH E. LYON, JR.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 17-2063
IN THE NAME OF HARVEY J. HARRIS

MEMORANDUM DECISION
AND ORDER

On February 20, 1967, Harvey J. Harris applied to the Department of Water Resources (formerly the Department of Reclamation) for a permit to appropriate 3.82 cubic feet of water per second from a groundwater source by means of a well and pump to be located within the NW¼SW¼, Sec. 14, Twp. 16S, Rge. 32E, B.M., Oneida County, to be used for the irrigation of 191 acres of land. The application was reviewed by the Department and approved on February 23, 1967.

On December 30, 1968, Mr. Harris made application to the Department of Water Resources for an extension of time in which to submit proof of beneficial use of water. The Director approved the request and extended the time to February 23, 1971. On February 22, 1971, proof of beneficial use of water was submitted to the Department. The land list on the permit was modified through an amendment, and on April 8 and April 15, 1971, the notice of this appropriation was published in the Idaho Enterprise, Malad, Idaho.

On April 20, 1971, a protest against the issuance of this license was submitted by LeVell Neal. The required licensing exam was completed on August 3, 1972, and a conference was held on January 22, 1974. No agreement was reached at this conference and the matter was continued to a later date.

On April 8, 1974, a request to intervene was received from the Curlew Irrigation Company.

A hearing in the matter was held on July 9, 1975, in Malad, Idaho. The permittee, Harvey J. Harris, was present and represented by Kent W. Foster of Holden, Holden, Kidwell, Hahn & Crapo of Idaho Falls, Idaho. The intervenor, Curlew Irrigation Company, was represented by James Manning of Rancine, Huntley & Olson of Pocatello, Idaho. The protestant, LeVell Neal, was present and represented by Herman J. McDevitt of McDevitt and McDevitt, Pocatello, Idaho.

Testimony on behalf of all parties was received and documentary evidence introduced. The Department took the matter under consideration, and after having reviewed all testimony and evidence offered for each of the parties and reviewing all pertinent information in the Department's official records, the Director of the Department of Water Resources makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

(1) In November of 1967, the permittee drilled an 18 inch diameter well to a depth of 210 feet in the NW¼SW¼, Sec. 14, Twp. 16S, Rge. 32E. The well casing was perforated from the 40 foot to 180 foot depth. Water was found to stand in the well at an elevation of 4,560 feet or about 23 feet below the ground surface. The permittee has used water from this well beneficially for the irrigation of 178 acres.

(2) The well produces 4.80 cubic feet of water per second.

(3) The protestant owns 105 acres of meadow land located west of the applicant's well and approximately 1,700 feet from the applicant's well at its' nearest point. The meadow tends to be marshy and has visible spring activity along the east edge at an approximate elevation of 4,560 feet caused by the local high water table which is at the land surface. The water from the east side of the meadow is captured in a ditch or drain tributary to Deep Creek.

(4) The water from the marshy areas and springs have contributed to the flow of Deep Creek for many years and, therefore, are tributary. As such, they are subject to all prior appropriations of the waters of Deep Creek.

(5) The direction of groundwater movement near the permittee's well is to the southwest.

(6) The protestant may have certain undefined rights to the use of water from springs located on his property. However, most of the water supply of the meadow occurs naturally as sub-irrigation of the grass root zone due to the locally high water table that exists under the meadow.

(7) Data available to the Department indicates water levels under the protestant's meadow and spring flow tends to fluctuate during the year, with the minimum levels occurring during the months of July and August. These fluctuations may be due to several causes such as (a) atmospheric pressure changes (b) a general lowering of the water table in the entire area (c) an increased use of water by the vegetation during the late summer (d) the checking of the east ditch by the protestant to raise the water table for irrigation of the adjacent meadow (e) the pumping of the permittee's well. The data available is not conclusive in showing a definite relationship between the pumping of the permittee's well and a decline in spring flow.

CONCLUSIONS OF LAW

(1) The pumping of the permittee's well may be one of the factors contributing to seasonal declines in the flow of springs located on the property of the protestant. However, it appears that if the pumping of this well is a contributing factor in the declines in spring flows observed in the protestant's meadow, the extent

of such dewatering is not likely to interfere with the availability of water to the protestant, if the protestant would use a reasonably efficient method of irrigation.

(2) The springs of the protestant are not private waters and any water right that the protestant may have developed by diversion and beneficial use would be subject to all existing prior water rights.

(3) The protestant may not hinder the full economic development of the groundwater resource by requiring the groundwater level to remain at or near the ground surface. The protestant is entitled only to the maintenance of a reasonable pumping level.

(4) The permittee has complied with the conditions of his permit and is entitled to a license from the Department of Water Resources.

(5) The flow of the permittee's well must be restricted to 3.56 cubic feet per second of water under this permit for the irrigation of 178 acres of land.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that License No. 17-2063 be ISSUED with a priority of February 20, 1967, for the use of 3.56 cubic feet per second of water from a groundwater source located within the NW¼SW¼, Sec. 14, Twp. 16S, Rge. 32E, B.M., for the irrigation of 37 acres within the NW¼SW¼, 20 acres within the SW¼SW¼, Sec. 14; 39 acres within the NE¼SE¼, Sec. 15; 22 acres within the SE¼SE¼, Sec. 22; 35 acres within the NW¼NW¼, Sec. 23; 25 acres within the NE¼SW¼, Sec. 23; for a total of 178 acres all within the Twp. 16S, Rge. 32E, B.M., Oneida County.

IT IS FURTHER ORDERED that a measuring device of a type acceptable to the Department of Water Resources be permanently installed and maintained as part of the diverting works.

Dated this 19 day of December, 1975.

R. KEITH HIGGINSON
Director

State of Idaho

Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 33477/17-2063 Priority Feb. 20, 1967 Amount 3.56 cfs

THIS IS TO CERTIFY, that HARVEY J. HARRIS

of Stone, Idaho, has complied with the terms and conditions of Permit No. 33477/17-2063 issued pursuant to Application for Permit dated February 20, 1967, and has submitted proof to the Department of Water Resources on February 22, 1971, that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 4.80 cfs of water from a ground water source, tributary to _____, and that the permit holder has applied to a beneficial use and established a right to use water as follows:

Beneficial Use	Period of Use		Rate of Diversion	Annual Volume
Irrigation	from May 1	to Oct. 1	at 3.56 cfs and	623 acre feet or 3.5 af per acre
	from	to	at cfs and	
	from	to	at cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 3.56 cfs of water be diverted at any one time, and that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed 623 acre feet per year, said waters to be diverted within the $NW\frac{1}{4}SW\frac{1}{4}$ of Sec. 14, Twp. 16 S, Rge. 32 E, B.M. in the County of Oneida

Description and location of place of use:

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16S	32E	14										37	20						57
		15													39				39
		22																22	22
		23						35			25								60

Total number of acres irrigated 178

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

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

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

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 19th day of December, 19 75.

Director

XXXXXXXXXXXXXXXXXX

1515 Lincoln Road

January 30, 1974

Re: Permit No. 17-2063

Mr. Herman J. McDevitt
Attorney At Law
P. O. Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

Enclosed please find a copy of the well log of the above referenced permit. We do not have copies of field exams in our office and we are asking our state office to send both you and Mr. Scott a copy.

If we may be of further assistance in this matter, please contact us.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:mb

Enclosure

December 22, 1975

Re: Permit No. 33477/17-2063

Mr. Harvey J. Harris
Stone,
Idaho 83280

Dear Mr. Harris:

Enclosed herewith is a copy of the Memorandum Decision and Order, along with a copy of the Water License, issued in connection with the above referenced permit.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:DR

Enc: Copy of Decision & Order
Copy of license

cc: Mr. Kent W. Foster
Mr. LeVell Neal
Mr. Herman J. McDevitt
Curlew Irrigation Company
Mr. D. James Manning

Enc: Copy of Decision & Order

bc: Eastern Regional Office

McDEVITT, McDEVITT & MEYERS
ATTORNEYS AT LAW
7TH & LANDER
POST OFFICE BOX 4747
POCATELLO, IDAHO 83201

B. A. McDEVITT
HERMAN J. McDEVITT

M. JAY MEYERS

AREA CODE 208
TELEPHONE 233-4121

RECEIVED
DEC 30 19
Department of Water Resources

December 29, 1975

Mr. Bobby D. Fleenor
Chief, Water Rights
Department of Water Resources
State House
Boise, Idaho 83720

Re: In the Matter of Licensing of
Harvey J. Harris

Dear Mr. Fleenor:

We received your letter and copy of Memorandum Decision last Friday, December 26.

We did not receive a copy of the license issued to Mr. Harris.

Would you please send to this office immediately a copy of said license so that we can pursue our further alternatives.

Thank you.

Sincerely,

M. Jay Meyers

M. Jay Meyers

MJM:alh

cc: Mr. LeVell Neal
cc: Mr. Kent W. Foster
cc: Mr. D. James Manning

January 5, 1976

COPY

Re: Permit No. 17-2063

Mr. M. Jay Meyers
McDevitt, McDevitt & Meyers
Attorneys at Law
P. O. Box 4747
Pocatello, ID 83201

Dear Mr. Meyers:

Pursuant to your letter of December 29, 1975, enclosed is a copy of the license for Harvey J. Harris.

Sorry to have inconvenienced you.

Sincerely,

RITA BENDELE
Senior Clerk

RB

Enc.

February 11, 1976

Re: License No. 17-2063 - Harvey Harris

Herman McDevitt
Box 4747
Pocatello, Idaho 83201

Dear Mr. McDevitt:

Enclosed is a certified copy of the Memorandum Decision and Order issued on the above referenced license.

There is a $2.00 fee for the copy and the certification of this Memorandum which you may remit to this office at your earliest convenience.

Sincerely,

JANICE ROHM
Secretary

JR

Enclosure

cc: Martie Brown

pd 2.23.76 #2608

April 6, 1979

LeVall Neal
Stone,
Idaho 83280

Dear Mr. Neal:

In reviewing our files we have discovered some slides of your property, taken in connection with the water dispute with Harvey Harris.

We are returning the slides under separate cover, since action by our Department in the case is resolved. They are yours to do with as you wish.

Sincerely,

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

DRT:lr

LOY H. JOHNSON

EASTERN DISTRICT
STATE OF IDAHO
DEPARTMENT OF WATER
~~ADMINISTRATION~~ Resources

1515 LINCOLN ROAD
IDAHO FALLS, IDAHO 83401
PHONE 523-7186

Ron Hardsmore
Stone, Idaho
83280

SEP 6 1974

Dept. of Water Resources
Attn: Loy H. Johnson
1515 Lincoln Road
Idaho Falls, Idaho
83401

17-2063

Started well
May 13 at 7:00 p.m
-May 15 off 2 on
to 5:00 p.m.
-may 22 off 11:00pm
on-May 23 10:00 AM
May 24 off 2:00 p.m.
On May 24 at
4:00 p.m
Off May 27 at
5:00 AM
On May 27 at
6:00 P.M
Off May 30 at
10:00 P.M
On May 31 at
7:00 A.M

OPP Blvd, 31 out
9:30 PM

On June 1 at
7:30 AM.
Off June 2 - 5:00
PM
On June 2 at 9:30 P.M.
Off June 3 at 7:00 AM
On June 3 at 12:00 Noon
Off June 4 at 2:00 p.m.
On June 10 at 9:30 AM
Off June 16 at 10:00 p.m.
On June 17 at 6:30 AM
Off June 17 at 8:15 PM
On June 18 at 12:30 PM
Off June 18 at 7:30 PM

On June 19 at 7:30 AM
Off June 19 at 12:00 Mid.
On June 20 at 9:30 AM
Off June 20 at 9:30 P.M.
On June 21 at 1.00 PM
Off June 24 at 7:00 PM
On June 28 at 7:00 AM
Off June 29 at 9:00 P.M
On July 2 at 7:30 AM
Off July 2 at 11:00 PM
On July 3 at 7:30 AM
Off July 14 at 1:30 AM
On July 14 at 12:00 Noon
Off July 16 at 11:00 P.M.
On July 17 at 7:00 AM
Off July 21 at 11:30 AM

On July 22 at 7:00 AM
Off July 22 at 9:00 p.m.
On July 23 at 7:00 p.m.
Off July 24 at 8:00 A.m.
On July 24 at 4:00 p.m.
Off July 27 at 12:00 noon
On Aug 11 at 6:00 p.m.
Off Aug 12 at 11:00 p.m.
On Aug 13 at 7:00 A.m.
Off Aug 13 at 7:30 p.m.
On Aug. 14 at 7:30 p.m.
Off Aug 15 at 8:30 p.m.
On Aug 16 at 7:00 AM
Off Aug 16 at 2:00 p.m.
On Aug 25 at 8:00 AM
Off Aug. 27 at 1:00 p.m.
On Aug 29 at 10:00 AM

Off Aug 30 at 10: AM
On Sept 1 at 8: AM
Still running —

You have the record to here —

Sept 6 — Still running
Sept 8 off 8:00 pm
Sept 9 on 8:00 AM
Sept 10 off 7:00 AM
Sept 10 on 8:00 PM
Sept 11 off 7:00 AM
Sept 13 on 7:00 AM
Sept 14 off 10:00 P.M.
Sept 24 on 9:00 AM
Sept 27 off 12 noon

Off for the year

SET 5/24/74
NO MEASUREMENT MADE

Chart F-1

Printed in U.S.A.

Leupold & Stevens Instruments, Inc., Portland, Ore.

Stevens Water Level Recorder — Type F

E-67-10 ML

17-2063

Neal Test Well
Reset Recorder
6/12/79 1620 Hrs
MP - D/W - Top of Shelter Floor
1.81'

7/12/79
CHANGED

Leupold & Stevens Instruments, Inc., Portland, Ore. Printed U.S.A.

Stevens Water Level Recorder — Type F

Chart F-1

0-67-10 ML

17-2063

NEAR PASTURE
SET 1200
7/1-7/7

2.2
2.3
2.4
2.5
2.6
2.7
2.8
2.9
3.0

C45
8/13/74
2000 HRS
2.49

Chart F-1

Stevens Water Level Recorder — Type F

Leupold & Stevens Instruments, Inc., Portland, Ore.

Printed in U.S.A.

E-67-10 ML

17-2063

Neal Pasture
2005 Hrs
8/13/74
D/W 2.49'
L+J

8/13/74
2005
2.49'

9/5/74
1735 Hrs
Float on bottom of hole
@ 2.92 MP

Leupold & Stevens Instruments, Inc., Portland, Ore.

Printed in U.S.A.

Stevens Water Level Recorder — Type F

Chart F-1

E-67-10 ML

NEAL PASTURE
SET 1490
5/2/74

WELL STARTED

PUMP STARTED

PUMP SHUT OFF

Printed in U.S.A.

Leupold & Stevens Instruments, Inc., Portland, Ore.

Chart F-1

Stevens Water Level Recorder — Type F

8-67-10 M.L.

17-2063

Neal Pasture
1800 Hrs
9/5/74
D/W 2.97'

9/5/74 1800 Hrs
Set Pin same
Plots as if was recorded
from other chart.

TS = 10/4/74
1535

Chart F-1

Stevens Water Level Recorder — Type F

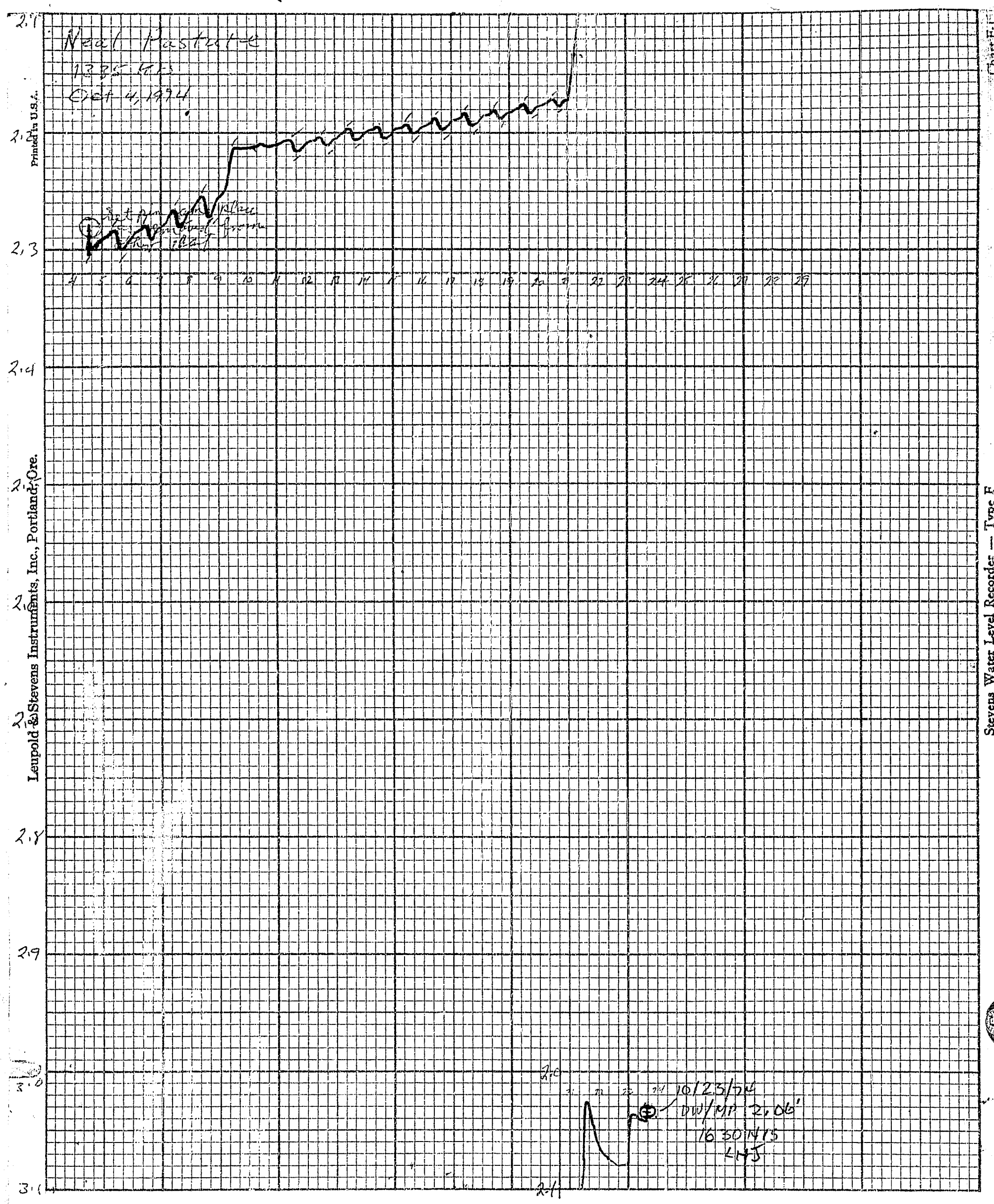
Leupold & Stevens Instruments, Inc., Portland, Ore.

Printed in U.S.A.

E-67-10 ML

17-2063

Neal Hastert
13S-6E-3
Oct 4, 1994



Printed in U.S.A.

Leupold & Stevens Instruments, Inc., Portland, Ore.

Stevens Water Level Recorder — Type F

Chart F-1

8-87-10 ML

17-2063

Neal Pasture
16 40 Hrs
Dw/mp 2.06'
10/23/74 LHJ

10/25/74
1540 Hrs
2.06' LHJ Dw/mp

11/15/74 1.98
1400
LHJ

Printed in U.S.A.

Leupold & Stevens Instruments, Inc., Portland, Ore.

Stevens Water Level Recorder — Type F

Chart F-1

2-67-10 ML

17-2063