Identification No. 17 7029

Application No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
APPLICATION FOR PERMIT
To Appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

APPROVED

1. Name of applicant Sinks Land & Livestock Corp.
   post office address c/o W. J. Byrd, Sec., Box 184, Malad, Idaho 83252 PH: 766-2286
2. Source of water supply ground water which is a tributary of - - - -
3. a. Location of point of diversion is NW ¼ of NW ¼ of Section 28 Township 16S
   Range 31E B.M. Oneida County; additional points of diversion if any: _____

   b. If water is not consumed, it will be discharged into _____ at a point in _____ ¼
   of _____ ¼ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
   Amount ~~XXXX~~ 4.70 (cfs or acre-feet per annum) for Irrigation purpose from Apr. 1 to Oct. 15 (both dates inclusive)
   Amount 0.23 (cfs or acre-feet per annum) for ~~XXXXXXXXX~~ stockwater purpose from Jan. 1 to Dec. 31 (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purpose from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated: Per letter 4/1/74 RDC
   a. ~~XXXX~~ 4.93 cubic feet per second and/or
   b. _____ acre feet per annum.
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. Pump size to be furnished at completion.
   Gated pipe for flood irrigation or wheel system sprinkler.

   b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet, materials used in storage dam: _____
   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.
   c. Proposed well diameter is 20 inches; proposed depth of well is 500 feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.
   b. Estimated construction cost is $20,000.00.
8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: NW ¼ of NW ¼ of Section 28 Township 16S
      Range 31E B.M.
      (2) Amount of power to be generated: _____ hp under _____ feet of head.
      (3) List number of each kind of livestock to be watered 1000 beef cattle

      (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.
      (5) If water is to be used for other purposes describe: _____

17 7029

17 7029

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16S	31E	28			31.7		36.0	25.9	25.9	40			17 (Lot 4)	25.8 (Lot 3)			25.3 (Lot 2)	7.4 (Lot 1)	235

Total number of acres to be irrigated 235

c. Describe any other water rights used for the same purposes as described above. None

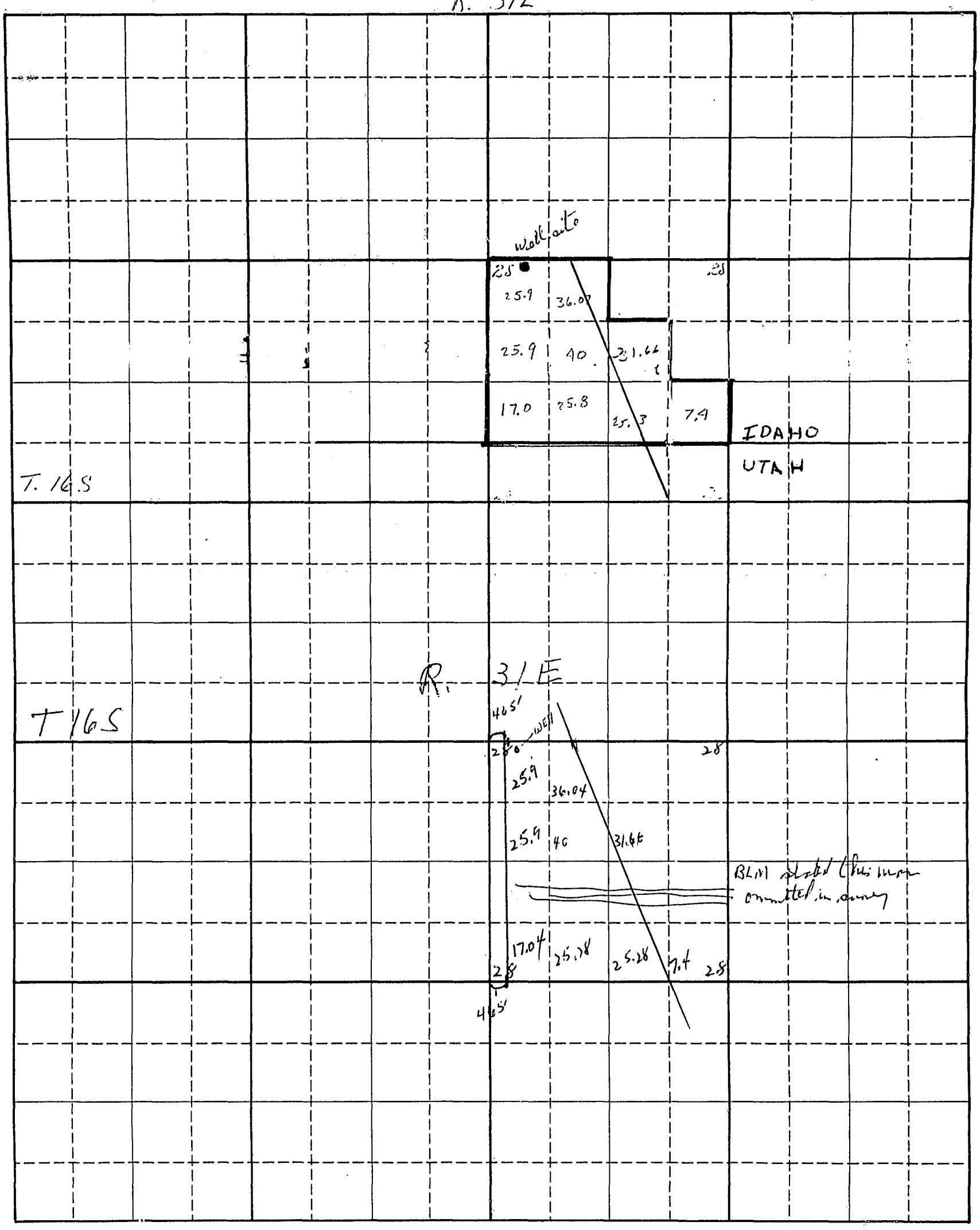
9. a. Who owns the property at the point of diversion Applicant

b. Who owns the land to be irrigated or place of use Applicant

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

10. Remarks We plan to drill the well immediately. As soon as supply of water is known we plan to irrigate with gated pipe or a wheel sprinkler system. Planned crops are alfalfa and grain.

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



Scale: 2 inches equal 1 mile

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

Sinks Land & Livestock Corp
By J. B. Sinks Sec.
(Applicant)

17 7029

17 7029

Proposed Priority ~~4-02-1974~~

MB 4-2-74 12:00 P.M.

Received by MB Date 3-27-74 Time 11:30 A

Preliminary check by RC Fee $ 65.00

Receipted by MB Date 4-2-74 #12815

Publication prepared by MB Date 4-4-74

Published in The Idaho Enterprise

Publication dates April 11 & 18, 1974

Publication approved OB Date 4/19/74

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by RDC NBDF

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 17-7029, and said application is hereby APPROVED.

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before May 1, 1979.

   c. Other: A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

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

Witness my hand this 3 day of May 1974.

Director

DEPARTMENT OF WATER ADMINISTRATION
- STAFF ANALYSIS -

Item	Initial	Date	
(1)	WR	4/4	Application No. 17-7029
(2)			✓ Source ✓ Point of Diversion ✓ County ___ Quantity of Water and Period of Use 235AC X.02 = 4.70cfs ✓ Description of Diverting Works ✓ Time required for B/U of water ✓ Place of Use or Acres Irrigated ✓ Map ✓ Signature ✓ Fee
(3)	___	4/4	In form to receipt
	___	4/4	Send Copies to: ___ Idaho State Health Department ✓ Idaho Fish and Game Department ✓ Bureau of Land Management
(4)	___	4/4	___ Request Special Use Permit from U.S.F.S. ✓ Request Easement from B.L.M. ___ Request Information from Applicant
(5)	___	4/4	In form for advertising
(6)	___	4/4	Located within Water District No. N.A.
(7)	___	4/4	Critical groundwater area: yes___ no ✓
(8)	___	4/4	Groundwater levels: ___ Decline (comment) ___ ✓ Stable (comment) Basalt 27 ___ Increasing (comment) ___
(9)	___	4/4	Comments: No conflicting G.W. rights
(10)	MB	4/19/74	Affidavit of Publication received (date) April 19, 1974
(11)	CB	4/29/74	Final date for protests April 29, 1974 Protests received: yes___ no ✓
(12)	"	"	Date and Place of hearing N.A. Decision reached at hearing ___
(13)	"	"	All requested information received from agencies or applicant yes___ no___ N.A.
(14)	RDC	4/29/74	Action recommended: ✓ Approve — Priority 4 ___ Deny — Reason for Reduction ___ ✓ Measuring device required ___ See attached sheet for additional conditions of approval ___ No additional conditions for approval
(15)	District E	By RDC	Date RECEIVED 17-7029 APR 29 1974 Department of Water Administration

RECEIVED
APR 1974
Department of Water Administration
Eastern District Office

NOTICE OF APPLICATION FOR WATER PERMIT

MB

Notice is hereby given that Sinks Land & Livestock Corp., Box 184, Malad, Idaho, has on 4/2/74 submitted Application No. 17-7029 for a permit to appropriate 4.93 cubic feet per second of water from a ground-water source by means of well and pump within the NW¼NW¼, Sec. 28, T. 16S, R. 31E, B.M., Oneida County; to be used from Jan. 1 to Dec. 31 for stockwatering purposes for 1000 beef cattle within the NW¼NW¼, Sec. 28, T. 16S, R. 31E; and from Apr. 1 to Oct. 15 for the irrigation of 235 acres within the SW¼NE¼, NW¼, Lot 1, 2, 3, & 4, Sec. 28, T. 16S, R. 31E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Administration, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before April 29, 1974.

R. KEITH HIGGINSON
Director

Published in the Idaho Enterprise, Malad City, Idaho, on April 11 and April 18, 1974.

AFFIDAVIT OF PUBLICATION

State of Idaho
County of Oneida, ss.

Norma Peck being first duly sworn on her oath, states: That she 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 2 successive weekly issues thereof the date of the first publication being the 11 day of April, 1974 the date of the last publication being the 18 day of April, 1974

Norma Peck

Subscribed and sworn to before me this 18th day of April, 1974.

Wanda Edwards
Notary Public, residing at Malad, Idaho

My Commision expires the 5 day of 15, 1974.

Costs:

35 lines at 23c per line first insertion $8.05

..... lines tabulated at 34½c per line $.....

15c per line each subsequent insertion $5.25

TOTAL $13.30

(Rates for legal notices are fixed by Idaho law)

17-7029

March 28, 1974

Mr. W. J. Byrd, Sec.
Sinks Land & Livestock Corp.
Box 184
Malad, Idaho 83252

Dear Mr. Byrd:

Please find enclosed your Application for Permit and check No. 92-86 in the amount of $125.00. We have also included a new application which we have taken the liberty of retyping. However, in retyping your application, we had difficulty in corresponding the description in Item 8b to the plat in Item 11. In the retyped application we made Item 8b correspond to what we felt you had indicated on your map. If these are not correct, please make the necessary changes. We also need to know the place of use for the water appropriated for stockwatering.

The Idaho statutes specify a maximum diversion rate of 0.02 cubic feet per second per acre. Any applications showing a diversion rate in excess of this amount will be reduced, unless the applicant can submit adequate justification for the higher rate. We have included a set of instructions which show the appropriate filing fees for the various diversion rates.

The filing fee for the 4.67 c.f.s. now indicated on your application would be $65.00. When you have made the necessary changes on the retyped application, please return it to this office with the appropriate filing fee.

Very truly yours,

RONALD D. CARLSON
Asst. to the District Engineer

RDC:mb

Enc: Check No. 92-86 ($125.00)
Apps for Permits

17 -029

BOARD OF DIRECTORS:

LAWRENCE JONES

T. D. JONES

MORGAN W. TOVEY

H. WARD THOMAS

JOHN O. WALLACE

FIRST BANK AND TRUST OF IDAHO

P. O. BOX 171
MALAD CITY, IDAHO 83252

BRANCH OFFICES: P. O. BOX 234. PRESTON. IDAHO 83263
P. O. BOX 755, SODA SPRINGS, IDAHO 83276

OFFICERS:

LAWRENCE JONES
PRESIDENT

T. D. JONES
EXECUTIVE VICE PRESIDENT

DANIEL O. JONES
VICE PRESIDENT

H. D. NAYLOR
VICE PRESIDENT
& CASHIER

D. MICHAEL BROADHEAD
ASSISTANT MANAGER
AND LOAN OFFICER

ELIZABETH MORGAN
ASSISTANT CASHIER

4-1-74

RECEIVED

APR 2 1974

Department of Water Administration
Eastern District Office

Dept of Water Adm:
Eastern District Office
1515 Lincoln Road
Idaho Falls, Idaho

Gentlemen:

It is difficult to plot the land on the map. I ~~k~~have attached the land description given us by the BLM. Maybe you can plot it for us. A total of 235 acres.

The place of use of stock watering would be the well site or nearby.

Thank you,

W. J. Fyrd, Sec.
Sinks Land & Livestock Corp.
Box 184
Malad, Idaho

17 -029

Land description of the Sinks Land & Livestock Corp, Malad, Idaho

All in T. 16 S R 31 E

25.9 acres in the $NW\frac{1}{4}NW\frac{1}{4}$
36.04 acres in Lot 7 (part of the $NE\frac{1}{4}$ of $NW\frac{1}{4}$)
25.9 acres in $SW\frac{1}{4}NW\frac{1}{4}$
40 acres in $SE\frac{1}{4}NW\frac{1}{4}$
31.66 acres in Lot 8 (Part of the $SW\frac{1}{4}$ of $NE\frac{1}{4}$)
17.04 acres in Lot 4 ($SW\frac{1}{4}SW\frac{1}{4}$)
25.78 acres in Lot 3 ($SE\frac{1}{4}SW\frac{1}{4}$)
25.28 acres in Lot 2 ($SW\frac{1}{4}SE\frac{1}{4}$)
7.4 acres in Lot 11
235 acres total

This is the BLM description of the land deeded to us.

17 7029

April 3, 1974

Re: Application for Permit No. 17-7029

Mr. W. J. Byrd, Sec.
Sinks Land & Livestock Corp.
Box 184
Malad, Idaho 83252

Dear Mr. Byrd:

Attached herewith is departmental receipt No. 12815 in the amount of $65.00 for the above referenced application which was received in this office April 2, 1974.

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

Very truly yours,

RONALD D. CARLSON
Asst. to the District Engineer

RDC:mb

Attachment

17 -029

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that Sinks Land & Livestock Corp., Box 184, Malad, Idaho has on 4/2/74 submitted Application No. 17-7029 for a permit to appropriate 4.93 cubic feet per second acre feet per annum XXXXXXXXXXXXXXXXXX of water from a ground-water source by means of well and pump within the NW¼NW¼, Sec. 28, T. 16S, R. 31E, B.M., Oneida County;

to be used from Jan. 1 to Dec. 31 for stockwatering purposes for 1000 beef cattle within the NW¼NW¼, Sec. 28, T. 16S, R. 31E; and from Apr. 1 to Oct. 15 for the irrigation of 235 acres within the SW¼NE¼, NW¼, Lot 1,2,3,&4, Sec. 28, T. 16S, R. 31E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Administration, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before April 29, 1974.

R. KEITH HIGGINSON
Director

Published in the Idaho Enterprise, Malad City, Idaho on April 11 and April 18, 1974.

17-7029

April 5, 1974

Re: Application for Permit No. 17-7029 SINKS LAND & LIVESTOCK CORP.

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

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for 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. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

NORMAN C. YOUNG
District Engineer

NCY:MB
Enc: Legal Notice (1)

not certified - returned
Bill ~~submitted~~ 4-19-74 by MB

17 7029

NOTICE OF APPLICATION FOR WATER PERMIT

MB

Notice is hereby given that Sinks Land & Livestock Corp., Box 184, Malad, Idaho, has on 4/2/74 submitted Application No. 17-7029 for a permit to appropriate 4.93 cubic feet per second of water from a ground-water source by means of well and pump within the NW¼NW¼, Sec. 28, T. 16S, R. 31E, B.M., Oneida County; to be used from Jan. 1 to Dec. 31 for stockwatering purposes for 1000 beef cattle within the NW¼NW¼, Sec. 28, T. 16S, R. 31E; and from Apr. 1 to Oct. 15 for the irrigation of 235 acres within the SW¼NE¼, NW¼, Lot 1, 2, 3, & 4, Sec. 28, T. 16S, R. 31E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Administration, 1515 Lincoln Road, Idaho Falls, Idaho, 83401 on or before April 29, 1974.

R. KEITH HIGGINSON
Director

Published in the Idaho Enterprise, Malad City, Idaho, on April 11 and April 18, 1974.

17-7029

1515 Lincoln Road

April 19, 1974

Re: Application for Permit No. 17-7029 Sinks Land & Livestock Corp.

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

Gentlemen:

Enclosed please find the bill which you submitted to our office for payment of the above referenced application. However, before payment can be made all publication bills must be certified and signed. Please do so and return the bill to this office at your earliest convenience.

Very truly yours,

MICHELLE BUTTE
Secretary

Enclosure

17 7029

May 6, 1974

Re: Permit No. 17-7029

Sinks Land & Livestock Corp.
c/o W. J. Byrd, Secretary
Box 184
Malad, Idaho 83252

Gentlemen:

Enclosed is a copy of your approved Application for Permit No. 17-7029 . We direct your attention to the conditions of approval as listed on the fourth page.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Assistant Director

BDF/bjg

Enclosures

17 7029

MEMORANDUM

TO: Ken Dunn

FROM: R. Keith Higginson

DATE: May 2, 1975

File 17-7029

On Wednesday, April 30th, I received a phone call from Dee Hansen, Utah State Engineer, in which he drew my attention to application 17-7029, which was filed to appropriate water by drilling a well in Curlew Valley above Snowville, Utah. He reminded me that, in Utah, he has administratively closed the area below the state line down to the north shore of Great Salt Lake to the drilling of any further irrigation wells and has told his people that he will not grant permits. He has also indicated that, as a concession to the State of Idaho, he has advised people that he will not allow drilling of any wells in the Upper Raft River area portion of Utah. He asked that we consider doing the same thing in Idaho with regard to Curlew Valley.

The main concern in Utah, of course, is the lowering of the water table in part of the area and the effect of such lowering upon the discharge of Locomotive Springs, which is a wildlife management area. We have several reports on this particular area and I request that you review those reports, along with our current applications, to determine whether we should take any action concerning this matter.

I would like to be able to work with Utah on an agreeable basis, if we can reasonably do it without denying the people of Idaho the right to appropriate water under the Constitutional guaranty.

COPY

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

RECEIVED
APR 2 1979
Department of Water Resources

APPLICATION FOR EXTENSION OF TIME

State of Idaho)
County of Oneida)

Permit No. 17-7029

Sinks Land & Livestock Corp. c/o P.M.A. of 412 W. 10th N. Logan, Ut. 84321
(name) (address)

State of Utah, 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. 17-7029.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before May 1, 1979.

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

Well has been drilled and tested to date.

Costing $ 11,000.00

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: We have just purchased the said property and have applid for applications changes and are waiting the outcome of the contest.

Wherefore, he asks that the Department of Water Administration extend the time for the completion of obligations under said permit to Aug. 1, 1980.

Kent A. Hoggan (Sec)
(signature) *

Subscribed and sworn before me this 29th day of March, 1979.

seal

John Chad
(notary public)

My commission expires Jan 16, 1981

ACTION OF THE DEPARTMENT OF WATER ADMINISTRATION

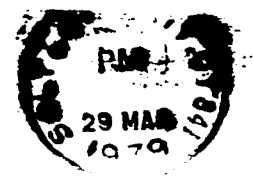
I, C. STEPHEN ALLRED, Director of the Idaho Department of Water Administration, State of Idaho, hereby APPROVE this request for extension of time and extend the time within which to submit proof of beneficial use to August 1, 1981.

Witness my hand this 21 day of November, 19 79.

C. Stephen Allred
Director

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through the Department of Water Administration, Statehouse - Annex 2, Boise, Idaho, 83707.

SANDAROSA ENTERPRISES
412 West 10th North
Logan, Utah 84321



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATE OFFICE 373 W. FRANKLIN STREET

BOICE, IDAHO 83720

04

Township 16 South, Range 31 East, Boise Meridian
Section 28: Lots 2, 3, 4, 7, 8, 11, NW¼NW¼, S½NW¼

17-7029

Excepting therefrom the following described land:

Commencing at the NW corner of Section 28, thence East 465 feet, thence South 3507.6 feet, thence West 465 feet, thence North 3507.6 feet to the point of beginning.

Containing approximately 235 acres.

FIRST BANK AND TRUST
OF IDAHO

P. O. BOX 171
MALAD CITY, IDAHO 83252

BRANCH OFFICES: P. O. BOX 755, SODA SPRINGS, IDAHO 83276
P. O. BOX 234, PRESTON, IDAHO 83263

T. D. JONES
EXECUTIVE VICE PRESIDENT

RECEIVED
JUN 29 1977
Department of Water Resources

June 28, 1977

Mr. Richard Kelley
Route #2
Rupert, Idaho 83350

Dear Mr. Kelley:

In reference to our telephone conversation, I am enclosing a legal description of the state ground where the well was drilled. Since Bill Byrd's death I have had difficulty in locating all papers with reference to Sinks Land and Livestock Corporation.

I would suggest that you call the State of Idaho and get the permit number because I cannot find it in time for you to meet the July 30th deadline.

If you have any questions, please call.

Very truly yours,

T. D. Jones
Exec. Vice President

TDJ/cw

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

John V. Evans
Governor

C. Stephen Allred
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

12 July, 1977

Mr. Richard Kelley
Route 2
Rupert, Idaho 83350

Dear Mr. Kelley,

Today we received a letter from T.D. Jones, executive vice president of First Bank and Trust of Idaho in Malad City. The letter was addressed to you and attached was a legal description of lands.

We are not certain why we received this letter, but rather than hold you up, I am sending you a copy of the permit. The proof of beneficial use is due 1 May, 1979.

If you have any questions, please get in touch.

Sincerely,

(Ms.) Kay Weaver
Records Supervisor

Encl.

October 11, 1978

Re: Permit No. 17-7029, 17-7044

Sinks Land & Livestock Corp.
c/o P.M.A.
412 West 10th North
Logan, Utah 84321

Gentlemen:

We have received the Applications for Amendment submitted for the above referenced permit.

However, we cannot accept these amendments as they constitute an expansion of the water right by increasing the acreage for each permit. Since Idaho is under the priority system for water rights, the expansion of the acreage would give the priority of the permits to land which was not included when the priority was first established.

Therefore, we are returning the Applications for Amendment and the $40.00 check also submitted. We recommend that amendment applications be filed showing the two points of diversion for each permit and only the place of use up to the number of acres allowed under each permit. This would allow the two points of diversion to cover both the 235 acres listed in Permit No. 17-7029 and the 640 acres listed in Permit No. 17-7044 which would be accomplishing what appears to have been the intention on the previously submitted applications.

If you have any questions, please contact us.

Sincerely,

JAN GROVER
Water Rights Supervisor

JG:lr

Enc: 3

PMA
PROFESSIONAL MANAGEMENT ASSOCIATES
412 West 10th North Logan, Utah 84321 Ph. (801) 752-9711

October 17, 1978

State of Idaho
Department of Water Resources
State Office, 373 W. Franklin St.
Boise, Idaho

Dear Mr. Grover:

Thank you very much for your letter of October 11, 1978 and your recommendation.

Please find enclosed new ammendments properly filled out along with the $40.00.

I appreciate your help and cooperation and hope these two ammendments can be expedited.

Sincerely,

Patrick R. Hoggan, Pres.

People Who Care

Patrick R. Hoggan, President
J. Reid Hoggan, Vice-President
Kent A. Hoggan, Sec. Treas.
Bradley R. Hoggan, Director
Jefrey A. Hoggan, Director

November 3, 1978

Re: Permit No's 17-7029 & 17-7044

Professional Management Association
Patrick R. Hoggan, President
412 W. 10th North
Logan, Utah 84321

Dear Mr. Hoggan:

We have received both Amendments submitted for the above referenced permits.

However, we cannot accept the amendment for Permit No. 17-7044 as it is still in the name of Rose Ranch Grazing Association, and must be assigned to Sinks Land and Livestock Corporation before we can process the Application for Amendment.

We will hold action on these Amendments until we receive the assignment for No. 17-7044.

If you have any questions, please contact us.

Sincerely,

JAN GROVER
Water Rights Supervisor

JG:lr

INTER-DEPARTMENT MEMO — 1

FROM Glen S.

DATE 11-14-78

TO Jan G.

SUBJECT — Send copy of apps for amendment to Region to be advertised.

- also specifically ask the region to send a copy of the notice to Mike Thompson in Utah or call him & tell him of the advertisement

GLS

SIGNATURE

STAFF REVIEW FOR 01/15/75

	FILE NUMBER	AFFIDAVIT RECEIVED	BILL RECEIVED
	21-7162	------	------
	29-7469	------	------
Amended	21-7101	_____	_____
Amendment	17-7029	_____	_____
Amendment	17-7044	_____	_____

TELEPHONE CONVERSATION

Date: December 14, 1978

From: L. Glen Saxton

To: Files 17-7029 and 17-7044

From phone conversation today with Mike Turnipseed of the Division of Water Rights, Logan, Utah, I learned the following:

1. Utah is categorically opposed to any additional pumping from groundwater in the Juniper - Blackpine valley that would cause general declines in water table conditions or individual interference with existing vested rights in Utah.

2. Utah believes that approval of the amendments would allow the applicant to change from an area highly speculative in nature of hitting water to an area of greater probability of hitting water. The likelihood of interference with wells in Sec. 35 and 36, Twp. 15 N., Rge. 10 W., S.L.B. & M. then would be greater.

3. The question was raised whether the intent was to drill the wells in Utah in addition to changing the place of use to Utah.

4. Utah doesn't want a hearing on the matter, but wanted their position known.

STATE OF UTAH

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RIGHTS

DEE C. HANSEN
STATE ENGINEER

EARL M. STAKER
DEPUTY

200 EMPIRE BUILDING
231 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111
(801) 533-6071

DIRECTING ENGINEERS
HAROLD D. DONALDSON
DONALD C. NORSETH
STANLEY GREEN
ROBERT L. MORGAN

January 15, 1979

RECEIVED
JAN 18 1979
Department of Water Resources

Idaho Dept. of Water Resources
614 State Street
Statehouse - Annex 2
Boise, Idaho 83707

Attention: Glen Saxton

Gentlemen:

The State of Utah would like to publicly protest the Amendments filed on 17-7029 and 17-7044 because the applicant proposes to change the points of diversion to the state line. Wells of this magnitude with transmissivities common to that area would cause a radius of influence several thousands of feet in diameter and at least half of the water would be drawn from groundwater in Utah.

Furthermore, the Idaho applications were filed April 2, 1974 and May 2, 1975 respectively. Utah has had a moratorium on approvals of irrigation wells since 1967 and has held 18 applications totalling 190 cfs which were filed before the above-mentioned Idaho applications.

It is Utah's position that if further hydrologic study reveals that there is unappropriated groundwater within the boundaries of the State, that it should go to the next priority unapproved Utah application rather than to a later dated priority Idaho appropriation drilled close enough to the border to appropriate groundwater within the Utah boundaries.

Yours truly,

Dee C. Hansen
State Engineer

DCH:sp

PMA
PROFESSIONAL MANAGEMENT ASSOCIATES
412 West 10th North Logan, Utah 84321
Ph. (801) 752-9711

RECEIVED
JAN 22 1979
Department of Water Resources
Eastern District Office

January 18, 1979

State of Idaho
Department of Water Resources
% Earnest Carlson
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Letter of Authorization

Dear Mr. Carlson,

On the 17th day of October 1978 Sinks Land and Livestock Corporation made application for amendment of a permit (17-7044) and listed points of diversion as follows: NW 1/4 NW 1/4, Section 28, Township 16 S, Range 31 E, B.M., County of Oneida. Other points of diversion SW 1/4 SE 1/4 and SE 1/4 SW 1/4 of Section 28 T16S, R30E. It is now the desire of Sinks Land and Livestock Corporation to list as the only point of diversion on this amendment as follows: SW 1/4 SE 1/4 of Section 28 T16S, R30E and omit the other two points of diversion as submitted.

Application for amendment of a permit (17-7029) shall be re-advertised as soon as possible (very expeditiously) for the diversion points already submitted for on the 17th day of October, 1978.

Sincerely,

Sinks Land and Livestock Corporation
mm/CD

People Who Care

Patrick R. Hoggan, President
J. Reid Hoggan, Vice-President
Kent A. Hoggan, Sec. Treas.
Bradley R. Hoggan, Director
Jefrey A. Hoggan, Director

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

January 31, 1979

Joseph Novak
520 Continental Bank Bldg.
Salt Lake City, UT 84101

Dear Mr. Novak: Re: Permit Nos. 17-7044 & 17-7029

Pursuant to your request, enclosed is a copy of the Department's PRACTICE AND PROCEDURE handbook and a copy of the letter from Dee C. Hansen, State Engineer, Department of Natural Resources.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: 2

cc: Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

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

John,
Received this today.
Pat.

FEB 12 1979
Laying: _____
Check: _____
Date: _____

February 7, 1979

Mr. Calvin Dredge
Sinks Land & Livestock Corporation
c/o Professional Management Associates
412 West 10th North
Logan, Utah 84321

Dear Sir:

Re: Application for Amendment of Permit No. 17-7029
Application for Amendment of Permit No. 17-7044

Enclosed is a copy of a protest filed against the issuance of amendments pursuant to your permits No. 17-7029 and No. 17-7044. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

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

1. Will the proposed use reduce the quantity of water under existing water rights?

2. Is the proposed water supply insufficient for the purposes intended?

3. Is the application made in good faith or for delay or speculative purposes.

4. Has the applicant sufficient financial resources with which to complete the project?

5. Will the proposed use under this permit conflict with the local public interest?

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

Very truly yours,

RONALD D. CARLSON
Supervisor
Eastern Region

RDC:dh

Enclosure

Copy to: Pat Hoggan, PMA ✓

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 733-3722

R. P. PARRY
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
D. EVAN ROBERTSON
THOMAS G. WALKER, JR.
JAMES C. TUCKER
STEVEN K. TOLMAN

T. M. ROBERTSON (1911-1977)
JOHN H. DALY (1913-1968)

DIRECTOR
DEPUTY DIR.
ADMIN.
TECH. SERV. MGR.
PROJECTS MGR.
LEGAL
PERSONNEL
FILES

Steve Allred Please Send me one Plan

February 13, 1979

RECEIVED
FEB 14 1979
Department of Water Resources

Mr. Ronald D. Carlson
Supervisor, Eastern Region
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Re: Sinks Land and Livestock, Applications for Amendment of Permits No. 17-7029 and 17-7044

Dear Ron:

My clients have sent me the original of the enclosed letter. It seems to me that their application to amend is governed by Idaho Code §42-211 which sets forth the authority of the Director as opposed to Idaho Code §42-203 and the criteria which you set forth in your letter.

Has the Department at some time taken the position that the §42-203 criteria applies to applications received pursuant to §42-211? If so, I would appreciate any information you may now have.

Sincerely,

JOHN A. ROSHOLT

JAR:bg

Enclosure

cc: Steve Allred

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

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

February 27, 1979

RE: Applications for Amendments No. 17-7029 and 17-7044 SINKS LAND & LIVESTOCK

Mr. Calvin Dredge
Sinks Land & Livestock Corporation
c/o Professional Management Associates
412 West 10th North
Logan, Utah 84321

Dear Mr. Dredge:

On February 7, 1979, we sent a letter requesting that you contact the protestants to determine the nature of the protest and attempt to resolve the protest prior to the Department conducting a hearing in this matter. The letter you received is a standard letter we send to the applicant whenever an application for permit is protested. The purpose of this letter is primarily to get the applicant and protestants together to determine if an agreement can be reached prior to the Department scheduling a hearing in the matter. Unfortuntately, the letter you received from us advising you that your applications for amendment had been protested was in error.

The Department is in the process of scheduling a hearing in this matter for March 15, 1979, at the Department of Water Resources conference room in Boise. The issues the Department can consider are limited by Section 42-211 of the Idaho Code to the impact the approval of the amendments will have on other water rights and if the diversion will result in the use of more water than originally permitted. The five items indicated on our previous letter apply only to protested applications for permit and will not be considered in this hearing.

I hope that our letter has not caused confusion or inconvenience.

Very truly yours,

Ronald D Carlson

RONALD D. CARLSON
Supervisor,
Eastern Region

RDC:cw
cc: Dee C. Hansen; PMA ; Attorney John Rosholt

State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

CERTIFIED MAIL 100699

March 2, 1979

Re: Permit No. 17-7029 ✓

Sinks Land and Livestock Corp.
c/o PMA
412 West 10th North
Logan, UT 84321

Gentlemen:

One of the conditions of approval of your water Permit No. 17-7029 (see last page of your approved permit) was that evidence of the extent of development be submitted as proof of application of water to beneficial use to this office on or before May 1, 1979. Enclosed is an affidavit form which must be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted.

Either the beneficial use affidavit or a request for an 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.

Rita Fleck

RITA FLECK
Water Rights

Encl: Proof affidavit

cc: John A. Rosholt

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	HANDLING CHARGE	REMARKS*
1	1228	Calvin Dredge, 412 W 10th N, Logan, Utah	15	80	45			Am.	17-70448
2	19	Pat Hoggan, PMA, 412 W 10th N, Logan	15	80	45				17-7029
3	1230	Ole Hansen, 231 E 400 S., Salt Lake	15	80	45			"	
4	1231	John Roshalt, P.O. Box 1906, Twin Falls,	15	80	45			"	
5									
6									
7					$5.60				
8									
9									
10									
11									
12		Sent by Certified Mail							
13		2/27/79 cw							
14									
15									
16									
17									
18									
19									
20									

FEB 27 1979 USPO

TOTAL NO. OF PIECES LISTED BY SENDER 4 | TOTAL NO. OF PIECES REC'D AT P.O. 4 | POSTMASTER, PER (Name of receiving employee) [signature] | *Show under "Remarks" class postage paid if other than first or if international

PS Form 3877, Dec. 1973

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

(Declaration of value is required on international registered mail)

★ U. S. GOVERNMENT PRINTING OFFICE: 1974-0-529-726

FORM MUST BE MADE OUT IN INK OR BALL POINT PEN

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

In the Matter of Protests Against the Amending of Permit Nos. 17-7029 and 17-7044 in the Name of SINKS LAND AND LIVESTOCK

NOTICE OF CONFERENCE AND/OR HEARING

On May 3, 1974, application for permit No. 17-7029 was approved for the diversion of 4.93 cubic feet per second of water from a ground-water source with the point of diversion within the NW¼NW¼, Section 28, T. 16S, R. 31E, for the irrigation of 235 acres. On May 30, 1975, application for permit No. 17-7044 was approved for the diversion of 10.0 cubic feet per second of water from a ground water source with points of diversion within the NE¼SE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, Section 14, T. 16S, R. 29E, for the irrigation of 640 acres.

On October 20, 1978, the permit holder filed with the Department of Water Resources applications for amendments concerning the above referenced permits. On January 18, 1979, the Department received protest against said amendments from Dee C. Hansen, Stage Engineer, Division of Water Rights, State of Utah.

The Department has set the matter of protest for conference and/or hearing for Thursday, March 15, 1979, at 10:00 a.m., in the Conference Room of the State Department of Water Resources, 373 Franklin, Boise, Idaho. Any hearing will be held in accorance 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 protestants may allow the Department without prejudice to dismiss the protest or the amendments. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing parties.

Dated this 27th day of February, 1979.

RONALD D. CARLSON
Supervisor, Eastern Region

STATE OF IDAHO

Department of Water Resources

No 12370

Boise, Idaho, 10/20, 1978

RECEIVED FROM Sandarosa Enterprises Logan, Utah $40.00

Forty ~~no~~/100 DOLLARS

FOR		
Amendments	$ 40	—
	$	
	$	
	$	
TOTAL - - -	$ 40	—

Check #2389
97-94/1243

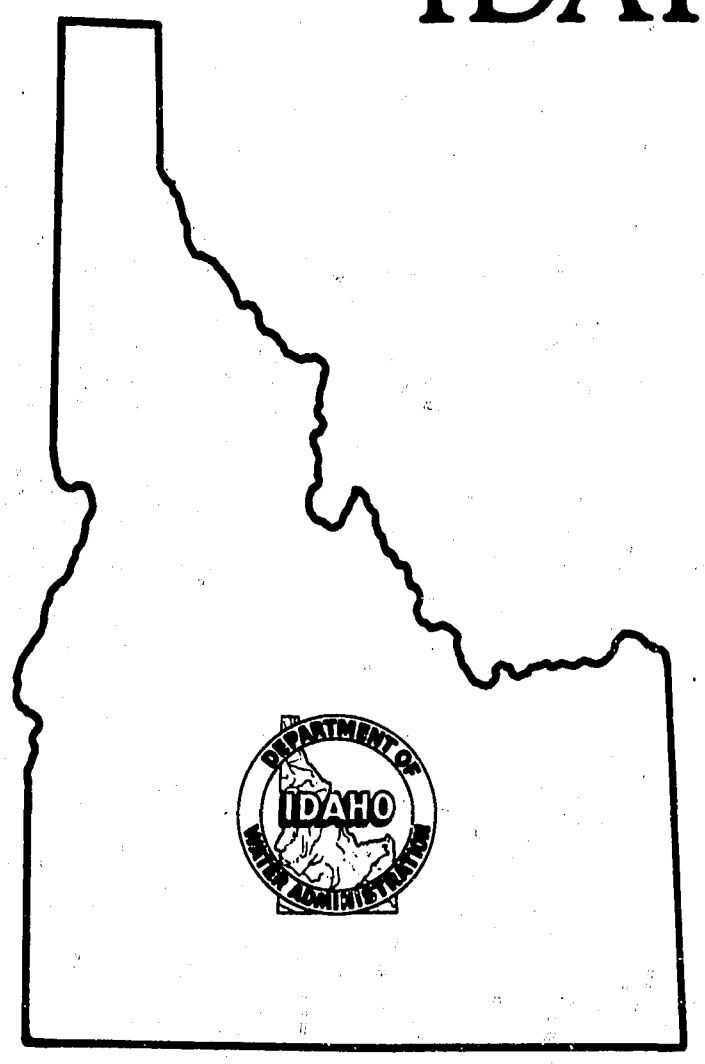
Jan Groen

THIS

book IN

FILE

REASONABLE PUMPING LIFTS FOR IDAHO



WATER INFORMATION BULLETIN NO. 21

FEBRUARY 1971

IN REPLY REFER TO
2800

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Burley District Office
Route #3, Box 1
Burley, ID 83318

April 16, 1979

RECEIVED
APR 23 1979
Department of Water Resources

Mr. Glen Saxton
Dept. of Water Resources
373 West Franklin
Boise, ID 83700

Dear Mr. Saxton:

You inquired as to BLM's position regarding the granting of rights-of-way for irrigation facilities in section 28, T. 16 S., R. 30 E. The rights-of-way would be for the purpose of drilling wells in Idaho and transporting the water across public land into Utah for irrigation purposes. Without an analysis of the project, we cannot say that the following discussion will be BLM's position on the project, but rather that it will have to be considered.

As you are aware, we denied several desert land entry applications which had been filed on public lands within Black Pine Valley. The nature of the underground water supplies and the flow system was one of the critical factors considered in that action. Although the Idaho section of the Black Pine Valley is not closed to well permit application, available studies indicate that removal of water in Idaho would affect existing underground water supplies in Utah. Utah considers their portion of Black Pine Valley as a critical ground water area.

By granting a right-of-way to allow the drilling of irrigation wells on public land and to allow transporting water across public land, the BLM would be contributing to what the State of Utah would consider an adverse action. Whether the granting of the right-of-way would be in the public interest may be questionable. It may well be that the granting of this one right-of-way may not affect existing operations in Utah, but the overall effect of granting similar applications in the area could be adverse to the public interest and the granting of one application might establish a precedent contrary to the public interest.

I hope the above discussion points out one important factor we would have to evaluate should a right-of-way application be filed. Please contact me if you have further questions.

Sincerely yours,

Nick James Cozakos

Nick James Cozakos
District Manager

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

Review of Tape 1/

~~Monday — 1:30~~

applicant — present appearance
Protestant — " "

Briefs
1. ? of reciprocity
2. ? of Utah's standing to protest

Factual
1. Rts of others affected
2. Expansion

Nielson — for app.
affecting rts of others
1. Would well s take water from same aquifer at either pt.
2. Local effect on wells near amended pt.

Brockway
App's Exhibit 1
aquifer — is called "the Juniper Block & Pine flow system"

—

Review of tape 2/

Local effects

- Effect on Mayo-well
  ≃ 1 mi. away
  8' drawdown over 180 day
  6' " on taylor

Turnipseed - X-exam
  Tech pub-45
  Holbrook - pump tests in leaky aquifer system
  Paul Castelin

  Kelton flow system
  "T" - twice as great as in Holbrook area.

  Jacob method
  16.7 = T Tech pub 45 - pg 17
  .03 = S

  Tech pub-45 - pg 24 3rd parag
  "unconfined system"

Kent Hogan
  17-70 ≥9 - drilled well & test pumped
  - well hasn't been used

X- eqaw

710- ~~ind~~ stoped testimony
- test pumped → 1500-1600 gpm
- 2 center pivots are set up

Turnipseed direct
- Nov 78 - Idaho-Utah meeting
- Evidence that aquifs are not homogeneous
- Ranges of trans 30,000 to 4 million
- quality indicates non homogeneous
- "If we ~~k~~knew that the wells in the orig pt of approval were a ~~in a~~ completely separate aquifer than the wells in Utah + ~~K~~knew there was no connection we'd have no basis for obj for them pumping at orig. p.d."

change aquifer lang

- mike agrees that the
- Net depletion to resource same @ new pt or at old pt.

- Pumping lift
  - ~~Mayo~~ well -
  - ~~Taylor~~ well -

Charlie Taylor
- well 25' into utah
  relatively new well
- tested @ 2780 gpm
  - Static water level 175' to 180'
  -
- Permit was moved west
- Drilled late summer 78

Dear ~~Dan~~ Dvan Brown
- g.w. decline — Low well break suction
- 1 well & surface elev - 1/4 mi South of Mayo well
  South & east. — larger well
  flood irr — 320 acres
- Crops — small grains & hay

- Mayo Well
  trend decr. 5' in ~~2~~ 25 yrs.

4-16-79 JW

INTER-DEPARTMENT MEMO — 1

FROM Glen S.

DATE 4-09-79

TO File 17-7029

SUBJECT I talked w/ Nick Kozacos, BLM Bundey (678-5514) office today w/ regard to right of way easements in Sec 28, T16S, R30E.

He stated he would have Carl Simonson call me back.

Simonson called & said he would send a letter. GS 4-10-79

SIGNATURE

ACCOUNT NUMBER

NAME AND ADDRESS OF OWNER

DESCRIPTION OF PROPERTY

REMARKS

M. Dunford Weston D 3341

17

NW¼NE¼ 40 Acres
S18-T11S-R37E

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

1963

M. Dunford Weston D 3341

17

NW¼NE¼ 40 Acres
S18-T11S-R37E

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

1964

M. Dunford Weston D 3341
% Reid S. Stewart
Downey, Idaho

17

NW¼NE¼ 40 Acres
S18-T11S-R37E

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

1965

EQUAL-IZED

IMPROVE

EQUAL-IZED

GATEWAY PRINTERS - POCATELLO

ASSESSMENT
BANNOCK CO
POCATELLO, I

B

MARKS	DE AREA	TRFD. TO	TRFD. F

1963

LAND AND LOTS

CLASS	ACRES	VALUATION
5 Dry Ag.	39,	120.00+5
	1, —	Waste

TOTAL IMPROVEMENTS

EQUALIZED VALUE		120.00*1

TOTAL EQUALIZED VALUE

TAXING DISTRICTS

CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES

L. D. C	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV	

1964

LAND AND LOTS

CLASS	ACRES	VALUATION
5 Dry Ag	39,	120.00+5
	1, —	Waste

TOTAL IMPROVEMENTS

EQUALIZED VALUE		120.00*1
	Irr. Pump	

TOTAL EQUALIZED VALUE

TAXING DISTRICTS

CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES

L. D. C	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV.	

1965

LAND AND LOTS

CLASS	ACRES	VALUATION
2	20	245.00+8
5 Dry Ag.	19,	58.00+5
	1, —	Waste

TOTAL IMPROVEMENTS

EQUALIZED VALUE		303.00*1

TOTAL EQUALIZED VALUE

TAXING DISTRICTS

CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES

L. D. C.	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV	

ESSMENT LEDGER
BANNOCK COUNTY
POCATELLO, IDAHO

FOR USE ON BURROUGHS SENSIMATIC F-800

Protestants Exhibit 1
3 sheets

ACCOUNT NUMBER 1 3 5 7

REMARKS

NAME AND ADDRESS OF OWNER

DESCRIPTION OF PROPERTY

1966

Reid S. Stewart
Downey, Idaho

D 3727

17

NE¼NW¼ 40 Acres
S18-T11S-R37E

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

1967

Reid S. Stewart
Downey, Idaho

D 3727

17

NE¼NW¼ 40 Acres
S18-T11S-R37E

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

1968

Reid S. Stewart
Downey, Idaho

D 3727

17

NE¼NW¼ 40 Acres
S18-T11S-R37E

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

GATEWAY PRINTERS – POCATELLO

ASSESSM
BANNO
POCATE

A

REMARKS	CODE AREA	TRFD. TO	TRFD. FROM
Irr. Pump			

1966

LAND AND LOTS	CLASS	ACRES	VALUATION
	2	20.	259.00+
	5-Dry Ag	17.	67.00+
	6	2.	1.00+
	Dry Grz.	1. Waste	
TOTAL IMPROVEMENTS	17		142.00+
TOTAL IMPROVEMENTS			469.00*
TOTAL EQUALIZED VALUE			

TAXING DISTRICTS	
CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES	
L. D. C	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV	

1967

LAND AND LOTS	CLASS	ACRES	VALUATION
	2	37.00	480.00+ B
	6-Dry Grz.	2.00	1.00+ B
	Irr. Pump	1.00 Waste	
TOTAL IMPROVEMENTS	17		142.00+ B
TOTAL IMPROVEMENTS			623.00*
TOTAL EQUALIZED VALUE			

TAXING DISTRICTS	
CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES	
L. D. C.	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV.	

1968

LAND AND LOTS	CLASS	ACRES	VALUATION
	2	37.00	480.00+ B
	6-Dry Grz.	2.00	1.00+ B
	Irr. Pump	1.00 Waste	
TOTAL IMPROVEMENTS	17		142.00+ B
TOTAL IMPROVEMENTS			623.00*
TOTAL EQUALIZED VALUE			

TAXING DISTRICTS	
CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES	
L. D. C.	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV	

SSMENT LEDGER
BANNOCK COUNTY
POCATELLO, IDAHO

FOR USE ON BURROUGHS SENSINATIC F-800

ACCOUNT NUMBER 0 1 0 3 0 5 0 7

NAME AND ADDRESS OF OWNER

REMARKS

DESCRIPTION OF PROPERTY

Reid S. Stewart D 3717
Downey, Idaho

17

NW¼NE¼ 40 Acres
S18-T11S-R37E

1966

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

Reid S. Stewart D 3717
Downey, Idaho

17

NW¼NE¼ 40 Acres
S18-T11S-R37E

1967

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

Reid S. Stewart D 3717
Downey, Idaho

17

NW¼NE¼ 40 Acres
S18-T11S-R37E

1968

CLASS	NUMBER	VALUATION
TOTAL PERSONAL		

GATEWAY PRINTERS - POCATELLO

ASSESSMEN
BANNOCK
POCATELL

MARKS	DE AREA	TRFD. TO	TRFD. FRO...
Irr. Pump			

1966

LAND AND LOTS

CLASS	ACRES	VALUATION
2	20.	259.00 + 8
5	19.	75.00 + 5
	1.	
Dry Ag.		Waste

IMPROVEMENTS

TOTAL IMPROVEMENTS

EQUALIZED VALUE — 334.00 *

TOTAL EQUALIZED VALUE

TAXING DISTRICTS	
CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES	
L. D. C	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV	

1967

LAND AND LOTS

CLASS	ACRES	VALUATION
2	39.00	505.00 + 8 B
	1.00	
Irr. Pump		Waste

IMPROVEMENTS

TOTAL IMPROVEMENTS

EQUALIZED VALUE — 505.00 *

TOTAL EQUALIZED VALUE

TAXING DISTRICTS	
CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES	
L. D. C	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV.	

1968

LAND AND LOTS

CLASS	ACRES	VALUATION
2	39.00	505.00 + 8 B
	1.00	
Irr. Pump		Waste

IMPROVEMENTS

TOTAL IMPROVEMENTS

EQUALIZED VALUE — 505.00 *

TOTAL EQUALIZED VALUE

TAXING DISTRICTS	
CITY OR VILLAGE	
SCHOOL DISTRICT	
FIRE DISTRICT	
CEMETERY DISTRICT	
HIGHWAY DISTRICT	

SPECIAL TAXES	
L. D. C.	
BRAND	
SHEEP	
BEE TAX	
HONEY ADV	

ESSMENT LEDGER
BANNOCK COUNTY
POCATELLO, IDAHO

FOR USE ON BURROUGHS SENSIMATIC F-500

PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: 733-3722

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

* * * * * * * * * * *

APPLICATIONS FOR AMENDMENT OF)
)
PERMIT NO. 17-7029 and 17-7044) BRIEF OF APPLICANT
)

* * * * * * * * * * *

Applicant seeks to change the place of diversion and point of use concerning the above two referenced permits which have been previously issued by the State of Idaho. The points of diversion would be located in Idaho and the place of use located in Idaho and Utah. The State of Utah, Department of Natural Resources, Division of Water Rights, protested through the State Engineer and a hearing was held on March 15, 1979, in Boise, Idaho. The Hearing Officer identified three questions for briefs. They are:

(1) The standing of Utah in the proceedings.

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(3) Whether the rights of others be adversely affected in the context of Idaho Code §42-211?

While the discussion of the points necessarily overlap, we have tried to argue each separately under three sections.

I.

Utah Has No Standing In The Idaho Proceeding.

In this case, the State of Utah holds no water right which might be injured. Protests from Idaho residents both as to the original permit and to the application for amendment have not been made. Utah cannot assert the kind of injury which was contemplated to be averted by the adoption of Idaho Code §42-411. It is also likely that the Code's reference to "the rights of others" does not contemplate the rights of other Utah persons who have Utah water rights for use on Utah land insofar as Idaho Code §42-211 is concerned. Utah argues that it vicariously represent Utah users, and certainly it does generally. However such vicarious representation, as well as an appearance by a Utah user would not qualify such persons to be within the contemplation of the criteria set forth within Idaho Code §42-211. If a Utah user had appeared and protested, he would have no standing in the instant proceeding because even he is not contemplated within Idaho Code §42-211 as a party to be protected. It is difficult then to see how Utah, with no right, can argue injury. The record is clear that a proposed change in point of diversion and place of use is within the jurisdiction of Idaho and is a determination as to the use of so-called "Idaho water". Testimony at the hearing demonstrates that even though a common aquifer is involved, that with the heavy development in Utah, that water levels have stabilized and that in all likelihood, even if Utah persons were within the contemplation of the statute, they will not be injured.

II.

Applicant's Proposal Does Not Violate State Law.

Idaho Code §42-408 and Utah Code §73-2-8 are similar statutes adopted by the respective State Legislatures. I quote them here for convenience.

PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: 733-3722

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

* * * * * * * * * * *

APPLICATIONS FOR AMENDMENT OF)
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PERMIT NO. 17-7029 and 17-7044) BRIEF OF APPLICANT
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I disagree

I don't understand

II.

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Idaho Code §42-408 and Utah Code §73-2-8 are similar statutes adopted by the respective State Legislatures. I quote them here for convenience.

"42-408. Appropriation subject to reciprocal legislation -- Certain waters excluded. -- No permit to appropriate the public waters of the state of Idaho shall be granted by the department of water resources, unless the sister state, to which it is desired to divert such water, shall have enacted legislation generally similar in purport to the provisions of this chapter, whereby water may be appropriated within such sister state for use within the state of Idaho; provided, that no permit to appropriate the waters of the Pend d'Oreille, the Clark Fork of the Columbia, or Spokane rivers, or any of the streams or lakes tributary thereto whose waters drain into the said streams, shall be granted where such waters are to be used outside of the state of Idaho; and, provided further, that no permit to appropriate or impound the waters of Lake Coeur d'Alene shall be granted where such waters, or electrical energy to be developed therefrom is to be used outside of the state of Idaho. (1915, ch. 111, § 8, p.254; reen. C.L. § 3265u; C.S., § 5602; am. 1925, ch. 3, § 1, p. 7; I.C.A., § 41-408.)"

"73-2-8. Powers Relating to Interstate Streams. The state engineer is hereby authorized and empowered to receive and grant applications to appropriate water from interstate streams in Utah, where such water is to be conveyed and used for beneficial purposes within any border state, and to issue certificates of appropriation thereon; provided, the law of such border state in like manner permits the appropriation of water therein for use in Utah. The state engineer shall cooperate with the state engineer or other proper officer of any adjoining state in the determination, supervision, regulation and control of all water and water rights in interstate streams; and to that end the state engineer, by and with the consent of the governor, may enter into the necessary and lawful agreements with the proper officer, duly authorized thereto, of any adjoining state to carry out the purposes of this section."

At the hearing, Utah's representative argued that the Utah statute speaks only to interstate streams and for that reason the Utah statute was inappropriate insofar as the instant proposals concerning ground water are concerned. The Idaho statute talks in terms of "public waters." Idaho Code §42-226 defines groundwaters as public waters. The appropriate part of that section reads as follows:

> ". . . All ground waters in this state are declared to the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use."

clear back to the farthest limits of the watershed. There is no reason or justification (in the words employed by the parties in this document) for restricting the Vermillion's reliance on the accumulation of water above its dam to such a small fractional portion thereof as the evidence in this case shows may be derived from marginal sources within the six miles between the two dams. But whether great or small, the marginal contributions are not the sole factors in the accumulation of waters between the two dams. The main contri" ution, from the very nature of the case, must come from upstream sources. There is no controlling significance in the specification of "all the water accumulating in the river" between the two dams; not at least, without a showing that the lower (Vermillion) dam backs the water up for six miles and to such depth that the accumulated water extends clear over and beyond the Annabella dam in depth exceeding that of the flowing water at the latter point. No such showing has been made, or probably could be. If not, the Vermillion does not exceed its rights in taking out 37.-80 second feet from the accumulated water between the two dams, from whatever source accumulated."

In Hutchins, Volume III, Water Rights Laws in the 19 Western States, (1977), the following text is quoted from pages 565-566:

> "A 1969 case involved Murray City, which had changed its diversion from old wells to a new well, as approved by the State Engineer under section 73-3-3 of the statutes. This section permits changes in the place of diversion or purpose of use, if no vested right is impaired, without compensation. The Utah Supreme Court said that 'the trial court as authorized under Sec. 73-3-23, provided that Murray City 'must at (its) sole cost <u>permanently</u> replace to the plaintiffs water in amount and quality to the level of their prior use.'' However, the supreme court required that this be modified. Among other things, the court stated:
>
> ***there has come to be recognized what may be referred to as the 'rule of reasonableness' in the allocation of rights in the use of underground water. This involves an analysis of the total situation: the quantity of water available, the average annual recharge in the basin, the existing rights and their priorities. All users are required where necessary to employ reasonable and efficient means in taking their own waters in relation to others to the end that wastage of water is avoided and that the greatest amount of available water is put to beneficial use.
>
> ****
> We perceive nothing in our statutory law inconsistent with this 'rule of reasonableness' just discussed, nor which compels a conclusion that owners of rights to use underground water have any absolute right to pressure."

Both Idaho and Utah are appropriation states. In the case of Connant v. Deep Creek and Curlew Valley Irrigation Company, 23 Utah 627, 66 P. 188, 90 Am.St.Rep. 721 (1901), the Court held that the courts of Idaho could not adjudicate rights as between residents of Idaho and residents of Utah on a stream which arose in Idaho and flowed in Utah. As prelude to that case, the Idaho residents had adjudicated the water to themselves, although the same flowed traditionally for uses in Utah. In 1938, the Circuit Court of Appeals for the Tenth Circuit decided the case of Albion-Idaho Land Company v. N. A. F. Irrigation Company, et al. In that case, the Circuit Court decided that the Federal District Court of Utah had no jurisdiction to adjudicate priorities to users of an interstate stream that were within the State of Idaho. In that case Clear Creek was the stream in question and it arises in Utah and flows into Idaho. It would thus appear that the Courts of neither state have a right to determine the rights of residents of the other state as to interstate streams.

Idaho Code §42-405 would appear to be consistent with these cases, suggesting that appropriations of water made under this chapter are subject to Idaho's control so long as they remain in the State of Idaho.

An argument has been suggested that because there are specific statutes that deal with appropriations for use in Oregon, Wyoming, Nevada, and Washington, that Idaho Code §42-408 is not applicable to the relationship with Utah because a presumption might possibily arise that because Idaho does not have a specific statute dealing with appropriation for use in Utah, that no such use such as the one proposed would be permissible. Such a position would fly in the face of many present known and established relationships on interstate surface streams in Idaho and Utah, and perhaps some as to ground

water. Utah does have a reciprocity statute comparable to Idaho Code §42-408. This general statute would appear controlling so long as the sister state has a like statute. But you only need to look to the dates of passage of the specific statutes to overcome the argument about Idaho's lack of a specific statute permitting uses in Utah. Essentially Chapter 4 of Title 42 was passed as a part of the Session Laws of 1915 and the only specific statute included at that time involved the State of Oregon. The intent of the legislature as to Chapter 4 of Title 42 was to permit such reciprocity in their relationship with other states so long as the other states would permit the same relationship.

The case of Walbridge v. Robinson, 22 Idaho 236, 125 Pac. 812 (1912) predated the enactment of Chapter 4 of Title 42 of the Idaho Code. While this case involved waters between Montana and Idaho, the Idaho Court essentially said that the solution was reciprocal legislation. The Court stated:

> "It was suggested on the oral argument that some of the irrigation states have reciprocity statutes on this subject and in such a case we can conceive how laws of one state might be executed in another. In other words, if the right to appropriate and divert waters of this state to be used in another state were recognized and conferred upon the condition that the authority of this state may be exercised in the regulation and control of the right in the state in which the use is to be had and that the State of Montana had accepted the conditions of the statute by reciprocal legislation, then this state could execute and enforce the above-mentioned provisions of the statute."

While this decision essentially set the stage for the enactment of Chapter 4 of Title 42, one can argue that both the Idaho statute thereafter enacted, as well as the Utah statute and Idaho's Walbridge case, may well be violative of the United States Constitution. In the City of Altus v. Carr, 255 F.Supp. 828 (W.D. Text., 1966), affirmed by the United States Supreme Court at 17 L.Ed.2d 34, 87 Sup. Ct. 240 (1966), the United States

Supreme Court dealt with the problem of Altus, Oklahoma's declining domestic water supply. With the permission of the owner of a farm in Texas, the city drove wells in Texas for transmission of the water to Oklahoma. Altus voted a $2 million bond issue and while the construction was proceeding, the Texas legislature adopted a statute which, with some exceptions inapplicable to Altus, prohibited withdrawal of underground water in Texas for transport outside the state unless the same was specifically authorized by the Texas legislature. In the final paragraph of the opinion of the Federal District Court, the Court said that the Texas statute violated the Interstate Commerce Clause of the United States Constitution. In this final paragraph, the Court said:

> "This statute, however, seeks to prohibit the production of underground water for the purpose of transporting same in interstate commerce, and has the effect of prohibiting the interstate transportation of such water after it has become personal property. Whether a statute by its phraseology prohibits the interstate transportation of an article of commerce after it has become the personal property of someone as in the Pennsylvania and West cases, or prohibits the withdrawal of such substance where the intent is to transport such an interstate commerce, the result upon interstate commerce is the same. In both situations, the purpose and intent for the statute and the end result thereof is to prohibit the interstate transportation of an article of commerce. Clearly, then, Section 2 of this statute constitutes an unreasonable burden upon interstate commerce. Plaintiffs should not be denied by the provisions of such statute the right to withdraw and move water in interstate commerce."

In a recent United States Supreme Court case entitled City of Philadelphia v. State of New Jersey, 98 S. Ct. 2531 (1978), New Jersey had a statute which prohibited the importation of solid or liquid waste which originated or was collected outside the territorial limits of the state. The City of Philadelphia was seeking to get rid of its solid waste and had contracted with private landfills in New Jersey for waste disposal. While it is difficult to equate water to garbage, the

holding of the United States Supreme Court was that the New Jersey statute prohibiting importation of most 'solid or liquid wastes which originated or was collected outside the territorial limits of the state" violated the commerce clause. It seems that certainly if garbage can generate revenue across state lines, water can do the same. The instant proposal is to use Idaho water for economic purposes on Utah lands, or if Utah is to contend that its statute is not broad enough to allow such reciprocity, then perhaps from Idaho's standpoint, not only are the statutes not reciprocal, but in the eyes of the United States Supreme Court both would be unconstitutional.

It seems a more logical result for both Idaho and Utah that the words "water from interstate streams" in Utah Code §73-2-8 pertains to Utah ground water as well as surface water. The rule of the United States Supreme Court would dictate that such a proposal as is advanced by the applicant herein does not violate the United States Constitution. On the other hand, the position advocated by Utah for the narrower interpretation of their statute, would in fact set up a classic violation of the commerce clause of the United States Constitution.

Probably the leading case where no reciprocity statutes were involved is that of Bean v. Morris, 221 U.S. 485, 55 L.Ed. 821, 31 Sup. Ct. 703 (1911). The case involved prior appropriators of water of an interstate stream. The prior appropriator was in Wyoming and Sage Creek flowed from Montana into Wyoming. Junior appropriators in Montana had interferred with the senior Wyoming user. The Court held that the State of Montana had full legislative authority over the creek within its state, but essentially held, as to older rights that it had always been assumed in the absence of legislation to the contrary, that the states were willing to ignore boundaries. Essentially that case was decided against the Montana junior

appropriator on the basis that more streams flowed from Wyoming to Montana and that Montana was not intent upon suicide. The Court said at page 308 of the Bean decision:

> "We know no reason to doubt, and we assume, that, subject to such rights as the lower state might be decided by this court to have, and to vested private rights, if any, protested by the Commission, the state of Montana has full legislative power over Sage Creek while it flows within that state. Kansas v. Colorado, 206 U.S. 46, 93-95, 51 L.Ed. 956, 973, 974, 27 Sup. Ct. Rep. 655. Therefore, subject to the same qualifications, we assume that the concurrence of the laws of Montana with those of Wyoming is necessary to create easements, or such private rights and obligations as are in dispute, across their common boundary line. Missouri v. Illinois, 200 U.S. 496, 521, 50 L.Ed. 572, 579, 26 Sup. Ct. Rep. 268; Rickey Land & Cattle Co. v. Miller & Lux, 218 U.S. 258, 260, 54 L.#d. 1032, 1037, 31 Sup. Ct. Rep. 11. But with regard to such rights as came into question in the older states, we believe that it always was assumed, in the absence of legislation to the contrary, that the states were willing to ignore boundaries, and allowed the same rights to be required from outside the state that could be acquired from within. Manville Co. v. Worcester, 138 Mass. 89, 52 Am. Rep. 261 (other citations omitted). There is even stronger reason for the same assumption here. Montana cannot be presumed to be intent on suicide, and there are as many if not more cases in which it would lose as there are in which it would gain, if it invokved a trial of strength with its neighbors."

Much the same situation exists between Idaho and Utah as to surface streams and a contrary decision as to subterranean waters would no doubt set relationships back between citizens of the states at least a century.

The Utah statute above-quoted (§73-2-8) authorizes the State Engineer to cooperate with the State Engineer of an adjoining state in "determination, supervision, regulation and control of all water and water rights in interstate streams; and to that end the State Engineer, by and with the consent of the Governor, may enter into necessary and lawful agreements with the proper officer, duly authorized thereto, of any adjoining state to carry out the purposes of this section." Idaho Code Sections 42-402 through 42-405 set up the mechanism for the State of Idaho's Director to issue a permit, accept proof of

completion of works, and license a permit even though the use may be made in another state so long as proof in the other state has been satisfied. These sections by inference suggest cooperation with the adjoining states. Idaho Code §42-231 gives the Director of the Department law and authority as to the groundwater resources of the State of Idaho, including the authority to "enter into cooperative investigations, researches, and studies with any agency or department of the government of the United States, or any other state or public authority of this State, private agencies or individuals." He is also directed in the same statute "to control the appropriation and use of groundwater of this State as in this act provided and to do all things reasonably necessary or appropriate to protect the people of this State from depletion of groundwater resources contrary to the public policy expressed in this act."

Obviously, by the granting of the permits Nos. 17-7029 and 17-7044, the Director of the Department exercised the authority within the powers granted to him concerning ground waters by Idaho Code §42-237(a).

In this case the record clearly shows that the well levels in both Idaho and Utah, are stabilized despite a recent drought year and a trend of less precipitation as measured at the closest precipitation measurement station at Strevel. In issuing the original permits, it must be presumed that the State of Idaho considered all of the criteria as set forth in Idaho Code §42-203 before originally issuing the permit. Now the statutory criteria for the requested change is essentially §42-211. The granting of the change would not result in "the diversion and use of more water than originally permited", but would essentially allow use of the same water from different wells on different land.

have been pursued by the respective states as concerns this water source. Idaho has jurisdiction over public waters in this state and if development of this water for partial use in Utah is in the interest of the State of Idaho, and can be accomplished within its rules for the use of ground water within the Idaho statute, the decision herein is that of Idaho.

III.

The "rights of others" contemplated in Idaho Code §42-211 as the reason for denial of an application to change the point of diversion and place of use must be "water rights."

Since the case of In Re Robinson, 61 Idaho 462, 103 Pac. 639 (1940), there is then no question under Idaho law that under a proposed change of place of use or transfer of water the only injury which another user may set up is an injury to his water right or the use thereof. The Robinson case was one in which the Wendell Highway District opposed the transfer of water within a Carey Act system for the reason that the tax base would be reduced within the Highway District.

Beginning with Hard v. Boise City Irrigation Company, 9 Idaho 589, 76 Pac. 331, the Idaho Supreme Court has held that a water right was real property and could be sold and transferred to other land or used so long as such transfer does not injure the other appropriators. The In Re Robinson case defines that injury to be "injury to a water right". The In Re Robinson case was decided in 1940. The Idaho Supreme Court further refined the requirement that the injury be to a water right in the case of Beecher v. cassia Creek Irrigation Company, 66 Idaho 1, 154 P.2d 507 (1944) where the Court said at page 7 of the Idaho Reports:

> "The question here presented is whether other users, particularly respondents, of the waters of Cassia Creek and its tributaries are injured or will be injured by a change, or, as frequently said, substantially injured, not merely a fanciful injury, but a real and actual injury."

The existence of "real and actual injury" in this case does not, and cannot, relate at all to total water supply. It must depend on proof of existence of local interference between wells. The evidence addressed shows that the existence of such injury cannot be postulated in advance, since many wells in the aquifer which are as close to each other as the proposed wells would be to existing wells, do not create inteferences.

SUMMARY

If Utah has standing to protest because of governmental perogatives, it has no water right which would be "adversely affected" in the context of Idaho Code §42-411. Even so the application does not enlarge the right. . . same aquifer and same number of acres. Utah waived the right to now protest because of her silence in the permit granting process. Even if Utah were a proper party with a water right, the testimony weights in favor of an administrative decision of "no interference." Well levels are stabilized and even slightly rising even through the drought of record as to this aquifer. Utah has formally sought no agreement, compact, or allocation to protect its citizens vicariously. The present proposal is valid within the existing reciprocal statutes if constitutional, or even if both are unconstitutional. The decision herein is Idaho's solely.

DATED this 23rd day of March, 1979.

Respectfully submitted,

PARRY, ROBERTSON, DALY & LARSON

By: John A. Rosholt
John A. Rosholt
Attorneys for Applicant

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of March, 1979, I served a copy of the foregoing BRIEF OF APPLICANT, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Mr. Dee C. Hansen
State Engineer
State of Utah
Department of Natural Resources
Division of Water Rights
200 Empire Building
231 East 400 South
Salt Lake City, Utah 84111

Ms. Josephine Beeman
Assistant Attorney General
Department of Water Resources
Statehouse
Boise, Idaho 83720

John A. Rosholt

PARRY, ROBERTSON, DALY & LARSON
LAWYERS
THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 733-3722

R. P. PARRY
BERT LARSON
C. G. McINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
J. EVAN ROBERTSON
THOMAS G. WALKER, JR.
JAMES C. TUCKER
STEVEN K. TOLMAN

T. M. ROBERTSON (1911-1977)
JOHN H. DALY (1913-1968)

3DF
JRP

March 23, 1979

RECEIVED
MAR 26 1979
Department of Water Resources

Mr. C. Stephen Allred, Director
Department of Water Resources
Statehouse
Boise, Idaho 83720

Attention: Norman Young

Dear Norm:

Please find enclosed the Brief of Applicant as requested at the hearing of March 15, 1979.

As suggested at the hearing, the applicant is most interested in an expeditous decision because of the upcoming irrigation season and the ramifications thereof.

Sincerely,

John A. Rosholt
JOHN A. ROSHOLT

JAR:bg

Enclosure

PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: 733-3722

RECEIVED
MAR 26 1979
Department of Water Resources

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

* * * * * * * * * * *

APPLICATIONS FOR AMENDMENT OF)
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While the discussion of the points necessarily overlap, we have tried to argue each separately under three sections.

March 27, 1979

John A. Rosholt
PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, ID 83301

Dear John:

Re: Applications for Amendment on Permit Nos. 17-7029 & 17-7044

Enclosed for your information and review is a copy of the State of Utah's response to the items to be briefed pursuant to the hearing on the above referenced amendments.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enc: 1

Transfer of #17-7039, 7044 — Jo Beeman's notes ← Deputy Atty Gen.

PROTEST HEARING - March 15, 1979 10 AM

Hogan application for transfer of groundwater

off the record

Utah 73-2-8
Idaho 42-408
} re. diversion of interstate streams for use outside the state

ISSUES:

brief (1) a. does groundwater constitute an interstate stream? ← briefs due March 23
b. do Idaho & Utah have reciprocal legislation?

(2) does transfer possibly hurt existing rights?

(3) does transfer constitute an enlargement of the right? (use of more water than originally permitted)

4. adequacy of published notice - apparently not an issue

brief (5) standing of Utah in protest hearing
is Utah an "interested party" brief due March 23

PARTIES:

limited to applicant and protestant (State of Utah)
interested private parties from Utah may be used as witnesses for State of Utah

on the record

APPLICANT

witness: Charles Brockway, Phd., U. of Idaho
civil engineer/water specialist

T16S R31E — sketch of geography of pts of diversion

* at time of written decision, Water Resources will need to rule on admissability of Utah's second exhibit

1 Protestants Exhibit "A"

- MEMO -

To: Dee C. Hansen

FROM: R. Michael Turnipseed

RE: Hoggan's Idaho Changes

DATE: February 23, 1979

The following is a Calculation of the effect of Hoggans putting three(3) wells on the state line in Section 28, T16S, R30E, BM.

Technical Publication No. 45 for the Curlew Valley Drainage Basin includes the findings of an aquifer test done on the Utah-Idaho border north of Snowville. The Idaho Department of Water Administration was able to determine reasonable values for storage coefficient and transmissivity from data obtained in two observation wells.

Well #6

Storage coefficient = .005

Transmissivity = 20,000 ft^2/day

Well #2

Storage coefficient = .009

Transmissivity = 22,000 ft^2/day

The test we will use for reference when making calculations uses coefficient of transmissibility instead of transmissivity. To convert transmissivity to coefficient of transmissibility, multiply by 7.48.

To evaluate the effects of the three wells that Hoggans propose to drill in Section 28, T16S, T30E, BM. on other Utah water rights, the flow from the three wells will be lumped into a 10 cfs flow from the S¼ Corner of Section 28, T16S, R30E, BM. for calculation purposes.

Values for storage coefficient in the proposed well will be estimated from the data obtained in wells #2 and #6 previously mentioned and a storage coefficient value for artesian wells given in Waltons book Groundwater Resources Evaluation. For justification of these assumptions we make reference to Waltons, Pg. 315. "The specific capacity varies with the Logarithm of $1/r_w^2$ (r_w = nominal radius of well, in feet). Large increases in the radius of a well result in comparatively small changes in the specific capacity.

Because specific capacity varies with the Logarithm of 1/S, large errors in estimated coefficients of storage results in comparatively small errors in coefficients of transmissibility estimated with specific capacity data."

There are two wells in Utah, one for Peter Mayo (13-173) and one for Charles Taylor (13-148) that were test pumped 2140 gpm at 32 feet of drawdown and 2730 gpm at 72 feet of drawdown respectively. This yields specific capacities of 67 gpm/ft and 38 gpm/ft respectively. Using these specific capacities and Walton's (Fig. 5.8 Pg. 318) the estimate transmissibility would be 9×10^4 and 1.5×10^5 respectively, very close to the transmissibility calculated by the Idaho Department of Water Resources on the wells further east.

Based on the previous assumptions the following calculations show the probable amount of drawdown that will occur in the two wells in Utah.

(eq 3.48) $$s = \frac{114.6Q}{T} W(u)$$

(eq 3.39) $$u = \frac{1.87\ r^2\ S}{Tt}$$

WHERE

s = drawdown, in feet

r = distance from pumped well to observation well, in feet.

Q = discharge, in gpm

t = time after pumping started, in days

T = coefficient of transmissibility

S = coefficient of storage

Using 180 day pumping period to determine s and 24 hour pumping period to determine T (Fig. 5.8 & 5.9, Pg. 318, Walton).

Mayo Well

Specific capacity = Q/s = $\frac{2146}{32}$ = 67 gpm/ft drawdown

$$u = \frac{1.87\ r^2 S}{Tt} = \frac{1.87\ (4300)^2\ .009}{1.5 \times 10^5\ (180)} = .0115$$

Or $u = 1.15 \times 10^{-2}$ $\therefore$ W(u) = 3.9178 (From table 3.1)

$$s = \frac{114.6Q}{T} W(u) = \frac{(114.6)\ (10)\ (450)}{1.5 \times 10^5} (3.9178) = 13.47'$$

8.2 ← Brockway

13.47 ft drawdown min. ← Interpolated

Charles Taylor Well

Specific capacity = Q/s = $\frac{2730}{72}$ = 38 gpm/ft drawdown

$$u = \frac{1.87\ (6600)^2\ .009}{9 \times 10^4\ (180)} = .0453 = 4.53 \times 10^{-2} = u$$

$\therefore$ W(u) = 2.5624 (table 3.1)

$$s = \frac{114.6\ (10)\ (450)}{9 \times 10^4} (2.5624 = 14.68 \text{ ft drawdown}$$

5.7' ← Brockway

14.68 ft drawdown max. ← Interpolated

RESOURCE EVALUATION

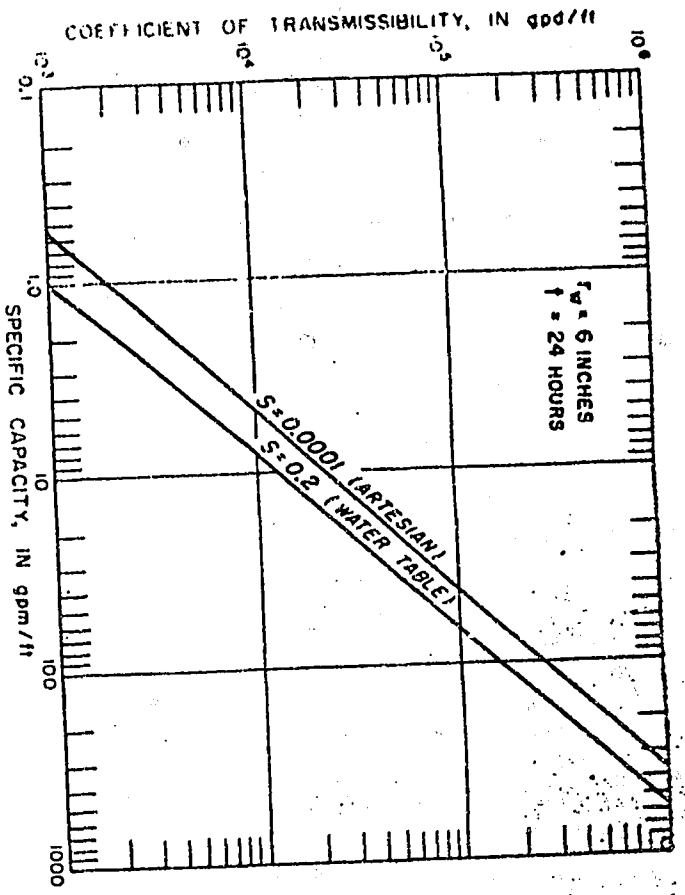


Fig. 5.8 Graphs of specific capacity versus coefficient of transmissibility for a pumping period of 24 hours. (*From Walton, 1962.*)

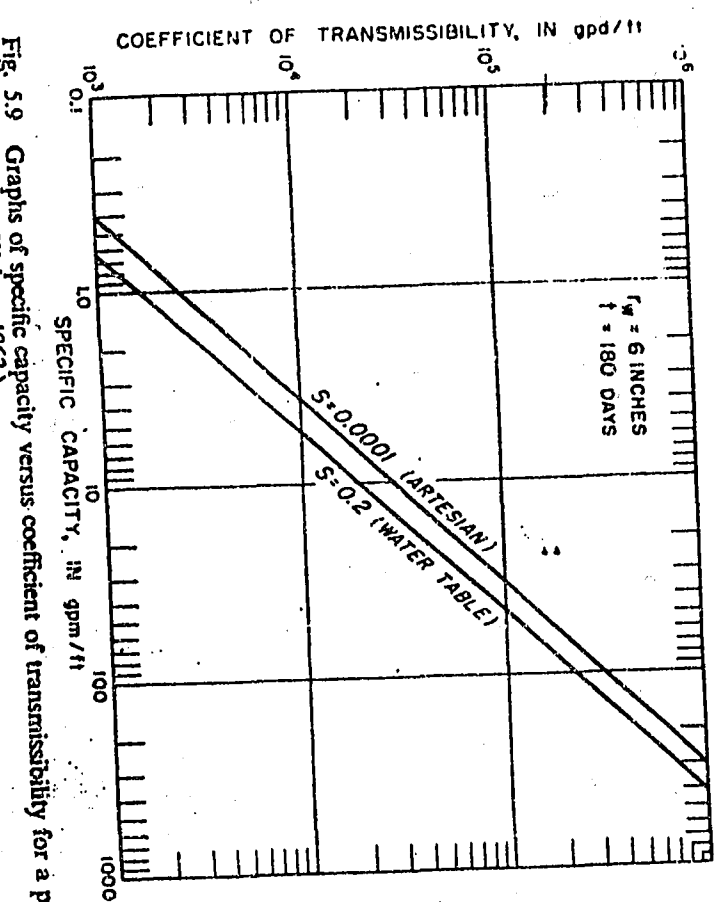


Fig. 5.9 Graphs of specific capacity versus coefficient of transmissibility for a pumping period of 180 days. (*From Walton, 1962.*)

Short Method

$T = \frac{264\,Q}{\Delta s}$ Δs for one log cycle

$S = \frac{0.3\,T\,t_0}{r^2}$

TABLE 3.1 VALUES OF $W(u)$ OR $W(u_{xy})$. (*After Wenzel, 1942.*)

N \ u or u_{xy}	$N\times10^{-15}$	$N\times10^{-14}$	$N\times10^{-13}$	$N\times10^{-12}$	$N\times10^{-11}$	$N\times10^{-10}$	$N\times10^{-9}$	$N\times10^{-8}$	$N\times10^{-7}$	$N\times10^{-6}$	$N\times10^{-5}$	$N\times10^{-4}$	$N\times10^{-3}$	$N\times10^{-2}$	$N\times10^{-1}$	N
1.0	33.9616	31.6590	29.3564	27.0538	24.7512	22.4486	20.1460	17.8435	15.5409	13.2383	10.9357	8.6332	6.3315	4.0379	1.8229	0.2194
1.5	33.5561	31.2535	28.9509	26.6483	24.3458	22.0432	19.7406	17.4380	15.1354	12.8328	10.5303	8.2278	5.9260	3.6374	1.4645	0.1000
2.0	33.2684	30.9658	28.6632	26.3607	24.0581	21.7555	19.4529	17.1503	14.8477	12.5451	10.2426	7.9402	5.6394	3.3547	1.2227	0.04890
2.5	33.0453	30.7427	28.4401	26.1375	23.8349	21.5323	19.2298	16.9272	14.6246	12.3220	10.0194	7.7172	5.4167	3.1368	1.0443	0.02491
3.0	32.8629	30.5604	28.2578	25.9552	23.6526	21.3500	19.0474	16.7449	14.4423	12.1397	9.8371	7.5348	5.2349	2.9591	0.9057	0.01305
3.5	32.7088	30.4062	28.1036	25.8010	23.4985	21.1959	18.8933	16.5907	14.2881	11.9855	9.6830	7.3807	5.0813	2.8099	0.7942	0.006970
4.0	32.5753	30.2727	27.9701	25.6675	23.3649	21.0623	18.7598	16.4572	14.1546	11.8520	9.5495	7.2472	4.9482	2.6813	0.7024	0.003779
4.5	32.4575	30.1549	27.8523	25.5497	23.2471	20.9446	18.6420	16.3394	14.0368	11.7342	9.4317	7.1295	4.8310	2.5684	0.6253	0.002073
5.0	32.3521	30.0495	27.7470	25.4444	23.1418	20.8392	18.5366	16.2340	13.9314	11.6280	9.3263	7.0242	4.7261	2.4679	0.5598	0.001148
5.5	32.2568	29.9542	27.6516	25.3491	23.0465	20.7439	18.4413	16.1387	13.8361	11.5330	9.2310	6.9289	4.6313	2.3775	0.5034	0.0006409
6.0	32.1698	29.8672	27.5646	25.2620	22.9595	20.6569	18.3543	16.0517	13.7491	11.4465	9.1440	6.8420	4.5448	2.2953	0.4544	0.0003601
6.5	32.0898	29.7872	27.4846	25.1820	22.8794	20.5768	18.2742	15.9717	13.6691	11.3665	9.0640	6.7620	4.4652	2.2201	0.4115	0.0002034
7.0	32.0156	29.7131	27.4105	25.1079	22.8053	20.5027	18.2001	15.8976	13.5950	11.2924	8.9899	6.6879	4.3916	2.1508	0.3738	0.0001155
7.5	31.9467	29.6441	27.3415	25.0389	22.7363	20.4337	18.1311	15.8280	13.5260	11.2234	8.9209	6.6190	4.3231	2.0867	0.3403	0.0000658
8.0	31.8821	29.5795	27.2769	24.9744	22.6718	20.3692	18.0666	15.7640	13.4614	11.1589	8.8563	6.5545	4.2591	2.0269	0.3106	0.0000376
8.5	31.8215	29.5189	27.2163	24.9137	22.6112	20.3086	18.0060	15.7034	13.4008	11.0982	8.7957	6.4939	4.1990	1.9711	0.2840	0.0000216
9.0	31.7643	29.4618	27.1592	24.8566	22.5540	20.2514	17.9488	15.6462	13.3437	11.0411	8.7386	6.4368	4.1423	1.9187	0.2602	0.0000124
9.5	31.7103	29.4077	27.1051	24.8025	22.4999	20.1973	17.8948	15.5922	13.2896	10.9870	8.6845	6.3828	4.0887	1.8695	0.2387	0.0000071

R29E R30E

observation well (USGS)

1970 1973 1974

17-704-1

IDAHO
UTAH

MAYO WELL

(Static W.L. 175-180)

(Static 175)

380 bowls 250 HP

200 bowls (Static 215) 250'

260 bowls 250 HP

260 bowls 250 HP (Static 62')

260 bowls 250 HP (Static 185')

260 bowls 350 HP (Static 170')

280 bowls 250 Static 165'

R10W R9W

R30E R 31 E

well
GS)

17-7029

T16S

T15N

T14N

R9W

1230
2 - 80 bbls
250
Station
165'

Applicant's
Exhibit #1

Protestants
Exhibit B

MODIFIED BLAINEY-CRIDDLE METHOD FOR CONSUMPTIVE USE

Adjusted C.U. for Alfalfa in N½ T14N, R9 & 10W and S½ T15N R9 & 10W = 25.07 in.

CROP	C.U.
Alfalfa	25.07 in.
Wheat & Barley	75% of Alfalfa
Grass	80% of Alfalfa

Growing season - May 3 - October 10 or 161 days

	May	June	July	Aug	Sept	Oct
Precipitation	1.42	1.05	.39	.69	.79	.69
Mean Monthly Temp.	51.9	60.6	68.2	66.5	57.1	46.3
Blainey-Criddle f	5.21	6.15	7.07	6.38	4.81	3.59

POTOMAC CORP.					AC. FT.
1820 Alf.	x	25.07		=	3802.44
80 Oats	x	25.07	x .75	=	125.36
40 Wht.	x	25.07	X .75	=	62.68

BROWN	
282 Alf.	589.17
282 Wht.	441.88

KEITH JENSEN	
616 Alf.	1286.98
205 Wht.	321.22

PETE MAYO	
160 Barley	250.71
100 Wht.	156.69
320 Alf.	668.56

ROSE RANCH	
1000 Alf.	2089.25
540 Barley	846.15

L.D.S. CHURCH	
310 Alf.	647.67

MARY NELSON	
255 Alf.	532.76

CHARLIE TAYLOR	
2150 Alf.	4491.90
2340 Wht.	3666.64
240 Grass	401.14

HOGGANS

	AC. FT.
2250 Alf.	4700.82
1750 Barley	2742.15
Total C.U.	

TOTAL ACREAGE IRRIGATED — 27,800.00 AC.FT. (rounded)

14,740 acres

Average precipitation @ Snowville during irrigation season = 3"/12 x 14,740 = 3685 AF

Total C.U. from Wells = 27,800 - 3685 = 24,000 AF (rounded)

If we consider an efficiency of 60% with some uncontrolable losses an estimate of groundwater pumped might be 40,000 AF.

Applications Approved in the Juniper-Black Pine Subdivision

Perfected	36.66 cfs	for 2792.8 acres
Unperfected	197 cfs	for 12,603 acres
Total		15,396 acres

Applications Awaiting Approval

109 cfs for 7982 acres

MARCH 15, 1979

Hearing Notes — 17-7029
17-7044

John Roscholt — Tom Nelson Applicant
Mike Turnipseed — Protestants

Issues —

1) UTAH — Idaho ~~reciprocity~~ Brief due 3/23/79
2) Rights of others will be effected
3) Use of more water than originally permitted.
4) STANDING of Utah to Protest brief 3/23/79

→ — Motion sustained on Mr. Roscholt to limit parties to actual protestants —

Applicant

1) Does the amended well location take water from the same aquifer?
2) Local effect of new location —
3) Intent of applicant

Charles Brockway

(1) Retained by Mr. Roscholt on behalf of Hagen
Admitted (2) Applicant's exhibit #1 — plat of original place of use & amended place of use & points of diversion
(3) Area of Curlew valley called Juniper Backbone —
Admitted (4) Applicant's exhibit #2 Map
(5) None of P.O. in Idaho Critical G.W. area
(6) The aquifers are same in general — wet depletion will be the same either way
(7) Several wells south & east (Mayo well + one owned by Mr. Charles Taylor in immediate area —
(8) Brockway calculated that — effect on Mayo well —

Single well pumping, in Sec 28 —
Distance of 4300 feet
Drawdown after 180 days would be 8 ft
at Mayo well — >6 ft @ Charles Taylor well —

Concluded that it is not a significant drawdown —

X-EXAM —

(1) How did you conclude that your aquifer — Reviewed all available well logs
(2) Diff in water quality — Not looked at
(3) Temperature — No.
(4) Quantity of water pumped at each well — yes looked at it.
(5) Pump tests — Data from Hilltop Com
(6) Leahy compiled aquifer system —
(7) Keller pump test — "T" value double

admitted Protestants exhibit "A" — pump test calculation —

Jacob method of determining dra

167 ft²/min — T value —
from U.S.G.S Tech Rpt 1945 —
.03 storage value — water table value —

10 cfs well in sec 28
4300 ft separation —
8.2 ft after 180 days } Mayo
6600 ft
5.7 ft drawdown 180 days } Taylor

What would constitute a significant drawdown — based upon original pumping depth —
Page 24 Ø 3 ——

Kent A. Hogan

(1) One of the applicant's
(2) One well drilled already under the permit

X - EXAM

well has been test pumped
1600 gpm — drawdown (?)
TWO center pivots set up —
ONE covers only a pivot in Idaho

Mr. Townsend

① Recharge value as determined by Baker + Leonard + Young

Admitted → Protestants' exhibit "B" — calculations of consumptive use — Objection that not relevant to issues
Rule on at time of decision

② Diff. in Temp + quality indicate differences in aquifer —

③ Ranges of transmissivities in Idaho 30,000 to 4,000,000 —— Courts doubt on drawdown calculations —
drawdown —

X-EXAM

Utah Board protest of original application

Water quality indicates different aquifers —

Charles Taylor

(1) Pumped groundwater since 1955
(2) Groundwater declines noticed —
(3) Some wells have broke suction
(4) Have more effect than original

Admitted Exhibit "C"

Rejected ~~Exhibit~~ "D"

(5) 2700 gpm rate test pumped ~~for 72 hrs~~
Drilled last summer of 1978 —

B. Van Brown

(1) Pumped g.w. for 2 years
(2) Groundwater declines noticed — broke suction
(3) Would a 10 cfs well effect his well —
don't know —

~~X~~ Exam —

Location — 1 mile south of Hogan well
another 1 mile south 1/4 mile ~~from~~ larger well

1/4 mile ~~began~~ wheat lines of small well
~~500~~ 587 acres under larger well —

Kent Hogan

Any wells in the area south of the proposed wells —

Some wells have broke suction since year —

600 hp well — static water level — 260 bowl setting

3/73 - 182 ft 4/74 - 182 ft ~~5/75~~ 5/75 - 180 ft

9/76 - 185 ft 9/77 - 185 ft 2/78 - 181 ft.

Survey measured in June/July of A.Z.

500 hp — 260 foot setting —

185 ft - 11/75 — 4/77 E - 187 ft

187 ft 9/76 — 2/78 (200 hp.) 184 ft

well 6 the west (350)

11/75 — 215

3/76 — 213 ft

Lee 18 — 250 hp + booster —
(260 foot setting)

Lyman release

3/75 - 165 ft

6/78 - 166 ft

350 hp well — see 12 — 260 ft foot setting

3/73 - 170 ft — 3/75 169

4/74 - 170 ft — 6/76 172

4/77 172 2/79 - 170

13 wells total —

electric depth tester

— Swell grains & hay —

Chuck Brockway

Obs. well - USGS — 4 mls N of Rooney area
1970 record begin
decline to 1973
measured since 1974 — to within 0.2 ft to 1970 measurment.

Precip @ Stanwell

Plotted departure from normal — 10.97"

No good correlation / precip —

Maywood — 5 to 6 ft decline in 25 years to 1972 —

Notes
Sinks Land + Livestock Co
17-7029 & 17-7044

Atty for Applicants
John Rasholt
Tom Nelson

issue → ② — injury — issue
issue → ③ — expansion — issue

7328. Utah Code
Surf. water
42-408 Idaho Code Sec (comparable to Utah's)

— Brief — Reciprocity
Groundwater
Briefs to be submitted on
issue → ① — Briefs filed by next Fri.
March 23rd, 1979

— Allow interested parties to appear as witnesses for Utah, but not have standing as protestants.

— ? of timeliness not a problem

— Brief — ? of Utah being a proper party. (Brief this issue by March 23rd, 1979)

Brief statement

- appearances
- Discuss issues
- Applicant proceed
  - Injury
    - Well take water from Same Aquifer
    - Local effect on wells adjacent

- Sworn in Witness - Chuck Brockway

- Exhibits admitted
  - Mayo well - 8'
  - other well - 6'

- X - examination of ~~Huckway~~ Brockway

- Jacob Method
  - 16.7 ft'/min = T Techpub 45 pg 17
  - .03 = S
  - rather than S values in Holbrook Area
  - 4300'
  - 8.2' } after 180 days

- Other well test
(Taylor)
- 5.7' drawdown) after 180 days

- tech pub 45

- Kent Hoggan -

Turnipseed - Protestant
Opening Statement

- Protestant's exhibit "B"

-

- Witness Charles Taylor

Protestants exhibit C - admitted

- Taylor well ≈ 25' S. of Idaho
Utah border.
tested at 2700 gpm
Static water level 175'-180'

4/

- Well drilled Summer 1978

Mr. Brown - Direct
- Irrig well problems
X-exam
- Static water level meas
- Small well ~~guns~~ & wheel lines
- Large well - flood irrig.

- Kent Hoggan
- 4 wells - ~~in~~ South in same general area.
- Static water levels

Static water level

- 250 HP —
- 150 HP —
- 600 HP — 182' - March — apr 183' — March 180'
  185' — 185' — 181'
- 500 HP —
  Nov 75 - 185'
  Sept 76 - 187
  apr 77 - 187
  Feb 78 - 184

200 H.P. 215'
• 213 Spr. 1978
Bowls 250'

Sec 18
250 HP w/booster
165' - Mar 65
166' - June 78

Sec 12
350 HP
170 - Mar 73
170 - 741 Feb 78 - 170'
169 -
172 - June 76

5/

- Bowl Setting - 250 avg.
-
- Recall Brockway
applic Exhibit 1.

- Obs well 4 mi no. of area of concern.

Protestant's Exhibit "A"

- MEMO -

To: Dee C. Hansen

FROM: R. Michael Turnipseed

RE: Hoggan's Idaho Changes

DATE: February 23, 1979

The following is a Calculation of the effect of Hoggans putting three(3) wells on the state line in Section 28, T16S, R30E, BM.

Technical Publication No. 45 for the Curlew Valley Drainage Basin includes the findings of an aquifer test done on the Utah-Idaho border north of Snowville. The Idaho Department of Water Administration was able to determine reasonable values for storage coefficient and transmissivity from data obtained in two observation wells.

Well #6

Storage coefficient = .005

Transmissivity = 20,000 ft^2/day

Well #2

Storage coefficient = .009

Transmissivity = 22,000 ft^2/day

The test we will use for reference when making calculations uses coefficient of transmissibility instead of transmissivity. To convert transmissivity to coefficient of transmissibility, multiply by 7.48.

To evaluate the effects of the three wells that Hoggans propose to drill in Section 28, T16S, T30E, BM. on other Utah water rights, the flow from the three wells will be lumped into a 10 cfs flow from the S¼ Corner of Section 28, T16S, R30E, BM. for calculation purposes.

Values for storage coefficient in the proposed well will be estimated from the data obtained in wells #2 and #6 previously mentioned and a storage coefficient value for artesian wells given in Waltons book Groundwater Resources Evaluation. For justification of these assumptions we make reference to Waltons, Pg. 315. "The specific capacity varies with the Logarithm of $1/r_w^2$ (r_w = nominal radius of well, in feet). Large increases in the radius of a well result in comparatively small changes in the specific capacity.

Because specific capacity varies with the Logarithm of 1/S, large errors in estimated coefficients of storage results in comparatively small errors in coefficients of transmissibility estimated with specific capacity data."

There are two wells in Utah, one for Peter Mayo (13-173) and one for Charles Taylor (13-148) that were test pumped 2140 gpm at 32 feet of drawdown and 2730 gpm at 72 feet of drawdown respectively. This yields specific capacities of 67 gpm/ft and 38 gpm/ft respectively. Using these specific capacities and Walton's (Fig. 5.8 Pg. 318) the estimate transmissibility would be 9×10^4 and 1.5×10^5 respectively, very close to the transmissibility calculated by the Idaho Department of Water Resources on the wells further east.

Based on the previous assumptions the following calculations show the probable amount of drawdown that will occur in the two wells in Utah.

(eq 3.48) $$s = \frac{114.6Q}{T} W(u)$$

(eq 3.39) $$u = \frac{1.87\ r^2\ S}{Tt}$$

WHERE

s = drawdown, in feet

r = distance from pumped well to observation well, in feet.

Q = discharge, in gpm

t = time after pumping started, in days

T = coefficient of transmissibility

S = coefficient of storage

Using 180 day pumping period to determine s and 24 hour pumping period to determine T (Fig. 5.8 & 5.9, Pg. 318, Walton).

Mayo Well

Specific capacity = $Q/s = \frac{2146}{32} = 67$ gpm/ft drawdown

$$u = \frac{1.87\ r^2 S}{Tt} = \frac{1.87\ (4300)^2\ .009}{1.5 \times 10^5\ (180)} = .0115$$

Or $u = 1.15 \times 10^{-2}$ $\therefore$ $W(u) = 3.9178$ (From table 3.1)

$$s = \frac{114.6Q}{T} W(u) = \frac{(114.6)\ (10)\ (450)}{1.5 \times 10^5} (3.9178) = 13.47'$$

13.47 ft drawdown min.

Charles Taylor Well

Specific capacity = $Q/s = \frac{2730}{72} = 38$ gpm/ft drawdown

$$u = \frac{1.87\ (6600)^2\ .009}{9 \times 10^4\ (180)} = .0453 = 4.53 \times 10^{-2} = u$$

$\therefore$ $W(u) = 2.5624$ (table 3.1)

$$s = \frac{114.6\ (10)\ (450)}{9 \times 10^4} (2.5624 = 14.68 \text{ ft drawdown}$$

14.68 ft drawdown max.

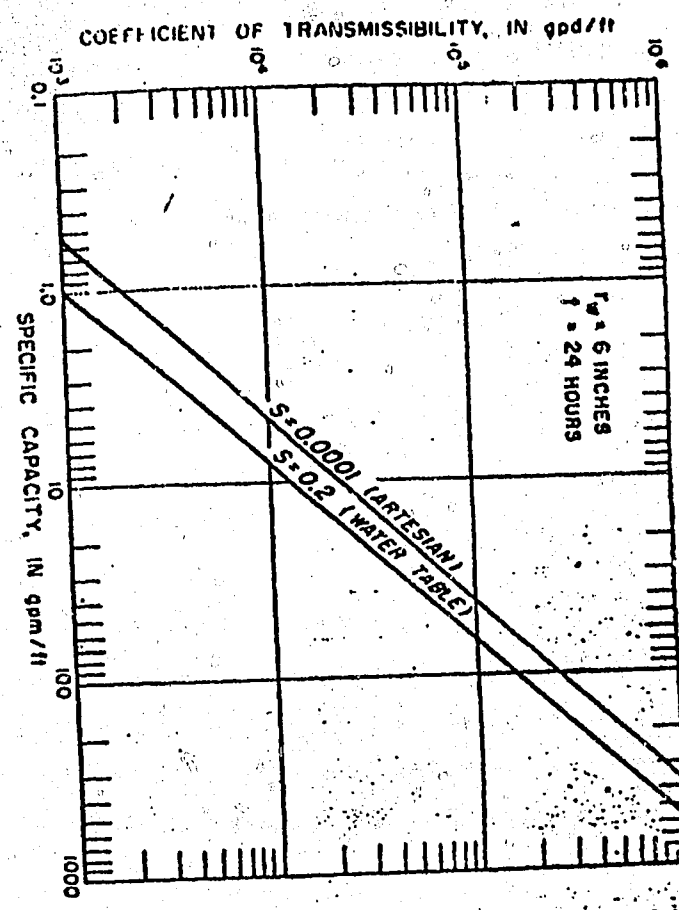


Fig. 5.8 Graphs of specific capacity versus coefficient of transmissibility for a pumping peric 24 hours. (*From Walton, 1962.*)

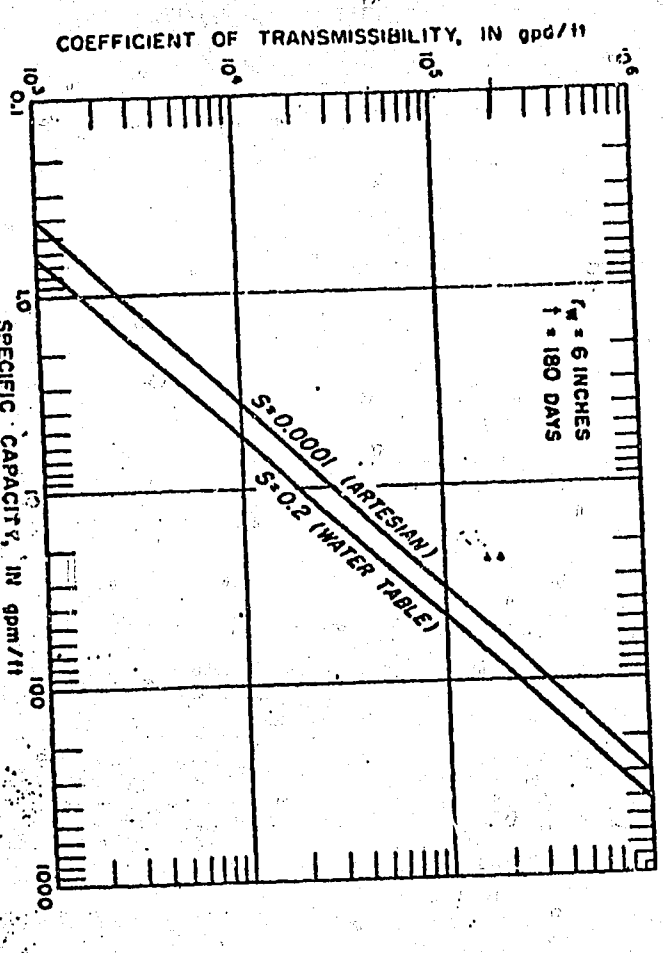


Fig. 5.9 Graphs of specific c 180 days. (*From Walton, 19* pecific capacity versus coefficient of transmissibility for a pumping pe *on, 1962.*)

Short Method

ds for one log cycle

$$T = \frac{264\,Q}{\Delta s}$$

$$S = \frac{0.3\,T\,t_0}{r^2}$$

TABLE 3.1 VALUES OF $W(\ )$ OR $W(u_{zy})$. (*After Wenzel, 1942.*)

u or u_{zy} / W	$N\times10^{-15}$	$N\times10^{-14}$	$N\times10^{-13}$	$N\times10^{-12}$	$N\times10^{-11}$	$N\times10^{-10}$	$N\times10^{-9}$	$N\times10^{-8}$	$N\times10^{-7}$	$N\times10^{-6}$	$N\times10^{-5}$	$N\times10^{-4}$	$N\times10^{-3}$	$N\times10^{-2}$	$N\times10^{-1}$	N
1.0	33.9616	31.6593	29.3564	27.0538	24.7512	22.4486	20.1460	17.8435	15.5409	13.2383	10.9357	8.6332	6.3315	4.0379	1.8229	0.2194
1.5	33.5561	31.2535	28.9509	26.6483	24.3458	22.0432	19.7406	17.4380	15.1354	12.8328	10.5303	8.2278	5.9266	3.6374	1.4645	0.1000
2.0	33.2684	30.9658	28.6632	26.3607	24.0581	21.7555	19.4529	17.1503	14.8477	12.5451	10.2426	7.9402	5.6394	3.3547	1.2227	0.04890
2.5	33.0453	30.7427	28.4401	26.1375	23.8349	21.5323	19.2298	16.9272	14.6246	12.3220	10.0194	7.7172	5.4167	3.1365	1.0443	0.02491
3.0	32.8629	30.5604	28.2578	25.9552	23.6526	21.3500	19.0474	16.7449	14.4423	12.1397	9.8371	7.5348	5.2349	2.9591	0.9057	0.01305
3.5	32.7088	30.4062	28.1036	25.8010	23.4985	21.1959	18.8933	16.5907	14.2881	11.9855	9.6830	7.3807	5.0813	2.8099	0.7942	0.006970
4.0	32.5753	30.2727	27.9701	25.6675	23.3649	21.0623	18.7598	16.4572	14.1546	11.8520	9.5495	7.2472	4.9482	2.6813	0.7024	0.003779
4.5	32.4575	30.1549	27.8523	25.5497	23.2471	20.9446	18.6420	16.3394	14.0368	11.7342	9.4317	7.1295	4.8310	2.5684	0.6253	0.002073
5.0	32.3521	30.0495	27.7470	25.4444	23.1418	20.8392	18.5366	16.2340	13.9314	11.6288	9.3263	7.0242	4.7261	2.4679	0.5598	0.001148
5.5	32.2568	29.9542	27.6516	25.3491	23.0465	20.7439	18.4413	16.1387	13.8361	11.5330	9.2310	6.9289	4.6313	2.3775	0.5034	0.0006409
6.0	32.1698	29.8672	27.5646	25.2620	22.9595	20.6569	18.3543	16.0517	13.7491	11.4469	9.1440	6.8420	4.5448	2.2953	0.4544	0.0003601
6.5	32.0898	29.7872	27.4846	25.1820	22.8794	20.5768	18.2742	15.9717	13.6691	11.3665	9.0640	6.7620	4.4652	2.2201	0.4115	0.0002034
7.0	32.0156	29.7131	27.4105	25.1079	22.8053	20.5027	18.2001	15.8976	13.5950	11.2924	8.9899	6.6879	4.3916	2.1508	0.3738	0.0001155
7.5	31.9467	29.6441	27.3415	25.0389	22.7363	20.4337	18.1311	15.8286	13.5260	11.2234	8.9209	6.6190	4.3231	2.0867	0.3403	0.0000658
8.0	31.8821	29.5795	27.2769	24.9744	22.6718	20.3692	18.0666	15.7640	13.4614	11.1589	8.8563	6.5545	4.2591	2.0269	0.3106	0.0000376
8.5	31.8215	29.5189	27.2163	24.9137	22.6112	20.3086	18.0060	15.7034	13.4008	11.0982	8.7957	6.4939	4.1990	1.9711	0.2840	0.0000216
9.0	31.7643	29.4618	27.1592	24.8566	22.5540	20.2514	17.9488	15.6462	13.3437	11.0411	8.7386	6.4368	4.1423	1.9187	0.2602	0.0000124
9.5	31.7103	29.4077	27.1051	24.8025	22.4999	20.1973	17.8948	15.5922	13.2896	10.9870	8.6845	6.3828	4.0887	1.8695	0.2387	0.0000071

Charles R. Taylor
Taylor Farm Service
Tremonton, Utah 84337

March 12, 1979

Mr. Ken Dunn
Idaho Department of Water Resources
Idaho State Capitol
Boise, Idaho 83720

Dear Mr. Dunn:

I am trustee for Section 25-T15N-R10W, Sections 30 & 31- T14N-R10W, and the NE¼ of Section 6-T14N-R9W for the Ethyl T. Taylor Trust with Utah water permits on them.

It has been brought to my attention that a company operating under the names: Sanderosa Enterprises, Production Management Association, Inc., the Hoggan family: Reid, Kent, Jeff, Bradley, and Patrick are filing a petition with your office for the moving of two Idaho well permits down near the Utah state line with the intention of pumping this water into Utah for use in irrigating lands in Utah.

I want to go on record as protesting the moving of these permits for the use of the water in Utah. The Hoggans proposed drilling sites near the Utah state line very likely will affect wells already drilled in the vicinity, There have been past agreements between Utah and Idaho Water departments to prohibit just such actions as the Hoggans are now proposing.

I categorically oppose the moving of the two Idaho permits for the Hoggans. I want to go on record as backing up the State Engineer of Utah, Mr. Dee Hansen and the manager of the Logan office, Mr. Mike Turnipseed.

I would appreciate your thoughtful consideration of the above wishes.

Sincerely yours,

Charles R. Taylor
Trustee

CRT/htr

Protestant's
Exh. 5, "C"

STATE OF UTAH

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RIGHTS

DEE C. HANSEN
STATE ENGINEER

EARL M. STAKER
DEPUTY

200 EMPIRE BUILDING
231 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111
(801) 533-6071

DIRECTING ENGINEERS
HAROLD D. DONALDSON
DONALD C. NORSETH
STANLEY GREEN
ROBERT L. MORGAN

RECEIVED
1979
Department of Water Resources

March 22, 1979

Idaho Dept. of Water Resources
614 State Street
State House Annex 2
Boise, Idaho 83707

Attention: Mr. Glen Saxton

RE: Amendments 17-7029 and 17-7044

Gentlemen:

At the hearing on amendments 17-7029 and 17-7044, it was requested that the Utah State Engineer submit a written response to several issues raised at the hearing and to summarize our position in this matter. This letter is in response to that request.

1. One of the issues raised was whether the Utah State Engineer could protest these amendments. It is my understanding that, under Idaho law, any person or entity interested in the matter may file a protest thereto and have a chance to express his concerns thereon. The general reasons for our concern in this matter will be summarized below, but I do feel that the Utah State Engineer is a concerned and interested party and has every right to enter a protest or appearance in this matter.

I might point out that several years ago, when change applications were filed in Utah in the area of the Woodruff Narrows, the State of Idaho entered a protest to the applications on the grounds that the proposed changes would have an adverse impact on Idaho water rights. Idaho officials were allowed to enter a protest, make a presentation at the hearing, and the protest was duly taken into consideration by the Utah State Engineer in making his decision. I do not see any material difference between that situation and the present one.

2. The second specific issue you wished us to address was whether Utah law would allow ground water to be diverted in Utah for use in Idaho, since Idaho law only allows export of water to states with a reciprocal statute.

Until the most recent session of the Utah Legislature, Utah law only allowed surface water in interstate streams to be appropriated in Utah and exported for use in adjoining states (see Utah Code Annotated, Section 73-2-8, 1953). In the just completed session, the Utah Legislature passed House Bill 106, which would allow the exportation of underground water as well as surface water from the State for use in other states. It should be pointed out that this new law will not become effective until May 8, 1979. Technically, until that time, there is no authority to allow the export of underground water.

3. It was also requested in the hearing that we summarize our position with regards to these two amendments and our reason for protesting them. The Utah State Engineer's office has, for some time, been concerned with the diversion of water from the Curlew Valley (Juniper-Black Pine) aquifer, which underlies portions of Utah and Idaho. Studies snow that the withdrawals from the aquifer are now about equal to the annual recharge, and we feel that any further diversion will have adverse effects on the whole underground basin.

Utah has had a moratorium on approvals of new irrigation wells in this area since 1967. Obviously, since the basin cuts across state lines, the Utah moratorium has a lessened effect if diversions continue to be allowed in Idaho. There are 18 Utah applications totalling 190 cfs which were filed prior to more recent Idaho applications, and while it is Utah's opinion that no new wells should be approved in this area (both in Utah and in Idaho) at the present time, if there is unappropriated ground water within the boundaries of the State, this water should go to the applications that have already been filed and are being held in abeyance.

In short, we feel that the general problem is one of the interstate allocation of the water of the Curlew Valley aquifer between Utah and Idaho, and we protested these two applications in order to point out the broader problems we see in administering this area in the best interests of all concerned.

It is our opinion, and we feel the evidence presented at the hearing confirms, that the approval of these amendments would have an adverse impact on water users in Utah who divert from the same basin and would, in effect, draw water from the Utah portion of the basin to the detriment of the State and its citizens.

I would therefore urge that these two amendments be rejected or at least held in abeyance until further studies can be made concerning the availability of unappropriated water in the area. I would further propose that the states of Idaho and Utah work together in organizing some sort of program to administer this area in a manner that will fairly allocate the water of this basin between our states to the mutual benefit of all involved.

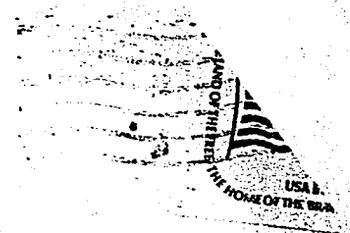
Yours truly,

Dee C. Hansen

Dee C. Hansen
State Engineer

DCH:sp

Utah State Division of Water Rights
231 East 400 South
Salt Lake City, Utah 84111



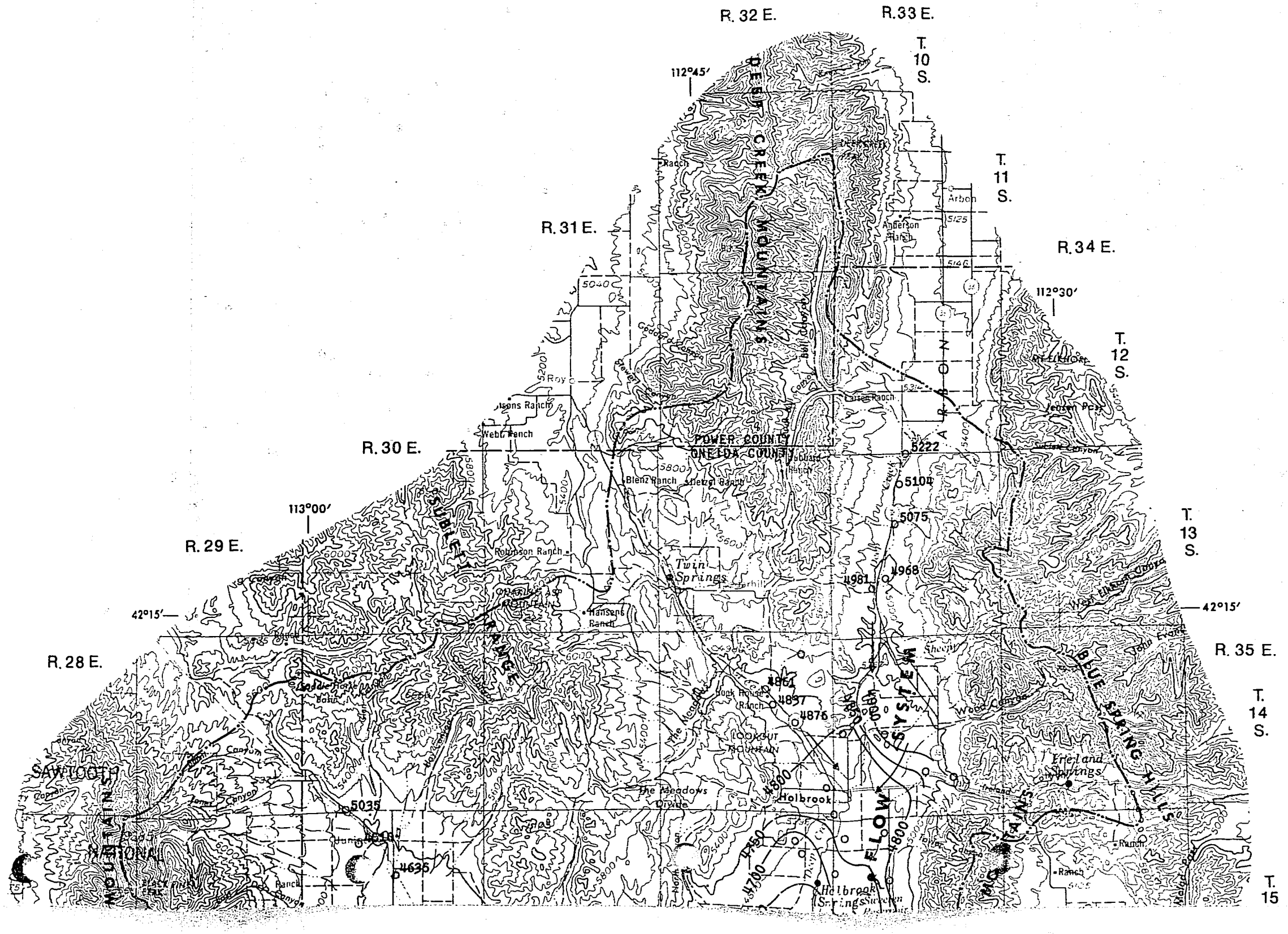
Idaho Dept. of Water Resources
614 State Street
State House Annex 2
Boise, Idaho 83707

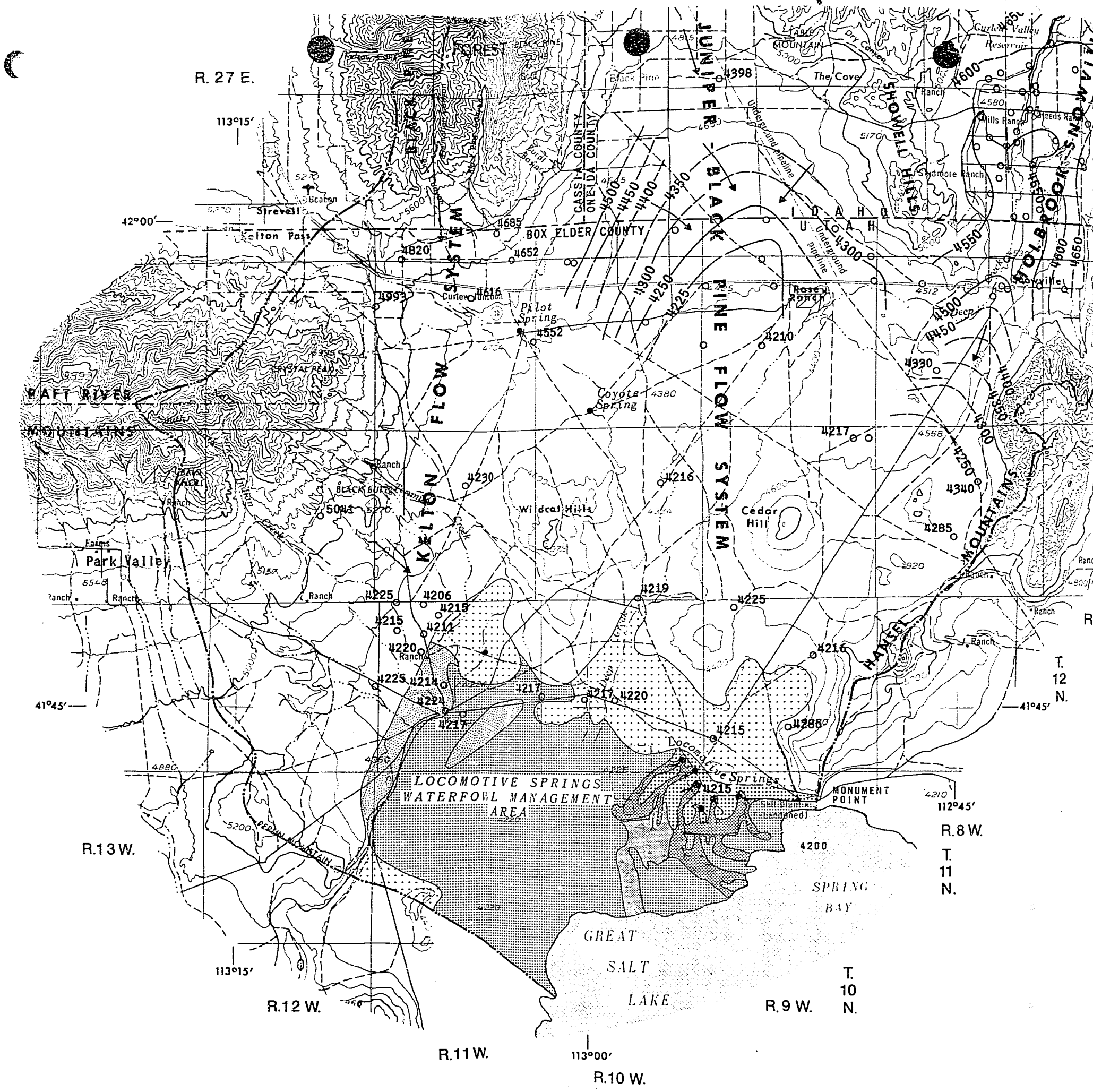
Attention: Mr. Glen Saxton

STATES DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES

TECHNICAL PUBLICATION NO. 45
PLATE 3 1974





EXPLANATION

4450 — Water-level contour

Shows approximate altitude of the potentiometric surface in March-April 1970. Contour interval 25 and 50 feet. Datum is mean sea level. Arrow shows general direction of ground-water movement

4285 ○ Well

Wells with numbers by them were not measured in March-April 1970; the numbers represent the altitude of the potentiometric surface at the well on the date of the water-level measurement given in table 8

4215 ● Spring

Number is land-surface altitude at point of discharge

AREAS OF NATURAL DISCHARGE
(Adapted from Bolke and Price, 1969, pl. 1)

- Greasewood
- Greasewood and rabbitbrush
- Saltflats (some greasewood, saltgrass, and pickleweed)
- Pickleweed and greasewood
- Open-water surfaces
- Saltgrass and other marsh grasses

Drainage divide

CONVERSION UNITS

Feet	Meters
4210	1280
4300	1310
4500	1370
4700	1430
4900	1490
5100	1550

Base modified from U.S. Geological Survey 1:250,000 series: Brigham City, Utah and Idaho; Pocatello, Idaho

5 0 5 MILES
5 0 5 KILOMETERS
CONTOUR INTERVAL 200 FEET (60 METERS)
DATUM IS MEAN SEA LEVEL

Hydrology by Ted Arnow and Don Price, 1973

Applicant's

MAP SHOWING WATER LEVELS AND NATURAL DISCHARGE AREAS IN THE

In general, the applicant seeks to add to Permit No 17-7029 an additional point of diversion within the same section, No. 28, as is located the original point of diversion. Section 28 is located immediately north of the Utah-Nevada border in the Antelope Valley.

Issue (1) In general, the applicant seeks to move the location of its groundwater wells to points immediately north of the Utah-Nevada border and to apply the wells to beneficial use on lands in Utah just south of the border.

Issue (2) Specifically the question is whether the change in applicant's proposed wells will unreasonably interfere with two wells in Utah, the "Maya well" located approximately 0.8 mile from the applicant's proposed wells and the "Taylor well" located approximately 1/4 [illegible] of the applicant's proposed wells.

Based on the evidence presented

the director is unable to find that the 11 applicants'

present wells withdraw water from the same aquifer or

a zone as the two Utah wells, but does find that

the groundwater sources of the ~~two~~ Mayo and Taylor

wells and the applicants present wells are interrelated

parts of the bigger groundwater system. Accordingly, although

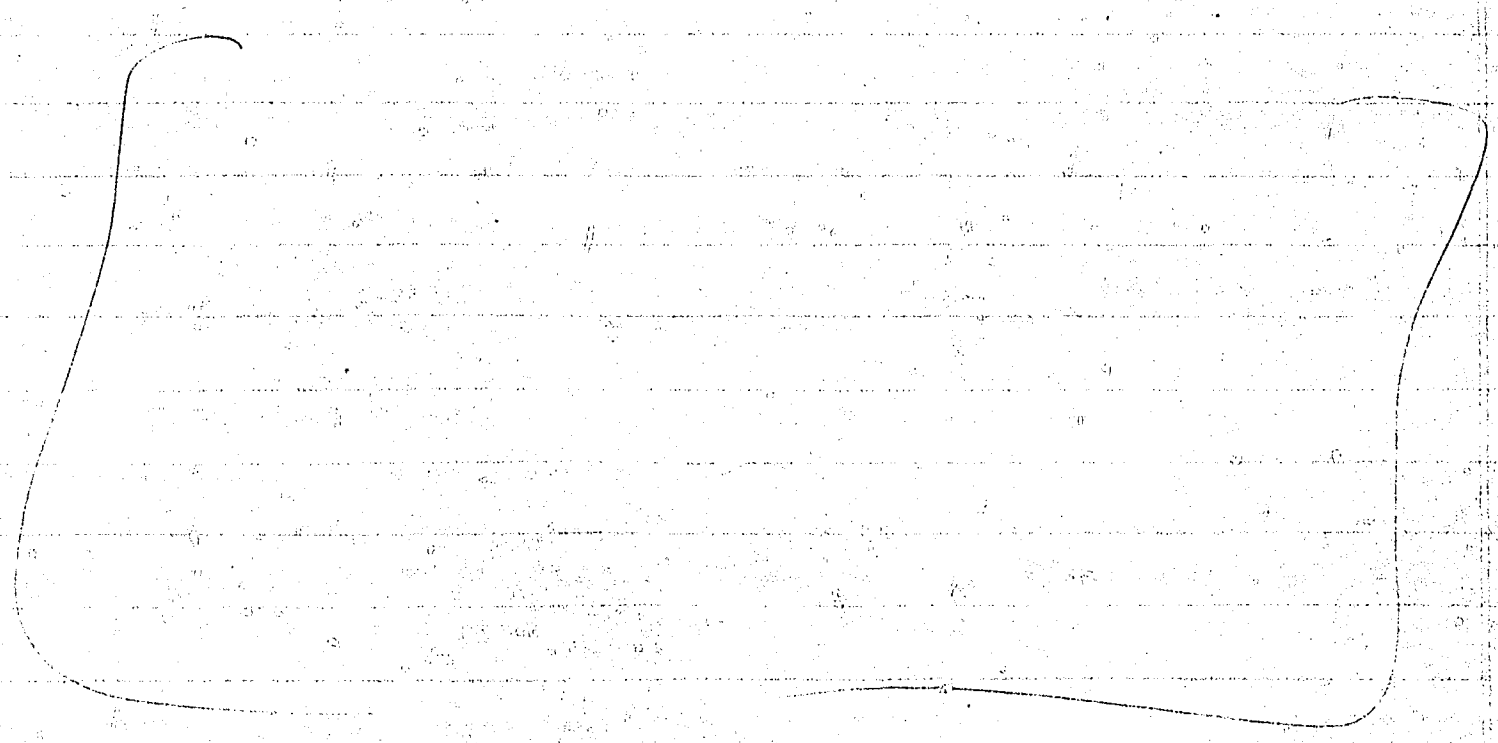
the applicants' prepared ~~drawn~~ amendments would not result in an

increase in the amount of water withdrawn from the groundwater

system, there is a question whether the ~~proposed~~ ~~to~~

applicants prepared wells will interfere with and to lower

the unconfined levels the Mayo and Taylor wells.



STATE OF UTAH

Executive Department

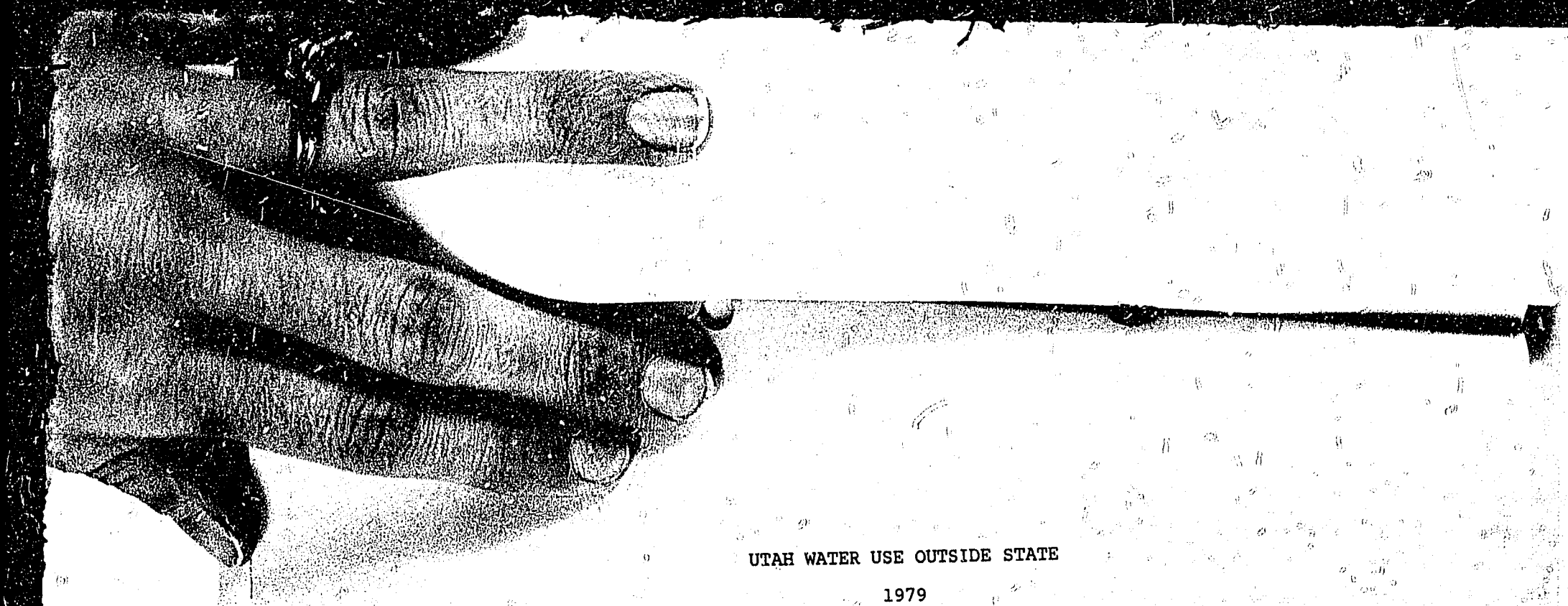
801-533-4504

CERTIFICATE

I, DAVID S. MONSON, LT. GOVERNOR/SECRETARY OF STATE OF THE STATE OF UTAH, HEREBY CERTIFY THAT the attached Utah State Legislature House Bill is a true and correct copy of the Engrossed Copy of H.B. No. 106, Utah Water Use Outside State, passed by the 1979 General Session of the Utah State Legislature on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah at Salt Lake City, this 3rd day of May, 1979.

David S. Monson



UTAH WATER USE OUTSIDE STATE

1979

GENERAL SESSION

Engrossed Copy

H. B. No. 106 By Ray S. Schmutz

AN ACT AMENDING SECTION 73-2-8, UTAH CODE ANNOTATED 1953, AS AMENDED BY CHAPTER 133, LAWS OF UTAH 1953; RELATING TO APPROPRIATIONS AND AGREEMENTS CONCERNING USE OF UTAH WATERS IN OTHER STATES; AND PROVIDING THAT THE STATE ENGINEER MAY APPROPRIATE WATER FROM ANY SOURCE TO BE USED FOR BENEFICIAL PURPOSES WITHIN THESE STATES.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 73-2-8, Utah Code Annotated 1953, as amended by Chapter 133, Laws of Utah 1953, is amended to read:

73-2-8. The state engineer is hereby authorized and empowered to receive and grant applications to appropriate water from [~~interstate streams~~] any source in Utah, where such water is to be conveyed and used for beneficial purposes within any [~~border~~] state, and to issue certificates of appropriation for this water [~~hereon, provided, the law of such border state in like manner permits the appropriation of water therein for use in Utah~~] only after the state engineer shall evaluate and make public the advantages to the State of Utah and its citizens of exporting water. The state engineer shall co-operate with the state engineer or other proper officer of any [~~adjoining~~] state in the determination, supervision, regulation and control of all water and water rights [~~in interstate streams,~~] and to that end the state engineer, by and with the consent of the governor, may enter into [~~the necessary and lawful~~] agreements with the proper officer [~~, duly authorized thereto,~~] of any [~~adjoining~~] state to carry out the purposes of this [~~section~~] subsection.

effective May 8, 1979

Received from the ~~House of Representatives~~ this 1st day of March, 1979

Approved March 7, 1979

Governor Matheson

Received from the Governor, and filed in the office of the Secretary of State this 8th day of March 1979

David S. Monson

Secretary of State

The foregoing _____ *was publicly read by title on the* _____ *day of* _____, *19* _____ *and signed by the President of the Senate on the* _____ *day of* _____, *19* _____, *and the fact of such signing duly entered upon the Journal this*

_____ *day of* _____, *19* _____

ATTEST:

.....

Secretary of Senate

President of the Senate

****

The foregoing Sub. HB #106 **was publicly read by title and immediately thereafter signed by the President of the Senate, in the presence of the house over which he presides, and the fact of such signing duly entered upon the Journal this**

16th day of February, 19 79

ATTEST:

Loykis C. Burkmeier

Secretary of Senate

President of the Senate

****

The foregoing _____ *was publicly read by title on the* _____ *day of* _____, *19* _____ *and signed by the Speaker of the House on the* _____ *day of* _____, *19* _____, *and the fact of such signing duly entered upon the Journal this*

_____ *day of* _____, *19* _____

ATTEST:

.....

Chief Clerk of the House

Speaker of the House

****

The foregoing Sub. HB #106 **was publicly read by title and immediately thereafter signed by the Speaker of the House, in the presence of the house over which he presides, and the fact of such signing duly entered upon the Journal this**

19th day of February, 1979

ATTEST:

Allen M Creamer

Chief Clerk of the House

Speaker of the House

****

Received from the ~~House of Representatives~~ this 1st day of March, 19 79

Approved March 7, 19 79

Governor

Received from the Governor, and filed in the office of the Secretary of State this 8th day of March 19 79

David L. Hobson

Secretary of State

CHAPTER 2

STATE ENGINEER

Section 73-2-1. State engineer—Term—Powers and duties—Qualification for duties.
73-2-1.1. Division of water rights—Creation—Power and authority.
73-2-1.2. Director of division of water rights—Appointment of state engineer.
73-2-1.3. Report to executive director of natural resources.
73-2-2. Oath and bond.
73-2-3. Salary and expenses.
73-2-4. Deputy and assistants—Employment and salaries of—Purchase of equipment and supplies.
73-2-5. Aid to district court.
73-2-6. Office at capitol—Place of hearings.
73-2-7. Aid to federal court.
73-2-8. Powers relating to interstate streams—Interstate agreements.
73-2-9. Power of arrest.
73-2-10. Reports to co-ordinating council and governor.
73-2-11. Records—Certified copies—Evidence.
73-2-12. Seal.
73-2-13. Attorney general, district and county attorneys to counsel.
73-2-14. Fees of state engineer—Payment into general fund.
73-2-15. Agreements with federal and state agencies—Investigations, surveys or adjudications.
73-2-16. Arbitration—Confirmation by district court.
73-2-17. Authorization of co-operative investigations of ground-water resources.
73-2-18. Contingent state appropriation—Payment of expenses.
73-2-19. Appropriation by United States.
73-2-20. Authorizing employees to enter and cross lands—Injuring monuments a misdemeanor.
73-2-21. Artesian wells—Wasting public water—State engineer, power to plug, repair or control—Co-operative agreements with owners.

73-2-1. State engineer—Term—Powers and duties—Qualification for duties.—There shall be a state engineer, who shall be appointed by the governor by and with the consent of the senate. He shall hold his office for the term of four years and until his successor is appointed and qualified. He shall have general administrative supervision of the waters of the state, and of the measurement, appropriation, apportionment and distribution thereof. He shall have power to make and publish such rules and regulations as may be necessary from time to time fully to carry out the duties of his office, and particularly to secure the equitable and fair apportionment and distribution of the water according to the respective rights of appropriators. He shall have full authority to bring suit in courts of competent jurisdiction to enjoin the unlawful appropriation, diversion, and use of both surface and underground water and to prevent waste, loss, or pollution thereof and to otherwise enable him to carry out the duties of his office. The state engineer may establish water districts and define the boundaries thereof, such districts to be so constituted as to secure the best protection to the claimants of water and the most economical supervision on the part of the state. No person shall be appointed to the office of state engineer who has had less than five years' experience as a practical engineer, or who has been less than three years an actual and bona fide resident of this state, or who has not such theoretical knowledge and practical experience and skill as shall fit him for the position.

History: L. 1919, ch. 67, § 7; 1921, ch. 62, § 1; R. S. 1933, 100-2-1; L. 1941, ch. 96, § 1; C. 1943, 100-2-1.

Compiler's Notes.

The 1941 amendment inserted fifth sentence.

Laws 1941 (1st Spec. Sess.), ch. 40, which amended certain sections of this chapter, contained a section 2 which read: "The term of office of the present state engineer shall terminate upon the appointment and qualification of his successor."

Cross-Reference.

Utah water and power board, 73-10-1 et seq.

1. Powers and duties of engineer.

Under former statute state engineer had authority to grant extension of time for appropriation that he had fixed for completing power plant and pipeline if not beyond ultimate limit fixed by statute, although application therefor was not made until after time first fixed by engineer had elapsed. Pool v. Utah County Light & Power Co., 36 U. 508, 105 P. 289.

State engineer is without power to grant right to use of water which in some way interferes with rights of others that have become fixed by long and continued use and enjoyment; it is only in event that engineer finds unappropriated water, that applicants may obtain rights to use of water. In re Jones' Estate, 59 U. 99, 202 P. 206.

Under former statute held that the section did not limit jurisdiction of engineer to unappropriated waters or waters belonging to the state, and that "waters of the state" and "waters in the state" were interchangeable terms. Caldwell v. Erickson, 61 U. 265, 213 P. 182.

Clearly, the state engineer has no powers except such as are expressly conferred upon him by statute. Little Cottonwood Water Co. v. Kimball, 76 U. 243, 289 P. 116.

The provisions of this section authorizing the state engineer to bring injunction suits to prevent the unlawful appropriation, diversion and use of water, or its pollution are adequate procedures under which the state engineer can compel the appropriator to comply with the law governing the diversion and the use of water storage rights. Rocky Ford Irr. Co. v. Kents Lake Reservoir Co., 104 U. 216, 140 P. 2d 638, for former opinion, 104 U. 202, 135 P. 2d 108.

The office of state engineer was not created to adjudicate vested rights between parties, but to administer and supervise the appropriation of the waters of the state. Whitmore v. Murray City, 107 U. 445, 154 P. 2d 748, explained in 121 U. 1, 283 P. 2d 1132.

The object of the engineer's office is to maintain order and efficiency in the appropriation, distribution, and conservation of water, and to allow as much water to be beneficially used as possible. United States v. District Court of Fourth Judicial Dist., 121 U. 1, 238 P. 2d 1132, rehearing denied, 121 U. 18, 242 P. 2d 774.

Although the engineer is required, the same as courts, to exercise discretion, determine facts after a hearing, and approve or reject applications accordingly, his duties are administrative in nature and purpose and not unusual for administrative officers. United States v. District Court of Fourth Judicial Dist., 121 U. 1, 238 P. 2d 1132, rehearing denied, 121 U. 18, 242 P. 2d 774.

The legislature invested the engineer with important but not conclusive discretionary powers and duties deserving of great respect, but as a safeguard against possible injustice, and by plenary review on trial de novo, it also invested the court with the ultima ratio and final say as to conflicting contentions of applicant and protestant. American Fork Irr. Co. v. Linke, 121 U. 90, 239 P. 2d 188.

2. Qualification for duties.

The state engineer is an executive officer who is not required to be trained in the law. United States v. District Court of Fourth Judicial Dist., 121 U. 18, 242 P. 2d 774.

Collateral References.

Waters and Water Courses⇐216.

94 C.J.S. Waters § 315.

73-2-1.1. Division of water rights—Creation—Power and authority.—There is created the division of water rights, which shall be within the department of natural resources under the administration and general supervision and policy direction of the co-ordinating council of natural resources. The division of water rights shall be the water rights authority

1. Based upon crop distrib yields & prices in this area in Uncle Co, the ~~return~~ cost of pumping water is relative at any pumping depth using any utility Co.

not to water

don't raise high cash crops such as

Sugar beets
Potatoes
onions
beans

- alfalfa
- barley
- wheat
- corn

Order

Now, therefore, it is hereby ordered that the proposed amendments to Permits 17-7029 & 17-7044 are hereby denied.

Dated this ___ day of _____ 1979

T. Stephen Alhadeff
Director

be argued one way or another without definite proof of the pumping level at which ~~it has~~ the point of diminishing returns are reached for all concerned.

~~The~~ The actual diversion of water at the proposed points of diversion together with a period of time for operation of the monitoring of effects would itself provide the best evidence to the unanswered questions. ~~The~~ The Director ~~does~~ does not think it reasonable and prudent however, to follow that line of reasoning due to the vested interests of other existing pumpers in Utah as ~~directed~~ described by ~~the~~ the State of Utah in this matter.

analysis

The proposed change in place of use from Idaho to Utah, with the wells being drilled in Idaho would appear to be a net benefit to the state of Utah. ~~Yet in this case we find that the~~ which the state of Utah would favor. Yet in this particular case we find the Utah State Engineer's office of the Dept of Natural Resources has filed a protest on behalf of other ground-water pumpers in the immediate area of the proposed ~~no~~ change pts of div in Sec 28, T16S R 30E. ~~Utah's~~

The Economic or reasonable pumping lifts ~~will~~ and relative adverse affects on existing ~~sources~~ pumpers can

6

~~CONCLUSIONS OF LAW~~

4. Section 42-408, Idaho Code authorizes the appropriation of Idaho water for use within a state which has reciprocal legislation. Utah Code §73-2-8, as amended, authorizes the appropriation of Utah surface and groundwater for use outside of Utah.

5. Under Idaho and Utah law, a Utah citizen can appropriate Idaho water for use within Utah.

6. The Utah State Engineer has standing to protest the proposed transfer of water rights by Sinks Land and Livestock

Conclusions of Law

1. ~~Wells~~ The withdrawal of water from wells proposed on the amendments in Sec 28, T16S, R30E will cause additional drawdown to the existing wells known as the ~~2 day~~ & 7 day wells and will add an unreasonable burden to existing pumping.

2. The amendments do not propose an expansion of water use since the ~~over~~ applicant does not propose to increase the rate of div or no. of acres irrig over that originally permitted.

3. Of the 4.70 cfs for irrig on permit 17-7029, only 2.20 cfs ~~[illegible]~~ (4.7 minus 1.25 or 3.02 cfs) ~~[illegible]~~ would be available to could be diverted from wells in Sec 28, T16S, R30E as proposed in the amendment.

Findings (Cont'd) ~~SINKS LAND & LIVESTOCK~~

~~Findings of Fact~~

Facts on File

60 days following adjournment;
unless two-thirds vote otherwise

13. Idaho Code 42-408 provides:

> "No permit to appropriate the public waters of the state of Idaho shall be granted by the department of water resources, unless the sister state, to which it is desired to divert such water, shall have enacted legislation generally similar in purport to the provisions of this chapter, whereby water may be appropriated within such sister state for use within the state of Idaho: ... (Emphasis added.)

14. Utah Code §73-2-8 (1953) provides:

The state engineer is hereby authorized and empowered to receive and grant applications to appropriate water from interstate streams in Utah, where such water is to be conveyed and used for beneficial purposes within any border state, and to issue certificates of appropriation thereon; provided, the law of such border state in like manner permits the appropriation of water therein for use in Utah. (Emphasis added.)

15. Utah House Bill 106, effective May 8, 1979, amends Utah Code §73-2-8 to read (new material is underlined; deleted material is lined out):

" The state engineer is hereby authorized and empowered to receive and grant applications to appropriate water from [~~intensive-streams~~] any source in Utah, where such water is to be conveyed and used for beneficial purposes within any [~~border~~] state, and to issue certificates of appropriation for this water [~~hereon,-provided,-the-law-of-such-border-state-in-like-manner-permits-the-appropriation-of-water-therein-for-use-in-Utah~~] only after the state engineer shall evaluate and make public the advantages to the State of Utah and its citizens of exporting water. The state engineer shall co-operate with the state engineer or other proper officer of any [~~adjoining~~] state in the determination, supervision, regulation and control of all water and water rights [~~in-interstate streams;~~] and to that end the state engineer, by and with the consent of the governor, may enter into [~~the-necessary-and-lawful~~] agreements with the proper officer [~~,duly-authorized-thereto,~~] of any [~~adjoining~~] state to carry out the purposes of this [~~section~~] subsection."

(over)

(OVER)

16. Idaho Code 42-26 provides in pertinent part that "anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication." (of the proposed transfer).

Notice of protest →

17. ~~The state engineer~~ Utah Code 73-2-1 provides that the Utah State Engineer "has the power" to secure the equitable and fair apportionment and distribution of the water according to the respective rights of appropriators."

Water is to be put to beneficial use →

18. The Utah State Engineer appeared in this proceeding to protest the effect of the proposed transfer on pre-existing appropriative rights in Utah.

right

Findings (Cont

of div. by the applicant vary from 5.7 feet to 14.68 feet. ~~which~~ which would be in addition to the normal drawdown at the Taylor & Mayo well due to pumping at those wells.

10. The number of acres & rate of div proposed by the amendments are not greater that shown on the original permits.

11. The well proposed on permit 17-7029 in NW NW - Sec 28, T16S R31E, Oneida Co has been drilled and test pumped @ 1500 to 1600 gpm (3.33 to 3.56 cfs).

12. Calculations based upon crop distrib, yields & prices in the subject area in Oneida Co show that ~~the cost of pumping~~ returns to investment are marginal ~~e~~ when pumping at any depth.

Admin proc problem!

can be justified against First Amendment speech, the judgment should be affirmed.

CLARK, J.

HUGHES v. OKLAHOMA

U.S. Supreme Court

WILLIAM RILEY HUGHES, Appellant, v. STATE OF OKLAHOMA, No. 77-1439, April 24, 1979

LAND

Constitutional rights and limitations — In general (§5.01)

Federal, state, and local regulation — Constitutionality (§8.03)

Oklahoma statute that bars shipment for sale out-of-state of natural minnows procured in waters in-state in order to protect minnows as state natural resource places full burden of environmental protection on interstate commerce, and therefore violates Commerce Clause of U.S. Constitution.

Texas commercial fish seller appeals on commerce Clause grounds his conviction under Oklahoma statute for transporting natural minnows for sale out of state.

Reversed.

Robert M. Helton, Wichita Falls, Texas, for appellant.

Bill J. Bruce, assistant attorney general, and Larry Derryberry, attorney general, Oklahoma City, Okla., for Oklahoma.

Full Text of Opinion

BRENNAN, J., delivered the opinion of the Court, in which STEWART, WHITE, MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., joined.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented for decision is whether Okla. Stat., Tit. 29, §4-115 (B) (Supp. 1978) violates the Commerce Clause, Art. I, §8, cl. 3, of the United States Constitution, insofar as it provides that "No person may transport or ship minnows for sale outside the state which were seined or procured within the waters of this state . . . ."[1]

Appellant William Hughes holds a Texas license to operate a commercial minnow business near Wichita Falls, Tex. An Oklahoma Game Ranger arrested him on a charge of violating §4-115 (B) by transporting from Oklahoma to Wichita Falls a load of natural minnows purchased from a minnow dealer licensed to do business in Oklahoma. Hughes' defense that §4-115 (B) was unconstitutional because it was repugnant to the Commerce Clause was rejected, and he was convicted and fined. The Oklahoma Court of Criminal Appeals affirmed, stating:

"The United States Supreme Court has held on numerous occasions that the wild animals and fish within a state's border are, so far as capable of ownership, owned by the state in its sovereign capacity for the common benefit of all its people. Because of such ownership, and in the exercise of its police power, the

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[1] Section 4-115 provides in full:

"A. No person may ship or transport minnows for sale into this state from an outside source without having first procured a license for such from the Director.

"B. No person may transport or ship minnows for sale outside the state which were seined or procured within the waters of this state except that:

"1. Nothing contained herein shall prohibit any person from leaving the state possessing three (3) dozen or less minnows;

"2. Nothing contained herein shall prohibit sale and shipment of minnows raised in a regularly licensed commercial minnow hatchery.

"C. The fee for a license under this section shall be:

"1. For residents, One Hundred Dollars ($100.00);

"2. For nonresidents, Three Hundred Dollars ($300.00).

"D. Any person convicted of violating any provisions of this section shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Dollars ($200.00)."

The prohibition against transportation out of State for sale thus does not apply to hatchery-bred minnows, but only to "natural" minnows seined or procured from waters within the State.

Section 4-115(b) is part of the Oklahoma Wildlife Conservation Code. Another provision of that Code requires that persons have a minnow dealer's license before they can lawfully seine or trap minnows within the State — except for their own use as bait — 29 Okla. Stat. §4-116, but no limit is imposed on the number of minnows a licensed dealer may take from state waters. Nor is there any regulation except §4-115 (B) concerning the disposition of lawfully acquired minnows; they may be sold within Oklahoma to any person and for any purpose, and may be taken out of the State for any purpose except sale.

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state may regulate and control the taking, subsequent use and property rights that may be acquired therein. *Lacoste* v. *Department of Conservation*, 263 U.S. 545, 44 S. Ct. 186, 68 L. Ed. 437 (1928); *Geer* v. *State of Connecticut*, 161 U.S. 519, 16 S. Ct. 600, 40 L.Ed. 793 (1896) . . . . As stated in *Lacoste, supra*, protection of the wildlife of a state is peculiarly within the police power of the state, and the state has great latitude in determining what means are appropriate for its protection.

". . . Oklahoma law does not prohibit commercial minnow hatcheries within her borders from selling stock minnows to anyone, resident or nonresident, and minnows purchased therefrom may be freely exported. However, the law served to protect against the depletion of minnows in Oklahoma's natural streams through commercial exportation. No person is allowed to export natural minnows for sale outside of Oklahoma. Such a prohibition is not repugnant to the commerce clause . . . ." *Hughes* v. *State*, 572 P. 2d 573, 575 (Okla. Crim. App. 1978).

We noted probable jurisdiction, U.S. (1978). We reverse *Geer* v. *Connecticut*, on which the Court of Criminal Appeals relied, is overruled. In that circumstance, §4-115 (B) cannot survive appellant's Commerce Clause attack.

I

The few simple words of the Commerce Clause — "The Congress shall have Power . . . To regulate Commerce . . . among the several States . . ." — reflected a central concern of the Framers that was an immediate reason for calling the Constitutional Convention: the conviction that in order to succeed, the new union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation. *See H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 533-534 (1949). The Commerce Clause has accordingly been interpreted by this Court not only as an authorization for congressional action, but, even in the absence of a conflicting federal statute, as a restriction on permissible state regulation.[2] The cases defining the scope of permissible state regulation in areas of congressional silence reflect an often controversial evolution of rules to accommodate federal and state interests.[3] *Geer* v. *Connecticut* was decided relatively early in that evolutionary process. We hold that time has revealed the error of the early resolution reached in that case, and accordingly *Geer* is today overruled.

A

Geer sustained against a Commerce Clause challenge a statute forbidding the transportation beyond the State of game birds that had been lawfully killed within the State.[4] The decision rested on the holding that no interstate commerce was involved. This conclusion followed in turn from the view that the State had the power, as representative for its citizens, who "owned" in common all wild animals within the State, to control not only the *taking*

[2] "The Commerce Clause is one of the most prolific sources of national power and an equally prolific source of conflict with legislation of the state. While the Constitution vests in Congress the power to regulate commerce among the states, it does not say what the states may or may not do in the absence of congressional action, nor how to draw the line between what is and what is not commerce among the states. Perhaps even more than by interpretation of its written word, this Court has advanced the solidarity and prosperity of this Nation by the meaning it has given to these great silences of the Constitution." *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 534-535 (1949).

Philadelphia v. *New Jersey*, 437 U.S. 617, 621-623 [11 ERC 1770] (1978), made clear that there is no "two-tiered definition of commerce." The definition of "commerce" is the same when relied on to strike down or restrict state legislation as when relied on to support some exertion of federal control or regulation.

[3] See, *e.g.*, *Gibbons* v. *Ogden*, 9 Wheat. 1, 209 (1824); *Willson* v. *Black Bird Creek Marsh Co.*, 2 Pet. 245 (1829); *Cooley* v. *Board of Wardens*, 12 How. 299 (1851); *Port Richmond & Bergen Point Ferry Co.* v. *Board of Chosen Freeholders*, 234 U.S. 317 (1914); *DiSanto* v. *Pennsylvania*, 273 U.S. 34 (1927); *Parker* v. *Brown*, 317 U.S. 341 (1943); *Southern Pac. Co.* v. *Arizona*, 325 U.S. 761 (1945); *H.P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525 (1949); *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970). See generally, F. Frankfurter, The Commerce Clause Under Marshall, Taney and Waite (1937); Dowling, Interstate Commerce and State Power, 27 Va. L. Rev. 1 (1940); Dowling, Interstate Commerce and State Power — Revised Version, 47 Colum. L. Rev. 597 (1947).

[4] "[T]he sole issue which the case presents is, was it lawful under the Constitution of the United States (section 8, Article I) for the State of Connecticut to allow the killing of birds within the State during a designated open season, to allow such birds, when so killed, to be used, to be sold and to be bought for use within the State, and yet to forbid their transportation beyond the State? Or, to state it otherwise, had the State of Connecticut the power to regulate the killing of game within her borders so as to confine its use to the limits of the State and forbid its transmission outside of the State?" *Geer* v. *Connecticut*, 161 U.S. 519, 522 (1896).

of game but the *ownership* of game that had been lawfully reduced to possession.[5] By virtue of this power, Connecticut could qualify the ownership of wild game taken within the State by, for example, prohibiting its removal from the State: "The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose." *Id.*, at 530. Accordingly, the State's power to qualify ownership raised serious doubts whether the sale or exchange of wild game constituted "commerce" at all; in any event the Court held that the qualification imposed by the challenged statute removed any transactions involving wild game killed in Connecticut from *interstate* commerce.[6]

Mr. Justice Field and the first Mr. Justice Harlan dissented, rejecting as artificial and formalistic the Court's analysis of "ownership" and "commerce" in wild game. They would have affirmed the State's power to provide for the protection of wild game, but only "so far as such protection . . . does not contravene the power of Congress in the regulation of interstate commerce."[7] Their view was that "[w]hen an animal . . . is lawfully killed for the purposes of food or other uses of man, it becomes an article of commerce, and its use cannot be limited to the citizens of one state to the exclusion of citizens of another state."[8]

B

The view of the *Geer* dissenters increasingly prevailed in subsequent cases. Indeed, not only has the *Geer* analysis been rejected when natural resources other than wild game were involved, but even state regulations of wild game have been held subject to the strictures of the Commerce Clause under the pretext of distinctions from *Geer*.

The erosion of *Geer* began only 15 years after it was decided. A Commerce Clause challenge was addressed to an Oklahoma statute designed to prohibit the transportation beyond the State of natural gas produced by wells within the State. *West* v. *Kansas Natural Gas Co.*, 221 U.S. 229 (1911). Based on reasoning parallel to that in *Geer*, Oklahoma urged its right to "conserve" the gas for the use of its own citizens, stressing the limited supply and the absence of alternative sources of fuel within the State. Nevertheless, the Court, in a passage reminiscent of the dissents in *Geer*, condemned the obvious protectionist motive in the Oklahoma statute and rejected the State's arguments with a powerful reaffirmation of the vision of the Framers:

> "The statute of Oklahoma recognizes [gas] to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate com-

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[5] *Id.*, at 522-529. The Court has recognized that *Geer's* analysis of the authorities on this issue is open to question. *Toomer* v. *Witsell*, 334 U.S. 385, 402 n. 37 (1948).

[6] "The qualification which forbids [the game's] removal from the State necessarily entered into and formed part of every transaction on the subject, and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce. Passing, however, as we do, the decision of this question, and granting that the dealing in game killed within the State, under the provision in question, created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce, and therefore under the control of the Constitution of the United States.

". . . The power of the State to control the killing of and ownership in game being admitted, the commerce in game, which the state law permitted, was necessarily only internal commerce, since the restriction that it should not become the subject of external commerce went along with the grant and was a part of it." *Geer* v. *Connecticut*, 161 U.S. 519, 530-532 (1896).

Our Brother REHNQUIST suggests that the Court in *Geer* offered as an alternative basis for its decision" (in the final paragraph of its 15 page opinion) that the "State, in the exercise of its police power, could act to preserve for its people a valuable food supply, even though interstate commerce was remotely and indirectly affected." *Post*, at 2 n. 3. That this was not an "alternative basis," however, is made clear in a sentence not quoted by our Brother REHNQUIST:

> "The power of a State to protect by adequate police regulation its people against the adulteration of articles of food, . . . although in doing so commerce might be remotely affected, necessarily carries with it the existence of a like power to preserve a food supply *which belongs in common to all the people of the State, which can only become the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the State and subject to the conditions which it may deem best to impose for the public good.*" 161 U.S., at 535 (emphasis added).

Thus, rather than an "alternative basis" independent of the "state ownership" and "no interstate commerce" rationales, this "preservation of a valuable resource" rationale was premised on those rationales. In any event, even if an "alternative basis," this rationale has met the same fate as *Geer's* primary rationale. See *infra*, at 7-8, and n. 9.

[7] *Id.*, at 541 (Field, J. dissenting); see *id.*, at 543 (Harlan, J., dissenting).

[8] *Id.*, at 538, 541-542 (Field, J., dissenting); see *id.*, at 543-544 (Harlan, J., dissenting).

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merce, and this is the purpose of its conservation . . . . If the States have such power a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining States their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without enlargement, its influence on interstate commerce need not be pointed out. To what consequences does such power tend? If one State has it, all States have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that "in matters of foreign and interstate commerce there are no state lines." In such commerce, instead of the States, a new power appears and a new welfare, a welfare which transcends that of any State. But rather let us say it is constituted of the welfare of all of the States and that of each State is made the greater by a division of its resources, natural and created, with every other State, and those of every other State with it. This was the purpose, as it is the result, of the interstate commerce clause of the Constitution of the United States. If there is to be a turning backward it must be done by the authority of another instrumentality than a court." *Id.*, at 255-256.

The Court distinguished discriminatory or prohibatory regulations offensive to the Commerce Clause, such as the Oklahoma statute, from a valid "exercise of the police power to regulate the taking of natural gas" that was "universal in its application and justified by the nature of the gas and which allowed its transportation to other states." *Id.*, at 257; see *id.*, at 252-254 (distinguishing *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190 (1900)).

In subsequent Commerce Clause challenges to state regulation of exports of natural resources, the *West* analysis emerged as the dominant approach. See, *e.g.*, *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 598-600 (1923);[9] *H. P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525 (1949). Today's principle is that stated in *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970):

"Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits . . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." (Citations omitted.)

This formulation was employed only last Term to strike down New Jersey's attempt to "conserve" the natural resource of landfill areas within the State for the disposal of waste generated within the State. *Philadelphia* v. *New Jersey*, 437 U.S. 617, 624 (1978).

The *Geer* analysis has also been eroded to the point of virtual extinction in cases involving regulation of wild animals. The first challenge to *Geer's* theory of a State's power over wild animals came in *Missouri* v. *Holland*, 252 U.S. 416 (1920). The State of Missouri, relying on the theory of State ownership of wild animals, attacked the Migratory Bird Treaty Act on the ground that it interfered with the State's control over wild animals within its boundaries. Writing for the Court, Mr. Justice Holmes upheld the Act as a proper exercise of the treatymaking power. He commented in passing on the artificiality of the *Geer* rationale: "To put the claim of the State upon title is to lean upon a slender reed." *Id.*, at 434.

Foster-Fountain Packing Co. v. *Haydel*, 278 U.S. 1 (1928), undermined *Geer* even more directly. A Louisiana statute forbade the transportation beyond the State of shrimp taken in Louisiana waters until the heads and shells had been removed.[10] The stat-

[9] The inconsistency between the result in this case and that in *Geer* was not overlooked by the dissenting Justices. See *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 601 (1923) (Holmes, J., dissenting). Significantly, our Brother REHNQUIST relies on this *dissent* in his discussion of the "alternative basis" of *Geer* — the "preservation of a valuable natural resource" rationale. See n. 6, *supra*; *post*, at 2 n. 3. The *Court* opinion in *Pennsylvania* v. *West Virginia*, as that in *West*, expressly rejected this argument along with the "no interstate commerce" rationale. *Id.*, at 599-600.

[10] The law challenged in *Foster-Fountain Packing Co.* was passed in July 1926. The state legislature may have been encouraged to take such action by certain language in *Lacoste* v. *Louisiana Dept. of Conservation*, 263 U.S. 545 (1924), language also relied on by the Oklahoma Court of Criminal Appeals in this case. *Lacoste* upheld a Louisiana "severance" tax on the skins of all wild furbearing animals and alligators taken in the State. The Court cited *Geer* for the proposition that:

"The wild animals within its borders are, so far as capable of ownership, owned by the State

ute clearly relied on the *Geer* state control of ownership rationale.[11] Anyone lawfully taking shrimp from Louisiana waters was granted "a qualified interest which may be sold within the state." Only after the head and shell had been removed within the State did the taker or possessor acquire "title and the right to sell and ship the same 'beyond the limit[s] of the State, without restriction or reservation.'" *Id.*, at 8.

Ignoring the niceties of "title" to the shrimp and concentrating instead on the purposes and effects of the statute, *Foster-Fountain Packing* struck down the statute as economic protectionism abhorrent to the Commerce Clause. The analysis resembled that employed in the natural gas cases, which were cited with approval, 278 U.S., at 10-11, 13.[12] *Geer* was distinguished on the ground that there "[n]o part of the game was permitted by the statute to become an article of interstate commerce." *Id.*, at 12.[13] Limiting *Geer* to cases involving complete embargoes on interstate commerce in a wild animal created the anomalous result that the most burdensome laws enjoyed the most protection from Commerce Clause attack.

Foster-Fountain Packing's implicit shift away from *Geer*'s formalistic "ownership" analysis became explicit in *Toomer* v. *Witsell*, 334 U.S. 385, 402 (1948), which struck down as violations of the Commerce Clause and the Privileges and Immunities Clause certain South Carolina laws discriminating against out-of-state commercial fishermen:

> "The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource. And there is no necessary conflict between that vital policy consideration and the constitutional command that the State exercise that power, like its other powers, so as not to discriminate without reason against citizens of other States."

Although stated in reference to the Privileges and Immunities Clause challenge, this reasoning is equally applicable to the Commerce Clause challenge.[14] *Douglas* v. *Seacoast Products, Inc.*, 431 U.S. 265 (1977), dispelled any doubts on that score. In rejecting the argument that Virginia's "ownership" of fish swimming in its territorial waters empowered the State to forbid fishing by federally licensed ships owned by nonresidents while permitting residents to fish, *Seacoast Products* explicitly embraced the analysis of the *Geer* dissenters:

> "A State does not stand in the same position as the owner of a private game preserve and it is pure fantasy to talk of 'owning' wild fish, birds, or animals. Neither the States nor the Federal Government, any more than a hopeful

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in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power the State may regulate and control the taking, subsequent use and property rights that may be acquired therein." *Id.*, at 549. Nevertheless, *Lacoste* expressly declined to uphold the tax "by virtue of the power of the State to prohibit, and therefore to condition, the removal of wild game from the State." *Ibid.* Rather than reach this issue, the Court upheld the measure as a valid police regulation designed to conserve and protect wild animals, noting that the tax applied to all skins taken within the State, whether kept within the State or shipped out. *Id.*, at 550-551. Thus, despite its citation of *Geer*, *Lacoste* is actually more compatible with the cases following the views of the Justices dissenting in *Geer*.

[11] The preamble to the Act read in part as follows: "To declare all shrimp and parts thereof in the waters of the State to be the property of the State of Louisiana, and to provide the manner and extent of their reduction to private ownership; . . ." *Foster-Fountain Packing Co.* v. *Haydel*, 278 U.S. 1, 5 n.* (1928).

[12] The Court cited these cases for the proposition that "[a] State is without power to prevent privately owned articles of trade from being shipped and sold in interstate commerce on the ground that they are required to satisfy local demands or because they are needed by the people of the State." *Id.*, at 10.

[13] "As the representative of its people, the State might have retained the shrimp for consumption and use therein . . . . But by permitting its shrimp to be taken and all the products thereof to be shipped and sold in interstate commerce, the State necessarily releases its hold and, as to the shrimp so taken, definitely terminates its control. Clearly such authorization and the taking in pursuance thereof put an end to the trust upon which the State is deemed to own or control the shrimp for the benefit of its people. And those taking the shrimp under the authority of the Act necessarily thereby become entitled to the rights of private ownership and the protection of the commerce clause." *Id.*, at 13.

[14] See *Hicklin* v. *Orbeck*, 437 U.S. 518, 531-532 (1978). The Court distinguished *Geer* on the same basis used in *Foster-Fountain Packing Co.*, 334 U.S., at 404-406. *Takahashi* v. *Fish & Game Comm'n*, 334 U.S. 410, 420-421 (1948), decided the same day as *Toomer*, reviewed the cases distinguishing and questioning *Geer* and found the State's claim to "ownship" inadequate to justify a ban on commercial fishing by alien residents.

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C

The case before us is the first in modern times to present facts essentially on all fours with *Geer*.[16] We now conclude that challenges under the Commerce Clause to state regulations of wild animals should be considered according to the same general rule applied to state regulations of other natural resources, and therefore expressly overrule *Geer*. We thus bring our analytical framework into conformity with practical realities. Overruling *Geer* also eliminates the anomaly, created by the decisions distinguishing *Geer*, that statutes imposing the most extreme burdens on interstate commerce (essentially total embargoes) were the most immune from challenge. At the same time, the general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th century legal fiction of state ownership.

II

We turn then to the question whether the burden imposed on interstate commerce in wild game by §4-115 (B) is permissible under the general rule articulated in our precedents governing other types of commerce. See, *e.g.*, *Pike* v. *Bruce Church*, *supra*, 397 U.S., at 142, quoted, at p. 8, *supra*. Under that general rule we must inquire (1) whether the challenged statute regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce either on its face or in practical effect; (2) whether the statute serves a legitimate local purpose; and, if so, (3) whether alternative means could promote this local purpose as well without discriminating against interstate commerce. The burden to show discrimination rests on the party challenging the validity of the statute, but "[w]hen discrimination against commerce . . . is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333, 353 (1977). Furthermore, when considering the purpose of a challenged statute, this Court is not bound by "[t]he name, description, or characterization given it by the legislature and the courts of the State," but will determine for itself the practical impact of the law. *Lacoste* v. *La. Dept. of Conservation*, 263 U.S. 545, 550 (1928); see *Foster-Fountain Packing Co.* v. *Haydel*, *supra*, 278 U.S., at 10; *Pike* v. *Bruce Church*, *supra*.

Section 4-115 (B) on its face discriminates against interstate commerce. It forbids the transportation of natural minnows out of the State for purposes of sale, and thus "overtly blocks the flow of interstate commerce at [the] State's border." *Philadelphia* v. *New Jersey*, *supra*, 437 U.S., at 624. Such facial discrimination by itself may be a fatal defect, regardless of the State's purpose, because "the evil of protectionism can reside in legislative means as well as legislative ends." *Id.*, at 626.[17] At a minimum such facial discrimination invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of nondiscriminatory alternatives.

Oklahoma argues that §4-115 (B) serves a legitimate local purpose in that it is "readily apparent as a conservation measure." Appellee's Brief, at 8. The State's interest in maintaining the ecological balance in state waters by avoiding the remov-

[15] "In more recent years . . . the Court has recognized that the States' interest in regulating and controlling those things they claim to "own," including wildlife, is by no means absolute. States may not compel the confinement of the benefits of their resources, even their wildlife, to their own people whenever such hoarding and confinement impedes interstate commerce. *Foster-Fountain Packing Co.* v. *Haydel*, 278 U.S. 1 (1928); *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923); *Oklahoma* v. *Kansas Natural Gas Co.*, 221 U.S. 229 (1911)." *Baldwin* v. *Montana Fish & Game Comm'n*, 436 U.S. 371, 385-386 (1978).

[16] See, *e.g.*, *Douglas* v. *Seacoast Products, Inc.*, 431 U.S. 265, 285 n. 21 (1977).

[17] "[W]hatever [a State's] ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently." *Philadelphia* v. *New Jersey*, 437 U.S. 617, 626-627 (1978).

al of inordinate numbers of minnows may well qualify as a legitimate local purpose. We consider the States' interests in conservation and protection of wild animals as legitimate local purposes similar to the States' interests in protecting the health and safety of their citizens. See, *e.g.*, *Firemen* v. *Chicago R. I. & P. R. Co.*, 393 U.S. 129 (1968). But the scope of legitimate state interests in "conservation" is narrower under this analysis than it was under *Geer*. A State may no longer "keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose." *Geer* v. *Connecticut*, *supra*, 161 U.S., at 530. The fiction of state ownership may no longer be used to force those outside the State to bear the full costs of "conserving" the wild animals within its borders when equally effective nondiscriminatory conservation measures are available.

Far from choosing the least discriminatory alternative, Oklahoma has chosen to "conserve" its minnows in the way that most overtly discriminates against interstate commerce. The State places no limits on the numbers of minnows that can be taken by licensed minnow dealers; nor does it limit in any way how these minnows may be disposed of within the State.[18] Yet it forbids the transportation of any commercially significant number of natural minnows out of the State for sale.[19] Section 4-115 (B) is certainly not a "last ditch" attempt at conservation after nondiscriminatory alternatives have proven unfeasible. It is rather a choice of the most discriminatory means even though nondiscriminatory alternatives would seem likely to fulfill the State's purported legitimate local purpose more effectively.[20]

We therefore hold that §4-115 (B) is repugnant to the Commerce Clause.

III

The overruling of *Geer* does not leave the States powerless to protect and conserve wild animal life within their borders. Today's decision makes clear, however, that States may promote this legitimate purpose only in ways consistent with the basic principle that "our economic unit is the Nation," *H. P. Hood & Sons, Inc.* v. *Du Mond*, *supra*, 336 U.S., at 537, and that when a wild animal "becomes an article of commerce . . . its use cannot be limited to the citizens of one State to the exclusion of citizens of another State." *Geer* v. *Connecticut*, *supra*, 161 U.S., at 538 (Field, J., dissenting).

Reversed.

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

This Court's seeming preoccupation in recent years with laws relating to wildlife must, I suspect, appear curious to casual observers of this institution.[1] It is no more curious, however, than this Court's recent pronouncements on the validity of *Geer* v. *Connecticut*, 161 U.S. 519 (1896). For less than one year ago we unreservedly reaffirmed the principles announced in *Geer*. *Baldwin* v. *Montana Fish & Game Commission*, 436 U.S. 371, 386 (1978). Today, the Court overrules that decision. Because I disagree with the Court's overruling of *Geer* and holding that Oklahoma's law relating to the sale of minnows violates the Commerce Clause, I dissent.

In its headlong rush to overrule *Geer*, the Court characterizes that decision as "rest[ing] on the holding that no interstate commerce was involved." *Ante*, at 5. It is true that one of the rationales relied on by the *Geer* Court was that the State could exercise its power to control the killing and ownership of animals *ferae naturae* to prohibit such game from leaving the borders of the State and thus prevent the game from ever becoming the objects of interstate commerce. 161 U.S., at 530-532. Since the Court in *Geer* was of the view that the challenged statute effectively prevented certain game from entering the stream of interstate commerce, there could be no basis for a Commerce Clause challenge to

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[18] See n. 1, *supra*.

[19] Section 4-115(B) does not apply to persons transporting less than three dozen natural minnows outside the State. See n. 1, *supra*.

[20] In its Brief Oklahoma argues, apparently for the first time, that the discrimination against out-of-state sales of natural minnows is justified because minnows purchased in the State are more likely to be used for bait in state waters. Appellee's Brief, at 3. The State contends that minnows "returned" to state waters as bait do not upset the ecological balance as much as those that never "return." The late appearance of this argument and the total absence of any record support for the questionable factual assumptions that underlie it give it the flavor of a *post-hoc* rationalization. The State's bare assertion is certainly inadequate to survive the scrutiny invoked by the facial discrimination of §4-115(B). In any case, Oklahoma itself concedes that the "return" of natural minnows as bait is irrelevant to most aspects of preserving ecological balance. Appellee's Brief, at 4.

[1] See, *e.g.*, *Hughes* v. *Oklahoma*, *supra*, at (minnows); *Tennessee Valley Authority* v. *Hill*, 437 U.S. 153 [11 ERC 1705] (1978) (snail darters); *Baldwin* v. *Montana Fish & Game Commission*, 436 U.S. 371 (1978) (elk); *Douglas* v. *Seacoast Products, Inc.*, 431 U.S. 265 (1977) (menhaden); *Kleppe* v. *New Mexico*, 426 U.S. 529 (1976) (wild horses and burros).

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the State's law. *Id.*, at 530, 532.[2] I do not dispute the Court's rejection of this theory; as the Court points out, this rationale was rejected long before today. *Ante*, at 6; see *West* v. *Kansas Natural Gas Co.*, 221 U.S. 229 (1911). My objection is that this line of reasoning, while undoubtedly considered important by the majority in *Geer*, is unnecessary to sustain that decision[3] and is unneeded in the disposition of the present case. And no one — not the Oklahoma Supreme or the State in this Court — contends that the minnows at issue are not the subjects of interstate commerce. It is obvious that the Court has simply set this theory up as a sort of straw man to facilitate the toppling of a decision which, in other respects, enunciates principles that have remained valid and vital, albeit somewhat refined, at least until today.[4]

[2] "The fact that internal commerce may be distinct from interstate commerce, destroys the whole theory upon which the argument of the plaintiff in error proceeds. The power of the State to control the killing of and ownership in game being admitted, the commerce in game, which the state law permitted, was necessarily only internal commerce, since the restriction that it should not become the subject of external commerce went along with the grant and was part of it." *Geer* v. *Connecticut*, 161 U.S. 519, 532 (1896).

[3] The Court in *Geer* assigned an alternative basis for its decision. The Court held that a State, in the exercise of its police power, could act to preserve for its people a valuable food supply, even though interstate commerce was remotely and indirectly affected.

"Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so interstate commerce may be remotely and indirectly affected. *Kidd* v. *Pearson*, 128 U.S. 1, *Hall* v. *DeCuir*, 95 U.S. 485; *Sherlock* v. *Alling*, 93 U.S. 99, 103; *Gibbons* v. *Ogden*, 9 Wheat 1. Indeed, the source of the police power as to game birds (like those covered by the statute here called into question) flows from the duty of the State to preserve for its people a valuable food supply." 161 U.S., at 534. See also *Silz* v. *Hesterberg*, 211 U.S. 31, 41-42 (1908); *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 601 (1923) (Holmes, J., dissenting).

[4] Certain of the statements in the Court's opinion provide a basis for some hope that these principles may yet survive the overruling of *Geer*. See *ante*, at 14. ("We consider the State's interest in conservation and protection of wild animals as legitimate local purposes . . . ."); *id.*, at 15. ("The overruling of *Geer* does not leave the States powerless to protect and conserve wild animal life within their borders.").

The Court in *Geer* expressed the view derived from Roman law that the wild fish and game located within the territorial limits of a State are the common property of its citizens and that the State, as a kind of trustee, may exercise this common "ownership" for the benefit of its citizens. 161 U.S., at 529. Admittedly, a State does not "own" the wild creatures within its borders in any conventional sense of the word.[5] *Baldwin* v. *Montana Fish & Game Commission*, *supra*, at 386; *Douglas* v. *Seacost Products, Inc.*, 431 U.S. 265, 284 (1977); *Toomer* v. *Witsell*, 334 U.S. 385, 401-402 (1948); *Missouri* v. *Holland*, 252 U.S. 416, 434 (1920). But the concept expressed by the "ownership" doctrine is not obsolete. *Baldwin* v. *Montana Fish & Game Commission*, *supra*, at 392 (BURGER, C. J., concurring). This Court long has recognized that the ownership language of *Geer* and similar cases is simply a shorthand way of describing a State's substantial interest in preserving and regulating the exploitation of the fish and game and other natural resources within its boundaries for the benefit of its citizens. *Id.*, at 386; *Douglas* v. *Seacoast Products, Inc.*, *supra*, at 284; *Toomer* v. *Witsell*, *supra*, at 402.

In recognition of this important state interest, the Court has upheld a variety of regulations designed to conserve and maintain the natural resources of a State. See, *e.g.*, *Baldwin* v. *Montana Fish & Game Commission*, *supra*; *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440 (1960); *Lacoste* v. *Louisiana Department of Conservation*, 263 U.S. 545 (1924); *Patsone* v. *Pennsylvania*, 232 U.S. 138 (1914); *Geer* v. *Connecticut*, *supra*; *Manchester* v. *Massachusetts*, 139 U.S. 240 (1891); *McCready* v. *Virginia*, 94 U.S. 391 (1877); *Smith* v. *Maryland*, 18 How. 71 (1855). To be sure, a State's power to preserve and regulate wildlife within its borders is not absolute.[6] But the State is ac-

[5] The *Geer* Court itself did not use the term "ownership" in any proprietary sense. See 161 U.S., at 529 ("We take it to be the correct doctrine in this country, that the ownership of wild animals, so far as they are capable of ownership, is in the State, not as proprietor but in its sovereign capacity as the representative and for the benefit of all its people in common.' ").

[6] *Geer* recognized limits to the exercise of the State's power to preserve wildlife within its boundaries. See 161 U.S., at 528 (this power, which the colonies possessed, remains in the States "at the present day, in so far as its exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal government by the Constitution").

corded wide latitude in fashioning regulations appropriate for protection of its wildlife. Unless the regulation directly conflicts with a federal statute or treaty, *Douglas* v. *Seacoast Products, Inc.*, *supra*, at 283-285; *Kleppe* v. *New Mexico*, 426 U.S. 529, 546 (1976); *Missouri* v. *Holland*, *supra*, at 434, allocates access in a manner that violates the Fourteenth Amendment, *Takahasi* v. *Fish & Game Commission*, 334 U.S. 410 (1948), or represents a naked attempt to discriminate against out-of-state enterprises in favor of in-state businesses unrelated to any purpose of conservation, *Foster-Fountain Packing Co.* v. *Haydel*, 278 U.S. 1, 13 (1928), the State's special interest in preserving its wildlife should prevail. And this is true no matter how "Balkanized" the resulting pattern of commercial activity.[7]

The Oklahoma law at issue in this case serves the special interest of the State, as representative of its citizens, in preserving and regulating exploitation of free-swimming minnows found within its waters. "[T]he law serve[s] to protect against the depletion of minnows in Oklahoma's natural streams through commercial exportation." *Hughes* v. *State*, 572 P. 2d 573, 575 (Okla. Ct. Crim. App. 1978). Oklahoma's statutory scheme may not be the most artfully designed to accomplish its purpose.[8] But the range of regulations that a State may adopt under these circumstances is extremely broad, particularly where, as here, the burden on interstate commerce is, at most, minimal. See *Douglas* v. *Seacoast Products, Inc.*, *supra*, at 288 (REHNQUIST, J., concurring and dissenting); *Lacoste* v. *Louisiana Department of Conservation*, *supra*, at 552; cf. *Baldwin* v. *Fish & Game Commission*, *supra*, at 391; *Kleppe* v. *New Mexico*, *supra*, at 545.

Contrary to the view of the Court, I do not think that Oklahoma's regulation of the commercial exploitation of natural minnows either discriminates against out-of-state enterprises in favor of local businesses or that it burdens the interstate commerce in minnows. At least, no such showing has been made on the record before us. Cf. *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 154 (1963). This is not a case where a State's regulation permits residents to export naturally seined minnows but prohibits nonresidents from so doing. No person is allowed to export natural minnows for sale outside of Oklahoma; the statute is evenhanded in its application. See Okla. Stat. Tit. 29, §4-115 (B). The State has not used its power to protect its own citizens from outside competition. See *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333 (1977); *Hood & Sons* v. *Du Mond*, 336 U.S. 525 (1949). Nor is this a case where a State requires a nonresident business, as a condition to exporting minnows, to move a significant portion of its operations to the

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[7] This view is fully consistent with the balancing approach to Commerce Clause decisionmaking enunciated in *Pike* v. *Bruce Church*, 397 U.S. 137 (1970), relied on so heavily by the Court. *Ante*, at 8, 13. In *Pike*, the Court stated:

> "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits . . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." 397 U.S., at 142.

Given the primacy of the local interest here, in the absence of conflicting federal regulation I would require one challenging a state conservation law on Commerce Clause grounds to establish a far greater burden on interstate commerce than is shown in this case. See *infra*, at 6-7. See also *Hunt* v. *Washington Apple Advertising Commission*, 432 U.S. 333, 350 (1977) ("[O]ur opinions have long recognized that, 'in the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it.' "); *Hood & Sons* v. *Du Mond*, 336 U.S. 525, 567 (1949) (Frankfurter, J., dissenting) ("Behind the distinction between 'substantial' and 'incidental' burdens upon interstate commerce is a recognition that, in the absence of federal regulation, it is sometimes — of course not always — of greater importance that local interests be protected than that interstate commerce be not touched.").

[8] The Court seems to doubt the conservation purpose of the Oklahoma law because the State places no limit on the number of minnows a licensed dealer may take from state waters and imposes no regulation governing the disposition of minnows within the State. *Ante*, at 14-15, and n. 20. But the State could rationally have concluded that it could adequately preserve its natural minnow population without such additional measures. Tr. of Oral Arg. 18,20, 21-23. Since, in my view, the prohibition on export of naturally seined minnows imposes little, if any, burden on the interstate commerce in minnows, the State has not violated the Commerce Clause by choosing an export ban on natural minnows as the means to effectuate its special interest in conserving wildlife located within its territorial limits.

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State or to use certain State resources in pursuit of its business for the benefit of the local economy. See *Toomer* v. *Witsell, supra; Foster-Fountain Packing Co.* v. *Haydel, supra; Johnson* v. *Haydel*, 278 U.S. 16 (1928); cf. *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 145 (1970). And, notwithstanding the Court's protestations to the contrary, Oklahoma has not blocked the flow of interstate commerce in minnows at the State's borders. See *ante*, at 13-14. Petitioner, or anyone else, may freely export as many minnows as he wishes, so long as the minnows so transported are hatchery minnows and not naturally seined minnows. On this record, I simply fail to see how interstate commerce in minnows, the commodity at issue here, is impeded in the least by Oklahoma's regulatory scheme.[9]

Oklahoma does regulate the manner in which both residents and nonresidents procure minnows to be sold outside the State. But there is no showing in this record that requiring petitioner to purchase his minnows from hatcheries instead of from persons licensed to seine minnows from the State's waters in any way increases petitioner's costs of doing business. There also is nothing in the record to indicate that naturally seined minnows are any more desirable as items of commerce than hatchery minnows. So far as the record before us indicates, hatchery minnows and naturally seined minnows are fungible. Accordingly, any minimal burden that may result from requiring petitioner to purchase minnows destined for sale out of state from hatcheries instead of from those licensed to seine minnows is, in my view, more than outweighed by Oklahoma's substantial interest in conserving and regulating exploitation of its natural minnow population. I therefore would affirm the judgment of the Oklahoma Court of Criminal Appeals.

[9] Thus, even putting aside the decision in *Geer* and the principles for which it has come to be known and considering the Oklahoma statute "according to the same general rule applied to state regulations of other natural resources," *Ante*, at 12, the Court still has failed to explain how Oklahoma's laws burden or discriminate against interstate commerce in minnows.

CITY OF BLUE ASH, OHIO v. McLUCAS

U.S. Court of Appeals
Sixth Circuit

CITY OF BLUE ASH, OHIO, Plaintiff-Appellant, v. DR. JOHN L. McLUCAS, Administrator, FEDERAL AVIATION ADMINISTRATION, and FEDERAL AVIATION ADMINISTRATION, Defendants, Appellees, No. 77-3300, April 17, 1979

LAND

Federal, state, and local regulation — Statutory construction (§8.05)

Federal, state, and local regulation — Transportation — In general (§8.351)

Municipality is not entitled under National Environmental Policy Act to order requiring Federal Aviation Administration to honor jet-ban agreement between municipality and regional airport authority, even though FAA incorporated agreement between other two parties in airport environmental impact statement, since NEPA does not provide for judicial enforcement against federal agency of third party commitment incorporated into agency's impact statement.

STATUTES

Federal — National Environmental Policy Act — In general (§95.0111)

Construed.

City challenges on National Environmental Policy Act grounds refusal of Federal Aviation Administration to bar jet aircraft from municipal airport.

On appeal from district court dismissal for failure to state a claim for relief.

Affirmed.

Robert T. McConaughy, Cincinnati, Ohio, for Blue Ash.

William M. Milligan, U.S. attorney, Cincinnati, Ohio, Lawrence Moore and Eloise E. Davies, Department of Justice, Washington, D.C., and Sandra Dawahare, Federal Aviation Administration, Washington, D.C., for FAA.

Full Text of Opinion

Before: WEICK, CELEBREZZE and LIVELY, Circuit Judges.

LIVELY, Circuit Judge. This case concerns the efforts of a municipality to prevent jet aircraft from using a general aviation airport located within its city limits.

parity with water rights within the State of Idaho.

Section 6. The State Engineer is hereby empowered to make such rules and regulations as may be necessary to the proper administration of the provisions of this ~~Chapter~~ Act.

Section 7. All acts and parts of acts in conflict with the provisions of this ~~Chapter~~ Act are hereby repealed.

Section 8. Whenever any person or persons feel themselves aggrieved by the determination or decision of the State Engineer relative to the granting of permit, the issuance of certification of proof of completion or the issuance of license, as hereinbefore provided for, such person or persons may appeal to the courts, provided that such appeal shall be taken within 60 days from the date of such determination or decision by the State Engineer, and shall be perfected when the appellant shall have filed in the office of the Clerk of the District Court of the county in which the intended point of diversion under the water permit is located, a copy of the official records of the office of the State Engineer having to do with such determination or decision of the State Engineer.

Section 9. No permit to appropriate the public waters of the State of Idaho shall be granted by the State Engineer, unless the sister state, to which it is desired to divert such water, shall have enacted legislation, generally similar in purport to the provisions of this ~~Chapter~~ Act, whereby water may be appropriated within such sister state for use within the State of Idaho.

Section 10. An emergency existing therefor this act shall take effect and be in force from and after its passage and approval.

within the State of Idaho: PROVIDED, That the State Engineer shall issue no certificate of completion under such proof until he shall have received from the officer or official mentioned in Section 1 of this ~~Chapter~~ Act a certificate to the effect that the proper public records of such sister State show the works to have been completed under said permit, said certificate to show in second-feet the capacities of the various conduits constructed and to show in acre-feet the capacities of reservoir, if any there be, constructed in such sister State under said permit.

Section 4. The State Engineer shall issue a license in accordance with the laws of the State of Idaho relative to the issuance of license under a permit, whenever he shall receive a certificate from the officer or official mentioned in Section 1 of this ~~Chapter~~ Act, to the effect that the proper public records of such sister State show that beneficial use has been made of the waters sought to be appropriated under said permit, said certificate to show the extent of such use in second feet. If such use is for irrigation, such certificate shall give a description by legal subdivisions of the land which is irrigated by such water. If such use is for power purposes, such certificate shall describe the location of the point of use.

Section 5. Appropriations of water made under the provisions of this ~~Chapter~~ Act shall be subject to the laws of the State of Idaho relative to administration, control and distribution of public waters, so long as said waters appropriated in accordiance herewith shall remain within the State of Idaho; and, PROVIDED FURTHER, That such rights in their entirety shall be subject to all laws of the State of Idaho which have been or may be passed from time to time relative to the appropriation and control of public waters, to the end that such rights may be upon a

House Bill No. 11
By Trotter

AN ACT

* in the State of Oregon.

AUTHORIZING AND EMPOWERING THE STATE ENGINEER IN CERTAIN CASES TO ISSUE PERMITS TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO WHERE SUCH WATERS ARE TO BE USED ~~IN A SISTER STATE~~ AND ESTABLISHING A PROCEDURE UNDER WHICH PROOF OF COMPLETION AND PROOF OF BENEFICIAL USE CAN BE MADE BY THE APPROPRIATOR AND CERTIFICATE OF COMPLETION AND LICENSE ISSUED BY THE STATE ENGINEER, AND DECLARING AN EMERGENCY THEREFOR.

Be It Enacted By the Legislature of the State of Idaho.

Section 1. That whenever it shall be desired to appropriate the public waters of the state of Idaho for use in ~~a sister state~~ the State of Oregon, the State Engineer shall grant a permit upon proper application therefor, provided he be satisfied that the interests of the State of Idaho will not be materially injured by such use of its public waters in ~~a sister state~~ the State of Oregon and provided the intending appropriator shall file with his application for permit a certificate from the proper officer or official of the State into which the water is to be diverted, showing to the satisfaction of the State Engineer that the intended appropriation would be beneficial and that the project for which the intended appropriation is required is feasible.

Section 2. The application for permit and the permit issued thereon as provided in Section 1 of this ~~Chapter~~ Act, shall be in accordance with the laws of the state of Idaho, relative to the filing of application for permit and the obtaining of permit to appropriate the public waters of the State of Idaho.

Section 3. Proof of completion of works under such permit shall be made in accordance with the laws of the State of Idaho relative to proof of completion under a permit to appropriate the public waters of the State of Idaho, as to all works of diversion under such permit lying

AMENDMENTS TO H. B. NO. 217.

Strike out the words "in a Sister State" appearing after the word "used" in line three of Title and insert therefore the words "in the State of Oregon."

In line 2 of Section 1 strike out the words "a sister state" and insert therefore the words "the State of Oregon."

In line 5 of Section 1 strike out the words "a sister state" and insert therefore the words "the State of Oregon."

Strike out all of Section 7.

Change Section 8 to read "section 7"

Change "section 9" to read "section 8".

Change "section 10" to read "section 9."

Without objection the report of the Committee of the Whole House as to H.B. No. 217 was adopted. The Speaker referred H.B. No. 217 to the Committee on Engrossed and Enrolled Bills and the amendments to the Printing Committee.

Feb. 23, 1915

Mr. Speaker,

We, your Committee of the Whole House beg leave to report that we have had under consideration H.B. No. 120 and recommend that the accompanying amendments be adopted and further recommend that the bill as so amended do pass.

McMurray,

~~State ex rel Tappan v. Smith~~

This language confuses the interpretation of the Act. If the original act applied only to Oregon, then this language affecting Northern Idaho ~~the objection to section 8~~ should have been included as a separate section, much as the sections affecting Wyoming, Nevada, and Washington were added. On the other hand, since I.C. 42-408 is arguably part of ~~an overall scheme~~ a comprehensive administration for any ~~approved out of~~ use of Idaho water in another state, the amendment of ~~section 8~~ I.C. 42-408 may have been ~~a protection~~ designed to ~~limit~~ protect diversions of certain Northern Idaho waters to any sister state. Thus, the proper place for such a restriction of the I.C. 42-408 within, ~~the statutes~~ which generally governs the administration of the out-of-state diversion.

"all of 42-408

: provided, that no permit to appropriate

INSERT: ~~This~~ It must be noted that the 1915 Act, although clearly passed only for the use of Idaho waters in Oregon, contains some language which is not strictly limited to use of Idaho waters in Oregon. In particular, section 8 of the 1915 Act, now codified at I.C. 42-408, could be read as a general provision governing the use of Idaho waters in any state.* However, the legislature history just ~~cited~~ discussed would ~~allow for~~ require another, and I believe ~~a more~~ preferred, interpretation of I.C. 42-408. The Act as passed in 1915 ~~only~~ allowed only for diversions to Oregon. However, ~~instituted in~~ the 1915 Act embodied a mechanism for the administration of diversions to ~~other~~ such states. (As the legislature would specifically approve ~~such~~ interstate diversions on a state by state basis.) Such state by state approval occurred in 1919 ~~when the~~ as to Wyoming; 1949 as to Nevada; and 1970 as to Washington. See I.C. 42-409, 42-410, and 42-411, respectively

* and thus allowing interstate diversions under the conditions of I.C. 42-408. (put 3 & in here, single-spaced, etc.")

20,250
20,025
20,250 -
19,032

4624
4340

67,000

376-3930
5436 Fairview

47,000
48,276

15,250
3477

18,727 + .996 x = 18,724

18,724

x 18,724

~~The text of the bill was also included.~~

The bill in this form was referred to the House Committee on Irrigation, Reclamation and Reclamation (House Journal, Feb. 11, 1915, p. 236) which recommended that the bill not be passed. House Journal, Feb. 16, 1915, p. 284. The bill was then referred to the Committee of the Whole House for amendment (House Journal, Feb. 19, 1915, p. 321) and was reported out with "do pass" after ~~the following amendments were made:~~ being amended to apply to Oregon rather than any water bill. (The amendments are shown by the striking through of deleted words and the underlining of added words):

title & text as amended

(House Journal, Feb. 23, 1915, p. 368)

The bill ~~as amended~~ then passed the House (House Journal, March 1, 1915, p. 446) and was presented to the Senate as "permitting the use of Idaho waters in Oregon." (Senate Journal, March 2, 1915, p. 294) ~~The bill~~ passed the Senate and was then ~~as originally drafted in the House~~ enacted into law. INSERT (next page)

Section 8 of the 1915 Act was ~~subsequently~~ amended in 1925 to add the underlined language appearing below:

To: Stks Land + Livestock (Permit Nos. 74-7038, 17-7039)
From: JO Beaman
Subject: diversion of Idaho waters to Utah

~~The general purpose of this act~~ duke Land and Livestock ~~is to give effect to~~ outlaying Code 42-408 as ~~the~~ the application of Idaho waters for use in Utah. ~~This Code 42-408 provides that~~ Idaho Code 42-408 ~~of the Idaho Code~~ ~~shall not be of force or effect~~ unless Idaho Code 42-408 ~~the statute~~ contains language ~~providing~~ specifically the use of waters in adjoining states.

However, ~~In order that~~ I.C. 42-408 ~~shall~~ apply to the use of ~~Idaho~~ waters in adjoining states, it has been necessary, ~~under~~ as I.C. 42-401 through 42-408, a 1915 Act ~~provides~~ to be specifically limited to the use of Idaho waters in Oregon. This limitation is evident from the ~~last~~ legislative history of the Act. ~~which, with subsequent amendments, appears at Idaho Code 42-401 through 42-408.~~

On February 5, 1915, Representative Isaac E. Bwyhee County introduced House Bill 217 [1] ~~which~~

~~passed~~ of the Idaho House of Representatives, House Journal, Feb. 5, 1915. H.B. 217 ~~was originally entitled~~ ~~An Act~~ was entitled and did ~~to allow~~ ~~conditioned~~ ~~allowing~~ the use of Idaho water in adjoining states under certain conditions. [2]

title of text

original Act

[1] Idaho Journal, Feb. 5, 1915, p. 183.

[2] The title and text of enacted H.B. 217 is found at the Idaho Archives

11

2

1915, ch. 111, §1, p. 254 Id. S.L. H.B. 217 enacted as 42-401 through 42-408

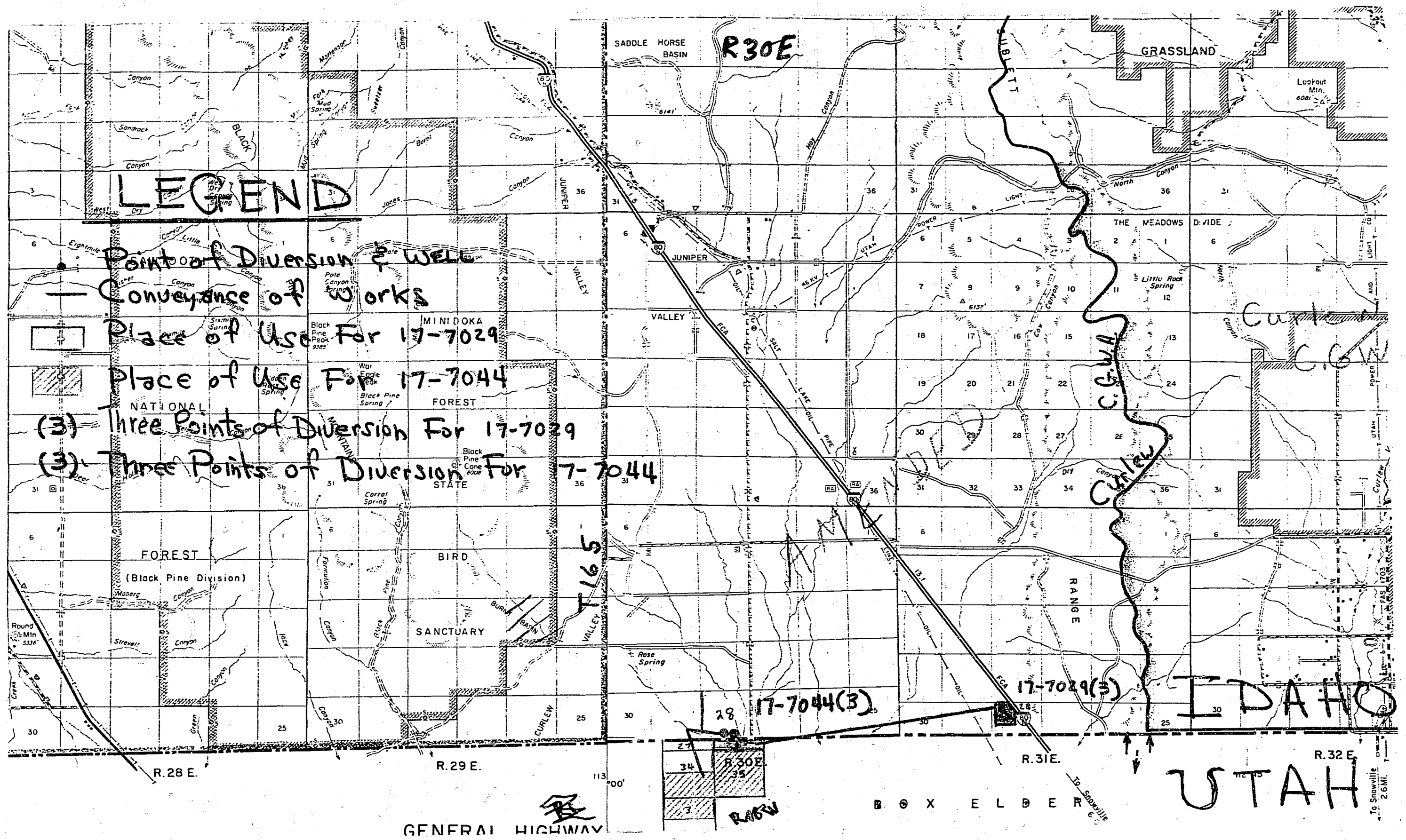
1925 ch. 3 §1 p. 7 S.B. 11 amended 42-408

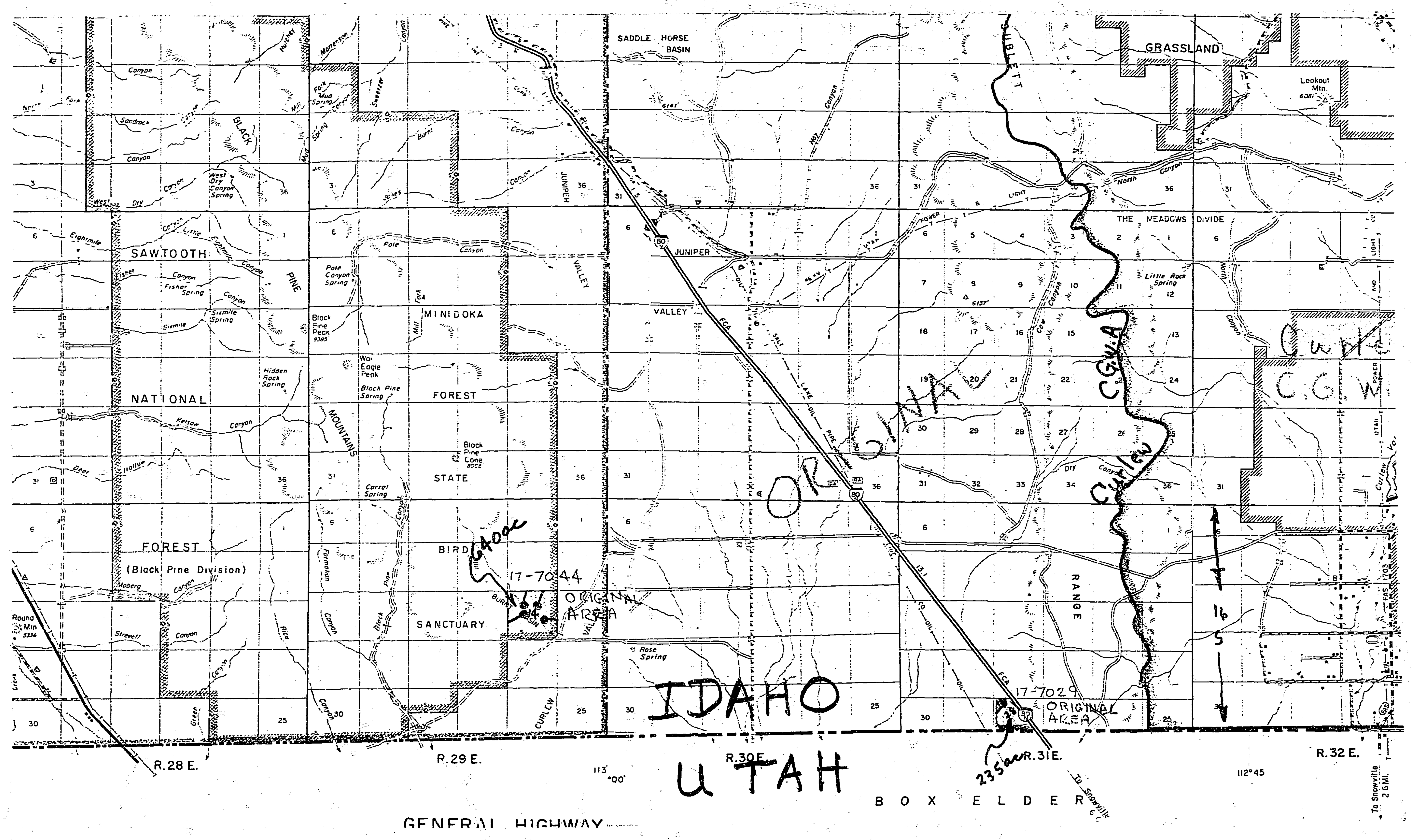
1951, ch. 80, §1 p. 149 H.B. 147 amended 42-401

1919 ch. 118 §1, p. 404

1949 ch 24 §1, p. 41

1970 ch. 89 §1, p. 217


LEGEND
Point of Diversion & Well
Conveyance of Works
Place of Use For 17-7029
Place of Use For 17-7044
(3) Three Points of Diversion For 17-7029
(3) Three Points of Diversion For 17-7044
R30E
T16S
17-7044(3)
17-7029(3)
28
SADDLE HORSE BASIN
GRASSLAND
Lookout Mtn.
THE MEADOWS DIVIDE
Little Rock Spring
JUNIPER
VALLEY
MINIDOKA
NATIONAL
FOREST
STATE
BIRD
SANCTUARY
FOREST
(Black Pine Division)
Black Pine Peak
Black Pine Spring
Corral Spring
Rose Spring
Round Mtn
RANGE
C.G.W.A.
Curlew
IDAHO
UTAH
R.28 E.
R.29 E.
R.30 E.
R.31 E.
R.32 E.
BOX ELDER
GENERAL HIGHWAY
To Snowville 2.6 MI.



SAWTOOTH
NATIONAL
FOREST
(Black Pine Division)
BLACK
PINE
MOUNTAINS
MINIDOKA
FOREST
STATE
BIRD
SANCTUARY
JUNIPER
VALLEY
SADDLE HORSE BASIN
GRASSLAND
THE MEADOWS DIVIDE
RANGE
Black Pine Peak 9385
War Eagle Peak
Black Pine Spring
Black Pine Cone
Corral Spring
Pole Canyon Spring
Fisher Spring
Sixmile Spring
Hidden Rock Spring
West Dry Canyon Spring
Little Rock Spring
Rose Spring
Round Mtn 5336
Lookout Mtn. 6381
Cow Canyon
Hot Canyon
North Canyon
Curlew
GIBLETT
IDAHO
UTAH
BOX ELDER
R.28 E.
R.29 E.
R.30 E.
R.31 E.
R.32 E.
113° 00'
112°45
To Snowville 26 MI.
GENERAL HIGHWAY
17-7044
ORIGINAL AREA
640 ac
17-7029
ORIGINAL AREA
235 ac
C.G.W.A
Curlew
C.G.W.
16
5

ROUTING SLIP

DATE May 16 TIME

TO: Alex Sefton	REF. No. (if any)
FROM: (show title) Jo Berman	

FOR YOUR:	REVIEW AND:		PER:
☐ Information	☐ Call Me	☐ See Me	☐ Our Conversation
☐ Approval	☐ Comment & Return		☐ Your Request
☐ Signature	☐ Take Proper Action		☐ Boss's Request
	☐ Draft a Reply for Me		

For Lesike, Land & Livestock file

> Saturday, . . . may be performed upon the next succeeding business day . . .

Section 73-108, *Idaho Code*, includes Sunday as a legal holiday.

Automatic tellers do not violate Section 26-1002, *Idaho Code*. The bank itself is not open for the transaction of business and is, in fact, closed. No transaction accepted and occurring after regular banking hours is completed and recorded until the next regular business day. If the maximum daily withdrawal is made after the close of business on Friday, and then again on Saturday and Sunday, the bank debits the total amount against the customer's account as if all withdrawls had occurred on the following Monday. The same holds true for all other transactions. The bank is not open for the transaction of business. It is legally "closed". Note, however, that if the automated teller (or a real teller performing the same services) is directly connected (or has access) to the bank records or computer, then the service goes beyond mere initiation of a transaction, and would be in violation of Section 26-1002, *Idaho Code*.

Although automatic tellers only initiate banking transactions, they are performing a banking service, eventually resulting in a completed transaction. As such, they are involved directly in the banking business and, therefore, under the regulation of the Commissioner of the Department of Finance of the State of Idaho.

Turning now to the question of whether an automated teller is in reality a branch bank, it is generally conceded that so long as the device is on the premises of a bank, it is lawful and may be used to its fullest extent.

Since the use of the device is simply a mechanical means of communicating with the bank, the placing of the device off the physical premises of the bank would not constitute banking nor constitute the device to be a branch bank.

A branch bank is commonly considered to be a building containing teller's windows, desks and chairs, customer counters, and bank personnel with whom the banking public may transact a full range of banking services. An automated teller is obviously not an "office", and only a very few of the kinds of transactions normally associated with a banking office or place of business can be initiated at such a machine. It is more closely analogous to a mail box or a telephone through which a customer may communicate with his bank to accomplish certain routine transactions.

The Comptroller of the Currency of the United States has advised that an automatic teller would not constitute branch banking, or be considered a branch office, branch agency, additional office, or branch place of business within the common understanding of those terms. Advisory opinion (December 12, 1974). In addition, the Attorneys General of Texas, Kansas, and Florida have author-

common understanding of those terms. Advisory opinion (December 12, 1974). In addition, the Attorneys General of Texas, Kansas, and Florida have author-

ized the use of automatic tellers, although branch banking is prohibited in each of these states.

An automatic teller is merely a mechanical communication device enabling an established customer of a bank to initiate a routine banking transaction at his convenience. The same limited mechanical functions could be performed by a live teller without violation of statute and in accordance with the same theory. If a transaction occurs when the bank is "closed", it is processed and legally completed on the next succeeding business day. Therefore, the purely mechanical transactions executed by an automated teller, or the same transactions executed by a live teller, on Saturdays or legal holidays do not violate the statutory prohibition of *Idaho Code*, Section 26-1002, and cannot be considered branch banking.

AUTHORITIES CONSIDERED:

1. *Idaho Code*, Sections 26-1002, 73-108.

2. *Bernstein v. Northwestern National Bank*, 157 Pa. Super. 73, 41 A.2d 440.

3. *In re Farmers State Bank of Amhearst*, 67 S.D. 51, 58-59, 289 N.W. 75, 78-79.

DATED this 16th day of April, 1975.

ATTORNEY GENERAL OF IDAHO

WAYNE L. KIDWELL
Attorney General

ANALYSIS BY:

BILL F. PAYNE
Business Regulations Division

ATTORNEY GENERAL OPINION NO. 22-75

TO: West Bonner Water District No. 1
c/o Tom Cooke, Esq.
P.O. Box 788
Priest River, Idaho 83856

Per request for Attorney General Opinion.

QUESTION PRESENTED: Is it legal to transport Idaho water to the State of Washington without specific statutory authority?

CONCLUSION: Appropriation of Idaho water outside the State is subject to reciprocal legislation of that state, and Washington having enacted such recipro-

legislation is entitled to appropriate Idaho water for use within the State of nington.

NALYSIS: In 1915 the Idaho Legislature enacted Chapter 4 of Title 42 of the *daho Code* which deals with the subject of appropriations for use outside the State. Section 42-405, *Idaho Code*, sets out the basic law of appropriations of water and reads in part:

> Appropriations of water made under the provisions of this chapter shall be subject to the laws of the state of Idaho relative to administration, control and distribution of public waters, so long as said waters appropriated in accordance herewith *shall remain within the state of Idaho:* . . . (Emphasis added.)

The Legislature at the same time enacted an exception to the general rule of appropriation and § 42-408 provides the following:

> *Appropriation subject to reciprocal legislation* — Certain waters excluded. — No permit to appropriate the public waters of the state of Idaho shall be granted by the department of reclamation, unless the sister state, to which it is desired to divert such water, *shall have enacted legislation generally similar in purport to the provisions of this chapter, whereby water may be appropriated within such sister state for use within the state of Idaho*: . . . (Emphasis added.)

These two statutes read together clearly indicate that the waters of the State of Idaho can only be appropriated for use within Idaho, unless the adjoining state which desires to appropriate Idaho water has reciprocal legislation which authorizes the diversion of its water for use within the State of Idaho. Section 42-408 excepts certain Idaho waters from out-of-state appropriations.

Due to the lack of such reciprocal legislation in the States of Oregon, Wyoming and Nevada, the Idaho Legislature passed specific legislation authorizing the appropriation of Idaho water for use within those states. Nevada in 1957 did enact a general reciprocity statute which antedates § 42-410 of the *Idaho Code*.

On the other hand, the State of Washington in 1917 enacted three statutes — R.C.W. 90.03.300, 90.16.110 and 90.16.120 — which authorize appropriations of Washington water for use outside their state. These statutes are very similar to § 42-408, *Idaho Code*, and it would appear that under Idaho and Washington Legislation a Washington citizen can appropriate Idaho water for use within his state.

In 1970 the Idaho Legislature enacted specific legislation for the State of Washington to authorize the appropriation of Idaho water for use in the area of Pullman, Washington. In light of § 42-408 and Washington's reciprocity statutes, this section, § 42-411 of the *Idaho Code*, seems superfluous. If by this legislation the Idaho Legislature intended to limit reciprocal agreement to a specific area within the State of Washington, then the repeal or amendment of § 42-408

would have been necessary to conform with the intent of §42-411. It would be unreasonable to assume that the specific provision of § 42-411, *Idaho Code* impliedly repeals § 42-408 of the *Idaho Code* eliminating reciprocity (unless authorized by specific legislation.) In addition the repeal of statutes by implication is not favored, and normally only takes place when the new law contains provisions which are contrary to, but do not expressly repeal those of a former law making the two laws totally irreconcilable. C.J.S., *Statutes* § 286, page 477. *State v. Davidson*, 78 Idaho 553, 309 P.2d 211 (1957); *Rydalch v. Glauner*, 83 Idaho 108, 357 P.2d 1094 (1961).

Sections 42-408 & 42-411 of the *Idaho Code* are not irreconcilable, nor are they inconsistent, but the Legislature merely granted specific authority for the appropriation within that area. Section 42-408, *Idaho Code* is still in existence, and authorizes the appropriation of Idaho water for use within a state which has reciprocal legislation. Such an appropriation must be made in accordance with the laws of the State of Idaho as set out in Chapter 4 of Title 42.

In conclusion the State of Washington is authorized to appropriate Idaho water and use it within the State of Washington pursuant to § 42-408 of the *Idaho Code* and subject to our appropriation laws, and likewise an Idaho citizen may appropriate Washington water for use within our state. Only a repeal of § 42-408 or an amendment to that section will effectively limit the appropriation of Idaho water for use in limited areas of the State of Washington.

AUTHORITIES CONSIDERED:

1. *Idaho Code* § 42-405.
2. *Idaho Code* § 42-408.
3. *Idaho Code* §42-411.
4. *State v. Davidson*, 78 Idaho 553, 309 P.2d 211 (1957);
5. *Rydalch v. Glauner*, 83 Idaho 108, 357 P.2d 1094 (1961);
6. C.J.S., *Statutes* § 286.

ATTORNEY GENERAL OF THE STATE OF IDAHO

WAYNE L. KIDWELL
Attorney General

ANALYSIS BY:

URSULA GJORDING
Assistant Attorney General

October 18, 1967

Mr. R. Keith Higginson
State Reclamation Engineer
Department of Reclamation
B U I L D I N G

COPY

Dear Mr. Higginson:

We have your letter of recent date wherein you request this office's opinion as to whether the application of the Board of Regents of the University of Idaho for the appropriation of water from the Potlatch River for use in both Idaho and Washington can be approved.

The question of whether a lawful appropriation of the waters of this State can be made for application to beneficial use in another state where there is no specific statutory authorization granting such a right has been answered in the negative by the Idaho Supreme Court. Walbridge v. Robinson, 22 Idaho 236, 125 Pac. 812 (1912). The Court there held that the waters of Bear Creek, located wholly within the State of Idaho and tributary to the Clearwater River, could not be appropriated and applied to beneficial use in Montana. The Court reasoned that because the title to the public waters of the State was vested in the State for the use and benefit of its citizens and because the State had not authorized the appropriation of such waters outside its boundaries, there existed no right to appropriate those waters for use beyond its jurisdiction. After the decision in that case, the legislature has specifically granted a right to appropriate water for use in the states of Oregon, Wyoming, Nevada and Utah. Idaho Code, Sections 42-402, 405-409 (1947), Sections 42-401, 403, 404, 410, 3401, 3402 (Supp. 1967).

There is no legislative authorization permitting the

appropriation of the waters in question for use in Washington. Therefore, it is our opinion that such would be prohibited and that to the extent the application contemplates use of the water beyond the jurisdiction of the State, it should not be approved.

Very truly yours,

FOR THE ATTORNEY GENERAL

WILLIAM D. COLLINS
Assistant Attorney General

WDC:jh

COPY

apportionment. In this case, we have decided that Congress has provided its own method for allocating among the Lower Basin States the mainstream water to which they are entitled under the compact."[141] The Court also concluded that while the Compact pertained to a division of waters between the Upper and Lower Basin States, it did not purport to make any division among the Lower Basin States, which division was the principal issue in this case.[142] In the event of a shortage of available water, the Secretary was required to follow certain provisions set out in the Act,[143] but he otherwise had discretion to choose among recognized methods of apportionment or devise reasonable methods of his own.[144]

[141] 373 U.S. at 565.

[142] *Id.* at 566.

[143] These included provisions regarding river regulation, navigation, flood control and present perfected rights." *Id.* at 593-594. But "in no event shall more than 4,400,000 acre-feet be apportioned for use in California including all present perfected rights * * *." Art. II(B)(3) of the Court's decree. See also 373 U.S. 546, 560-562, 567-568, and note 108 *supra*. See note 138 *supra*, regarding the States' respective shares when the available mainstream water is sufficient to supply them.

The 1968 Colorado River Basin Project Act, §301(b), 82 Stat. 885, 888 (1968), 43 U.S.C. §1521(b) (1970), provided that art. II(B)(3) of the Court's decree in 376 U.S. 340 "shall be so administered that in any year in which, as determined by the Secretary [of the Interior], there is insufficient main stream Colorado River water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada [see note 138 *supra*], diversions from the main stream for the Central Arizona Project shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California served under existing contracts with the United States by diversion works heretofore constructed, and by other existing Federal reservations in that State, of four million four hundred thousand acre-feet of mainstream water, and by users of the same character in Arizona and Nevada. Water users in the State of Nevada shall not be required to bear shortages in any proportion greater than would have been imposed in the absence of this subsection 301(b). This subsection shall not affect the relative priorities, among themselves, of water users in Arizona, Nevada, and California which are senior to diversions for the Central Arizona Project, or amend any provisions of said decree." Section 301(c), 43 U.S.C. §1521(c) (1970), provided that this limitation "shall not apply so long as the Secretary shall determine and proclaim that means are available and in operation which augment the water supply of the Colorado River system in such quantity as to make sufficient mainstream water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada."

Section 602 of the Act, 43 U.S.C. §1552 (1970), provided that in order to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty, the Secretary of the Interior should propose, submit to the State Governors for review, and adopt criteria for the coordinated long-range operation of reservoirs built under this Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act. Certain mandatory criteria were included in this section of the Act.

[144] The Court added, "Congress still has broad powers over this navigable international

VALIDITY OF STATE LEGISLATIVE RESTRICTIONS ON TAKING WATER OUT OF STATE

Several statutes have been enacted in the Western States regarding the question of the appropriation of water in one State for use in another State. A number of such statutes pertaining to the use of water from surface watercourses are discussed in chapter 7.[145] Some of these statutes, as well as some statutes pertaining to the use of ground water,[146] include prohibitions or restrictions of varying kinds and degrees, with respect to the taking of water out of one State for use in another State. Some of the variations in such legislation include: (1) Colorado legislation which provides that it is unlawful to divert or transport the waters of streams or other sources of water in the State into any other State for use therein;[147] and (2) Utah legislation which provides that water may be appropriated from interstate streams in Utah, to be conveyed into any border State for use therein, provided the sister State has reciprocal legislation.[148] Some of the statutory provisions pertain only to certain interstate projects[149] or certain other States.[150]

A number of statutes have required specific legislative approval for any or certain out-of-state transport of water, such as the Texas statute held unconstitutional in the *Altus* case, as discussed below. As another variation, Arizona legislation provides that while water may be appropriated from surface watercourses for projects that overlap the statelines, the State Land

stream. Congress can undoubtedly reduce or enlarge the Secretary's power [illegible] 373 U.S. at 594.

The Court said the Act was passed "in the exercise of the congressional power to control navigable water for purposes of flood control, navigation, power generation, and other objects," and added that the Act "*is equally* sustained by the power of Congress to promote the general welfare through projects for reclamation, irrigation, or other internal improvements." *Id.* at 587 (emphasis added). It is not entirely clear what the Court would have held if the Act had been regarded as only an exercise of either the commerce power or general welfare power alone, not in combination. The Act stated that it was "[f]or the purpose of controlling the floods, improving navigation, and regulating the flow of the Colorado River, providing for storage and for the delivery of stored waters thereof for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy * * *." 43 U.S.C. §617 (1970).

[145] See the discussion in chapter 7 at notes 842-852.

One of the statutes, however, has recently been repealed. Mont. Rev. Codes Ann. §89-809 (1964), cited in chapter 7 n. 846, repealed by Mont. Laws 1973, ch. 452, §46. Wyo. Stat. Ann. §41-151 (1957), cited in chapter 7 n. 852, was repealed by Wyo. Laws 1974, ch. 25, which also repealed §41-1.4 regarding ground waters and enacted modified provisions. *Id.* §41-19.5 (Interim Supp. 1974).

[146] N. Mex. Stat. Ann. §75-11-20 (1968). See note 145 regarding Wyoming.

[147] Colo. Rev. Stat. Ann. §§37-81-101 and -102 (1973), formerly §§148-1-1 and -2.

[148] Utah Code Ann. §73-2-8 (1968).

[149] See, e.g., Ariz. Rev. Stat. Ann. §45-153 (1956), discussed below.

[150] See, e.g., Idaho Code Ann. §§42-401 and -410 (Supp. 1969).

Hutchins, V. III

Department may decline to issue a permit if the proposed point of diversion is within Arizona and the place of use in another State.[151]

The validity of such statutory restrictions on taking water out of the State appears to be rather unsettled, and may depend upon the nature of such restrictions and affected rights and waters, and other circumstances. In a case decided by the United States Supreme Court in 1908, *Hudson County Water Company* v. *McCarter*, New Jersey had enacted a statute which, after reciting the need to preserve the fresh water of the State for the health and prosperity of its citizens, made it unlawful to transport or carry the waters of any stream, lake, or pond into any other State for use therein. After its enactment, a New Jersey water company contracted to transport water from the Passaic River to New York City, at a minimum rate of 3 million gallons a day, and the New Jersey Attorney General brought suit under the statute to enjoin such transport. The company asserted that the statute was unconstitutional in that "it impairs the obligation of contracts, takes property without due process of law, interferes with commerce between New Jersey and New York, denies the privileges of citizens of New Jersey to citizens of other States, and denies to them equal protection of the laws."[152] But the Court upheld the validity of the statute as applied to the defendant water company. The Court, through Justice Holmes, said, "The courts below assumed or decided and we shall assume that the defendant represents the rights of a riparian proprietor, and on the other hand, that it represents no special charter powers that give it greater rights than those."[153] The Court also said, among other things:

[151] Ariz. Rev. Stat. Ann. §45-153 (1956).

[152] *Hudson County Water Co.* v. *McCarter*, 209 U.S. 349, 354 (1908).

[153] *Id.*

The Supreme Court added that on these assumptions the lower appellate court had "pointed out that a riparian proprietor has no right to divert waters for more than a reasonable distance from the body of the stream or for other than the well-known ordinary uses, and that for any purpose anywhere he is narrowly limited in amount. It went on to infer that his only right in the body of the stream is to have the flow continue, and that there is a residuum of public ownership in the State. It reinforced the State's rights by the State's title to the bed of the stream where flowed by the tide, and concluded from the foregoing and other considerations that, as against the rights of riparian owners merely as such, the State was warranted in prohibiting the acquisition of the title to water on a larger scale.

"We will not say that the considerations that we have stated do not warrant the conclusion reached; and we shall not attempt to revise the opinion of the local court upon the local law, if, for the purpose of decision, we accept the argument of the plaintiff in error that it is open to revision when constitutional rights are set up. Neither shall we consider whether such a statute as the one before us might not be upheld, even if the lower riparian proprietors collectively were the absolute owners of the stream, on the ground that it authorized a suit by the State in their interest where it does not appear that they all have released their rights. See *Kansas* v. *Colorado*, 185 U.S. 125, 142 [1902]. But we prefer to put the authority which cannot be denied to the State upon a broader ground than that which was emphasized below, since in our opinion it

It sometimes is difficult to fix boundary stones between the private right of property and the police power when, as in the case at bar, we know of few decisions that are very much in point. But it is recognized that the State as *quasi*-sovereign and representative of the interests of the public has a standing in court to protect the atmosphere, the water and the forests within its territory, irrespective of the assent or dissent of the private owners of the land most immediately concerned. *Kansas* v. *Colorado*, 185 U.S. 125, 141, 142 [1902]; 206 U.S. 46, 99 [1907]; *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 238 [1907]. What it may protect by suit in this court from interference in the name of property outside of the State's jurisdiction, one would think that it could protect by statute from interference in the same name within. On this principle of public interest and the police power, and not merely as the inheritor of a royal prerogative, the State may make laws for the preservation of game, which seems a stronger case. *Geer* v. *Connecticut*, 161 U.S. 519, 534 [1896].[154]

The problems of irrigation have no place here. Leaving them on one side, it appears to us that few public interests are more obvious, indisputable and independent of particular theory than the interest of the public of a State to maintain the rivers that are wholly within it substantially undiminished, except by such drafts upon them as the guardian of the public welfare may permit for the purpose of turning them to a more perfect use. This public interest is omnipresent wherever there is a State, and grows more pressing as population grows. It is fundamental, and we are of opinion that the private property of riparian proprietors cannot be supposed to have deeper roots. * * * But we agree with the New Jersey courts, and [illegible] quite beyond any rational view of riparian rights that an ag[illegible]

is independent of the more or less attenuated residuum of title that the State may be said to possess." *Id.* at 354-355.

[154] In the *Geer* case, the Court upheld the lower court's decision that the State of Connecticut "had power to make it an offense to have in possession, for the purpose of transportation beyond the State, birds which had been lawfully killed within the State during the open season, and that the statute in creating this offence did not violate the interstate commerce clause of the Constitution of the United States." 161 U.S. 519, 522. (The commerce clause, art. I, §8, is set out in note 158 *infra*.) The Court thereby indicated that the State had "the power to regulate the killing of game within her borders so as to confine its use to the limits of the State and forbid its transmission outside of the State." *Id.* The Court said *inter alia*, "The sole consequence of the provision forbidding the transportation of game, killed within the State, beyond the State, is to confine the use of such game to those who own it, the people of that State. * * *

* * * *

"Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so interstate commerce may be remotely and indirectly affected." *Id.* at 529, 534.

of no matter what private owners, could sanction the diversion of an important stream outside the boundaries of the State in which it flows. The private right to appropriate is subject not only to the rights of lower owners but to the initial limitation that it may not substantially diminish one of the great foundations of public welfare and health.

response to due process argument

We are of opinion, further, that the constitutional power of the State to insist that its natural advantages shall remain unimpaired by its citizens is not dependent upon any nice estimate of the extent of present use or speculation as to future needs. The legal conception of the necessity is apt to be confined to somewhat rudimentary wants, and there are benefits from a great river that might escape a lawyer's view. But the State is not required to submit even to an aesthetic analysis. Any analysis may be inadequate. * * *

The defense under the Fourteenth Amendment [due process clause] is disposed of by what we have said. That under Article I, §10, needs but a few words more. One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject matter [citing cases]. But the contract, the execution of which is sought to be prevented here, was illegal when it was made.

The other defenses also may receive short answers. A man cannot acquire a right to property by his desire to use it in commerce among the States. Neither can he enlarge his otherwise limited and qualified right to the same end. The case is covered in this respect by *Geer* v. *Connecticut*, 161 U.S. 519 [155] and the same decision disposes of the argument that the New Jersey law denies equal privileges to the citizens of New York. It constantly is necessary to reconcile and to adjust different constitutional principles, each of which would be entitled to possession of the disputed ground but for the presence of the others, as we already have said that it is necessary to reconcile and to adjust different principles of the common law. See *Asbell* v. *Kansas* [209 U.S. 251 (1908)]. The right to receive water from a river through pipes is subject to territorial limits by nature, and those limits may be fixed by the State within which the river flows, even if they are made to coincide with the state line.[156]

However, a three-judge Federal district court, in *Altus, Oklahoma* v. *Carr* (1966), held unconstitutional, as a violation of the commerce clause,[157] a Texas statute (article 7477b, section 2) which provided that "No one shall withdraw water from any underground source in this State for use in any other state by drilling a well in Texas and transporting the water outside the boundaries of the State unless the same be specifically authorized by an Act of

[155] This case is discussed at note 154 *supra*.

[156] 209 U.S. 349, 355-356. The Court added that "Within the boundary citizens of New York are as free to purchase as citizens of New Jersey. But this question does not concern the defendant, which is a New Jersey corporation." *Id.* at 358.

[157] The commerce clause, U.S. Const. art. I, §8, provides in part that the Congress shall have power "to regulate Commerce * * * among the several States * * *."

the Texas Legislature and thereafter as approved by it."[158] This decision was affirmed *per curiam*, without any reported opinion, by the Supreme Court.[159]

The district court, among other things, said:

> By virtue of the Commerce Clause, the Congress of these United States was specifically granted the power to regulate commerce among the several states, and the states may not unreasonably burden or interfere with interstate commerce. This is not to say that a state may not, in the absence of conflicting legislation by Congress, make laws governing matters of local concern which may in some measure affect interstate commerce, or even, to some extent, regulate it. Southern Pacific Co. v. State of Arizona, 325 U.S. 761, 767 * * * (1945). Rather, it means that a state may not enact a law which imposes a direct burden on interstate commerce or discriminates against interstate commerce. H. P. Hood & Sons v. DuMond, 336 U.S. 525 * * * (1949); The Minnesota Rate Cases, 230 U.S. 352 * * * (1913). In the recent case of Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440, 444 * * * (1960), an undue or unreasonable burden was defined as one which materially affects interstate commerce where uniformity of regulation is necessary.[160]

The district court agreed with plaintiffs' contention that two United States Supreme Court decisions involving natural gas should control the outcome of this case. The district court said that in one of those cases, *Pennsylvania* v. *West Virginia* (1923), "the Supreme Court had before it the question whether a State wherein natural gas is produced and is a recognized subject of commercial dealings may enact a statute which requires that the consumers of such State shall be accorded a preferred right of purchase over consumers in other States."[161] The statute was held to be an interference with interstate commerce. The district court said that in the other case, *Oklahoma (West)* v. *Kansas Natural Gas Company* (1911), "the Supreme Court had before it an Oklahoma statute which denied the right of eminent domain and the right to use the highways of the state for the purpose of transporting natural gas without the state. The effect of the statute was to deny owners of the natural gas the right to transport it out of the state." This statute also was held to be invalid under the commerce clause.[162]

[158] *Altus, Oklahoma* v. *Carr*, 255 Fed. Supp. 828 (W.D. Tex. 1966), invalidating Tex. Laws 1965, ch. 568, §2, at 1245, Tex. Rev. Civ. Stat. Ann. art. 7477b, §2 (Supp. 1965).

[159] 385 U.S. 35 (1966).

In this regard, Corker, C. E., "Water Rights in Interstate Streams," in 2 "Waters and Water Rights" §132 (R. E. Clark ed. 1967), has expressed the view, *inter alia*, that "Per curiam opinions by the Supreme Court are not currently reliable predictors." citing *Swan* v. *Adams*, 385 U.S. 440, 444 (1967).

[160] 255 Fed. Supp. 828, 837.

[161] *Id.*, citing *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923).

[162] *Id.* at 838, citing *Oklahoma (West)* v. *Kansas Natural Gas Co.*, 221 U.S. 229 (1911).

The district court quoted portions of each of these two opinions, including the following statement from the *Oklahoma (West)* case: "We place our decision on the

(*Continued*)

In the *Altus* case the district court, in referring briefly to the *Hudson* case, discussed above, and some other cases, said:

(*Continued*)
character and purposes of the Oklahoma statute. * * * It denies to appellees the lesser right to pass under * * * or over [the highways] * * *. This discrimination is beyond the power of the state to make. * * * [N]o state can by action or inaction prevent, unreasonably burden, discriminate against or directly regulate, interstate commerce or the right to carry it on. And in all of these inhibited particulars the statute of Oklahoma offends." *Oklahoma (West)* v. *Kansas Natural Gas Co.*, *supra* at 262.

In the *Oklahoma (West)* case the Supreme Court discussed and distinguished its earlier opinion in the *Hudson* case, discussed above, as follows: "*Hudson County Water Co.* v. *McCarter*, 209 U.S. 349, is urged, we have seen, on our attention. A statute of the State of New Jersey was involved, which made it unlawful for any person or corporation to transport or carry through pipes the waters of any fresh-water lake, river, etc., into any other State for use therein. Two propositions may be said to be the foundation of the decision of the court below sustaining the statute. (1) 'The fresh-water lakes, ponds, brooks and rivers, and the waters flowing therein, constitute an important part of the natural advantages of the' State, 'upon the faith of which its population has multiplied in numbers and increased in material welfare. The regulation of the use and disposal of such waters, therefore, if it be within the power of the State, is among the most important objects of government.' (2) 'The common law recognized no right in the riparian owner, as such, to divert water from the stream in order to make merchandise of it, nor any right to transport any portion of the water from the stream to a distance for the use of others.' It was further declared that the common law authorized the acquisition of water 'only by riparian owners, and for purposes narrowly limited. Not that the ownership is common and public.' And the contention was rejected that the title of the individual riparian owner was to the water itself—the fluid considered as a commodity—and exclusive against the public and against all persons excepting other riparian owners. [For the actual language of the *Hudson* case, see the quotation at note 153 *supra*.]

"It is clear that neither of these propositions will support the contentions of the appellant in the case at bar. Nor does any principle announced upon the review of the case here, though the power of the State to enact the statute was put 'upon a broader ground than that which was emphasized below.' The police power of the State was discussed and the difficulty expressed of fixing 'boundary stones between' it and the right of private property which was asserted in the case. There were few decisions, it was said, that were very much in point. But certain principles were expressed, of which *Geer* v. *Connecticut*, 161 U.S. 519 [1896; see note 154 *supra*], was considered as furnishing an illustration and *Kansas* v. *Colorado*, 185 U.S. 125 [1907], and *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230 [1907], some suggestions.

"That principle was that it was for the 'interest of the public for a State to maintain the rivers that are wholly within it substantially undiminished, except by such drains upon them as the guardian of the public welfare may permit for the purpose of turning them to more perfect use.' And this principle was emphasized as the one determining the case and the opinion expressed that it was 'quite beyond any rational view of riparian rights that an agreement of no matter what private owners, could sanction the diversion of an important stream outside of the boundaries of the State in which it flows. The private right to appropriate is subject not only to the rights of the lower owners but to the initial limitation that it may not substantially diminish one of the great foundations of public welfare and health.'

"It is hardly necessary to say that there was no purpose in the case to take from property its uses and commercial rights or to assimilate a flowing river and the welfare

The Defendant seeks to support his position that Section 2 of Article 7477b is a valid and reasonable exercise of the police power on the theory that Section 2 acts only upon uncaptured water, which has no owner, or, if there is an owner, it is the common property of the State of Texas. To support this theory and his general position that under any view the statute is a reasonable exercise of the police power, the Defendant relies primarily upon Greer [sic] v. State of Connecticut, 161 U.S. 519 * * * (1896); *Hudson County Water Company* v. *McCarter* 209 U.S. 349 * * * (1908); Knight v. Grimes [80 S.D. 517, 127 N.W. (2d) 708 (1964)]; and Williams v. City of Wichita [190 Kans. 317, 374 Pac. (2d) 578 (1962)].[163]

In our opinion, none of the above cases presents sufficient authority for this court to disregard the holdings of the cases of Commonwealth of Pennsylvania v. State of West Virginia, and [Oklahoma] West v. Kansas Natural Gas Co., which are found to be controlling on the issue presented herein. Considering the statute in question only with regard to whether it regulates the transportation and use of water after it has been withdrawn from a well and becomes personal property, such statute constitutes an unreasonable burden upon and interference with interstate commerce. Moreover, on the facts of this case it appear[s] to us that Section 2 of Article 7477b does not have for its purpose, nor does it operate to conserve water resources of the State of Texas except in the sense that it does so for her own benefit to the detriment of her sister States as in the case of [Oklahoma] West v. Kansas Natural Gas Co. In the name of conservation, the statute seeks to prohibit interstate shipments of water while indulging in the substantial discrimination of permitting the unrestricted intrastate production and transportation of water between points within the State, no matter how [illegible] example, from Wilbarger County to El Paso County, Texas, the statute had little relation to the cause of conservation.[164]

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which was interested in its preservation to the regulation of gas wells or to take from the gas when reduced to possession the attributes of property decided to belong to it in *Ohio Oil Co.* v. *Indiana* [177 U.S. 190 (1900)], and recognized in *Lindsley* v. *Natural Gas Co.* [220 U.S. 61 (1911)]. Indeed, pains were taken to put out of consideration a material measure of the benefits of a great river to a State. And surely we need not pause to point out the difference between such a river flowing upon the surface of the earth and such a substance as gas seeping invisibly through sands beneath the surface.

"We have reviewed the cases at some length as they demonstrate the unsoundness of the contention of appellant based upon the right to conserve (we use this word in the sense appellant uses it) the resources of the State, and that the statute finds no justification in such purpose for its interference with private property or its restraint upon interstate commerce." *Oklahoma (West)* v. *Kansas Natural Gas Co.*, *supra* at 258-260.

The *Hudson* case was not mentioned in the other natural gas case, *Pennsylvania* v. *West Virginia*, relied on in the *Altus* case, although the Supreme Court in the *Pennsylvania* case approvingly drew upon the *Oklahoma (West)* case for support. *Pennsylvania* v. *West Virginia* 262 U.S. 553, 596-597, 598-600 (1923).

[163] Emphasis added. The *Hudson* and *Geer* cases are both discussed above with respect to the *Geer* case, see note 154 *supra*. The *Knight* and *Williams* cases are discussed in chapter 6, at notes 293 and 241 respectively.

[164] The district court also said that "the fact that Section 1 of Article 7477b declares that

(*Continued*)

Under the law of the State of Texas, a landowner has the right to drill wells and appropriate all the underground percolating waters found to his own purposes, and if, in the exercise of such right, he intercepts or drains off water from beneath his neighbor's land, this inconvenience to his neighbor falls within the description of damnum absque injuria, which cannot be the ground of an action [citing cases]. * * * Further, after the water has been appropriated, the landowner, his lessee or assign, has the right to sell the water to others for use off the land and outside the basin where produced, just as he could sell any other species of property [citing cases].[165] These rights, although not codified, have been generally recognized by statute as property rights of sufficient character for ownership [citing statutes]. Thus, except for Section 2 of Article 7477b, the general law of the State of Texas, which recognizes water that has been withdrawn from underground sources as personal property subject to sale and commerce, would allow the Plaintiffs to withdraw water from the Mock's land and transport same to the City of Altus [Oklahoma].

This statute, however, seeks to prohibit the production of underground water for the purpose of transporting same in interstate commerce, and has the effect of prohibiting the interstate transportation of such water after it has become personal property. Whether a statute by its phraseology prohibits the interstate transportation of an article of commerce after it has become the personal property of someone as in the Pennsylvania and [Oklahoma] West cases, or prohibits the withdrawal of such substance where the intent is to transport such in interstate commerce, the result upon interstate commerce is the same. In both situations, the purpose and intent of the statute and the end result thereof is to prohibit the interstate transportation of an article of commerce. Clearly, then, Section 2 of this statute constitutes an unreasonable burden upon interstate commerce.[166]

The district court apparently concluded that the Texas statute which prevented the transport of ground water outside the State without specific legislative approval, while the general law of Texas regarding percolating ground water allowed "unrestricted intrastate production and transportation of water between points within the State, no matter how distant," was invalid and could not be legitimately considered a water conservation measure that might not unreasonably burden interstate commerce.

(*Continued*)
the purpose and intent of such Article is 'to conserve and protect all water resources both public and private' does not bind Plaintiffs, and they may show that the statute in its practical operation is an unreasonable burden on interstate commerce. Foster Fountain Packing Co. v. Haydel, 278 U.S. 1, 10 * * * (1928)." 255 Fed. Supp. 828, 839.

[165] In this regard, see, in chapter 20, "Texas—Percolating Waters—Right of Use."

[166] 255 Fed. Supp. 828, 839-840.

Earlier in the opinion, the district court said: "There is no question of state ownership of captured underground water, for the law of Texas is well settled that the landowner has the right to drill wells and appropriate the water beneath his land [citing cases]. We are not here concerned with state regulation of a public property, but rather the impediment of an interstate shipment of an article of commerce." *Id.* at 823.

From the foregoing language of the court's opinion and the way it briefly referred to the *Hudson* case discussed above,[167] it would appear that, among other factors, the district court particularly might have been less likely to have held the Texas statute to be unconstitutional if the Texas laws with respect to the use and transportation of percolating ground waters *within* the State had been *more restrictive*, as were the New Jersey laws regarding riparian rights to use a surface watercourse involved in the *Hudson* case.[168] However, like the Supreme Court in the *Hudson* case, the district court appears to have laid down few definitive guidelines to determine whether a different statute, or the same kind of statute under different circumstances, would be valid or would be invalid as an "unreasonable burden upon and interference with interstate commerce."[169]

[167] See also note 162 *supra*, regarding the way in which the *Hudson* case was discussed and distinguished in the *Oklahoma (West)* opinion of the Supreme Court, which the Court relied upon for support in the *Altus* case.

[168] Variations in the State laws governing the use of percolating ground water are discussed in chapters 19 and 20. The various State laws applicable to the use of surface watercourses are discussed in earlier chapters.

In this general regard, see the type of considerations discussed in White, M. D., "Reasonable State Regulation of The Interstate Transfer of Percolating Water," 2 Natural Res. Lawyer 383 (1969); Comment, "Legal Planning for the Transfer of Water Between River Basins: A Proposal for the Establishment of the Interbasin Transfer Commission," 55 Cornell L. Rev. 809, 827-828 (1970).

[169] A considerable variety of speculative views regarding the *Altus* and *Hudson* cases have been expressed in a number of publications. See, e.g., White, *supra* note 168; Comment, *supra* note 168, at 826-828; Johnson, R. W., "Law of Interbasin Transfers," prepared for the National Water Commission, Nat'l Tech. Inf. Service, Springfield, Va., Accession No. PB 202 619, at 48-51 (1971); and other articles or publications cited therein.

It was stated in chapter 7 that "Whatever power a State may have to prevent the acquisition of an appropriative right within its territory for use of water in another State cannot be exercised to the impairment of a preexisting validly established appropriative right of a project that overlaps the state line. Protection of such a right is secured to its holder by the Constitution of the United States," relying on a 1922 Supreme Court decision involving water transport from Colorado to Nebraska that is discussed there. See chapter 7, at note 833 and the discussion of *Weiland* v. *Pioneer Irr. Co.*, 259 U.S. 498 (1922), in note 833. This case did not involve any legislative ban or restriction on out-of-State use and was not mentioned in the *Altus* case.

42-408. Appropriation subject to reciprocal legislation -- Certain waters excluded.-- No permit to appropriate the public waters of the state of Idaho shall be granted by the department of water resources, unless the sister state, to which it is desired to divert such water, shall have enacted legislation generally similar in purport to the provisions of this chapter, whereby water may be appropriated within such sister state for use within the state of Idaho: provided, that no permit to appropriate the waters of the Pend d'Oreille, the Clark Fork of the Columbia, or Spokane rivers, or any of the streams or lakes tributary thereto whose waters drain into the said streams, shall be granted where such waters are to be used outside of the state of Idaho: and, provided further, that no permit to appropriate or impound the waters of Lake Coeur d'Alene shall be granted where such waters, or electrical energy to be developed therefrom is to be used outside of the state of Idaho.

This language confuses the interpretation of the Act. If the original act applied only to Oregon, then this language affecting Northern Idaho should have been included as a separate section, much as the sections affecting Wyoming, Nevada, and Washington were added. On the other hand, since I.C. 42-408 is arguably part of a comprehensive administration for any use of Idaho water in another state, the amendment of I.C. 42-408 may have been designed to protect diversions of certain Northern Idaho waters to any sister state. Thus, the proper place for such a restriction is within I.C. 42-408 which generally governs the administration of the out-of-state diversion.

JPB:dlc

> State Engineer, unless the sister state, to which it is desired to divert such water, shall have enacted legislation generally similar in purport to the provisions of this Act, whereby water may be appropriated within such sister state for use within the State of Idaho.
>
> Section ~~10~~ 9. An emergency existing therefor this act shall take effect and be in force from and after its passage and approval. (House Journal, Feb. 23, 1915, p. 368).

The amended bill then passed the House (House Journal, March 1, 1915, p. 446) and was presented to the Senate as "permitting the use of Idaho waters in Oregon." (Senate Journal, March 2, 1915, p. 294) It passed the Senate in this form and was then enacted into law.

It must be noted that the 1915 Act, although clearly passed only for the use of Idaho water in Oregon, contains some language which is not strictly limited to use of Idaho waters in Oregon. In particular, Section 8 of the 1915 Act, now codified at I.C. 42-408, could be read as a general provision governing the use of Idaho water in any sister state and thus allowing interstate diversions under the conditions of I.C. 42-408:

> Section 8. No permit to appropriate the public waters of the State of Idaho shall be granted by the State Engineer, unless the sister state, to which it is desired to divert such water, shall have enacted legislation generally similar in purport to the provisions of this Act, whereby water may be appropriated within such sister state for use within the State of Idaho.

However, the legislative history just discussed would require another, and I believe the preferred, interpretation of I.C. 42-408. The Act as passed in 1915 allowed only for diversions to Oregon. However, as the legislature would specifically approve interstate diversions on a state by state basis, the Act embodied a mechanism for the administration of diversions to such sister states. Such state by state approval occurred in 1919 as to Wyoming; 1949 as to Nevada; and 1970 as to Washington. See I.C. §§42-409, 42-410, and 42-411, respectively.

Section 8 of the 1915 Act was amended in 1925 to add the underlined language appearing below:

Section 4. The State Engineer shall issue a license in accordance with the laws of the State of Idaho relative to the issuance of license under a permit, whenever he shall receive a certificate from the officer or official mentioned in Section 1 of this Act, to the effect that the proper public records of such sister State show that beneficial use has been made of the waters sought to be appropriated under said permit, said certificate to show the extent, of such use in second feet. If such use is for irrigation, such certificate shall give a description by legal subdivisions of the land which is irrigated by such water. If such use is for power purposes, such certificate shall describe the location of the point of use.

Section 5. Appropriations of water made under the provisions of this Act shall be subject to the laws of the State of Idaho relative to administration, control and distribution of public waters, so long as said waters appropriated in accordance herewith shall remain within the State of Idaho; and, PROVIDED FURTHER, That such rights in their entirety shall be subject to all laws of the State of Idaho which have been or may be passed from time to time relative to the appropriation and control of public waters, to the end that such rights may be upon a parity with water rights within the State of Idaho.

Section 6. The State Engineer is hereby empowered to make such rules and regulations as may be necessary to the proper administration of the provisions of this Act.

~~Section 7.--All acts and parts of acts in conflict with the provisions of this Act are hereby repealed.~~

Section 8~~7~~. Whenever any person or persons feel themselves aggrieved by the determination or decision of the State Engineer relative to the granting of permit, the issuance of certification of proof of completion or the issuance of license, as hereinbefore provided for, such person or persons may appeal to the courts, provided that such appeal shall be taken within 60 days from the date of such determination or decision by the State Engineer, and shall be perfected when the appellant shall have filed in the office of the Clerk of the District Court of the county in which the intended point of diversion under the water permit is located, a copy of the official records of the office of the State Engineer having to do with such determination or decision of the State Engineer.

Section 9~~8~~. No permit to appropriate the public waters of the State of Idaho shall be granted by the

OF THE STATE OF IDAHO WHERE SUCH WATERS ARE TO BE USED ~~IN-A-SISTER-STATE~~ IN THE STATE OF OREGON AND ESTABLISHING A PROCEDURE UNDER WHICH PROOF OF COMPLETION AND PROOF OF BENEFICIAL USE CAN BE MADE BY THE APPROPRIATOR AND CERTIFICATE OF COMPLETION AND LICENSE ISSUED BY THE STATE ENGINEER, AND DECLARING AN EMERGENCY THEREFOR.

Be It Enacted By the Legislature of the State of Idaho.

Section 1. That whenever it shall be desired to appropriate the public waters of the state of Idaho for use in ~~a-sister-state,~~ the State of Oregon, the State Engineer shall grant a permit upon proper application therefor, provided he be satisfied that the interests of the State of Idaho will not be materially injured by such use of its public waters in ~~a-sister state~~ the State of Oregon and provided the intending appropriator shall file with his application for permit a certificate from the proper officer or official of the State into which the water is to be diverted, showing to the satisfaction of the State Engineer that the intended appropriation would be beneficial and that the project for which the intended appropriation is required is feasible.

Section 2. The application for permit and the permit issued thereon as provided in Section 1 of this Act, shall be in accordance with the laws of the state of Idaho, relative to the filing of application for permit and the obtaining of permit to appropriate the public waters of the State of Idaho.

Section 3. Proof of completion of works under such permit shall be made in accordance with the laws of the State of Idaho relative to proof of completion under a permit to appropriate the public waters of the State of Idaho, as to all works of diversion under such permit lying within the State of Idaho: PROVIDED, That the State Engineer shall issue no certificate of completion under such proof until he shall have received from the officer or official mentioned in Section 1 of this Act a certificate to the effect that the proper public records of such sister State show the works to have been completed under said permit, said certificate to show in second-feet the capacities of the various conduits constructed and to show in acre-feet the capacities of reservoir, if any there be, constructed in such sister State under said permit.

the issuance of certification of proof of completion or the issuance of license, as hereinbefore provided for, such person or persons may appeal to the courts, provided that such appeal shall be taken within 60 days from the date of such determination or decision by the State Engineer, and shall be perfected when the appellant shall have filed in the office of the Clerk of the District Court of the county in which the intended point of diversion under the water permit is located, a copy of the official records of the office of the State Engineer having to do with such determination or decision of the State Engineer.

Section 9. No permit to appropriate the public waters of the State of Idaho shall be granted by the State Engineer, unless the sister state, to which it is desired to divert such water, shall have enacted legislation generally similar in purport to the provisions of this Act, whereby water may be appropriated within such sister state for use within the State of Idaho.

Section 10. An emergency existing therefor this act shall take effect and be in force from and after its passage and approval.2/

The bill in this form was referred to the House Committee on Irrigation, Reservoirs and Reclamation (House Journal, Feb. 11, 1915, p. 236) which recommended that the bill not be passed. House Journal, Feb. 16, 1915, p. 284. The bill was then referred to the Committee of the Whole House for amendment (House Journal, Feb. 19, 1915, p. 321) and was reported out with a "do pass" after being amended to apply to Oregon rather than any sister state (the amendments are shown by the striking through of deleted words and the underlining of added words):

House Bill 217

By Trotter

AN ACT

AUTHORIZING AND EMPOWERING THE STATE ENGINEER IN CERTAIN CASES TO ISSUE PERMITS TO APPROPRIATE THE PUBLIC WATERS

2/ This is the title and text of original H.B.217 which is presently housed at the Idaho Supreme Court Library.

PROVIDED, That the State Engineer shall issue no certificate of completion under such proof until he shall have received from the officer or official mentioned in Section 1 of this Act a certificate to the effect that the proper public records of such sister State show the works to have been completed under said permit, said certificate to show in second-feet the capacities of the various conduits constructed and to show in acre-feet the capacities of reservoir, if any there be, constructed in such sister State under said permit.

Section 4. The State Engineer shall issue a license in accordance with the laws of the State of Idaho relative to the issuance of license under a permit, whenever he shall receive a certificate from the officer or official mentioned in Section 1 of this Act, to the effect that the proper public records of such sister State show that beneficial use has been made of the waters sought to be appropriated under said permit, said certificate to show the extent of such use in second feet. If such use is for irrigation, such certificate shall give a description by legal subdivisions of the land which is irrigated by such water. If such use is for power purposes, such certificate shall describe the location of the point of use.

Section 5. Appropriations of water made under the provisions of this Act shall be subject to the laws of the State of Idaho relative to administration, control and distribution of public waters, so long as said waters appropriated in accordance herewith shall remain within the State of Idaho; and, PROVIDED FURTHER, That such rights in their entirety shall be subject to all laws of the State of Idaho which have been or may be passed from time to time relative to the appropriation and control of public waters, to the end that such rights may be upon a parity with water rights within the State of Idaho.

Section 6. The State Engineer is hereby empowered to make such rules and regulations as may be necessary to the proper administration of the provisions of this Act.

Section 7. All acts and parts of acts in conflict with the provisions of this Act are hereby repealed.

Section 8. Whenever any person or persons feel themselves aggrieved by the determination or decision of the State Engineer relative to the granting of permit,

of Idaho water in sister states under certain conditions:

House Bill No. 217

By Trotter

AN ACT

AUTHORIZING AND EMPOWERING THE STATE ENGINEER IN CERTAIN CASES TO ISSUE PERMITS TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO WHERE SUCH WATERS ARE TO BE USED IN A SISTER STATE AND ESTABLISHING A PROCEDURE UNDER WHICH PROOF OF COMPLETION AND PROOF OF BENEFICIAL USE CAN BE MADE BY THE APPROPRIATOR AND CERTIFICATE OF COMPLETION AND LICENSE ISSUED BY THE STATE ENGINEER, AND DECLARING AN EMERGENCY THEREFOR.

Be It Enacted By the Legislature of the State of Idaho.

Section 1. That whenever it shall be desired to appropriate the public waters of the state of Idaho for use in a sister state, the State Engineer shall grant a permit upon proper application therefor, provided he be satisfied that the interests of the State of Idaho will not be materially injured by such use of its public waters in a sister state and provided the intending appropriator shall file with his application for permit a certificate from the proper officer or official of the State into which the water is to be diverted, showing to the satisfaction of the State Engineer that the intended appropriation would be beneficial and that the project for which the intended appropriation is required is feasible.

Section 2. The application for permit and the permit issued thereon as provided in Section 1 of this Act, shall be in accordance with the laws of the state of Idaho, relative to the filing of application for permit and the obtaining of permit to appropriate the public waters of the State of Idaho

Section 3. Proof of completion of works under such permit shall be made in accordance with the laws of the State of Idaho relative to proof of completion under a permit to appropriate the public waters of the State of Idaho, as to all works of diversion under such permit lying within the State of Idaho:

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

MEMORANDUM

TO: Sinks Land & Livestock (Permit Nos. 17-7044, 17-7029)

FROM: Jo Beeman

DATE: July 19, 1979

SUBJECT: Diversion of Idaho Waters to Utah

Sinks Land and Livestock cites Idaho Code 42-408 as authorizing the appropriation of Idaho water for use in Utah. Idaho Code 42-408 does contain language generally addressing the use of water in a sister state:

> "42-408. Appropriation subject to reciprocal legislation -- Certain waters excluded.-- No permit to appropriate the public waters of the state of Idaho shall be granted by the department of water resources, unless the sister state, to which it is desired to divert such water, shall have enacted legislation generally similar in purport to the provisions of this chapter, whereby water may be appropriated within such sister state for use within the state of Idaho: provided, that no permit to appropriate the waters of the Pend d'Oreille, the Clark Fork of the Columbia, or Spokane rivers, or any of the streams or lakes tributary thereto whose waters drain into the said streams, shall be granted where such waters are to be used outside of the state of Idaho: and, provided further, that no permit to appropriate or impound the waters of Lake Coeur d'Alene shall be granted where such waters, or electrical energy to be developed therefrom is to be used outside of the state of Idaho."

However, I.C. 42-408 is part of a 1915 Act, codified at I.C. 42-401 through 42-408, which is specifically limited to the use of Idaho waters in Oregon. This limitation is evident from the legislative history of the Act.

On February 5, 1915, Representative Frank E. Trotter of Owyhee County introduced House Bill 217[1/] to allow the use

1/ House Journal, Feb. 5, 1915, p. 183.

MEMORANDUM DECISION

In this matter the applicant, the

owns two permits for the diversion ~~of water~~ from

a groundwater of groundwater an aquifer in

southern Delta, known as the Juniper-Black Rock

Valley System, and to apply that water to beneficial use

in Delta for stockwatering and irrigation. In its

application at issue here, the applicant seeks

(1) to change the point of diversion, to the location of its

pumps, to a location near the Utah border and (2)

to change the place of use to locations in Utah

across the state border, Utah. The applicant's plan, then,

is to pump water from wells in the Delta and to

Juniper and to the cows at wells across the border

use for irrigation and watering in Utah.

INTER-DEPARTMENT MEMO — 1

DATE

FROM

TO

SUBJECT

Sinks Land # 17-7044, 17-7029

1) sent intent of amendments to Trettevik org. bill to permit out of state appropriation if resident state has reciprocal leg. and to specifically permit in Oregon, probably because Ore. at the time did not have recip. leg. —

2) Hughes is recip. leg. requirement a permissible reg. 12 ERC at 2111

3) do we actually have any recip.?

4) can deny amend. under I sec a ground the Ct. would have done it same

SIGNATURE

July - 39

STATE HEADLINES

The Council of State Governments

July 13, 1979 No. 79-14

WINDFALL PROFITS TAX ENDORSED

The National Governors' Association supported oil price deregulation and use of a windfall profits tax and other revenues for new energy development, energy conservation, and to help the poor pay higher fuel bills. The governors, meeting in Louisville, KENTUCKY, July 8-10, also approved resolutions calling for stricter controls over nuclear power plants, urging nationwide uniform standards for interstate trucking, calling on the president to grant emergency environmental waivers to permit power and industrial plants to convert from oil to coal, recommending a trust fund for hazardous waste management, and asking international aid for Indochinese refugees. INDIANA Governor Otis R. Bowen was elected chairman, succeeding Kentucky Governor Julian M. Carroll.

OIL INSTEAD OF ROYALTIES

Under HB 1033 just enacted by the LOUISIANA legislature, the state will take barrels of oil "in lieu" of royalties for oil pumped from state lands. According to sponsoring legislators, the state will get about 32,000 barrels of oil a day which will convert to 832,000 gallons of gasoline each day, or about one sixth of the state's daily consumption. The state will sell its oil to local, small refineries which will be required to sell the gasoline within the state.

CORPORATE TAX TO BE AMENDED

ILLINOIS Governor James R. Thompson is expected to use his amendatory veto power on a corporate income tax rate increase approved by the legislature. The legislature enacted a 6.85 percent rate, up from 4 percent, and the governor had asked for a 6.5 percent rate. A short special session to work on the tax measure is anticipated if the governor amends the bill. A new tax rate to raise about $460 million became necessary after the state's supreme court ruled last March that a corporate personal property tax was unconstitutional.

OPEN TRIALS NOT REQUIRED

The U.S. Supreme Court ruled July 2 that the press and the public do not have the constitutional right under the Sixth or Fourteenth Amendment to the U.S. Constitution to attend criminal trials. The 5-to-4 decision, which affirmed a NEW YORK Court of Appeals ruling in a 1976 murder trial, gives judges wide freedom in clearing courtrooms of spectators and newsmen.

LIEUTENANT GOVERNOR NAMED COORDINATOR

NORTH DAKOTA Governor Arthur A. Link has signed an executive order naming Lieutenant Governor Wayne G. Sanstead as head of the state's new Federal Aid Coordinator Office. The position was authorized by the legislature. With three divisions, the office will administer continuing programs involving the flow of more than $19 million in federal funds to local and state agencies.

TEMPERATURE CONTROLS ORDERED

The U.S. Department of Energy announced on July 10 that the thermostats in all nonresidential buildings except hospitals, elementary schools, day-care centers, and lodging portions of hotels must be set no lower than 78 degrees for cooling and no higher than 65 degrees for heating. The plan is effective July 16 and will run for nine months. The DOE said that the states will be responsible for carrying out the plan.

NEWSROOM SEARCHES PROHIBITED

TEXAS Governor William P. Clements has signed two laws protecting the media from newsroom searches. The criminal code was amended so that justices of the peace can no longer issue search warrants. A second amendment to the state's criminal code prohibits evidentiary searches of newsrooms of newspapers, magazines, and broadcast stations.

July - 42

WATER DIVERSION PROHIBITED

COLORADO Governor Richard Lamm has signed legislation prohibiting the diversion of any of the state's water resources outside the state (H.B. 1409). A Colorado farmer owning contiguous agricultural land in an adjacent state must get the state engineer's approval and specific authority from the General Assembly before diverting Colorado water to that land. Meanwhile, in Denver, a trial has begun to determine whether four business groups have rights to about 20 million acre-feet of Colorado groundwater. The companies intend to drill more than 1,000 water wells. More than 100 lawyers representing state, federal, and local governments and private interests were present at the first day's proceedings.

BUDGET PASSED AFTER DEADLINE

The PENNSYLVANIA legislature passed a $6.3 billion budget July 4. The state was without a budget for the first four days of the 1979-80 fiscal year. The budget had stalled in the house in a dispute over a gasoline tax increase which, as passed, raises the tax from 9 to 11 cents a gallon. The state's 2.2 percent personal income tax and the 10.5 percent corporate net income tax will remain at current levels through 1981, at which time they will revert to 2 and 9.5 percent respectively.

EDUCATION FINANCE UPHELD

OHIO's equal yield formula for financing public education, which depends on both local and state taxing efforts, has been upheld by the state's supreme court. The decision overrules a district appeals court ruling which held that the system discriminates against pupils in poorer districts. The supreme court did agree that the system will cause some "inequality" among school districts, but "we cannot say that such disparity is a product of a system that is so irrational as to be an unconstitutional violation."

STATE BILLS CASINO

NEW JERSEY has presented Resorts International, Inc., which operates a casino in Atlantic City, a $1.6 million bill for costs relating to the state's one-year investigation and seven-week license hearing. The state's casino law requires that all costs relating to licensing and inspections be paid by the casino.

BLIND BIDDING OUTLAWED

Governor Victor Atiyeh of OREGON signed a bill June 18 outlawing "blind bidding" on motion pictures—a practice that requires theater owners to commit themselves to showing a new movie before they have seen it and sometimes before the picture has even been made. Fourteen other states have passed similar laws.

ILLEGITIMATE CHILDREN'S RIGHTS AIDED

NEW YORK Governor Hugh Carey has signed legislation allowing illegitimate children to inherit from their fathers as well as their mothers. In MICHIGAN, Governor William G. Milliken has signed legislation prohibiting any reference on a birth certificate to the legitimacy or illegitimacy of a child.

COAL TO FUEL POWER PLANT

MASSACHUSETTS Governor Edward J. King announced July 6 that the state's largest power plant will convert from oil to coal in 1981. The Massachusetts Industrial Finance Agency voted to give a $96.5 million bond issue to help finance the project. The governor estimated that the conversion will save 12 million to 14 million barrels of imported oil annually.

COMPUTERIZED CAR POOLS

WISCONSIN's Department of General Services is experimenting with computerized car pool arrangements whereby state employees with business in the same place on the same day will travel together.

MINORS' PRIVACY RIGHTS UPHELD

The CALIFORNIA Supreme Court ruled that parents do not have the right to authorize some police searches of their minor children's property. The court said that allowing the searches would violate the children's right to due process. The case involved police search of a 17-year-old's locked toolbox, with the parents' consent, and the discovery of nine bags of marijuana.

Published every two weeks by the Council of State Governments, P.O. Box 11910, Lexington, Kentucky 40578. Phone: (606) 252-2291. Subscription rate: $12 yearly. Ralph Derickson, editor.

JO B.

N

BY

RKH:mjr

KF
Opposition Yes
Pearson

NELSON, ROSHOLT, ROBERTSON, WALKER, TOLMAN & TUCKER
ATTORNEYS AT LAW
IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 1906
TWIN FALLS, IDAHO 83301
(208) 734-0700

RECEIVED
AUG 1 1979
Department of Water Resources

DATE: 7/31/79

TO: Steve Allred

RE: Appls for Amendment 17-7029 17-7044
Ltr that I mentioned on Phone to Supplement Your "Hoggan" File

Norm

DIRECTOR	
DEPUTY DIR.	
RESO. ADMIN.	Not
RESO. ANALYSIS	
OPER. BUREAU	WS
TECH. SER. BUR.	
PROJ. STUD. BUR.	
LEGAL	
FISCAL	
PERSONNEL	
FILES	

NELSON, ROSHOLT, ROBERTSON, WALKER, TOLMAN & TUCKER

BY .....

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES — STATE HOUSE BOISE, IDAHO 8372

October 7, 1975

JUL 24 1975
Lawyer
Client
Date

John,
We received this in our file
and thought it might shed some
light on it. I will see counsel of had
it at the hearing.

Mr. Patrick R. Hoggan
President
Professional Management Associates
666 North Main
Logan, UT 84321

Dear Mr. Hoggan:

You have apparently been misinformed concerning a supposed arrangement between Utah and Idaho with regard to the management of Curlew Valley and Raft River Valley groundwater resources. There is no such understanding and cannot be under provisions of the respective state laws. Our activities in this State are governed strictly by the provisions of the Idaho Code. I have no authority to refuse to issue a permit, except in an area which is officially declared to be a critical groundwater area. In order for such declaration to be made, the withdrawal of groundwater must exceed the reasonably anticipated average rate of future natural recharge. In the Idaho portion of the Curlew Valley, this is not the case and I am without authority to close the area to appropriation. We have watched this area for many years and we find no extensive water level declines or other indications that the basin is over appropriated at present. We, therefore, must continue to consider each application as it is filed based upon the information available to us.

Very truly yours,

R. KEITH HIGGINSON
Director

RKH:mjr

PMA
PROFESSIONAL MANAGEMENT ASSOCIATES
412 West 10th North Logan, Utah 84321 Ph. (801) 752-9711

RECEIVED
SEP 20 1979
Department of Water Resources

DIRECTOR	CL
DEPUTY DIR.	
RESO. ADMIN.	
RESO. ANALYSIS	
OPER. BUREAU	
TECH. SER. BUR.	
PROJ. STUD. BUR.	
LEGAL	
FISCAL	
PERSONNEL	
REG. BUREAU	
S. REG. N. REG. W. REG. E. REG.	
FILES	

September 18, 1979

C. Stephen Allred, Director
Department of Water Resources
State Office, 373 West Franklin Street
Boise, Idaho 83720

Dear Mr. Allred,

We have hesitated to write and ask about our Applications for Ammendment on No.s 17-7029 and 17-7044. We have lived in Idaho most of our lives and have owned property in Idaho all of our lives and have always appreciated the effeciency of Idaho State Government; therefore, we hope you will understand the intent of this letter.

If it is within your juristiction and power we would so much appreciate a decision on the above Applications for Ammendment, since the delay in acting on the Ammendments have caused us considerable problems and financial duress. We do not ask for any special consideration, but rather want to alert you to our problem and ask for your cooperation if it can be given.

Thank you for your time involved with this correspondence.

Sincerely,

Patrick R. Hoggan

Patrick R. Hoggan
Partner

cc/John Rosholt

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO)
)
COUNTY OF ADA)

CERTIFICATE OF MAILING

I HEREBY CERTIFY That I have on this date served a true and correct copy of the foregoing PROPOSED MEMORANDUM DECISION AND ORDER and ORDER ISSUING PROPOSAL FOR DECISION I.C. SECTION 67-5211 by depositing a copy thereof in the United States mail, postage prepaid and addressed to:

Sinks Land and Livestock Corporation
c/o P.M.A. 412 West 10th North
Logan, UT 84321

John A. Rosholt & Thomas G. Nelson
PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, ID 83301

Dee C. Hansen
Department of Natural Resources
Division of Water Rights
200 Empire Building
231 East 400 South
Salt Lake City, UT 84111

Dated this 5th day of October, 1979.

Rita Fleck

On this 5th day of October, 1979, personally appeared before me the signer of the above instrument, who duly acknowledged to me that she executed the same.

David R. Tuthill Jr.

Notary Public
Residing in Boise, Idaho

Commission expires: September 10, 1980

ORDER

IT IS HEREBY ORDERED THEREFORE, that the applications for amendment of Permit Nos. 17-7029 and 17-7044 in the name of Sinks Land and Livestock Company are hereby DENIED.

DATED This 4TH day of October, 1979.

Norman C Young

NORMAN C. YOUNG
Administrator
Resource Administration Division

and the material in the Department's files, the Director makes the following specific findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The applicant's requested amendments do not involve an expansion in the acreage irrigated or the rate of diversion or a change in the nature of use.

2. The applicant's proposed wells would result in drawdowns between 8.2 feet and 13.47 feet at the Mayo well and 4.7 feet and 14.68 feet at the Taylor well, both of which are located in the State of Utah.

3. It is the judgment of the Utah State Engineer, who has general supervisory authority over groundwater pumping in Utah, that these drawdowns would lower the pumping levels at these two Utah wells below reasonable levels.

4. The proposed places of beneficial use are located in the State of Utah.

CONCLUSIONS OF LAW

1. The applicant's requested amendments would not result in the diversion and use of more water than originally permitted.

2. Vested water rights under the laws of the State of Utah would be adversely affected by the proposed change in points of diversion, in particular the water rights at the Mayo and Taylor wells.

3. The Director may consider the protest of the State of Utah on behalf of water users in that state.

4. Idaho law does not authorize a diversion of water from the State of Idaho for application to beneficial use in the State of Utah, and this law does not violate the commerce clause of the United States Constitution.

5. When not adverse to the policies of this state, the Director may give due respect to and consider the water management policies of sister states affected by proposed amendments, and a proper regard for the policies of the State of Utah requires a denial of these particular applications.

The commerce clause has no application here since the waters involved are clearly not articles of interstate commerce. Under Idaho law, as well as Utah law, an appropriator does not have absolute ownership of the water and does not have an unfettered right to sell that water in intrastate or interstate commerce. Rather, the state owns the water and the appropriator owns the right to use that water for a specific beneficial use. With respect to the circumstances of this case, it is important to note that under the prior appropriation doctrine applied by both Idaho and Utah, the application to beneficial use is necessary to acquire a water right and also serves as an important limitation on that water right. If an appropriator could divert water from Idaho to points beyond the state boundaries, and therefore beyond the state's jurisdiction to verify and supervise the application of the water to beneficial use, the appropriator could, merely by taking the water across the state line, acquire a property right greater than he could acquire under the substantive state law of either Idaho or Utah.

Practical considerations of cooperation and comity between states also support a denial of these applications. There appears to be no reason for locating the proposed wells in Idaho rather than Utah other than the fact that the applicant already owns water permits in Idaho and, because Utah has closed its portion of the flow system, cannot acquire such a permit in Utah. However, the land to be irrigated is located in Utah and the source of the water to be used is a groundwater system shared by Idaho and Utah. All things considered, it seems that the applicant should be required to locate its wells in Utah and obtain the necessary permits pursuant to Utah law. The Director recognizes that the applicant cannot obtain such a permit in Utah, but that is a matter of Utah's regulation of its water resources. The concern of the Director is that the different policies of this state, which are intended for Idaho water users, and the convenient location of the border not become the means by which Utah water users are able to circumvent the regulations of our sister state.

For the above stated reasons and based on the evidence presented to the Department and on a review of the briefs submitted

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For the above stated reasons and based on the evidence presented to the Department and on a review of the briefs submitted

Utah is not specifically mentioned in Chapter 4.

Chapter 4 alternatively can be interpreted as authorizing a permit to appropriate public waters of this state for use in a sister state, provided the sister state "shall have an enacted legislation generally similar in purport to the provisions of this chapter, whereby water may be appropriated within such sister state for use within the State of Idaho . . . ." I.C. 42-408. Accordingly, the Director may authorize a diversion of water in Idaho for use in Utah only if Utah has corresponding reciprocal legislation. The Utah statute in this regard, as amended in 1979, provides:

> The state engineer is hereby authorized and empowered to receive and grant applications to appropriate water from any source in Utah, where such water is to be conveyed and used for beneficial purposes within any state, and to issue certificates of appropriation for this water only after the state engineer shall evaluate and make public the advantages to the State of Utah and its citizens of exporting water. The state engineer shall co-operate with the state engineer of other proper officer of any state in the determination, supervision, regulation and control of all water and water rights and to that end the state engineer, by and with the consent of the governor, may enter into agreements with the proper officer of any state to carry out the purposes of this subsection.

Utah Code Ann. 73-2-8 (amended 1979)

This statute is obviously not reciprocal to Idaho law, since it conditions the Utah State Engineer's authority to permit out-of-state diversions of water on an evaluation and finding that such diversion would be advantageous to the State of Utah.

It is arguable, however, that Idaho law is roughly similar to the Utah provision if the "local public interest" criterion of I.C. 42-203 is construed to apply also to amendments under 42-211. If this be the case, the amendments at issue here would still have to be denied since the amendments would not specifically benefit Idaho and do not appear to be in the local public interest of users in this state.

In sum, Idaho law does not empower the Director to authorize a diversion of water in Idaho for application to beneficial use in Utah.

Applicants argue, however, that if Idaho law is so construed it violates the commerce clause of the United States Constitution.

and the State of Utah - which would benefit from the proposed development but whose water users would also be most directly affected by the development - has vigorously opposed the requested amendments. Because of the policy nature of the pumping level decision and all of the factors listed above, the Director is of the opinion that in this case considerable weight and deference should be given the judgment of the Utah State Engineer, who has general supervisory authority over groundwater pumping in Utah, that the anticipated drawdowns resulting from the proposed wells would lower the pumping levels of the Taylor and Mayo below reasonable levels. The Director emphasizes, however, that this case involves very unusual circumstances and that in other situations, particularly where the opinion of officials in other states may be inconsistent with the water management policies of this state, the Director may not give such opinions this same deference but will make his own independent decision on reasonable pumping levels.

The third issue concerns the request to change the places of use to a location in Utah. This issue raises questions concerning the Director's authority to authorize diversions from Idaho for beneficial use in Utah. Absent specific legislation, the Director's authority under Title 42 of the Idaho Code to authorize and supervise water appropriation and distribution does not extend beyond the borders of this state. Walbridge v. Robinson, 22 Idaho 236, 125 P.2d 812 (1912). Without special legislation the Director has no more authority to authorize and supervise diversions in Idaho for application to beneficial use in Utah than he has to authorize and supervise a diversion in Utah for beneficial use in Idaho.

However, Chapter 4 of Title 42, Idaho Code, does address the question of diversions in Idaho for use in another state. The provisions of that statute are ambiguous and subject to at least two alternative interpretations. The chapter can be understood as allowing diversions only into those states or parts of states which the legislature has specifically identified by statute. See I.C. 42-401, -409 to -411. In such case, the Director has no authority to authorize these requested diversions into Utah since

drawdowns in these circumstances.

Recognizing these limitations, the Director, rather than determining a specific drawdown at each well, finds that the proposed well will lower the pumping levels of the Mayo and Taylor wells and that the drawdown will range between 8.2 feet and 13.47 at the Mayo well and between 5.7 feet and 14.68 feet at the Taylor well.

This determination raises the next question whether drawdowns of this range would lower the pumping levels at the Mayo and Taylor wells below reasonable levels and would therefore justify a denial of the applicant's proposed amendments. Under Idaho law a prior appropriator of groundwater is not necessarily protected in the maintenance of his historic pumping level but only in the maintenance of a reasonable pumping level as may be established by this Department. I.C. 42-226 and -237(a) and (g); Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973). The decision by the Idaho legislature to alter the general rules of prior appropriation to protect reasonable pump levels rather than historic levels was a policy decision intended to promote the full economic development of this state's underground water resources for the benefit of the citizens of this state. See I.C. 42-226; Baker v. Ore-Ida Foods, Inc., supra. Moreover, the determination of reasonable pumping levels, which has been delegated by the Legislature to this Department, involves to a large degree questions of water management policy. In sum, the decision to recognize and protect reasonable pumping levels and the determination of those levels is more a water management policy decision than a purely factual question.

In the rather peculiar circumstances of this case, the Director has some concerns about the extent to which Idaho policies on pumping levels should be applied to the Mayo and Taylor wells, which are located in Utah. Here, the applicant's proposed well sites are virtually on the state border, the groundwater - although pumped from the Idaho side of the border - is not being developed for the benefit of this state but is to be applied to beneficial use in Utah for the benefit of that state, the pumping levels involved are not located in Idaho but in Utah,

or amendment only if "rights of others will not be adversely affected thereby . . . ." There may be some question whether Section 42-211 includes interference with water rights not acquired under the laws of this state. However, it seems well established that appropriators in one state cannot entirely ignore the adverse affects their appropriations may have on vested rights of senior appropriators in an adjoining state. See Bean vs. Morris, 221 U.S. 485 (1911). On this basis the Director concludes that he is entitled to hear and consider the protest of the State of Utah.

The second issue presented is a factual question whether the requested amendments will interfere with the rights of Utah appropriators. Specifically, the question is whether the applicant's proposed wells will unreasonably interfere with two wells in Utah, the "Mayo well" located approximately 0.8 mile from the applicant's proposed wells and the "Taylor well" located approximately 1¼ miles from the proposed wells. Based on the evidence presented, the Director is unable to find that the applicant's present wells withdraw water from the same aquifer or zone as the two Utah wells, but does find that the groundwater sources of the Mayo and Taylor wells and the applicant's present wells are interrelated parts of the same larger groundwater system. Accordingly, the proposed wells would not increase the amount of water withdrawn from the groundwater system from which the Utah wells also pump, but the proposed wells do raise questions about local interference with the Mayo and Taylor wells.

There is no real dispute that the proposed wells will lower the pumping levels of the Mayo and Taylor wells. Rather, the dispute centers on the amount of that drawdown. The expert witness for the applicant estimated that the pumping level of the Mayo well would be lowered by 8.2 feet and the Taylor well by 5.7 feet. The witness for the protestant estimates the drawdown on the Mayo well at 13.47 feet, a minimum, and on the Taylor well at 14.68 feet, a maximum. Both witnesses are highly qualified and based their opinions on accepted procedures and techniques. Their difference in opinion is largely the result of the scarcity of data and the inherent difficulty in predicting

-- Place of use: 640 acres in Sec. 34 and 35, Twp. 15N, Rge. 10W S L B & M and Sec. 3, Twp. 14N, Rge. 10W S L B & M

In general, the applicant seeks to change the location of its groundwater wells to points immediately north of the Utah - Idaho border and to apply that water to beneficial use on lands in Utah just south of the border.

Notice of the applications for amendment was published in the Idaho Enterprise, Malad City, Idaho on December 28, 1978 and on January 4, 1979. Notice of the amendment of Permit No. 17-7044 was also published in the South Idaho Press, Burley, Idaho on January 2 and 9, 1979. A protest against the approval of the applications was received on January 18, 1979 from Dee C. Hansen on behalf of the Department of Natural Resources, State of Utah.

A hearing on the matter was held at Boise, Idaho on March 15, 1979. The applicant was represented by John Rosholt and Tom Nelson, attorneys at law, and the protestant was represented by R. Michael Turnipseed, P.E., Northern Area Engineer, Department of Natural Resources, State of Utah.

The applicant's present wells withdraw water from a groundwater area known as the "Juniper--Black Pine Flow System," and the proposed wells would withdraw water from this same water system. This flow system extends into the State of Utah and the general direction of the underground flow is from north to south, i.e., from Idaho into Utah. Utah water users also pump groundwater from this system in Utah and two Utah water users have wells located near the applicant's proposed well sites but on the Utah side of the border.

The State of Utah has closed the portion of the system located within that state to groundwater pumping since approximately 1967. However, this department has not closed that portion of the system located in Idaho. The State of Utah protests the amendments on the ground that they would nterfere with existing vested rights in Utah.

The first issue presented is a procedural question whether the Director may consider the protest of the State of Utah. Pursuant to I.C. 42-211, the Director may approve an application

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR AMENDMENT OF PERMIT NOS. 17-7029 AND 17-7044 IN THE NAME OF SINKS LAND AND LIVESTOCK COMPANY	PROPOSAL FOR DECISION AND ORDER

MEMORANDUM DECISION

Sinks Land and Livestock Corporation is the owner of Permit Nos. 17-7029 and 17-7044.

Permit No. 17-7029, issued on May 3, 1974, provides for the diversion of 4.93 cubic feet per second (cfs) from a groundwater source in the NW¼NW¼, Sec. 28, Twp. 16S, Rge. 31E, Oneida County for stockwater and the irrigation of 235 acres in Sec. 28, Twp. 16S, Rge. 31E B.M.

Permit No. 17-7044, issued on May 30, 1975, provides for the diversion of 10.00 cfs from a groundwater source in the NE¼SE¼, SW¼NE¼, SE¼NW¼ and NE¼SW¼, Sec. 14, Twp. 16S, Rge. 29E, Cassia County for stockwater and the irrigation of 640 acres in Sec. 14, Twp. 16S, Rge. 29E B.M.

On October 20, 1978, Sinks Land and Livestock submitted applications for amendment to change the points of diversion and place of use of each permit as follows:

Permit No. 17-7029 (amended)

-- Points of diversion: NW¼NW¼, Sec. 28, Twp. 16S, Rge. 31E and SW¼SE¼, SE¼SW¼, Sec. 28, Twp. 16S, Rge. 30E B.M.

-- Place of use: 235 acres in the NW¼, Sec. 28, Twp. 16S, Rge. 31E, S½, Sec. 26, Twp. 15S, Rge. 10W S L B & M

Permit No. 17-7044 (amended)

-- Points of diversion: NW¼NW¼, Sec. 28, Twp. 16S, Rge. 31E and SW¼SE¼, SE¼SW¼, Sec. 28, Twp. 16S, Rge. 30E B.M.

date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATION OF SERVICE

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

V.

FINAL DECISION

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

DATED this 5 day of October, 1979.

C. STEPHEN ALLRED
Director
Department of Water Resources

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

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

II.

BRIEFS

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

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

III.

ORAL ARGUMENTS

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

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

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

BEFORE THE DIRECTOR OF THE DEPARTMENT

OF WATER RESOURCES OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR AMENDMENTS ON PERMIT NOS. 17-7029 AND 17-7044

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

C. Stephen Allred, Director of the Department of Water Resources, having reviewed the attached proposed decision prepared by his appointee, NORMAN C. YOUNG, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposal for decision pursuant to Idaho Code, Section 67-5211 and orders that said proposed decision and a copy of this order be served upon each of the parties to these proceedings who appeared at the hearing on March 15, 1979, of this matter or upon their attorneys in accordance with Rule 7.3 of the Rules of Practice and Procedure of this Department.

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

I.

EXCEPTIONS

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

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

RECEIVED
OCT 19 1979
Department of Water Resources

John A. Rosholt
NELSON, ROSHOLT, ROBERTSON,
WALKER, TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83301
Telephone: 734-0700

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

IN THE MATTER OF APPLICATION)
) EXCEPTIONS OF APPLICANT TO
FOR AMENDMENT ON PERMIT NOS.) PROPOSAL FOR DECISION AND
) ORDER
17-7029 and 17-7044.)

* * * * * * * * * *

Applicant Sinks Land & Livestock, by and through Nelson, Rosholt, Robertson, Walker, Tolman & Tucker, their attorneys of record, herein file the following exceptions to the Proposal For Decision and Order filed in this matter on October 5, 1979.

(1) Applicant objects to Finding of Fact No. 3 inasmuch as there is no evidence in the record that pumping levels at the Mayo well and the Taylor well will be lowered below "reasonable levels". Testimony indicated that the static water levels in wells had remained approximately the same throughout years of plenty and years of drought. Even though such testimony would have been irrelevant, there was no evidence on how Utah defines "reasonable pumping levels, or even if they do define it.

(2) Applicant objects to Conclusion of Law No. 2. The Department suggests in their order at page 3 that the "groundwater sources of the Mayo and Taylor wells and the

Applicant's present wells are interrelated parts of the same larger groundwater system." Since the Applicant has the right under Idaho law to divert from the common groundwater system and apply the water for beneficial use on Idaho lands, it is difficult to see how the rights of the Mayo and Taylor wells can be adversely affected by the change in points of diversion and places of use. The right now exists to pump a given quantity of water from the aquifer and since it is a common water supply, changing the point of diversion and the place of use cannot adversely effect the Mayo and Taylor wells beyond the point that the Applicant is entitled under Idaho law to effect them anyway. In paragraph 3 of the March 22, 1979, letter of Utah State Engineer Dee Hanson to the Department concerning this matter, he admits that the withdrawals from the aquifer are "now about equal to annual re-charge . . ." Utah is apparently saying that they should be entitled to priority for permits that have been filed in their equivalent of a "critical groundwater area."

(3) Inconsistent verbage appears at page 6 of the proposal. Reference is made to the "local public interest" criteria of Idaho Code § 42-203. The Applicant already has the right to divert water and apply it to lands in Idaho. If Applicant was to seek a change in point of diversion and change in place of use in Idaho, as long as the same amount of water were to be withdrawn, the rights of others would not be adversely effected. Since the rights of others are not adversely effected, it would be difficult to conclude that "the local public interest" had been violated even if the imagination were stretched to apply that criteria to amendments proposed under § 42-211.

CONCLUSION

The result of the decision is that there is no reciprocity between Idaho and Utah. This being the case, then

every diversion now existing in one state for use in the other state along the Idaho-Utah border may be void. An analysis of the decision could lead to the conclusion that if each state could corral the water supplies within its own boundaries that arise there, they could deprive historic appropriative rights in the other state.

It is difficult to see how the Applicant, who has a right to pump the given amount of water for use on Idaho lands can more adversely effect either Idaho water right holders or Utah water right holders by pumping the same amount of water from different locations from a common water supply in the State of Idaho and applying the same to other lands, whether or not they be in Idaho. The tenor of this decision appears political rather than rational. Even if the Applicant had political power enough to obtain the enactment of reciprocal statutes in both states, the tenor of the decision would indicate that a similar application at a later date after said statutes had been enacted would also be denied.

DATED this 12 day of October, 1979

Respectfully submitted,

NELSON, ROSHOLT, ROBERTSON,
WALKER, TOLMAN & TUCKER

By: John A. Rosholt
John A. Rosholt

CERTIFICATE OF MAILING

I hereby certify that on the 12 day of October, 1979, I served a copy of the foregoing EXCEPTIONS OF APPLICANT AND PROPOSAL FOR DECISION AND ORDER, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Mr. Dee C. Hansen
State Engineer
State of Utah
Department of Natural Resources
Division of Water Rights
200 Empire Building
231 East 400 South
Salt Lake City, Utah 84111

Ms. Josephine Beeman
Assistant Attorney General
Department of Water Resources
Statehouse
Boise, Idaho 83720

John A. Rosholt

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATIONS FOR)
AMENDMENTS ON PERMIT NOS. 17-7029)
AND 17-7044 IN THE NAME OF SINKS)
LAND AND LIVESTOCK CORPORATION)

CERTIFICATE OF MAILING

I HEREBY CERTIFY That I have on this date served a true and correct copy of the ORDER ADOPTING PROPOSAL FOR DECISION AS FINAL DECISION AND ORDER by depositing a copy thereof in the United States mail, postage prepaid and addressed to:

Sinks Land and Livestock Corporation
c/o P.M.A.
Logan, UT 84321

John A. Rosholt & Thomas G. Nelson
PARRY, ROBERTSON, DALY & LARSON
P. O. Box 1906
Twin Falls, ID 83301

Dee C. Hansen
Department of Natural Resources
Division of Water Rights
200 Empire Building
231 East 400 South
Salt Lake City, UT 84111

Dated this 28th day of November, 1979.

Rita Fleck

Dated this 28th day of November, 1979, personally appeared before me the signer of the above instrument, who duly acknowledged that she executed the same.

Lyle Glen Layton
Notary Public
Residing at Boise, Idaho

Commission expires 11-25-82

Form 211
5/78

Ident. No. 17-7029
DENID

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
OCT 20 1978
Department of Water Resources

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use.

Comes now Sinks Land and Livestock Corporation

of (address) % P.M.A. 412 West 10th North Logan, Utah 84321 , and represents to the

Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 17-7029 , and requests that the permit and permit map be changed as follows:

1. Point of diversion: NW ¼ NW ¼, Section 28 , Township 16 S , Range 31 E , B.M., County of Oneida . Other points of diversion: SW 1/4 SE 1/4 and SE 1/4 SW 1/4 of Section 28 T16S, R30E.

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

Amount 4.70 (cfs or acre feet per annum) for Irrigation purposes from April 1 to Oct. 15 (both dates inclusive)

Amount 0.23 (cfs or acre feet per annum) for Stockwater purposes from Jan. 1 to Dec. 31 (both dates inclusive)

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

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

3. Place of use or land to be irrigated:

TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16 S	31 E	28					X	X	X	X									125
SLB&M 15 N	10 W.	26									X	X	X	X	X	X	X	X	110

Total number of acres to be irrigated = 235

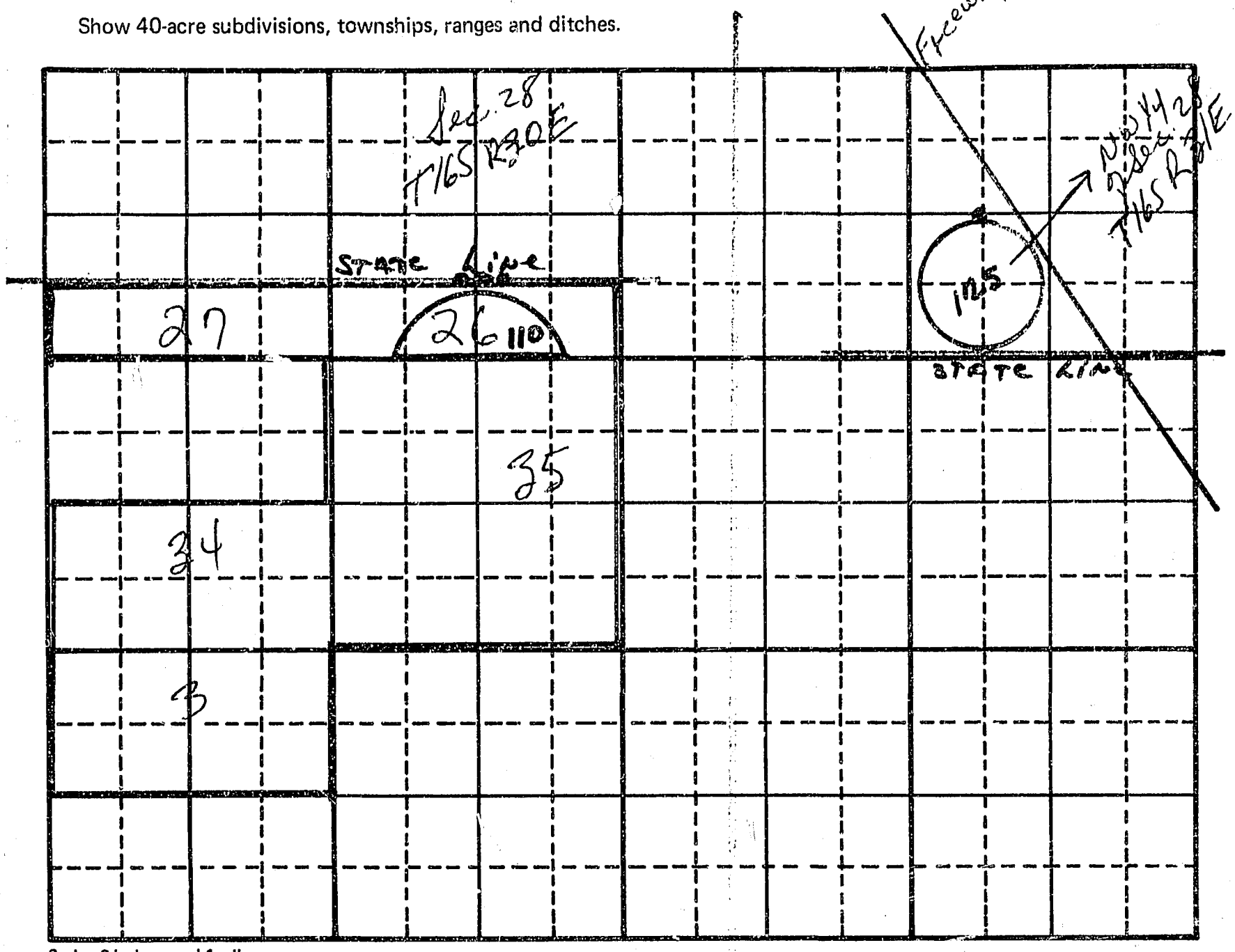
4. a. Who owns the property at the point of diversion? Sinke Land & Livestock Corp.

b. Who owns the land to be irrigated or the place of use? Same

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

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, 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 Logan, Utah 84321, this 17 day of October, 19 78.

(Signature) (RA)

FOR DEPARTMENT USE ONLY

Rec't # 12370

Preliminary check by AEA Fee = $20.00 97-94 Receipted by jg Date 10/20/78

Publication prepared by _____ Date _____ Published in _____

Publication dates _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, C. STEPHEN ALLRED, Director of the Department of Water Resources hereby

DENY this Application for Amendment submitted on Permit No. 17-7029.

Witness my hand this 13 day of November, 19 78.

Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR AMENDMENT OF PERMIT NOS. 17-7029 AND 17-7044 IN THE NAME OF SINKS LAND AND LIVESTOCK COMPANY	ORDER ADOPTING PROPOSAL FOR DECISION AS FINAL DECISION AND ORDER

By an Order dated October 5, 1979, the Director issued, pursuant to Idaho Code, Section 67-5211, a Proposal for Decision and Order prepared by his appointee, Norman C. Young, who conducted the hearing of this matter.

The applicant timely filed exceptions to the Proposal for Decision, objecting to Findings of Fact No. 3 and Conclusions of Law No. 2 and certain language on Page 6 of the Proposal. No request for oral argument was made. No other exceptions have been filed.

The Director has reviewed and considered the exceptions of the applicant and finds them without merit.

The Director, therefore, adopts the Proposal for Decision as his Final Decision and Order and by the Order the Applications for Amendment of Permit Nos. 17-7029 and 17-7044 in the name of Sinks Land and Livestock Company are hereby DENIED.

Dated this 13 day of November, 1979.

C. STEPHEN ALLRED

Director

November 28, 1979

Sinks Land and Livestock Corporation
c/o P.M.A.
412 West 10th North
Logan, UT 84321

Gentlemen:

Re: Applications for Amendments on Permit Nos. 17-7029 and 17-7044

Enclosed are copies of the denied Applications for Amendments along with a copy of the Order Adopting Proposal for Decision and Final Decision and Order.

Any person who does not agree with the decision of the Department may request a rehearing before the Director within twenty (20) days or may appeal directly to the district court within sixty (60) days of the date of the decision is mailed.

Sincerely,

L. GLEN SAXTON
Chief, Operations Bureau

LGS:rf

Enclosures

CC: (see Certificate of Mailing)

November 28, 1979

Sinks Land and Livestock Corporation
c/o P.M.A.
412 West 10th North
Logan, UT 84321

Gentlemen:

Re: Permit No. 17-7029 -- Extension of Time

Enclosed is a copy of the request for extension of time to submit proof of beneficial use. Please note that the time within which to submit proof is extended to August 1, 1981.

Sincerely,

JAN GROVER
Water Rights Supervisor

JG:rf

Enclosure

RECEIVED
JAN 22 1979
Department of Water Resources
Eastern District Office

NOTICE OF PROPOSED AMENDING OF WATER PERMIT

NOTICE IS HEREBY GIVEN that Permit No. 17-7029 in the name of Sinks Land and Livestock, Logan, Utah, was issued for the diversion of 4.93 c.f.s. of water from a ground-water source with point of diversion within the NW¼NW¼, Sec. 28, T. 16S, R. 31E, B.M., Oneida County; to be used from Jan. 1 to Dec. 31 for stockwatering purposes for 1,000 head of beef, and from Apr. 1 to Oct. 15 for the irrigation of 235 acres within the SW¼NE¼, NW¼, S½S½, Sec. 28, T. 16S, R. 31E, B.M.

The permit holder now proposes to amend Permit No. 17-7029, changing the point of diversion to the NW¼NW¼, SW¼SE¼, SE¼SW¼, Sec. 28, T. 16S, R. 30E, and the place of use to the NW¼, Sec. 28, T. 16S, R. 31E, S½, Sec. 26, T. 15N (SLB &M), R. 10W. A portion of this land being located in Utah.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before January 15, 1979.

C. STEPHEN ALLRED
Director

Published in the Idaho Enterprise, Malad City, Idaho, on December 28, 1978 and January 4, 1979.

AFFIDAVIT OF PUBLICATION

State of Idaho
County of Oneida, ss.

Donna Sikes being first duly sworn on her oath, states: That She is Secretary 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 coniinuously 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 2 successive weekly issues thereof of the date of the first publication being the 28th day of December 19 78, the day of the last publication being the 4th day of January 19 79

Donna Sikes

Subscribed and sworn to before me this 19 of Ja 19 79.

Cindy Williams
Notary Public, residing at Malad, Idaho

My Commission expires the ..... day of 1/81 19.....

Costs:

41 lines at 23c per line first insertion	$ 9.43
..... lines tabulated as 34 1/2c per line	$ .....
15c per line each subsequent insertion	$ 6.15
TOTAL	$ 15.58

(Rates for legal notices are fixed by Idaho law)

RECEIVED
JAN 22 1979
Department of Water Resources
Eastern District Office

NOTICE OF
PROPOSED AMENDING OF
WATER PERMIT

NOTICE IS HEREBY GIVEN that Permit No. 17-7029 in the name of Sinks Land and Livestock, Logan, Utah, was issued for the diversion of 4.93 c.f.s. of water from a ground-water source with point of diversion within the NW¼NW¼, Sec. 28, T. 16S. R. 31E, B.M., Oneida County; to be used from Jan. 1 to Dec. 31 for stockwatering purposes for 1,000 head of beef, and from Apr. 1 to Oct. 15 for the irrigation of 235 acres within the SW¼NE¼, NW¼, S½S½, Sec. 28, T. 16S, R. 31E, B.M.

The permit holder now proposes to amend Permit No. 17-7029, changing the point of diversion to the NW¼NW¼, SW¼SE¼, SE¼SW¼, Sec. 28, T. 16S, R. 30E, and the place of use to the NW¼, Sec. 28, T. 16S, R. 31E, S½, Sec. 26, T. 15N (SLB &M), R. 10W. A portion of this land being located in Utah.

Any protest to the proposed amending of the permit must be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401, on or before January 15, 1979.

C. STEPHEN ALLRED
Director

Published in the Idaho Enterprise, Malad City, Idaho, on December 28, 1978 and January 4, 1979.

AFFIDAVIT OF PUBLICATION

State of Idaho
County of Oneida, ss.

Shauna Sinks being first duly sworn on her oath, states: That she is Secretary 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 2 successive weekly issues thereof of the date of the first publication being the 28th day of December 19 78, the day of the last publication being the 4th day of January 19 79

Shauna Sinks

Subscribed and sworn to before me this 19 of Jan 19 79.

Cindy Williams
Notary Public, residing at Malad, Idaho

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

Costs:
41 lines at 23c per line first insertion ..... $ 9.43
..... lines tabulated as 34 1/2c per line ..... $.....
15c per line each subsequent insertion ..... $ 6.15
TOTAL $ 15.58

(Rates for legal notices are fixed by Idaho law)

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 17-7029 IN THE NAME OF CURLEW VALLEY ASSOCIATES

ORDER OF REINSTATEMENT

WHEREAS, on April 2, 1974, Sinks Land and Livestock Corporation filed with the Department of Water Resources an application for permit to appropriate 4.93 cubic feet per second of water from a groundwater source to be diverted within the NW¼NW¼, Sec. 28, Twp. 16S, Rge. 31E B.M., Oneida County, to be used for irrigation and stock-watering purposes; and,

WHEREAS, on May 3, 1974, the Department approved said application and issued Permit No. 17-7029 with the condition that proof of construction of works and application of water to beneficial use be submitted on or before May 1, 1979; and,

WHEREAS, on September 29, 1978, Sinks Land and Livestock Corporation assigned all right, title and interest in and to Permit No. 17-7029 to Calvin C. Dredge and Alicia A. Dredge, and:

WHEREAS, on December 29, 1978, Calvin and Alicia Dredge assigned all right title and interest in and to Permit No. 17-7029 to Patrick R. Hoggan, J. Reid Hoggan, Kent A. Hoggan, Bradley R. Hoggan and Jefrey A. Hoggan doing business as Curlew Valley Associates; and,

WHEREAS, on November 21, 1979, the Department granted an extension of time to August 1, 1981; and,

WHEREAS, on May 31, 1981, the Department notified the permit holder by certified mail that proof was due and instructed the permit holder as to the steps to be taken to make said proof; and,

WHEREAS, on August 13, 1981, the Department notified the permit holder that Permit No. 17-7029 had lapsed for failure of the permit holder to submit proof of beneficial use; and,

WHEREAS, Section 42-218a of the Idaho Code provides that a permit may be reinstated upon a showing of reasonable cause within sixty days from the date of the notice of lapsing; and,

WHEREAS, the permit holder has provided a reasonable showing as to why said permit should be reinstated by submitting proof of beneficial use on October 13, 1981;

IT IS, THEREFORE, HEREBY ORDERED that the permit be REINSTATED and the priority advanced to June 14, 1974.

Dated this ~~16~~ 16th ~~day~~ of December, 1981.

L. Glen Saxton

L. GLEN SAXTON

Chief, Operations Bureau

May 31, 1981

Sinks Land and Livestock Copp.
c/o PMA
412 W. 10th N.
Logan, UT 84321

Gentlemen:

Re: Permit No. 17-7029

One of the conditions of approval of your approved Permit No. 17-7029 was that evidence of the extent of development must be submitted to this office on or before August 1, 1981. (See last page of your approved permit). Enclosed is a postcard which may be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted. A request for extension of time form is enclosed for your convenience. Please note that a fee of $15.00 must be submitted with this form.

Either the beneficial use postcard or a request for an 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 within sixty days.

Sincerely,

RITA I. FLECK
Sr. Secretary

Enclosures

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440

SIENES LAND & LIVESTOCK CORP.
C/O F.M.A.
412 W. 10TH N.
LOGAN, UT 84321

AUGUST 13, 1981

DEAR PERMIT HOLDER:

YOU ARE HEREBY NOTIFIED THAT UNDER THE PROVISIONS OF SECTION 42-211A OF THE IDAHO CODE, PERMIT NO. 17-7084 HAS LAPSED. THIS OFFICE DID NOT RECEIVE EITHER A NOTICE THAT YOU HAVE COMPLETED THE PROJECT BY THE DATE REQUIRED ON YOUR PERMIT, OR A REQUEST FOR AN EXTENSION OF TIME. YOU WERE PROVIDED THE PROPER FORMS IN OUR NOTICE TO YOU DATED MAY 31, 1981.

YOUR PERMIT CANNOT BE REINSTATED UNLESS YOU SUBMIT THE STATEMENT OF BENEFICIAL USE POSTCARD OR SUBMIT AN EXTENSION OF TIME REQUEST SHOWING REASONABLE CAUSE FOR DELAY. EITHER THE COMPLETED POSTCARD OR THE EXTENSION REQUEST MUST BE RECEIVED BY THIS OFFICE WITHIN SIXTY DAYS OF THE DATE OF THIS LAPSE NOTICE OR THE PERMIT WILL NO LONGER BE OF ANY FORCE OR EFFECT.

A STATEMENT OF BENEFICIAL USE POSTCARD AND A REQUEST FOR EXTENSION OF TIME FORM ARE ENCLOSED FOR YOUR USE. PLEASE NOTE THAT A FEE OF $15.00 MUST ACCOMPANY AN EXTENSION OF TIME REQUEST.

L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU

ENCLOSURES

CERTIFICATION OF MAILING

I hereby certify that on 8/13/81
a copy/an original of this document was deposited in the United States mail, postage prepaid, addressed to the individual(s) named above.

Jan Fraser

INTER-DEPARTMENT MEMO — 1

FROM Glen S

DATE 8-19-81

TO File 17-7029

(801-563-3585)

SUBJECT — Lynn Davis, Trustee for the Bankruptcy proceeding called today & inquired about submitting proof.

- I advised him an authorized agent of Sinks Land & Livestock Co. would need to sign the proof of Claim.

GSS
SIGNATURE

RECEIVED
OCT 13 1981
Department of Water Resourc

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re CURLEW VALLEY ASSOCIATES, a Utah general partnership, aka/dba Professional Management Associates, Sandarosa Land & Livestock, J. Reid Hogan, Patrick R. Hogan, Kent A. Hogan, Bradley R. Hogan, and Jefrey A. Hogan Debtor.	)	Bankruptcy No. 80-00876

APPOINTMENT OF TRUSTEE

Good cause appearing therefor and no notice being necessary and no adverse interest being present, it is

ORDERED, that Lynn H. Davis, of Utah State University, UMC 35, Logan, Utah 84322 is appointed Trustee herein pursuant to 11 U.S.C. §1104 upon sufficient grounds presented to the Court. The trustee may qualify pursuant to 11 U.S.C. §322 by giving a bond, within five days of this order, with security to be approved by the Court, to the United States of America, in the sum of $500,000.00 conditioned for the faithful performance of his duties herein.

Dated: December 31st, 1980

United States Bankruptcy Judge

I hereby certify that the annexed and foregoing is a true and complete copy of a document on file in the United States Bankruptcy Court for the District of Utah.

Date: 1/26/81

Margaret F. Lotty
Deputy Clerk

LYNN H. DAVIS
AGRICULTURAL ECONOMIST And APPRAISER
7530 NORTH HIGHWAY 91
~~P. O. BOX 195~~
SMITHFIELD, UTAH 84335
Area Code (801) 563-3585

RECEIVED
OCT 13 1981
Department of Water Resources

Oct. 9, 1981

Mr. L. Glen Saxton
Chief, Operations Bureau
Department of Water Resources
State of Idaho
Statehouse
Boise, Idaho 83720

Dear Mr Saxton:

As indicated in our telephone conversation this date and earlier, I am the Court appointed trustee for Cedar Valley Associates as indicated by the attached copy of my appointment.

Cedar Valley Associates has a well in Idaho which is used for irrigation. The original application for the well was apparently filed by Sinks Land and Livestock Corporation (Calvin Dredge). This well along with the land was a part of a real estate transaction wherein the Noggans purchased from indirectly from Mr Dredge. By that I mean there was an exchange involving a Mr Corbett as well. It is my understanding that although the contract of Sale has not been fully consumated that the permit should be firmed up at this time.

I talked with you some time ago relative to

this application and one other application
that has now expired. Nos. 17-7029 & 17-7044
I have not had Helco Eq & Mata, Adlabs
obtain a flow meter and they were to
install the same on Oct. 8, 1981 as per
your Recommendations.
I am enclosing the card which
your office requires. I will call your
office on 10-13-81 relative to this application
to be sure my information, since I am
a newcomer, is correct and satisfactory to
protect the permit.

Sincerely
John A. Davis
Trustee for
Carlen Valley Associates

P.S. I believe I have the correct permit number
on the card but if not please correct same.

INTER-DEPARTMENT MEMO — 1

FROM Glen S

DATE 10-13-81

TO File 17-7029

SUBJECT — Lynn Davis, trustee in the bankruptcy proceeding will send documentation soon connecting Sinks Land & Livestock Co. (the permit holder) to Curlew Valley Associates. Per telephone conversation today w/ Lynn Davis.

GLS

SIGNATURE

Lynn H. Davis

AGRICULTURAL ECONOMIST And APPRAISER,

~~647 SOUTH SUMMERWILD AVE.~~

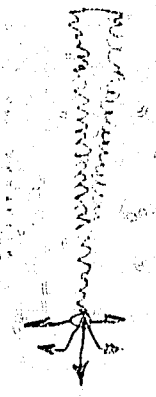
~~LOGAN, UTAH 84321~~

7530 No. HIGHWAY 91

SMITHFIELD, UTAH 84335

CERTIFIED MAIL
No. 027207

AIR MAIL
SPECIAL DELIVERY



MR. L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO
STATEHOUSE
BOISE, IDAHO 83720

AIR MAIL
SPECIAL DELIVERY

ALL BLM AND FOREST PERMITS INCLUDING BUT NOT LIMITED TO THE FOLLOWING:

GRAZING PERMITS

BLM

Snowville Allot. #5088	613	A.U.M.S.
Curlew Allot. #6001	3,637	A.U.M.S.

U. S. Forest

Curlew Nat. Grassland	225	head
Sawtooth Nat. Forest		
Sublett Troughs C & H Allot.	46	head
Black Pine C & H Allot.	44	head

Leases

Geo. Hendricks 5/8/74 320 a. E½ Sec. 28
T. 14 N. R. 9 W.

Lamar Coon 8/7/74 640 a. ± Sec. 2 North of Highway 30
T. 14 N. R. 10 W.

EXHIBIT "B"

WATER RIGHTS INCLUDING BUT NOT LIMITED TO:

STATE OF UTAH PERMIT #	QUANTITY C.F.S.
13-142	5.12 (irr.)
13-1138 & change application #A-7863	10.00 (irr.)
13-1139 & change application #A-6134	10.00 (irr.)
Deep Creek	8.34 (irr.)
13-2985 Rose Ranch Reservoir	1948.6 ac. ft.
13-1142	10.00 (irr.)
13-1143	10.00 (irr.)
13-1150	.05 (stock water)
13-2879	.015 (domestic)
13-2894	.04 (stock water)
13-2851	0.015 (stock water)
13-2639	.015 (stock water)
13-2013	stock water direct from Deep Creek
13-2009	stock water direct from Deep Creek
13-1998	stock water direct from Deep Creek
13-1996	stock water direct from Deep Creek
13-114	.06 (domestic)
13-2885	1.875 (irr.)

STATE OF IDAHO PERMIT #	
17-7029	4.97 (irr.)
17-7044	10.00 (irr.)

And including any and all irrigation equipment used in the present farming operation including existing and planned development.

LEGAL DESCRIPTION SINKS LAND AND LIVESTOCK COMPANY

Township 12 N. Range 10 W. Salt Lake Meridian

Sec. 7:	Starting at NW Corner, thence East 1,056 feet, thence South 5,280 feet, thence West 1,056 feet, thence North 5,280 feet to place of beginning containing 128 acres.	128 acres
Sec. 17:	Starting at NW Corner, thence East 1,056 feet, thence South 5,280 feet, thence West 1,056 feet, thence North 5,280 feet to place of beginning containing 128 acres.	128 acres
Sec. 31:	Starting at NW Corner, thence East 5,280 feet to NE Corner, thence South 1,056 feet, thence West 5,280 feet, thence North 1,056 feet to place of beginning containing 128 acres.	128 acres
Sec. 33:	Starting at NW Corner, thence East 5,280 feet to NE Corner, thence South 1,056 feet, thence West 5,280 feet, thence North 1,056 feet to place of beginning containing 128 acres.	128 acres

Oneida County, Idaho

Township 16 S. Range 29 E. Boise Meridian

Sec. 14:	All	640 acres

Township 16 S. Range 31 E. Boise Meridian

Sec. 28:	Lots 2, 3, 4, 7, 8, 11	121.85 acres
	NW¼ NW¼	40 acres
	S½ NW¼	80 acres
	TOTAL	12,026.2 acres

Box Elder County, Utah

Township 14 N. Range 8 W. Salt Lake Meridian

Sec. 7:	N½	320 acres
8:	N½ SW¼	80 acres
	N½ SE¼	80 acres
	NW¼	160 acres
Sec. 9:	W½ SW¼	80 acres
	SW¼ SE¼	40 acres
	SE¼ SW¼	40 acres
Sec. 11:	That part east of Deep Creek, West of Locomotive road and south of Interstate 15 Frontage road.	14 acres
Sec. 15:	W½ NW¼	80 acres
	NE¼ NW¼	40 acres
	NW¼ NE¼	40 acres

Township 14 N. Range 9 W. Salt Lake Meridian

Sec. 1:	That portion of SW¼ lying South of State Highway	34.4 acres
Sec. 2:	All	640 acres
Sec. 3:	That portion lying south of state highway	75 acres
Sec. 10:	All	640 acres
Sec. 11:	All	640 acres
Sec. 12:	NW¼	160 acres
Sec. 14:	All	640 acres
Sec. 15:	All	640 acres
Sec. 22:	All	640 acres
Sec. 23:	All	640 acres
Sec. 36:	All	640 acres

Township 14 North Range 10 W

Sec. 3:	SE¼	160 acres
	NE¼	160 acres
	SW¼	160 acres
	W½ NW¼	80 acres
ALSO:	Beginning at a point 129 rods E. of the NW Corner of Section 3, thence S. 160 rods, thence E. 31 rods, thence N. 160 rods, thence W. 31 rods to beginning.	31 acres
Sec. 4:	E½ — Except small parcel across old highway.	320 acres

Township 15 N. Range 9 W. Salt Lake Meridian

Sec. 26:	That portion lying South of Idaho State Line and West of Interstate 80.	124.58 acres
Sec. 35:	All, less State Highway	624.93 acres

Township 15 N. Range 10 W. Salt Lake Meridian

Sec. 26:	Lots 1, 2, 3, 4	27.24 acres
	S½ S½	160 acres
Sec. 27:	Lots 1, 2, 3, 4	21.2 acres
	S½ S½	160 acres
Sec. 34:	S½	320 acres
Sec. 35:	All	640 acres

Township 13 N. Range 10 W. Salt Lake Meridian

Sec. 29:	All	640 acres

Township 12 N. Range 9 W. Salt Lake Meridian

Sec. 7:	All	640 acres

STATE OF Idaho)
: ss.
County of Bannock)

On this 21st day of September, 1978, before me, the undersigned Notary Public in and for said County and State, personally appeared Calvin C. Dredge and Alicia A. Dredge, husband and wife, known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

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

Camille Ladd
NOTARY PUBLIC FOR
Residing at

STATE OF Utah)
: ss.
County of Cache)

On this 22nd day of September, 1978, before me, the undersigned Notary Public in and for said County and State, personally appeared Patrick R. Hoggan and Sandra C. Hoggan, husband and wife; J. Reid Hoggan and DeVone A. Hoggan, husband and wife; Kent A. Hoggan and Diane H. Hoggan, husband and wife; Bradley R. Hoggan and Cathy P. Hoggan, husband and wife; and Jefrey A. Hoggan and Hoggan, husband and wife, known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same.

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

NOTARY PUBLIC FOR
Residing at

REGARDLESS OF ANY OTHER PROVISION OF THIS CONTRACT, IT SHALL BE NULL AND VOID AND HAVE NO FORCE OR EFFECT UNLESS PURCHASERS ON OR BEFORE OCTOBER 15, 1978, DELIVER TO THE SELLER AND THE ESCROW AGENT A WRITTEN LETTER OF COMMITMENT DEMONSTRATING THAT THEY HAVE OBTAINED SUFFICIENT FINANCING TO PURCHASE THE PROPERTY AS CONTEMPLATED HEREIN. IN ADDITION, FAILURE TO PRESENT SAID COMMITMENT LETTER SHALL CONSTITUTE A FORFEITURE OF THE $25,000.00 DOWN PAYMENT BY PURCHASERS TO SELLER, WHICH SHALL BE DELIVERED BY ESCROW AGENT TO SELLER, AND EACH OF THE PARTIES SHALL OTHERWISE BEAR THEIR OWN COSTS AND EXPENSES.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CALVIN C. DREDGE, Seller

PATRICK R. HOGGAN

J. REID HOGGAN

KENT A HOGGAN

BRADLEY R. HOGGAN

JEFFREY A. HOGGAN

- Purchasers -

have no other recourse against Purchaser; provided at said time Seller is able to deliver title to said property free and clear of all encumbrances, subject to easements and restrictions common to said property.

If neither party is ready, willing and able to perform under the terms hereof, or in the even Purchaser is ready, willing and able to perform but should Seller be unable on November 15, 1978 to deliver title to said property free and clear of all encumbrances, subject to easements and restrictions common to said property, all moneys in deposit with the escrow agent shall be refunded and Seller shall at the sole option of the Seller reimburse the Purchaser the reasonable value of removeable improvements, or Purchaser shall remove from the premises all improvements made by the Purchasers from and after October 1, 1978. Each Party shall bear their own costs and expenses incurred by reason of this agreement.

It is further agreed that Seller cannot now convey clear title to the properties involved, nor can he convey the same, until a liquidation of the corporate assets of the Sinks Land & Livestock Corporation has been accomplished pursuant to Internal Revenue Code § 333, and until all debts, liens and encumbrances thereon have been ascertained and verified by the escrow agent, and until the purchase price is paid to said escrow agent to discharge the debts, liens and encumbrances, and that each of the parties hereby agree to execute any and all documents necessary to carry out the intent of this agreement and exercise reasonable diligence to accomplish the same.

7. Attorney fees. If it is necessary to enforce performance under this contract by referring it to an attorney, the defaulting party shall be liable for all costs incurred, including a reasonable attorneys fee.

This agreement contains the entire agreement between the parties and shall be binding upon the heirs, personal representatives and assigns of the respective parties.

assignments of the water rights, BLM and forest permits and land leases, together with a bill of sale to the personal property, all as described above. It is however understood and agreed between the parties that three-fourths of the mineral rights in the real property have been reserved and Seller at the present time only has access to only a one-fourth interest in said mineral rights, but that any additional rights hereinafter acquired by Seller will be immediately transferred to Purchaser. Seller agrees to exercise reasonable efforts in securing said mineral

4. Possession. Seller agrees to to surrender possession of all the property described herein to Purchaser on or before November 15, 1978, and hereby grants to Purchaser the privilege of entering upon the premises on October 1, 1978, to prepare and improve the irrigated farm lands for the 1979 crop year. In consideration of granting this privilege, Purchaser will grant Seller the use of the pasture land on said property, sufficient to pasture Seller's cattle until December 15, 1978, and on land covered by the BLM and forest grazing permits until all permittees running in common have removed their cattle from the range.

5. Costs and Expenses. Costs and fees of said escrow agent shall be borne equally by the parties, and each of the parties will assume and pay the costs and fees of their own accountants and attorneys. However, all real estate commissions which Seller has agreed to in writing shall be the liability and responsibility of the Seller and the amount thereof may be paid by the escrow agent at the time of closing, on or before November 15, 1978, from the proceeds held by the escrow agent, but said commission shall not exceed 6% of said purchase price and shall not be due or payable if the transaction contemplated in this agreement is not consummated, and in that event Seller shall not be liable or responsible for any commission.

6. Failure to Close. This agreement shall be consummated or closed on or before November 15, 1978. Should Purchaser not deliver the balance of the purchase price on said date, the escrow agent is authorized to deliver the Twenty-five Thousand Dollars ($25,000.00) held as down payment to Seller, Seller shall

1. Consideration. Purchaser agrees to pay to the Seller the sum of $2,900,000.00 in the following matter, to-wit:

(a) Twenty-five Thousand ($25,000.00) Dollars, upon execution of this agreement, which shall be placed in trust with Hillam Abstract and Title Company of Brigham City, Utah; and

(b) Two million Eight Hundred Seventy-five Thousand ($2,875,000.00) Dollars payable in trust to Hillam Abstract and Title Company of Brigham City, Utah, on or before November 15, 1978, and within sufficient time to pay all the debts and encumbrances on said property as contemplated herein.

2. Escrow. The parties hereto appoint Hillam Abstract and Title Company of Brigham City, Utah, as escrow agent. Said escrow agent shall be authorized to obtain preliminary title reports and any and all other information necessary to ascertain the nature and amounts of any liens, security agreements, financial statements, or any encumbrances on the property which is the subject of this sale, and from the proceeds deposited in trust pay the debts on said property so that the same will be conveyed free and clear of all debts and encumbrances, save and except the easements and restrictions common to the real property.

Said escrow agent shall be further authorized to receive from Seller warranty deeds, assignments and bills of sale conveying the above described property to the Purchaser. Upon payment of all the debts and encumbrances thereon, as set forth above, the escrow agent may deliver the warranty deeds, assignments and bills of sale to the Purchaser and remit the Twenty-five Thousand ($25,000.00) down payment, and the balance of the purchase price to the Seller, which delivery of said documents and remittance of the purchase price shall take place on or about November 15, 1978.

3. Conveyance. Seller agrees to convey title free and clear of all encumbrances, subject to easements and restrictions common to said property, under the terms and conditions set forth above, by good and sufficient warranty deeds, provide a policy of title insurance insuring title in a sum equal to the purchase price,

EXHIBIT "D"

SALES CONTRACT

THIS CONTRACT made and entered into this 22nd day of September, 1978, by and between Calvin C. Dredge, hereinafter referred to as Seller, and Patrick R. Hoggan, J. Reid Hoggan, Kent A. Hoggan, Bradley R. Hoggan and Jefrey A. Hoggan, hereinafter referred to as Purchaser:

WITNESSETH:

Subject to Calvin C. Dredge acquiring all of the assets of Sinks Land and Livestock Corporation by liquidation, pursuant to Internal Revenue Code § 333, the Seller Agrees to sell and convey and the Purchaser agrees to purchase the following described property:

A. All of the certain real property approximately described on Exhibit "A" (containing two pages) attached hereto and incorporated herein by reference, containing approximately 12,000 acres, more or less;

B. All water rights appurtenant to said real property described in said Exhibit "A", which water rights are approximately described on Exhibit "B" attached hereto and incorporated herein by reference;

C. All Bureau of Land Management and Forest permits approximately described on Exhibit "C" attached hereto and incorporated herein by reference thereto;

D. Two land leases, approximately described on Exhibit "D" (containing two pages), attached hereto and incorporated herein by reference thereto;

E. All machinery and equipment described on Exhibit "E", (containing three pages) listing 85 items and all miscellaneous supplies and personal property on said premises at the date of closing, and excluding those items on Exhibit "F", listing 53 items, copies of which are attached hereto and incorporated herein by reference thereto;

UNDER THE FOLLOWING TERMS AND CONDITIONS:

EXHIBIT "C"

WARRANTY DEED

For Value Received

CALVIN C. DREDGE and ALICIA A. DREDGE, husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto

PATRICK R. HOGGAN, J. REID HOGGAN, KENT A. HOGGAN, BRADLEY R. HOGGAN and JEFREY A. HOGGAN

whose current address is

the grantees, the following described premises, in Oneida **County Idaho, to wit:**

Township 16 South, Range 31 east, Boise Beridian:
Section 28: Lots 2, 3, 4, 7, 8, 11, NW¼NW¼, S½NW¼;
EXCEPT: Commencing at the NW Corner of Section 28, thence East 465 feet, thence South 3507.6 feet, thence West 465 feet, thence North 3507.6 feet to the point of beginning.

Subject to the right, title and interest of the public in and to those portions of the above-described premises falling within the bounds of roads or highways, dedicated and/or otherwise used by the public, and subject to all easements and restrictions attendant and pertinent to said highways.

GRANTORS reserve three-fourths (3/4) of all gas, oil and mineral and geothermal rights and values of every kind and nature whatsoever, together with the necessary rights of ingress and egress for the purpose of prospecting, exploration, drilling, mining, or otherwise developing said rights.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances, and together with any and all water rights appurtenant to said lands,

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated:

December 29, 1978

Calvin C. Dredge

Alicia A. Dredge

STATE OF IDAHO, COUNTY OF

On this 29th **day of** December **19** 78, **before me, a notary public in and for said State, personally appeared** Calvin C. Dredge and Alicia A. Dredge

known to me to be the person S whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Camille Ladd

Notary Public

Residing at Preston **, Idaho**

Comm. Expires 3-21-82

State of Idaho, County of Oneida: ss.

#98813

I hereby certify that this instrument was filed for record at the request of Title 2 South at 40 minutes past 3 o'clock P.M. this 2nd day of Jan. 19 79 in my office and duly recorded on Film as Inst. No. 98813

Fee 1.00

Ex-Officio Recorder

By

Deputy

Furnished by the AMERICAN LAND TITLE CO., Pocatello, Idaho

QUITCLAIM DEED

FOR VALUE RECEIVED , Sinks Land & Livestock Corporation does hereby convey, release, remise and forever quit claim unto CALVIN C. DREDGE and ALICIA A. DREDGE, husband and wife, whose current address is P. O. Box 245, Rupert, Idaho 83350, the following described premises in Oneida County, Idaho, to-wit:

Township 16 South, Range 31 East, Boise Meridian:
Section 28: Lots 2, 3, 4, 7, 8, 11, NW¼NW¼, S½NW¼; EXCEPT: Commencing at the NW Corner of Section 28, thence East 465 feet, thence South 3507.6 feet, thence West 464 feet, thence North 3507.6 feet to the point of beginning.

together with their appurtenances, including any and all water rights appurtenant to said lands. SUBJECT TO all indebtedness due thereon which Calvin C. Dredge agrees to assume and pay, and SUBJECT TO all oil, gas and mineral rights reserved by T. D. Jones and the predecessors in interest in Sinks Land & Livestock Corporation, and Rose Ranch Grazing Association in the above described property.

DATED: September 29, 1978.

SINKS LAND & LIVESTOCK CORPORATION

Calvin C Dredge
President

ATTEST: Alicia A Dredge
Secretary

STATE OF IDAHO)
: ss.
County of Bannock)

On this 29th day of September, 1978, before me, the undersigned Notary Public in and for said County and State, personally appeared Calvin C. Dredge and Alicia A. Dredge, known to me to be the President and Secretary of the Corporation whose name is subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same on behalf of said Corporation.

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

Camille Ladd
NOTARY PUBLIC FOR IDAHO
Residing at:

State of Idaho, County of Oneida ss. #98812
I hereby certify that this instrument was filed for record at request of L. A. Scott at 35 minutes past 3 o'clock P M. this 2 day of Jan A.D., 1979 in my office and duly recorded on Film as Inst. No 98812
Fee 1.00
Ex-Officio Recorder
By Deputy

Proposed Priority 4-02-1974

17 7029

Received by NE Date 3-22-74 Time 11:30 A

Preliminary check by JR Fee $ 6.50

Receipted by NE Date 4-2-74 #12115

Publication prepared by NE Date 4-4-74

Publish in The Idaho Enterprise

Publication dates April 11 & 18, 1974

Publication approved DS Date 4/10/74

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by RR NBDF

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 17-7029, and said application is hereby APPROVED.

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

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before May 1, 1979.

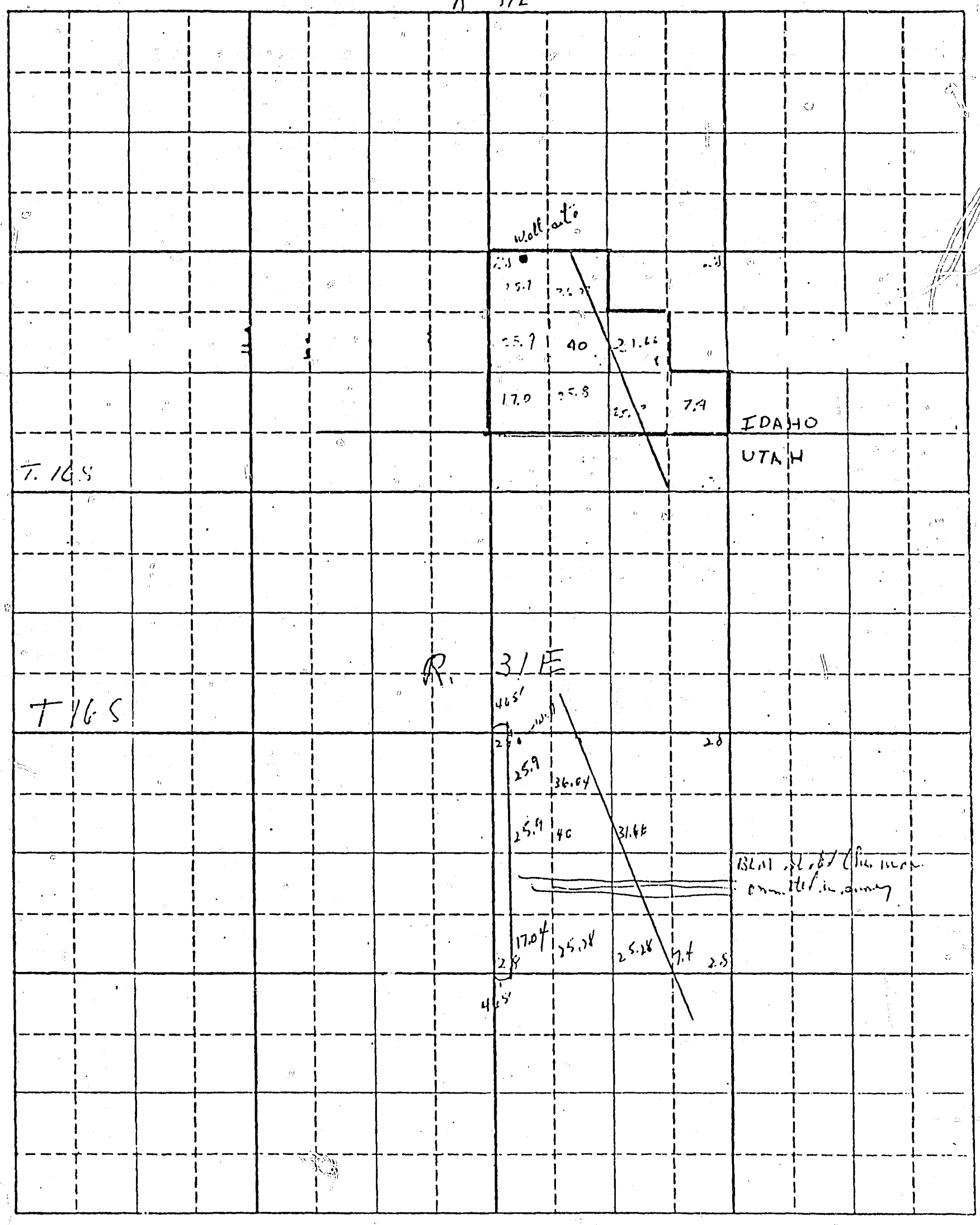
   c. Other: A measuring device of a type approved by this Department shall be permanently installed and maintained as part of the diverting works.

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

Witness my hand this 3 day of May 1974.

Director

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



Scale: 2 inches equal 1 mile

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

Dick Lloyd / Vernal City
By Dick Lloyd
(Applicant)

17 7029

17 7029

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

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
16S	31E	28			31.7		36.0	25.9	25.9	40			17 (Lot 4)	25.8 (Lot 3)			25.3 (Lot 2)	7.4 (Lot 1)	235

Total number of acres to be irrigated 235

c. Describe any other water rights used for the same purposes as described above. None

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

b. Who owns the land to be irrigated or place of use Applicant

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

10. Remarks We plan to drill the well immediately. As soon as supply of water is known we plan to irrigate with gated pipe or a wheel sprinkler system. Planned crops are alfalfa and grain.

EXHIBIT "A"

Identification No. 17 7029

Application No. _____

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR PERMIT

5-7-74

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

APPROVED

1. Name of applicant Sinks Land & Livestock Corp.

   post office address c/o W. J. Byrd, Sec., Box 184, Malad, Idaho 83252 PH: 766-2286

2. Source of water supply ground water which is a tributary of - - - - -

3. a. Location of point of diversion is NW ¼ of NW ¼ of Section 28 Township 16S Range 31E B.M. Oneida County; additional points of diversion if any: _____

   b. If water is not consumed, it will be discharged into _____ at a point in _____ ¼ of _____ ¼ of Section _____ Township _____ Range _____ B.M. _____

4. Water will be used for the following purposes:

   Amount ~~XXXX~~ 4.70 (cfs or ~~acre-feet per annum~~) for Irrigation purpose from Apr. 1 to Oct. 15 (both dates inclusive)

   Amount 0.23 (cfs or ~~acre-feet per annum~~) for stockwater purpose from Jan. 1 to Dec. 31 (both dates inclusive)

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

5. Total quantity to be appropriated: Per letter 4/1/74 RDC

   a. ~~XXXX~~ 4.93 cubic feet per second and/or

   b. _____ acre feet per annum.

6. Proposed diverting works:

   a Description of ditches, flumes, pumps, headgates, etc. Pump size to be furnished at completion. Gated pipe for flood irrigation or wheel system sprinkler.

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

   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.

   c. Proposed well diameter is 20 inches; proposed depth of well is 500 feet.

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.

   b. Estimated construction cost is $ 20,000.00 .

8 Description of proposed uses:

   a. If water is not for irrigation:

   (1) Give the place of use of water: NW ¼ of NW ¼ of Section 28 Township 16S Range 31E B.M.

   (2) Amount of power to be generated: _____ hp under _____ feet of head.

   (3) List number of each kind of livestock to be watered 1000 beef cattle

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

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

17 7029

1. Exhibit "B" -- Quitclaim Deed from Sinks to the Dredges;

2. Exhibit "C" -- Warranty Deed from the Dredges to the Hoggans; and

3. Exhibit "D" -- Sales Contract for sale of the Real Property and State of Idaho Permit No. 17-7029 from the Dredges to the Hoggans.

On the basis of the enclosed documents, we would both ask that you transfer record ownership of State of Idaho Permit No. 17-7029 from Sinks to the Hoggans, and that you send us evidence of such transfer. Should you require any additional documentation, please contact either of the undersigned at your earliest convenience.

Thank you for your assistance.

Very truly yours,

Weston L. Harris

Weston L. Harris, Esq.
WATKISS & CAMPBELL
310 South Main, Suite 1200
Salt Lake City, Utah 84101
Attorney for the Trustee

Robert B. Lochhead, Esq.
Attorney for Connecticut General

RBL:rlc

Enclosures

LAW OFFICES OF
MARTINEAU, ROOKER, LARSEN & KIMBALL
A PROFESSIONAL CORPORATION
1800 BENEFICIAL LIFE TOWER
36 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 532-7840

ROBERT B. LOCHHEAD

RECEIVED
NOV 20 1981
Department of Water Resources

November 16, 1981

Idaho Dept. of Water Resources
Statehouse Mail
Boise, Idaho 83720

ATTENTION: L. Glenn Saxton

Re: Idaho State Water Permit
No. 17-7029

Dear Mr. Saxton:

The undersigned attorneys represent (1) Dr. Lynn Davis, court-appointed trustee in bankruptcy case number 80-00876, In Re Curlew Valley Associates, etc., pending in the United States Bankruptcy Court for the District of Utah; and (2) the Connecticut General Life Insurance Company. The trustee is charged with administering the estate of a partnership consisting of J. Reid Hoggan, Patrick R. Hoggan, Kent A. Hoggan, Bradley R. Hoggan and Jefrey A. Hoggan (hereinafter the "Hoggans"), which partnership is engaged in farming operations in northern Utah and southern Idaho. Connecticut General is a secured creditor of the Hoggans and the holder of a mortgage covering a large portion of the agricultural property used by the trustee for the Hoggan partnership.

One of the assets used in the Hoggans' farming operation on which Connecticut General holds a mortgage is Idaho State Water Permit No. 17-7029. The water represented by said permit is being used by the trustee for the Hoggan partnership on the real property described in said permit (hereinafter the "Real Property") situated in Oneida County, Idaho. A copy of the approved application for said permit is attached hereto as Exhibit "A". When the trustee recently attempted to prove beneficial use, however, he was told that the permit is listed on your records as belonging to Sinks Land & Livestock Corporation (hereinafter "Sinks").

Enclosed are copies of the following documents evidencing transfer of the Real Property together with Permit No. 17-7029 from Sinks to Calvin C. Dredge and Alicia A. Dredge (hereinafter the "Dredges"), and from the Dredges to the Hoggans:

INTER-DEPARTMENT MEMO — 1

FROM Glen S

DATE 11-20-81

TO File 17-7029

SUBJECT — I again talked w/ Lynn Davis today & advised that I have not rec'd the written documentation between Sinks L. & L. & Curlew Valley Assoc. — No word on joint investment General Life Ins. mny soon.

GLS

SIGNATURE

PLACE
TEN CENT
STAMP
HERE

IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

RECEIVED
OCT 13 1981
Department of Water Resources

DEPARTMENT OF WATER RESOURCES

The Idaho Departm of Water Resources will consider this card as a sta nt that the permit holder(s) has completed development to the extent shown below of Permit No. 17-7029.

Name(s) of Permit Holder: CURLEW VALLEY ASSOCIATES LYNN H DAVIS, TRUSTEE

Post Office Address: 7530 N HIGHWAY 91

SMITHFIELD, UT 84335 Tel. No. 801-563-3585

Source of Water: WELL

Extent of Use:
- ☐ Domestic (number of households)
- ☐ Stockwater (number and type of stock)
- ☒ Irrigation 210-260 (acres) EST.
- ☐ Other

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

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

10-9-81
Date

Lynn H. Davis, Trustee
for Curlew Valley Associates
Bankruptcy Inc. Signature of Permit Holder 80-00876

January 7, 1982

Lynn H. Davis, Trustee
Curlew Valley Associates
7530 N. Highway 92
Smithfield, UT 84335

Dear Mr. Davies:

Re: Permit No. 1707029

Enclosed is a copy of the order reinstated the above-referenced permit. Please note that the priority has been advanced to June 14, 1974.

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

If you have any questions regarding the field examination, please contact our Eastern Regional office.

Sincerely,

RITA I. FLECK
Sr. Secretary

RIF:f

Enclosure

State of Idaho

Department of Water Resources

ASSIGNMENT OF PERMIT

Department of Water Resources
SEP 21 1989
RECEIVED

I, Curlew Valley Associates, hereby assign to Cypress Farms, Inc.

of Snowville, Utah
Address

All my right, title, and interest in and to Permit No. 17-7029 to appropriate the public waters of the State of Idaho.

The following described portion of my right, title, and interest in and to Permit No. _____ to appropriate the public waters of the State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage within each 40 acre subdivision, the point of diversion and the amount of water in cubic feet per second for direct diversion, or acre feet for storage)

_____

_____

_____

Made this 19th day of September, 1989.

Curlew Valley Associates
by Jay J Davis, Trustee
Permit Holder

_____
Spouse of Permit Holder

State of ~~Idaho~~ UTAH)
) ss
County of CACHE)

On this 19th day of Sept, 1989, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Jay J Davis

seal

Notary Public residing at
Hyde Park, UT.

My commission expires:
12/15/92

RECORDED BY
First American Title Co. of Stockton
RECORDED March 24, 1994

INST 120182 Oneida Co. / 229849 Cassia Co.

COUNTY RECORDER

WE HEREBY CERTIFY THAT THIS IS A FULL TRUE
AND CORRECT COPY OF THE ORIGINAL
First American Title Co. of Stockton
BY _____

WHEN RECORDED RETURN TO:
Russell J. Jackson and
A. Marie Jackson
6435 North Vasco Road
Livermore, California 94550

QUITCLAIM DEED AND ASSIGNMENT OF WATER RIGHTS

CYPRESS FARMS, INC., a California corporation, of 101 California Street, Suite 4310, San Francisco, California 93902, Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby quitclaims and assigns to RUSSELL J. JACKSON and A. MARIE JACKSON, of 6435 North Vasco Road, Livermore, California 94550, as joint tenants with full right of survivorship and not as tenants in common, Grantees, all water and water rights (including, without limitation, all adjudicated or decreed claims and rights; certificates of appropriation; applications to appropriate; water users' claims; diligence claims; change applications; exchange applications; easements for development, storage, use or conveyance of water or for access to water; ditches and ditch rights; reservoirs and reservoir rights; and all water stock and other interests in water, irrigation or ditch companies or other associations) appurtenant to or acquired or used in connection with the real property in Box Elder County, Utah and Cassia and Oneida Counties, Idaho, more particularly described in Exhibit A, attached hereto and made a part hereof, including, without limitation, the water rights described in Exhibit B, attached hereto and made a part hereof.

TO HAVE AND TO HOLD to Grantees and to Grantees' heirs, successors and assigns forever.

Dated this 24th day of March, 1994.

CYPRESS FARMS, INC.

By _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
: ss.
COUNTY OF SAN FRANCISCO)

On this 14th day of March, 1994, before me Katherine C. Lord, a notary public, personally appeared Howard H. Head, known or identified to me to be the President of Cypress Farms, Inc., a California corporation, and acknowledged to me that such corporation executed the same.

My commission expires:

Sept. 3, 1994

Katherine C. Lord
Notary Public
Residing at: Richmond, CA

68254

OFFICIAL SEAL
KATHERINE C. LORD
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Comm. Expires Sept. 3, 1994

EXHIBIT "A"

UTAH - BOX ELDER COUNTY

Parcel 1: (08-007-0016)
North Half of Section 7, Township 14 North, Range 8 West, SLM.

Parcel 2: (08-007-0018 and 08-007-0020))
North Half of Southwest Quarter, North Half of Southeast Quarter and Northwest Quarter of Section 8, Township 14 North, Range 8 West, SLM.

Parcel 3: (08-062-0003)
West Half of Southwest Quarter, Southwest Quarter of Southeast Quarter, Southeast Quarter of Southwest Quarter of Section 9, Township 14 North, Range 8 West, SLM.

Parcel 4: (08-063-0047)
That part lying East of Deep Creek (assuming Deep Creek is the same as Curlew Creek) and West of Locomotive Road (being same as County Road) and South of Interstate 15 Frontage Road of Section 11, Township 14 North, Range 8 West, SLM.

Parcel 5: (08-007-0040)
West Half of Northwest Quarter, Northeast Quarter of Northwest Quarter and Northwest Quarter of Northeast Quarter of Section 15, Township 14 North, Range 8 West, SLM.

Parcel 6: (08-008-0013)
That portion of Southwest Quarter lying South of State Highway in Section 1, Township 14 North, Range 9 West, SLM.

Parcel 7: (08-008-0011)
All of Section 2, Township 14 North, Range 9 West, SLM.

Parcel 8: (08-008-0010)
That portion of Section 3, Township 14 North, Range 9 West, SLM, lying South of State Highway.

Parcel 9: (08-008-0007)
All that part of Section 4, Township 14 North, Range 9 West, SLM, lying South of the Highway.

Parcel 10: (08-008-0020)
All of Section 9, Township 14 North, Range 9 West, SLM.

Parcel 11: (08-008-0021)
All of Section 10, Township 14 North, Range 9 West, SLM.

EXHIBIT"A"(Continued)

Parcel 12: (08-008-0022)
All of Section 11, Township 14 North, Range 9 West, SLM.

Parcel 13: (08-008-0023)
Northwest Quarter of Section 12, Township 14 North, Range 9 West, SLM.

Parcel 14: (08-008-0033)
All of Section 14, Township 14 North, Range 9 West, SLM.

Parcel 15: (08-008-0032)
All of Section 15, Township 14 North, Range 9 West, SLM.

Parcel 16: (08-008-0031)
All of Section 16, Township 14 North, Range 9 West, SLM.

Parcel 17: (08-008-0038)
All of Section 21, Township 14 North, Range 9 West, SLM.

Parcel 18: (08-008-0039)
All of Section 22, Township 14 North, Range 9 West, SLM.

Parcel 19: (08-008-0040)
All of Section 23, Township 14 North, Range 9 West, SLM.

Parcel 20: (08-008-0058)
All of Section 36, Township 14 North, Range 9 West, SLM.

Parcel 21: (08-105-0005)
BEGINNING at Southeast Corner of Section 1, Township 14 North, Range 10 West, SLM, running thence West 879.78 feet, thence North 495 feet, more or less, to Highway right of way, thence East along said right of way 879.78 feet, more or less, to East Section line of said Section 1, thence South 495.00 feet, more or less to the point of BEGINNING.

Parcel 22: (08-009-0006)
All of Section 3, Township 14 North, Range 10 West, SLM, lying South of State Highway.

Parcel 23: (08-026-0018)
That portion of Section 26, Township 15 North, Range 9 West, SLM, lying South of Idaho State Line and West of Interstate 80.

Parcel 24: (08-026-0020)
All of Section 35, Township 15 North, Range 9 West, SLM. LESS: Interstate Highway.

Parcel 25: (08-008-0046)
West Half of Section 28, Township 14 North, Range 9 West, SLM.

Parcel 26: (08-008-0008)
That portion of the West Half of Section 3, Township 14 North, Range 9 West, SLM; lying North of Highway. Subject to an access roadway, 20 feet in width, over the common boundary of Section 3 and 4, Township 14 North, Range 9 West, SLM.

Parcel 27: (08-008-0050)
All of Section 25, Township 14 North, Range 9 West, SLM.

Parcel 28: (08-008-0049)
All of Section 26, Township 14 North, Range 9 West, SLM.

Parcel 29: (08-008-0045)
East Half and Northwest Quarter of Section 29, Township 14 North, Range 9 West, SLM.

Parcel 30: (08-008-0054)
The North Half and the North half of Southwest Quarter of Section 34, Township 14 North, Range 9 West, SLM.

Parcel 31: (07-008-0041)
Lots 1, 2, 3 and 4 in Section 3, Township 13 North, Range 9 West, SLM.

Parcel 32: (08-008-0065)
The East Half of East Half of Section 32, Township 14 North, Range 9 West, SLM. Subject to County Road along North side.

Parcel 33: (08-008-0053)
All of Section 33, Township 14 North, Range 9 West, SLM. Subject to County Road along North side.

Parcel 34: (08-008-0056)
The Southeast Quarter of the Southwest Quarter and the Southeast Quarter of Section 34, Township 14 North, Range 9 West, SLM.

EXHIBIT"A"(Continued)

Parcel 35: (08-008-0012)
All of Section 1, Township 14 North, Range 9 West, SLM, lying North of U.S. Highway 30, and that portion of the Southeast Quarter of the Southeast Quarter of Section 1, Township 14 North, Range 9 West, SLM, lying South of Highway 30.

Parcel 36: (08-026-0022)
All of Section 36, Township 15 North, Range 9 West, SLM. Less, I-80N/-84 right of way.

Parcel 37: (08-026-0021)
That part of Section 25, Township 15 North, Range 9 West, SLM, lying South of the Utah-Idaho State Line.

Parcel 38: (08-007-0001)
That part of Section 6, Township 14 North, Range 8 West, SLM, lying North of the U. S. Highway 30. LESS: I-84/I-80N, right of way.

Parcel 39: (08-025-0010)
All of Section 31, Township 15 North, Range 8 West, SLM. Less I-84/I-80N right of way.

Parcel 40: (08-025-0009)
All that part of Section 30, Township 15 North, Range 8 West, SLM,lying South of the Utah-Idaho State line.

Parcel 41: (08-007-0004)
All that part of Section 5, Township 14 North, Range 8 West, SLM, lying North of U.S. Highway 30. LESS: I-84/I-80N right of way.

Parcel 42: (08-025-0011)
All of Section 32, Township 15 North, Range 8 West, SLM.

Parcel 43: (08-025-0008)
That part of Section 29, Township 15 North, Range 8 West, SLM, lying South of the Utah-Idaho State Line.

Parcel 44: (08-007-0009)
That part of Section 4, Township 14 North, Range 8 West, SLM, lying North of old U. S. Highway 30. LESS: I-84/1-80N right of way.

Parcel 45: (08-025-0016)
The South Half of the South Half of Section 33, Township 15 North, Range 8 West, SLM.

EXHIBIT"A"(Continued)

Parcel 46: (08-007-0006)
Beginning at the Northwest Corner of the Northeast Quarter of Section 8, Township 14 North, Range 8 West, SLM, and running thence South 2 degrees 06'32" West 202.31 feet (South 200 feet by record), thence South 89 degrees 51' 59" East 1984.67 feet (East 1984.42) feet by record) thence North 11 degrees 36'50" East 146.53 feet (North 12 degrees 30'50" East 145 feet more or less by record) to the New State Highway right of way fence, thence Northwesterly in the following three courses: North 64 degrees 40'44" West 88.45 feet, thence North 67 degrees 15'46" West 47.72 feet, North 69 degrees 36'14" West 20.05 feet to the North line of said Section 8; thence West 1863.96 feet (West 1870 feet, more or less by record) to the point of beginning, situated in the Northeast Quarter of said Section 8.

Parcel 47: (08-007-0050 and 08-007-0051)
All of Section 19, and the Northwest Quarter of Section 20, Township 14 North, Range 8 West, SLM.

Parcel 48: (08-007-0033)
Easement for ingress and egress over the following described tract of land: 30 foot Easement beginning at the Southeast Corner of Section 17, Township 14 North, Range 8 West, SLM, running thence West 200 feet, more or less, thence Northwesterly 1300 feet, more or less, thence West 1200 feet; thence Southwesterly 800 feet, more or less to North line of Section 20, Township 14 North, Range 8 West, SLM, over a now existing gravel road.

Parcel 49: (07-008-0003)
South Half of North Half and South Half of Section 3, Township 13 North, Range 9 West, SLM.

Parcel 50: (07-008-0004 and 07-008-0005)
All of Section 4, Township 13 North, Range 9 West, SLM.

Parcel 51: (07-008-0006)
All of Section 5, Township 13 North, Range 9 West, SLM.

Parcel 52: (08-008-0052)
West Half of East Half and West Half of Section 32, Township 14 North, Range 9 West, SLM.

LEGAL DESCRIPTION

IDAHO

That certain real property located in Cassia County, Idaho and more particularly described as follows:

Township 16 S., Range 29 E. Boise Meridian

Section 14: All.

EXHIBIT "A" (Continued)

LEGAL DESCRIPTION

IDAHO

That certain real property located in Oneida County, Idaho, and particularly described as follows:

Township 16 S., Range 31 E. Boise Meridian

Section 28: Lots 2, 3, 4, 7, 8, 11,
NW¼ NW¼,
S½ NW¼, **EXCEPT: BEGINNING** at the NW Corner of Section 28, thence East 465 feet, thence South 3,507.6 feet, thence West 465 feet, thence North 3507.6 feet to the point of **BEGINNING.**

EXHIBIT B

Water Rights

Utah Water Rights by Water Right Number

13-114	13-1988	13-2858
13-142	13-1991	13-2870
13-146	13-1994	13-2894
13-155	13-1996	13-2985
13-161	13-1998	13-2903
13-174	13-1999	13-3026
13-198	13-2000	13-3132
13-1103	13-2001	13-3162
13-1138	13-2151	13-3250
13-1139	13-2639	13-3251
13-1142	13-2769	13-3365
13-1143	13-2770	13-3486
13-1144	13-2851	13-3563
13-1145	13-2856	13-3564

Utah Water Rights by Category

Certificated Water Rights

Certificate Number	Water Right Number	Application/Change Number
5588	13-114	A24403
a1786	13-142	A26513/a10837
12988	13-1138	A37578/a10573
12990	13-1139	A37579/a6134
a1785	13-2985	D3202/a10836
12989	13-3251	A52870/a13420

Diligence Claims

13-1988	13-1996	13-2000
13-1991	13-1998	13-2001
13-1994	13-1999	13-2985

Water User Claims

Claim Number	Water Right Number
A26572	13-146
A26581	13-155
A26923	13-161
A27606	13-174
A29854	13-198
A36984	13-1103
A37491a	13-2151
A39187	13-2639
A41006	13-2769
A41007	13-2770
A42066	13-2851
A42211	13-2856
A42338	13-2858
A42859	13-2870
A43609	13-2894
A44140	13-2903
A46913	13-3026
A48932	13-3132
A50150	13-3162
A56763	13-3365

Approved Applications to Appropriate

Application Number	Water Right Number
A26954a	13-3250
A60643	13-3486
A64925	13-3563
A64926	13-3564

Approved Change Applications

Change Number	Water Right Number	Application Number
a15779	13-3250	A26954a
a15239	13-3365	A56763

Unapproved Applications to Appropriate

Application Number	Water Right Number
A37608	13-1142
A37609	13-1143
A37610	13-1144
A37611	13-1145

Idaho Water Rights

17-07029

68306

WHEN RECORDED RETURN TO:
Russell J. Jackson and
A. Marie Jackson
6435 North Vasco Road
Livermore, California 94550

INSTRUMENT NO
RECORDED BY
First American Title Co. of Stockton
RECORDED March 24, 1994
INST 120181 Oneida Co. / 229848 Cassia Co.
COUNTY RECORDER
WE HEREBY CERTIFY THIS TO BE A FULL TRUE
AND CORRECT COPY OF THE ORIGINAL
First American Title Co. of Stockton

SPECIAL WARRANTY DEED

HOWARD H. LEACH, TRUSTEE OF THE HOWARD H. LEACH REVOCABLE TRUST, of 101 California Street, Suite 4310, San Francisco, California 93902, Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, conveys and assigns to RUSSELL J. JACKSON and A. MARIE JACKSON, of 6435 North Vasco Road, Livermore, California 94550, Grantees, warranting title against the claims of persons claiming by, through or under Grantor, but not otherwise, the following:

1. The lands located in Box Elder County, Utah (as joint tenants with full right of survivorship and not as tenants in common) and Cassia and Oneida Counties, Idaho (as community property), more particularly described in Exhibit A, attached hereto and made a part hereof; together with all buildings, fixtures and improvements thereon and all rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto now or hereafter used or enjoyed with said property, or any part thereof.

2. All water and water rights (including, without limitation, all adjudicated or decreed claims and rights; certificates of appropriation; applications to appropriate; water users' claims; diligence claims; change applications; exchange applications; easements for development, storage, use or conveyance of water or for access to water; ditches and ditch rights; reservoirs and reservoir rights; and all water stock and other interests in water, irrigation or ditch companies or other associations) appurtenant to or acquired or used in connection with the foregoing real property, including, without limitation, the water rights described in Exhibit B, attached hereto and made a part hereof.

3. The United States Forest Service and Bureau of Land Management grazing allotments described in Exhibit C, attached hereto and made a part hereof.

4. The United States Department of Agriculture grain bases described in Exhibit D, attached hereto and made a part hereof.

SUBJECT TO 1994 taxes and exceptions, reservations, easements and encumbrances of record.

TO HAVE AND TO HOLD to Grantees and to Grantees' heirs, successors and assigns forever.

Dated this 24th day of March, 1994.

Howard H. Leach, Trustee of the Howard H. Leach Revocable Trust

STATE OF CALIFORNIA)
: ss.
COUNTY OF SAN FRANCISCO)

On this 14th day of March, 1994, before me Katherine C. Lord, a notary public, personally appeared Howard H. Leach, Trustee of the Howard H. Leach Revocable Trust, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

My commission expires:
Sept. 3, 1994

Notary Public
Residing at: Richmond, CA

OFFICIAL SEAL
KATHERINE C. LORD
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Comm. Expires Sept. 3, 1994

67798

EXHIBIT "A"

UTAH - BOX ELDER COUNTY

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West Half of Southwest Quarter, Southwest Quarter of Southeast Quarter, Southeast Quarter of Southwest Quarter of Section 9, Township 14 North, Range 8 West, SLM.

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That part lying East of Deep Creek (assuming Deep Creek is the same as Curlew Creek) and West of Locomotive Road (being same as County Road) and South of Interstate 15 Frontage Road of Section 11, Township 14 North, Range 8 West, SLM.

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West Half of Northwest Quarter, Northeast Quarter of Northwest Quarter and Northwest Quarter of Northeast Quarter of Section 15, Township 14 North, Range 8 West, SLM.

Parcel 6: (08-008-0013)
That portion of Southwest Quarter lying South of State Highway in Section 1, Township 14 North, Range 9 West, SLM.

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All of Section 2, Township 14 North, Range 9 West, SLM.

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EXHIBIT"A" (Continued)

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All of Section 36, Township 14 North, Range 9 West, SLM.

Parcel 21: (08-105-0005)
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Parcel 22: (08-009-0006)
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EXHIBIT "A" (Continued)

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All of Section 36, Township 15 North, Range 9 West, SLM. Less, I-80N/-84 right of way.

Parcel 37: (08-026-0021)
That part of Section 25, Township 15 North, Range 9 West, SLM, lying South of the Utah-Idaho State Line.

Parcel 38: (08-007-0001)
That part of Section 6, Township 14 North, Range 8 West, SLM, lying North of the U. S. Highway 30. LESS: I-84/I-80N, right of way.

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Parcel 47: (08-007-0050 and 08-007-0051)
All of Section 19, and the Northwest Quarter of Section 20, Township 14 North, Range 8 West, SLM.

Parcel 48: (08-007-0033)
Easement for ingress and egress over the following described tract of land: 30 foot Easement beginning at the Southeast Corner of Section 17, Township 14 North, Range 8 West, SLM, running thence West 200 feet, more or less, thence Northwesterly 1300 feet, more or less, thence West 1200 feet; thence Southwesterly 800 feet, more or less to North line of Section 20, Township 14 North, Range 8 West, SLM, over a now existing gravel road.

Parcel 49: (07-008-0003)
South Half of North Half and South Half of Section 3, Township 13 North, Range 9 West, SLM.

Parcel 50: (07-008-0004 and 07-008-0005)
All of Section 4, Township 13 North, Range 9 West, SLM.

Parcel 51: (07-008-0006)
All of Section 5, Township 13 North, Range 9 West, SLM.

Parcel 52: (08-008-0052)
West Half of East Half and West Half of Section 32, Township 14 North, Range 9 West, SLM.

EXHIBIT "A" (Continued)

LEGAL DESCRIPTION
IDAHO

That certain real property located in Cassia County, Idaho and more particularly described as follows:

Township 16 S., Range 29 E. Boise Meridian

Section 14: All.

EXHIBIT "A" (Continued)

LEGAL DESCRIPTION

IDAHO

That certain real property located in Oneida County, Idaho, and particularly described as follows:

Township 16 S., Range 31 E. Boise Meridian

Section 28: Lots 2, 3, 4, 7, 8, 11,
NW¼ NW¼,
S½ NW¼, **EXCEPT: BEGINNING** at the NW Corner of Section 28, thence East 465 feet, thence South 3,507.6 feet, thence West 465 feet, thence North 3507.6 feet to the point of **BEGINNING.**

EXHIBIT B

Water Rights

Utah Water Rights by Water Right Number

13-114	13-1988	13-2858
13-142	13-1991	13-2870
13-146	13-1994	13-2894
13-155	13-1996	13-2985
13-161	13-1998	13-2903
13-174	13-1999	13-3026
13-198	13-2000	13-3132
13-1103	13-2001	13-3162
13-1138	13-2151	13-3250
13-1139	13-2639	13-3251
13-1142	13-2769	13-3365
13-1143	13-2770	13-3486
13-1144	13-2851	13-3563
13-1145	13-2856	13-3564

Utah Water Rights by Category

Certificated Water Rights

Certificate Number	Water Right Number	Application/Change Number
5588	13-114	A24403
a1786	13-142	A26513/a10837
12988	13-1138	A37578/a10573
12990	13-1139	A37579/a6134
a1785	13-2985	D3202/a10836
12989	13-3251	A52870/a13420

Diligence Claims

13-1988	13-1996	13-2000
13-1991	13-1998	13-2001
13-1994	13-1999	13-2985

Water User Claims

Claim Number	Water Right Number
A26572	13-146
A26581	13-155
A26923	13-161
A27606	13-174
A29854	13-198
A36984	13-1103
A37491a	13-2151
A39187	13-2639
A41006	13-2769
A41007	13-2770
A42066	13-2851
A42211	13-2856
A42338	13-2858
A42859	13-2870
A43609	13-2894
A44140	13-2903
A46913	13-3026
A48932	13-3132
A50150	13-3162
A56763	13-3365

Approved Applications to Appropriate

Application Number	Water Right Number
A26954a	13-3250
A60643	13-3486
A64925	13-3563
A64926	13-3564

Approved Change Applications

Change Number	Water Right Number	Application Number
a15779	13-3250	A26954a
a15239	13-3365	A56763

Unapproved Applications to Appropriate

Application Number	Water Right Number
A37608	13-1142
A37609	13-1143
A37610	13-1144
A37611	13-1145

Idaho Water Rights

17-07029

68306

EXHIBIT "C"

GRAZING ALLOTMENTS

BUREAU OF LAND MANAGEMENT

Snowville Allotment	#15088	657± AUM's
Curlew Allotment	#16001	5,092± AUM's

UNITED STATES FOREST SERVICE

Sublett Troughs Allotment	#10049	280± AUM's
Mineral Gulch Allotment	#10038	613± AUM's

EXHIBIT "D"

USDA - ASCS GRAIN BASE ALLOTMENTS

Wheat Base -	2,372.2±	Acres
Barley Base -	1,082.3±	Acres
Corn Base -	139.2±	Acres
Oats Base -	10.5±	Acres

State of Idaho
Department of Water Resources

RECEIVED
OCT 04 1989
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 17-07029

Date of Priority: June 14, 1974

Maximum Diversion Rate: 2.79 CFS
Maximum Diversion Volume: 794.5 AF

Comes now CYPRESS FARMS INC.
SNOWVILLE, UT 00000 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 17-07029, and requests that the permit be changed as follows:

Source: GROUNDWATER

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/01 to 11/01	2.79 CFS	794.5 AF

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 28, Township 16S, Range 31E ONEIDA County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
16S	31E	28		SWNE 9		NENW 14		NWNW 5	
				(SWNW) 24		SENW 40	LOT 3	(NESW) 26	
			LOT 4	(NWSW) 14	LOT 1	(NESE) 2	LOT 2	(NWSE) 19	153
						~~Total number of acres irrigated:~~			~~153~~

Lands irrigated within state of Utah:

TWN	RGE	SEC							
15N	09W	26	Lot 3 (NESW)	10	Lot 4 (NWSW)	7	SWSW	23	
			SESW	34					74
					Total number of acres irrigated:				227

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

Signed at Cypress Farms, Inc., this 2 day of October, 1989.

Jesse E. Kennedy Manager
(Signature)

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 17-07029

****

FOR DEPARTMENT USE ONLY

Preliminary check by KW Fee = 200 Receipted by ___ #C012003 Date 10-5-95

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, R. Keith Higginson, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 17-07029 with the following;

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
6. A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.
7. There are 74 acres irrigated in the State of Utah located within the SW1/4 of S26, T05N, R09W.

Witness my hand this 10TH day of MAY, 1995.

Acting for R. Keith Higginson, Director

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 17-07029

Priority: June 14, 1974

Maximum Diversion Rate: 2.79 CFS
Maximum Diversion Volume: 794.5 AF

This is to certify, that RUSSELL J JACKSON
A MARIE JACKSON

6435 N VASCO RD
LIVERMORE CA 94550 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 2, 1974; and has submitted Proof of Beneficial Use on October 13, 1981. An examination indicates that the works have a diversion capacity of 2.790 cfs of water from a **GROUNDWATER source, and a water right has been established as follows:**

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/15 to 10/15	2.79 CFS	794.5 AF

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 28, Township 16S, Range 31E
ONEIDA County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
16S	31E	28	SWNE	9	NENW	14	NWNW	5	
			SWNW	24	SENW	40	Lot 3(NESW)	26	
			Lot 4(NWSW)	14	Lot 1(NESE)	2	Lot 2(NWSE)	19	153

Lands irrigated within the State of Utah:

15N	09W	26	Lot 3(NESW)	10	Lot 4(NWSW)	7	SWSW	23	
			SESW	34					74

Total number of acres irrigated: 227

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 17-07029

CONDITIONS/REMARKS:

5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
6. A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.
7. There are 74 acres irrigated in the State of Utah located within the SW1/4 of S26, T05N, R09W.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 10TH day of MAY, 1995.

Acting for R. Keith Higginson, Director

WATER RIGHT SUMMARY

ACTION	RIGHT NO.	NAME	AMOUNT CFS
Original Application	17-07029	Sinks Land & Livestock	4.93
Full Assignment	17-07029	Dredge, Calvin C Dredge, Alicia A	4.93
Full Assignment	17-07029	Curlew Valley Associates	4.93
Full Assignment	17-07029	Cypress Farms, Inc	4.93
Full Assignment	17-07029	Jackson, Russell J Jackson, A. Marie	4.93

PERMIT NO. 17-7029 (Name)

Accompanied by: Mr Hunt

EXAMINATION: DATE: 8-24-82

Motor Make	HP	Motor Serial No.	Pump Make	Pump Serial No.
GE	250	4RJW11DX	Aurora	NA

Measuring Device Type: McCrometer

Meter # 81-10-5082 Annubar# Size #

Remarks: 2 pivots 85 & 125 acres ?

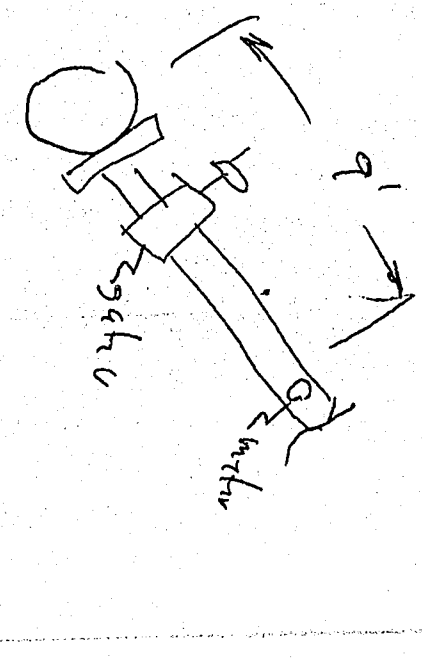
will be assigned to Comm. Gen. Life Insurance

1250
~~1300~~ spm

1000 gallon/48secs

land is SW of Freeway

PERMANENT PLAN OF SYSTEM



Check if permit 17-7044 approved & call Mr Hunt

Form 219
12/79

State of Idaho
DEPARTMENT OF WATER RESOURCES
FIELD REPORT

17-7029
Permit No.

CONTACT WITH PERMIT HOLDER

	DATE	INITIALS	REMARKS
☐ Appointment letter mailed:			
☐ Telephone call made: (List Telephone No. used)			
☐ Appointment scheduled for: (Date, time, location)			

EXAMINATION

Santa Rosa Ranch
801-872-8259

Date 8-24-82 Accompanied by Mr. Hunt Total Q measured 2.79 cfs

If source is surface water, estimate total flow of source _____

Methods of measurement McCrometer Meter #81-10-5088 Meets Permit requirements? _____

Measurement calculations: 1000 gallons / 485 secs. or 2.79 cfs

WELL/DIVERSION* NO.	HP	MOTOR MAKE	MOTOR SERIAL NO.	PUMP MAKE	PUMP SERIAL NO.	MEASURING DEVICE TYPE	CONDITION OF MEAS. DEV.	REMARKS
	250	G.E.	ART13113X	Aurora	NA	McCrometer Meter	—	

System Description Well/pump with mainline to two pivots

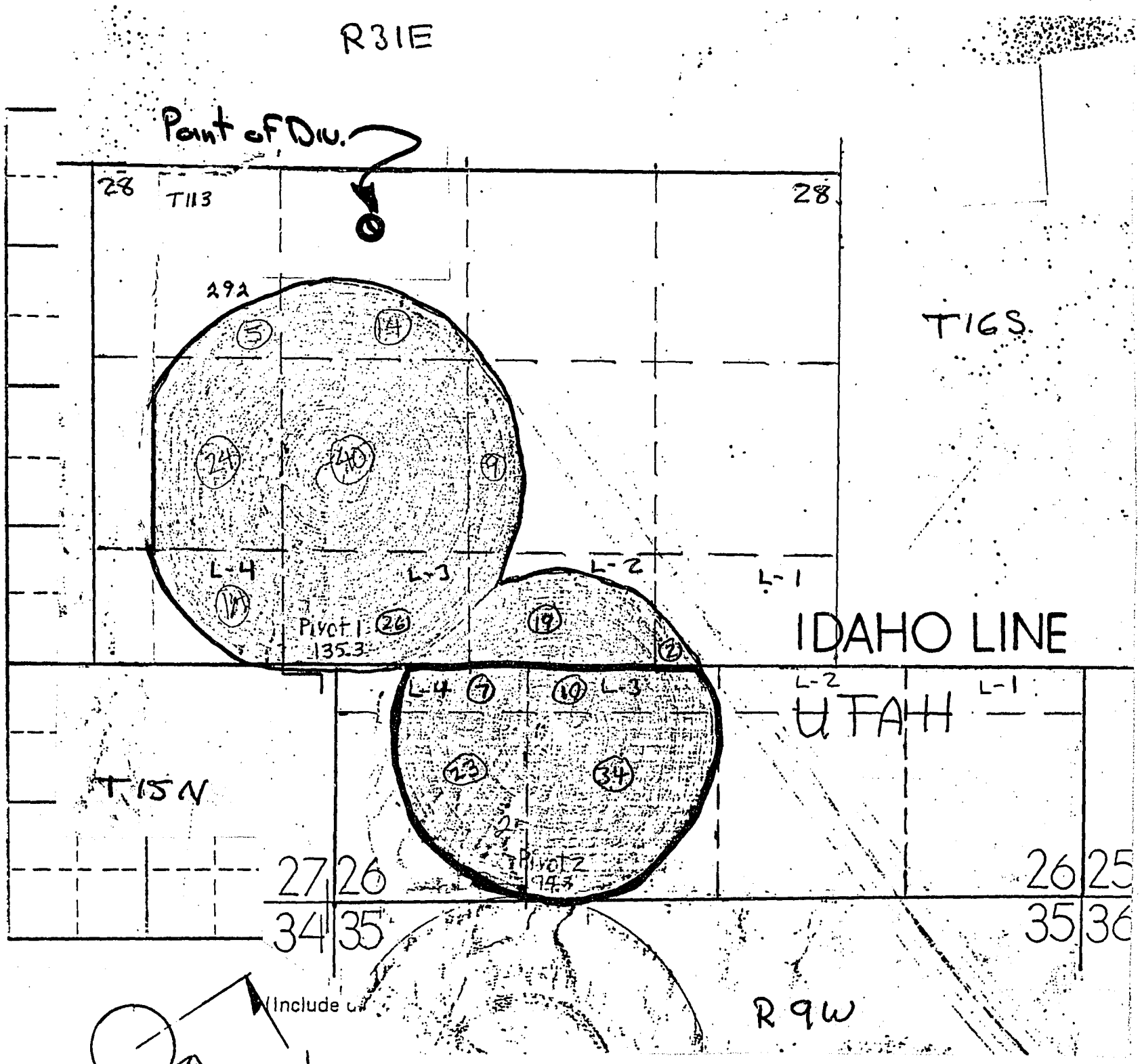
*Code with map on reverse side. Disregard code if only one.

RECOMMENDED AMOUNTS

Irrigation requirement = 3.5 AFA/Acre

USE	Q (cfs)	V (afa)	FROM	TO
Irrigation	2.79 cfs	794.5	4-1	11-1
Total				

Remarks Needs to be assigned to Connecticut General Life Insurance
Part of smaller pivot goes in Utah & this land will be licensed also.



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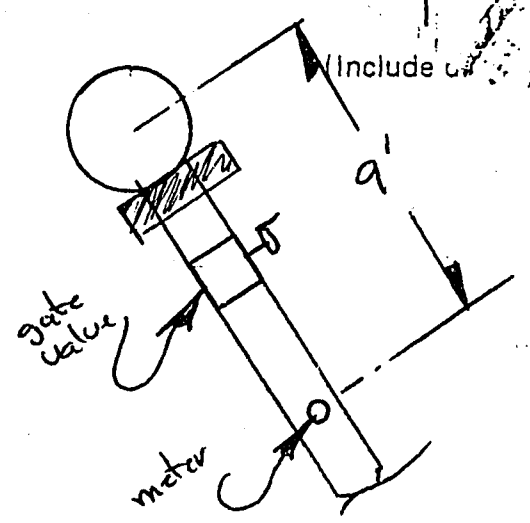


Point(s) of diversion: NE¼NW¼ Sect. 28 T16S R31E

Place(s) of Use

	TWP.	RGE.	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
				NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
ID	16S	31E	28			9		14	5	24	40	26	14			2	19			153
												L-3	L-4			L-1	L-2			
UTAH	15N	9W	26									10	7	23	34					74
												L-3	L-4							

Recommended Amendments:

- ☑ Change P.D. as reflected above
- ☐ Add P.D. as reflected above
- ☐ None
- ☑ Change P.U. as reflected above
- ☐ Add P.U. as reflected above
- ☐ Other

Examiner's Signature H.W. Jones Date 7-15-87

Checked by E.S. Verner Date 12-7-87

Approved by BM Date 12-8-87

RECOMMENDED AMOUNTS

3.

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

4. Permit Holder: _____

   Address: _____

5. Source: _____ tributary to _____

6. Beneficial Use

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
Irrigation	4-1	11-1	2.79	794.5
Allowable Maximums:			2.79 cfs	794.5afa

7. Point(s) of Diversion:

No.	Govt. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County

8. Place(s) of Use

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
Total Acres _____																			

9. Recommended Conditions/Remarks: _____

10. Recommended Amendments

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

☑ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other _____

11. Examiner's Signature H.W. Jones Date 12-7-87

Checked in Regional Office by Steve McCord Date 12-8-87

Approved in State Office by _____ Date _____

Form 219B
5/84

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

LICENSING REPORT

17-7029
Permit No.

1. **Measurement Calculations**
   a) Field Measurement Calculations (Include theoretical capacities and system capacity)

By Mercometer meter 1000 gallons/48 secs or 2.79 cfs

b) Volume Calculations for Irrigation:

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = 227 acres x ~~2.17~~ 3.5 af/a = 794.5
$V_{D.R.}$ = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = 2.79 cfs x 214 days x 1.9835 = 1184
V = Smaller of $V_{I.R.}$ and $V_{D.R.}$ = 794.5 afs

c) Volume Calculations for Other Uses:

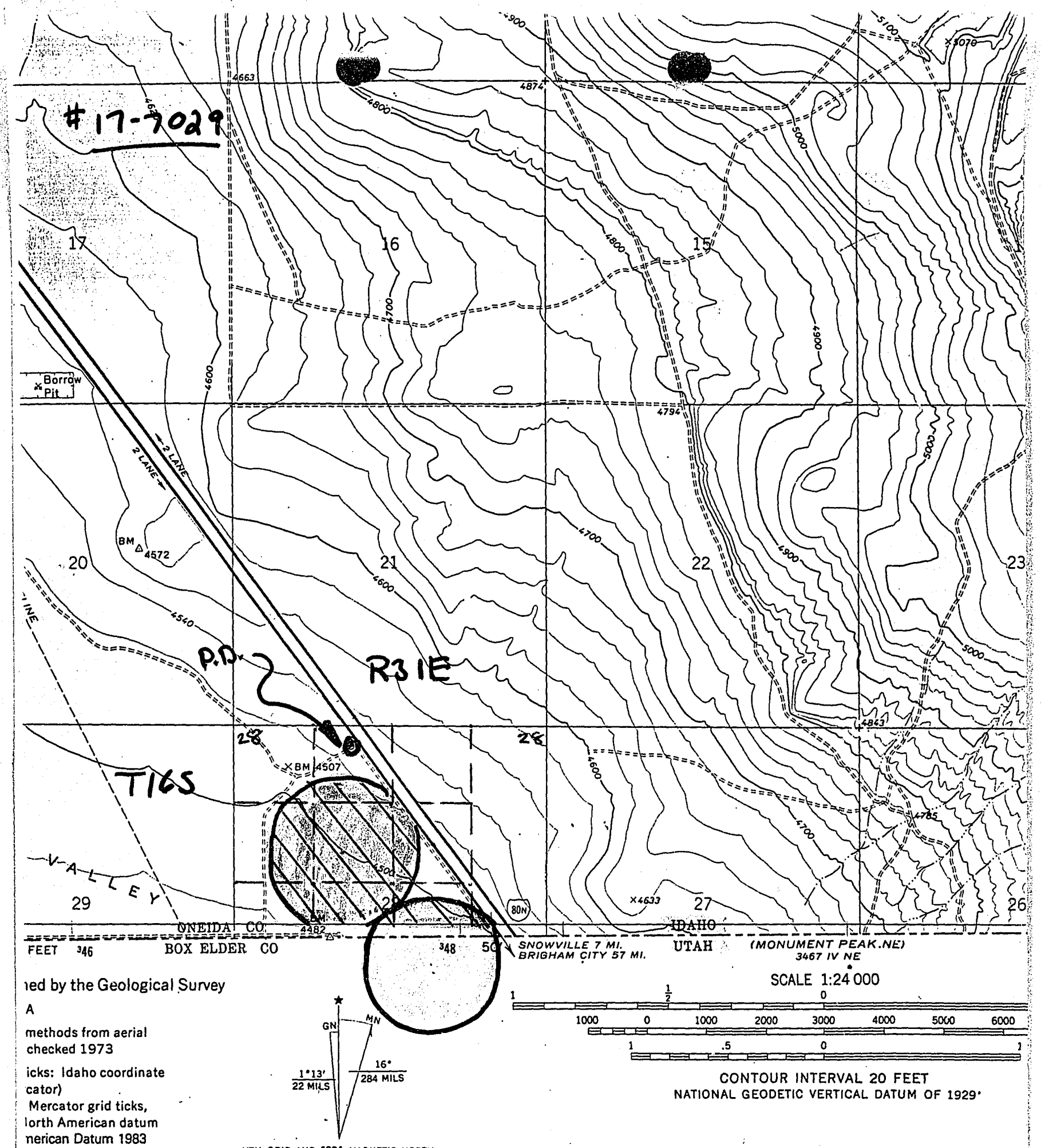
2. **Overlap Review**

a) Other water rights with same place of use: None

b) Other water rights with same point of diversion: None

c) Analysis:

#17-7029



ıed by the Geological Survey

A

methods from aerial
checked 1973

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Mercator grid ticks,
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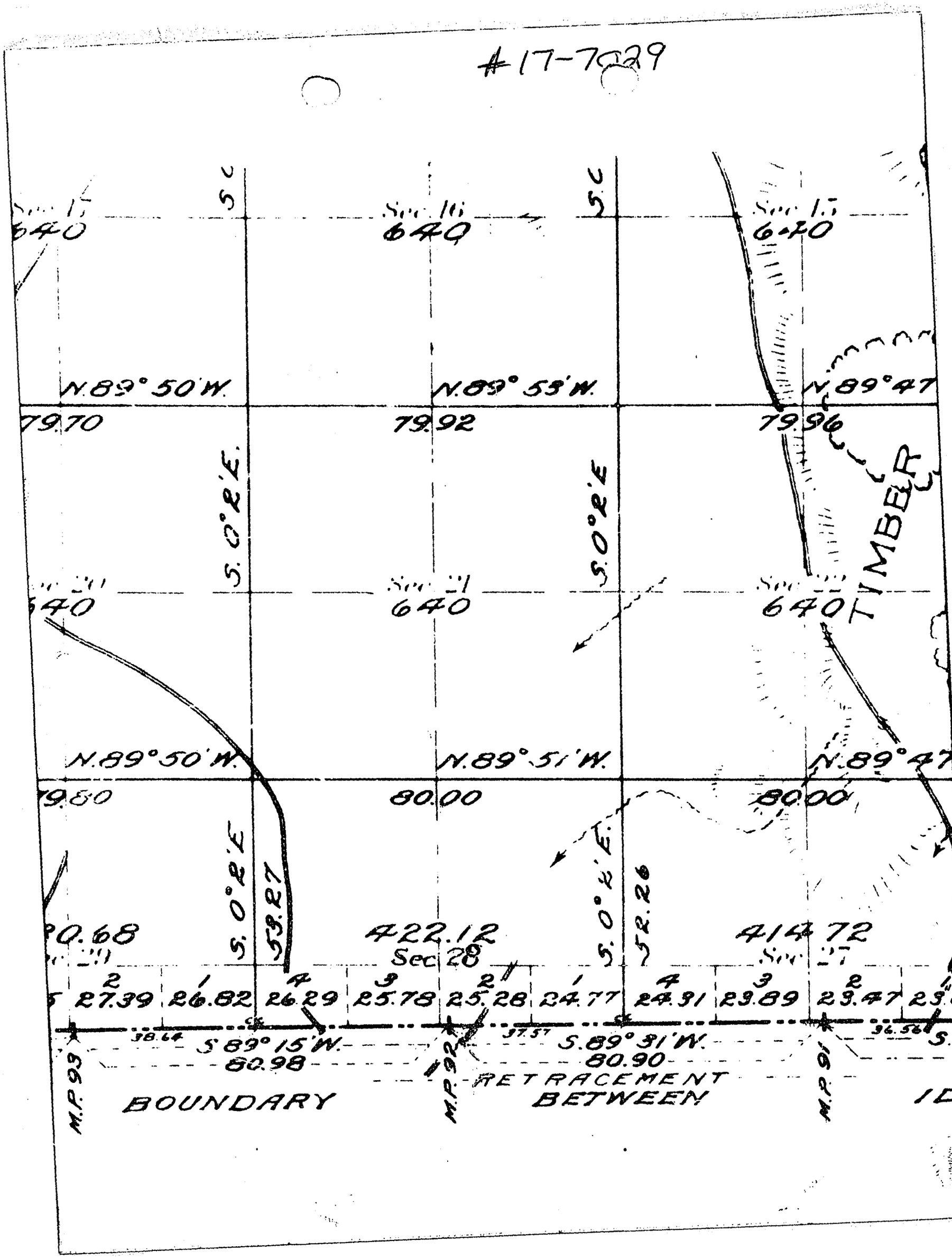
shown on this map.

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARD
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTO
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON

#17-7029


Sec 15
640
S.C
Sec 14
640
S.C
Sec 13
640
N.89° 50'W.
79.70
N.89° 53'W.
79.92
N.89° 47
79.96
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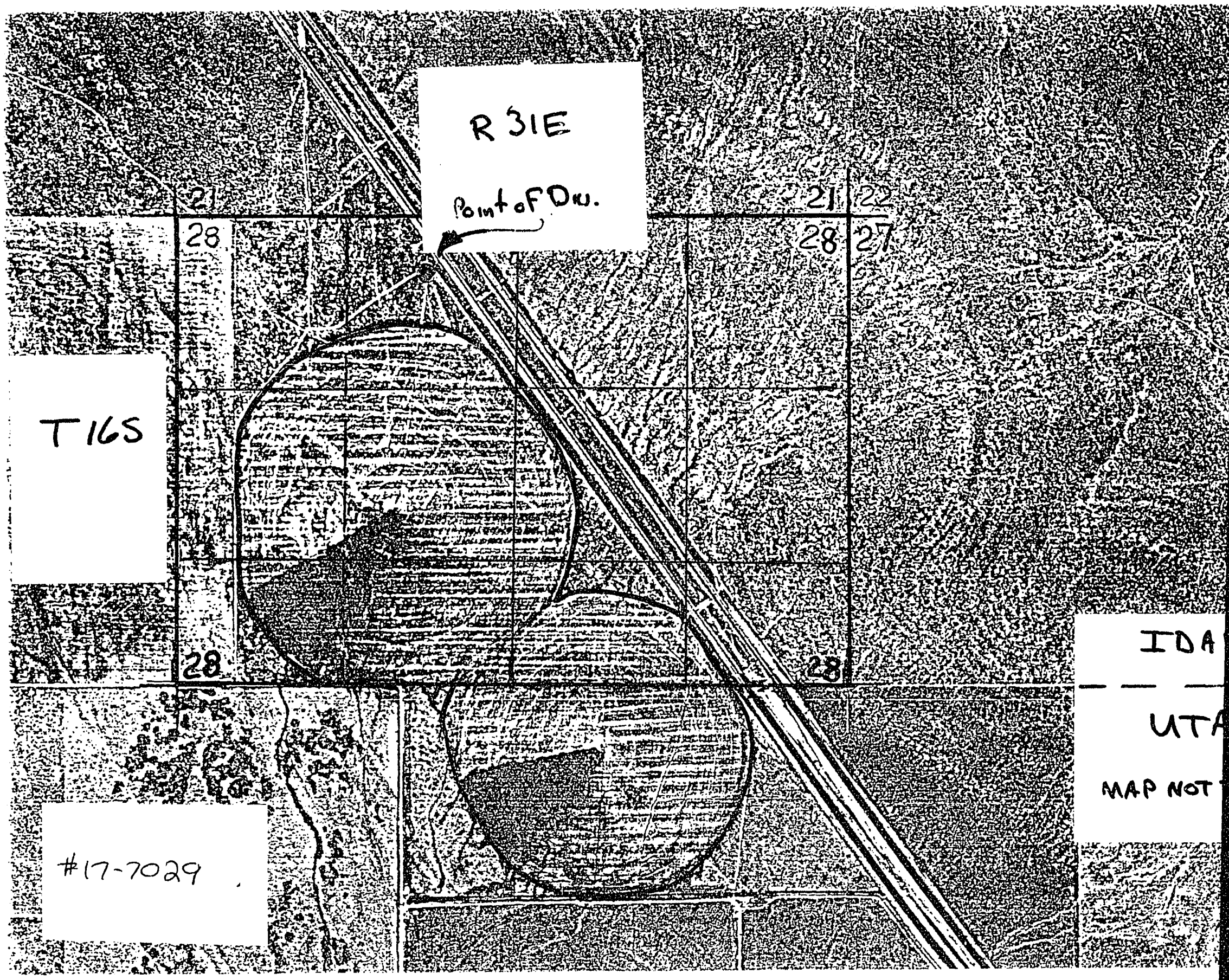
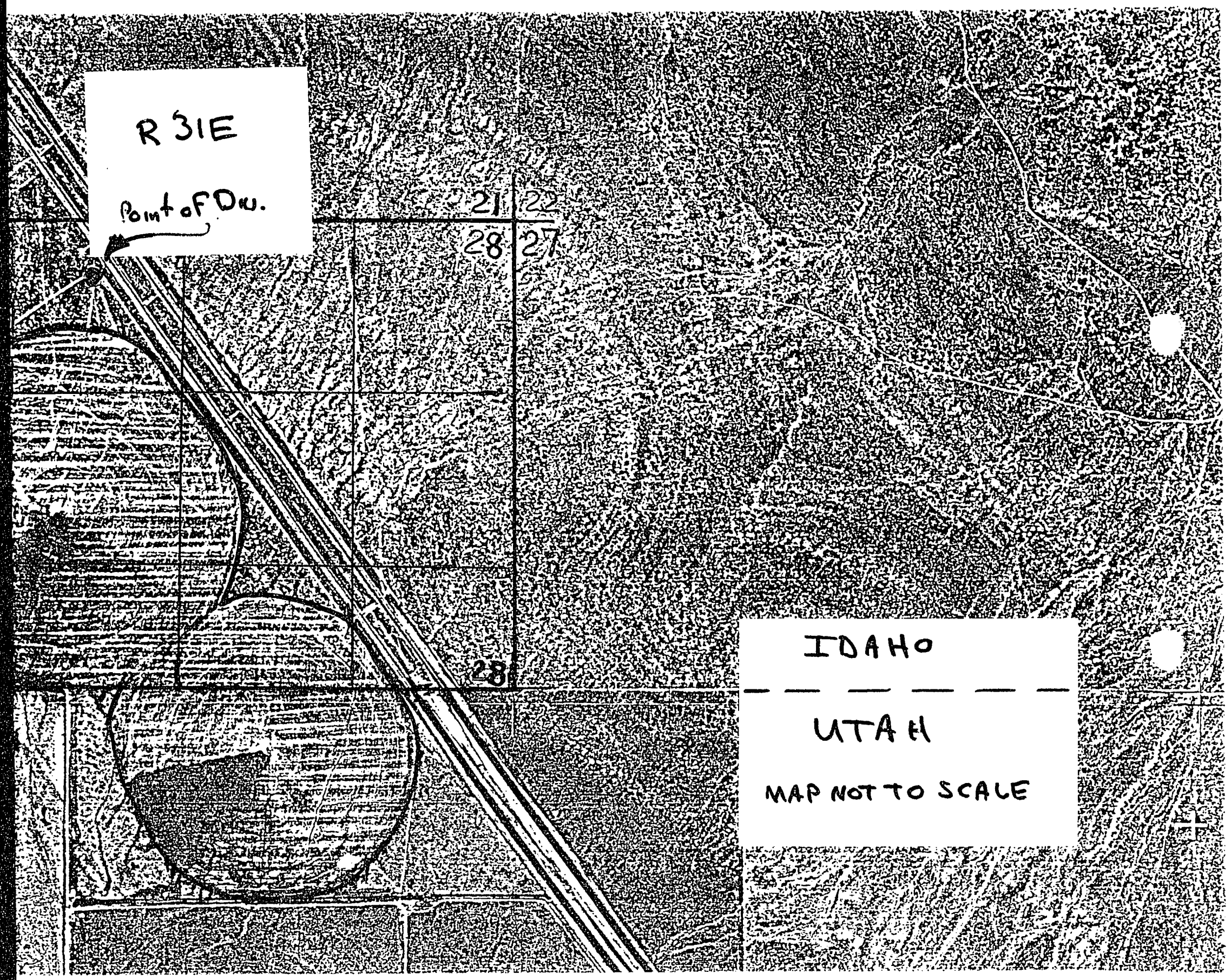
TIMBER
Sec 21
640
Sec 22
640
N.89° 50'W.
79.80
N.89° 51'W.
80.00
N.89° 47
80.00
S.0°2'E.
53.27
S.0°2'E.
52.26
20.68
Sec 21
422.12
Sec 28
414.72
Sec 27
27.39
26.82
26.29
25.78
25.28
24.77
24.31
23.89
23.47
38.64
37.57
36.56
S.89° 15'W.
80.98
S.89° 31'W.
80.90
M.P.
RETRACEMENT
BETWEEN
BOUNDARY
ID



#17-7029


R 31E
Point of Dw.
21
22
28
27
28
IDAHO
UTAH
MAP NOT TO SCALE

July 10, 1989

CURLEW VALLEY ASSOCIATES
C/O LYNN H. DAVIS, TRUSTEE
7530 N. HIGHWAY 91
SMITHFIELD, UT 84335

RE: PERMIT NO. 17-07029

Dear Permit Holder(s):

The above referenced water right is in the process of being licensed. However, before a license can be issued, your permit must be amended to correspond with the findings of the Department's field examiner.

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

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

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

September 27, 1989

CYPRESS FARMS INC.
SNOWVILLE, UT 00000

RE: PERMIT NO. 17-07029

Dear Permit Holder(s):

The above referenced water right is in the process of being licensed. However, before a license can be issued, your permit must be amended to correspond with the findings of the Department's field examiner.

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

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

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

ROSE RANCH
P.O. Box 730
(801) 872-8227
Snowville, UT 84336

maybe another address for our use
KW

SALT LAKE CITY UT 841
PM
2 OCT
1989

Begin an Adver
Giant Proporti
Collect Stamps

STATE OF IDAHO DEPARTMENT OF WATER RESOURSES

1301 N. ORCHARD

BOISE, IDAHO. 83706

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

Receipt No: C012003

Date: 10/05/89
Time: 10:01:57

Received From: ROSE RANCH-CYPRESS FARMS

Type of Payment	Program Acct Class	Amount
AMENDMENT-17 07029	0610199 1238 6390	$20.00

Total $20.00

CHECK 182

Idaho Department of Water Resources

Region: STATE

Signature: D. Keathley

MEMORANDUM

TO: TIM

FROM: JIM JOHNSON

RE: PERMIT NO. 17-7029

DATE: April 27, 1990

==========

Your statutory review was interesting and it appears that before we take further action on licensing this permit we should pursue determining if Utah and Idaho have a reciprocal agreement.

Please contact the State of Utah Water Resources Department and inform them of the situation before us and solicit their comments.

5-2-90

Jim;

I contacted the Utah Water Resources Department and was referred to a deputy Attorney General at Utah Attorney Generals office. I contacted the deputy A.G.'s office but he has not returned my calls. In the meantime, I researched the Utah CODE and found applicable CODE to your question above. From what I found, I don't believe it will be necessary to call Utah AG's office at this time. I added A paragraph to previous memo on this subject.

MEMORANDUM

TO: JIM JOHNSON

FROM: TIM LUKE

DATE: May 2, 1990

RE: PERMIT NO. 17-7029

==========

I have researched the question about appropriation of water in Idaho for use in Utah.

Chapter four of the Idaho Code addresses appropriation of water for use outside of the state. There are four individual sections under this chapter which discuss appropriation of water in Idaho for use in four neighboring states, including Oregon, Wyoming, Nevada and Washington. The four sections, 42-401, 42-409, 42-410 and 42-411 were added to the code respectively in 1915, 1919, 1949 and 1970. These four sections allow appropriation of water in Idaho for use in those states. The chapter does not include any section which specifically discusses appropriation for use in Utah. The chapter in general appears to deal with appropriation of surface water rather than groundwater.

Section 42-405, Idaho Code appears to prohibit the appropriation of water in Idaho for use outside of the state, unless otherwise allowed under the four sections above. Section 42-408 also prohibits the appropriation of water from Idaho for use in a bordering state unless that bordering state has some reciprocal legislation which allows water to be diverted from that state for use in Idaho. Sections 42-405 and 42-408 were both added to the code in 1915.

The state of Utah does have reciprocal legislation which allows water to be diverted within Utah for use in other states. A copy of the applicable Utah statute, Section 73-2-8, is attached. The Utah law requires that the state engineer evaluate the benefits of the proposed exportation prior to issuing any certificates of water appropriation. Because of this reciprocal legislation, it appears that the state of Idaho can consider approving permits and licenses for diversion of water to Utah. The irrigation of land located in both Idaho and Utah from a groundwater source in Idaho, as proposed for licensing under permit 17-7029, is not necessarily illegal or contrary to Idaho statutes. Furthermore, the groundwater basin in this area of Idaho, the Curlew Valley, is tributary to Great Salt Lake in Utah.

Sections 42-405 and 42-408 of the Idaho Code are potentially unconstitutional in light of the 1982 U.S. Supreme Court decision, Sporhase v. Nebraska (458 U.S. 941). In that case,

Nebraska attempted to prohibit appropriation of groundwater from Nebraska for irrigation of a tract of land in Colorado (there was also a tract of land in Nebraska under the same appropriation). Nebraska had a statute which allowed transfer of groundwater out of state if the use was not unreasonable or contrary to the conservation of the groundwater resource, but prohibited the transfer of groundwater out of state if the outside state did not have reciprocal legislation allowing transfer of groundwater to Nebraska. The Supreme Court held that this reciprocity requirement of the Nebraska code violated the Commerce Clause. In its opinion the Court indicated that the unreasonable use clause of the Nebraska code did not necessarily violate the Commerce Clause. Nebraska however failed to demonstrate that the use was unreasonable or contrary to the local public interest.

73-2-6. Office at capitol — Place of hearings.

The state engineer shall keep his office at the state capitol, but all proceedings and hearings requiring the attendance of water users and witnesses shall be held within the county where the land is located.

History: L. 1919, ch. 67, § 60; R.S. 1933 & C. 1943, 100-2-6.

73-2-7. Aid to federal court.

The state engineer, when requested by the district court of the United States for the district of Utah, may assist said court in any matter relating to the distribution and use of any of the waters of the state, and may when so requested co-operate with any water commissioner appointed by said court in any such matter.

History: L. 1919, ch. 67, § 66; R.S. 1933 & C. 1943, 100-2-7.

73-2-8. Power to appropriate water from any source in Utah for beneficial purposes in other states — Co-operation with other states.

The state engineer is hereby authorized and empowered to receive and grant applications to appropriate water from any source in Utah, where such water is to be conveyed and used for beneficial purposes within any state, and to issue certificates of appropriation for this water only after the state engineer shall evaluate and make public the advantages to the state of Utah and its citizens of exporting water. The state engineer shall co-operate with the state engineer or other proper officer of any state in the determination, supervision, regulation and control of all water and water rights and to that end the state engineer, by and with the consent of the governor, may enter into agreements with the proper officer of any state to carry out the purposes of this section.

History: L. 1921, ch. 70, § 1; R.S. 1933, 100-2-8; L. 1941, ch. 96, § 1; C. 1943, 100-2-8; L. 1953, ch. 133, § 5; 1979, ch. 246, § 1.

Cross-References. — Representative to be appointed by the Board of Water Resources to represent the state in interstate conferences and compacts, § 73-10-3.

COLLATERAL REFERENCES

Journal of Energy Law and Policy. — A Primer of Utah Water Law: Part II, 6 J. Energy L. & Pol'y 1 (1985).

Legal Impediments to Interstate Water Marketing: Application to Utah, 9 J. Energy L. & Pol'y 237 (1989).

MEMORANDUM

TO: GARY

FROM: JIM JOHNSON

RE: IDAHO WATER USED IN UTAH

DATE: May 22, 1990

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You had inquired about this right after conversing with Norm.

Tim has now completed his review and concluded that issuing the license would not violate any statutes. I believe the next step, assuming that issuing the license is acceptable, is to send a letter to the State of Utah informing them of the proposed license and allow them to respond.

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

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

December 17, 1990

State of Utah
Natural Resources
3 Triad Center, Suite 450
Salt Lake City, UT 84180-1204

Gentlemen:

We are preparing to issue a water right license to a permit holder who uses a well in Idaho to irrigate 153 acres in this state and 74 acres within the State of Utah. The groundwater basin in this area is tributary to Great Salt Lake. Because Utah has reciprocal legislation which allows water to be diverted for use in neigboring states such as Idaho, we are willing to include the acres irrigated within Utah under this license.

I am enclosing a copy of our proposed license along with a copy of the map showing the location of the acres irrigated. I ask that you review the proposal and submit any comments you may have within 15 days.

Thank you in advance for your assistance in this matter.

Sincerely,

Sharla Curtis

SHARLA CURTIS
Technical Records Specialist

Enclosures

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 7, 1994

State of Utah
Natural Resources
3 Triad Center, Suite 450
Salt Lake City, UT 84180-1204

Re: Licensing of State of Idaho Permit No. 17-07029

Gentlemen;

In December 1990 this Department corresponded with you concerning the above referenced permit. The subject of the correspondence was to inform you that the State of Idaho was preparing to issue a license for irrigation of lands located both in Idaho and in Utah. Attached is a copy of that correspondence and a copy of the proposed license. To provide additional information I have also included a copy of the field exam containing maps of area being licensed.

In the December 1990 letter we asked for your review and comments. Since we did not receive any comments I assumed you were comfortable with the proposed actions.

We are now ready to proceed with the license issuance and in consideration of the lapsed time I again ask for your review and comments, if any, before we issue a license.

If I do not hear from you within 20 days I will again assume you are comfortable with our proposed action. You can contact me by phone at 208-327-7947.

Sincerely,

Jim Johnson
Water Rights Supervisor

FIRST AMERICAN TITLE COMPANY

FIRSTAMERICAN

RECEIVED
APR 0 1 1994
Department of Water Resources

March 25, 1994

State of Idaho
Department of Water Resources
1301 North Orchard
Boise, Idaho 83720

Attn: Cindy Zimmerman

RE: Escrow No. 123741SW
LEACH / JACKSON
Cypress Farms - Rose Ranch
Oneida and Cassia Counties - Idaho

Dear Ms. Zimmerman:

In reference to our conversation this date, I am forwarding to you the Quitclaim Deed & Assignment of Water Rights, and Special Warranty Deed, with recording data attached, for the completion of the Water Rights transfer.

We were instructed to send these documents to your office, by Mr. Robert P. Hill an Attorney with the Firm of Ray, Quinney & Nebeker, in Salt Lake City, Utah.

If you have any questions regarding the transfer, please call Mr. Hill at 801/532-1500 or myself at 209/951-4030. Any additional papers needed should be directed to the Seller or Purchaser at the addresses appearing on the enclosed documents.

Yours truly

Sylvia Walling
Escrow Officer

encl:

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 5, 1994

RUSSELL J JACKSON
A MARIE JACKSON
6435 NORTH VASCO RD
LIVERMORE CA 94550

Re: Permit No. 17-07029

Dear Water Right Holders:

We acknowledge receipt of the correspondence assigning the ownership of the above referenced water right to you. We have modified our computer records to reflect this change in ownership.

If you have any questions regarding this matter, please feel free to contact us.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:dc

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 10, 1995

RUSSELL J JACKSON
A MARIE JACKSON
6435 N VASCO RD
LIVERMORE CA 94550

RE: WATER RIGHT NO. 17-07029

Dear Water Right Holder(s):

Enclosed is a copy of the Water Right License issued on the above referenced permit along with a copy of your approved Application for Amendment.

Should you have any questions regarding these documents, please contact me.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure