



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Mathew Weaver

November 29, 2023

RECEIVED

FEB 15 2024

IDWR / NORTH

JOHN HAWLEY
KAREN HAWLEY
RYAN HAWLEY
6259 CARR ST #3
ARVADA, CO 80004

RE: Evidence of priority date for CFPRBA Claim No. 97-9078, limited recommendation of CFPRBA Claim No. 97-7102

Dear Claimant(s),

The Department of Water Resources has received your Clark Fork-Pend Oreille River Basin Adjudication (CFPRBA) water right claims. We are unable to fully recommend your adjudication claims at this time for the following reason.

The Notice of Claim to a Water Right identified with number 97-7102 was submitted for the use of water from the from an unnamed stream for recreation storage, stockwater, wildlife from storage, fire protection from storage, and irrigation of one acre to irrigate. As this claim is based upon a previously issued license, the claimed uses must match that of the original water right, unless confirmed through an accomplished transfer. Water right no. 97-7102 does not include water for wildlife or fire protection from storage and thus those purposes of use cannot be included in our recommendation of the claim. If you have added additional water uses from the unnamed stream beyond what was previously licensed, then an Application for Permit (enclosed) should be submitted for those uses. Please keep in mind that a water right is not required to divert water for the purpose of suppressing an active fire, but if water is diverted into a hydrant system or applied to land for prevention of future fires, then a water right is required.

Additionally, water right no. 97-7102 was licensed with a maximum diversion rate of 0.04 CFS, but your claim included a maximum diversion rate of 0.02 CFS. If this underclaimed diversion rate was in error, that can be corrected with the submission of an Amended Notice of Claim to a Water Right form. If the capacity of the delivery system has been reduced and the claimed rate of 0.02 CFS is accurate, than no amendment is needed. For your convenience, I have enclosed a partially completed amended claim form for 97-7102, which includes all the elements of the original license along with the corrected maximum diversion rate. The amended sections have been highlighted, and if any additional changes are made to the claim form, please initial those changes before signing. There is no charge for amending the claim.

The other Notice of Claim to a Water Right we received from you, identified with number 97-9078, was submitted for the use of water from the from the same unnamed stream for domestic use in four cabins with a claimed priority date of June 16, 1965. Sufficient evidence of beneficial use

was not submitted with the claim to support this priority date and prove the extent of domestic use at that time. A field examination was performed onsite by IDWR staff for water right no. 97-7102 on September 14, 1981, and the uses you are claiming were not included in that report. When claiming domestic use in multiple homes, the priority date of that use will be the date the final home claimed was added to the system.

Your claim also includes a statement detailing your intention to claim water for future use. Water cannot be claimed in the adjudication for future uses, only existing water rights established lawfully in accordance with Idaho laws by either beneficial use or the permit system. The permit system for establishing a water right became mandatory for uses developed from surface water after May 20, 1971 (except for watering stock directly from streams).

We will move forward with the recommendation of water right claim no. 97-9078 once provided sufficient evidence to verify the extend of beneficial use of this water source for domestic purposes within the claimed place of use beginning on or before the priority date claimed. Additionally, I have enclosed a parcel map of the claimed property for you to mark the point of diversion and place of use locations for your current water uses (domestic, stockwater, and irrigation). **Please submit the required evidence and completed map within 30 days, referencing the corresponding claim number listed above with all documents submitted.**

PLEASE NOTE: If no further evidence is submitted, IDWR will recommend the Court decree claim no. 97-9078 for domestic use in one home and a shared point of diversion with water right 97-7102 at its last known location. It will be to your advantage to provide clear and convincing evidence to ensure the water rights are recorded accurately.

If you have any questions or concerns, do not hesitate to contact our office and we will be happy to help. I can be reached by phone during business hours at 208-762-2815 or by email at evan.roda@idwr.idaho.gov.

Best Regards,



Evan W. Roda
Senior Water Supervisor
Northern Region

Enclosures: Amended Notice of Claim to a Water Right No. 97-7102, Parcel Location Map, Application for Permit w/ Instructions

Attn: Evan Roda, Claim 97-7102 and 97-9078, Case 69576R for RP58N04W205401A

4 messages

John H <hawljo@gmail.com>
To: evan.roda@idwr.idaho.gov

Thu, Feb 8, 2024 at 5:35 PM

2-3-24

Idaho Department of Water Resources
Senior Water Supervisor,
Evan Roda,

Thank you for extending our reply time. Sorry we did not get this to you sooner. As Karen explained, we had some hardships that were unavoidable including a house fire and a car wreck with injuries. Unfortunately the fire destroyed some of our records, but we have been working diligently to gather the information that you requested, regarding adjudication of claims 1426 no. 07-7102 and 1443 no. 97-9087.

The purpose of this letter is to provide you with that information, and to seek guidance on how best to proceed.

Last we spoke 1/26/24, the plan was to amend 97-7102 to reflect the original elements of the license. That's done. The Amendment Notice of Claim to Water Right Acquired Under State Law is signed and attached below. License 97-7102 is in Dan Zebell's name. We own the property now and acquired his water rights with it. Do we need to submit a change of ownership form 42-1409-6 or is our notice of claim to adjudicate 97-7102 sufficient to update ownership?

We are proceeding with our notice of claim 1443, 97-9078, Beneficial Use Water Rights in 4 cabins. However, your letter states that before you will recommend this water right claim, "sufficient evidence to verify the extent of beneficial use of this water source for domestic purposes within the claimed place of use, beginning on or before the priority date claimed " will be required. We have some questions about that.

I don't recall if we submitted form 42-1409-1, Notice of Claim to a "Water Right Acquired Under State Law," or 42-1409-2, "Notice of Claim to a Water Right Acquired Under State Law for Small Domestic and/or Stockwater purposes where daily use is less than 13,000 GPD." I am presuming that we submitted form 42-1409-1 or that the online application did for us, because IDWR is requesting additional evidence of the priority date, among other things?

IDWR publication "Evidence of Priority" states that "some claimits in the Adjudication will be required to submit additional evidence of the priority date of the water right if: 1) The claim is based on beneficial use AND 2) The claim is NOT a Small Domestic and Stockwater claim." In other words, the claim itself, being an affidavit is sufficient evidence, if it is a Beneficial Use Water Right claim, and it is a Small Domestic Stockwater claim and it is for Domestic Use, and

it is less than 13,000 GPD. We have 4 such claims in 1443 97-9078 that are not based on license, decree or permit. We are curious why additional evidence is required? This seems to contradict IDWR policy.

Under the provisions of Section 42-243, Idaho Code, any person using or claiming water rights, established by diversion and application of water to a beneficial use must file a claim with the IDWR. However, it is my understanding that the use of water for Domestic purposes, as defined in 42-111, Idaho Code, is expressly exempted from this requirement. Please clarify.

Currently, it appears that IDWR is prepared to recommend that the court decree claim 97-7102 with all the elements of the approved license. Thank you. In addition, your letter states, if no other evidence is submitted, IDWR will recommend the court decree claim 97-9078 for one domestic use. Thank you again. Curious though, if there is sufficient evidence in our Notice of Claim to recommend one Domestic Use Water Right, why is there insufficient evidence to recommend four? Is this due to a limitation on the extent of that Domestic Use per 42-111 or perhaps a limitation of one water right decree per claim form, when filing a Beneficial Use Water Right claim of Domestic use? If this is the case, shouldn't we submit 4 beneficial use water right claims, on four separate claim forms, rather than spending hundreds of hours of histological research to "prove" Use dates, Priority dates, water quantity amounts, and locations of Use, on 4 houses that already have lawfully established "Constitutional Water Rights?" Perhaps, it would be more proper, prudent and efficient, if we just submit 4 claim forms, one for each domestic use? In this way our water rights wouldn't be withheld or diminished, but apparently the burden of proof on the filing requirements would. Please clarify.

Per our last conversation, we have attached the Bonner County Assessor inventory of improvements for our property. This provides evidence of construction dates and thus the inferred Beneficial Use and Priority dates.

The Assessor currently lists 4 improvements on our 65 acres, known as 449 Cat Road in Priest River ID T58-R4W-S20. The assessment also describes plumbing (kitchen sink, bathroom, hot water heat etc). According to Bonner County, these 4 improvements were constructed in 1965, 1970, 1975, and 1985. Three of these improvements (D, 01, 02) are dwellings, the fourth (03) is a barn. There are other buildings that are not listed. One of those is a dwelling that was damaged by a heavy snow load and was subsequently removed from this list.

The current Bonner County assessor's list of improvements are:

- 1) D- Dwelling built in 1965, (Log cabin pictured in the assessment on W2E2SWSW)
- 2) 01- Pole Building built in 1970, (A dwelling adjacent to D-Dwelling on W2E2SWSW)
- 3) 02- Cabin built in 1975, (Guest house on NWSWSW)
- 4) 03- Pole building built in 1985. (This is a garage / pole barn on N2SWSWSW)

Based on IDWR codes, the Bonner County assessor's information and our first and second hand knowledge, it appears that we have four dwellings with Beneficial Use Water Rights that should be decreed in adjudication.

These are:

- 1) Improvement D- Dwelling 1965 on W2E2SWSW.

- 2) Improvement 01- Pole building built in 1970. A pole- log cabin/dwelling on W2E2SWSW.
- 3) Improvement 02- Cabin built in 1975, with water appropriation of 10/1/1970 on NWSWSW.
- 4) A dwelling that was removed from the improvement list in 1995 that was likely built in the late 1960's. This was Dan Zebells' primary dwelling located on NWSWSW.

Based on the Assessors' records, two of these dwellings were built before May 20, 1971. Adjudication Memo 23 states that: "The priority date of a water right established by diversion and application to beneficial use is the date water is put to beneficial use. Incremental development of beneficial use water rights require separate priority dates for each development period. Beneficial use rights do not start with the commencement of development; they start when development is completed and water is put to beneficial use." We have 4 different developments with 4 beneficial use dates. The Assessor provides sound evidence of construction completion dates, and therefore the surface water appropriation, diversion, Beneficial Use and Priority dates are 1/1/1965 and 1/1/1970 for these two dwellings. The extent of the use, is the amount prescribed and allotted in 42-111 as Domestic Use. This and our testimony should be sufficient evidence to recommend the court decree claim 97-9078 for these two Domestic Uses.

Our other two dwellings have appropriation and priority use dates that are a bit more obscure, because the Assessor's construction dates for these are 1975 and unlisted. However, sufficient evidence exists, including our first and second hand knowledge of more than 50-years, that these dwellings used appropriated water from the unnamed stream before 5/20/1971 and that the water was put to beneficial use in a time and manner that legally established "Constitutional Water Rights." We also believe that all four of these legally created Beneficial Use Water Rights appurtenant to our four cabins should be recommended for court decree via Adjudication based on the sufficient evidence provided thus far, which includes our testimony to the same.

However, you requested more information so we will attempt to provide that.

According to the Assessor valuation summary, Dan Zebell's log cabin was "destroyed" in 1995 and then removed from the improvement list. Though this house was damaged, the Domestic Beneficial Use Water Right use never stopped and continues today. The water is used for Domestic purposes to the extent allowed in 42-111. This house had all the modern conveniences, including a functional bathroom. It was Dan's primary house located on the NWSWSW parcel. Building permits were not required at the time of construction, so there are no public records in Bonner County that I can find to validate the construction date. However, we believe it to be one of the first cabins constructed on the property in the mid to late 60's. We have documents, aerial and ground photos of this house, at various times, from various sources, and we have first and second hand knowledge that further validates its age and water use. For example: At the end of our driveway, there are historic government issued topo maps from the US Forest Service and USGS that show three structures in the N2SWSWSW / NWSWSW Section 20. These 1967 topos were revised with aerial imagery in 1996 and 2012. The buildings shown in these maps are in the approximate location of Dan's buildings, including this unlisted log cabin. Dan and his girlfriend Dale, lived in it year round. Our plan is to repair or rebuild it.

This cabin would have been seen/observed by the IDWR field investigators in 1977 and 1981 because it was located in-between the pond and irrigated garden that they were inspecting, and because the pond and garden were domestic recreational uses, likely subordinate to this dwelling. Two Places Of Use (POU) are drawn on page 16 of the 97-7102 report. One appears to be the irrigated 1-acre farm/garden, the other is the pond. There are also two Points Of Diversions (POD) drawn as x and noted as "(2-points) SWSW." Tom King describes the diversion as an 8x6 diversion ditch to the 125x100x10 .96AF pond and a pump that was moved to various points along the stream. For some reason, he only describes one POU location as T58N-R4W-S20 SW1/4 SW14 for 1/2 acre code x on the location chart. Not sure, but I think code x = Other, not Domestic, Stockeater, M,C,I, Recreation, or H fish propagation etc, which seems odd to me. Why not D or S as licensed? Perhaps the other POU that was not given a location was the preexisting diversion for the dwellings, or perhaps it was for the pump he described which also diverted water to the dwellings, or perhaps it was the irrigated garden or pond? This cabin could not have been missed, yet I don't see that on the report either. The real question is, why isn't his house listed as a POU on the 97-7102 report? Dan's application requested .04 CFS for Domestic Use and 0.08 CFS total, for all uses but his license was approved with only .04 CFS and Domestic Use was removed.

The beneficial use described on the license 97-7102 is Diversion to Storage, Recreation Storage, Stockwater and Irrigation for 1-acre with 2 divisions. Perhaps Domestic Use was not approved because this water right already existed as a "Beneficial Use Water Right" that was not yet decreed. In an Aug 15, 1977 interdepartmental memo, Tom King, senior water resource agent reviewing Dan's permit application, describes his 8/17/1977 tour of the property, and the water system development for 97-7102. He noted the new in-stream pond, two other ponds, a swamp, several springs and found that the unnamed stream sinks on the property irrespective of the new pond. He estimated the total flow of the unnamed stream to be 0.5 CFS (228-gpm). That is a lot of water. Significantly more than it is today, and significantly more than I have seen. It also contradicts Dan's claim that the creek flow was only 0.5-gpm at the pond diversion and 5-gpm 100 feet upstream from it. Perhaps Tom meant .5 GPM? In any event he did not mention the existing system for the existing cabins, either because he did not see it or because it was unrelated/irrelevant to the inspection that he was conducting.

It appears that Tom King conducted a second field examination Sep 14 1981 to verify completion of the new diversion system development of Beneficial Use. Dan's application for permit was for Diversion to Storage, Domestic Use, Storage for Recreation, Stockwater, 1/2 acre Irrigation and Aquatic Fish Culture, totaling 0.08 CFS. IDWR approved Diversion to Storage, Storage for Reaction, Stockwater and Irrigation for 1 acre at .04 CFS and 2.7 AFA. That seems odd to me. Before Dan applied for this permit, water was diverted from a small dam on the same unnamed creek and beneficially used domestically in 4 dwellings. These "small domestic uses" were exempt from the 1978 statutory reporting requirement. That legislation was being considered when Dan applied, and it passed during his licence approval process. The 1978 law requiring the reporting of existing Beneficial Use Water Rights expressly excluded a requirement for reporting small 42-111 domestic use rights, like Dan's. This might explain why Domestic use was indicated on his application but did not end up on his license? Dan had lawfully established Domestic Beneficial Use Water Rights when he submitted "application for permit" in 1977. The legal purpose for the "application for permit" form that he was told to use by IDWR, is exclusively used for the establishment of new water

rights. It cannot adjudicate and decree pre-existing water rights. To do that, Dan needed to submit a "notice of claim." But he did not know that. Unfortunately, Dan's "application for permit" could not have been licensed with, nor decreed rights for, his existing Constitutional Water Rights, though it appears he tried. I see no other rational explanation as to why Dan applied for and IDWR denied his request for Domestic Use, which he already had. Water use in Idaho is a constitutional right that is not withheld without good reason, like the right already exists.

Before 5/20/71 a water right was created by simply diverting surface water to a beneficial use. The Priority date is the date the water is put to Beneficial Use. Dan was not opposed to the permit process. He submitted an application for permit (97-7102) and invited Tom to tour the property in 1977. Domestic uses were exempt from the reporting requirements in the statute passed in 1978. Perhaps Dan knew that his preexisting system provided legally established Domestic Beneficial Use Water Rights and as such they were exempt from new permit and reporting requirements and that there was no reason to acquire new rights for this purpose? What other reason would he have for not including all four cabins in his 97-7102 application for permit? This would have been the perfect time to get water rights if he did not already have them. The only rational conclusion is that these cabins already had lawfully appropriated "Constitutional Water Rights" and there was no need for a "new water right" to serve the 4 cabins. That means, even if Dan tried to include one or all of the existing Beneficial Use Water Rights to be adjudicated by court decree in his 97-7102 Application/Permit/License process, that would have been rejected because this process and form was exclusively for new water rights. It appears, despite this, Dan attempted to include his primary dwelling's water rights in his new permit to obtain a court decree or license for the same and was denied because this was not the correct venue for it. It would also appear that those investigating this matter, understood that Dan had pre-existing Beneficial Use Water Rights for the dwellings which was the reason for the denial of new domestic water rights. As such this further provides evidence that this cabin and its water rights existed before 5/20/1971. All of this speaks to the age and existence of these cabins and their water rights. Furthermore, even if this Domestic Use was added after 5/20/71, which is very unlikely and opposed to the evidence otherwise, it appears that 42-1426 allows for the lawful enlargement of the existing Use and referral to the court for decree via adjudication.

The extent of the use for this dwelling is the amount prescribed and allotted in 42-111 Domestic Use (.04 CFS up to 13,000 GPD). We don't know the exact date of construction or beneficial use. Based on all the evidence that we found thus far and our recollection of the facts, we believe this cabin was built before the 5/20/1971 restrictions went into effect and that it was likely built in the late 60's. Therefore, a reasonable Diversion, Beneficial Use and Priority date is 1/1/1967.

Improvement 02- cabin 1975 is Dan's guest house. It is located on the NWSWSW parcel near his primary dwelling. Evidence suggests that construction of this cabin likely began before 5/20/1971. The Earles' and Dan's father Dick Zebell were friends. They visited the property regularly and utilized this dwelling among others. Construction in these remote places often takes years to complete due to the harsh weather, limited supplies, limited manpower, limited finances, access, adverse wildlife, and short building seasons. It is reasonable to conclude that water appropriation began before construction started, because water access

plays a key role in determining if a house can be built and then determining where it will be built. Water development is typically the first task of development. Before May 20, 1971 permits were not required for surface water appropriation, which is the most likely explanation why permits were not sought. The process of creating a water right was to divert water and use it for a beneficial purpose. When this water appropriation precedes 5/20/71, Adjudication Memorandum #23 allows 5 years due diligence to put the appropriation to beneficial use. "Priority date of such a right is the date the appropriation was completed." "There may be claims based on beneficial use with priority dates after the effective date of the permit requirement." That means a claim of beneficial use water right can be referred and decreed with a priority date of 5/20/1976, and in some cases later than that. According to the Assessor information, this cabin was constructed 1/1/75. That means the Beneficial Use date is 1/1/1975. And because construction can take 4-5 years to complete, it is reasonable to conclude that appropriation and diversion began 10/1/1970. In this scenario, the appropriation date is before 5/20/71. The priority date is the beneficial use date of 1/1/1975. This is a more plausible and rational explanation, that is consistent with the facts, laws and our recollection, than the theory that appropriation happened after 5/20/71 without a water permit. That makes no sense whatsoever. Why wait until after 5/20/71 and then have to pay a fee and subject yourself unnecessarily to the tedious permit process? The water was readily available and free for the taking. Three other domestic diversions were already in use. Connecting a fourth before construction and before the proposed change in law would have been easy and free and the logical rational thing to do. Furthermore, even if this Domestic Use was added in 1975, which is less likely, it appears that 42-1426 allows for the enlargement of the existing Use. To the best of our knowledge this is a lawfully appropriated Beneficial Use Water Right that has existed as long as we can recall and it continues today. As such it should be referred to the court for decree. The extent of the use for this dwelling is the amount prescribed and allotted in 42-111 Domestic Use (.04 CFS up to 13,000 GPD) with a Priority date of 1/1/75.

Wendell and Lorraine Earle were friends with the Zebells and acquaintances with the Heidekkers. They began vacationing at the property in 1972. Subsequently they purchased a new 1973 Chevy Suburban to travel there. We currently own it. Jani, Karen's older sister, remembers their first trip to the property in 1972. At that time, the unnamed stream provided water to the dwellings. Wendell bragged about the spring water and the fact that they would drink it from the creek. After Wendell purchased the property, he and Dan had an ongoing business friendship. That arrangement allowed Dan to continue to occupy "his cabins" and in exchange he became a caretaker of Wendell's property. That arrangement continued until Dan died in 2010. We got to know Dan well. He told us about all the various aspects of this property, including water rights and usage.

Dan and Larry were friends, neighbors and business partners. They shared water and other resources. Each had two dwellings located on separate parcels. Unfortunately, Dan and Larry have passed away, so we can't get an affidavit from them. Likewise, Wendell and Lorraine are both deceased, so we can't get a statement from them either. Robert Brody, another previous owner, who was also a developer, is deceased. I believe Pack River Properties was dissolved. Most of the people with first hand knowledge of this property, before 1972, are gone. However, my wife, her sister, and I have more than 50 years of first and second hand knowledge. In addition, we have access to Wendell's property records, which are plentiful.

Our 65 acres consists of 25 acres on 3-parcels in SWSW and 40 acres on 1-parcel in NWSW. The 25 acres are divided into 1(5-acre parcel) and 2(10-acre parcels). Wendell and Lorraine Earle purchased all of this property in multiple installments at different times from various people, including Dan Zebell, Lawrence Heidekker, Stephen Wagner and Robert Brody.. Dan and Larry owned 1/2 interests in the property. Their cabins and water usages were on separate parcels. This is relevant because it is my understanding that water rights attach to parcels and uses. In this case we have 4 beneficial use water rights on 2 parcels attached to 4 houses. I believe Dan acquired the entire 65 acres from Pack River Properties. The assessment record shows that Pack River acquired it from the US Government, Dec 31, 1899. Pack River Properties was a timber company. They likely appropriated significant amounts of water on this property, for the beneficial use of Forest Practices, dating back to 12/31/1899. Based on this perhaps our Forest Practice Use should have a Priority of 1899?

This land is currently known as RP58N04W205401. It is owned by my wife Karen Hawley. Her parents, Wendell and Lorraine Earle, used the property for Forest Practice, livestock, poultry, agricultural and Domestic Purposes, including recreation, as did the previous owners. Wendell and Lorraine placed the property in trust in 2007 (deed 743063). Karen took possession of it in 2021 (deed 984879).

The water on this property has long been used for forest practice and timber management (permit 92813E), farming, agricultural irrigation, stock water and domestic uses for dwellings including garden/yard irrigation and recreation. Abundant evidence of this remains on the property. For example, tree stumps from logging and timber management, remnants of barbed wire fencing for livestock management are embedded deep into the trees throughout the forest. Remains of old logging equipment, irrigation, agricultural, and farming equipment exist on the property as well. And of course, multiple dwellings and outbuildings are a witness to their long established domestic uses. All these testify to the historic and beneficial uses for appropriated waters on this property. The historic tax classification has been timber management, while concurrently being used for residential and recreational purposes. The owners that I know of, were all engaged in Timber Practices, among other things. Current tax class is 534 residential improvement on cat 12 rural residential tract. This is not a subdivision, no are there

The unnamed creek/spring originates in the national forest and sinks on the property as described in 97-7102 field investigation. I would estimate the maximum flow of this creek in summer to be 60 GPM, not 0.5 CFS (224 GPM) as Tom King estimated. Most of this water has been appropriated and put to beneficial use on this property. What isn't used sinks on the land. The creek freezes or dries up in the winter, therefore it does not support aquatic life but our pond does, including native trout, turtles and frogs etc. In addition, we have multiple sources of private and diffused waters, including other ponds, one being about 2 acres in size, springs, pools, artesian wells and wetlands. All of these waters sink on our property and all of these waters, except the unnamed creek, originate on our property. These abundant private waters have long been used for forest practice, wildlife habitats, aesthetics, aquatic life and recreational purposes.

It is my understanding that we don't need a permit to use the private and diffused waters on our lands and that these private waters cannot be appropriated by others, per 14-212 and

IDWR memorandum #11. However, if a permit for these will help prevent our private waters from being taken from us, or if we risk losing our priority date, then we want to acquire a permit for our private waters by adjudication or otherwise. That said, this letter and our current applications are focused on the adjudication of appropriated water from the unnamed stream and put to beneficial use in our dwellings, and the continuation of 97-7102 as licensed.

Our notice of claim (97-9078) was intended to adjudicate our Beneficial Use Water Right claim of 0.1 CFS (44.83 GPM) for Domestic Use in the 4 dwellings, which is the recommended allotment by IDWR for 4 dwellings. Perhaps the recommended amount of 0.04 CFS each x 4 = 0.16 CFS would be more appropriate? Each dwelling has a tap which provides about 11-gpm (11x4=44 gpm) via gravity flow. This amount roughly doubles when pumped. I have no idea how that translated into .02 CFS on our application. It was not our intention to underclaim the diversion rate for 97-7102 or 98-9078. I do not know how that happened. Our apologies, we are new to this process.

To that end, it appears that the Beneficial Uses Water Rights for our dwellings qualify for adjudication and decree. Perhaps all of these should be adjudicated collectively under claim 97-9078 as submitted or perhaps they should be adjudicated separately on different claim forms, if there is a limitation of one right per form?

You expressed concern that existing diversions for the Domestic Beneficial Use Water Rights were not noted in field report 97-7102. I am not sure why this is a concern, but it is easily explained. The 65 acre parcel has very thick vegetation. In mid September it would have been difficult to see the tiny creek and the small diversion dam because the forest and foliage is exceptionally dense. The grass, foliage and shrubbery grows 6 to 7 feet, making it difficult to walk through and hard to see anything. It has always been a challenge for me to find the diversion, and I know where to look. If Dan did not show it to the inspector, it is unlikely that he would have seen it. Dan had no obligation or reason to do so. The new diversions and Uses proposed in 97-7102 were unrelated to the existing diversions and beneficial uses that were already legally established for the houses. On the other hand, if the preexisting diversion was observed, it would have appeared to be a natural pool in the stream. The field inspector was looking for a POD for the pond and possibly a POD for the 1-acre garden. He was not looking for a pre-existing POD or POU relating to already established Constitutional Water Rights and Uses in the cabins. Tom King walked the property in 1977 and 1981. He, or another official reviewing this claim, appears to have drawn 2 PODs and 2 POUs. The 2-PODs appear to be a new ditch to the pond and the other was the pre-existing diversion for the cabins or perhaps the mobile pump diversion he describes? Dan identifies the new diversion system on his application for 97-7102 as the pond and a 4-hp pump. Tom describes the second diversion in Dan's new system as a 3-hp gas "portable pump moved to various points along the stream." It should be noted that a 3-hp gas pump produces 80-100 GPM and a 4-hp gas pump produces 145-160 GPM. However, Tom describes this pump as delivering only 9-GPM to the irrigation system? A 1/2 hp pump could have easily done that. Where was the other 70-90 GPM going, that this pump was producing? Perhaps that capacity was for the 4 preexisting Domestic Uses. The 2 POUs drawn, appear to be Dan's pond and his 1-acre farm/garden. Perhaps the field investigator observed both diversions and thought nothing of it, because one of them was a pre-existing exempt system that already had legally established "Historic" "Constitutional Water Rights," which were unrelated to 97-7102's new diversion and Use? Or

perhaps he thought the domestic diversion was only for the irrigated land and pump? Or perhaps, he simply did not see it? Or perhaps having full knowledge of it, Tom excluded it from the 97-7102 report, because this current application for permit and license process was for new use water rights only, and this report was not the correct venue to note or refer existing use claims for adjudication decree. Or perhaps some other combination of reasons? We can only speculate as to why it was not mentioned in the field report. What we do know, is that the preexisting diversion and use was in existence long before Tom's unrelated field report and investigation.

It should be noted that the water distribution pipes and or pumps for the existing system were not always connected. These were typically removed when the property was not in use, because they could be stolen or damaged by flooding or freezing, and oddly enough, bears like chewing on the pipes which creates a maintenance nightmare. Leaving them out meant extensive repairs next season. It is quite possible that the diversion system was not connected at the time of field inspection and could not have been observed or noted. Finally, grizzly bears, black bears, mountain lions, moose and wolves are all abundant on the property. It is a beautiful place with lots of wildlife, but it is not the kind of place that most people feel safe walking around in, for an extended length of time, looking for diversions.

The assessor's documentation establishes reasonable and sufficient proof of the dates that the dwellings were constructed and thus establishes subsequent beneficial use and priority dates for the domestic uses that were appropriated for these dwellings. Assessment dates are assumed to be complete years for tax purposes. We can reasonably assume that appropriation and beneficial use of water began no later than the date of completion of construction, and more likely, it began at the onset of construction. Accordingly, reasonable appropriation dates, priority dates and beneficial use dates for these dwellings are 1/1/1965 for the D-dwelling, 1/1/1967 Dan's unlisted home that collapsed, 1/1/1970 for the 01-pole building-cabin, and 1/1/1975 priority for the 1975 02- cabin- based on appropriation being 10/01/70 and beneficial use being 1/1/75.

The beneficial use for the dwellings are "domestic purposes" per 42-111. The extent of the beneficial use for each dwelling is the allotment that is prescribed in Sec 42-111.1.A & B, which is A):1/2 acre irrigation up to 13,000 GPD or B) other uses at .04 CFS not exceeding diversion volume of 2,500 GPD or as otherwise prescribed in IDWR publication "Water Use Information" "Domestic Use Diversion Rates" for "typical in house domestic use", A) 0.04 CFS for 1-dwelling or B) 0.10 CFS for 4-dwellings. Which domestic use limitations and rights are further clarified on page 7 of Administers memorandum 67 including in-house domestic, 1/2 acre lawn and garden and pond storage. We attempted to claim 0.1 CFS (44.883 gpm) for the 4 dwellings under claim 97-9078 while leaving license 97-7102 unchanged at .04 CFS (14.9532gpm). Perhaps $0.04 \text{ CFS} \times 4 = 0.16 \text{ CFS}$ (78.21 GPM) for the 4 dwellings would be more appropriate? The six POU's on three parcels, include the pond and 1-acre irrigation on 97-7102 and the 4 cabins. License 97-7201 is approved for 0.04 CFS (19.55 GPM) which supplies water to the pond and 1-acre irrigation. The preexisting diversion system provides about 11 GPM to each house from the unnamed stream by gravity. When augmented with a 3-hp gas pump, this amount increases to about 19.5 gpm each.

As you suggested, we have amended 97-7102 to match the elements of the existing license. It was not our intention to underclaim the diversion rate. Our records show that we applied for 0.1CFS (44.883 GPM) in our 97-9078 claim and it was our intention to leave 97-7102 unchanged at 0.04 CFS (14.9532 GPM).

If this information does not provide clear and convincing evidence of beneficial use, sufficient to approve our claims, then we can provide more evidence, but that will take more time. We are in Colorado. Unfortunately, Bonner County records before July 1986, are available only through in person search at the Clerk and Recorder's office which is located in Sand Point, Idaho. Wendell kept detailed records, so there are lots of pictures and documents that we can look through including his tax records that might show the construction date of Dan's primary cabin, or other pertinent information? Unfortunately, Wendell's records are in California, in Jani's house, and they are not well organized.

We believe this claim to be consistent with all applicable laws including Idaho's Constitution Article XV Sec 3: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied."

I apologize for the length, redundancy and any errors, we were a bit rushed to put this together. Please let us know what is the best way to proceed and what additional documentation, if any, is needed to process our claims.

Thanks for your help, and Go Broncos!

John and Karen Hawley

8 attachments

-  **RP58N04W205401 1994.pdf**
62K
-  **RP58N04W205401A SUMMARY.pdf**
106K
-  **RP58N04W205401.pdf**
579K
-  **Online Claims domestic use 97-9078 (1443) full form.pdf**
303K
-  **97-07102 Water Right Backfile 97-7102.pdf**
2666K
-  **Bonner County records- Deed Earle to Hawley.pdf**
765K
-  **Amended Notice of Claim to a Water Right 97-7102.pdf**
1551K
-  **449 Cat Road Assessment inventory 2016.pdf**
117K

Thu, Feb 8, 2024 at 7:30 PM

John H <hawljo@gmail.com>

To: Karen Hawley <karenfrisco@gmail.com>, Ryan Hawley <ryanmichaelhawley@gmail.com>

[Quoted text hidden]

8 attachments



RP58N04W205401 1994.pdf
62K



RP58N04W205401A SUMMARY.pdf
106K



RP58N04W205401.pdf
579K



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765K



Amended Notice of Claim to a Water Right 97-7102.pdf
1551K



449 Cat Road Assessment inventory 2016.pdf
117K

Roda, Evan <Evan.Roda@idwr.idaho.gov>
To: John H <hawljo@gmail.com>

Fri, Feb 9, 2024 at 8:59 AM

Good morning Mr. and Mrs. Hawley,

Your provided evidence will be added to your claim files for consideration in our recommendation of your water right claims. Please mail your original amended notice of claim for claim no. 97-7102 to our address listed below. We will contact you if we have any further questions during our review of the provided evidence and our recommendation of your water right claims.

Thank you,

Evan

Evan W. Roda

Water Rights Supervisor

Idaho Department of Water Resources, Northern Region

7600 N Mineral Drive, Suite 100

Coeur d'Alene, ID 83815-7763

Phone (208) 762-2815 / 2800

<https://idwr.idaho.gov>



From: John H <hawljjo@gmail.com>
Sent: Thursday, February 8, 2024 4:35 PM
To: Roda, Evan <Evan.Roda@idwr.idaho.gov>
Subject: Attn: Evan Roda, Claim 97-7102 and 97-9078, Case 69576R for RP58N04W205401A

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

2-3-24

[Quoted text hidden]
[Quoted text hidden]

John H <hawljjo@gmail.com>
Draft To: "Roda, Evan" <Evan.Roda@idwr.idaho.gov>

Mon, Feb 12, 2024 at 10:51 AM

Hi Evan,

We will get the Amended Notice of Claim mailed to you today.

I forgot to attach the Parcel Location Photo and Timber Management contract. They are attached below. I will mail a copy with the Amended Notice. The Parcel Location Aerial Photo that you provided, places the Unnamed Creek in the wrong location. I've redrawn that in PDF format.

Is there a limit on water rights that can be licensed per claim form? If each of our claims require its own form, should we use form 14-1409-2 or 14-1409-1 or something else?

The 27th paragraph has a typo that says "This is not a subdivision, no are there". This is supposed to say: This is not a multiple ownership subdivision per 42-111.

Thanks,
John and Karen

[Quoted text hidden]

2 attachments



Forest Practice Contract_ Earle-Zebell 1995.pdf
999K

 **Parcel Location CFPRBA Claims 97-7102 97-9078 with improvements.pdf**
2473K

PARCEL LOCATION FOR CFPRBA CLAIMS 97-7102 & 97-9078



2021 AERIAL PHOTO

STATE OF IDAHO — DEPARTMENT OF LANDS
CERTIFICATE OF COMPLIANCE — FIRE HAZARD MANAGEMENT AGREEMENT
NOTIFICATION OF FOREST PRACTICE

92813 E

THIS AGREEMENT is entered into by ZEBELL, DAN
(Street) 105 NORTH FIRST (City) SANDPOINT (State) ID
(Zip Code) 83864 (Phone #) 263-6908 hereinafter referred to as CONTRACTOR,
and the Department of Lands, hereinafter referred to as STATE, in compliance with Idaho Code Section 36-122. This contract shall only apply to the following land:
Subdivision Section Township Range County (No.)
NWSNW, W2E2SNSW, N2SNSWSW,
NWSW 20 58N 4W BONNER 09
RP5401

Land owned by EARLE, WENDELL E. & LORRAINE O. Address 552 COMPASS CIRCLE, REDWOOD CITY, CA
Timber owned by SAME AS LANDOWNER Address 94065
Operator SAME AS CONTRACTOR Address _____
Purchaser(s) J.D. LUMBER Address _____

The CONTRACTOR hereby agrees to provide for hazard reduction or management in accordance with the following option: (Check one)

1. XX The CONTRACTOR attests that he will not cut an amount of timber sufficient to cause a fire hazard.
10.000 BF OR LESS
2. _____ The CONTRACTOR elects to treat the hazard created and to subsequently receive a refund of slash monies withheld.
3. _____ The CONTRACTOR agrees to operate under the terms of a surety bond, currently in force, which provides for management of fire hazards on the lands above described.
4. _____ The CONTRACTOR has entered into a contract with the STATE for management of the fire hazard in accordance with Idaho Code Section 36-404.

This agreement/notification expires 11-30-95 unless granted an extension in writing by the STATE.

THE SLASH WITHHOLDING RATE SHALL BE THE MINIMUM RATE IN FORCE AT THE TIME THE PRODUCTS ARE DELIVERED TO THE PURCHASER UNLESS OTHERWISE INDICATED AS FOLLOWS: \$ _____ PER _____
NOTIFICATION OF FOREST PRACTICE:

THE OPERATOR NAMED ABOVE HAS COMPLIED WITH PROVISIONS OF IDAHO CODE SECTION 36-1306 BY THE FOLLOWING NOTIFICATION:

1. XX Harvesting of forest tree species.
2. () Road construction associated with harvesting of forest tree species.
3. () Reforestation
4. () Use of chemicals or fertilizers for the purpose of growing or managing forest tree species.
5. () Management of slashings resulting from harvest, management or improvement of forest tree species.

The following information will help the Department of Lands evaluate the potential for water quality and erosion impacts. Lake _____
Segment of concern NO Class I stream YES NO Class II stream NO YES
Steep slopes NO Unstable/Erodible soils NO Conversion in use NO
The contractor has read this document and by signature agrees to the terms and conditions this date SEPTEMBER 18, 1995

STANLEY F. HAMILTON, Director
(Not valid unless countersigned by warden or authorized agent)

DALE MARTIN
FIRE WARDEN

[Signature]
Contractor

Accepted by: [Signature] Authorized Agent

REMYX PROTEST LAKE 443-2516 110
Protective District No.

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

**IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER
FROM THE CLARK FORK-PEND OREILLE RIVER BASIN WATER SYSTEM**

CIVIL CASE N°
Ident. Number
Date Received
Receipt No:

1. Name of Claimant(s):

Name	Address	City	State	Country	Postal Code
HAWLEY JOHN	6259 CARR ST #3	ARVADA	CO	USA	80004
HAWLEY KAREN	6259 CARR ST #3	ARVADA	CO	USA	80004
HAWLEY RYAN	6259 CARR ST #3	ARVADA	CO	USA	80004

2. Date of Priority:

Date	Explanation
6/16/1965	Domestic water from unnamed creek began June 16, 1965.

3. Source:

Source	Tributary
UNNAMED CREEK	SINKS

4. Point of Diversion:

Township	Range	Section	Gov Lot	QQ	Q	County	Type	Description
58N	04W	20		SW	SW	BONNER	Beginning Point	Pump / pipe from unnamed creek/spring.

5. Water is used for the following purpose(s):

Water Use	Number Of Homes	Stock	Number of Stock	Description
DOMESTIC	4			Domestic use.

6. Season(s) of Use:

Water Use	From Month/Day	To Month/Day
DOMESTIC	01/01	12/31

7. Quantity:

Water Use	CFS	AF	KW
DOMESTIC	0.10		

Totals

CFS	AF	KW
0.10		

8. Place of Use:

Water Use	Total Claimed Acreage
-----------	-----------------------

DOMESTIC



9. Remarks:

The domestic use is for 4 cabins. The use location is known as 449 Cat Road Priest River Id. Methods of diversion have evolved over time. In the 1960's and early 1970's there was a small dam with a head and 1.5" discharge pipe that gravity fed the cabins via piping. All diversions points and use locations are on our property under common ownership. Historical use included domestic, 1/2 acre irrigation, fire mitigation stockwater, timber forest practices.

10. Other Water Rights:

97-7102 exists on the same land and diverts from the same unnamed creek/spring source. That license use includes: Irrigation Stockwater Diversion to storage Storage for recreation Private water uses from private water sources.

11. Basis:

Basis
Beneficial Use

12. Signature(s):

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form and the Clark Fork-Pend Oreille River Basin Water System Adjudication. (b.) I/We do ___ do not ___ wish to pay a fee for monthly copies of the docket sheet.

Number of attachments: _____

Title and Organization

Please print name

Bonner County Parcel Information

Parcel Information

Parcel #: **RP58N04W205401A**
Site Address: 449 Cat Rd
Priest River ID 83856-4910
Owner: Earle Trust
552 Compass Circle
Redwood City CA 94065-1132
Twn/Range/Section: T: 58N R: 04W S: 20 Q:
Parcel Size: 65.00 Acres (2,831,400 Sq Ft)
Lot Dimensions: Front:0 - Depth:0
Plat/Subdivision:
Census Tract/Block: 950600/3314
Levy Code: 940000
Deeds: 743063 G,192-360,183-417
Total Land Value: \$30,366
Total Impr Value: \$12,120
Total Value: \$42,486



Tax Information

Tax Year	Annual Tax
2016	\$476

Legal

20-58N-4W NWSWSW, W2E2SWSW, N2SWSWSW, NWSW

Land

Land Use: 131 - Land-ag/timb w/resid Imp
Land Categories: ;7;10;
Recreation:

Zoning: A/F-10 - AGRICULTURAL/FORESTRY 10 (A/F-10)
Building Categories: 42 - Log Rustic
School District: 83

Assessor Categories

Category	Quantity	Value	Exemption
10	1	\$23,710	\$0
31	0	\$7,350	\$0
32	0	\$4,770	\$0
7	64	\$6,656	\$0

Improvement

Year Built: 1965 (1985 eff.)	Bathrooms: 0.00	Finished Sq Ft: 324
Stories: 1.00	Bedrooms: 1	Heat: No heat-wood stove/insert
A/C: Yes	Garage: 0	Roof: Aluminum sheet - Gable
Basement: No	Carport: No	Pool:
Condition: F	Fireplace: Yes	Foundation:

Other Improvements

Description	Year Built	Effective Year Built	Base Area	Finished
POLEBLDG	1970	1970	368	0
POLEBLDG	1985	1985	480	0
CABIN	1975	1975	160	0

Sentry Dynamics, Inc. and its customers make no representations, warranties or conditions, express or implied, as to the accuracy or completeness of information contained in this report.

Instrument # 984879
Bonner County, Sandpoint, Idaho
06/09/2021 04:27:32 PM No. of Pages: 2
Recorded for: SNEDDEN LAW
Michael W. Rosedale Fee: \$15.00
Ex-Officio Recorder Deputy
Index to: WARRANTY DEED

(Space Above For Recorder's Use)

SPECIAL WARRANTY DEED

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, **JANI E. EARLE, Successor Trustee of the WENDELL E. EARLE and LORRAINE O. EARLE 2007 TRUST** dated July 18, 2007, ("Grantor"), conveys and specially warrants to **KAREN L. HAWLEY, TRUSTEE OF THE KAREN L. HAWLEY TRUST**, dated May 14, 2021. ("Grantee"), whose address is 6259 Carr Street, No. 3, Arvada, CO 80004 and her successors and assigns forever, the following described real property:

The NW 1/4 SW 1/4;

The NW 1/4 SW 1/4 SW 1/4;

The W 1/2 E 1/2 SW 1/4 SW 1/4; and

The N 1/2 SW 1/4 SW 1/4 SW 1/4;

All in Section 20, Township 58 North, Range 4 W.B.M. Bonner County, Idaho.

SUBJECT TO taxes and assessments for the year 2021, together with any and all existing easements, rights-of-way, reservations, restrictions and encumbrances of record, to any existing tenancies, to all zoning laws and ordinances, and to any state of facts an accurate survey or inspection of the premises would show.

This conveyance shall include any and all estate, right, title, interest, appurtenances, tenements, hereditaments, reversions, remainders, easements, rents, issues, profits, rights-of-way and water rights in anywise appertaining to the property herein described as well as any after-acquired title.

The Grantor covenants to the Grantees that Grantor is the owner in fee simple of said premises; that the premises are free from encumbrances created or suffered by the Grantor, excepting those as may be herein set forth, and excepting those of record, and that Grantor will warrant and defend the same from all lawful claims of or through Grantor, but none other.

IN WITNESS WHEREOF, the Grantor has executed this instrument on this 25 day of May, 2021.

Jani E. Earle
JANI E. EARLE, Successor Trustee of the
Wendell E. Earle and Lorraine O. Earle
2007 Trust

STATE OF CALIFORNIA)

) ss.

County of San Mateo

On this 25 day of May, in the year of 2021, before me, a Notary Public for the state of California, personally appeared JANI E. EARLE, known or identified to me to be the person whose name is subscribed to the within instrument as the Successor Trustee of the WENDELL E. EARLE and LORRAINE O. EARLE 2007 TRUST dated July 18, 2007, and acknowledged to me that she acted on behalf of said trust.

(Sign) Spitel

NOTARY PUBLIC

Residing at: San Carlos, California

My commission expires: 06-11-2022



ADMINISTRATIVE INFORMATION

OWNERSHIP - Deeded Owner

HAWLEY TRUST

6259 CARR ST - #3

ARVADA, CO 80004 USA

20-58N-4W

NMSWSW, W2E2SWSW, N2SWSWSW,

NMSW

TRANSFER OF OWNERSHIP

Date

Parent Parcel Number

Property Address

449 CAT RD

Neighborhood

3505 N PR TO PETERSON

Property Class

534 534-Resid Improv on cat 12

TAXING DISTRICT INFORMATION

Jurisdiction 09

Area 001

District 094000

RESIDENTIAL

VALUATION RECORD

Assessment Year	01/01/2018	01/01/2019	01/01/2020	01/01/2021	01/01/2022	01/01/2023	Worksheet
Reason for Change	5Y Reval	5Y Reval	5Y Reval	5Y Reval	5Y Reval	5Y Reval	
VALUATION	I	31008	31880	36318	41023	304950	260288
Market Value	B	12120	15393	15393	16912	22749	18660
	T	43128	47273	51711	57935	327699	278948

Site Description

Legal Acres:

65.0000

LAND DATA AND CALCULATIONS

Land Type	Rating Soil ID	Measured Acreage	Table Effective Depth	Prod. Factor -or- Depth Factor -or- Square Feet	Base Rate	Adjusted Rate	Extended Value	Influence Factor	Value
1 Rural res tract fair (cat 12)		64.0000		0.00	2600.00	2600.00	166400		166400
2 Homestead (cat 10/12/15/20)		54		0.00	54888.00	54888.00	54888		54888
3 TSBAMENTITIES		AV		0.0	39000.00	39000.00	39000		39000

STM: AG/TIME INFO

NO NEW OWNERS-CDG 11/2/21

322: COUNTY BOARD OF EQUALIZATION

ADUE UPHELD 7-7-22 MTM

3F: DEFERRED TAXES

ferred est'd reg'd by Transfer 11/02/2021 DTB

FILED ON 04/19/2022 DTB

422: LAND CHANGE 2022

IGHBOURHOOD MOVED FROM 3510 TO 3505 DUE TO SALES 2021

JD 04/26/2022

JRR: No Trespassing/Locked Gate

422: REVIEW YEAR 2022

31

Supplemental Cards

TRUE TAX VALUE

260288

Supplemental Cards

TOTAL LAND VALUE

260288

PHYSICAL CHARACTERISTICS

Style: 42 Log Rustic
Occupancy: Single family
Story Height: 1.0
Finished Area: 324
Attic: None
Basement: None
Roofing: Material: Aluminum sheet
Type: Gable
Framing: Std for class
Pitch: Not available
Flooring: Sub and joists 1.0
Base Allowance 1.0
Exterior Cover 1.0
Interior Finish 1.0
Drywall
Accommodations 2
Finished Rooms 1
Bedrooms
Fireplaces: 1

HEATING AND AIR CONDITIONING

Primary Heat: No heat-wood stove/insert
Lower Full Part
/Bsmt 1 Upper Upper

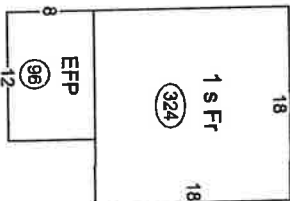
PLUMBING

Kit Sink 1
Water Heat 1
TOTAL 2

REMODELING AND MODERNIZATION

Amount Date

IMPROVEMENT DATA



SPECIAL FEATURES

Description	Value
D :WDSTOVE	2500
01 :FINISHLO	3665
02 :LOFT	8
03 :ISO	-5
D	-1

SUMMARY OF IMPROVEMENTS

ID	Use	Story	Const	Year	Eff	Base	Feat-	Adj	Size or	Computed	Phys	Obsol	Market	%	Value
D	DWELL	0.00		Low	1965	1965	VP	0.00		55090	90	0	100	100	5510
01	POLEBHDG	10.00		Fair	1970	1970	AV	34.75	Y	15630	55	0	100	100	7030
02	CABIN	0.00	0	Low	1975	1975	P	123.68	N	12860	80	0	100	100	2570
03	POLEBHDG	10.00		Low	1985	1985	F	34.75	Y	8870	60	0	100	100	3550

(LCM: 100.00)

Data Collector/Date

Appraiser/Date

Neighborhood

Supplemental Cards

18660

KDMM 12/25/2021

KLD 12/28/2021

Neigh 3505 AV

TOTAL IMPROVEMENT VALUE

Valuation Summary Sheet

Bonner County

1/26/2024 4:12:30 PM

Parcel Number: RP58N04W205401

Property Address: 449 CAT RD, PRIEST RIVER, ID 83856

Effective Date: 2/24/1983

Tax Code Area: 94-0000

Expiration Date:

Legal Description: 20-58N-4W NWSWSW, W2E2SWSW, N2SWSWSW, NWSW

Legal Party Name	Address	City St Zip	
HAWLEY TRUST	6259 CARR ST - #3	ARVADA, CO 80004	Primary Owner
HAWLEY, KAREN L TRUSTEE	6259 CARR ST - #3	ARVADA, CO 80004	Secondary Owner

Cat ID	Ext	Rv Year	Unit	Quantity	Value	HO Mkt	HO Exemp	PTR	Other
12	L00	2022	AC	64.000	\$166,400	\$0	\$0	\$0	\$0
12H	L00	2022	AC	1.000	\$93,888	\$0	\$0	\$0	\$0
32	R01	2022		-	\$8,710	\$0	\$0	\$0	\$0
34H	R01	2022		-	\$5,615	\$0	\$0	\$0	\$0
		Totals:		65.000	\$274,613	\$0	\$0	\$0	\$0

Deed Date	Deed Reference	Zone Code:	Comments:
12/31/1899	984879 WD		
12/31/1899	743063 G	Parcel Type: PV	CORRECTED BOE 2016
12/31/1899	192-360	Location Code: 3505	DNQ TIMB 2022
12/31/1899	183-417		NEW AG 1995 HSE DESTROYED 1995

Parcel History - RP58N04W205401

Status: Active

Tax Year: 1994 ▼

Name: EARLE, WENDELL E & LORRAINE

Mailing Address: 552 COMPASS CIRCLE, REDWOOD CITY, CA 94065

Legal Description: 20-58N-4W NWSWSW, W2E2SWSW, N2SWSWSW NWSW NWSWSW, W2E2SWSW, N2SWSWSW

Code Area: 25-0000

Cat	Ext	RY	Quantity	Unit	Value	HO Market	HO Exempt	PTR Market	Other Mkt	Adj	UR Base	Roll Kind	Mo	Net Taxable
12	L00	1989	65.000	AC	44,850	0	0	0	0	0	0	Ann1 12		44,850
34	R01	0	0.000		6,676	0	0	0	0	0	0	Ann1 12		6,676
Ann1 Totals					\$51,526	\$0	\$0	\$0	\$0	\$0	\$0			\$51,526

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 97-7102 (late proof)
Priority August 4, 1977 Amount 0.04 cfs

THIS IS TO CERTIFY, that Dan Zebell
of Priest River, Idaho, has complied with the terms and conditions of Permit
No. 97-7102 issued pursuant to Application for Permit dated July 15, 1977,
and has submitted proof to the Department of Water Resources on May 21, 1979,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 0.04 cfs of water from unnamed creek,
tributary to sinks, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Irrigation	April 1 to October 15	0.02	1.5 acre feet
Stockwater	from January 1 to December 31	at 0.02 cfs and	0.2 acre feet
Diversion to Storage	from January 1 to December 31	at 0.02 cfs and	n/a
Storage for Recreation	from January 1 to December 31	at n/a cfs and	1.0 acre feet

(both dates inclusive)

Subject, however, to the condition that no more than 0.04 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
2.7 acre feet per year, said waters to be diverted within the (2 points) SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section
20, Twp. 58N, Rge. 4W in the County of Bonner

Description and location of place of use:

Twp.	Range	Sec.	NEW				NWA				SWR				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
58N	4W	20													1

Total number of acres irrigated 1

Identification No. _____
Application No. 97-7102

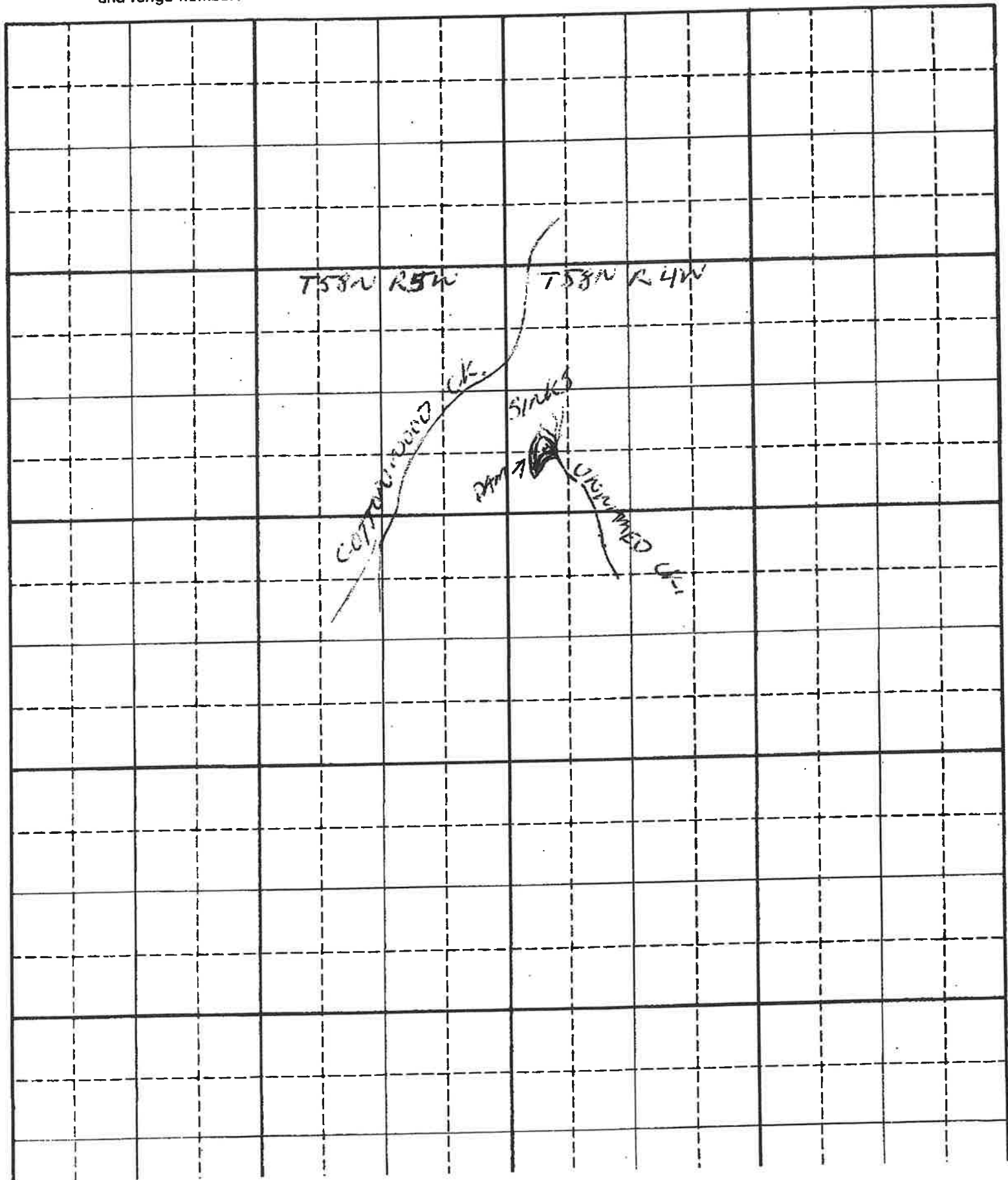
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT **APPROVED**

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

1. Name of applicant DAN ZEBELL Phone: NOVIE
post office address RT 5 Box 101 PRIEST RIVER, IDA
2. Source of water supply UNNAMED CREEK which is a tributary of SINKS
3. a. Location of point of diversion is SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 20 Township S8N
Range 4W B.M. BANNER County; additional points of diversion if any: _____
- b. If water is not consumed, it will be discharged into UNNAMED CREEK at a point in SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 20 Township S8N Range 4W B.M. _____
4. Water will be used for the following purposes:
- Amount .02 for STOCK purpose from JAN 1 to DEC 31 (both dates inclusive)
(cfs or acre-feet per annum)
- Amount .02 for IRRIGATION purpose from APR 1 to OCT 15 (both dates inclusive)
(cfs or acre-feet per annum)
- Amount 1.0 for FISH CULTURE purpose from JAN 1 to DEC 31 (both dates inclusive)
(cfs or acre-feet per annum) (recreation) is per minute
5. Total quantity to be appropriated:
- a. .08 cubic feet per second and/or _____
- b. _____ acre feet per annum.
6. Proposed diverting works:
- a. Description of ditches, flumes, pumps, headgates, etc. EARTH DAM, 8 FEET HIGH, 125 FEET LONG, 30 FEET WIDE AT THE BASE, 10 FEET WIDE AT THE TOP - 4 HP PUMP
- b. Height of storage dam 8 feet, active reservoir capacity .25 acre feet; total reservoir capacity .25 acre feet, materials used in storage dam: EARTH
Period of year during which storage will occur JAN 1 to DEC 31 inclusive.
(Mo. Day) (Mo. Day)
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years.
- b. Estimated construction cost is \$ 250.00
8. Description of proposed uses:
- a. If water is not for irrigation:
- (1) Give the place of use of water: SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 20 Township S8N

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



Protests filed by: W.M. Junfilla (withdrawn 2-7-78)
NCM

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by Ruth g

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 97-7102, 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: _____

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

Witness my hand this 27th day of April, 1978.

Norman C. Young
Administrator

State of Idaho
DEPARTMENT OF WATER RESOURCES
FIELD REPORT

RECEIVED
SEP 28 1981
Department of Water Resources

97-7102

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

Date 9-14-81 Accompanied by App Total Q measured ~
If source is surface water, estimate total flow of source .5 cfs
Methods of measurement Est/calc Meets Permit requirements?

Measurement calculations:
Storage Pond
 $\frac{125' \times 100' \times 10'}{43560} = 0.96 \text{ AF}$
garden w/ lawn type oscillator sprinklers (3) @ 3 gpm = 9 gpm
x 0.02 Div to storage for stock & Rec

WELL/DIVERSION* NO.	HP	MOTOR MAKE	MOTOR SERIAL NO.	PUMP MAKE	PUMP SERIAL NO.	MEASURING DEVICE TYPE	CONDITION OF MEAS. DEV.	REMARKS
	3	BEARS	Gas					

System Description 3 H.P. Gas Pump with garden hoses to garden. 8" x 6" ditch to pond 125' x 100' x 10' pond.

*Code with map on reverse side. Disregard code if only one.

RECOMMENDED AMOUNTS

USE	Irrigation requirement =	Q (cfs)	V (afa)	AFA/Acre
				FROM TO
<u>Diversion lossage</u>	<u>3.0</u>	<u>0.02</u>	<u>2</u>	<u>1-1 12-31</u>
<u>Stock</u>		<u>0.02</u>	<u>2</u>	<u>1-1 12-31</u>
<u>Storage for Recreation</u>			<u>1.0</u>	<u>1-1 12-31</u>
<u>Irrigation</u>		<u>0.02</u>	<u>1.5</u>	<u>4-1 10-15</u>

SCHEMATIC DIAGRAM OF SYSTEM

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

✓ Point(s) of diversion (2 points) SW & W, S. 20, T58N, R4W

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	
58N	4W	20											1/2						1/2

Recommended Amendments:

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

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

☒ None
☐ Other _____

Engineer's Signature

Checked by

Approved by

Date

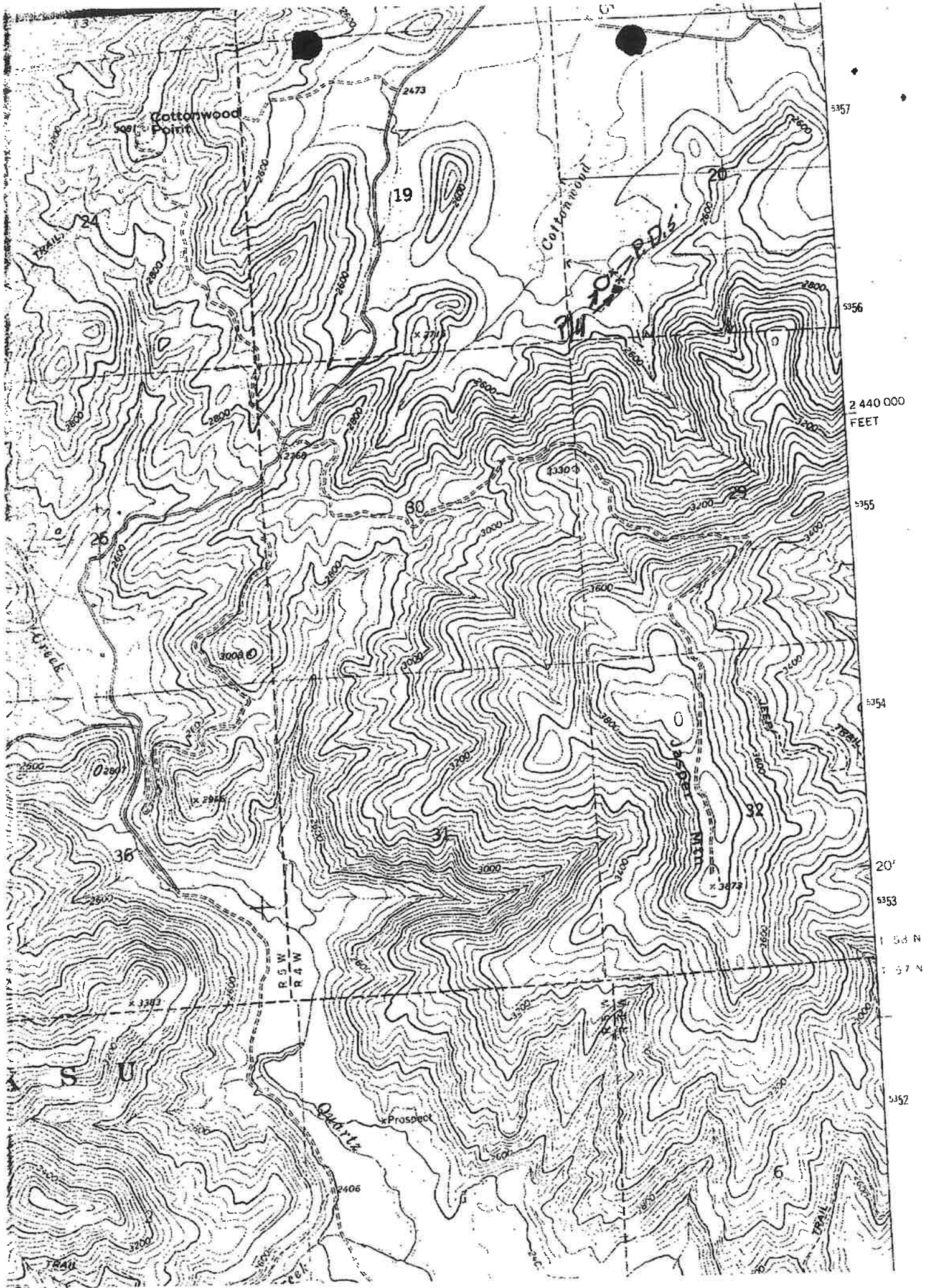
Date

Date

9-15-81

9/23/81

4-15-82



FROM - 01-01 TO - 12-31 USE - RECREATION STORAGE USE DIV. RATE - .0000 CFS USE DIV.
X → FROM - 01-01 TO - 12-31 USE - PUMPER USE DIV. RATE - .0400 CFS USE DIV.
X → FROM - 01-01 TO - 12-31 USE - FISH PROP. STORAGE HS USE DIV. RATE - .0000 CFS USE DIV.
USE - IRRIGATION PLACE OF USE - TWIN 58N. RING 04W SEC 20 TRACT SWSW LOT 4

DATE -

DEGREE NAME -

REMARKS - AC. IRR. 2.5. 2/10 in

X → ~~NON IRRIG USE - 5/20 60415, 2 PIGS, 20 FOWD D/I HOME HS/RECREATION UNIT. Standard~~

HEARING -

OTHER RIGHTS FOR SAME USE -
PROOF DUE - 05-01-1979 PERMIT/DENIED - 04-27-1978 PROTESTED -
PROOF MADE - P FLD EXAM - COND. OF APPROVAL -
DIVERSION MEANS - DAM & PUMP.

B 1-1 12-31 ,02 cfs

DATE

FROM TomTO F1/eSUBJECT Protest 97-7102

S-15-77 I contacted both Mr. J. & Mrs. Z. Mr. J. informed me that the water Mr. Z was diverting is tributary to cottonwood creek. Mr. Z took me on a tour of the location. Mr. Z has an incomplete pond ~~which~~ which is storing water at an estimated 2 gpm. Below the point of diversion the water normally diverges into numerous channels less than 3" deep. This forms a swamp. ~~At~~ At the time of my examination the swamp was dry but the ground was moist. The swamp appears to feed a number of ponds that appear to be old beaver dams.

Page 1 of 3

SIGNATURE

MICROFILMED

FROM Tom

DATE

TO file

SUBJECT Protest 97-7102 (cont)

The ponds are dry at this time. It appears that the old chimney that provided ingress for the beavers has become the exit from the ponds for the water. The ponds appear to be in a series so that one would fill before the next ^{streams} would receive water. There appears to be other springs which would normally empty the swamp ponds, but the ones that I found ~~the~~ dry. ~~It~~ It appears that the spring diverted by Mr. Z. could get through the swamp at this time.

Page 2 of 3

SIGNATURE

INTER-DEPARTMENT MEMO -- 1

FROM Tenn

DATE

TO F. I.

SUBJECT Protest 97-7102 (cont)

The water would also have to fill the series of ponds before reaching the cottonwood Creek. It is my opinion that the water diverted by m-2 could not reach Cottonwood Creek except in the spring run off, where it would be augmented by the other springs & snow melt in the area.

SIGNATURE

Page 3 of 3

RECEIVED

Water Use Information

The ability to calculate the typical amount of water needed for a specific task is important in water management planning. Water rights are limited to the quantity of water that can be beneficially used. Here are some water use standards used by IDWR to evaluate water right applications and claims. Typically, applicants and claimants seeking more than these amounts are asked for supplemental documentation explaining the need for more water.

cfs (cubic foot per second) = 448.8 gallons per minute
AF (Acre Foot) = 325,851 gallons

Stock Watering

Cattle, Other Than Dairy – 12 gallons per day per cow

Dairy Cattle – 35 gallons per day per cow

Horses – 12 gallons per day per horse

Mules – 12 gallons per day per mule

Hogs – 4 gallons per day per hog

Goats – 2 gallons per day per goat

Sheep – 2 gallons per day per sheep

Chickens – 5-10 gallons per day per 100 chickens

Turkeys – 10-18 gallons per day per 100 turkeys

Domestic Use Diversion Rates

These figures show diversion rates typical for in-house domestic use. These figures do not include water for domestic stockwater or lawn and garden irrigation. Applicants seeking to divert water in excess of these rates for in-house domestic use should provide information explaining why the additional quantity is needed.

1 Household – 0.04 cfs

$$X \quad 4 = .16$$

2 Households – 0.06 cfs

3 Households – 0.08 cfs

→ **4 Households** – 0.10 cfs

10 Households – 0.15 cfs

20 Households – 0.20 cfs

30 Households – 0.25 cfs

40 Households – 0.30 cfs

50 Households – 0.33 cfs

Other Common Uses

Hotels with private bath (two persons per room) – 60 gallons per room per day

Motels with bath – 40 gallons per day per bed space

Hospitals – 250-400 gallons per day per bed

Swimming pools – 10 gallons per day per swimmer

Picnic grounds with bathhouses, showers, & flush toilets – 20 gallons per day per person

Restaurants with bar/lounge, toilet facilities – 9-12 gallons per day per patron

Schools (day) with cafeteria, gym and showers – 25 gallons per day per student

Schools (boarding) – 75-100 gallons per day per student

Churches – 5 gallons per day per person

Service Stations – 10 gallons per day per vehicle

Stores – 400 gallons per day per restroom

Airports – 3-5 gallons per day per passenger

→ **Irrigation – A total diversion of 0.02 cfs per acre irrigated, unless the applicant or claimant can demonstrate that more is required. For irrigated tracts of 5 acres or less, no additional justification is required for up to 0.03 cfs per acre. For irrigation of public spaces, such as parks and school grounds, IDWR will authorize a diversion rate of 0.02 cfs per acre times 24 divided by the number of hours irrigation actually occurs each day. For example, a park irrigated for 8 hours overnight could divert up to 0.06 cfs per acre.**

$$\frac{.02}{2} = .01 = \frac{1}{2} \text{ acre} \Rightarrow .01 \times 4 = .04 \text{ 2 acres}$$

$$\begin{array}{r} 1/10 \text{ H Domestic Uses} \\ + .04 \text{ Irrigation 1/2 acre each} \\ \hline .04 \text{ CFS TTE 1/2 Domestic + Irrigation 1/2 acre} \end{array}$$

ADJUDICATION MEMORANDUM #23

TO: Adjudication Section Staff

FROM: Carter Fritschle, Adjudication Section Manager *CA*

SUBJECT: Effect of Mandatory Permit Statutes

REVISED: September 4, 2013

I. Surface Water

As of May 20, 1971, a right to surface water can be obtained only by compliance with the application, permit and license procedure established by statute. See Section 42-201, Idaho Code.

The first exception to this rule is water rights used solely for instream watering of domestic livestock can still be established by beneficial use. See Section 42-113, Idaho Code. Note "domestic" livestock does not mean the livestock use must be associated with a household use. The second exception to this rule is an enlargement approved under Section 42-1426, Idaho Code.

The priority date of a water right established by diversion and application to beneficial use is the date water is put to beneficial use. Incremental development of beneficial use water rights require separate priority dates for each development period. Beneficial use rights do not start with the commencement of development; they start when development is completed and water is put to beneficial use.

II. Ground Water

As of March 25, 1963, a right to ground water can be obtained only by compliance with the application, permit and license procedure established by Section 42-229, Idaho Code.

The first exception to this rule is water rights for domestic purposes, as defined in Section 42-111, Idaho Code, can still be established by beneficial use. See Section 42-227, Idaho Code. The second exception to this rule is an expansion right approved under Section 42-1416B, Idaho Code, or an enlargement right approved under Section 42-1426, Idaho Code.

See Adjudication Memorandum #4 for further discussion of the definition of domestic purposes and the effect of mandatory permit statutes on domestic rights.

III. Cut Off Dates

Both the ground water and surface water statutes provide, "In the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation."

In general, a surface water right with a priority of May 20, 1971, or later, or a claim to a ground water right with a priority of March 25, 1963, or later, is invalid because it is in violation of the mandatory permit statute.

However, a beneficial use right with a priority after the cut-off date can be established if the claimant can show the right was commenced (the first step in the appropriation by diverting the water) before the cut-off date, and the appropriation was completed (put to beneficial use) with due diligence after the right was commenced.

Due diligence will be presumed if the appropriation was completed within five years after the appropriation was commenced. Five years is the relevant period since this is the maximum amount of time allowed for completion of an appropriation under a permit. Since the priority date of such a right is the date the appropriation was completed, there may be claims based on beneficial use with priority dates after the effective date of the permit requirement, but the priority date will generally be within five years of the effective date of the permit requirement.

A longer period for completion will be deemed reasonable under the same circumstances where an extension would be granted by the director for completion of an appropriation pursuant to a permit. Recommending a beneficial use right with a priority after the effective date of the permit requirement based on a period for completion in excess of five years requires Bureau Chief approval.

IV. Effect on Adjudication

A claim should not be rejected on the basis the water right is in violation of the mandatory permit system. IDWR might not recommend it, but the claimant can still claim it.

Where a claimant has filed a notice of claim to a water right clearly in violation of the mandatory permit statute, the practice has been to inform the claimant of the possible problem, and give the claimant the option to:

- 1) file just the notice of claim,
- 2) file just an application for permit, or
- 3) file both a notice of claim and an application.

Option 3 offers the best protection of the claimant's interests, but is also the most expensive. (Note that claimants have been allowed to withdraw a notice of claim and get their filing fee back if the claimant is filing an application instead of the notice of claim.)

This is an exception to the general rule that fees will be refunded only where the fee was miscalculated at the time of filing the notice of claim.)