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DISTRICT COURT SRBA
8th Judicial District
County of Twin Falls, State of Idaho

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**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 33-69 et. al**

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David R. Tuthill Jr., Adjudication Bureau Chief

October 1, 2003

I. INTRODUCTION

The Director of the Idaho Department of Water Resources (“IDWR” or “the Department”) submits this Supplemental Director’s Report regarding subcase nos. 33-69 et al. in accordance with Idaho Code § 42-1412(4) and Administrative Order I. This report is also submitted in response to Special Master Bilyeu’s *Amended Trial Scheduling Order* dated July 22, 2003, setting forth the deadline of September 30, 2003 for a 706 Report from IDWR.¹ This report sets forth the basis of the Department’s recommendation for water right nos. 33-69 et al. and was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill, Jr., Adjudication Bureau Chief for IDWR. That same order also requests that the Department submit Amended Director’s Reports for subcase nos. 33-69 et al. on September 30, 2003. Thus, filed on September 30, 2003, are Amended Directors Reports, or Director’s Reports, whichever the case may be, for all of the subcases that are the subject of this Report.

Ernest Carlsen, Water Rights Supervisor, IDWR, Eastern Region Office in Idaho Falls has knowledge of the information contained in this report.

There are 33 subcases discussed in this report and all of them have objections except 33-11003 which was reported to the SRBA Court for the first time in July, 2003. Attached hereto is Table 1 that summarizes the status of each subcase in the SRBA. The United States Forest Service is the only objector to water right nos. 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33- 81, and 33-82. The Forest Service also has an objection filed to water right no. 33-2057F. The Forest Service’s objections relate only to a typographical error in the place of use description. That error has been corrected in the Amended Director’s Reports for

¹ By permission of the Court and the parties, IDWR is filing this report one day after the deadline.

these subcases that were filed on September 30, 2003. These subcases also share common remarks with the other subcases that are objected to by Sagewillow, Inc. (“Sagewillow”).² The common remarks have also been corrected to account for the Amended Director’s Reports on any related water rights.

Sagewillow has objected to the recommendations for subcase nos. 33-2007, 33-2008, 33-2057A, 33-2057B, 33-2057C, 33-2057D, 33-2057E, 33-2057F, 33-2083A, 33-2083B, 33-2083C, 33-2083D, 33-2083E, 33-2083F, 33-2086A, 33-2086B, 33-2090, 33-2091, 33-2133, and 33-7018. Mays Land and Livestock and Blaine County Canal Co. filed responses to all of Sagewillow’s objections except 33-2133.³ The only subcase without an objection at this time is subcase no. 33-11003; however, the Department has filed an Amended Director’s Report for this subcase in order to make the place of use description compatible with related water rights.

II. PROCEDURAL BACKGROUND

In October 1990, Sagewillow filed an application to transfer the place of use and point of diversion of the ground water right from the “Homestead Place” to the “North of Road” place.⁴ Nobody protested the transfer and the Department approved the transfer in October of 1992 (“1992 transfer”). Attached hereto is Sagewillow Diagram 1 that illustrates the various properties. The Diagram shows the recommended places of use for the various water rights and also notes the location of the water rights not recommended by the Department in parentheses

² Sagewillow, Inc. is the official name of the entity on file with the Secretary of State’s office. Although the objections filed in the SRBA are under Sage Willow, Inc. this report will refer to Sagewillow as one word.

³ The United States Bureau of Land Management filed an objection to 33-2133 but that objection was resolved with the filing of the Amended Director’s Report for that subcase on 2/2/2001. Thus, BLM is no longer a party to this subcase.

⁴ Note, the Supreme Court’s decision in *Sagewillow v. Idaho Dept. of Water Resources*, 138 Idaho 831, 70 P.3d 669 (2003) erroneously states that the transfer was intended to transfer water from the “Bird Ranch” to “North of Road” place. *Id.* at 836, 70 P.3d at 673.

underneath the claimed property location. Diagram 1 also contains the locations of the points of diversion for the surface water rights and the locations of certain wells discussed in this report.

Two years later in 1994, Sagewillow filed seven more transfer applications with the Department of Water Resources seeking to change the place of use for its six ground water rights (“1994 transfers”). James Mays, Mays Land and Livestock, and the Blaine County Canal Company filed protests to the transfers claiming that the transfers would expand Sagewillow’s surface water rights and that the ground water rights had been forfeited by non-use. Following the hearing, the Department found that the water rights appurtenant to the “North of Road” place and the “Homestead Place” had been forfeited and that water rights appurtenant to the “Knollin” and “Bird Ranches” and the “Frew Place” had been partially forfeited. Sagewillow was allowed to irrigate only 1,412 acres. Furthermore, the Department voided the transfer it had originally approved in 1992.

Sagewillow appealed the Department’s decision to the Seventh Judicial District Court, which affirmed the Department’s Order. Sagewillow then appealed the matter to the Supreme Court. The Supreme Court held that the Snake River Basin Adjudication (SRBA) District Court had exclusive jurisdiction to review the Department’s decision, thus, vacating the Seventh Judicial District Court’s decision based on lack of jurisdiction. *Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 135 Idaho 24, 13 P.3d 855 (2000). The case was then remanded back to the SRBA District Court.

The Legislature enacted Idaho Code § 42-1401D in response to the Supreme Court’s action; this statute prohibits any Department actions under the Idaho Administrative Procedure Act from being heard in the SRBA District Court. The SRBA District Court then transferred the

case back to the Seventh Judicial District Court and without further hearing, the District Court reissued its prior decision. Sagewillow then appealed again to the Supreme Court.

One of the key issues on appeal was whether or not the Department of Water Resources correctly applied the doctrine of resumption of use. The Department's conclusion of law regarding resumption stated:

17. Other users are not required to assert a specific claim to the water rights or water represented by rights held by the user attempting to resume his use. The existence or establishment of a junior water right is sufficient to claim the water. The resumption doctrine cannot restore portions of water rights forfeited by Sage Willow's [sic] predecessor in interest to the detriment of other water right holders.

Amended Final Order, In the Matter of Application for Transfer Nos. 4221, 4222, 4223, 4224, 4225, 4226, 4227 in the Name of Sagewillow, Inc., p. 19 (April 8, 1996).

The Supreme Court found that the Department's conclusion was incorrect. The Supreme Court clarified the requirements to be met under the resumption of use doctrine, stating that to resume a water right the resumption needed to occur:

1. Prior to the time others "initiated their appropriation," citing *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937);
2. In the case of ground water, the water user must have retaken possession of his wells and canals prior to the "initiation of any right therein by others," citing *Wagoner v. Jeffery*, 66 Idaho 455, 162 P.2d 400, (1945); and,
3. Be upon the land to which the water right was appurtenant, citing *McCray v. Rosenkrance*, 135 Idaho 509, 20 P.3rd 693, (2001).

Sagewillow at 842, 70 P.3d at 680.

A key to determine whether other water users had initiated or claimed a right to the water is whether the stream is fully appropriated. In a previous Supreme Court decision, the Supreme Court held, "a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost and the junior appropriators move up the ladder of priority."

Jenkins v. State, Dept. of Water Resources, 103 Idaho 384, 387-88, 647 P.2d 1256, 1259-60 (1982). The Supreme Court clarified this statement in *Sagewillow* and expressly held “that the mere existence of a junior appropriator, however, is not sufficient to show that the junior appropriator has made a claim of right to the water not used by the senior appropriator.” *Sagewillow* at 836, P.3d at 676. Thus, the Department’s conclusion that the mere existence of a junior water right user was enough to defeat resumption was incorrect. Rather, a showing that the junior water user actually relied upon the water right prior to the resumption of use and put the water to beneficial use must be shown. *Id.*

The Supreme Court in *Sagewillow* discussed *Jenkins* further, noting that there was an express finding in that case that the watercourse was fully appropriated. The Court said that “the junior appropriators would be harmed if there would not be sufficient water to fill their water rights due to the senior appropriator being permitted to resume his use.” *Id.* The Court noted that this would typically occur when the watercourse was fully appropriated. If the watercourse was fully appropriated and the junior appropriators were using water to the extent that it was available, then according to the Supreme Court’s decision in *Sagewillow*, the junior appropriator would have made a claim to the water not used by the senior appropriator.

The Supreme Court remanded the case back to the Department because the Department did not make any finding that after the statutory period of non-use and before resumption of use by *Sagewillow* that any junior appropriator used water that was available because of continued non-use of the water by *Sagewillow*.

III. LEGAL PARAMETERS USED FOR THE ATTACHED DIRECTOR’S REPORTS

When filing these Director’s Reports, the Department considered how the water rights existed in 1987. The Department did not take into consideration the 1992 transfer that was found

by the Supreme Court to be properly voided⁵ and the seven 1994 transfers that have since been withdrawn by Sagewillow. In addition, the Department considered the following legal requirements:

1. Is there clear and convincing evidence that the water user failed to use and apply the water to a beneficial use for a continuous 5-year period? I.C. § 42-222.
2. Is a transfer required under I.C. § 42-222? Did the change in the point of diversion or place of use of the water right occur prior to 1987?
3. If a resumption of the water right occurred, did it occur upon the same land to which the water right was originally appurtenant?
4. If a resumption of the water right occurred, did it occur prior to any claim of right by a third party to the water not used by the senior appropriator?

IV. DISCUSSION

This section of the report will discuss the Department's basis for its recommendations contained in the Director's Reports and Amended Director's Reports filed on September 30, 2003.

A. Water Right Nos. 33-69, 33-70, 33-71, 33-72, 33-73, 33-74, 33-76, 33-78, 33-79, 33-80, 33-81, and 33-82

These water rights are used on the "Knollin Ranch." These are commonly referred to as the "high water rights." The United States Forest Service filed the only objections to the Department's original recommendations for these water rights; there was a typographical error in the place of use legal description placing these water rights on Forest Service property. This error has been corrected on these water rights and thus, the USFS's objections should be resolved with the filing of the Amended Director's Reports. The Amended Director's Reports for these water rights also incorporate appropriate combined use remarks to account for any related overlapping water rights.

⁵ See *Sagewillow, Inc. v. IDWR*, 138 Idaho at 671, 70 P.3d at 683.

1. Background. These water rights were decreed in *Blaine County Investment Co. v. Mays, Decree*, (6th Jud. Dist. Idaho, March 4, 1927). The relevant portion of the decree is attached as Exhibit 1. Water right nos. 33-69, 33-70, 33-71, 33-72, 33-80, 33-81 and 33-82 are the more senior of the high water rights with priority dates ranging from October 1, 1906 to March 15, 1909. Water right nos. 33-73, 33-74, 33-76, 33-78 and 33-79 are the more junior high water rights with priority dates ranging from April 1, 1912 to October 15, 1913. Water right nos. 33-69, 33-72, 33-74, 33-76, 33-78 and 33-79 were decreed with the Little Lost River as the source and water rights nos. 33-70, 33-71, 33-73, 33-80, 33-81, 33-82 were decreed with Spring Creek as the source.⁶ On the Amended Director's Reports filed along with this report, the priority dates for the various water rights did not change. All the high water rights now have Big Spring Creek and Little Lost River as their source.

2. Recommendations. The discussion for the recommendations for these water rights will focus on the number of acres and quantity elements for these water rights. The sum of these water rights equals 32 cfs. However, only 655 acres were historically irrigated according to Mr. Vance Hawley's testimony at the administrative hearing on Sagewillow's application for transfer. In his testimony, Mr. Hawley describes the irrigated acres field by field. The sum of the acres historically irrigated according to his testimony equals 655 acres.⁷ 1987 NAPP photography, 1992 aerial photos and a 1975 orthophotoquad map further support the recommended number of acres. These water rights were historically used on property located in T7N, R28E Sections 1, 7, 8, 12, 13 and 18 when they were available. Sub-irrigation occurs primarily in T7N R28E Sections 7 and 19 on lands not irrigated by these water rights. The high water rights are not available on a regular basis.

⁶ Diagram 1 shows Big Spring Creek however, Spring Creek and Big Spring Creek are one and the same.

⁷ Refer to Exhibit 2, IDWR administrative hearing transcript, page 13, line 18 through page 24, line 25.

If the total quantity of 32 cfs were recommended on the land historically irrigated under these water rights, then the resulting flow rate would be 2.5 miners inches per acre. These water rights were decreed at 0.02 cfs/acre. The Department's Amended Director's Reports are consistent with the decreed rates of diversion providing for the delivery of 0.02cfs/acre at the field headgate.

The quantity on the Amended Director's Reports for the more senior of the high water rights is cumulative until one inch of water per acre is provided on the 655 acres. The more junior high water rights are then limited with quantity and place of use remarks that say when combined with the senior high water rights, that all the water rights are limited to the delivery of 0.02 cfs/acre at the field headgate and the irrigation of 655 acres. The original recommendations for these high water rights also contained a combined limit of 0.02 cfs/acre, however, the condition specified a total combined diversion rate. The remarks on the Amended Director's Report are more administrable from the Department's perspective and do not limit the more senior high water rights unnecessarily.

B. Water Right Nos. 33-2007 and 33-2008

These two water rights are recommended to be disallowed because they are recommended as 33-71 and 33-73 respectively. The Department concludes that license nos. 33-2007 and 33-2008 were superceded by the decree in *Blaine County Investment Co. v. Mays*, (6th Jud. Dist. Idaho, March 4, 1927). This conclusion is based on the following reasons: (1) the license holders' predecessors in interest were parties in that case and (2) the sources and places of use for the two licenses are covered by water rights decreed in that case.

1. Background. License no. 33-2007 was in the name of Adolph M. Myrup for 3.2 cfs with a February 1, 1909, priority date from the Little Lost River. License no. 33-2007 is attached as Exhibit 3. Decreed right no. 33-71 was decreed from Spring Creek with a March 15, 1909, priority date to Merchants Trust & Savings Bank to be used on property titled in the decree as “A.M. Myrup Desert Entry.” *Blaine County Investment Co.* ¶ XXI. The land in the decree and the license are summarized in the following table:

Licensed POU for 33-2007	Decreed POU for 33-71
T7N, R28E, S18, SENW, SWNE, NWSE, NESE	T7N, R28E, S18, SENW, SWNE, NWSE, NESE

License no. 33-2008 was developed in the name of Lillian Myrup for 6.4 cfs from Spring Creek with a June 12, 1909, priority date. License no. 33-2008 is attached as Exhibit 4. Water right no. 33-73 was decreed from Spring Creek with an April 1, 1912, priority date to Merchants Trust & Savings Bank to be used on property titled in the decree as “Lillian Myrup Entry.” *Id.* The land in the decree and the license are summarized in the following table:

Licensed POU for 33-2008	Decreed POU for 33-73
T7N, R28E, S8, NENW, SENW, SWNW, NESW, NWSW, SESW, NWSE, SWSE	T7N, R28E, S8, NENW, SENW, SWNW, NESW, NWSW, SESW, NWSE, SWSE

2. Recommendation. Since the decree involves the same lands that were subject to the prior licenses (33-2007 and 33-2008) and the parties on the licenses were also involved in the decree by the fact that their predecessors in interest were parties to that decree, the Department concludes that decreed right nos. 33-71 and 33-73 replace license nos. 33-2007 and 33-2008. This conclusion is further bolstered by the fact that if 33-2007 and 33-2008

were considered to be separate water rights, then the licensed place of use would have a combined total of 0.04 cfs/acre from surface water rights. This would result in the Department putting a combined used limit of .02 cfs/acre on the water rights, even if 33-2007 and 33-2008 were considered separate and apart from decreed water right nos. 33-71 and 33-73.

C. Water Right Nos. 33-2057, 33-2057A, 33-2057B, 33-2057C, 33-2057D, 33-2057E, 33-2057F, 33-2083, 33-2083A, 33-2083B, 33-2083C, 33-2083D, 33-2083E, and 33-2083F

These ground water rights are used on the “Knollin Ranch” but also serve the “Bird Ranch.” Because the transfers that created the splits of water right nos. 33-2057 and 33-2083 have been withdrawn, the Amended Director’s Reports disallow the “A” through “F” splits. Instead, these water rights are recommended under the “parent” water right nos. 33-2057 and 33-2083 in Director’s Reports filed along with this report.⁸ Water right no. 33-2057F had a USFS objection due to the typographical error discussed previously. That objection should be resolved with the filing of the Director’s Report for water right no. 33-2057.

1. Background. Water right no. 33-2057 was licensed for 24 cfs from ground water on 1,483 acres with a February 1, 1950, priority date. The land originally irrigated under this water right was located on the “Knollin Ranch” and the “Bird Ranch.” Water right no. 33-2083 was licensed from ground water with an August 23, 1957, priority date for 5 cfs on the same 1,483 acres as 33-2057. These water rights are diverted from well numbers 1, 2, 3, 4, 5 and 11 as depicted on Diagram 1. The water from wells 1, 2, and 3 is applied directly to the land. The water diverted from wells 4, 5, and 11 is diverted into a ditch and then injected into the Little Lost River at the point of injection recommended on the Amended Director’s Report in T7N R27E Section 12. The ground water is then rediverted either by exchange or by commingling

⁸ This is the first time that these water rights without the splits have been recommended in the SRBA.

from four points of redirection onto the two properties. The points of redirection for these two water rights are the same points of diversion as recommended for the high water rights plus the point of redirection located in T8N, R27E Section 15. From this point of redirection, water from the Little Lost River is transported by a ditch and put on the “Bird Ranch” for irrigation purposes.

2. Recommendation. The Department has concluded that a total of 1181.9 acres are irrigated under these water rights. This conclusion is based in part on Vance Hawley’s testimony at the administrative hearing on Sagewillow’s transfer applications. Mr. Hawley testified that he remembered a total of around 1,200 acres being irrigated.⁹ IDWR’s shape file, based on this testimony and coupled with 1987 NAPP photography, 1992 aerial photographs, 1975 orthophotoquad map, and the topography of the land resulted in a total of 1181.9 acres.

Sagewillow’s objections originally filed in the SRBA to the “A” through “F” splits of 33-2057 and 33-2083 contended that 2,383 total acres is irrigated under these water rights when combined with various other water rights. However, the Department concludes that the total number of acres historically irrigated on the “Knollin Ranch” and the “Bird Ranch” is only 1181.9 acres. Water right nos. 33-2057 and 33-2083, like the high water rights, are limited to .02 cfs at the field headgate, thus, more than an inch per acre can be diverted from ground water and redirected from surface water so that the water user suffers no conveyance loss.

D. Water Right Nos. 33-2086A, 33-2086B and 33-7018

These water rights are located on the “Frew Place.” The “A” and “B” splits of water right no. 33-2086 reflect a change in the ownership of the water right that resulted when David Hawley sold a portion of the “Frew Place” to Sagewillow in March 1993. The Deed is attached as Exhibit 5.

⁹ Refer to Exhibit 2, page 26, lines 1-20.

1. Background. Idaho Law recognizes that a water right is a real property interest. I.C. § 55-101. A water right is an appurtenance to the land on which the water is actually applied. *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984). Idaho Code § 42-220 states that: “all rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted.” When land is conveyed together with all appurtenances, the land carries with it all appurtenant water rights unless the deed conveying the land expressly reserves some or all of the water rights. See *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911). The converse must be equally true: a deed purporting to convey only appurtenant water rights cannot be construed to convey water rights not appurtenant to the lands being sold unless it can be clearly shown that the intent of the parties was to convey the water rights in their entirety, regardless of the number of acres sold. The deed conveying the property from David Hawley to Sagewillow states:

TOGETHER With all water and ditch rights appurtenant thereto, including, but not limited to: State of Idaho Water Rights License Nos. 33-2086 and 33-0718.¹⁰ (sic)

The Department concludes that the controlling phrase in the deed is “appurtenant thereto” which indicates only the water under license nos. 33-2086 and 33-7018 that was appurtenant to the land purchased by Sagewillow was conveyed.¹¹ Thus, the Amended Director’s Reports filed along with this report are based on this conclusion.

¹⁰ Although the deed states water right no 33-0718 instead of 33-7018, it is understood that 33-7018 is correct and that the deed contains a typographical error.

¹¹ The Department has two documents in its files that also discuss these water rights. These documents are attached hereto as Exhibits 6 and 7. The first document is titled “Notice Concerning Water Rights for Property” and the second document is titled “Assignment of Notice of Claim(s).” The Department concludes that neither of these documents is sufficient to convey all of the water right under license nos. 33-2086 or 33-7018. If conveying all the water right was in fact the parties intent, then, that can be easily remedied with another deed from Mr. Hawley to Sagewillow removing the water from the 31 acres still owned by Mr. Hawley and conveying it to Sagewillow. At that point, however, a transfer would be required to change the place of use for that portion of the water right.

2. Recommendation. The place of use for license no. 33-2086 lists 260 acres with 4.10 cfs. However, only 230 acres were ever historically irrigated; thus, the water right appurtenant to the “Frew Place” is for 230 acres. The conclusion on the number of acres irrigated is based on testimony on historical usage during the administrative proceeding plus 1987 NAPP photography. In accordance with Department policy, the quantity of the license will not be reduced and remains 4.10 cfs since it does not exceed .02 cfs/acre. According to the Warranty Deed, David Hawley still owns the NWSW Section 32, T08N, R28E containing 31 acres originally irrigated under this license. Of the property purchased by Sagewillow, 199 acres were actually historically irrigated as depicted on Diagram 1. Therefore, the recommendation for 33-2086A, still owned by Mr. Hawley is for 31 acres and 0.550 cfs and the recommendation for 33-2086B, purchased by Sagewillow is for 199 acres and 3.55 cfs.

Water right no. 33-7018 was originally licensed for 3.26 cfs on 163 acres with a September 12, 1972, priority date. This water right originally irrigated lands located on the “Frew Place” in T7N, R28E Section 5. This water right has been recommended for a total of 163 acres within a permissible place of use of 199 acres on the “Frew Place” but shares combined use remarks with 33-2086B. This conclusion is based on what was historically irrigated at that location which is supported by 1987 NAPP photography.

E. Water Right No. 33-2090

The Department recommended water right no. 33-2090 as disallowed for the following reasons: 1) clear and convincing evidence shows that the water right was not used from 1969 to 1989; and 2) the current points of diversion used under 33-2090 on the “North of Road” place are unauthorized.

1. Background. Water right no. 33-2090 was licensed for 5.93 cfs with a December 21, 1959, priority date from ground water. The point of diversion for this water right is located in the T7N R27E S1 NWSW and was licensed to irrigate 320 acres located in T7N R27E S1 and T7N R28E S6, shown on Diagram 1 as “North of Road” place. Sagewillow purchased the “North of Road” property in 1989. Shortly thereafter, Sagewillow drilled two wells, one in T7N R27E S1 SWNESE (Well #10 on Diagram1) and one in T7N R28E S6 SWNESW. (Well #9 on Diagram 1). Sagewillow’s intent was to place three new pivots on the “North of Road” place using these two new wells and an existing well located in T7N R27E S12 NENENE. (Well #1 on Diagram 1) Thus, Sagewillow filed an application for transfer No. 2222 to recognize three new points of diversion for the “North of Road” place. Application for transfer no. 2222 was protested. After an administrative hearing on this transfer, the Department denied transfer of water right no. 33-2090 because it found that this water right had not been used since the late 1960s and the Department determined that resumption of use for this water right was not valid. After the Supreme Court reviewed the Department’s decision on this transfer and remanded the matter back to IDWR for further findings on the resumption issue, Sagewillow withdrew application for transfer no. 2222. Thus, when making the Amended Director’s Reports to the SRBA Court for water right no. 33-2090, the Department reviewed this water right without regard to the transfer application.

2. Recommendation.

a) Forfeiture. Sworn testimony during the administrative hearing on application for transfer no. 2222 by Vance Hawley, who had personal knowledge of the irrigation practices on the “North of Road” place and whose testimony was credible, demonstrated that no water had been used on the “North of Road” place since 1969. Mr.

Hawley's testimony stated that his aunt and uncle owned this property and that irrigation on the property was to secure a patent under the Desert Land Entry Act. Mr. Hawley did not recall the land ever being irrigated when he was on the property.¹² Furthermore, NAPP imagery also shows that in 1987 no water was applied to this property. Hence, the Department concludes that this water right has been forfeited due to non-use from 1969 to 1989.

b) Unauthorized Points of Diversion. There is no valid defense to forfeiture for 33-2090. In order to change a water right's point of diversion, a transfer must be filed pursuant to I.C. § 42-222 unless the transfer occurred prior to 1987 and then the transfer can be recognized under the "accomplished transfer" statute, I.C. § 42-1425. In Sagewillow's case, the three points of diversion currently used on the "North of Road" place were not used until after Sagewillow purchased the property in 1989. Thus, absent a valid transfer, there is no legal way to recognize the points of diversion currently being used by Sagewillow under 33-2090. Not only has water right 33-2090 been forfeited for non-use for over 20 years, but also the points of diversion described under the water right are unauthorized.

It is impossible to find that 33-2090 was legally resumed using illegal points of diversion. The new points of diversion have no legal basis to be recommended in the SRBA. The Supreme Court in *McCray v. Rosenkrance*, 135 Idaho 509, 20 P.3d 693 (2001), held that resumption is not a valid defense to forfeiture when the place of use has been changed for the resumed water right prior to the filing of a transfer. *McCray* at 518, 20 P.3d at 702. In *McCray*, the Court noted that although the water user was trying to claim that certain water rights were resumed by changing the place of use of the water rights, the Court specifically stated "it has not been alleged that he sought the permission of the water district as required by Idaho Code § 42-108, or that he made application to change the place of use with the IDWR as required by Idaho

¹² Refer to Exhibit 2, page 28 line 17 through page 30, line 7.

Code § 42-222.” *Id.* (emphasis added). The Court held that “[i]t is clearly the law in Idaho that a water right cannot be resumed when the facts clearly establish that water was not applied to the land of which it was appurtenant.” *Id.* A logical application of this holding is that resumption is not available as a defense against forfeiture when the resumption occurred in a manner that would require a transfer under I.C. § 42-222. Thus, in this case, because the points of diversion on “North of Road” place are unauthorized, resumption is not a valid defense against forfeiture. Therefore, the Department has not analyzed, for purposes of this report, whether any resumption occurred prior to the initiation by a third party of a right to use the water not diverted under the forfeited water right or whether resumption would cause injury to other water users.¹³

F. Water Right No. 33-2091

1. Background. The Department also recommended water right no. 33-2091 as disallowed because the water right had been forfeited for non-use from 1969 to 1989. Water

¹³ If the Court determines that the basis for the Department’s finding that water right no. 33- 2090 is forfeited and disallowed is not appropriate and that resumption should be considered at the unauthorized points of diversion, the Department can submit an expert report at the Court’s request that details whether or not resumption causes injury to other junior water right holders. The Department has already determined in its Final Order that:

12. A geologic formation near the confluence of the Little Lost River and Spring Creek impedes the southward flow of ground water in the underlying aquifer, causing the ground water and surface water to merge in the southern half of Knollin Ranch. The Little Lost River loses water to the underground aquifer above the Knollin Ranch, but as the ground water and surface water merge, the Little Lost River and Spring Creek gain water as they flow through the Knollin Ranch. The Little Lost River continues to gain water downstream several miles to the Canal Co. diversion.

13. The Little Lost River and the aquifer underlying the Little Lost River Basin downstream of the Knollin Ranch are dependent on water flows which pass the Knollin Ranch, either on the surface or underground.

14. The Hawley wells were drilled into the shallow portion of the aquifer which is hydrologically connected to the surface water. There is a direct hydrologic connection between the water pumped by the Hawley wells and the surface water that flows downstream into the Little Lost River below the Knolling Ranch.

right no. 33-2091 was licensed for 5.60 cfs with a January 22, 1960, priority for use on 320 acres of property known as the “Homestead Place.” (See Diagram 1.) In 1990, Edmund Dumke, as President for Sagewillow Inc., filed application for transfer no. 3785 to change the point of diversion and place of use for this water right to the “North of Road” place. The application for transfer was not protested and was approved to change the place of use and point of diversion for license no. 33-2091 based upon the verified information contained in the application without conducting an independent investigation of the facts. This transfer resulted in an overlap of the place of use under license no. 33-2090.¹⁴ Apparently, pursuant to transfer no. 3785 two pivots were installed on the “North of Road” lands in 1990 and the irrigation of the property commenced that same year.¹⁵

2. Recommendation. Sworn testimony at the administrative hearing by Mr. Vance Hawley who had personal knowledge of the irrigation practices on the “Homestead Place” and whose testimony was credible provided that this property was only irrigated by his parents for the purpose of obtaining a patent to the land. Irrigation was discontinued after the patent process was complete due to the condition of the ditches.¹⁶ Furthermore, 1987 NAPP photography shows, that license no. 33-2091 originally appurtenant to the “Homestead Place,” ceased being used once the patent for the land was issued in the late 1960’s. Water right no. 33-2091 was not used again until after Sagewillow purchased the property in 1989, but it was then used on the “North of Road” property. Thus, the Department concludes that water right no. 33-2091 is forfeited due to non-use from 1969 to 1989.

¹⁴ One of the reasons Sagewillow filed its series of transfer applications that were ultimately appealed to the Supreme Court was to change transfer no. 3785 by moving license 33-2091 to lands not already covered under license 33-2090.

¹⁵ The development of the new points of diversion actually occurred prior to authorization as Transfer no. 3785 was not approved until October, 1992.

¹⁶ Refer to Exhibit 1, page 8, line 15 through page 12, line 11.

The Department's Final Order in application for transfer no. 2222 found that transfer no. 3785 was void because water right no. 33-2091 had not been used since 1969. Whether or not it was proper to void this transfer because the water right had been forfeited was addressed by the Supreme Court in *Sagewillow*. The Supreme Court specifically stated:

it would be a substantial burden upon the Department to require that in response to every transfer application it conduct an investigation into whether the water right(s) involved had been lost or reduced by forfeiture or abandonment. Therefore, we hold that if forfeiture or abandonment is not actually raised as an issue in a proceeding to transfer the point of diversion or place of use of a water right, the final order in the transfer proceeding is not *res judicata* on the issue of whether or not the water right had been forfeited or abandoned.

Sagewillow, 138 Idaho at 671, 70 P.3d at 683. The Court went on to say that “[w]hen approving the transfer in 1992, the Department expressly stated that the approval did not preclude later review of the validity of the water right.” *Id.* Thus, the Supreme Court affirmed that the Department had the authority to void the transfer.

Regardless, however, of whether or not the transfer is void, the Supreme Court acknowledged that transfer no. 3785 did not find that water right 33-2091 was valid and did not consider forfeiture. *Id.* The Department concludes, as reflected in the Amended Director's Reports for water right no. 33-2091 that the water right is invalid because of non-use from 1969 to 1989.

G. Water Nos. 33-2133 and 33-11003

Water right no. 33-2133 was licensed for 2,960 acre feet with a June 22, 1949, priority date for “Soil Root Zone Storage only.” This water right is used for soil root zone storage on lands located on the “Knollin Ranch.” This water right allows the diversion of waters from the Little Lost River and Upper Spring Creek¹⁷ to be diverted and applied to land to raise the subwater table so the root zone is saturated. Some of this water is collected in a series of ponds

¹⁷ Upper Spring Creek is the same as Big Spring Creek shown on Diagram 1.

to accomplish this purpose. Water right no. 33-11003 accompanies licensed right no. 33-2133. This water right allows diversion of the storage water collected in the ponds so it can be applied on the recommended place of use for this water right.

The Amended Director's Reports filed along with this report for these two water rights show that these two water rights can be used on 1436.1 acres. Attached hereto as Diagram 2 shows the place of use for these water rights. The conclusion for the number of acres and location of the acres is based in part on information in water right license file no. 33-2133 and on information received from Dr. Charles Brockway, the engineer employed by Sagewillow to confirm the place of use for these two water rights.

V. CONCLUSION

The Department's analysis of the various water rights and the basis of its recommendations in the Director's Reports and Amended Director's Reports filed contemporaneously with this report are based upon solid facts and law. The water rights should be partially decreed as recommended in the Director's Reports and Amended Director's Reports filed herewith.

Respectfully submitted this 1st day of October, 2003.


Ernest Carlsen
Water Rights Supervisor, IDWR

CERTIFICATE OF MAILING

I certify that on October 1, 2003 I mailed and/or delivered the original and copies of this form, including all attachments, to the following interested parties, by placing them in sealed envelopes, addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

2. Copies to:

Office of the Attorney General
Natural Resources Division
Box 83720
Boise, ID 83720-0010

☐ Overnight Mail
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street MSC 033
Boise, ID 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Kent Foster
P.O. Box 50130
Idaho Falls, ID 83405

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Michael Creamer
P.O. Box 2720
Boise, ID 83701-2720

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

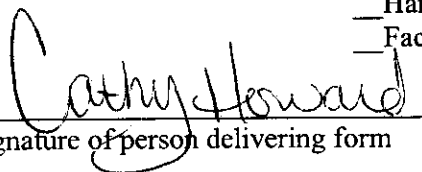

Signature of person delivering form

Table 1
Subcase Nos. 33-69 et al.'s SRBA Procedural History

Sagewillow Subcase No.	SRBA Claim filed 10/6/89	Recommended in Basin 33 Director's Report 2/1/2000	Objection Filed by Sagewillow 3/23/2000	Objection Filed by USFS 4/6/2000	Responses Filed by BCCC & Mays L & L 8/9/2000	SF5 Filed 1/13/00 & SMRR Filed 10/27/2000	Motion to Alter and Amend SMRR Denied 2/22/2001
33-00069	x	x		x		x	x
33-00070	x	x		x		x	x
33-00071	2/22/1993	x		x		x	x
33-00072	x	x		x		x	x
33-00073	x	x		x		x	x
33-00074	2/22/1993	x		x		x	x
33-00076	2/22/1993	x		x		x	x
33-00078	2/22/1993	x		x		x	x
33-00079	2/22/1993	x		x		x	x
33-00080	x	x		x		x	x
33-00081	x	x		x		x	x
33-00082	x	x		x		x	x
33-02007	x	x	x		x		
33-02008	x	x	x		x		
33-02057A	11/9/1999	x	x		x		

33-02057B	11/9/1999	x	x		x		
33-02057C	11/9/1999	x	x		x		
33-02057D	11/9/1999	x	x		x		
33-02057E	11/9/1999	x	x		x		
33-02057F	11/9/1999	x	x	x	x		
33-02083A	11/9/1999	x	x		x		
33-02083B	11/9/1999	x	x		x		
33-02083C	11/9/1999	x	x		x		
33-02083D	11/9/1999	x	x		x		
33-02083E	11/9/1999	x	x		x		
33-02083F	11/9/1999	x	x		x		
33-02086A	11/9/1999	x	x		x		
33-02086B	11/9/1999	x	x		x		
33-02090	x	x	x		x		
33-02091	x	x	x		x		
33-02133	3/31/1993	x	x ¹	²			
33-07018	4/4/1990	x	x		x		
33-11003	9/18/1990	7/31/2003	³				

¹ Second Objection by Sagewillow filed 3/1/2001 following the Amended Director's Report Filed on 2/28/2001

² The USFS did not file an objection to this subcase, rather the United States Bureau of Land Management did, however, the BLM's objection was resolved after the filing of the Amended Director's Report on 2/28/2001.

³ No objections were received to the Director's Report for this subcase, however, IDWR filed an Amended Director's Report for this subcase in order to properly describe the place of use element with related water rights.

Sagewillow, Inc. Diagram 1

Bird Ranch

Homestead
Place
(33-2091
disallowed)

Little Lost River

Big Spring Creek

SCANNED
Freese Place
0C 1 2003

08N27E

08N28E

07N27E

07N28E

North of Road
(33-2090
disallowed)

10

9

11

3 2 1

Knollin Ranch
(33-2007
33-2008
disallowed)

Pond

■ Sagewillow POD Surface Water
● Sagewillow POD Ground Water

POU 33-2086A

POU 33-2086B, 33-7018

POU

33-69 33-76
33-70 33-78
33-71 33-79
33-72 33-80
33-73 33-81
33-74 33-82

POU 33-2057, 33-2083

Township/Range

Sections

2000 0 2000 4000 6000 Feet



Idaho Department of Water Resources
Prepared by: Ernie Carlson
and Sandy Egbert
Date: Sept. 26, 2003

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR BUTTE COUNTY.

33-B ✓
NUMBERED

THE BLAINE COUNTY INVESTMENT
COMPANY, a corporation,

Plaintiff,

T. G. MAYS, et al.,

Defendants.

D E C R E E

This matter having been referred to Honorable L. E. Glenn by an order of this court, made and entered on the 4th day of May, 1923, to take the testimony herein and to try all of the issues in said action, both of fact and law, and to report findings and judgment thereon, as required by law, and the said Referee having heard and considered said cause and having submitted a full and complete report thereon setting forth his findings of fact and conclusions of law, and the court having duly considered said report and the objections filed thereto, and having heard the arguments of counsel for the respective parties in support of their objections to said report, and given due consideration thereto, and the court having heretofore made an order approving and adopting the report of the Referee, and the court having heretofore made and filed findings of fact and conclusions of law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.

That all of the lands hereinafter described are arid in character and require artificial irrigation in order to produce profitable crops thereon.

II.

That the duty of water upon the several tracts of land herein described corresponds to the quantity of water awarded thereto, respectively, and the quantity of water herein awarded,

1.

EXHIBIT

1

(b) Rocky Run: 100 inches, June 1, 1908; that said ⁸ ~~34~~
source of supply is not tributary to Little Lost River. 33 0066

Spring Creek: 220 inches, June 1, 1908. 33 0067 ~~34~~

Point of diversion:

to be used upon and appurtenant to:

(Sunny Bar Ranch). The Northwest quarter and the West half of the Southwest quarter, Section 29; and the West half of the Northwest Quarter of Section 32, Township 8 North, Range 28 East of the Boise Meridian.

(c) Little Lost River: 300 inches, June 1, 1891. 33 0068

Point of diversion:

to be used upon and appurtenant to:

(Bird Ranch). The Southeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter, the Southwest quarter and the West half of the Southeast quarter, Section 34, Township 8 North, Range 27 East of the Boise Meridian.

(d) Little Lost River: 160 inches, June 1, 1908, 33 0069

Point of diversion:

to be used upon and appurtenant to:

(Home Ranch - Conger Entry) The East half of the Northwest quarter, the Northeast quarter of the Southwest quarter and the Northwest quarter of the Southeast quarter of Section 7, Township 7, North, Range 28 East of the Boise Meridian.

(e) Spring Creek: 140 inches, October 1, 1906. 33 0070 ²⁹

Point of diversion:

to be used upon and appurtenant to:

(A. M. Myrup Homestead) The South half of the South half of Section 7, Township 7 North, Range 28 East of the Boise Meridian.

(f) Spring Creek: 160 inches, March 15, 1909, 33 0071 ~~37~~

Point of diversion:

to be used upon and appurtenant to:

(A. M. Myrup Desert Entry) The Southeast Quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter and the North half of the Southeast quarter, Section 18, Township 7 North, Range 28 East of the Boise Meridian.

(g) Little Lost River: 40 inches, May 1, 1908, 33 0072

Point of diversion:

to be used upon and appurtenant to:

The Northwest Quarter of the Southwest Quarter, Section 7, Township 7 North, Range 28 East of the Boise Meridian.

(h) Spring creek: 320 inches, April 1, 1912, 33 0073

Point of diversion:

to be used upon and appurtenant to:

MAY 28 1996

6. In all other respects this decree shall be final.

Dated this 4th day of March, 1927.

Ralph W. Adair,
District Judge.

Filed March 5, 1927.
J. F. Tiedeman, Clerk,
By, Ora F. Martin, Deputy.
Recorded Book One of Orders & Decrees, page 425.

By order of the Court of the Sixth Judicial District of the State of Idaho,
in and for the County of Butte, at the March term - first judicial day,

The following changes were made in the Decree in the case
of THE BLAINE COUNTY INVESTMENT COMPANY, a corporation, Plaintiff,
vs. ROBERT G. MAYS, et al., Defendants:

On page 22 - LESLIE A SERMON:

The following addition was made:

"Homestead Entry No. 258 in Butte County, Idaho, particularly
described in Book 2 of Patents in the office of the Recorder of said
Butte County, at page 179."

On page 9 - EPHRAIM HANSEN and MARY HANSEN, husband and wife:

The date of the water decreed from Saw Mill Creek was changed
to read "50 inches, May 25 (instead of May 26) 1891.

RECORDED
MAY 28 1926

STATE OF IDAHO, }
County of Butte. } ss.

I HEREBY CERTIFY that the within is a full, true and correct copy of the

DECREE in the case of THE BLAINE COUNTY INVESTMENT COMPANY,
a corporation, Plaintiff vs ROBERT G. MAYS, et al, Defendants,
filed March 5, 1927, and recorded in Book One of Orders &
Decrees, page 425, Butte County Records,

RECORDED

MAY 28 1996

as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at
Arco, Idaho, this 17th day of March 1927.
By Ora F. Martin Deputy.
J. F. Tisdeman Clerk and Ex-Officio Recorder.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

IN THE MATTER OF APPLICATION FOR)
TRANSFER NOS. 4221, 4222, 4223, 4224,)
4225, 4226 AND 4227 IN THE NAME OF)
SAGE WILLOW, INC.)
_____)

SAGEWILLOW, INC.,)

Petitioner/Appellant,)

vs.)

IDAHO DEPARTMENT OF)
WATER RESOURCES, JAMES)
MAYS, MAYS LAND AND)
LIVESTOCK and BLAINE)
COUNTY CANAL COMPANY,)
_____)

Respondents,)

Case No. CV-96-39

TRANSCRIPT OF AGENCY PROCEEDING

Department of Water Resources, of the State of Idaho
Gary Spackman, Hearing Officer

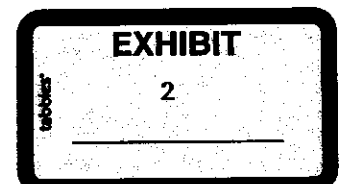
KENT W. FOSTER
HOLDEN KIDWELL HAHN CRAPO

J. EVAN ROBERTSON
NORMAN M. SEMANKO
ROSHOLT ROBERTSON TUCKER
Petitioner/Appellant

MICHAEL C. CREAMER
GIVENS PURSLEY & HUNTLEY
Protestant/Respondent

PHILLIP J. RASSIER
IDAHO DEPT. OF WATER
RESOURCES
Respondent

VOL II



1 PROCEEDINGS BEGIN

2 MR. SPACKMAN: We are recording again and this
3 recorder is a dummy recorder or a smart recorder and we're the
4 dummies because it will not let us record over prior
5 testimony. So regardless of the way we insert the tape, if
6 it's been recorded on it won't record again. So this is a new
7 day, February 1st, a new month, Groundhog Day, and I hope
8 tomorrow isn't a repeat of today. I seen the movie and I
9 think we should be able to finish today.

10 Mr. Creamer, you're calling witnesses and I think
11 we're set for another one at this juncture.

12 MR. CREAMER: Yes. Protestants would call Mr. Vance
13 Hawley.

14 MR. SPACKMAN: Mr. Hawley? Raise your right arm
15 please.

16 VANCE HAWLEY, PROTESTANT'S WITNESS, IS SWORN

17 MR. SPACKMAN: Thank you. Mr. Creamer?

18 DIRECT EXAMINATION

19 BY MR. CREAMER:

20 Q Mr. Hawley, could you state your name and spell it and
21 provide us your address please.

22 A Okay. My name is Vance, V-A-N-C-E, Laren, L-A-R-E-N,
23 Hawley, H-A-W-L-E-Y. And I live at 578 East 4900 South, in
24 Idaho Falls.

25 Q What's your occupation, Mr. Hawley?

1 A My occupation is in electronics, specifically two-way
2 radio.

3 Q How long have you been employed in that profession?

4 A I've worked -- well, I first worked in this profession in
5 probably 1970, and have worked it off and on up to the
6 present.

7 Q All right. Mr. Hawley, are you familiar generally with
8 the lands that are involved in the transfers and that Sage
9 Willow is proposing?

10 A I am familiar with the lands.

11 Q Okay. And can you tell us how it is that you're familiar
12 with those lands?

13 A Well, my father owned the property up until it was sold
14 to Mr. Dumke. And during a portion of that time I lived on
15 the lands and for a shorter portion of that time I worked the
16 lands.

17 Q All right. Behind you, Mr. Hawley, are several exhibits.
18 The first one is Mays' Exhibit Number 1, do you see it there?
19 It's the Orthophoto Quad. And do the lands that are involved
20 in the transfer that -- and that you're familiar with, are
21 they depicted on that Exhibit 1?

22 A Yes, they are.

23 Q All right. And also we have Exhibits 2 and 3. Exhibit 2
24 is on the same board with the Orthophoto Quad, just to the
25 right of it there. Do you recognize the lands that are shown

1 in Exhibit 2?

2 A Yes, I do.

3 Q And if you turn to your right and look over your shoulder
4 is Exhibit 3, do you recognize those lands?

5 A Yes, I do.

6 Q Okay. Let's start -- you mentioned that you lived on
7 this property at some point. Could you tell us about the --
8 your experiences there?

9 A Okay. I think I can give you those dates too to be more
10 specific.

11 Q All right.

12 A I moved to Howe in the summer of 1970, and lived on the
13 ranch starting in 1970. Leased the ranch from March '78
14 through March of '81. Continued to live there and work full
15 time on the ranch until I left in June of 1983. I returned
16 briefly August of '87, lived there but did not work there
17 until approximately December of that year.

18 Q Okay. When you leased the property, for what purposes
19 did you lease it?

20 A Production of hay and care of livestock.

21 Q And you ran cattle on that property then?

22 A That's correct.

23 Q All right. And can you tell us what types of
24 responsibilities you had during the years that you lived on
25 the property? Did -- were you involved in the operation of

1 the property?

2 A During the time that I lived on the property but did not
3 lease it, that would be '70 through '78, my involvement was
4 not full time by any means. I had a full-time job away from
5 the ranch where I was gone for a week at a time and then on
6 the ranch a week at a time. During that week of the time that
7 I was on the ranch I worked part time with my father.

8 Q And what kinds of responsibilities did you have? What
9 duties did you have?

10 A Wherever the need seemed to be the greatest at the time,
11 whether it was moving cattle or helping in some other way.

12 Q All right. Let's look at the summer months. During the
13 summer months were you involved at all in the irrigation of
14 that land?

15 A Not as extensively, nearly as extensively as I was during
16 the time that I leased it, but I did help move water.

17 Q Are you familiar with the locations of the ditches?

18 A Yes, very familiar.

19 Q And with the location of the wells?

20 A Yes.

21 Q And with the location of the lands that were irrigated
22 during those years?

23 A Yes. One of the things that I did do quite a bit during
24 the time that I lived there but didn't work there full time,
25 was help with the maintenance of the wells and helped clean

1 ditches, so I was very familiar with that.

2 Q And during the years that you've told us that you leased
3 the property, I believe it was the beginning of 1978 through
4 1981, were you also involved in the management and operation
5 of the irrigation?

6 A Yes, very much.

7 Q Did you harvest the hay off of those lands yourself?

8 A Yes.

9 Q I would like to start with the -- with Exhibit Number 2
10 which is the black and white -- it's an aerial photo and I'll
11 represent to you that it's based on aerial photos obtained
12 from the ASCS office in Arco dated 1987. Can you tell us what
13 is shown in Exhibit 2?

14 A Well, fairly well centered in the middle of that photo is
15 the property known as the Bird Ranch.

16 Q Right. Were you present during the testimony yesterday?

17 A Yes, I was.

18 Q And do you recall that the area of the Bird Ranch as Mr.
19 Pancheri described it included some lands to the east of the
20 dark area that's shown in the center of that photograph. Is
21 that right?

22 A I recall that, yes.

23 Q Do you also refer to that area as the Bird Ranch?

24 A During the period of time that my father was alive he
25 referred to that as the homestead because it was homesteaded

1 by my mother.

2 Q All right. Could you tell us about the history -- first
3 I would like to give you a marker and ask -- I'm going to give
4 you an orange marker. And I would like you to show us the --
5 illustrate some items on Exhibit 2. First how was that
6 property irrigated? The Bird Ranch property.

7 A It was flood irrigated.

8 Q All right. Can you show us where the -- how the water
9 was provided to that --

10 A Sure. The main feeder ditch which comes in from the
11 north is depicted here. Reaches this corner of the property
12 where there's a major --

13 Q That would be the north -- kind of the northwest corner?

14 A Yeah, that would be the northwest corner of the northwest
15 area where the ditch divided and the aerial shows it going on
16 a grade up along the sides of the mountain. And on around the
17 property to the south there's also a very steep ditch which
18 runs downhill due east from that corner. And I believe
19 there's also a division on the ditch that runs here and you
20 can see markings here where there's a ditch and water is
21 dispersed from there.

22 Q Okay. And were -- can you tell us whether -- how much of
23 the land within the Bird Ranch property that you've described
24 was irrigated during the years that you were on the property?

25 A Well, the best reference I have is the ASCS figures which

1 you know they use their instruments to take a look at aerials
2 and -- and pick it out and the figure that I have based on
3 those figures is 297 acres. And it seems reasonable to me
4 with the little bit of dry land that there was on the west
5 side up against the mountain, a little bit of dry land on the
6 south, and there's also a dry corner in the far northeast.

7 Q So the 297 acres referenced by the ASCS tracks reasonably
8 with your recollection?

9 A Very reasonably. Yes.

10 Q All right. Could you write the number of acres that were
11 irrigated in the center of that portion of the Bird Ranch for
12 me please? All right, and you've written 297 in the center of
13 the area that's known as the Bird Ranch?

14 A That's right.

15 Q Now the homestead property was to the east, is that
16 correct?

17 A That's correct.

18 Q Can you tell me how many acres of the homestead property
19 were irrigated during the years that you either lived on the
20 property or leased the land?

21 A I can't give you a good figure because the best I can
22 give you is an estimate. There is a low spot and it's
23 depicted on the map here and I'll mark it with a pen, it comes
24 out of the east side of the Bird Ranch and follows this low
25 area here where right at this point it runs across the

1 property line and I'm marking that with a pen also. This area
2 in through here would have been watered with waste water that
3 would have come off of the Bird Ranch. We didn't go out and
4 set dams or make any delivery attempt to irrigate it, but it
5 is a low spot and water did run in this area. And if I were
6 just going to give an estimate on figures I would say no more
7 than ten acres and perhaps five.

8 Q And was that irrigation as a result of your going down
9 and turning in water and putting it on the land?

10 A No. Once again that's where waste water would have run
11 off the Bird Ranch as a result of the topography of the
12 ground.

13 Q And do you recall from yesterday's testimony that this
14 water came through that main ditch on an exchange from some
15 wells on the Knollin Ranch?

16 A Yes, I recall that.

17 Q All right. Was there also a well that was in place on
18 this property on the Bird Ranch or the homestead that could
19 irrigate that land?

20 A There -- during the period of time I was there, there was
21 a well that was powered by a diesel motor in the northwest
22 corner of the homestead property.

23 Q In the years that you were living on the property or
24 leasing the property do you recall that well ever being used?

25 A I don't recall it ever being used. It's certain that it

1 wasn't used during the period of time that I leased the place
2 because I would have been very much aware of the expenses
3 involved in getting it going. I don't -- my recollection is
4 that it was in a state of disrepair when I moved there in
5 1970.

6 Q Could you also put a -- maybe an orange X up on the -- on
7 that map and show us the approximate location of the well?

8 A Where that well and diesel --

9 Q Yes.

10 A Well, they would have been located on the highest ground
11 so a person could have watered the most possible, and it would
12 have been very near the northwest corner of that homestead
13 property.

14 Q All right, thank you. Now you said that your mother
15 homesteaded that piece of ground that you've referred to as
16 the homestead?

17 A That's my recollection, yes.

18 Q Do you recall when the -- when they received a patent for
19 that land?

20 A I believe it was in 1966.

21 Q And from the time that they obtained the patent on that
22 ground, do you know whether they -- whether it was irrigated
23 thereafter?

24 A I'm reasonably sure that it was irrigated in the process
25 of obtaining the patent, it could possibly have been irrigated

1 after 1966. I don't have any knowledge of it happening, but
2 it could have happened.

3 Q After --

4 A I'm reasonably sure that it didn't happen after 1970.

5 Q All right. And so if the water right is 2091, 33-2091
6 shows a priority date of January 22nd, 1960, it's your
7 understanding that the property was probably irrigated from
8 1960 up until the time of the patent?

9 A I doubt that it was irrigated any more than it was
10 required to obtain the patent. And I'm not sure that it would
11 have been required for it to have been irrigated continuously
12 over that period of time. You know the time that I've spent
13 on the property and been out there and you know we ran cattle
14 out there, the ditches were not in that good a shape. I would
15 be very surprised if it were irrigated that much judging on
16 the condition of the ditches.

17 Q And how did you obtain your knowledge of the history of
18 this property prior to your going out there in the '70's?

19 A Prior to the '70's?

20 Q Yes.

21 A Well, my father owned the property so I heard discussions
22 of it.

23 Q Did -- do you have any understanding as to the reason why
24 someone would drill a well -- your mother or your father would
25 drill a well and prove up on that ground and then not use the

1 well to irrigate the property thereafter?

2 A I can venture a guess as to why.

3 Q Well, is it a -- would it be a guess or would it be
4 something other than a guess?

5 A Well, I can tell you the way the property was managed.
6 It was managed as dry range. It was seeded into crested wheat
7 grass and my father used it as a fenced pasture where he could
8 manage the cattle separately from the BLM lands. We would put
9 cattle -- we would put cows and young calves in there in the
10 spring before the BLM license opened up. So it increased his
11 ability to manage the cattle.

12 Q Okay, when we look at the Bird Ranch again, you've
13 indicated about 297 acres had been irrigated, can you tell me
14 in your experience how that property was irrigated? How the
15 water was applied? When it was applied?

16 A Okay. I can tell you a little bit about that. It was
17 typically watered once in a season, I'm not saying that it
18 didn't ever get watered twice, but I don't have recollection
19 of it ever having been watered twice in season. It was rough
20 to irrigate, it took a large stream of water, and one of the
21 concerns that my father had is that later in the irrigation
22 season if we were pulling up water out of the river to fill
23 that ditch to the Bird Ranch it would threaten the river. The
24 words he used, it would dry up the river. So he was very
25 conscientious of getting that water early in the watering --

1 in the irrigation season. And that's my recollection of when
2 it was watered.

3 Q And do you have any knowledge of the approximate yield of
4 -- first let me ask you, did you harvest the hay off of that
5 ground?

6 A Yes. Yes, we hayed it.

7 Q And what kind of hay was it?

8 A It was grass hay.

9 Q Do you have any --

10 A It had some alfalfa in it, but it was primarily grass.

11 Q Any knowledge of what the yields would have been off of
12 that property?

13 A I think by most standards the yields was poor. My
14 estimates was half a ton to the acre.

15 Q All right. Have you ever -- in your time on the ranch
16 did you ever harvest any hay off of the homestead property?

17 A No, we never had any equipment on it at all.

18 Q Mr. Hawley, I would like to turn now to the Knollin Ranch
19 property which is shown in Exhibit 3 and ask you to tell us
20 about your experience, your knowledge of that property. I
21 think first, is K-N-O-L-L-I-N the proper spelling for the
22 Knollin Ranch?

23 A That's my recollection. A.J. Knollin is the man who
24 owned that early in the century.

25 Q Was he the person who originally proved up on that land

1 and obtained patents from the government?

2 A Well, when you say that land that's pretty encompassing.
3 The Knollin Ranch as it's known today came from several
4 smaller tracts, some of which were homesteaded by my father,
5 some of which were homesteaded by Brown and other individuals.
6 How much of it was actually homesteaded by Knollin I think is
7 a relatively small part.

8 Q All right. How was it that Mr. Knollin acquired these
9 parcels?

10 A I don't have knowledge of that.

11 Q Okay. But ultimately do you understand that at some
12 point he owned the Knollin Ranch proper and then that was
13 acquired by your father?

14 A He owned much of what we see there or saw there at the
15 time that Mr. Dumke purchased it.

16 Q And how did your father acquire the property?

17 A Well, once again I don't know all of the details. Some
18 of it was purchased from a mortgage company. Mr. Knollin went
19 broke during the depression. So the land was taken into
20 receivership by the mortgage company and was held for a number
21 of years. In looking through documents my father leased it
22 for a period of time from the mortgage company. And at some
23 point purchased the land only, not purchasing the water,
24 because in the process of the mortgage company trying to sell
25 the land they sold the water separately.

1 Q And then after purchasing the property did your father
2 develop the groundwater rights on the property, the rights
3 that are subject to the transfer here?

4 A Groundwater rights. Developed groundwater rights?

5 Q Did he drill wells on the property?

6 A He did drill wells, yes.

7 Q Okay. Now do you know when those wells would have been
8 drilled?

9 A I don't have the dates on those?

10 Q Okay. Can you tell us during the years that you were on
11 this property do you know how many wells were being used in
12 their locations?

13 A Yes, I believe I do.

14 Q All right. What wells were in use at that time?

15 A Shall I use the map to illustrate?

16 Q That would be great. If you want to take the same orange
17 pen --

18 A Okay.

19 Q -- and put X's where -- on locations where you know
20 wells.

21 A Okay. I can show you approximately. We would need a
22 little better photo to be more exact, but I can come pretty
23 close with this.

24 Q If you -- you might take a look at the Orthophoto Quad
25 there, Exhibit 1, and see if that might help you, if that has

1 any better detail. If it doesn't, feel free to use whichever
2 one you would like.

3 A It's better, but we can do fairly well.

4 Q All right.

5 A Some of the wells are marked on there. There are five
6 wells along the east west running access road coming into the
7 Knollin Ranch. And they were located -- would you like me to
8 mark with this pen?

9 Q Yes, please with the orange.

10 A At approximately these locations. And once again to be
11 more exact we would need just a little better photo and they
12 -- the exact location would show up. But they were scattered
13 along that east west running road. There were five there.
14 There were three down here. And by down here we're now
15 referring to one near the big pond and two more southwest of
16 the big pond approximately in this location, that's eight
17 wells. There was a ninth electric well at the far northwest
18 corner of the Knollin Ranch proper in approximately this
19 location.

20 Q How large of a well was the well that you just noticed in
21 the far northwest corner?

22 A The one in the far northwest corner. It was the largest
23 of the wells and would produce, well, maybe 300 inches, maybe
24 a little bit more. It was a pretty good producer. It was the
25 largest producer. It was a 75-horse well, it was the largest

1 producer of those nine wells.

2 Q Did you operate those wells while you were either living
3 on the property or leasing the property?

4 A Yes, I did.

5 Q And what was the purpose of using those wells?

6 A Well, those wells were used to irrigate the land.

7 Q All right. Let's start with the large well in the
8 northwest, that 75-horsepower well. How often did you use
9 that well?

10 A I didn't use it very often. My father wasn't in favor of
11 using it, he felt that it wasn't an economical decision to use
12 it, although it was the largest single producer. And I recall
13 using it part of one season.

14 Q Was that during the period of time that you leased the
15 property?

16 A During the period of time that I leased the property,
17 that's right?

18 Q During the years when you just lived on the property, do
19 you have any knowledge of whether it was used in those years?

20 A I don't have any knowledge. It's possible it might have
21 been and I wouldn't have been aware of it. But I don't have
22 any knowledge of it.

23 Q But in any event it was operational and it was -- it
24 could have been used?

25 A That's right.

1 Q All right. Now I would like you to show us -- describe
2 your understanding of how this property was irrigated, and I'm
3 interested in the areas that were flood irrigated during the
4 time that you're familiar with the property.

5 A Okay.

6 Q If you could do that I would --

7 A Well, we --

8 Q -- feel free to use the exhibit.

9 A -- we had no sprinklers so anything that we irrigated
10 would have been flood irrigated.

11 Q All right.

12 A Would you like me to detail the various lands?

13 Q Yes, and what I would like you to show us on the map are
14 the lands that based on your knowledge and the times -- the
15 years that you were living on or working on this Knollin
16 Ranch, the property that you are aware of that were flood
17 irrigated?

18 A Okay. As we travel the east west access road into the
19 ranch we reach a point here where now we have irrigated lands
20 on both sides of the road and at that time there was a cattle
21 guard there, and as we continue on west the first land off to
22 our right to the north was referred to as the cattle guard
23 piece. And this would have been those lands that lie west --
24 or excuse me -- lie east of the river --

25 Q I'm going to ask you -- I'm just thinking about what

1 might show up better, I'm going to give you a green --

2 A Okay.

3 Q -- pen instead so that we can see that. And if you can
4 just outline the areas for us.

5 A Okay. Those lands lie east of the river, west and north
6 of the access road into the ranch. And we referred to that as
7 the cattle guard piece, and that was 70 acres.

8 Q Now when you say 70 acres, how do you come up with that
9 number?

10 A The acreage figures I'm going to use were derived from
11 information obtained from ASCS data.

12 Q All right. Have you reviewed the ASCS data that -- of
13 the acreages?

14 A Yes, I have.

15 Q Do those reflect -- tell me how those match up with your
16 recollection?

17 A I was very surprised how close they came to my
18 recollection of the way things were. I believe the ASCS data
19 to be very accurate.

20 Q All right.

21 A Shall we continue?

22 Q Go ahead and proceed, thank you.

23 A Okay. Well, we've taken care of the lands on --

24 MR. FOSTER: Excuse me, just --

25 MR. CREAMER: Just a minute. Just a minute.

1 MR. FOSTER: May I ask one more question in aid of a
2 possible objection?

3 MR. SPACKMAN: Yes.

4 QUESTIONS IN AID OF OBJECTION

5 BY MR. FOSTER:

6 Q Mr. Hawley, as you testify, are you testifying from your
7 own knowledge and estimates or are you testifying from
8 records, ASCS records?

9 A Working the land I didn't have the means to measure
10 acreage. I didn't go out with a tape measure and measure
11 acreage. I have to rely on people who have the instruments to
12 do that. Those figures fit my recollection of the lands as we
13 worked them.

14 Q Is your testimony then based on a recent review of ASCS
15 records?

16 A That's correct. And my recollection of the way things
17 were during the period of time that I was there.

18 Q Oh, okay. All right.

19 MR. FOSTER: I don't have an objection.

20 THE WITNESS: Okay.

21 MR. SPACKMAN: Thank you. Continue, Mr. Creamer.
22 Or Mr. Hawley.

23 DIRECT EXAMINATION (Continued)

24 BY MR. CREAMER:

25 Q Mr. Hawley, you could continue with your --

1 A Okay. The home where I lived was right around here,
2 wherever this road crosses the river, and I believe it's right
3 here. Where the access road crosses the river, immediately
4 behind the -- we call this piece here behind the house and it
5 is 20 acres. To the north of it --

6 Q Can you draw a boundary around that --

7 A Certainly, I'll --

8 Q -- the areas that we're going to include within the 20
9 acres?

10 A Actually -- whoop. This is a fairly recent photo, isn't
11 it? Do you know the --

12 Q This is 1987, Mr. Hawley.

13 A Yes, okay. Let's draw that boundary right across there,
14 and refer to this as behind the house. This acreage here is
15 what I referred to as the junk yard piece of ground. A piece
16 of ground that when I first leased the place was just rough
17 brush and was not farmed and we went ahead and broke that out.
18 The acreage in there would have been no more than 13 acres.
19 And I say no more than there's a little question in my mind
20 whether the ASCS photos also include some rough ground that
21 actually go down to a -- in a gully and just barely across the
22 gully up to the river, but at any rate, up to 13 acres.

23 Q And 13 -- up to 13 acres --

24 A Yes.

25 Q -- is your recollection of how many acres would have been

1 irrigated?

2 A Right. Right.

3 Q All right.

4 A Just south of the house we had a little pasture where we
5 kept a milk cow, and that is eight acres. The next piece of
6 ground as we -- shall we continue on around?

7 Q Yes, please.

8 A Okay. There were some hay fields on the southwest
9 portion of the Knollin Ranch. The first we referred to as the
10 southwest hay field, and it is in the south, southwest
11 quadrant of the ranch and I'll draw the boundary to that. And
12 that is 68 acres. Now there's a companion hay field that lie
13 just a little bit further south, and that is 16 acres. And
14 that will take care of the lands that lie on the west side of
15 the river. Shall we continue on?

16 Q Please.

17 A Okay. The next piece of ground, or next that we might
18 consider were pieces of ground --

19 MR. SPACKMAN: Just a moment, Mr. Hawley.

20 (Tape Change)

21 MR. SPACKMAN: We're recording again. I'm sorry.

22 THE WITNESS: Okay. Okay, I'll continue and I'll go
23 down here into an area that we called the upper shed field and
24 this map here shows the farmed ground outline. And that's the
25 upper shed. The shed field continued on across the ditch into

1 what I referred to as the middle shed field. The river being
2 the south boundary and the fence between the irrigated lands
3 and the sub-irrigated land, and we called that the middle shed
4 field. And then lastly would have been the lower shed field.
5 It would have gone up to what is now the property line between
6 Phillips and Sage Willow.

7 Q That property line is on the sections between Sections 18
8 and 17?

9 A That is correct.

10 Q All right.

11 A Uh-huh. And once again follows the boundary between the
12 irrigated lands and the subbed pasture, and with the river
13 being the south boundary. All of those shed fields together,
14 upper, middle, and lower are 208 in acreage.

15 The thing next we can -- now everything that we've talked
16 about up till this time was -- let's take one more piece of
17 ground, then we'll make a division. We'll talk about the
18 Brown field. It lies on the far eastern boundary of the
19 Knollin Ranch, near the county main paved county access road,
20 and parts of it show up on this map till we get to the point
21 here where there's a missing piece. But I will outline it the
22 best I can having part of it missing here. There are dry arid
23 rangelands to the east and the boundary of Big Spring Creek.
24 To the west there's a large gully here where one of the old
25 dry creek beds run in, so there's a piece of ground here

1 that's not usable. And back to the beginning that piece of
2 ground is 64 acres.

3 Okay, everything that we've talk about up till now was
4 irrigated and was farmed for hay production except this little
5 pasture south of the house, which I mentioned we kept the milk
6 cow in there.

7 Q But that was irrigated, is that correct?

8 A Yes, that was also irrigated but with the exception of
9 this eight acres the rest of these grounds that we've talked
10 about we took hay off of. This piece down here kind of got
11 the poor --

12 Q Which piece are you talking about now?

13 A The lower shed field. The south -- most southeast corner
14 of the Knollin Ranch. We didn't always get it watered real
15 well. Sometimes we would get a hay crop off it and sometimes
16 all we would get off it was pasture.

17 Q And what was the reason? Was that because of the
18 availability of water or for what reason?

19 A Yeah, mostly availability, sometimes we just wouldn't get
20 that far with the water.

21 Q All right.

22 A Okay. Well, continuing on with the deeded -- or with the
23 irrigated ground the access -- the east west access road that
24 runs into the ranch, to the south of it there were two large
25 irrigated pastures. And I'll do the best I can with this map

1 to show the boundary. But there was fence that came -- well,
2 not a fence but a ditch that came around here approximately
3 like this, and ran through like this, jogged down there. And
4 now at a point here you'll see on this map where there are
5 several rough jogs in the fence and that's because that -- I
6 asked my father why he fenced it that way and he said that's
7 because that's the way the land was, the subbed pasture to the
8 south and the farmable pasture to the north and back along the
9 access road.

10 There are -- in this lands that I've just drawn the large
11 circle around, there were a couple of dry pieces and they show
12 up on this aerial fairly well. And I'll exclude those,
13 there's a couple of little pieces along through here that were
14 dry. Now this was cross fenced into two separate pastures,
15 and the cross fence I believe ran down through here. The west
16 -- what's called the west steer pasture, and it was 1906
17 acres.

18 Q It was called the west what pasture?

19 A The west steer pasture.

20 Q Steer, all right.

21 A The east was call the east steer pasture, and it was 216.
22 Now those two pieces of ground to my recollection were never
23 farmed for production of hay, but the ditches were cleaned, we
24 had tractors out there cleaning the ditches, and we did
25 irrigate it.

1 Q All right. We're adding up those numbers here to see
2 what we come up with and I believe it's about 1,158 acres --

3 A Okay, my figure on --

4 Q -- including the Bird Ranch.

5 A -- adding that was 1,176.

6 Q Okay. I'm sorry?

7 A My figures on adding that was 1,176.

8 Q 1,176. And that includes the area that the 297 acres
9 that you've shown on the Bird Ranch?

10 A That's correct.

11 Q Well, we get 1,176 now too. That's comforting.

12 A Good.

13 Q So we've come up with 1,176 acres of ground that you
14 recall having flood irrigated during the years that you were
15 on the property. Does 1,176 when we come up with that number,
16 does that sound -- how does that reflect with your memory?

17 A When I was first asked if I would have any recollection
18 of how lands were managed there, the figure that I had
19 remembered from the years before I did any of the -- any of
20 the review was 1,200 acres. So 1,176 is very close.

21 Q All right. And how often was -- were these lands
22 irrigated? We've talked about the Bird Ranch how that was
23 irrigated, were these lands irrigated differently than the
24 Bird Ranch?

25 A Well, I've already made a comment that the lower shed

1 field sometimes wouldn't get irrigated at all, if it did get
2 irrigated it was irrigated once. Probably the fields that got
3 the best attention, the most attention and got irrigated twice
4 would have been the cattle guard field, which we've referred
5 to as being on the east side of the river and north to the
6 access road. The piece of ground behind the house would have
7 gotten good attention and the southwest hay fields, both the
8 southwest and the separate piece of hay fields would have
9 received good attention being irrigated twice.

10 Q If we look in the south -- you're talking about the
11 southwest fields and you've indicated there was 68 acres of
12 ground there, if you look on the map in the southwest. To the
13 extreme southwest corner there is some ground that you didn't
14 include, but there's been testimony that there's a ditch that
15 runs south along the west boundary and then turns and runs
16 east along the south boundary. And Mr. Pancheri testified
17 yesterday that there had been some irrigation in there at --
18 can that land in fact be irrigated from those ditches?

19 A Yes, it could be. The main water that -- the main ditch
20 that transports water to the southwest hay fields does run
21 along the boundary of the property and there are old ditch
22 courses out in here where you can see that at one time
23 somebody irrigated that land. Of course all the land was
24 irrigated at one time in its distant past, and it could be
25 irrigated from that ditch.

1 Q During the years that you were on the property, was there
2 any attempt made to harvest hay off of that ground?

3 A No. That --

4 Q The southwest.

5 A -- that ground was a grass, it could well have been
6 crested wheat, I'm not sure. And there's a spring that sits
7 in that piece of ground kind of to the north -- northeast
8 corner of it. And cattle will trail in there a lot off of the
9 BLM range to water there. So the grass up there is poor, it's
10 full of cow trails, and no, no effort was made to harvest
11 anything there.

12 Q And did you make any attempt or are you aware of any
13 attempt during the years you were on the property to irrigate
14 that ground?

15 A No, I don't have any recollection of trying to irrigate
16 it.

17 Q All right. I would like to talk now about a portion of
18 ground that sits north of the east west access road that
19 you've described and north of the series of five wells. Are
20 you familiar with that ground?

21 A Yes, I am.

22 Q Did that also belong, and was that a part of the Knollin
23 Ranch when your father owned it?

24 A Well, a portion of it was, up to the original fence, I
25 believe a quarter -- well, no, it must have been a half a mile

1 north.

2 Q During the time that you were on the property, do you
3 recall that land ever having been irrigated?

4 A No.

5 Q Was that land homesteaded by your family?

6 A It -- my understanding is that it was homesteaded by my
7 uncle and my aunt.

8 Q And do you know whether -- was that proved up in the same
9 way as the Bird Ranch?

10 A It's my understanding that it was.

11 Q By irrigation?

12 A Yes.

13 Q Was -- were there any irrigation ditches on the property
14 while you were familiar with it?

15 A Yes, there were.

16 Q And was there a well that served that property?

17 A Yes, that large well that we've talked about previously
18 that sits in the far northwest corner of the Knollin proper,
19 the ditches are set up to water from that well.

20 Q Do you have an understanding why those lands in spite of
21 the ditches and the well were never irrigated?

22 A Well, my testimony on that won't be too much different
23 than my mom's homestead. My father seeded into crested wheat
24 and while the feed was similar to the BLM crested wheat it
25 gave him an opportunity to manage cattle on deeded land during

1 the periods of time that he wasn't open to go out on the BLM.

2 Q Was that ground pastured or -- what -- I'm sorry -- what
3 was the use of the property when --

4 A It was dry pasture. It was crested wheat grass.

5 Q Did it have livestock running on it?

6 A There were periods of time when we would have livestock
7 on it, yes.

8 Q Did you also use a -- divert water from either the Little
9 Lost or Big Spring Creek during the winter months --

10 A Yes.

11 Q -- to this property?

12 A Yes.

13 Q Can you tell me how that was accomplished?

14 A Well, probably the most successful diversion was from
15 Spring Creek. I can point to the map perhaps?

16 Q Let me give you a purple --

17 A Okay.

18 Q -- felt tip and ask you to show us the low --

19 A Okay.

20 Q -- or describe the irrigation with the winter water with
21 the purple.

22 A The access road that comes into the Knollin Ranch, the
23 portion of that access road that runs on a northeast southwest
24 bias. To the east of that along Spring Creek there's a
25 diversion, and I will mark on the map approximate location of

1 that diversion. From that diversion waters were brought first
2 slightly west and then south into the body of the Knollin
3 Ranch during the wintertime.

4 There is a second diversion that lies north of our map,
5 but you can see part of it on here. I'm pointing to the very
6 extreme north portion of the map, and there's another
7 diversion where water was brought down a ditch on an almost
8 due south to southerly heading and where it comes onto our
9 photo we can see indications of the ditch there. And I know
10 there was some attempts made to bring water down there, but
11 with freezing and what not, my best recollection is that it
12 was mostly just full of ice. I don't remember seeing water
13 actually running in that ditch in the wintertime, but I know
14 we had tried it.

15 Q Had you been involved in those attempts to use that
16 ditch?

17 A Yes. Also there is a diversion in the river just barely
18 below where my home sat, where the main access road crosses
19 the river, and I'm marking here with the pen. And from that
20 point there is a large canal that runs approximately as I'm
21 marking here, first southeast, and then east, and then
22 southeast into the big pond. And that diversion -- that
23 diversion gave us some problems. We either had no water there
24 when the river was frozen dry or we had too much water during
25 the early spring runoff and it was always a challenge to get

1 out there and get the boards pulled out of the headgate before
2 we washed things out.

3 Q And from -- when were those diversions made? And was it
4 a continuous diversion through the year? Was it periodic?
5 For what -- and what would trigger you to go up to the river
6 and turn the water in?

7 A When the water master would go off, discontinue to
8 formally furnish water to the water users and the rest of the
9 water system is when we would take the water out.

10 Q Can you tell us the duration on an average year that you
11 might be able to run water when the water master had taken the
12 call off the river?

13 A Well, once again the diversion on the main Lost River
14 would work early in the winter and would work again in the
15 spring, but wouldn't work during the heart of the winter
16 because the river would be frozen dry. The Spring Creek
17 Diversion, the main Spring Creek Diversion, the one that I
18 identified east of the access road would work most of the
19 winter.

20 Q And what was the purpose of the winter water, do you
21 know?

22 A The purpose was winter storage.

23 Q All right. Did -- was there an outlet to the large pond?

24 A I'm not sure I understand the question.

25 Q If you ran water in there in the winter, did --

1 A Oh, outlet from it?

2 Q -- did the water stay in the pond? Was it -- or was
3 there an outlet?

4 A During the period of time that I'm familiar with the
5 Knollin Ranch, the pond was in poor repair. There was an
6 outlet and it was washed, not clear down, it would hold some
7 water but the overflow had washed in. There was another
8 structure just south of it that was totally washed out.

9 Q So what would happen to the water if you would divert it
10 from the Little Lost into the pond? Did you just fill the
11 pond up and that was it?

12 A It would quickly fill the pond because there wasn't too
13 much left of the pond and then it would run on south in this
14 water course that you can see depicted on the photo that runs
15 south to southeast, and would just freeze back in these -- in
16 this lowland down here.

17 Q It would do what?

18 A Freeze back. Just --

19 Q It -- in your experience did that provide some benefit to
20 the land?

21 A My feeling was that it wasn't managed properly and the
22 benefit of the main river diversion I think was marginal.
23 Because the -- as I've testified the dike was partially -- the
24 main dike was partially washed out, the one that was next
25 south was completely washed out, so most of this water stayed

1 right in the low gullies in the water courses. There was more
2 benefit from the diversion from Spring Creek because here the
3 topography of the land wasn't such that it immediately ran
4 into a gully, it ran out and I can remember seeing quite a bit
5 of this land here full of water and ice.

6 Q All right. Thank you, Mr. Hawley.

7 A You're welcome.

8 MR. SPACKMAN: Mr. Williams, do you wish to question
9 Mr. Hawley?

10 MR. WILLIAMS: I don't believe I have any questions
11 for him.

12 MR. SPACKMAN: Mr. Foster, you may cross-examine?

13 MR. FOSTER: Thank you.

14 CROSS-EXAMINATION

15 BY MR. FOSTER:

16 Q Mr. Hawley, without meaning to be intrusive, what year
17 were you born?

18 A 1946.

19 Q Okay. And you were gone from the ranch for some period
20 of time prior to 1970?

21 A That's right. I grew up on my parents' home place which
22 is not part of this -- these lands that we've discussed.

23 Q Okay.

24 A It's about ten miles farther down the valley.

25 Q Okay.

1 A And away to school, yes. And I moved back to the ranch
2 in 1970 from having finished college.

3 Q Oh, all right, fine. The land south, about ten miles
4 south, who owns that land now?

5 A That land is currently owned primarily by my mother and
6 my father's trust and some by myself.

7 Q Okay. And is that land irrigated?

8 A Yes, is it.

9 Q Was that land ever irrigated under an exchange
10 arrangement with water that was pumped into the river from the
11 wells up on the Hawley place to your knowledge?

12 A No.

13 Q Okay.

14 A No, my recollection is that there was -- I don't know
15 whether it was an official situation, but there was a
16 prohibition against transferring water down the valley from
17 wells up above.

18 Q Okay, so you don't recall times when --

19 A Well, not only don't I recall times, but I remember my
20 father making some pretty strong statements that in my
21 ignorance I suggested we do that and he said, no, you can't do
22 that.

23 Q Okay. And then 1970 to '78 you were working where did
24 you say?

25 A 1970 through '78, during that period of time I worked for

1 KID Television. And --

2 Q Okay. Here in Idaho Falls?

3 A No, I worked out on the East Butte. And that's -- I
4 worked there for a week and then the other week I was back on
5 the ranch.

6 Q I see.

7 A A week on and a week off with the television station.

8 Q So then you were just -- you were on the ranch the times
9 when you weren't out on the East Butte?

10 A That's right.

11 Q Out of work. Okay.

12 A I don't mean to imply that I worked full time during that
13 week that I was there because I didn't, but I did live there
14 full time.

15 Q Okay. And then it was three years that you leased the
16 place?

17 A That's correct.

18 Q And that would have been '79, '80, and '81?

19 A Would have begun in March of '78.

20 Q Oh, so then '78 irrigation season, '79 and '80?

21 A Uh-huh. That's correct.

22 Q Okay. Since 1989 have you had much familiarity with the
23 operation of the ranch?

24 A Very limited.

25 Q Okay. Up on the Bird Ranch, you told us or started to

1 tell us about that you did harvest grass with some alfalfa hay
2 from the land on the west side of the road, --

3 A That's correct.

4 Q -- the Bird Ranch proper, and that the other -- the land
5 on the east side of the road, the land homesteaded I think you
6 referred to it as the homestead.

7 A Uh-huh.

8 Q You didn't harvest hay from that.

9 A That's correct.

10 Q But I assume that was used for just pasture when the
11 cattle were there?

12 A That's correct. It was a different type of feed. The
13 vegetation on the Bird Ranch was much more lush than that in
14 the homestead.

15 Q Okay. In addition to the almost 1,200 and the 1,176
16 acres that were flooded, flood irrigated, do you have an
17 estimate for the land that was benefitted by the sub-
18 irrigation?

19 A I'm pointing to the map and there's a large pasture that
20 includes most of the lands that we haven't previously
21 identified in the heart of the Knollin Ranch and off hand I
22 don't recall the acreage of that pasture, but that pasture --
23 in the Little Lost River Valley if you don't get water to
24 something you don't get any kind of a crop. Crested wheat is
25 about the only thing that will survive out there without

1 water. The feeds in there were much better than you would
2 have expected had there not been supplemental water.

3 Q Uh-huh. This would be -- this would include the area
4 that goes down where the springs begin to appear?

5 A That's correct.

6 Q Okay. And so that land served as pasture for the cattle?

7 A That's correct.

8 Q And the grass you would say was benefitted by the sub?

9 A Yes.

10 Q And by those sub conditions?

11 A Uh-huh.

12 Q Okay. That may have been enhanced I assume by the winter
13 water diversions and some of the other irrigation that was
14 done?

15 A Yes. Uh-huh.

16 Q Okay.

17 A Our irrigation practices by today's standards were poor.
18 We pumped a lot of water, some of it we literally pumped right
19 back into the river because of waste water running off the
20 ground into the river. And because it was all flood
21 irrigation, much of the rest of it I think probably went into
22 that shallow aquifer.

23 Q Okay. You've mentioned a similar comment I guess to that
24 of Mr. Pancheri that there are ditches -- there are ditches
25 all over, even property that you didn't irrigate or didn't

1 observe irrigated.

2 A That's correct.

3 Q And appeared to have been irrigated in the past.

4 A That's correct.

5 Q Do you know about any of that irrigation?

6 A I can only infer. I -- you know before 1970 my personal
7 knowledge is very limited. Some of the -- a comment that I
8 can make is that out in the pasture, the sub-irrigated ground
9 that we referred to as a sub-pasture, there are old ditches
10 out there and I characterize them old because sometimes it
11 would only be you -- two berms that run parallel to one
12 another. The body of the ditch would be filled in and the old
13 fence lines along it where you could see stubs of posts. A
14 ditch like that would run along and it would come to a gully
15 that had been washed by this infusion of water from the river.
16 And from that I would infer that those ditches were previous
17 to my father's ownership of the property.

18 The ditches in the deeded land that lies north of the
19 east west running access road and in the homestead I believe
20 were dug by my father in the process of obtaining title to
21 that ground.

22 Q Now you mentioned I think an uncle and aunt who may have
23 homesteaded.

24 A Yes.

25 Q Did they at one time own that property?

1 A You know I don't know the details of that, how they
2 homesteaded it and how my father obtained title to it.

3 Q Okay. And down in the southwest corner that you
4 described as having a spring that the cattle trailed to, it
5 also had ditches all over it?

6 A That's correct.

7 Q And then the same thing there, you don't know when it may
8 have been irrigated?

9 A That's -- that's --

10 Q But it had the appearance of having been irrigated?

11 A Oh, yes. Uh-huh.

12 Q Okay. Maybe on the map that shows the Bird property you
13 drew some ditches, we had understood that there's a ditch that
14 goes -- that comes out of that main ditch that also goes along
15 the north side of that land. Do you recall that ditch?

16 A Yes, there is.

17 Q Okay.

18 A Uh-huh. Yes, I didn't mean to indicate that that was all
19 the ditches.

20 Q All right.

21 A Heavens no, there are many ditches up there.

22 Q Lots of ditches. You never personally used that ditch?

23 A Which -- can you be more specific about which ditch?

24 Q Well, maybe I can't because I haven't seen it personally,
25 but I just have understood that there was a sizeable ditch

1 that went along the north boundary of the property, apparently
2 for the purpose of irrigating maybe in a southerly or easterly
3 direction or something like that.

4 A Well, if it's the ditch that I'm thinking of the answer
5 would be yes, I did use it. Let me try to clarify that on the
6 map.

7 Q Sure.

8 A The Bird Ranch is a bowl. If a person puts his finger on
9 the east boundary of the Bird Ranch and comes due west you've
10 defined a swale that runs in an east westerly direction. So
11 all the water runs to that point. The lands that lie north of
12 that are irrigated from the north to the south. And to
13 irrigate these lands here, there is a ditch along the northern
14 parameter of the property to accomplish that.

15 Q And where did that bring water from? Which -- what was
16 the source of the water?

17 A My recollection is that at a point here, and I'm pointing
18 to the main ditch that comes in from the river at a point due
19 west of the north boundary of the Bird Ranch, there's ditch
20 that runs due east downhill there.

21 Q Okay.

22 A And there's an entrance point at that northwest corner of
23 the northerly section.

24 Q Does that ditch continue across to the homestead
25 property?

1 A It continues east. There's one point where it has to go
2 out into the BLM property to go around a swale. And tied off
3 of that ditch in that neighborhood, and it may be you can see
4 a dim line here, there is a ditch that would furnish water to
5 the homestead.

6 Q The north part of the homestead?

7 A Yes, that's correct.

8 Q Okay. And then I assume there were ditches that led from
9 the well in that northwest corner of that homestead?

10 A Oh, yes, definitely.

11 Q Okay.

12 A Now that ditch that I just drew in from the body of the
13 Bird Ranch to the homestead, I'm not aware of it having been
14 used.

15 Q Okay. All right.

16 MR. FOSTER: I think that's all the questions I
17 have.

18 MR. SPACKMAN: Redirect examination, Mr. Creamer?

19 MR. CREAMER: I have no questions.

20 MR. SPACKMAN: Thank you, Mr. Hawley.

21 THE WITNESS: Thank you.

22 MR. SPACKMAN: I think now is probably a good time
23 for a break. Do we want to break for a moment?

24 (Hearing Recessed)

25 MR. SPACKMAN: We're recording again. And, Mr.

County: Blaine
Stream: Little Lost River
Amount: 2.9 cu.ft.
Use: Irrig. & Domestic
Priority: 2-15-09

STATE OF IDAHO

Water License No. 4442

WATER DISTRICT NO. 9

WHEREAS, On the 1st day of February, A. D. 1909, ADOLPH M. MYRUP,

of Howe, County of Jefferson, State of Idaho, duly made application (No. 6145) to me for a permit to use 3.2 cubic feet per second of the waters of Little Lost River, in water District No. 9, County of Blaine, State of Idaho, for irrigation and domestic purposes, and,

WHEREAS, On the 15th day of March, A. D. 1909, Permit No. 4442 was issued to said applicant for the diversion of said water and providing for the completion of the works of diversion therein described on or before the 15th day of March, A. D. 1914, and for the application to beneficial use of said water on or before the 15th day of March, A. D. 1916, and,

WHEREAS, On the 23rd day of March, A. D. 1914, ADOLPH M. MYRUP,

the holder of said permit, duly made proof of the completion of adequate works for the diversion of 3.2 cubic feet per second of said waters, as evidenced by my Certificate No. 4442 dated April 30 1914, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 3.2 cubic feet per second of said water, with date of priority of February 1 1909 and

WHEREAS, On the 1st day of April, A. D. 1916, ADOLPH M. MYRUP,

the holder of said permit, duly made proof of the application to beneficial use of 2.9 cubic feet per second of said water:

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to ADOLPH M. MYRUP,

of Howe, County of Jefferson, State of Idaho, the holder and owner of said Permit No. 4442, a perpetual right, dating from February 15, 1909 to the use of 2.9 cubic feet per second of the waters of Little Lost River,

in the County of Blaine and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point 2640' S. of the N.W. Cor. of Sec. 1, T. 7 N. R. 27 E.B.,

and conducted to and upon 145 acres:divided as follows; 40 acres in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$, 30 acres in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$; 35 acres in the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ and 40 acres in the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ all in Section 18, T. 7 N., R. 28 E.B.M.

for the purpose of irrigation and domestic use. subject, however, to the laws of the State of Idaho, applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source or supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 1st day of June A. D. nineteen hundred and Sixteen.

(Seal)

J. H. SMITH

State Engineer:

30 2007

EXHIBIT

3

 Blaine County *
 Spring Creek, *
 Irrigation & Domestic *
 6.4 second feet *
 Priority 6/12/1909 *

S T A T E O F I D A H O

Water License No. 4759

WHEREAS, On the 12th day of June, A.D. 1909, LILLIAN G. MYRUP, of Howe, County of Blaine, State of Idaho, duly made application (No. 6860) to me for a permit to use 6.4 cubic feet per second of the waters of Spring Creek, County of Blaine, State of Idaho, for irrigation and domestic purposes, and,

WHEREAS, On the 12th day of June, A.D. 1909, Permit No. 4759 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 12th day of December, A.D. 1909, and for the application to beneficial use of said water on or before the 12th day of December, A.D. 1910, and,

WHEREAS, On the 11th day of December, A.D. 1909, LILLIAN G. MYRUP, the holder of said permit duly made proof of the completion of adequate works for the diversion of 6.4 cubic feet per second of said waters, as evidenced by my Certificate No. 4759, dated August 4th, 1910, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 6.4 cubic feet per second of water, with date of priority of June 12th, 1909, and,

WHEREAS, On the 12th day of December, A.D. 1910, LILLIAN G. MYRUP, the holder of said permit, duly made proof of the application to beneficial use 6.4 cubic feet per second of said water:

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to LILLIAN G. MYRUP of Howe, County of Blaine, State of Idaho, the holder and owner of said Permit No. 4759, a perpetual right, dating from June 12th, 1909, to the use of 6.4 cubic feet per second of the waters of Spring Creek in the County of Blaine and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be (diverted at a point in the (Southeast Corner of the Northeast quarter (NE $\frac{1}{4}$), Section 6, Township 7 North, Range 28, East) of the Boise Meridian, and conducted to and upon 320 acres as follows:- East half of the Northwest quarter (E $\frac{1}{2}$ NW $\frac{1}{4}$), Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), East half of the Southwest quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$), Northwest quarter of the Southwest quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$), West half of the Southeast quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$), Section 8, Township 7 North, Range 28, East of the Boise Meridian, for the purpose of irrigation and domestic use, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

33 2008

EXHIBIT

4

tabler

AND, FURTHER, the right to the use of the waters above described is subject to the following limitations, to-wit:

Deducting twelve (12%) per cent from the decreed waters to be delivered into Little Lost River as hereinafter set forth, to cover losses by reason of evaporation and seepage occurring in transmission through the channel of Little Lost River from the mouth of the ditch hereinafter described to the mouth of Spring Creek, the licensee, under the terms of this license, shall at no time be entitled to a quantity of water from said Spring Creek in excess of an amount equal to eighty-eight (88%) per cent of the water then being delivered by said licensee into Little Lost River through the ditch heretofore constructed for the delivery of certain waters of Mahogany Creek, Quaken Asp Spring and Bell Mountain Creek under a decreed right heretofore purchased by said licensee from Mary Wild and Jens N. Wild, her husband; said water so delivered into Little Lost River to be measured by the water master through a proper measuring device to be installed by the licensee before this license shall become effective, said measuring device thereafter to be maintained and kept in proper repair by said licensee.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 11th day of January, A.D. Nineteen hundred and twelve.

(SEAL)

A. E. Robinson
State Engineer.

33 2008

WARRANTY DEED

930021D.DOC

FEB 12 12:05 P.M.
BUTTE COUNTY RECORDER

FOR VALUE RECEIVED Terry Hawley, a ~~single person dealing~~ with his sole and separate property; David E. Hawley, a/k/a David Hawley, and Connie Hawley, husband and wife, the Grantors, do hereby grant, bargain, sell, and convey unto Sage Willow Inc., the Grantee, whose current address is 2416 Plaza Del Grande, Las Vegas, Nevada, 89102 the following described premises, to-wit:

DESCRIPTION OF A PARCEL OF PROPERTY

Within: SEC. 32, T8N, R28E, B.M., the S1/2SW1/4
and a portion of NW1/4SW1/4 and

Within: SEC. 5, T7N, R28E, B.M., the NE1/4SW1/4
and a portion of the NW1/4

Little Lost River Valley, Butte County, Idaho

A single parcel of property to be described by metes and bounds:

Commencing at a 1/2" rebar marking the SW Corner of Sec. 32, T8N, R28E, B.M., and the NW corner of Sec. 5, T7N, R28E, B.M., Butte County, Idaho, said corner lying S 00°19'15" E, 5264.79 feet from a 1/2" rebar marking the NW Corner of Section 32, and said Corner being the True Point of Beginning.

Thence N 00°19'15" W, 1316.20 feet along the Westerly boundary of said Sec. 32 to the S 1/16 Corner common to Sections 31 and 32; thence N 00°19'15" W, 990.00 feet along said section line; thence N 90°00'00" E, 40.00 feet; thence S 00°19'15" E, 990 feet, more or less, to the northerly 1/16 boundary line of the SW1/4 SW1/4 of said Sec. 32; thence Easterly, 1280 feet, more or less, along said northerly 1/16 line of the SW1/4 SW1/4 to the SW 1/16 corner of said Sec. 32; thence Easterly, 1320 feet, more or less, along the northerly 1/16 boundary line of SE1/4 SW1/4 to the CS 1/16 Corner of said Sec. 32; thence Southerly, 1320 feet, more or less, along the easterly 1/16 boundary line of SE1/4 SW1/4 to the 1/4 Corner common to said Sec. 32 and Sec. 5, T7N, R28E, B.M.; thence S 00°04'18" W, 3895.50 feet to the CS 1/16 Corner of Sec. 5; thence S 89°54'05" W, 1321.30 feet to the SW 1/16 Corner; thence N 00°11'50" E, 1316.47 feet to the CW 1/16 Corner; thence S 89°48'09" W, 391.71 feet along the 1/4 section line; thence N 31°41'39" W, 149.59 feet;

WARRANTY DEED -1

EXHIBIT

5

MAR 27 1996

thence N 03°42'07" W, 442.43 feet;
thence N 21°07'24" W, 283.84 feet;
thence N 39°11'32" W, 176.63 feet;
thence N 27°52'36" W, 266.90 feet;
thence N 50°23'36" W, 58.75 feet;
thence N 39°08'42" W, 656.73 feet;
thence N 89°52'48" W, 9.70 feet to the westerly boundary of
said Section 5;
thence N 00°19'27" E, 826.90 feet along the westerly boundary
of said Section 5 to the True Point of Beginning.

Also contained within this description are 2 60-foot wide
roads: 1) The Howe Northwest Highway 2) A county road within
the NW1/4 Sec. 5.

Said described property contains 252 acres, more or less,
minus 6.5 acres, more or less, within said roads for a net
acreage of 245.5 acres, more or less.

(Note: The parties intend by this description to include an
irrigation well and sufficient area surrounding said
irrigation well for access, operation, use, maintenance and
repair of the well. As soon as the weather permits, grantor
shall obtain a formal survey of the land intended to be
conveyed where the irrigation well is located. If this
description needs to be corrected the parties agree to make
such corrections.)

EXCEPTING THEREFROM Oil and Gas rights, and particularly Oil
and Gas Lease and Assignment thereof.

TOGETHER With all water and ditch rights appurtenant thereto,
including, but not limited to: State of Idaho Water Rights
License Nos. 33-2086 and 33-0718.

TOGETHER With all irrigation equipment including the
following:

1. Motor, U.S. Motors, 50 HP #882566
2. Pump, Berkley, Mod #1200SH-3, with panel #5110301
3. Pump, G.E. Motor, 50 HP Model #5K6248XH4A, #FHJ628450
4. Pump, Verti Line Layne Bowler, Model 14RL, #18 2110

Together with tenements, hereditaments, appurtenances, ditches
and ditch rights and water and water rights thereunto belonging or
in anywise appertaining.

Subject to reservations in United States patents and State
deeds or other restrictions imposed by law, easements and right-of-
way, zoning and building ordinances, use restrictions of record,
and taxes and assessments for the year 1993 and thereafter.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, it's heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

DATED and signed this 9 day of ^{March}~~February~~ 1993.

David Hawley
David Hawley

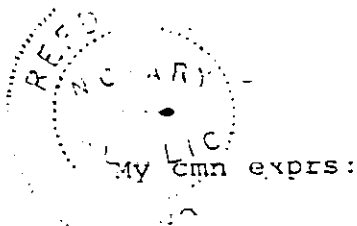
Connie Hawley
Connie Hawley

Terry Hawley
Terry Hawley

STATE OF IDAHO)
County of Bingham) ss.

On this 9 day of ^{March}~~February~~ 1993, before me, the undersigned, a notary public in and for said state, personally appeared David Hawley and Connie Hawley, husband and wife, known to me to be the person whose names are subscribed to the within 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.



Reed L. Reed
Notary Public for State of Idaho
Residing at Blackfoot, Idaho
3-12-99

WARRANTY DEED - 3

MAR 27 1996

STATE OF IDAHO)
) ss.
County of Bingham)

On this 24th day of ~~February~~ ^{MARCH} 1993, before me, the undersigned, a notary public in and for said state, personally appeared Terry Hawley, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

My cmn exprs:

Anita McQuintey
Notary Public for State of Idaho
Residing at Blackfoot
Comm Exp 5/20/94



MAR 27 1996

APR 06 1993

NOTICE CONCERNING WATER RIGHTS FOR PROPERTY
(to be mailed to the Idaho Department of Water Resources)

DATE OF CLOSING: March 9, 1993

LEGAL DESCRIPTION OF PROPERTY: (lot and block, where applicable, and Township, Range, Section, sixteenth section)

[] Served Only by a Public Service Water Supply (domestic water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

[X] Water Right Number(s): A33-02086 and A33-07018.

[X] Name and Address of Former Owner/Claimant(s): David and Terry Hawley
675 South Shilling
Blackfoot, Idaho 83221

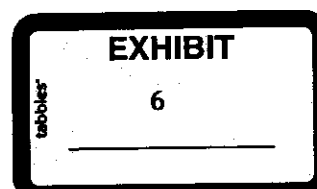
[X] New Owner/Claimant(s): Sage Willow, Inc.

[X] New Mailing Address: c/o Holden, Kidwell, Hahn & Crapo
P.O. Box 50130
Idaho Falls, Idaho 83405

[X] New Telephone Number: (208) 523-0620

[X] Does the change in ownership result in a splitting of the water right claimed? yes X no

If yes, then describe the portion of the water right that is now claimed by the new owner:



RECORDED
APR 13 1993

[X] Signature of New
Owner/Claimant(s):

Saginaw Inc

Edmund W. Gamble Pres

Date:

March 9th, 1993

[X] Signature of Former
Owner/Claimant(s):

Harry J. Huntley
Carol Huntley

Date:

March 9 1993

[] Attach proof of
ownership, describe
proof attached:

(Proof of ownership must describe
either the property conveyed or
include the claim number. Proof of
ownership is not required if this form
is signed by the former claimant.

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date:

By:

Further Action Needed:

Further Action Taken

Dated:

By:

Final Review and Data-Entry

Dated:

By:

Claim Numbers of Split, if any:

#8149.00

58661/srs

MICROFILMED

SEP 19 1993

APR 30 1993

Department of Water Resources

ASSIGNMENT OF NOTICE OF CLAIM(S)

We, David and Terry Hawley, hereby assign to Sage Willow, Inc.,
c/o Holden, Kidwell, Hahn & Crapo,
P.O. Box 50130, Idaho Falls, Idaho 83405
Address

All my right, title, and interest in and to Notice of
 Claim No(s). A33-02086 and A33-07018.
 to a Water Right Acquired Under State Law.

The following described portion of my right, title, and
 interest in and to Notice of Claim No(s). _____
 to a Water Right Acquired Under State Law.

(If assigning a portion, describe that portion of the
 claim being assigned by listing the acreage within each
 40-acre tract, the point of diversion and the amount of
 water in cubic feet per second for direct diversion, or
 acre feet for storage)

Made this 9 day of March, 1993.

Signature of Claimant(s)

David Hawley
 David Hawley

Terry Hawley
 Terry Hawley

STATE OF IDAHO)

) ss.

County of Bingham)

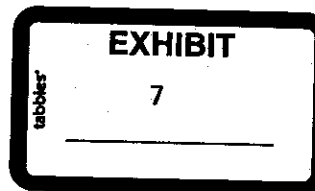
On this 9 day of March, 1993, personally appeared before
 me the signers of the above instrument, who duly acknowledged to me
 that they executed the same.

Notary Public Bud W. Ford

Residing at Regly, Idaho

My Commission Expires 3-12-99

58671/srs



Sagewillow, Inc. Diagram 2

Bird
Ranch

Little Lost River

Homestead
Place

08N27E 08N28E

07N27E 07N28E

North of Road

Frew Place

Knollin Ranch

Pond



SCANNED
OCT 01 2003

POU 33-2133 33-11003

Township/Range

Sections



8000 Feet

4000

0

4000

Idaho Department of Water Resources
Prepared by: Ernie Carlsen
and Sandy Egbert
Date: Sept. 29, 2003



FAX Transmittal Cover Sheet

Number of pages including this one: 25

Date: 10/1/03

To: Court for Fax Filing

Fax No.: _____

From: IDWR State Office

Fax No.: 327-5400

Phone No.: 327-7900

Subject: For Fax Filing on 10/1/03 Exhibits will
Follow in the mail.

In Addition: There is now a way to research water rights over the Internet. The system is a graphical or text query system and can be accessed from the IDWR home page:

<http://www.idwr.state.id.us>

From that link, select "Snake River Basin Adjudication" toward the lower left hand of the screen. Then select "Map" or "Text" on the next page.

"TEXT" lets you search water rights via Name, Legal, Source, etc.

Enter in the information you know. Information can be entered under more than one tab. After you have completed entering your information, select "Search"

"MAP" allows you to search water rights graphically.

Use the tools on the Left side of the screen to Zoom in and out. To find out what each button does, hold the cursor over the button for a second. To the Right side of the screen are different layers that can be turned on or off. As you zoom in to your place in question, different layers will appear on the right side of the screen.

A HELP function is available within the application or you can call 1-800-451-4129 or (208)327-7906 for help.