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Department of Water Resources

Movant: State of Idaho

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

In Re SRBA	)	Subcase No. 63-26877
	)	STATE OF IDAHO'S FIRST SUPPLEMENTAL
	)	ANSWERS AND RESPONSES TO UNITED STATES'
Case No. 39576	)	FIRST SET OF DISCOVERY REQUESTS TO STATE
	)	OF IDAHO, DEPARTMENT OF HEALTH AND
_____	)	WELFARE

COMES NOW, the State of Idaho, by and through its attorneys of record, and pursuant to Rules, 33, 34, and 36 of the Idaho Rules of Civil Procedure, supplements its answers and responses to the *UNITED STATES' FIRST SET OF DISCOVERY REQUESTS TO STATE OF IDAHO, DEPARTMENT OF HEALTH AND WELFARE*, as follows:

INTERROGATORIES

INTERROGATORY #1: If your answers to any of the Requests for Admission are anything other than an unqualified "admit:"

1. Identify and describe in detail the facts upon which you rely in making your response;
2. Identify all individual(s) with knowledge regarding any such facts;
3. Identify all documents relating in any way to your response(s); and
4. Identify any witnesses and exhibits upon which you intend to rely upon to support your response(s).

ANSWER TO INTERROGATORY #1: Since this interrogatory requests answers to four questions for each Request for Admission that is denied, this answer is subdivided first into ten subparts corresponding to the first ten Requests for Admission that the State of Idaho denied. Then each Request for Admission is further subdivided into four parts to provide an answer to the four questions for each Request for Admission that the State of Idaho has denied. Our answers are as follows:

1. Request for Admission #1:

i. **Facts:**

The State of Idaho executed on or about September 11, 1962 STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) to the Idaho Department of Health.

The United States and State of Idaho jointly prepared "Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho" (MAIL63815). This document states in part:

"Tract 0-8 Summit Creek – T. 7 N., R. 7 E., section 16: All 640 acres

...

Outstanding rights – (Shown in green on facing page.) The State Highway Department has an easement for Highway 21 which crosses the tract. It encompasses 12.51 acres. The State Department of Health has an easement for constructing and maintain [sic] a recreation area for the Nampa State School. The Camp Ea Da How youth camp includes some buildings and a fishing pond. The easement encompasses 10 acres more or less."

The State of Idaho executed on or about January 15, 1986 STATE OF IDAHO DEED No. 12174 (MAIL53304) to the UNITED STATES OF AMERICA.

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) includes the following land in its legal description: SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East Boise Meridian.

STATE OF IDAHO DEED No. 12174 (MAIL53304) includes the following land in its legal description: NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East Boise Meridian.

The United States was made aware of Camp Ee Da How, including the fish pond, specifically by the Appraisal Report for the Thorn Creek No. 2 exchange. The specific reference to STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) in the deed was a reference to all rights pertaining to Camp Ee Da How, including the fish pond.

ii. **Individuals with knowledge:**

Staff of the Idaho Department of Health and Welfare or its predecessor:

Erwin C. Sage, M.D., M.P.H., Director of Idaho State School and Hospital from 1961 to 1965.

Other Identification information is not known.

Dan Fazzini, Ph.D., Director of Idaho State School and Hospital from
1980 to 1987.
9406 S. Vandalia Avenue
Tulsa, OK 74137
(918) 524-4224

Staff of the Idaho Department of Lands or its predecessors:

Ray Miller, Area Forester.

Other Identification information is not known.

Laura Davidson, Mineral Lease and Easement Clerk.

Other Identification information is not known.

Ray Walston, Land Agent.

Other Identification information is not known.

Jay Biladeau, Assistant Director.
954 West Jefferson St.
Boise, ID 83720
(208) 334-0200
Previous Positions: Chief, Bureau of Real Estate.

Perry Whittaker, Chief, Bureau of Real Estate.
954 West Jefferson St.
Boise, ID 83720
(208) 334-0200
Previous Positions: Real Estate Specialist.

Don McNarrie, Real Estate Specialist.
954 West Jefferson St.
Boise, ID 83720
(208) 334-0200
Previous Positions: Not applicable.

iii. **Documents:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho (MAIL63815).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho (MAIL63815).

2. Request for Admission #2:

i. **Facts:**

The State of Idaho executed on or about September 11, 1962 STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) to the Idaho Department of Health.

The United States and State of Idaho jointly prepared "Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho" (MAIL63815). This document states in part:

"Tract 0-8 Summit Creek – T. 7 N., R. 7 E., section 16: All 640 acres

...

Outstanding rights – (Shown in green on facing page.) The State Highway Department has an easement for Highway 21 which crosses the tract. It encompasses 12.51 acres. The State Department of Health has an easement for constructing and maintain [sic] a recreation area for the Nampa State School. The Camp Ea Da How youth camp includes some buildings and a fishing pond. The easement encompasses 10 acres more or less."

The State of Idaho executed on or about January 15, 1986 STATE OF IDAHO DEED No. 12174 (MAIL53304) to the UNITED STATES OF AMERICA.

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) includes the following land in its legal description: SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East Boise Meridian.

STATE OF IDAHO DEED No. 12174 (MAIL53304) includes the following land in its legal description: NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East Boise Meridian.

The United States was made aware of Camp EE DA HOW, including the fish pond, specifically by the Appraisal Report for the Thorn Creek No. 2 exchange. The specific reference to STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) in the deed was a reference to all rights pertaining to Camp EE DA HOW, including the fish pond.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho (MAIL63815).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn
Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties,
Idaho (MAIL63815).

3. Request for Admission #3:

i. **Facts:**

The State of Idaho executed on or about September 11, 1962 STATE OF
IDAHO EASEMENT No. 2633 (MAIL63828) to the Idaho Department
of Health.

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) includes the
following statement:

“[T]he party of the first part does hereby grant to the party of the second
part an easement for the purpose of constructing and maintaining a
recreation area for the Nampa State School of Nampa, Idaho, over and
across the following described lands situated in Boise County, State of
Idaho, to-wit:

SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, section 16, Township 7 North, Range 7 East,
Boise Meridian, containing 10 acres more or less.

It is understood and agreed that no tree will be cut except by
permission of the State Land Commissioner or his authorized
agent.”

A memo dated August 5, 1963 (MAIL47880) documents the following: “6.

Select site for small rock or log dam – Site has been selected and most of
the brush cut. Excavation and dam will be made next spring.”

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D.,

Superintendent, to Mr. John Brogan, State Land Department stated:

“Concerning Mr. Trombley’s letter of May 10, 1967, enclosed are plans and drawings of the two Ranger Cabins and foundations and a map indicating the desired location of these cabins.

On August 21, Mr. Al Atkinson of the Department of Public Lands assisted our Recreation Director by suggesting locations that would not cause soil erosion. We would also like to enlarge the fishpond to approximately 90’ in diameter.

Your concurrence with our request will allow us to begin immediate construction.”

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr.

John R. Marks, M.D., Superintendent, stated:

“This letter is to verify verbal approval on August 24th of your proposed plans and locations for the two buildings to be constructed in connection with the above mentioned easement. Also for enlargement of the pool.

The plans and drawings you submitted will be made a part of Easement No. 2633 (MAIL63828). If we can be of any further assistance, do not hesitate to let us know.”

A memo dated July 28, 1967 (MAIL47881) documents the following: “4.

Enlarge fishing pond to approximate size on the attached diagram.”

Checks appear by items 1A, 1B, 1C, 2, 3, and 4. The date of 9-1-67 appears beside items 1A, 1B, and 1C.

The United States and State of Idaho jointly prepared “Appraisal Report State

of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal

and Nonfederal Lands Boise and Elmore Counties, Idaho”

(MAIL63815). This document states in part:

“Tract 0-8 Summit Creek – T. 7 N., R. 7 E., section 16: All 640 acres

...

Outstanding rights – (Shown in green on facing page.) The State Highway Department has an easement for Highway 21 which crosses the tract. It encompasses 12.51 acres. The State Department of Health has an easement for constructing and maintain [sic] a recreation area for the Nampa State School. The Camp Ea Da How youth camp includes some buildings and a fishing pond. The easement encompasses 10 acres more or less.”

The State of Idaho executed on or about January 15, 1986 STATE OF IDAHO DEED No. 12174 (MAIL53304) to the UNITED STATES OF AMERICA.

STATE OF IDAHO DEED No. 12174 (MAIL53304) includes the following land in its legal description: SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East Boise Meridian.

STATE OF IDAHO DEED No. 12174 (MAIL53304) states in part, as follows:

“TO HAVE AND TO HOLD the above-described premises and parcels of land and granted real property unto the said United States of America and its assigns forever, subject only to the following:

....

4. State of Idaho Easement No. 2633 granted to State of Idaho, acting by and through the State Department of Health on August 22, 1962 for the purpose of constructing and maintaining a recreation area and access road for Nampa State School being described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East, B.M.”.

The State of Idaho contends that it developed a water right for use on the land described in State of Idaho Easement No. 2633 (MAIL63828) by the constitutional method of appropriation by diverting the water and placing it to a beneficial use. The memo dated August 5, 1963 evidences an intent to appropriate the water for a recreational pond, and the memo dated July 28, 1967 evidences (i) completion of a small pond prior to the date of the memo and (ii) enlargement of the recreational pond on or about September 1, 1967.

The State of Idaho further contends that the State Board of Land Commissioners, by and through the Idaho Department of Lands, retained

authority under STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) to approve changes in the camp if the changes included the possibility of tree removal.

Under this retained authority, the Idaho Department of Lands approved the enlarged pond on or about August 28, 1967, and the pond became part of the express rights recognized in Idaho Easement No. 2633 (MAIL63828).

The United States was made aware of Camp EE DA HOW, including the fish pond, specifically by the Appraisal Report for the Thorn Creek No. 2 exchange. The specific reference to STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) in the deed was a reference to all rights pertaining to Camp EE DA HOW, including the fish pond.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Memo dated August 5, 1963 (MAIL47880).

Memo dated July 28, 1967 (MAIL47881).

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D., Superintendent, to Mr. John Brogan, State Land Department.

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr. John R. Marks, M.D., Superintendent.

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn
Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties,
Idaho (MAIL63815).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Memo dated August 5, 1963 (MAIL47880).

Memo dated July 28, 1967 (MAIL47881).

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D.,
Superintendent, to Mr. John Brogan, State Land Department.

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr.
John R. Marks, M.D., Superintendent.

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn
Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties,
Idaho (MAIL63815).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

4. Request for Admission #4:

i. **Facts:**

The State of Idaho executed on or about September 11, 1962 STATE OF
IDAHO EASEMENT No. 2633 (MAIL63828) to the Idaho Department
of Health.

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) includes the
following statement:

"[T]he party of the first part does hereby grant to the party of the second part an easement for the purpose of constructing and maintaining a recreation area for the Nampa State School of Nampa, Idaho, over and across the following described lands situated in Boise County, State of Idaho, to-wit:

SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, section 16, Township 7 North, Range 7 East, Boise Meridian, containing 10 acres more or less.

It is understood and agreed that no tree will be cut except by permission of the State Land Commissioner or his authorized agent."

A memo dated August 5, 1963 (MAIL47880) documents the following: "6.

Select site for small rock or log dam – Site has been selected and most of the brush cut. Excavation and dam will be made next spring."

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D.,

Superintendent, to Mr. John Brogan, State Land Department stated:

"Concerning Mr. Trombley's letter of May 10, 1967, enclosed are plans and drawings of the two Ranger Cabins and foundations and a map indicating the desired location of these cabins.

On August 21, Mr. Al Atkinson of the Department of Public Lands assisted our Recreation Director by suggesting locations that would not cause soil erosion. We would also like to enlarge the fishpond to approximately 90' in diameter.

Your concurrence with our request will allow us to begin immediate construction."

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr.

John R. Marks, M.D., Superintendent, stated:

"This letter is to verify verbal approval on August 24th of your proposed plans and locations for the two buildings to be constructed in connection with the above mentioned easement. Also for enlargement of the pool.

The plans and drawings you submitted will be made a part of Easement No. 2633 (MAIL63828). If we can be of any further assistance, do not hesitate to let us know."

A memo dated July 28, 1967 (MAIL47881) documents the following: "4.

Enlarge fishing pond to approximate size on the attached diagram."

Checks appear by items 1A, 1B, 1C, 2, 3, and 4. The date of 9-1-67 appears beside items 1A, 1B, and 1C.

The United States and State of Idaho jointly prepared "Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho" (MAIL63815). This document states in part:

"Tract 0-8 Summit Creek – T. 7 N., R. 7 E., section 16: All 640 acres

...

Outstanding rights – (Shown in green on facing page.) The State Highway Department has an easement for Highway 21 which crosses the tract. It encompasses 12.51 acres. The State Department of Health has an easement for constructing and maintain [sic] a recreation area for the Nampa State School. The Camp Ea Da How youth camp includes some buildings and a fishing pond. The easement encompasses 10 acres more or less."

The State of Idaho executed on or about January 15, 1986 STATE OF IDAHO DEED No. 12174 (MAIL53304) to the UNITED STATES OF AMERICA,

STATE OF IDAHO DEED No. 12174 (MAIL53304) includes the following land in its legal description: SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East Boise Meridian.

STATE OF IDAHO DEED No. 12174 (MAIL53304) states in part, as follows:

"TO HAVE AND TO HOLD the above-described premises and parcels of land and granted real property unto the said United States of America and its assigns forever, subject only to the following:

....

4. State of Idaho Easement No. 2633 granted to State of Idaho, acting by and through the State Department of Health on August 22, 1962 for the purpose of constructing and maintaining a recreation area and access

road for Nampa State School being described as the SW¹/₄SW¹/₄NW¹/₄ of section 16, Township 7 North, Range 7 East, B.M.”.

The State of Idaho contends that it developed a water right for use on the land described in State of Idaho Easement No. 2633 (MAIL63828) by the constitutional method of appropriation by diverting the water and placing it to a beneficial use. The memo dated August 5, 1963 evidences an intent to appropriate the water for a recreational pond, and the memo dated July 28, 1967 evidences (i) completion of a small pond prior to the date of the memo and (ii) enlargement of the recreational pond on or about September 1, 1967.

The State of Idaho further contends that the State Board of Land Commissioners, by and through the Idaho Department of Lands, retained authority under STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) to approve changes in the camp if the changes included the possibility of tree removal.

Under this retained authority, the Idaho Department of Lands approved the enlarged pond on or about August 28, 1967, and the pond became part of the express rights recognized in Idaho Easement No. 2633 (MAIL63828).

The United States was made aware of Camp EE DA HOW, including the fish pond, specifically by the Appraisal Report for the Thorn Creek No. 2 exchange. The specific reference to STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) in the deed was a reference to all rights pertaining to Camp EE DA HOW, including the fish pond.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Memo dated August 5, 1963 (MAIL47880).

Memo dated July 28, 1967 (MAIL47881).

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D., Superintendent, to Mr. John Brogan, State Land Department.

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr. John R. Marks, M.D., Superintendent.

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho (MAIL63815).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Memo dated August 5, 1963 (MAIL47880).

Memo dated July 28, 1967 (MAIL47881).

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D., Superintendent, to Mr. John Brogan, State Land Department.

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr. John R. Marks, M.D., Superintendent.

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho (MAIL63815).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

5. Request for Admission #5:

i. **Facts:**

The State of Idaho executed on or about September 11, 1962 STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) to the Idaho Department of Health.

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) includes the following statement:

“[T]he party of the first part does hereby grant to the party of the second part an easement for the purpose of constructing and maintaining a recreation area for the Nampa State School of Nampa, Idaho, over and across the following described lands situated in Boise County, State of Idaho, to-wit:

SW¼SW¼NW¼, section 16, Township 7 North, Range 7 East, Boise Meridian, containing 10 acres more or less.

It is understood and agreed that no tree will be cut except by permission of the State Land Commissioner or his authorized agent.”

A memo dated August 5, 1963 (MAIL47880) documents the following: “6.

Select site for small rock or log dam – Site has been selected and most of the brush cut. Excavation and dam will be made next spring.”

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D.,

Superintendent, to Mr. John Brogan, State Land Department stated:

“Concerning Mr. Trombley’s letter of May 10, 1967, enclosed are plans and drawings of the two Ranger Cabins and foundations and a map indicating the desired location of these cabins.

On August 21, Mr. Al Atkinson of the Department of Public Lands assisted our Recreation Director by suggesting locations that would not cause soil erosion. We would also like to enlarge the fishpond to approximately 90' in diameter.

Your concurrence with our request will allow us to begin immediate construction."

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr.

John R. Marks, M.D., Superintendent, stated:

"This letter is to verify verbal approval on August 24th of your proposed plans and locations for the two buildings to be constructed in connection with the above mentioned easement. Also for enlargement of the pool.

The plans and drawings you submitted will be made a part of Easement No. 2633 (MAIL63828). If we can be of any further assistance, do not hesitate to let us know."

A memo dated July 28, 1967 (MAIL47881) documents the following: "4.

Enlarge fishing pond to approximate size on the attached diagram."

Checks appear by items 1A, 1B, 1C, 2, 3, and 4. The date of 9-1-67 appears beside items 1A, 1B, and 1C.

The United States and State of Idaho jointly prepared "Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties, Idaho" (MAIL63815). This document states in part:

"Tract 0-8 Summit Creek - T. 7 N., R. 7 E., section 16: All 640 acres

...

Outstanding rights - (Shown in green on facing page.) The State Highway Department has an easement for Highway 21 which crosses the tract. It encompasses 12.51 acres. The State Department of Health has an easement for constructing and maintain [sic] a recreation area for the Nampa State School. The Camp Ea Da How youth camp includes some buildings and a fishing pond. The easement encompasses 10 acres more or less."

The State of Idaho executed on or about January 15, 1986 STATE OF IDAHO DEED No. 12174 (MAIL53304) to the UNITED STATES OF AMERICA,

STATE OF IDAHO DEED No. 12174 (MAIL53304) includes the following land in its legal description: SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East Boise Meridian.

STATE OF IDAHO DEED No. 12174 (MAIL53304) states in part, as follows:

“TO HAVE AND TO HOLD the above-described premises and parcels of land and granted real property unto the said United States of America and its assigns forever, subject only to the following:

....

4. State of Idaho Easement No. 2633 granted to State of Idaho, acting by and through the State Department of Health on August 22, 1962 for the purpose of constructing and maintaining a recreation area and access road for Nampa State School being described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East, B.M.”.

The State of Idaho contends that it developed a water right for use on the land described in State of Idaho Easement No. 2633 (MAIL63828) by the constitutional method of appropriation by diverting the water and placing it to a beneficial use. The memo dated August 5, 1963 evidences an intent to appropriate the water for a recreational pond, and the memo dated July 28, 1967 evidences (i) completion of a small pond prior to the date of the memo and (ii) enlargement of the recreational pond on or about September 1, 1967.

The State of Idaho further contends that the State Board of Land Commissioners, by and through the Idaho Department of Lands, retained

authority under STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) to approve changes in the camp if the changes included the possibility of tree removal.

Under this retained authority, the Idaho Department of Lands approved the enlarged pond on or about August 28, 1967, and the pond became part of the express rights recognized in Idaho Easement No. 2633 (MAIL63828).

The Idaho Department of Lands file regarding STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) identified an approved use of water at Camp EE DA HOW in a fish pond.

The United States was made aware of Camp EE DA HOW, including the fish pond, specifically by the Appraisal Report for the Thorn Creek No. 2 exchange. The specific reference to STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) in the deed was a reference to all rights pertaining to Camp EE DA HOW, including the fish pond.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Memo dated August 5, 1963 (MAIL47880)

Memo dated July 28, 1967 (MAIL47881)

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D.,

Superintendent, to Mr. John Brogan, State Land Department

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr.

John R. Marks, M.D., Superintendent.

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn

Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties,

Idaho (MAIL63815).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

Memo dated August 5, 1963 (MAIL47880).

Memo dated July 28, 1967 (MAIL47881).

Letter dated August 22, 1967 (MAIL63818) from John R. Marks, M.D.,

Superintendent, to Mr. John Brogan, State Land Department.

Letter dated August 28, 1967 (MAIL63817) from G. C. Trombley to Mr.

John R. Marks, M.D., Superintendent.

Appraisal Report State of Idaho No. 7 Land Exchange also known as Thorn

Creek No. 2 Federal and Nonfederal Lands Boise and Elmore Counties,

Idaho (MAIL63815).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

6. **Request for Admission #7:**

i. **Facts:**

The State of Idaho executed STATE OF IDAHO EASEMENT No. 2633

(MAIL63828) on or about September 11, 1962.

The State of Idaho executed STATE OF IDAHO DEED No. 12174
(MAIL53304) on or about January 15, 1986.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with
knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

7. Request for Admission #8:

i. **Facts:**

The State of Idaho executed STATE OF IDAHO EASEMENT No. 2633
(MAIL63828) on or about September 11, 1962.

The State of Idaho executed STATE OF IDAHO DEED No. 12174
(MAIL53304) on or about January 15, 1986.

A memo dated August 5, 1963 (MAIL47880) documents the following: "6.

Select site for small rock or log dam – Site has been selected and most of
the brush cut. Excavation and dam will be made next spring."

A memo dated July 28, 1967 (MAIL47881) documents the following: "4.

Enlarge fishing pond to approximate size on the attached diagram."

Checks appear by items 1A, 1B, 1C, 2, 3, and 4. The date of 9-1-67
appears beside items 1A, 1B, and 1C.

The State of Idaho contends that it developed a water right for use on the land described in State of Idaho Easement No. 2633 (MAIL63828) by the constitutional method of appropriation by diverting the water and placing it to a beneficial use. The memo dated August 5, 1963 evidences an intent to appropriate the water for a recreational pond, and the memo dated July 28, 1967 evidences (i) completion of a small pond prior to the date of the memo and (ii) enlargement of the recreational pond on or about September 1, 1967.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

A memo dated August 5, 1963 (MAIL47880).

A memo dated July 28, 1967 (MAIL47881).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

A memo dated August 5, 1963 (MAIL47880).

A memo dated July 28, 1967 (MAIL47881).

8. Request for Admission #9:

i. **Facts:**

The State of Idaho executed STATE OF IDAHO EASEMENT No. 2633
(MAIL63828) on or about September 11, 1962.

The State of Idaho executed STATE OF IDAHO DEED No. 12174
(MAIL53304) on or about January 15, 1986.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with
knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

9. Request for Admission #10:

i. **Facts:**

The State of Idaho executed STATE OF IDAHO EASEMENT No. 2633
(MAIL63828) on or about September 11, 1962.

The State of Idaho executed STATE OF IDAHO DEED No. 12174
(MAIL53304) on or about January 15, 1986.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with
knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

10. **Request for Admission #11:**

i. **Facts:**

The State of Idaho executed STATE OF IDAHO EASEMENT No. 2633 (MAIL63828) on or about September 11, 1962.

The State of Idaho executed STATE OF IDAHO DEED No. 12174 (MAIL53304) on or about January 15, 1986.

A memo dated August 5, 1963 (MAIL47880) documents the following: "6.

Select site for small rock or log dam – Site has been selected and most of the brush cut. Excavation and dam will be made next spring."

A memo dated July 28, 1967 (MAIL47881) documents the following: "4.

Enlarge fishing pond to approximate size on the attached diagram."

Checks appear by items 1A, 1B, 1C, 2, 3, and 4. The date of 9-1-67 appears beside items 1A, 1B, and 1C.

The State of Idaho contends that it developed a water right for use on the land described in State of Idaho Easement No. 2633 (MAIL63828) by the constitutional method of appropriation by diverting the water and placing it to a beneficial use. The memo dated August 5, 1963 evidences an intent to appropriate the water for a recreational pond, and the memo dated July 28, 1967 evidences (i) completion of a small pond prior to the

date of the memo and (ii) enlargement of the recreational pond on or about September 1, 1967.

A "land conveyance document" is unnecessary to create a valid water right in the name of the State of Idaho.

ii. **Individuals with knowledge:** Attachment I is a list of individuals with knowledge. Attachment I is incorporated by reference.

iii. **Documents:**

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

STATE OF IDAHO DEED No. 12174 (MAIL53304).

A memo dated August 5, 1963 (MAIL47880).

A memo dated July 28, 1967 (MAIL47881).

iv. **Witnesses and Exhibits:**

STATE OF IDAHO DEED No. 12174 (MAIL53304).

STATE OF IDAHO EASEMENT No. 2633 (MAIL63828).

A memo dated August 5, 1963 (MAIL47880).

A memo dated July 28, 1967 (MAIL47881).

DATED this 8th day of December, 2003.

LAWRENCE G. WASDEN
Attorney General



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

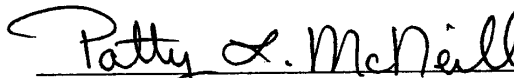
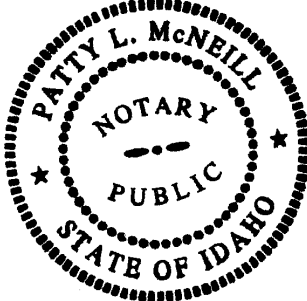
STATE OF IDAHO)
) ss.
County of Ada)

KEN DEIBERT, being first duly sworn, deposes and states: That he has read the above and foregoing STATE OF IDAHO'S FIRST SUPPLEMENTAL ANSWERS AND RESPONSES TO THE UNITED STATES' FIRST SET OF DISCOVERY REQUESTS TO STATE OF IDAHO, DEPARTMENT OF HEALTH AND WELFARE, and that he verifies that the information contained in the answers and responses to these discovery requests are true and correct to the best of his knowledge, information, and belief.



KEN DEIBERT

SUBSCRIBED AND SWORN to before me this 8th day of December 2003.



Notary Public for Idaho

Residing at: Boise

My commission expires: 6-30-2009

ATTACHMENT I

Staff of the Idaho Department of Health and Welfare or its predecessor:

Erwin C. Sage, M.D., M.P.H., Director of Idaho State School and Hospital from 1961 to 1965.

Other Identification information is not known.

John Marks, M.D., Director of Idaho State School and Hospital from 1965 to 1969.

Other Identification information is not known.

Eleanor Gustin, R.N.

Gail Ison, Ph.D., Director of Idaho State School and Hospital from 1969 to 1971.

Gail Ison, Ph.D.

31 Mesa Vista Drive

Boise, ID 83705

(208) 345-0131

Previous Positions: Not applicable.

Eleanor Gustin, R.N.

Other identification information
is not known.

John Christensen, M.S.W., Director of Idaho State School and Hospital from 1971 to 1972.

Other Identification information is not known.

Frank Ernest, Director of Idaho State School and Hospital from 1972 to 1974.

Other Identification information is not known.

Robert M. Decker, M.S., Director of Idaho State School and Hospital from 1974 to 1978.

3155 River Road South, Suite 100

Salem, OR 97302

(503) 362-5235

Previous Positions: Not applicable.

William F. Conyard, M.Ed., Director of Idaho State School and Hospital from 1978 to 1979.

Other Identification information is not known.

Robert W. Gover, Ph.D., Director of Idaho State School and Hospital from 1979 to 1980.

Other Identification information is not known.

Dan Fazzini, Ph.D., Director of Idaho State School and Hospital from 1980 to 1987.
9406 S. Vandalia Avenue
Tulsa, OK 74137
(918) 524-4224
Previous Positions: Not applicable.

Nancy C. Gravley, Director of Idaho State School and Hospital from 1988 to 1990.

Other Identification information is not known.

Jerry L. Harris, Director of Idaho State School and Hospital from 1990 to 1993, deceased.

John R. Doner, Director of Idaho State School and Hospital from 1993 to 1994.
607 North 8th Street
Boise, ID 83702
(208) 334-2451

David L. Humphrey, Director of Idaho State School and Hospital from 1995 to 1998.
5675 South Schooner
Boise, ID 83716
(208) 336-8583.
Previous Positions: Not applicable.

Scott R. Cunningham, Acting Director of Idaho State School and Hospital during 1998.
450 W. State St., 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(Forwarding address)
(208) 334-5704 (Forwarding phone number)
Previous Positions: Not applicable.

Ken Deibert, Director of Idaho State School and Hospital from 1999 to 2001.
450 W. State St., 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500
Previous Positions: Not applicable.
Present Position: Administrator, Division of Family and Community Services.

Barbara Hancock, Director of Idaho State School and Hospital from 2001 to present.
Idaho State School and Hospital
3100 11th Ave. N.
Nampa, ID 83687.
(208) 442-2812.
Previous Positions: Not applicable.

Fred George, DD Vocational Specialist
Idaho State School and Hospital
3100 11th Ave. N.
Nampa, ID 83687.
(208) 442-2812.
Previous Positions: Not applicable.

Steve Van Atter, Recreational Supervisor
Idaho State School and Hospital
3100 11th Ave. N.
Nampa, ID 83687.
(208) 442-2812.
Previous Positions: Not applicable.

Tom Weygandt, Maintenance
Idaho State School and Hospital
3100 11th Ave. N.
Nampa, ID 83687.
(208) 442-2812.
Previous Positions: Not applicable.

Donna Waters, Financial Specialist
450 W. State St., 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500
Previous Positions: Accountant, Sr.

Staff of the Idaho Department of Lands or its predecessors:

Ray Miller, Area Forester.

Other Identification information is not known.

Laura Davidson, Mineral Lease and Easement Clerk.

Other Identification information is not known.

Ray Walston, Land Agent.

Other Identification information is not known.

Jay Biladeau, Assistant Director.
954 West Jefferson St.
Boise, ID 83720
(208) 334-0200
Previous Positions: Chief, Bureau of Real Estate.

Perry Whittaker, Chief, Bureau of Real Estate.
954 West Jefferson St.
Boise, ID 83720
(208) 334-0200
Previous Positions: Real Estate Specialist.

Don McNarrie, Real Estate Specialist.
954 West Jefferson St.
Boise, ID 83720
(208) 334-0200
Previous Positions: Not applicable.