

Michael C. Creamer (ISB No. 4030)
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
S:\CLIENTS\3314\10\MCC Affidavit.DOC

RECEIVED

JAN 13 2004

Department of Water Resources

*Attorneys for Mays Land and Livestock Inc. and
Blaine County Canal Company*

**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

Case No. 35976

Case Nos.:33-69, 33-70, 33-71, 33-72,
33-73, 33-74, 33-76, 33-78, 33-79, 33-
80, 33-81, 33-82, 33-2086A, 33-2086B,
33-2090, 33-2091, 33-7018

**AFFIDAVIT OF MICHAEL C.
CREAMER**

STATE OF IDAHO)
) ss.
County of Ada)

Michael C. Creamer, being first duly sworn, deposes and states as follows:

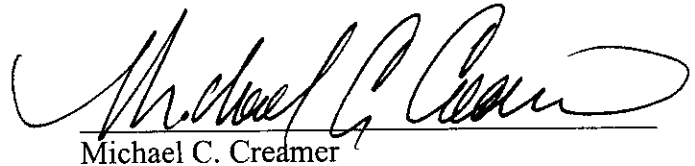
1. I am the attorney of record for Mays Land & Livestock ("Mays") and Blaine County Canal Company ("BCCC") ("Respondents").

2. I represented Mays at the January 1995 administrative hearing in the matter of Application for Transfer Nos. 4221, 4222, 4223, 4224, 4225, 4226 and 4227 in the Name of Sagewillow, Inc. I represented both Respondents in the various stages of judicial review of the resulting administrative decision.

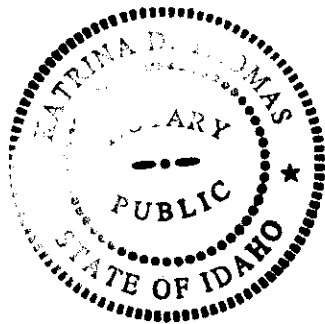
3. At the administrative hearing, BCCC offered a single exhibit into the record, namely Blaine County Canal Company Exhibit No. 1. Sagewillow, Mays and BCCC stipulated to the Exhibit's admission. A true and correct copy of the portion of the transcript (p. 9, l. 23 - p. 10, l. 15) of the administrative hearing concerning the admission of BCCC Exhibit No. 1 is attached hereto as Exhibit A.

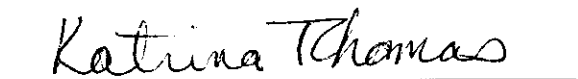
4. In the course of the various appellate proceedings that have occurred since the hearing, BCCC Exhibit No. 1 apparently has been misplaced or lost by the Idaho Department of Water Resources.

5. Attached hereto as Exhibit B is a true and correct copy from my hearing files of BCCC Exhibit No. 1 as offered and admitted consisting of nineteen total pages and containing fourteen letters from water users in the Little Lost River basin.


Michael C. Creamer

SUBSCRIBED AND SWORN to before me this 9th day of January, 2004.




Notary Public for the State of Idaho
Residing at: Bowle, ID
My commission expires: 4-10-06

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of January, 2004, I served a true and correct copy of the foregoing by delivering the same to the following by the method indicated below, addressed as follows:

Original to:

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

☐ U. S. Mail
☐ Hand Delivered
☒ Overnight Mail
☐ Facsimile

Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

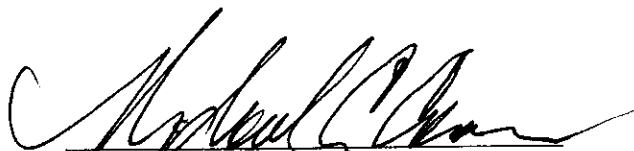
☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Kent W. Foster, Esq.
Holden Kidwell Hahn & Crapo PLLC
330 Shoup Ave.
P.O. Box 50130
Idaho Falls, ID 83405-0130

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile


Michael C. Creamer

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

BE IT REMEMBERED that this matter came on for hearing on the 31st day of January, 1995 as Day 1 of a two-day hearing at Idaho Falls, Idaho, in front of Gary Spackman, Hearing Officer, Idaho Department of Water Resources.

The following is a transcription of the above referenced hearing.

APPEARANCES:

FOR THE APPLICANT:

KENT W. FOSTER, Attorney
P.O. Box 50130
330 Shoup Avenue, Third Floor
Idaho Falls, Idaho 83450

FOR THE PROTESTANTS:

For James Mays and Mays Land &
Livestock:
MICHAEL C. CREAMER, Attorney
P.O. BOX 2720
Boise, Idaho 83701

For Blaine County Canal Co.:
WADE WILLIAMS
HC 65, Box 1018
Howe, Idaho 83244

TRANSCRIPTION BY:

NORTHWEST TRANSCRIPTS, INC.
P.O. Box 890
Nampa, Idaho 83653-0890
(208) 466-2743

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

1 the irrigation methods that are proposed and the irrigation
2 methods estimated prior to the transfer.

3 Exhibit 16 is a summary of pumping estimates for the
4 Sage Willow wells and it includes about 20 pages with various
5 pieces of information; the acre feet pumped annually, winter
6 pumping, the non-winter pumping, and bar graph summary.

7 Exhibit 17 is potential range reduction impacts on
8 stream flows in the Little Lost.

9 Exhibit 18 is recommended reductions by transfer
10 number, and the number of acres, and diversion rates for those
11 transfers.

12 Exhibits 19 and 20 are two different scenarios for
13 estimating evapotranspiration, pre-transfer and post-transfer.
14 Consist of 20 exhibits and we've stipulated that those are
15 admitted into the record under the same conditions that you've
16 mentioned previously.

17 MR. SPACKMAN: And based on what we discussed then
18 these exhibits are also admitted into the record with --
19 generally with the stipulation or with the reservation that
20 the applicant can raise questions, or may raise questions
21 about the purpose for which they're being used.

22 (Protestant Mays' Exhibit Nos. 1 through 20, Admitted)

23 MR. SPACKMAN: Now, Mr. Williams, you have some
24 documents, we can -- I guess you've marked yours, so -- and we
25 discussed I think prior to starting the recording the marking

1 of your exhibit as a single exhibit.

2 MR. WILLIAMS: Right, Exhibit.

3 MR. SPACKMAN: And if you'll just explain what the
4 exhibit is.

5 MR. WILLIAMS: Our exhibit consists of 14 letters
6 from the water users in the Little Lost River that have had
7 trouble in the last couple of years with their wells and
8 they're dropping off and going dry. And they have listed
9 license numbers, the amount of water the licensed water right
10 consists of. And most of them the percentage of loss that
11 they have experienced over the last year.

12 MR. SPACKMAN: Okay, and the parties have stipulated
13 to the admission of the canal company's exhibit and under the
14 same conditions that were previously stated.

15 (Protestant Blaine County Canal Co.'s Exhibit No. 1, Admitted)

16 MR. SPACKMAN: And I might just add as part of this
17 discussion that prior to recording we discussed the late filed
18 petition by the canal company to amend its protest. I had
19 issued on January 27th an order denying the petition to amend
20 the protest, but after discussing it with the parties I have
21 decided to -- and actually because of the graciousness of all
22 the parties I've determined that I should withdraw that order
23 on January 27th. And so the order is withdrawn and I grant
24 the order to -- or grant the petition to amend protest filed
25 by the Blaine County Canal Company. And so the Blaine County

January 27, 1995

Mr. Gary Spackman
Hearing Officer
Idaho Dept. Water Resources
1301 N Orchard St.
Boise, Idaho 83720-0098

RE: Water Transfer No.'s 4221, 4222, 4223, 4224, 4225, 4226,
and 4227 in the name of SageWillow, Inc.

Dear Gary:

Blaine County Canal Company feels that the ground water in the Little Lost is being pumped beyond its capacity to recharge itself at this time. We have gathered the attached information from some of the many water users in the Little Lost showing the extent at which we are having trouble currently with wells dropping off and going dry. We feel that any further expansion of this valuable resource will harm all of the current ground water licensees in the Little Lost River. We would like to reserve the right to call any or all of these individuals who are currently having difficulties with their wells as witnesses in the upcoming hearing.

Sincerely,

Wade T. Williams

Blaine County Canal Company
Wade T. Williams (Chairman)

cc: Sagewillow, Inc.
c/o Holden, Kidwell, Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405-0130

James Mays
c/o Michael C. Creamer
Givens, Pursley & Huntley
PO Box 2720
Boise, ID 83701

January 21, 1995

To Whom It May Concern:

W. T. Williams Inc. farms approximately 1200 acres in the Little Lost River Valley, irrigating with surface water from Blaine County Canal Company and ground water. With the ongoing drought, expansion of ground water development and the reduction in flood irrigation which helps to replenish the ground water we have experienced extreme lack of ability to adequately irrigate our crops in the past few years even with the use of more efficient sprinkler irrigation.

In 1992 with the continuation of the drought and greater dependence on our ground water we started seeing our wells drop off towards the end of the summer with one well being completely dry. Seeing that we were having trouble adequately watering our crops we converted all of our remaining flood irrigated ground to sprinkler irrigation in the fall.

In 1993 we saw the wells drop off earlier than the previous year. After a fairly good surface water run we still experienced problems keeping our crops wet after the river slowed down, since two of our wells were dry and three had dropped by 30 to 50% by fall.

1994 proved to be the worst year yet with three wells going completely dry by mid summer and the remainder of the wells dropping off by as much as 75%. We have one well which is the only water for 640 acres and that well began losing pressure early in the spring and we renozzled from 6 gpm flow control nozzles to 7/64" and 5/32" nozzles and dropped a 150 horsepower booster pump to maintain our pressure, thus resulting in a more difficult time keeping up with our irrigation needs.

We also have one domestic well which has been having trouble for several years and is at this time nearly dry. It will run a garden hose for about 5 to 10 minutes and then goes dry and takes about 15 to 20 minutes to recharge enough to run another 5 to 10 minutes.

It appears to us that the ground water in the Little Lost is being pumped beyond its capacity to recharge itself, especially during drought conditions and that any further expansion of tapping this valuable resource will harm all of the current ground water licensees. We are extremely concerned about the attempt of reactivate abandoned water licenses by Sage Willow since many of these licenses had been abandoned when we proved on our wells.

I have enclosed a list of our wells, locations, licensed cfs and the priority dates. Thank you for your consideration and time in this very important matter.

Sincerely,

Wade T. Williams

Wade T. Williams

WILLIAMS

2

5 Wells

06N 29E Sec 21 SW SE NE
 21 SE SE NE (dry fall "93", "94")
 23 NW SE NE (dry "92", "93", "94")
 23 NW NW SE (50% fall "93", dry summer "94")
 25 NW NW NE (50% fall "94")

3.89CFS May 7, 1963 ID. NO. A33-02041
 5.00CFS May 1, 1956 ID. NO. A33-04000
 2.32CFS July 1, 1951 ID. NO. A33-04002

2 Wells

06N 29E Sec 8 SW SW SE [off 30% summer "93"
 16 NW NW NW [50% summer "94", 75% fall "94"

4.8CFS Feb. 13, 1953 ID. NO. A33-02069
 3.4CFS May 1, 1954 ID. NO. A33-04001

1 well

06N 30E Sec 29 NW SW pressure dropped summer "94"
 7.27CFS Mar. 20, 1978 renozzled and went from 500HP
 ID. NO. A33-07063 to 350 HP

January 26, 1995

John L McDonald
HC 65 Box 1030
Howe, ID 83244

IRRIGATIONS WELLS

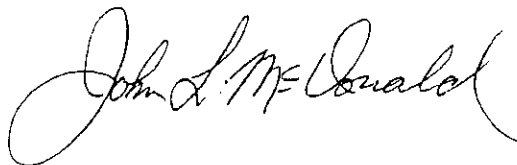
Ident #: A33-07047 This well has been throwing so little
Depth: 100 feet that I haven't been running it the
Quantity: 0.27 CFS last couple of years.

Ident #: A33-02046 This past irrigation season,
(2 Wells Under this ID no.) Well #1 was throwing about
Depth: Well #1: 76 feet 1/3 to 1/4 of normal flow.
Well #2: 66 feet Well #2 was cavitating.
Quantity: 2.94 CFS together

I lease land from a neighbor, Jesse Strobe. I was unable to contact him for pump information.

One of his pumps is located on 80 acres with the legal description of S1/2 NE 1/4 Sec. 26 TWP 6N Range 29 EBM. This pump was cavitating last irrigation season.

The other pump is located on 80 acres with the legal description of E1/2 SE 1/4 Sec. 22 TWP 6N Range 29 EBM. This pump was supplying 1/2 or less of its normal volume.



January 27, 1995

To: To Whom It May Concern

Subject: Basin 33 Water

TWP6N,R29E,Sec.21

I.D. #A33-07153

Depth - 105'

Domestic well - This well was discontinued because of sand and water was standing around 100'
New well drilled in 1994 to 120'.

TWP6N,R29E,Sec.28

I.D.#A33-07013

Depth - 160'

Irrigation well - Consumptive use: 395 AFA
% available Fall '94 - 80%

TWP6N,R29E,Sec.27

I.D.#A33-1067

Depth - 88 1/2'

Domestic well - Measured as of September 19, 1994, water level 79'

I.D.#A33-02121

Depth - 200'

Irrigation well - Consumptive use: 375 AFA - Appropriated use: 450 AFA
% available Fall '94- 50%

Sincerely,

Rulon Callister

WOODIE LAND & LIVESTOCK

January 27, 1995

33-02084 Priority date: November 18, 1957
Use: Irrigation Licensed for 1.160 cfs
Depth: 106' Water level: 45'
On 7/1/94, we approximate the water level to be 65' and pumping 30 inches

33-02136 Priority date: August 10, 1966
Use: Irrigation Licensed for 1.830 cfs
Depth: 267' Water level: 90'
On 7/1/94, we approximate the water level to be 200' and pumping 60 inches

33-07046 Priority date: July 12, 1976
Use: Irrigation Licensed for 0.600 cfs
Depth: 118' Water level: 45'
On 7/1/94, approximate the water level to be 60' with no approximation on inches pumped.

33-02095 Priority date: August 30, 1960
Use: Irrigation Licensed for 1.550 cfs
Depth: 109' Water level: 45'
On 7/1/94, we approximate the water level to be 60' and pumping 40 inches

33-10099 Priority date: 6/1/14
Use: Domestic
Depth: 66' Water level 43'
The well went dry in June 1993. In July a new well was drilled next to the old site to a depth of 128' with a water level of 75'.

During the summer of 1994, we had to shut off one line of a four line wheel-line system due to a severe decrease in available water. This was on 33-02095 and 33-07046.

HC 65 Box 1043
Howe ID 83244
25 January 1995

TO: To Whom It May Concern

SUBJECT: Basin 33 Water

License # 33-7064
Depth of well: 275 feet
Licensed amount of water: .80 cfs
% available fall of '94: 60%

License # 33-02082
Depth of well: 275 feet
Licensed amount of water: 1.6 cfs
% available fall '94: 60%

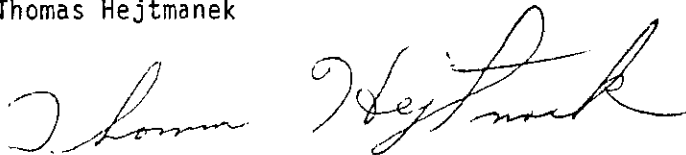
The above two licenses are for the same well for a total licensed amount of 2.4 cfs.

License # 33-2120
Depth of well: 300 feet
Licensed amount of water: 3.39 cfs
% available fall '94: 70%

License # 33-7062
Depth of well: 100 feet
Licensed amount of water: 1.64 cfs
% available fall '94: 25%

Sincerely,

Thomas Hejtmerek

A handwritten signature in cursive script, appearing to read "Thomas Hejtmerek", written in dark ink.

January 25. 1995

Water Right License #22819/33-2060: Licensed for 3.2 CFS.
and #22950/33-2063: Licensed for 1.68 CFS.
Both located in NW 1/4, Sec 28, Twp 6N, R.29 E.B.M.
and are open discharge wells.

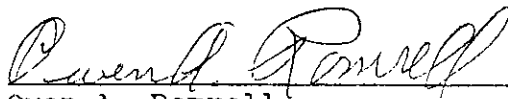
These wells work together to irrigate the SW 1/4 of Sec.28 and the NW 1/4 of Sec.33. The wells are about 660 ft. apart on a north-south direction. The one on the south (3.2 CFS) is 100 ft. deep with the bowls setting at about 96 ft. At the normal water table of 60 ft., it will pump enough for eight 1/4 mile lines, 3/16 nozzles, at 55 lbs. pressure. It had to be shut off the middle of August, 1994. It would pump only enough for two lines, 11/64 nozzles and was surging.

The well on the north (1.68 CFS) was cleaned during the winter of 1992. Originally drilled to 127 ft. it had silted in to 100 ft. and was deepened to 130 ft. The bowls were set at 126 ft. At normal water table of 60 ft., it will pump for four 1/4 mile lines with 3/16 nozzles at 70 lbs. pressure. At the end of the 94 season it was pumping for four lines with 11/64 nozzles at 38 lbs.

Water License # G-27266. Licensed for 2.10 CFS.
Located NW 1/4, SE 1/4, Sec.28, Twp 6N. R29E.

At normal water table of 60 ft. It will pump enough for six 1/4 mile lines with 11/64 nozzles at 58 lbs. pressure. For 1994 it was shut off in the middle of August as it was only pumping for three lines and was surging.

Culinary well: located SW 1/4 of SW 1/4, Sec.21, Twp 6N, R29E. Original well was 80 ft. deep. It went dry about the 10th of August, 1994. Redrilled to 140 ft. around the 20th of August and seems to be okay.


Owen A. Romrell

January 25, 1995

To Whom it May Concern:

Basin # 33

Priority Date 1950 & 1976

License # A 33-02064

Depth of well 126'

License for 3.99 CFS

Located NW 1/4, SW 1/4 Sec 15 Twp 6N 29 E

This well normally supplies water for 8 1/4 mile lines at 65 lbs pressure. From July 25, 1994 until irrigation season ended in October, 1994 it was only supplying water for 6 lines at 35 lbs pressure which is about a 40% reduction in water.

Islem Farms
Gonard M Islem
pres

Robert F. & Jacqueline A. Graefe
Homeowners
P.O. Box 45
Howe ID 83244-0045

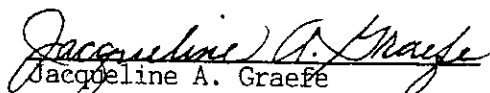
January 27, 1995

We are homeowners on approx. 8 acres located in Howe, ID, Butte Cty.
TWP 6N Range 29E Sect 22, a fraction of the SE quarter of the SW
quarter.

In 1975 we built a four bedroom home on the above acreage. We
tied into an existing 86 ft well. This well accomodated the
home, approx. 10,000 sq ft of lawn and 400 sq ft garden. In
1986 the table dropped and we lowered the pump 7 feet. In May
1994 the well went dry. In June we dug a new well and hit water at 112 ft.

Our water usage has not changed in the last 20 years.


Robert F. Graefe


Jacqueline A. Graefe

JANUARY 26, 1995

To whom it may concern:

Information requested concerning irrigation wells:

License #	C.F.S.	A.F.A.	Depth	ID #
20629	0.860	562.5	100'	A 33-02047
20629	1.74	562.5	100'	A 33-02044
26022	2.2	562.5	100'	A 33-02077

Normal Lift for these wells is 50'.

The approximate loss in these wells for 1994 was 45-50%.

Brian Danell

Jan 24, 1995

Information requested concerning
irrigation wells.

License #	C.F.S.	A.F.A.	Depth	ID #
20917	6.000	765.0	200'	A33-02055
29604	1.550	400.0	200'	A33-02100
20738	3.400	600.0	200	A33-02048
"	3.400	190.0		A33-10082

Approximate loss this past summer
of 30-35%.

Carolyn J Harrell-Sutton

1986 / water cap

Depth of - well 90 ft

1987
APRIL 30 40' 4"
OCT 20 46' 6"

1988
Feb - 24 41' 4"
April 1 40' 8"
APR 19 40' 5"
Aug 2 51' - 10"

1989
April 1 46' - 3"
April 20 45' - 10"
Aug 25 52' - 3"
OCT 18 52' - 7"

1990
Feb - 15 46' - 1"
~~Sept 8~~
SEPT 7 49' - 4"

1991
Feb 10 47' - 8"
" 20 47' - 4"
MAY 7 46' - 8"

Feb - 4 49' - 11"
APR 21 51' - 4"
MAY 18 57' - 0"
SEPT 17 58' - 10"
OCT 22 60' - 1"

1993
MARCH 29 54' - 2"
MAY 1 53' - 3"
MAY 11 53' - 2"
Aug 15 55' - 2"
OCT 14 55' - 9"

1994
APR 30 53' - 10"
July 12 64' - 0"
OCT 20 64' - 2"

1995
JAN 16 59' - 6"

Earl Worthy
Lisium #
33-02098

#1

Jan 25, 1995
To the Water Resource Dept.

Dear Sue,

I am writing to make you aware of the problems we are having with our wells.

We have four irrigation wells that have dropped significantly & two domestic wells that have ran out of water in fact one of the domestic wells has ran out of water completely.

I will list each well by the identification number & comment to it. We also rent Robert Chambers farm, which we have done for 13 yrs., some will comment on those water rights also.

I will comment to the domestic wells first.

Ident. No. A33-10035

This well is 300 ft deep, last summer we couldn't pump enough water for the house use, it did come back enough for the house, but we couldn't water the lawn at all.

Ident. No. A33-10037

This well dried up completely about the 15th of Aug 1994. This was the first time this has happened since we have been involved with the place.

#2

Now for the irrigation wells.

Permit No. A33-02049

This permit has a 1948 priority date. We have farmed this land since 1983. We have always had adequate water till last yr (1994). There is water rights for 1,760 C.F.S. but there was only enough water to supply one 1/4 mile spindle line with 1/4 nozzles at 20 lb pressure. This is only 80 gal per min.

Permit No. A33-02039

This permit has a 1947 priority date.

C.F.S. of 2.82

This well supplies water to a low pressure pivot. Last year (1994) the first 2 towers were pumping air instead of water.

Permit No. A33-02038

This permit also has a 1947 priority date.

C.F.S. of 3.01

This well also supplies water to a low pressure pivot it also was pumping air in the yr 1994. This has been a very good well till 1994.

Permit No. A33-02037A

This permit also has a 1947 priority date

C.F.S. of 1.6

This well has been a very good producer till 1994. It would run 3- $\frac{1}{4}$ mile lines, with $\frac{1}{64}$ nozzles at 60 lbs pressure. This figures out to be approximately 645 G.P.M. but last year we were only able to run 2- $\frac{1}{4}$ mile lines at 60 lbs. pressure with $\frac{5}{32}$ nozzles which figures 352 gals. per min. A reduction of 293 gal. So you see we have had a very dramatic reduction in our under-ground water supply as well as our surface water was nearly nothing in 1994.

Now to comment on Robert Chambers permits.
Ident No. A 33-07009

C.F.S. of 8.0

Priority Date 1970

Ident No. A 33-07025

C.F.S. of 1.16

Priority Date 1973

Ident. No. A 33-07065

C.F.S. of 3.1

Priority date of 1979

This well is 700 ft deep. The banks are sitting at 300 ft. We did lose a little pressure on the system but it is holding up quite well.

#4

It is the more shallow wells that is giving us, here in the valley, the most problems, and as we know that all of our shallower wells are fed by running streams, all flowing from the direction of the Little Lost river. The underground water traveling from the North West to the South East. I don't see how any more development of up-stream water can be allowed if our existing water rights are worth the paper they are written on.

Respectfully

Keith Dickerson

A very concerned water
user in the Little Lost Drainage

Dated 1-25-1995.

~~number 11~~ / ~~Howe 2~~
~~Pumps #~~

License 33-02045

Priority - April 8-1948

Amount - 3.2 CFS

depth 120'

amount pumping July 1994
1.8 CFS

Pumps # 2

License 33-2115

Priority - Feb 20-1963

Amount - 2.20 CFS

depth 500'

amount pumping 6-15-94 - 1.5 CFS

Added 40' column - 6-20-94

amount pumping 7-15-94 - 1.8 CFS

Our domestic well usually had water at 60 feet. When the pump went out in Jan. of 1993 ~~there~~ the water table had dropped 10 feet. Now at 70 feet.

Our well went dry in July of 1994. The pump sat at 80' and there was no water there.

We drilled a new well in Nov. 1994. We hit water at approx. 85 feet. The new pump is now at 120 feet.

Sally Amy

Jan. 27, 1995