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TWIN FALLS, IDAHO

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	)	Water Right Claim 67-04152
	)	
Case No. 39576	)	ORDER OF REFERENCE TO SPECIAL
	)	MASTER BRIGETTE BILYEU
	)	
	)	

On May 26, 2004, this Court received correspondence regarding the above-captioned water right claim. A copy of the correspondence is attached to this **Order**. The original of the correspondence was file stamped, docketed as received, and lodged in the subcase file. Where the water right claim was previously uncontested, a subcase file was created for the correspondence. Where a **Partial Decree** was previously entered for the water right claim, the **Partial Decree** was also included in the subcase file.

THE FOLLOWING ARE HEREBY ORDERED:

1. That Brigitte Bilyeu is appointed Special Master to preside over the above-captioned water right claim for the following purposes:

a. To determine the intended purpose of the correspondence and the legal significance of the correspondence, if any. For example, the Special Master may determine whether the correspondence constitutes a motion to correct a clerical error pursuant to I.R.C.P. 60(a), or a motion to set aside a partial decree pursuant to I.R.C.P. 60(b), etc.;

b. To determine whether the correspondence complies with **SRBA Administrative Order 1 (AO1)** and the Idaho Rules of Civil Procedure or whether additional time should be granted to allow the party to file an appropriate motion with the Special Master and/or to obtain counsel in the matter; whether the matter should be dismissed on its face; or to

determine whether the matter would be more appropriately processed administratively through the Idaho Department of Water Resources;

c. If the correspondence is ultimately deemed a sufficient motion, or in the event a new motion is filed in compliance with the applicable rule(s), the Special Master shall conduct all proceedings necessary to issue a recommendation as to the underlying merits. For example, if the Special Master concludes a *Partial Decree* should be set aside or amended, the recommendation should not only include that the *Partial Decree* be amended or set aside, but should also include how the elements of the water right should be partially decreed.

2. The original of this *Order* shall be placed in the subcase file and the file transferred to the Special Master for proceedings consistent with this *Order*.

3. The Special Master shall issue a *Special Master's Report and Recommendation* on the matter consistent with *AOI*.

IT IS SO ORDERED.

DATED June 7, 2004.


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER OF REFERENCE TO SPECIAL MASTER BRIGETTE BILYEU** was mailed on June 7, 2004, with sufficient first-class postage to the following:

Mr. & Mrs. Leonard Palmer
Council, ID 83612

Nello W. Jenkins
Margaret Jenkins
Council, ID 83612

David Lawrence
Vonda Lawrence
PO Box 445
Council, ID 83612

Merle A. De Haas
Helen A. De Haas
PO Box 457
Council, ID 83612

IDWR Document Depository
PO Box 837200
Boise, ID 83720-0098


Deputy Clerk

11/10
LODGED

David F Lawrence
PO Box 445
Council, ID 83612

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TWIN FALLS CO., IDAHO
FILED *M*

May 26, 2004

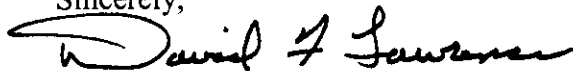
Snake River Basin Adjudication Court
PO Box 2707
Twin Falls, ID 83303

Your Honor,

We have discovered an error in the partial decree for our water right #67-04152, in re SRBA case #39576. Four families filed on this claim originally in 1976 (copy attached) and the claim was for 30 gallons per minute of water for the (4) homes as domestic use and stockwater. In 1989 we refiled the claim (copy attached) for the same amount of water, paid the 57.00 fee, receipt #W007349. In the partial decree issued by Administrative District Judge, Barry Wood, (copy attached) the quantity of water is not to exceed 13,000 gallons per day. I contacted John Westra of the Department of Water Resources in Boise, he stated the error had been made at their office but they are unable to correct it because the partial decree has been entered. He suggested we challenge the limitation of 13,000 gallons per day condition of the decree with the Adjudication Court.

Can you provide the paperwork necessary to get this corrected? Please let us know what we need to do.

Sincerely,



David F Lawrence

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. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 67-04152

NAME AND ADDRESS: LEONARD PALMER
MARGARET JENKINS
MRS LEONARD PALMER
NELLO W JENKINS
COUNCIL, ID 83612

DAVID LAWRENCE
VONDA LAWRENCE
PO BOX 445
COUNCIL, ID 83612

HELEN E DE HAAS
MERLE A DE HAAS
PO BOX 457
COUNCIL, ID 83612

SOURCE: SPRINGS TRIBUTARY: COOL CREEK

QUANTITY: 0.14 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 06/20/1950

POINT OF DIVERSION: T16N R01W S24 NWNW Within Adams County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic 4 HOMES	01-01 TO 12-31	0.07 CFS
	Stockwater	01-01 TO 12-31	0.07 CFS

PLACE OF USE:	Stockwater		Within Adams County
	T16N R01W S14	NESW	SWSW
	S23	SESW	
		NENW	
	Domestic		Within Adams County
	T16N R01W S14	NESW	SWSW
	S23	SESW	
		NENW	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

A handwritten signature in black ink, appearing to read "B Wood", is written over a horizontal line.

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that DeHass, Warner, Jenkins and Plummer (See Exhibit for full names)
(name of claimant)

all of Council, Idaho, claims a right to the diversion and beneficial use of
(mailing address)

the public water of the State of Idaho

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) springs along Cool Creek, in Foust Canyon, tributary to, Weiser River
- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount	<u>30GPM</u>	Use	<u>domestic</u>	Period of Use:	From	<u>Jan. 1</u>	To	<u>Dec. 31</u>
Amount	<u> </u>	Use	<u> </u>	Period of Use:	From	<u> </u>	To	<u> </u>
Amount	<u> </u>	Use	<u> </u>	Period of Use:	From	<u> </u>	To	<u> </u>
	(cfs, gpm or a/f)		(dom., irri., stock, etc.)					(both dates inclusive)

- (3) Total quantity of water claimed: _____ cubic feet per second, or _____ acre feet per annum, and/or 30 gallons per minute.

- (4) Priority claimed: (the date water was first applied to beneficial use) June 20, 1950

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

- (5) A) Point of diversion: (give location of point where water is diverted from its source)
NW 1/4 NW 1/4, Sec. 24 Twp. 16N Rge. 1W B. M. County of Adams
 Additional points of diversion:

B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. concrete collection boxes: 4"
metal line: 1/2" distribution lines (See addenda for full particulars).

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

Total No. of acres _____

- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible: domestic use in homes of applicants.

- (7) If you are claiming water as a member of an organization, list name of organization: claimants are neighbors along main pipe lines. They are not formally organized.

LAW OFFICES OF
CARL H. SWANSTROM
ATTORNEY AND COUNSELOR AT LAW
POST OFFICE BOX 26
COUNCIL, IDAHO 83612
TELEPHONE 253-4267
AREA CODE 208

March 15, 1976

Department of Water Resources
State of Idaho
State House
Boise

Gentlemen:

In behalf of Merle DeHass and Helen DeHass, his wife, Daniel Warner and Marjorie A. Warner, His wife, Nello W. Jenkins and Margaret Jenkins, his wife, and Bradley Plummer and Neva Plummer, his wife, all of Council, Idaho, I am enclosing their joint claim to a water right, established by application to domestic uses in the homes of claimants, under priority of June 20, 1950.

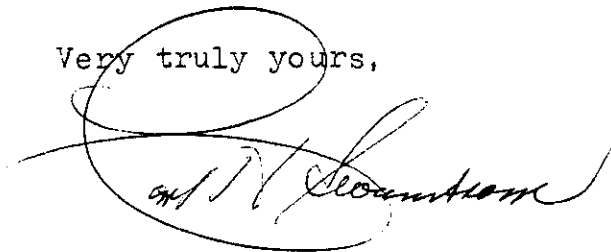
Claimants are four neighboring families, residing on small farm units, and all using water from common springs, delivered to their homes through a common pipe line. Claimants are not formally organized but by mutual cooperation, they use the water in their homes and, in very limited ways, on small yards or gardens.

The springs which supply the concerned water were acquired by the Village of Council in 1950 from people who were then owners of the lands now owned by claimants, and the Village constructed collection boxes and a 4" metal line from the springs to Village reservoirs East of the townsite.

The flow of water was not sufficient to materially benefit the Village water system so after a "trial run" of two or three years, the water line was cut off from the Village system and the water and pipe lines turned back to property owners along the pipe line. There has been a continuous, beneficial use of the concerned water on premises of claimants, since June of 1950.

I enclose my check for \$10.00 in payment of Departmental fee.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carl H. Swanstrom", is written over a large, loopy circular flourish.

ADDENDA - EXHIBIT TO "CLAIM TO A WATER RIGHT" by DeHass,
Warner, Jenkins and Plummer.

NAMES OF CLAIMANTS: Notice is Hereby Given That,

Merle DeHass and Helen DeHass, husband and wife;
Daniel Warner and Marjorie A. Warner, husband and wife;
Nello W. Jenkins and Margaret Jenkins, husband and wife;
Bradley Plummer and Neva Plummer, husband and wife;

all of Council, Idaho 83612.

(1) The source of water claimed is a series of small springs, along Cool Creek, in Fouste Canyon, a flood water tributary of the Weiser River. Point of diversion is situated in the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 24, Township 16 North, Range 1 West, Boise Meridian.

(2) At all times subsequent to June 20, 1950, the water hereby claimed has been used by applicants and/or their predecessors in interest, from January 1st to December 31st of each year, for domestic (or household) use in homes of applicants and for yard or garden irrigation from May 1st to October 15th of each year, The amount beneficially used is 30 gallons per minute.

(3) The total quantity of water claimed is 30 gallons per minute.

(4) The claimed date of priority is June 20, 1950.

(5) A) The claimed water is diverted from springs situated in the Northwest Quarter of the Northwest Quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 24, Township 16 North, Range 1 West, Boise Meridian, along Cool Creek, in Fouste Canyon, about 1 $\frac{1}{2}$ miles southeasterly of Council, Idaho.

B) Diversion of claimed water is by concrete collection boxes at Spring sites from which water is conducted through 4" metal pipe, northerly, and westerly, above valley level, for about 1 mile, and from that line, $\frac{1}{2}$ " metal pipe lines lead, westerly, to the respective homes of applicants. See sketch attached.

(6) A) The respective homes of applicants, where claimed water is used, are situated in the following legal subdivisions, all in Township 16 North, Range 1 West, Boise Meridian, to-wit:

Merle and Helen DeHass, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 23,
Daniel and Marjorie A. Warner, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14,
Nello W. and Margaret Jenkins, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14,
Bradley and Neva Plummer, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 14.

B) Claimed water is very largely used for year around, domestic purposes in the four (4) homes of applicants: incidental use for yard or garden purposes around applicant's homes, May 1st to October 15th, each year.

(7) Claimants are a group of four (4) farm neighbors. They are not formally organized.

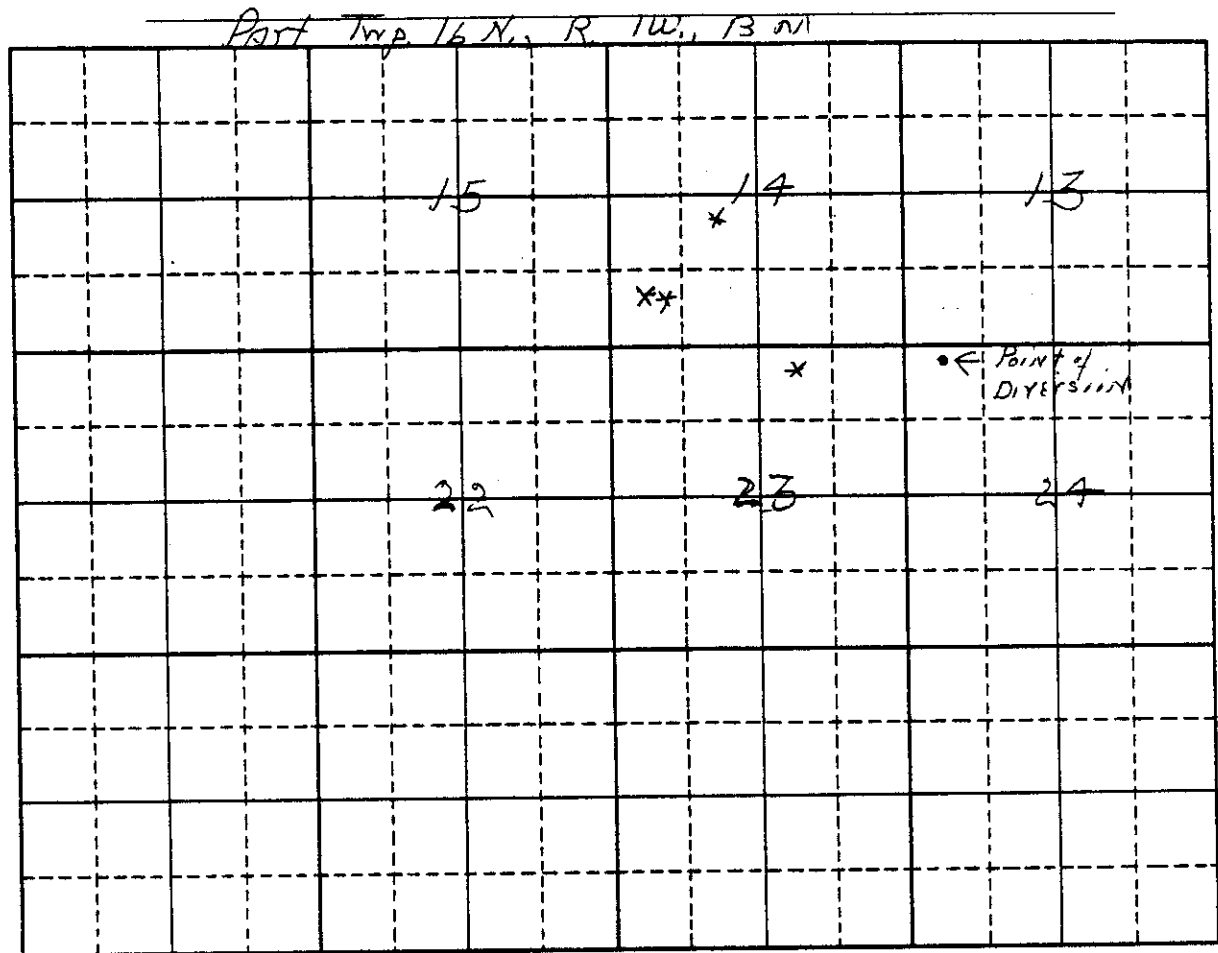
(8) Remarks: During the spring and early summer of 1950, the then Village of Council, Idaho, in an attempt to increase supply of water for its Village water system, contracted with the then owners, holders or claimants of the spring water hereby claimed to acquire all the flow of the springs before described. The Village constructed concrete collection boxes at spring sites, and then conveyed all the

flow of such springs, through a 4" metal pipe, about 1½ miles westerly, and northerly, to Village reservoirs East of Council, Idaho. In consideration for the water rights so acquired, the Village installed ½" metal pipe lines, connecting with said 4" line, leading Westerly to each of the four residences, now owned by applicants and agreed to furnish to the then property owners, without charge, 500 cubic feet of water, per month. Such installations were made and commencing in 1950, water hereby claimed has been continuously delivered to each of the homes now owned by claimants.

The flow of the spring referred to, after a two or three year trial period proved to be of such little benefit to the Village of Council as not to justify the maintenance of diversion works and pipe lines, and the main, 4" line was closed off and all of the water then became available for use on the four properties now owned by the herein named claimants.

There has been continuous and uninterrupted beneficial use of ALL the water from the before described springs by the Village (now City) of Council, Idaho, and by the four (4) claimants, or their immediate predecessors in interest, since June 20, 1950.

(8) Remarks See Addenda for Remarks, history of use, etc.



Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss. SEE ATTACHED AFFIDAVIT
County of)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Sworn to before me this _____ day of _____, 19____ (Claimant)

Notary Public

Residing at _____

My commission expires _____

For Department Use Only

Received by <u>DLB</u>	Date <u>3-17-76</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>DLB</u>	Date <u>3-17-76</u>		claimant by:	
\$10.00 fee received by <u>DLB</u>	Date <u>3-17-76</u>	* 3691		
Approved for publication by <u>DLB</u>	Date <u>4-8-76</u>			
Published in <u>Idaho Statesman</u>				
Dates <u>March 25 + April 1</u>				

STATE OF IDAHO)
: ss.
County of Adams)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, or they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Merle DeHass
Merle DeHass

Helen DeHass
Helen DeHass

Daniel Warner
Daniel Warner

Marjorie A. Warner
Marjorie A. Warner

Nello W. Jenkins
Nello W. Jenkins

Margaret Jenkins
Margaret Jenkins

Bradley Plummer
Bradley Plummer

Neva Plummer
Neva Plummer

Sworn to before me this 12th day of March, 1976.

[Signature]
Notary Public residing at Council,
Idaho.

My commission expires: 4-13-1976

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A67-04152
Date Received: 8/09/1989
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name:	MERLE A. DE HAAS	208-253-4790
Address:	P.O. BOX 457	
	COUNCIL, ID	83612
AND		
Name:	HELEN E. DE HAAS	208-253-4790
Address:	P.O. BOX 457	
	COUNCIL, ID	83612
AND		
Name:	LEONARD PALMER	
Address:	COUNCIL, ID	83612
AND		
Name:	MRS. PALMER	
Address:	COUNCIL, ID	83612
AND		
Name:	NELLO W. JENKINS	
Address:	COUNCIL, ID	83612
AND		
Name:	MARGARET JENKINS	
Address:	COUNCIL, ID	83612
AND		
Name:	DAVID LAWRENCE	
Address:	COUNCIL, ID	83612
AND		
Name:	VONDA LAWRENCE	
Address:	COUNCIL, ID	83612

COPY
FOR YOUR FILES

2. Date of Priority: JUN 20, 1950

3. Source: SPRINGS

Trib. to: COOL CREEK

A67-04152

Page

1

Date: 08/28/89

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
16N	01W	24	NW NW		ADAMS

5. Description of diverting works:

CONCRETE CISTERN COLLECTS WATER PIPED 1.5 MILES TO HOUSES.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.070		
STOCKWATER	01/01	12/31	0.070		

31 gpm

7. Total Quantity Appropriated is:

0.070 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

D/4 HOMES. S-

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
16N	01W	14	NE SW		DOMEST	
			NE SW		STOCK	
			SW SW		DOMEST	
			SW SW		STOCK	
			SE SW		DOMEST	
		23	NE NW		STOCK	
			NE NW		DOMEST	
					STOCK	

11. Place of use in counties: ADAMS

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

SORENSEN-RINEHART DITCH SHARES FOR IRR.

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Seal

COPY
FOR YOUR FILES

Notary Public

Residing at _____

My Commission Expires _____