

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: **A22-07280B**
Date Received: 10/20/1988
Receipt No: X777777
Received By: _____

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: NORMAN RILEY 208-356-5873
Address: 1623 W 3400 S
REXBURG ID 83440
OR
Name: ROBIN RILEY 208-356-5873
Address: 1623 W 3400 S
REXBURG ID 83440

A2207280B



2. Date of Priority: JUN 27, 1978

3. Source: GROUNDWATER Trib. to: _____

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
05N	40E	11	SW	SW	SW		MADISON

5. Description of diverting works:

WELL, 500HP PMP 505'-12" COL. SETTING, 16"-12GA. DIS. STEEL PIPE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/15	10/15	4.270		

7. Total Quantity Appropriated is:

4.270 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 1468.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
05N	40E	2	SW	SW		IRR	16.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05N	40E	2	SE	SW		IRR	13.0
						Section Acres	29.0
		3	NE	SE		IRR	9.0
			SE	SE		IRR	24.0
						Section Acres	33.0
		10	NE	NE		IRR	24.0
			SE	NE		IRR	24.0
			NE	SE		IRR	12.0
						Section Acres	60.0
		11	NE	NW		IRR	35.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	24.0
			NE	SW		IRR	9.0
			NW	SW		IRR	20.0
						Section Acres	168.0
						Total Acres	290.0

11. Place of use in counties: MADISON

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

13. Other Water Rights Used:
LICENSE NO. 22-2223

14. Remarks:

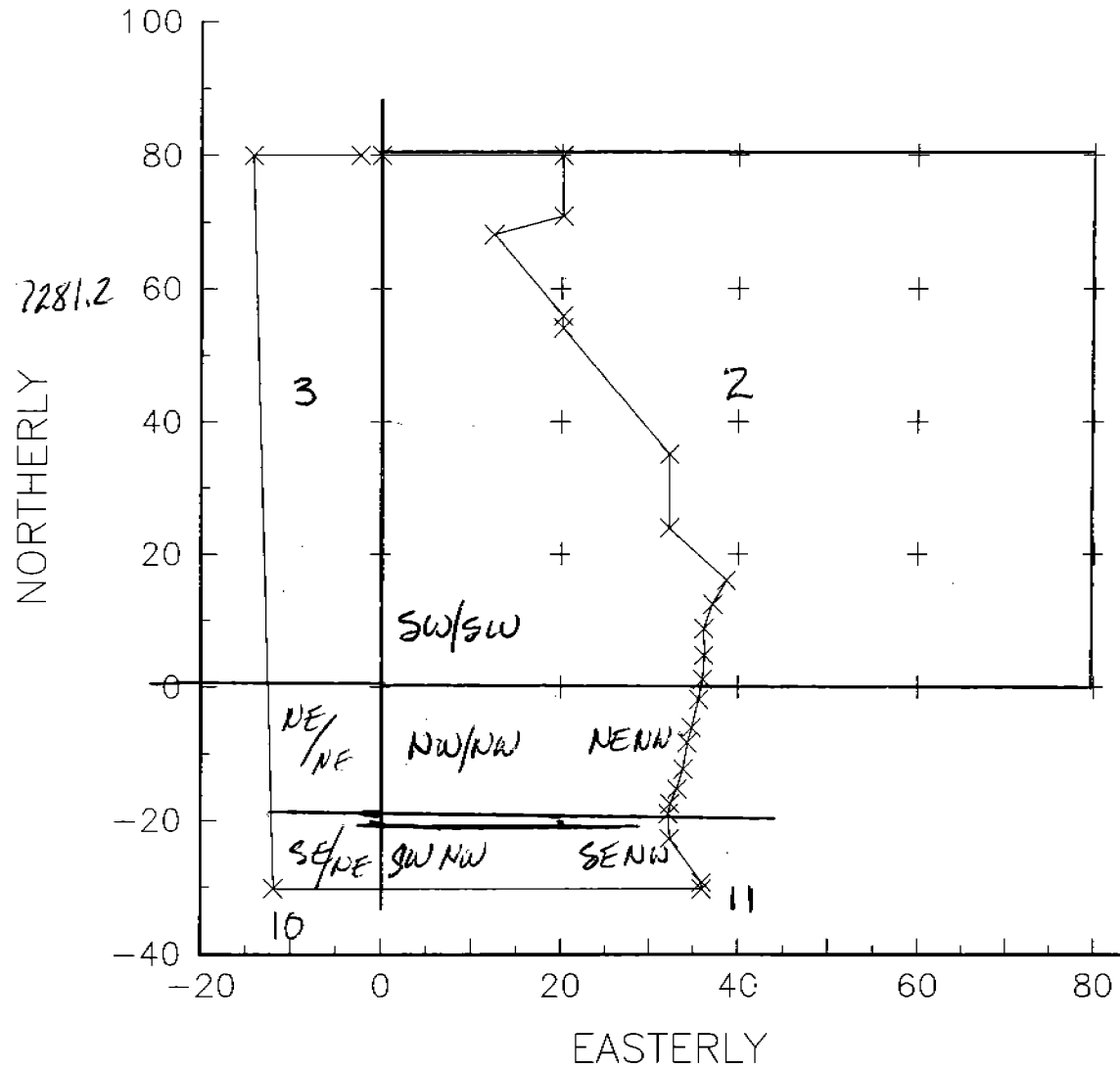
THE PLACE OF USE LISTED ABOVE DIFFERS FROM THE PERMITTED ACREAGE
REFLECTS ACTUAL PRACTICE WHICH STARTED WHEN WE BEGAN USING THE
WELL. THIS WAS CONFIRMED BY DEPARTMENT PERSONEL WHEN THEY COM-
PLETED THE LICENSING FIELD EXAM.
PAID #E003351

15. Basis of Claim: LICENSE

MICROFILMED

DEC 09 1992

TYPICAL SECTION Property Overlay



1320 1/4

72808

205

329

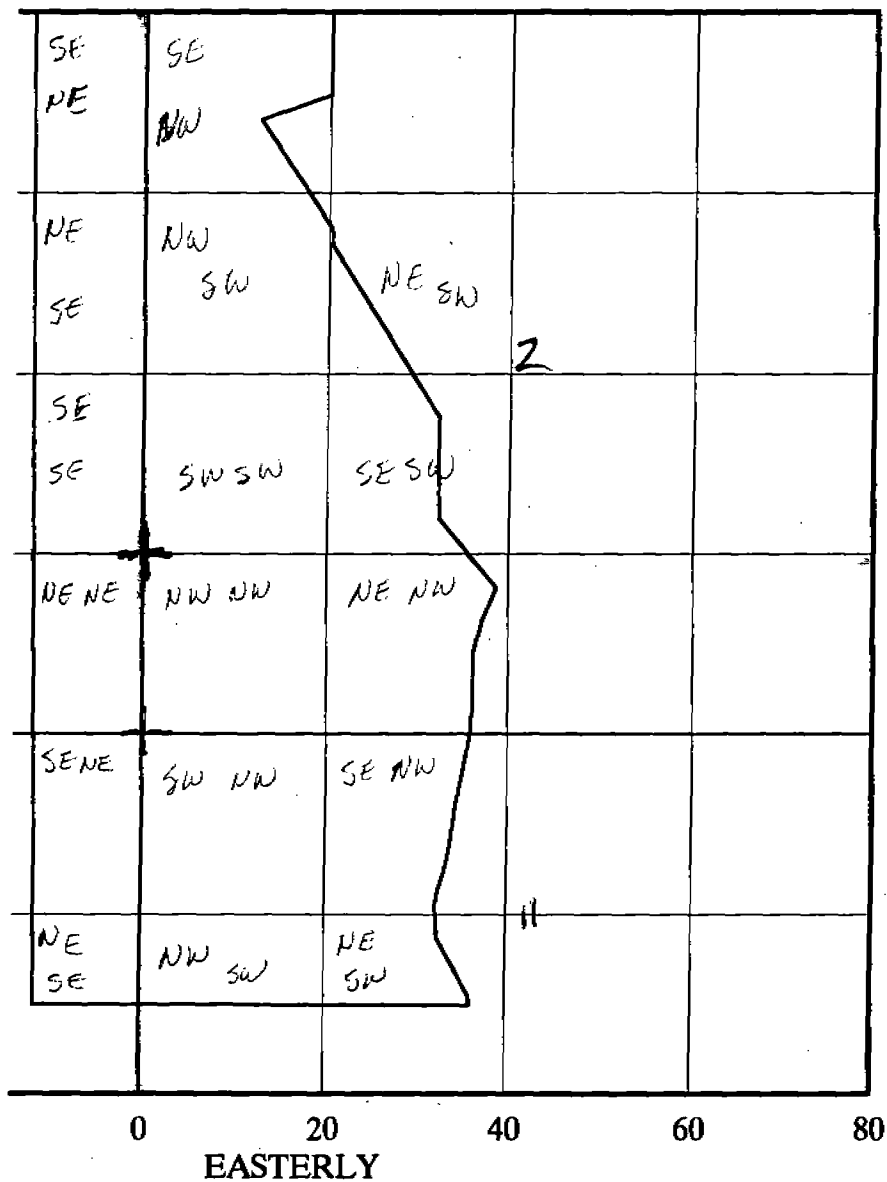
10.81

DEC 09 1992

MICROFILMED

PLOT – MEETS & BOUNDS

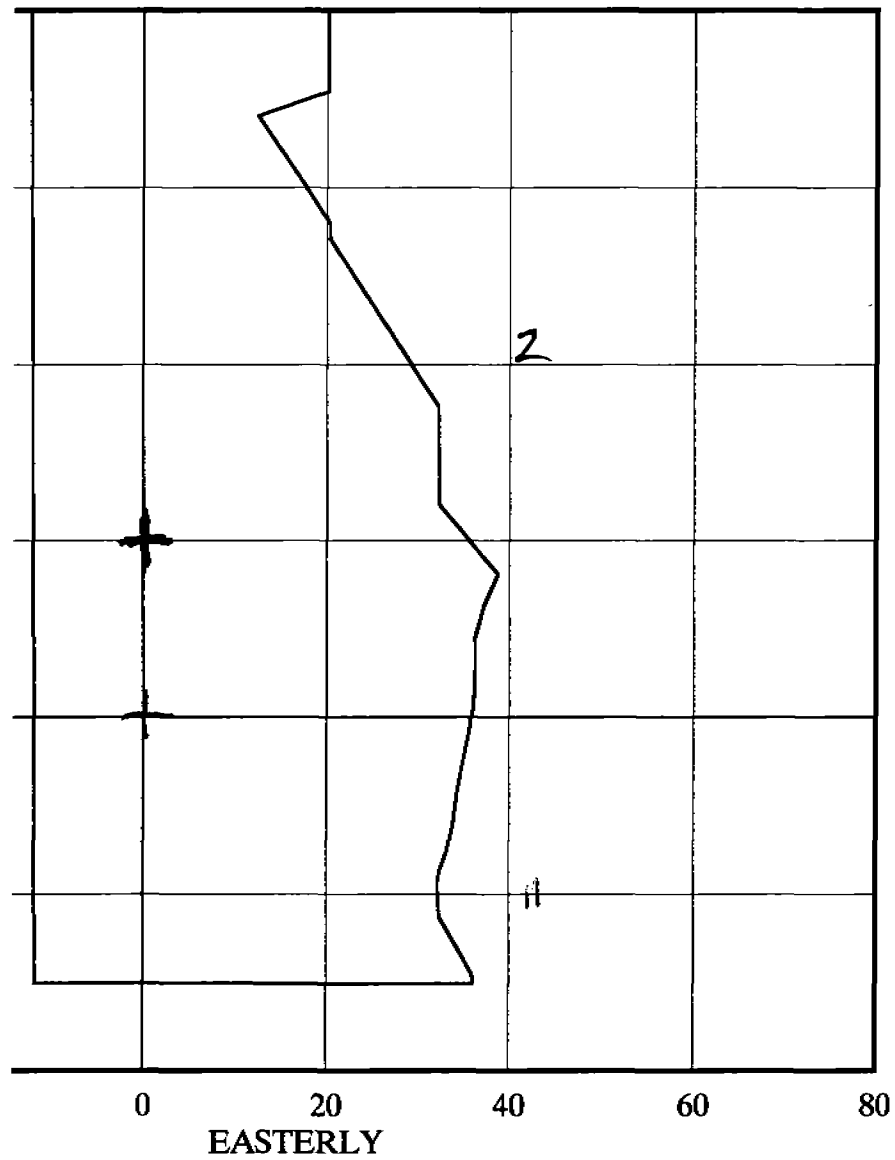
DISTANCE IS IN CHAINS



DEC 09 1992

DEC 09 1992

DISTANCE IS IN CHAINS



MICROFILMED
DEC 09 1992

Log for claim 22-07280B

Spatial Dynamics LTD

7/10/01

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
05n40e	2	SWSW	16	17	
05n40e	2	SESW	13	12	
05n40e	3	NESE	9	9.3	
05n40e	3	SESE	24	25	
05n40e	10	NENE	24	24	
05n40e	10	SENE	24	23	
05n40e	10	NESE	12	12	
05n40e	11	NENW	35	32	
05n40e	11	NWNW	40	40	
05n40e	11	SWNW	40	40	
05n40e	11	SENW	24	27	
05n40e	11	NESW	9	14	
05n40e	11	NWSW	20	21	
Totals:			290	296.3	

RECEIVED

MAR 30 2000

Department of Water Resources

Eastern
EMC

2000 MAR 29 PM 2:45

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

SRBA Assigned Case 94-00012

Case No. 39576

NORMAN RILEY and ROBIN
RILEY, husband and wife,

Plaintiffs,

v.

CATHERINE ROWAN,

Defendant.

ORDER ADOPTING SPECIAL
MASTER'S REPORT AND
RECOMMENDATION

On July 20, 1999, Special Master Bilyeu issued a *Special Master's Report and Recommendation* in the above-captioned case, pertaining to water right license numbers 22-07280A and 22-07280B. No party filed a Motion to Alter or Amend the Special Master's findings.

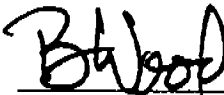
Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report*, finds them to be consistent with the Supreme Court's decision in *Riley v. Rowan*, 131 Idaho 831, 965 P.2d 191 (1998) and wholly adopts them as its own.

THEREFORE IT IS ORDERED that the ownership and elements of the subject water rights, as found by the Special Master, are hereby binding on the parties to the above-captioned case.¹

Recommendations for water right license numbers 22-07280A and 22-07280B will be included in the Director's Report for Irrigation and Other Water Rights for Basin 22 when it is filed with the Court. At that time, the objection period for 22-07280A and 22-07280B will commence. Although the parties to the above-captioned case (and their successors) are bound by the *Special Master's Report and Recommendation*, other parties to the SRBA will be afforded the opportunity to file objections at that time.

IT IS SO ORDERED:

DATED: MARCH 29 2000.



BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

¹ The Idaho Supreme Court's decision in *Riley* holds that the Rileys and Rowan were each entitled to a one-half interest in water license no. 22-07280. IDWR, in attempting to comply with the directive, was unable to affect an exact one-half division of all the elements of the license. The result is that a portion of the place of use for the license issued to Rowan is on the Rileys' property, and a portion of the place of use for the license issued to the Rileys is on Rowan's property. Although the Rileys and Rowan are bound by the Supreme Court's decision, other parties to the SRBA, as well as the SRBA Court, are not. At issue in *Riley* was the interpretation of a private agreement between the Rileys' predecessor in title and Rowan. Because other parties to the adjudication are not bound by the private agreement, then neither IDWR or the SRBA Court are bound by the private agreement as it relates to other claimants. Claimants cannot circumvent the application of Idaho's permit and adjudication statutes simply by entering into a private agreement.

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of **ORDER ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATION** were mailed on March 29, 2000, with sufficient first-class postage to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83270-0098

Gregory Moeller
Rigby Thatcher Andrus Rigby
Kam & Moeller
PO Box 250
Rexburg, ID 83440-0250

Steven Parry
Anderson Nelson Hall & Smith
PO Box 51630
Idaho Falls, ID 83405-1620


Deputy Clerk of the Court

RECEIVED

APR 08 1999

Department of Water Resources

Eastern
ENC

1999 APR -6 PM 3:42

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

Rowan & Riley

In Re SRBA

Companion Case: 94-00012

Case No. 39576

ORDER SETTING MANDATORY
SETTLEMENT CONFERENCE,
EXHIBIT AND WITNESS
DISCLOSURE, AND HEARING

A status conference was held April 6, 1999. The parties agreed to attend a mandatory settlement conference, and to disclose exhibit and witness lists. The Court orders a **Mandatory Settlement Conference** for water rights 22-07280A and 22-07280B. The Settlement Conference shall proceed before a Settlement Moderator for the purpose of helping the parties work on settling their differences before hearing.

IT IS ORDERED that this case shall proceed with a Settlement Conference before Settlement Moderator Fritz X. Haemmerle. Parties and their attorney of record must be personally present at the settlement conference. No one may attend by proxy or by telephone. Each party is required to be present with the individual(s) possessing full settlement authority on every aspect of this case. **Failure to attend or attendance without settlement authority may result in sanctions by the court.**

The following deadlines shall apply to this case:

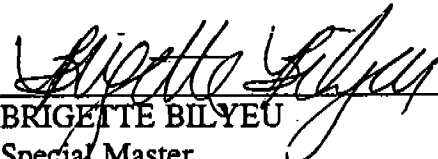
5/12/99	9:00 am	Settlement Conference
		Location: Madison County Courthouse
		134 East Main
		Rexburg, Idaho

5/12/99	9:00 am	Disclosure of Intent to Call Witnesses
---------	---------	--

5/14/99 5:00 pm Deadline to: Exchange Exhibit and Witness Lists, File with the Court, and provide copies to IDWR.

5/21/99 10:00 am **Hearing**
Location: Madison County Courthouse
 134 East Main
 Rexburg, Idaho

DATED April 6, 1999.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

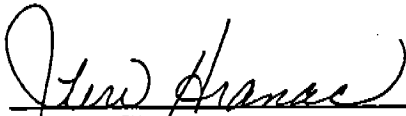
CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER SETTING MANDATORY SETTLEMENT CONFERENCE, EXHIBIT AND WITNESS DISCLOSURE, AND HEARING was mailed on April 6, 1999, with sufficient first-class postage prepaid to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Gregory Moeller
Rigby Thatcher Andrus Rigby
Kam & Moeller
Po Box 250
Rexburg, ID 83440-0250

Steven Parry
Anderson Nelson Hall Smith
PO Box 51630
Idaho Falls, ID 83405-1630



Deputy Clerk



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

Eastern Region - FYE
Marci Page has adj.
file

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 12, 1997

NORMAN AND ROBIN RILEY (First Class Mail)
1623 W 3400 S
REXBURG ID 83440

CATHERINE ROWAN (First Class Mail)
843 THREE FOUNTAINS DR
SALT LAKE CITY, UT 84107

RECEIVED

DEC 22 1997

Department of Water Resources
Eastern Region

RE: Water Right Nos. 22-07280A & 22-07280B -- CERTIFICATE OF SERVICE

Dear Interested Parties:

Pursuant to the SRBA District Court's *Order Denying Stay and Amendment to Court's Order to IDWR Re: Issuance of License* dated September 30, 1997, I have enclosed Director's Reports pursuant to Idaho Code §42-1411 recommending the elements of right nos. 22-07280A & 22-07280B in the SRBA. I have also enclosed for your review color copies of IDWR's Geographic Information System analysis of the irrigated acreage for the rights in question.

Pursuant to the Court's *Order* you have 30 days in which to file objections to either or both of the water rights recommended in these reports. Therefore, objections must be filed by **January 14, 1998**. You have 14 days from the end of the objection period to file responses to any objections to the Director's Reports. Therefore, responses must be filed by **January 28, 1998**.

If you have any questions about these recommendations, please feel free to contact me at (208) 327-7929.

Sincerely,

David R. Tuthill, Jr., P.E.
Chief, Adjudication Bureau

Enclosures: SRBA Director's Reports for Water Rights Nos. 22-07280A and 22-07280B
Color Copies of GIS Shape Files of Irrigated Parcels for Rowan and Riley

c: Gregory W. Moeller, Steven R. Parry
Honorable Daniel C. Hurlbutt

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: DEC-12-1997

PAGE: A-2

RIGHTS FROM: SOURCE: GROUNDWATER

RIGHT NUMBER: 22-072808

NAME & ADDRESS: NORMAN RILEY
ROBIN RILEY
1623 W 3400S
REXBURG ID 83440

SOURCE: GROUNDWATER

QUANTITY: 4.59 CFS

USE OF THIS RIGHT WITH RIGHT NO. 22-02223 IS LIMITED TO A
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1540 AF.

PRIORITY DATE: 06/27/1978

POINT OF DIVERSION: T05N R40E S11 SWSW Within MADISON County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	4.59 CFS

PLACE OF USE:	IRRIGATION	Within MADISON County				
	T05N R40E S02	Lot 4 (SNNW)27	NESW 9	NWSW 39	SWSW 40	
		SESW 26				
	S03	Lot 1 (SENE)21	NESE 24	SESE 24		
	S10	NENE 25	SENE 24	NESE 12		
	S11	NENW 32	NWNW 40	SNNW 40	SENE 26	
		NESW 12	NWSW 19			
	440 ACRES TOTAL					

USE OF THIS RIGHT WITH RIGHT NO. 22-02223 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 440 ACRES IN A SINGLE
IRRIGATION SEASON.

EXPLANATORY MATERIAL: BASIS OF CLAIM - LICENSE

RECEIVED

MAY 24 1999

Department of Water Resources

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

Subcase 22-07280 B

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:



NAME AND ADDRESS OF PERSON OBJECTING

Name: Catherine Rowan

Address: 843 Three Fountains Drive

Salt Lake City, UT 84107

Daytime Phone: (801) 255-4566

Name & Address of Attorney, if any:

Gregory W. Moeller

P. O. Box 250

Rexburg, ID 83440



CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Norman Riley and Robin Riley

Address: 1623 W. 3400 S.

Rexburg, ID 83440

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**

Should be: _____

2. ☐ **Source**

Should be: _____

3. ☒ **Quantity**

Should be: 5.41 CFS

4. ☐ **Priority Date**

Should be: _____

5. ☐ **Point(s) of Diversion**

Should be: _____

6. ☐ **Instream Flow Description**

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

8. ☐ **Period of Year**

Should be: _____

9. ☒ **Place of Use**

Adjusted along with Subcase No. 22-07280 A to treat all 367 acres as Rowans "Primary Service Lands." See preliminary Licenses dated December 12, 1997

11. I object because:

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): _____

Please see attached statement (Attachment "A") and Re-Examination Field Report, dated 11/16/98 (Attachment "B").

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on March 26, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

2. One copy to the claimant of the water right at the following address:

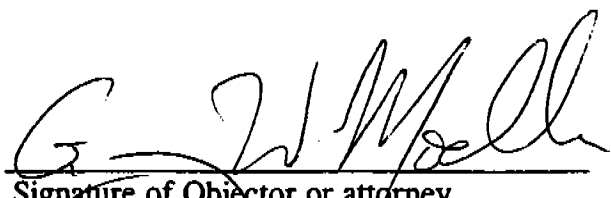
Name: Catherine Rowan
Address: 843 Three Fountains Drive
Salt Lake City, UT 84107

3. Copies to:

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

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

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



Signature of Objector or attorney
mailing on Objector's behalf

F.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Madison)

Gregory W. Moeller, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

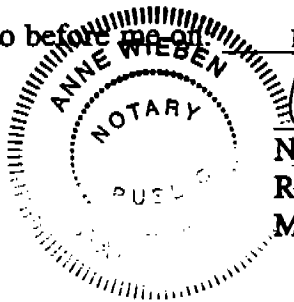
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Gregory W. Moeller

(Attorney signing in representative capacity)

Subscribed and sworn to before me on March 26, 1999



Anne Wieben

Notary Public for Idaho

Residing at: Rexburg, Idaho

My Commission Expires: 7-27-2001

ATTACHMENT "A"

There are two wells involved in this dispute. The North Well (Water Right No. 22-02223) is located on Riley's property. Rowan concedes that she has no rights to this well. The center of the controversy is the South Well (subject to Water Right Nos. 22-07280A and 22-07280B) which is located on Rowan's property. Historically, approximately 575 acres have been watered from the South Well. However, 160 acres were left off the application for permit originally filed in 1978. The 160 acres were part of the 1988 property division and are now covered by Permit No. 22-00792, in the name of Catherine Rowan. These 160 acres are located at the extreme southern tip of Rowan's property, and apparently were not considered in the District Court's decision nor in the new licenses issued by IDWR.

Ignoring the 160 acres, historically Rowan has irrigated 294 acres from the South Well. Rileys have historically irrigated 121 acres from the South Well and an additional 319 acres from the North Well (Water Right No. 22-02223). So in essence, what the SRBA District Court asked IDWR to do, was to give Catherine one-half of the water from the South Well to irrigate her 294 acres and the Rileys one-half of the water to irrigate their 121 acres, plus water to supplement the North Well.

When the Department issued its preliminary licenses on December 12, 1997 (Exhibits "B(1)" and "B(2)") the Department essentially did just that. The Department determined the rate of flow to be 9.18 CFS, an amount that both parties agree is substantially too low. Then the Department split the flow and granted Catherine Rowan the right to irrigate her 294 acres with an annual volume of 1029 acre feet. Rileys were allowed to irrigate 440 acres (121 from the South

Well and 319 from the North Well) with an annual volume of 1540 acre feet, to be used in conjunction with Water Right 22-02223 (the North Well). Although there were some substantial issues related to quantity, Rowan believed the essential division was fair and accomplished what the parties intended.

It is worth noting that the trial testimony established that when the farm was divided in 1988, the intent was clearly to leave **both** parties with sufficient water to irrigate their ground. The preliminary licenses issued by the Department did just that by dividing the flow evenly and applying it to the waters historically irrigated from that well.

Following Rowan's prevailing on appeal, the Department was again asked to issue licenses. However, this time the Department changed its tact. The November 30, 1998 licenses (Exhibits C(1) and C(2)) did increase the amount of flow to 9.53 CFS, essentially giving both parties 4.77 CFS. However, rather than merely dividing the flow and allowing it to be applied to the historically irrigated acreage, the Department went further. The Department apparently felt that the annual volume of water should also be divided equally. As a result of this analysis, Rowan was given 207.5 acres of a primary right, with an annual volume of 727 acre feet. Rowan was also given the right to irrigate 159.5 acres supplemental to the North Well (Water Right No. 22-00223). As IDWR was well aware, Rowan has no rights in the North Well and cannot use this supplemental right. It is essentially worthless to her. Rileys were given the exact same right, 207.5 primary acres with an annual volume of 727 acre feet and 159.5 supplemental acres, related to their rights in the North Well.

While Rowan has no use for the supplemental acreage, Rileys obviously do. As argued before the Court, IDWR, in attempting to exactly split this right, has created a grossly fair and

inequitable division which results in Rowan receiving less than she needs and Rileys receiving more than they can use on their land. For example, the Rileys are given 207.5 acres of a primary rights, while they have historically only irrigated 121 acres from the South Well. Meanwhile, Rowan is given 207.5 primary acres, while she has historically irrigated 294 acres from this well, in addition to the 160 acres, which is covered by Permit No. 22-00792.

As a result of the Department's decision, Rowan will lose the right to irrigate approximately 87 acres, which have always been irrigated. When a final resolution is reached as to the status of the south 160 acres, (Permit No. 22-00792) the Department could take an additional 80 acres away from Catherine, leaving her once fully irrigated farm, with 167 acres of dry farm.

Such a result was clearly not intended by Judge Hurlbutt's "Memorandum Decision" of August 28, 1997. For example, in that decision Judge Hurlbutt stated:

At Lucille's death, Jim Howe and Catherine Rowan became co-owners of the permit. To rule otherwise would allow Jim Howe, a co-owner, to strip water from his co-tenant's, Catherine Rowan, one-half of the farm. Idaho Water Law does not permit such a result.

Memorandum Decision, p. 10

By effectively holding that the license was appurtenant to Catherine Rowan's ground, and could not be conveyed or removed without her permission, Judge Hurlbutt is clearly indicating that all of Catherine's ground would be irrigated. Judge Hurlbutt's decision clearly does not support a result that would leave Rileys with more water than they can use on this ground and Rowan with less than she needs.

In adopting the findings in the Court's Memorandum Decision, the Idaho Supreme Court stated as follows:

The District Court held that the only interest Jim Howe had in the permit was identical to that of Rowan; thus at the time of Lucille Howe's death, Jim Howe and Rowan became co-owners of the permit. The evidence indicated that Jim Howe "acknowledged that the permit application was intended to benefit the **complete set of farm owners**, not just himself. When he filed the application in his and Lucille's names, he did not intend to disavow Catherine Rowan's ownership interest." Furthermore, both the application for the permit and notice of claim were filed when Jim Howe was acting as manager of the farm and did not create a separate interest in the water permit to the exclusion of Rowan. The District Court determined that following the parties' decision to partition the property, Jim Howe and Rowan entered into an agreement in which it was "Jim Howe's clear, and ambiguous agreement and understanding that the permitted interest in the 'south well' was shared with Catherine Rowan. . . ."

Riley v. Rowan, Idaho Supreme Court 1998 Opinion No. 96 (Emphasis added).

The December 12, 1997 licenses allowed a flow of 9.18 CFS. Interestingly, the November 30, 1998 licenses increased that amount substantially to 9.53 CFS. This is still far less than both parties believe they are entitled to. Rowan believes, and assumes that Rileys concur, there is substantial evidence justifying a flow rate of at least 9.72 CFS, with higher amounts ranging from 10.81 CFS to over 13 CFS being possible. During settlement negotiations between Rowan, Rileys and IDWR, IDWR produced records substantiating flow rates between 10.81 CFS and 13.0 CFS.

It is worth repeating that as a result of these new licenses, (Exhibits C(1) and C(2)) Rowan gets 87 less acres than she needs. This is not cured by giving her the right to water an additional 159.5 supplemental acres on a North Well to which she has no rights. On the other had, the Rileys get the right to water 86 more acres than they need from the South Well, plus the 159.5 supplemental acres.

RE-EXAMINATION FIELD REPORT

A. GENERAL INFORMATION

Permit No. 22-07280

B. MEASUREMENTS:

Date: 16 Nov 1998

Note: Measurements taken with 2 different diameter tapes & thickness mikes

North Well #1: o.d. = 11.850" - 12.050" Thickness = 0.110" - 0.113"

South Well #2:

North mainline:

o.d. = 14.000" - 14.040" Thickness = 0.102" - 0.105"

South mainline:

o.d. = 15.990" - 16.025" Thickness = 0.136" - 0.139"

C. FLOW CALCULATIONS:

i.d. = [o.d.] - [2(T)]

i.d. = inside diameter

o.d. = outside diameter

T = wall thickness

$$Q_{cfs} = (i.d.)^2(\sqrt{H})(C) \div 448.8 \text{ gpm/cfs}$$

H = differential pressure inches H₂O

C = Annubar Constant

C for 12" = 3.99

C for 14"-16" = 4.01

Assumptions:

o.d. = maximum measured outside diameter

T = minimum measured thickness

H = use differential pressure measured original exam (6-29-87)

NORTH #1 WELL: $i.d. = [12.050] - [2(0.110)] = 11.830$ $H = 12.9'$ $C = 3.99$

$$Q_{cfs} = (11.830)^2(\sqrt{12.9})(3.99) \div 448.8 = 2005.567 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 4.469 \text{ cfs} = 4.47 \text{ cfs}$$

SOUTH #2 WELL:

North Mainline: $i.d. = [14.040] - [2(0.102)] = 13.836$ $H = 4.9'$ $C = 4.01$

$$Q_{cfs} = (13.836)^2(\sqrt{4.9})(4.01) \div 448.8 = 1699.274 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 3.786 \text{ cfs} = 3.79 \text{ cfs}$$

South Mainline: $i.d. = [16.025] - [2(0.136)] = 15.753$ $H = 6.7'$ $C = 4.01$

$$Q_{cfs} = (15.753)^2(\sqrt{6.7})(4.01) \div 448.8 = 2575.777 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 5.739 \text{ cfs} = 5.74$$

TOTAL CALCULATED FLOW RATE: $Q_{TOTAL} = 4.47 \text{ cfs} + 3.79 \text{ cfs} + 5.74 \text{ cfs} = 14.00 \text{ cfs}$

D. AUTHENTICATION:

Field Examiner's Name:

KEITH C WILSON

1

THEORETICAL PUMP FLOW CALCULATIONS

Formula: $Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$

SYSTEM: NORTH

Assumptions:

Hp = Name plate Horsepower = Water Hp = 300

Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 370 ft.

Well log used is for this well

psi = 0 psi (Between well pump & booster pump)

$$Q_{cfs} = \left[\frac{300}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{370}{Lift} + \left(\frac{0}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{1850.94}{} \right] \div \left[\frac{370}{} \right]$$

$$Q_{cfs} = \underline{5.00} \text{ cfs}$$

SYSTEM: SOUTH

Assumptions:

Hp = Name plate Horsepower = Water Hp = 500

Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 350 ft.

Well log used is for this well

psi = 0 psi (Between well pump & booster pump)

$$Q_{cfs} = \left[\frac{500}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{350}{Lift} + \left(\frac{0}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{3084.90}{} \right] \div \left[\frac{350}{} \right]$$

$$Q_{cfs} = \underline{8.81} \text{ cfs}$$

=====

TOTAL SYSTEM

CAPACITY Q = 5.00 cfs + 8.81 cfs = 13.81 cfs

PERMIT NO. 22-7280

#2

THEORETICAL PUMP FLOW CALCULATIONSFormula: $Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$ SYSTEM: NORTH**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp = $300 + 100 = 400$ Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 370 ft.

Well log used is for this well

psi = 58 psi (Measured after booster pump)

$$Q_{cfs} = \left[\frac{400}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{370}{Lift} + \left(\frac{58}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{2467.92}{} \right] \div \left[\frac{503.86}{} \right]$$

4.90 cfs

$$Q_{cfs} = \underline{4.897} \text{ cfs}$$

SYSTEM: South**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp = $500 + 350 = 850$ Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 350 ft.

Well log used is for this well

psi = 59 psi

(After booster pump & Avg psi of N & S Mainlines)

$$Q_{cfs} = \left[\frac{850}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{350}{Lift} + \left(\frac{59}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{5244.33}{} \right] \div \left[\frac{486.17}{} \right] = 10.786$$

$$Q_{cfs} = \underline{10.79} \text{ cfs}$$

TOTAL SYSTEM

$$\text{CAPACITY } Q = \underline{4.90 \text{ cfs} + 10.79 \text{ cfs}} = \underline{15.69} \text{ cfs}$$

PERMIT NO. 22-7280

#3

THEORETICAL PUMP FLOW CALCULATIONS

$$\text{Formula: } Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$$

SYSTEM: NORTH**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp = 300 + 100 = 400 hpEff = Efficiency (pump & motor) = 70%

Lift: Static Level + 50' Draw down

Dynamic water level = 420 ft.

Well log used is for this well

psi = 58 psi (Measured after booster pump)

$$Q_{cfs} = \left[\frac{400}{Hp} \times 8.814 \times \frac{0.7}{Eff} \right] \div \left[\frac{420}{Lift} + \left(\frac{58}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{2467.92}{} \right] \div \left[\frac{553.86}{} \right] = 4.455$$

$$Q_{cfs} = \underline{4.46} \text{ cfs}$$

SYSTEM: SOUTH**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp = 500 + 350 = 850 hpEff = Efficiency (pump & motor) = 70%

Lift: Static Level + 50' Draw down

Dynamic water level = 400 ft.

Well log used is for this well

psi = 59 psi

(After booster pump & Avg psi of N & S Mainlines)

$$Q_{cfs} = \left[\frac{850}{Hp} \times 8.814 \times \frac{0.7}{Eff} \right] \div \left[\frac{400}{Lift} + \left(\frac{59}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{5244.33}{} \right] \div \left[\frac{536.17}{} \right] =$$

$$Q_{cfs} = \underline{9.78} \text{ cfs}$$

TOTAL SYSTEM

$$\text{CAPACITY } Q = \underline{4.46 \text{ cfs} + 9.78 \text{ cfs} = 14.24 \text{ cfs}}$$

PERMIT NO. 22-7280

RECEIVED

MAR 29 1999

RILEY

Department of Water Resources

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

A. Subcase 22-07280B
(Insert water right number)

STANDARD FORM 1
OBJECTION
Attached to Case No. CV-94-00012

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Robin Riley
Address: 1623 W. 3400 S.
Rexburg, Idaho 83440
Daytime Phone: (208) 356-5873

Name & Address of Attorney, if any:

Steven R. Parry
P.O. Box 51630
Idaho Falls, Idaho 83405-1630
(208) 522-3001

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Norman Riley / Robin Riley
Address: 1623 W. 3400 S.
Rexburg, Idaho 83440

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address
Should be: _____
2. ☐ Source
Should be: _____
3. ☒ Quantity
Should be: 5.31 CFS (4.77 + .54)
4. ☐ Priority Date
Should be: _____
5. ☒ Point(s) of Diversion
Should be: The point of diversion for the additional .54 CFS should be T05N R40E S3 SENE
6. ☐ Instream Flow Description
Should be: _____
7. ☐ Purpose(s) of Use
Should be: _____
8. ☐ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: Same as listed plus (See Exhibit A)

11. I object because:

- ☐ This water right should not exist.
- ☒ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): The reasons supporting these
objections are set forth in Riley's Brief dated February 16, 1999, filed in
Subcase No. 94-00012 with Special Master Bilyeu, that Brief being incorporated
herein by this reference. For convenience, a copy of pages 9-13 of the Brief are
attached as Exhibit B.

F.

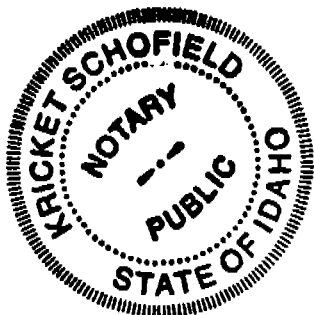
VERIFICATION (Must be Completed)

State of IDAHO)
)ss.County of BOONEVILLE)STEVEN R. PARKY, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

~~That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6)~~
~~or that I am the attorney for the party/claimant objecting and that I have read this objection, know~~
its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 24, 1999Krick Schofield
Notary Public for Idaho
Residing at: Idaho Falls
My Commission Expires: 9-4-2004

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on March 25, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
~~PO Box 2707~~
Twin Falls, ID 83301-~~2707~~ Via Fed Express

2. One copy to the claimant of the water right at the following address:

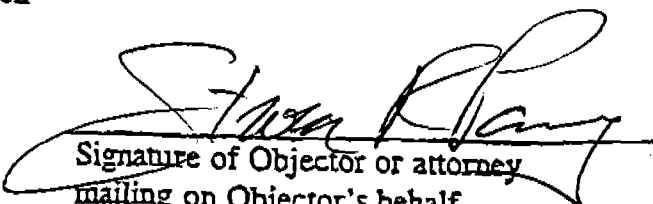
Name: Norman + Robin Riley
Address: 1623 West 3400 South
Rexburg, Idaho 83440

3. Copies to:

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

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

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


Signature of Objector or attorney
mailing on Objector's behalf

TO STANDARD FORM 1 OBJECTION

<u>TWN</u> <u>RGE</u> <u>SEC</u>			<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>		<u>TOTAL</u>
05N	40E	14	SWNW	0.3	SENW	2.0	NESW	25.0	
			NWSW	23.0	SWSW	34.0	SESW	39.0	
			SWSE	10.0					133.3
	15		NESE	0.2	SESE	3.0			3.2
	23		NWNE	2.0	NENW	9.0	NWNW	3.0	14.0
Total number of acres irrigated:									150.05

EXHIBIT B
TO STANDARD FORM 1 OBJECTION

authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence; or (e) are arbitrary, capricious, or an abuse of discretion. [Citations omitted.]

Id. at 577. Whether the standard of review is set forth under the Administrative Procedures Act (see jurisdictional discussion above) or otherwise, the fact is that the SRBA must not lightly overturn the decisions of the Department. As set forth in the background section above, the licenses under consideration are the result of years of review and consideration by the Courts and the Department, and the Department has internally reviewed these issues at the highest levels. The Department has been assisted at hearings and otherwise by the Attorney General's office and has expended a considerable amount of time on the issues associated with this case. Hence their decisions should be presumed correct.

The main complaint to be heard from Rowan relates to the Annual Diversion rate and the allocation of primary service land acres and supplemental service land. These issues have been considered and carefully analyzed by the Department, and therefore should not be overturned by the SRBA without a compelling reason. The Department's analysis is clearly set forth in its November 30, 1998 letter to the parties, a copy of which was sent to the SRBA.

III. ELEMENTS OF WATER LICENSES

The Rileys are generally in agreement with the Department's actions in issuing the licenses. However, from the beginning of this case, the Rileys have maintained that the ownership of the water permit must first be determined, and then the owner or owners thereof should have the right to seek amendments to the permit before it is licensed or in connection with its license. The need for such amendments is made clear by the beneficial use field report (See SRBA Trial Exhibit 5) which actually recommended at Section I.2 thereof that the underlying permit be amended to reflect the actual place of use and the additional point of diversion. All the Rileys desire is a chance to seek appropriate amendments to their portion of the water right as discussed below. Because any other permit holder would be afforded this right, the denial of this right would deny the Rileys of important property without due process of law. The key issues now before the SRBA are each addressed below.

A. ANNUAL DIVERSION.

The Department has properly divided the water rights evenly between the parties by focusing on the various aspects of the water right that are valuable. After years of litigation and one trip to the Idaho Supreme Court, the answer is clear that Rowan owns 50% of the subject water right and the Rileys own 50% of the subject water right. As the Rileys have long maintained, the only way that can happen is if the Rileys own water rights on land which they have leased from Rowan. The question before the SRBA is simply "What does half mean?"

The parties were given every opportunity and encouragement by the Department to come to an agreement dividing the water rights in a way that would work best for them both, but Rowan simply wants more than half. The Rileys have come too far and spent too much to give up any part of their half of the water right. With the parties at an impasse, the Department did the only logical thing it could do, and that is to divide every aspect of the water right in half. At the prior hearing, Rowan's attorney appeared to have conceded that the Department had "mathematically" divided the right in half, but claimed that subjective factors should be considered. The parties by agreement could certainly consider subjective factors favorable to their respective positions, but barring their mutual consent "half" should mean "half," nothing more and nothing less.

Clearly the most valuable aspect of the water right are the maximum diversion rate and the annual diversion volume, with the first representing the speed at which the water comes out of the spigot and the later representing the size of the bucket to hold the water. The maximum diversion rate has clearly been divided equally with each party receiving 4.77 CFS. Likewise, by equally dividing the Primary Service acres and the Supplemental Service acres, the Department has given each party an equally sized bucket. In making that allocation, the most useful element is the Primary Service acres as the Supplemental Service acres are of little value to either party. Certainly the supplemental water rights given to Rowan on Rileys' land are of little value to her unless she can move them or sell them to the Rileys. However, the fact is, that with modern irrigation methods, the supplemental rights owned by the Rileys on their own ground are of little value to them as well as their primary rights on that ground are sufficient to water that ground. The licenses as issued by

the Department carefully gave each party the same size bucket and consequently the Rileys own some primary water rights as tenants on property owned by Rowan. That is the natural result of an even split of the water right and the result which the Rileys have long anticipated and predicted if the ownership was indeed 50/50.

The Department divided the water right evenly between the parties and the SRBA should not alter that division. The Department followed the order of the SRBA as confirmed by the Idaho Supreme Court and that portion of the licenses should stand.

B. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL WATER.

The beneficial use field report (SRBA Trial Exhibit 5) proved that the North well owned by the Rileys was actually producing 4.41 CFS, or .54 CFS more than the 3.87 CFS authorized by a separate license owned by the Rileys on that North Well (SRBA Trial Exhibit C). As mentioned above, the field report recommended an amendment to the water permit to take this additional water production into account. This was possible because the water permit (SRBA Trial Exhibit D) was for 10.81 CFS which was more than the South Well could actually produce. This additional .54 CFS of water was produced by the North Well which is clearly owned by the Rileys who were farming the ground. As such, the Rileys should have the right to amend their license so as to take this water into account, and if necessary the water should be applied to the 160 acres South of the railroad which the Rileys were leasing from Rowan.

C. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL ACRES.

The beneficial use filed report (SRBA Trial Exhibit 5, See Map #1) showed that approximately 160 acres South of the railroad tracks was being irrigated by the Rileys. As such, the Rileys should be able to move some of their water down to this 160 acres. Whether the Rileys "spread" their water to all or part of this 160 acres by way of a permit amendment or by an expansion claim off their North water license, Rowan has no claim to have spread water to these acres. While Rowan owned the ground which was leased to the Rileys or their predecessor, there is a railroad track separating the property from the other parcel and that railroad strip is owned by the railroad. The Rileys, and formerly their predecessor, have sole ownership of the railroad easement and paid for the easement, the pipe, and the installation thereof to put the water under the railroad tracks. The mainline

used to spread this water on the 160 acres is above ground and clearly belongs to the Rileys. It would be outrageous for any court to say that Rowan applied her water through the labor and effort of the Rileys as her tenants, across land owned by another, through pipe owned by the Rileys and on an easement owned by the Rileys, to above-ground mainline and through sprinklers owned by the Rileys.

If the SRBA does not resolve the issue with the 160 acres now, a clear mechanism needs to be established for its resolution. Without notice to the Rileys, Rowan pursued and obtained Water Permit No. 22-07792 (SRBA Trial Exhibit MM). This Permit was issued January 30, 1997, with a proposed priority date of September 4, 1996, and was tied to Right 22-07280. When the Rileys discovered what had taken place during the pendency of this matter without any notice to them, they raised strong objection with the Department and issued its Order Designating a Preliminary Order dated March 12, 1997, a copy of which is attached as Exhibit A. This procedure allowed the Rileys to file their Petition for Reconsideration In Re: Permit 22-07792 dated March 24, 1997, a copy of which is attached as Exhibit B. That Petition was placed on hold before the Department and remains this day on hold before the Department.

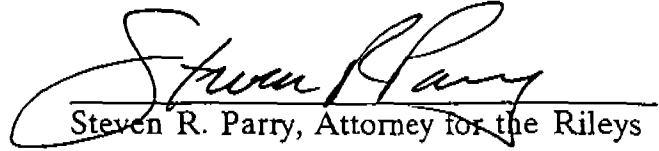
The issues associated with the 160 acres obviously need to be resolved in connection with the resolution of the other issues. Both parties will likely desire amendments to include the 160 acres, but the facts remain that only the Rileys actually applied water to that ground, and they did it through their pipe running through their easement. Rowan expended no money and made no effort to develop the water on the 160 acres and therefore only the Rileys should be allowed to expand their water to those acres. Therefore, the Rileys specifically request that the Department be ordered to entertain their amendment in this regard or that some other procedure be established to resolve the issues relating to the 160 acres.

IV. CONCLUSION

Based upon the foregoing discussion, the Rileys request the Special Master to recommend a partial decree consistent with the licenses issued by the Department, except that the Rileys license should first be amended to add the additional .54 CFS being produced by the North Well and to add all or part of the 160 acres that was watered by the

Rileys. These two revisions are consistent with the recommendations set forth in the beneficial use field report. If no recommendation is made with regard to the 160 acres, then the Rileys request that a procedure be established to resolve that issue as well.

RESPECTFULLY SUBMITTED this 16th day of February, 1999.


Steven R. Parry, Attorney for the Rileys

RECEIVED

MAR 29 1999

Department of Water Resources

Anderson Nelson Hall Smith, P.A.
ATTORNEYS

490 MEMORIAL DRIVE
POST OFFICE BOX 51630
IDAHO FALLS, IDAHO 83405-1630
TELEPHONE (208) 522-3001
FAX (208) 523-7254
E-MAIL anhs@ida.net

W. Joe Anderson
Douglas R. Nelson
Blake G. Hall
Marvin M. Smith*
Scott R. Hall
Joel E. Tingey
Steven R. Parry*
Brian T. Tucker

Of Counsel
John M. Sharp*

Eugene L. Bush
(1928-1986)

*Also member of Utah bar

March 24, 1999

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
Twin Falls, Idaho 83303-2707

Re: *Rowan v. Riley*
Case No.: CV-94-00012

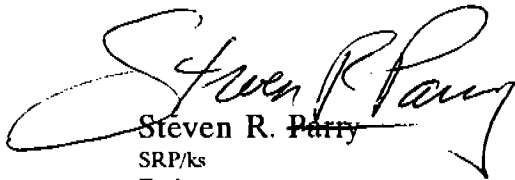
Dear Clerk:

Enclosed are a Standard Form 1 Objection filed on behalf of Norman Riley and one filed on behalf of Robin Riley. Pursuant to the instructions for filing, my understanding was that both Norman and Robin needed to file a separate objection. Inasmuch as the water right is their community property, I felt that filing two objections was prudent. However, the objections are identical.

Although not required by the objection form itself, we recognize that this objection is being filed in the context of ongoing litigation and therefore we have provided a curtesy copy of this objection to Greg Moeller who is Catherine Rowan's attorney.

If you need any additional information or have any questions pertaining to the Standard Form 1 Objection, please do not hesitate to call. Thank you for your assistance in this matter.

Sincerely,



Steven R. Parry
SRP/ks
Enclosures

cc: Gregory W. Moeller
Norman and Robin Riley

L:\SRP266\SRBACL\LR

COPY

RECEIVED

MAR 29 1999

RILEY

Department of Water Resources

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

A: Subcase 22-07280B
(Insert water right number)

STANDARD FORM 1
OBJECTION

Attached to Case No. CV-94-00012

Please fill in the following information:

B: NAME AND ADDRESS OF PERSON OBJECTING

Name: Norman Riley
Address: 1623 W. 3400 S.
Rexburg, Idaho 83440
Daytime Phone: (208) 356-5873

Name & Address of Attorney, if any:

Steven R. Parry
P.O. Box 51630
Idaho Falls, Idaho 83405-1630
(208) 522-3001

C: CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Norman Riley / Robin Riley
Address: 1623 W. 3400 S.
Rexburg, Idaho 83440

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address

Should be: _____

2. ☐ Source

Should be: _____

3. ☒ Quantity

Should be: 5.31 CFS (4.77 + .54)

4. ☐ Priority Date

Should be: _____

5. ☒ Point(s) of Diversion

Should be: The point of diversion for the additional .54 CFS
should be T05N R40E S3 SENE

6. ☐ Instream Flow Description

Should be: _____

7. ☐ Purpose(s) of Use

Should be: _____

8. ☐ Period of Year

Should be: _____

9. ☒ Place of Use

Should be: Same as listed plus (See Exhibit A)

11. I object because:

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): The reasons supporting these

objections are set forth in Riley's Brief dated February 16, 1999, filed in
Subcase No. 94-00012 with Special Master Bilyeu, that Brief being incorporated
herein by this reference. For convenience, a copy of pages 9-13 of the Brief are
attached as Exhibit B.

F.

VERIFICATION (Must be Completed)

State of Texas)
)ss.

)SS.

County of Bonneville

STEVEN R. PARRY, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

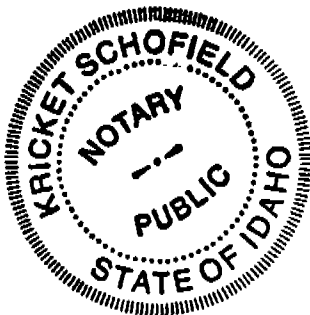
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

Notary Public for

Residing at:

My Commission Expires: 9-4-2004



INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on March 25, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
~~PO Box 2707~~
Twin Falls, ID 83301-~~2707~~ VIA FED EXPRESS

2. One copy to the claimant of the water right at the following address:

Name: Norman + Robin Riley
Address: 1623 WEST 3400 SOUTH
Rehburg, Idaho 83440

3. Copies to:

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

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

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

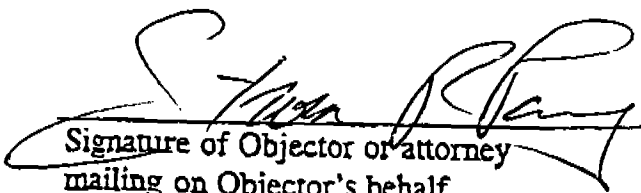

Signature of Objector or attorney
mailing on Objector's behalf

EXHIBIT A

TO STANDARD FORM 1 OBJECTION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
05N	40E	14	SWNW 0.3	SEnw 2.0	NESW 25.0	
			NWSW 23.0	SWSW 34.0	SESW 39.0	
			SWSE 10.0			133.3
		15	NESE 0.2	SESE 3.0		3.2
		23	NWNE 2.0	NENW 9.0	NWNW 3.0	14.0
Total number of acres irrigated:						150.05

authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence; or (e) are arbitrary, capricious, or an abuse of discretion. [Citations omitted.]

Id. at 577. Whether the standard of review is set forth under the Administrative Procedures Act (see jurisdictional discussion above) or otherwise, the fact is that the SRBA must not lightly overturn the decisions of the Department. As set forth in the background section above, the licenses under consideration are the result of years of review and consideration by the Courts and the Department, and the Department has internally reviewed these issues at the highest levels. The Department has been assisted at hearings and otherwise by the Attorney General's office and has expended a considerable amount of time on the issues associated with this case. Hence their decisions should be presumed correct.

The main complaint to be heard from Rowan relates to the Annual Diversion rate and the allocation of primary service land acres and supplemental service land. These issues have been considered and carefully analyzed by the Department, and therefore should not be overturned by the SRBA without a compelling reason. The Department's analysis is clearly set forth in its November 30, 1998 letter to the parties, a copy of which was sent to the SRBA.

III. ELEMENTS OF WATER LICENSES

The Rileys are generally in agreement with the Department's actions in issuing the licenses. However, from the beginning of this case, the Rileys have maintained that the ownership of the water permit must first be determined, and then the owner or owners thereof should have the right to seek amendments to the permit before it is licensed or in connection with its license. The need for such amendments is made clear by the beneficial use field report (See SRBA Trial Exhibit 5) which actually recommended at Section I.2 thereof that the underlying permit be amended to reflect the actual place of use and the additional point of diversion. All the Rileys desire is a chance to seek appropriate amendments to their portion of the water right as discussed below. Because any other permit holder would be afforded this right, the denial of this right would deny the Rileys of important property without due process of law. The key issues now before the SRBA are each addressed below.

the Department carefully gave each party the same size bucket and consequently the Rileys own some primary water rights as tenants on property owned by Rowan. That is the natural result of an even split of the water right and the result which the Rileys have long anticipated and predicted if the ownership was indeed 50/50.

The Department divided the water right evenly between the parties and the SRBA should not alter that division. The Department followed the order of the SRBA as confirmed by the Idaho Supreme Court and that portion of the licenses should stand.

B. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL WATER.

The beneficial use field report (SRBA Trial Exhibit 5) proved that the North well owned by the Rileys was actually producing 4.41 CFS, or .54 CFS more than the 3.87 CFS authorized by a separate license owned by the Rileys on that North Well (SRBA Trial Exhibit C). As mentioned above, the field report recommended an amendment to the water permit to take this additional water production into account. This was possible because the water permit (SRBA Trial Exhibit D) was for 10.81 CFS which was more than the South Well could actually produce. This additional .54 CFS of water was produced by the North Well which is clearly owned by the Rileys who were farming the ground. As such, the Rileys should have the right to amend their license so as to take this water into account, and if necessary the water should be applied to the 160 acres South of the railroad which the Rileys were leasing from Rowan.

C. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL ACRES.

The beneficial use filed report (SRBA Trial Exhibit 5, See Map #1) showed that approximately 160 acres South of the railroad tracks was being irrigated by the Rileys. As such, the Rileys should be able to move some of their water down to this 160 acres. Whether the Rileys "spread" their water to all or part of this 160 acres by way of a permit amendment or by an expansion claim off their North water license Rowan has no claim to have spread water on these acres. While Rowan owned the ground which was leased to the Rileys or their predecessor, there is a railroad track separating the property from the other parcel and that railroad strip is owned by the railroad. The Rileys, and formerly their predecessor, have sole ownership of the railroad easement and paid for the easement, the pipe, and the installation thereof to put the water under the railroad tracks. The mainline

used to spread this water on the 160 acres is above ground and clearly belongs to the Rileys. It would be outrageous for any court to say that Rowan applied her water through the labor and effort of the Rileys as her tenants, across land owned by another, through pipe owned by the Rileys and on an easement owned by the Rileys, to above-ground mainline and through sprinklers owned by the Rileys.

If the SRBA does not resolve the issue with the 160 acres now, a clear mechanism needs to be established for its resolution. Without notice to the Rileys, Rowan pursued and obtained Water Permit No. 22-07792 (SRBA Trial Exhibit MM). This Permit was issued January 30, 1997, with a proposed priority date of September 4, 1996, and was tied to Right 22-07280. When the Rileys discovered what had taken place during the pendency of this matter without any notice to them, they raised strong objection with the Department and issued its Order Designating a Preliminary Order dated March 12, 1997, a copy of which is attached as Exhibit A. This procedure allowed the Rileys to file their Petition for Reconsideration In Re: Permit 22-07792 dated March 24, 1997, a copy of which is attached as Exhibit B. That Petition was placed on hold before the Department and remains this day on hold before the Department.

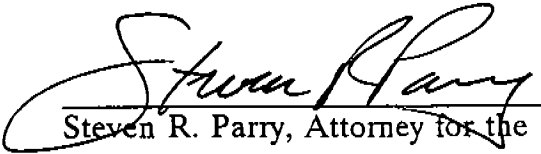
The issues associated with the 160 acres obviously need to be resolved in connection with the resolution of the other issues. Both parties will likely desire amendments to include the 160 acres, but the facts remain that only the Rileys actually applied water to that ground, and they did it through their pipe running through their easement. Rowan expended no money and made no effort to develop the water on the 160 acres and therefore only the Rileys should be allowed to expand their water to those acres. Therefore, the Rileys specifically request that the Department be ordered to entertain their amendment in this regard or that some other procedure be established to resolve the issues relating to the 160 acres.

IV. CONCLUSION

Based upon the foregoing discussion, the Rileys request the Special Master to recommend a partial decree consistent with the licenses issued by the Department, except that the Rileys license should first be amended to add the additional .54 CFS being produced by the North Well and to add all or part of the 160 acres that was watered by the

Rileys. These two revisions are consistent with the recommendations set forth in the beneficial use field report. If no recommendation is made with regard to the 160 acres, then the Rileys request that a procedure be established to resolve that issue as well.

RESPECTFULLY SUBMITTED this 16th day of February, 1999.


Steven R. Parry, Attorney for the Rileys



State of Idaho
DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

NOVEMBER 24, 1992

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

NORMAN RILEY
1623 W 3400 S
REXBURG ID 83440

RE: CHANGE IN OWNERSHIP FOR A22-07280, A22-02223, AND
A22-12251

Dear Mr. Riley:

The request for Change in Ownership concerning the Notices of Claim in the above reference (A22-02223 and A22-12251) has been processed and the names changed to show you as the current owner. A22-07280 was split into two separate portions.

Enclosed are "copies" of A22-02223 and A22-12251 for your records. Also enclosed is A22-07280B for a portion of water right A22-07280.

Jim Howe has died and Mrs. Rowan requested the water rights be in her name (they were formerly in both names).

Since you purchased 205 acres of land from Catherine H. Rowan, the above mentioned water right, A22-07280, has been split into A22-07280A and A22-07280B. A22-07280B gives you 3.020 cfs for 205 acres and A22-07280A with 7.790 cfs on 529 acres is the remaining portion belonging to Mrs. Rowan.

Review the forms and if there are other corrections or questions, feel free to contact this office (525-7161).

If there are no questions or corrections, please keep these Notices for your records.

Respectfully submitted,

Jo Thompson
Dave Carlson
Water Rights Agent, Adjudication

DC:jt

Enclosure

cc: Catherine Rowan/copy letter/A22-07280A

See letter filed Dec 31 92

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DEC 09 1992

Form 42-1409(7)



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

DATE OF CLOSING: _____

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____
Section _____, 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____, BM.
Lot _____, Block _____, Subdivision/Townsite _____.
If you have additional legal descriptions, please attach separate sheet.

☐ Served Only by a Public Service Water Supply (all 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)

☐ Water Right Number(s)
Assigned by IDWR: A22-07280, A22-02223, A22-12251

☐ Name and Address of Former Owner/Claimant(s)(Seller): Tim W. Howe (deceased)
P.O. Box 803 (formerly 240 Mohawk Av.)
Rexburg, ID 83440

☐ New Owner/Claimant (Purchaser): Norman or Robin Riley

☐ New Mailing Address: 1623 W. 3400 S.
Rexburg, ID 83440

☐ New Telephone Number: (208) 356-5873

☐ Does the change in ownership result in a splitting of the water right owned/claimed? ☒ yes ☐ no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:
No on the others

A22-07280

☐ 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 owner/claimant.)

☐ Signature of New Owner/Claimant(s): Robin Howe Riley Date 11-12-92

☐ Signature of Former Owner/Claimant(s): _____ Date _____

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:	
Initial Review and Data-Entry	
Date: _____	By: _____
Further Action Needed:	
Further Action Taken	
Date: _____	By: _____
Final Review and Data-Entry	
Date: _____	By: _____
Claim Numbers of Split, if any:	

Original to be mailed to Idaho Department of Water Resources

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DEC 09 1992

M-17756

First American Title Company

*Rowan deed
to James*

CORRECTION GRANT DEED

FOR VALUE RECEIVED, KATHERINE ANNE HOWE, a/k/a Catherine Rowan, of 843 Three Fountains Drive, Salt Lake City, Utah 84107, does hereby grant, bargain, sell, and convey unto JAMES HOWE, of Rexburg, Idaho 83440, the following described real property in Madison County, State of Idaho, to-wit:

A tract of land which is situated in Secs. 2, 3, 10, and 11, in Twp. 5 N., Rge. 40 E., Boise Mer.:

Beginning at the Northwest corner of said Section 2, and running thence S.89°57'E. 1331 feet, to the Northeast corner of lot 4 of said Section 2; thence S.0°02'E. 599.75 feet, along the sixteenth line, to the Northeasterly corner of the property owned or formerly owned by Wess Howe; thence long the boundaries of said property the following two (2) courses; (1) S.69°58'25"W. 541.60 feet; thence (2) S.32°16'56"E. 953.83 feet, to said sixteenth line; thence S.0°02'E. 118.67 feet along said line, to its intersection with the west side of a county road; thence along said west side the following three courses; (1) S.32°15'E. 1483.2 feet; thence (2) S.0°10'E. 735 feet; thence (3) S.39°03'E. 671.2 feet; thence S.23°10'W. 258.6 feet; thence S.14°45'W. 251.9 feet; thence S. 0°44' . 262.8 feet; thence S.2°48'W. 240.9 feet; thence S. 7°50'W. 200 feet; thence S.11°29'W. 286.6 feet; thence S. 10°17'W. 154.2. feet; thence S.7°08'W. 260 feet; thence S.12°50'W. 200.8 feet; thence S. 19°00'W. 153 feet; thence S. 9°07'W. 100 feet; thence S. 2°23'E. 247.1 feet; thence S. 23°40'30"E. 495.5 feet (deed shows N.28°50'W. 484.5 feet) thence S.2°57'E. 65.8 feet; thence N. 89°57'W. 3156.6 feet; thence N. 0°01'14"W. (deed shows North 7281.2 feet to the north line of said Section 3; thence S.89°49'E. 737.3 feet along the Section line, to the point of beginning, containing 452.9 acres more or less.

TOGETHER With any and all improvements and appurtenances thereto; rents, issues and profits thereof; and reversions and remainders. Grantor does hereby grant and convey to Grantee an individual one-half interest and right to any water from the south main well which is located on Grantor's property.

Grantor does hereby grant and convey to Grantee and Grantee's heirs, assigns, interest and right to any water from the south main well which is located on Grantor's property.

MICROFILMED

DEC 09 1992

DATED This 10th day of August, 1988.

DEC 19 1992

Instrument 1000

8/2/88

CORRECTED AGREEMENT

THIS AGREEMENT made and entered into this 2nd day of August, 1988, by and between CATHERINE ROWAN, of 843 Three Fountains Drive, Salt Lake City, Utah 84107, hereinafter referred to as "Grantor" and JAMES HOWE, of Rexburg, Idaho 83440, hereinafter referred to as "Grantee".

WHEREAS, the Grantor owns certain property adjacent to Grantee's property, said property being described below and hereinafter referred to as "the Grantor's property", to-wit:

A tract of land situated in Sections 10, 11, 14 and 15, Township 5 North, Range 40 East of the Boise Meridian, Madison County, Idaho, described as follows:

Beginning at a point that is N. 89°45'W. 787.3 feet along the Section line, and S.01°01'14"E. 6138.7 feet, from the Northeast corner of Section 3, of said Township and Range, and running thence S.0°01'14"E. 7814.7 feet to the Northerly right-of-way line of the Union Pacific Railroad; thence N.43°57'E. 2290.55 feet along said right-of-way line; thence North 2960.65 feet to a point that is S.30°38'E. 19.4 feet and West 769.5 feet from the Northwest corner of said Section 14; thence W.1649.5 feet to the Southwest corner of the property described in Instrument No. 224270, as recorded in Madison County, Idaho; thence along the boundaries of said property the following three (3) courses, (1) N.22°20'E. 420 feet; thence (2) N.9°10'W. 120 feet; thence (3) N.24°02'47"E. 244.23 feet to the North corner of said property; thence North 291.6 feet; thence N.19°05'W. 200 feet; thence N.23°56'W. 200.6 feet; thence N.26°14'W. 130.8 feet; thence N.17°20'W. 370.3 feet; thence N.2°57'W. 195.2 feet; thence N.89°57'W. 3156.6 feet to the point of beginning, containing 296.3 acres, more or less.

WHEREAS, the Grantor desires to grant to the Grantee an easement across the Grantor's property for the joint use of a well and accessories thereto located on the Grantor's property, together with a non-exclusive ingress and egress to

repair, inspect, or maintain said well, pump, related facilities thereto, and pipelines which carry water from the well to the Grantee's property across the Grantor's property.

NOW THEREFORE, in consideration \$10 in hand paid and for other good and valuable consideration and the mutual covenants and promises herein contained, the parties agree as follows:

1. Grantor does hereby grant unto Grantee a perpetual right and easement across the Grantor's property for the purposes set forth above. Location of said easement on the Grantor's property is as follows:

A 20' wide roadway easement described as follows:

Beginning at a point that is S .30°38' E. 19.4 feet and West 749.50 feet from the Northwest corner of Sec. 14, Twp. 5 N., Rge. 40 E., Boise Mer. and running thence East 20 feet; thence South 2960.65 feet to the Northerly right-of-way line of the Union Pacific Railroad; thence S. 43°57' E. 28.82 feet along said right-of-way line; thence North 2981.40 feet to the point of beginning.

2. Grantee agrees to pay all costs of repair, maintenance and operation of said easement.

3. Said easement shall run from the lands herein above described and shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties.

IN WITNESS WHEREOF the parties have hereunto signed this agreement the day and year first above written.

GRANTOR

Catherine Rowan
Catherine Rowan

AGREEMENT -2-

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GRANTEE

James Howe
James Howe

STATE OF UTAH,)
ss.
County of Salt Lake.)

On this 3rd day of August, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Catherine Rowan, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she 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.

Sandra M. Culver
Notary Public for Utah
Residing at: 314, 16th
My Commission Expires: 8-29-91

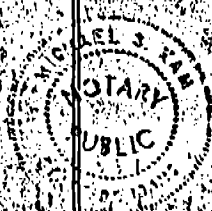
STATE OF IDAHO,)
ss.
County of Madison.)

On this 2nd day of August, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared James Howe, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

AGREEMENT -3-

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DEC 05 1982

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



Michael S. Farn
Notary Public for Idaho
Residing at REXBURG
My Commission Expires: 6-15-93

State of Idaho | SS 226561
County of Madison
I hereby certify that the within instrument was
filed AUG 12 1988
at 3:49 P.M. and
recorded on Film 226561
For 12.00
by MARIE E. HOOPES, Recorder
Deputy
At the request of ETPCA

AGREEMENT - 4 -

MICROFILMED

State of Idaho | SS 226425
County of Madison
I hereby certify that the within instrument was
filed AUG 3 1988
at 4:42 P.M.
recorded on Film 226425
For 12.00
by MARIE E. HOOPES, Recorder
Deputy
At the request of Jim Howe

MICROFILMED
DEC 1988