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Department of Water Resources

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED \_\_\_\_\_

2003 APR 28 PM 12 48

**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING  
SUBCASE NOS. 51-2214, 51-4000A (split into 51-12976 & 51-12977), and 51-10207  
(split into 51-12978 & 51-12979)**

In Re SRBA  
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

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

April 24, 2003

## I. INTRODUCTION

In his *Trial Schedule Order* issued on March 10, 2003, Special Master Terrence A. Dolan requested that the Idaho Department of Water Resources ("IDWR") submit an "I.R.E. Rule 706 expert report" for subcases 51-2214, 51-4000A (split into 51-12976 & 51-12977), and 51-10207 (split into 51-12978 & 51-12979). In response to this order and in accordance with Idaho Code § 42-1412(4), Administrative Order 1, and I.R.E. 706, IDWR submits this Supplemental Director's Report. This report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill Jr., Adjudication Bureau Chief for IDWR.

The following IDWR employees have knowledge of the information contained in this report: Senior Water Resource Agents Mel Schulte and Roxanne Brown.

## II. PROCEDURAL HISTORY

The *Director's Report for Irrigation and Other Uses, Reporting Area 6, Basin 51* was filed with the Snake River Basin Adjudication ("SRBA") Court on or about November 24, 1998. In January of 1999, Tri-Vial, Inc. ("Tri-Vial") filed objections to water right recommendations 51-2214, 51-4000A, and 51-10207. Hearings were held and the subcases were stayed pending related litigation in the case of *Kohring v. Robertson, et al.*, filed in the Third Judicial District, County of Owyhee. That case dealt with the land and wells involved in these water right recommendations. Judge Morfitt issued a partial judgment in *Kohring v. Robertson, et al.* on July 3, 2002, dividing the land and irrigation works between the Robertsons and the Kohrings.<sup>1</sup> On or around October 17, 2002, the

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<sup>1</sup> Judge Morfitt signed an amended judgment on November 18, 2002. The amended judgment clarified that both parties had a one-half interest in the wells in Section 36.

parties submitted change of ownership forms to IDWR seeking the division of Tri-Vial's water rights. On November 18, 2002, IDWR filed a *Notice of Completed Administrative Proceeding* (NCAP) with Amended Director's Reports attached. In its Amended Director's Report, IDWR split water right number 51-4000A into 51-12976 and 51-12977 and split water right number 51-10207 into 51-12978 and 51-12979. The water right recommendation for 51-2214 remained as previously numbered. Water rights 51-12976 and 51-12978 were recommended to Susan and Eugene Robertson ("the Robertsons"). Water rights 51-12977, 51-12979 and 51-2214 were recommended to Kent and Virginia Kohring ("the Kohrings"). The Kohrings filed objections to the amended recommendations on January 15, 2003. The SRBA court held a status conference on March 6, 2003 and issued its *Trial Schedule Order* on March 10, 2003. In anticipation of preparing this Supplemental Director's Report, IDWR held two fact-finding hearings to gather additional information from the parties on February 19, 2003 and March 27, 2003 with David R. Tuthill, Jr. acting as the hearing officer.

### **III. DISCUSSION**

This report will discuss the objections to each of the Amended Director's Reports as well as the information and evidence offered at the fact-finding hearings in this matter.

#### **A. Water Right No. 51-2214:**

The Kohrings objected to the amended recommendation for water right 51-2214, stating that the annual volume should be changed to 1,560 acre feet per year. Based upon IDWR records, IDWR finds that the annual volume for this water right should be changed. IDWR issued a license for water right 51-2214 on April 4, 1983. The annual volume on the license was listed as 1,560 acre feet per year. In 1983, IDWR calculated the annual

volume by multiplying IDWR's standard volume rate for the area at the time (5 acre feet per acre per year) by the total number of acres (312 acres). Thus, IDWR's recommendation should be corrected and 51-2214 should be decreed by the SRBA court as licensed with an annual volume of 1,560 acre feet per year.

**B. Water Right No. 51-12976:**

Water right 51-12976 is recommended in the name of the Robertsons. The Kohrings objected to IDWR's recommendation for the annual volume and one of the points of diversion. Although the Kohrings did not file an objection to the priority date, they argued at the fact finding hearings that the priority date should also be changed. These issues will be addressed in order.

**i. Annual Volume:**

The Kohrings object to IDWR's annual volume recommendation for water right 51-12976, arguing that the volume should be increased to 800 acre feet per year. Based on the evidence submitted, IDWR finds that the annual volume for this water right should not be increased. The annual volume for a beneficial use water right is based upon standards adopted by IDWR in 1991. IDWR's basis for this standard is outlined in detail in the *Report Regarding Development of Standards for Annual Volume of Irrigation Requirements at the Field Headgate* filed August 1, 1996 in subcase 36-8649. Under the standards adopted in 1991, the acre foot standard for the relevant part of Basin 51 is 4.0 acre feet per acre per year. At the fact finding hearings, the Kohrings suggested that the acre foot standard for this water right should be 5.0 as it is for 51-2214. However, water right 51-2214 was licensed under the old acre foot standard used in 1983. If a water right is not previously licensed or decreed, IDWR recommends the annual volume pursuant to

the 1991 standards. The current acre foot standard for the relevant part of Basin 51 (4 acre feet per acre per year) multiplied by the total number of acres (153 acres) equals 612 acre feet per year. Thus, annual volume for 51-12976 should remain at 612 acre feet per year.

ii. Point of Diversion:

As a result of the party's change of ownership forms, IDWR split water right number 51-04000A into two parts, with 51-12976 to the Robertsons and 51-12977 to the Kohrings. Each split was recommended with three points of diversion: two wells in the SWSWSW of Section 36 (hereafter referred to as the "Section 36 wells") and one well in the SWSWNW of Section 25 (hereafter referred to as the "Section 25 well"). The Kohrings objected to the inclusion of the Section 25 well as a point of diversion in the Robertson's water right, arguing generally that the water from this well has not historically been used to irrigate the Robertson's property. As a result of the fact finding hearings, however, it is clear that water from the Section 25 well has historically been used on what is now known as the Robertson property.

a. History of the Parent's Farm.

J.G. Kohring (the father of Kent Kohring and Susan Robertson) developed a well in Section 36 and first started irrigating in approximately 1956. The lands he irrigated consisted of 320 acres in the W1/2NW, SENW, NESW, N1/2SE, and S1/2NE, Section 25, Township 6 South, Range 4 East, Boise Meridian, Owyhee County, Idaho (hereafter referred to as the "Parent's Farm"). The Parent's Farm is shown as marked in green on the map attached hereto as Attachment A.

In 1966, J.G. Kohring developed the Section 25 well. From 1966 to the mid-1970's, water from both the Section 36 and Section 25 wells was first co-mingled in a pond in the SWNE of Section 25 prior to being applied to the Parent's Farm.

In the mid-1970's J.G. Kohring sold the Parent's Farm to Kent and Virginia Kohring. Then in 1977, the Kohrings sold an undivided one-half interest in the Parent's Farm to the Robertsons. The Parent's Farm was farmed as a partnership until 1992 when the Robertsons and the Kohrings formed Tri-Vial. Eventually, all the water rights at issue were changed into Tri-Vial's name. As described above, a dispute subsequently arose between the parties and as a result of the case Kohring v. Robertson, et al., each party was deeded approximately half of the original Parent's Farm (as well as other parcels of land not directly relevant to this issue). According to the deeds attached to the change of ownership forms submitted to IDWR by the parties, the Kohrings received the NESW, S1/2NW, and NWNW of the original Parent's Farm along with "all water and water rights appurtenant" to the parcels. The Robertsons received the N1/2SE and S1/2NE of the original Parent's Farm, together with "all water and water rights appurtenant thereto."

b. Testimony at the fact finding hearings establishes that the water from the Section 25 well has been used on the Parent's Farm since 1966.

In their objection regarding the Section 25 well, the Kohrings wrote, "[t]here is no documentary or historic support for this point of diversion for the place of use in right #51-04000A or 51-12976." However, at the fact finding hearings, instead of arguing lack of historical use, the Kohrings focused on how a sump pump was added in 1977 and since that time, only the "excess" water was placed on the Parent's Farm. IDWR asked each party to submit written answers to the following question:

Previous testimony indicated that water from the well in Section 25 and the wells in section 36 is co-mingled into a pond in Section 25 and then applied to both Robertson and Kohring land. What year did this practice commence? How were the Robertson and Kohring lands irrigated prior to the co-mingling practice?

*Notice of Fact-Finding Hearing, Part 2, at 2.*

In response to the question, the Kohrings wrote:

The water from the well in Section 25 (51-02214) is pumped to a sump in the Southwest quarter Northwest quarter from which it has, since 1977, been used to irrigate property now owned by the Kohrings, that is, the Southwest quarter Northwest quarter, the Northwest quarter Northwest quarter, the Northeast quarter Northwest quarter, the Southeast quarter Northwest quarter, and the Northeast quarter Southwest quarter. The excess water continued down the ditch to the pond in the Southwest quarter Northeast quarter, where it is pumped to the Kohring and Robertson properties. Prior to 1977, when there was no sump, the waters from the well in Section 25 and from Section 36 (51-04000A) went to the pond, which was small at that time, and served both properties.

*Written Response of Kent and Virginia Kohring to IDWR Request, at 3 (a copy attached hereto as Attachment B).*

The Kohrings now argue that only “excess” water from the sump in section 25 is used on the Parent’s Farm. However, it is impossible to delineate between which water is excess and which water is not, given the fact that all irrigation water from the Section 36 well and the Section 25 well is first co-mingled before being used for irrigation. Furthermore, even if the Kohrings were able to distinguish between excess and non-excess water, they admit that some water from the well in Section 25 has continually been used to irrigate the Parent’s Farm since 1966.

When the water from the Section 25 well was applied to the Parent’s Farm and put to beneficial use in 1966, the well became a second point of diversion for watering the

Parent's Farm. These changes to points of diversions are recommended pursuant to the accomplished transfer statute I.C. § 42-1425 . I.C. § 42-1425 states, in relevant part:

Any change of place of use, point of diversion, nature or purpose of use or period of use of a water right by any person entitled to use of water or owning any land to which water has been made appurtenant either by decree of the court or under the provisions of the constitution and statutes of this state, prior to November 19, 1987, the date of commencement of the Snake River basin adjudication, may be claimed in a general adjudication even though the person has not complied with sections 42-108 and 42-222, Idaho Code, provided no other water rights existing on the date of the change were injured and the change did not result in an enlargement of the original right.

I.C. § 42-1425 (2).

Testimony and the notes in the original claim file for 51-4000 suggest that the well in Section 36 was not a stable source of water for the Parent's Farm. It is likely that the Section 25 well was developed to help meet the irrigation needs of the Parent's Farm. Thus, when J.G. Kohring developed the Section 25 well and applied the water on the Parent's Farm, he created a valid second point of diversion for water right 51-04000 which can be claimed pursuant to the accomplished transfer statute.

At the fact finding hearing, the Kohrings also argued that the Robertsons are not entitled to a point of diversion in Section 25 because the partial judgment issued by Judge Morfitt found that the Kohrings are the sole owners of the Section 25 well. The fact that the Kohrings now have sole legal title to the well does prevent the Robertson's ability to have the Section 25 well listed as a point of diversion for their water right. Current ownership of the well does not determine whether or not the well has historically been used as a point of diversion for the Robertson's property. It is clear that water from the well has historically been applied to the entire Parent's Farm since the well was developed in 1966. Thus, the point of diversion is part of the water right. Should the Kohrings no

longer allow the Robertsons to use the well to irrigate their property, the Robertsons may be able to transfer to a new point of diversion.

In conclusion, because water from the well in Section 25 has been historically used on the Parent's Farm and continues to be used to this day, the Section 25 well is a point of diversion appurtenant for each split of water right 51-04000A. Thus, the point of diversion in Section 25 should remain on water right 51-12976 for the Robertsons.

iii. Priority Date:

Although they did not formally object to the priority date, the Kohrings argued at the fact finding hearings that the priority date for this water right should be 1950. The Kohrings presented a Certificate of Completion of Works dated 1950 at the fact-finding hearing which they claimed showed that the priority date for this right should be 1950. However, the Proof of Completion which was submitted related to permit #51-2114. Permit #51-2114 lapsed and was cancelled by order of IDWR on March 22, 1971 for failure to submit proof of beneficial use. A copy of the Order canceling the permit is attached hereto as Attachment C.

Everything in the file and record suggests that the proper priority date for this water right should be 1956. J.G. Kohring's original statutory claim filing claimed the 1956 priority date. Furthermore, both Mr. Robertson and Mr. Kohring have previously submitted affidavits stating that the water was put to beneficial use in 1956. Based upon the files, the Affidavits, and the evidence presented the priority date should remain as March 15, 1956.

**C. Water Right No. 51-12977:**

51-12977 was recommended to the Kohrings. The Kohrings objected to the annual volume and suggested that an additional point of diversion for a domestic right should be added. In addition, even though they did not formally object to the priority date for this water right, the Kohrings raised the priority date issue at the fact finding hearings. Each issue is addressed in turn.

**i. Annual Volume:**

In its recommendation, IDWR recommended that the annual volume be set at 636 acre feet per year. In their objection, the Kohrings argue that the annual volume should be 800 acre feet per year. As discussed above for water right number 51-12976, IDWR's volume standard for the relevant part of Basin 51 is 4 acre feet per acre per year. This is based upon IDWR's current standard for the area. Thus, the annual volume should remain at 636 acre feet per year.

**ii. Domestic:**

In their objection to IDWR's recommendation for 51-12977, the Kohrings also argue that the recommendation should include a domestic use for their residence from the Section 36 well. IDWR finds that the Kohrings are entitled to a domestic water right from the well in Section 36, but concludes that it should be claimed and recommended under its own water right number and not as part of 51-12977.

**a. History of the Domestic Line:**

In the early 1980's, the Robertsons decided to build a house in the NESE of Section 25. In order to supply the house with water, the Robertsons proposed to build a pipeline

from one of the wells in Section 36. In addition, it was agreed that the line would also serve the existing house on the Parent's Farm where Virginia and Kent Kohring and J.G. and Nina Kohring resided. It is clear that the line was to benefit both properties. Both Kent Kohring and Eugene Robertson participated in digging the trench for the new line, although Robertson did most of the trenching. Partnership funds were used to pay for most of the materials used in the new water line and to rent the trencher. See documents titled *K & G Farms 1981 Expenses*, a copy of which is included as Attachment D. These documents support that the line for the residences was placed in either May or June of 1981. Testimony at the fact finding hearings further established that the Kohring and Robertson homes were connected to the Section 36 well sometime in 1981 or 1982.

b. Since The Residences Were Not Connected To The Section 36 Well Until 1981, Neither Party Is Entitled To A Pre-1981 Priority Date For Domestic Use From The Section 36 Well.

It is clear that both the Kohrings and the Robertsons commenced a new domestic use from the Section 36 well in 1981 or 1982. Because the Kohring's residence was not connected to the Section 36 well until then, the domestic use cannot be recognized under the 1956 priority date associated with water right 51-12977. The use of the Section 36 well for domestic purposes in 1981 represents a new purpose of use that should have been claimed under a different water right number. Thus, IDWR finds that the Kohrings are entitled to a domestic water right from the Section 36 well, but does not find that it should be added to 51-12977.

Of course, only the Kohrings have asked to add a domestic use from the Section 36 well to their half of 51-04000A. This is because the Robertsons were recommended a domestic point of diversion from the Section 36 well with a 1963 priority date under 51-

12979. This information, as well as other additional evidence, requires IDWR to change its recommendation of 51-12979. This is discussed in detail below under the section titled "Water Right No. 51-12978 and 51-12979".

In conclusion, IDWR believes that both parties are entitled to a beneficial use domestic right out of the Section 36 well with a priority date of 1981 or 1982, but not under the existing water rights. IDWR suggests that both parties file motions to file late notice of claims with the SRBA court and file new claims for the domestic uses from the Section 36 well.

iii. Priority Date:

The Kohrings raised the issue of the priority date for 51-12977 for the first time at the fact finding hearings. As discussed above under 51-12976, the evidence submitted to support an earlier priority date was based upon a canceled permit. Thus, IDWR does not believe that the priority date for this water right should be changed.

**D. Water Right No. 51-12978 and 51-12979:**

IDWR split water right number 51-10207 into 51-12978 and 51-12979 and recommended all the domestic uses under these two splits. 51-12978 was recommended to the Robertsons and 51-12979 was recommended to the Kohrings. The Kohrings objected, arguing that this water right number has always been associated with the well on their property (not the well in Section 36) and should not have been split. Based upon the additional evidence presented at the fact finding hearings, IDWR finds that 51-10207 should not have been split. The testimony at the fact finding hearings is that the well in the SWNWSE of Section 25 ("Kohring Domestic Well") was developed in 1963 when the Kohrings moved onto the property and has been used solely on the Kohring's property. As

discussed above, the Section 36 well was not used for domestic water until 1981. Because the various domestic uses were developed at different times, IDWR no longer recommends trying to fit all domestic uses under this one water right. Because the Kohring Domestic Well was developed separately from the domestic system built in 1981, IDWR recommends that the court recognize 51-10207 as originally recommended but without the point of diversion in section 36. IDWR believes that this will best capture the historical beneficial use of this right.

Furthermore, as discussed above under 51-12977, IDWR suggests that the parties each file new claims for domestic uses from the Section 36 wells, to document the historical beneficial use of the Section 36 wells for domestic uses. This way, the irrigation rights can be recommended separately from the domestic rights and the domestic rights can be recommended as they have been developed.

#### **IV. CONCLUSION**

Based upon the written responses and the testimony given at the fact-finding hearings, as well as the Department's records, IDWR finds:

51-2214: Annual volume amount should be changed to 1,560 acre feet per year. IDWR's recommendation should be corrected and 51-2214 should be decreed by the SRBA court as licensed with an annual volume of 1,560 acre feet per year.

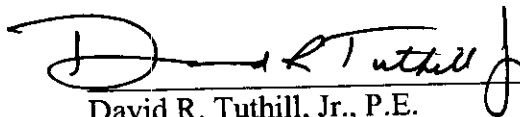
51-04000A (split into 51-12976 and 51-12977): The annual volume should not be enlarged for either of these rights and Section 25 well should not be deleted from 51-12976. Finally, the domestic use for the Kohring portion of this right, specifically that from the Section 36 well, should not be included.

51-10207 (split into 51-12978 and 51-12979): 51-10207 should not have been split into 51-12978 and 51-12979. 51-10207 should be recommended as originally submitted to the court, except for the point of diversion in section 36 removed.

New Domestic Claims: IDWR finds that Robertsons and the Kohrings are each entitled to domestic rights from the well in Section 36. The existing recommendations do not accurately reflect these uses and should be claimed separately. The parties should seek leave of the SRBA court to file late notice of claims for these rights.

Finally, upon leave from the court, IDWR would be willing to submit revised Director's Reports reflecting the changes recommended to the Director's Report based upon this 706 report.

Respectfully submitted this 24<sup>th</sup> day of April, 2003.

A handwritten signature in black ink, appearing to read "D. R. Tuthill, Jr.", with a stylized flourish at the end.

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

## CERTIFICATE OF MAILING

I certify that on April 24, 2003, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

2. Copies to:

Tri-Vial, Inc.  
Eugene & Susan Robertson  
HC 85, Box 139E  
Bruneau, ID 83604

Kent & Virginia Kohring  
HC 85, Box 140  
Bruneau, ID 83604

Susan Wildwood  
P.O. Box 6502  
Boise, ID 83707

Jim Jones  
1275 Shoreline Lane  
Boise, ID 83702

IDWR Repository  
P.O. Box 83720  
Boise, ID 83720



Signature of person or attorney mail

# ATTACHMENT A

51-04000A  
53  
SeL36  
SWSW  
Lurell  
1954-56  
all green

End of initial trenching - 1981 (Apr) per Mr. Roberson  
 Later in 1981 (month later) trench to Roberson house)  
 Exhibit A same rental to Koenig place

Exhibit A

only well  
51-02214

1965  
all  
from 1965

[illegible]

(1975)  
Residence for  
Labor  
(Per Kohring)

Approx  
1 1/4 miles to  
51-04000A  
~~West Carroll~~  
51-10207  
only well

Robertson,  
Davis  
2nd

Koh.ing  
House  
(1990)

(1990)

1977 K. Kohring

- 1974 farmed by E. Kohring

SEC 24 6S 4E

1979/

1980

# ATTACHMENT B

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                                                |                         |
|------------------------------------------------|-------------------------|
| IN THE MATTER OF SNAKE RIVER BASIN )           | WRITTEN RESPONSE        |
| ADJUDICATION WATER RIGHT NOS. )                | OF KENT AND VIRGINIA    |
| 51-2214, 51-4000A (split into 51-12976 & )     | KOHRING TO IDWR REQUEST |
| 51-12977), and 51-10207 (split into 51-12978 ) |                         |
| & 51-12979 )                                   |                         |
| _____ )                                        |                         |

The following are the answers of Kent and Virginia Kohring to the questions posed in the Notice of Fact-Finding Hearing, Part 2:

QUESTION 1. How many residences (including mobile homes or trailer homes) are currently located on both the Robertson and Kohring property? Please describe or provide a map showing the location of each residence.

RESPONSE: The Kohring residence property has a house with an apartment. Adjacent to that parcel are two labor trailers that have been used from time to time. The Robertson house has one residence house. The three acres in Section 36 currently has a mobile home.

QUESTION 2: Are there any residences that were historically located on either the Robertson or Kohring land that are no longer there?

RESPONSE: There previously were two other mobile homes on the three acres in Section 36. There is an old home on the Kohring property that is no longer habitable.

QUESTION 3: What date was each residence built or placed on the Robertson and Kohring land?

WRITTEN RESPONSE OF KENT AND  
VIRGINIA KOHRING TO IDWR REQUEST - 1

RESPONSE: The Robertson residence house was built in approximately 1982. The apartment underneath the current Kohring residence was built in 1962 and was the first residence. The house was built over the apartment in 1963 or 1964. The labor trailers adjacent to the Kohring residence were placed there in approximately 1975 and 1990, respectively. It is unknown when the three mobile homes were placed on the three-acre parcel in Section 36, but it was around 1990.

QUESTION 4: Which well does each residence get its water from? If a residence is connected to more than one well, please list all wells the residence is connected to.

RESPONSE: All of the residences on the Kohring home property get water from both 51-10207 and 51-4000A. The mobile home residences on the three acres in Section 36 get their water from 51-4000A. The residence on the Robertson property gets its water from 51-4000A, as well as the new well on the Robertson property.

QUESTION 5: What date was each residence connected to each well? If residence is connected to more than one well, please give date the residence was connected to each well.

RESPONSE: The apartment under the Kohring home was connected to 51-10207 in 1962. The house above it was connected to that well about a year later, when it was constructed. The labor trailers were connected at the time they were placed on the adjacent property. In 1981, all of the residences on the Kohring property were connected to 51-4000A, except the one labor trailer, which was connected in 1990. The Robertson home was connected to 51-4000A in about 1982.

QUESTION 6: When each residence was connected to the well(s), was water immediately put to beneficial use?

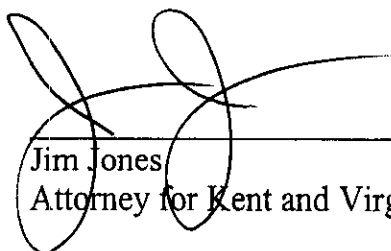
RESPONSE: Water was immediately put to beneficial use for each of the residences listed above.

QUESTION 7: Previous testimony indicated that water from the well in section 25 and the wells in section 36 is co-mingled into a pond in section 25 and then applied to both Robertson and Kohring land. What year did this practice commence? How were the Robertson and Kohring lands irrigated prior to the co-mingling practice?

RESPONSE: The water from the well in Section 25 (51-02214) is pumped to a sump in the Southwest quarter Northwest quarter from which it has, since 1977, been used to irrigate property now owned by the Kohrings, that is, the Southwest quarter Northwest quarter, the Northwest quarter Northwest quarter, the Northeast quarter Northwest quarter, the Southeast quarter Northwest quarter, and the Northeast quarter Southwest quarter. The excess water continues down the ditch to the pond in the Southwest quarter Northeast quarter, where it is pumped to the Kohring and Robertson properties. Prior to 1977, when there was no sump, the waters from the well in Section 25 and from Section 36 (51-04000A) went to the pond, which was smaller at that time, and served both properties.

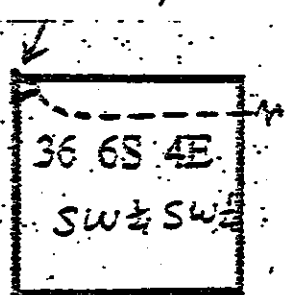
A diagram illustrating the various locations referenced in the foregoing answers is attached and incorporated as Exhibit 1.

DATED this 26<sup>th</sup> day of March, 2003.

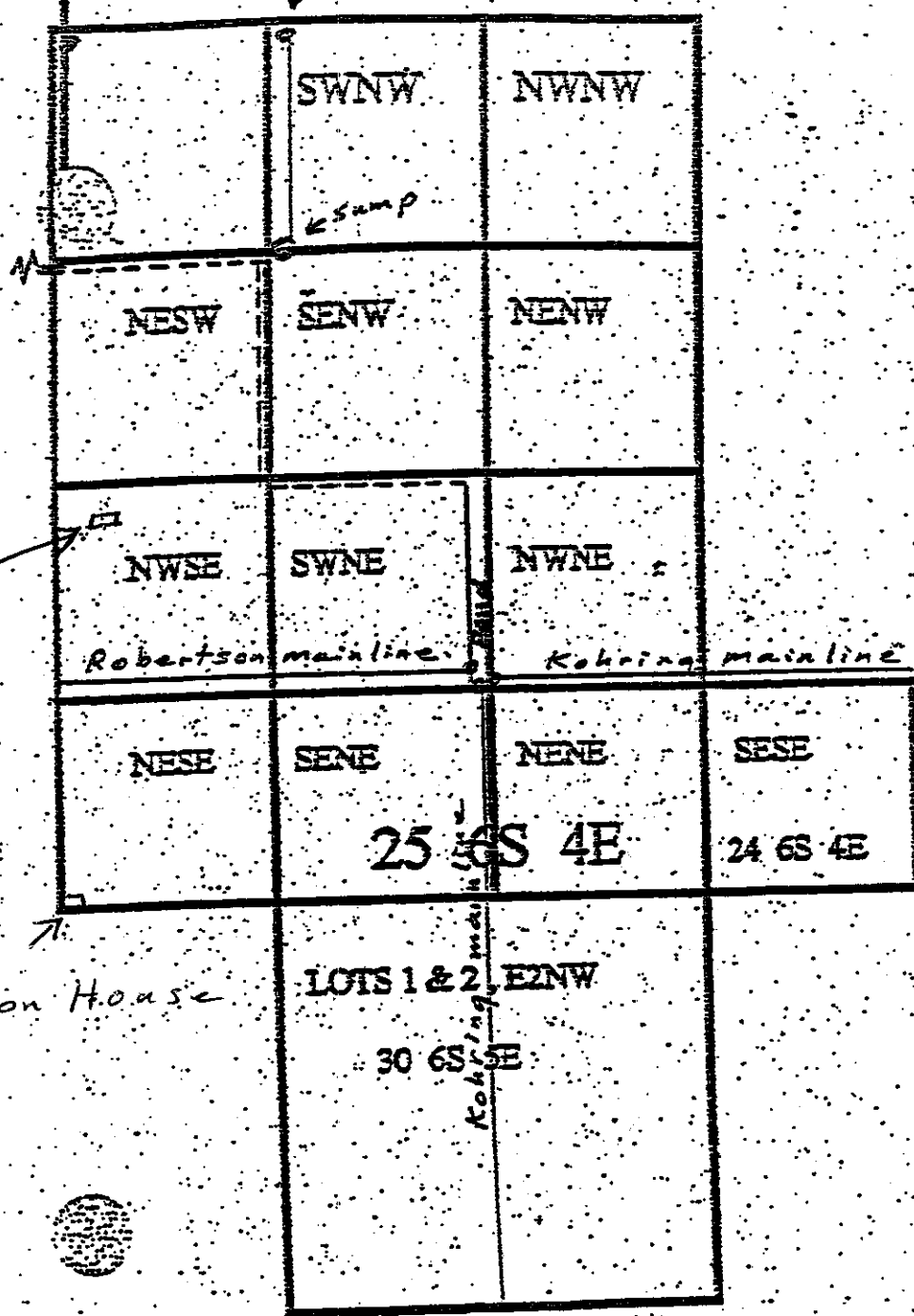


Jim Jones  
Attorney for Kent and Virginia Kohring

Joint / 3 A mobile home site  
Wells



Kohring well



Kohring house

Robertson House

→



# ATTACHMENT C

STATE OF IDAHO  
DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2  
Boise, Idaho 83707  
(208) 384-2215



R. Keith Higginson  
Director

Water Rights Administration  
Water Resource Investigations  
Dam and Reservoir Safety  
Water Well Drilling  
Flood Plain Management  
Irrigation and  
Flood Control Districts

IN THE MATTER OF CANCELLATION OF PERMIT )  
TO APPROPRIATE THE PUBLIC WATERS OF THE )  
STATE OF IDAHO NO. 21542/51-2114 )  
IN THE NAME OF J. Gerhard Kohring )  
\_\_\_\_\_ )

ORDER OF CANCELLATION

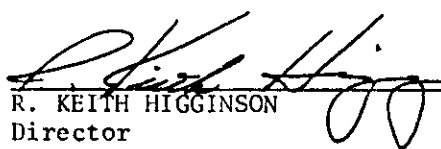
WHEREAS, the permit holder has failed to submit proof of beneficial use  
of water due on April 5, 1962; and,

WHEREAS, on January 25, 1971, notice was sent to the holder of said  
permit to appear before the Director of the Department of Water Administration  
on or before March 6, 1971, to show cause why said permit should not be  
cancelled; and,

WHEREAS, the holder of said permit has failed to comply with the require-  
ments of said permit and has not shown adequate cause why such permit should not  
be cancelled;

IT IS THEREFORE ORDERED and Permit 21542/51-2114 is hereby CANCELLED.

Dated this 22nd day of March, 19 71.

  
R. KEITH HIGGINSON  
Director

21542  
51-2114

# ATTACHMENT D

K + J. Farms 1981

Expenses

joint domestic

Not on  
original  
document

Capital Purchase - Water System - new

|         |                                           |         |
|---------|-------------------------------------------|---------|
| May 5   | ICP Const Supply - deposit trenches       | 100.00  |
| May 13  | ICP Const. Supply - rent trenches         | 458.26  |
| May 15  | Mike Love - Backhoe                       | 420.23  |
| May 18  | Pay + Pack - material                     | 244.10  |
| June 3  | Sprinkler Irrigation Sales - pipe         | 2551.02 |
| June 22 | Fire Cast - tanks                         | 621.25  |
| July 15 | Sprinkler Irrigation Sales                | 138.00  |
| Aug 17  | TV Pipe Supply                            | 377.80  |
| Oct 13  | Eugene Robertson - reimbursement material | 1410.24 |
| Dec 9   | Mike Love - Backhoe                       | 198.00  |
| Dec 20  | Henry Cleby - Patrol work                 | 255.00  |

all - set up Total Cost Water system 6823.90 ✓  
12 yr life ACE

Utilities

|        |                                                    |       |
|--------|----------------------------------------------------|-------|
| Feb 6  | Idaho Power Co. - labor trailer                    | 55.40 |
| Feb 6  | Gen State Utilities Corp. - phone                  | 84.00 |
| Feb 6  | Cal Gas - propane labor trailer                    | 71.30 |
| Mar 13 | Idaho Power Co. - labor trailer + stock tank water | 40.65 |
| Mar 13 | Cal Gas - propane labor trailer                    | 37.60 |

total cost of utilities

288.95 ✓

Exhibit No. 2 - Admitted w/ concerns by counsel

September 1981)  
Department of the Treasury  
Internal Revenue Service (0)

Identifying number:

82-033984-2

▶ Filers of Schedule C (Form 1040), Schedule E (Form 1040) and Form 4835 should see the instructions for those forms before completing Form 4362.

| A. Class of property | B. Date placed in service | C. Cost or other basis | D. Recovery period | E. Method of figuring depreciation | F. Percentage | G. Deduction for this year |
|----------------------|---------------------------|------------------------|--------------------|------------------------------------|---------------|----------------------------|
|----------------------|---------------------------|------------------------|--------------------|------------------------------------|---------------|----------------------------|

Form 4562 (Rev. 9-61)

# U.S. Partnership Return of Income

For calendar year 1981, or fiscal year  
beginning \_\_\_\_\_, 1981, and ending \_\_\_\_\_, 19\_\_\_\_

OMB No. 1545-0046

**1981**

A Principal business activity (see page 12 of instructions)  
B Principal product or service (see page 12 of instructions)  
C Business code number (see page 12 of instructions)

Use  
IRS  
label.  
Other-  
wise,  
please  
print  
or type.

OF 82-0339822 DEC 31, 1981 D82 L #  
KENT KOHRING ETAL PTR  
K & G FARM  
RT B BOX 140  
BRUNEAU ID 83604

D Employer identification no.  
E Date business started  
F Enter total assets from Schedule L, line 13, column (D).

G Check method of accounting: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (attach explanation)  
H Check applicable boxes: (1) ☐ Final return (2) ☐ Change in address.

**IMPORTANT**—Fill in all applicable lines and schedules. If you need more space, see page 2 of the Instructions. Enter any items specially allocated to the partners on Schedule K, line 17, and not on the numbered lines on this page or in Schedules A through I.

|                                                                     |                                                                                                                                                         |                                         |           |     |  |
|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----------|-----|--|
| <b>Income</b>                                                       | 1a Gross receipts or sales \$.....                                                                                                                      | 1b Minus returns and allowances \$..... | Balance ▶ | 1c  |  |
|                                                                     | 2 Cost of goods sold and/or operations (Schedule A, line 34) . . . . .                                                                                  |                                         |           | 2   |  |
|                                                                     | 3 Gross profit (subtract line 2 from line 1c) . . . . .                                                                                                 |                                         |           | 3   |  |
|                                                                     | 4 Ordinary income (loss) from other partnerships and fiduciaries (attach statement) . . . . .                                                           |                                         |           | 4   |  |
|                                                                     | 5 Nonqualifying dividends . . . . .                                                                                                                     |                                         |           | 5   |  |
|                                                                     | 6 Nonqualifying interest . . . . .                                                                                                                      |                                         |           | 6   |  |
|                                                                     | 7 Net income (loss) from rents (Schedule H, line 2) . . . . .                                                                                           |                                         |           | 7   |  |
|                                                                     | 8 Net income (loss) from royalties (attach schedule) . . . . .                                                                                          |                                         |           | 8   |  |
|                                                                     | 9 Net farm profit (loss) (attach Schedule F (Form 1040)) . . . . .                                                                                      |                                         |           | 9   |  |
|                                                                     | 10 Net gain (loss) (Form 4797, line 11) . . . . .                                                                                                       |                                         |           | 10  |  |
|                                                                     | 11 Other income (attach schedule) . . . . .                                                                                                             |                                         |           | 11  |  |
|                                                                     | 12 TOTAL income (loss) (combine lines 3 through 11) . . . . .                                                                                           |                                         |           | 12  |  |
| <b>Deductions</b>                                                   | 13a Salaries and wages (other than to partners) \$.....                                                                                                 | 13b Minus jobs credit \$.....           | Balance ▶ | 13c |  |
|                                                                     | 14 Guaranteed payments to partners (see page 4 of Instructions) . . . . .                                                                               |                                         |           | 14  |  |
|                                                                     | 15 Rent . . . . .                                                                                                                                       |                                         |           | 15  |  |
|                                                                     | 16 Interest (Caution—see page 4 of Instructions) . . . . .                                                                                              |                                         |           | 16  |  |
|                                                                     | 17 Taxes . . . . .                                                                                                                                      |                                         |           | 17  |  |
|                                                                     | 18 Bad debts (see page 5 of Instructions) . . . . .                                                                                                     |                                         |           | 18  |  |
|                                                                     | 19 Repairs . . . . .                                                                                                                                    |                                         |           | 19  |  |
|                                                                     | 20 Depreciation from Form 4562 (attach Form 4562) \$....., less depreciation<br>claimed in Schedules A and H and elsewhere on return \$....., Balance ▶ |                                         |           | 20  |  |
|                                                                     | 21 Amortization (attach schedule) . . . . .                                                                                                             |                                         |           | 21  |  |
|                                                                     | 22 Depletion (other than oil and gas, attach schedule—see page 5 of Instructions) . . . . .                                                             |                                         |           | 22  |  |
|                                                                     | 23a Retirement plans, etc. (see page 5 of Instructions) . . . . .                                                                                       |                                         |           | 23a |  |
|                                                                     | 23b Employee benefit programs (see page 5 of Instructions) . . . . .                                                                                    |                                         |           | 23b |  |
|                                                                     | 24 Other deductions (attach schedule) . . . . .                                                                                                         |                                         |           | 24  |  |
|                                                                     | 25 TOTAL deductions (add lines 13c through 24) . . . . .                                                                                                |                                         |           | 25  |  |
| 26 Ordinary income (loss) (subtract line 25 from line 12) . . . . . |                                                                                                                                                         |                                         | 26        |     |  |

## Schedule A—COST OF GOODS SOLD AND/OR OPERATIONS (See Page 6 of Instructions)

|                                                                                                                   |     |  |
|-------------------------------------------------------------------------------------------------------------------|-----|--|
| 27 Inventory at beginning of year (if different from last year's closing inventory, attach explanation) . . . . . | 27  |  |
| 28a Purchases \$.....                                                                                             | 28a |  |
| 28b Minus cost of items withdrawn for personal use \$.....                                                        | 28b |  |
| 28c Balance ▶                                                                                                     | 28c |  |
| 29 Cost of labor . . . . .                                                                                        | 29  |  |
| 30 Materials and supplies . . . . .                                                                               | 30  |  |
| 31 Other costs (attach schedule) . . . . .                                                                        | 31  |  |
| 32 Total (add lines 27 through 31) . . . . .                                                                      | 32  |  |
| 33 Inventory at end of year . . . . .                                                                             | 33  |  |
| 34 Cost of goods sold (subtract line 33 from line 32). Enter here and on line 2, above . . . . .                  | 34  |  |

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of general partner \_\_\_\_\_ Date \_\_\_\_\_

Preparer's signature \_\_\_\_\_ Date \_\_\_\_\_

Check if self-employed ☐ Preparer's social security no. \_\_\_\_\_

Firm's name (or your, if self-employed) and address \_\_\_\_\_ E.I. No. \_\_\_\_\_

Tallman Accounting Service ZIP code \_\_\_\_\_

# K V Farms 81

## Expenses

### Capital Purchases

|                   |                                         |                |
|-------------------|-----------------------------------------|----------------|
| Aug 5             | Agri-lines - 3 1/4 mile sprinkler lines | 5885.50        |
| <del>Nov</del> 17 | Statewide Electric - panel box          | 8.86           |
| Dec 4             | Overland lumber - pump house            | 316.22         |
| Dec 8             | Statewide Electric - pump house         | 5.58           |
| Dec 13            | Fred Marsh - Const. pump house          | 198.00         |
|                   |                                         | <u>428.66</u>  |
| Dec               | P & Mitter - Used 1 brn Trailer house   | 2500.00        |
|                   |                                         | <u>8814.16</u> |

(Kent's part  
of domestic)  
Not on original

water  
system

### Supplies + materials

|         |                                         |                |
|---------|-----------------------------------------|----------------|
| Feb 6   | Jumbo's Auto Service - tires pickup     | 215.70         |
| Mar 24  | Garden Center - Sprayer + pump          | 61.73          |
| May 18  | Sears - Tools for ranch                 | 117.20         |
| May 18  | Koppell's - Tools for ranch             | 52.58          |
| June 1  | Nampa I H - parts                       | 164.86         |
| June 3  | Les Schwab - tires pickup               | 355.79         |
| Sept 10 | Sears Roebuck - Battery + shock, pickup | 121.04         |
|         |                                         | <u>1088.84</u> |

### Taxes

|         |                                         |        |
|---------|-----------------------------------------|--------|
| Feb 28  | Idaho State Tax Commission              | 74.82  |
| June 3  | Owyhee Co Tax Collector 2nd 80 Taxes    | 334.40 |
| Sept 14 | Elmore County Assessor - pickup license | 38.00  |
| Dec 18  | Owyhee Co. Tax Collector 81 Taxes       | 603.82 |

+ +.6 Taxes

991.04

farming  
tions.  
Line 17  
Per-unit  
by  
instruc

Form **4562**  
(Rev. September 1981)  
Department of the Treasury  
Internal Revenue Service (4)

## Depreciation

- ▶ See separate instructions.
- ▶ Attach this form to your return.

OMB No. 1545-0172  
Expires 12/31/82

Name(s) as shown on return

Identifying number

- Ronald C. & V. J. ... & K. ...*
- 200-48-0040*
- ▶ Generally, you must use the Accelerated Cost Recovery System of depreciation (ACRS) for all assets you placed in service after December 31, 1980. Report these assets in Part I, lines 1(a) through 1(f).
  - ▶ You may elect to exclude certain property. Report this property in Part I, line 2.
  - ▶ Use Part II for assets you placed in service before January 1, 1981, and certain other assets for which you cannot use ACRS.
  - ▶ Filers of Schedule C (Form 1040), Schedule E (Form 1040) and Form 4835 should see the instructions for those forms before completing Form 4562.

### Part I Assets placed in service after December 31, 1980

| A. Class of property                                                                                                               | B. Date placed in service | C. Cost or other basis | D. Recovery period | E. Method of figuring depreciation | F. Percentage | G. Deduction for this year |
|------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------|--------------------|------------------------------------|---------------|----------------------------|
| <b>1 Accelerated Cost Recovery System (ACRS) (See instructions for grouping assets):</b>                                           |                           |                        |                    |                                    |               |                            |
| (a) 3-year property                                                                                                                |                           |                        |                    |                                    |               |                            |
| (b) 5-year property <i>New</i>                                                                                                     | <i>1991</i>               | <i>5,925.50</i>        | <i>5</i>           | <i>SL</i>                          | <i>100</i>    | <i>1,177.10</i>            |
| (c) 10-year property <i>Used</i>                                                                                                   | <i>1991</i>               | <i>15,000.00</i>       | <i>10</i>          | <i>SL</i>                          | <i>100</i>    | <i>2,250.00</i>            |
| (d) 15-year public utility property                                                                                                |                           |                        |                    |                                    |               |                            |
| (e) 15-year real property—low-income housing                                                                                       |                           |                        |                    |                                    |               |                            |
| (f) 15-year real property other than low-income housing                                                                            |                           |                        |                    |                                    |               |                            |
| <b>2 Property subject to section 168(e) (2) election (see instructions):</b>                                                       |                           |                        |                    |                                    |               |                            |
|                                                                                                                                    |                           |                        |                    |                                    |               |                            |
|                                                                                                                                    |                           |                        |                    |                                    |               |                            |
|                                                                                                                                    |                           |                        |                    |                                    |               |                            |
|                                                                                                                                    |                           |                        |                    |                                    |               |                            |
|                                                                                                                                    |                           |                        |                    |                                    |               |                            |
| <b>3 Totals (add amounts in columns C and G)</b>                                                                                   |                           |                        |                    |                                    |               | <i>3,427.10</i>            |
| <b>4 Depreciation from Part II, line 3</b>                                                                                         |                           |                        |                    |                                    |               | <i>2,000.00</i>            |
| <b>5 Total (add column G, lines 3 and 4). Enter this amount on the depreciation expense line (where it applies) of your return</b> |                           |                        |                    |                                    |               | <i>5,427.10</i>            |

See Paperwork Reduction Act Notice on page 1 of the separate instructions.

Form **4562** (Rev. 9-81)

For the year January 1-December 31, 1981, or other tax year beginning 1981, ending 19 OMB No. 1545-0074

Use IRS label. Other-wise, please print or type.

Your first name and last name (if joint return, also enter spouse's name and last name) FD 387-28-9464 516-38-0188 D82 3001

Pre KENT G & VIRGINIA A KOHRING

Cit BRUNEAU ID 83604

Last name

Your social security number

Spouse's social security no.

Your occupation

Spouse's occupation

Presidential Election Campaign Do you want \$1 to go to this fund? Yes No

If joint return, does your spouse want \$1 to go to this fund? Yes No

Note: Checking "Yes" will not increase your tax or reduce your refund.

Filing Status

1 Single

2 Married filing joint return (even if only one had income)

3 Married filing separate return. Enter spouse's social security no. above and full name here

4 Head of household (with qualifying person). (See page 6 of Instructions.) If he or she is your unmarried child, enter child's name

5 Qualifying widow(er) with dependent child (Year spouse died 19 ). (See page 6 of Instructions.)

Check only one box.

For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

Exemptions

Always check the box labeled Yourself. Check other boxes if they apply.

6a Yourself 65 or over Blind

6b Spouse 65 or over Blind

6c First names of your dependent children who lived with you

6d Other dependents: (1) Name (2) Relationship (3) Number of months lived in your home (4) Did dependent have income of \$1,000 or more? (5) Did you provide more than one-half of dependent's support?

6e Total number of exemptions claimed

Enter number of boxes checked on 6a and b

Enter number of children listed on 6c

Enter number of other dependents

Add numbers entered in boxes above

Income

Please attach Copy B of your Forms W-2 here.

If you do not have a W-2, see page 5 of Instructions.

Please attach check or money order here.

7 Wages, salaries, tips, etc.

8a Interest income (attach Schedule B if over \$400 or you have any All-Savers interest)

8b Dividends (attach Schedule B if over \$400)

8c Total. Add lines 8a and 8b

8d Exclusion (See page 9 of Instructions)

8e Subtract line 8d from line 8c (but not less than zero)

9 Refunds of State and local income taxes (do not enter an amount unless you deducted those taxes in an earlier year—see page 9 of Instructions)

10 Alimony received

11 Business income or (loss) (attach Schedule C)

12 Capital gain or (loss) (attach Schedule D)

13 40% of capital gain distributions not reported on line 12 (See page 9 of Instructions)

14 Supplemental gains or (losses) (attach Form 4797)

15 Fully taxable pensions and annuities not reported on line 16

16a Other pensions and annuities. Total received

16b Taxable amount, if any, from worksheet on page 10 of Instructions

17 Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E)

18 Farm income or (loss) (attach Schedule F)

19a Unemployment compensation (insurance). Total received

19b Taxable amount, if any, from worksheet on page 10 of Instructions

20 Other income (state nature and source—see page 11 of Instructions)

21 Total income. Add amounts in column for lines 7 through 20

Adjustments to Income

(See Instructions on page 11)

22 Moving expense (attach Form 3903 or 3903F)

23 Employee business expenses (attach Form 2106)

24 Payments to an IRA (enter code from page 11)

25 Payments to a Keogh (H.R. 10) retirement plan

26 Interest penalty on early withdrawal of savings

27 Alimony paid

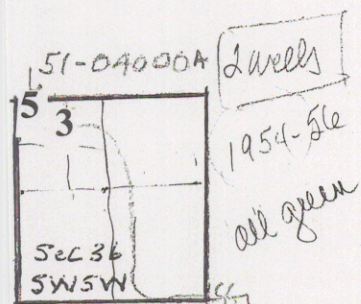
28 Disability income exclusion (attach Form 2440)

29 Other adjustments—see page 12

30 Total adjustments. Add lines 22 through 29

Adjusted Gross Income

31 Adjusted gross income. Subtract line 30 from line 21. If this line is less than \$10,000, see "Earned Income Credit" (line 57) on page 15 of Instructions. If you want IRS to figure your tax, see page 3 of Instructions.



End of initial trenching - 1981 (Per Mr. Robertson  
Latter in 1981 (month later) trench to Robertson house)  
Exhibit A Same rental to Kohring pks

only well 1965  
51-02214 all the brown (land)

Her owned green  
Kent owned brown

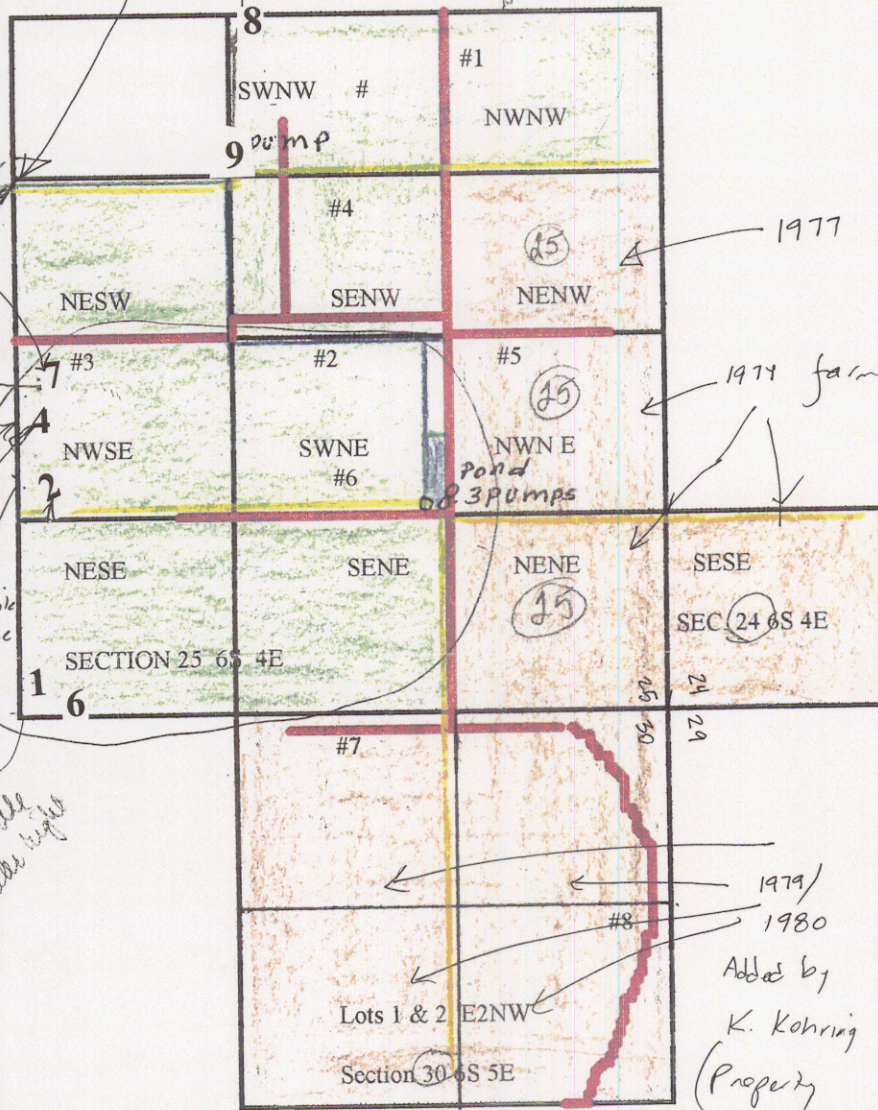
(1975)  
Residence for  
Labor  
(Per Kohring)

Approx  
1 1/4 miles to  
51-04000A  
51-10207  
only well

Robertson  
Davis Road

Kohring  
House  
(1990)

House  
downside  
well -  
separate right

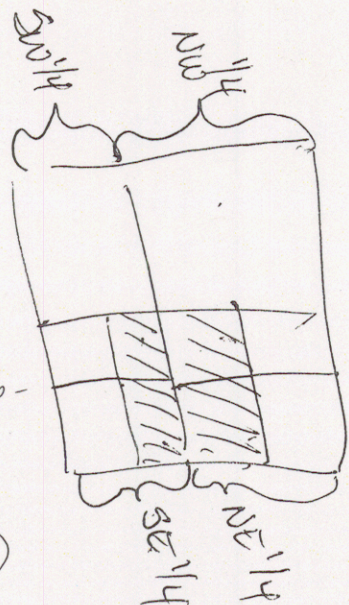


1977 K. Kohring

1974 farmed by K. Kohring

1979/  
1980

Added by  
K. Kohring  
(Property  
leased to  
partnership -  
transferred  
to Tri Vial  
for a time)



Land under 51-04000A

Land under 51-02214

Main Lines

Drain Ditches

Exhibit #D