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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

SEP 23 2004

By _____ Clerk
Deputy Clerk

**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NOS. 29-339B AND 29-339D**

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, Adjudication Bureau Chief

September 23, 2004

I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4) and Administrative Order 1, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") submits this Supplemental Director's Report regarding subcase numbers 29-339B and 29-339D. This report is submitted in response to Special Master Bilyeu's *Amended Order Setting Deadline* for the Department to file its 706 report ("Report"). The Report sets forth the basis of the Department's recommendation for the above-listed water rights and was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill, Jr., Adjudication Bureau Chief for IDWR.

The following Department employees have knowledge of the information contained in the Report: David R. Tuthill, Jr. and Ernest Carlsen, Senior Water Resource Agent, Eastern Region Office in Idaho Falls ("Agent Carlsen").

II. SUMMARY OF THE ISSUES

There are two claimants and two water rights involved in these subcases, which involve recommendations for water rights on Brush Creek. Dennis Owen Thompson claimed 29-339B, and Lamar H. Barnes claimed 29-339D, with Thompson objecting to each recommendation. First, Thompson objected to his own recommendation, 29-339B, stating that, pursuant to a prior decree, he was entitled to more water than the Department recommended. Second, Thompson objected to 29-339D, stating that Barnes had forfeited his right by non-use, or in the alternative, the Department had recommended too much water.

III. BACKGROUND

A. *Hancock et al. v. Bloxham et al.*

The water rights at issue in this Report claim their source as Brush Creek and therefore are derived from *Hancock et al. v. Bloxham et al.* (Fifth Judicial District Court, Bannock County,

May 11, 1909). Attached hereto as Exhibit A is a true and correct copy. In *Hancock*, the court was called upon to adjudicate the waters of Brush Creek. There, the court found that “defendants be, and they are entitled to the use at all times, of all the waters of Brush Creek, . . . for the purpose of irrigation and for domestic and stock purposes, . . . to date from the first day of May 1872.” Instead of dividing the waters of Brush Creek on the basis of volume, the court ordered the implementation of a 204-hour rotation schedule:

. . . said waters of Brush Creek shall be used by the said defendants as follows: The said W.H. Coffin to use all of said waters of said Brush Creek for a period of three consecutive days; the said Herber Bloxham . . . to use all the waters of said Brush Creek for a period of three consecutive days; and the said Fred Aldous to use all the waters of said Brush Creek for a period of two and one half consecutive days, the same to be used alternately to the said parties[.]

B. Water Right Number 29-339B

Water right number 29-339B was claimed by Thompson on March 1, 1990. The Department’s recommendation is consistent with Thompson’s claim for irrigation and stockwater, totaling 1.400 cubic feet per second (“cfs”) for irrigation and .030 cfs for stockwater from Brush Creek, for use on 70 acres of land, with a recommended priority of May 1, 1872. According to the Department’s recommendation, “The amount of time water is diverted under the rights listed below is limited to a combined total of *64 hours out of a 204 hour rotation schedule* as provided for in the decree of *C.B. Hancock v. Herber Bloxham* (Fifth Judicial Dist. Ct., Bannock County, May 11, 1909). Combined rights: 29-339b and 29-11409.” Emphasis added.

On October 4, 2003, Thompson, through his attorney, Randall C. Budge, objected to the Department’s recommendation of his own water right:

Continuously since I purchased the property in 1983 from Robert Wilding I have always used a 3 day-72 hour rotation out of a 204 hour rotation. Similarly, my predecessor in interest, Robert Wilding indicates that he acquired the property

from his father Floyd Wilding who acquired the property from his father Herber Wilding, all of whom continuously used a 3 day-72 hour rotation covering the period from the late 1800s until 1983. Additionally, the predecessor to Heber Wilding was John Bloxham, the original homesteader whose original decreed right was for 3 days of rotation. The decree listed amount of water as "all the waters from said Brush Creek for 3 consecutive days," in the case of Hancock and Bybee vs. Estate of John Bloxham, et. al.

Emphasis added.

C. Water Right Number 29-339D

Water right number 29-339D was claimed by Lamar H. Barnes on April 11, 1990, and is represented by Kent W. Foster. While Barnes claimed .300 cfs for irrigation on 15.0 acres of land, the Department recommended .190 cfs for irrigation on 9.3 acres of land. Barnes' claimed priority date, May 1, 1872, was consistent with the Department's recommendation. According to the Department's recommendation, "The amount of time water is diverted under the rights listed below is limited to a combined total of 30 hours out of a 204 hour rotation schedule as provided for in the decree of C.B. Hancock v. Herber Bloxham (Fifth Judicial Dist. Ct., Bannock County, May 11, 1909). Use of this right with rights listed below is limited to a total combined diversion rate of .19 CFS and to a total combined annual diversion volume of 32.5 AF. Combined rights nos.: 29-339D and 29-4384."

On October 4, 2003, Thompson, through his attorney, objected to the Department's recommendation of Barnes' water right:

The recommended 30 hours out of a 204 hour rotation is excessive and provides far more water that [sic] is needed to fully irrigate the recommended 9.3 acre place of use. It is believed that the place of use has been irrigated under right number 29-4384 and that any right to use this right number 29-339D has been forfeited by nonuse.

IV. DISCUSSION

A. *Hancock* Water Rights

Because the court in *Hancock* decreed the entire flow of Brush Creek pursuant to a rotation schedule, it is appropriate to examine the rights established by the decree and how those rights were claimed and recommended to the SRBA District Court. In *Hancock*, the water rights were decreed as follows:

<u>Basin</u>	<u>Seq.</u>	<u>Suff.</u>	<u>Priority</u>	<u>Days</u>	<u>Hours</u>	<u>Owner List</u>
29	339	A	1872-05-01	3	72	W. H. Coffin
29	339	B	1872-05-01	3	72	Estate of John Bloxham
29	339	C	1872-05-01	2.5	60	Fred Aldous

Total Hours = 204

In the SRBA, water rights from Brush Creek were claimed as follows:

<u>Basin</u>	<u>Seq.</u>	<u>Suff.</u>	<u>Basis</u>	<u>Priority</u>	<u>Q.</u>	<u>Owner List</u>
29	339	A	Decreed	1872-05-01	1.58	Bloxham, Leslie; Bloxham, Louis
29	339	C	Decreed	1872-05-01	2.8	Thompson, Dennis Owen
29	339	D	Decreed	1872-05-01	0.3	Barnes, Lamar H.
29	339	E	Decreed	1872-05-01	0.6	Bloxham, Craig V. Bloxham, Vern C.
29	4370	A	Statutory Claim	1898-04-01	1.4	Thompson, Dennis Owen
29	11409		Beneficial Use	1924-05-01	0.9	Christopherson, Lorna; Mickelson, Barbara
29	11804		Decreed	1872-05-01	2.0	Criddle, Keedrin; Criddle, Steven
29	13475		Decreed	1872-05-01	0.32	Henderson, Roy C.

A comparison of the SRBA claims to the three decreed rights--29-339A, -339B, and -339C--reveals the following association:

Decree: 29-339A claimed as 29-339A by Louis Bloxham.

Decree: 29-339B claimed as 29-339B by Dennis Thompson, and 29-13475 by Roy Henderson.
 Decree: 29-339C claimed as 29-339D by Lamar H. Barnes, 29-339E Vern C. and Craig V. Bloxham, and 29-11804 Steven Criddle.
 Claims: 29-4370A by Dennis Thompson.
 29-11409 by Barbara Mickelson and Lorna Christopherson.

In order to honor the 204-hour rotation established by the court in *Hancock*, the claims were recommended with remarks specifying the number of hours in the rotation:

<u>Basin</u>	<u>Seq.</u>	<u>Suff.</u>	<u>Basis</u>	<u>Priority</u>	<u>Q.</u>	<u>Acres</u>	<u>Remarks</u>
29	339 A		Decreed	1872-05-01	1.58	79.2	72 hours, based on decreed right 29-339A
29	339 B		Decreed	1872-05-01	2.8	70	64 hours, based on portion of decreed right 29-339B
29	339 D		Decreed	1872-05-01	0.3	9.3	30 hours, based on half of decreed right 29-339C
29	339 E		Decreed	1872-05-01	0.6	0	Disallowed per order by IDWR
29	4370 A		Statutory Claim	1898-04-01	1.4	0	Disallowed
29	11409		Beneficial Use	1924-05-01	0.9	5.2	Not included in rotation.
29	11804		Decreed	1872-05-01	2	32	30 hours, based on half of decreed right 29-339C
29	13475		Decreed	1872-05-01	0.32	16	8 hours, based on portion of decreed right 29-339B

The hours recommended for 29-339A, -339B, -339D, -11804, and -13475 total 204.

B. Basis of Recommendation for 29-339B

As Thompson stated in his objection, before he obtained his interest in 29-339B, Robert L. Wilding owned the place of use and accompanying water right. On June 3, 1985, Robert L. Wilding and Louise Wilding, husband and wife, conveyed, by warranty deed, to William Gary Rinehart, a single person, real property in Bannock County. Attached hereto as Exhibit B is a

true and correct copy. The Warranty Deed, which was recorded in Bannock County, was stamped "750790." In addition to the real property, Wilding conveyed to Rinehart

. . . all water rights appertinent thereto; *8 hours per turn of Brush Creek water*; also together with spring and spring house for culinary purposes located approximately 300 feet east of the northern end of the above described parcel and together with an easement sufficient for a 2-inch water line to convey water from said springs to above described parcel and rights for ingress and egress from above described parcel.

Emphasis added.

In *Hancock*, water right 29-339B was decreed 72 hours of Brush Creek water. Therefore, following the conveyance to Rinehart, Wilding retained 64 hours of Brush Creek water.

Rinehart subsequently conveyed his real property interest, along with "8 hours per turn of Brush Creek water" to Roy C. Henderson and Betty Jo Henderson, husband and wife, on June 3, 1985. Attached hereto as Exhibit C is a true and correct copy. The Warranty Deed was recorded in Bannock County and stamped "750791." On March 22, 2004, after receiving no objections, the SRBA District Court partially decreed water right number 29-13475 to Henderson for 8 hours of water from Brush Creek, totaling .32 cfs for irrigation and .02 for stockwater, for use on 16 acres, with a priority of May 1, 1872.¹ Attached hereto as Exhibit D is a true and correct copy.

While Thompson claims in his objection that he "purchased the property in 1983 from Robert Wilding[,]" predating Wilding's 1985 conveyance to Rinehart, Thompson told Agent Carlsen, during a field examination of his property, that he purchased the right in 1990. Confirming this statement is Warranty Deed "90007688," stamped and recorded June 13, 1990 in Bannock County, conveying property from Wilding Ranches, Inc. to Dennis and Jane

¹ According to the partial decree, "The amount of time water is diverted under this water right *is limited to a total of 8 hours out of a 204 hour rotation* as provided for in the decree of C. B. Hancock v. Heber Bloxham (Fifth Judicial Dist. Ct., Bannock County, May 11, 1909)." Emphasis added. The partial decree is therefore consistent with the water conveyed to Henderson in Warranty Deed 750791.

Thompson. Attached hereto as Exhibit E is a true and correct copy. Thompson's statement to Agent Carlsen is also supported by an unsigned 1990 "Resolution" between Wilding and Thompson. Attached hereto as Exhibit F is a true and correct copy. According to the Warranty Deed and the Resolution, Thompson was granted "all water of Brush Creek appurtenant to said real property *except eight (8) hours per irrigation turn which was conveyed to adjacent real property by Warranty Deed No. 750791 in Book 425 of the official records of Bannock County, Idaho*" Emphasis added. Warranty Deed 750791 refers to the 1985 conveyance of real property and 8 hours of water rights from Brush Creek by Rinehart to Henderson, which was partially decreed to Henderson by the SRBA District Court in 29-13475.

C. Basis of Recommendation for 29-339D

According to Thompson's objection, 29-339D should be disallowed because of forfeiture for non-use, or in the alternative, that the hours of rotation are excessive. In order to arrive at the Department's recommendation, Agent Carlsen discussed the issue with Barnes and examined Barnes' claimed place of use. According to Agent Carlsen, Barnes said that he either impounds Brush Creek water in a storage pond situated west of the county road in the SWNE Section 22 T11S R37E, or uses it directly for irrigation of property in the SWNE and SENW Section 22 T11S R37E. Using ArcView computer imagery and 1987/1988 aerial photography, Agent Carlsen determined that Barnes has been irrigating 9.3 acres within his claimed place of use with water from Brush Creek.

The Department's recommendation that Barnes receive 30 hours of Brush Creek water is derived from the *Hancock* decree and historic use.² Furthermore, the express language that Barnes cannot divert more than .190 cfs for use on 9.3 acres ensures that Barnes is limited to

² Decreed right 29-339C received 60 hours of Brush Creek water from the court in *Hancock*. Barnes claimed one-half of 29-339C through 29-339D. The other one-half was claimed by Keedrin and Steven Criddle through 29-11804. Each claim has been recommended by the Department for 30 hours of Brush Creek water.

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irrigating his place of use with approximately no more than one-inch of water per acre. *See* Idaho Code § 42-220.

V. CONCLUSION

The Department's recommendation of water right numbers 29-339B and 29-339D is based on historical evidence and reasonable conclusions. Therefore, the Department respectfully requests that these water rights, as described in the Director's Report, be recommended to the SRBA District Court for partial decree.

Submitted this 23rd day of September, 2004.

A handwritten signature in cursive script, reading "Ernest Carlsen", is written over a horizontal line.

Ernest Carlsen
Senior Water Resources Agent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by electronic mail and United States mail with the correct postage affixed thereto on this 23 day of September 2004.

Document Served: SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NOS. 29-339B AND 29-339D

Persons Served: Randall C. Budge
201 East Center
P.O. Box 1391
Pocatello, Idaho 83204
rcb@racinelaw.net

Kent W. Foster
330 Shoup Avenue, 3rd Floor
P.O. Box 50130
Idaho Falls, Idaho 83405
kfoster@holdenlegal.com



Idaho Department of Water Resources

EXHIBIT A

JUL 13 1959
Department of Reclamation

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2981
Vol 6 Page 11.
File 111721
Buck Creek

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN
FOR BANNOCK COUNTY

C. B. Hancock and J. J. Bybee,
Plaintiffs,

VS.

Heber Bloxham and T. J. Bloxham,
as executors of the estate of
John Bloxham, deceased, and W. H.
Coffin and Fred Aldous,
Defendants.

J U D G M E N T

This cause came on regularly for trial on the 29th day of April, 1909, the same being the adjourned term of the regular March, 1909, term of the above entitled Court, the Honorable Edward A. Walters, Judge of the District Court of the Fourth Judicial District of the State of Idaho, sitting as judge of the above entitled court by request of the Hon. Alfred Budge, the Judge of the said above entitled Court.

Messrs. Gray & Boyd appeared as attorneys for the plaintiffs, and Messrs. Standrod and Terrell, appeared as attorneys on behalf of the defendants and cross complainants.

The Court proceeded to the hearing of the said cause upon the complaint of the plaintiffs and the answer and the amended cross complaint of the defendants. Witnesses were called and testified for and on behalf of the plaintiffs, and the plaintiffs testimony closed, whereupon witnesses were called on behalf of the defendants and cross complainants and documentary evidence having been introduced on their behalf, the testimony of said defendants and cross complainants closed; whereupon rebuttal testimony was offered and submitted on behalf of the plaintiffs, and the testimony on behalf of all the parties to the action closed, and the cause was finally submitted to the Court. And the Court having duly considered all the testimony and the law and being fully advised in the premises, and having made its findings of fact and conclusions of law and ordered that Judgment be entered accordingly;

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It is therefor ordered, adjudged and decreed that the plaintiffs take noting by reason of their complaint herein, and that said complaint be dismissed absolutely;

29-0339 That the defendants be, and they are entitled to the use at all times, of all the waters of Brush Creek, a stream situated near Downey, in Bannock County, State of Idaho, for the purpose of irrigation and for domestic and stock purposes, their right to the use of the same to be of the same priority and of equal dignity and to date from the first day of May 1872.

29-0359A That the said waters of said Brush Creek shall be used by the said defendants as follows: The said W. H. Coffin to use all of said waters of said Brush Creek for a period of three consecutive days; the said 29-0359B Heber Bloxham and T. H. Bloxham as executors of the estate of John Bloxham (the said right to belong to the estate of said John Bloxham) to use all the waters of said Brush Creek for a period of three consecutive days; 29-0359C and the said Fred Aldous to use all the waters of said Brush Creek for a Trans. 284 period of two and one half consecutive days, the same to be used alternately by the said parties;

That the said waters belonging to the said defendant, W. H. Coffin, and to be used by him, as aforesaid, shall become appurtenant to the following described lands:

The Easthalf of the Northeast quarter of Section 27, in township 11, South of Range 37, East of Boise Meridian; Also the east half of the southeast quarter of Section 22, in Township 11, South of Range 37, east of Boise Meridian, except 4.3 acres commencing at the southwest corner of the Northeast quarter of the southeast quarter of Section 22, thence East 18 rods, thence North 39 rods, thence west 17 rods, thence south 39 rods to the place of beginning, heretofore conveyed by W. H. Coffin to John D. Kent;

Also commencing at the Southeast corner of the Northeast quarter of Section 22, in township 11, South of Range 37, East of Boise Meridian, running thence west 1322 feet, thence North 40 rods, thence east 80 rods, thence south 40 rods to the place of beginning containing; 21 acres;

Also commencing at the northwest corner of the northeast quarter of

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the southeast quarter of Section 22, in Township 11, South of Range 37, East of Boise Meridian, running thence West 18 rods, thence South 4°30' east 41 rods, thence East 17 rods, thence north 41 rods, to the place of beginning, containing 4.5. acres.

All of said lands being situated in Bannock County, State of Idaho.

That the said waters belonging to the said defendant, Fred Aldous,^{m 284} and to be used by him as aforesaid, shall become appurtenant to the following described lands:

Commencing at the southeast corner of the northeast quarter of section 22, in Township 11 South of Range 37, East of Boise Meridian, running thence South 78°17' West 1658.5 feet to the place of beginning, thence west 4949 feet, thence north 1020.8 feet, thence east 4868.4 feet; thence south 4°32' East 1024 feet to the place of beginning, containing 53.2^{115.7} acres; Also commencing at the northwest corner of the northeast quarter of the southeast quarter of Section 22, in township 11, South of Range 37, East of Boise Meridian, running thence West 267 feet, thence north 4° 32' west 646 feet, thence east 303 feet thence south 40 rods to the place of beginning, containing 4.2 acres.

All of said lands being situated in Bannock County, State of Idaho. That the said waters belonging to the said defendants Heber Bloxham and T. J. Bloxham, as executors of the estate of John Bloxham, deceased, and to be used by them as aforesaid, shall become appurtenant to the following described lands:

Commencing at the southeast corner of the northeast quarter of section 22, township 11 South of Range 37, East of Boise Meridian, running thence North 68°27' west 1742 feet to the place of beginning; thence North 4°30' West 986.5 feet; thence North 80°8' East 3153 feet; thence south 00°42' east 1465 feet; thence south 85° 19' West 1409 feet; thence South 90° 00' West 1598 feet to the place of beginning containing 85.7 acres situated in Section 22, Township 11, South of Range 37 East of Boise Meridian, in Bannock County, State of Idaho.

That the said plaintiffs, C. B. Hancock and J. J. Rybee, and each of them, and each of their agents, attorneys, counsellors and servants be, and they are hereby perpetually and forever enjoined from using any of

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waters of the
the/said Brush Creek, or interfering in any manner with the use thereof
by the said defendants, and from in any wise interfering with the dams
or ditches used by said defendants in the diversion or conveyance of the
said waters from the said Brush Creek to and upon the lands of the said
defendants, or either of their said lands.

It is further ordered adjudged and decreed that each of the parties
to this action pay the costs therein incurred by him respectively.

Done in open Court this the 11th day of MAY, 1909.

Edward A. Walters,

Presiding District Judge.

10th July 59
Deputy

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources.

Signed this 10 day of July 2004

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EXHIBIT B

The foregoing is a true and certified copy of the document on file at the department of Water Resources.

Signed this 10 day of Sept, 2004
[Signature]

WARRANTY DEED

750790

FOR VALUE RECEIVED *by* ROBERT L. WILDING and LOUISE WILDING
Husband and wife

The Grantors, do hereby grant, bargain, sell and convey unto
WILLIAM GARY RINEHART
A single person

The Grantee, whose address is Downey, Idaho
the following described premises, to-wit:

SEE ATTACHED EXHIBIT "A"

TOGETHER WITH ALL WATER RIGHTS APPURTINENT THERETO; 8 HOURS PER TURN OF BRUSH CREEK WATER; ALSO TOGETHER WITH SPRING AND SPRING HOUSE FOR CULINARY PURPOSES LOCATED APPROXIMATELY 300 FEET EAST OF THE NORTHERN END OF THE ABOVE DESCRIBED PARCEL AND TOGETHER WITH AN EASEMENT SUFFICIENT FOR A 2-INCH WATER LINE TO CONVEY WATER FROM SAID SPRING TO ABOVE DESCRIBED PARCEL AND RIGHTS FOR INGRESS AND EGRESS FROM ABOVE DESCRIBED PARCEL. ABOVE DESCRIBED PARCEL BEING THE LEGAL DESCRIPTION FROM WARRANTY DEED INSTRUMENT NO. 715726.

follows:
GRANTORS RESERVE A 15 FOOT EASEMENT TO SERVICE THE BIG IRRIGATION PUMP AND WELL LOCATED IN THE NORTH CORNER OF THE PROPERTY DESCRIBED ON EXHIBIT A FROM BRUSH CREEK ROAD. *X*

from property east of and adjacent to
WATER RIGHTS NUMBER 29-0340

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances except covenants, conditions, restrictions and easements of record and any assessments for the year 1985 which are not yet due and payable

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: June 3, 1985

Robert L. Wilding
Robert L. Wilding

Louise Wilding
Louise Wilding

STATE OF IDAHO, COUNTY OF BANNOCK

On this 3rd day of June, 1985
before me, a notary public in and for said State, personally appeared
Robert L. Wilding and Louise Wilding

NOTARY SEAL
I, _____, whose name is attested
subscribed to the within instrument, and acknowledged to me
that they executed the same.

Residing at Pocatello, Idaho
Comm. Expires 1st Feb

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at the

NO. 750790
RECORDED AT THE OFFICE OF

PIONEER TITLE CO.
85 JUN -5 NO 50

OFFICIAL STATE OF IDAHO NO. 425
BANNOCK COUNTY, IDAHO
LARRY W. GHAN RECORDER
FEE \$4.00 DEPUTY *[Signature]*

PIONEER TITLE COMPANY
OF BANNOCK COUNTY
Pocatello, Idaho - 208-233-9595

2-2

A tract of land in Section 14, Township 11 South, Range 37 East, Boise Meridian, Bannock County, Idaho described as follows:

Commencing at the Southwest corner of the East Half of the Southwest quarter of said Section 14; thence along the West line thereof North 0°00'56" West 115.50 feet; thence parallel with the South line of said Section 14, South 89°39'00" East 30.00 feet to a half inch iron pin on the East line of Brush Creek Road, the True Point of Beginning;

Thence along the East line of Brush Creek Road, parallel with the West line of the East half of the Southwest Quarter of said Section 14 North 0°00'56" West 857.36 feet; Thence North 11°27'45" East 174.17 feet; thence along a curve to the right through a central angle of 48°56'26" with a radius of 40.00 feet, an arc distance of 34.167 feet; thence North 60°24'11" East 320.46 feet; thence along curve to the right through a central angle of 28°33'40" with a radius of 220.00 feet an arc distance of 109.667 feet; thence North 88°57'51" East 113.36 feet; thence South 87°01'15" East 164.42 feet; thence leaving the South line of Brush Creek Road South 0°17'18" West 117.61 feet; thence South 26°31'37" West 105.39 feet; thence South 12°15'07" West 31.44 feet; thence South 1°02'10" East 93.16 feet; thence South 84°32'35" East 19.26 feet; thence North 82°02'56" East 199.91 feet; thence North 87°49'25" East 21.43 feet; thence South 77°38'57" East 14.41 feet; Thence South 65°35'34" East 289.24 feet; thence South 63°31'29" East 123.89 feet; thence South 59°34'58" East 25.94 feet, thence South 48°02'20" East 29.30 feet; thence South 11°12'07" East 46.15 feet; thence South 19°27'11" West 22.99 feet; thence South 32°26'26" West 22.39 feet, thence South 71°00'19" West 23.47 feet; thence South 83°27'16" West 20.43 feet; thence South 87°38'51" West 177.14 feet; thence South 61°40'22" West 92.50 feet; thence South 27°46'07" West 34.06 feet; thence South 55°30'35" West 27.95 feet; thence South 87°29'55" West 72.71 feet; thence North 87°41'09" West 135.48 feet; thence South 15°03'56" West 267.98 feet; thence South 17°31'40" West 283.35 feet to the North line of England Road, being 115.50 feet North of the South line of said Section 14; thence parallel with the South line of said Section 14, along the North line of England Road, North 89°39'00" West 619.45 feet to the True Point of Beginning

The termini of the courses herein described is marked with a 1/2 inch iron pin tagged L.S. 4473 and is shown on the map of a survey of the described parcel, Recorded May 24, 1985, Instrument Number 750008.

EXCEPT

Beginning at a point 7 rods North of Southwest Corner of the Southeast Quarter of Southwest Quarter of Section 14, Township 11 South, Range 37 East, Boise Meridian; thence running East 198 feet, more or less, thence North 660 feet, more or less, thence West 190 feet, more or less, to the East side of Brush Creek Road, more or less, thence South 660 feet, more or less, to the True Point of Beginning.

MICROFILMED
NOV 13 1985

EXHIBIT C

Signed this 10 day of May, 2004


750791

WILLIAM GARY RINEHART
A single person

ROY C. HENDERSON and BETTY JO HENDERSON
Husband and wife

split from 29-339C

SEE ATTACHED EXHIBIT "A"

TOGETHER WITH ALL WATER RIGHTS APPERTINENT THERETO; ~~WARRANTY DEED INSTRUMENT NO. 750790~~ CREEK
ALSO TOGETHER WITH SPRING AND SPRING HOUSE FOR CULINARY PURPOSES LOCATED
APPROXIMATELY 300 FEET EAST OF THE NORTHERN END OF THE ABOVE DESCRIBED PARCEL
AND TOGETHER WITH AN EASEMENT SUFFICIENT FOR A 2-INCH WATER LINE TO CONVEY WATER FROM
SAID SPRING TO ABOVE DESCRIBED PARCEL AND RIGHTS FOR INGRESS AND EGRESS FROM ABOVE
DESCRIBED PARCEL. ABOVE DESCRIBED PARCEL BEING THE LEGAL DESCRIPTION FROM
WARRANTY DEED INSTRUMENT NO. 715726.

WARRANTY DEED INSTRUMENT NO. 750790

WATER RIGHTS NUMBER 29-0340

and that he will warrant and defend the same from all lawful claims whatsoever.

William Gary Rixhart

On this 4th day of June, 1985, before me, a notary public in and for said State, personally appeared

known to me to be the person whose name is
subscribed to this instrument, and acknowledged to me
that he executed the same.

Idaho

Mail to:

**PIONEER TITLE COMPANY
OF BANNOCK COUNTY**
Pocatello, Idaho - 208-233-9595

2-2

A tract of land in Section 14, Township 11 South, Range 37 East, Boise Meridian, Bannock County, Idaho described as follows:

Commencing at the Southwest corner of the East Half of the Southwest quarter of said Section 14; thence along the West line thereof North 0°00'56" West 115.50 feet; thence parallel with the South line of said Section 14, South 89°39'00" East 30.00 feet to a half inch iron pin on the East line of Brush Creek Road, the True Point of Beginning;

Thence along the East line of Brush Creek Road, parallel with the West line of the East half of the Southwest Quarter of said Section 14 North 0°00'56" West 857.36 feet; Thence North 11°27'45" East 174.17 feet; thence along a curve to the right through a central angle of 48°56'26" with a radius of 40.00 feet, an arc distance of 34.167 feet; thence North 60°24'11" East 320.46 feet; thence along curve to the right through a central angle of 28°33'40" with a radius of 220.00 feet an arc distance of 109.667 feet; thence North 88°57'51" East 113.36 feet; thence South 87°01'15" East 164.42 feet; thence leaving the South line of Brush Creek Road South 0°17'18" West 117.61 feet; thence South 26°31'37" West 105.39 feet; thence South 12°15'07" West 31.44 feet; thence South 1°02'10" East 93.16 feet; thence South 84°32'35" East 19.26 feet; thence North 82°02'56" East 199.91 feet; thence North 87°49'25" East 21.43 feet; thence South 77°38'57" East 14.41 feet; Thence South 65°35'34" East 289.24 feet; thence South 63°31'29" East 123.89 feet; thence South 59°34'58" East 25.94 feet; thence South 48°02'20" East 29.30 feet; thence South 11°12'07" East 46.15 feet; thence South 19°27'11" West 22.99 feet; thence South 32°26'26" West 22.39 feet; thence South 71°00'19" West 23.47 feet; thence South 83°27'16" West 20.43 feet; thence South 87°38'51" West 177.14 feet; thence South 61°40'22" West 92.50 feet; thence South 27°46'07" West 34.06 feet; thence South 55°30'35" West 27.95 feet; thence South 87°29'55" West 72.71 feet; thence North 87°41'09" West 135.48 feet; thence South 15°03'56" West 267.98 feet; thence South 17°31'40" West 283.35 feet to the North line of England Road, being 115.50 feet North of the South line of said Section 14; thence parallel with the South line of said Section 14, along the North line of England Road, North 89°39'00" West 619.45 feet to the True Point of Beginning

The termini of the courses herein described is marked with a 1/2 inch iron pin tagged L.S. 4473 and is shown on the map of a survey of the described parcel, Recorded May 24, 1985, Instrument Number 750008.

MICROFILMED

NOV 13 1985

EXHIBIT D

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

In Re SRBA

Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 29-13475

NAME AND ADDRESS:

ROY C HENDERSON
6593 E BRUSH CREEK RD
DOWNEY, ID 83234

SOURCE:

BRUSH CREEK TRIBUTARY: MARSH CREEK

QUANTITY:

0.32 CFS

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

The amount of time water is diverted under this water right is
limited to a total of 8 hours out of a 204 hour rotation as
provided for in the decree of C. B. Hancock v. Heber Bloxham
(Fifth Judicial Dist. Ct., Bannock County, May 11, 1909).

PRIORITY DATE:

05/01/1872

POINT OF DIVERSION:

T11S R37E S14

NWSESW

Within Bannock County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
Irrigation
Stockwater

PERIOD OF USE
04-01 TO 10-31
01-01 TO 12-31

QUANTITY
0.32 CFS
0.02 CFS

PLACE OF USE:

Irrigation

T11S R37E S14

SESW 16.0

16.0 Acres Total

Within Bannock County

Stockwater

Same as Irrigation

Within Bannock County

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

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

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

RULE 54(b) CERTIFICATE

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

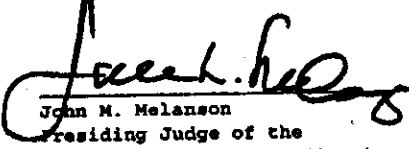

John M. Melanson
Residing Judge of the
Snake River Basin Adjudication

EXHIBIT E

3-1

90007688

90007688

WARRANTY DEED

FOR VALUE RECEIVED, Wilding Ranches, Inc., an Idaho Corporation, as Grantor hereby grants sells and conveys to Dennis Owen Thompson and Patricia Jane Thompson as Grantees, whose address is 207757 S. Simpson Rd., Downey, Idaho, the following described real property situate in Bannock County, Idaho, to wit:

PARCEL 1:

Township 11 South, Range 37 East, Boise Meridian, BANNOCK COUNTY, IDAHO,

Section 22: Beginning at a point 162 feet South of the Southwest corner of the Northeast 1/4 Northeast 1/4 of Section 22; thence North 521 feet; thence North 80°16' East, 2277.6 feet; thence North 80°48' East, 402.1 feet, more or less to the West 1/16 line of Section 23; thence Southerly along said West 1/16 line 697 feet; thence South 84°00' West, 2660.5 feet to the POINT OF BEGINNING.

Together with all water, water rights and ditches appurtenant to the above described real property including but not limited to:

a). An undivided third (1/3) of all water flowing into Brush Creek from a free flowing well which right was reserved to Grantor, or its predecessors, in that certain Warranty Deed recorded as Instrument No 750790 in Book 425 of the official records of Bannock County, Idaho and which is evidenced by Licence 29-02448 of the Idaho Department of Water Resources; and

b). all water of Brush Creek appurtenant to said real property except eight (8) hours per irrigation turn which was conveyed to adjacent real property by Warranty Deed No. 750791 in Book 425 of the official records of Bannock County, Idaho and which is evidenced by Licence Numbers A29-00339C and A29-04370A.

part of
Brush
Creek
Water
in 100
order

JONES, CHRISTENSEN, JOHNSON, ROBINSON,
HOLMES and ROBINSON, Chartered
P.O. BOX 988 - 404 WEST WYATT ROAD
POCAHONTAS, IDAHO 83429

Pay
Number

3-2

90007688

PARCEL 2:

A 5.60 Acre tract in the NW1/4NW1/4 of Section 23, T11S, R37E, B.M., Bannock County, Idaho, to-wit:

Beginning at the intersection of the Northerly Right of Way fence of the Brush Creek Road and the West line of Section 23, T11S, R37E, B.M., said point being S 0°01'50"E 679.16 ft from the Northwest Corner of said Section 23; thence N 80°16'E 676.16 ft along said fence; thence North 164.77 ft; thence S 87°57'55" W 47.15 ft; thence N 0°07'36" W 158.69 ft; thence S 89°38'02" W. 619.20 ft to the West line of said Section 23; thence S 0°01'50" E 432.14 ft to the Point of Beginning.

Together with all water, water rights, ditches and buried pipelines appurtenant to the real property above described in Parcel 2 including the right to the continuous flow of .030 C.F.S. of water flowing to said real property through a pipeline from an unnamed spring which arises in the SE1/4 of the NW1/4 or of the NW1/4 of Section 23, Township 11 South, Range 37 E.B.M.;

Together with a 36' by 60' machine storage Quonset on cement foundation, mangers on cement pad, a cinderblock building and two wood graineries.

Together with all appurtenances, improvements and the rents, issues and profits thereof including all oil, petroleum, gas, coal, hydrocarbon substances, phosphate and all other minerals of every kind and character in or under the real property above described in Parcels 1 and 2.

Subject to:

all taxes and assessments, levied or assessed in 1990 and all subsequent years; and

all rights of way, easements, covenants, reservations and restrictions of record against both parcels the real property above described.

Grantor hereby covenants with Grantees, their heirs and assigns, that Grantor is the owner in fee simple of said real property and all appurtenances; that the same are free of all liens and encumbrances, not hereinabove set forth and Grantor will

WARRANTY DEED
0563D

-2-

JONES, CHRISTENSEN, JORGENSEN, ROBINSON,
HOLMES and ROBINSON, Chartered
P.O. BOX 95 - ARMY VETERANS
POZARELLO, CALICO BIRM

90007688

warrant and defend said real property and all appurtenances from all lawful claims whatsoever.

IN WITNESS WHEREOF, This Deed was executed this 13th day of June, 1990.

WILDING RANCHES, INC.

BY Robert L. Wilding
President

ATTEST: Robert L. Wilding
Secretary

CORPORATE SEAL

STATE OF IDAHO)
County of Bannock) ss

On this 13th day of June, 1990, before me the undersigned notary public, personally appeared ROBERT L. WILDING, known or identified to me to be the president of Wilding Ranches, Inc., the corporation that executed the foregoing instrument and acknowledged to me that said corporation 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.

Butterfly County
Notary Public
Residing at Butterfly, Idaho
My Commission Expires: 1-14-92

Notary Seal

90007688
NO. RECORDED AT REQUEST OF
AMERICAN LAND TITLE CO.

90 JUN 15 P4:49

OPEN TO ALL BY M. 524
BANNOCK COUNTY IDAHO
LARRY W. CHANER CORNER
SEE 200 DEPT. MR.

WARRANTY DEED
0563D

-3-

JONES, CHRISTENSEN, JORGENSEN, ROBINSON,
HOLMES and JOHNSON, Chartered
P.O. BOX 80 - AMERICAN
MILWAUKEE, WISCONSIN

08/25/2004 11:19
T T 110.

2008975228

Kenny O'vage

I Bought this Property At two different times. $\frac{1}{2}$ I Bought in 1983 From Robert Wildin & Borrowed the money from then Downey State Bank. I cant find that warranty Deed. the other $\frac{1}{2}$ I Bought in 1990 As evidenced by warranty deed dated such. ~~at that time~~ and that was bought in 1990 was leased by me from 1983 to 1990 Thanks

Dennis Thompson

EXHIBIT F

RESOLUTION

RESOLVED, that Robert L. Wilding, the President of Wilding Ranches, Inc., an Idaho Corporation, is hereby authorized to execute, on behalf of the Corporation, all documents necessary to sell for \$ _____, cash and convey by Warranty Deed to Dennis Owen Thompson and Patricia Jane Thompson all the corporation's right, fee simple title in the following described property to wit:

REAL PROPERTY:

PARCEL 1:

Township 11 South, Range 37 East, Boise Meridian,
BANNOCK COUNTY, IDAHO,

Section 22: Beginning at a point 162 feet South of the Southwest corner of the Northeast 1/4 Northeast 1/4 of Section 22; thence North 521 feet; thence North 80°16' East, 2277.6 feet; thence North 80°48' East, 402.1 feet, more or less to the West 1/16 line of Section 23; thence Southerly along said West 1/16 line 697 feet; thence South 84°00' West, 2660.5 feet to the POINT OF BEGINNING.

Together with all water, water rights and ditches appurtenant to the above described real property including but not limited to:

a). An undivided third (1/3) of all water flowing into Brush Creek from a free flowing well which right was reserved to Grantor, or its predecessors, in that certain Warranty Deed recorded as Instrument No 750790 in Book 425 of the official records of Bannock County, Idaho and which is evidenced by Licence 29-02448 of the Idaho Department of Water Resources; and

b). all water of Brush Creek appurtenant to said real property except eight (8) hours per irrigation turn which was conveyed to adjacent real property by Warranty Deed No. 750791 in Book 425 of the official records of Bannock County, Idaho and which is evidenced by Licence Numbers A29-00339C and A29-04370A.

*8 hours to
Henderson.*

PARCEL 2:

A 5.60 Acre tract in the NW1/4NW1/4 of Section 23, T11S, R37E, B.M., Bannock County, Idaho, to-wit:

Beginning at the intersection of the Northerly Right of Way fence of the Brush Creek Road and the West line of Section 23, T11S, R37E, B.M., said point being S 0°01'50"E 679.16 ft from the Northwest Corner of said Section 23; thence N 80°16'E 676.16 ft along said fence; thence North 164.77 ft; thence S 87°57'55" W 47.15 ft; thence N 0°07'36" W 158.69 ft; thence S 89°38'02" W. 619.20 ft to the West line of said Section 23; thence S 0°01'50" E 432.14 ft to the Point of Beginning.

29-10393 - Together with all water, water rights, ditches and buried pipelines appurtenant to the real property above described in Parcel 2 including the right to the continuous flow of .030 C.F.S. of water flowing to said real property through a pipeline from an unnamed spring which arises in the SE1/4 of the NE1/4 of the NW1/4 of Section 23, Township 11 South, Range 37 E.B.M.;

Together with a 30' by 60' machine storage Quonset on cement foundation, manglers on cement pad, a cinderblock building and two wood graineries.

Together with all appurtenances, improvements and the rents, issues and profits thereof including all oil, petroleum, gas, coal, hydrocarbon substances, phosphate and all other minerals of every kind and character in or under the real property above described in Parcels 1 and 2.

Subject to:

all taxes and assessments, levied or assessed in 1990 and all subsequent years; and

all rights of way, easements, covenants, reservations and restrictions of record against both parcels the real property above described.

PERSONAL PROPERTY:

The sprinkling system situate upon the above described real property which includes:

Two (2) quarter (1/4) mile lines of used four (4) inch sprinkler pipe.

One (1) used Gorman-Rupp 30 horsepower irrigation pump.

One-half (1/2) mile of portable used six (6) and eight (8) inch mainline.

CERTIFICATE

I, the undersigned Secretary of Wilding Ranches, Inc., an Idaho Corporation, do hereby certify that the above Resolution is full, true, and correct copy of a Resolution duly adopted by the Board of Directors of the Corporation at a meeting of said board, duly called and held on the _____ day of _____, 19____, and at which a quorum of said board was present on the date stated therein, and that said Resolution is duly entered upon the minute book of the corporation, and that it is in full force and effect at this date.

DATED This _____ day of _____, 1990.

Secretary