

EDWIN L. LITTENEKER
ATTORNEY AT LAW

RECEIVED

SEP 30 2004

P.O. Box 321
322 Main St. DEPARTMENT OF
Lewiston, ID 83501 WATER RESOURCES
Telephone: 208-746-0344
Facsimile: 208-798-8387
Email: ellatlaw@lewiston.com

September 28, 2004

IDWR State Office
P.O. Box 83720
Boise, ID 83707-9815

Re: Waha Glen Water District
Water Right Claim Nos. 85-4038 & 85-11536

To Whom It May Concern:

Please be advised that I represent Waha Glen Water District. I have enclosed the District's Notice of Error Reply, along with supporting documentation contesting the proposed recommendation of the IDWR to disallow the water right claims of the Waha Glen Water District.

I look forward to receiving your reply.

Sincerely yours,



Edwin L. Litteneker
Attorney at Law

ELL:dh

Enc.

cc: Pete Gertonson

RECEIVED

SEP 30 2004

DEPARTMENT OF 08/20/2004
WATER RESOURCES

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR to know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: September 30, 2004

Water right number: 85-4038

WAHA GLEN WATER DISTRICT
40032 WAHA GLEN ROAD
LEWISTON, ID 83501
Telephone Number: (208) 746-6966

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Waha Glen Water District disagrees with the recommendation that no lawful appropriation has been shown.

2. Describe the changes you wish to make in the proposed recommendation:

Waha Glen Water District asks the IDWR to confirm Waha Glen Water District's statutory claim, demonstrating an appropriation for water systems use with a priority date of 6/1/1945.

3. Give a brief explanation as to why you disagree with these portions:

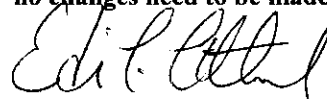
Waha Glen Water District serves the residents of Waha Glen, a residential subdivision of Nez Perce County originally platted in July 1931. (See Exhibit 1.) Waha Glen Water District was created by Court Order in May 1978. (See Exhibit 2.) Waha Glen Water District previously submitted a claim in 1989. (See Exhibit 3.) Though the District was not formed until 1978 the residents utilized a community water system, which was sold to the District in 1979. (See Exhibit 4.) The District serves an area that has utilized the primary well site since the original Waha Store opened in 1892. (See Exhibit 5.)

___ I AGREE with this proposed recommendation: no changes need to be made.

DATE:

09/28/04

SIGNATURE:



Please print your name: Edwin L. Litteneker
Attorney for Waha Glen Water District

IDWR State Office, P.O. Box 83720, Boise, ID 83707-9815

EXHIBIT '1'

State of Idaho } ss
County of Nez Perce }

[illegible]

Witness:
A. H. Eubank
James H. Harned (and)
Granada T. Harned (and)

State of Maine }
County of Waldo }

1. Wednesday, 14th July 1902, the 1st day of July 1902, before me Edmund
W. Johnson of the County of County residing at London
and London England known to me to be the persons whose names are
 subscribed to the foregoing instrument and acknowledging to me that they executed the
 same for the purposes and consideration therein expressed.
 I have hereunto set my hand and affixed my
 stamp this 14th day and year. First edition written.
 By Edmund Johnson Esq.
 My Commission expires 14th July 1902

NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9
Twp 33 N., R. 4 W.B.M.

[illegible]

W. H. L. - Inc. - 134
County Engineer

State of Idaho } as
County of Nez Perce }
On this 28th day of July, 1921, before me, the undersigned, a notary public in and for the State of Idaho personally appeared W. F. Hughes known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. In witness whereof I have hereunto set my hand and seal the 28th day of July, 1921.

W. 35th St. & 16th St.

W. 36th St.

W. 37th St.

Public Alley

Block 1

Block 2

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SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9
Twp 33 N., R. 4 W.B.M.

CASE # 58
 (see certificate # 353598 6-2-71)
 (original filed vault)
 (see certificate # 3535460 1-2-72)
 (original filed vault)
 see # 370687 Cuban Economy Review 1/10/69
 North

Plat of WAHA GIEN

Wahne, New Pecos County, Idaho.
Part of W¹/₂ of SW¹/₄ of Section 9 T.23N.R.4W.M.
Scale of 1 inch=100 feet.
July 1931.

J, W, N,

Religions:

MICROFILM NO. 351398

AFFIDAVIT OF CORRECTION TO PLAT

RECEPTION (4)
INDEXED (1)
FILMED (1)
DELIVERED (1)

We, the undersigned, do hereby certify that the plat of Waha Glen, Waha, Nez Perce County, State of Idaho, recorded on Page 100 of Book No. 1 of plats as instrument No. 138181 contains the following discrepancies:

1. The Engineer's Certificate which reads "commencing at a point on the South line of Section 9 of Township 33 North, Range 4 West, B.M. at a distance of 568.84 feet East of the Southwest corner of said Section 9" should in fact read "commencing at a point 474.31 feet due East and 12.31 feet due North of the Southwest corner of Section 9, Township 33 North, Range 4 West, B.M.; as re-established by Nez Perce County.
2. The dimension of 341.12 feet in the second paragraph as shown incorrectly in the Engineer's Certificate as 341.12 feet should in fact be shown as 339.20 feet.
3. The numerical designation of Lot Number "16" adjacent to Lot 14 is incorrectly shown and should in fact be shown as Lot Number 15, Block 1, Waha Glen.

Terry R. Rudd
TERRY R. RUDD, REGISTERED LAND SURVEYOR

H. Gerald Hendrix
H. GERALD HENDRIX

Warren S. Watts
WARREN S. WATTS, CITY ENGINEER &
ACTING COUNTY ENGINEER

Jeanetta Kay Hendrix
JEANETTA KAY HENDRIX

Edgar O. Hull Jr.
EDGAR O. HULL, JR.

Harvey E. Hartley
HARVEY E. HARTLEY

Marian L. Hartley
MARIAN L. HARTLEY

On this 24th day of May, 1971, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Terry R. Rudd, Warren S. Watts, H. Gerald Hendrix, Jeanetta Kay Hendrix, Edgar O. Hull, Jr., Harvey E. Hartley, and Marian L. Hartley, known to me to be the persons whose names are subscribed to the above instrument and in my presence executed same.

In Witness Whereof, I have set my hand and official seal this 24th day of May, 1971

Norma C. Platon
NOTARY PUBLIC IN AND FOR THE STATE OF IDAHO
RESIDING AT LEWISTON, IDAHO

DATE

May 24, 1971

INST. NO. 351398
FILED FOR RECORD
REQUESTED BY John Hendrickson
FEE \$1.00 for Western Appraisals

71 JUN -7 AM 11:07

JAMES E. LLOYD
RECORDER, NEZPERCE COUNTY, IDAHO
BY _____ DEPUTY James E. Lloyd

MICROFILM No. 356460

RECEPTION
INDEXED
FILMED
DELIVERED

SECOND AFFIDAVIT OF CORRECTION TO PLAT

THIS SUPERSEDES AFFIDAVIT OF CORRECTION TO PLAT RECORDED JUNE 7, 1971

We, the undersigned, do hereby certify that the plat of Waha Glen, Waha, Nez Perce County, State of Idaho, recorded on Page 100 of Book No. 1 of Plats as Instrument No. 138181 contains the following discrepancies:

1. The Engineer's Certificate which reads "commencing at a point on the South line of Section 9 of Township 33 North, Range 4 West, B.M. at a distance of 568.84 feet East of the Southwest corner of said Section 9", should in fact read "commencing at a point 502.1 feet due East and 15.11 feet due North of the Southwest corner of Section 9, Township 33 North, Range 4 West, B.M. as re-established by Nez Perce County".

2. The dimension of 341.12 feet in the second paragraph as shown incorrectly in the Engineer's Certificate as 341.12 feet should in fact be shown as 339.20 feet.

3. The numerical designation of Lot No. "16" adjacent to Lot 14 is incorrectly shown and should in fact be shown as Lot No. "15", Block 1, Waha Glen.

Terry R. Rudd
TERRY R. RUDD, REGISTERED LAND SURVEYOR

H. Gerald Hendrix
H. GERALD HENDRIX

Warren S. Watts
WARREN S. WATTS, ENGINEER

Jeanetta Kay Hendrix
JEANETTA KAY HENDRIX

Edgar O. Hull, Jr.
EDGAR O. HULL, JR.

Harvey E. Hartley
HARVEY E. HARTLEY

Marian L. Hartley
MARIAN L. HARTLEY

On this 25 day of JANUARY, 1972, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Terry R. Rudd, Warren S. Watts, H. Gerald Hendrix, Jeanetta Kay Hendrix, Edgar O. Hull, Jr., Harvey E. Hartley, and Marian L. Hartley, known to me to be the persons whose names are subscribed to the above instrument and in my presence executed same.

In Witness Whereof, I have set my hand and official seal this 25th day of JANUARY, 1972.

James E. Lloyd
NOTARY PUBLIC IN AND FOR THE STATE OF IDAHO
RESIDING AT Lewiston, Idaho.

1-25-72
DATE

James E. Lloyd

JAN 27 1972

Fee \$1.00 Dorothy Brown

KEETON and TAIT
PAUL C. KEETON
Attorney at Law
312 Miller Street
P.O. Drawer E
Lewiston, ID 83501
(208) 743-6231

FILED
2:50 P. CLOCK P
MAY 24 1978
JAMES LLOYD
Clerk of the District Court
Marine Allen
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

In the Matter of the) Case No. 38344
WAHA GLEN WATER DISTRICT.) Order

A motion having been made for a order of this Court requiring the polls to be kept open until the hour of 8:00 p.m. on the 14th day of June, 1978, which is the day of the election to either create or reject the above named water district and to elect a board of directors for said district.

That the undersigned Judge of the District Court having found good reason to grant said motion, now makes the following orders:

That on the 14th day of June, 1978, which is the day for the election in the above entitled district, that the polls be kept open between the hours of 9:00 a.m. and 8:00 p.m., so that all persons residing in the district will have full opportunity to cast their ballots.

It is ordered that a copy of this order be posted in the Waha Store which has been designated as the polling place for said election for at least ten days prior to the time fixed for said election.

DATED this 24th day of May, 1978.

I, James E. Lloyd, Clerk of the above entitled Court do hereby certify the foregoing to be a full, true and correct copy of the original Order in the above entitled case as the same now appears on file and of record in my office.

JOHN H. MAYNARD
Judge

WITNESS my hand and official seal this MAY 24 1978

Order

JAMES E. LLOYD, Clerk

By *Marine Allen*
Deputy

LAW OFFICES OF
KEETON AND TAIT
LEWISTON, IDAHO

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

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

CIVIL CASE NUMBER: 39576

Ident. Number 85-4038
Date Received: 3/10/1989
Receipt No: C005749
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

WAHA GLEN WATER DIST
19 WAHA GLEN
LEWISTON ID

Phone: (208)743-5765
83501

2. Date of Priority: 06/01/1945

3. Source: GROUND WATER , GROUND WATER Trib. to: ,

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
33N	04W	9	NW SW SW	NEZ PERCE	
33N	04W	9	SE NW SW	NEZ PERCE	

5. Description of diverting works:

606' DEEP WELL PUMPED TO RES. AND DELEVERED TO HOMES.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
~~DOMESTIC~~	1/01	12/31	0.12	

7. Total Quantity Appropriated is:
0.12 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
33N	04W	8	NE	SE	~~DOMESTIC~~	
			SE	SE	~~DOMESTIC~~	
33N	04W	9	NW	SW	~~DOMESTIC~~	
			SW	SW	~~DOMESTIC~~	
			SE	SW	~~DOMESTIC~~	
			SW	NW	~~DOMESTIC~~	
			NE	SW	~~DOMESTIC~~	
33N	04W	16	NW	NW	~~DOMESTIC~~	
			NE	NW	~~DOMESTIC~~	

11. Place of use in counties: NEZ PERCE

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

13. Other Water Rights Used:

14. Remarks:

PRIORITIES ARE 6-1-1945 OF .12 CFS & 4-1-1957 OF .52 CFS.

15. Basis of Claim: Statutory Claim

A G R E E M E N T

THIS INDENTURE Made this 23rd day of December, 1977, by and between EDGAR O. HULL, JR. and LORRAINE HULL, his wife, first parties, hereinafter called "Hulls", and ADOLPH RICCI, ROBERT GRIMM, GARY DODGE, RONALD HORN, and JAMES D. DANIEL, second parties, hereinafter called the "Landowners",

WITNESSETH, That

WHEREAS, the said Edgar O. Hull, Jr. has developed that certain real property situate in the County of Nez Perce, State of Idaho, more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein as though fully set forth herein, which said real property was acquired from Harvey Hartley and Marian Hartley, husband and wife, and is hereinafter referred to as the "Waha Subdivision", and

WHEREAS, various parcels of the Waha Subdivision have heretofore been sold, or have been contracted to be sold to various parties, and

WHEREAS, Hulls remain the owners of 23 parcels of land within the Waha Subdivision, which they propose to sell, and which are hereafter more specifically described, and

WHEREAS, Landowners are all owners of land or contract interests in land in the Waha Subdivision, and

WHEREAS, Hulls, as a part of the development of the Waha Subdivision, have developed a water system, consisting of wells, a spring, reservoirs, pumps and a water transmission and distribution system for the supplying of water to Landowners and contract purchasers within the Waha Subdivision, and

WHEREAS, in connection with such water system, Hulls have acquired various water permits from the State of Idaho, including a water permit on Blue Lake, which said Blue Lake permit is not included in this transaction, and

WHEREAS, as a part of the development of the Waha Subdivision, Hulls have reserved various roadways for use by the general public, and

WHEREAS, Hulls are obligated to furnish water to owners and contract purchasers of land within the Waha Subdivision, and

WHEREAS, Hulls have agreed to transfer to Landowners, by quitclaim deed, any interest held by Hulls in and to said roadways in the Waha Subdivision, and

WHEREAS, Hulls have further agreed to transfer to Landowners their water rights, and the water system serving the Waha Subdivision (except those held in connection with Blue Lake, which is not involved herein), upon the terms herein provided, and

WHEREAS, Hulls have further agreed to transfer to Landowners an inventory of pipe, pipe-fittings, valves, bolts and plans for a proposed second reservoir upon the Waha Subdivision, upon the terms herein provided,

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows, to-wit:

1. ROADWAYS

Hulls will, contemporaneously herewith, transfer and quitclaim to Landowners all interest of Hulls in road right of ways now existing within the Waha Subdivision. Hulls have no responsibility concerning construction, maintenance or repair of any such roadways, and no such obligation shall be assumed by Landowners, by reason of their acceptance of such deed.

2. WATER SYSTEM

Hulls will, contemporaneously herewith, convey and quitclaim to Landowners, Hulls' interest in the water system serving the Waha Subdivision, including two drilled wells and one hand-dug well, spring, existing reservoir and pump-house, and additional reservoir site, and all water works, water lines and water distribution system, including all easements in connection with water transmission and distribution within the Waha Subdivi-

sion, in which Hulls have any interest. In addition, Hulls will, contemporaneously herewith, transfer to Landowners by Bill of Sale, one Jacuzzi 5 hp. 3-phase pump, Model No. 2341172003, one 25 hp. Reliance motor, No. PCBG-11C-G7-TA, one Aurora pump, one chlorinator tank, and Wallace and Ternan Phase 94 solution metering pump. In addition, Hulls will assign to Landowners all State of Idaho water permits held by them in connection with the Waha Subdivision, excepting that relating to Blue Lake, which is not involved. All of such assets are herewith referred to, in total, as the "Water System".

3. CONSIDERATION

No monetary consideration shall be paid by Landowners to Hulls for the transfer of such road easements and Water System. However, in consideration of such transfer, Landowners agree to do and perform the agreements and covenants of this contract, agreed to be done and performed by said Landowners.

4. DELIVERY OF WATER AND SYSTEM MAINTENANCE

As of the effective date hereof, Landowners assume the obligation of maintaining and repairing the water system serving the Waha Subdivision, and further assume all contract and other obligations of Hulls for the delivery of water to landowners and contract purchasers of land within the Waha Subdivision, and will save and hold Hulls harmless from any liability in connection with the maintenance and repair of such system, and further in connection with the delivery of water to said Landowners, and contract purchasers, and will, at their expense, defend Hulls in any suit or proceeding attempting to establish any obligation or liability on the part of Hulls in connection with the maintenance of such Water System or the delivery of such water.

5. EFFECTIVE DATE AND PRORATION OF RECEIPTS

The effective date of this agreement for all purposes shall be December 1, 1977. All receipts of the Water System serving the Waha Subdivision

shall be prorated as of the effective date. All receipts of such system accruing prior to the effective date shall be the property of Hulls. All such receipts accruing after the effective date shall be the property of the Landowners.

6. UNSOLD PARCELS

The Hulls have 23 additional parcels of land to be developed and sold in the Waha Subdivision, which will require water service, and which are hereafter described. Those parcels identified by parcel number refer to the numbers upon survey map prepared by James W. Grow & Associates, a copy of which is in the possession of the Landowners.

The 23 water rights are situate in Nez Perce County, Idaho, and are as follows:

One each on Parcels Nos. 35 through 42, approximately five acres each, total 44 acres, total of 8 parcels. One each on Parcels Nos. 26 through 30, approximately five acres each, total 27.62 acres, total of 5 parcels. One each on Parcels Nos. 23, 24 and 25, five acres each, total of 15 acres, total of 3 parcels. One on Parcel No. 22, which is 2.8 acres. One on Parcel No. 17, which is 4.3 acres. Two on Parcel No. 16, which has 5 acres. One on Parcel No. 7, which has 5 acres.

In addition to the foregoing 21 parcels, there would be one for Lot 9, Block 2, Waha Glen Subdivision.

In addition to the foregoing 22 parcels, there would be one for the following described parcel, to-wit:

That part of the Northwest Quarter of the Northwest Quarter of Section 16, Township 33 North, Range 4 West of the Boise Meridian, more particularly described as follows: Beginning at a point which is S.80°19'32"E. a distance of 719.00 feet from the Northwest Corner of Section 16, Township 33 North, Range 4 West of the Boise Meridian; thence S.26°06'E. a distance of 276.30 feet to a point; thence S.49°33'W. a distance of 157.65 feet to a point; thence N.26°06'W. a distance of 276.30 feet to a point; thence N.49°33'E. a distance of 157.65 feet to the Point of Beginning. Containing 1 acre, more or less.

By contract of sale for each said parcel, Hulls will require the purchasers thereof to pay all expenses in connection with any roadway extension to serve such property, and also all expense of piping water from the existing system to the property sold, and also all expenses of hooking said property up to said system. The agreement will further provide that all

such roadways and all such water main transmission lines shall be and become the property of the Landowners, together with any easements necessary for any such transmission lines. The price charged by Hulls for such parcels shall be adjusted to reflect the fact that the purchasers will be obligated to extend such roadways and Water System at their expense and without expense to the Landowners. After such parcels are hooked up to be served by the Water System, the monthly charge for water delivered will be as set by the Landowners for all land within the Waha Subdivision.

Upon the construction of such roadway extension and such water line extension to each such parcel sold, and the transfer thereof to the Landowners, the Landowners agree to furnish water to each such parcel, and to charge for the same upon a basis of equality with other landowners within the Waha Subdivision. Landowners will also repair and maintain all transmission mains for transporting water to said parcels of land in the same manner as other transmission mains in the Waha Subdivision.

7. INVENTORY TRANSFERRED

In addition to the foregoing real and personal property, Hulls hereby transfer, convey and set over to Landowners inventory of pipe, pipe-fittings, valves, bolts, and also plans for a second proposed reservoir, which were heretofore the property of the Hulls, and which were procured by the Hulls at a cost of \$6,881.29. Such property is transferred to the Landowners without monetary consideration. However, in consideration of such transfer, Landowners agree as follows:

A. Hulls will be exempt from all assessments, hook-up charges or water right charges which Landowners may impose against the users of water in the Waha Subdivision for initial financing or otherwise, as to the 23 parcels still held by Hulls and unsold. After sale by the Hulls, such parcels shall be subject to any charges which the Landowners impose in common with all other water users in the Waha Subdivision.

B. The pipe in such inventory was purchased to convey water from the second proposed reservoir. This would involve backhoeing and laying pipe for 235 feet across property in the Waha Subdivision belonging to one Don Hines to the line of property in said Subdivision owned by E. B. Ponack. Landowners agree to complete this work at their expense.

8. ATTORNEY'S FEES

In case of any suit or proceeding by any party or parties hereto against any other party or parties, to enforce any provision hereof, or in any way arising out of this agreement, the prevailing party or parties in such suit or proceeding shall be entitled to recover from the losing party or parties such sum as the court in such suit or proceeding shall adjudge reasonable for attorney's fees for such prevailing party or parties.

9. GENERAL

The terms, conditions and covenants hereof shall extend to and be binding upon the heirs and assigns of the parties. The terms, conditions and covenants hereof shall be enforceable, in addition to all other legal remedies, by an action for specific performance, or for mandatory or prohibitive injunction.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

Edgar O. Hull
Lorraine Hull
First Parties - Hulls

Adolph Ricci
Robert Grimm
Robert Grimm

Gary Dodge
Gary Dodge

Ronald Horn

James D. Daniel

Second Parties - Landowners

STATE OF IDAHO)
County of Nez Perce) ss.

On this 12th day of December, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared EDGAR O. HULL, JR. and LORRAINE HULL, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

Genevieve M. Johnson
Notary Public for the State of Idaho
Residing at Lewiston therein.

STATE OF IDAHO)
County of Nez Perce) ss.

On this 23rd day of December, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared ADOLPH RICCI, ROBERT GRIMM, GARY DODGE, RONALD HORN, and JAMES D. DANIEL, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

Paul T. Horton
Notary Public for the State of Idaho
Residing at Lewiston therein.

ADDENDUM

That for the purpose of clarifying the terms of the foregoing agreement, the parties agree that there shall be added to Number 4 on page 3 of the agreement the following:

Second Parties shall not be responsible for any transactions, verbal or written, which may have been made by First Parties concerning said water system prior to the date of the signing of this agreement and which are not included in this agreement. Any obligations incurred by First Parties relating to any work done on the system prior to the transfer or any claimed breach of contract for contracts entered into by First Parties prior to the transfer shall be the obligations of First Parties, and Second Parties shall have no obligations to defend First Parties in any suit or proceeding which might be brought by other parties arising out of contracts or agreements made by First Parties, except as set out in the first paragraph of this Number 4.

That for the purpose of clarifying the terms of the foregoing agreement, the parties agree that there shall be added to Number 7. B on page 6 of the agreement the following:

Second Parties may make the connection to the E.B. Ponack properties in the manner provided for in this agreement or in any other manner satisfactory to them and E.B. Ponack.

It is understood by the parties hereto that any bills, debts, or liens for work on the property or on the system which are now due are to be assumed and paid by First Parties and it is understood that Second Parties are not assuming or agreeing to pay any debts now due by First Parties for any work which may have been done on the system prior to the time of the signing of this agreement.

DATED this 20th day of December, 1977.

Edgar C. Hulls
Lennie Hulls
First Parties - Hulls

Adolph Ricci
Robert Grimm
Gary Dodge

Addendum

Ronald L. Horn
Ronald Horn
James D. Daniel
James D. Daniel
Second Parties

STATE OF IDAHO)
: ss.
County of Nez Perce)

On this 20th day of December, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared EDGAR O. HULL, Jr., and LORRAINE HULL, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

(SEAL)

Herbert M. Johnson
Notary Public for the State of Idaho,
residing at Lewiston therein.

STATE OF IDAHO)
: ss.
County of Nez Perce)

On this 23rd day of December, 1977, before me, the undersigned, a Notary Public in and for said state, personally appeared ADOLPH RICCI, ROBERT GRIMM, GARY DODGE, RONALD HORN, and JAMES D. DANIEL, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

(SEAL)

Paul C. Tuton
Notary Public for the State of Idaho,
residing at Lewiston therein.

Addendum

EXHIBIT "A"

All situate in the County of Nez Perce, State of Idaho, to-wit:

All in Township 33 North, Range 4 West of the Boise Meridian:

Section 8: The Southeast Quarter of the Southeast Quarter.

Section 9: The Southeast Quarter of the Southwest Quarter.

That portion of Lot 2 in Section 9 lying South of the Waha-Grangeville Highway.

Section 9: All of Lot 4 except an irregular tract of land being portions of Lot 4 of Section 9, and of Lot 1 and of the NE1/4NW1/4 of Section 16, all in Township 33 North, Range 4 West, Boise Meridian, Idaho, and described as follows:

Commencing at the quarter corner common to Section 9 and 16 of T33N, R4WBM, thence South 54 feet more or less to a point on the north line of an easement for right-of-way, which easement is recorded in the records of Nez Perce County, Idaho in Book 8 of Easements at page 579 and is therein designated instrument number 249455; thence, following the external boundary of said right-of-way extended S46°47'W a distance of 467 feet to a point; thence S 38°45'W a distance of 124 feet to a point; thence S63°W a distance of 105 feet to a point; thence S27°E a distance of 250 feet to a point; thence N63°E a distance of 154 feet to a point; thence N38°45'E a distance of 157 feet to a point; thence N46°47'E a distance of 562 feet to a point; thence N63°30'E a distance of 232 feet to a point; thence N65°27'E. a distance of 141 feet, more or less to a point; on the section line common to Section 9 and 16; thence east a distance of 169 feet more or less to the meander corner of said Sections 9 and 16 located on the west side of Waha Lake; thence following the meanders of the Waha Lake survey in a northerly and easterly direction to a point where said meanders intersect the west line of that tract of land described as a portion of Lot 4, Section 9, T33N, R4WBM, in that certain deed of conveyance recorded in Book 205 of Deeds, at Pages 226 and 227, records of Nez Perce County, Idaho, thence N 5°45' W a distance of 442 feet more or less to a point on the north line of said Lot 4 of Section 9, which point bears west a distance of 235 feet from the West line of the Nez Perce Indian Reservation boundary; thence west along the north line of said Lot 4 a distance of 500 feet to a point; thence South 28°10' W a distance of 1498 feet more or less to the point of beginning and which point is the quarter corner common to Sections 9 and 16.

ALSO:

That part of Lot 4, Section 9, Township 33 North, Range 4 West of the Boise Meridian, described as follows:

Commence at the Southwest corner of the Nez Perce Indian Reservation, the point of beginning; thence N5°45'W along the West line of the Nez Perce Indian Reservation a distance

of 221' to the Northeast corner of said Lot 4; thence West along the North line of said Lot 4 a distance of 235' to a point; thence S5°45'E on a line parallel to the West line of the Nez Perce Indian Reservation a distance of 442' more or less to the mean high water line of Lake Waha; thence in a Northeasterly direction along the mean highwater line of Lake Waha to the place of beginning.

Section 9: Lot 3 and the West Half of the Southwest Quarter of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Block 2, Waha Glen, according to the recorded plat thereof

ALSO: A tract of land known as the "Lane" situate between Lots 1 and 2 of Block 2 of Waha Glen, as shown by the official plat thereof, measurements of said Lane being 25. feet wide, 154.36 feet on the side adjoining Lot 1 and 150.22 feet on the side adjoining Lot 2.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of Block 1, Waha Glen, according to the recorded plat thereof.

One certain tract of land adjoining the lane between Lots 1 and 2, Block 2, on the west side, same being that side opposite to and furthest from the highway known as Lake Drive, which said additional tract is 25.04 feet wide and extends from said Lane a sufficient depth to equal the depth of an additional tract added to said Lot 1, Block 2, the same being to a depth of 30 feet, more or less.

One certain tract of land adjoining Lot 1 on the West side thereof, same being the side opposite to and furthest from the highway known as Lake Drive, which said additional tract of land is 100 feet wide and extends back from said Lot 1 a sufficient depth to take in one certain tool shed as thereon located, same being to a depth of 30 feet, more or less, all situate in Waha Glen, according to the plat thereof on file in the office of the County Recorder of Nez Perce County, Idaho, in Book 2-B of Plats, page 103.

EXCEPTING that part of Lot 3 of Section 9 in Township 33 North, Range 4 West of the Boise Meridian, described as follows: Commencing at the Southeast corner of said Lot 3; thence Northwesterly along the West line of the Nez Perce Indian Reservation to the Northeast corner of said Lot 3; thence West along the North line of said Lot 3 a distance of 204.1 feet to a point; thence Southeasterly to a point on the South line of said Lot 3, 235 feet West of the point of beginning; thence East along the South line of said Lot 3 a distance of 235 feet to the point of beginning, SUBJECT to rights-of-way for roads and pipelines.

ALSO EXCEPTING That part of Lot 4, Section 9, Township 33 North, Range 4 West of the Boise Meridian, described as follows: Commencing at the Southwest corner of the Nez Perce Indian Reservation, the point of beginning, thence North 5°45' West along the West line of the Nez Perce Indian Reservation a distance of 221 feet to the Northeast corner of said Lot 4; thence West along the North line of said Lot 4 a distance of 235 feet to a point; thence South 5°45' East on a line parallel to the said West line of the Nez Perce Indian Reservation a distance of 442 feet, more or less, to the mean high water line of Lake Waha; thence

in a Northeasterly direction along the mean highwater line of Lake Waha to the place of beginning; EXCEPTING THEREFROM an irregular tract of land being portions of Lot 4, Section 9 and Lot 1 and of the Northeast Quarter of the Northwest Quarter of Section 16, all in Township 33 North, Range 4 West of the Boise Meridian, described as follows:

Commencing at the quarter corner common to Sections 9 and 16 of Township 33 North, Range 4 West of the Boise Meridian, thence South 54 feet more or less to a point on the north line of an easement for right-of-way, which easement is recorded in Book 8 of Easements, page 579, records of Nez Perce County, Idaho, Instrument No. 249455; thence following the external boundary of said right-of-way extended, South 46°47' West a distance of 467 feet to a point; thence South 38°45' West a distance of 124 feet to a point; thence South 63° West a distance of 105 feet to a point; thence South 27° East a distance of 250 feet to a point; thence North 63° a distance of 154 feet to a point; thence North 38°45' East a distance of 157 feet to a point; thence North 46°47' East a distance of 562 feet to a point; thence North 63°30' East a distance of 232 feet to a point; thence North 65°27' East a distance of 141 feet, more or less, to a point on the section line common to Sections 9 and 16, thence East a distance of 169 feet, more or less, to the meander corner of said Sections 9 and 16 located on the West side of Waha Lake; thence following the meanders of the Waha Lake survey in a northerly and easterly direction to a point where said meanders intersect the West line of that tract of land described as a portion of Lot 4, Section 9, Township 33 North, Range 4 West Boise Meridian, in that certain deed of conveyance recorded in Book 205 of Deeds, pages 226 and 227, records of Nez Perce County, Idaho; thence North 5°45' West a distance of 442 feet, more or less, to a point on the North line of said Lot 4 of Section 9, which point bears west a distance of 235 feet from the West line of the Nez Perce Indian Reservation boundary; thence West along the North line of said Lot 4 a distance of 500 feet to a point; thence South 28°10' West a distance of 1498 feet more or less to the point of beginning, which point is the quarter corner common to Sections 9 and 16. A portion of said lands are subject to those provisions of that certain easement recorded in Book 8 of Easements, page 579, Instrument No. 249455, records of Nez Perce County, Idaho.

ALSO a right-of-way for public road being a strip of land located within Lot 3 of Section 9, Township 33 North, Range 4 West Boise Meridian, which strip of land is 50 feet in width and being 25 feet on each side of the center line of said strip of land, which center line is described as follows:

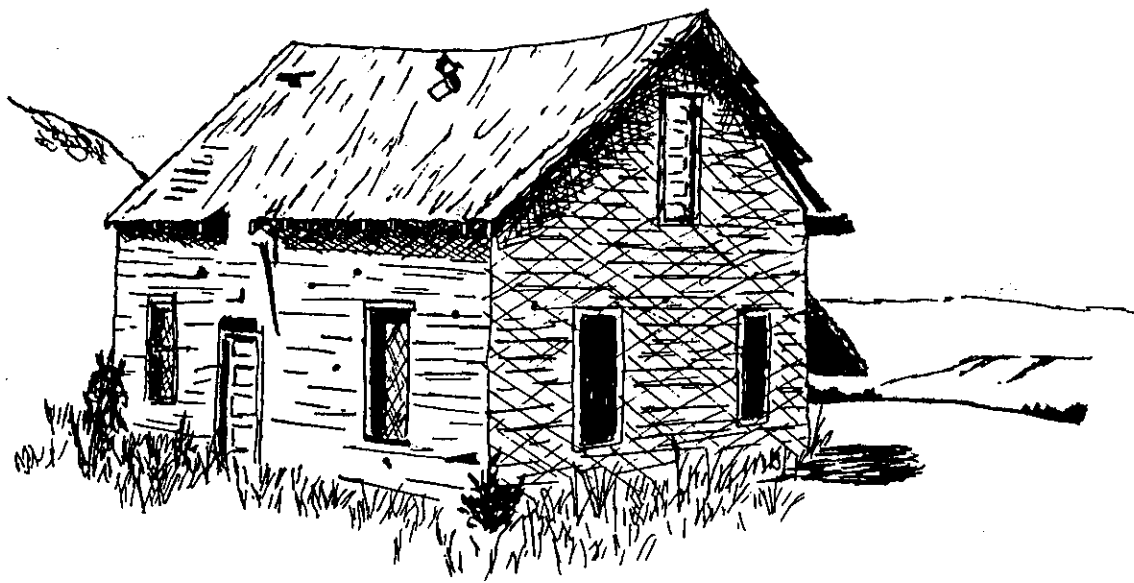
Beginning at the quarter corner common to Sections 9 and 16, Township 33 North, Range 4 West Boise Meridian, thence North 1320 feet to the Southwest corner of said Lot 3; thence E. 897 feet to a point on the South line of said Lot 3, which point is the true point of beginning; thence North 58°06' East a distance of 59 feet to a point; thence North 42°18' East a distance of 284 feet to a point; thence North 2°02' West a distance of 100 feet to a point; thence North 13°08' West a distance of 294 feet to a point; thence North 23°23' West a distance of 134 feet to a point; thence North 36°41' East a distance of 244 feet to a point; thence North 11°36' East a distance of 151 feet, more or less, to a point on the South right-of-way line of the Lewiston-Winchester

County road and which point bears South 39°06' West a distance of 276 feet from a subdivision monument of Section 9, which monument was established by a private survey. Said monument may or may not be properly located as a true corner of the subdivision of said Section 9.

Section 16: Lot 1 and the North half of the Northwest Quarter.

EXCEPT Lots 4 and 5 of Block 1, Waha Glen Addition to Nez Perce County, State of Idaho, according to the recorded plat thereof, and reserving the right of access thereto over and across the existing roadway thereto to its junction with the county road.

Past Days of the Tammany-Waha Area



Betty Thiessen Meloy

Steve Carter

Volume I

OLD AND NEW DESCRIPTIONS OF WAHA AND TAMMANY

In the History of North Idaho, 1903, on page 132 appears the following description of the area:

.... Most of the maps show Craig's mountain as occupying comparatively small space and situated just north of the great bend of the Salmon and between that river and the Snake, but in reality it is an extensive plateau, bearing upon its sides or broad top several widely separated towns, principal among them Forest, Morrow, Westlake, Keuterville and Winchester. Near the top of this mountain and west of the reservation line is Waha Lake, twenty-one or twenty-two miles southeast from Lewiston. It is described as a beautiful little sheet, elliptical in shape and a half mile long, surrounded on all sides by a pine forest. The old stage road passes around its eastern margin. It has long been and still is a favorite summer resort. At one time an attempt was made to stock it with fish, but the plan did not prove a success. There is a well appointed hotel on its banks, the Lake House, kept by Mr. Faunce, who also has an abundance of row and sail boats and such other equipments as will augment the convenience and comfort of recreation seekers. To reach it from Lewiston you take the old stage road which passes through Tammany hollow, Lewiston prairie and Waha prairie, all rich farming and stock raising sections, though the last named is more elevated and consequently colder than the other valleys. The soil of these prairie sections is very productive and harvests usually bountiful. Many of the farmers have excellent orchards. In Tammany hollow, on the old Dowd ranch, artesian water has been struck in several places, and many attempts, will be made to find it elsewhere in the valley, that orchards and gardens may be irrigated....

Waha Lake is a popular fishing spot today and motor boats are now allowed. It is used as an alternative source of water for the Lewiston Orchards Irrigation District if Soldiers Meadow becomes low. There is no longer a hotel on the lake but the land area around Waha Lake has become the permanent home of many families who are employed in Lewiston but desire to live away from town. There was a Boy Scout Camp at the south end of the lake owned by the Lewis-Clark Council of Boy Scouts of America, Inc. Waha is also a winter sport area since the use of snowmobiles has flourished in the last decade. The main road to the top of the mountain still passes above the lake on the east side. There are two stores and restaurants below Waha Lake that serve the residents and visitors. One is the "old" store, still called Waha Store, that has been there since 1892 and is owned by Peter and Peggy Ray. It has the ice cave in the bank just outside the front door that was developed in 1911 and the Waha Glen residential area behind it. The other store is just north of it toward the 21 Ranch and is called Craig Mountain Store. This was built in 1974 by Harvey and Marion Hartley and is now owned by A. L. and Jackie Mc Laughlin.

fences, construct highways, build cities, and establish schools. His was a hard, healthy, interesting life. The winning of the west is filled with romance and color, and will ever remain the most fascinating and interesting page of American history. Today there are no more frontiers, no more wests to conquer. The public domain in the United States is gone. The vision of the pioneer has been fulfilled. He has subdued the wilds, tamed the wilderness, harnessed the rivers, bridged the streams, conquered the mountains, developed farms, and established connection with other points by wire, highway and rail. He has done his share in the progress of civilization and the growth of his community.

Felix Warren was a great man because he led a life worthy of greatness, because he was square, because he was magnanimous, because he was kind, considerate, dependable and loyal. He was a man of firm convictions, high integrity, and great courage. He had a big heart and was possessed with the generous, friendly spirit of the pioneer—qualities which remained with him throughout his entire life.

Although he came to this beautiful land 30 years after that courageous missionary, Henry Harmon Spalding, yet he...

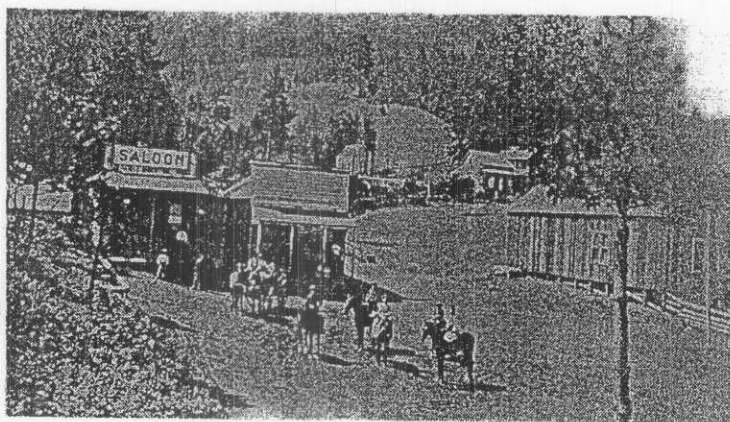


Stage coach at Waha Store with hotel visible in the background
photo courtesy Jean Buchanan

do for them.

Waha during the times
of the stage coach.
Two women riding side-
saddle in the foreground.

Picture courtesy Virginia
Gaiser



Well sits
on this
same property

CHARLES E. FAUNCE A real pioneer of the pioneers, leading the way for the early seekers for gold into this country and also doing the same in many other localities, always conducting himself with the same sagacity, uprightness, courage, fortitude, and affability that characterized him, and always did a noble part in the worthy undertakings of the pioneers, it was very fitting that Charles E. Faunce should occupy a prominent position in the history of Nez Perces county, since he did much here to advance and build it up, and was one of the highly esteemed and substantial men of the county.

Charles E. Faunce had the distinction of being born in the old Miles Standish house, in Duxbury, Massachusetts, which was built in the seventeenth century. His birth occurred on August 17, 1832, being the son of George and Sallie (Chase) Faunce. The father was a seafaring man, born in Vermont, and died at the age of eighty-three. The mother was born in 1791 and died in 1881, aged ninety. New Hampshire was her native state. Charles Faunce remained at home securing his education and a training in seafaring life until he was twenty and then he went, via Cape Horn, to San Francisco, consuming one hundred and twenty days on the trip. He went to the mines at Auburn, California, at once joining his brothers, John and William, who had gone thither in 1849. A little later he went to Michigan Bluffs, having learned the art of mining in Auburn. He mined there for nine years and did well. Then he came to Idaho and went into the Florence and Warrens districts. He took a pack train in and found ten thousand men there. He worked that summer, took claims in the fall, then went to the Clearwater and assisted in rafting logs to build the Lapwai agency. Returning to Florence and Warrens the next spring, he did not meet with success, so came back to Lewiston and took charge of the wood business of Allen, Piercy & Company. He mined on the Snake river and at Warrens, and always wintered in Lewiston. At one time he had a summer's work in the flume and one night parties cleaned it up and stole the entire amount, leaving him in the fall penniless. He went to Lewiston, having sold out his claims and quit the mining business. He was appointed deputy sheriff under Ephraim Bunker and was in this capacity when the noted criminal, Peter Walker, was hung by a mob. He then went into the dray and transfer business with Dyer, where he labored until 1874, then sold out and returned to Massachusetts, where he visited one winter. Returning, he mined, acted as night watchman, and in 1882, he built a hotel at Lake Waha. By his skill in handling it and making the place attractive as a summer resort, he soon had an enormous trade, almost the entire town of Lewiston being visitors to that attractive spot. In 1892 Mr. Faunce sold this property and removed to his homestead, two miles west. His wife, who had been postmistress at the lake, was also appointed the same in this new place, and here Mr. Faunce and his wife built up a fine resort. This was operated until 1901, when he sold it and removed to Lewiston.

On September 28, 1881, Mr. Faunce married Mrs. Alida J. (Lappeus) Anderson, daughter of William W. and Elizabeth (Lewis) Lappeus, natives of New York. Mrs. Faunce was born in Albany, New York in 1840. Mrs. Faunce had two sons by her former marriage, William and Absolum Anderson. Mr. Faunce was a Republican and was always interested in politics. He was also a member of the Pioneer Association in the county and was highly esteemed by all who knew him.

from History of North Idaho

definite announcement can be made as to the plans,

The party were greatly pleased with the result of their investigations in Oregon. At Hood River they had the benefit of a consultation with Professor E. L. Smith, the noted Oregon horticulturist, and were given the benefit also of the views of many prominent growers and shippers of fruit there. They return here convinced that the apple growing industry is destined to become an important factor in the future development of the wealth of the Lewiston valley. They found that at Hood River the net profits arising from orchards planted to apples such as the Spitzenberg and New Town Pippin ranged from \$700 to \$2000 an acre. It has been demonstrated here that these varieties of apples can be grown to a high degree of perfection at the Twenty-one ranch. The Hood River strawberries are famous throughout the northwest, yet the growing of berries there is rapidly giving way to the apple industry. A case was cited where two acres of orchard, embracing 140 trees, returned 1,800 boxes of apples. Placing a value on these of \$3.27 a box would show gross returns of \$5,836.

"The Hood River section is certainly an elegant apple country," said Mr. Hurlbut, "and it is entitled to the prominence it is given among the fruit districts of the Northwest. While on the trip we also secured extensive data relative to the fruit industry in the Wenatchee and Yakima sections."

Lewiston Tribune, November 23, 1912, POTTS SECURES 7000 ACRES, Deed Filed Definitely Transfers Rich Lands, Satisfies a Big Loan, Final Chapter in the Career of the Waha-Lewiston Company.

The placing on record yesterday of a sheriff's deed at the office of the county auditor definitely transferred to the authority of Franklin M. Potts, of Philadelphia, about 7,000 acres of land, formerly the holdings of the Waha-Lewiston Land and Water company and comprising tracts embracing the richest lands of the Lewiston valley. The consideration named in the sheriff's deed is \$150,000, this being the sum bid by Mr. Potts when the property was bid under sheriff's execution, but the claim of Mr. Potts on which the proceedings was taken was in excess of \$250,000. The latter sum had been loaned several years ago to the Commercial Trust company by the Philadelphia Warehouse company, of which Mr. Potts is president, and the security given for the loan applied to bonds against the holdings of the Waha-Lewiston Company. The fore-closure proceedings resulted in the process of collecting the loan and the legal aspects of the situation have been receiving attention for a long period.

The land acquired by Mr. Potts embraces the following:

The well known "21" ranch at Waha, embracing 1,925 acres.

The "Scrip" ranch, south of Tammany and near the Daniels and Wallace ranch, embracing 1,000 acres.

The Hank Trimble ranch, south of Tammany and adjoining the "Scrip" ranch, embracing 1,730 acres.

The "Snake River" ranch, located along the Snake River between Lewiston and Tammany, including a nursery tract, and embracing 950 acres.

The "Grostein" ranch, located at head of Lindsey creek, east of Lewiston, embracing 464 acres.

The "Houston" ranch, on Lapwai road, west of the Ira Small place, embracing 240 acres.

Two hundred and forty acres in Lewiston Orchards, planted to two-year-old trees.

Seven hundred acres around Lake Waha.

From:
Waha Water District
40032 Waha Glen RD
Lewiston, Idaho 83501

August 30, 2004

To: The Idaho Department of Water Resources Adjudication Bureau

-In 1890 Charles Faunce purchased land that included the Waha Glen area. (See map of Homesteaders and First Settlers, obtained from the Nez Perce County Courthouse.)

-In 1892 Charles Faunce built and operated a store, post office, hotel, and stagecoach watering station on the Waha Glen property on which the well currently exists. (See pictures, historical documents.)

-In 1927, and 1930, Henry and Amanda Harnes purchased the Waha Glen area and organized it into lots, beginning with the existing store, hotel, post office, and stagecoach watering station (see plat plan, 1931 with highlighted well property, and map of landowners: Section 9 Township No. 33 North Range No 4 West.)

-From 1936 to 1968* the Waha Glen area was purchased and sold to various owners, ending with Harvey Hartley in 1968. It was sometime during this period a well was established and galvanized distribution system created servicing the existing lots.(see plat plan, 1931 with highlighted well property) *note – the copying of the maps showing landowners and dates of ownership stopped in 1970 due to all the subdividing taking place in the Waha and surrounding areas. (see maps of landowners, Sections 8 and 9)

-From approximately 1972 to 1977 Edgar Hull, who owned the Waha Glen properties at the time, upgraded the old galvanized distribution system to 6 inch plastic pipe capable of servicing not only the original lots created in the 1931 plot plan, but also the 5 acre parcels Mr. Hull had created when developing the Waha Glen area. In 1977 Edgar Hull transferred the water rights, including the lot containing the well, he obtained when he purchased the Glen properties from the Hartleys to the Waha Glen residents with the purpose of establishing a Waha Glen Water District. (See document titled "Proposal Waha Subdivision".)

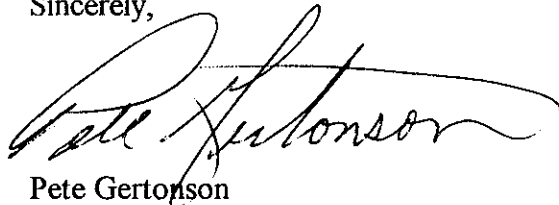
-In 1989 we received notification from the State of Idaho questioning our water right. We contacted Forrest Luthy, then employed by the Idaho Adjudication District about our concerns. Forrest assured us the notice was not intended for previously recognized state approved water districts and guaranteed we would never be faced with questionable water rights. Wanting to put this issue behind us for good we filled out the required paperwork and sent in the calculated fee, check # 1468 for \$62.00. Your own records show this.

According to Land Title, records of ownership of water rights are not required to be included in Deeds, etc. or any other public record in the state of Idaho. Which, from your own requirements, makes it very hard to prove our case.

We have proven beyond a reasonable doubt from the documents and historical data supplied, the existence of domestic water usage in Waha Glen, from before a time when even the state of Idaho or water rights existed! We are the only legally recognized water district entity in this area that can make this Grand Fathered claim for water rights!

Unless we hear from you within 45 days from the date of this letter, we will consider this matter resolved. Otherwise, we request any future contact also include copies sent to our attorney for possible future litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Gertonson", with a large, sweeping flourish extending from the end of the name.

Pete Gertonson

Chairman of the board Waha Water District

Cc:

Our attorney:

Edwin Litteneker

322 Main

Lewiston, Idaho 83501