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ISB No. 1018

Attorneys for Roost Potato Company, Inc.

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

In Re: SRBA
Case No. 39576

Subcase No. 36-07763

**AFFIDAVIT IN SUPPORT OF
MOTION TO FILE
LATE NOTICE OF CLAIM**

STATE OF IDAHO }
County of Minidoka } ss.

Calvin Jones, being first duly sworn, deposes and says:

1. That this affiant is the President of Roost Potato Company, Inc., an Idaho corporation, which is the owner of water right License No. 36-7763 described in the Water Right Report for 36-7763 of the Idaho Department of Water Resources attached hereto as Exhibit "A."

2. That this affiant is also the former Vice-President of Jones Livestock Feeding Co. shown as the owner of water right License No. 36-7763. That this water license was obtained by me, through the help of Jim Blandford, an attorney from Kimberly, Idaho.

3. In June of 1984, this affiant was involved in a serious automobile accident in which affiant received a double scull fracture, including a

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loss of a part of affiant's skull bone, resulting in brain damage to affiant. Because of these injuries, affiant did very little work of any kind for the rest of 1984. In 1985, Production Credit Association foreclosed on the operating loans of Jones Livestock Feeding Co., and Travelers Insurance Company foreclosed on the real estate loans on Jones Livestock Feeding Co., including water right License No. 36-7763.

4. In 1986, Roost Potato Company, Inc., a corporation incorporated by myself, was able to rent the property formerly owned by Jones Livestock Feeding Co. for 1985 and was able to buy that real property from Travelers Insurance Company in 1986. However, the operation of the farm and feedyard was beyond the mental capacity and ability of this affiant as the result of the injuries affiant had sustained in the 1984 accident. This affiant's son Cevin took over the operation of affiant's feedyard and this affiant's son Curtis commenced working with the farm, eventually becoming the main operator of the farm.

5. In the transfers of the real property to Roost Potato Company, Inc., formerly owned by Jones Livestock Feeding Co., all water rights were transferred to Roost Potato Company, Inc., including License No. 36-7763, as shown by the letter from W. F. Ringert, attorney for The Travelers Insurance Company, to R. Keith Higginson, Director, Idaho Department of Water Resources dated April 14, 1989, a copy of which is attached hereto and made a part hereof as though fully set forth herein as Exhibit "B."

6. Unfortunately, for reasons that cannot be explained by this affiant, in causing claims to be made for the water rights of Roost Potato Company, Inc., this affiant and persons acting on behalf of Roost Potato

Company, Inc. failed to file a Claim for the water right represented by water License No. 36-7763. On February 13, 2004, this affiant discovered that no such Claim had been filed as he was reviewing partial decrees that had been entered for other water rights of Roost Potato Company, Inc. This affiant has no recollection that Roost Potato Company, Inc. was ever advised by the Idaho Department of Water Resources that there had been no filing prior to the time that this affiant made an inquiry on February 13, 2004.

7. Water has been diverted from Goose Lake located in the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 20, Township 9 South, Range 19 East of the Boise Meridian, Jerome County, Idaho on a continuous basis since the development of this water right leading to License No. 36-7763, and the water has been used each and every year for the irrigation of lands described in said license.

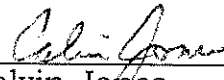
8. Roost Potato Company, Inc., the owner of License No. 36-7763, and this affiant, as the principal stockholder of said corporation and President, will be irreparably harmed if Roost Potato Company, Inc. is not allowed to file a Late Notice of Claim and to ultimately have this water right decreed in the Snake River Basin Adjudication.

9. This affiant has no knowledge of any injury that would occur to any other claimant in the Snake River Basin Adjudication as the result of the filing of a late claim of a decree of the water right set forth in water License No. 36-7763.

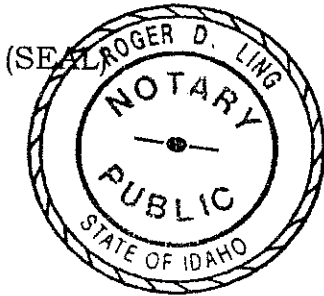
WHEREFORE, this affiant prays that the Court grant the Motion filed herewith on behalf of Roost Potato Company, Inc. for leave to file a Notice of Late Claim in the Snake River Basin Adjudication for water License No. 36-7763.

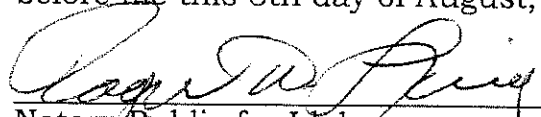
AFFIDAVIT IN SUPPORT OF MOTION
TO FILE LATE NOTICE OF CLAIM

FURTHER THIS AFFIANT SAYETH NAUGHT.


Calvin Jones

SUBSCRIBED AND SWORN TO before me this 6th day of August, 2004.




Notary Public for Idaho
Residing at: Rupert, Idaho
My Commission expires: 10/30/06

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 36-7763

WATER RIGHT NUMBER: 36-7763

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JONES LIVESTOCK FEEDING CO PO BOX 465 EDEN, ID 83325

Priority Date: 11/14/1977
 Basis: License
 Status: Not Claimed

<u>Source</u>	<u>Tributary</u>
GOOSE LAKE	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	3/15 to 11/15	0.800 CFS	268.00 AF
	<u>Total Diversion:</u>	0.800 CFS	268.00 AF

Location of Point(s) of Diversion

GOOSE LAKE	SE1/4SE1/4	Sec. 20, Twp 09S, Rge 19E, B.M.
JEROME County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	19E	20															5.0	30.0	35.0
09S	19E	21											12.0						12.0
09S	19E	29			20.0														20.0

Total Acres: 67

Conditions of Approval:Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 36-7763

Comments:

1. skeen 5/31/2002 8:58:04 AM Status Change

Comment: On May 31, 2002, the status for this water right record was changed to Not Claimed. This right was established prior to 11/19/1987, it was not claimed in the Snake River Basin Adjudication, and it was not a deferrable domestic or stockwater right.

FROM STATE 4-21-89

Ringert, Clark, Harrington, Reid, Christenson & Kaufman

CHARTERED
LAWYERS

WILLIAM F. RINGERT
D. BLAIR CLARK
ANDREW M. HARRINGTON
JAMES G. REID
JEFFREY R. CHRISTENSON
JAMES P. KAUFMAN
LAURA E. BURRI
SAMUEL KAUFMAN (1921-1988)

599 WEST BANNOCK STREET
P.O. BOX 2773
BOISE, IDAHO 83701
TELEPHONE (208) 342-4591
FAX (208) 342-4657

April 14, 1989

Mr. R. Keith Higginson, Director
Idaho Department of Water Resources
1301 North Orchard ~~Avenue~~ STREET
Boise, ID 83706 2237

Re: Snake River Basin Adjudication - Change in Ownership

Dear Mr. Higginson:

Pursuant to the requirements of Idaho Code §42-1409(7), you are hereby notified that the property described in the enclosed "Description of Lands" has been sold by The Travelers Insurance Company, a Connecticut corporation to Roost Potato Company, Inc., whose current mailing address, according to our records is 952 S. 1400 East, Eden, Idaho 83325.

The water rights appurtenant to those lands and for which the owner is required, to file a notice of claim in the Snake River Adjudication are identified by the following water right numbers in the record of the Department of Water Resources or Notices of Claim numbers in the Snake River Basin Adjudication:

Water Licenses Nos. 36-2324, 36-7000, and 36-7763.

Mitchell Feed yard Hayes Waste water

Yours very truly,

W. F. Ringert

W. F. Ringert

WFR:am
Enclosure
cc: Donald S. Reed
Margaret Veglia
Thomas S. Josselyn
Roost Potato Company, Inc.

I Rec from Lawyers 4-17

TOWNSHIP 9 SOUTH, RANGE 19, EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 20: S½SE½; NE½SE½;

Section 21: SW½SW½;

Section 28: S½NW½; NW½NW½;

Section 29: N½NE½;

Section 32: N½, EXCEPTING THEREFROM that portion of NW½NW½ deeded to the State of Idaho by Deed recorded April 12, 1934 in Book 102 Page 579, Jerome County records.

EXCEPTING THEREFROM that part of N½NE½ deeded to the State of Idaho by Deed recorded January 29, 1932 in Book 102 Page 233, Jerome County records.

EXCEPTING THEREFROM that part of E½NW½ deeded to the State of Idaho by Deed recorded April 12, 1934 in Book 102 Page 479, Jerome County records.

EXCEPTING THEREFROM that part of SW½NW½ deeded to the State of Idaho by Deed recorded April 12, 1934 in Book 102 Page 577, Jerome County records.

AND EXCEPTING the following described parcel located in the SE½NE½ and NE½SE½:

Beginning at the Southeast corner of said Section 32;

Thence North 0°03'00" West a distance of 2599.93 feet along the Easterly boundary of said Section 32 to THE TRUE POINT OF BEGINNING;

Thence North 89°06'42" West a distance of 225.56 feet;

Thence North 3°34'50" East a distance of 185.61 feet;

Thence North 84°21'20" East a distance of 214.80 feet to a point on the Easterly boundary of said Section 32;

Thence South 0°03'00" East a distance of 209.87 feet to THE TRUE POINT OF BEGINNING.

C o n t i n u e d

SUBJECT TO an easement over a strip of land 20 feet wide which runs directly over the existing mainline up to and including a pump and motor located on the North Side Canal with the right of ingress and egress and right to use and maintain pipes and pumps located on the above described property:

Section 32: That part of the NXSEX, described as follows:

Beginning at the East quarter corner of said Section 32;

Thence North 89°31' West, 281.6 feet along the North line of said NXSEX to THE TRUE POINT OF BEGINNING;

Thence South 0°03' East, 454.8 feet to the North bank of the North Side Canal Company C-53 Lateral;

Thence North 89°30' West, 392.7 feet along said North bank of said lateral to the juncture of the C-42 lateral of the North Side Canal Company;

Thence along the North bank of said C-42 lateral the following courses and distances:

Thence North 69°55' West, 701.75 feet;

Thence South 85°17' West, 328.7 feet;

Thence South 82°03' West, 817.35 feet;

Thence South 80°15' West, 136.4 feet;

Thence North 89°31' West, 21.85 feet to the West line of said NXSEX;

Thence North 0°03' West, 394.5 feet along said West line to the Northwest corner of said NXSEX;

Thence South 89°31' East, 2344.9 feet along the North line of said NXSEX to THE TRUE POINT OF BEGINNING.

AND that part of the NXSEX, described as follows:

Beginning at the East quarter corner of said Section 32;

Thence South 0°03' East, 383.0 feet along the East line of said Section 32 to intersect the North bank of the North Side Canal Company C-53 Lateral;

Thence along the North bank of said C-53 lateral the following courses and distances:

Thence North 86°17' West, 136.3 feet;

Thence South 45°45' West, 124.09 feet;

C o n t i n u e d

Thence North 81°33' West, 57.36 feet;
Thence leaving said C-53 lateral North 0°03' West,
454.8 feet to the North line of said N½SE½;
Thence South 89°31' East, 281.6 feet to THE POINT
OF BEGINNING.

SUBJECT TO an easement over a strip of land 20 feet wide which runs directly over the existing mainline up to and including a pump and motor located on the North Side Canal with the right of ingress and egress and right to use and maintain pipes and pumps located on the above described property:

Section 33: SW½; W½SE½; S½NW½; SW½NE½; S½NW½NW½; NE½NW½;

SUBJECT TO an easement over a strip of land 20 feet wide which runs directly over the existing mainline up to and including a pump and motor located on the North Side Canal with the right of ingress and egress and right to use and maintain pipes and pumps located on the above described property:

TOWNSHIP 10 SOUTH, RANGE 19, EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 4: Lot 4; SW½NW½, EXCEPTING THEREFROM the East 580 feet of the SW½NW½;

SUBJECT TO an easement for road right of way purposes over, upon and across the South 25 feet of the West 740 feet of said SW½NW½.

TOWNSHIP 10 SOUTH, RANGE 21, EAST OF THE BOISE MERIDIAN,
JEROME COUNTY, IDAHO

Section 9: A portion of the S½SW½, described as follows:

Beginning at the Southwest corner of Section 9, Township 10 South, Range 21, East Boise Meridian, said corner marked by a ½" rebar;
Thence North 0°03'30" West (North 0°03' West recorded) along section line for 467.00 feet to a P.K. Nail;
Thence North 89°58'20" East (North 89°56' East recorded) for 662.31 feet to a ½" rebar which shall be THE POINT OF BEGINNING;
Thence North 89°58'20" East (North 89°56' East

C o n t i n u e d

recorded) for 787.69 feet to a $\frac{1}{2}$ " rebar;
Thence South 0°03'30" East (South 0°03' East
recorded) for 315.05 feet to a $\frac{1}{2}$ " rebar;
Thence South 89°32'15" West for 779.35 feet to a $\frac{1}{2}$ "
rebar;
Thence North 1°33'05" West for 321.08 feet to THE
POINT OF BEGINNING.

SUBJECT TO a 20 foot wide access easement along the
South and West sides TOGETHER WITH a right of
ingress and egress over and across the following
described properties to wit:

Beginning at the Southwest corner of Section 9,
Township 10 South, Range 21, East Boise
Meridian, said corner marked by a $\frac{1}{2}$ " rebar;
Thence North 89°58'20" East (North 89°56' East
recorded) along section line for 654.48 feet to
THE POINT OF BEGINNING;
Thence North 1°33'05" West for 467.17 feet to a
point;
Thence North 89°58'20" East (North 89°56' East
recorded) for 40.00 feet to a point;
Thence South 1°33'05" East for 300.92 feet to a
point;
Thence North 89°32'15" East for 759.87 feet to a
point;
Thence South 0°03'30" East (South 0°03' East
recorded) for 40.00 feet to a point;
Thence South 89°32'15" West for 758.83 feet to a
point;
Thence South 1°33'05" East for 126.24 feet to a
point on Section line;
Thence South 89°58'20" West (South 89°56' West
recorded) for 40.00 feet to THE POINT OF
BEGINNING.

AND Beginning at the Southwest corner of Section 9
of Township 10 South, Range 21, East Boise
Meridian, said corner marked by a $\frac{1}{2}$ " rebar which
shall be THE POINT OF BEGINNING;
Thence North 0°03'30" West (North 0°03' West
recorded) along section line for 467.00 feet to
a P.K. Nail;
Thence North 89°58'20" East (North 89°56' East
- recorded) for 155.41 feet to a point;
Thence South 0°18'13" West for 467.01 feet to a
point on section line;
Thence South 89°58'20" West (South 89°56' West
recorded) along section line for 152.46 feet to
THE POINT OF BEGINNING.