

2005 FEB 14 PM 1:12
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA	)	Subcase No.: 29-11596
	)	
Case No. 39576	)	ORDER OF REFERENCE TO SPECIAL
	)	MASTER BRIGETTE BILYEU
	)	
	)	

On February 14, 2005, this Court received correspondence from Karl E. and Ardys L. Holte, regarding the above-captioned water right claim. A copy of the correspondence is attached to this **Order**. The original of the correspondence was file stamped, docketed as received, and lodged in the subcase file. Where the water right claim was previously uncontested, a subcase file was created for the correspondence. Where a **Partial Decree** was previously entered for the water right claim, the **Partial Decree** was also included in the subcase file.

THE FOLLOWING ARE HEREBY ORDERED:

1. That Brigitte Bilyeu is appointed Special Master to preside over the above-captioned water right claim for the following purposes:

a. To determine the intended purpose of the correspondence and the legal significance of the correspondence, if any. For example, the Special Master may determine whether the correspondence constitutes a motion to correct a clerical error pursuant to I.R.C.P. 60(a), or a motion to set aside a **Partial Decree(s)** pursuant to I.R.C.P. 60(b), etc.;

b. To determine whether the correspondence complies with **SRBA Administrative Order 1 (AOI)** and the Idaho Rules of Civil Procedure or whether additional time should be granted to allow the party to file an appropriate motion with the Special Master and/or to obtain counsel in the matter; whether the matter should be dismissed on its face; or to

determine whether the matter would be more appropriately processed administratively through the Idaho Department of Water Resources;

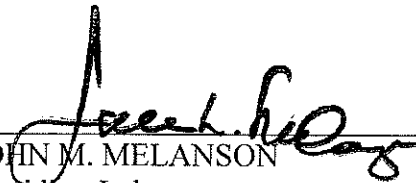
c. If the correspondence is ultimately deemed a sufficient motion, or in the event a new motion is filed in compliance with the applicable rule(s), the Special Master shall conduct all proceedings necessary to issue a recommendation as to the underlying merits. For example, if the Special Master concludes a *Partial Decree(s)* should be set aside or amended, the recommendation should not only include that the *Partial Decree(s)* be amended or set aside, but should also include how the elements of the water right should be partially decreed.

2. The original of this *Order* shall be placed in the subcase file and the file transferred to the Special Master for proceedings consistent with this *Order*.

3. The Special Master shall issue a *Special Master's Report and Recommendation* on the matter consistent with *AOI*.

IT IS SO ORDERED.

DATED February 14, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF REFERENCE TO SPECIAL MASTER BRIGETTE BILYEU was mailed on February 14, 2005, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

G K MATKIN
JOANNE MATKIN
1506 N MINK CREEK RD
POCATELLO, ID 83204
Phone: 208-233-2441

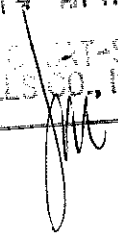
*Karl E. & Ardis L. Halte
1506 N Mink Creek Rd
Pocatello ID 83204-7255*

Julie Murphy

466
LODGED

February 5, 2005

The Hon. John M. Melanson
Judge of the SRBA Court
P. O. Box 2707
Twin Falls, ID 83303-2707

2005 FEB 14 AM 11:01
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED 

Re: Change in ownership for Water Right 29-11596

Dear Judge Melanson:

In 1999 my wife and I purchased a home on ~2.2 acres of land adjacent to Mink Creek in Bannock County. This property was previously owned by G. Kayle Matkin and Joanne Matkin. As this property is outside the Pocatello city limits, we get our culinary water from a well on the property, and the Matkins formerly pumped water from Mink Creek for irrigation purposes. (The pump and motor they used for this were inoperative at the time we acquired the property, however, so we have been unable to pump from the creek. We hope to remedy this situation this summer.)

In 2002 we were visited by Mr. Craig Saxton, Sr. Water Resource Agent in the Adjudication Bureau, who was in the process of re-evaluating the ownership of water rights in this area. He was very helpful in getting us the appropriate paperwork to get all the water rights pertaining to our property into our names. We sent in the required proof of ownership, applications, and the fees requested, and on March 22, 2004, you issued us a partial decree on water right No. 29-00274J for obtaining irrigation water from Mink Creek.

We recently received a letter from Mr. E. Justin Aldridge, a Technical Reviewer, who advised that there was a problem with water right No. 29-11596, which applies to the culinary well water, as there was a discrepancy in the legal description in the Partial Decree issued by the SRBA Court on June 18, 1998, for water right No. 29-11596 in the names of G. Kayle and Joanne Matkin for their property, which includes the portion we now own and on which the culinary well is located. The portion of the property on which Mr. Matkin retained ownership (adjacent to and north of ours) is only pasture area with a number of sheds and outbuildings. The legal description given in 29-11596 is incorrect for any of the Matkin property or for ours. Enclosed is a copy of one particular letter from our file, which Mr. Saxton wrote to the former owners regarding a conversation with Mr. Matkin (who is subsequently deceased). Also enclosed is a copy of the legal description of our property and a copy of the map supplied us by the SRBA personnel.

Mr. Aldridge reviewed our entire file with Ms. Danni Smith, who advised us to write to you to request that the error in the legal description (NENE) be corrected to the correct quarter quarter (NESE) and a new Partial Decree be entered.

Inasmuch as the Matkins never have owned property in the NENE quarter, and based on Mr. Saxton's discussions with Mr. Matkin in 2002, we do respectfully request that a Motion to Set

Aside be filed so that the NENE designation is changed to the correct NESE designation and a new Partial Decree is entered in our names for the culinary water right No. 29-11596 on our property.

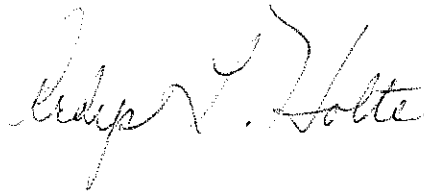
If you need further information from us, our phone numbers are 208-232-6563 (home), 208-241-8358 (Karl's cell), or 208-241-8359 (Ardys's cell). Also, Mr. Saxton has the original file, and Ms. Smith and Mr. Aldridge have copies of our entire file pertaining to these water right matters.

Thank you for your consideration.

Sincerely,



Karl E. and Ardys L. Holte
1506 N. Mink Creek Road
Pocatello, ID 83204-7255



cc: Mr. Craig Saxton
Mr. Justin Aldridge
Ms. Danni Smith

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 29-11596

NAME AND ADDRESS: G K MATKIN
JOANNE MATKIN
1506 N MINK CREEK RD
POCATELLO, ID 83204

SOURCE: GROUNDWATER

QUANTITY: 0.07 CFS

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

PRIORITY DATE: 02/28/1951

POINT OF DIVERSION: T07S R35E S30 NENENE Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.03 CFS
	Domestic 1 HOME	01-01 TO 12-31	0.04 CFS

PLACE OF USE:	Stockwater		Within Bannock County
	T07S R35E S30	NENE	
	Domestic		Within Bannock County
	T07S R35E S30	NENE	

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

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

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.


Daniel C. Hurlbutt, JR.
Presiding Judge
Snake River Basin Adjudication

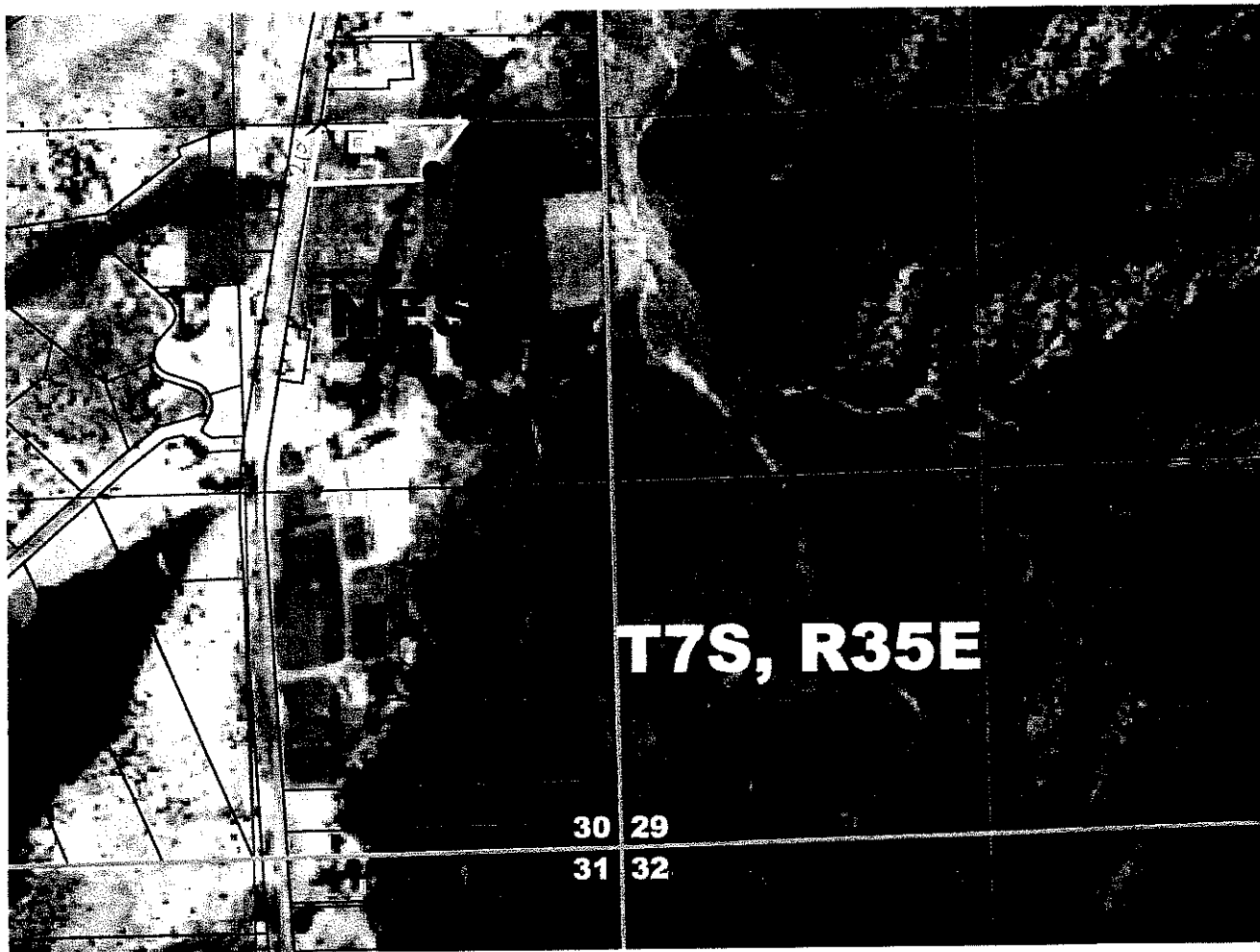
Mr. & Mrs. Holt,
Your legal description has
your property in 7S 35E
Section 30
NESE.

But the Partial
decree says NENE.

POINT OF DIVERSION

Potential Claim Map - Holte

Reference Map



Point of Diversion

Claimed Irrigated Acres: 2.0

Decreed POU 1506 N. MINK CREEK RD.



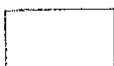
Possible Recommended POU - N/A



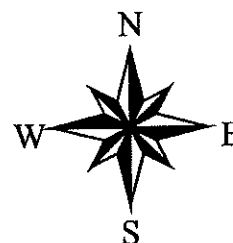
Bannock Co Tax Lot Data



Section Lines



Quarter Quarter Lines



Prepared By: Craig Saxton
October 2002



State of
DEPA
Western R

KARL E. HOLTE
SSN 481-32-8628
1506 N MINK CREEK RD (208) 232-6563
POCATELLO, ID 83204-7255

☐ TAX DEDUCTIBLE ITEM

2672

92-7363/3241

BAL
FORD
THIS
ITEM
BALANCE
DEPOSIT
OTHER
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FORD

IDAHO STATE UNIVERSITY
FEDERAL CREDIT UNION
Campus Box 8029 • Pocatello, ID 83209



September 6, 200

⑆324173639⑆7305 00009835⑈ 2672

NOT NEGOTIABLE

KARL E HOLTE
ARDYS L HOLTE
1506 N MINK CK RD
POCATELLO ID 83204-7255

RE: Notice of Change in Water Right Ownership for Snake River Basin Adjudication
(SRBA) claims 29-00274I and 29-02402.

Dear Mr. and Ms. Holte:

I received your Notice of Change in Water Right Ownership form. However, with further research I have found a couple problems with completing the change.

Issue 1:

When I met with you we spoke about the use of well water on your property. I had originally thought that part of GK Matkin's well right 29-02402 was applicable to your property. However, after further looking at the original license, it is clear that 29-02402 was not licensed for irrigation use on your property.

However, I did find domestic right 29-11596 for use of groundwater that is applicable to your property. 29-11596 has been partially decreed by the SRBA court and is a perfected water right. However, since it has been partially decreed, there is a \$25 fee associated with the ownership change.

*Mailed
9/11/02*

Issue 2:

29-00274I is a claim for use of Mink Creek water for irrigation purposes. You informed me that GK Matkin used Mink Creek water on your property. The problem is Mr. Matkin never claimed use on your property. Thus, I cannot split off the portion applicable to your property since nothing was claimed on your property.

I will solicit GK Matkin to amend claim 29-00274I to include your property as an irrigated place of use. If he is not responsive, your other option is to file a separate SRBA claim for the use of Mink Creek water.

1

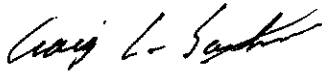
Conclusion:

I am returning the Change of Ownership information you sent. Please look over the changes I made in red and send it back to me with a check for \$25. Once I receive that I will forward it onto the SRBA court to change the ownership on 29-11596.

Upon receiving amended claim 29-00274I from GK Matkin, I will split the right into two portions and you will be notified of your new claim number. If you do not receive correspondence from myself regarding this issue in the next couple of months, you will need to contact me to discuss filing a separate claim if you wish to continue to use Mink Creek water.

I realize this is a confusing matter. Please feel free to contact me if you have any questions.

Respectfully submitted,



Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 29-11596

WATER RIGHT NUMBER: 29-11596

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	G K MATKIN 1506 N MINK CREEK RD POCATELLO, ID 83204 (208)233-2441
Current Owner	JOANNE MATKIN 1506 N MINK CREEK RD POCATELLO, ID 83204 (208)233-2441

Priority Date: 02/28/1951

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
---------------	------------------

GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	1/01 to 12/31	0.030 CFS	
DOMESTIC	1/01 to 12/31	0.040 CFS	
<u>Total Diversion:</u>		0.070 CFS	

Location of Point(s) of Diversion

GROUND WATER	NE1/4NE1/4NE1/4	Sec. 30, Twp 07S, Rge 35E, B.M.
BANNOCK County		

Place of Use

STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	35E	30	X																

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	35E	30	X																

Conditions of Approval:

IDAHO DEPARTMENT OF WATER RESOURCES

09/06/2002

Water Right Report 29-11596

1. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
2. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks:

1. Explanatory PARCEL NO. R4013052800 STOCKWATER, 30 COWS, 4 HORSES

Comments:

1. SMITH 9/3/1992 COPIED FROM REMARKS
Comment: MINK CREEK WATER

Dates and Other Information:

Licensed Date:
Decreed Date: 6/18/1998
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector: OR
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

September 6, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

GK MATKIN
JEANNE MATKEN
8428 NOUNAN RD
MONTPELIER ID 83254

RE: Amendment of Snake River Basin (SRBA) claim 29-00274I and Change of Address

Dear Mr. and Ms. Matkin:

The Idaho Dept. of Water Resources is currently in the process of reviewing SRBA claims in your area. During my initial review, I found that Karl and Ardys Holte purchased a little over 2 acres from you in 1999. It is my understanding that this property is and has been irrigated from Mink Creek and in 1990 you filed claim 29-00274I.

The department views water rights as being applicable to the property. Karl and Ardys Holte filed a Notice of Change in Water Right Ownership form to change a portion of 29-00274I into their name.

The problem is that 29-00274I claims 10 acres of irrigation in T7S, R35E, Sec 30, SENE. The property purchased by the Holte's is located in T7S, R35E, Sec 30, NESE (see enclosed map).

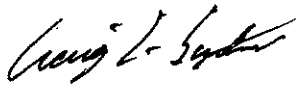
From speaking to you on 8/21/02, and conducting a field exam on 8/14/02, it is my belief that your intension in filing claim 29-00274I was to include irrigation on the NESE or what is now the Holte property. If my assessment is accurate, 29-00274I needs to be amended so I can split the claim and put the appropriate portion of the claim in the Holte's name.

For your convenience I am enclosing an amended claim. Please look over the claim and initial any changes you wish to make. When satisfied, sign the claim in front of a notary and return it to this office as soon as possible.

In addition, it appears that your mailing address has changed. Enclosed is a change of address form that needs to be completed to ensure you receive any future mailings.

Please feel free to contact me if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Craig L. Saxton".

Craig L. Saxton
Sr. Water Resource Agent
Adjudication Bureau

Enclosure (s)

Cc: Karl and Ardys Holte

Escrow #: 52986TA

Parcel # 8403059900

Approved by:

39001889

WARRANTY DEED

FOR VALUE RECEIVED, D. JOANNE MATKIN, AN UNMARRIED PERSON

the Grantor(s), do(es) hereby grant, bargain, sell, and convey unto KARL E. HOLTE AND ARDYS L. HOLTE, HUSBAND AND WIFE
the Grantee(s), whose address is 1506 N. MINK CREEK, POCATELLO, ID 83201
(Mailing Address), 1506 N. MINK CREEK, POCATELLO, ID 83204 (Property Address),
the following described premises, situated in BANNOCK County, Idaho:

LEGAL DESCRIPTION "EXHIBIT A" ATTACHED

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s) and Grantee(s) heirs, successors, and assigns forever. The Grantor(s) do(es) hereby covenant and warrant to and with the Grantee(s) that the Grantor(s) is/are the owner(s) in fee simple of such premises; that such premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject; those set forth in Pioneer Title Company Title of Bannock County, Commitment No. 52986TA, dated December 17, 1998; those made, suffered, assumed, or created by the Grantee(s); reservations, restrictions, dedications, covenants, easements of record or use; rights of parties in possession, encroachments, overlaps, boundary-line disputes, or other matters that would be disclosed by an accurate survey or inspection of the property; rights-of-way and agreements, if any, of record; general taxes and assessments (including irrigation and utility assessments, if any, for the current year) that are not yet due and payable; and that the Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

DATED this 26 day of January, 1999.

D. Joanne Matkin
D. JOANNE MATKIN

STATE OF IDAHO

County of BANNOCK

} ss

On this 26 day of January, 1999, before me, the undersigned, personally appeared D. JOANNE MATKIN known or identified to me to be the person(s) 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 in said County the day and year first above written.



Stephanie Leight
Notary Public
Residing at: POCATELLO, IDAHO
Commission Expires: 4-25-2000

99001889

Commencing at the Northwest Corner of the NE1/4 SE1/4 of Section 30, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, and running thence in an Easterly direction along the North line of the said NE1/4 SE1/4 a distance of 295 feet, more or less, to the Easterly side of U.S. Highway #38, the point of beginning of this survey;

thence in a Southwesterly direction following the Easterly side of the Highway a distance of 210 feet; thence East to the center of Mink Creek; thence in a Northeasterly direction following the center line of Mink Creek a distance of 210 feet, more or less, to the North line of the NE1/4 SE1/4; thence in a Westerly direction along the North line of said NE1/4 SE1/4 a distance of 430 feet, more or less, to the point of beginning of this survey.

99001889

RECORDED AT REQUEST OF

PIONEER TITLE

99 JAN 29 AM 10 25

OFFICIAL RECORD BOOK NO 731

COUNTY IDAHO

RECORDED

FEE 600.00

EXHIBIT A