David J. or James F. or Margaret Hagenbarth Estate
PO Box 1128
Dillon, MT 59725

September 29, 2004

Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RE: Evidence of Priority for SRBA Water Right Claims 21-4170, 4171, 4172, 4173, 4174, and 4175

Dear Allen:

Based on a preliminary review by your staff, I received notice on June 18, 2004 that the Department would not recommend the priority date claimed for the above water rights. After continuous review of the Hagenbarth water right claims in Basin 21 and 31 during the last 20 years, I am constantly discovering additional documents and acquiring greater knowledge about how the use of the water rights we claim has developed from the time our earliest predecessor began use up until the present day. As you look at these claims, you will notice that I submitted explanatory information three time in 1984, 1988, and in 1990, respectively. In this document I am representing the parties of Margaret, David J. and myself (James F.)in providing additional documents and information that will provide the proof necessary to support the priority date being claimed for these water rights. Attachment X of the 1990 Amended filings provides the primary information and rationale for the claimed Priority Date of November 10, 1893. I will build upon this document and provide additional proof.

Attachment 1 is a Notice of Water Location of George L. Wall. This notice specifically identifies a spring (Sheep Springs) that he diverted flows from near the center of Section 11, T13N,R40E, not far from where we are diverting flows from Kick Creek today. This notice also identifies the land he irrigated and this land is the same land being irrigated today and irrigated by our predecessors. There is no doubt that Sheep Springs is the same spring that lies in the NWNESW of Section 2, T13N,R40E and produces the water in the drainage that is now called Kick Creek and was filed on by the claimants in the above referenced filing. This document alone should be proof enough as to the validity of the priority date claimed.

Attachment 2 is a Notice of Water Location by George L. Wall that appropriates water from Dry Creek and identifies a canal that transports this water to lands that lie east of Dry Creek and south of Kick Creek. This canal would intercept the water being claimed in the following claimants' water right filings: 21-4170, 4171,4172,4173,4174, and 4175.

The land being irrigated in Wall's Dry Creek notice includes many of the same acres that are claimed in the above identified filings. The priority of this filing (November 10, 1893) consequently solidifies the priority date of the claims listed above at November 10, 1893, because this canal lies below and intercepts the flows from theses sources and puts them to beneficial use on the same land claimed in the above filings. This Dry Creek Canal is the same canal used by the claimants today and is discussed fully in other Attachments and identified on the maps of the above claims.

Attachment 3 is a Notice of Water Location filed by Chris Sorenson that claims water from Dry Creek and also identifies a canal that transports this water to lands that lie south and east of Dry Creek. The majority of this canal is the same canal used by George Wall, except that portion that delivered water to land lying further south. Much of this canal (since it is the same canal as that used by Wall) intercepts the water being claimed and put this water to beneficial use on lands listed in the following claimants' water right filings: 21-4170, 4171, 4172, 4173, 4174, and 4175. The priority of this Notice of Water Location is August 12, 1893, earlier than that claimed by the claimants' in the above filings. Attachment 3 provides further proof that the claimants' predecessors were diverting and beneficially using water identified in the above claims as early as November 10, 1893.

Attachment 4 is a Notice of Water Location filed by Harry Dunn in 1902. The significance of this filing is that it identifies the presence and use of an old canal (the Arrangee Canal) which carried water southeasterly from Dry Creek to land irrigated by Dunn. This is the same canal mentioned by Wall and Sorenson in Attachments 2 and 3. This verifies that the canal was built and did exist prior to Dunn's filing. Dunn is a predecessor in interest to a much of the lands owned and water claimed in filings 21-4170, 4171, 4172, 4173, 4174, and 4175. This canal by it location would automatically intercept the above claimed water flows and put them to use on land now owned and irrigated by the claimants.

Attachments 5 is a warranty deed between Harry and Helga Dunn and Wood Livestock Company and Attachment 6 is a deed between E.T. and Anna Underwood and F. J. Hagenbarth. These transactions took place in 1908 and their significance is that they transferred land and water to the claimants' more immediate predecessors and the portions of the water described (Dry Creek) had to have been delivered to the place of use (same as claimants) through the canal mentioned in the previous attachments. As mentioned in these previous attachments, this canal intercepts the flows of the sources claimed in 21-4170, 4171, 4172, 4173, 4174, and 4175 and carried this water to the lands where the claimants put it to beneficial use. These attachments prove that this canal existed and had been used for many years.

Attachment 7 is a copy of a License and Certificate of Water Right (#8990 or 21-2054) issued to the claimants' predecessor F.J. Hagenbarth. This license includes flows from Dry Creek to be used on lands in T13N,R40E, some of the same land being claimed in 21-4170, 4171, 4172, 4173, 4174, and 4175. On page 1 the Dry Creek feeder canal is identified. On Sheet 2 of the accompanying map, this canal is vividly identified as to its

course and how it delivers water to the land claimed in the above filings. The course of this canal would obviously intercept the flows from sources claimed above. Sheet 2 also illustrates how Kick Creek was being used above the canal and is pertinent to those lands in Claim 21-4173 that lay above the canal and are irrigated with Kick Creek flows. Attachment 7 is proof that the same canals developed by Wall and Sorenson in 1893 were being used and these canals obviously intercepted the flows being claimed in the above filings. This attachment substantiates how these flows were being beneficially used on land now owned and irrigated by the claimants.

Attachments 8, 9 and 10 are copies of sworn testimony given by F.J. Hagenbarth, the claimants predecessor, during the hearings for the Suave Decree. If necessary the claimants can provide certified copies of this testimony from the National Archives-Pacific NW Region in Seattle, WA. This decree was a result of Case #635 in the 21st U.S. District Court, Idaho-Eastern Division- Ernest Suave vs. W.H. Abbott etal.. The Suave Decree governed water in the Camas Creek Drainage in Basin 31. Since Dry Creek is on the hydrologic divide between Basins 21 and 31 and has water diverted and put to beneficial use in both basins, testimony in this case relates to water use in Basin 21 and the claims made by the claimants in Basin 21.

In Attachment 8 (Hagenbarth d 16&17-1746&1747) F. J. Hagenbarth testifies about the canal that carries water from Dry Creek to Sheridan Reservoir. He states that this canal proceeds in an easterly direction, is about 4 miles long, and was constructed by at least 1889. In Attachment 9 (Hagenbarth x 88-1818) Mr. Hagenbarth testifies that before applying for a license for water in the Dry Creek Canal, they "had used water under user's right years before that". In Attachment 10(Hagenbarth x 82-84) Mr. Hagenbarth testifies about the Harry Dunn right which used the Dry Creek Canal, but was diverted to Dunn's 320 acres before the canal reached Sheridan Reservoir (Sheet 2 in Attachment 7 clearly identifies where this upper canal is diverted from the Dry Creek Feeder Canal). Mr. Hagenbarth testifies that Wood Live Stock Company owned the Dunn land and it had been irrigated by them for the last 20 years. Mr. Hagenbarth again testified (Hagenbarth x 84) that the Dry Creek Canal had been constructed "since in the Eighties" (1880's). The testimony in the hearings for Case #635 leaves little doubt that the Dry Creek Canal was built in the 1880's and it carried water to the land being irrigated and claimed by the claimants. The fact that this canal and its branches were large and followed an easterly course from Dry Creek toward Sheridan Reservoir, proves that they would have intercepted all the flows from the water sources claimed in 21-4170, 4171, 4172, 4173, 4174, and 4175 and put them to beneficial use on lands now owned and irrigated by the claimants.

Given the documentation provided above, there can be no question that the priority dates for claims 21-4170, 4171, 4172, 4173, 4174 and 4175 are as early as November 10, 1893. There is no question that the water claimed in these rights has continually been put to beneficial use on land owned by the claimants. Evidence of Priority Date and Use has been produced and documented by the Claimants and I ask that the Department recommend these Notices of Claims be decreed by the Court in Basin 21.

Sincerely,

James F. Hagenbarth

180

21-4174

ATTACHMENT 1

Water Location

of

Geo. L. Wall.

Notice is hereby given to all whom it may concern that I, Geo L. Wall, a citizen of the U.S. and over 21 years of age, do hereby claim and appropriate one hundred twenty (120) inches of the flow of the waters of Sheep Springs measured under a four inch pressure. Said water is diverted at a point where this notice is posted, said point being about ½ mile S from the Junction of the two branches of said Spring, and about 10 rods N of the centre of Section 11 T. 13 N.R. 40 E.B.M. and in Antelope Valley Fremont County, Idaho. The water hereby claimed and appropriated to be used for agricultural ahd domestic purposes upon the following described lands and premises which will be when surveyed.

40 The NE¼ of the SW quarter)
80 " N½ " " SE ") of Section 11
120 acres of T. 13 N.R. 40 E.B.M. said land being part of the land known as the Richard Bianchi Desert Entry and adjoining Mary Rainvilles Desert Entry on the west.

Said waters so claimed and appropriated are taken and diverted from said sheep Spring at the aforesaid point of diversion and conducted to and upon the said hereinbefore described lands by means of a ditch, said ditch being 2419 ft. long 6 feet wide at the bottom and 1 foot in depth, and with a grade (fall) of one half of 1 tenth of one foot to the 100 feet.

Nov. 10, 1893.

G. L. Wall

Filed for Record at the request of F. W. Beane, at 5 min. past 2 o'clock P.M. this 9th day of Jan. 1894.

F. S. Bramwell, Recorder.

Transcribed from Fremont County Records Book "A" Water Location Record, Page 536.

STATE OF IDAHO
COUNTY OF CLARK :SS
I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof, on file in my office.
Date 12-25-04
Conni S. Owen
Clerk of the District Court
Becky Nordstrom
Deputy Clerk

Water Location

of

Geo. L. Wall.

Notice is hereby given to all whom it may convern that I, Geo. L. Wall, a citizen of the U.S. and over the age of 21 years do hereby claim and appropriate Three hundred and sixty (360) inches of the flow of the waters of Dry Creek measured under a four inch pressure.

Said water is diverted at the point where this notice is posted said point being on the west fork of Dry Creek, about 30 rods above the Junction of the West Fork and the East Fork, and being on the NE quarter of Section 8 T. 13 N. Range 40 E.B.M. and in Antelope Valley Fremont County, Idaho.

The Water hereby claimed and appropriated to be used for agricultural and domestic purposes upon the following described premises, which will be when surveyed.

80 The S½ of the SW quarter)
80 " S½ " " SE ") of Section 11
80 " W½ " " SW ") of Section 12
80 " N½ " " NW ")
40 " NW¼ " " NE ") " " 14

of T. 13 N. R. 40 E. B.M. 360 acres. Said land being part of the land known as the Richard Bianchi Desert Entry and adjoining Mary Rainvilles Desert Entry on the West. Said waters so claimed and appropriated are taken and diverted from said Dry Creek by means of a dam built in and across said Creek at the aforesaid point of diversion, said dam being built of logs and earth and being 26 feet long, 8 feet wide, and 6 feet high; and the aforesaid water, so claimed and appropriated is taken from said creek at the said dam, situated at said diversion and conducted to and upon said hereinbefore described lands by means of a ditch 97 feet long, and 12 feet wide at the bottom to another dam, said dam being 75 feet long, 9½ ft. wide, 3 ft. high thence by ditches about 19800 ft. long and from 12 feet to 6 ft. wide at the bottom and from 2½ ft. to 1 foot in depth, and with a grade (fall) of from one ½ of one tenth of one foot to one tenth of one foot to the 100 feet.

November 10th, 1893.

Geo. L. Wall.

Filed for record at the request of F. W. Beane at 5 minutes past 2 o'clock P.M. this 9th day of January 1894.

F. S. Bramwell, Recorder.

Transcribed from Fremont County Records Book "A" of Water Location Record, Page 544.

STATE OF IDAHO)
COUNTY OF CLARK) SS

I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof, on file in my office.

Date 6-25-04

Conni S. Owen
Clerk of the District Court

Becky Nordstrom
Deputy Clerk

ATTACHMENT 3

21-4174

NOTICE OF LOCATION OF WATER RIGHT.

NOTICE IS HEREBY GIVEN to all whom it may concern, That I Chris Sorenson, a citizen of the United States, over the age of twenty-one years, do hereby claim and appropriate Six Hundred Forty (640) inches of the flow of the waters of Dry Creek, measured under a four inch pressure.

Said water is divided at the point where this notice is posted. Said point being on the west fork of Dry Creek, about 30 rods above the Junction of the West Fork and the East fork and being on the NE Quarter of Section 8, T. 13 N. R. 40 E.B.M. and in Antelope Valley Fremont County, Idaho. The water hereby claimed and appropriated to be used for Agricultural and domestic purpose upon the following described land & premise, which will be when surveyed:

80. The S½ of the SE Quarter of Section 9.
160 The NE Quarter of Section 16.
80 The S½ of the SW Quarter
120 The NE¼ and the S½ of the SE Quarter } of Section 10.
120 The N½ and the SW¼ of the NW Quarter of Sec. 15.
80 and N½ of the NE Quarter T 13 N. R 40 E.B.M. 640 acres.

Said land being known as the Mary Rainville Desert Entry and adjoining Richard Bianches Desert Entry on the East.

Said waters, so claimed and appropriated are taken and diverted from said Dry Creek by means of a dam, built in and across said creek at the aforesaid point of diversion. Said dam being built of logs and earth and being 26 feet long, 8 feet wide and 6 feet high, and the aforesaid waters, so claimed and appropriated, is takenfrom said dam situated at said diversion, and conducted to and upon said hereinbefore described lands, by means of a ditch 97 feet long, and 12 feet wide at the bottom, to another dam. Said dam being 75 feet long, 8 1/3 feet wide, and 3 feet high, thence by ditches about 13700 ft. long, and from 12 to 6 feet wide at the bottom, and from 2½ feet to 1 foot in depth, and with a grade (fall) from ½ of one-tenth, to one tenth of one foot to the 100 feet.

August 12, 1893. Chris Sorensen.

Filed for record at the request of F. W. Bean, at 32 min. past five P.M. 10th day of Jan'y, 1894. F. S. Bramwell, Recorder.

Transcribed from Book A of Water Location Record, Page 494, Fremont County Records.

STATE OF IDAHO
COUNTY OF CLARK :SS
I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof, on file in my office.
Date 6-25-04
Conni S. Owen
Clerk of the District Court
Becky Nordtvedt
Deputy Clerk

GEO. D. BARNARD STATIONERY CO., ST. LOUIS

NOTICE OF WATER RIGHT.

ATTACHMENT 4

21-4174

STATE OF IDAHO,
County of Fremont } *ss.*

TO ALL CONCERNED, NOTICE IS HEREBY GIVEN:

1st. That Harry Dunn

hereby claim *the use of the waters of* Dry Creek *of* Spencer, Idaho,

to the extent of ten *cubic feet per second.*

2d. It is intended to divert said water at or near the point where a copy of this notice is posted, and more definitely described as follows: About one half mile up Dry Creek from point where the old Aranpee Canal Was diverted.

Transcribed from Book B Water Rights, Page 468, Fremont County Records.

STATE OF IDAHO
COUNTY OF CLARK :SS
I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof, on file in my office.
Date 6-25-04, 19
Conni S. Owen
Clerk of the District Court
Becky Haddon
Deputy Clerk

(In above description give legal subdivision of land or describe the place with reference to some prominent landmark.)

3d. The purpose for which said water is intended to be used is Agricultural

The place of intended use is Twp. 13 N. R. 40 E.B.M.

4th. It is intended to divert said water by means of a ditch & the Aranpee Canal

The general course of the proposed canal is Southeasterly
The length of the proposed canal is Four miles
It is intended to use said water for irrigating the following described land: Certain parts of Twp. 13 N. R. 40 E.B.M.

5th. It is intended to have the works for diversion and use of said water as aforesaid completed within three *years.*
(This must in no case exceed five years.)

WITNESS my *hand at* Spencer *this* seventh *day of* Spencer *1902.* *Idaho,*

Harry Dunn } *Claimants.*

STATE OF IDAHO,
County of Fremont } *ss.*

Harry Dunn

being first duly sworn, depose s *and say* s *that* he is *of lawful age and* the *claimant of the Water Right mentioned in the foregoing notice and whose name* is *subscribed thereto. That the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted in a conspicuous place at or near the place of intended diversion (as provided by law) on the* 7th *day of* July *1902, at minutes past* 3 *o'clock P. M.*

Harry Dunn

Subscribed and sworn to before me, this 7th *day of* July *1902*

A. Redford, Justice of the Peace

NOTE.—The above Certificate may, where there are several Claimants, be made and sworn to by one of them.

Filed for record this 7th *day of* July *1905, at* 1:55 *o'clock P.M.*

By.....*Deputy.* A. M. Carter .....*Recorder.*

att 4

ATTACHMENT 5 110

IN WITNESS WHEREOF, have hereunto set my hand and fixed my official seal, the day and year in this certificate first above written.

21-4174

STATE OF IDAHO
COUNTY OF CLARK :SS N. P. Christiansen

I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof, on file in my office.
Date JULY 1st, 2004
Connie S. Owen
Clerk of the District Court
Deputy Clerk

Justice of the Peace

STATE OF IDAHO :
: SS Kilgore Precinct.
County of Fremont :

On this 8th day of June 1908, before me N. P. Christiansen, a Justice of the Peace in and for said County, personally appeared Ellen Latham known to me to be the wife of Wm. Latham and known to me to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate above written.

N. P. Christeansen
Justice of the Peace
Kilgore Precinct.

Filed for record at the request of F. J. Hagenbarth at 1 P. M. Sept. , 15, 1908
I. N. Corey, Recorder, By Rose D. Miller, Dep.
Transcribed from Fremont County Records, from Deed Record Book "Y", pages 266 and 267

No. 22781

WARRANTY DEED.

THIS INDENTURE, made this 15th day of Sept., in the year of our Lord one thousand nine hundred and eight between Harry Dunn & Helga Dunn, his wife of Spencer County of Fremont State of Idaho the party of the first part, and Wood Live Stock Company Ltd. a corporation of Spencer County of Fremont State of Idaho the party of the second part;

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of two thousand six hundred & ninety four & nn/100 Dollars, lawful funds of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to its heirs and assigns forever, all the following described real estate, situated in Antelope Valley County of Fremont State of Idaho, to-wit:

SE4, SE4 SW4 of Sec. 10; E2 SW4 SW4 SW4 of Sec. 11, Tp 13 N. of R. 40 E. B. M., together with all water rights pertaining thereto, whether acquired by useor appropriation, especially that certain water right taken from Day Creek in 1902 & duly recorded in Fremont County said land contains 320 acres,

TOGETHER with all and singular the tenements, hereditaments and appurtenences thereunto belonging or in any wise appertaining, the reversion and reversions, remainder and remainder, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part:

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together witn the.

ATTA Imnt 6 21-41^ 115

THIS INDENTURE, made this 14th day of Sept,, in the year of our Lord one thousand nine hundred and eight between E. T. Underwood and Anna Underwood his eife of Kilgore P. O. County of Fremont State of Idaho the parties of the first part; and F. J. Hagenbarth of Spencer County of Fremont State of Idaho the party of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of the sum of five thousand seven hundred & twenty four & 36/100 Dollars, lawful money of the United States of America, to them im hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate, situated in Sheridan & Antelope Valley County of Fremont, State of Idaho, to-wit: N2 NE4 Sec. 15; N2 NW4 Sec. 14, Tp 13- N. R. 40 E. SW4, SE4 NW4, SW4 NE4, N2 SE4 Sec. 8 Tp 13 N. R. 41 E.B. M. containing 480 acres-

together with that certain water right of 160 inches purchased from H. Dunn and 6 cu. ft. flow per Sec. of the waters of Willow Creek as Per License No. 1786- recorded in records of Fremont Co., as well as all other water rights whether acquired by use, Purchase, appropriation or otherwise.

TOGETHER with all and singular the tenements, hereditaments and appurtenences thereunto belonging or in any wise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits, thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part:

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenences, unto the party of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quite and peaceable possession of the said party of the second part,.....his heirs and assigns, against the said party of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, Thes aid Parties of the first part have hereunto set their hands and seals the day and year first above written

Signed, sealed and delivered in the presence of

H. C. Wood
C. W. Hardy

E. T. Underwood (SEAL)

Anna Underwood (SEAL)

STATE OF IDAHO :
County of Fremont : SS

On this 14 day of September in the year 1908, before me C. W. Hardy, a Notary Public in and for said County, p rsonally appeared E. T. Underwood 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 affixed my official seal, the day and year in this certificate first above written.

My commission expires July 2/'12

C. W. Hardy, Notary Public (SEAL)

STATE OF IDAHO :
County of Fremont : SS

On this 14 day of September 1908, before me C. W. Hardy, a Notary Public in and for said County, personally appeared Anna Underwood, wife of E. T. Underwood known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me thst she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate above written.

C. W. Hardy,
(SEAL) Notary Public

July 2, 1912

STATE OF IDAHO
COUNTY OF CLARK } SS

I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof on file in my office.

Date July 1ST, 19 2004

Conni S. Owen
Clerk of the District Court

Deputy Clerk

Record at the request of F. J. Hagenbarth at 8 A.M., Sept., 21st, 1908.

I. N. Gorey, Recorder.

County Records, from Deed Record Book "Y", page 272.

ATTACHMENT 6
21-4174

appurtenences, unto the party of the second part, and to its heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, its heirs and assigns, against the said party of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these pres forever Defent.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

Harry Dunn (SEAL)

Helga Dunn (SEAL)

F. J. Hagenbarth

C. W. Hardy

STATE OF IDAHO :
: SS
County of Fremont :

I DO HEREBY CERTIFY THAT: On this 15 day of September, in the year 1908 before me C. W. Hardy, A Notary Public in and for said County and State, personally appeared Harry Dunn known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same.

AND I DO HEREBY CERTIFY THAT: On this 15 day of September, in the year of (1908) before me, C. W. Hardy, a Notary Public in and for said county and State, personally appeared Helga Dunn known to me to be the person whose name is subscribed to the within and foregoing instrument described as a married woman, the wife of the above named Harry Dunn and upon an examintaion separate and apart from and without the hearing ofher said husband, I made her acquainted with the contents of the instrument, and thereupon without the hearing of her said husband she acknowledged to me that she executed the same and that she does not wish to retract such execution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Spencer, Fremont County, the day and year first above Written.

C. W. Hardy

(SEAL) Notary Public

My commission expires July 2, 1912

Filed for record at the request of F. J. Hagenbarth at 8 A.M., September 21st, 1908

I. N. Gorey, Recorder

Transcribed from Fremont County Records, from Deed Record Book "Y", page 271

STATE OF IDAHO
COUNTY OF CLARK :SS
I HEREBY CERTIFY that above and foregoing is a full and correct copy of the original thereof, on file in my office.
Date July 1ST, 2004
Canni S. Owen
Clerk of the District Court
Deputy Clerk

Issued in lieu of License No. 6990, Page 275

Attachment 7

21-4174

State of Idaho

License and Certificate of Water Right

Water License No. 6990

Water District No. 36-A

Amount 75.2

Priority 9-24-1912

THIS IS TO CERTIFY that F. J. Hapenbarth of Spencer, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated September 24 1912; that Permit No. 6990 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 80.0 second feet, was issued thereunder on August 27, 1915, showing that said works were completed on the 7th day of January, 1915; and that on the 9th day of September, 1920,

F. J. Hapenbarth of Spencer, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of the right to use the waters of Dry Creek and Sheridan Creek, a tributary of Snake River, for the purpose of irrigation and domestic use, under Use Permit No. 6990 of the State Engineer and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 6 of Licenses, at page 3229, on the 2nd day of January, 1925;

The right hereby confirmed dates from September 24, 1912;

The Point of Diversion is located Dry Creek feeder canal bears S.39°45'E. 3270' from the ¼ Corner bet. Secs. 9-16, T. 13 N., R. 40 E.,B.M.; Sheridan Creek feeder canal bears N. 53° 16'E., 1638' from ¼ Cor. bet. Secs. 7-12,T. 13 N., R. 41 E.,B.M.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 75.2 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
13 N.	41 E.	8	S½ SE¼	80	80
		16	All	640	640
		17	All	640	640
		18	E½	320	320
		20	All	640	640
		21	All	640	640
13 N.	40 E.	12	S½ NE¼	80	80
			W½ SE¼	80	80
			SW¼	160	160
		11	SE¼	160	160
		10	SW¼ SW¼	40	40
		15	W½ NW¼	80	80
			NE¼ NW¼	40	40
			N½ NE¼	80	80
		14	N½ NW¼	80	80
					3760

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 2nd day of January, 1925.

(SEAL)

W. G. SWENDSEN
Commissioner of Reclamation.

By GEO. E. CARTER
Assistant

21-205

NAME OF APPLICANT... C. Hagenbarth ATTACHMENT 7 Permit 8330

21-4174

SHEET 1

RECEIVED
APR 03 2003
IDWR/North

LEGEND

Land under permit of irrigated



SCALE: 3 INCHES = 1 MILE DRAW PLAN IN INK

NAME OF APPLICANT F. Nogenborth ATTACHMENT Permit 6990

21-4174



ATTACHMENT 8

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SEPTEMBER 6th, 1928 - THURSDAY - 9:30 A.M.

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MR. PETERSON: It is agreed that the capacity of the Woody Ditch, which has been referred to in the testimony here, is 700 inches, and that the capacity of the East Side Ditch, which is also identified in the testimony is 500 inches.

It is agreed that the capacity of the Harmon Reservoir, referred to, is 2,000 acre feet.

It is agreed that the capacity of the Lone Tree Reservoir, which will be identified in the testimony, is 2,200 acre feet.

FRANK HABENBARTH Resumes the Stand.

DIRECT EXAMINATION (Continued)

BY MR. PETERSON:

Q I want to discuss with you first, Mr. Hagenbarth, the Sheridan Reservoir and the diversion into the Sheridan Reservoir from Dry Creek. You may state, if you will, the fact of whether or not there is a diversion from Dry Creek by way of canal into the Sheridan Reservoir?

A There is.

Q Where does that diversion head on Dry Creek?

A In Section 9, Township 13 North, Range 41 East. I think it is right near the northeast quarter of the south-

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west quarter of that section, about five hundred feet--

Q You say Section 8, Township 13 North, Range 41 East?

A Thirteen North, Range 40 East--excuse me.

Q The canal proceeds then in what general direction to the reservoir?

A.I would say in an easterly direction.

Q About what distance to the reservoir?

A About four miles I should say.

Q When was that canal constructed?

A In the eighties.

Q One would be safe in saying 1889?

A Yes.

Q As to the date of completion?

A Yes.

Q When was water diverted through it first?

A About that time.

Q What has been done, if anything, each season since that time in regard to the diversion of water through the ditch?

A It has gone through the canal constantly.

Q What is the capacity of the canal?

A It is a very large canal. It would carry up to 3,000 inches of water. It is cut down now--easily 2,000 inches would be very conservative.

Q How much water has been diverted through that canal from that source to the Sheridan Reservoir from year to year?

A That would depend upon the season. During high

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Q (MR. PETERSON) In respect to the Sheridan Reservoir rights, you were asked whether or not you claimed under license there--I understood from your testimony this morning that prior to that application, based on user right, you claimed water through the Dry Creek Canal into the Sheridan Reservoir?

A Yes.

Q At an early date?

A Many years before.

Q A user right?

A Yes. We put in application for a permit later on. We had used that water under user's right for years before that.

Q (MR. SNOW) In the absence of diversions from Dry Creek, would there be considerable of that water get down, during flood water season, into the Camas, or would it be very slight?

A Wouldn't be very much--very little. I have seen--the average year wouldn't be a hundred inches.

Q (MR. PETERSON) I think you definitely fixed the point of diversion from the Sheridan Reservoir?

A Out on the land?

Q The point where you take it out?

A In the southwest corner of the southwest quarter of the southeast quarter of Section 12, Township 13 North, Range 40 East.

Q Thence it is taken east through the canal and laterals of the company to and upon about 2,000 acres of meadow land, located in sections--give the sections?

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for which water right is claimed under License No. 3214 for 190 inches--how long has it been since any of that land was irrigated?

A I can't answer that either for the same reason.

Q Speaking now of the two ditches out of Dry Creek--one ditch goes over to the Sheridan Reservoir?

A Yes.

MR. SNOW: As I understand on that ditch there is a right that is not pleaded, Mr. Peterson, in the cross complaint, known as the Harry Dunm right?

MR. PETERSON: Yes.

Q And the water connected with that right is diverted before the ditch reaches the reservoir?

A Yes.

Q There are 320 acres of land in that?

A Yes.

Q That now belongs to the Wood Livestock Company?

A Yes.

Q How much of that is irrigated?

A Practically all of it.

Q That is cleared of sage brush?

A It is all clear meadow land.

Q It has been irrigated every year for the last five or six years?

A For the last twenty years.

Q There are some lands that are not--belonging Hagenbarth x 82.

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to the Wood Livestock Company that are not shown in color on Defendant's Exhibit No. "68", but the Wood Livestock Company does own lands that are generally located in Township 13, Range 41 East Boise Meridian?

A Yes.

Q What is the general character of those lands?

A Gravelly sand loam.

Q I mean with respect to--pasture lands.

A It has been farmed for a great many years--hay put up. It is covered with a system of laterals, and ditches with headgates.

Q But I understood you to say this morning that in recent years you had found that itwas more economical for the livestock to harvest the crops for you?

A That was only true of this part right here (indicating). We have put up hay on this here (indicating). That applied largely to the Camas meadows country. We are now planning to discontinue farming this.

Q Under the Sheridan Reservoir?

A Yes.

Q How much of the lands watered by the Sheridan Reservoir have you been cutting hay on?

A Two thousand acres. It is a very large extensive timothy meadow, and some clover. Alfalfa never did very good there.

Q With respect to that you would say that all water that is diverted out of Dry Creek, tributary of Camas, and taken over to the Sheridan Reservoir from Hagenbarth x 83.

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that source, that being the only source in which we are interested in this suit, has been used in the irrigation of those hay lands you described, and other lands in that vicinity belonging to the Wood Livestock Company?

A Yes.

Q Township 13 North, Range 41 East?

A Yes.

Q So that you can say that that water has all been used for irrigation purposes?

A Constantly, yes.

Q Has that land been leveled?

A A great deal of it has been leveled. It is very fine meadow, hay meadow.

Q I think you probably covered this before--my recollection is imperfect--this canal from Dry Creek into Sheridan Reservoir has been constructed for a good many years?

A Since in the Eighties.

Q Was it enlarged, or in its present shape?

A In its present shape, except where the natural flow of water enlarged it. It carries a very large volume of water.

Q I understand out of Dry Creek, for use in the Sheridan Reservoir, you claim water under License No. 8990?

A Yes.

Q And that is approximately 3500 acre feet?

A Yes. In addition to water already owned by Hagenbarth x 84.

State of Idaho
DEPARTMENT OF WATER RESOURCES
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EASTERN REGION

June 18, 2004

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

RECEIVED
OCT 0 4 2004
Department of Water Resources
Eastern Region

MARGARET OR DAVID HAGENBARTH
PO BOX 1128
DILLON MT 59725

Woody Hagenbarth

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 21-4174

Dear Claimant (s):

The Idaho Department of Water Resources is nearing the beginning of water rights review in Basin 21, the Henry's Fork drainage. The Notice(s) of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based on "Beneficial Use". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by License, Decree, or Permit. For this reason, proof must be provided supporting the priority date. **As the claimant, you are responsible for submitting the necessary proof to support the priority date.**

Your claim, as referenced above, claims a Priority Date of NOV 10 1893, from UNNAMED STREAM.

It is important that each element of the Notice of Claim be verified. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed priority date.

For your reference, I have provided a printout of your Notice of Claim and the pamphlet entitled **"Evidence of Priority".** The pamphlet describes the types of evidence which are acceptable and suggests which documents will fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled **"What Kind of Evidence is Required"** and **"Some Examples of Documents Which May Be Evidence of the Priority Date". PLEASE READ THE ENCLOSED PAMPHLET.**

It is our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other elements of the Notice of Claim have been or soon will be conducted by Department personnel.