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MAY 24 2005
Department of Water Resources
COPY

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 <u>22-12900</u>
	)	(Insert water right number)
Case 39576	)	
	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE:
	)	☐ LATE NOTICE OF CLAIM
	)	☒ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is DYLE PETERSON

My address is 418 N. 2700 E. ST. ANTHONY, ID, 83445

My phone number is: Work _____ Home (208) 624-3629

I am an attorney representing DYLE PETERSON

My name is ROBERT L. HARRIS

My address is P.O. Box 50130 IDAHO FALLS, ID 83405

My phone number is (208) 523-0620

MOTION TO FILE A LATE NOTICE OF CLAIM

A *Motion to File a Late Notice of Claim* will require a hearing before the Presiding Judge.

☐ I did not file a Notice of claim to the use of water in the SRBA because:

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☐ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

I have attached:

- ☐ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.
- ☐ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on _____
(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A *Motion to File an Amended Notice of Claim* may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☒ I must amend my Notice of Claim to the use of water in the SRBA because:

JUNIOR ESTERMILLER, WHO FILED ON MY BEHALF, MADE SOME
MISTAKES WHEN HE FILED. WATER RIGHT 22-12900 IS AN EXPANSION
OF WATER RIGHT 22-2200 (NOT 22-2180), SO THE POINT OF DIVERSION
NEEDS TO BE CHANGED. IN ADDITION, ~~THE~~ I (NOT JUNIOR OSTERMILLER)
SHOULD BE LISTED AS THE CURRENT OWNER. LASTLY, THE PRIORITY DATE
SHOULD BE MAY 1, 1965, RATHER THAN FEB. 1, 1965.

- ☒ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

AFFIDAVIT OF CAROL OSTERMILLER (INCLUDING DOCUMENTS SUPPORTING
HER AFFIDAVIT); AFFIDAVIT OF BOYD E. HOWARD (INCLUDING DOCUMENTS
SUPPORTING HIS AFFIDAVIT); AFFIDAVIT OF GLEN GODFREY.

I have attached:

- ☒ An amended Notice of Claim (available from IDWR).

- ☒ Payment of the following additional fees required by IDWR:

NONE

VERIFICATION (Must be completed)

State of IDAHO

County of BONNEVILLE

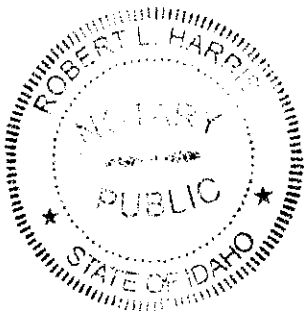
DYLE B. PETERSON, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Dyle B. Peterson
Signature of person filing motion

Robert L. Harris
Attorney signing in representative capacity

Subscribed and sworn to before me on MAY 11, 2005
(Insert Date)



Robert L. Harris
Notary Public for STATE OF IDAHO
Residing at: Ammon, Bonneville County
My Commission expires: 11/18/2010

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on 19 May, ²⁰⁰⁵~~199~~, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

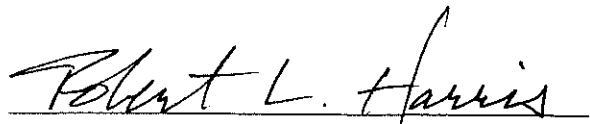
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)


Signature of person or attorney mailing the form

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
KARL R. DECKER
THEL W. CASPER*
SHAN B. PERRY
AMELIA A. SHEETS
DeANNE CASPERSON**
ROBERT L. HARRIS

1000 RIVERWALK DRIVE, SUITE 200
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL RHARRIS@HOLDENLEGAL.COM

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MAY 24 2005

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1939-1982)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

*Also Licensed in Utah and Arizona
**Also Licensed in Missouri & Kansas

May 18, 2005

Allen B. Ruberry
Idaho Department of Water Resources
Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

COPY

RE: Proof of Beneficial Use for Water Right No. 22-12900

Dear Allen:

Enclosed with this letter are a number of documents relating to SRBA Water Right Claim 22-12900. We appreciate your flexibility in allowing us additional time to provide evidence of the priority date associated with this right. As you may remember from our brief discussion over a month ago, the notices were sent to the widow of Junior Ostermiller (the presently-listed Current Owner) and she did not fully appreciate what these notices required her to do. Mr. Ostermiller died on October 8, 1994. We have worked as quickly as possible to provide the Department with the information that it has requested.

The enclosed documents are intended to prove a priority date of May 1, 1965 (not February 1, 1965 as presently listed on the Adjudication Claim Report) and to clean up some other issues related to this water right. We believe that the following discussion will be helpful in explaining the history of this water right and why some changes are necessary.

In order to better understand the following, please refer to the aerial photo with drawn quarter-quarter sections enclosed with this letter. First, as indicated by the Adjudication Claim Report, Water Right No. 22-12900 is appurtenant to property owned by Mr. Dyle Peterson. Mr. Peterson's property is highlighted in yellow and outlined in red on the aerial photo. This property was never owned by Junior Ostermiller, but Mr. Ostermiller filed this SRBA claim on Mr. Peterson's behalf because Mr. Ostermiller was leasing Mr. Peterson's property at the time. For some reason, Mr. Ostermiller is listed as the Current Owner. Enclosed with this letter is an

Amended Notice of Claim to a Water Right and a copy of a Motion to file an Amended Notice of Claim with the SRBA court that, among other things, proposes to change the Current Owner designation from Junior Ostermiller to Dyle Peterson.

As explained by the enclosed affidavits, Mr. Peterson leased his property to both Junior Ostermiller and Rex Howard beginning in 1965. The enclosed affidavits and other documents also demonstrate that both farmers pumped water from a well located in 06N, 41 E, **Sec. 3** (not 06N, 41E, **Sec. 2** as listed on the Adjudication Claim Report) from 1965 until 1986. The approximate location of this well is indicated on the aerial photo and is labeled as "correct point of diversion." Mr. Howard and Mr. Ostermiller also used this point of diversion to irrigate other property owned by each of these men and by Mr. Reese Godfrey under Water Right No. 22-2200. These properties are located to the north of Mr. Peterson's property. Therefore, Water Right No. 12-12900 is an expansion of Water Right No. 22-2200 and not an expansion of Water Right No. 12-0218 as indicated on the Adjudication Claim Report. The Amended Notice of Claim to a Water Right and the Motion to file an Amended Notice of Claim with the SRBA court seek to correct this error.

In 1986, Mr. Howard ceased leasing his half of Peterson's property and Mr. Ostermiller began leasing all of Mr. Peterson's property. At this point, Mr. Ostermiller decided that it would be easier to divert water from a well located in 06N, 41E, **Sec. 2** that he also owned. Mr. Ostermiller irrigated Peterson's property from this well in Sec. 2 until his death in 1994. Mr. Ostermiller did not file a transfer application to change the point of diversion for this right, but he did irrigate the property from the point of diversion in Sec. 2 until 1994.

This history is useful to understanding why Mr. Ostermiller, filing on behalf of Mr. Peterson, listed the point of diversion as being in Sec. 2 because at the time he filed the claim for Water Right No. 22-12900 around 1990, Mr. Ostermiller was actually using the point of diversion in Sec. 2 without realizing that he was using that point of diversion illegally. As set forth in the affidavits, the correct point of diversion for this water right is in Sec. 3. The Amended Notice of Claim to a Water Right and the Motion to file an Amended Notice of Claim with the SRBA court seeks to correct this error.

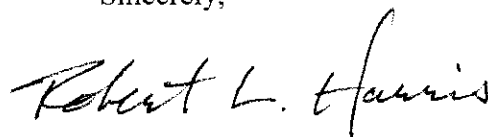
Beginning in 1995, Mr. Peterson began leasing all of his property to Mr. Layne Harris. Mr. Harris is the current lessee of the property and owns property south of Peterson's property. Back in 1995, Mr. Harris began diverting water from a well located south of Mr. Peterson's property in 06N, 41E, **Sec. 10** to irrigate the Peterson property. In the process of figuring out the history of Water Right No. 22-12900, Mr. Harris now realizes that he should have filed a transfer application to change the point of diversion and intends to file such an application for transfer in the next few months.

Concerning the priority date, since this is a claim for enlargement of 22-2200, the priority date relates back to when the enlargement occurred. None of the three affiants could remember the exact date that water was first applied to the Peterson property, but they all know that it was sometime in the spring of 1965. It is highly unlikely that the property was first irrigated in February. Therefore, we believe that the correct priority date should be May 1, 1965 because this is the time that water was most likely first applied to the Peterson property.

In sum, the Amended Notice of Claim to a Water Right and the Motion to file an Amended Notice of Claim with the SRBA court seeks to change the Current Owner (from Mr. Ostermiller to Mr. Peterson), the priority date (from Feb. 1, 1965 to May 1, 1965), and the point of diversion (from 06N, 41 E, Sec. 2 to 06N, 41E, Sec. 3). It also is intended to clarify that Water Right No. 22-12900 is an expansion of Water Right No. 22-2200 rather than Water Right No. 22-02180. Water Right No. 22-12900 has been used every year since 1965 to irrigate Peterson's property and has not been forfeited. However, three different points of diversion have been used to divert water under this right. Given the history set forth in the enclosed documents, the point of diversion that should be partially decreed by the SRBA court is found in 06N, 41 E, Sec. 3 because that point of diversion was used when this enlargement was accomplished. The water right is currently being diverted from a well in 06N, 41E, Sec. 10 by Mr. Layne Harris to irrigate Mr. Peterson's property. Mr. Harris will file a transfer application to change the point of diversion within the next few months.

We hope the above history and enclosed documents are clear as to what has occurred with Water Right No. 22-12900. It appears that the SRBA was intended to cleanup situations just like this one. We appreciate your assistance with this matter. Please do not hesitate to call if you have any questions.

Sincerely,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

cc: Dyle Peterson
Layne Harris

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MAY 24 2005

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 22-12900

Date Received _____

Receipt Number _____

AMENDED NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY

1. Name of Claimant(s) Dyle Peterson Phone (208) 624-3629Mailing Address 418 N. 2700 E. St. Anthony, ID Zip 834452. Date of Priority (Only (1) per claim) May 1, 19653. Source of water supply (a) Groundwater

which is tributary to (b) _____

4.a. Location of existing point of diversion is:

Township 6N Range 41E Section 3, SE 1/4 of NW 1/4 of 1/4, Govt. Lot _____,
County of Madison

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, 1/4 of 1/4 of 1/4, Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, 1/4 of 1/4 of 1/4 Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged
and the depth of each well. Water is diverted from the well with a pump.

6. Water is claimed for the following purposes: (Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 4/15 to 10/15 amount .64 cfs or _____7. Total quantity claimed (a) .64 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

10. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instruction for standard symbols.

[illegible]Total number of acres irrigated 74.0

11. In which county(ies) are lands listed above as place of use located? Madison
12. Do you own the property listed above as place of use? Yes X No
If your answer is No, describe in Remarks below the authority you have to claim this water right.
13. Describe any other water rights used at the same place and for the same purposes as described above.
 or None (X)

14. Remarks:

This amended application is intended to correct errors made in the initial application for Water Right 22-12900. The initial application was filed by Junior Ostermiller on behalf of Dyle Peterson. The water right should list Mr. Peterson as the current owner, not Mr. Ostermiller. Mr. Ostermiller was Mr. Peterson's lessee at the time, but Mr. Peterson is the owner of the property. Also, Mr. Ostermiller should have listed the point of diversion for this water right as being located in Township 06N, Range 41E, Section 3, SE1/4NW1/4 instead of in Section 2 because this water right was an expansion of Water Right No. 22-2200 and not an expansion of 22-02180. Lastly, the priority date should be May 1, 1965 and not February 1, 1965.

15. Basis of Claim (Check one) Beneficial Use _____ Posted Notice _____ Permit _____ Decree _____ License _____
If applicable provide IDWR Water Right Number _____ Enlargement of Water Right No. 22-2200. _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant

16. Signature(s)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s)

Date _____

Date _____

Last Name Ident. Number

For Organizations: I do solemnly swear or affirm that I am _____ of _____ (Title) _____, that I have signed the foregoing document in the space below as _____ (Organization) _____ of _____ (Organization) and that the statements contained in the foregoing document are true and correct.

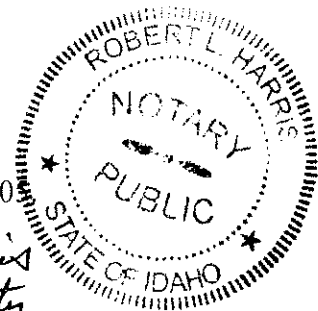
Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho)
County of BONNEVILLE) SS.

Subscribed and sworn (or affirmed) before me this 11th day of MAY, 2008

Notary Public Robert L. Harris
Residing at Ammon, Bonneville County
My Commission Expires 11/18/2010



17. Notice of Appearance:

Notice is hereby given that I, Robert L. Harris, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Robert L. Harris
Address P.O. Box 50130 Idaho Falls, ID 83405
Date May 11, 2008

COPY

Send To Printer

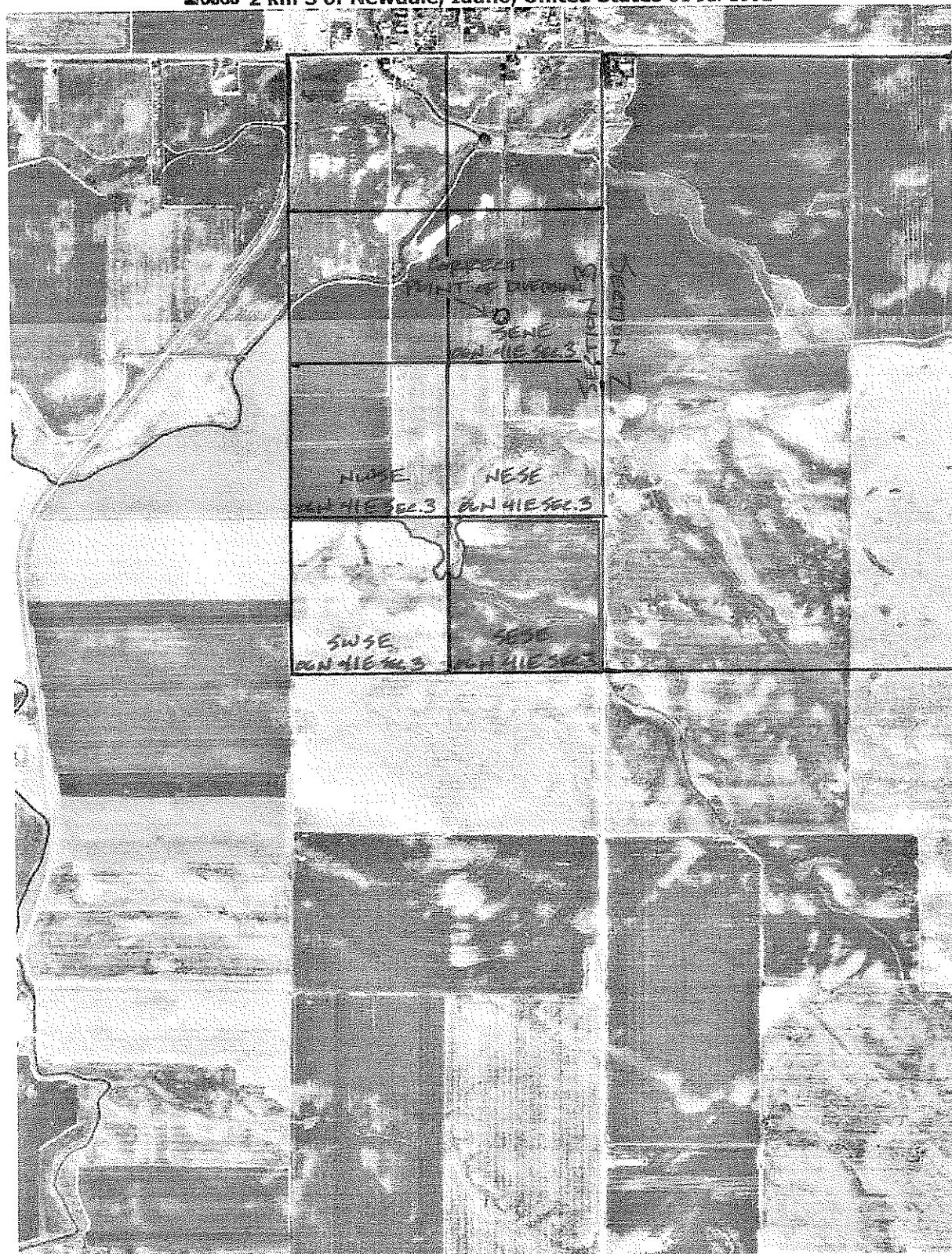
Back To TerraServer

Change to 11x17 Print Size

Show Grid Lines

Change to Landscape

USGS 2 km S of Newdale, Idaho, United States 31 Jul 1992



0 1.5Km

0 1.25Mi

MAY 24 2005

Department of Water Resources
COPY**Carol Ostermiller**

STATE OF IDAHO)
County of Madison)ss.

Carol Ostermiller, being duly sworn on oath, deposes and states as follows:

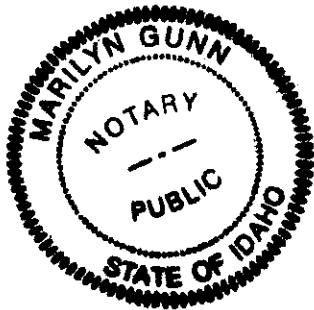
I am over the age of eighteen (18) years old and competent to testify as to the following facts and have personal knowledge as to the following facts.

1. I currently reside at 8881 E. Hwy 33, Newdale, Idaho, 83436.
2. I was married to Junior Ostermiller for 28 years until his death on October 8, 1994. Because of marriage to my husband, I am familiar with how the farm was run and how water was used on our farm. I am also well acquainted with the property farmed by my husband.
3. My husband utilized a well located south of my home in Township 06N, Range 41E, Sec. 3 in Madison County to irrigate property leased to my husband from Mr. Dyle Peterson for our farm up until 1995. My husband leased one-half of Peterson's property and Rex Howard leased the other half of Peterson's property. I have attached to this affidavit a true and correct copy of the lease entered into between Mr. Peterson, the lessee, and Rexford Howard and Junior Ostermiller, the lessors, and labeled it as "Exhibit A". As indicated on the lease, it was entered into on February 6, 1965. Both Mr. Howard and my husband used water from the same well located south of my home in Township 06N, Range 41E, Sec. 3, beginning in the spring of 1965, to irrigate Peterson's property. In 1986, Mr. Howard stopped leasing his half of Peterson's property and my husband thereafter leased Rex's portion from Mr. Peterson. At this point, my husband decided to use water from our other well located in Township 06N, Range 41E, Sec. 2 to irrigate all of Peterson's property because he felt that it would be easier to get water to Peterson's property this way. Water was used from this well in Township 06N, Range 41E, Sec. 2 to irrigate Peterson's property until 1995.

4. The Remarks section on the Adjudication Claim Report for Water Right No. 22-12900 states that this is an expansion of License No. 22-02180, but this is not correct because the well located south of my home (which diverts water for Water Right No. 22-2200) was the well actually used to irrigate Peterson's property from 1965 until 1995. This well was drilled around 1961 to irrigate our farmland located just south of my home. I have attached a copy of the water license we received for this well as Exhibit B. Once my husband and Mr. Howard leased Peterson's property beginning in 1965, water was used from this well to irrigate the approximately eighty (80) acres of land owned by Mr. Peterson.
5. I remember when water was first used to irrigate Mr. Peterson's property because I found a copy of the first lease entered into between my husband, Mr. Howard and Mr. Peterson, dated February 6, 1965, and this refreshed my memory of when the lease began.
6. I also remember when water was first used to irrigate Mr. Peterson's property because it happened just before my husband and I were married in 1966. I remember this time because we increased our farm acreage to make a better living. I also remember baling and collecting hay grown on Peterson's property right around the time that I was married in 1966.

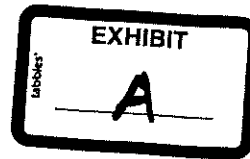

Carol Ostermiller

SUBSCRIBED AND SWORN to me this 11 day of April, 2005.



Marilyn Gunn
Notary Public for the State of Idaho
Residing at: Idaho
My Commission Expires: 3-10-09

IDAHO FARM LEASE



This lease is entered into this 6th day of February 1965, between D. B. Peterson and Ila Peterson, Husband and Wife, hereinafter designated landlord, and Rexford S. Howard and Junior Ostermiller hereinafter designated tenant.

Witnesseth: That landlord, for and in consideration of the covenants and agreements hereafter mentioned to be kept and performed by tenant, has by these presents, demised and leased to tenant the following described land, to-wit:

South half of the Southeast Quarter ($S\frac{1}{2}SE\frac{1}{4}$)
Section 3, Township 6 North, Range 41 East,
Boise Meridian.

in the county of Madison, State of Idaho, and containing eighty (80) acres, more or less, together with all buildings and improvements thereon and all rights thereto appertaining except as otherwise herein provided, to have and to hold the same to tenant, from February 6, 1965, to December 31, 1969. And the tenant in consideration of the leasing of the premises as above set forth, covenants and agrees with landlord to pay, as rent for the same, the shares of crops, cash, or quantities of crops as set forth below:

Cash rent on or before the first day of April of each year commencing April 1, 1965, on the following basis:
\$20.00 per acre for grain crops of any kind.
\$25.00 per acre for potatoes.
No rent on non-tillable land.

After the crop year of 1965 not more than half of the acreage that is tillable shall be planted to potatoes.

Tenant is specifically authorized to sprinkle irrigate said premises.

And tenant further agrees with landlord that at the expiration of the term of this lease he will yield up the possession to landlord without further demand or notice, and in as good order and condition as when the same was entered upon by tenant, loss by fire or inevitable accident and ordinary wear excepted.

The tenant further agrees not to allow or suffer any waste on said premises, or lease, or under-let, or permit any person or persons to occupy or improve same or make or suffer to be made any alteration therein, except with the approval of the landlord hereto in writing having first been obtained.

And it is further expressly understood and agreed between the parties hereto as follows:

1. The tenant covenants to farm said premises to the satisfaction of landlord, and to raise the greatest amount of grain and other crops thereon the nature of the soil and season will permit, and further to break up and improve as much of the waste land as may be in condition to plow.
2. Tenant shall haul out and distribute upon the poorest soil on said premises all the manure and compost suitable to be used and further not to burn any straw or stubble on said premises.
3. The tenant shall preserve and keep the fruit and ornamental trees, vines and shrubbery that are now on or may be planted upon the premises from injury by plowing or from cattle, or any other stock, and further to keep said premises free from brush and burrs, and shall also keep all necessary ditches and drains plowed and cleaned out during the continuance of this lease.
4. Tenant shall keep said premises including the hedges and fences in proper repair, provided that the landlord shall furnish such material that he or his agent may consider necessary to repair said premises within a reasonable time after being notified, and the tenant shall haul said material to said premises without charge.
5. Tenant covenants not to remove any of the crops raised on said premises during the term of said lease until the rent therein specified shall be fully paid, or sell the same or any part thereof. And if any grain or other crops raised on said premises during said term shall be removed or attempted to be removed by any person or persons before the payment of said rent; or if the tenant shall sell, or attempt to sell, said grain or other crops of produce, or any part thereof shall be claimed or attached or levied upon by execution or claimed by any other person or persons upon any pretense whatever, before said rent shall be fully paid, then upon the happening of any such contingencies, said rent shall immediately become due and payable, and landlord or his legal representatives shall have the right to enter into the said premises and take possession of said grain or other crops, or whatever the same may be and remove the same and sell the same or any part thereof; or if the same be not sufficiently matured for harvesting or gathering to cultivate the same and to preserve and protect the same until it shall be fit, and then to harvest or gather or sell the same or any part thereof, at private or public sale, and to apply the proceeds thereof to the payment of the expenses and cost of carrying out the provisions of this lease and the payment of said rent hereby reserved.

6. Landlord reserves the right to plow the stubble ground when tenant may have harvested the grain grown thereon and further that landlord or his legal representatives may enter upon said premises for the purpose of viewing or of seeding and making repairs.

7. If tenant shall fail to cultivate said premises as herein agreed, or shall fail to keep any of the covenants contained in the lease, or shall assign this lease or under-let said premises, or any part thereof, then this lease shall, at the election of landlord, be null and void, and landlord or his legal representatives shall have the right to take possession of said premises, using such force as may be necessary with or without process of law, and all damages growing out of the failure to perform any of the covenants in this lease shall be added to and become part of the rent, recoverable as rent.

8. The tenant hereby waives and relinquishes all rights from exemption from sale or seizure under distress or execution that he now has or may hereafter have by virtue of any law of the state exempting personal property from seizure and sale on execution or distress for rent, and landlord shall have, in addition to the lien given him by law, a lien upon the terms of this lease and a lien upon all personal property owned by tenant during the term of this lease whether said property is exempt or not, and tenant gives landlord full power and right to take and seize any personal property whether exempted by law or not, and sell the same or any part thereof in satisfaction of said rent hereby agreed to be paid.

9. Tenant also agrees to pay and discharge all costs and attorney's fees, or any expense that shall arise from enforcing any of the covenants of this lease by landlord, and it is further agreed by and between the parties that all crops growing in stack, crib or granary, on said premises shall be security for all sums due or to become due from tenant, as evidenced by book account or note held by landlord.

10. Tenant further agrees that he will plant on said premises only such kinds of crops as shall be named and designated by landlord, it being understood that landlord shall designate the kind and nature of the crops to be planted in any particular year during the term of this lease thirty days before the usual period for planting said crops.

11. It is further agreed that tenant shall, without charge, repair and keep in repair during the terms of this lease, all the irrigation ditches and laterals in connection with the above described premises in any manner, whether the said ditches or laterals are on the premises or elsewhere. And that tenant will not permit the water to break out from said ditches or laterals, and tenant will not allow any damage to result to the public or private individuals by breaking out of said ditches or laterals. And should such break occur or damages result, tenant agrees to reimburse landlord for any sum he may be required to pay. Landlord shall have a lien on all crops and other property above mentioned as security for the payments of said amount.

12. Tenant shall keep the said premises, and the roads adjacent thereto free from all weeds of every kind and nature. The said weeds shall be eradicated as soon as they come through the ground. No weeds shall be allowed to bloom or to otherwise spread on the premises. All suggestions for the control and eradication of said weeds that may be made by landlord shall be put into operation by tenant, and should tenant refuse or fail to control or eradicate the said weeds within ten days after notice from landlord, then landlord may proceed to control or eradicate the said weeds, and any expenses so incurred shall be paid by tenant, and landlord shall have a lien on all of the crops on said premises belonging to tenant for the amount so expended. Tenant further agrees to comply with all orders of the Board of County Commissioners or the Bureau of Noxious Weed Control which may be issued for the control or eradication of noxious weeds in said premises, or on the roads adjacent thereto, and in the event that landlord shall be required to comply with said orders then tenant shall be liable to landlord for the amount so expended and landlord shall have a lien on the crops belonging to tenant for said amount.

In witness whereof we have hereunto set our hands and seal, the day and year first written above.

D. B. Peterson
Ila Peterson
Landlord.
Rexford S. Howard
Junior Ostermiller
Tenant.

STATE OF IDAHO,
County of FREMONT) ss.

On this 6th day of February, 1965, before me the undersigned, a notary public in and for the said state, personally appeared D. B. Peterson and Ila Peterson, Husband and Wife, Rexford S. Howard and Junior Ostermiller

known to me to be the person s whose name s are subscribed to the within lease and acknowledged to me 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.

Bill Peterson
Notary Public
Residing at XXXXXXXXXX St. Anthony, Idaho
My Commission expires January 20, 1965

No. _____
IDAHO FARM LEASE
From _____
Dated _____, 19____
Expires _____, 19____
Recorded at the request of _____
minutes past _____ o'clock
M., in Record _____ of _____
Leases, page _____, Records of _____
County of _____
State of Idaho _____
Recorder _____
Deputy _____

RECEIVED

MAY 24 2005

COPY Department of Water Resources

Boyd E. Howard

STATE OF IDAHO)
)ss.
County of FREMONT)

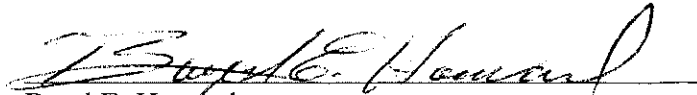
Boyd E. Howard, being duly sworn on oath, deposes and states as follows:

I am over the age of eighteen (18) years old and competent to testify as to the following facts and have personal knowledge as to the following facts.

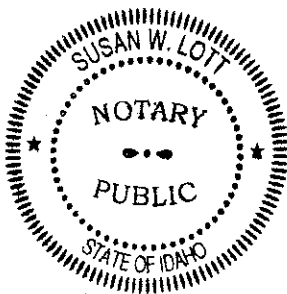
1. I currently reside at 150 Church St., Newdale, Idaho, 83436.
2. My father, Rex Howard, farmed one-half of Mr. Peterson's property up until 1986. Because I worked for my father on his farm and actually worked on Peterson's property moving irrigation pipe and performing other work, I am familiar with how Peterson's property was irrigated. In addition, I was a neighbor of Junior Ostermiller's and became familiar with how he irrigated Peterson's property.
3. My father utilized a well located south of my home in Township 06N, Range 41E, Sec. 3 in Madison County to irrigate property leased to him from Mr. Dyle Peterson for our farm up until 1986. After my father ceased leasing our one-half of Peterson's property, Junior Ostermiller leased all of Peterson's property. I am not sure how Junior irrigated all of the property after we stopped leasing our portion of Peterson's property.
4. The Remarks section on the Adjudication Claim Report for Water Right No. 22-12900 states that this is an expansion of License No. 22-02180, but this is not correct because it is actually the well for Water Right No. 22-2200 that was used to irrigate Peterson's property from 1965 until 1986 while we were farming our one-half portion of Peterson's property.
5. I remember when water from the well located in 06N, Range 41E, Section 3 was first used to irrigate Mr. Peterson's property because I observed that Peterson's property was irrigated from this well, I turned the well on and off to irrigate

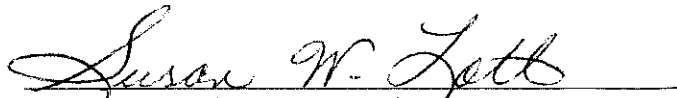
Peterson's, and I moved pipe on the one-half portion of Peterson's property farmed by my father.

6. In addition, I have attached a true and correct copy of a Depreciation Schedule written by my father and labeled it as "Exhibit A". The entries in the first three lines of the Depreciation Schedule under the column entitled "Kind of Property" refer to the pump and other materials that were purchased when the well in Section 3 was first used. The "Pump & S. pipe" referred to on the fourth line refers to a booster pump that my father purchased once he entered into the lease with Mr. Peterson. Because water had to be pumped uphill to irrigate Peterson's, it was necessary for my father to use a booster pump to get water from the well to Peterson's property.


Boyd E. Howard

SUBSCRIBED AND SWORN to me this 30th day of April, 2005.




Notary Public for the State of Idaho
Residing at: Newdale, Idaho
My Commission Expires: 3/18/2006

Name REXFORD S. HOWARD

Address _____

DEPRECIATION SCHEDULE
(Special First Year and Salvage Value)Year Ended 19

METHOD CODE: SL - Straight Line DB - Declining Balance SY - Sum of Years

S.S. or Identification No. 517-07-4230

1. Kind Of Property	2. Date Acquired	3. Cost or Other Basis	4. BASIS ADJUSTMENTS		5. Adjusted Basis	6. Basis For Depreciation	8. DEPRECIATION		9. DEPRECIATION	
			Special First Year Depreciation	Estimated Salvage Value			Reserve To 12-31-78	For This Year 19 78	For This Year 19 80	For This Year 19 80
PUMP & SPRINKLER PIPE	1961	2480.51				SL 20	2232.06	124.00	124.45	2480.51
3/4 MI MAINLINE	✓	3882.81				✓	3494.38	194.00	194.43	3882.81
PUMP & WELL	✓	2538.40				✓	2284.60	127.00	126.80	2538.40
PUMP & S. PIPE	1965	2278.82				✓	1917.02	114.00	114.00	2278.82
POTATO QUANSEN	8-69	10950.00				✓	5475.00	548.00	548.00	10950.00
FORBES POTATO DIGGER	9-15-72	1350.00	270.00		1080.00	✓	976.84	103.16	-	1080.00
1973 FORD 1/2 TON P.U.	7/73	3836.75	767.35		3069.40	✓	2110.55	384.00	384.00	2373.55
PORTABLE ELEC. GENERAT	6/73	697.00	139.40		557.60	✓	389.46	70.00	70.00	529.46
USED NEW HOLLAND HAY BALER	6/73	1250.00	250.00		1000.00	✓	697.91	125.00	125.00	947.91
USED STEEL POTATO BED	9/73	300.00	60.00		240.00	✓	160.00	30.00	30.00	220.00
USED SEED CUTTER	4/73	625.00	125.00		500.00	✓	349.87	63.00	63.00	475.87
METAL SHOP 40X60	9/74	11,130.00				✓	4823.00	1113.00	1113.00	7049.00
USED TRUCK HOIST	4/74	150.00	30.00	SL 2 1/2 (75)	120.00	7	98.03	9.00	9.00	116.03
POTATO PILER (USED)	1-74	2450.00	490.00	SL 2 1/2 (75)	1960.00	✓	1595.56	182.00	182.00	1959.56
HESON POTATO DIGGER (U)	2-74	5000.00	1000.00	SL 2 1/2 (75)	4000.00	✓	3654.89	138.00	138.00	3930.89
WEED SPRAYER (USED)	7-74	479.00	95.80	SL 2 1/2 (75)	383.20	✓	319.44	26.00	26.00	371.44
NEW SPRINKLER PIPE	5-74	1629.52	327.90	SL 2 1/2 (75)	1301.62	7	1035.22	111.00	111.00	1257.22
NEW GAS SANITARY	6-74	269.00	53.80	SL 2 1/2 (75)	215.20	✓	189.73	10.00	10.00	209.73
COW SHED	11-75	417.43				SL 7	188.89	60.00	60.00	303.89
1957 CHEV TRK	2-8-75	1000.00	200.00		800.00	✓	447.86	114.00	114.00	675.86
1958 INT. TRACTOR	7-75	7000.00	1400.00		5600.00	✓	2800.00	200.00	200.00	4400.00
DUAL LOADER	7-75	2200.00	440.00		1760.00	✓	880.28	251.00	251.00	1392.28
TOOL SHED	7-75	286.00	57.00	SL 2 1/2 (80)	229.00	7	162.38	19.00	19.00	200.38
HARROWS	5-76	451.40				SL 7	166.57	64.00	64.00	294.57
SEED PILER	7-76	400.00				✓	138.08	57.00	57.00	252.08
SPRINKLER PIPE	4-76	116.34				✓	44.28	17.00	17.00	78.28
STEEL POTATO BED (U)	4/78	490.90	98.00		392.90	✓	74.80	91.00	91.00	270.90
INT. DIESEL TRACTOR 800	6/78	6000.00	1200.00		4800.00	✓	683.68	1176.00	840.00	270.00
SPRINKLER PIPE	7/78	92.50	19.00		73.50	✓	8.75	19.00	13.00	4.75
YAMAHA MOTOR BIKE, 1974	✓	360.50	72.00		288.50	✓	34.35	73.00	52.00	15.35
TOTAL DEPRECIATION							37435.43	6,212.16	5720.68	49

EXHIBIT

A

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Department of Water Resources

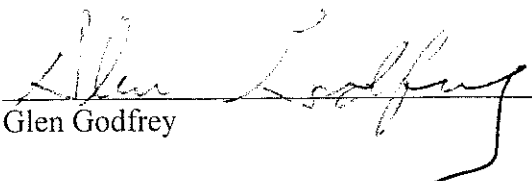
Glen Godfrey

STATE OF IDAHO)
)ss.
County of Fremont)

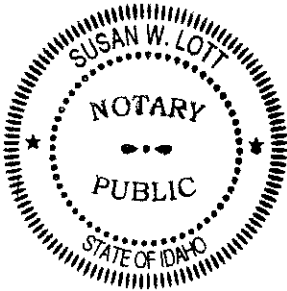
Glen Godfrey, being duly sworn on oath, deposes and states as follows:

I am over the age of eighteen (18) years old and competent to testify as to the following facts and have personal knowledge as to the following facts.

1. I currently reside at 310 Park St., Newdale, Idaho, 83436.
2. I was a neighbor of Junior Ostermiller and my father, Reese J. Godfrey, farmed ground close to Mr. Ostermiller's farm and to Mr. Dyle Peterson's property. Because I worked for my father on his farm, which was close to Ostermiller's farm and Peterson's property, I became familiar with how the Peterson property was irrigated.
3. Mr. Peterson's property was farmed by both Junior Ostermiller and Rex Howard and both of these men used water from the well located south of Junior's home in Township 06N, Range 41E, Sec. 3 in Madison County, to irrigate the Peterson property. This well was drilled sometime around 1961 or 1962 to irrigate property owned by Mr. Ostermiller, Mr. Howard, and my father. When Mr. Ostermiller and Mr. Howard entered into a lease with Mr. Peterson in 1965, both men used water from this well to irrigate the approximately eighty (80) acres of land owned by Mr. Peterson. Because the Peterson place is uphill from this well, I remember that a booster pump was installed and used in order to get water to Peterson's property.


Glen Godfrey

SUBSCRIBED AND SWORN to me this 30th day of April, 2005.



Susan W. Lott
Notary Public for the State of Idaho
Residing at: Merida, Fremont County
My Commission Expires: 3/18/2006