

FEB 01 2006

DEPARTMENT OF
WATER RESOURCES

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Attorneys for Lambert Produce Co., Inc.

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

In Re SRBA	)	Subcase 45-13973 & 45-13974
	)	
Case No. 39576	)	
	)	MEMORANDUM IN SUPPORT OF
	)	MOTIONS TO FILE LATE CLAIMS
	)	
	)	

During the hearing on the pending Motions to File Late Claims for the above-referenced claims numbers, the Court provided Lambert Produce Co., Inc. ("Lambert") with the opportunity to file a memorandum supporting the motions. The Court requested briefing on two specific issues: 1) the potential injury to other water right holders on the water sources at issue in the proposed claims; and 2) how the amnesty statute applies to allow the late claims. This memorandum addresses both of these issues.

I. Lambert's claims request decrees with priority dates junior to all other water rights on the claimed water sources and therefore will not injure any existing rights.

Water right claims nos. 45-13973 and 45-13974 seek SRBA decrees for Lambert's historic use of high runoff flows from Land Creek, Land Ranch Spring and Willow Creek in Cassia County, Idaho. Lambert holds existing, senior decreed rights to these same three sources,

but until filing the late claims at issue here, did not properly claim its full historic use of high flows to irrigate its farm.

Lambert has captured and used these high flows, which in some years last well into the summer months, for many decades. In fact, the land use patterns in the area surrounding Lambert's farm have developed with the expectation that these high flows will be captured at the Lambert farm and not flow through to downstream properties, which could be flooded if Lambert did not capture the water.

Other decreed water rights divert from each of the three surface water sources at issue in the late claims. However, Lambert's claims seek priority dates that are junior to all existing water rights. Attached as Exhibits A, B and C is a listing of all existing water rights for Land Creek, Land Ranch Spring and Willow Creek. The claimed priorities for claim nos. 45-13973 and 45-13974 are March 15, 1968, and June 30, 1985, respectively. None of the existing rights or the three sources at issue has priorities junior to the claimed priorities. Consequently, diversion and use of the claimed rights cannot legally interfere with the water uses recognized by the existing, senior rights.

II. Idaho Code § 42-1426 allows the Court to decree water right claim no. 45-13974, which is a claimed enlargement of right 45-13973.

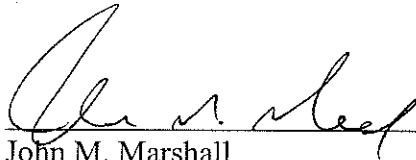
Lambert's farm includes an approximately 6,100-acre place of use that is irrigated with a common, interconnected irrigation delivery system. This irrigation system is fed by groundwater and by surface water from Land Creek, Land Ranch Spring and Willow Creek. In typical years Lambert is able to irrigate the entire farm with surface water in the spring and early summer before resorting to ground water. Claim no. 45-13973 is intended to capture Lambert's use of surface water on the farm with the March 15, 1968, priority, which is supported by a 1968 aerial photograph attached to the claim. At that time, as demonstrated by the photograph, Lambert's

predecessor was irrigating 4,953 acres. Accordingly, claim no. 45-13973 claims a total of 4,953 acres.

By 1987, Lambert had increased the number of irrigated acres served by the interconnected delivery system to 6,121 acres, all of which can be irrigated with surface water. Accordingly, Lambert has submitted claim no. 45-13974 as a claim to a 1,168-acre enlargement (calculated by subtracting 4953 from 6121) of right 45-13973 pursuant to Idaho Code § 42-1426. This section of the Idaho Code permits the Court to decree new water rights for increased acreage developed under existing water rights prior to the commencement of the adjudication, provided there is no injury to existing rights. IDWR's standard practice is to subordinate all enlargements to 1994, the year section 42-1426 was enacted, to prevent injury. Lambert expects that claim no. 45-13974 will be subordinated in this way. Claim no. 45-13974 is supported by a 1987 aerial photograph that shows irrigation of 6,121 acres at that time.

For the foregoing reasons, in addition to those provided in the Lambert's motions for late claim, Lambert respectfully requests that the Court grant the motions for late claim.

DATED this 31st of January, 2006.

A handwritten signature in cursive script, appearing to read "John M. Marshall", is written over a horizontal line.

John M. Marshall
Attorney for Lambert Produce Co., Inc.

CERTIFICATE OF MAILING

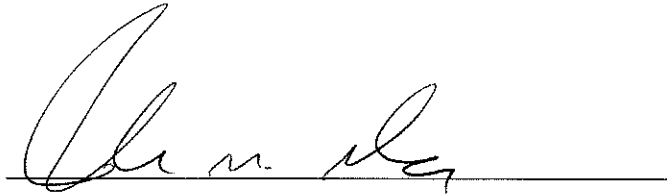
I certify that on this 31st day of January, 2006, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies postage prepaid and addressed as follows:

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:

Chris M. Bromley, Esq.
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

A handwritten signature in dark ink, appearing to read "Chris M. Bromley", is written over a horizontal line.

IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below. ☐ Search for both active and inactive water right records.

Search Results

Type of Query	USAGE INSTRUCTION
☐ All SRBA & Water Rights	
SRBA ☐ Claims ☐ Recommendations ☐ Both	Water Rights ☐ Applications ☐ Permits ☒ Decrees, Licenses and Statutory Claims ☐ Transfers ☐ All of the above

Basin Who What When Where Clear Search Help

Query parameters:

basinFrom = 45

Source = Land Creek

Search for: active Records

POD = 1

Information for type: Statutory Claim, Decree and License

	Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details General Provision	1	45	163	A		Decreed	Active	1890-04-01	0.6	LAND CREEK	DOMESTIC, IRRIGATION, STOCKWATER	CLARK, RACHAEL S (Current)
Details General Provision	2	45	163	B		Decreed	Active	1890-04-01	2.6	LAND CREEK	DOMESTIC, IRRIGATION, STOCKWATER	CLARK, RACHAEL S (Current)
Details General Provision	3	45	209			Decreed	Active	1892-04-12	0.88	LAND CREEK , MARSH CREEK	IRRIGATION	LEWIS, HYRUM S (Current)
Details Related Documents General Provision	4	45	219			Decreed	Active	1892-04-12	2.4	AMOS CREEK , LAND CREEK	IRRIGATION	WINTERBURN, BILL (Current)
Details General Provision	5	45	228			Decreed	Active	1892-04-12	0.86	LAND CREEK	IRRIGATION	ROPER, G A (Current)
Details Related Documents General Provision	6	45	232			Decreed	Active	1892-04-12	3.7	LAND CREEK , WHITE PINE CANYON CREEK	IRRIGATION	LOVELAND, DON CARLOS (Current)
Details Related Documents General Provision	7	45	239			Decreed	Active	1892-04-12	0.8	LAND CREEK	IRRIGATION	MARKHAM, GALENA I (Current)
Details General Provision	8	45	242	A		Decreed	Active	1892-04-12	0.425	LAND CREEK	IRRIGATION	HYMAS, JOHN W (Current)
Details General Provision	9	45	242	B		Decreed	Active	1892-04-12	1.275	LAND CREEK	IRRIGATION	MARKHAM, GALENA I (Current)
Details Related Documents General Provision	10	45	250	A		Decreed	Active	1892-04-12	0.24	LAND CREEK	IRRIGATION	SORENSEN, RONALD S (Current); SORENSEN, SERN C (Current)

Details	11	45	250	B		Decreed	Active	1892-04-12	0.46	LAND CREEK	IRRIGATION	SIX S RANCH LLC (Current)
Related Documents												
General Provision												
Details	12	45	258			Decreed	Active	1875-03-01	2	LAND CREEK	IRRIGATION	SIX S RANCH LLC (Current)
Related Documents												
General Provision												
Details	13	45	266	A		Decreed	Active	1875-06-15	0.6	LAND CREEK	DOMESTIC, IRRIGATION	STARRH, T A (Current)
Related Documents												
General Provision												
Details	14	45	266	B		Decreed	Active	1875-06-15	0.6	LAND CREEK	IRRIGATION	LOVELAND, DON CARLOS (Current)
Related Documents												
General Provision												
Details	15	45	276	A		Decreed	Active	1876-05-31	0.4	LAND CREEK	IRRIGATION	GCW RANCH LLC (Current)
Related Documents												
General Provision												
Details	16	45	276	B		Decreed	Active	1876-05-31	0.11	LAND CREEK	IRRIGATION	KELLEY, GEORGE M (Current)
Related Documents												
General Provision												
Details	17	45	276	D		Decreed	Active	1876-05-31	0.04	LAND CREEK	IRRIGATION	MANNING, JUSTIN (Current); MANNING, SHILOH (Current)
Related Documents												
General Provision												
Details	18	45	276	G		Decreed	Active	1876-05-31	0.684	LAND CREEK	IRRIGATION	GRIGG, DEBORA (Current); GRIGG, MARK G (Current)
Related Documents												
General Provision												
Details	19	45	276	H		Decreed	Active	1876-05-31	0.3	LAND CREEK	IRRIGATION	WADE, JANAY (Current); WADE, LISA G (Current); WADE, MIKEL K (Current)
Related Documents												
General Provision												
Details	20	45	276	K		Decreed	Active	1876-05-31	0.17	LAND CREEK	IRRIGATION	GCW RANCH LLC (Current)
Related Documents												
General Provision												

Information for type: Statutory Claim, Decree and License

	Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details	21	45	277	A		Decreed	Active	1877-05-31	0.3	LAND CREEK	IRRIGATION	GCW RANCH LLC (Current)
Related Documents												
General Provision												
Details	22	45	277	C		Decreed	Active	1877-05-31	0.32	LAND CREEK	IRRIGATION	PERRY, BETTY (Current); PERRY, JESSIE DEAN (Current)
Related Documents												
General Provision												
Details	23	45	277	E		Decreed	Active	1877-05-31	0.24	LAND CREEK	IRRIGATION	PARTON, L JAMES (Current)
Related Documents												
General Provision												
Details	24	45	277	F		Decreed	Active	1877-05-31	0.31	LAND CREEK	IRRIGATION	FITZGERALD, EDITH L (Current); FITZGERALD, HARRY W (Current)
Related Documents												
General Provision												

Details												
Related Documents	25	45	278			Decreed	Active	1879-06-30	1	LAND CREEK	DOMESTIC, IRRIGATION	LOVELAND, DON CARLOS (Current)
General Provision												
Details												
Related Documents	26	45	283			Decreed	Active	1875-03-01	2	LAND CREEK	IRRIGATION, STOCKWATER	ROBINSON, LEROY (Current)
General Provision												
Details												
Related Documents	27	45	288			Decreed	Active	1875-11-03	2.5	LAND CREEK	DOMESTIC, IRRIGATION	GRAY, C M (Current)
General Provision												
Details												
Related Documents	28	45	289			Decreed	Active	1881-06-30	0.8	LAND CREEK	IRRIGATION	SIX S RANCH LLC (Current)
General Provision												
Details												
Related Documents	29	45	296			Decreed	Active	1877-03-31	1	LAND CREEK	DOMESTIC, IRRIGATION	HARPER, THOMAS E (Current)
General Provision												
Details												
Related Documents	30	45	303			Decreed	Active	1877-12-31	0.8	LAND CREEK	IRRIGATION	KELLEY, GEORGE M (Current)
General Provision												
Details												
Related Documents	31	45	521	B		Decreed	Active	1877-06-01	1.5	LAND CREEK	IRRIGATION	SORENSEN, RONALD S (Current); SORENSEN, SERN C (Current)
General Provision												
Details												
Related Documents	32	45	521	D		Decreed	Active	1877-06-01	0.38	LAND CREEK	IRRIGATION	CLARK, RICHARD GLENN (Current); CLARK, SHIRLEY A (Current)
General Provision												
Details												
Related Documents	33	45	521	E		Decreed	Active	1877-06-01	0.05	LAND CREEK	IRRIGATION, STOCKWATER	GUNDERSON, DONALD G (Current)
General Provision												
Details												
Related Documents	34	45	522			Decreed	Active	1878-05-31	0.6	LAND CREEK	DOMESTIC, IRRIGATION	HALLER, WILLIAM (Current)
General Provision												
Details												
Pedigree	35	45	695			Decreed	Active	1890-04-01	3.2	LAND CREEK	IRRIGATION	LAMBERT PRODUCE CO INC (Current)
Related Documents												
General Provision												
Details												
Related Documents	36	45	696			Decreed	Active	1907-04-01	1.6	LAND CREEK	IRRIGATION	LAMBERT PRODUCE CO INC (Current)
General Provision												
Details												
General Provision	37	45	697			Decreed	Active	1890-04-01	1.06	LAND CREEK	DOMESTIC, IRRIGATION, STOCKWATER	ELQUIST, ALPHA (Current)
Details												
General Provision	38	45	700			Decreed	Active	1890-04-01	2.133	LAND CREEK	DOMESTIC, IRRIGATION, STOCKWATER	WOOLEY, GLENN C (Current); WOOLEY, VERN C (Current)
Details												
Related Documents	39	45	703			Decreed	Active	1912-04-01	3.2	LAND CREEK	IRRIGATION, STOCKWATER	ELQUIST RANCHES INC (Current)
General Provision												
Details												
Related Documents	40	45	2053			Decreed	Active	1909-02-04	3.2	LAND CREEK	IRRIGATION	LAMBERT PRODUCE CO INC (Current)
General Provision												

Information for type: Statutory Claim, Decree and License

	Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details Related Documents General Provision	41	45	2054			License	Active	1909-02-04	4.8	LAND CREEK	IRRIGATION	WORTHINGTON, MARTHA D (Current)
Details Related Documents General Provision	42	45	2137			License	Active	1914-04-01	0.2	LAND CREEK	IRRIGATION	JOLLEY, MILTON M (Current)
Details Related Documents General Provision	43	45	4140			Statutory Claim	Active	1937-11-01	1	LAND CREEK	STOCKWATER	MARCHANT, GARELD S (Current)
Details Related Documents General Provision	44	45	4141			Statutory Claim	Active	1890-10-01	0.5	LAND CREEK	STOCKWATER	ELQUIST RANCHES INC (Current)
Details Related Documents General Provision	45	45	4258	A		Decreed	Active	1961-01-01	4.2	LAND CREEK	IRRIGATION	LAMBERT PRODUCE CO INC (Current)
Details Related Documents General Provision	46	45	4258	B		Decreed	Active	1961-01-01	0.6	LAND CREEK	STOCKWATER	SCHENK LAND & CATTLE LP (Current)
Details Related Documents General Provision	47	45	10371			Decreed	Active	1892-04-12	0.4	LAND CREEK	IRRIGATION	GCW RANCH LLC (Current)
Details Related Documents General Provision	48	45	10407			Decreed	Active	1946-01-07	0.03	LAND CREEK , LAND RANCH SPRING	STOCKWATER	BEDKE, RAY C (Current)
Details Related Documents General Provision	49	45	10432			Decreed	Active	1878-08-01	0.02	AMOS CREEK , LAND CREEK	STOCKWATER	SIX S RANCH LLC (Current)
Details Related Documents General Provision	50	45	11991			Decreed	Active	1878-05-01	0.02	LAND CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH (Current)
Details Related Documents General Provision	51	45	12209			Decreed	Active	1878-05-01	0.02	LAND CREEK SPRING	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH (Current)
Details Related Documents General Provision	52	45	12215			Decreed	Active	1878-05-01	0.02	LAND CREEK SPRING NO 1	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH (Current)
Details Related Documents General Provision	53	45	12216			Decreed	Active	1878-05-01	0.02	LAND CREEK SPRING	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH (Current)
Details Related Documents General Provision	54	45	12447			Decreed	Active	1890-04-01	5.33	LAND CREEK	DOMESTIC, IRRIGATION, STOCKWATER	ELQUIST RANCHES INC (Current)
Details Related Documents General Provision	55	45	12894			Decreed	Active	1934-06-27	0.02	BOULDER CANYON CREEK , LAND	STOCKWATER	PICKETT RANCH & SHEEP CO (Current)

										CREEK		
Details Related Documents General Provision	56	45	13594			Decreed	Active	1877-06-01	0.03	LAND CREEK	IRRIGATION	CLARK, DOROTHY E (Current)
Details Related Documents General Provision	57	45	13595			Decreed	Active	1877-06-01	0.94	LAND CREEK	IRRIGATION	CLARK, ALAN G (Current)
Details Related Documents General Provision	58	45	13881			Decreed	Active	1880-07-31	0.19	LAND CREEK	IRRIGATION	KOYLE, SANDRA (Current)
Details Related Documents General Provision	59	45	13882			Decreed	Active	1880-07-31	0.41	LAND CREEK	IRRIGATION	BERLIN, L SUSAN (Current); BERLIN, STEVEN KENT (Current); WILLIS, JUSTIN (Current); WILLIS, NEELIE BERLIN (Current)

Number of records = 59

IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below. ☐ Search for both active and inactive water right records.

Search Results

Type of Query	USAGE INSTRUCTION
☐ All SRBA & Water Rights	
SRBA ☐ Claims ☐ Recommendations ☐ Both	Water Rights ☐ Applications ☐ Permits ☒ Decrees, Licenses and Statutory Claims ☐ Transfers ☐ All of the above
Basin Who What When Where	Clear Search Help

Query parameters:

basinFrom = 45

Source = Land Ranch Spring

Search for: active Records

POD = 1

Information for type: Statutory Claim, Decree and License

	Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details General Provision	1	45	164			Decreed	Active	1870-04-01	2.35	LAND RANCH SPRING	DOMESTIC, IRRIGATION, STOCKWATER	CLARK, RACHAEL S (Current)
Details General Provision	2	45	165			Decreed	Active	1870-04-01	0.5	LAND RANCH SPRING	DOMESTIC, STOCKWATER	CLARK, RACHAEL S (Current)
Details General Provision	3	45	698			Decreed	Active	1870-04-01	0.783	LAND RANCH SPRING	DOMESTIC, IRRIGATION, STOCKWATER	ELQUIST, ALPHA (Current)
Details General Provision	4	45	699			Decreed	Active	1870-04-01	0.5	LAND RANCH SPRING	DOMESTIC, STOCKWATER	ELQUIST, ALPHA (Current)
Details Related Documents General Provision	5	45	701			Decreed	Active	1870-04-01	1.567	LAND RANCH SPRING	IRRIGATION	LAMBERT PRODUCE CO INC (Current)
Details General Provision	6	45	702			Decreed	Active	1870-04-01	0.5	LAND RANCH SPRING	DOMESTIC, STOCKWATER	WOOLEY, GLENN C (Current); WOOLEY, VERN C (Current)
Details Related Documents General Provision	7	45	10407			Decreed	Active	1946-01-07	0.03	LAND CREEK, LAND RANCH SPRING	STOCKWATER	BEDKE, RAY C (Current)
Details Related Documents General Provision	8	45	12444			Decreed	Active	1870-04-01	4.133	LAND RANCH SPRING	DOMESTIC, IRRIGATION, STOCKWATER	ELQUIST RANCHES INC (Current)

Number of records = 8

EXHIBIT B

IDWR Water Right and Adjudication Search

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Search Results

Type of Query	USAGE INSTRUCTION
☐ All SRBA & Water Rights	
SRBA ☐ Claims ☐ Recommendations ☐ Both	Water Rights ☐ Applications ☐ Permits ☒ Decrees, Licenses and Statutory Claims ☐ Transfers ☐ All of the above

Query parameters:

basinFrom = 45

Source = Willow Creek

Search for: active Records

POD = 1

Information for type: Statutory Claim, Decree and License

	Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
Details General Provision	1	45	166			Decreed	Active	1881-11-23		WILLOW CREEK	IRRIGATION	MONCUR, ROBERT G (Current); MONCUR, RUTH (Current)
Details General Provision	2	45	167			Decreed	Active	1881-11-23		WILLOW CREEK	IRRIGATION	POULTON, WILLIAM A (Current)
Details Pedigree Related Documents General Provision	3	45	169			Decreed	Active	1881-11-23	1.06	WILLOW CREEK	IRRIGATION	LAMBERT PRODUCE CO INC (Current)
Details Related Documents General Provision	4	45	2066			License	Active	1909-06-01	0.6	LITTLE WILLOW CREEK	IRRIGATION	MILLER, JOHN T (Current)
Details Related Documents General Provision	5	45	4028			Statutory Claim	Active	1884-11-12	0.2	LITTLE WILLOW CREEK	IRRIGATION, RECREATION, STOCKWATER	HOVEY, RAY GARR (Current)
Details Related Documents General Provision	6	45	4256			Statutory Claim	Active	1908-03-17	0.13	WILLOW CREEK	IRRIGATION	STREETER, MICHAEL J (Current)
Details Related Documents General Provision	7	45	7566			License	Active	1985-02-01	0.01	WILLOW CREEK SPRING	STOCKWATER, WILDLIFE	UNITED STATES OF AMERICA ACTING THROUGH (Current)
Details Related Documents General Provision	8	45	11928			Decreed	Active	1881-11-23	0.11	WILLOW CREEK	STOCKWATER	LAMBERT PRODUCE CO INC (Current)

EXHIBIT C

Details Related Documents General Provision	9	45	12211			Decreed	Active	1878-05-01	0.02	WILLOW CREEK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH (Current)
Details Related Documents General Provision	10	45	12212			Decreed	Active	1878-05-01	0.02	WILLOW CREEK SOUTH FORK	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH (Current)
Details Pedigree Related Documents General Provision	11	45	13455			Decreed	Active	1881-11-23	1.81	WILLOW CREEK	IRRIGATION	LAMBERT PRODUCE CO INC (Current)
Details Pedigree Related Documents General Provision	12	45	13456			Decreed	Active	1881-11-23	0.29	WILLOW CREEK	STOCKWATER	LAMBERT PRODUCE CO INC (Current)
Details Related Documents General Provision	13	45	13666			Decreed	Active	1980-03-15	1.2	WILLOW CREEK	IRRIGATION	POULTON, WILLIAM A (Current)

Number of records = 13