

DEPARTMENT OF
WATER RESOURCES

Attorneys for Claimant,
Jack M. Harman

In Re SRBA) Subcase No. 36-16403
)
)
 Case No. 39576) **AFFIDAVIT OF JACK M. HARMAN**
) **IN SUPPORT OF MOTION**
) **TO FILE LATE NOTICE OF CLAIM**

- 1 -

Water Rights to the Idaho Department of Water Resources

4. That when such application was made for Water Right No. 36-02061, I learned that this license was originally issued in two parts: One for 3.2 cfs and a supplemental one for 1.8 cfs. That a true and correct copy of both of the original licenses are attached hereto as Exhibit "A".

5. That Water Right No. 36-02061 should have been a license for 5.0 cfs upon a 320-acre place of use.

6. That I first became aware of this discrepancy when I received a letter dated February 8, 2006 from James E. Stanton, a senior water resource agent for the Department of Water Resources. That a true and correct copy of said letter is attached hereto as Exhibit "B".

7. That the February 8, 2006 letter from Mr. Stanton stated:

An odd situation has come up regarding one of the water rights in Sec. 18, 36-2061. This license was issued in two parts, one for 3.2 cfs and a supplemental one for 1.8 cfs. The field examiner found a system capacity of 5.0 cfs, so the intention was that the supplemental license would make up the difference between the original amount and the capacity. An Amended license should have been issued, but this did not occur for whatever reason. When the old water rights were entered into our computer system, only the smaller rate was shown. The SRBA claim was then filed on the smaller amount, and this was carried through the decree process.

8. That it was at this point that I first realized that I needed to file a late claim to cover the balance of 36-2061 for the additional 3.2 cfs.

9. That the SRBA claim paperwork was reviewed by the Harman Land Ranch staff which farms the 320 acres at issue but the error was not detected. That such mistake was first discovered by the Harman Land Ranch staff and the individual owners of the water rights when Jim Stanton responded to our transfer application in February of 2006.

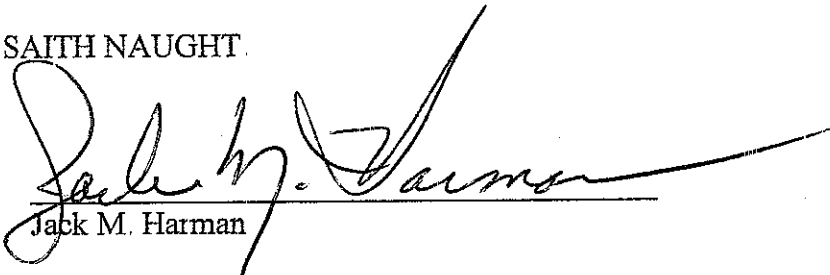
10. That the two water licenses, both for number 36-02061 as evidenced in

Exhibit A attached hereto, have caused confusion during the licensing process, and such confusion demonstrates good cause why this late claim should be permitted.

11. That Water Right No. 36-02061 has been partially decreed for 1.8 cfs and, in actuality, should have been decreed for 5.0 cfs based on the water licenses and the historical use on the property.

12. That, as stated by Mr. Stanton in his February 9, 2006 letter, the full volume of 1280 acre-feet was decreed. That the decreed flow rate of 1.8 cfs can only produce 878.3 acre-feet running continuously for 246 days, making the additional right for 3.2 cfs necessary.

FURTHER YOUR AFFIANT SAITH NAUGHT.


Jack M. Harman

SUBSCRIBED AND SWORN to before me this 12 day of June, 2006.

(SEAL)


Notary Public for Idaho
Residing at: Rupert, ID
My Commission expires: 4/15/11

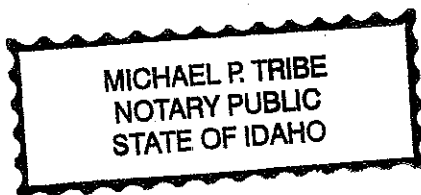


EXHIBIT A

State of Idaho

License and Certificate of Water Right

Water License No. 20315Amount 3.2 second feet

Water District No. _____

Priority February 20, 1948

THIS IS TO CERTIFY that LAWRENCE H. DUFFIN
 of Rupert, Idaho, made application for a permit to appropriate the
 public waters of the State of Idaho, dated February 20, 1948; that Permit No. 20315
 was issued under said application; that Certificate of Completion of works, with a carrying capacity of
five second feet, was issued thereunder on January 30, 1953, showing that said works
 were completed on the 28th day of January, 1953; and that on the 12th
 day of June, 1953,

LAWRENCE H. DUFFIN

of Rupert, State of Idaho, made proof to the satisfaction of the
 State Reclamation Engineer of Idaho, of the right to use the waters of a well
 , ~~subterranean~~ (subterranean flow) , for the purpose of irrigation

, under Use Permit No. 20315 of the Department of Reclamation
 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 State Reclamation Engineer of Idaho and entered of record in Volume
9 of Licenses at page 5204, on the 17th day of December, 1953;

The right hereby confirmed dates from February 20, 1948;

The Point of Diversion is located
 in the SE 1/4 SE 1/4, Sec. 18, Tp. 7 S., R. 25 E., B. M. County Minidoka

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 3.2 cubic feet per second

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
7 S.	25 E.	18	NE $\frac{1}{4}$ NE $\frac{1}{4}$	32	40
			NW $\frac{1}{4}$ NE $\frac{1}{4}$	40	40
			SW $\frac{1}{4}$ NE $\frac{1}{4}$	40	40
			SE $\frac{1}{4}$ NE $\frac{1}{4}$	33	40
			NE $\frac{1}{4}$ SE $\frac{1}{4}$	33	40
			NW $\frac{1}{4}$ SE $\frac{1}{4}$	40	40
			SW $\frac{1}{4}$ SE $\frac{1}{4}$	40	40
			SE $\frac{1}{4}$ S $\frac{1}{4}$	33	40
			Number of Acres Actually Irrigated - -		

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 State Reclamation Engineer, affixed at Boise, Idaho, this

17th day of December, 1953

MARK E. KULP

State Reclamation Engineer

(SEAL)

State of Idaho

License and Certificate of Water Right

Water License No. 20315

Amount 1.8 second feet

Water District No. _____

Priority February 20, 1948

THIS IS TO CERTIFY that LAWRENCE H. DUFFIN
of Rupert, Idaho, made application for a permit to appropriate the
public waters of the State of Idaho, dated February 20, 1948; that Permit No. 20315
was issued under said application; that Certificate of Completion of works, with a carrying capacity of
five (5) second feet, was issued thereunder on January 30, 1955, showing that said works
were completed on the 28th day of January, 1955; and that on the 10th
day of September, 1954.

LAWRENCE H. DUFFIN
of Rupert, State of Idaho, made proof to the satisfaction of the
State Reclamation Engineer of Idaho, of the right to use the waters of a well
subterranean (Subterranean flow) for the purpose of irrigation
under Use Permit No. 20315 of the Department of Reclamation
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 State Reclamation Engineer of Idaho and entered of record in Volume
9 of Licenses at page 5513, on the 6th day of July, 1955;
The right hereby confirmed dates from February 20, 1948;

The Point of Diversion is located
in the SE 1/4 SE 1/4 Sec. 18, Tp. 7 S., R. 25 E., B. 1 Idaho County
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 1.8 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
7 S.	25 E.	18	NE NE	32	40
			NW NE	40	40
			SW NE	40	40
			SE NE	32	40
			NE SE	32	40
			NW SE	40	40
			SW SE	40	40
			SE SE	32	40
			Number of Acres Actually Irrigated- - - - -		
					320

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 State Reclamation Engineer, affixed at Boise, Idaho, this
6th day of July, 1955.

(SEAL)

EXHIBIT B



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J DREHER
Director

February 8, 2006

Harman Land Ranch
C/o Bob Harman
461-A E 1500 N
Rupert, ID 83350

RE: 2 Apps For Transfer Received 2-2-2006

Dear Mr. Harman;

The above-referenced applications are being returned to you for correction. First of all, no fees were submitted with the applications. With regard to the transfer on Sec. 8, Right 36-7531 was left out of the transfer; while the land is in Sec. 9, this right is diverted from the 4 wells in Sec. 8 and is therefore part of that water system. The right covers 80 acres, but is limited to 0.35 cfs of additional flow above what is allowed under Rts. 36-2137 & 7189. The total diversion rate decreed from the 4 wells in Sec. 8 is 14.16 cfs, requiring a filing fee of \$810. This will also make the total acres 682, and the total volume being transferred as 2728 acre feet per annum.

The water rights in Sec. 8 are all in your name in our records, but the application proposes to change the ownership to the Ranch. The registered address for the Ranch is 1500 N 465 E, so this is the address that should be used on the application. If the mailing address for the Ranch has changed to the address shown on the application, then the registered address needs to be changed with the Idaho Secretary of State. Please clarify which address is correct.

With regard to the transfer on Sec. 18, the total decreed diversion rate of 7.68 cfs requires a filing fee of \$530. This application is also in the name of the Ranch, but the owners of record of the water rights are four of the six partners in the Ranch. Only you signed the application, however. If it is your intention to change the ownership of these rights also, we need a document with notarized signatures of all the partners authorizing the change.

An odd situation has come up regarding one of the water rights in Sec. 18, 36-2061. This license was issued in two parts, one for 3.2 cfs and a supplemental one for 1.8 cfs. The field examiner found a system capacity of 5.0 cfs, so the intention was that the supplemental license would make up the difference between the original amount and the capacity. An amended license should have been issued, but this did not occur for whatever reason. When the old water rights were entered into our computer system, only the smaller rate was shown. The SRBA claim was then filed on the smaller amount, and this was carried through the decree process. While the full volume of 1280 acre feet was decreed (the license had no volume listed), the decreed flow rate can only produce 878.3 acre feet running continuously for 246 days.

Records from Water District 130 show that your east well diverts up to 5.53 cfs, with both wells together pumping up to 9.26 cfs; the total decreed rate for both wells is 7.68 cfs, so up to 1.58 cfs above the allowed rate has been diverted at times. While you are allowed up to 2692 acre feet of water a year for 673 acres, the maximum use from 1999 through 2004 has been 1549 afa. The District 130 watermaster regulates by annual volume only, and has not been concerned about your excess diversion rate.

February 8, 2006

As part of transfer processing, we will reduce the allowed volume under this right to the lesser amount. You can try to increase the allowed diversion rate from this well by several means. You can try to get the decree on this right set aside, which is a lengthy process requiring an attorney. You can try to file a late SRBA claim for the additional rate; there is a \$100 filing fee, and no attorney is needed. If you choose the latter, you can make an appointment to start the claim process with one of our agents in this office. Once a claim number is established, you will then need to obtain permission from the SRBA Court to actually file the claim. Before attempting this, you may wish to discuss the matter with Travis Thompson of the Rosholt law office in Twin Falls. He represents both the Twin Falls Canal Co. and Clear Springs Foods, two entities which could conceivably object to your late claim. If they would plan to object, it would still be up to the SRBA judge to make a ruling; you would have to decide whether or not you wanted to deal with the legal hassle. I am not offering any legal advice, just a discussion of how the process works. It would take some time to get a new claim through the SRBA process; you would not be able to include the claim in a transfer until it is accepted by the Court, and processing of the transfer would be held up pending review of the claim by our SRBA staff. Including an additional claim in the transfer application would of course increase the filing fee, but by a lesser amount than filing a separate transfer later just on the claim.

Regards,



James E. Stanton
Sr. Water Resource Agent