

June 4, 2004

**JUNIOR OSTERMILLER
EAST HWY 33
NEWDALE ID 83436**

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 22-12900

Dear Claimant (s):

The Idaho Department of Water Resources is nearing the end of water rights review in Basin 22, the Teton River 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 FEB 1 1965, from GROUNDWATER.

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.

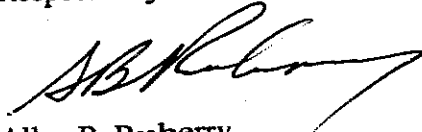
For your reference, I have provided a printout of your Notice of Claim and the pamphlet entitled "**Evidence of Priority**". The pamphlet describes the types of evidence which are acceptable and suggests which documents will fulfill this requirement. While I encourage you to read the entire pamphlet, 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.

.....
The Department will not recommend the Notice of Claim be decreed by the court if evidence of a priority date is not submitted. The Notice of Claim will be disallowed.
.....

Please submit documentation supporting the priority date within 30 days of the date of this letter, referencing all documents with the corresponding claim number. If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact this office.

Respectfully submitted,



Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

cc: File

Enclosure: Brochure on "Evidence of Priority"



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 10, 2005

**JUNIOR OSTERMILLER
EAST HWY 33
SANEWDALE ID 83436**

**FINAL NOTICE
PLEASE READ**

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 22-12900

Dear Claimant (s):

The Idaho Department of Water Resources is beginning water rights review in Basin 22, the Teton Valley area. 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 JUNE 1, 1965, from a WELL.

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.**

Glen Godfrey

RECEIVED

MAY 20 2005

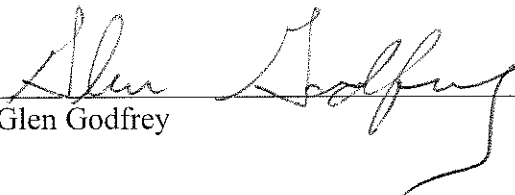
Department of Water Resources
Eastern Region

STATE OF IDAHO)
)ss.
County of Fremont)

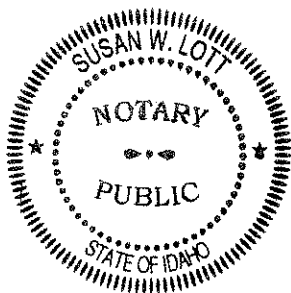
Glen Godfrey, being duly sworn on oath, deposes and states as follows:

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: Newdale, Fremont County
My Commission Expires: 3/18/2006

Boyd E. Howard

RECEIVED

MAY 20 2005

Department of Water Resources
Eastern Region

STATE OF IDAHO)
)ss.
County of FREMONT)

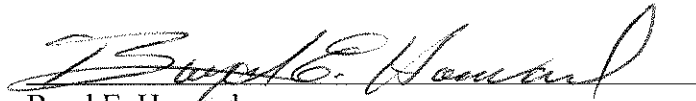
Boyd E. Howard, being duly sworn on oath, deposes and states as follows:

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.

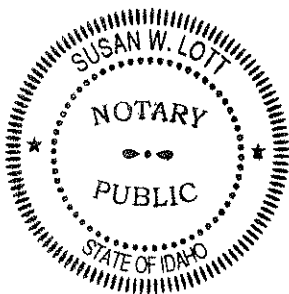
1. I currently reside at 150 Church St., Newdale, Idaho, 83436.
2. My father, Rex Howard, farmed one-half of Mr. Peterson's property up until 1986. Because I worked for my father on his farm and actually worked on Peterson's property moving irrigation pipe and performing other work, I am familiar with 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

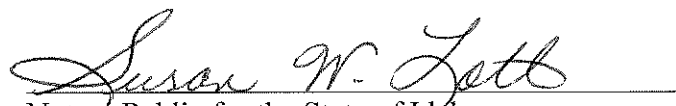
Peterson's, and I moved pipe on the one-half portion of Peterson's property farmed by my father.

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: Newsdale, Idaho
My Commission Expires: 3/18/2006

Name REXFORD S. HOWARDDEPRECIATION SCHEDULE
(Special First Year and Salvage Value)Year Ended 19

Address

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. Life in Months	7. Reserve To 12-31-78	8. DEPRECIATION		9. DEPRECIATION	
			Special First Year Depreciation	Estimated Salvage Value				For This Year 19 78	For This Year 19 79	For This Year 19 80	For This Year 19 81
PUMP & SPRINKLER PIPE	1961	2480.51				SL 20	2232.06	124.00	124.00	124.45	2480.51
3/4 MI MAINLINE	✓	3882.81				✓	3494.38	194.00	194.00	194.43	3882.81
PUMP & WELL	✓	2538.40				✓	2284.60	127.00	127.00	126.90	2538.40
PUMP & S. PIPE	1965	2278.83				✓	1917.02	114.00	114.00	114.00	2278.83
POTATO QUANSET	8-69	10,950.00				✓	5475.00	548.00	548.00	548.00	10,950.00
FORBES POTATO DIGGER	9-15-72	1350.00	270.00		1080.00	✓	976.84	103.16	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	384.00	2978.55
PORTABLE ELEC. GENERAT	6/73	697.00	139.40		557.60	✓	389.46	70.00	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	125.00	947.91
USED STEEL POTATO BED	9/73	300.00	60.00		240.00	✓	160.00	30.00	30.00	30.00	220.00
USED SEED CUTTER	4/73	625.00	125.00		500.00	✓	349.87	63.00	63.00	63.00	475.87
METAL SHOP 40X60	9/74	11,130.00				✓	4823.00	1113.00	1113.00	1113.00	7049.00
USED TRUCK HOIST	4/74	150.00	30.00	SL 2 1/2 (79)	120.00	7	98.03	9.00	9.00	9.00	116.03
POTATO PILER (USED)	1-74	2450.00	490.00	SL 2 (79)	1960.00	✓	1595.56	182.00	182.00	182.00	1959.56
HESON POTATO DIGGER (U)	7-74	5000.00	1000.00	SL 2 1/2 (79)	4000.00	✓	3654.89	138.00	138.00	138.00	3930.89
WEED SPRAYER (USED)	7-74	479.00	95.80	SL 2 1/2 (79)	383.20	✓	319.44	26.00	26.00	26.00	371.44
NEW SPRINKLER PIPE	5-74	1639.52	327.90	SL 2 1/2 (79)	1311.62	7	1035.22	111.00	111.00	111.00	1257.22
NEW GAS CAN TANK	6-74	269.00	53.80	SL 2 1/2 (79)	215.20	✓	189.73	10.00	10.00	10.00	209.73
COW SHED	11-75	417.43				SL 7	188.89	60.00	60.00	60.00	303.89
1957 CHEV TR	2-8-75	1000.00	200.00		800.00	✓	447.86	114.00	114.00	114.00	675.86
1958 INT. TRACTOR	7-75	7000.00	1400.00		5600.00	✓	2800.00	200.00	200.00	200.00	4400.00
DUAL LOADER	7-75	2200.00	440.00		1760.00	✓	880.28	251.00	251.00	251.00	1392.28
TOOL SHED	7-75	286.00	57.00	SL 2 1/2 (80)	229.00	7	162.33	19.00	19.00	19.00	200.33
HARROWS	5-76	451.40				SL 7	166.57	64.00	64.00	64.00	294.57
SEED PILER	7-76	400.00				✓	138.08	57.00	57.00	57.00	252.08
SPRINKLER PIPE	4-76	116.34				✓	44.28	17.00	17.00	17.00	73.28
STEEL POTATO BED (U)	4/78	490.90	98.00		392.90	100	74.80	91.00	91.00	91.00	270.90
INT. DIESEL TRACTOR 806	6/78	6000.00	1200.00		4800.00	✓	685.68	1176.00	1176.00	1176.00	270.90
SPRINKLER PIPE	7/78	92.50	19.00		73.50	✓	8.75	19.00	19.00	19.00	4.75
YAMAHA MOTOR BIKE, 1974	✓	360.50	72.00		288.50	✓	34.35	73.00	73.00	73.00	15.65
TOTAL DEPRECIATION							37435.43	6,212.16	6,212.16	5720.68	49,758.15

EXHIBIT

A

Carol Ostermiller

STATE OF IDAHO)
County of Madison)ss.

RECEIVED

MAY 20 2005

Department of Water Resources
Eastern Region

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

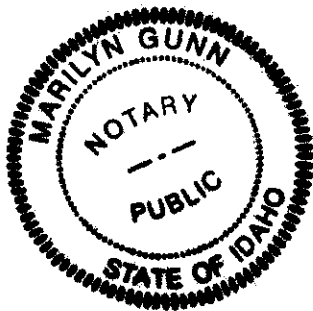
I am over the age of eighteen (18) years old and competent to testify as to the following facts and have personal knowledge as to the following facts.

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: Leton, Idaho
My Commission Expires: 3-10-09

EXHIBIT
A

hereinafter designated tenant.

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

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.

Tenant is specifically authorized to sprinkle irrigate said premises.

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 Ostermille
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 Ostermille

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.

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

IDAHO FARM LEASE

No.

From

Dated

Expires

Recorded at the request of

minutes past

M., in Record

Leases, page

County of

State of Idaho

Recorder.

Deputy.