

January 30, 2006

**SHOOTING STAR DEVELOPMENT LLC
PO Box 6880
KETCHUM ID 83340**

**FINAL NOTICE
PLEASE READ**

**RE: REQUEST FOR EVIDENCE OF PRIORITY
SRBA WATER RIGHT CLAIMS: 22-13264, 22-4095, 22-4032**

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, 22-13264, claims a Priority Date of July 13, 1916, from DICK CREEK.

Your claim, 22-4095, claims a Priority Date of April 01, 1946, from SPRINGS.

Your claim, 22-4032, claims a Priority Date of July 15, 1910, from LEWIS-MURDOCK SPRING.

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**

December 17, 2006

To: Cindy Bird

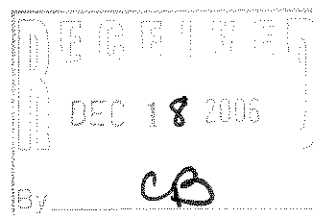
From: John & Laura Grabow

Re: Nos. 22-4032, 4095, 13264 & 13373

You were good enough in your cover letter dated December 14 to say that I could call you if I had questions on the preliminary recommendations. I will call you tomorrow (Monday), but since you no doubt have thousands of these claims before you, I thought I'd fax you first with my issue and the relevant claim numbers.

The original recommendations, to which I objected to some of the priority dates in my memo of December 8, recommended for No. 4032 - 66.8 acres, No. 13264 - 22 acres & No. 13373 - 31 acres. With my acceptance of the disallowance of 22-4095, this totaled 119.80 acres of irrigated land out of the property total of 160 acres, which seemed to me fair. However, if I am reading this correctly, the revised recommendations are No. 4032- 43.8 acres, No.13264 - 9 acres and 22-13373 - 31 acres (unchanged), totaling only 83.80 acres of the 160 acres. In addition, all three recommendations - 22-13373 and 22-4032 in the southern portion of the property and 22-13264 up in the north - state that the three are limited to irrigation of a total of 63 acres.

Thanks for getting back to me on my prior December 8 memo so quickly. I will call you Monday,





State of Idaho

DEPARTMENT OF WATER RESOURCES

15 W. Center St. Soda Springs, Idaho 83276

Phone: (208) 547-3993 FAX: (208) 547-3939 www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

December 14, 2006

JOHN AND LAURA GRABOW
PO BOX 6880
KETCHUM, ID USA 83340

REF: SRBA CLAIMS 22-4032, 22-4095, 22-13264 AND 22-13373.

Subject: NOE REPLIES AND MEMORANDUM

Dear John and Laura,

Enclosed is your new preliminary recommendations based on your memorandum and notice of error replies received. If you have any questions please don't hesitate to give me a call at 547-3993.

Respectfully,

Cindy E. Bird
Adjudication Bureau

Enclosure(s): Preliminary Recommendations 22-4032, 22-13264 and 22-13373.

P.O. Box 6880
Ketchum, Idaho 83340

Law Offices
John C. Grabow

MEMORANDUM

7755
208-622-~~XXXX~~

To: IDWR

From: John & Laura Grabow

Date: December 8, 2006

Re: Water Rights Claims 22-4032, 22-4095, 22-13264 & 22-13373 — *cb*

Because all four of these claims relate to the same 160-acre parcel of land, homesteaded by the Lewis family in 1916, I am providing you with a single narrative response.

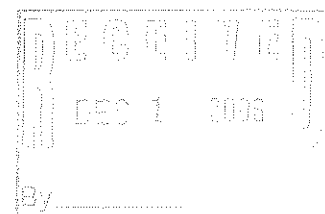
22-13373 Darby Creek; .620 CFS; 1916 priority – no changes being sought.

22-4032 Lewis-Murdock Spring; 1.340 CFS; 1943 priority. I am not contesting the volume, period of use or source but strenuously disagree with the 1943 priority date, which as far as I can tell is based upon the birth date of one of the supporting affiants, adjoining landowner Randy Murdock.

This determination disregards the March 26, 1980 notarized Claim to a Water Right of prior owner William Lewis, which is sworn and notarized and specifically identifies continuous use of the Murdock-Lewis Spring since 1910. That document was also publicly filed in the Teton County Water Rights book, and not challenged. Mr. Lewis died in the 1980's, in his nineties, and was born in approximately 1895. Accordingly, he would have direct personal knowledge of such continuous use of the Murdock-Lewis Spring. Especially since individuals alive in 1910 are unlikely to still be alive, and the State chose to adjudicate these beneficial use claims now rather than an earlier date, such as in 1980 when Mr. Lewis complied with the statutory requirement to file such a claim, to disregard his sworn statement now as to when the Murdock-Lewis Spring was first applied to a beneficial use on the basis, as I understand it, that the statement is only contained in a prior claim, is arbitrary and capricious.

In addition, the 1910 priority date is directly supported by the 1916 land patent to Eli Lewis, which has also been submitted in support of this claim. Under the Homestead Act of 1862, the land patent would have been granted only after five years of improvements and agricultural use of the land – fully consistent with William Lewis's claimed 1910 priority date.

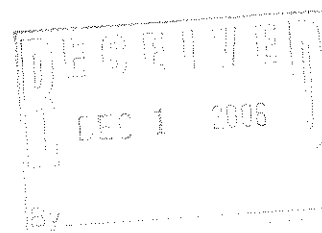
Finally, at the suggestion of Ernie Carlson, I submitted as well the application of adjoining landowner Randy Murdock, whose grandfather homesteaded in the same time period and also makes use of the same Murdock-Lewis Spring. Though, unlike William Lewis, not himself alive when beneficial use of the Murdock-Lewis Spring was first made in 1910, I do not believe this reflects a lack of personal knowledge by Randy. He is not merely indicating that he heard such use took place – he has lived on the property and has personal knowledge that the Lewis's and his family both farmed and irrigated their adjoining properties since the early 1900's, that there was no ground water well for that purpose but only surface water, including in particular the Murdock-Lewis Spring.



The IDWR preliminary recommendation for this claim indicates that it is to be used in combination with 22-13373, which has a 1916 priority date. I would not oppose a 1916 (rather than 1910 as claimed) priority date for this claim as well, but the 1943 priority date is inconsistent with the evidence offered in support – and also common sense, since these 160 acres plainly could not and were not irrigated between 1910 and 1943 from Darby Creek alone (as to which diversion, No. 22-13373 being recommended for only 31 acres).

22-13264 Dick Creek; 440 CFS; 1942 priority Again, my only challenge is to the priority date, which I am only guessing is based upon the approximate date that supporting affiant Rodney Lewis, son of William Lewis, was either born or lived on the property. Again, however, I believe that this is based upon an incorrect definition of personal knowledge – and a definition particularly inappropriate when the State has chosen to formally adjudicate these claims at a time when virtually anyone alive at the time beneficial use was first made would now be deceased. As with Mr. Murdock, Rodney Lewis did not simply hear that his father and uncle irrigated the northern portion of this property from this Dick Creek diversion since 1916 -- he knows that this portion of this property was used for agricultural purposes by his father and uncle, that there was no ground water well for that purpose but only surface water, in particular this diversion from Dick Creek which was continued to be used by Rodney Lewis himself (and later, by affiant Gordon Allen). In addition, as above, the 1916 priority date is supported by the 1916 land patent to Eli Lewis, which has also been submitted in support of this claim.. Under the Homestead Act of 1862, the land patent would have been granted only on the basis of improvements and agricultural use of the land, which included the northern portion not irrigated by the other irrigation sources.

22-4095 Disallowed. This also involves the northern portion of the property. I will not contest this disallowance if 22-13264 is granted the requested priority date of 1916; otherwise, I reserve my right to challenge this disallowance which, notwithstanding the finding, was supported by evidence by the claimant and is based upon diversion and beneficial use, even though this recommendation apparently indicates not found during the field inspection.



body - copy, prior fax received & dated.

Law Offices

John C. Grabow

December 4, 2006

P.O. Box 6880

Ketchum, Idaho 83340

208-622-**ONE (1) PAGE BY FACSIMILE**

Cindy Bird
Idaho Dep't of Water Resources

Re: Water Rights Claim 22-4032

Dear Ms. Bird:

Following up on our conversation last week, and your suggestion that I check the public records for any indication of water use by the prior owners of these 160 acres, I drove to Driggs and looked through the public records, including an old water rights book in the County Courthouse. The March 26, 1980 notarized Claim to a Water Right of prior owner William Lewis, which as we discussed contains specific reference to continuous use of the Murdock-Lewis Spring since 1910, was publicly filed. I did some checking and learned that Mr. Lewis died in the 1980's, in his nineties, and was born in approximately 1895. Accordingly, he would have direct personal knowledge of such continuous use of the Murdock-Lewis Spring. Especially since individuals alive in 1910 are unlikely to still be alive, and the State chose to adjudicate these beneficial use claims now rather than an earlier date, such as in 1980 when Mr. Lewis complied with the statutory requirement to file such a claim, his sworn statement as to when the Murdock-Lewis Spring was first applied to a beneficial use should be considered in the current adjudication of this claim. In addition, the March 20, 2005 Affidavit of adjoining landowner Randy Murdock (who I believe has been recommended a 1920 priority date for the same Murdock-Lewis Spring) supports such use by Lewis since the early 1900's. Though, unlike Lewis, not himself alive back then, this does not reflect a lack of personal knowledge by Randy. He is not merely indicating that he heard such use took place - he has lived on the property and has personal knowledge that the Lewis's and his family both farmed and irrigated their adjoining properties since the early 1900's, that there was no ground water well for that purpose but only surface water, including in particular the Murdock-Lewis Spring.

As you can probably tell when we spoke, I am not a water law expert. However, last week I did review this matter with a water rights attorney in Boise. In addition, to the forgoing, he thought that the 1916 land patent to Lewis supports the 1910 claimed priority date. He indicated that under the Homestead Act of 1862, the land patent would have been granted only after five years of improvements and agricultural use of the land - consistent with William Lewis's claimed 1910 priority date.

Thank you for your consideration.

Sincerely yours,



John C. Grabow

22-4034

Nov. 27, 2006

TO: Cindy Bird

From: John Grabow (208-622-7455)

Four (4) pages by fax, re # 22-4032

Law Offices
John C. Grabow

P.O. Box 6880
Ketchum, Idaho 83340

October 23, 2006

22-7455
208-622-7116
Fax 208-622-7470

Ernie Carlson
Idaho Dep't of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Water Rights Claim 22-4032

Dear Mr. Carlson:

I am writing to follow up on my pending water right claim 22-4032, which has as its source the so-called Lewis/Murdock Spring. As I understand it from the IDWR database, this claim has a tentative recommendation for a 1943 priority date – which I am hoping is a mistake and, in any event, do not understand since I am aware of nothing in the file which would support that date.

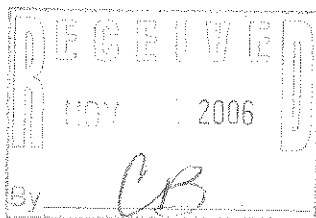
In my previous meeting with you, and later letter to Allen Ruberry of February 16, 2006, to substantiate a 1912 priority date I submitted an affidavit of Randy Murdock, the adjacent property owner, and a U.S. patent for these 160 acres, dated 1916, which makes specific reference to the conveyance of the water rights. I am writing you now because, having just recently left the stone age and switched from dial-up to DSL internet, I was for the first time able to open upon the backup files to this claim on the IDWR database. I found there a 1980 affidavit from W.W. Lewis (whom I believe is deceased), the son of Eli Lewis who owned the property from the early 1900's. That affidavit (attached) indicates continuous irrigation use from the Lewis/Murdock Spring on the property since 1910.

If there is any additional information I may provide in support of this claim, please let me know. As always, thank you for your cooperation.

Sincerely yours,



John C. Grabow



RECEIVED
OCT 24 2006
Department of Water Resources
Eastern Region

March 20, 2005
P.O. Box 969
Ketchum, ID 83340
208-351-5355

Mr. Randy Murdock
204 West, 300 South
Victor, ID 83455

Water Right Claims 22-4034 & 22-4032

Dear Mr. Murdock,

It has come to my attention that the Idaho Department of Water Resources is attempting to substantiate the priority date for your water right claim 22-4034 and my water right claim 22-4032.

For reference, both claims 22-4034 and 22-4032 have their source listed as the Lewis/Murdock Spring and its point of diversion located in the SW $\frac{1}{4}$, SE $\frac{1}{4}$, Township 4N, Range 45E, Section 10.

I understand based upon speaking with you today that you are 61 years old, that you were born in Teton Valley and you have lived on your family's ranch since your birth in 1943. At the time of your birth your father Russell Murdock was already living on the ranch which he purchased in approximately 1930 from your grandfather Albert Murdock who homesteaded the property in approximately 1900-1910.

From the time you purchased your ranch from your father in approximately 1972 to the present day, you have irrigated 160 acres located in the NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$, Township 4N, Range 45E, Section 9 with water from the Lewis/Murdock Spring. Your father, who bought this property from your grandfather, owned it from approximately 1930-1972. While you grew up on the property, your father irrigated the same 160 acres with water from this spring. It is also your understanding that since the late 1800's your family has used water from the Lewis/Murdock spring to irrigate land for hay and cattle pasture in the area.

You also have knowledge that Bill Lewis, who owned the property to the east of your ranch from 1942-1986, and his father Eli Lewis who owned the property from the early 1900's, irrigated approximately 90 acres from the Lewis/Murdock Spring, and that irrigation has continued on the property to the present day. The location of the irrigation is just east of your place of use, located in the NW $\frac{1}{4}$, SW $\frac{1}{4}$, and the SE $\frac{1}{4}$, Township 4N, Range 45E. (The pasture just north of the road and east of your home.) You have knowledge from Clair Hillman, who is 10 years older than you, that Clair's father homesteaded the acreage where the Lewis/Murdock Spring originates. Both your acreage and my property, formerly the Lewis property were irrigated from Lewis/Murdock Spring since the time that both properties were homesteaded.

You also have knowledge that the Lewis/Murdock Spring runs into a ditch and then flows westerly. There is no headgate diverting the water from the spring to any other properties except for your ranch and my property. You know that historically there is water in the Lewis/Murdock Spring for irrigation from approximately late March until late October each year. You remember that Bill Lewis and your father would share the maintenance of the ditch each spring and throughout the year. You currently clean the ditch out each spring with a backhoe to get proper flow.

If you are in agreement with the above facts please sign this letter in the presence of a Notary of the Public. Thank you very much for your cooperation and time regarding this matter.

Sincerely,

Craig Knight
Manager Teton Valley Holdings

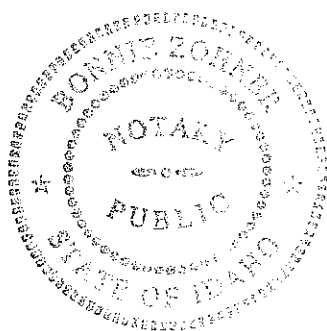
By signing below, I Randy Murdock solemnly swear that the statements contained in the foregoing documents are true and correct.

Signature Randy murdock Date 3-31-05

State of Idaho _____)

County of Teton _____)

Subscribed and affirmed before me this 21st day of March 2005



Notary Public Bonnie Zoller

Residing at Driggs Idaho

My Commission Expires 10/13/2010