

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5299
WATER RIGHT NO. 37-30000N

RECEIVED

AUG 27 1989

Department of Water Resources
Boise, Idaho

This is to certify that: **RANDY E CORIELL**
TERESA CORIELL
C/O JAMES P SPECK
SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	0.05 CFS	7.0 AF

SOURCE

* GROUNDWATER

Priority: 03/24/1883

LOCATION OF POINT(S) OF DIVERSION:

SESW , Sec. 33, Township 03N, Range 18E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N	18E	33	SESW	2		2

Total number of acres irrigated: 2

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

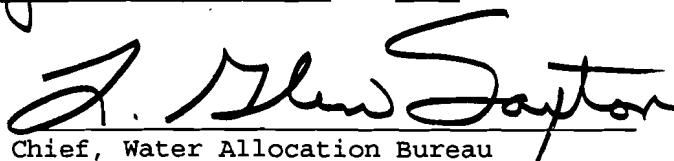
37-3000N 5299

TRANSFER NO. 5299
WATER RIGHT NO. 37-30000N

CONDITIONS OF APPROVAL AND REMARKS

4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
- * 7. Diversion of groundwater is limited to those times water is available for diversion under this right and priority from the Big Wood River and is actually diverted into the Hiawatha Canal for mitigation purposes.
8. 0.05 cfs of surface water from the Big Wood River shall continue to be diverted in the SWNW, S20, T03N, R18E into the Hiawatha Canal and remain undelivered and allowed to sink to mitigate the use of groundwater under this right.
9. Place of use is located within Lot 5, Buckhorn Subdivision First Addition.

Dated this 25th day of August, 1999.


Chief, Water Allocation Bureau

MEMORANDUM

TO: File 37-30000E (A37-12818D)

FROM: Pam Skaggs^{PS}/State Office

SUBJECT: Transfer 5299

DATE: August 24, 1999

Transfer 5299 changes the point of diversion, place of use and allows the diversion of groundwater in place of surface water from the Big Wood River under a portion of Right 37-30000E, splitting the right into Parts M and N.

The applicants will divert water from an existing well on their property and surface water will continue to be delivered to the Hiawatha canal and allowed to sink as mitigation for groundwater use. The transferred portion of the right has been identified as SRBA Claim A37-12818D that will also be modified through the transfer approval.

Season of use and diversion volume were adjusted to current standard. Recommended conditions include watermaster control, measuring device & lockable controlling works, irrigation overlap, diversion of groundwater limited to availability from the original source, continued diversion of surface water, subdivision lot and standard transfer conditions.

Sent to SC 2/24/99

INTEROFFICE MEMORANDUM

TO: TRANSFER FILE NO. 5299
FROM: KELLY K CHRISTENSEN *KKC*
SUBJECT: ADJUDICATION REVIEW OF TRANSFER
DATE: 02/19/99

Adjudication review finds no problems with the concept of the transfer, however based upon the corrected quitclaim deed I changed the place of use for both parts C and D. Therefore, the correct adjudication claim for this transfer is A37-12818D. See also Change of ownership/split right analysis dated 2-19-1999

A37-12818
2.72 cfs
2N 18E sec 9, sec 10
Pacesetter Dev Co

T-4205

A37-12818A
2.61 cfs
2N 18E sec 9, sec 10
Marathon Part O.C 1996

A37-12818B
0.11 cfs
for lots 1 & 2 of the
Buckhorn Subdivision
P/U = 4 acres

P/U Changed on
2-19-1999

P/U Changed on
2-19-1999

Ownership change
Per Quitclaim deed 380404

A37-12818D
0.053 cfs FOR LOT 2 of the
Buckhorn Subdivision
P/U = 2 acres
Coriell

A37-12818C
0.057 cfs for lot 1 of the
Buckhorn Subdivision
P/U = 2 acres cfs
Fitzpatrick

T-5299

Transfer filed to correct incorrect split based
upon quitclaim deed 380404. Correction
Quitclaim Deed filed. Instrument # unknown att.

A37-12818D
0.053 cfs FOR LOT 5 of the
Buckhorn Subdivision
P/U = 2 acres
Coriell

A37-12818C
0.057 cfs FOR LOT 2 of the
Buckhorn Subdivision
P/U = 2 acres
Fitzpatrick

The application identifies A37-12818C as the portion being corrected through T-5299. The correct claim however is actually A37-12818D for 0.53 cfs as split.

A37-12818C has been corrected to recognize that it is appurtenant to Lot 2 of the Buckhorn Subdivision. A37-12818D has also been corrected and now appurtenant to lot 1 of the Buckhorn Subdivision.

Post Transfer

Assuming that this transfer is approved, lot 1 of the Buckhorn Subdivision will then be dry, no water rights appurtenant to that lot.

A37-12818D should be renumbered to the 30,000 number assigned by allocations.

37-30000 N, A 37-12818C, T # 5299

AJ0749NP
No. A37-12818D

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 02/19/99
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	TERESA B CORIELL	03/24/1883	IRRIGATION	04-15 10-15	0.05 CFS	6.72 AFA
C	RANDY E CORIELL					
	PO BOX 760			TOTAL DIVERSION:	0.05 CFS	6.72 AFA
	HAILEY ID 83333			CONSUMPTIVE USE:		4.80 AFA
	(208) 788-3549					

Water Source: BIG WOOD RIVER

Tributary to: MALAD RIVER

Stage: DECREED

Point(s) of Diversion: T03N R18E S20 SWNW

BLAINE County

Place of use Legal Description for: IRRIGATION

				NE				NW				SW				SE																
				NENE	NWNE	SWNE	SENE					NENW	NWNW	SWNW	SENW					NESW	NWSW	SWSW	SESW					NESE	NWSE	SWSE	SESE	SUM
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:		
02N	18E	4	:											01																1.8		
03N	18E	33	:																			.2								0.2		
																													TOTAL ACRES	2.0		

POU County: BLAINE

Non-Irrigation Uses: NONE

Other Rights: NONE

Remarks: GEN THIS CLAIM IS FOR A PORTION OF 37-0577 ORIGINALLY DECREED TO W.
T. RILEY.
CONFORMED ATTORNEY MAILING ADDRESS DMS

THIS RIGHT WAS SPLIT FROM A37-12818 PURSUANT TO APPROVED
TRANSFER 4205:
1. USE OF WATER UNDER THIS WATER RIGHT WILL BE REGULATED BY THE
WATERMASTER OF STATE WATER DISTRICT NO. 37.
2. A MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS OF A TYPE
APPROVED BY THIS DEPARTMENT SHALL BE MAINTAINED ON THE DIVERTING
WORKS IN A MANNER THAT WILL PROVIDE THE WATERMASTER SUITABLE
CONTROL OF THE DIVERSION.
3. THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE
NO MORE THAN .02 CFS PER ACRE NOR MORE THAN 3.5 AFA PER ACRE FOR
THE LANDS ABOVE.
4. APPROVAL OF THIS TRANSFER IN NO WAY GRANTS ANY RIGHT-OF-WAY OR
EASEMENT FOR USE OF A DELIVERY SYSTEM OWNED BY PERSON(S) OTHER
THAN THE RIGHT OWNER.
5. THE CHANGE AUTHORIZED BY THIS TRANSFER SHALL BE ACCOMPLISHED
WITHIN ONE (1) YEAR OF THE DATE OF THIS APPROVAL.
6. FAILURE TO COMPLY WITH THE CONDITIONS OF THIS TRANSFER IS
CAUSE FOR THE DIRECTOR TO ISSUE AN ORDER TO SHOW CAUSE WHY THE

For T-5299
File

AJ0749NP
No. A37-12818D

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 02/19/99
PAGE: 2

=====

Remarks: APPROVAL OF THE TRANSFER SHOULD NOT BE RESCINDED.
7. APPROVAL OF THIS TRANSFER DOES NOT PRECLUDE THE OPPORTUNITY
FOR REVIEW OF THE VALIDITY OF THE WATER RIGHT(S) IN THE ONGOING
SNAKE RIVER BASIN ADJUDICATION.

NAME CHANGE MADE 2/2/96 TLB

OWNERSHIP CHANGE RESULTED IN A SPLIT FROM A37-12818B.
A37-12818D BELONGS TO CORIELL WITH .053 CFS AND 2 ACRES.
A37-12818C BELONGS TO FITZPATRICK WITH .057 CFS AND 2 ACRES.
6/25/96 TLB

PLACE OF USE CORRECTION MADE BASED UPON A CORRECTED QUITCLAIM
DEED SUBMITTED BY JAMES SPECK.
THE PLACE OF USE IS ALSO KNOWN AS LOT 1 BLOCK 1 BUCKHORN
SUBDIVISION FIRST ADDITION KKC 1-19-99.

TRANSFER 5299 PENDING TO MOVE RIGHT OFF THIS LOT.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

RECEIVED

JAN 14 1999

Department of Water Resources
Southern Region

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

January 13, 1999

Mr. Jim Stanton
IDWR - Southern Region
1341 Fillmore
Suite 200
Twin Falls ID 83301-3380

**Re: Jim and Michelle Kukurin - Portion of
Water Right No. 37-00577 claimed in the SRBA as
A37-12818C**

Dear Jim:

Enclosed you will find a copy of my letter of this same date to Lee Peterson regarding the water right acquired by Mr. and Mrs. Kukurin with Lot 2, Block 1 of Buckhorn Subdivision, First Addition in Blaine County, Idaho. I am also enclosing a copy of the Correction Quitclaim Deed from the Fitzpatricks to the Coriells which corrects the description of the water right conveyed to the Coriells in 1995. You will see that the specified place of use of the conveyed water right was the land in Section 4 which is the Fitzpatricks' Lot 1, Block 1 of Buckhorn Subdivision, First Addition. This resolves the concerns raised by Vicky Hancock in her January 27, 1998 letter to me.

Please let me know if you need any additional documents to now change the IDWR records to reflect Mr. and Mrs. Kukurin as the owner of the water right acquired from the Fitzpatricks appurtenant to Lot 2, Block 1 of Buckhorn Subdivision, First Addition. Once the change of ownership has been made in the IDWR computer database, please send me a printout of the SRBA claim A37-12818C.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____

James P. Speck

JPS:jal

cc: Client (w/encl.); Ken Hills (via fax)

RECEIVED

APR 23 1998

413290

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
P. O. Box 987
Ketchum, Idaho 83340

SPECK & AANESTAD

RECEIVED

JAN 14 1999

Department of Water Resources
Southern Region

BLAINE CO. REQUEST

OF: *Speck & Aanestad*

'98 APR 21 PM 12 32

MARY GREEN, CLERK *mg*

(space above line for Recorder's use)

FEES \$ *9.00*

**CORRECTION
QUITCLAIM DEED**

FOR VALUE RECEIVED, J. PETER FITZPATRICK and CLAIRE B. FITZPATRICK, husband and wife, whose current mailing address is 7511 Gibraltar Street, Carlsbad, CA 92009 (hereinafter collectively referred to as the "Grantor"), does hereby convey, release, remise and forever quitclaim unto RANDY E. CORIELL and TERESA B. CORIELL, husband and wife, whose current mailing address is Post Office Box 760, Hailey, ID 83333 (hereinafter collectively referred to as the "Grantee"), any and all interest Grantor may have in the following described water rights, appurtenant to premises situated in Blaine County, Idaho, to wit:

0.053 cfs of the Big Wood River with a March 24, 1883 priority date pursuant to Idaho Water Right No. 37-00577 and Claim No. A37-12818 in In Re the General Adjudication of Rights to the Use of Water From the Snake River Basin Water System, Twin Falls District Court Case No. 39576, used for the irrigation of two (2) acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, S.4, T.2N., R.18E., B.M., Blaine County, Idaho, pursuant to approved Transfer No. 4205.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the Grantee, and to Grantee's heirs and assigns forever.

THIS DEED IS BEING RECORDED TO CORRECT THE DESCRIPTION OF THE WATER RIGHT IN INSTRUMENT NO. 380404, RECORDED JULY 21, 1995, RECORDS OF BLAINE COUNTY, IDAHO.

IN WITNESS WHEREOF the undersigned have executed this Quitclaim Deed on the dates set forth below:

DATE: 3/10/98


J. PETER FITZPATRICK

DATE: 3/16/98

Claire B. Fitzpatrick
CLAIRE B. FITZPATRICK

CLAIRE B. FITZPATRICK

STATE OF CA.)
) SS.
County of San Diego

On this 10th day of March, 1998, before me the undersigned notary public in and for said state, personally appeared J. PETER FITZPATRICK and ~~CLAIRE B. FITZPATRICK~~, known or identified to me to be the persons whose names ^{is} are subscribed to the foregoing instrument, and acknowledged to me that ~~they~~ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year first above written.



Josephine M. M. M.
Notary Public for California
Residing at : 135 Saxony Rd. Encinitas, CA.
Commission Expires: 12-10-99

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

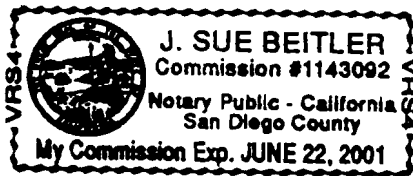
County of ORANGE

SS.

On MARCH 16, 1998, before me, J. Sue Beitler
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared CLAIRE B. FITZPATRICK
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

J. Sue Beitler
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: CORRECTION QUITCLAIM DEED

Document Date: 3/10 & 3/16/98 Number of Pages: 3

Signer(s) Other Than Named Above: J. PETER FITZPATRICK document + 2 acknowledgments

Capacity(ies) Claimed by Signer

Signer's Name: CLAIRE B. FITZPATRICK

☒ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: herself

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

January 13, 1999

Lee Peterson
Water District 37 & 37M
P. O. Box T
Shoshone ID 83352

**Re: Jim and Michelle Kukurin - Portion of Water Right No. 37-00577
Claimed in the SRBA as A37-12818C**

Dear Lee:

Enclosed you will find a copy of the Warranty Deed from J. Peter Fitzpatrick and Claire B. Fitzpatrick to Jim Kukurin and Michelle Kukurin for Lot 2, Block 1 of Buckhorn Subdivision, First Addition. Appurtenant to this property is a portion of the old W.T. Riley water right (37-00577) claimed in the SRBA by the Fitzpatricks as A37-12818C. The amount of this portion of the water right is 0.057 cfs. I have also enclosed a copy of approved Transfer No. 4205 whereby the Fitzpatricks transferred 0.11 cfs of this water right to their property. As you know, the other portion of the water right represented by Transfer No. 4205 was previously conveyed by the Fitzpatricks to Randy E. Coriell and Teresa B. Coriell.

Will you please change your records to reflect Jim and Michelle Kukurin as the new owners of this portion of the water right and send your future billings to them at their Las Vegas address on the Warranty Deed. I understand that the fees have been paid for this portion of the water right which you have delivered into the Hiawatha Canal each year since the transfer was approved in 1995.

Thank you again for your continuing cooperation and assistance in these matters. Happy New Year!

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____

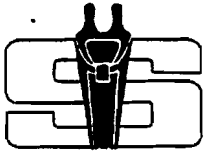
James P. Speck

JPS:jal
cc: Client (w/encl.)
Jim Stanton (w/encl.)
Ken Hills (vis fax)

RECEIVED

JAN 14 1999

Department of Water Resources
Southern Region



Order No. 97008132
This form furnished by
Blaine County Title Associates

WARRANTY DEED

For Value Received J. PETER FITZPATRICK and CLAIRE B. FITZPATRICK, husband and wife

the Grantor hereby grants, bargains, sells, conveys and warrants unto JIM KUKURIN and MICHELLE KUKURIN, husband and wife

the Grantee whose current address is: 9055 SOUTH DECATUR BLVD., LAS VEGAS, NV 89139

the following described premises, to-wit:

Lot 2 in Block 1 of BUCKHORN SUBDIVISION, FIRST ADDITION, according to the official plat thereof, recorded as Instrument No. 217019, records of Blaine County, Idaho.

RECEIVED

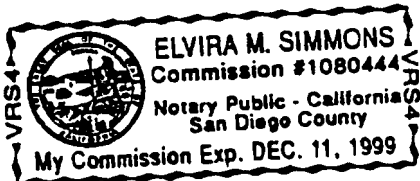
JAN 14 1999

Department of Water Resources
Southern Region

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of San Diego
 On 9-9-97 before me, Elvira M. Simmons, Notary
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared J. Peter Fitzpatrick
Name(s) of Signer(s)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Warranty Deed
 Document Date: September 2, 1997 Number of Pages: 2
 Signer(s) Other Than Named Above: Claire Fitzpatrick

Capacity(ies) Claimed by Signer(s)

Signer's Name: J. Peter Fitzpatrick

- ☒ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
 Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

TO: SRBA

DATE: January 13, 1999

FROM: Jim Stanton

SUBJECT: Change of Ownership, Claim A37-12818C, Peter Fitzpatrick

This has been a mess due to an incorrect deed previously submitted to us. An amended has now been submitted. Transfer 4205 put 0.11 cfs on Lots 1 & 2 of Buckhorn Sub. First Addition. The original deed gave water from Lot 2 to Randy Coriell, but this should have read Lot 1. Lot 1 is entirely in NE/NW Sec. 4 2N 18E, while Lot 2 is partly in NE/NW Sec. 4 (0.3 acres) and partly in SE/SW Sec. 33 T. 3N R. 18E (1.7 ac). A deed is on file selling Lot 2 to James Kukurin, but this was received after we got the deed giving 0.053 cfs from that tract to Coriell. Coriell never owned Lot 2, but does own Lot 5. Due to a mixup in his purchase of Lot 5, he didn't get any water rights with it. So Fitzpatrick had to sell him some water to square that deal. Coriell has since file App. for Transfer #5299 to put the water from Lot 1 on his Lot 5; Kelly has the app. for review, but it appears to be approvable. A copy of the corrected deed to Coriell is attached; it specifies 0.053 cfs, leaving 0.057 cfs remaining on Lot 2 for Kukurin.

Is this sufficient information to change the ownership of this claim? Kukurin plans to start building on his property, and wants to make sure everything is legal before doing so. Please look into this as soon as possible. If another deed to Kukurin is needed, let Jim Speck know; he is working on this, so coordination between our offices would be mutually beneficial. Please also note that the land description on this claim is incorrect, as Lot 2 is in both sections as described above. Coriell proposes to transfer A37-12818C, so we also need to coordinate the splits with the transfer.

TO: File

DATE: January 12, 1999

FROM: Jim Stanton

SUBJECT: Claim A37-12818B, Fitzpatrick

Today I spoke with Ken Hills of Kenneth J. Hills Realty of Ketchum. He sold Lot 2 of the claimed property to James Kukurin. He called concerning the mixup of the deeds involving Lots 1 & 2. The water from Lot 1 was supposed to go to Randy Coriell, but the original deed gave Coriell the water from Lot 2. An amended deed has since been filed to show the water coming from Lot 1 for Coriell. At the time we received Kukurin's deed to Lot 2, we only had the erroneous deed from there to Coriell. I visited with Mr. & Mrs. Kukurin last week, and suggested they contact Jim Speck to straighten this out. I told Mr. Hills that an amended deed from Fitzpatrick to Kukurin showing 0.057 cfs and Lot 2 as belonging to Kukurin should allow us to change ownership on Kukurin's portion of this claim; no transfer is needed unless Kukurin wants to irrigate more than half an acre from the domestic well he plans to drill on the property (I also told Kukurin this).

Mr. Hills told me that he watered Lot 2 as a favor to Kukurin last spring with the idea that he would be pasturing horses there. He said he borrowed a portable pump and sprinklers from Clint Stennett for this purpose. But no horses were put there, so he stopped watering prior to my site inspection of the ground. Hills also said that he observed an excellent stand of alfalfa on Lot 2 in 1997, so believed that it had been watered. He thought that somebody had been taking one cutting of hay a year off this ground. He also said that he did not water Lot 1, and observed it to be in much poorer condition than Lot 2. Although I cannot verify that the caller was Mr. Hills, and have no personal knowledge of Hills' involvement with this property, he presented a good story that I cannot dispute. He called to try to solve the ownership problem as a favor to Mr. Kukurin rather than to try and prove historical use of water on Lot 2, but responded to my questions on the matter with plausible answers that seem to support a positive recommendation on Kukurin's portion this claim. And Kukurin now plans to develop his lot as a home site, so it will undoubtedly be irrigated when the SRBA gets to Basin 37.

FROM: Allen Merritt 

DATE: August 14, 1998

TO: Transfer File No. 5299

Water Right(s): 37-30000 (part) or A37-12818C

In the Name of: Coriell

SUBJECT: Review and Recommendation

This transfer was filed to straighten out splitting up of a portion of the old W.T. Riley right. Previous transfers have been processed but these resulted in the water being associated with the wrong lot in a subdivision. (See Jim Stanton's 4/24/98 memo and 7/8/98 memo)

The water currently is being used on lot 5 of the Buckhorn Subdivision and being diverted from a well instead of directly from the River. This transfer records this present use.

The transfer was advertised without protest.

RECOMMENDATION

I recommend that the transfer be approved subject to the following conditions:

- This right is under the control of the watermaster of district 37. A measuring device must be maintained on the point of diversion from the river and a measuring device and lockable control must be maintained at the well where the water is re-diverted.

- The point of diversion from the river is via the Hiawatha canal with PD in SWNW S20, T03N, R18E.

- Rediversion from the well within NESESW S33, T03N, R18E is only authorized as long as the right continues to be delivered into the Hiawatha Canal and then remains undelivered and allowed to sink near the well. If the right is shut off due to priority cuts on the Big Wood River the well shall cease diversion for irrigation.

- Subject to SRBA.

- Subject to forfeiture.

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Randy E. &/or Teresa Coriell Phone 726-4421Post Office address c/o James P. Speck, Speck & Aanstad, PO Box 987, Ketchum, ID 83340

A. PURPOSE OF TRANSFER

- *1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☒ Other Split decreed right

2. Describe the reason for the proposed changes Although the D portion of Claim A37-12818 was deeded to the applicants, it is appurtenant to Lot 2 of Buckhorn Sub First Addition. Applicants own Lot 5 of the subdivision, which has no water rights. To correct this error, the C portion of the claim needs to be moved from Lot 1 to Lot 5.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>37-30000H</u> (7)	<u>3-24-1883</u>	<u>0.053 cfs</u>	<u>Irrig.</u>	<u>4-15</u> to <u>10-15</u>
		<u>7.0 AFA</u>		
<u>A37-12818C</u>	<u>"</u>	<u>"</u>	<u>"</u>	<u>"</u> to <u>"</u>

2. Total amount of water being transferred 0.053 cubic feet per second and/or 7.0 acre-feet per annum.

3. Source of water Big Wood River tributary to Malad River

4. Point(s) of Diversion: ~~No Change~~ * Per telecon w/applicant 7-9-98

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	<u>NE</u>	<u>SE</u>	<u>SW</u>	<u>33</u>	<u>3N</u>	<u>18E</u>	<u>Blaine</u>	<u>Private Well</u>

5. Lands irrigated or place of use: P/U is Lot 5 of the Buckhorn Sub. First Addition

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
<u>3N</u>	<u>18E</u>	<u>33</u>												<u>2</u>					<u>2</u>

* Wells pump

a. Description of diversion system ~~Hiawatha Canal headgate, Hiawatha Canal, pump in canal, sprinkler irrigation system.~~

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer: The lands will no longer be irrigated.

d. Remarks: See Transfer No. 4205. The new place of use is Lot 5, Buckhorn Subdivision First Addition. Original place of use is Lot 1 A copy of the Subdivision plat is attached.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
And said Application is hereby _____, subject to the following limitations and conditions:

[illegible]

Witness my hand this _____ day of _____, 19_____.

PART 2

TRANS NO. 5299

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. A37-12818C

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	0.053CFS	7.9 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
BIG WOOD RIVER	MALAD RIVER

Priority: 03/24/1883

LOCATION OF POINT(S) OF DIVERSION: SWNW , Sec. 20, Township 03N, Range 18E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02N	18E	4	NENW	2		2
Total number of acres irrigated:						2

CONDITIONS/REMARKS:

1. THIS CLAIM IS FOR A PORTION OF 37-0577 ORIGINALLY DECREED TO W. T. RILEY.
2. CONFORMED ATTORNEY MAILING ADDRESS DMS

THIS RIGHT WAS SPLIT FROM A37-12818 PURSUANT TO APPROVED TRANSFER 4205:
 1. USE OF WATER UNDER THIS WATER RIGHT WILL BE REGULATED BY THE WATERMASTER OF STATE WATER DISTRICT NO. 37.
3. 2. A MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS OF A TYPE APPROVED BY THIS DEPARTMENT SHALL BE MAINTAINED ON THE DIVERTING WORKS IN A MANNER THAT WILL PROVIDE THE WATERMASTER SUITABLE CONTROL OF THE DIVERSION.
4. 3. THIS RIGHT WHEN COMBINED WITH ALL OTHER RIGHTS SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE NOR MORE THAN 3.5 AFA PER ACRE FOR THE LANDS ABOVE.
5. 4. APPROVAL OF THIS TRANSFER IN NO WAY GRANTS ANY RIGHT-OF-WAY OR EASEMENT FOR USE OF A DELIVERY SYSTEM OWNED BY PERSON(S) OTHER THAN THE RIGHT OWNER.
6. 5. THE CHANGE AUTHORIZED BY THIS TRANSFER SHALL BE ACCOMPLISHED WITHIN ONE (1) YEAR OF THE DATE OF THIS APPROVAL.
7. 6. FAILURE TO COMPLY WITH THE CONDITIONS OF THIS TRANSFER IS

Claim No. A37-12818C

CAUSE FOR THE DIRECTOR TO ISSUE AN ORDER TO SHOW CAUSE WHY THE APPROVAL OF THE TRANSFER SHOULD NOT BE RESCINDED.

8. 7. APPROVAL OF THIS TRANSFER DOES NOT PRECLUDE THE OPPORTUNITY FOR REVIEW OF THE VALIDITY OF THE WATER RIGHT(S) IN THE ONGOING SNAKE RIVER BASIN ADJUDICATION.
9. *****
NAME CHANGE MADE 2/2/96 TLB

OWNERSHIP CHANGE WAS MADE INTO A SPLIT FROM A37-12818B.
10. A37-12818C BELONGS TO FITZPATRICK WITH .057 CFS AND 2 ACRES.
11. A37-12818D BELONGS TO CORIELL WITH .053 CFS AND 2 ACRES. 6/25/96
TLB

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 37-30000E

STAGE: DECREED

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	to	24.41 CFS

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
BIG WOOD RIVER	MALAD RIVER

Priority: 03/24/1883

LOCATION OF POINT(S) OF DIVERSION:SWNW , Sec. 20, Township 03N, Range 18E
BLAINE CountyPLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02N	18E	4				
		5				
		8				
		9				
		15				
		16				
		22				
		23				
		25				
		26				
03N	18E	28				
		29				
		33				

CONDITIONS/REMARKS:

1. **19980409***

A portion of this right, 0.02 cfs, is used for mitigation purposes for groundwater diversion as described under Permit approval conditions 10 & 11 of Right 37-08819.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.05³ cfs for Irrigation purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion: Same as 2.A.7.

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use: P/U is Lot 1 of the Buckhorn Sub. First Addition

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	18E	4					Lt3 2												2

Total acres 2

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 24.35⁷ cfs for Irrig. purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

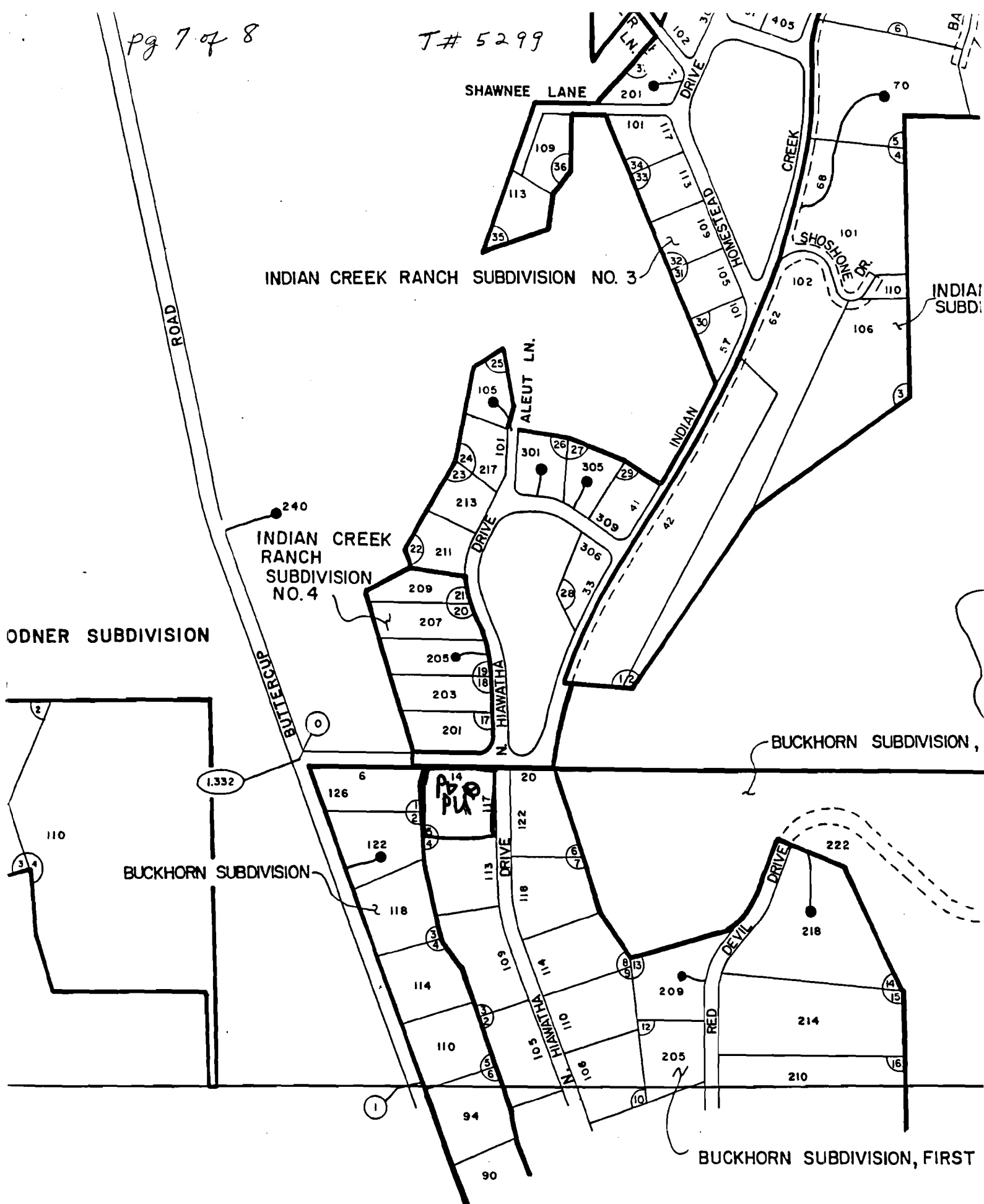
2. Point(s) of Diversion: Same as 2.A.7.

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use: Same as 2.A.8. minus above land

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____



SEC. 33, T. 3 N., R. 18 E.

PART 3**B. CHANGES IN NATURE OF USE**

1.

<u>New Nature of Use</u>	<u>Amount (cfs/AF)</u>	<u>Hours/Days/Year</u>	<u>Period Of Use</u>
			to
			to
			to

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

DATE: 4/9/98

Randy E. Coriell
RANDY E. CORIELL

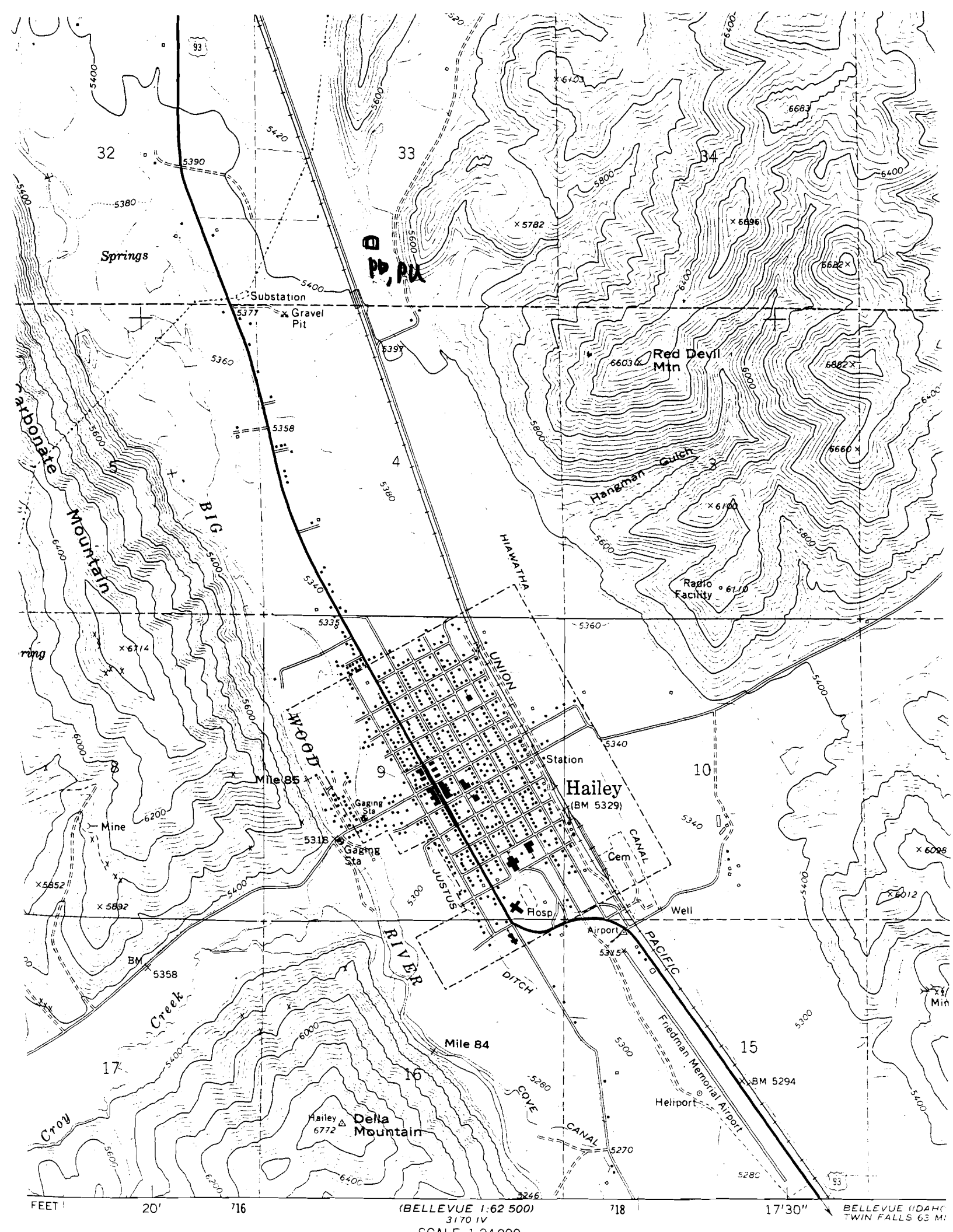
Subscribed and sworn to before me this 9 day of APRIL ~~March~~, 1998.

Mary Rowland
Notary Public for Idaho
Residing at Blaine County
My commission expires 5-11-2000

FOR DEPARTMENT USE ONLY

Received by J. Stanton Date 4-24-98
Prelim. check by J Fee \$100.
Receipted J # SD21026
Published in Wood River Journal
Pub. dates 7/22 & 7/29/98 Recommend: approve deny
Watermaster recommendation requested 7/13/98 rec'd
Field exam conducted (required for statutory claims)

Protest filed by: Hearing held by:



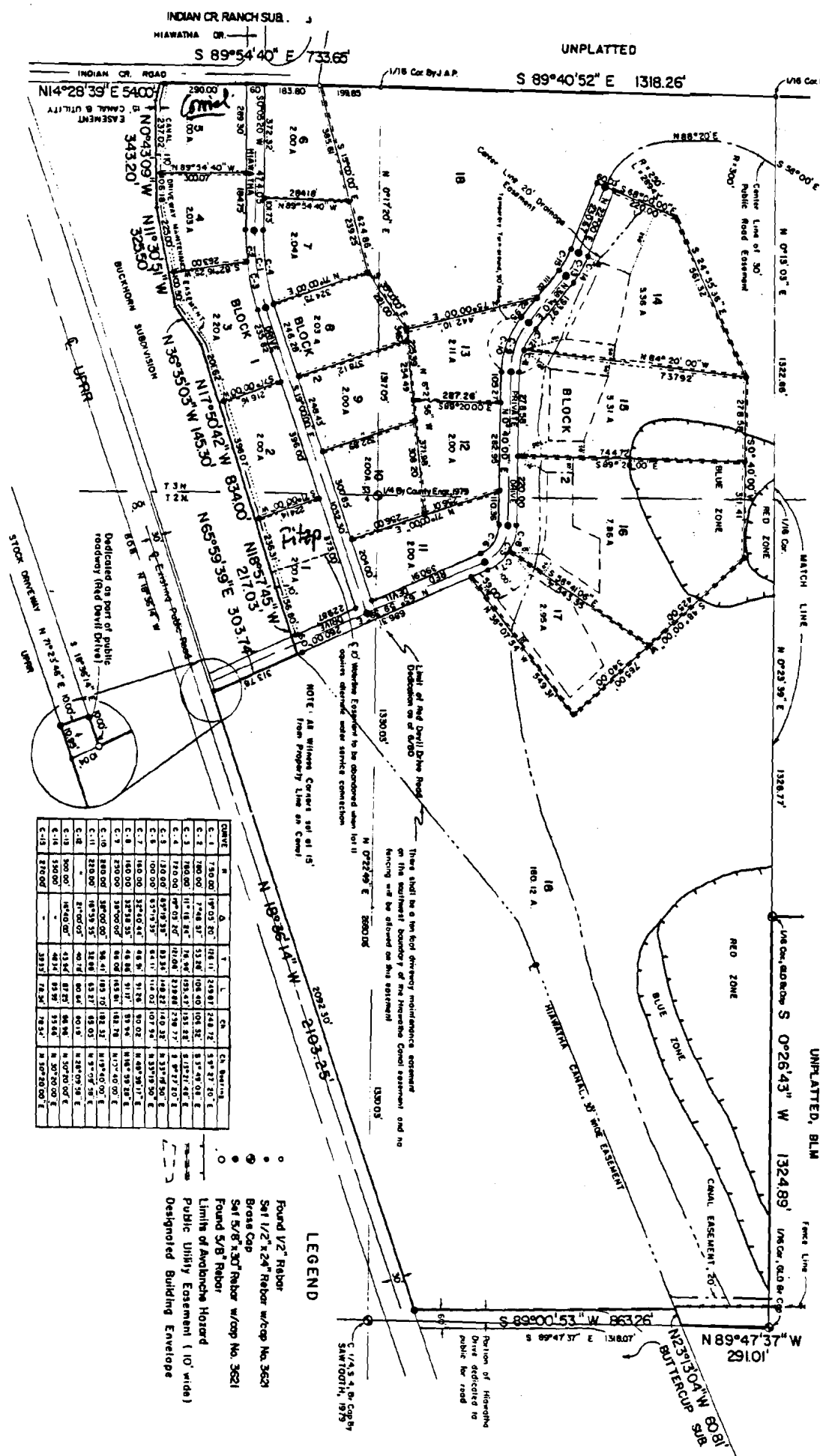
PLAT SHOWING **BUCKHORN SUBDIVISION FIRST ADDITION**

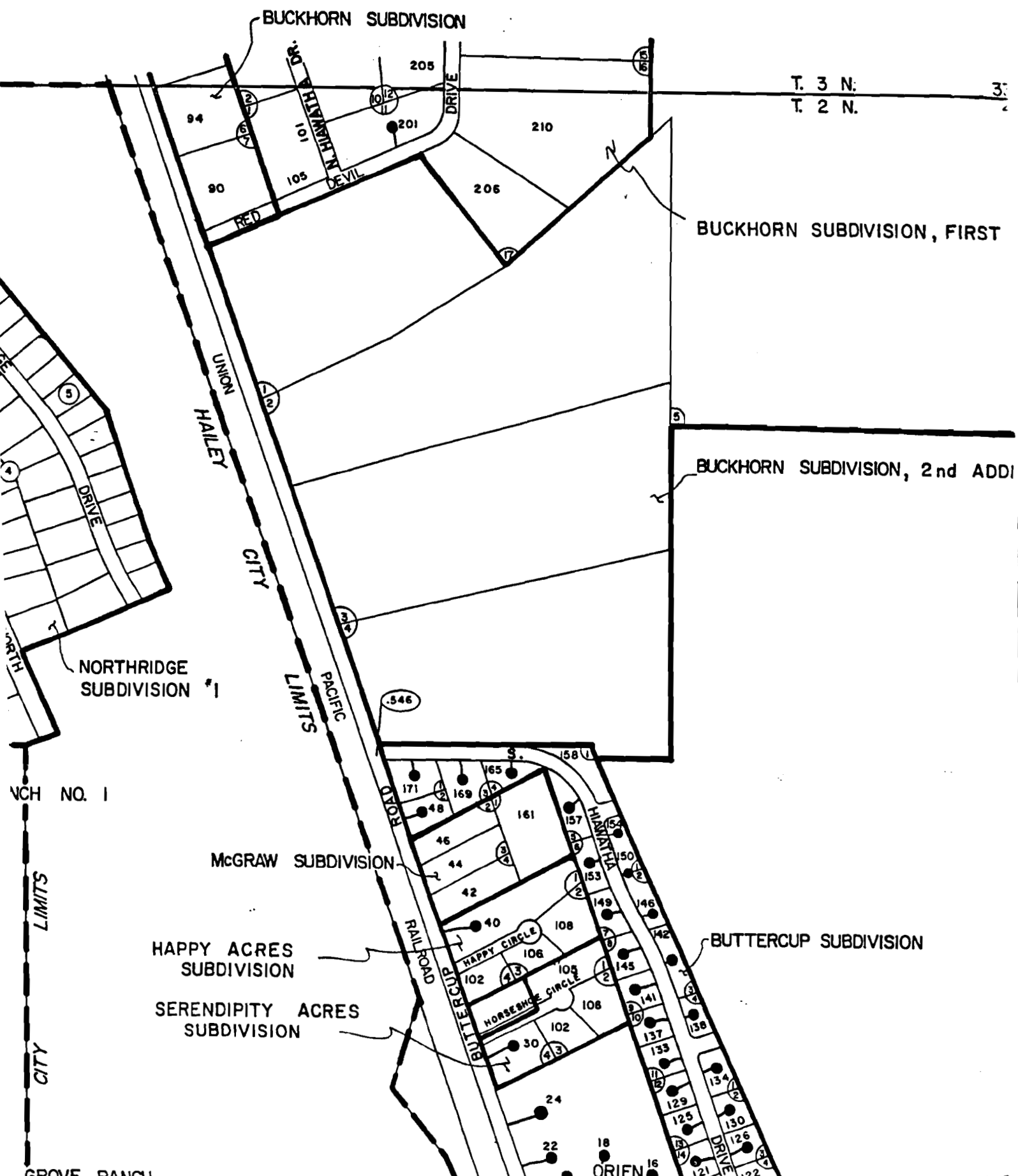
LOCATED WITHIN S. 4, T. 2N, R. 18E., & S. 33, T. 3N, R. 18E., B. M.

BLAINE COUNTY, IDAHO

WHILE THIS MAP IS A PHOTOGRAPHIC REPRODUCTION OF THAT ON FILE IN EITHER THE RECORDER'S OR SURVEYOR'S OFFICE, THE COMPANY ASSUMES NO LIABILITY FOR VARIATION, IF ANY, WITH ANOTHER OR FURTHER.

Sun Valley Title Company
 P.O. Box 1608
 Ketchum, Idaho 83340





TO: File

DATE: July 8, 1998

FROM: Jim Stanton

SUBJECT: App. for Transfer, Randy Coriell

Yesterday I visited the supposed present place of use and the applicant's property. Lots 1 & 2 of this subdivision are heavily vegetated with alfalfa and native grass, but have no other development. They lay along the east side of the Hiawatha Canal. I walked the entire perimeter of the two lots, and also went out into the lots. I saw no irrigation system of any kind, and no way to get river water to the property. There were no headgates, ditches, pumps or other diversion works. The land is 2-4' higher than the canal, so a ditch would have to come from upstream in order to get enough head to reach the property. But the upstream area is all roads and developed homesites. I talked to Dave Cropper, operator of the Hiawatha Canal, who said that all the people in that area would have to pump out of the canal in order to irrigate; he did not know who had pumps, however. The lots are unfenced, so could not be used as pasture (if the subdivision would even allow it). The hay should have been harvested by now, but hasn't been. The land appears to be just sitting there idle. The owners of the lots live in other states, and apparently aren't too interested in the land at this time.

The Coriell property is fully developed, however, with a nice home, lawn, and a flowered berm. Over half of the 2-acre lot appeared to be irrigated. Nobody was home during my visit, and I did not go behind the house to look for a pump in the canal. But I spoke later to Dr. Coriell, who told me that he uses his domestic well to irrigate his lot. He said that the present irrigation system was completed & in use by 1995. So it appears that the proposed transfer has already occurred. Since the transfer to Lot 1 was approved in 1995, it appears that forfeiture is not an issue here. Since this water is being put to beneficial use, we should be able to approve this transfer. The applicant requested that he be allowed to divert from his domestic well instead of having to pump out of the Hiawatha Canal, so I will change the application to include a change in the point of diversion as well as a change in the place of use. Although the application requests a new p/u of 2 acres (same size as the "old" p/u), only 1- 1.5 acres are actually irrigated at the new p/u; I don't plan to investigate this further unless requested. If more accuracy is required, approve the transfer for 1.5 acres instead of 2 acres, but this could require a reduction in the allowable flow rate (I didn't ask Mr. Coriell how much his well pumps, but he said it had plenty of water for his needs).



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

**PHILIP E. BATT
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

April 30, 1998

James P. Speck
Speck & Aanestad
PO Box 987
Ketchum, ID
83340

RE: App. for Transfer, Randy &/or Teresa Coriell

- Dear Jim;

Based on your explanation of the water-rights situation involving the Coriells, I have made certain technical corrections to this application. A copy of the corrected application is enclosed for your review. Please look it over at your earliest convenience, and let me know if this is satisfactory. I will hold the file until I hear from you.

There also appears to be a slight problem with the quitclaim deed from Fitzpatrick to Coriell, as the deed shows 0.053 cfs. This is the amount for the D portion of the claim, however, which is appurtenant to Lot 2 (although it is now in the name of Coriell). The C portion, 0.057 cfs, is on Lot 1, which Fitzpatrick still owns.

Regards,

James E. Stanton
Sr. Water Resource Agent

P. S. Please not our new address, as the application was sent to our old downtown address. As we have been here for over a year, I'm surprised that mail is still being forwarded.

T-4-5280

TO: File

DATE: April 24, 1998

FROM: Jim Stanton

SUBJECT: Claims A37-12818C & D, X37-12818D

Transfer #4205, approved 3-17-1995, moved 0.11 cfs of the Riley Right to Lots 1 & 2 of the Buckhorn Subdivision First Addition. Lot 1 is in the NE/NW Sec. 4 T. 2N R. 18E, and Lot 2 is in this tract (about 0.2 ac) and in the SE/SW Sec. 33 T. 3N R. 18E (1.8 ac). Each lot is about 2 acres. J. P. Fitzpatrick owned both lots. In July of 1995, Fitzpatrick erroneously quitclaimed Lot 2 and half of the transferred claim to Randy & Teresa Coriell; this portion was given the number of 12818D. The remaining portion of the claim, appurtenant to Lot 1, was numbered 12818C. It was Fitzpatrick's intention to sell the water off of Lot 1 to Coriell for use on Lot 5, which is in the north end of the SE/SW Sec. 33; Coriell got the land from a different party without water rights. In September of 1997, we got a change of ownership and quitclaim deed for Lot 2 to Jim & Michelle Kukurin. As this land was shown in the name of Coriell instead of Fitzpatrick, correspondence to the various parties was sent by SRBA staff in order to straighten out this mess.

Jim Speck has just filed an app. for transfer to correct the record, and has explained the situation to me. One problem was that T. 4205 had no subdivision descriptions in any of the paper records in our office. In order to understand the transfer, I have had to dig into this mess.

As of right now, Coriell's Lot 5 has no recorded water rights. His water is still on Lot 1 in Sec. 4 instead of in Sec. 33 where it belongs. The new transfer will correct this. The D portion of the right belongs to Kukurin; Fitzpatrick or Jim Speck need to withdraw the original faulty quitclaim deed that gave Lot 2 to Coriell.

RECEIVED

MAR 20 1998

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

SPECK & AANESTAD

James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
P. O. Box 987
Ketchum, Idaho 83340

(space above line for Recorder's use)

**CORRECTION
QUITCLAIM DEED**

FOR VALUE RECEIVED, J. PETER FITZPATRICK and CLAIRE B. FITZPATRICK, husband and wife, whose current mailing address is 7511 Gibraltar Street, Carlsbad, CA 92009 (hereinafter collectively referred to as the "Grantor"), does hereby convey, release, remise and forever quitclaim unto RANDY E. CORIELL and TERESA B. CORIELL, husband and wife, whose current mailing address is Post Office Box 760, Hailey, ID 83333 (hereinafter collectively referred to as the "Grantee"), any and all interest Grantor may have in the following described water rights, appurtenant to premises situated in Blaine County, Idaho, to wit:

0.053 cfs of the Big Wood River with a March 24, 1883 priority date pursuant to Idaho Water Right No. 37-00577 and Claim No. A37-12818 in In Re the General Adjudication of Rights to the Use of Water From the Snake River Basin Water System, Twin Falls District Court Case No. 39576, used for the irrigation of two (2) acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, S.4, T.2N., R.18E., B.M., Blaine County, Idaho, pursuant to approved Transfer No. 4205. (Lot 1)

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the Grantee, and to Grantee's heirs and assigns forever.

THIS DEED IS BEING RECORDED TO CORRECT THE DESCRIPTION OF THE WATER RIGHT IN INSTRUMENT NO. 380404, RECORDED JULY 21, 1995, RECORDS OF BLAINE COUNTY, IDAHO.

IN WITNESS WHEREOF the undersigned have executed this Quitclaim Deed on the dates set forth below:

DATE: 3/10/98


J. PETER FITZPATRICK

DATE: 3/16/98

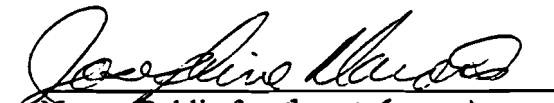

CLAIRE B. FITZPATRICK

STATE OF CA)
County of San Diego) ss.

On this 10th day of March, 1998, before me the undersigned notary public in and for said state, personally appeared J. PETER FITZPATRICK and ~~CLAIRE B. FITZPATRICK~~, known or identified to me to be the persons whose names ~~are~~^{is} subscribed to the foregoing instrument, and acknowledged to me that ~~they~~^{He} executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public for California
Residing at : 135 Saxony Rd. Encinitas, CA.
Commission Expires: 12-10-99

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

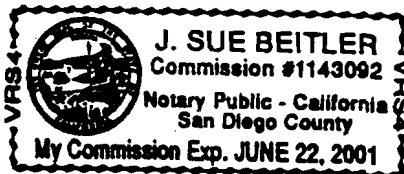
County of ORANGE

SS.

On MARCH 16, 1998, before me, J. Sue Beitler
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared CLAIRE B. FITZPATRICK
Name(s) of Signer(s)

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

J. Sue Beitler
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: CORRECTION QUITCLAIM DEED

Document Date: 3/10 & 3/16/98 Number of Pages: 3

Signer(s) Other Than Named Above: J. PETER FITZPATRICK *document + 2 acknowledgments*

Capacity(ies) Claimed by Signer

Signer's Name: CLAIRE B. FITZPATRICK

- ☒ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: herself

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF A CLAIM TO A WATER RIGHT

TRANSFER NO. 4205
CLAIM NO. A37-12818B

RECEIVED

MAR 22 1985

This is to certify that: J PETER FITZPATRICK
CLAIRE B FITZPATRICK
C/O JAMES P SPECK ESQ
PO BOX 987
KETCHUM ID 83340

Department of Water Resources
Southern Region Office

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	0.11 CFS	14.0 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
BIG WOOD RIVER	MALAD RIVER

Priority: 03/24/1883

LOCATION OF POINT(S) OF DIVERSION: SWNW , Sec. 20, Township 03N, Range 18E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02N	18E	4	NENW	2		2
03N	18E	33	SESW	2		2
Total number of acres irrigated:						4

CONDITIONS/REMARKS:

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
2. A measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
4. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

NOV 28 1986

TRANSFER NO. 4205
CLAIM NO. A37-12818B

CONDITIONS/REMARKS:

5. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
6. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
7. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

Dated this 17th day of March, 1995.


Chief, Water Alloc. Bureau

NOV 28 1995

AJ5808NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

09/15/95 13:05:36
Page 1

Water Right Number - A37-12818

Prefix Translation: ADJUDICATION CLAIM

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
SPLIT RIGHT

1 -
2 -
3 -
City- XXX State- ID Zip- 00000
Phone - 208-000-0000

*** O - ORIGINAL OWNER ***
PACESETTER DEVELOPMENT COMPANY

1 - 4540 CAMPUS DRIVE
2 -
3 -
City- NEWPORT BEACH State- CA Zip- 92660
Phone - 714-852-8600

SPECK

JAMES P

1 - HOGUE SPECK & AANESTAD
2 - PO BOX 987
3 -
City- KETCHUM State- ID Zip- 83340
Phone - 208-000-0000

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - - +
03/24/1883 ERROR IN REGION Z - SEE REMARKS

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
BIG WOOD RIVER MALAD RIVER
SPLIT RIGHT

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County Diversion Name
03N 18E 20 SE SW NW (13) BLAINE

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 11/01 2.720

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
2.720 257.5

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
02N 18E 9 NE NE 6.0 01 IRRIGATION (13) BLAINE
02N 18E 10 NW NW 37.0 01 IRRIGATION (13) BLAINE
02N 18E 10 SW NW 17.0 01 IRRIGATION (13) BLAINE
02N 18E 10 SE NW 27.0 01 IRRIGATION (13) BLAINE
02N 18E 10 NE SW 16.0 01 IRRIGATION (13) BLAINE

Total Acres: 103.0

+ - - Diversion Means - VIA HEADGATE #22 & HIAWATHA CANAL

NOV 7 8 1995

09/15/95 13:05:55
Page 2

Prefix Translation: ADJUDICATION CLAIM

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 02/03/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	-
Licensed Date	- 00/00/0000	Receipt Number	- X777777	Federal/State Indicator	- S
Claims Tape Error Flg	-	POU Ownership Flag	- Y	Presumption Flag	-
Fee Exempt Flag	-	Name Connector	- AND/OR	Notice of Error Flag	-

NOV 28 1936

R PROOF

X

CVR

X

MAPS

X

PHOTOS

MISC

X

Water Right Number - R37-12818

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
SPLIT RIGHT

1 -
2 -
3 -
City- XXX State- ID Zip- 00000
Phone - 208-000-0000

*** O - ORIGINAL OWNER ***
PACESETTER DEVELOPMENT COMPANY

1 - 4540 CAMPUS DRIVE
2 -
3 -
City- NEWPORT BEACH State- CA Zip- 92660
Phone - 714-852-8600

SPECK

JAMES P

1 - HOGUE SPECK & AANESTAD
2 - PO BOX 987
3 -
City- KETCHUM State- ID Zip- 83340
Phone - 208-000-0000

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
03/24/1883 ERROR IN REGION I - DISALLOWED

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BIG WOOD RIVER MALAD RIVER
SPLIT RIGHT

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County
03N 18E 20 SE SW NW (13) BLAINE HIAWATHA CANAL

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 11/01 2.720

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
2.720 257.5

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
02N 18E 9 NE NE 6.0 01 IRRIGATION (13) BLAINE
02N 18E 10 NW NW 37.0 01 IRRIGATION (13) BLAINE
02N 18E 10 SW NW 17.0 01 IRRIGATION (13) BLAINE
02N 18E 10 SE NW 27.0 01 IRRIGATION (13) BLAINE
02N 18E 10 NE SW 16.0 01 IRRIGATION (13) BLAINE

Total Acres: 103.0

+ - - Diversion Means - VIA HEADGATE #22 & HIAWATHA CANAL

Prefix Translation: RESEARCH

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - NONE

..... Remarks

THIS CLAIM IS FOR A PORTION OF 37-0577 ORIGINALLY DECREED TO W.
T. RILEY.

CONFORMED ATTORNEY MAILING ADDRESS DMS

PURSUANT TO APPROVED TRANSFER 4205 9/5/95:

CLAIM WAS SPLIT - A37-12818A PACESETTER DEVELOPMENT CO. 2.61 CFS.

A37-12818B J PETER AND CLAIRE B FITZPATRICK .11 CFS.

+ Old Water Right Numbers +

3700577

+ - - - - - Conditions of Approval - - - - - +

P04 - FORFEITED/ABANDONED: This is included for a claim based on a
 - decree or license that is PROPOSED to be disallowed on the basis
 - that the water right no longer exists because forfeiture of the
 - right by nonuse was confirmed and a defense to forfeiture was not
 - confirmed, or because abandonment of the right was confirmed.

+ - - - - Decree Plaintiff - - - +

S.C. FROST ET AL

+ - - - - Decree Defendant - - - +

ALTURUS WATER CO., ET AL

+ - Decree Date - +

00/00/0000

+ -Comments- +

Date: 10/15/1993 User Id: CLELLAND Subject: RECOMMENDATION/DISALLOWAL

SEE FILE FOR DETAILS OF REVIEW. WATER HAS NOT BEEN USED FOR A PERIOD OF AT LEAST 5 YEARS; 1987-1992.

Date: 04/03/1995 User Id: DSMITH Subject: DATA ENTRY

CONFIRMED ATTORNEY ADDRESS DMS

+ - - Audit Fields - - +

09/06/95 TFAWCETT

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 09/30/1993	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 02/03/1989	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- X777777	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	- D
				Notice of Error Flag	-



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

September 6, 1995

PHILIP E. BATT
Governor

KARL J. DREHER
Director

JAMES P SPECK ESQ
HOGUE, SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

RE: Amendment of SRBA Claim A37-12818

Dear Mr. Speck:

Pursuant to the approval of Transfer No. 4205, the above referenced Notice of Claim in the Snake River Basin Adjudication has been amended to conform with the transfer. As a result of the transfer, two new claims were created to reflect the changes.

Claim A37-12818B is for .11 cfs to irrigate 4 acres in the name of J. Peter and Claire B. Fitzpatrick. Claim A37-12818A contains the remainder of Pacesetter Development Company's original water right A37-12818. Enclosed please find printouts of the way your client's claim records have been modified. Please check these modified records over carefully to verify they correctly reflect the intended changes. If you have questions please feel free to contact this office.

Sincerely,

Trish Fawcett
Technical Records Specialist

Enclosures

NOV 28 1996



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

MARCH 17, 1995

J PETER FITZPATRICK
CLAIRE B FITZPATRICK
C/O JAMES P SPECK ESQ
P O BOX 987
KETCHUM ID 83340

Transfer of Water Right No. A37-12818B

Dear Water Right Holder(s):

Enclosed is a copy of your approved Transfer of Water Right for the above referenced water right (Transfer No. 4205). Please be sure to thoroughly review the "Conditions/Remarks:) as listed on the transfer.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jim Johnson', written over a horizontal line.

JIM JOHNSON, Manager
Water Right Permits Section

JJ:rl

Enclosure

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

Water Right Number - X37-128188

Prefix Translation:

XFER OF ^{B/O} ~~REC'D~~ CLAIM

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
FITZPATRICK

J PETER

1 - C/O JAMES P SPECK ESQ
2 - PO BOX 987
3 -

City- KETCHUM State- ID Zip- 83340

Phone - 619-431-2665

FITZPATRICK

CLAIRE B

1 - C/O JAMES P SPECK ESQ
2 - PO BOX 987
3 -

City- KETCHUM State- ID Zip- 83340

Phone - 619-431-2665

*** O - ORIGINAL OWNER ***
PACESETTER DEVELOPMENT CO

1 -

2 -

3 -

City- State- ID Zip-

Phone - 208-000-0000

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
03/24/1883 17 SOUTHERN J - BENEFICIAL USE

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BIG WOOD RIVER MALAD RIVER

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County

03N 18E 20 SW NW (13) BLAINE HIAWATHA HEADGATE

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume

01 - IRRIGATION 04/15 10/15 0.110 14.00

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
0.110 14.00 0.0

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County

02N 18E 4 NE NW 2.0 01 IRRIGATION (13) BLAINE

03N 18E 33 SE SW 2.0 01 IRRIGATION (13) BLAINE

Total Acres: 4.0

+ - - Diversion Means - VIA HEADGATE #22 & HIAWATHA CANAL

+ - - Non-Irrigation Use - NONE

+ - - Other Rights for Same Use - NONE

Water right number - X37-12818B

Prefix Translation: XFER OF RECOM. CLAIM

+ - - - - Remarks - - - - -
No Remarks found.

+ - - - - Old Water Right Numbers - - - - -
No Old Water Right Numbers Found

+ - - - - Conditions of Approval - - - - -
R04 - Use of water under this water right will be regulated by the
watermaster of State Water District No. 37.
R43 - A measuring device and lockable controlling works of a type
approved by this Department shall be maintained on the diverting
works in a manner that will provide the watermaster suitable
control of the diversion.
R30 - This right when combined with all other rights shall provide no
more than .02 cfs per acre nor more than 3.5 afa per acre for the
lands above.
T04 - Approval of this transfer in no way grants any right-of-way or
easement for use of a delivery system owned by person(s) other
than the right owner.
T07 - The change authorized by this transfer shall be accomplished
within one (1) year of the date of this approval.
T08 - Failure to comply with the conditions of this transfer is cause
for the director to issue an order to show cause why the approval
of the transfer should not be rescinded.
T09 - Approval of this transfer does not preclude the opportunity for
review of the validity of the water right(s) in the ongoing
Snake River Basin Adjudication.

+ - - - Decree Plaintiff - - - + + - - - Decree Defendant - - - + + - Decree Date - +
S. C. FROST ET. AL. ALTURUS WATER COMPANY, ET. AL. 00/00/0000

+ - - - - Comments - - - - -
Date: 02/22/1995 User Id: PSKAGGS Subject: TRANSFER NO. 4205
Transfer No. 4205 was filed to change the place of use under a portion of Right No. 37-00577 and SRBA Claim A37-12818. The
portion of the original water right was identified as 37-00577BN, and the claim is a small portion of this right. No transfer was
required for the water right since the proposed change was within the original confines of the right. The SRBA Claim however, was
only a portion of the original right and a transfer is required to change the place of use under a portion of the claim,
splitting the right into parts A and B. Questions regarding the validity of the right will be resolved through the final
recommendations of the court for basin 37.

+ - - Audit Fields - - +
03/17/95 PSKAGGS

+ - - - - Adjudication Rights Dates and Flags Area - - - - -
Court Report Filing - 00/00/0000 Field Inspection Made - 00/00/0000 Civil Case Number - 39576
Objection Filed Date - 00/00/0000 Field Inspection Flag - Old Case Number -
Response Filed Date - 00/00/0000 Verified Date - 00/00/0000 Old Judicial District -
Claim Received Date - 00/00/0000 Last Amended Date - 00/00/0000 Temporary Right - T
Receipt Number - Water District - 37
POU Ownership Flag - Y Federal/State Indicator - S
Name Connector - Presumption Flag -
Notice of Error Flag -

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

Water Right Number - X37-12818A

Prefix Translation: XFER OF ^{BU}~~RECON~~ CLAIM

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** A - ATTORNEY ***
SPECK

JAMES P

1 - PO BOX 987

2 -

3 -

City- KETCHUM

State- ID Zip- 83340

Phone - 208-000-0000

*** C - CURRENT OWNER ***
PACESETTER DEVELOPMENT COMPANY

1 - 4540 CAMPUS DRIVE

2 -

3 -

City- NEWPORT BEACH

State- CA Zip- 92660

Phone - 714-852-8600

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
03/24/1883 ERROR IN REGION J - BENEFICIAL USE

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
BIG WOOD RIVER MALAD RIVER

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County
03N 18E 20 SE SW NW (13) BLAINE

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 11/01 2.610

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
2.610 0.0

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
02N 18E 9 NE NE 2.0 01 IRRIGATION (13) BLAINE
02N 18E 10 NW NW 37.0 01 IRRIGATION (13) BLAINE
02N 18E 10 SW NW 17.0 01 IRRIGATION (13) BLAINE
02N 18E 10 SE NW 27.0 01 IRRIGATION (13) BLAINE
02N 18E 10 NE SW 16.0 01 IRRIGATION (13) BLAINE

Total Acres: 99.0

+ - - Diversion Means - VIA HEADGATE #22 & HIAWATHA CANAL

+ - - Non-Irrigation Use - NONE

+ - - Other Rights for Same Use - NONE

Water right number - X37-12818A

Prefix Translation: XFER OF RECOM. CLAIM

+ - - - - Remarks - - - - -
THIS CLAIM IS FOR A PORTION OF 37-0577 ORIGINALLY DECREED TO W.
T. RILEY.

+ - - - - Old Water Right Numbers - - - - -
No Old Water Right Numbers Found

+ - - - - Conditions of Approval - - - - -
No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
S. C. FROST ET. AL. ALTURUS WATER COMPANY, ET. AL. 00/00/0000

+ - - - - Comments - - - - -
Date: 02/22/1995 User Id: PSKAGGS Subject: TRANSFER NO. 4205
Transfer No. 4205 was filed to change the place of use under a portion of Right No. 37-00577 and SRBA Claim A37-12818. The
portion of the original water right was identified as 37-00577BN, and the claim is a small portion of this right. No transfer was
required for the water right since the proposed change was within the original confines of the right. The SRBA Claim however, was
only a portion of the original right and a transfer is required to change the place of use under a portion of the claim,
splitting the right into parts A and B. Questions regarding the validity of the right will be resolved through the final
recommendations of the court for basin 37.

+ - - Audit Fields - - +
03/17/95 PSKAGGS

+ - - - - Adjudication Rights Dates and Flags Area - - - - -
Court Report Filing - 00/00/0000 Field Inspection Made - 00/00/0000 Civil Case Number - 39576
Objection Filed Date - 00/00/0000 Field Inspection Flag - Old Case Number -
Response Filed Date - 00/00/0000 Verified Date - 00/00/0000 Old Judicial District -
Claim Received Date - 00/00/0000 Last Amended Date - 00/00/0000 Temporary Right - T
Receipt Number - Water District -
POU Ownership Flag - Y Federal/State Indicator - S
Name Connector - Presumption Flag -
Notice of Error Flag -

MEMORANDUM

TO: FILE A37-12818 (37-00577BN)

FROM: PAM SKAGGS/STATE OFFICE

SUBJECT: TRANSFER NO. 4205

DATE: February 22, 1995

OK
Chaff
2-22-95

ok

=====

This transfer application identifies a portion of water right number 37-00577 to be transferred to a new place of use. The portion has been more closely identified as 37-00577BN and ~~the~~ corresponding Snake River Basin Adjudication Claim A37-12818 ~~which is also~~ *part of* ~~represents only~~ a portion of 37-00577BN.

Review of the rights and the proposed change indicate that **no change will occur to the water right**. The transfer identifies an ownership split and specific place of use that is located within the original confines of Right No. 37-00577BN. A transfer is not required for the water right.

The SRBA Claim does need to be changed, splitting a portion of the right and transferring it to a new location. The transfer approval is prepared to change the claim only, splitting the claim into parts A and B.

There has been much review and discussion regarding the validity of the transferred right and the SRBA is recommending disallowal because the right was forfeited or abandoned. The transfer is being processed pending the conclusion of the adjudication and is subject to final disposition of the right.

Recommended conditions include watermaster control, measuring device with lockable controlling works, irrigation overlap, non-confirmation of claim, right-of-way and standard transfer conditions.

TRANSFER REVIEW SHEET
(11-94)

Transfer # 4205

Date Reviewed 2-21-95

38

Right(s) 37-00577? (PART) BN

(A37-12818) SRBA Claim for Part of 37-00577

☒ Print Split Summary

B: Change P/D C: Add P/D (D): Change P/U E: Change Nature of Use
F: Change Period of Use G: Other H: Change P/D & Add P/D
I: Change P/D & P/U J: Add P/D & Change P/U

Proof of Ownership Quitclaim Deed 4 Acres 106 cts overlaps above rts.

Transfer All of Right ☒ Portion of Right Working File T37-00577X2
Resulting Split(s) BN split into BS + BT Next split

BS = 14.57 cts

BT = .11 " 4 Acres 146 cts

BN = 14.68 "

Check Transfer Against Right Season/Vol. B/3.5

(1) ☒ Priority (2) ☒ Use (3) Season (4) Rate (5) Volume

(6) ☒ Source (7) ☒ P/D (8) P/U (9) ☒ Proof/Owner (10) ☒ Map

(11) 37 Water District (12) NONE Pertinent Conditions (13) NO Expansion
Assuming Confirmed by SRBA

(3) No Season on Decree - Standard = 4-15 to 10-15

(4) Within Decreed Range > 1" per acre

(5) No VOL on Decree - Standard = $3.5 \times 4 = 14 \text{ cts}$ $5.11 \times 183 \times 19835 = 39.9$

(8) No Change to WR P/U - Ownership split only

No Transfer needed on WR / Claim needs to be t/a / split & change P/U

A37-12818 > A = 2.61 99 Acres 247.5 ac/cu

B = .11 cts 4 Acres 146 cts 10.0 ac/cu

2.72 103

Transfer Remarks Removed per Gen S.

Conditions R30, R43, R04, T01, T04, T07, T08, T09

Database/Processing Notes AJ Approval Parts A+B Copied to X pre-fix
on AT database

WRN updated

Fitz. sig

Database updated 3-7-95
38

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)

WR-NUMBER	SOURCE	NE				NW				SW				SE				SUM
		NE		NW		SW		SE		NE		NW		SW		SE		
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
T02N R18E S 4 2																		
P3408423	GROUNDWATE :							04-6										6
R3700004	BIG WOOD R :			2	2										20	5	6	32 : 67
A3700004B	BIG WOOD R :			2	2										20	5		25 : 54
T3700004B	BIG WOOD R :			2	2										20	5		25 : 54
A3700004C	BIG WOOD R :																2	7 : 9
A3700004D	BIG WOOD R :																3	3 : 3
3700024	BIG WOOD R :														1			1 : 1
A3700024	BIG WOOD R :			2	2										20	5		25 : 54
R3700024	BIG WOOD R :			2	2										20	5	6	32 : 67
T3700024	BIG WOOD R :			2	2										20	5		25 : 54
A3700028A	BIG WOOD R :							1										
R3700028A	BIG WOOD R :							1										
A3700028B	BIG WOOD R :							2										2
R3700028B	BIG WOOD R :							2										2
A3700028E	BIG WOOD R :			3	3			34										40
A3700028F	BIG WOOD R :			18	1			1					1					21
A3700028G	BIG WOOD R :							6										6
3700183	BIG WOOD R :							03-1	04-1	I	I	I	I	I		I	I	
A3700183A	BIG WOOD R :														25		13	38
R3700183A	BIG WOOD R :														25		13	38
A3700183B	BIG WOOD R :							15						24		27		92
R3700183B	BIG WOOD R :							15						24		27		92
3700296	INDIAN CRE :			02-1	1			03-1										
A3700296B	INDIAN CRE :			10	22			5										37
3700297	BIG WOOD R :			02-1	1			03-1										
A3700297B	BIG WOOD R :							2										2
R3700297B	BIG WOOD R :			02-1	1			*1						1				2
R3700297F	BIG WOOD R :			26	37	6		14						3				86
A3700297G	BIG WOOD R :							2										2
R3700297G	BIG WOOD R :							2										2
A3700297H	BIG WOOD R :			02-3	3									34				40
A3700297J	BIG WOOD R :			7	35	6		12						1				61
A3700297K	BIG WOOD R :			18	1			1						1				21
A3700297L	BIG WOOD R :							6										6
3700298A	BIG WOOD R :							03-19	04-33	17	31		40		39		I	179
A3700298C	BIG WOOD R :														25		13	38
R3700298C	BIG WOOD R :														25		13	38
A3700298D	BIG WOOD R :							15						24		27		92
R3700298D	BIG WOOD R :							15						24		27		92
3700334D	BIG WOOD R :							03-1	04-1	1	1	I	1	I			I	
A3700334E	BIG WOOD R :														25		13	38
R3700334E	BIG WOOD R :														25		13	38
A3700334F	BIG WOOD R :							15						24		27		92
R3700334F	BIG WOOD R :							15						24		27		92

PROPOSED P/U — Already described under 37-00577BN

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '**' ARE ADJUDICATION CLAIMS)

		Quitclaim Deed																																	
		NE				NW				SW				SE				NE				NW				SW				SE					
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM					

T02N R18E S 9																																			
R3700004	BIG WOOD R :		2																											2					
A3700004C	BIG WOOD R :	1	2																											3					
R3700024	BIG WOOD R :		2																											2					
A3700364D	BIG WOOD R :		2	9																										11					
T3700577AR	BIG WOOD R :																																		
3700577AX	BIG WOOD R :																																		
3700577BN	BIG WOOD R :	No AQ identified																																	
T3700577BU	BIG WOOD R :																																		
T3700577BX	BIG WOOD R :																																		
T3700577T	BIG WOOD R :																																		
3700577X	BIG WOOD R :																																		
3700901	BIG WOOD R :																																		
3700902A	BIG WOOD R :	1																																	
3700902B	BIG WOOD R :																																		
3700904	BIG WOOD R :		1																																
3700907	BIG WOOD R :	1																																	
3700916	BIG WOOD R :																																		
3700923	BIG WOOD R :																																		
3702313	CROY CREEK :																																		
3702530	GROUNDWATE :																																		
A3702530	GROUNDWATE :																																		
R3702530	GROUNDWATE :		2	9																															
3704315	GROUNDWATE :																																		
3707068	GROUNDWATE :																																		
3707196	BIG WOOD R :																																		
3708006	GROUNDWATE :																																		
A3708084	GROUNDWATE :																																		
R3708084	GROUNDWATE :																																		
R3711411	BIG WOOD R :																																		
A3712085	GROUNDWATE :																																		
R3712085	GROUNDWATE :																																		
A3712106	BIG WOOD R :																																		
R3712106	BIG WOOD R :																																		
A3712818	BIG WOOD R :	6 Quitclaim Deed identities 4 Acres located this AQ																																	
C13Q-X 74																																			
NO QTRS		MAPPING		00																															

T02N R18E S 10 NO ACRES TRANSFERRED FROM SEC 10.

3700004	BIG WOOD R :																		
3700024	BIG WOOD R :																		
A3700191	BIG WOOD R :																		
T3700577AR	BIG WOOD R :																		

OVERLAP OF ORIGINAL P/U DESCRIBED

[illegible]

WATER RIGHT NUMBER	NAME	CFS
37-00577	SPLIT INTO 37-0577A & 37-0577B BY DECREE. SEE ALBRETHSEN VS WOOD RIVER LAND CO., 6-27-1925.	
37-00577A	SPLIT INTO 37-0577C & 37-0577D BY TRANS. 43.	
37-00577B	HIAWATHA CANAL CO.	2.74
37-00577C	SPLIT INTO 37-0577E & 37-0577F BY PAULL VS RAVENSCROFT, 8-14-1922	
37-00577D	SPLIT INTO 37-0577J & 37-0577K BY DECREE. SEE BLAINE CO. NATIONAL BANK VS CRONE ET. AL., 4-17-1923.	
37-00577E	SPLIT INTO 37-0577G & 37-0577H ROY ET. AL. VS DITTOE, 3-21-1923.	
37-00577F	PAULL , AUGUSTA	1.00
37-00577G	SPLIT INTO 37-0577Q & 37-0577R BY DECREE. SEE BURLINGTON SAVINGS BANK VS GRAYSON ET. AL., 1-25-1924.	
37-00577H	ROY , AMELIA VIC PERRY , MRS. F. G. FRIEDMAN , LEON S. HOWES , MARIE L. FULD , JOSEPH W.	
37-00577J	SPLIT INTO 37-0577L & 37-0577M BY DECREE. SEE STATE OF IDAHO VS MARSHALL ET. AL., 4-28-1923.	
37-00577K	BLAINE COUNTY NATIONAL BANK	2.00
37-00577L	SPLIT INTO 37-0577N & 37-0577P BY DECREE. SEE BLAINE CO. NATIONAL BANK VS LARSEN ET. AL., 5-24-1923.	
37-00577M	STATE OF IDAHO	1.60
37-00577N	SPLIT INTO 37-0577AB & 37-0577AC BY TRANS. 586.	
37-00577P	BLAINE COUNTY NATIONAL BANK	4.00
37-00577Q	SPLIT INTO 37-0577S & 37-0577T BY TRANS. 456.	
37-00577R	BURLINGTON SAVINGS BANK	5.00

WATER RIGHT NUMBER	NAME	CFS
37-00577S	SPLIT INTO 37-0577U & 37-0577V BY TRANS. 487.	
37-00577T	VALLEY RANCH PARTNERS , THE	0.85
37-00577U	SPLIT INTO 37-0577W, 37-0577X, & 37-0577Y BY TRANS. 501.	
37-00577V	VALLEY RANCH PARTNERS , THE	0.84
37-00577W	SPLIT INTO 37-0577Z & 37-0577AA BY TRANS. 508.	
37-00577X	FRIEDMAN CO.	1.00
37-00577Y	FRIEDMAN CO.	2.80
37-00577Z	SPLIT INTO 37-0577AD, 37-0577AE, & 37-0577AF BY TRANS. 722.	
37-00577AA	WELLARD , ELWIN	0.99
37-00577AB	SPLIT INTO 37-0577BA & 37-0577BB BY TRANS. 2724.	
37-00577AC	CRONE , D. H.	2.40
37-00577AD	SPLIT INTO 37-0577AG & 37-0577AH BY TRANS. 1743.	
37-00577AE	CLARK , WAYNE	1.00
37-00577AF	CLARK , WAYNE	6.78
37-00577AG	SPLIT INTO 37-0577AJ & 37-0577AK BY TRANS. 1744.	
37-00577AH	MOORE , KENNETH L.	1.58
37-00577AJ	SPLIT INTO 37-0577AL & 37-0577AM BY DECREE. SEE HARRIS VS SMITH ET. AL., 4-1-1977.	
37-00577AK	MC CARTNEY , LATON MC CARTNEY , GERTRUDE	0.20
37-00577AL	SPLIT INTO 37-0577AN & 37-0577AP BY TRANS. 2427.	
37-00577AM	SPLIT INTO 37-0577AQ & 37-0577AR BY TRANS. 2525.	
37-00577AN	SPLIT INTO 37-0577AS & 37-0577AT BY TRANS. 2584.	

WATER RIGHT NUMBER	NAME	CFS
37-00577AP	ASTORQUIA , EST. OF MARIA	1.43
37-00577AQ	SPLIT INTO 37-0577BE & 37-0577BF BY TRANS. 3274.	
37-00577AR	WOOD RIVER RANCH INC.	2.84
37-00577AS	SPLIT INTO 37-0577AU & 37-0577AV BY TRANS. 2644.	
37-00577AT	HAUGH , CHRISTIE ANN	0.35
37-00577AU	SPLIT INTO 37-0577AW & 37-0577AX BY TRANS. 2690.	
37-00577AV	CAMERON , ED	0.46
37-00577AW	SPLIT INTO 37-0577AY & 37-0577AZ BY TRANS. 2718.	
37-00577AX	GORMAN , JAMES A.	0.10
37-00577AY	SPLIT INTO 37-0577BC & 37-0577BD BY TRANS. 3196.	
37-00577AZ	STUART , E. HADLEY	2.70
37-00577BA	WOOD RIVER LAND CO.	12.51
37-00577BB	BALDWIN , CLYDE	0.48
37-00577BC	SPLIT INTO 37-0577BL & 37-0577BM.	
37-00577BD	DAVIS INVESTMENT CO.	1.20
37-00577BE	SPLIT INTO 37-0577BG & 37-0577BH.	
37-00577BF	BURKE , WAYNE L.	0.02
37-00577BG	SPLIT INTO 37-0577BJ & 37-0577BK.	
37-00577BH	LANIER , FRANK J.	0.18
37-00577BJ	HARRIS , JAMES L.	0.10
37-00577BK	MILLER , RICHARD D.	0.10
37-00577BL	SPLIT INTO 37-0577BN/BP/BQ/BR.	

WATER RIGHT NUMBER	NAME	CFS
37-00577BM	BODNER , LISELOTTE	0.72
37-00577BN	WOOD RIVER LAND CO.	14.67
37-00577BP	BURKE , JOHN A. JUDD , FREDERICK E.	0.18
37-00577BQ	ANDERSON , RICHARD B.	0.04
37-00577BR	CAMPION , THOMAS B. CAMPION , LYNN H.	0.26

MEMORANDUM

To: Jim Johnson
Pam Skaggs

From: L. Glen Saxton 

RE: **ATTACHED APPLICATIONS FOR PERMIT AND APPLICATION FOR TRANSFER**

Date: February 6, 1995

The attached four (4) applications for permit and application for transfer no. 4205 which proposes mitigation to allow approval of the four applications for permit, have been subject to intense review between Water Allocation Bureau and Adjudication Bureau. The review relates to past use of the right proposed for mitigation and potential forfeiture of it.

The bottom line is that we should approve the applications for permit and application for transfer since the information presently available does not clearly show that the mitigation right has been forfeited through non-use.

Please review the applications for approval and give them some priority since these files have been around for a while and are regularly checked upon by Jim Speck. Thanks.

TO: STATE OFFICE

JAN-31-'95 TUE 09:56

IDWR SOUTHERN

TEL NO: 1-20

36-3037

#315 P01

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451



LEE R. PETERSON
Watermaster

RECEIVED

JAN 30 1995

Mel Scholte
Idaho Department of Water Resources
222 Shoshone St. East
Twin Falls, Idaho 83301

Department of Water Resources
Southern Region

January 30, 1995

Mel,

This is a list of the water used and the charges paid by Pacesetter Homes/Edmund Dumke from 1986 to the present time. They never were billed the \$20.00 minimum.

1986 -301.30 CFS, paid \$58.30, 1987 no record of use or payment, 1988 no record of use or payment, 1989 no record of use or payment, 1990-339.60 CFS, paid \$252.51, 1991-354.60 CFS, paid \$190.51, 1992-200.69 CFS, paid \$90.08, 1993-269.34 CFS, paid \$40.30, 1994-184.20 CFS, billed 139.44.

I hope this is the information you were seeking. If we can be of further help please let us know.

Sincerely,

Norma Peterson
Norma Peterson
Secretary/Treasurer

Post-It™ brand fax transmittal memo 7671		# of pages >
To <i>Nick Spencer</i>	From <i>Mel Scholte</i>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

TO: STATE OFFICE

JAN-31-'95 TUE 09:57

IDWR SOUTHERN

TEL NO: 1-206

6-3037

#315 P03

MEMORANDUM TO FILE

FROM: MEL SCHULTE *MS*

DATE: 12-14-1994

RE: MARATHON PARTNERS
(PACESETTER DEVELOPMENT CO)
A37-12818

IN A TELEPHONE CONVERSATION WITH NORMA PETERSON AT THE WATER MASTER'S OFFICE FOR THE BIG WOOD RIVER DISTRICT, SHE INFORMED ME THE 3-24-1883 WATER DIVERTED TO THE HIAWATHA CANAL WAS STOPPED ON AUGUST 12, 1991. THE PURPOSE OF MY INQUIRY WAS TO CONFIRM STATEMENTS IN AN AFFIDAVIT THAT WATER HAD BEEN DIVERTED FROM THE HIAWATHA CANAL FOR IRRIGATION FROM 7-16-1991 TO 7-30-1991 AND FROM 8-1-1991 TO 8-30-1991.

TO: STATE OFFICE

JAN-31-'95 TUE 09:57

IDWR SOUTHERN

TEL NO: 1-20

16-3037

#315 P02

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451



LEE R. PETERSON
Watermaster

RECEIVED

JAN 30 1995

Department of Water Resources
Southern Region

FACSIMILE TRANSMISSION

TO:	Idaho Department of Water Resources
FAX NUMBER:	736-3037
FOR THE ATTENTION OF	Mel Scholte
FROM	Water District 37 & 37M
FAX NO.	Same as Phone 208-886-2451
NUMBER OF PAGES (INCLUDING THIS ONE)	2
DATE	1/30/95
MESSAGE	

=====

If you do not receive the above number of pages, or if there is any other problem, please call (208) 886-2451 at Shoshone, Idaho.

=====

The information contained in this fax is confidential and subject to attorney-client privilege. If the reader is not the intended recipient or the agent thereof, you are hereby notified that any dissemination, distribution or copying of the fax is prohibited. If you have received this fax in error, please notify us immediately and return the original by mail at our expense. Thank you.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451



RECEIVED
JAN 06 1995

LEE R. PETERSON
Watermaster

Department of Water Resources

Glen Saxton
State of Idaho
Department of Water Resources
1301 N. Orchard St.
Boise, Idaho 83720-9000

January 4, 1995

RE: Transfer No. 4205, Marathon Partners No. 37-00577 and
A37-12818.

Glen:

In response to your letter regarding the water use 1987 through 1991 for right No. 37-00577, this particular water right is delivered at the head gate into the Hiawatha Canal, from the Big Wood River, it is then administered by the Hiawatha ditchings for delivery to the users within the system. With my appointment as Watermaster in 1991, a water delivery form was issued to the ditchrider of each system so we could have a accurate record of those who were actually using water. Since 1991 these forms indicate that water was used under decree No. 37-00577.

Researching the Watermaster reports they show water was used in 1989 and billed in 1990, used in 1990 and billed in 1991, but there is no recorded use in 1987 and 1988. To actually verify that water was delivered to the designated property would entail an on sight inspection.

If we can be of further assistance feel free to call.

Sincerely,

A handwritten signature in cursive script, reading "Lee R. Peterson".

Lee R. Peterson
Watermaster



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 21, 1994

Lee Peterson
Water District 37
P.O. Box T
Shoshone, ID 83352

RE: APPLICATION FOR TRANSFER NOS. 37-00577 AND A37-12818 -
MARATHON BROTHERS

Dear Lee:

In 1993, Marathon Brothers, through Jim Speck of Ketchum filed the above referenced application for transfer with the department offering 0.11 cfs of the above referenced surface water rights as mitigation for four (4) pending applications for permit which propose a groundwater diversion. The question before the department is whether there has been a five year consecutive period of non-use associated with the surface water right.

On September 28, 1993 you submitted the "Recommendation of Watermaster" form to the department in connection with the proposed transfer. With respect to watermaster billing for use of water, your records apparently show the following:

1987 - no billing
1988 - no billing
1989 - no billing
1990 - billed
1991 - billed

The critical 5-year period appears to be from 1987 through 1991. Since there is conflicting information on the use of water, I need to know whether your records show that water was or was not delivered (not just billed) during the period in question.

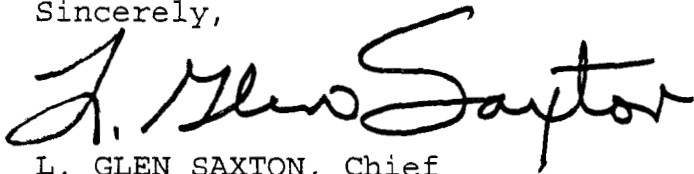
Lee Peterson

Page 2

December 21, 1994

Please provide the information at your earliest convenience.

Sincerely,

A handwritten signature in black ink, reading "L. Glen Saxton". The signature is written in a cursive, flowing style. The first letter "L" is large and loops around the first part of the name. The last name "Saxton" is written in a similar cursive style.

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region

From: DWR03::DWR60::SCLLELLAN
To: DWR03::GSAXTON, MSCHULTE
CC: SCLLELLAN
Subj: MARATHON AFFIDAVITS

13-DEC-1994 15:41*

MEMO

TO: GLEN SAXTON
FROM: STEVE CLELLAND
DATE: December 13, 1994

RE: AFFIDAVITS FROM SPECK FOR MARATHON PARTNERS

=====

I met with Mel Schulte and we reviewed the affidavits and previous documents again. The Recommendations to the SRBA claims WILL NOT CHANGE as a result of these documents. Records of the water delivery by the watermaster contradict statements of use by the affiants.

We also questioned the beneficial use of water. The use claimed was, "... starting the growth of pasture grass..." so that grazing could begin the following summer. They have claimed to irrigate only 15 days during the peak irrigation crop demand and start a pasture that "HOPEFULLY" may be grazed a year later. Does this qualify as beneficial use of water? Please advise us of the Department's position of what constitutes minimum beneficial use for irrigation if we are off base. We concluded the mere diversion of water cannot justify a water right, there must be some beneficial use associated with the diversion.

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
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16 WEST CROY STREET
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POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

November 30, 1994

VIA FACSIMILE - 1-208-327-7866
ORIGINAL TO FOLLOW BY MAIL

RECEIVED
DEC 2 1994
Department of Water Resources

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

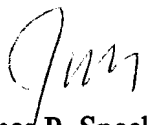
Re: Marathon Partners - Portion of Water Right No. 37-00577 (SRBA Claim No. A37-12828) - Applications for Permit No. 37-08587, 37-08819, 37-08820 and 37-08821 and Application for Transfer No. 4205

Dear Glen:

Enclosed please find the originals of the Affidavit of Edmund E. Dumke, Jr. and the Supplemental Affidavit of Gregory A. Mann which I am submitting in support of the above-referenced Applications. Please call me if you have any further questions or desire any additional information. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS/j
(enclosures)
cc: Ed Dumke (w/ enclosures)

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO**

IN THE MATTER OF A PORTION OF	)	
WATER RIGHT NO. 37-00577 - SRBA	)	SUPPLEMENTAL AFFIDAVIT OF
CLAIM NO. A37-12818	)	GREGORY A. MANN
	)	

STATE OF IDAHO	)	
	)	ss.
County of Blaine	)	

I, GREGORY A. MANN, being first duly sworn under oath, depose and state as follows:

1. Attached hereto as Exhibit A is a copy of the October 1, 1993 Affidavit I previously submitted in this matter. I reaffirm and incorporate into this Affidavit all of my statements made in the October 1, 1993 Affidavit.

2. On July 15, 1991, I made arrangements with Dale Mizer, ditch rider for the Hiawatha Canal Association, to have the entire amount of the Pacesetter 1883 water right delivered from the Hiawatha Canal to the northeast corner of Pacesetter's Deerfield Property, which is outlined in red and identified by the letter "D" on the aerial photograph copy attached hereto as Exhibit B.

3. On July 16, 1991, Mr. Mizer diverted 136 inches of water from the Hiawatha Canal at point "1" shown on Exhibit C into the ditch running along the base of the hill to a culvert crossing under Quigley Road. The path of delivery of the water from the Canal to the Deerfield Property is marked in red on Exhibit C. I cleaned out these ditches and the culvert so that as much

of the 136 inches as possible reached the Deerfield Property.

4. I did not measure the water at the point where it entered the Deerfield Property. I ran the water out onto as much of the Deerfield Property as possible using the field ditches. It covered that portion of the Deerfield Property marked with red cross-hatching on Exhibit B. The water ran continuously from July 16, 1991 through July 30, 1991. The purpose was to irrigate as much of the Deerfield Property as possible, starting the growth of pasture grass so that cattle could be grazed on the property when the pasture was adequate, hopefully by the following summer.

5. From August 1, 1991 through August 30, 1991, the entire 136 inches of the Pacesetter 1883 water right was diverted from the Hiawatha Canal and delivered to the northwest corner of the Hidden Meadows Property (outlined in blue and identified by the letters "HM" on Exhibit B) where it ran in field ditches to flood irrigate that parcel. The purpose was the same as for the Deerfield Property. I then contacted the manager of the property immediately north of the Hidden Meadows Property, Mr. Greg Smith, who expressed a desire to use the Pacesetter lands for irrigated pasture for his cattle as soon as the pasture was adequate.

Dated this 29 day of November, 1994.

Gregory A. Mann
GREGORY A. MANN

SUBSCRIBED AND SWORN TO before me this 29th day of November, 1994.

Susan A. Scott
Notary Public for Idaho
Residing at Moshoone, Idaho
My commission expires 10/06/2000

1
2 **AFFIDAVIT**

3 STATE OF IDAHO)
4 County of Blaine) ss.
5)

6 I, GREGORY A. MANN, being first duly sworn upon
7 oath, depose and state as follows:

8 1. I am 47 years old and have been a resident of
9 Blaine County, Idaho for 22 years.

10 2. In the summer of 1991, I was asked by Ned Loomis, a
11 representative of Pacesetter Development Company, to irrigate
12 Pacesetter's undeveloped lands with its 1883 water right. The
13 purpose was to raise pasture grass for cattle grazing.

14 3. From July 16 through July 30, 1991, I flood
15 irrigated the SE 1/4 NW 1/4, Section 10, Township 2 North Range
16 18 East, property commonly known as the Deerfield Subdivisions
17 No. 3, 4 and 5. In order to get the water to this property, it
18 was diverted from the Hiawatha Canal into the Highline Ditch
19 which runs at the base of the hills north of Quigley Road and
20 then through a culvert under Quigley Road to the Northeast corner
21 of the place of use.

22 4. From August 1 through August 30, 1991, I diverted
23 the water for flood irrigation of the entire parcel north of
24 Quigley Road known as the Hidden Meadows Property, consisting of
25 approximately 55 acres. The purpose of the irrigation was to
26 raise pasture grass for grazing.

27 **AFFIDAVIT OF GREGORY A. MANN - 1**
28

1 DATED this 1 day of ^{OCT.}~~September~~, 1993.

2
3 Gregory A. Mann
4 Gregory A. Mann

5 OCTOBER SUBSCRIBED AND SWORN to before me this 1st day
6 of ~~September~~, 1993.

7 Deborah L. Jones
8 Notary Public for Idaho
9 Residing at: Bellevue, Id 83333
10 Comm. Expires: 6/99

11
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28 **AFFIDAVIT OF GREGORY A. MANN - 2**

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO**

IN THE MATTER OF A PORTION OF	)	
WATER RIGHT NO. 37-00577 - SRBA	)	AFFIDAVIT OF EDMUND E.
CLAIM NO. A37-12818	)	DUMKE, JR.
_____	)	

STATE OF IDAHO	)	
	)	ss.
County of Blaine	)	

I, EDMUND E. DUMKE, JR., being first duly sworn under oath, depose and state as follows:

1. I am 38 years old and have been a resident of Blaine County, Idaho for 27 years.

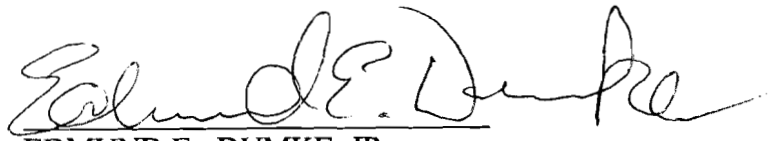
2. I am the managing general partner of Marathon Partners, an Idaho general partnership ("Marathon"). On June 24, 1992 Earl Engelmann entered into an agreement to purchase from Pacesetter Development Company ("Pacesetter") two (2) parcels of land known as the Hidden Meadows Property and the Deerfield Property, and identified as parcels "HM" and "D", respectively, on the aerial photograph copy attached hereto as Exhibit A. Included in this purchase was the entire amount of Pacesetter's 1883 water right - 136 inches (the "water right"). In mid-July, 1992, Marathon acquired Engelmann's interest in this agreement. The transaction then closed September 10, 1992.

3. The water right had already been cut for priority by the time Marathon acquired its interest in the agreement to purchase the properties from Pacesetter, so Marathon was not able to cause the water right to be used in 1992. However, in the spring of 1993, I made arrangements with Burr Smith to have the entire Hidden Meadows Property flood irrigated that season. This parcel was then fenced with new fencing in the fall of 1993 and leased to our neighbors to the north who run a cutting horse and cattle operation (the "Cutters"). The Cutters ran their cattle on the Hidden Meadows Property in the fall of 1993 once the fencing was completed. The Hidden Meadows Property was again flood irrigated in 1994 and leased to the Cutters who again ran their cattle on the property.

4. Prior to Marathon's purchase, the Deerfield Property and the Hidden Meadows Property had been annexed into the City of Hailey. By the end of 1992, City water had been extended to the Deerfield Property and we were planning to market the residential lots the following year. In early 1993, Marathon reached an agreement with the Blaine County School District ("District") through a non-profit group known as the Wood River High School Baseball and Softball Association ("WRHSBSA") to donate to the District a portion of the water right sufficient to irrigate the existing high school grounds and athletic fields as well as the planned and badly needed new complex for baseball and softball fields, a total of approximately 40 acres. In March, 1993, the District filed its Application for Permit No. 37-08821 proposing to use this portion of the water right in a "mitigation plan". Marathon signed a quitclaim deed transferring all of its interest in that portion of the water right to the District and understood that from that point forward any use of that portion of the water right could only be by the District pursuant to the right it would eventually obtain through its application. therefore, no attempt was made to use that portion of the water right

in 1993 and 1994.

Dated this 15 day of November, 1994.


EDMUND E. DUMKE, JR

SUBSCRIBED AND SWORN TO before me this 15 day of November, 1994.

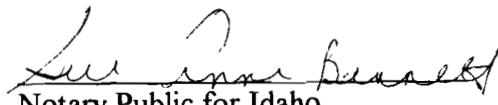
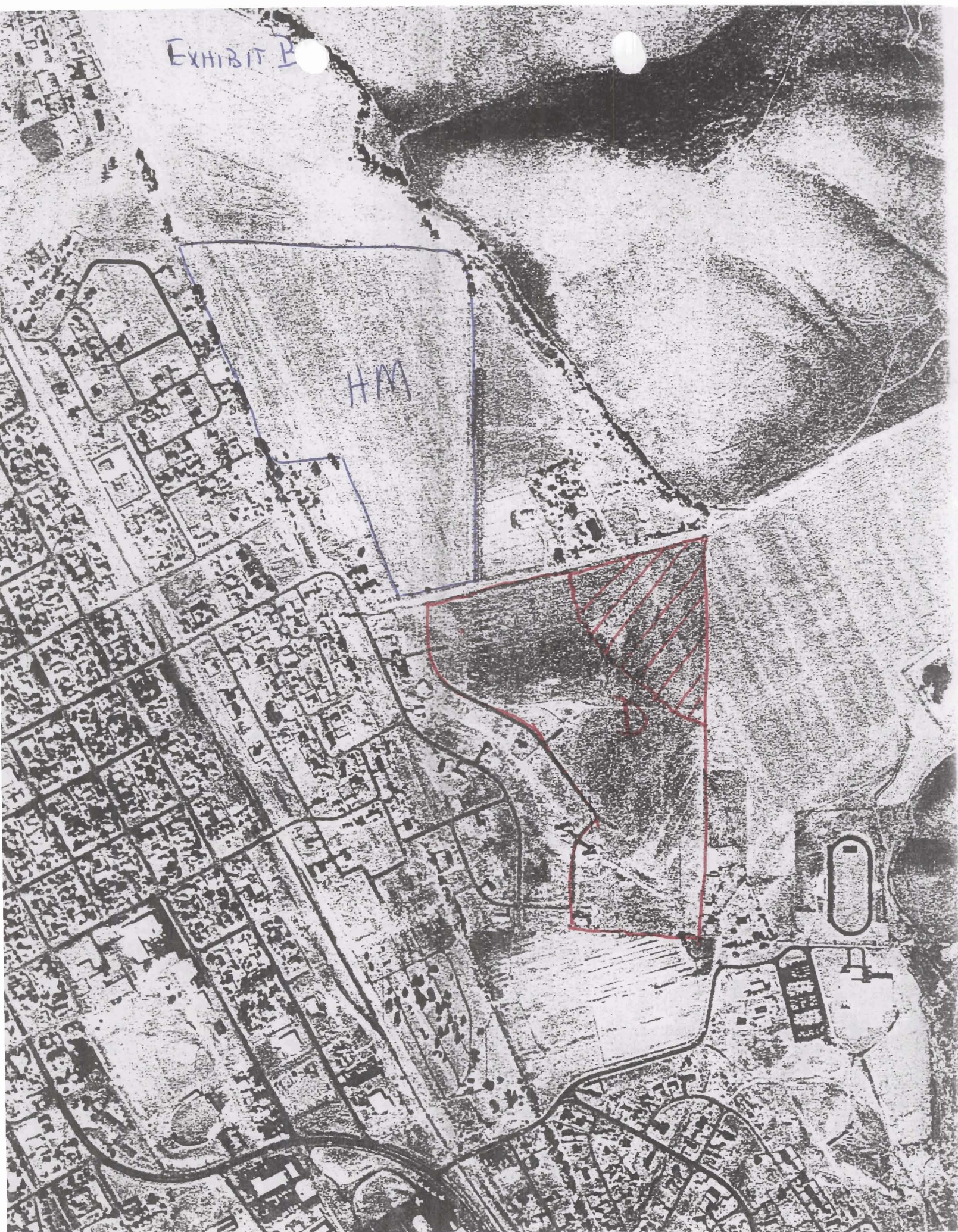

Notary Public for Idaho
Residing at Idaho Falls
My commission expires 7/21/95

EXHIBIT B

HM



HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
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FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

October 18, 1994

RECEIVED

OCT 21 1994

VIA FACSIMILE 208/327-7866

Department of Water Resources

L. Glen Saxton, Chief
Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83720-9000

Re: Marathon Partners - Portion of Water Right No. 37-00577 (SRBA Claim
No. A37-12828) Applications for Permit No. 37-08587, 37-08819, 37-08820,
and 37-08821 and Application for Transfer No. 4205

Dear Mr. Saxton:

Thank you for your letter of October 7, 1994, which we received on October 12, 1994. My clients and I appreciate the Department's interest in completing the processing of the above-referenced Applications. In my June 6, 1994, letter to Nick Spencer I set forth our legal argument on the defense of resumption of use to statutory forfeiture. Mr. Spencer replied by letter of August 10, 1994 wherein he disagrees that the presumption of use defense is available in this case. The unstated result of Mr. Spencer's analysis is that the resumption of use defense is NEVER available to a water user on an over appropriated stream such as the Big Wood River. Carried further, this must mean the Department's position is that once a water right in the Big Wood River drainage is not used for a period of five (5) consecutive years (unless any of the non-use is due to a reason beyond the control of the water user) that water right is lost by forfeiture notwithstanding any resumption of use of that right in the sixth year or any year thereafter. Needless to say, if this approach is consistently applied by the Department in evaluating the SRBA Claims and in future transfer proceedings, the impact on current water uses in the Big Wood River Valley will be tremendous!

Mr. Spencer noted that his letter represents his opinion and not necessarily the position of the Department in this transfer proceeding. Accordingly, I specifically request the resumption of use defense be evaluated in the approval process for the above-referenced Applications.

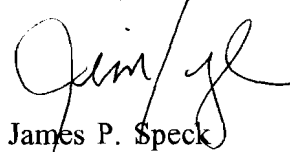
It is my understanding that the sole issue in these proceedings is whether or not Marathon Partners' water right was forfeited as a result of non-use for the period from 1987 through 1991. In 1992, this water right was cut for the rest of the irrigation season on July

L. Glen Saxton, Chief
Water Allocation Bureau
Idaho Department of Water Resources
October 18, 1994
Page 2

14. Therefore, it may not have been an economically viable option to irrigate the land in question that season. In 1993, the year of Marathon Partners first irrigation season, use of the water right was resumed. We have previously submitted affidavits (Gregory Mann and Burr Smith) asserting use of the water on the property in question during this time frame (1987-1991). In particular, Mr. Mann has stated under oath that he used the water right to irrigate on both sides of Quigley Road during the 1991 irrigation season. From prior correspondence and conversations with Mr. Spencer, I understand the Department accepts the statement by Mr. Mann that the water right was used on the lands in 1991, but questions whether or not the use was a "beneficial use" necessary to avoid a claim of non-use. Mr. Spencer sent me a list of questions concerning this issue to be answered by the person involved with the water use in 1991. I will have answers to these questions, in affidavit form, submitted by November 1, 1994. Please let me know immediately if this is not sufficient action to avoid the preliminary order proposed by your October 7, 1994 letter.

Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.

A handwritten signature in dark ink, appearing to read 'Jim/JS', is written over the printed name 'James P. Speck'.

James P. Speck

JPS:jl

cc: Ed Dumke (w/ enclosure)
Gregg Sturtevant (w/ enclosure)
Rod Thornton (w/ enclosure)
Keith Friedly (w/ enclosure)
Dr. Peter Fitzpatrick (w/ enclosure)
Larry Lloyd (w/ enclosure)

M E M O R A N D U M

TO: L. GLEN SAXTON
CHIEF, WATER ALLOCATION BUREAU

FROM: NICHOLAS B. SPENCER *NBS*

RE: TRANSFER APPLICATION NO. 4205 AND RELATED APPLICATIONS
FOR NEW PERMIT INVOLVING WATER RIGHT NO. 37-12818

DATE: AUGUST 16, 1994

Following discussion with Phil Rassier concerning the procedural posture of the above-referenced transfer file, I am returning it to you for further action as you deem proper. Phil and I have agreed that since action in the SRBA has been stayed by Judge Hurlbutt and the transfer application is now purely a matter for the allocations side of the department, it is now appropriate for me to cease my involvement in the matter.

The purpose of this memorandum is to provide you a detailed summary of the history of telephone conversations and correspondence that has occurred between Jim Speck and myself since I was assigned to the file last November. I also am attaching copies of some of the letters that Jim and I exchanged. However, I am not including all of those letters because Phil believes that under the new state Administrative Procedures Act this transfer already falls within the definition of a "contested case". Therefore we believe that I ought not detail to you my legal analysis of the resumption of use defense to forfeiture that Jim has raised, since to do so might potentially put the department at risk of Jim alleging that the department has improperly prejudged the case before it has been formally submitted to you for decision.

As you will remember, this file came to adjudications last fall because of adjudications' initial determination that water right number 37-12818 would be recommended for disallowal in the SRBA on the ground of forfeiture for nonuse. By letter dated November 4, 1993, you informed Jim Speck that because of that recommendation for disallowal you would not allow the water right to be used for mitigation. You indicated that you would hold the transfer application in abeyance for twenty days to allow Jim to provide the department with additional information showing that the recommendation for disallowal was in error. Jim thereafter submitted three affidavits, which were critiqued by Steve Clelland and found by him to be insufficient to cause him to reverse his recommendation of disallowal. Messrs. Speck and Slette thereafter complained to Clive Strong in the Attorney

General's office. I was brought in at that juncture to arrange for a fact finding hearing, as provided for in the adjudication statutes, to flesh out the facts regarding whether the right had indeed been forfeited for nonuse. From that point the chronology of events is as follows:

1. After I discussed the procedural alternatives--first with Phil Rassier and then with Jim Speck--Jim and I determined that we were moving into uncharted territory with so many procedural questions and potential pitfalls that we abandoned the proposal to have a fact finding hearing. Instead, we decided to do mutual depositions: I would depose his fact witnesses and he would depose Mel Schulte and Steve Clelland. **[NOTE, see my letter of January 13th and Jim's letter of January 19th, both attached.]**

2. However, before the depositions were scheduled Jim called to tell me that he had found two additional fact witnesses who would swear out affidavits regarding the diversion of the water right in question in 1991. One of these, the local water master, would attest that he had delivered the right into the Hiawatha Canal. The second, an attorney whose property adjoins the parcel in question would attest that in the summer of 1991 he had helped clear out brush from the culvert under the road separating the lower from the upper parcel for the purpose of getting water across to the lower parcel. **[NOTE that although Jim has described the substance of what these affiants would testify to, he has not yet provided us the affidavits, presumably because he and I subsequently got involved in wrestling over the resumption of use defense to forfeiture, discussed below.]**

3. In discussing the legal significance of these affidavits I pointed out to Jim that even assuming that he were able to establish that water had been diverted onto the subject property in 1991, this in and of itself did not constitute a complete defense to forfeiture since part of the concern of Messrs. Schulte and Clelland was that they had seen no evidence of beneficial use of the water. This led to a rather intense telephone debate between us as to what constituted "beneficial use" of water. I followed up on this phone conversation with a letter listing the Idaho cases of which I was aware that discussed and defined what constituted beneficial use. And since I also had asked Steve and Mel to provide me with a list of questions they wanted answered/information they needed in order to make an informed determination as to whether, assuming a diversion of water in 1991, such diversion constituted beneficial use of the water, I also enclosed this material in my letter to Jim. **[NOTE, see letter of February 25th, and attachments. Jim also has not provided the information requested by Mel and Steve, also presumably because of our intervening debate over the resumption of use defense.]**

4. Instead of responding to the beneficial use concerns I had raised, Jim wrote me a few weeks later to inquire into the department's position regarding the resumption of use defense to forfeiture. In that letter he asserted in essence that since the irrigation use of the water had been resumed, that resumed use ought to constitute a defense to forfeiture, obviating the need to pursue any further the inquiry into whether the right in question had been diverted to beneficial use in 1991. **[NOTE, see letter of April 8th, attached.]** I initially responded to this inquiry by phone. I pointed out that because the resumption of use defense was being raised in a number of objections to claims recommended for disallowal in Basin 36 (including claims of Acequia, Inc., and the Estate of Rosemary Haley, both of which are also clients of Jim's) that the adjudication bureau was going to review its policies regarding that defense as well as the its interpretation of the relevant case authorities.

5. Before this meeting could be held, Judge Hurlbutt's stay of proceedings in the SRBA and the gag order on the department both intervened. Accordingly, I was only able initially to respond that the department could not discuss his Basin 36 objections, and needed clarification from the court as to whether we could further discuss the present matter. **[NOTE, see my letter of May 13th and his response of May 16th, both attached.]**

6. Once we received clarification on the gag order I informed Jim that the department could continue to address the present matter because, even though all adjudication proceedings had been stayed, the department's interpretation of the gag order was that the order was not intended to limit the allocations side of the department. I reiterated that we were going to review the resumption of use defense. **[NOTE, see my letter of May 19th.]**

7. Jim responded by telephone to make sure that, based upon its interpretation of the Judge's order clarifying the gag order, the department was comfortable with continuing discussions about the present matter. During the course of that conversation he briefly noted that--assuming for argument's sake the right had not been used during the period 1987-1991-- he was pursuing additional inquiry concerning why it had not been used.

8. I subsequently reviewed the case of Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), the leading case regarding the scope of the department's authority to consider in a transfer proceeding the resumption of use defense to forfeiture. I discussed the case in detail with both John Homan and Phil Rassier. Thereafter I met with Dave Shaw, Lynne Krogh, and Marci Sterling to discuss the various ramifications of resumption of use defenses raised in various objections to recommendations for disallowal of claims in Basin 36.

9. After this meeting I responded in writing to Jim regarding his resumption of use defense. In that letter I also requested that he provide the department with any information he should find concerning two other defenses to forfeiture implicated by his investigation into why the right had not been used. **[NOTE, see letter of May 25th, attached. Jim has not yet provided any information to the department regarding why the right wasn't used, and whether the circumstances of nonuse might give rise to the two other forfeiture defenses.]**

10. Jim responded to my May 25th letter with a letter containing a detailed critique of my reading of the Jenkins case. **[NOTE, see June 6th letter from Jim Speck, attached.]**

11. Before I had had the opportunity to respond to his June 6th letter, Jim called me to inquire as to who the appropriate people in the department were to discuss the temporary use of a City of Hailey municipal right for mitigation in order to secure the department's permission to drill a well for "temporary" use on the Wood River Sports Complex. (If you remember, I discussed this briefly with you at the time. After talking to Phil and you I called Jim back to give him your name and Phil's. As you predicted, he apparently did not call you, preferring instead to talk to Phil and to Norm. Norm has since met with people in Hailey regarding this matter, but I have not heard what its current status is.)

12. On August 10th I faxed to Jim a ten-page response to his June 6th letter critiquing my analysis of the Jenkins case. This August 10th letter is the one that Phil and I are particularly concerned that you not be privy to in order that your ultimate determination on the pending transfer application and applications for permit not be "contaminated" by it. In that letter I expressly stated that the views expressed therein were my own, and not the official position of the department. I also informed Jim that I would not be sharing that letter with any of the administrators who ultimately might need to render decision on the pending applications. I told him that since the matter was now purely one for allocations I was ceasing my involvement in it, and that Phil Rassier and/or John Homan would be handling the legal end of it from this point forward. And I suggested that it now was appropriate for him to provide the department with the factual information that had previously had been requested. **[NOTE, see the final five paragraphs of the August 10th letter, attached.]**

Finally, please note that all the attached letters are photocopies. I will keep the originals in my file should they be needed for any purpose in the future. If this memo raises any matters you'd care to discuss with me, please feel free to do so.

All that having been said, I need to emphasize at this juncture that the analysis I have detailed above is my own interpretation of the position the department likely would take. It is not the department's formal ruling on your resumption of use defense to forfeiture.

The transfer application and the four applications for permit--all four of which propose using the water right in question for mitigation--presently are before the department for consideration; but, per Glen Saxton's letter of November 3, 1993, the department has been holding them in abeyance pending your being afforded full opportunity to submit additional information in response to the forfeiture concerns the department has raised.

Generally the department does not rule on individual factual or legal issues piecemeal. Rather, it prefers to address all concerns at one time in deciding whether to approve or deny any given application. Thereby, if an application is denied, all concerns raised by the applicant are preserved for review and reconsideration at the same time during the course of any subsequent administrative review proceeding that the applicant might seek. Therefore, I have not shared this letter, or discussed its substance, with the administrators who ultimately will render either the initial determination on the applications in question, or who will render the decision in any subsequent formal administrative review proceedings, should such be undertaken.

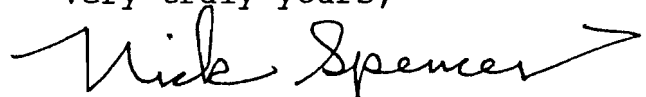
AUGUST 10 LETTER

James P. Speck, Esq.
August 10, 1994
Page 9

In conclusion, I believe that where we presently are in this process is still at the question of whether there has been a forfeiture. This implicates both the other defenses to forfeiture as to which I have previously requested information from you, as well as the additional factual information--previously detailed by Messrs. Schulte and Clelland--that the department has requested concerning the diversion of water in 1991. I think it now is appropriate for you to submit this information to the department so that it can go forward with its determination of the pending applications.

Since all SRBA proceedings have been stayed, this matter has become purely one for the allocations side of the department to address. I have responded to your resumption of use inquiry because you initiated it prior to the entry of the stay order, it is clearly relevant to the pending determinations by the allocations staff, and the allocation functions have not been stayed. However, since my duties with the department primarily concern the SRBA, I think it is appropriate that I now return this matter to allocations and cease my involvement with it. Legal counsel for the allocations side are Phil Rassier and John Homan. Both of them, but especially Phil Rassier, are generally familiar with the factual and procedural background of the applications.

Very truly yours,

A handwritten signature in black ink, reading "Nick Spencer", with a long horizontal stroke extending to the right.

NICHOLAS B. SPENCER
Deputy Attorney General

MEMORANDUM

To: Files 37-08587, 37-08819, 37-08820 and 37-08821

From: L. Glen Saxton 

RE: **STATUS OF APPLICATIONS**

Date: July 5, 1994

On this date, I discussed the status of the above referenced applications with Nick Spencer who has been in contact with Jim Speck representing the applicants.

Spencer advised that Speck intends to make a proposal to the department essentially offering to leave water right no. 37-10717 or part thereof in the Big Wood River in order to divert a comparable amount of water from wells. Right 37-10717 is owned by the city of Hailey and is an irrigation right diverted through the Hiawatha canal. The right appears to be valid based on preliminary investigation by adjudication bureau staff in Southern Region.

The department is now awaiting the proposal from Jim Speck.

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION OF
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June 6, 1994

VIA FACSIMILE - 1-208-327-7866

Mr. Nicholas B. Spencer
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: SRBA Claim No. A37-12818 - Blaine County School District (the "District"),
et al.

Dear Nick:

Thank you for your letter of May 25, 1994. This correspondence is directed at the pending Applications for Permit Nos. 37-08587 (Gregg Sturtevant), 37-08819 (Keith Friedly), 37-08820 (Rod Thornton), and 37-08821 (the District) and Application for Transfer No. 4205 (Fitzpatrick), each of which involves a portion of the water right claimed in the SRBA by Marathon Partners as A37-12818.

I must respectfully disagree with your analysis of the defense of resumption of use to an action for statutory forfeiture of a water right pursuant to I.C. § 42-222. Although this defense was described and discussed in several other cases (e.g. Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937); Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944); Wagoner v. Jeffery, 66 Idaho 455, 162 P.2d 400 (1945)), Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), is the controlling decision for the present case. In Boyer, Boyer sought to transfer the point of diversion approximately 18 to 20 miles downstream and to change the place of use from lands within the Big Lost River Irrigation District to lands outside the Irrigation District's boundaries of 10.88 cfs of decreed water rights from the Big Lost River with priority dates from June 1, 1888 to May 10, 1897. Protests were filed by the Big Lost River Irrigation District and the Three-In-One Ditch Company asserting, among other grounds, that Boyer had forfeited these water rights by non-use for more than five years under I.C. § 42-222. The State Reclamation Engineer granted the change finding, in part, that the transfer will not result in any injury whatsoever to any water right claimed or owned by any other person. The evidence showed non-use for a period of 30 or 40 years, but a resumption of use (on lands other than the decreed place of use!) prior to the assertion of any claim of forfeiture. The Idaho Supreme Court held Boyer's water rights had not been forfeited, stating as follows:

Forfeitures are abhorrent and all intendments are to be indulged

Mr. Nicholas B. Spencer
June 6, 1994
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against forfeiture. Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50; Idaho Farms Co. v. Northside Canal Co., D.C., 24 F.Supp. 189.

The correct rule was thus, in essence, announced in Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009:

'Although statutory abandonment of a water right has occurred, forfeiture is not effective if, after five-year period original owner or appropriator resumes the use of the water prior to claim of right by a third party. (I.C.A., sec. 41-216)' now Section 42-222, I.C.

and similarly in Wagoner v. Jeffery, 66 Idaho 455, 162 P.2d 400.

No one claims this particular decreed water by adverse possession and clearly, so far as this proceeding is concerned, it was in part at least used by respondent on some of his Arco lands before it was claimed it had been forfeited. (emphasis added).

73 Idaho at 159-60. Therefore, if after five or more consecutive years of non-use, a water right holder resumes use of all or even just a portion of his water right before a third party claims that water right by adverse possession or asserts a claim that it has been forfeited, statutory forfeiture of the water right pursuant to I.C. § 42-222 is avoided.

Boyer is very similar to the present case. In 1946, when Boyer filed his application for transfer, there were rights on the Big Lost River with priority dates junior to all or at least some of the rights owned by Boyer. In all likelihood, the Big Lost River was then fully appropriated. Thus, these junior priority rights would have "moved up the ladder of priority" if the Court had determined that Boyer's senior rights were forfeited. Nonetheless, the Supreme Court upheld the resumption of use defense and held Boyer's water rights had not been lost through statutory forfeiture.

Jenkins v. State Department of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), is NOT a resumption of use defense case! The Court specifically noted that Jenkins had not raised this defense. Moreover, there was NO evidence of resumption of use of Jenkins Cottonwood Creek water right.¹ The Court stated the resumption of use defense as follows:

¹ After the hearing, the Director had found that Jenkins' Cottonwood Creek water right had not been used for "the previous 18 years". 103 Idaho at 386. The Supreme Court noted that "the record is devoid of any evidence to indicate that any of the established defenses would be applicable even if argued." Id. at 389. Specifically, the Court noted that clear and convincing evidence indicated Jenkins had not used the Cottonwood Creek right between 1961 and 1979, and protests to his application for transfer asserting forfeiture were filed in 1978.

Mr. Nicholas B. Spencer
June 6, 1994
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[I]f use of the water right is resumed after the five year period, but before any third parties make a claim in the water, then the courts will decline to declare a forfeiture. Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952) (other cites omitted) (emphasis added).

Id. at 389. Under Jenkins, the Department is required to determine whether or not a water right which is the subject of an application for transfer has been forfeited. This is a "preliminary step" in the determination of whether or not other water rights will be injured by the proposed transfer. Id. at 387. In other words, the question of forfeiture is first resolved. If five or more consecutive years of non-use are established, available defenses must be examined. Injury to other users is NOT a factor in evaluating the defense of resumption of use to a forfeiture challenge. The analysis of the impact of a proposed resumption of use pursuant to the transfer on junior appropriators is only performed IF the water right is found to have been forfeited. Thus, the Court in Jenkins noted that ordinarily forfeiture is determined in a separate proceeding, but where protesters to a proposed transfer allege the water right has been forfeited, the Department must first determine if that is the case. Then,

If a water right has indeed been lost through abandonment or forfeiture, the right to use that water reverts to the state and is subject to further appropriation. (cites omitted). Other parties may then perfect a water right in those waters. (cites omitted). Hence a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost (cites omitted) and the junior appropriators move up the ladder of priority. If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators. (emphasis added).

Id. at 387-88. The issue of junior water rights "moving up the ladder of priority" is only reached if the senior water right is first found to have been forfeited.

In virtually every Idaho water right forfeiture case, there is a statement to the effect that forfeitures are "abhorred by the courts" or "not favored". Therefore, forfeiture of a water right must be established by clear and convincing evidence. The law of forfeiture of water rights in Idaho does not preclude the use of the defense of resumption of use on fully appropriated streams. There must be some intervening claim to the water right in question by a third party such as adverse possession or the assertion of forfeiture prior to the resumption of use of all or some portion of the water right. The mere fact that junior water rights exist on the same stream (even a fully appropriated one such as the Big Lost River in Boyer) does not constitute the "claim of right by a third party" necessary to defeat the defense of resumption of use.

Mr. Nicholas B. Spencer
June 6, 1994
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In the present case, assuming arguendo no use from 1987 through 1992, Marathon Partners resumed use of all of its water right in 1993. No third party has made a claim of adverse possession to this water right, nor did anyone assert the right had been forfeited prior to this resumption of use. The defense of resumption of use applies to this case and the water right has NOT been forfeited. In the absence of forfeiture, there is no injury to other water rights nor is there an enlargement in use of this water right by the use of portions of the water right in the mitigation plans proposed by the District, Sturtevant, Thornton and Friedly or the transfer of place of use of a portion of the water right requested by Fitzpatrick. The District and my other clients are entitled to the approval of their respective applications.

Sincerely yours,

HOGUE, SPECK & AANESTAD

A handwritten signature in black ink, appearing to read "Jim", written in a cursive style.

James P. Speck

JPS/j
cc: clients



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 25, 1994

VIA FACSIMILE TRANSMISSION

James P. Speck, Esq.
HOGUE, SPECK & AANESTAD
120 East Avenue
Ketchum, Idaho
FAX NO. (208) 726-0752

Re: SRBA Claim No. A37-12818/ Transfer Application No.
4205, et al.

Dear Jim:

This letter will follow up on our prior letters and telephone conversations, addressing in particular the issue of whether the doctrine of resumption of use is available as a defense against forfeiture.

First, it does not appear likely that on the factual record as presently developed IDWR would determine that the water right in question, if forfeited, has been revived by resumption in use. Resumption in use only revives the original water right if the right can be revived without injury to intervening junior appropriators. In Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 388, 647 P.2d 1256 (1982) the Idaho Supreme Court expansively defined the term "injury". The Court pointed out that when the senior right is forfeited, all junior rights move up one place in the order of priority; and that if the senior right is subsequently revived, the resulting displacement of the juniors one place back down the priority order in and of itself constitutes injury. Therefore, on an overtaxed stream such as the Big Wood River, it would be virtually impossible for a senior right to be revived without a resulting injury to juniors. If IDWR were to recognize the revival, it would have to do so only in a manner to prevent that injury. Such prevention likely would be accomplished by treating the right as being in effect a new appropriation with a priority date as of the date the use was resumed. Such a junior priority date would be of little use to your clients.

Therefore I assess the situation with this water right as follows. I presume that the additional affidavits you have discussed with me--once submitted--will establish that water was diverted onto both the upper and lower parcels during July and

James P. Speck, Esq.
May 25, 1994
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August, 1991. The issue thereby becomes a question of what beneficial use, if any, was made of the water that was diverted. IDWR's two water agents who each independently field examined the property will testify that they observed no evidence of beneficial use. The aerial photography and the agents' own observations do, in my estimation, establish a prima facie case of five years non-use or lack of beneficial use. My reading of the case law is that, while the showing of beneficial use necessary to rebut a prima facie showing of forfeiture necessarily is minimal since forfeiture must be proved by clear and convincing evidence, the beneficial use must at least be more than simply diverting some water onto the ground for purpose of avoiding forfeiture.

Thus I think the question that still needs to be answered before IDWR can approve this transfer is what beneficial use was made of the water that was diverted.

However, there are also two defenses to forfeiture that may come into play. To make an informed decision regarding this transfer application IDWR would be very much interested in learning what the facts are regarding the following:

1. You stated to me in one of our telephone conversations that the watermaster would swear out an affidavit to the effect that he delivered the water right in question into the Hiaawatha Canal during the 1991 irrigation season, and if I remember correctly, also during the 1990 irrigation season. If the watermaster delivered the right into the canal, and if in fact the right were not actually diverted onto the property and used during any time that it was being delivered into the canal, the question that naturally arises is what happened to the water? Did somebody else use it, and if so, under what circumstances? I ask these questions because the five year forfeiture clock does not run while the water right is being beneficially used by a third party with the permission of the water right owner. See Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937). The permission given to the third party by the water right owner can be verbal. Reynolds Irrigation District v. Sproat, 70 Idaho 217, 214 P.2d 880 (1950). IDWR takes the position that the permissive use doctrine articulated in Zezi v. Lightfoot requires an identifiable third party to whom the water right owner gives express permission; it is not good enough to merely leave the water in the ditch and presume that somebody else thereby is using it. (If that were sufficient by itself, such a rule would in effect abolish the doctrine of forfeiture. However, the courts have to my knowledge never addressed the issue of whether there are circumstances in which implied consent by the water right owner is sufficient to establish permissive use by a third party sufficient to avoid forfeiture.) If your inquiries reveal

James P. Speck, Esq.
May 25, 1994
Page 3

that at any time during the period 1987-1991 this water right was being used by somebody else with the permission of the water right owner, such use would eliminate the five years continuous non-use necessary for forfeiture.

2. A second concern about which IDWR would like additional information is why the water right apparently was not used from at least 1987 forward. One item of evidence that lends support to a finding of forfeiture is that at some point in the past the properties downstream from the two parcels in question were subdivided and the ditch apparently was filled in. As a result the water right at issue here became the last right on the ditch. Because the downstream rights were no longer being delivered, less water would have been turned into the ditch. With less head coming down the ditch it presumably would have been more difficult to divert the entire right out onto the two parcels. While this situation augments a finding of forfeiture, it also raises a question as to whether the doctrine of impossibility may be raised as a defense to forfeiture. If it were physically impossible to divert the entire quantity of the right out of the ditch, then this might be a defense to forfeiture of at least that portion of the right that could not be diverted. However, this in turn raises the question of whether the water right owner would thereby be under a duty to use due diligence in modifying his diversion works to permit delivery of the entire right. In any event this is an avenue that I believe merits further exploration by you or your clients.

I raise these two additional areas of concern because IDWR does not wish to act upon an incomplete factual record. While IDWR has statutory duties to perform, and cannot approve a transfer of all or any part of a right that has been forfeited, it certainly does not want deny a transfer on the basis of an erroneous determination of forfeiture. Therefore I would be very much interested in hearing what additional information you might have on the points addressed above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nick Spencer", with a long horizontal flourish extending to the right.

NICHOLAS B. SPENCER
Deputy Attorney General



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 19, 1994

VIA FACSIMILE TRANSMISSION

James P. Speck, Esq.
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120 East Avenue
Ketchum, Idaho 83340
FAX NO. (208) 726-0752

Re: Snake River Basin Adjudication claims

Dear Jim:

At the May 17th status conference Judge Hurlbutt in his verbal comments from the bench clarified certain aspects of his gag order on the department: it now is reasonably clear that IDWR is free to discuss with you both the factual and legal parameters of the Fitzpatrick transfer application, including concerns that may shade over into the SRBA, because at this juncture the transfer is the overriding matter between IDWR and your client, and Judge Hurlbutt has made it clear that he did not intend his order to limit IDWR's ability to perform its non-SRBA statutory duties.

It is not yet clear, however, whether IDWR will be permitted to discuss any aspect of the Acequia claims, because for them SRBA considerations predominate. At the status conference IDWR submitted a lengthy memorandum detailing the many concerns it had about the scope of the gag order. The judge gave other status conference participants a week to review the memorandum and submit written comments. He indicated that after reviewing those comments he will provide appropriate clarification regarding his order.

I will be meeting with department managers this coming Monday to address various forfeiture/resumption of use issues that have arisen both within and without of the SRBA. I would hope and trust that the outcome of this meeting will be a uniform policy and legal interpretation regarding the circumstances under which IDWR will recognize a resumption of use as not causing injury to other rights. I will contact you after that meeting to advise you on its outcome.

Very truly yours,

NICHOLAS B. SPENCER
Deputy Attorney General

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May 16, 1994

VIA FACSIMILE - 1-208-327-7866

Mr. Nicholas B. Spencer
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: SRBA Claim No. A37-12818 - Blaine County School District (the "District"),
et al.

Dear Nick:

Thank you for your letter of May 13, 1994. I am aware of the "gag order" entered by Judge Hurlbutt. If broadly construed, the order appears to prohibit the processing of any transfer application which raises an issue concerning any element of a water right for which a Notice of Claim has been filed in the SRBA. I agree it certainly restricts the ability of an applicant and IDWR to resolve the question of forfeiture which is to be investigated by IDWR for all transfer applications.

In light of this potential significant delay in processing the District's application for permit using the claimed water right for mitigation, I offer the following suggestion. Those transfers of water rights recently approved by IDWR with which I am familiar include a condition stating that approval of the transfer does not preclude review of the validity of the water right in the SRBA. If a similar condition is added to the approval of the District's application for permit, the issues we are currently struggling with can be left for resolution in the SRBA.

The future of the popular Wood River Sports complex is yet another project now bogged down in the seemingly endless complexities of the SRBA. Blaine County is now considering assisting in the funding of the project, but is naturally concerned about the availability of proper water rights to complete it. I hope IDWR will do what it can to expedite the resolution of the many issues involved in this application and work with us to continue its processing.

Please call me after the hearing on the "gag order" tomorrow so that I can advise my client how next to proceed. Thank you.

Mr. Nicholas B. Spencer
May 16, 1994
Page 2

Sincerely yours,

HOGUE, SPECK & AANESTAD

A handwritten signature in black ink, appearing to read "Jim", written in a cursive style.

James P. Speck

JPS/j
cc: client



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 13, 1994

VIA FACSIMILE TRANSMISSION

James P. Speck, Esq.
HOGUE, SPECK & AANESTAD
120 East Avenue
Ketchum, Idaho 83340
FAX NO. (208) 726-0752

Re: Snake River Basin Adjudication claims

Dear Jim:

I have not yet responded to your inquiry regarding IDWR's position as to resumption of use as a defense to forfeiture because the SRBA Court has imposed a gag order on the department. A copy of the order is attached.

I think the order clearly prohibits any substantive discussion regarding the Acequia claims. Though I think it less clear, the order also appears to prohibit substantive discussion regarding the notice of claim A37-12818, because although the claim hasn't yet been recommended, paragraph 2 of the order prohibits contact with any claimants, especially contact of a nature that might be viewed as settlement discussion or negotiation. The only exception is in the final paragraph of the order, but it limits communication to the "purely mechanical exchange of information."

We have requested clarification from Judge Hurlbutt, and have a hearing before him set for this coming Tuesday, May 17th, to address the limitations the order is imposing upon the routine functioning of the department.

Very truly yours,

NICHOLAS B. SPENCER
Deputy Attorney General

Enclosure

HOGUE, SPECK & AANESTAD
A PROFESSIONAL ASSOCIATION OF
ATTORNEYS

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JAMES P. SPECK
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April 8, 1994

VIA FACSIMILE - 1-208-327-7866

Mr. Nicholas B. Spencer
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: SRBA Claim No. A37-12818 - Blaine County School District, et al.

Dear Nick:

I have again met with Greg Mann to discuss the irrigation use of the water right in 1991. However, I have not yet been able to meet with Burr Smith or others who may have run horses and/or cattle on either or both of the two (2) parcels. In the meantime, I would like to address the Department's philosophy and focus on the issue of forfeiture in this case.

First, it is my understanding the Department is only concerned with the non-use of the water right from 1987 through 1992, a period of only six (6) consecutive years. I do not believe there is an issue of forfeiture during any other time frame. Second, Marathon Partners purchased the property and water right in September, 1992. The prior owner, Pacesetter Development Company, had been attempting to sell the property during 1992, a very poor water year for this area. I believe the watermaster records will show this right was cut for priority on July 14, 1992 and not turned on again during that season. Thus, there were good reasons for Pacesetter to not use the right in 1992.

Third, upon purchasing the property, Marathon Partners, knowing of the proposal for new athletic fields for the Blaine County School District ("District"), approached the non-profit organization (the Wood River High School Baseball and Softball Association) charged with raising the funds and overseeing the construction of the fields and offered to donate a portion of the water right (from the southern parcel) as long as the transfer to the new use was accomplished as quickly as possible. Marathon fully intended to resume actual use of the water for irrigation of the southern parcel in 1993 if an agreement could not be reached on transferring that portion to the District. After corresponding with Norm Young about whether to file an application for transfer or new permit with a "mitigation plan", the District elected to do the latter and Application for Permit No. 37-08821 was filed at the end of March, 1993. We believe that proceeding promptly through the administrative process to obtain approval of the

Mr. Nicholas B. Spencer
April 8, 1994
Page 2

new use should constitute a "resumption of use" of this portion of the water right (from the southern parcel). It is only fair to make the "use" retroactive to the date of filing the application (similar to the priority date for new permit applications) and suspend the ticking of the forfeiture clock during the pendency of the application approval process, since the applicant has no control over the time it takes for the application to make its way through the necessary administrative channels.

In 1993, Marathon Partners irrigated the entire northern parcel known as Hidden Meadows and cattle were run on this land through an agreement with the owners of lands to the north of Hidden Meadows. Burr Smith did the irrigating. Marathon intends to irrigate and run cattle on the Hidden Meadows property again in 1994. This is certainly a resumption of a valid beneficial use.

Thus, we have resumption of use of the water right after six (6) years of non-use (for the sake of this discussion only - we are not conceding non-use in 1991!) The sixth year (1992) was such a low water year it arguably should not even be counted against us. As you know, forfeiture is generally "abhorred" by the courts and proof of forfeiture by clear and convincing evidence is required. I do not know of a reported case declaring forfeiture of a water right after only five or six consecutive years of non-use. Is the Department, in this and other cases in the SRBA, going to take the position that water rights are to be forfeited when the non-use extends for only five or six years? Shouldn't the defense of resumption of use be recognized in this case?

Please call me at your earliest convenience. It is important for the District to know where it stands by this summer season. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD



James P. Speck

JPS/j

cc: client



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

February 25, 1994

VIA FACSIMILE TRANSMISSION

James P. Speck, Esq.
HOGUE, SPECK & AANESTAD, P.A.
120 East Avenue
Ketchum, Idaho
FAX NO. (208) 726-0752

Re: Notice of Claim A37-12818

Dear Jim:

To follow up on our conversation of yesterday afternoon please find attached the list of questions prepared by Steve Clelland and Mel Schulte regarding your clients' irrigation practices with regard to the above referenced claim.

As I have previously mentioned to you it now is appearing to me very likely that your clients will be able to provide sufficient factual information through affidavits regarding past irrigation practices as to obviate the need for depositions or a fact finding hearing. However, I also suspect that the real focus of concern regarding this water right will not turn out to be a factual issue of whether the subject property was irrigated in 1991, but rather the legal issue of whether the irrigation actually undertaken constitutes a beneficial use of the water.

In order for you to begin considering how we ought to address that legal issue I recommend that you review the following cases: McAtee v. Faulkner Land & Livestock, Inc., 113 Idaho 393, 744 P.2d 121 (Ct. App. 1987), Rudge v. Simmons, 39 Idaho 22, 226 Pac. 170 (1924), Pyke v. Burnside, 8 Idaho 487, 69 Pac. 477 (1902), and Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co., 245 Fed. 9, 21-22 (9th Cir. 1917).

If you do not have a set of the old Federal Reporters readily available in your library please let me know and I will attempt to fax to you the pertinent language from my photocopy of the Vineyard case.

Very truly yours,

NICHOLAS B. SPENCER
Deputy Attorney General

IDWR MEMO

TO: NICK SPENCER
FROM: STEVE CLELLAND &
MEL SCHULTE
DATE: FEB. 23, 1993

RE: QUESTIONS ON BENEFICIAL USE/IRRIGATION OF LANDS:

1. WHAT TYPE IRRIGATION SYSTEM WAS USED? (FLOOD, FURROW, SPRINKLER)
2. WHAT WAS THE NUMBER OF DAYS ROTATION TO COVER THE IRRIGATED LANDS?
3. WHAT WERE THE SET TIMES USED?
4. WHAT CROPS WERE RAISED?
 - A. IF CROPPED, SHOW SALES RECEIPTS FOR CROPS SOLD.
 - B. IF PASTURE, SHOW NUMBER OF HEAD, TYPE OF STOCK, HOW LONG.
5. COMPLETE THE "IRRIGATION FLOW RATE QUESTIONNAIRE".
6. HOW MUCH WATER WAS USED TO IRRIGATE? HOW WAS IT MEASURED?
7. MAP OUT HOW THE WATER WAS DELIVERED TO THE FIELD?
8. HOW MANY ACRES WERE ACTUALLY IRRIGATED?
9. WHEN, AND HOW MANY TIMES, WAS THE FIELD BURNED OFF? (SINCE 1989)
10. WHY WERE THE FIELDS BURNED OFF?
11. WERE THE FIELDS PLOWED OR DISCED SINCE 1990?
12. WHO IRRIGATED THE FIELD ON A REGULAR BASIS IN 1991?
13. HOW WAS THE WATER CONTROLLED IN THE EARTH DITCHES?
14. WHERE AND HOW WAS THE WASTE WATER RUNOFF CONTROLLED AND DIRECTED?
15. WHY HAVEN'T THE FIELDS BEEN IRRIGATED ON A REGULAR BASIS PRIOR TO 1991 AND SINCE 1991.

COMPLETE THIS QUESTIONNAIRE FOR EACH OF THE PARCELS SEPARATELY. ONE NORTH OF QUIGLEY ROAD AND ONE FOR THE PARCEL SOUTH OF QUIGLEY ROAD.

(NICK... ANSWERS TO THESE QUESTIONS COULD RAISE OTHER QUESTIONS. THESE ARE VERY SIMILAR TO THE APPROACHES WE TAKE TO REVIEW ANY OTHER CLAIMED RIGHT.)

IRRIGATION FLOW RATE QUESTIONNAIRE

THIS INFORMATION IS REQUIRED FOR ANY ADJUDICATION CLAIM(S) FOR WHICH THE IRRIGATION FLOW RATE CLAIMED IS MORE THAN 0.02 CFS PER ACRE (ONE EXCEPTION IS THAT 0.03 CFS PER ACRE MAY BE ALLOWED FOR IRRIGATION OF UP TO 5 ACRES).

CLAIM NO (S). _____

NAME _____

ADDRESS _____

PHONE _____

1 TOTAL IRRIGATED ACRES SHOWN ON CLAIM(S) REFERENCED ABOVE _____ ACRES.

2. TYPICAL CROPS GROWN

CROP	PERCENT OF TOTAL ACRES	CROP	PERCENT OF TOTAL ACRES
Alfalfa		Pasture	
Alfalfa Seed		Peas/Lentils	
Beans		Melons	
Field Corn		Potatoes	
Silage		Sugar Beets	
Sweet Corn		Tomatoes	
Spring Grain		Lettuce/Radishes	
Winter Wheat		Cabbage/Broccoli	
Hops		Carrots/Turnips	
Orchard		Other ()	

3. IRRIGATION SYSTEM TYPE

TYPE	PERCENT OF TOTAL ACRES	
Graded Border		PLEASE COMPLETE ITEM 4.
Level Border		PLEASE COMPLETE ITEM 4.
Furrow		PLEASE COMPLETE ITEM 5.
Corrugation		PLEASE COMPLETE ITEM 6.
Sprinkler		PLEASE COMPLETE ITEM 7.
Contour Ditch		PLEASE COMPLETE ITEM 8.
Trickle or Drip		
Sub-Irrigation		

4. BORDER (COMPLETE BELOW BASED ON PEAK USE)

Inflow (cfs) _____ width (feet) _____ average length (feet) _____
 slope (%) _____ set time (hours) _____ number of borders per set _____
 frequency (days) _____

5. FURROW (COMPLETE BELOW BASED ON PEAK USE)

Inflow (gallons per minute) _____ spacing (inches) _____ average length (feet) _____
 slope (%) _____ set time (hours) _____ number of furrows per set _____
 frequency (days) _____

6. CORRUGATION (COMPLETE BELOW BASED ON PEAK USE)

inflow (gallons per minute) _____ spacing (inches) _____ average length (feet) _____
slope (%) _____ set time (hours) _____ number of corrugations per set _____
frequency (days) _____

7. SPRINKLER (COMPLETE BELOW BASED ON PEAK USE)

TYPE center pivot _____ solid set _____
lateral move _____ gun/boom _____

average nozzle flow (gallons per minute) _____ nozzle spacing (feet) _____
average lateral length (feet) _____ lateral spacing (feet) _____
Number of laterals _____ circle length (feet) _____
Number of impact heads _____ number of spray heads _____
set time (hours) _____ frequency (days) _____

8. CONTOUR DITCH (COMPLETE BELOW BASED ON PEAK USE)

inflow (cfs) _____ field slope (%) _____
ditch length (feet) _____ distance between ditches (feet) _____
application depth (inches) _____ set time (hours) _____
frequency (days) _____

9. CONVEYANCE FROM SOURCE TO FARM

UNLINED DITCH

length (feet) _____ average depth (inches) _____ average width (inches) _____

LINED DITCH

length (feet) _____ average depth (inches) _____ average width (inches) _____

PIPELINE

length (feet) _____ diameter (inches) _____

10. ON-FARM DISTRIBUTION

UNLINED DITCH

length (feet) _____ average depth (inches) _____ average width (inches) _____

LINED DITCH

length (feet) _____ average depth (inches) _____ average width (inches) _____

PIPELINE

length (feet) _____ diameter (inches) _____

11. HAVE YOU CHANGED YOUR IRRIGATION SYSTEM FROM THE ONE HISTORICALLY USED? (FOR EXAMPLE, LAND LEVELING, CHANGING LENGTH OF RUNS, CHANGE FROM FURROW TO SPRINKLER, ETC.)
IF YES, PLEASE DESCRIBE _____

12. HAVE YOU HAD ANY IRRIGATION SYSTEM DESIGN/EVALUATIONS OR FARM SOIL SURVEYS COMPLETED BY THE SOIL CONSERVATION SERVICE, PRIVATE CONSULTANTS, OR IRRIGATION EQUIPMENT DEALERS?
IF YES, PLEASE DESCRIBE OR ATTACH COPIES _____

**HOGUE, SPECK &
AANESTAD**

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILER

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January 19, 1994

VIA FACSIMILE - 1-327-7866

Mr. Nick Spencer
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83720-9000

Re: SRBA Notice of Claim A37-12818

Dear Nick:

Due to various scheduling conflicts, my witnesses and I will not be available until February 28 - March 4, 1994. Please select a date during that time frame and let me know. I would like to use the conference room at my Ketchum office. I may also provide one or two additional witnesses to bolster our claims that the lands were irrigated during the 1991 season.

I would also like to confirm that the only issue is whether or not there were five consecutive years of non-use, commencing with 1987, and that the Department is not asserting there was a sufficient period of non-use prior to 1987 to invoke the forfeiture statute.

Please call at your earliest convenience to discuss these matters. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD

James P. Speck

JPS/j

MEMORANDUM

To: Files 37-08587, 37-08819, 37-08820 and 37-08821
From: L. Glen Saxton *LS*
RE: STATUS OF APPLICATIONS
Date: January 14, 1994

The department is holding these applications pending the taking of depositions in connection with the use of surface water rights shown on a pending transfer. The surface water rights have been offered as mitigation for the diversion of ground water.

The question to be addressed in the taking of depositions is whether the surface water rights are valid and have not been lost thorough non use.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 13, 1994

VIA FACSIMILE TRANSMISSION

James P. Speck, Esq.
HOGUE, SPECK & AANESTAD
120 East Avenue
Ketchum, Idaho 83340
FAX NO. (208) 726-0752

Re: Snake River Basin Adjudication
Notice of Claim A37-12818

Dear Jim:

To reiterate my telephone proposal of earlier this afternoon, I suggest that in lieu of an adjudication fact finding hearing pursuant to Idaho Code §42-1410(1) we instead do mutual depositions to flesh out the facts regarding the whether water right number 37-12818 has been forfeited. I propose that I take the depositions of Messrs. Mann and Smith. I presume that you in turn will want to explore the facts underlying the conclusion of water agents Steve Clelland and Mel Schulte that the right has been forfeited for nonuse. To that end I will make Messrs. Clelland and Schulte available for deposition at the same time we depose Messrs. Mann and Smith.

I think that we can probably take all four depositions in half a day, but I am completely willing to set aside as much time as you think appropriate. If four or five hours seems sufficient to you I would propose that I bring my people up from Twin Falls in the morning and that we begin right after lunch. For the convenience of your clients, as well as Messrs. Mann and Smith, I suggest that we take the depositions in either your Ketchum or Hailey office--whichever works better for you.

The available dates of Messrs. Clelland, Schulte and myself are as follows:

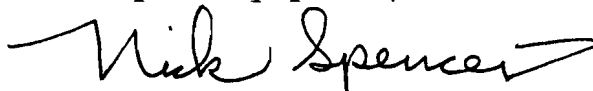
January 25 through January 28
February 2 through February 4
February 7
February 28 through March 4
March 7 through March 11
March 14
March 16 through March 18
March 21 through March 25

James P. Speck, Esq.
January 13, 1993
Page 2

I understand that you will need to discuss this proposal with your clients and then get back with me about it.

Thank you for your consideration. I look forward to hearing back from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nick Spencer", with a long horizontal flourish extending to the right.

NICHOLAS B. SPENCER
Deputy Attorney General

NOV-11-93 THU 12:09

. 02

Post-It™ brand fax transmittal memo 7671		# of pages > 2
To: David Shaw	From: Clive Strong	
Co.	Co.	

HOGI

TERRY G. HOGUE
JAMES R. SPECK
DOUGLAS J. AARSTAD
J. STEPHEN CRABTREE
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November 11, 1993

42-1410 (1)

VIA FAX NO. (208) 334-2690
ORIGINAL TO FOLLOW BY REGULAR MAIL

Mr. Clive Strong
Attorney General's Office
210 Statehouse
Boise, Idaho 83720

Re: Application for Permit Nos. 37-08587 (Sturtevant);
37-08819 (Friedly); 37-08820 (Thornton); 37-08821
(Blaine County School District); Application for
Transfer No. 4205/37-00577 Part, A37-12818 Part
(J. Peter &/or Claire B. Fitzpatrick)

Dear Clive:

I represent the applicants for each of the above-referenced Applications for Permit and Application for Transfer. Marathon Partners, who's managing general partner is Mr. Ed Dumke, Jr., represented by Mr. Gary Slette, is the owner of a portion of the old W. T. Riley water right claimed in the SRBA as A37-12818. Mr. Dumke has very generously offered to donate a large portion of this water right to the Blaine County School District to be used as a part of a mitigation plan for a new groundwater irrigation right under the guidelines and restrictions of the Big Wood River Groundwater Management area. My other clients have arranged to purchase portions of the same water right from Marathon Partners. Although the Applications for Permit were protested, those protests have now been resolved.

The use of the Big Wood River water right was originally questioned by Mel Shulte and Steve Clelland at the Southern Regional office solely for the period from 1987 through the present. Their on-site investigations and review of aerial photographs and other data indicated to them that the water had not been used during that period. However, Mr. Slette and I investigated this issue and contacted persons who had used the water with the permission or for the benefit of the prior owner of the property, Pacesetter Development Company. I arranged for Mr. Gregory A. Mann, who had been retained by Pacesetter to irrigate the property in the summer of 1991, to execute an Affidavit. Due to a typographical error by my staff, the Affidavit had to be corrected in one paragraph. It is this error

Mr. Clive Strong
November 11, 1993
Page 2

which Mr. Clelland chooses to focus on as raising the validity of a sworn statement by Affidavit! Mr. Mann, a long time resident of Blaine County whose wife is currently the Chairman of the Blaine County Planning and Zoning Commission, will be rather shocked and incensed when he learns he has essentially been accused of lying by a representative of the Department. This is not quite the role we had envisioned the Department to play in these matters.

Please call me immediately so that we might discuss whether or not these matters can be resolved short of my client's appealing the Department's decision and Mr. Dumke pursuing the challenge to his valid water right. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS/v1

cc: Gary D. Slette, Esq.
Mr. Ed Dumke, Jr.
Mr. Larry Lloyd
Mr. Gregg Sturtevant
Mr. Rod Thornton
Mr. Keith Friedly
Mr. J. Peter Fitzpatrick

TRANSMITTAL COVER SHEET

OMNIFAX G66

11-10-93

TO: GLEN SAXTON

TOTAL PAGES SENT: 18

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FROM: IDAHO DEPARTMENT OF WATER RESOURCES
222 SHOSHONE AVE E
TWIN FALLS ID 83301

PHONE: 736-3033

FAX: 736-3037

SENDER: STEVE C.

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OCT 27 1994

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COMMENTS:

137-12818

Comparison of Evidences & Review

10-15-93
STEVE CLELAND

	1974	X74 OPC irrigation not shown
(ABANDONED)	1980	photo filed to Subdivide w/ County.
	1984	Landact does not support irrigation uses
	1985	W. Master Bills for Water.
(FORGOTTEN)	1986	W. Master Bills for Water.
①	1987	No Billing. Napp shows Non-irrigation
②	1988	No Billing. Napp shows Non-irrigation
③	1989	No Billing.
④	1990	Billed. 6-11 Field Exam no irrigation, no system
⑤	1991	Billed.
⑥	1992	Billed.
	1993	9-30 Field Exam - no irrigation, system reditched. 5-14 Field Exam (by Mel Schulte) no irrigation - no delivery system.

Offidavits claim:

GREGORY MANN (OCT 1 1993)

1991 July - claims to irrigate SENE 5.10 for Cattle Grazing.
Aug - claims to irrigate North of Quigley Road
for Cattle Grazing.

(replaces an earlier sworn statement.)

No system for irrigation existed in 1990 or in 1993
to irrigate the lands in SENE. They looked the same
on both exams - unirrigated and prepared for Subd.

No cattle were grazed here either; no fences
during either exam and no cattle signs of grazing
i.e. manure, tracks, grazed off crops.

P. 2 of 5

A37-12818 review

In discussing the irrigation possibilities for lands north of Quigley road, Mel Schulte and I compared what we had viewed on previous exams and we concluded; No irrigation system for delivery existed until our last exam in 9-30-93. At that time new ditches had been dug or cleaned. No evidence of Cattle grazing had occurred. The area was not completely fenced off from Residential areas and the signs of cattle were absent.

The crop/vegetation found growing on 9-30-93 was a mixture of local weeds, some sagebrush has started to reclaim the land, and a volunteer alfalfa crop was found. Not uncommon for alfalfa to remain growing like that due to the deep root system & gravelly soils.

Evidence does not support this affiant's statements.

AFFIDAVIT:

BURR SMITH (9-22-93)

1983

He moved to property adjacent to A37-12812 prop.
Since then has irrigated the parcels & pastured horses.

See the listing on page one of this review.
Property may have been irrigated in part
during 1983 as claimed. It is possible
Landcat reports list a partial irrigation
in 1984, but from 1987 onward to present
no evidence supports this affiant's claims.
Again, the place is not fenced nor are there
signs of grazing by horses or cattle in
this field.

AFFIDAVIT:

CLINT STENNETT (9-15-93)

1983, 84, 85 Says he farmed & irrigated the property
North of Dingley Road. also pastured
Horses there.

Evidence supports some possible irrigation
on parts of this parcel in Landcat of 1984.
No ~~upper~~ information on 1983 or 1985.

P. 4 of

A37-12818

AFFIDAVIT:

GEORGE MANN (9-7-93)

1991 July
1993 Aug

{ same as the first affidavit, except
← change in date on the August
entry from 1993 to 1991. }

Raises the question of the validity of
"sworn statements" by affiant

Summary:

The history of this right is pretty clear and
is supported by the evidence available at this
time of Review.

In 1974 when the downstream rights on
Hiawatha Canal were abandoned, this place became
the last delivery on the ditch. A reduced flow
in the Canal made economical use of this
land and water impractical. (See CVR page 10
for analysis.) Finally, in 1980 the Deerfield
Plats were filed to Subdivide this property.
Some partial use occurred around 1983
& 84. By 1987 no use was being made of

the water for irrigation and the Water Master never billed for its use until 1990. All the evidence during this time confirms the non-use of water for irrigation on this property.

The Billing of Water Master for these rights doesn't support its use in 1990, 91 or 92.

It has been my experience with water users that they believe merely paying the assessment to the Water Master will insure continued validity of their rights. This belief is reinforced by water masters also. (Dale Mizer mentioned this to me during our conversation of this area and its rights.)

My personal field exam in 1990 on June 11th would have followed 3 years of non use on these lands as indicated by the evidence shown. In Sept 30 1993 when I returned for a followup look at the same property, the conditions and appearance of the property had not changed it remained unirrigated.

Only in 1993, when mitigation uses appear for this right, are any efforts made to develop the irrigation system. But the efforts aren't complete since the right is not wanted for irrigation use.

Recommend: Disallowance by Forfeiture/Abandonment

Steve Collins 10-15-93

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES _____ x 0.02 CFS/ACRE = _____ CFS
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 257.5 AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE _____ AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = _____ AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

1b. CALCULATIONS

$$\frac{2.72 \text{ cfs}}{103 \text{ Ac.}} = 0.026 \text{ cfs/Ac.}$$

$$= 1.32''/\text{Ac}$$

May need to run a Hubble analysis on this system.
This Field is now the last place on the ditch, a ditch claimed by others upstream and the Watermaster to be heavy on conveyance losses. When the places downstream, Woodside area, were taken out of production in 1974 the flow in the Canal was reduced. Without those additional flows, this rate of 1.32''/acre may not have been sufficient to sustain an economical crop. This led to the non use of the land & water as found.
See 12-15-62

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

October 6, 1993

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3367
FAX (208) 788-4230

RECEIVED

OCT 07 1993

Department of Water Resources
Southern Region Office

Mr. Mel Shulte
State of Idaho
Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

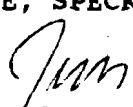
Re: Application for Permit Nos. 37-08587 (Sturtevant);
37-08819 (Friedly); 37-08820 (Thornton); 37-08821
(Blaine County School District); Application for
Transfer No. 4205/37-00577 Part, A37-12818 Part
(J. Peter &/or Claire B. Fitzpatrick)

Dear Mel:

Enclosed you will find a copy of an Affidavit completed
by Gregory A. Mann concerning his use of the 1883 Water Rights
for irrigation of lands now owned by Marathon Partners in 1991.
Please note that this Affidavit corrects the typographical error
in the Affidavit I previously sent you. Kindly discard the
previous Affidavit of Mr. Mann and make the enclosed Affidavit a
part of the record for each of the above-referenced applications.
Kindly call me if you have any questions. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS/vl

Enclosure

cc: Gary D. Slette, Esq. (with enclosure)
Mr. Ed Dumke, Jr. (with enclosure)
Mr. Larry Lloyd (with enclosure)
Mr. Gregg Sturtevant (with enclosure)
Mr. Rod Thornton (with enclosure)
Mr. Keith Friedly (with enclosure)
Mr. J. Peter Fitzpatrick (with enclosure)

RECEIVED

OCT 07 1993

Department of Water Resources
Southern Region Office

AFFIDAVIT

STATE OF IDAHO)
County of Blaine) ss.

I, GREGORY A. MANN, being first duly sworn upon
oath, depose and state as follows:

1. I am 47 years old and have been a resident of
Blaine County, Idaho for 22 years.

2. In the summer of 1991, I was asked by Ned Loomis, a
representative of Pacesetter Development Company, to irrigate
Pacesetter's undeveloped lands with its 1883 water right. The
purpose was to raise pasture grass for cattle grazing.

3. From July 16 through July 30, 1991, I flood
irrigated the SE 1/4 NW 1/4, Section 10, Township 2 North Range
18 East, property commonly known as the Deerfield Subdivisions
No. 3, 4 and 5. In order to get the water to this property, it
was diverted from the Hiawatha Canal into the Highline Ditch
which runs at the base of the hills north of Quigley Road and
then through a culvert under Quigley Road to the Northeast corner
of the place of use.

4. From August 1 through August 30, 1991, I diverted
the water for flood irrigation of the entire parcel north of
Quigley Road known as the Hidden Meadows Property, consisting of
approximately 55 acres. The purpose of the irrigation was to
raise pasture grass for grazing.

AFFIDAVIT OF GREGORY A. MANN - 1

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DATED this 1 day of ^{OCT.}~~September~~, 1993.

Gregory A. Mann
Gregory A. Mann

OCTOBER SUBSCRIBED AND SWORN to before me this 1st day
of ~~September~~, 1993.

Dorothy L. Jones
Notary Public for Idaho
Residing at: Bellevue, Id 83313
Comm. Expires: 6/99

AFFIDAVIT OF GREGORY A. MANN - 2

ROSHOLT, ROBERTSON & TUCKER

**Chartered
ATTORNEYS AT LAW**

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
THOMAS J. RYAN
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN K. SIMPSON
PATRICK D. MADIGAN
PAUL W. SAMUELSON

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 326-0700
FAX (208) 344-0004

September 23, 1993

RECEIVED

SEP 24 1993

Department of Water Resources
Southern Region Office

Mr. Mel Shulte
State of Idaho
Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, ID 83301

RE: Application for Permit Nos. 37-08587 (Sturtevant); 37-08819 (Friedly); 37-08820 (Thornton); 37-08821 (Blaine County School District); Application for Transfer No. 4205/37-00577 Part, A37-12818 Part (J. Peter &/or Claire B. Fitzpatrick)

Dear Mel:

Enclosed you will find a copy of the Affidavit of Burr Smith wherein he described how he used Ed Dumke Jr.'s water right as well as his own to irrigate his parcel of property and Mr. Dumke's for the purpose of pasturing horses. Please make this Affidavit a part of the record for each of the above-referenced applications. If you have any questions concerning the Affidavit, please call me.

Yours truly,

Gary D. Slette/mw
GARY D. SLETTE

GDS:mw
09179301.GDS
Enclosure

cc: Ed Dumke, Jr.
Jim Speck

RECEIVED

SEP 24 1993

Department of Water Resources
Southern Region Office

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In Re:

Water Right No. 37-00577
[Adjudication Claim No. A37-1281]

AFFIDAVIT OF
BURR SMITH

STATE OF IDAHO

County of Blaine

) ss.
)

I, Burr Smith, under oath, depose and state as follows:

1. I have knowledge of the fifty four (54) acre parcel of land owned by Ed Dumke, Jr. east of the City of Hailey and north of Quigley Road.

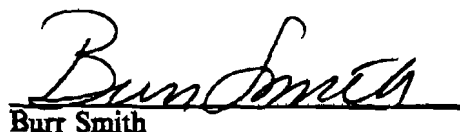
2. I moved to the property adjacent to Mr. Dumke's land in 1983.

3. Since that time, I have been irrigating and boarding horses on both parcels of land.

4. I generally rotate the water that is appurtenant to my land and his land in order to provide a sufficient flow to cover both parcels of our property.

5. With regard to Mr. Dumke's land, I irrigated it for the purpose of raising pasturage for horses.

Further sayeth your affiant naught.


Burr Smith

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SUBSCRIBED AND SWORN to before me this 22nd day of September, 1993.


NOTARY PUBLIC FOR UTAH
Residing at: HAILEY
My Commission Expires: 8-3-98

09169304.GDS

AFFIDAVIT OF BURR SMITH - 2

ROSHOLT, ROBERTSON & TUCKER

**Chartered
ATTORNEYS AT LAW**

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
THOMAS J. RYAN
GARY L. QUIGLEY
JUSTIN R. SEAMONS
JOHN K. SIMPSON
PATRICK D. MADIGAN
PAUL W. SAMUELSON

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6004

R E C E I V E D

SEP 20 1993

Department of Water Resources
Southern Region Office

September 17, 1993

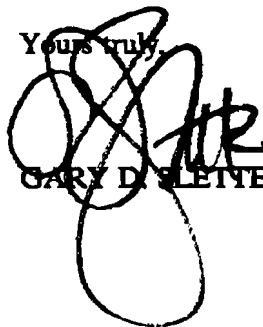
Mr. Mel Shulte
State of Idaho
Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, ID 83301

RE: Application for Permit Nos. 37-08587 (Sturtevant); 37-08819 (Friedly); 37-08820 (Thornton); 37-08821 (Blaine County School District); Application for Transfer No. 4205/37-00577 Part, A37-12818 Part (J. Peter &/or Claire B. Fitzpatrick)

Dear Mel:

Enclosed you will find a copy of the Affidavit of Clint Stennett wherein he described how he used Ed Dumke Jr.'s water right to irrigate the land owned by Mr. Dumke during the summers of 1983, 1984, and 1985. Please make this Affidavit a part of the record for each of the above-referenced applications. If you have any questions concerning the Affidavit, please call me.

Yours truly,


GARY D. SLETTE

GDS:mw
09179301.GDS
Enclosure

cc: Ed Dumke, Jr.
Jim Speck

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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In Re:)
Water Right No. 37-00577) AFFIDAVIT OF
(Adjudication Claim No. A37-1281) CLINT STENNETT

STATE OF IDAHO)
County of Blaine) ss.

I, Clint Stennett, under oath, depose and state as follows:

1. During the summers of 1983, 1984, and 1985, I boarded my horses on a 54 acre parcel of property located in Sections 9 and 10 of Township 2 North, Range 18 E.B.M.

2. I am aware that that property is located on the north side of Quigley Road east of Hailey, and is currently owned by Ed Dumke, Jr.

3. During each of those three years, I farmed and irrigated that property with surface water rights out of the Hiawatha Canal, which water rights were appurtenant to the property.

4. The purpose of such irrigation was to raise pasture for my horses.

Further sayeth your affiant naught.


Clint Stennett

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SUBSCRIBED AND SWORN to before me this 15th day of September, 1993.

Holly K. Cole
NOTARY PUBLIC FOR IDAHO
Residing at: Blaine County
My Commission Expires: 10-27-98

09009305.GDS

AFFIDAVIT OF CLINT STENNETT - 2

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRABTREE
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

September 15, 1993

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83401
(208) 788-1247
FAX (208) 788-1248

RECEIVED

SEP 17 1993

Department of Water Resources
Southern Region Office

VIA FAX NO. (208) 736-3037
ORIGINAL TO FOLLOW BY REGULAR MAIL

Mr. Mel Shulte
State of Idaho
Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

Re: Application for Permit Nos. 37-08587 (Sturtevant);
37-08819 (Friedly); 37-08820 (Thornton); 37-08821
(Blaine County School District); Application for
Transfer No. 4205/37-00577 Part, A37-12818 Part
(J. Peter &/or Claire B. Fitzpatrick)

Dear Mel:

It has been brought to my attention that the dates in
paragraph 4 of Mr. Mann's Affidavit are incorrect. The dates
should be August 1 through August 31, 1991, and not 1993.

Please call if you need another document with this
correction. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD


James P. Speck

JPS/v1

cc: Gary D. Slette, Esq.
Mr. Gregg Sturtevant
Mr. Larry Lloyd
Mr. Rod Thornton
Mr. Keith Friedly
Mr. J. Peter Fitzpatrick

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
J. STEPHEN CRADTREE
TRACY DUNLAP
JOHN A. SEILLER

120 EAST AVENUE
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KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

September 13, 1993

Mr. Mel Shulte
State of Idaho
Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301

RECEIVED

SEP 14 1993

Department of Water Resources
Southern Region Office

Re: Application for Permit Nos. 37-08587 (Sturtevant);
37-08819 (Friedly); 37-08820 (Thornton); 37-08821
(Blaine County School District); Application for
Transfer No. 4205/37-00577 Part, A37-12818 Part
(J. Peter &/or Claire B. Fitzpatrick)

Dear Mel:

Enclosed you will find a copy of the Affidavit of
Gregory A. Mann wherein he described how he used Pacesetter
Development Company's 1883 water right to irrigate Pacesetter's
lands in 1991. Please make this Affidavit a part of the record
for each of the above-referenced applications. If you have any
questions concerning the Affidavit, please call me.

Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD

Jim
James P. Speck

JPS/vl

Enclosure

cc: Gary D. Slette, Esq.
Mr. Gregg Sturtevant
Mr. Larry Lloyd
Mr. Rod Thorton
Mr. Keith Friedly
Mr. J. Peter Fitzpatrick

RECEIVED

SEP 14 1993
Department of Water Resources
Southern Region Office

AFFIDAVIT

STATE OF IDAHO)
County of Blaine)

ss.

I, GREGORY A. MANN, being first duly sworn upon oath, depose and state as follows:

1. I am 47 years old and have been a resident of Blaine County, Idaho for 22 years.

2. In the summer of 1991, I was asked by Ned Loomis, a representative of Pacesetter Development Company, to irrigate Pacesetter's undeveloped lands with its 1883 water right. The purpose was to raise pasture grass for cattle grazing.

3. From July 16 through July 30, 1991, I flood irrigated the SE 1/4 NW 1/4, Section 10, Township 2 North Range 18 East, property commonly known as the Deerfield Subdivisions No. 3, 4 and 5. In order to get the water to this property, it was diverted from the Hiawatha Canal into the Highline Ditch which runs at the base of the hills north of Quigley Road and then through a culvert under Quigley Road to the Northeast corner of the place of use.

4. From August 1 through August 30, 1993, I diverted the water for flood irrigation of the entire parcel north of Quigley Road known as the Hidden Meadows Property, consisting of approximately 55 acres. The purpose of the irrigation was to raise pasture grass for grazing.

AFFIDAVIT OF GREGORY A. MANN - 1

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DATED this 7 day of September ⁶⁴ ~~August~~, 1993.

Gregory A. Mann
Gregory A. Mann

September SUBSCRIBED AND SWORN to before me this 7th day of ~~August~~, 1993.

Edw. H. Kirby
Notary Public for Idaho
Residing at: Blaine County
Comm. Expires: 11/1/97

RECEIVED
SEP 14 1993
Department of Water Resources
Southern Region Office

AFFIDAVIT OF GREGORY A. MANN - 2

HOGAN, SPECK &
LANIER, P.A.
P.O. BOX 400
HARTY, IDAHO 83323
(208) 788-8567

ROSHOLT, R

ATT

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. GLETT
JERRY V. JENSEN
BRUCE M. SMITH
THOMAS J. RYAN
GARY L. QUIGLEY
JUSTIN R. GRAMONE
JOHN K. EDWARDS
PATRICK D. MADDOX
PAUL W. SAMUELSON
TRACY J. STOVER
NORMAN M. BERLAND

142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 734-0041

BOISE, IDAHO 83720
TELEPHONE (208) 334-0700
FAX (208) 344-4004

Post-It™ brand fax transmittal memo 7871		# of pages > 12
To: <i>Blaine Septon</i>	From: <i>Clive Strong</i>	
Co. <i>IDWR</i>	Co.	
Dept.	Phone #	
Fax # <i>77866</i>	Fax # <i>42690</i>	

November 10, 1993

VIA FACSIMILE 334-2690

Clive Strong
Attorney General's Office
210 Statehouse
Boise, ID 83720

RE: Transfer Application/Burden of Proof

Dear Clive:

As I indicated to you on the phone, my client, Ed Dumke, Jr., is the owner of certain water rights in Blaine County. He has agreed to transfer a portion of one of his water rights to serve as mitigation water for a proposed groundwater extraction consistent with the Blaine County Critical Groundwater Management Order. Steve Clelland, of the southern regional office of the IDWR, conducted a field examination, and has made a determination that the right should be forfeited. Prior to his submission of the recommendation to the state office, Jim Speck and I obtained affidavits from three individuals regarding the usage of the water on Mr. Dumke's property, one of which was obtained from State Representative Clint Stennett. As I review Mr. Clelland's hand-written notes, I discern his questioning of the veracity and truth of the affiants' statements. While he did not use the word "liar" in his notes, it is obvious that he has formed that opinion and has acted as judge and jury in this matter. *recommended*

Needless to say, my client is incensed. I have explained to him what I thought was the Department's position with regard to burden of proof issues, and more specifically, the forfeiture issue. I told him that the Department had represented to us that if a claimant possessed (proof) contrary to the Department's recommendation, the Department would receive that evidence, and that the Department would not take an adversary position with regard to forfeiture in the face of such evidence. I recall some sort of representation that the Department was not interested in forfeiting water rights in the face of contradictory evidence. Everything I see with regard to this matter is contrary to that position, and will

Clive Strong
November 10, 1993
Page 2

2
certainly influence our position in the SRBA if Mr. Clelland's and Mr. Saxton's unilateral ruling in the face of contrary evidence is permitted to govern this transfer.

Please review the enclosed information I am providing you at your earliest convenience, and advise me as to any potential resolution. If you have any questions or comments, please contact either Jim Speck or me.

Yours truly,



GARY D. SLETTE

GDS:mw
11109303.GDS

Enclosure

cc: Ed Dumke, Jr. (via fax; w/o documents)
Jim Speck, Esq. (via fax; w/o documents)

NOV- 5-73 FRI 14:47 HOGUE SPECK AANESTAD

P. 02



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mall, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

November 4, 1993

RECEIVED

CAROL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

NOV 05 1993

James P. Speck
Hogue, Speck & Aanestad
P.O. Box 987
Ketchum, ID 83340

Hogue, Speck & Aanestad

RE: APPLICATION FOR TRANSFER NO. 4205 OF ADJUDICATION CLAIM A37-12818 IN THE NAME OF J. PETER FITZPATRICK AND CLAIRE B. FITZPATRICK

Dear Mr. Speck:

Part of the water right represented by Snake River Basin Adjudication (SRBA) Claim No. A37-12818 has been proposed for mitigation of ground water proposed for diversion under the following applications for permit:

- 37-08887 - Gregg K. Sturtevant
- 37-08819 - Keith Friedly
- 37-08820 - Rod Thornton
- 37-08821 - Blaine County School District

The department's Twin Falls office has investigated past use of water claimed on A37-12818. Based on the department's investigation and on the information presently available to the department, Claim A37-12818 will be recommended in the SRBA as forfeited through non-use. Hence, the department will not allow this right to be used for mitigation of water diverted under the above referenced applications for permit.

If you have evidence to show that the department's investigation and findings are not correct, please submit the information within twenty (20) days in order that the department can review and consider the evidence. If you wish to review the findings of the department's investigation of the claim, you need to contact our Twin Falls office.

This office will temporarily hold the pending application for transfer to provide time for you to respond in this matter.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region

~~NOV 10 15:30 FAX 1337 TWIN FALLS IDAHO DEPT OF WATER RESOURCES~~

P.03

TRANSMITTAL COVER SHEET

ONNIFAX 666

TO: Jim Speck

TOTAL PAGES SENT: 8

DOCUMENT DESCRIPTION: RECOMMENDATION OF A37-12818

(PORTIONS - AFTER RECEIVING AFFIDAVITS.)

FROM: IDAHO DEPARTMENT OF WATER RESOURCES
222 SHOShONE AVE E
TWIN FALLS ID 83301

PHONE: 736-3033

FAX: 736-3037

SENDER: STUVE CLELLAND

CHARGES:

One (1) free copy per request, cover sheet not counted. Two (2) or more copies per request will cost \$0.25 per page. (\$0.50 minimum)

Please consider this document as a billing statement.

The charge for your fax copies is: \$ 2.00
Please remit to the above address.

COMMENTS:

P. 65

10/22/2003 04:28:10
Page 2

Profile Translations: 10/10/2020

THE UNIVERSITY OF CHICAGO

Answer:

東亞書局發行

Qualifications of Applicant

- accepts or disagrees that it is wrong to use deception in the future
- that this answer 'right' no longer holds because *particular* of the 'right' by means was *confined* and a defense to *fraudulent* was not *confined*, or because *denial* of the 'right' was *unethical*.

THE

Notes: On 07/29/89 the 1st CLIAID subject recommended that SPECIAL AGENT FILE FOR DETAILS OF REVIEW. WORKED OUT AND MADE GOOD FOR A PERIOD OF AT LEAST 5 YEARS; 1967-1970.

10012723 01011200

Advertisement for a new book

Black Empire Inc.
7100 Empress Hwy. #100
Van-Hoof Ave.
Last August 2000
Black Empire Inc.

16/12/1972
20/04/1980
05/07/77

Civil Case Number
Old Case Number
and Judicial Officer
Temporary Judge
Notes/Comments

1

THE UNIVERSITY OF CHICAGO

1

**Federal/State Traffic
Accident Flag
Notice of Arrest/Flag**

•

NOV 10 1993 TWIN FALLS, IDAHO

P. 86

13712818

Comparison of Evidence & Review

10-15-93
BROCK CLELAND

	1974	874 BDO	irrigation not shown
(unreviewed)	1980	photo filed to Subdivided w/ County.	
	1984	Leadert does not support irrigation uses	
	1985	W. Martin bills for water.	
(Reviewed)	1986	W. Martin bills for water.	
①	1987	No Billing. Stops above description	
②	1988	No Billing. Stops above description	
③	1989	No Billing.	
④	1990	Billed. Full system description, as system	
⑤	1991	Billed.	
⑥	1992	Billed.	
	1993	2-30 Full Exam - no irrigation, system not shown 5-14 Full Exam (by Mr. Schultz) no irrigation - as description.	

Affidavit claim:

GREGORY MAW (OAT 1 1993)

1991 July - claims to irrigate SEWU 5.10 for cattle grazing.
Aug - claims to irrigate North of Quigley Road
for cattle grazing.

(replaces an earlier survey statement.)

No system for irrigation stated in 1990 or in 1993
to irrigate the lands in SEWU. They looked the same
on both exams - unirrigated and prepared for Subl.
No cattle were grazed here either; no fences
during either exam and no cattle signs of grazing
is. mounds, tanks, & grazed off crops.

NOV - 8 - 87 FRI 15:00 TWIN FALLS BUREAU ARGUE SPECK, ARNESTAD

P. 08

P-395

A37-12818

See the listing on page one of this review.
property may have been irrigated in part
during 1983 as claimed. It is possible
landowner reports but a partial irrigation
in 1984, but from 1987 onward to present
no evidence supports the affiant's claim.
Again, the place is not small and there
are signs of grazing by horses or cattle in
this field.

AFFIDAVIT:

CLINT STENNETT (9-15-93)

1983, 84, 85

Says he farmed & irrigated the property
North of Dughey Road. also produced
horses there.

Evidence supports some possible irrigation
on parts of this parcel in headcut of 1984.
No signs information on 1983 or 1985.

NOV - 5 - 93 FRI 14:51 HOGUE SPECK, ARNESTAD

P. 18

NOV - 05 - 93 FRI 15:18 TWIN SOUTHERN

595

137-12818

the water for irrigation and the Water Master
owner killed for its use until 1990. All
the evidence during this time confirms the non-use
of water for irrigation on this property.

The Billing of Water Master for their rights
doesn't support its use in 1990, 91 or 92.

It has been my experience with water users
that they believe merely paying the assessment
to the Water Master will insure continued
validity of their rights. This belief is reinforced
by water masters also. (See Pigeon mentioned
this to me during our conversation of this area
and its rights.)

My personal field exam in 1990 on June 11th
would have followed 3 years of non-use on these
lands as indicated by the evidence shown. In
Sept 22 1993 when I returned for a follow-up
look at the same property, the conditions and
appearance of the property had not changed
it remained un irrigated.

Only in 1993 when irrigation was again
for this right, are any efforts made to develop
the irrigation system. But the efforts aren't complete
since the right is not wanted for irrigation use.

Recommend: Disallowed by Forfeiture/Abandonment

NOV - 5 - 93 11:10:33 20. MAGNUM SPECK ARNESTAD

P. 11

DATE/TIME CALCULATIONS: (Include)

10. CALCULATIONS

1. INTEREST RATE 10.00 C/P/ANNU 10.00

ADDED 10.00 C/P/ANNU 10.00

GRAND TOTAL 10.00 C/P/ANNU 10.00

2. IF THE ADDITIONAL VALUE WAS FROM FIELD AND ATTACHED 10.00 10.00 ...

3. INTERESTED CONSTRUCTION

CLAIMED CONSTRUCTION 10.00 10.00

ADDED 10.00 C/P/ANNU 10.00

TOTAL CONSTRUCTION 10.00 10.00

4. INTERESTED CONSTRUCTION

CLAIMED CONSTRUCTION 10.00 10.00

ADDED 10.00 C/P/ANNU 10.00

TOTAL CONSTRUCTION 10.00 10.00

5. CALCULATIONS FOR VALUE WITH INTEREST

SEE ATTACHED SHEET 10.00 10.00

REMARKS: (Include limitations on construction not for combined rights.)

$$\frac{2.72 \text{ cfs}}{103 \text{ Ac.}} = 0.026 \text{ cfs/Ac.}$$

$$= 1.32 \text{ "/Ac.}$$

They need to run a Hubble analysis on this system.
 The Fill is now the last place on the dist, a little directly
 other upstream and the upstream to be heavy on emergency flow.
 When the place downstream, upstream area, are taken out of protection
 in 1974 the flow in the Canal was reduced. Without that reduction
 flow, the rate of 1.32"/Ac may not have been sufficient to maintain
 an economical crop. This led to the move out of the Canal with as found.
 Jan 10-15-93

NOV 10 '93 FRI 15:33 TO: JIM BURNER
NOV 10 '93 FRI 15:33 TO: JIM BURNER

P. 89

p. 47

A37-12818

AFFIDAVIT:

GEORGE MANAI (9-7-93)

1991 July

1993 Aug

{ same as the first affidavit, except
← change in date on the annual
entry from 1993 to 1991. }

Re: the question of the validity of
"sworn statement" by affiant

Summary:

The history of this right is pretty clear and
is supported by the evidence available at this
time of Review.

In 1974 when the downstream rights on
Hiawatha Canal were abandoned, this place became
the best delivery on the ditch. A reduced flow
in the Canal made economical use of this
land and water impractical. (See CVR page 10
for analysis.) Finally, in 1980 the Danfield
Plato was filed to Subdivide this property.
Some partial use occurred around 1983
& 84. By 1987 no use was being made of

TRANSMITTAL COVER SHEET

OMNIFAX G66

11-5-93

TO: Jim Speck

726-0752 FAX

TOTAL PAGES SENT: 8

DOCUMENT DESCRIPTION: RECOMMENDATION OF A37-12818

(PORTIONS - AFTER RECEIVING AFFIDAVITS.)

FROM: IDAHO DEPARTMENT OF WATER RESOURCES
222 SHOSHONE AVE E
TWIN FALLS ID 83301

PHONE: 736-3033

FAX: 736-3037

SENDER: STEVE CLELLAND

CHARGES:

One (1) free copy per request, cover sheet not counted. Two (2) or more copies per request will cost \$0.25 per page. (\$0.50 minimum)

Please consider this document as a billing statement.

The charge for your fax copies is: \$2.00
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COMMENTS:

MICROFILMED
OCT 27 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

November 4, 1993

RECEIVED

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

James P. Speck
Hogue, Speck & Aanestad
P.O. Box 987
Ketchum, ID 83340

NOV 08 1993

Department of Water Resources
Southern Region Office

RE: APPLICATION FOR TRANSFER NO. 4205 OF ADJUDICATION CLAIM A37-12818 IN THE NAME OF J. PETER FITZPATRICK AND CLAIRE B. FITZPATRICK

Dear Mr. Speck:

Part of the water right represented by Snake River Basin Adjudication (SRBA) Claim No. A37-12818 has been proposed for mitigation of ground water proposed for diversion under the following applications for permit:

37-08587 - Gregg K. Sturtevant
37-08819 - Keith Friedly
37-08820 - Rod Thornton
37-08821 - Blaine County School District

The department's Twin Falls office has investigated past use of water claimed on A37-12818. Based on the department's investigation and on the information presently available to the department, Claim A37-12818 will be recommended in the SRBA as forfeited through non-use. Hence, the department will not allow this right to be used for mitigation of water diverted under the above referenced applications for permit.

If you have evidence to show that the department's investigation and findings are not correct, please submit the information within twenty (20) days in order that the department can review and consider the evidence. If you wish to review the findings of the department's investigation of the claim, you need to contact our Twin Falls office.

This office will temporarily hold the pending application for transfer to provide time for you to respond in this matter.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

MICROFILMED
OCT 27 1994

c: IDWR - S. Region



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

November 4, 1993

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

James P. Speck
Hogue, Speck & Aanestad
P.O. Box 987
Ketchum, ID 83340

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Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region

OCT 28 1993

MEMORANDUM

DATE: 28-Oct-1993

FROM: Loren Holmes *LH*TO: Files; Transfer 4205, Apps for permit 37-8587, 8270, 8819,
8821

SUBJECT: Final region review of files

SRBA claim A37-12818, which is a previously unrecorded split of 37-00577, is proposed to be used as the basis for mitigation plans enabling approval of the applications for permit. A .11 cfs portion of the right is proposed for transfer under transfer 4205.

The following is a summary of the proposed changes in acres and amounts of water:

Application	Acres	Q	Acres remaining	Q remaining
T4205	4	.11	99	2.61
37-08587	3	.079	96	2.531
37-08220	1	.026	95	2.505
37-08819	1	.026	94	2.479
37-08821	40	.80	54	1.679

transfer
Approval of these applications will result in an untransferred remainder of A37-12818 of 1.679 cfs appurtenant to an unspecified 54 acres of the claimed place of use.

The claim has been completely reviewed by SRBA staff according to the standards set for review of claims. A claim verification report (CVR) has been completed and the claim has been recommended for disallowal based on a finding of 5 years non-use. Pertinent parts of the CVR and the reviewing agent's analysis are attached.

If water under claim A37-12818 has historically been turned into the canal, then execution of the mitigation plans will result in an actual contribution of water to the river.

If water has not been turned into the canal, then the river flows have actually been augmented by this water for some time. The mitigation plans will contribute no additional water to the river and exercise of the groundwater permits will further stress the existing conditions.

A study of historic daily flows in the Hiawatha canal documented in "Water distribution and Hydrometric Work in Water District 37" reports covering the 1970's to the present may shed some light on whether the water was turned into the canal. The region does not have a complete set of these records.

NOV 28 1993

With respect to Transfer 4205, the file supports a recommendation of denial because water has not been beneficially used on the place of use of the water right. On the other hand, if this right has been delivered by the watermaster at the Hiawatha headgate, and this is sufficient to prevent a forfeiture, the transfer can be granted.

Of course, the court may uphold the disallowal of the claim which would render this set of applications impossible. It may be necessary to hold the whole matter in abeyance until the SRBA court rules on the claim.

Also see
LIC File
37-8587

NOV 28 1996

RECEIVED

Page 1 of 8STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESAPR 01 1993 Transfer No. 4205

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant J. PETER FITZPATRICK and/or CLAIRE B. FITZPATRICK Phone (619) 431-2665
Post Office address c/o JAMES P. SPECK, ESQ., HOGUE, SPECK & AANESTAD, P.O. BOX 987, Ketchum, ID
83340

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes APPLICANTS ARE PURCHASING A PORTION OF A WATER RIGHT
AND DESIRE TO CHANGE PLACE OF USE TO THEIR PROPERTY.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>37-00577 Port</u>	<u>3/24/1883</u>	<u>0.11 cfs</u>	<u>IRRIGATION</u>	<u>April 1</u> to <u>Nov. 1</u>
<u>A37-12818 Port</u>	<u>3/24/1883</u>	<u>0.11 cfs</u>	<u>IRRIGATION</u>	<u>April 1</u> to <u>Nov. 1</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 0.11 cubic feet per second and/or _____ acre-feet per annum.3. Source of water BIG WOOD RIVER tributary to MALAD RIVER

4. Point(s) of Diversion: _____

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	SW	NW	20	3N	18E	BLAINE	HIAWATHA HEADGATE

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	18E	4					2												2
3N	18E	33											2						2

NOV 28 1996

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 37-00577 *port* Decreed to W.T. RILEY
in case of S.C. FROST, ET AL vs. ALTURUS WATER COMPANY, ET UX
dated 12/13/1909 in _____ county of LINCOLN
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☒ Warranty Deed

☒ Other PURCHASE & SALE AGREEMENT

3. Source of water BIG WOOD RIVER tributary to MALAD RIVER

4. Date or priority 3/24/1883

5. Water is used for the following purpose:

amount _____ for IRRIGATION purposes from APRIL 1 to NOV. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	SW	NW	20	3N	18E	BLAINE	HAIWATHA HEADGATE #22

8. Lands irrigated or place of use: NONE SPECIFIED IN DECREE. USED ON LANDS IN AND AROUND HAILEY.

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

9. Describe any other water rights used for the same purpose as described above _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.11 cfs for IRRIGATION purposes from APRIL 1 to NOV. 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	SW	NW	20	3N	18E	BLAINE	HIAWATHA HEADGATE #22

3. Lands irrigated or place of use: NONE SPECIFIED IN DECREE. USED ON LANDS IN AND AROUND HAILEY.

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres 4

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for IRRIGATION purposes from APRIL 1 to NOV. 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	SW	NW	20	3N	18E	BLAINE	HIAWATHA HEADGATE #22

3. Lands irrigated or place of use: NONE SPECIFIED IN DECREE. USED ON LANDS IN AND AROUND HAILEY.

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

NOV 28 1996

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. A37-12818 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice

☒ Warranty Deed

☒ Other PURCHASE & SALE AGREEMENT

3. Source of water BIG WOOD RIVER tributary to MALAD RIVER

4. Date or priority 3/24/1883

5. Water is used for the following purpose:

amount 2.72 cfs for IRRIGATION purposes from APRIL 1 to NOV. 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.72 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	SW	NW	20	3N	18E	BLAINE	HIAWATHA HEADGATE #22

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	18E	9	6																6
2N	18E	10						37	17	27	16								97

Total acres

NOV 28 1996
103

9. Describe any other water rights used for the same purpose as described above

NONE

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.11 cfs for IRRIGATION purposes from APRIL 1 to NOV. 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	SW	NW	20	3N	18E	BLAINE	HIAWATHA HEADGATE #22

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	18E	9	4																4

Total acres 4

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 2.61 for IRRIGATION purposes from APRIL 1 to NOV. 1
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	SW	NW	20	3N	18E	BLAINE	HIAWATHA HEADGATE #22

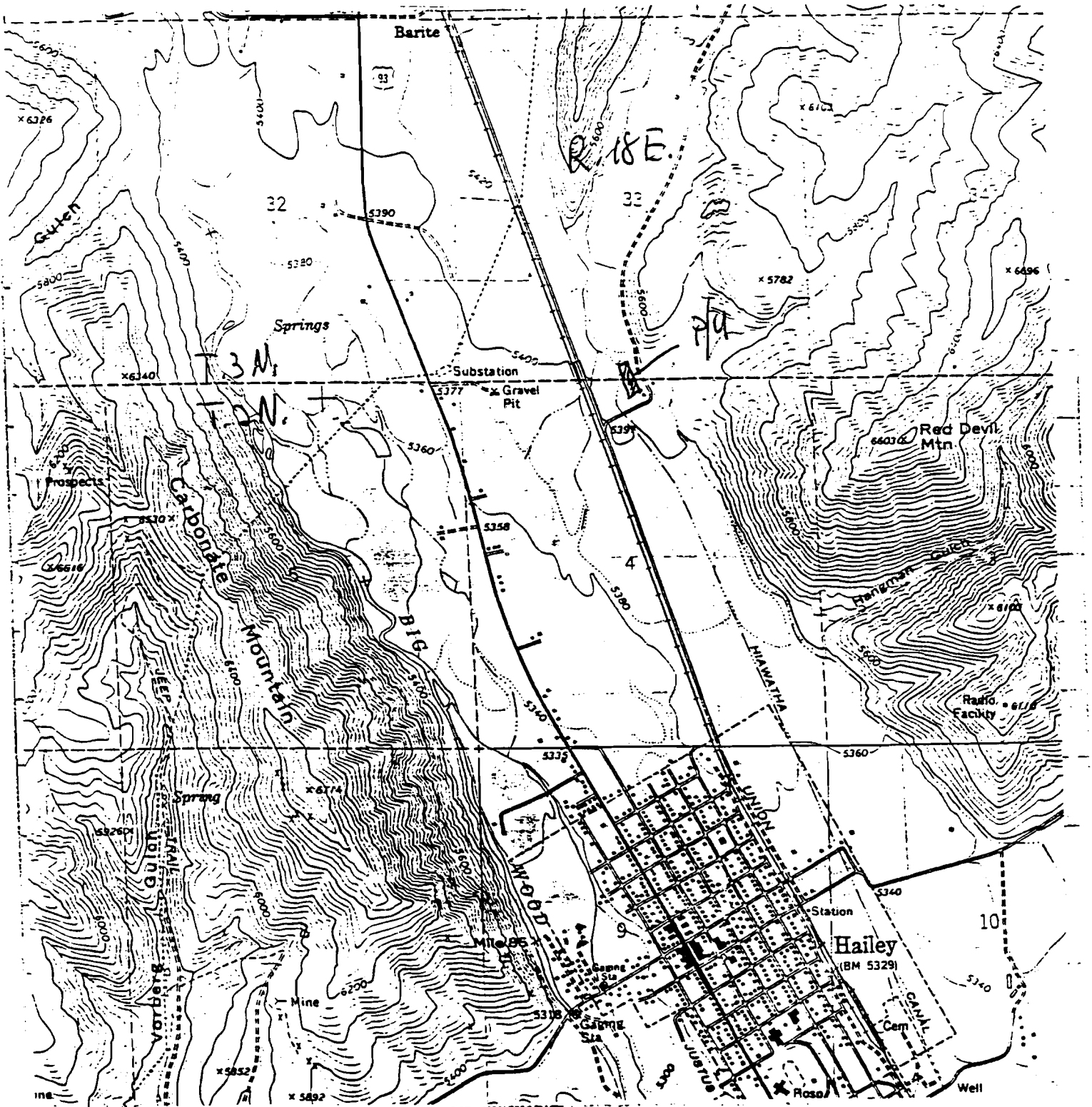
3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	18E	9	2																2
2N	18E	10						37	17	27	16								97

NGV 2 8 1956

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Claire B. Fitzpatrick
(Signature of Applicant)

Subscribed and sworn to before me this 23 day of MARCH, 19 93



My commission expires

Norma K. Garrison
(Notary Public)

FOR DEPARTMENT USE ONLY

Transfer contains 8 pages and 0 attachments

Received by R. Foster Date 4/1/93 Protest filed by _____

Prelim. check by MTS Fee \$30 (5015622) _____

Receipted by MTS Date 4-15-93 _____

Published in Wood River Journal Copies of protest forwarded by _____

Pub. dates 9/15 + 9/22/93 Hearing held by _____ Date _____

Watermaster recommendation requested on 8/27/93 Recommended for ☐ approval ☐ denial

_____ rec'd. 9/23/93 by _____

Copy of transfer sent to lien holder _____

NOV 29 1993