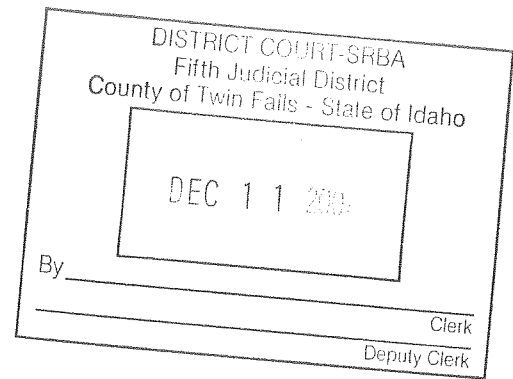


Robert L. Harris, Esq. (ISB # 7018)
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase Nos.: 21-10557 and 21-13013

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

RLF I, LLC, RLF II, LLC, RLF III, LLC, and RLF IV, LLC ("RLF") and Del Kohtz, by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., and in accordance with this court's October 12, 2007 Trial Scheduling Order, hereby submit this Memorandum in Support of Motion for Summary Judgment in regards to the adjudication of Water Right Nos. 21-10557 and 21-13013. For the reasons set forth below, both water rights, as a matter of law, must be decreed as they are currently recommended to the SRBA court by the Idaho Department of Water Resources ("IDWR").

I. PROCEDURAL HISTORY

A. Water Right No. 21-13013.

Water Right No. 21-13103 is a water right owned by RLF, and is currently recommended for adjudication for .4 cfs and the irrigation of 48 acres within a 497.8-acre permissible place of use.

This water right is diverted through a diversion from Fall River known as the “Silkey Canal” or “Silkey Ditch”, which is located near the town of Chester, Idaho. This water right has a lengthy procedural history in the SRBA, with essentially two rounds of objections.

The first objection filed on this right was filed by the claimant, RLF. The objection related to IDWR’s recommendation of the permissible place of use (“PPOU”) of this right and a reduction in quantity.¹

After an onsite meeting with RLF and IDWR representatives, it was determined that the permissible place of use for the RLF water rights should be enlarged. As a result, the parties executed a Standard Form 5 on November 15, 2006 resolving the place of use and quantity objection. All SRBA matters pertaining to this right were thought to have been addressed.

However, on November 21, 2006, IDWR requested that the Court not move the water rights delivered through the Silkey Ditch (including 21-13013) to partial decree because there were some remaining questions a number of the other Silkey rights, in particular 21-41G, 21-51B, and 21-12978. The court set a status conference for April 11, 2007.

Before the April 1, 2007 status conference, a second objection was filed, this time by Robert and Donna Fuchs (“Fuchs”) through their attorney, Ray Rigby. However, the objection was not classified as a late objection because there was no accompanying motion to file a late objection, and consequently, the objection was only lodged (not filed) with the court. At the April 11, 2007 status conference, this was brought to Fuchs’ attention, the court scheduled a hearing on the motion to file the late objection for June 27, 2007. After a hearing on that date, the court granted the motion, and a status conference was held on July 13, 2007, where it was determined that a settlement conference

¹ A listing of these other rights, along with 21-13013, is attached hereto as “Exhibit A”. This summary contains all of the water rights recommended to RLF.

would be appropriate in this matter. In an order dated July 18, 2007, the court set the settlement conference for September 27, 2007, to commence at 10:30 a.m. in the IDWR Eastern Region Office in Idaho Falls.

The settlement conference was held as scheduled, and while the discussion helped the parties understand each others' positions, no resolution on the matter was reached. At a status conference held one week after the settlement conference on October 3, 2007, the parties elected to have the court prepare a trial schedule. In particular, RLF and Kohtz were ready to move forward with a motion for summary judgment and to schedule a trial because both were anxious to have the matter resolved. Further, both were aware of the court's recent difficulty in scheduling various matters because of the large number of other SRBA matters before the court, and wanted to have deadlines and other dates scheduled as soon as possible. The court issued a trial scheduling order on October 12, 2007 with dates for the summary judgment motion to be heard on January 28, 2008, and for trial to be held from March 12-14, 2008. Because of the court's calendar, these were the earliest and best available dates for this matter. The court has now been asked to amend the Trial Scheduling Order, which RLF strongly objects to because it will further delay resolution of this matter and prejudice RLF and Kohtz. The specific arguments addressing this motion are addressed in another brief², but we wish to further note our objection here.

B. Water Right No. 21-10557.

Water Right No. 21-10557 is a water right owned by George Nedrow, and is currently recommended for adjudication to George Nedrow for 3.0 cfs and the irrigation of 312 acres within a 611.4-acre permissible place of use. This right was originally delivered through the Silkey Ditch

² This brief is entitled "Objection to Motion to Amend Trial Scheduling Order."

off of Fall River, but was transferred in the late-1950s to the Henry's Fork of the Snake River near Ashton, and has been used on the Nedrow property since that time.

Similar to 21-13013, this water right has a lengthy procedural history in the SRBA, with essentially two rounds of objection. The first objection dealt with a place of use error, specifically, the exclusion of an individual acre limitation for this right within a larger PPOU. This issue has since been resolved.

The second objection to this right began with the filing of an objection on March 21, 2007 by Fuchs through their attorney, Ray Rigby. The objection to this right was also not classified as a late objection, and was only lodged (not filed) with the court because there was no motion to file a late objection, nor a hearing scheduled for such a motion. At the hearing on the motion to file late claim for 21-13013 on June 27, 2007, counsel for RLF brought it to the court's attention that Fuchs had not scheduled a hearing date and time for the late objection as to 21-10557. Counsel for RLF and Kohtz suggested that all parties to the matter were already present on the hearing for 21-13013, and that the court could go ahead with a hearing at that time. The hearing was held, and the motion to file the late objection was granted. After that time, both 21-13013 and 21-10557 were scheduled on the same track.

The court has now been asked to amend the Trial Scheduling Order as to 21-10557, which Del Kohtz strongly objects to because it will further delay resolution of this matter. The specific arguments addressing this motion are addressed in an accompanying brief, but briefly, for a number of years, Mr. Del Kohtz has been working with the Nedrows to purchase 21-10557 for Mr. Kohtz's use in his business of coordinating transfers. A number of transfers have been filed relying upon 21-10557 as an integral part of the transfer. The delays suffered by Mr. Kohtz thus far have been

detrimental to him and his business, and any further delay will cause additional difficulty and prejudice.

Nevertheless, regardless of the pending motion to amend the Trial Scheduling Order, this matter can be resolved with a motion for summary judgment. The questions surrounding this right surround ownership, which is evidenced by the chain of title to the properties of those involved in this case. The specifics of these deeds are the basis for our motion for summary judgment and are discussed below.

II. LEGAL PRINCIPLES.

A. Summary Judgment Standard.

In Idaho, summary judgment is proper “if the pleadings, deposition, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.”³ When a motion for summary judgment “has been properly supported with evidence indicating the absence of material factual issues, the opposing party’s case must not rest on mere speculation, and a mere scintilla of evidence is not enough to create a genuine issue of fact.”⁴

B. Conveyance of Water Rights.

With the conveyance of property, Idaho is a race-notice jurisdiction.⁵ When land is therefore transferred to another person or entity, it is done by deed, and recorded in order to put all subsequent

³ I.R.C.P. 56(c).

⁴ *John W. Brown Properties v. Blaine County*, 129 Idaho 740, 742, 932 P.2d 368, 370 (Ct. App. 1997).

⁵ *Froman v. Madden*, 13 Idaho 138, 88 P. 894 (1907).

purchasers on notice.⁶ Just like land, water rights are real property and are conveyed by deed.⁷ In Idaho, “it is well established that a water right is an appurtenance to the land on which it has been used and will pass by conveyance of the land.”⁸ When land to which a certain water right is appurtenant is divided, “a division of the land would divide the appurtenant water right in the same proportion as it divided the land. . . unless it was specifically reserved in the deed or it could be clearly shown that it was known to both parties that the water right was not intended to be conveyed.”⁹ This principle is also articulated in Idaho Code § 42-220: “[A]ll rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted.”

III. ARGUMENT.

A. Summary judgment must be granted in this matter because the deeds provide conclusive proof of the conveyance of the water rights.

In the Rexburg Decree, 275 inches (5.5 cfs) of water was decreed to Z. Sundberg (Zach Sundberg) to the following land in Fremont County, Idaho: “Lots 1, 2, 3, and 4 in Sec. 7, T. 8N. R., 42 B.M. containing 149.85 acres.”¹⁰ The water right was subsequently numbered as 21-114. Water Right Nos. 21-13013 and 21-10557 are claimed portions of this right.

Another water right that is relevant to this matter is 21-102, which is a water right decreed to a neighboring landowner, J.R. Silkey. The decree was for 400 inches (8.0 cfs) to the following

⁶ Idaho Code § 55-811.

⁷ Idaho Code § 55-101.

⁸ *Silverstein v. Carlson*, 118 Idaho 456, 460, 797 P.2d 856, 860 (1990) quoting from *Russell v. Irish*, 20 Idaho 194, 198-99, 118 P. 501, 502 (1911).

⁹ *Id.*

¹⁰ See “Exhibit B” attached hereto.

land: "S1/2 of SE 1/4, NE 1/4 of SE 1/4, and Lot 2 of Sec. 12, T. 8 N., R. 41 E. B. M. containing 152.35 acres."¹¹ The places of use of both 21-114 and 21-102 are depicted in the map attached hereto as "Exhibit C".

On September 9, 1910, Zach and Annie Sundberg sold the land to which 21-114 was appurtenant (Lots 1, 2, 3, and 4 in Sec. 7, T. 8N. R. 42 E.B.M.) to Joseph Seeley.¹² No mention is made of the water rights on the property, therefore, water right 21-114 was conveyed with the property. Later, on October 18, 1927, the 21-114 property (along with other property in section 12) was sold to Edgar Barney, and no water was withheld by the Seeleys.¹³ This means that Edgar Barney owned all 5.5 cfs of 21-114 as he owned Lots 1, 2, 3, and 4 in Sec. 7.

On April 10, 1947, Edgar and Lillie Barney sold Lots 3 and 4 to Earl Barney "[T]ogether with 100 inches of Silkie [sic] Decreed water."¹⁴ From our conversations with Fuchs, we understand that the interpretation of this language is the basis for their objection. Fuchs has essentially claimed that the reference to "Silkie Decreed water" in the deed refers to Water Right No. 21-102, the water right decreed to J.R. Silkey on the land in **neighboring** Section 12 of T. 8N. R. 42 E, not water right 21-114 (Sundberg), the water right that was actually appurtenant to Lots 3 and 4. RLF and Kohtz contend that the reference to "Silkie" simply refers to the ditch through which the water diverted pursuant to 21-114 was delivered, and is not a reference to 21-102. The "Silkie Decreed Water" is a reference was to 21-114, the right that was still actually appurtenant to Lots 3 and 4 at the time.

¹¹ *Id.*

¹² See "Exhibit D" attached hereto.

¹³ See "Exhibit E" attached hereto.

¹⁴ See "Exhibit F" attached hereto.

In other words, the water right conveyed to Earl Barney was 100 inches (2 cfs) of 21-114, not 100 inches of 21-102.

RLF's and Kohtz's contention is supported by the subsequent deed conveying the property from Earl and Eula Barney to George and Lela Nedrow on June 6, 1956.¹⁵ That deed stated that Lots 3 and 4 were conveyed "together with 100 miners inches of Fall River water decreed to Z. Sundberg and purchased by the parties of the first part herein from Edgar Barney, with a priority of June 1, 1890."¹⁶

RLF's and Kohtz's contention is further supported by Idaho law, as summarized above. When land is conveyed by deed, it is presumed that all appurtenances, including water rights, are also conveyed with the property unless the water right is specifically reserved. Assume for the sake of argument that the reference to "100 inches of Silkie Decreed water" in the deed from Edgar and Lillie Barney to Earl Barney dated April 10, 1947 was indeed 100 inches of the neighboring J.R. Silkey water right (21-102). In order for this water to have made its way to Lots 3 and 4 of Section 7, there would have to be a deed evidencing the severance of the water right from the Section 12 land and conveyance of the water right to Lots 3 and 4 of Section 7. We have found no such deed, nor do we believe that such deed exists.

Assuming also for the sake of argument that somehow the "100 inches of Silkie Decreed water" did make its way onto Lots 3 and 4 of Section 7 and was actually conveyed to Earl Barney by Edgar and Lillie Barney so that 100 inches of 21-102 was conveyed to Earl Barney. This same deed would have also necessarily conveyed a proportionate amount of 21-114, which was still appurtenant to Lots 3 and 4, because this water was not specifically reserved in the deed, which is

¹⁵ See "Exhibit G" attached hereto.

¹⁶ *Id.*

required by Idaho law. Therefore, the deed from Edgar and Lillie to Earl would have essentially done three things:

- (1) Conveyed Lots 3 and 4 of Section 7 to Earl Barney;
- (2) Conveyed 100 inches (2.0 cfs) of 21-102 (J.R. Silkey water); and
- (3) Conveyed 137.5¹⁷ inches (2.75 cfs) of 21-114 (Z. Sundberg water).

Thus, even under Fuchs' interpretation of the April 10, 1947 deed, a portion of 21-114 (indeed, a even a bigger portion than under RLF's and Kohtz's interpretation of this deed) was conveyed to Earl Barney. Either way, the deeds evidence that a portion of 21-114 was conveyed to Earl Barney, and therefore this matter can be resolved as a matter of law. It simply makes much more sense to conclude that the 100 inches of Silkie Decreed water in this deed referred to 21-114, which was appurtenant to Lots 3 and 4 at the time. Subsequent deeds and actions of the Department further support RLF's and Kohtz's view of this matter.

After Earl Barney received Lots 3 and 4 along with 100 inches (2.0 cfs) of 21-114, Earl sold the property to George and Lela Nedrow on June 6, 1956. The deed specifically stated that the land included "100 miners inches of Fall River water decreed to Z. Sundberg and purchased by the parties of the first part herein from Edgar Barney, with a priority of June 1, 1890". Thereafter, George and Lela deeded Lots 3 and 4 to Gomer and Mary Williams "[t]ogether with 20 miners inches of Fall River Water."¹⁸ Thus, George and Lela only conveyed 20 inches (.4 cfs) with the property, and retained 80 inches (1.6 cfs), 60 inches of which George and Lela then moved to property near

¹⁷ This assumes that Lots 1-4 are all the same size, so that Lots 3 and 4 would receive exactly $\frac{1}{2}$ of the 275 inches under 21-114. The actual acreage and amounts may vary.

¹⁸ See "Exhibit H", attached hereto.

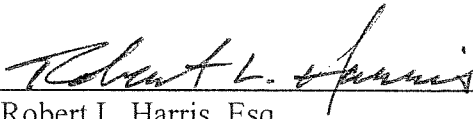
Ashton. Gomer and Mary Williams eventually deeded Lots 3 and 4 to Alma and Zeralene Blanchard,¹⁹ and the property was kept in the Blanchard family until it was sold to RLF.

Since the 1950s, there have been a number of transfers and other actions taken in regards to both 21-114 and 21-102 which rely upon the "100 inches of Silkie water" as referring to 21-114. We will not go into detail as to these actions in these briefs, but would refer the court to the extended summary provided by IDWR (Trent Galbraith) in a letter dated March 23, 2007 to Ray Rigby, a copy of which is attached hereto as "Exhibit J." In addition, "Exhibit K" contains other correspondence from IDWR on this issue. As the court can see, this is an issue that has been researched thoroughly and thoughtfully, and IDWR's recommendations are well-supported in both law and fact. Because the issue before the court is one of reviewing deeds and ownership of water rights, this matter can be decided by summary judgment rather than proceed to trial.

IV. CONCLUSION

For the reasons set forth above, summary judgment in favor of RLF and Kohtz must be granted.

Dated this 10th day of December, 2007.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

¹⁹ See "Exhibit I", attached hereto.

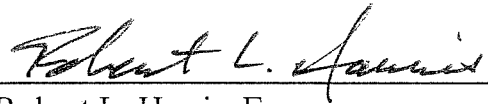
CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by mailing, with the correct postage thereon, a true and correct copy thereof on this 10th day of December, 2007.

DOCUMENT SERVED: MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Randall C. Budge
Scott J. Smith
RACINE OLSEN NYE
BUDGE & BAILEY, CHTD.
P.O. Box 1391
Pocatello, Idaho 83204-1391

(✓) U.S. Mail


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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EXHIBIT A

EXHIBIT B

Attachment
I

Stumbaugh, John
4 N., R., 40 E., B. M., containing 160 acres
The SE $\frac{1}{4}$, the NE $\frac{1}{4}$, and the E $\frac{1}{2}$ of SW $\frac{1}{4}$ of
Sec. 13, and E $\frac{1}{2}$ of NW $\frac{1}{4}$, and SE $\frac{1}{4}$ of
NW $\frac{1}{4}$ of Sec. 24, T. 15, N. R., 42 E.,
B. M., containing 520 acres.

Sullivan, Thomas F.
W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 4, T. 2 N., R., 38 E.,
B. M., and NE $\frac{1}{4}$ of Sec. 4, T. 2 N., R.
38 E., B. M., containing 240 acres.

Sullivan, Thomas F.
and Mary A.
S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 7, and NW $\frac{1}{4}$, and the W $\frac{1}{2}$
of NE $\frac{1}{4}$ of Sec. 18, T. 14, N. R., 44
E. B. M., containing 320 acres, and the
E $\frac{1}{2}$ of Sec. 13, T. 14, N. R., 43 E., B.
M., containing 320 acres.

Summers, S. J.
Part of NW $\frac{1}{4}$ of Sec. 30, T. 4 N., R., 40
E. B. M., containing 148.39 acres.
Also, 6-1/3 acres in SW $\frac{1}{4}$ of Sec. 19, T.
4 N., R., 40 E. B. M.,

Summers, William
NE $\frac{1}{4}$ of Sec. 25, T. 4 N., R., 39 E., B. M.,
containing 160 acres.

→ Sundberg, Z.
Lots 1, 2, 3 and 4 in Sec. 7, T. 8 N. R., 42
B. M., containing 149.85 acres.

The Sunny Dell Irrigation Canal Company.

① Beckstrom, Niels
N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 7, T. 4 N., R., 40 E., B.
M., containing 80 acres.

② Carlson, Frans E.
S $\frac{1}{2}$ of SE $\frac{1}{4}$, and SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 6, T.
4 N. R., 40 E. B. M., containing 120 acres.

③ Christensen,
Niels
W $\frac{1}{2}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 8, T. 4 N., R. 40
E., B. M., containing 20 acres.

④ Christensen
Niels C.
NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 8, and S $\frac{1}{2}$ of NW $\frac{1}{4}$ of
NW $\frac{1}{4}$ of Sec. 8, T. 4 N. R., 40 E., B. M.
containing 60 acres.

Sheser, William

SE $\frac{1}{4}$ of NW $\frac{1}{4}$, and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of SEC. 23,

and SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of E $\frac{1}{2}$ of

Sec. 24, T. 6 N., R., 44 E. B. M.,

Lot 3, and SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 4, T. 3 N.,
R. 45 E., B. M.

Shirts, William

Shurtliff, William

E $\frac{1}{2}$ of SW $\frac{1}{4}$ and Lots 1 and 2 of Sec. 31, T.
2 N. R., 44 E., B. M., Also, Lot 4 of
Sec. 5, and Lots 1, 2 and 3 of Sec.
6, T. 1 N. R., 44 E., B. M.,
containing 156 acres.

Siddoway, James,
and James
Briggs

(See Briggs, James. and James Siddoway.)

Siddoway-Briggs
& Co.,

(a partnership composed of James Siddoway
and James Briggs. (See Briggs, James. and
James Siddoway.)

Siddoway
Irrigation &
Manufacturing
Company.

Lands of stockholders of said company, the
description of said lands and the
names of said stockholders not being
given in the pleadings of said company.

→ Silkey, J. R.

S $\frac{1}{2}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, and Lot 2 of Sec.
12, T. 8 N., R., 41 E. B. M.,
containing 152.25 acres.

Simmons, A. R.

NE $\frac{1}{4}$ of Sec. 26, T. 13, N. R., 43 E. B.
M., containing 160 acres.

Simmons,
Charles C.

SE $\frac{1}{4}$ of Sec. 26, T. 13, N., R. 43 E. B.
M., containing 160 acres.

Simmons, Inez
and A. H.

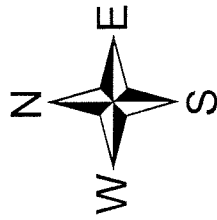
N $\frac{1}{2}$ of NE $\frac{1}{4}$, and N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 35, T.
13 N., R., 43 E., B. M., containing
160 acres.

Simmons, John

S $\frac{1}{2}$ of SE $\frac{1}{4}$, and S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 25, T.
6 N., R., 45 E., B. M., containing
160 acres.

EXHIBIT C

DECREED PLACE OF USE FOR 21-114 AND 21-102



Legend

21-114_POU

21-102_POU

Sections

Quarters



Prepared by:
Robert L. Harris
Dec. 10, 2007
2004 NAIP Aerial Photo

EXHIBIT D

THIS INDENTURE made the 9th day of September in the year One thousand

and ten between ZACH SUNDBERG of Carstairs of the Province of Alberta formerly of the County of Fremont in the State of Idaho, Farmer, and ANNIE J. SUNDBERG wife of Zach Sundberg aforesaid, the parties of the first part; and Joseph Nephi Sealey of Stirling in the Province of Alberta, Farmer, the party of the second part.

WITNESSETH: That the said parties of the first part for and in consideration of the sum of Four Thousand and fifty(4050) Dollars of lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents Grant, Bargain, Sell and Convey and Confirm unto the said party of the second part and to his heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the County of Fremont and State of Idaho, and bounded and described as follows, to-wit:

Lots One(1) Two(2) Three(3) Four(4) of Section Seven(7) Township eight(8) North of Range Forty-two(42) E. R. M., and Lot One(1) of Section Twelve(12) Township Eight (8) North, of Range Forty-one(41) containing 149 85/100 acres, according to the Government Survey.

Also a one fourth($\frac{1}{4}$) interest in what is known as the McBee Ditch and a one fourth($\frac{1}{4}$) interest in the canal being taken out of Black Springs Creek.

SUBJECT to a Mortgage of Eighteen hundred(1800) Dollars made between Zach Sundberg and Annie J. Sundberg as Mortgagors And the American Freehold Land Mortgage Co. as Mortgagee-

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the rent issues and profits thereto.

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereunto incident unto the said party of the second part and to his heirs and assigns forever. And the said parties of the first part and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against the said parties of the first part and their heirs and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered

in the presence of

Charles W. Moore

Canada

Province of Alberta

Zach Sundberg (Seal)

Annie J. Sundberg (Seal)

I DO HEREBY CERTIFY THAT on this 9th day of September in the year 1910, before me Charles W. Moore a Notary Public in and for the said Province, personally appeared Zach Sundberg known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same. And I do hereby certify that, on this 9th day of September in the year 1910, before me the officer above described

SCANNED

SEP 28 2006

EXHIBIT E

#244253

WARRANTY DEED

THIS INDENTURE, Made the 18th day of October in the year of our Lord one thousand nine hundred and 27 between Joseph W. Seeley and Celia Seeley, his wife of the County of Sanpete State of Utah, the part 1st of the first part, and Edgar Barney

of the County of Fremont State of Idaho, the part 2nd of the second part,

WITNESSETH: That the said part 1st of the first part, for and in consideration of the sum of Four thousand and no/100 DOLLARS, lawful money of the United States of America, to them in hand paid by the said part 2nd of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold and do by these presents GRANT, BARGAIN,

SELL, CONVEY and CONFIRM unto the said part 2nd of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being in the County of Fremont and State of Idaho, and bounded and described as follows, to-wit:

Commencing at a point thirteen rods North of the Southwest corner of the Southeast quarter of Section 12, Township 8, North Range 41, E.B.M., running thence North 90 rods, more or less, to the east bank of Snake River, thence in a southwesterly direction along said river bank 100 rods, more or less, thence east 35 rods, to place of beginning. Said tract containing 11 acres more or less, and being all of Lot 3 of said Section 12, except that part conveyed to J.R. Silkey, and Lots 1, 2, 3 and 4 of section 7, Township 8 North of Range 42 E.B.M. and Lot 1 of Section 12, Township 8 North Range 41, containing 149.85 acres, according to the Government Survey. Also a one-quarter interest in what is known as the McFee ditch and a one-quarter interest in the canal being taken out of Black Springs Creek

Subject to all taxes.

\$4.40 Revenue stamps attached and cancelled.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, and the rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said part 1st of the first part.

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, together with the appurtenances, unto the said part 2nd of the second part, to his heirs and assigns forever. And the said part 1st of the first part, and his heirs, the said premises in the quiet and peaceable possession of the said part 2nd of the second part, his heirs and assigns, against the said part 1st of the first part and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant any, and by these presents forever defend.

IN WITNESS WHEREOF, The said part 1st of the first part have hereunto set their hands and seal on the day and year above written.

Signed, Sealed and Delivered in the Presence of

W. A. L. Peterson

Jos. H. Seeley

(SEAL)

Celia Seeley

(SEAL)

(SEAL)

(SEAL)

STATE OF UTAH
County of Sanpete

ss. On this 18th day of October, in the year 19 27,

before me,
personally appeared

Joseph H. Seeley and Celia Seeley, his wife

a Notary Public in and for said County and State,

known to me to be the person whose name is subscribed to the within 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 in this certificate first above written.

SCANNED

SEP 7 1927

EXHIBIT F

Warranty Deed

THIS INDENTURE, Made this 10th day of April
in the year of our Lord One Thousand Nine Hundred and forty-seven, between
Edgar Barney and Lillie Barney, his wife,
of St. Anthony County of Fremont State of Idaho,
the parties of the first part, and
Earl Barney
of St. Anthony County of Fremont State of Idaho,
the party of the second part:

WITNESSETH: That the said parties of the first part for and in consideration of the sum of
One thousand five hundred and no/100 - - - - - dollars
lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt
whereof is hereby acknowledged

do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said party of
of the second part, and to his heirs and assigns forever. All to be explained in
piece or parcel of land situate, lying and being in the County of Fremont State of Idaho, bounded
and more particularly described as follows, to-wit:

Lots 3, and 4, of Section 7, Township
8 North, Range 42, East Boise Meridian
Together with 100 inches of Silkie De-
creed water.



Together with all and singular, the tenements, hereditaments and appurtenances therunto belonging or in anywise appertaining, and
the rents, issues and profits thereof.
TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges therunto incident
unto the said party of the second part, and to his heirs and assigns forever. And the said parties of the
first part, and their heirs the said premises in the quiet and peaceable possession of the said party of the second part
his heirs and assigns against the said party of the first part, and their heirs and assigns all and every
person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.
IN WITNESS WHEREOF: The said parties of the first part have hereunto set their hands and seals
the day and year first above written.
Signed, Sealed and Delivered in the Presence of

Edgar Barney
Lillie Barney

Exhibit 5A

BOOK 54 PAGE 118

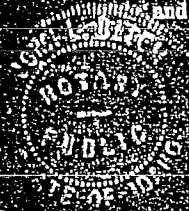
STATE OF IDAHO

County of Bonneville, ss.

On this 1st day of March, in the year 1946
before me, John L. Bloom, a notary public in and for
State of Idaho, personally appeared SYLVEN BARNEY and FLORENCE BARNEY, his wife,

known to me to be the person s. whose name s subscribed to the within 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 in this certificate first above written.



John L. Bloom
Notary Public
In and for State of Idaho
Residing at Idaho Falls, Idaho
My commission expires Nov. 9, 1947.

No. 269200

WARRANTY DEED

Syven Barney

TO

Earl Barney

Dated March 10 1946

STATE OF IDAHO
County of Shoshone ss.

I hereby certify that this instrument
was filed for record at the request of

Earl Barney

at 10 minutes past 11

o'clock A.M. this 5

day of June 1946

in my office and duly recorded in

Book 54 of Deeds at

page 117

J. H. Foley

Deputy Recorder

Wm. W. Bird

Deputy

Fees \$ 1.50

Amos S. Atkinson

EXHIBIT G

THIS INDENTURE, made this 6th day of June, 1956,
 between EARL BARNEY and EDDA BARNEY, his wife
 of Chester, County of Fremont, State of Idaho
 the parties of the first part and
GEORGE W. NEDROW and LELA NEDROW, his wife
 County of Fremont, State of Idaho, the parties of the second part,
 WITNESSETH, that the said parties of the first part, for and in consideration of the sum of
TEN AND NO/100 (\$10.00) Dollars
 lawful money of the United States of America, and other valuable considerations
 to them in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged,
 have granted, bargained, sold, and by these presents, do grant, bargain, sell and convey and confirm unto
 the said parties of the second part, and to their heirs and assigns, forever all the following described
 real estate, situated in Chester County of Fremont,
 State of Idaho, to-wit:

Lots 3 and 4 of Section 7, Township 8, North Range
 42, E.B.M., together with 100 miners inches of Fall
 river water decreed to Z. Sundberg and purchased by
 the parties of the first part herein from Edgar Barney,
 with a priority of June 1, 1890.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belong-
 ing or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues
 and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity,
 of the said parties of the first part.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together
 with the appurtenances unto the parties of the second part, and to their heirs and assigns forever.
 And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable
 possession of the said parties of the second part, their heirs and assigns, against the said parties
 of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully
 claiming or to claim the same shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands
 and seals the day and year first above written.

Executed and Delivered in the Presence of

Ray W. Light

Earl Barney

[SEAL]

Edna Barney

[SEAL]

[SEAL]

[SEAL]

STATE OF IDAHO,

County of Madison.

On this 6th day of June in the year 1956, before me
 Ray W. Rugh, a Notary Public in and for said State, personally appeared
 Earl Barney and Eula Barney,

known to me to be the persons whose names are subscribed to the within 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 in this certificate first above written.

Ray W. Rugh
 Notary Public for the State of Idaho,
 Residing at Rexburg, Idaho.

No. 284306

WARRANTY DEED

(FORM No. 100)

Earl Barney

et ux

TO

George W. Nedrow

et ux

Dated June 6, 1956

STATE OF IDAHO,

County of Fremont

I hereby certify that this instrument
 was filed for record at request of

Nedrow & Nedrow Co.

at 27 minutes past

o'clock P.M., this 27th day of

July, 1956, in my

office, and duly entered in Book 63

at page 399

Michael Stone

By, Michael Stone

Fees, \$1.50

Deputy

Mail to

SEP STEVENSON LAW PUB. CO., PORTLAND, ORE.

#29-2262

EXHIBIT H

WARRANTY DEED

This Indenture, Made this eighteenth day of December 1918 in the year of our Lord, one thousand nine hundred and eighty between George W. Nedrow and Lela Nedrow, husband and wife of Ashton County of Fremont State of Idaho the part 1st of the first part, and Gomer H. Williams and Mary B. Williams, husband and wife of Chester County of Fremont State of Idaho the part 1st of the second part.

WITNESSETH, That the said part 1st of the first part for and in consideration of the sum of Six Thousand Five Hundred Dollars \$6000/100 00 DOLLARS lawful money of the United States of America, to them in hand paid by the said part 1st of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell and convey and confirm unto the said part 1st of the second part, and to their heirs and assigns forever, all the following described real estate, situated in Fremont County, State of Idaho, to wit: Lots 3 and 4 of Section 7, Township 8 North, Range 42 East of the Boise Meridian, Fremont County, State of Idaho. Together with 20 miners inches of Fall River Water



TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well as in equity, of the said part 1st of the first part;

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together with the appurtenances, unto the part 1st of the second part, and to their heirs and assigns forever. And the said part 1st of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said part 1st of the second part, their heirs and assigns, against the said part 1st of the first part and their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND

IN WITNESS WHEREOF, the said part 1st of the first part have hereunto set their hand and seal this day and year first above written.

Signed, Sealed and Delivered in the

Presence of

George W. Nedrow (Seal)
Mary B. Williams (Seal)

Notary Public (Seal)

STATE OF IDAHO
County of Fremont

156-24504

On this 14th day of December, 1958, before me, the undersigned, Notary Public in and for said County, personally appeared George M. Nedrow and Edna Nedrow, his wife.

known to me to be the party on the whose names are subscribed to the within 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.

George M. Nedrow

289572

Warranty Deed

George M. Nedrow

Edna Nedrow

Dated 14 Dec 1958

STATE OF IDAHO
County of Fremont

I hereby certify that this instrument was filed for record at the request of

George M. Nedrow

at 10 minutes past 9

o'clock P.M. this 19

day of Dec 1958

in my office and duly recorded in

Book 66-2 of page 603

George M. Nedrow

By *George M. Nedrow* Deputy

Notary Public

My Comm. Expires 1-20-60

CHANDLER, IDAHO

EXHIBIT I

BOOK 72 PAGE 425
WARRANTY DEED OF GIFT

THIS INDENTURE, Made this 11th day of April 1963
by and between GOMER H. WILLIAMS and MARY B. WILLIAMS, his wife

of the County of Fremont, State of Idaho, the part 1st of the first
part, and ALMA LANE BLANCHARD, also known as A. LANE BLANCHARD, and
ZERALENE BLANCHARD, his wife

of the County of Fremont, State of Idaho, the part 1st of the second
part.

WITNESSETH, That the said part 1st of the first part, for and in consideration of love & affection
hereby gives & conveys
presents do hereby convey and confirm unto the said part 1st of the second part
and to their heirs and assigns forever, all the following described real estate, situate in the
County of Fremont, State of Idaho, to wit:

Lots Three (3) and Four (4) of Section Seven (7), Township Eight (8) North,
Range Forty-two (42), East of the Boise Meridian, Fremont County, Idaho.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto be-
longing or in anywise appertaining, and the reversion or reversions, remainder and remainders, rents,
issues and profits thereof, and all estate, right, title and interest in and to the said property as well in
law as in equity, of the said part 1st of the first part.

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, to-
gether with the appurtenances, unto the part 1st of the second part, and to their heirs and
assigns forever.

IN WITNESS WHEREOF, The said part 1st of the first part has hereunto set their
hand and seal the day and year first above written.

Signed, sealed and delivered in the
presence of

Gomer H. Williams (SEAL)
Mary B. Williams (SEAL)
(SEAL)
(SEAL)

STATE OF IDAHO

County of Fremont

On this 12th day of May in the year 19 63 before me

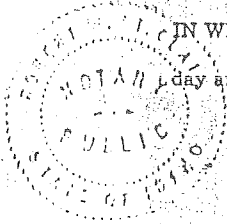
the undersigned _____, a Notary Public in and for the State of Idaho, personally

appeared ALMA LANE BLANCHARD, also known as A. LANE BLANCHARD, and ZERALENE

BLANCHARD, his wife,

known to me to be the person ss whose name ss are subscribed to the within instrument, and acknowledged to me that he executed the same.

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



[Signature]
Notary Public
Residing at Idaho Falls, Idaho
My Commission Expires 11/1/65

No. 299692

WARRANTY DEED

TO

Dated 12, 19 63

STATE OF IDAHO
County of Fremont ss.

I hereby certify that this instrument was filed for record at the request of

Fremont Title Co

at 5:12 minutes past 10
o'clock a M., this 12
day of May, 19 63
in my office and duly recorded in
Book 72 of Deeds, at
page 425

La Monte Bauer

Ex-Officio Recorder

By [Signature]

Deputy

Fees \$ 1.50

EXHIBIT J



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

March 23, 2007

Ray Rigby
25 North Second East
Rexburg, ID 83440

Re: Donna T. Fuchs – Water Right 21-13043 and 21-114C

Dear Ray,

After our meeting with Bill Fuchs on March 22, 2007, I have once again reviewed the documents I have in my possession. I would like to portray my thoughts on the subject. I would first like to talk about water right 21-114 and 21-102. Water right 21-114 was decreed to Z. Sundberg for 275 inches (5.5 CFS) to the following lands:

"Lots 1, 2, 3, and 4 in Sec. 7, T. 8 N. R.,
42 B.M. containing 149.85"

Water right 21-102 was decreed to J. R. Silkey for 400 inches (8 CFS) to the following lands:

"S ½ of SE ¼, NE ¼ OF SE ¼, AND Lot 2
of Sec. 12, T. 8 N., R. 41 E. B. M. containing
152.35 acres"

Attachment 1 is an excerpt from the Rexburg Decree describing lands decreed to Z. Sundberg and Attachment 2 is an excerpt for the Rexburg Decree describing lands decreed to J. R. Silkey. Attachment 3 is a map of the land decreed to 21-114 and Attachment 4 is a map of land decreed to 21-102.

21-114 (Z. Sundberg)

On October 7, 1903 Samuel Cantwell sold Lots 1, 2, 3, and 4 of Sec. 7 T. 8 N. R. 42 E. and lot 1 Sec 12 T. 8 N. R. 41 E. to Zach Sundberg. Sundberg was decreed 5.5 CFS of water for all that land except that in section 12. Sundberg then on September 9, 1910 sold that same land to Joseph Seeley. Since the water was not withheld in the deed it was transferred to Seeley when he purchased the land. Seeley sold that land to Edgar Barney on October 18, 1927 except about 4 acres on lot 3 section 12 which was sold to J.R. Silkey. Again that water was not withheld. So at this point Edgar Barney owns about 11

acres of lot 3 section 12 and all of lots 1, 2, 3, and 4 of section 7 and water in the amount of 5.5 CFS decreed to Z. Sundberg in the Rexburg Decree.

On April 10, 1947 Edgar Barney sold Lots 3 and 4 of section 7 with 2 CFS of Sundberg water to Earl Barney. Now Earl has 2 CFS and Edgar has 3.5 CFS of the Sundberg right (21-114) for total of 5.5 CFS as decreed.

On April 14, 1950 transfer # 204 was approved by Edgar Barney to move 4 CFS of Sundberg water to the Farmers Own Canal because there was too much upkeep on the ditch he was using. Earl Barney must have used the same ditch at the time and so also had to maintain it. I believe that Edgar and Earl agreed to the transfer together but the transfer only listed Edgar Barney maybe because the Department of Reclamation still had the full right in the name of Edgar so it was just easier for Edgar to file the transfer rather than going through the change of ownership process.

On April 20, 1956 Lillie Barney Edgar's widow sold lots 1 and 2 of section 7 to W.S. Tanner along with her share of the Sundberg water taking into account Earl was sold 2 CFS when he bought lots 3 and 4. At this point W.S. Tanner has 3.5 CFS on lots 1 and 2 and Earl Barney has 2 CFS on Lots 3 and 4. Earl Barney then sells his portion of the Sundberg water right (2 CFS) as well as lots 3 and 4 to George Nedrow. W.S. Tanner still has his 3.5 and now George Nedrow has the rest of the Sundberg water right, 2 CFS.

On August 20, 1958 George Nedrow was approved transfer # 911 to move 1.2 CFS off of lots 3 and 4 of T. 8 N. R. 42 E. Section 7 to the following:

"parts of SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 4, NW $\frac{1}{4}$ SE $\frac{1}{4}$, West 13 rods of Lot 2, and S $\frac{1}{2}$ SW $\frac{1}{4}$ section 21; N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 28, all in Township 9 North, Range 42 East, B.M. and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 6, Township 8 North, Range 42 East, B.M."

In Mr. Nedrow's application he states he is leaving 40 inches (.8 CFS) in the Silkey Ditch. After this transfer W.S. Tanner still has 3.5 CFS of the Sundberg right (21-114), and Nedrow has 1.2 CFS in Henry's Fork used on the above stated lands and .8 CFS still in Silkey Ditch and still on lots 3 and 4. This is a total of 5.5 CFS as decreed.

On September 22, 1959 George Nedrow was approved transfer # 933 and moved another 20 inches (.4 CFS) to the same lands as did transfer # 911. Mr. Nedrow states in his application that he is leaving 20 inches (.4 CFS) on lots 3 and 4 coming from the Silkey Ditch and now 1.6 CFS coming directly from the Henry's Fork.

After transfer # 933 W.S. Tanner has 3.5 CFS on lots 1 and 2 of Township 8 North Range 42 East Section 7, and George Nedrow has 1.6 CFS coming from Henry's Fork and put upon the lands stated in transfer # 911. Mr. Nedrow also has .4 CFS left on Lots 3 and 4 Township 8 North Range 42 East Section 7 and coming from the Silkey Ditch.

The Water District 01 accounting book for 1976 (Attachment 5) shows that in the Farmers Own Canal there is 2.8 CFS of water right 21-114(Sundberg) delivered to W.S.Tanner. In Transfers # 911 and # 933 Mr. Nedrow states in his application that the water being transferred is coming from the Silkey Ditch, and not the Farmers Own Canal. From the information in these transfers and applications it appears that transfer # 204 occurred but that Mr. Nedrow wrote the wrong source on his application when filing transfer # 911. Mr. Nedrow owned water in the Farmers Own Canal and the Silkey Ditch. It is my opinion that transfer # 911 transferred 1.2 CFS from the Farmers Own Canal and transfer # 933 transferred .4 CFS from the Silkey Ditch. That would leave the 2.8 in the Farmers Own Canal as shown in the accounting book.

Lots 3 and 4 of section 7 now have .4 CFS of the water originally decreed to Z. Sundberg (21-114). That land is now owned by RLF LLC.

Recommendations for 21-114 (Z. Sundberg)

21-114C	3.5 CFS	Donna Fuchs
21-10557	1.2 CFS	George Nedrow
21-13013	0.4 CFS	RLF LLC
Un-Reccomended	0.4 CFS	George Nedrow
Total	5.5 CFS	

21-102 (J. R. Silkey)

Water right 21-102 was decreed to J. R. Silkey for 400 inches (8 CFS) to the following lands:

"S $\frac{1}{2}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ OF SE $\frac{1}{4}$, AND Lot 2
of Sec. 12, T. 8 N., R. 41 E. B. M. containing
152.35 acres" Attachment 2.

On September 22, 1961 George Nedrow was approved transfer # 967. This transfer moved 30 inches (.6 CFS) of water off of the SE $\frac{1}{4}$ and moving it out of the Silkey Ditch to a diversion directly on the Henry's Fork to irrigate the following lands:

"S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, of Section 20;
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 19; SW $\frac{1}{4}$ NW $\frac{1}{4}$,
N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$, Lot 4, in Section 21;
N $\frac{1}{2}$ NE $\frac{1}{4}$, of Section 28; W $\frac{1}{2}$ N $\frac{1}{2}$ Section 29;
All in Township 9 North, Range 42 E. B. M."

After transfer # 967 there is 7.4 CFS left on the SE $\frac{1}{4}$ of Section 12, and .6 CFS is owned by George Nedrow and transferred to the above listed land.

On November 29, 1961 John McCulloch was approved transfer # 973. This transfer moved 1 CFS off of the SE ¼ of Section 12 and moved it to the following lands:

“W ½ E ½ NE ¼, W ½ NE ¼, W1/2 of Lot 1;
NE ¼ NW ¼, of Section 32 Township 9
North, Range 42 E. B. M.”

After Transfer # 973 George Nedrow has .6 CFS and John McCulloch has 1 CFS. That leaves 6.4 CFS on the decreed land (SE ¼ of Section 12, Township 8 North Range 41 East).

Larry Simmons now owns the land decreed to J. R. Silkey. Simmons bought the land from John Seely who sold him an acreage-based portion of the J.R. Silkey right (21-102). His portion based on the amount of acres he bought is 5.8 CFS.

Recommendations for 21-102 (J. R. Silkey)

21-102D	1.0 CFS	John McCulloch
21-10557	0.6 CFS	George Nedrow
21-12865	5.8 CFS	Larry Simmons
21-12864	0.6 CFS	John Seely

Total 8.0 CFS

Conclusions for 21-114 and 21-102

Based on the information in my possession, it is my opinion that the rights as they are recommended are correct (see the above recommendation breakdown), but if Mrs. Fuchs can get a written statement from George Nedrow stating he is not entitled to the “un-recommended” portion of 21-114 (Sundberg) then I will recommend that additional 0.4 CFS for 21-114C. This would bring his total up to 3.9 CFS as claimed under 21-114C.

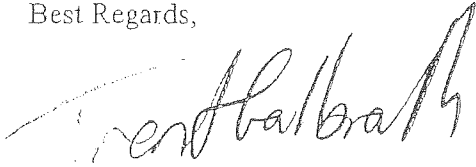
McBee Water

I would now like to address the late claim filed by Donna Fuchs (21-13043) for water referred to as “McBee Water”. In the Silkey Ditch accounting book, it is stated that there is 28.2 CFS and that the Fuchs Ranch has a total of 5.6 of that water. We have no other information to support there is any other personal water delivered to this ranch.

If one was to research who owned the land described in the water location notice filed by S. R. McBee and David Feighner, it is my opinion that you would find that the people that owned the land at the time of the Rexburg Decree were included in the Rexburg Decree and therefore the water would be decreed under their name not McBee. However I have no evidence of this. The only thing I do know is we have no record of this right and if it was not superceded by the Rexburg Decree it seems to be forfeited do to non-use and therefore will be disallowed.

Though these are my conclusions I would be glad to look at any addition documentation you might have. My decision is not set in stone however this will be my recommendation barring any evidence that may change my mind. I look forward to working with you to resolve this issue.

Best Regards,

A handwritten signature in black ink, appearing to read "Trent Galbraith". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Trent Galbraith
Water Agent
Idaho Department of Water Resources
900 N. Skyline Rd. Ste A,
Idaho Falls ID 83402
(208)525-7161

Enclosed: Attachments 1-5

Attachment
I

Stumbaugh, John 4 N., P., 40 E., B. M., containing 160 acres
The SE $\frac{1}{4}$, the NE $\frac{1}{4}$, and the E $\frac{1}{2}$ of SW $\frac{1}{4}$ of
Sec. 13, and E $\frac{1}{2}$ of NW $\frac{1}{4}$, and SE $\frac{1}{4}$ of
NW $\frac{1}{4}$ of Sec. 24, T. 16, N. R., 42 E.,
B. M., containing 520 acres.

Sullivan, Thomas F. W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 4, T. 2 N., R., 38 E.,
B. M., and NE $\frac{1}{4}$ of Sec. 4, T. 2 N., R.,
38 E., B. M., containing 240 acres.

Sullivan, Thomas F.
and Mary A. S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 7, and NW $\frac{1}{4}$, and the W $\frac{1}{2}$
of NE $\frac{1}{4}$ of Sec. 18, T. 14, N. R., 44
E. B. M., containing 320 acres, and the
E $\frac{1}{2}$ of Sec. 13, T. 14, N. R., 43 E., B.
M., containing 320 acres.

Summers, S. J. Part of NW $\frac{1}{4}$ of Sec. 30, T. 4 N., R., 40
E. B. M., containing 148.39 acres.
Also, 6-1/3 acres in SW $\frac{1}{4}$ of Sec. 19, T.
4 N., R., 40 E. B. M.,

Summers, William NE $\frac{1}{4}$ of Sec. 25, T. 4 N., R., 38 E., B. M.,
containing 160 acres.

Sundberg, Z. Lots 1, 2, 3 and 4 in Sec. 7, T. 8 N. R., 42
B. M., containing 149.85 acres.

The Sunny Dell Irrigation Canal Company.

(1) Beckstrom, Niels N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 7, T. 4 N., R., 40 E., B.
M., containing 80 acres.

(2) Carleon, Frans E. S $\frac{1}{2}$ of SE $\frac{1}{4}$, and SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 6, T.
4 N. R., 40 E. B. M., containing 120 acres.

(3) Christensen,
Niels W $\frac{1}{2}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 8, T. 4 N., R. 40
E., B. M., containing 20 acres.

(4) Christensen
Niels C. NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 8, and S $\frac{1}{2}$ of NE $\frac{1}{4}$ of
NW $\frac{1}{4}$ of Sec. 8, T. 4 N. R., 40 E., B. M.,
containing 60 acres.

Sheser, William

SE $\frac{1}{4}$ of NE $\frac{1}{4}$, and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 23,

and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of

Sec. 24, T. 6 N., R., 44 E.B.M.,

Lot 3, and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 4, T. 3 N.,

R. 45 E., B. M.

Shirts, William

ET of SW $\frac{1}{4}$ and Lots 1 and 2 of Sec. 31, t

2 N. R., 44 E., B. M., Also, Lot 4 of

Sec. 5, and Lots 1, 2 and 3 of Sec.

6, T. 1 N. R., 44 E., B. M.,

containing 156 acres.

Shurtliff, William

Siddoway, James,
and James
Briggs

(See Briggs, James. and James Siddoway.)

Siddoway-Briggs
& Co.,

(a partnership composed of James Siddoway
and James Briggs. (See Briggs, James. and
James Siddoway.)

Siddoway
Irrigation &
Manufacturing
Company.

Lands of stockholders of said company, the

description of said lands and the

names of said stockholders not being

given in the pleadings of said company,

Silkey, J. R.

S $\frac{1}{2}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, and Lot 2 of Sec.

12, T. 8 N., R., 41 E. B. M.,

containing 152.25 acres.

Simmons, A. R.

NE $\frac{1}{4}$ of Sec. 26, T. 13, N. R., 43 E. B.

M., containing 160 acres.

Simmons,
Charles C.

SE $\frac{1}{4}$ of Sec. 26, T. 13, N., R. 43 E. B.

M., containing 160 acres.

Simmons, Inez
and A. R.

N $\frac{1}{2}$ of NE $\frac{1}{4}$, and N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 35, T

13 N., R., 43 E., B. M., containing

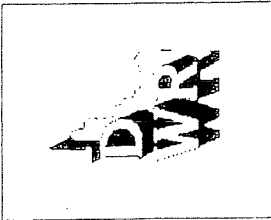
160 acres.

Simmons, John

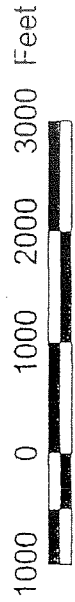
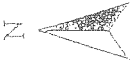
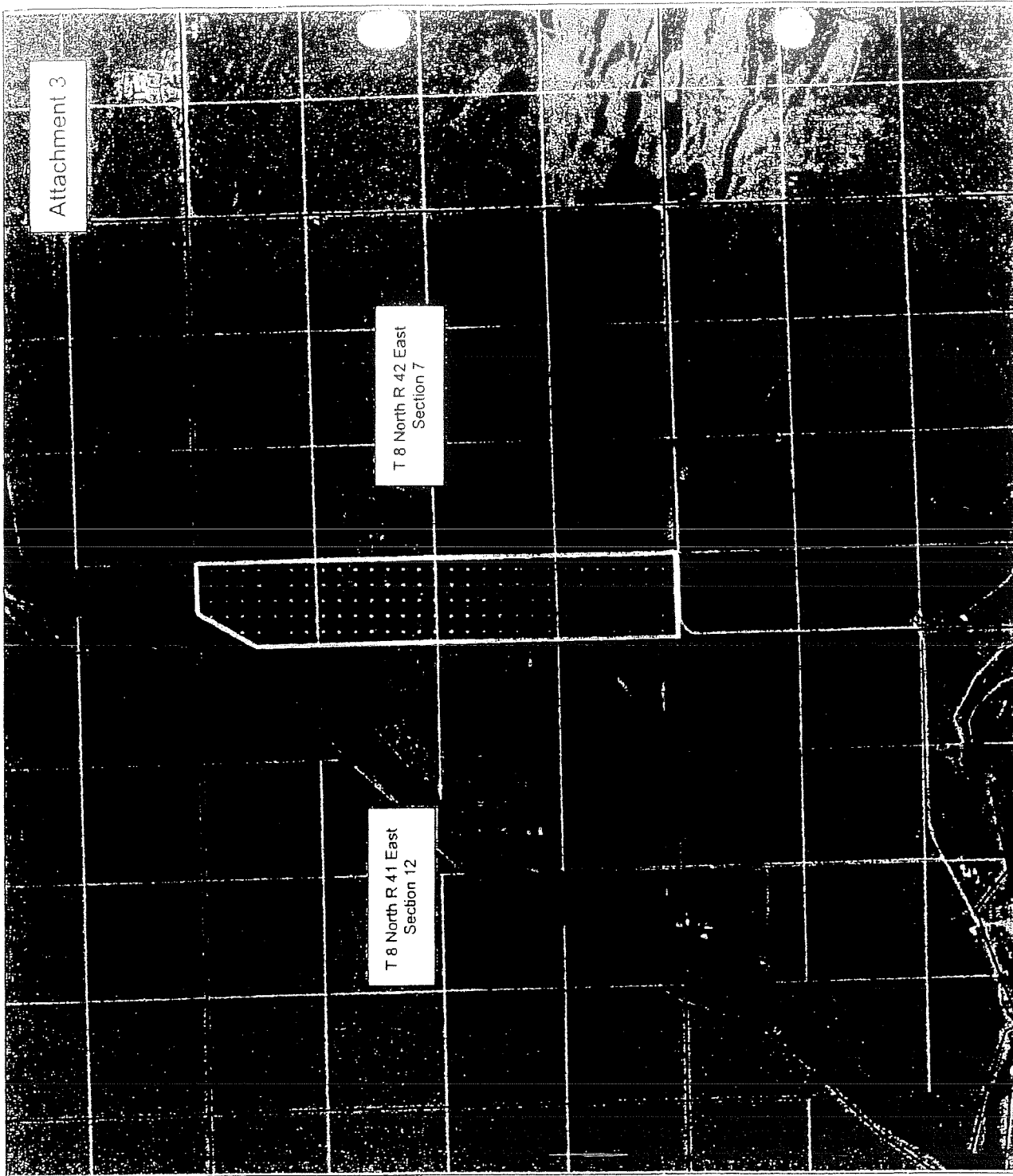
S $\frac{1}{2}$ of SE $\frac{1}{4}$, and S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 25, T.

6 N., R., 45 E., B. M., containing

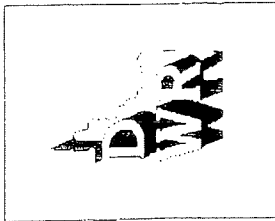
160 acres.



Land Decreed to Z.
Sundberg in the
Rexburg Decree

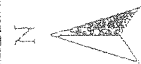
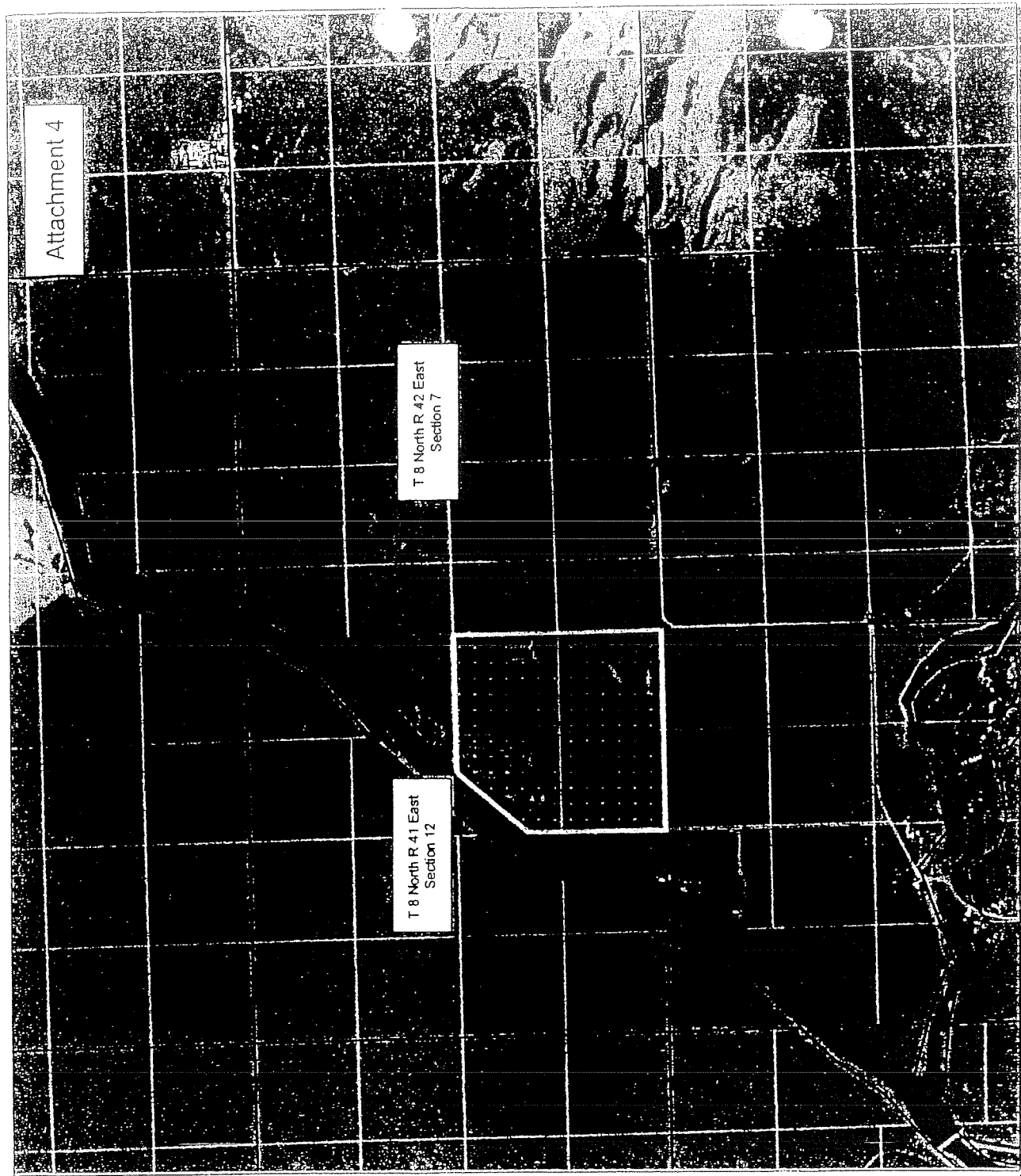


Naip Photography 2004
Created By Trent Galbraith
3-23-2007



Land Decreed to
J. R. Silkey in the
Rexburg Decree

Naip Photography 2004
Created By Trent Galbraith
3-23-2007



1000 0 1000 2000 3000 Feet

PRINCIPAL WATER RIGHTS HENRYS FORK AND FALLS RIVER

(Listed in downstream order)

Party or Canal	Date	Decreed Amount in Sec.-ft.	Accumulated Total
<u>DIVERSIONS FROM FALLS RIVER</u>			
21-0022 Yellowstone (TR from Marysville)	Nov. 5, 1895	25.0	25.0
21-0140	May 1, 1906	100	125.00
Harrigfeld	21-0057 Aug. 4, 1900	60	60
	21-0058 May 1, 1906	80	140
Marysville (Orig. decree less TR to Yellowstone)	Nov. 5, 1895	252	*305 (260)
(Less 8.0 cfs to be pumped from Falls Ri. by Potter & Martindale re TR's)		305	21-0473 & 21-0073A
Farmers Own		1675	1381
21-0044/1233 W.S. Tanner et al (CPD 240, TR 911)	June 1, 1890	2.8	* 2.8(47.8)
(Sundberg)			
21-0044 Lynn Loosli (L. J. Maurer)	June 1, 1892	0.5	
(Black Springs)			
21-0038 Lynn Loosli (A. P. Crabb)	June 1, 1892	1.40	4.7
(Black Springs)			
21-0075 Lynn Loosli (L. J. Maurer)	June 1, 1894	3.00	
(Black Springs)			
21-0115/T244 W.S. Tanner et al (Sundberg) (Black Springs CPD 204, 242)	June 1, 1894	0.3	* 8.0(53.0)
21-0048 Farmers Own	April 1, 1896	34.0	*42.0(87.0)
21-0049 Farmers Own	May 1, 1904	12.00	54.0
21-0050 Farmers Own	May 1, 1905	40.00	94.0
01-0338 Farmers Own	April 1, 1939	12.00	106.00
*Marysville has authorized temporary transfer of 45 sec-ft. to Farmers Own until further notice.			
21-0019/1794 Almy (Earl Potter)	Sept 24, 1900	3.00	3.00
<u>Enterprise Irrigation District</u>			
(Supp)	21-2000 June 12, 1903	140.2	140.2
	01-0267 Jan. 22, 1916	30.0	170.2
	01-0335 April 1, 1939	29.0	199.2
21-0022 Bell Pump	Sept 26, 1889	5.2	5.2
	01-0347 April 1, 1939	6	11.2
21-0046 Fall River (360 cfs after July 1)	June 1, 1889	460.0	460.0
21-0047	Apr. 1, 1939	32.0	492.0

Diversion from Falls River continued next page -

EXHIBIT K



RONALD CARLSON
WATERMASTER

(208) 525-7172
Fax (208) 525-7177

State of Idaho
Water District 1
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718

DIRECTOR
KARL BREHER

COMMITTEE OF NINE December 10, 2004

CHAIRMAN
Albert Lockwood
Edgemoor

VICE CHAIRMAN
Larry Kerbs
St. Anthony

Leonard Beck
Puney

Charles Conner
Hansen

Claude Gower
Idaho Falls

Paul Berggren
Blackfoot

Eric Robinson
Kero Falls

Dan Hale
Blackfoot

Leland Clark
Ashton

Ray Rigby
Law Offices of Rigby, Thatcher, Andrus, Rigby, Moeller, Chartered
P.O. Box 250
25 North Second East
Rexburg, ID 83440

RE: Water Right #21-114
Robert and Donna Fuchs and William Fuchs

Dear Ray,

I've reviewed the documentation you sent concerning Water Right #21-114 including the claim by the Fuchs that the computations made by the department and others leaves out 0.4 CFS of water that belongs to them. There is no doubt the department (IDWR) did not make clear how the water right had been split over time as it processed transfers #204, #911, #933, and #4014. Several analyses have been made concerning what might have happened. The IDWR, water district, and adjudication claims all differ as to how the original 5.5 cfs originally decreed to Z. Sundberg has been split.

Here is what's known and is of record:

- 5.5 cfs of 6/1/1890 priority from Fall River was decreed to Z. Sundberg in the Rexburg Decree, dated 12/16/1910, for Lots 1, 2, 3, and 4 in Sec. 7, T. 8 N., R. 42 E.B.M. containing 149.85 acres.
- Change of Point of Diversion #204, dated April 14, 1950, certified Edgar Barney as the owner of 4.0 cfs of the original Sundberg right and changed the point of diversion of 4.0 cfs from the Silkey Canal to the Farmers Own Canal. The Change of Point of Diversion does not describe the land owned by Edgar Barney, however, states "said change in point of diversion shall not modify in effect said decreed water right, or place of use." The amount of the original decreed right conveyed to these lands remaining in the Silkey Canal was 1.5 cfs after the change was implemented.

In 1978, when Bob Swank was compiling the first version of the computer water-right accounting program for Water District #1 he apparently changed the cfs amounts previously delivered for the Sundberg right. His uncertainty concerning the right probably triggered his discussion with Dave Tutthill and Dave's subsequent memorandum to Lyric Swank. The 5.5 cfs Sundberg right was portioned and assigned to only the Farmers Own Canal (3.9 cfs) and George Nedrow Pump (1.6 cfs) in the water right accounting from 1978 through 1994. There wasn't any portion assigned to the Silkey Canal during this period.

As requested during the 1995 irrigation season by Dee Blanchard and the Silkey Irrigation District Water Users Association, I researched the history and transfer progression of the 5.5 cfs Sundberg water right #21-114. According to the current water right adjudication, and water district records, I recommended to Cheryl Howe to change the portions of the Sundberg right currently listed in the water right accounting from 3.9 cfs (Farmers Own) and 1.6 cfs (George Nedrow) to the following portions: 4.0 cfs to Farmers Own Canal; 1.2 cfs to the George Nedrow pump; and 0.3 cfs to the Silkey Canal.

I based my recommended changes to the 1995 accounting on the following assumptions:

- The 1.2 cfs described in Transfers #911 and #933 were the same 1.2 cfs, as theorized in Dave Tutthill's memorandum. Also, George Nedrow had filed an adjudication claim (A21-10557) for only 1.2 cfs of right #21-114. However, it should be noted that Water District #1 assigned George Nedrow 2.4 cfs of the right from 1960 through 1977 as shown in its Decreed Water Rights books, and then assigned him 1.6 cfs of the right from 1978 through 1994 in the computer accounting.
- Prior to 1978 there had always been at least a portion of the Sundberg right delivered to the Silkey Canal. I was unable to determine why Water District #1 ceased delivering the 0.3 cfs portion to the Silkey Canal beginning in 1978, so the 0.3 cfs was reassigned to the Silkey Canal in the 1995 water right accounting. It should also be noted that Arlo Dee Blanchard has filed an adjudication claim (A21-00114) for 0.4 cfs of the original Sundberg right to be delivered through the Silkey Canal.
- Finally, after assigning 1.2 cfs to George Nedrow and 0.3 cfs to the Silkey Canal, 4.0 cfs of the right was left remaining to be delivered to the Farmers Own Canal, the maximum amount ever delivered to that diversion. There are two adjudication claims filed for the Sundberg right diverted through the Farmers Own Canal. North Fremont Canal Systems has an adjudication claim (A21-00114D) for 2.8 cfs and Robert & Donna Fuchs have a claim (A21-00114C) for 3.9 cfs of the original Sundberg right to be delivered through the Farmers Own diversion.

To further complicate matters, the IDWR approved Transfer #4014, dated October 2, 1995, which combined the Yellowstone, Marysville, and Farmers Own Canals into one entity, the North Fremont Canal Systems, Inc. The portion of the Sundberg water right #21-114 described in the approved transfer as being owned by North Fremont Canal Systems is 2.8 cfs. The IDWR computer database has been updated since the transfer and shows the original 5.5 cfs Sundberg right portioned as follows: 1.2 cfs to George Nedrow (21-114B); 1.5 cfs to Z. Sundberg (21-114C); and 2.8 cfs to North Fremont Canal Systems (21-114D).

- Transfer #911, dated August 10, 1958, certified George W. Nedrow as owner of 1.2 cfs of Fall River waters, bearing the 6/1/1890 priority date, originally decreed to Z. Sundberg for Lots 3 and 4 of Sec. 7, T. 8 N., R. 42 E.B.M. The 1.2 cfs on the lands hereby described have been abandoned and the water moved to parts of SWSW, N2SW, SWSE, Lot 4, NWSE, West 13 rods of Lot 2, and S2SW Section 21; N2NE Section 28, all in T. 9 N.; R. 42 E.B.M. and SESE Section 6, T. 8 N., R. 42 E.B.M. according to the transfer. The point of diversion for the 1.2 cfs was changed from the Silkey Ditch to pumping from the Henry's Fork.

- Transfer #913, dated September 22, 1959, certified George W. Nedrow as owner of 1.2 cfs of Fall River waters, bearing the 6/1/1890 priority date, originally decreed to Z. Sundberg for Lots 3 and 4 of Sec. 7, T. 8 N., R. 42 E.B.M. The 1.2 cfs on the lands hereby described have been abandoned and the water moved to parts of SWNW, N3SW, SWSE, Lot 4, NWSE, West 13 rods of Lot 2, and S2SW Section 21; N2NE Section 28, all in T. 9 N., R. 42 E.B.M. and SESE Section 6, T. 8 N., R. 42 E.B.M. according to the transfer. The point of diversion for the 1.2 cfs was changed from the Silkey Ditch to pumping from the Henry's Fork.

At this point, theories as to what took place differ. Dave Pithill in his memorandum to Lyle Swank, dated April 2, 1979, suggests the possibility that Transfer #204 was never effected and was unknown to Mr. Nedrow. Historical Water District #36 Decreed Water Rights books indicate that 1.5 cfs of the Sundberg right owned by E. Barney was delivered to the Silkey Canal up until 1958 when it was reduced to 0.3 cfs after moving 1.2 cfs to the George Nedrow pump as documented in Transfer #911. Sometime between the compilation of the January 1, 1956 and the April 1, 1961 Decreed Water Rights books, 4.0 cfs of the Sundberg right previously delivered to the Farmers Own Canal was reduced to 2.8 cfs, apparently as a result of Transfer #933. A total of 2.4 cfs of the original Sundberg right was then assigned to the George Nedrow pump.

The Decreed Water Rights book (corrected April 1, 1961) indicates 2.8 cfs of the Sundberg right was being delivered to E. Barney through the Farmers Own Canal, 0.3 cfs delivered to E. Barney through the Silkey Canal, and 2.4 cfs delivered to George Nedrow on the Henry's Fork. This was supported by the attached letter from H.C. Eagle, Watermaster, dated February 24, 1960. Subsequent correspondence from L.G. Anderson (Fremont-Madison Irrigation District), dated February 23, 1961, indicates Mary Blanchard was the current owner of the 0.3 cfs previously owned by E. Barney delivered to the Silkey Canal.

Water District #1 Decreed Water Rights book (August 1976) indicates the original 5.5 cfs of the Sundberg right was assigned as follows: 2.8 cfs to W. S. Tanner et al through the Farmers Own Canal; 0.3 cfs to W. S. Tanner through the Silkey Canal; and 2.4 cfs to the George W. Nedrow pump on the Henry's Fork.

To be honest, I don't know for sure how the original 5.5 cfs Sundberg right should be portioned, and I don't think anyone in IDWR knows for sure at this point in time, either. I can't assure the Fuchs with any certainty that the water rights they have claimed in the adjudication will be decreed to them. The IDWR examiner and the adjudication courts will determine that. However, I will make sure copies of this correspondence and the correspondence you sent to me will appear in the Fuchs' adjudication claim file to insure these problems get addressed during the IDWR adjudication review.

It's expected IDWR will be examining these claims over this next year. Obviously, the adjudication examiner will have to determine the appropriate owners and the portions they own with the understanding that the combined amounts cannot add up to more than the original 5.5 cfs. The Fuchs will be given an opportunity to protest any IDWR recommendations made to their claims and any other entity's claims to be listed in the Basin 21 Director's Report before they are decreed by the courts. Until that time, I think it's appropriate for Water District #1 to continue portioning the original 5.5 cfs Sundberg right to the Silkey Canal (0.3 cfs), Farmers Own Canal (4.0 cfs), and George Nedrow Pump (1.2 cfs) as it has for the last ten years.

Over the next year or two, the IDWR adjudication review will have to determine:

- Is George Nedrow entitled to more (or less) than the 1.2 cfs of the Sundberg right (#21-114) he claimed?
- How much of the original right (if any) still remains in the Silkey Canal?
- How much of the original right should be assigned to the Farmers Own diversion; and should all, or a portion of it, be owned by either North Fremont Canal Systems or the Fuchs?

It doesn't appear to me there is anything more the Fuchs, IDWR, or the water district can do at this point in time to further insure the Fuchs' claim. The IDWR and water courts will sort out the conflicting claims and information concerning the delivery of right #21-114 over the next couple years. The Fuchs will be able to participate in the process and will be contacted if the IDWR adjudication staff has questions concerning their claim or when the IDWR has finished preparing the preliminary Director's Report for Basin 21.

Sincerely,

Tony Olenichak

Tony Olenichak
Deputy Watermaster

Cc: Ron Carlson, Watermaster
Lyle Swank, Assistant Watermaster
Adjudication Claim File A21-00114C
Bill Fuchs; 3857 E. 500 N., Rigby, ID 83442

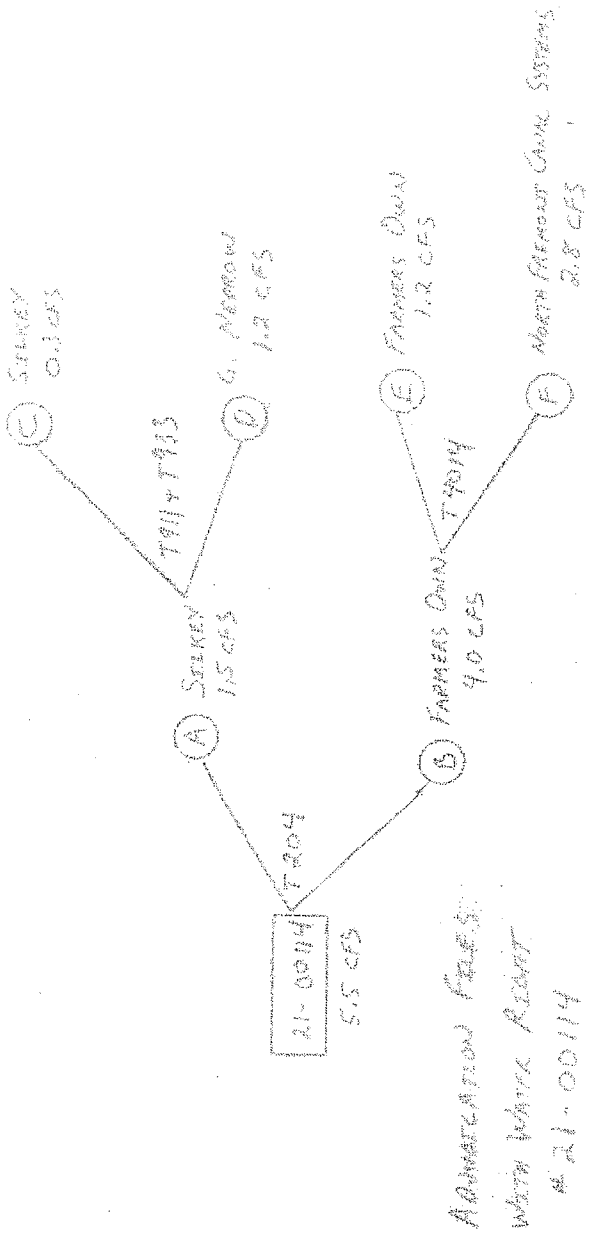
Barney to Tanner
20 April 1956 -

Barney to Tanner
175" 3.5 cfs.

6 June 1956

Barney to Nedrow
100" 2.0 cfs.

7/11/95



ANALYSIS OF SPLITS TO WATER RIGHT # 21-00114.

TRANSFERS #911 & #933 APPEAR TO BE FOR SAME 1.2 CFS.

GEORGE MEADOW CLAIMED 1.2 CFS IN SRGA (A41-10557)

ARLO DEE BLANCHARD CLAIMED 0.3 CFS THRU SELKEY IN SRGA (A21-00114)

NORTH FREMONT CANAL SYSTEM CLAIMED 2.8 CFS IN SRGA (A21-00114)

ROBERT FUCHS CLAIMED 3.9 CFS THRU FARMERS OWN IN SRGA (A21-00114)

EDWAR COOKING OF WATER RIGHT SPLITS IS DIFFERENT.

TRANSFER #4014 ONLY INCLUDED 2.8 CFS PROBABLY BECAUSE IT WAS ASSUMED THAT G. MEADOW OWNED 2.4 CFS.

ENCLOSURE
NOT A COPY

T. OLSEN
WATER RIGHTS



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 29, 2005

Richard D Divine
PO Box 2601
Crested Butte CO 81224

Bill Fuchs
3857 E 500 N
Rigby ID 83442

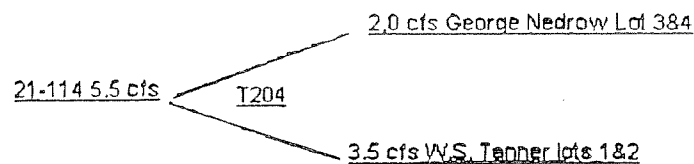
George Nedrow
1361 N 3125 E
Ashton ID 83420

Dear Sirs:

The purpose of this letter is to notify you the Preliminary Director's Report you previously received may be changed. The notices of error and new claims received subsequent to the mailing of the Preliminary Director's Report caused us to re-examine the recommendations involving water right 21-114. Your claim to a portion of this water right was one of those we re-examined. As you may be aware, there has been lengthy discussion about this right. I would like to review our findings with you at this time so that you have the opportunity to search for additional documentation to support your claim.

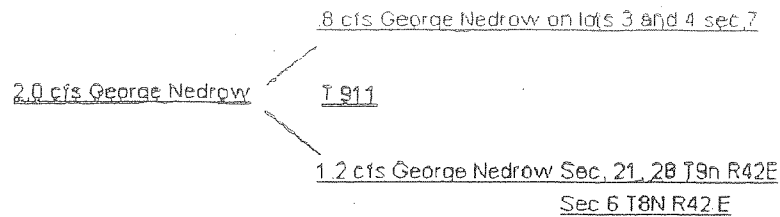
Transfer 204 dated April 14, 1950 changed the point of diversion for a portion of 21-114. The transfer suggests that 4.0 cfs was moved into the Farmers Own Canal. However, this amount is not supported by subsequent warranty deeds from the sale of the decreed place of use. On April 20, 1956 Lillie Barney sold property including lots 1 and 2 of Section 7, Township 8 North Range 42 East. This sale included 100 shares of carrying right in the Farmers Own Canal and 3.5 cfs of 6/1/1890 referring to a portion of water right 21-114 and 1.2 cfs of 6/1/1894 referring to water right 21-115. On June 6, 1956 Earl Barney sold property to George Nedrow including lot 3 and 4 of Section 7, Township 8 North Range 42 East along with 2 cfs of 6/1/1890 water right.

These deeds suggest a distribution of water right 21-114 between parties is not consistent with Transfer 204. The deeds state 3.5 cfs was changed to Farmers Own Canal and 2.0 cfs remained in the Silkey Ditch.

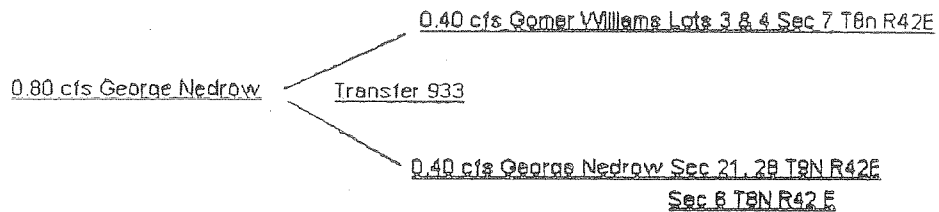


Transfer 911 (8/10/1958) filed by George Nedrow moved 1.2 cfs to a pump on the Fall River and changed the place of use.

November 29, 2005



In December 1958 George Nedrow sold Lot 3 and Lot 4 T8N R42E to Gomer Williams with "20 inches of Fall River Water" that is interpreted as 0.40 cfs of right 21-114. Then in September of 1959 George Nedrow filed transfer 933. The purpose of the transfer was to move water just like transfer 911. The confusion is the quantity on T933. Deeds confirm that George Nedrow only owned 2.0 cfs and then he conveyed 0.40 cfs before filing transfer 933. Based on the available deeds, George Nedrow was entitled to transfer 0.4 cfs under T933 rather than the 1.2 cfs reflected in the Department's records.



In summary, because T933 was incorrectly recorded on the Department's records administration of 21-114 has been in error since 1959. According to warranty deeds and the transfer applications, water right 21-114 was actually split as follows:

3.5 cfs was conveyed to W.S. Tanner and diverted through the Farmers Own Canal.

1.6 cfs was transferred to a pump on Falls River by George Nedrow under transfer 911 and 933.

⁴⁰
~~0.04~~ cfs was conveyed to Gomer Williams and diverted through the Silkey Canal.

Based on these findings, you will find an updated version of the preliminary recommendation for your portion of 21-114. If you disagree with these findings please return the notice of error with the discrepancies notated. It would also be helpful to provide evidence or an explanation to support your contention that an error has been made.

Sincerely,



J. Ryan Mikesell
Sr. Water Resource Agent

