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JAN 31 2008

DEPARTMENT OF
WATER RESOURCES

Robert L. Harris, Esq. (ISB # 7018)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
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COPY

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

**AFFIDAVIT OF ATTORNEY
ROBERT L. HARRIS**

STATE OF IDAHO)
) ss.
County of Bonneville)

I, Robert L. Harris, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

And being so sworn I depose and say:

1. I am an attorney licensed to practice law in the state of Idaho. I am a member of the firm of

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C..
2. Attached hereto are true and correct copies of the following documents referenced in the

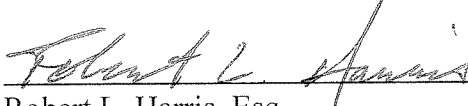
Memorandum in Support of Motion for Summary Judgment regarding the above subcases:
 - a. Exhibit A: Summary of RLF I, II, III, IV, LLC water rights.

- b. Exhibit B: Copy of portions of Rexburg Decree showing water decreed to Z. Sundberg and J.R. Silkey.
- c. Exhibit C: Map prepared by affiant depicting originally decreed place of use for 21-114 (the Sundberg water right) and 21-102 (the J.R. Silkey water right).
- d. Exhibit D: Deed from Zach and Annie Sundberg to Joseph Nephi Seeley conveying Lots 1 through 4 of Township 8N, Range 42E, Section 12 (and other property), which affiant obtained from the Idaho Department of Water Resources.
- e. Exhibit E: Deed from Joseph N. Selley and Celia Selley to Edgar Barney conveying Lots 1 through 4 of Township 8N, Range 42E, Section 12 (and other property), which affiant obtained from the Idaho Department of Water Resources.
- f. Exhibit F: Deed from Edgar and Lillie Barney to Earl Barney conveying Lots 3 and 4 of Township 8N, Range 42E, Section 12, which affiant obtained from the Idaho Department of Water Resources.
- g. Exhibit G: Deed from Earl and Eula Barney to George W. Nedrow and Lela Nedrow conveying Lots 3 and 4 of Township 8N, Range 42E, Section 12, which affiant obtained from the Idaho Department of Water Resources.
- h. Exhibit H: Deed from George W. Nedrow and Lela Nedrow to Gomer H. Williams and Mary B. Williams conveying Lots 3 and 4 of Township

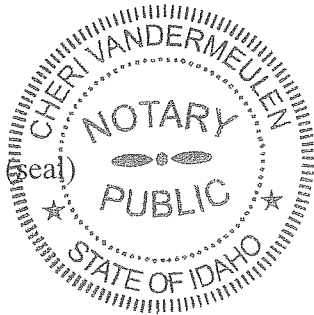
8N, Range 42E, Section 12, which affiant obtained from the Idaho Department of Water Resources.

- i. Exhibit I: Deed from Gomer H. Williams and Mary B. Williams to Alma Lane Blanchard and Zeralene Blanchard conveying Lots 3 and 4 of Township 8N, Range 42E, Section 12, which affiant obtained from the Idaho Department of Water Resources.
- j. Exhibit J: Letter from Trent Galbraith of IDWR to Ray Rigby, dated May 23, 2007, along with attachments to the letter; which affiant obtained from the Idaho Department of Water Resources.
- k. Exhibit K: Letter from Tony Olenichak of IDWR to Ray Rigby, dated December 10, 2004, which affiant obtained from the Idaho Department of Water Resources, and letter from J. Ryan Mikesell of IDWR to Richard D. Divine, Bill Fuchs, and George Nedrow, which affiant obtained from the Idaho Department of Water Resources.

DATED this 29th day of January, 2008.


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

SUBSCRIBED AND SWORN TO before me this 29th day of January, 2008.



Cheri Vandermeulen
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission Expires: July 7, 2009

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 29th day of January, 2008.

DOCUMENT SERVED:

AFFIDAVIT OF ATTORNEY ROBERT L. HARRIS

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

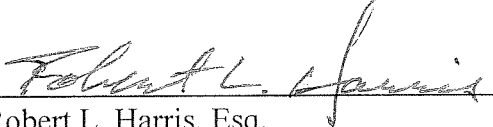
(☒) U.S. Mail
() Email

George Nedrow
1361 N. 3125 East
Ashton, Idaho 83420

(☒) U.S. Mail

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

(☒) U.S. Mail


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

G:\WPDATA\RLH\12839 Rick Divine\Fuchs\Affidavit.RLH.wpd.cdv

EXHIBIT A

RLF I, II, III, IV, LLC WATER RIGHTS

[illegible]

EXHIBIT B

Attachment
I

Stumbaugh, John
4 N., R., 40 E., B. M., containing 160 acres
The SE $\frac{1}{4}$, the NW $\frac{1}{4}$, and the E $\frac{1}{2}$ of NW $\frac{1}{4}$ of
Sec. 13, and E $\frac{1}{2}$ of NW $\frac{1}{4}$, and SW $\frac{1}{4}$ 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) Carlson, Frank 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 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 E $\frac{1}{4}$ 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

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. 3 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. R.

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

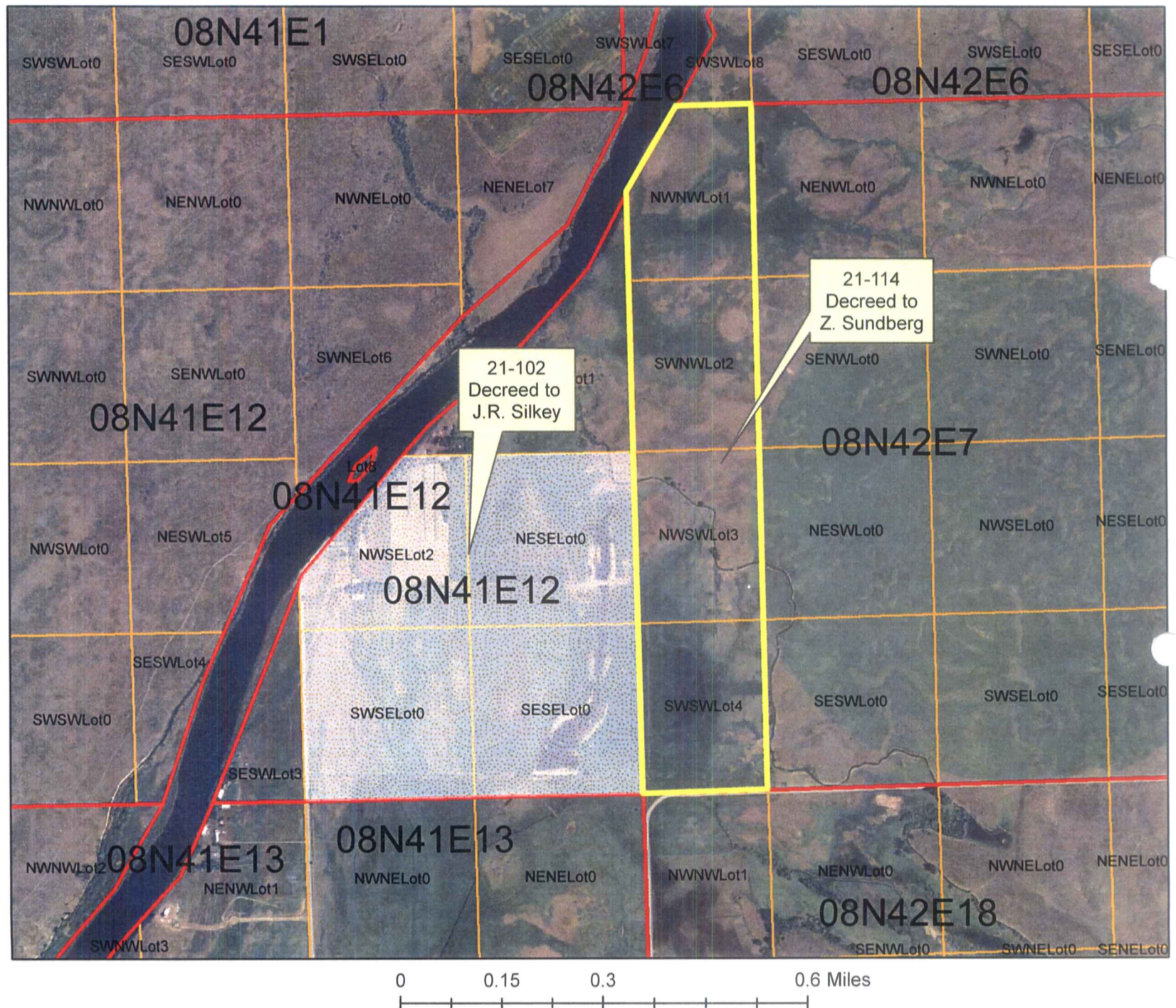


EXHIBIT D

THIS INSTRUMENT made > 9th day of September in the year One thousand & hundred 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 Seeley 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. B. M., and Lot One(1) of Section Twelve(12) Township Eight (8) North, of Range Forty-one(41) containing 149 55/100 acres, according to the Government Survey.

Also a one fourth($\frac{1}{4}$) interest in what is known as the McBoe 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 26 2003

EXHIBIT E

#344263

WARRANTY DEED

THIS INDENTURE, Made the 13th day of October in the year of our Lord one thousand nine hundred and 27 between Joseph H. Seesley and Celia Seesley, 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 2 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, in then in hand paid by the said part 2 of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold and do

SELL, CONVEY and CONFIRM unto the said part 2 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 36 rods, to place of beginning. Said tract containing all 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 41 E.B.M. and Lot 1 of Section 12, Township 8 North Range 41, containing 149.25 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 therunto 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 2 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 2 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 hand and seal the day and year above written.

Witness, Sealed and Delivered in the Presence of

A. L. Peterson

Jos. H. Seesley

(SEAL)

Celia Seesley

(SEAL)

(SEAL)

(SEAL)

STATE OF UTAH
County of Sanpete

ss. On this 13th day of October

in the year 19 27,

before me,
personally appeared

Joseph H. Seesley and Celia Seesley, his wife

known to me to be the person whose name is
they executed the same.

are

subscribed to the within instrument, and acknowledged to me that

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

30ANN 1

SEP 7 1927

EXHIBIT F

Warranty Deed

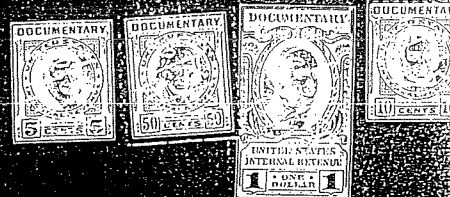
THIS INDENTURE, Made this 10th. day of April
in the year of our Lord One Thousand Nine Hundred and forty-seven, between
Edgar Barney and Lillie Barney, his wife,
of St. Anthony, County of Fremont, State of Idaho,
the parties of the first part, and

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 00 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 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 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 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

Edgar Barney
Lillie Barney

CANNED

SEP 26 2006

BOOK 54 PAGE 118

STATE OF IDAHO

County of Bonneville, }

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) 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.



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

Sylvan Barney

TO

Earl Barney

Dated March 1, 1946

STATE OF IDAHO, as
County of Bonneville, }

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

Edgar Barney

at 10 minutes past 11
o'clock P. M. this 5
day of June 1950
in my office and duly recorded in
Book 54 of Book 0 at
page 17

J. H. Foley

Ex-Officio Recorder

By *Wanda S. Sord*

Deputy

Fees \$ 1.50

Wanda S. Sord

EXHIBIT G

THIS INDENTURE, made this 6th day of June, 1956,
 between EARL BARNEY and EULA 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
 of Ashton, Idaho,
 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]

Eula Barney

[SEAL]

[SEAL]

[SEAL]

STATE OF IDAHO,

BOOK

63 PAGE 400

County of Madison

On this 6th day of June in the year 1956, before me
 Ray W. Rigby 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. Rigby
 Notary Public for the State of Idaho,
 Residing at Rexburg, Idaho.

28A706

No.

WARRANTY DEED

(FORM No. 300)

Earl Barney

et al

TO
 George W. Nedrow
 et al

Dated June 6, 1956

STATE OF IDAHO,

County of Fremont

I hereby certify that this instrument
 was filed for record at request of
 Fremont Title Co.
 at 29 minutes past 3
 o'clock P.M., this 27th day of
 July, 1956, in my
 office, and duly entered in Book 63
 of Records
 at page 399

Jack R. Stone
 Esq. Idaho Recorder
 By Maud Stone
 Deputy

Fees \$ 1.50
 Deputy

Mail to

RECORDED BY STEVENSON & LAY, PUG. CO., PORTLAND, ORE.

#29-2262

EXHIBIT H

WARRANTY DEED

This Indenture, Made this eighteenth day of December
in the year of our Lord, one thousand nine hundred and thirty-eight 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 parties of the first part for and in consideration of the sum
of Six Thousand Five Hundred Dollars & NO/100 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' shares
of Fall River Water.



TOGETHER with all and singular the tenements, hereditaments and appurtenances there-
unto 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 Incquity, 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)
Lela Nedrow (Seal)
Gomer H. Williams (Seal)
Mary B. Williams (Seal)

STATE OF IDAHO
County of Fremont

1958-2-504

On this 19th day of December in the year 1958, before me the undersigned, County Public Officer in and for said County, personally appeared George W. Neador, and Pearl Neador, his wife

known to me to be the person in whose name the within instrument and acknowledged to me that they executed the same.

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

George J. [Signature]

289572

Warranty Deed

George W. Neador
Pearl Neador

James H. Williams
Walter

Dated Dec 18 1958

STATE OF IDAHO
County of Fremont

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

at 12 minutes past 10 o'clock PM this 19th day of Dec 1958 in my office and duly recorded in Book 666 of Neador

at page 503
George W. Neador

By Walter Deputy

Fees \$ 1.50

CHRONICLE-RECORDING IDAHO

EXHIBIT I

WARRANTY DEED OF GIFT

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

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

of the County of Freemont, State of Idaho, the part¹⁹⁸ of the second part.

[illegible]

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.

[illegible]

IN WITNESS WHEREOF, The said part ies of the first part ha ve hereunto set their
hand s_____ and seal s_____ the day and year first above written.

Signed, sealed and delivered in the presence of

_____ (SEAL)
 _____ (SEAL)
 _____ (SEAL)
 _____ (SEAL)

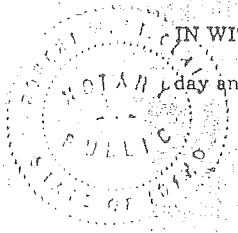
STATE OF IDAHO

County of Fremont

On this 12 day of May, in the year 1963 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 ZERAENE BLANCHARD, his wife,

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



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 12 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, 1963
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 12 minutes past 10
o'clock A M. this 12
day of May, 1963
in my office and duly recorded in
Book 22 of deeds, at
page 425

La Monte Bauer

By [Signature]
Ex-Officio Recorder

Deputy
Fees \$ 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.

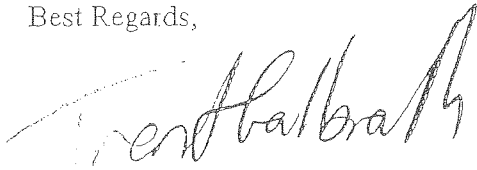
McBee Water

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 superseded 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 at the beginning and a large, stylized "H" at the end.

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., 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. 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., 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 SAC. 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., D. 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. 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

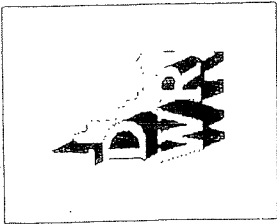
160 acres.

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 Deeded to Z.
Sundberg in the
Rexburg Decree

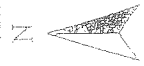
Attachment 3

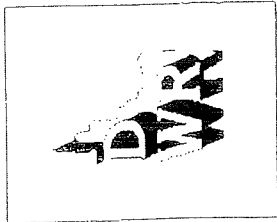
T 8 North R 42 East
Section 7

T 8 North R 41 East
Section 12

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

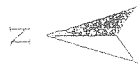
1000 0 1000 2000 3000 Feet





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

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



Attachment 4

T 8 North R 42 East
Section 7

T 8 North R 41 East
Section 12

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>			
<i>21-0022</i> <u>Yellowstone</u> (TR from Marysville)	Nov. 5, 1895	25.0	25.0
<i>21-0140</i>	May 1, 1906	100	125.00
<u>Harrigfeld</u>	21-0057 Aug. 4, 1900	60	60
	21-0058 May 1, 1906	80	140
<u>Marysville</u> (Orig. decree less	Nov. 5, 1895	252	*305 (260)
<i>21-0012</i> <u>TR to Yellowstone</u>		305	
<i>21-0018</i> (Less 8.0 cfs to be pumped from Falls Ri. by Potter & Martindale re TR's			21-0473 & 21-0073A)
<u>Farmers Own</u>		1.2	*1675 + 1381
<i>21-0014/1833</i> <u>W.S. Tanner et al (CPD 240, TR 911)</u>	June 1, 1890	2.8	* 2.8(47.8)
<i>21-0014</i> <u>Lynn Loosli (L. J. Maurer)</u>	June 1, 1892	0.5	
<i>21-0038</i> <u>Lynn Loosli (A. P. Crabb)</u>	June 1, 1892	1.40	4.7
<i>21-0075</i> <u>Lynn Loosli (L. J. Maurer)</u>	June 1, 1894	3.00	
<i>21-0015/1244</i> <u>W.S. Tanner et al (Sundberg) (Black Springs CPD 204, 242)</u>	June 1, 1894	0.3	* 8.0(53.0)
<i>21-0048</i> <u>Farmers Own</u>	April 1, 1896	34.0	*42.0(87.0)
<i>21-0049</i> <u>Farmers Own</u>	May 1, 1904	12.00	54.0
<i>21-0050</i> <u>Farmers Own</u>	May 1, 1905	40.00	94.0
<i>01-0338</i> <u>Farmers Own</u>	April 1, 1939	12.00	106.00
*Marysville has authorized temporary transfer of 45 sec-ft. to Farmers Own			
61-0013 until further notice.			
<i>21-0019/1791</i> <u>Almy</u> (Earl Potter)	Sept 24, 1900	3.00	3.00
<u>Enterprise Irrigation District</u>			
(Supp)	21-0000 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
<i>21-0022</i> <u>Bell Pump</u>	Sept 26, 1889	5.2	5.2
	01-0347 April 1, 1939	6	11.2
<i>21-0046</i> <u>Fall River</u> (360 cfs after July 1)	June 1, 1889	460.0	460.0
<i>21-0047</i>	01-0336 Apr. 1, 1939	32.0	492.0

Divisions from Falls River continued next page -

EXHIBIT K

State of Idaho

Water District 1

900 N. Skyline Dr., Suite A

Idaho Falls, Idaho 83402-1718

RONALD D. GARRISON
WATERMASTER

(208) 525-7172

Fax (208) 525-7177

DIRECTOR
EARL D. PRINCE

COMMITTEE OF NINE

December 10, 2004

CHAIRMAN

Albert Luckwood
Edgar

VICE CHAIRMAN

Gary Kerby
St. Anthony

CLERK

Charles Beck
Barney

Charles C. Jones
Idaho Falls

Charles C. Jones
Idaho Falls

Paul Bergman
Blaine

Paul Bergman
Blaine

Paul Bergman
Blaine

Paul Bergman
Blaine

Paul Bergman
Blaine

Paul Bergman
Blaine

Paul Bergman
Blaine

Ray Rigby

Law Offices of Rigby, Thatcher, Andrews, 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 claims by the Fuchs that the computations made by the department and others leaves out 3.4 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 Sundberg 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 Tutinell and Dave's subsequent memorandum to Lyle 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 Sheryl 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 Transfer #911 and #933 were the same 1.2 cfs, as theorized in Dave Tutinell'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 Henrys Fork.

- Transfer #913, dated September 21, 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, 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 Henrys Fork.

At this point, the ones 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 Henrys Fork. This was supported by the attached letter from H.C. Eagle, Watermaster, dated February 24, 1960. Subsequent correspondence from L.C. 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 Henrys 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 the 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

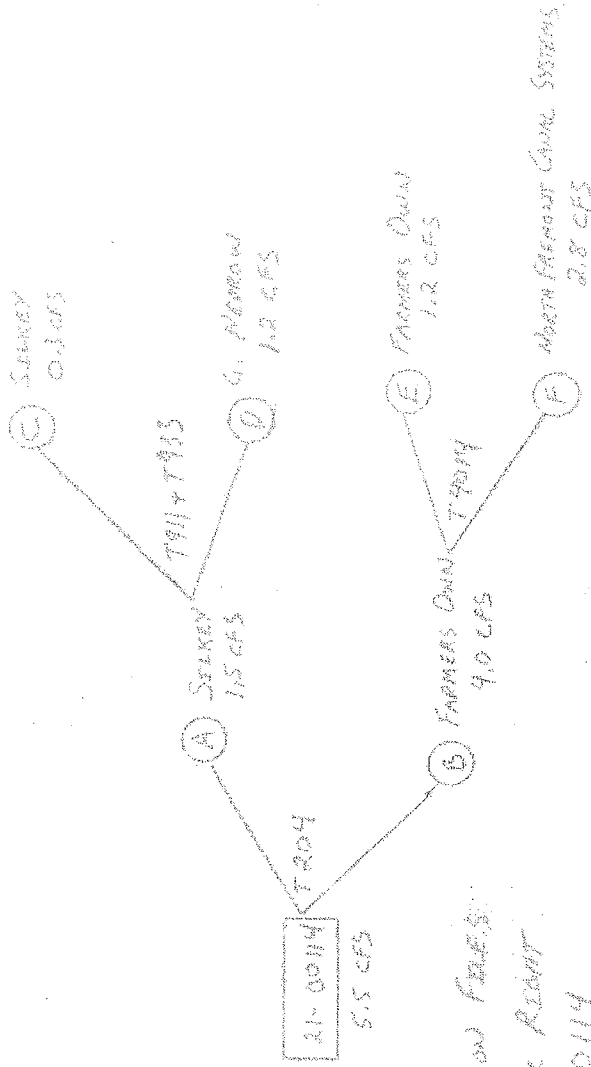
CC: Ron Carlson, Watermaster
Lyle Swank, Assistant Watermaster
Adjudication Claim File A21-00114C
Bill Fuchs; 3857 E. 500 N., Rigby, ID 83442

~~Barney to Turner~~
20 April 1956 -

Barney to Turner
175" 3.5 cfs.

6 June 1956

Barney to Nedrow
100" 2.00 cfs.



ANALYSIS OF SPLITS TO WATER RIGHT #21-0014.

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

GEORGE MORGAN CLAIMED 1.2 CFS IN SBA (A21-1057)

ARLO DEE BLANCHARD CLAIMED 0.3 CFS THEN SILVER IN SBA (A21-0014)

NORTH FRONT CANYON SYSTEM CLAIMED 2.8 CFS IN SBA (A21-0014)

ROBERT FUEHS CLAIMED 3.9 CFS THAN FARMERS OWN IN SBA (A21-0014)

IF OUR CODING OF WATER RIGHT SPLITS IS DIFFERENT.

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

T. OLESEN
Water District #1

21-0014
NOT ON FILE



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

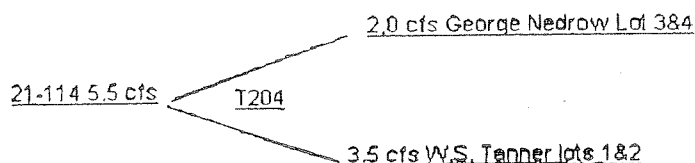
George Nedrow
1361 N 3125 E
Ashton ID 83420

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.

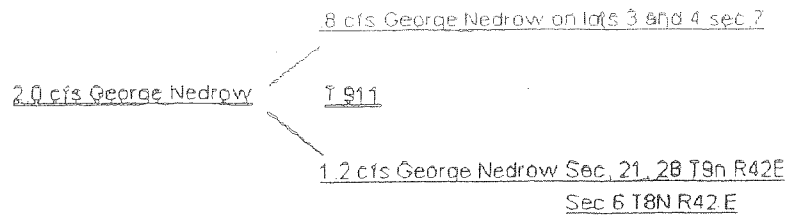
Transfer 204 dated April 14, 1950 changed the point of diversion for a portion of 21-114. The transfer suggests that 4.0 cfs was moved into the Farmers Own Canal. However, this amount is not supported by subsequent warranty deeds from the sale of the decreed place of use. On April 20, 1956 Lillie Barney 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.

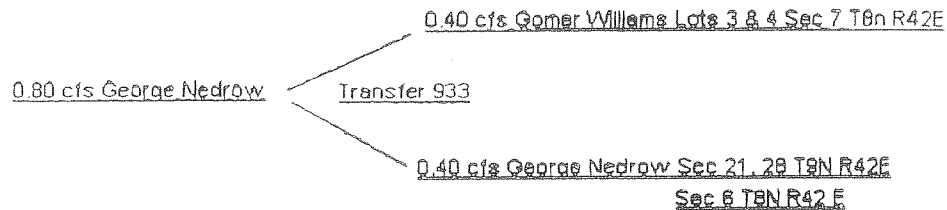


Transfer 911 (8/10/1958) filed by George Nedrow moved 1.2 cfs to a pump on the Fall River and changed the place of use.

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