

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A63-07035C**
Date Received: 3/31/1989
Receipt No: X777777
Received By: _____

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: RICHARD A NESTORICK 208-336-3889
Address: HC 33 BOX 2436
BOISE ID 83706

2. Date of Priority: OCT 30, 1967

3. Source: SPRING Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	03E	24	NW	SW			BOISE

5. Description of diverting works:
PIPE, CONCRETE RESERVOIR, AND PIPELINE TO POINT OF USE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.001		

7. Total Quantity Appropriated is:
0.001 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
DOMESTIC, 1 HOME

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	03E	24	SW	NW		DOMEST	

11. Place of use in counties: BOISE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

LOT 2, BLOCK 4 PINES SUBDIVISION #1

THIS CLAIM IS A RESULT OF A CHANGE IN OWNERSHIP FOR A PORTION OF
CLAIM NO. A63-07035, FEE PAID UNDER RECEIPT NO. W002502. 11/13/96
LH.

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-07035
Date Received: 3/03/1989
Receipt No: W002502
Received By: DEW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MAURICE H. FAUBION 602-895-7646
Address: 527 HOTEL PLAZA
BOULDER CITY, NV 89005

2. Date of Priority: OCT 30, 1967

3. Source: SPRING Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	03E	24	NW	SW			BOISE

5. Description of diverting works:
PIPE, CONCRETE RESERVOIR, AND PIPELINE TO POINT OF USE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.006		

7. Total Quantity Appropriated is:
0.006 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
FOUR SUMMER CABINS

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	03E	24	SW	NW		DOMEST	

11. Place of use in counties: BOISE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

NONE

14. Remarks:

P/U LOT 1-3, BLK. 1 & LOT 2, BLK. 4, S 24, T4N, R3E.

PINES SUBDIVISION #1, MAP ENCLOSED.

15. Basis of Claim: LICENSE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Identification No. 63-7035Date Received 3-3-89Receipt Number W002502NOTICE OF CLAIM
TO A
WATER RIGHT

RECEIVED

MAR 31 1989

ACQUIRED UNDER STATE LAW
or Domestic and/or Stockwater Purposes
Daily Use is less than 13,000 gallons per dayDepartment of Water Resources
Western Regional Office

Filing Fee \$25

Please type or print clearly

1. Name of Claimant(s) Maurice H. Faubion Phone (208) 342-1220 (summer only)
9, Bee's Mail Service Phone (602) 895-7646
Mailing Address 527 Hotel Plaza - Boulder City, NV Zip 890052. Date of Priority (Only one per claim) Oct. 30, 1967 Month/Day/Year3. Source of water supply (Check one) () Groundwater or Other () (a) Spring
which is tributary to (b) Sinks Name of kind of source4. Location of point of diversion is: Township 4 N Range 3 E
Section 24 NW 1/4 of SW 1/4 of _____ 1/4, Govt. Lot _____, BM.,
County of Boise

Additional points of diversion if any: _____

5. Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate Etc.), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Perforated collection pipe, concrete & wood reservoir, and pipeline to print of use. (USFS special use permit # 70 04 02 5137)

6. Water is claimed for the following: (limited to Domestic and/or Stockwater only. See Instructions.)

For Domestic purposes from Jan 1 to Dec. 31 amount 0.0067 (cfs)
(Both dates are inclusive)
For _____ purposes from _____ to _____ amount _____7. Total quantity claimed 0.0067 (cfs)8. Total consumptive use claimed is de minimus9. Non-irrigation uses. Describe fully. (Domestic: give number of households served if single ownership; Stockwater: Type and Number of livestock) Four households (Summer Cabins) served.EXHIBIT #8
PAGES 1 TO 2

MICROFILMED

10. Place of use is: Township: 4N Range 3E
Section 24 SW 1/4 of NW 1/4, Govt. Lot _____ B.M.,
County of Boise for (Circle One) Domestic Stock Domestic and Stock

Additional places of use, if any _____

11. In which county (ies) are lands listed above as place of use located? Boise

12. Do you own the property listed above as place of use? Yes Some No Not All
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

None

14. Remarks: Points of use are Lots 1, 2, & 3, Block 1; Lot 2, Block 4, Sec 24
Top 4N, Rge. 3E, B.M. - Pines Subdivision #1, Map Enclosed

15. Basis of Claim (Circle One) Beneficial Use Posted Notice License Permit Decree

Court _____ Decree Date _____ Plaintiff vs Defendant _____

If applicable provide IDWR Water Right Number 63-7035

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understood the form entitled "How you will receive notice in the Snake River Basin Adjudication". (b.) I/We do _____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of Attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Marion H. Thompson Date 3/28/89

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

of _____ Title _____ that I have signed the foregoing

document in the space below as _____ Organization _____

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Title and Organization _____

State of Idaho/or Arizona }
County of Maricopa } SS.

Subscribed and sworn (or affirmed) before me this 28 day of March 19 89

SEAL

Notary Public John A. Scott
Residing at 4449 S. Alma School Rd Chandler
My Commission Expires My Commission Expires June 14, 1992

Last Name FAUBION Ident No. _____

MICROFILMED

Copies: White-State, Yellow-Claimant

DATE: 09/06/98
PAGE: 1

Audit: 09/06/98 CWALKER

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

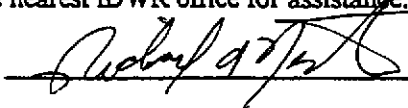
Please print or type. Attach pages with additional information. Instructions are on the back of this page.

Incomplete forms will be returned.

RECEIVED

OCT 10 1996

WATER RESOURCES
WESTERN REGION

1. Water Right Number(s) 63-07035 (part)
Adjudication Claim Number(s) A63-07035 (part)
2. The following **REQUIRED** information must be submitted with this form.
 - A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.
AND
 - B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)
OR
 - C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.
3. Name and Address of Former Owner/Claimant(s) JEFF & JAN MAXEY
5534 MILSTONE DR, BOISE ID 83714
4. New Owner/Claimant(s) RICHARD A. NESTORICK
Name connector (Check one): ☐ AND, ☐ OR, ☐ AND/OR
New Mailing Address HC ~~B~~ 33 BOX 2436
City, State and ZIP Code BOISE, ID. 83706
New Telephone Number (208) 336-3889
5. Date you acquired the property AUG 1, 1996
6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.
Number of acres actually irrigated _____ Number and type of stock _____
Diversion rate in CFS 1/4 of claim/wr Number of homes 1 Lot 4, Blk. 2, The Pines Subdivision #1
cubic feet per second Other uses _____
If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.
7. Signature of New Owner/Claimant(s)  Date 10 OCT 96

Date _____
8. (Corporations or other organizations must submit a list of directors/officers demonstrating authority to sign form.)
For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.



A Pioneer Company

PIONEER TITLE COMPANY
OF ADA COUNTY

821 West State Street / Boise, Idaho 83702-5836 / Telephone (208) 336-6700

RECEIVED

OCT 10 1996

**WATER RESOURCES
WESTERN REGION**

P 149717 LF

Read and Approved:

WARRANTY DEED
(INDIVIDUAL)

FOR VALUE RECEIVED RICHARD R. FAUBION AND ROBERTA FAUBION, HUSBAND AND WIFE

Grantor s , do hereby grant, bargain, sell and convey unto RICHARD A. NESTORICK, AN UNMARRIED PERSON

the Grantee , whose current address is: HC 33 BOX 2436, BOISE, ID 83715 83706 ^{ew} County, State of Idaho, more particular described as follows, to-wit:
LOT 2 BLOCK 4 THE PINES SUBDIVISION NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED AS INSTRUMENT NO. 72506, RECORDS OF BOISE COUNTY, IDAHO.

INSTR. 161445
RECORD Ntr View

161445

RECORDED

Per Name
WD 9300/ck

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee , and Grantee heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee , the Grantor s are the owner s in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee ; and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (includes irrigation and utility assessments, (if any) for the current year, which are not yet due and payable, and that Grantor s will warrant and defend the same from all lawful claims whatsoever.

Dated: July 29, 1996

Richard R. Faubion
RICHARD R. FAUBION

Roberta Faubion
ROBERTA FAUBION

STATE OF California , County of San Bernardino

On this 30 day of July , in the year of 1996 , before me Anne M. Yohn , a notary public, personally appeared The Undersigned , known or identified to me to be the person s whose name s Richard R. Faubion and Roberta Faubion are subscribed to the within instrument, and acknowledged to me that they executed the same.



Notary Public: Anne M. Yohn
Residing at: Ucaipa CA
My Commission Expires: 11-7-97

"THE PINE" SUBDIVISION

IN THE SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24
T.4N., R.3E., B.M. Idaho

BOISE COUNTY

Pioneer Title Co. of Boise County

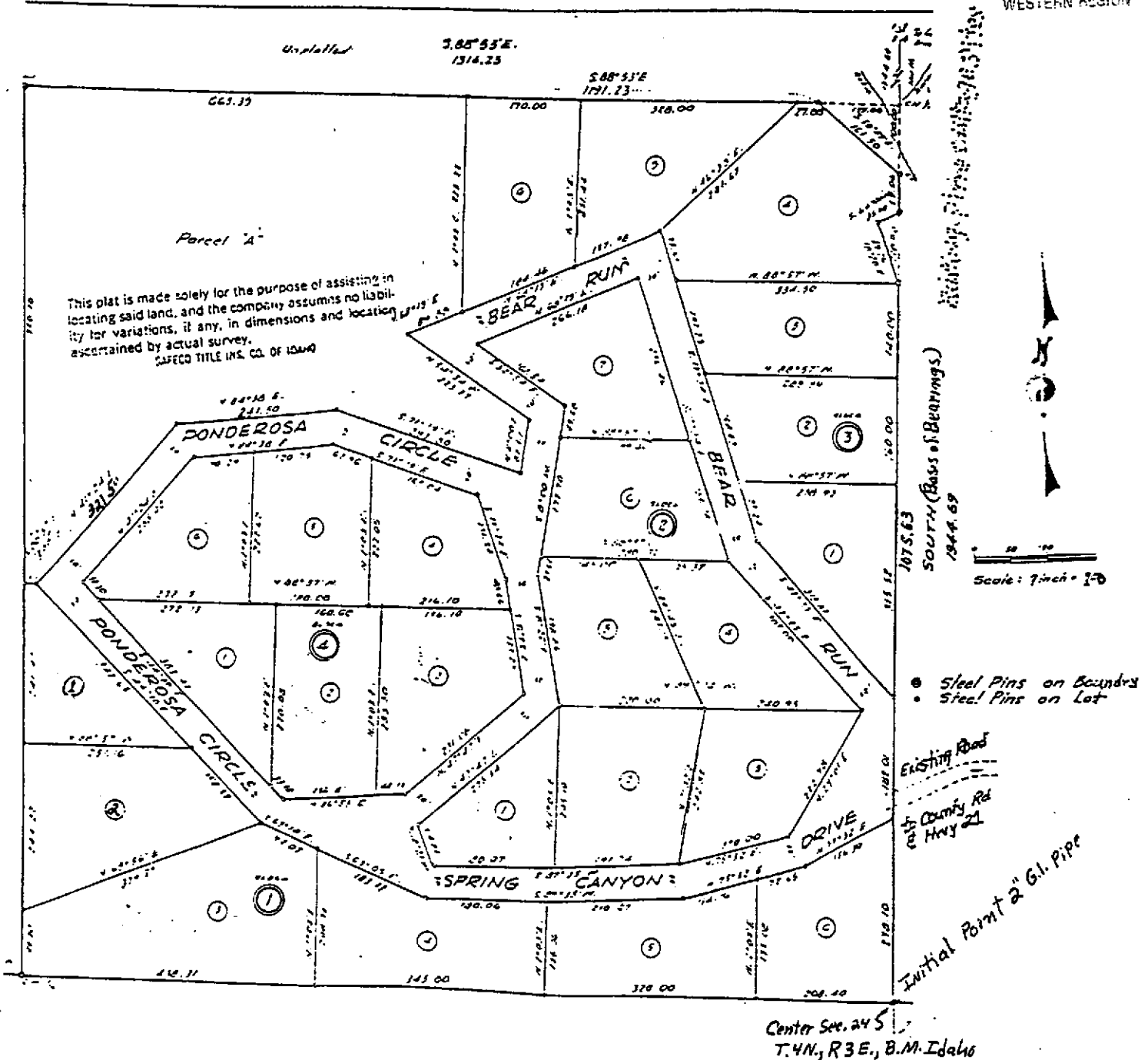
This sketch is for location purposes only. The Company assumes no liability for variations.

PIONEER TITLE COMPANY
of Ada County

RECEIVED

OCT 10 1996

WATER RESOURCES
WESTERN REGION



WATER LICENSE

Water License No. 63-7035 Priority October 30, 1967 Amount 0.0067 c.f.s. (3 g.p.m.)

THIS IS TO CERTIFY, that Maurice H. Faubion
of Boise, Idaho, made application for a permit to appropriate the public waters of
the State of Idaho, dated October 30, 1967; that Permit 63-7035 was issued pursuant
to said application; that the proposed works were completed on or about November 17, 1969,
with a storage/or carrying capacity of 0.0067 c.f.s. (3 g.p.m.), said works consisting of perforated
pipe, concrete & wood reservoir; and that on November 17, 1969,
proof was made to the satisfaction of the State Reclamation Engineer, of the beneficial use of 0.5
acre feet per season, with a maximum rate of diversion of (3 g.p.m.) 0.0067 cubic feet per second of the waters
of spring, tributary of _____,
for the purpose of domestic from January 1 to December 31;
and for _____ from _____ to _____; and for
_____ from _____ to _____; and that the use
of said waters has been made in accordance with the laws of Idaho, and is hereby confirmed by the State Recla-
mation Engineer and entered in the records of the Idaho Department of Reclamation: the point of diversion is
located in NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 24, T. 4N, R. 3E, B.M., and
other additional points _____, in the County of
Boise; and that the amount of water to which such right is
entitled and which is hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially
used for said purposes and shall not exceed 0.5 acre feet per year.

Description and location of place of use: Lots 1, 2, & 3, Block 1; Lot 2, Block 4, Sec. 24,
Twp. 4N, Rge. 3E, B.M.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

Total number of acres irrigated _____

The right to the use of the water hereby confirmed is restricted to the lands or place of use herein described,
as provided by the laws of Idaho.

Witness the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this

25 day of November, 19 69.

R. Keith Higgins
State Reclamation Engineer

FAUBION

1/30/1989

SRBA CLAIMS RECEIVING CHECKLIST #2

CLAIMANT'S NAME

FAUBION

CLAIM IDENT. NO.

63-7035

DATE RECEIVED

2/3/89

CK #

1036

AMOUNT \$

25

YES

NO

Required Info?

1. Is the name and address complete with zip code? ☒ YES ☐ NO ☐ *
2. Is a priority date entered? ☒ YES ☐ NO ☐ *
- Is the priority date acceptable in view of mandatory filing dates? ☒ YES ☐ NO ☐ *
- See Adjudication Memos #1 and #4 to determine if a Permit is required.
3. (a) Is a source entered? ☒ YES ☐ NO ☐ *
- (b) Is a tributary to entered? (if required) ☒ YES ☐ NO ☐ N/A ☐ TO THE 10-ACRE TRACT
4. Is the legal description of the p.d. sufficient? ☒ YES ☐ NO ☐ *
5. Is there a description of the diverting works? ☒ YES ☐ NO ☐ *
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form. ☒ YES ☐ NO ☐ *
- Is the period of use included? ☒ YES ☐ NO ☐ *
- Is a quantity claimed for each use? ☒ YES ☐ NO ☐ allow 0.1 cfs
7. Is a total quantity claimed entered? ☒ YES ☐ NO ☐ " "
8. If required is a consumptive use entered? ☒ YES ☐ NO ☐ N/A ☐ *
- Is the consumptive use correct? ☒ YES ☐ NO ☐ N/A ☐ *
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4. ☒ YES ☐ NO ☐ N/A ☐ *
10. Is (are) the place(s) of use and purpose(s) indicated? ☒ YES ☐ NO ☐ *
11. Is (are) the county(ies) entered? ☒ YES ☐ NO ☐ *
12. Is the ownership of p.u. checked? ☒ YES ☐ NO ☐ need's not map
13. Are other water rights listed or "none" indicated? ☒ YES ☐ NO ☐ *
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) ☒ YES ☐ NO ☐ N/A ☐ should be lic.
15. Is the basis of the claim indicated? ☒ YES ☐ NO ☐ *
16. If the claimant requested a monthly docket sheet, is payment enclosed? (If yes, describe payment status in "Comments" below.) ☒ YES ☐ NO ☐ *
17. Is the claim signed by the claimant, and is the signature appropriate? Organizations must complete the organization block. ☒ YES ☐ NO ☐ *
18. Has the claim been signed, sealed, and dated by a notary? ☒ YES ☐ NO ☐ *
19. Was this claim filed on time, or was an extension granted? ☒ YES ☐ NO ☐ *
20. Is the fee enclosed correct? ☒ YES ☐ NO ☐ Exempt ☐ *
21. If this claim is based on an existing water right, has the identification number been entered? ☒ YES ☐ NO ☐ N/A ☐ *
22. Should this claim be receipted and data entered? ☒ YES ☐ NO ☐ *

MICROFILMED

AUG 21 1992

Claim checked by:

JS^{1st} LW^{2nd}

Date:

4-20-89

Claim must be returned to claimant:

☐ (Yes) ☐ (No)

Claimant must be notified of modifications:

☐ (Yes) ☐ (No)

Receipt Prepared by:

Claim data entered by:

Sent to claimant by:

Date:

Date:

Date:

Checked by:

Date:

Comments:

Appears to be one owner. License reflects one name. Modification letter for 10-acre, 0.1 cfs + license allow 1/4 cfs for that

SRBA

SUBCASE SUMMARY REPORT 63-07035C

[Return to SRBA Home Page](#)

SRBA
01-08-2002

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 63-07035C FILE#: 00550
CLAIMANT: NESTORICK, RICHARD A
36 PONDEROSA CIRCLE

BOISE ID 83716
STATUS: PD ISSUED
WATER SOURCE: SPRING, SINKS
ISSUES: 11
POINT(S) OF DIVERSION DESCRIPTION

****** PARTIES INVOLVED ******

RICHARD A NESTORICK C ATTY: CHARLES L. HONSINGER
JEFFREY A MAXEY O PRO SE

****** ROA ENTRIES ******

01-26-0000	TRIAL HELD BY SPECIAL MASTER	TH	01-26-2000	0900
05-04-1999	OBJ 01 F/B MAXEY, JEFFREY A	RB	09-06-1999	0001
05-07-1999	OBJ 02 F/B USDA FOREST SERVICE			0002
07-15-1999	NOTICE SETTING INITIAL HEARING	1S	10-08-1999	0200
07-27-1999	CORRESPONDENCE RE: CHANGE OF ADDRESS TO 36 PONDEROSA CIRCLE, BOISE, 83716			
09-21-1999	SUPPLEMENT TO OBJECTION 1 F/B MAXEY	RB	09-21-1999	0001
10-08-1999	HEARING HELD - INITIAL HEARING	1H	10-08-1999	0200
10-08-1999	MINUTES - INITIAL HEARING			
10-15-1999	ORDER SETTING MANDATORY SETTLEMENT CONFERENCE	LS	01-19-2000	1000
10-15-1999	AND ORDER SETTING TRIAL	TS	01-26-2000	0900
12-06-1999	NOTICE BY THE U.S. OF WITHDRAWAL OF OBJECTION		12-06-1999	0002
01-20-2000	ORDER REQUESTING AFFIDAVIT OF IDWR SETTING FORTH THE BASIS OF THE DIRECTOR'S REPORT	ZB	01-25-2000	1200
01-20-2000	SETTLEMENT CONFERENCE REPORT FILED		01-20-2000	
01-21-2000	NTC OF APPEARANCE - HONSINGER FOR NESTORICK			
01-25-2000	AFFIDAVIT OF ROXANNE BROWN REGARDING RECOMMENDATION ON SUBCASE 63-7035C			
01-26-2000	MINUTES - TRIAL			
01-28-2000	ORDER REQUESTING INFORMATION FROM IDWR SETTING FORTH ITS PRACTICE FOR LICENSING OR RECOMMENDING DOMESTIC WATER RIGHTS FOR WHICH THE DELIVERY SYSTEM IS IN PLACE REPORT DUE	ZZ	02-11-2000	0500
01-31-2000	ORDER GRANTING MOTION TO WITHDRAW		01-31-2000	0002
02-02-2000	LDGD: BRIEF ON INFORMATION OF IDWR SETTING FORTH ITS PRACTICE FOR LICENSING OR RECOMMENDING DOMESTIC WATER RIGHTS FOR WHICH THE DELIVERY SYSTEM IS IN PLACE			

F/B MAXEY			
02-02-2000	MOTION FOR EXTENSION OF TIME TO FILE BRIEF	MG	02-03-2000
F/B HONSINGER			
02-03-2000	ORDER GRANTING EXTENSION OF TIME TO FILE		
	BRIEF	BB	02-11-2000 0500
02-11-2000	LDGD: MEMORANUM RE: STUBBING-IN F/B		
	HONSINGER		
02-11-2000	AFFIDAVIT OF ROXANNE BROWN		
02-11-2000	ABOVE DOCUMENT IS ENTITLED SUPPLEMENTAL		
	REPORT BY IDWR SETTING FORTH ITS PRACTICE		
	FOR LICENSING OR RECOMMENDING DOMESTIC		
	RIGHTS FOR WHICH THE DELIVERY SYSTEM IS		
	IN PLACE (PER SPECIAL MASTER - DOCKETED AS		
	AFFIDAVIT OF ROXANNE BROWN)		
02-29-2000	REPORT & RECOMMENDATION OF MASTER	CB	03-28-2000
02-29-2000	NOTICE OF ISSUANCE - MASTERS R&R		
02-29-2000	CERTIFICATE OF MAILING - MASTER R&R		
03-30-2000	MOTION TO ALTER OR AMEND MASTER'S REPORT	MD	05-12-2000
	FILED BY JEFFREY MAXEY		
04-06-2000	ORDER SETTING HEARING	HS	04-25-2000 0930
	MOTION TO ALTER OR AMEND filed by Maxey.		
04-18-2000	LDGD: MEMORANDUM IN OPPOSITION TO MOTION TO		
	ALTER OR AMEND SPECIAL MASTER'S REC		
	(FILED BY HONSINGER)		
04-25-2000	HEARING HELD - MOTION TO ALTER OR AMEND	HH	04-25-2000 0930
04-25-2000	MINUTES - MOTION TO ALTER OR AMEND		
05-12-2000	ORDER DENYING MOTION TO ALTER OR AMEND		05-12-2000
	ASSIGNED MASTER WAS: 701 BILYEU, BRIGETTE		
05-30-2000	LODGED: MEMORANDUM IN OPPOSITION TO ORDER TO		
	DENY MTN TO ALTER/AMEND SM'S REPORT AND		
	RECOMMENDATION AND REQUEST FOR HEARING		
	BEFORE PRESIDING JUDGE		
05-30-2000	LODGED: CORRECTED COPY OF MEMORANDUM IN		
	OPPOSITION TO ORDER TO DENY MTN TO ALTER OR		
	AMEND SPECIAL MASTERS REPORT AND RECOMMENDTN		
	AND REQUEST FOR HG BEFORE PRESIDING JUDGE		
06-13-2000	NOTICE SETTING HEARING	HV	07-27-2000 0130
06-26-2000	MOTION TO RESCHEDULE HEARING F/B HONSINGER	MG	07-05-2000
	FOR NESTORICK		
07-05-2000	ORDER VACATING AND RESETTNG HEARING	HS	08-07-2000 0130
08-07-2000	HEARING HELD RE FILING	HH	08-07-2000 0130
08-07-2000	BENCH ORDER GIVING PARTIES 10 DAYS TO SUBMIT	BB	08-17-2000 0500
	ADDITIONAL BRIEFING RE LEGAL POSITION &		
	TIMELINESS OF FILING		
08-09-2000	LDGD: BREIFING ON ADMINISTRATION ORDER 1		
	(AO1) SECTION 13(C) L/B MAXEY		
08-16-2000	MEMORANDUM RE: TIMELINESS OF CHALLENGE F/B		
	HONSINGER @ RINGERT CLARK		
09-06-2000	ORDER RE: TIMELINESS OF FILING A NOTICE OF		
	CHALLENGE AND ORDER DISMISSING CHALLENGE		
09-18-2000	ORDER OF PARTIAL DECREE		
09-18-2000	PARTIAL DECREE		09-18-2000
09-19-2000	CERTIFICATE OF MAILING		

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SRBA

DIRECTORS REPORT 63-07035C

[Return to SRBA Home Page](#)

IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 63-07035C

*
* THIS DIRECTORS REPORT HAS BEEN AMENDED SINCE *
* IT WAS 1ST FILED. *
*

Name and Address: RICHARD A NESTORICK
HC 33 BOX 2436
BOISE, ID 83706

Source: SPRING Tributary: SINKS

Quantity: .001 CFS

THE TOTAL ACTUAL QUANTITY FOR THIS RIGHT IS 0.001675 CFS.
THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

Priority Date: 10-30-1967

Diversion Point: T04N R03E S24 NWSW Within Boise County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Domestic	01-01 TO 12-31	.001 CFS

Place of Use: Domestic Within Boise County
T04N R03E S24 SWNW

Other Provisions Necessary for Definition / Administration of this Water Right:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

Explanatory Material: Basis of Claim - License

PROPERTY ALSO KNOWN AS LOT 2, BLK 4, PINES SUBDIVISION #1.

[Return to SRBA Home Page](#)

AUG 16 2000

Department of Water Resources

Jeffrey A Maxey, Pro Se
HC 33 48 Spring Canyon Rd.
Boise, ID 83716

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AD FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	SUBCASE NO: 63-07035C
	)	
Case No. 395076	)	BRIEFING ON ADMINISTRATION ORDER)
	)	1, (A01) SECTION 13 (C)
	)	
	)	

I. BRIEF PROCEDURAL HISTORY

1. On February 29, 2000, Special Master Bilyea issued a **Special Master's Report and Recommendation and Findings of Fact and Conclusions of Law** for the above-captioned subcase.
2. On March 30, 2000, Jeffrey A. Maxey, pro se, filed a **Motion to Alter or Amend Special Master's Recommendation**
3. On May 12, 2000, Special Master Bilyea issued an **Oder Denying Motion to Alter or Amend Special Master's Report and Recommendation ("Order")**.
4. On May 30, 2000, Jeffrey A. Maxey submitted to the Court a Memorandum in Opposition to Order to Deny Motion to Alter or Amend Special Master's Report and Recommendation and Request for Hearing Before the Presiding Judge ("Memorandum"), which was lodged.
5. On August 7, 2000, a hearing was held in conjunction with the SRBA monthly status at the Snake River Basin Adjudication Court, 253 3rd Avenue North, Twin Falls , Idaho to allow parties to present arguments to the Court pursuant to Administrative Order 1 ("A01") section 13 (c).

II. LEGAL BRIEFING

- A. I purchased the property from Mr. Maurice and Dorothy (Maxine) Faubion under the impression I had sole ownership of the water rights listed as 63-07035.
- B. Mr. Richard Faubion, brother of Maurice Faubion sold property listed as Pines Subdivision lot 2, block 4, to Richard Nestorick with the full understanding and verbal agreement that water was withheld from the sale of the property.
- C. Mr. Charles Honsinger, Nestorick's attorney and I had several conversations on May 26, 2000, attempting to resolve the above issue and come to some kind of resolution that both parties could agree upon. Mr. Honsinger informed me that his client wanted me to pay for his attorney fees in the amount of \$1,800.00, reimburse Mr. Nestorick four thousand (\$4,000.00) dollars for his time, Mr. Nestorick would not file an objection to a water transfer I filed, and not to pursue any additional fees for the building delay of his property due to not having water.
- D. I first informed Mr. Honsinger that Mr. Nestorick did not have water to his property when he purchased his land, secondly, I informed Mr. Honsinger Mr. Maurice and Maxine Faubion owned the property when new water lines were installed and the old lines were untouched, third, I informed Mr. Honsinger I had made several attempts to work with Mr. Nestorick in resolving our water right issues to include a mandatory settlement conference which Mr. Nestorick demanded that a trial take place. I informed Mr. Honsinger that I would like to resolve this conflict between Mr. Nestorick and I, work together and fix and improve the spring so that it could support more than one household. Mr. Honsinger informed me that this would not take place unless I met Mr. Nestorick's demands. I think it is worthy that the Court notes that I have tried to compromise and work with Mr. Nestorick at every turn, but have failed in every attempt, due to Mr. Nestorick's demands.
- E. Without choice, I filed a Challenge to the Special Master Report and Recommendation (Administrative Order 1 (A01) section 13 (c)), on May 26,

2000, by mail (date is noted at the bottom of documentation). I feel that the Court should note that I waited to the last moment in hopes in resolving the above issues. I also would like to inform the Court that I was out of State, in Washington on business when the Notice of Challenge to the Special Master's Report was mailed, my wife made a mistake and inadvertently failed to sign my signature.

- F. Idaho Code, Rule 55(c) **Setting aside default judgement**). For good cause shown the court may set aside an entry of default and, if the judgement by default has been entered, may likewise set it aside in accordance with Rule 60(b).
- G. Idaho Code, Rule 60(b) The Challenge to the Special Master's Report pursuant to Administrative Order 1 (A01) section 13(c) had to be filed within fourteen (14) days of May 12. On May 26, 2000, a Challenge to the Special Master's Report and Recommendation was mailed and inadvertently not signed. I feel that it is also worthy of the Court to note that a correct copy signed was faxed to SRBA Court and mailed out to every party the very next working day, July 30, 2000.
- H. Judge Wood previously ruled that Motions to Alter or Amend should be allowed three (3) days additional time for mailing under I.R.C.P. 6(e)(1). This should also apply to a Notice of Challenge to the Special Master Recommendation.

DATED August 14, 2000.


JEFF MAXEY

CERTIFICATION OF MAILING

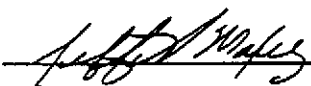
I certify that a true and correct copy of the Briefing Administrative Order 1 (A01) Section 13 (c) were mailed on August 14, 2000, with sufficient first-class postage to the following:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Richard A. Nestorick
Represented by:
Charles Honsinger
P.O. Box 2773
Boise, Idaho 83701-2773
Phone: 208 342-4591

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CERTIFICATE OF MAILING

 August 14, 2000
Jeff Maxey

RECEIVED

MAR 1 2000

Department of Water Resources

FEB 29 PM 2:40

DISTRICT COURT - SRBA
TWIN FALLS, IDAHO

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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

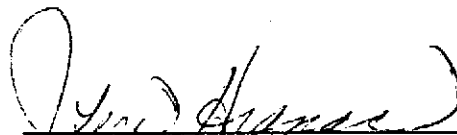
Water Right(s): 63-07035C

On February 29, 2000, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED February 29, 2000.



TERI HRANAC
Deputy Clerk

FEB 29 PM 2:40

DISTRICT COURT-SRBA
TWIN FALLS CO, IDAHO
FILED _____

**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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
Case No. 39576	)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
_____	)	FOR WATER RIGHT: 63-07035C

I. PROCEDURAL BACKGROUND

This water right claim is a portion of root right 63-07035 which was claimed in the SRBA. The Director of the State of Idaho Department of Water Resources (IDWR) investigated each portion of the root right, including this water right, and submitted its recommendation in a *Director's Report*.

There were two objections to water right 63-07035C. The United States Forest Service filed an objection to the point of diversion. However, the Forest Service objection was withdrawn prior to trial. *Notice by the United States of Withdrawal of Objections* (Dec. 6, 1999). The United States was dismissed as a party, and its objection was dismissed with prejudice. *Order Granting Motion to Withdraw* (Jan. 31, 2000). Jeffrey A. Maxey filed the other objection to this water right, asserting that the right should not exist because forfeiture had occurred from 1989 to the present.

A trial was held January 26, 2000. The trial focused on two issues. The first issue was whether Mr. Nestorick had acquired any portion of the root right when he bought one of the four lots to which the original right was appurtenant. The second issue was whether this water right

was forfeited by five years of non-use. The claimant Richard A. Nestorick and the objector Jeffrey A. Maxey each participated at trial and presented evidence.

II. STANDARD OF REVIEW

A. DIRECTOR'S REPORT

The *Director's Report* recommended this right essentially as licensed. IDWR considered the original licensed quantity of .0067 cfs and recommended a division of the water quantity proportionate to the division of the property. Thus, the *Director's Report* recommended one-fourth of the quantity to each of the four lots, resulting in a quantity of .001675 cfs for 63-07035C.¹ The objector, Jeffrey A. Maxey disagreed with the recommendation in the *Director's Report*. The trial of this subcase focused on two theories proposed by Mr. Maxey. Mr. Maxey argued that no water rights were transferred with the real property purchased by Mr. Nestorick at T04N R03E S24 SWNW, Lot 2, Block 4, Pines Subdivision #1. In the alternative, Mr. Maxey argued that this water right was forfeited by five years of non-use beginning in 1989.

B. PRIMA FACIE WEIGHT

The *Director's Report* has *prima facie* weight as set forth in I.C. § 42-1411(4)-(5). The term *prima facie* evidence is an alternative label for a rebuttable presumption. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 947 P.2d 409, 418 (1997); *State v. Hebner*, 108 Idaho 196, 697 P.2d 1210 (Ct. App. 1985). Thus, giving evidence *prima facie* weight confers a presumption that sufficient proof has been made to prevail on an issue absent competent evidence to the contrary. Giving evidence *prima facie* weight does not shift the burden of persuasion on an issue. *Reddy v. Johnson*, 77 Idaho 412, 293 P.2d 945 (1956); D. Craig Lewis, IDAHO TRIAL HANDBOOK §§ 1.4-12.7 (1995). When rebutted, the presumption disappears, and the party with the benefit of the presumption retains the burden of persuasion on the issue. *Hagerman Water Right Owners* at 745.

The *Director's Report* as *prima facie* evidence draws a conclusion as to particular elements of a water right. A presumption exists until the objector presents "substantial evidence" that the element is other than as recommended. If the objector asserts forfeiture, however, that must be

¹ The printout in the *Director's Report* shows a quantity of .001 for this right. Roxanne Brown testified that IDWR's computer generated printout could only print three digits past the decimal point. However, IDWR's complete recommendation for this right is .001675 cfs.

shown by "clear and convincing" evidence. *Jenkins v. Idaho Dept. Of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982). If the objector presents such evidence, the presumption disappears. Nevertheless, the facts upon which the presumption is based are to be weighed with all other facts that may be relevant. *Hagerman Water Right Owners* at 745.

C. WATER RIGHTS PASS WITH LAND UNLESS RESERVED IN THE DEED

When water rights become appurtenant to the land on which they are used, they pass with the land unless reserved in the deed. "[I]t is well established that a water right is an appurtenance to the land on which it has been and will pass by conveyance of the land." *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911). The Idaho Supreme Court has consistently recognized that appurtenant water rights pass with the deed, unless the instrument of conveyance says otherwise.

This conveyance would carry with it the water right appurtenant to the land at the time of the conveyance, 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.

Id. at 501.

Where a sale of land conveys a portion of the original land holding, a proportional division of the water right is conveyed. "A division of the land would divide the appurtenant water right in the same proportion as it divided the land." *Id.*

The appellate decisions in Idaho which held that water rights pass with the land as an appurtenance have dealt most often with irrigation rights. Nevertheless, this Special Master holds that domestic water rights are generally appurtenant to domestic lots.²

2

Although one state has rejected the notion that non-irrigation water rights are appurtenant to the land on which they are used, it is doubtful that Idaho would follow suit. In *KRM, Inc. v. Caviness*, 122 N.M. 389, 925 P.2d 9 (Ct. App. 1996), the Court of Appeals of New Mexico determined that a statutory exception to the appropriations doctrine provided that only water used on land for irrigation purposes is considered appurtenant to land so as to pass with title to land by operation of law. Thus, New Mexico does not recognize water rights as appurtenant to land unless they are irrigation rights. New Mexico's common law and water law statutes differ significantly from Idaho's. Our courts have used language which generally recognizes water rights as appurtenances to land. The rationale for allowing irrigation rights to pass with land is equally compelling for domestic rights. Domestic wells are usually thought of as appurtenances to domestic lots. Severing domestic water rights from domestic lots unless specifically included in a deed would wreak havoc with property conveyances. This Special Master has considered the conclusion of the New Mexico Court of Appeals, but finds it unpersuasive.

D. FORFEITURE

Statutory forfeiture is based on the legislative declaration in I.C. § 42-222(2) that water rights may be lost if they are not applied to a beneficial use for five continuous years. *Jenkins v. Idaho Department of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982). Forfeiture is disfavored under Idaho law, and the Idaho Supreme Court has consistently held that forfeiture must be proven by "clear and convincing evidence." *Id.* at 389.

III. FINDINGS OF FACT

A. APPLICATION AND LICENSING OF ROOT RIGHT

The root right from which this claim originated, 63-07035, was licensed to Maurice H. Faubion by the Idaho Department of Water Resources on November 25, 1969. (Exhibit 5). The place of use in the license included four lots described as Lots 1, 2, & 3, Block 1 and Lot 2, Block 4 all in T04N R03E S24. (Exhibit 5). The diversion works include a buried perforated pipe which collects spring flow and pipes it underground to four cabin sites. (Exhibit 4). Prior to the time IDWR approved the license for 63-07035, a domestic water supply was "in use" on all four cabin sites, including Lot 2, Block 4. (Exhibit 4).

In 1989, Maurice H. Faubion filed two notices of claim in the SRBA for this water right. (Exhibits 21 and 6). The Idaho Department of Water Resources sent the first claim (Exhibit 21) back to Mr. Faubion asking for clarification (Exhibit 23) because the claim exceeded the license.

Mr. Faubion returned the original claim (Exhibits 21 and 14) and in addition, filled out a second claim (Exhibit 6). The Idaho Department of Water Resources considered both documents prior to making its recommendation in the *Director's Report*. (Testimony of Roxanne Brown).

B. SALE OF INDIVIDUAL LOTS

Sometime after the root right was licensed, the four lots were sold. This portion of the water right was numbered 63-07035C, and relates to Lot 2, Block 4. Mr. Nestorick purchased Lot 2, Block 4 in July 1996 from Richard R. Faubion, and a warranty deed was executed conveying the property. (Exhibit 1). The warranty deed conveyed the following real property to Mr. Nestorick: "Lot 2 Block 4 The Pines Subdivision No. 1, According to the Official Plat thereof, filed as Instrument No. 72506, Records of Boise County, Idaho." (Exhibit 1). The warranty deed conveyed "the said premises, with their appurtenances unto the said Grantee, and Grantee heirs and assigns forever. . . ." (Exhibit 1, emphasis added).

Jeff and Jan Maxey purchased the other three lots from Maurice Faubion in August 1996, and a warranty deed was executed conveying the property. (Exhibit 2). The warranty deed conveyed the following real property to Mr. Maxey: "Lots 2, 3 and 4 in Block 1 of the Pines Subdivision No. 1, according to the Official Plat thereof on file and of record in the Recorder's office, Boise County, State of Idaho, as Instrument No. 72506." (Exhibit 2). The warranty deed for the Maxey property conveyed "the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. . . ." (Exhibit 2).

C. EVIDENCE REGARDING FORFEITURE

Although a delivery system conveying water to each of the four lots was constructed, no house or other dwelling has ever been built on any of the lots including Mr. Nestorick's lot. (Testimony of Richard A. Nestorick). However, water was actually used at each lot. (Exhibit 4). The Idaho Department of Water Resources did not investigate whether this water right was forfeited. (Testimony of Roxanne Brown).

Mr. Maxey attempted to admit several documents to prove forfeiture, but the documents were not admitted because they contained inadmissible hearsay.³

1. Exhibit 11, an Out-of-Court Statement From Richard R. Faubion

An *Affidavit of Richard R. Faubion* (Exhibit 11) was offered which contained an out-of-court statement from Richard Faubion asserting that the property was used occasionally for camping during vacation and that the water to the lot was last used in the summer of 1987. The *Affidavit* also contained an out-of-court statement asserting that the water rights on the property were never owned by Richard Faubion, but were owned by Maurice Faubion. (Exhibit 11). The court sustained a hearsay objection to Exhibit 11.

2. Exhibit 12, an Out-of-Court Statement From Maxine Faubion

The court also rejected Exhibit 12, a letter from Maxine Faubion. The letter contained out-of-court statements from Maxine Faubion asserting that the water rights sold to Jeff and Jan Maxey were owned by Maurice H. Faubion and that any other water used by any other parties in the Pines Subdivision was done "by permission of Maurice Faubion, not by a legal right to the water." (Exhibit 12). The court sustained a hearsay objection to Exhibit 12.

³ Exhibits 10, 15, 18, 19 and 23 were marked prior to trial, but were not offered.

3. Exhibit 17, and Out-of-Court Statement from Dorothy Faubion

Mr. Maxey offered Exhibit 17, a notarized letter from Dorothy M. Faubion which contained an out-of-court statement that "water on the Richard Faubion lot at the Pines Subdivision #1, Boise County, Idaho, has not been utilized since October of 1989." (Exhibit 17). The court sustained a hearsay objection.

4. Exhibit 20, an Unsigned, Out-of-Court Statement.

The court also rejected Exhibit 20, an unsigned letter from Dorothy M. Faubion to the SRBA court dated December 13, 1999. The letter contained an out-of-court statement that the 1996 sale of Maurice Faubion's property to Jeff and Jan Maxey transferred all water rights to Jeff and Jan Maxey. The letter attempted to testify that the water has been cut off to Mr. Nestorick's lot for more than five years. (Exhibit 20). The court sustained a hearsay objection.

5. Exhibit 22, an Out-of-Court Statement From Richard Faubion

Mr. Maxey offered Exhibit 22, a letter from Richard Faubion to Jeff Maxey. The letter contained an out-of-court statement that water had not been used on Lot 2, Block 4 for more than 5 years. (Exhibit 22). The court sustained a hearsay objection.

IV. CONCLUSIONS OF LAW

A. WATER RIGHT PASSED TO LOT 2, BLOCK 4

The Idaho Department of Water Resources investigated this water right. IDWR made a determination as to ownership and quantity in the *Director's Report*. The *Director's Report* concluded the owner is Richard Nestorick. The *Director's Report* has *prima facie* weight, and its conclusion as to ownership is presumed correct until substantial evidence is presented to rebut the conclusion. Mr. Maxey argued that Maurice Faubion was the owner of the entire water right, and that a proportional share of the original right was not transferred with the sale of Lot 2, Block 4 from Richard Faubion to Mr. Nestorick. However, there was insufficient evidence to support that conclusion.

IDWR's recommendation for this water right was based on the legal description contained in the license for 63-07035 and claimed in the SRBA. Mr. Nestorick purchased Lot 2, Block 4, which was included in the place of use in both the license and the claim. The *Director's Report* concluded that a proportionate share of 63-07035 passed as an appurtenance with the deed.

Maurice Faubion filed a claim in the SRBA for water right 63-07035. Mr. Faubion filed, and IDWR considered, two documents, Exhibits 6 and 21. Both documents list Mr. Faubion as

the claimant. Both exhibits describe the purpose of use as domestic. Both documents describe the place of use as "Four households (summer cabins) served." The Warranty Deed attached to Exhibit 1 shows a transfer of Lot 2, Block 4 from Richard and Roberta Faubion to Richard A. Nestorick "with their appurtenances." (Exhibit 1).

Documents marked Exhibits 11, 12 and 20 asserted the prior owner of Lot 2, Block 4 never owned or transferred a water right with Lot 2, Block 4. These documents were rejected at trial as inadmissible hearsay. However, even if competent evidence regarding Mr. Faubion's intent to transfer water rights had been offered, it would likely have been rejected. Where the language of a deed is plain and unambiguous, the intention of the parties must be determined from the deed, and parol evidence is not admissible. *Hall v. Hall*, 116 Idaho 483, 777 P.2d. 255 (1989).

IDWR's recommendation that a portion of water right 63-07035 passed with Lot 2, Block 4 was not rebutted. Furthermore, this Special Master finds that a proportional division of 63-07035 passed as an appurtenance when Lot 2, Block 4 was sold to Mr. Nestorick.

B. FORFEITURE

1. The Period of Non-Use Alleged is Insufficient as a Matter of Law

Mr. Maxey asserted that this water right was forfeited by five (5) years of non-use beginning in 1989. "This right was not used from 1989 to present. Therefore, this right has been forfeited because of more than five years of continuous non-use." *Objection*. Mr. Maxey offered documents marked Exhibits 11, 12, 17, 20, and 22 to show five years of non-use. All five documents were rejected as inadmissible hearsay.

Even if the court had admitted Exhibits 11, 12, 17, 20, and 22 asserting non-use beginning in either 1987 or 1989, that evidence would be insufficient to prove forfeiture. The five-year period for forfeiture is tolled once a claim has been filed in the SRBA. *Order on Challenge of "Facility Volume" Issue and "Additional Evidence" Issue* (Subcases 36-02708 *et seq.*, (Dec. 29, 1999)). Presiding Judge Barry Wood has held that the period of non-use is tolled once a claim is filed in the SRBA.

Therefore, pursuant to this reasoning, unless a claimant ultimately abandons their claim within the SRBA (which could result in the failure of the entire water right,) any alleged time period of non-use subsequent to the filing of the notice of claim cannot be used to establish forfeiture.

Id. at 28.

The claim for 63-07035 (Exhibits 6 and 21) was received by IDWR March 3, 1989. Therefore, a period of non-use beginning in either 1987 or 1989 could, at most, show a forfeiture period of two years from the beginning date to the time the forfeiture period was tolled.

2. Failure to Build Housing Structure is Insufficient

There was some evidence probative of the forfeiture issue. Specifically, evidence that no house or cabin was ever built at Lot 2, Block 4 is probative. However, that evidence did not rise to the level of "clear and convincing" evidence considering the context of the evidence relating to this water right. Mr. Maxey essentially argued that this right)and by implication the other rights related to 63-07035) were forfeited because the water delivery system was never connected to a house or cabin.

Quantification of a water right based on the completion of a delivery system rather than the commencement of beneficial use of water is referred to by IDWR as the "stopping-in" method. This method has been used by IDWR for many years in the licensing process, and has been applied in recommendations in the SRBA. (*Affidavit of David Tuthill*).

Idaho Courts have not yet decided whether IDWR's "stopping-in" policy complies with Idaho's forfeiture statutes.⁴ However, that issue need not be decided here because this right was

⁴ Our sister state of Washington recently addressed the validity of water rights which were based on the mere completion of a delivery system rather than putting the water right to beneficial use. The Washington Department of Ecology had recognized this practice for more than 40 years, referring to it as a "pumps and pipes" method of quantification. The Washington Supreme Court rejected the "pumps and pipes" method because it failed to require that the water right be applied to a beneficial use.

Read together, the statutes contemplate, in addition to construction of a water system, that an applicant will estimate the time needed to actually apply appropriated water to beneficial use, the Department will establish a time period in which water shall actually be applied to beneficial use, extensions of time will be available depending upon the circumstances, and a final certificate of water right will be issued upon a showing that the appropriation has been perfected.

State v. Theodoratus, 135 Wash.2d 582, 957 P.2d 1241 (1998). The Washington Supreme Court rejected the pumps and pipe method because its application rendered that state's forfeiture statutes meaningless.

For example, if only one lot of 250 in a development having a completed water supply system ever actually used water, relinquishment could never be found of any part of the water right because system capacity would not change no matter how long water was not actually used with respect to the other 249 lots. We will not construe the statutory scheme in a way which renders these provisions of the relinquishment [forfeiture] statutes meaningless."

Id. at 135 Wash.2d 594, 957 P.2d 1247. This Special Master finds the analysis of the Washington Supreme Court compelling, and presumes without deciding, that the "stopping-in" method of quantification would be rejected in Idaho.

put to beneficial use. The Proof of Application of Water to Beneficial Use described the beneficial use and the place of use as:

Domestic water supply for cabin sites (4) in the Pines Subdivision, Boise County Idaho, adjacent to above described spring location. Cabin sites are lots 1, 2, and 3 Block 1 and lot 2 Block 4. One hydrant is now located and in use on each lot.

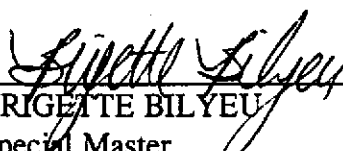
(Exhibit 4, emphasis added).

Water was actually used on Lot 2, Block 4. Thus, water right 63-07035C need not rely on the "stopping-in" policy of IDWR. Thus, there was no showing of a five year period of non-use. This Special Master finds that the record did not show forfeiture by contain "clear and convincing" evidence. IDWR's conclusion of quantity for this right is confirmed.

V. CONCLUSION

The *Director's Report* is afforded *prima facie* weight. This Special Master finds that considering the facts upon which the *Director's Report* was based and weighing the evidence at trial, the elements contained in the *Director's Report* are confirmed. Therefore, based on the findings and record herein, IT IS RECOMMENDED that water right 63-07035C be decreed with the elements as set forth in the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 63-07035C*.

DATED February 29, 2000.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

200 FEB 29 PM 2:40

In Re SRBA

Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54 (b) FOR

WATER RIGHT 63-07035C

DISTRICT COURT-SRBA
TWIN FALLS, IDAHO
FILED

NAME & ADDRESS: RICHARD A. NESTORICK
36 PONDEROSA CIR.
BOISE, ID 83706

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: .001675 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED
13,000 GALLONS PER DAY.

PRIORITY DATE: 10-30-1967

POINT OF DIVERSION: T04N R03E S24 NWSW Within BOISE COUNTY

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic ^{AB} ~~HOME~~	01-01 to 12-31	.001675 CFS

PLACE OF USE: DOMESTIC Within BOISE COUNTY
T04N R03E S24 SWNW

OTHER PROVISIONS NECESSARY FOR THE DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION
OF HISTORICAL BENEFICIAL USE.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE
DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER
RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO
LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with
Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that
the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue
and an appeal may be taken as provided by the Idaho Appellate Rules.

RECOMMENDATION

FEB 29 2000

Bryette S. Lee
SPECIAL MASTER

BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

770 FEB 29 PM 2:40

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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)

CERTIFICATE OF MAILING

Case No. 39576)

Water Right(s): 63-07035C

CERTIFICATE OF MAILING

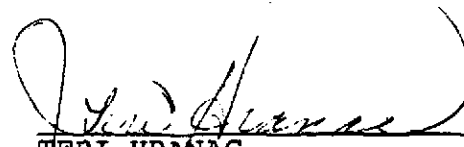
I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on February 29, 2000, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

RICHARD A NESTORICK
Represented by:
CHARLES L. HONSINGER
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

JEFFREY A MAXEY
HC 33
48 SPRING CANYON RD
BOISE, ID 83716
Phone: 208-364-1820

CERTIFICATE OF MAILING


TERI HRANAC
Deputy Clerk

PAGE 1
02/29/00

**SUPPLEMENTAL REPORT BY IDWR
SETTING FORTH ITS PRACTICE FOR LICENSING OR RECOMMENDING
DOMESTIC RIGHTS FOR WHICH THE DELIVERY SYSTEM IS IN PLACE**

In Re SRBA
Twin Falls County Civil Case No. 39576
Subcase No. 63-07035C

Supplemental Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
David R. Tuthill Jr., Adjudication Bureau Chief

February 10, 2000

BACKGROUND

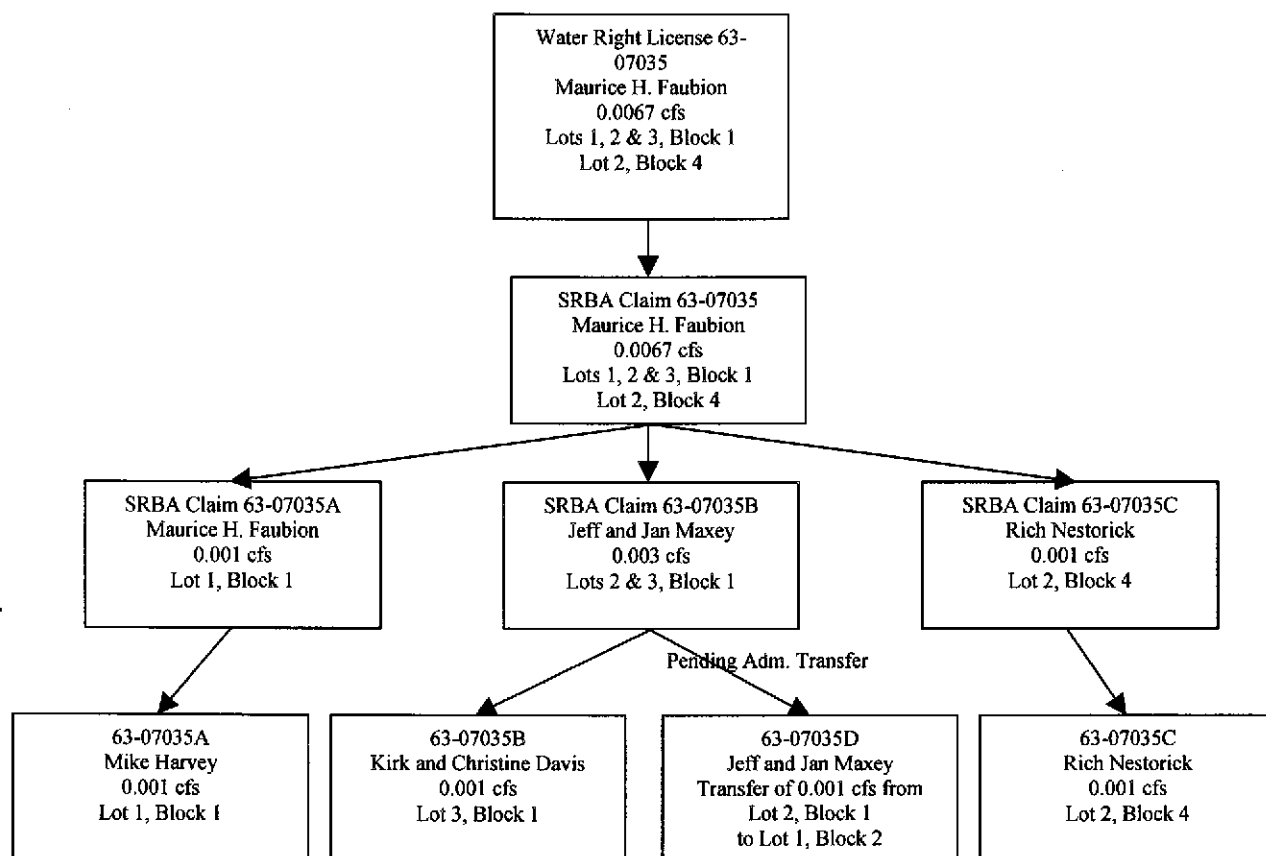
In 1967, Maurice Faubion applied for a permit to appropriate the water of an unnamed spring in the Robie Creek area near Boise. Mr. Faubion sought to develop the spring for domestic use on four cabin sites. The application was approved, and assigned the number 63-07035. A copy of the approved permit is attached as Exhibit 1.

IDWR received Mr. Faubion's *Proof of Application of Water to Beneficial Use* on November 17, 1969. A copy of the form is attached as Exhibit 2. Mr. Faubion indicated that a quantity of 3 gallons per minute was being diverted from the unnamed spring into a storage tank and subsequently being delivered via pipeline to four cabin sites in The Pines Subdivision.

IDWR staff conducted a field examination of Permit 63-07035 on November 25, 1969. A copy of the *Report of Examiner* is attached as Exhibit 3. The examiner found the diversion works to be as described by Mr. Faubion on the *Proof*. The spring flow was collected at the source, piped to a storage tank, then piped underground to four cabin sites. The examiner's report further states, "One hydrant is now located and *in use* on each lot." (emphasis added). IDWR understands a hydrant to be a discharge valve from a water mainline, most commonly a faucet. IDWR also refers to this type of development as "stubbed-in".

A license for water right 63-07035 was issued on November 25, 1969. The license reflected the domestic use of water from the unnamed spring on four lots in The Pines Subdivision.

Mr. Faubion filed an SRBA claim on his water right in 1989. The claim represented the right as licensed. Subsequent to that filing, all four lots have changed ownership as represented by the following diagram:



The Director's recommendations for the resulting water rights divided the "parent" right into four separate rights, one for each original, stubbed-in lot. IDWR has previously discussed with the court the need to add additional language to these recommendations to overcome the limitations of our current database and associated printing equipment.¹

The bottom tier of this chart represents the current ownership of the water rights resulting from the sale of lots originally shown on license 63-07035.

GENERAL LICENSING CONSIDERATIONS

IDWR has a longstanding practice of licensing domestic water use for stubbed-in lots in subdivisions. This practice recognizes that the development and sale of subdivision lots may take longer than the period IDWR can authorize for the development of the water delivery

¹ IDWR's current database cannot store quantity values with greater precision than 0.001 cfs. The four water rights arising from 63-07035 would each have a quantity of 0.001675 cfs.

system to those lots. A developer may go to considerable expense and effort to construct a water distribution system to lots that may not sell for a number of years. By issuing a water right license for domestic uses that have been stubbed-in, IDWR avoids large numbers of individual filings as the lots are sold. This allows the developer to obtain necessary funding for development by assuring financial institutions that a water right is available for each parcel being sold.

Another important reason for this practice is to circumvent problems with water delivery in times of shortage. It would be nearly impossible to administer delivery if each neighbor in a subdivision had a different priority date from the same delivery system.

RECOMMENDATION OF 63-07035

At the time of licensing 63-07035, IDWR followed its historical guidelines concerning stubbed-in developments. In addition, it would not have been unusual for "cabin site" owners in that area to use domestic water other than in permanent dwellings. For instance: a travel trailer might be "hooked-up" during the summer months but removed in the winter, water might be used for irrigation of trees or other landscaping. Water might even be used by the lot owners for camping trips to their own property. The United States Forest Service holds many licensed rights for domestic use that amount to a single faucet or hand-pump providing water to campers. In such circumstances, where the water was physically available to the stubbed-in lots, IDWR assumed the beneficial use of water might be intermittent. (The field exam notes that the faucets were not only stubbed-in but *used*.) The possibility of intermittent use would have been considered both at the time of licensing and recommendation in the SRBA.

Respectfully Submitted,

February 11, 2000

Roxanne Brown, Sr. Water Resource Agent
Idaho Dept. of Water Resources

ALAN LANCE
Attorney General

SARA C. DENNISTON
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7900
Fax: (208) 327-5400

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 Claimant	)	Subcase Nos. 63-07035C
	)	
	)	
Case No. 39576	)	AFFIDAVIT OF ROXANNE BROWN
	)	REGARDING RECOMMENDATION
	)	ON SUBCASE NO. 63-07035C
	)	
	)	

County of Ada) ss.

Roxanne Brown, being first duly sworn, deposes and states as follows:

1. My name is Roxanne Brown, I am a senior water agent for the Idaho Department of Water Resources (IDWR).
2. My work address is Idaho Department of Water Resources (IDWR), 1301 North Orchard, Boise, Idaho 83706. I reside in Boise, Idaho.
3. The recommendation on claim number 63-07035C was prepared by an IDWR contractor under the supervision of IDWR Regional Supervisor Jan Shurte. This affidavit is based on my knowledge of IDWR policies and procedures and from review of IDWR license files and adjudication files.
4. Claim number 63-07035C is based on a portion of license number 63-07035 (attached as Exhibit 1) issued to Maurice H. Faubion for domestic use on four cabin sites for 0.0067 cfs with a priority date of October 30, 1967. The description and location of place of use on that license is as follows: Lots 1, 2, & 3, Block 1; Lot 2, Block 4, Sec. 24, Twp. 4N, Rge. 3E, B.M.

Ownership

5. License number 63-07035 was originally claimed in the SRBA by the original licensee, Maurice H. Faubion. Mr. Faubion's claim indicates "Points of use are Lots 1, 2, & 3, Block 1; Lot 2, Block 4, Sec 24 Twp 4N, Rge. 3E, B.M. - Pines Subdivision #1".

6. On August 12, 1996, prior to issuance of the Director's Report for Basin 63, Jeff Maxey filed a change of ownership with IDWR indicating that he had purchased two of the lots originally owned by Mr. Faubion: Lots 2 and 3, Block 1 of Pines Subdivision. Mr. Maxey submitted a warranty deed conveying the subject lots from Maurice and Dorothy Faubion to Jeff and Jan Maxey (attached as Exhibit 4) along with the change of ownership form. The warranty deed did not specifically mention water rights, but did convey the lots "with their appurtenances." Mr. Maxey's claim was designated as claim number A63-07035B. The remaining claim on Lot 1, Block 1 and Lot 2, Block 4 was renumbered as A63-07035A in the name of Maurice H. Faubion.

7. On October 10, 1996, prior to issuance of the Director's Report for Basin 63, Mr. Nestorick filed a change of ownership with IDWR indicating that he had purchased one of the remaining two lots owned by Mr. Faubion, Lot 2, Block 4 of the Pines Subdivision. Mr. Nestorick submitted a warranty deed conveying the subject lot from Richard and Roberta Faubion to Richard Nestorick (attached as Exhibit 5) along with the change of ownership form. The warranty deed did not specifically mention water rights, but did convey the lot with "appurtenances." Mr. Nestorick's claim was designated as claim number A63-07035C and claim number 63-07035A now covered only Mr. Faubion's remaining claim on Lot 1, Block 1.

8. On March 26, 1999, after the Director's Report for Basin 63 was submitted, Kirk Davis filed a change of ownership with IDWR indicating that he had purchased both of the lots previously owned by Jeff Maxey: Lots 2 and 3, Block 1 of the Pines Subdivision. Although the Warranty Deed (attached as Exhibit 6) conveyed the lots "with their appurtenances," Mr. Davis indicated on the change of ownership form that the water right for one of the two lots (Lot 2, Block 1) was retained by Mr. Maxey. Based on this information, Mr. Maxey and Mr. Davis were assigned equal portions of 63-07035B. IDWR then submitted a Notice of Completed Administrative Proceeding with the SRBA Court mistakenly designating the rights split from 63-07035B as 63-07035C (Davis) and 63-07035D (Maxey). These rights should have been designated as 63-07035B (Davis) and 63-07035D (Maxey). The court returned the NCAP and a corrected NCAP will be filed shortly.

9. On October 29, 1999, after the Director's Report for Basin 63 was submitted, Mike Harvey filed a change of ownership with IDWR indicating that he had purchased the remaining lot owned by Mr. Faubion, Lot 1, Block 1 of the Pines Subdivision. Mr. Harvey submitted a quitclaim deed conveying the subject lot from Lois Harvey to Mike Harvey (attached as Exhibit 7) along with the change of ownership form. The quitclaim deed did not specifically mention water rights, but did convey the land with "appurtenances." Mr. Harvey's water right is represented by claim number 63-07035A.

10. The application for permit (attached as Exhibit 2) and proof of beneficial use (attached as exhibit 3) submitted by Mr. Faubion on license 63-07035 indicated that he intended to use the requested water for four cabin sites. Mr. Faubion's SRBA claim also indicated that the water is for use in four summer cabins.

11. IDWR made a determination that all of the deeds submitted in support of the changes of ownership filed by the new owners of Mr. Faubion's property passed any appurtenant water rights with the property. No evidence was submitted to IDWR to show that the portion of the water right appurtenant to the lot purchased by Mr. Nestorick's was not sold along with the land.

12. Mr. Faubion's SRBA claim was proportionately split amongst the new owners of the property according to the number of lots purchased. However, the resulting amounts were so small that they could not be represented in IDWR's database and the Director's Report recommendations do not appear to total all of the original quantity claimed. The Department assigned the following quantities of water to the owners of record at the time the Director's Report was issued:

	<u>No. of Lots</u>	<u>Proportional Quantity</u>	<u>Quantity Recommended</u>
Maxey	2	0.003350 cfs	0.003 cfs
Nestorick	1	0.001675 cfs	0.001 cfs
Faubion/Harvey	1	0.001675 cfs	0.001 cfs

13. A graphic summary prepared by me showing the history of license 63-07035 and the ownership splits is attached as Exhibit 12.

Basis of Recommendation

14. Mr. Faubion's SRBA claim number 63-07035 (attached as Exhibit 8) matches license number 63-07035.

15. Where a claim to a de minimis domestic and stockwater right matches the underlying license, the Department will not perform a field examination and will recommend the right as claimed and licensed.

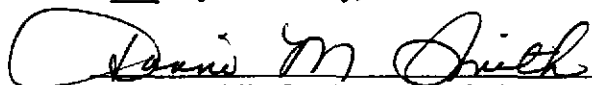
16. Unless an issue of forfeiture is raised prior to issuance of the Director's Report, IDWR will not investigate the possibility of forfeiture. In this case, there is no evidence that the issue of forfeiture was raised prior to Mr. Maxey filing his objection to Mr. Nestorick's water right.

17. Therefore, ~~the recommendation~~ the recommendations on 63-07035A (attached as Exhibit 9), 63-07035B (attached as Exhibit 10), and 63-07035C (attached as Exhibit 11) were based on a proportional split of license 63-07035.

of January, 2000


Roxanne Brown

D SWORN before me this 2nd day of January, 2000


Notary Public for the State of Idaho
Residing at: Boise ID
My commission expires: 12/5/2000

CERTIFICATE OF MAILING

I certify that on January 25, 2000, I served the original and copies of this form, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

Via facsimile (original by US Mail)

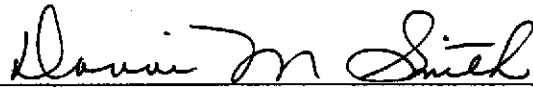
2. Copies to:

Charlie Honsinger
Ringert Clark
PO Box 2773
Boise, ID 83701

Via facsimile

Jeff Maxey
HC 33 48 Spring Canyon Rd
Boise, ID 83716

Via facsimile



Signature of person or attorney mailing the form

Identification No.

63-7035

Application No.

42113

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
APPLICATION FOR PERMIT

APPROVED

To appropriate the Public Waters of the State of Idaho

1. Name of applicant Maurice H. Faubion
post office address 7233 Sunnybrook--Boise, Idaho 83705
2. Source of water supply ~~UNNAMED M.F. UNNAMED SPRING~~ (2) ¹ ~~UNNAMED~~ Creek which is a tributary of Robie Creek, Boise Rvr.
3. a. Location of point of diversion is so $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 24 Township 4N Range 3E B.M. Boise County; additional points of diversion if any:
(3) Spring NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of section 24, Township 4 N, Range 3 E B.M. Boise County - M.F.
- b. If water is not consumed, it will be discharged into same creek at a point in SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 24 Township 4N Range 3E B.M.
4. Quantity to be appropriated:
a. 204 MF cubic feet per second and/or
b. _____ acre feet per annum will be stored.
5. Water will be used for the following purposes:
Domestic (water supply) purpose from January 1 to Dec. 31 (both dates inclusive)
for cabin sites (weather permitting) (both dates inclusive)
_____ purpose from _____ to _____ (both dates inclusive)
_____ purpose from _____ to _____ (both dates inclusive)
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. will develop spring on adjacent USFS land which feeds above small creek, and pipe to cabin sites.

b. Height of storage dam _____ feet; active reservoir capacity 200 gal. acre feet; total reservoir capacity _____ acre feet; materials used in storage dam: wood and concrete
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 2 years.
b. Estimated construction cost is \$ 400.
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 24 Township 4N Range 3 E B.M.
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____
(4) Name of municipality to be served _____, or number of families to be supplied with domestic water 4 MF.
(5) If water is to be used for other purposes describe: domestic water supply, cabin sites. ^{4 MF}

WATER LICENSE

THIS IS TO CERTIFY, that Maurice H. Faubion

entitled and ~~shall not exceed~~ 0.5 acre feet per year.
used for said purposes and shall not exceed 0.5 acre feet per year.

for said purposes and shall not exceed 0.5 acre feet per year.

Description and location of place of use: Lots 1, 2, & 3, Block 1; Lot 2, Block 4, Sec. 24.

Total number of acres irrigated.

Witness the seal and signature of the State Reclamation Engineer, *affixed at Boise, Idaho, this*

25 day of November 1969

State Reclamation Engineer

EXHIBIT #1

PAGES 1 TO 1

637099

Identification No. _____

Permit No. 63-7035

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

RECEIVED
1967

1. a) Name of Permit Holder Maurice H. Faubion Department of Reclamation
 b) Post Office Address 7233 Sunnybrook, -Boise, Idaho 83705
2. Permit Number 63-7035
3. Date of Priority that you are prepared to establish December 26, 1967
4. a) Source from which water was appropriated Spring
 b) Location of the point of diversion: NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 24
 Township 4N Range 3E Boise Meridian, Other points of diversion: None
 Location verified by the District Ranger at USFS Idaho City using
 their small scale map of the area.
5. a) The amount of water and use to which the water has been applied:
 amount 3 gals./min. for Domestic water purposes from January 1 to Dec. 31 incl.
 (cfs and/or acre feet per annum) supply for cabin sites (Month-Day) (Month-Day)
 amount _____ for _____ purposes from _____ to _____ incl.
 (cfs and/or acre feet per annum) (Month-Day) (Month-Day)
 amount _____ for _____ purposes from _____ to _____ incl.
 (cfs and/or acre feet per annum) (Month-Day) (Month-Day)
 b) Total amount appropriated 3 gals./min. cfs and/or acre feet per annum
 c) Describe how and by whom measurement of rate of flow or amount of storage was made and the qualifications of the person making the measurement: flow into system measured as 1 gal/min.
using bucket and watch 7/28/69 by applicant and C.E. Abshire. Flow
was observed to be stronger earlier in the year, estimated 3 gal./min.
6. If the means of diversion and conveyance are owned by someone other than the Permit Holder:
 a) Give the name or description of the canal, ditch or other works by which the water is conducted to the place of use: _____
 b) Describe the agreement or understanding by which you take water from the works: _____
USFS special use permit: Record no. 70, Region 4, Boise Nat'l Forest,
Idaho City District, Use no. D-3, Dated Oct 7, 1968
7. a) Briefly describe the works for diverting and conveying the water to the place of use, (If from a subterranean source, give the pump size, motor size, size of well casing, depth of well; if from surface water, give brief description of diversion structure and/or canal or ditch) Using buried perforated pipe to
collect spring flow, then piped to 200 gallon concrete and wood
reservoir, then piped underground to 4 cabin sites. Entire system is
gravity fed. Main line 1 inch in diameter, laterals 3/4 inch diameter.
 b) Describe the type and size of measuring device which you have installed at your point of diversion: _____
 c) Give well drillers name and address and date the well was completed None

EXHIBIT #3

PAGES 1 TO 4

63 7035

(No notice letter needed)

[illegible]

c. Describe any other water rights used for the same purposes _____

9. a. Who owns the property at the point of diversion applicant, Maurice H. Raubion
b. Who owns the land to be irrigated or place of use same and Forest Service NF
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Special Use Permit application for spring being made this date with U.S.F.S. / NF

10. Remarks

Water to be used on 2 cabin sites of applicant and possibly on 2 adjacent sites.

Received by Duff Date 10-30-67 Time 1:15 PM

Preliminary check by Duff Fee \$ 10.00

Receipted by ef Date 10-30-67

Publication prepared by KS Date 11-7-67

Published in Idaho World

Publication dates 11-16, 23-67

Publication approved ks Date Galley Proof

Priority reduced to _____ Reason _____

Protests filed by: none

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by CSA DKS

ACTION OF STATE RECLAMATION ENGINEER

APPROVED

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 63-7035, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before January 1, 19 70.
- c. Other: _____

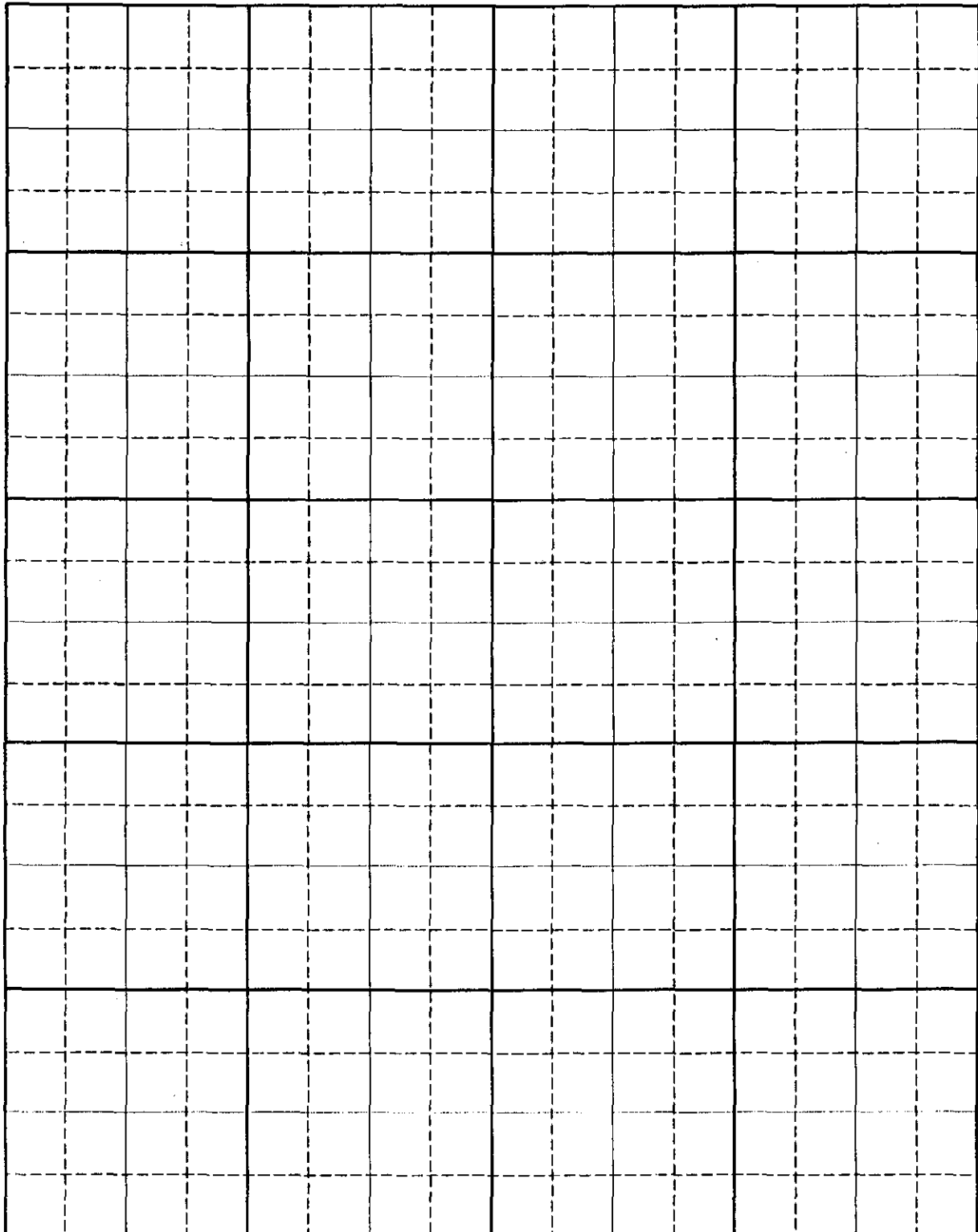
2. Denial of said application is for the following reasons: _____

Witness my hand this 26th day of December, 19 67.

STATE OF IDAHO

R. Keith Higgins
State Reclamation Engineer

11. Map of proposed project: ATTACHED



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Walter H. Paulson
(Applicant)

8. If for other than irrigation, describe the beneficial use to which you have applied the water and the place of use Domestic water supply for cabin sites (4) in the Pines Subdivision,
Boise County Idaho, adjacent to above described spring location.
Cabin sites are lots 1,2, and 3 Block 1 and lot 2 Block 4. One hydrant
is now located and in use on each lot.

9. Irrigation uses: Describe the lands irrigated by giving the acreages irrigated within each 40 acre subdivision: None

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres irrigated _____

10. Remarks: Map of location and system is attached.

The above information is a true statement of the extent to which the above numbered permit has been developed.

11/17/69
 (Date)

Maurice H. Paulson
 (Signature)

State of IDAHO)
 County of BOA) ss.

On this 17th day of November, 1969, personally appeared before me the
 signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

Stephen Wood
 Notary Public residing at
BOISE, IDAHO

My commission expires May 1, 1972

ORIGINAL

United States Department of Agriculture
Forest Service

SPECIAL USE PERMIT

Act of June 4, 1897, or February 15, 1901
This permit is revocable and nontransferable
(Ref. FSM 2718)

a. Record no. (1-2)

70

b. Region

4

c. Forest (5-6)

Boise

d. District (7-8)

Idaho City

e. Use number (9-12)

D-3

f. Kind of use (13-15)

Water
Supply

g. State (16-17)

Idaho

h. County (18-20)

Boise

k. Card no. (21)

1

Permission is hereby granted to Maurice H. Faubionof 7233 Sunnybrook, Boise, Idaho 83705,
hereinafter called the permittee, to use subject to the conditions set out below, the following described lands
or improvements:N¹/₂SW¹/₄ Section 24, T. 4 N., R. 3 E., S.M. in the
Robie Creek drainage.*SW 1/4 of Sec 24*This permit covers ~~xxxxxxxxxxxxxxxxxxxx~~ .095 miles and is issued for the purpose of:Developing a spring and installing pipeline to provide
water to private property for domestic use.1. Construction or occupancy and use under this permit shall begin within 6 months, and
construction, if any, shall be completed within 24 months, from the date of the permit. This
use shall be actually exercised at least 365 days each year, unless otherwise authorized
in writing.2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of
Agriculture, the sum of Free Use-Regulation U-11 (6) dollars (\$) _____ for the period
from 19, to 19, and thereafter
annually on _____Dollars (\$ _____)Provided, however, Charges for this use may be made or readjusted whenever necessary to place the
charges on a basis commensurate with the value of use authorized by this permit.3. This permit is accepted subject to the conditions set forth herein, and to conditions 18 to
20 attached hereto and made a part of this permit.

PERMITTEE	NAME OF PERMITTEE	SIGNATURE OF PERMITTEE	DATE
	Faubion, Maurice	<i>[Signature]</i>	<i>Jul 7, 1962</i>
WITNESSES	NAME OF WITNESSES	SIGNATURE OF WITNESSES	DATE

(CONTINUED ON REVERSE)

63 7035

2700-4 (3/68)

18. This permit confers no right upon the permittee to the use of the water involved. Such rights must be obtained and retained under applicable State law.
19. The permittee agrees to be responsible for prevention and control of soil erosion and gullying on lands covered by this permit and adjacent thereto resulting from the permittee's construction or maintenance. Such preventive measures may include vegetating with grass or herbaceous plants all ground cover where the soil has been exposed, and construction and maintenance of such preventive works as may be prescribed by the Forest Service.
20. This permit shall have no force and effect until the permittee has signified acceptance of its provisions and conditions by signing below and returning the duplicate copy to the Forest Supervisor.

HOWARD E. AHLISKOG
Forest Supervisor

10-2-68
Date

By [Signature]

I have read the foregoing permit and agree to accept and abide by its terms and conditions.

September 29, 1968
Date

[Signature]
Permittee

THIS FORM FURNISHED COURTESY OF:

**ALLIANCE TITLE &
ESCROW CORP.**

READ & APPROVED BY GRANTEE(S): _____

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 96062462-B WO/SB

WARRANTY DEED

FOR VALUE RECEIVED MAURICE H. FAUBION AND DOROTHY M. FAUBION,
TRUSTEES OF THE FAUBION FAMILY TRUST UNDER TRUST AGREEMENT DATED
FEBRUARY 3, 1992

GRANTOR(S), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto JEFF MAXEY and
JAN MAXEY, HUSBAND AND WIFE

GRANTEE(S), whose current address is: 5534 Millstone Drive, Boise, Idaho 83714
the following described real property in BOISE County, State of Idaho, more particularly
described as follows, to wit:

Lots 2, 3 and 4 in Block 1 of THE PINES SUBDIVISION NO. 1,
according to the Official Plat thereof on file and of record in
the Recorder's office, Boise County, State of Idaho, as
Instrument No. 72506.

INST# 161883
REQUEST Alliance

161883

26 AUG 30 AM 9:01

BOISE COUNTY RECORDER

BY Rue Miller

TYPE WD FEE \$3.00/c

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and
Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said
Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from
all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered
or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and
agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments,
if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend
the same from all lawful claims whatsoever.

Dated: August 07, 1996 FAUBION

Dorothy M. Faubion Trustee

STATE OF IDAHO, County of ADA, ss.

On this 12TH day of AUGUST in the year of 1996, before me,
the undersigned, a Notary Public in and for said State,
personally appeared DOROTHY M. FAUBION known or identified to
me to be the person(s) whose name(s) is/are subscribed to the
within instrument, as Trustee of FAUBION FAMILY TRUST U/T/A
DATED FEBRUARY 3, 1992 and acknowledged to me that he/she/they
executed the same as Trustee.



Signature: Stephanie Buse

Name: STEPHANIE BUSE

(Type or Print)

Residing At: BOISE, IDAHO

My Commission expires: AUGUST 31, 1996

EXHIBIT #4

PAGES 1 TO 1



A Pioneer Company
PIONEER TITLE COMPANY
OF ADA COUNTY

821 West State Street / Boise, Idaho 83702-5836 / Telephone (208) 336-6700

RECEIVED

OCT 10 1996

WATER RESOURCES
WESTERN REGION

P 149717 LF

Read and Approved:

WARRANTY DEED
(INDIVIDUAL)

FOR VALUE RECEIVED RICHARD R. FAUBION AND ROBERTA FAUBION, HUSBAND AND WIFE

Grantor s , do hereby grant, bargain, sell and convey unto RICHARD A. NESTORICK, AN UNMARRIED PERSON

the Grantee , whose current address is: HC 33 BOX 2436, BOISE, ID ~~83715~~ 83706 ^{ew}
the following described real property in BOISE County, State of Idaho, more particularly described as follows, to-wit:
LOT 2 BLOCK 4 THE PINES SUBDIVISION NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED AS INSTRUMENT NO. 72506, RECORDS OF BOISE COUNTY, IDAHO.

NOTE 161445
REVIEW Mr. View

161445

161445

Per Name
WD 9300/ce

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee , and Grantee heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee , the Grantor s are the owner s in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee ; and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (includes irrigation and utility assessments, (if any) for the current year, which are not yet due and payable, and that Grantor s will warrant and defend the same from all lawful claims whatsoever.

Dated: July 29, 1996

RICHARD R. FAUBION

ROBERTA FAUBION

STATE OF California , County of San Bernardino

On this 30 day of July , in the year of 1996 , before me Anne M. Yohn
The Undersigned , a notary public, personally appeared Richard R. Faubion and Roberta Faubion
known or identified to me to be the person s whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Notary Public: Anne M. Yohn
Residing at: Yreka CA
My Commission Expires: 11-7-97

EXHIBIT #5

PAGES 1 TO 2

"THE PINE" SUBDIVISION

IN THE SE 1/4 NW 1/4 Section 24
T.4N., R.3E., B.M. Idaho

BOISE COUNTY

Pioneer Title Co. of Boise County

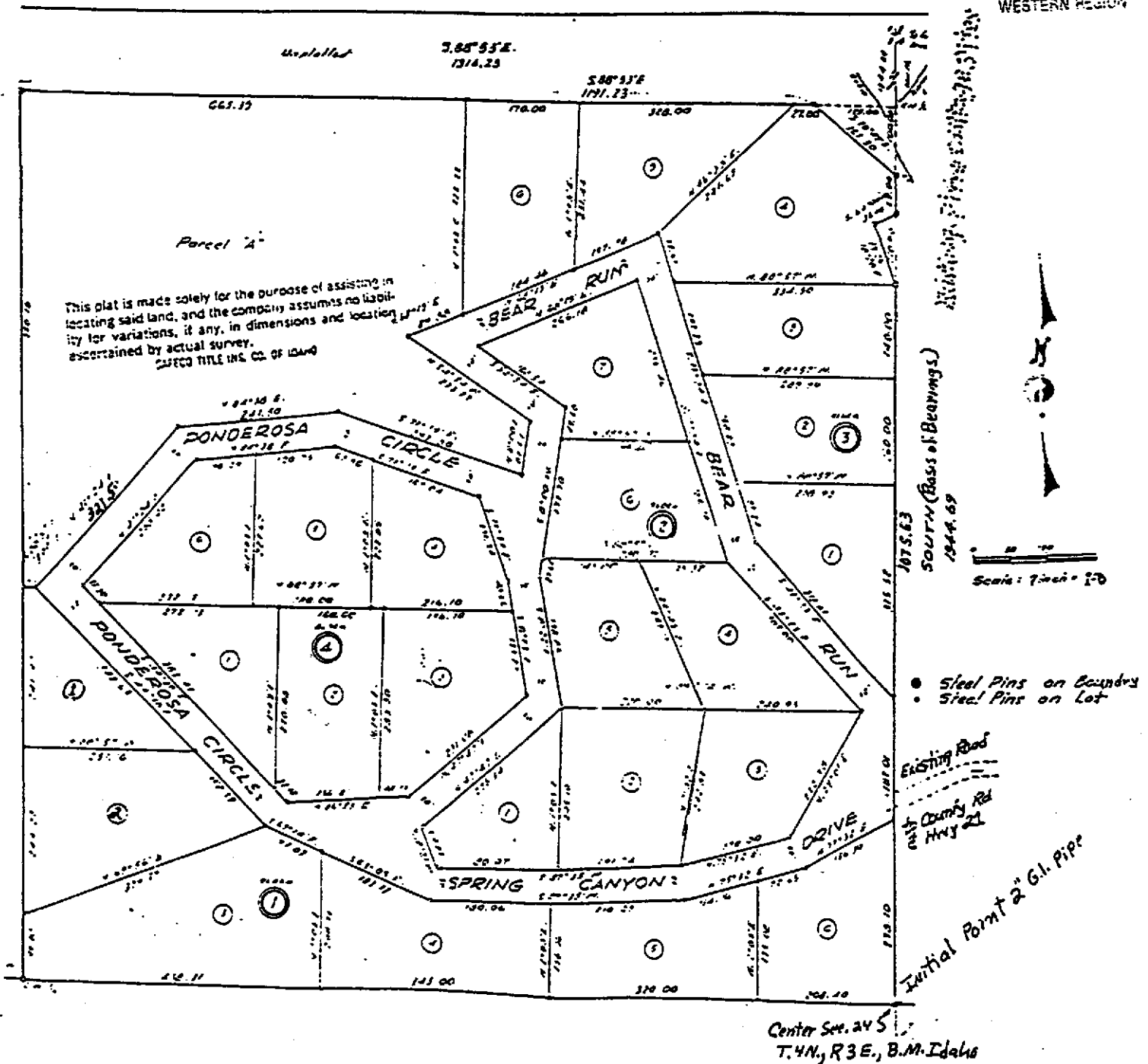
This sketch is for location purposes only. The Company assumes no liability for variations.

PIONEER TITLE COMPANY
of Ada County

RECEIVED

OCT 10 1996

WATER RESOURCES
WESTERN REGION



THIS FORM FURNISHED COURTESY OF:

ALLIANCE TITLE &
ESCROW CORP.

172063

DIET 172063
REQUEST Alliance Title

99 FEB 16 AM 11:10

BOISE COUNTY RECORDER

Whitely George
TYPE Deed Fee \$3.00/line

READ & APPROVED BY GRANTEE(S):

(030A AND 020A)

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 99080422 JC/SB

WARRANTY DEED

FOR VALUE RECEIVED JEFF MAXEY and JAN MAXEY, HUSBAND AND WIFE

GRANTOR(S), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto KIRK JAMES
DAVIS and CRISTY LYNN DAVIS, HUSBAND AND WIFEGRANTEE(S), whose current address is: 8743 KIOWA, BOISE, IDAHO 83709
the following described real property in BOISE County, State of Idaho, more particularly
described as follows, to wit:Lots 2 and 3 in Block 1 of THE PINES SUBDIVISION NO. 1,
according to the Official Plat thereof on file and of
record in the Recorder's office, Boise County, State of
Idaho, as Instrument No. 72506.Reserving unto grantors access to repair water lines on Property, and
Water running through property cannot be obstructed.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and
Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said
Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from
all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered
or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and
agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments,
if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend
the same from all lawful claims whatsoever.

Dated: February 11, 1999

JEFF MAXEY

JAN MAXEY

STATE OF IDAHO
COUNTY OF ADAOn this 11th day of February, in the year of 1999, before me, the undersigned, a Notary
Public in and for said State, personally appeared JEFF MAXEY and JAN MAXEYknown or identified to me as the person(s) whose name(s) is/are subscribed to the within instrument, and
acknowledged to me that he/she/they executed the same.

Signature:

Name: STEPHANIE BUSE

Residing at: BOISE, IDAHO

EXHIBIT

#6

PAGES

1 TO 1

QUITCLAIM DEED

For Value Received Lois M. Harvey (unmarried person) out of love and affection

do hereby convey, release, remise and forever quit claim unto Mike C. Harvey (unmarried person)

whose current address is

the following described premises, to-wit:

Lot 1, Block 1 of The Pines Subdivision No. 1, according to the official plat thereof on file and of record in the Recorder's Office, Boise County, State of Idaho, as Instrument No. 72505.

together with their appurtenances.

Dated: 1-17-95

Lois M. Harvey

STATE OF ~~Idaho~~ ^{Washington} COUNTY OF Pierce
On this 17 day of January, 1995,
before me, a notary public in and for said State, personally
appeared Lois M. Harvey

known to me to be the person — who — name —
subscribed to the within instrument, and acknowledged to
me that — she — executed the same.

Sharon M. Cummins
Notary Public
Residing at Tacoma, Washington, Idaho
Comm. Expires 2-19-97

Furnished by the AMERICAN LAND TITLE CO., Pocatello, Idaho

EXHIBIT # 7

PAGES 1 TO 1

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-30-1998
PAGE: A-1717

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: SINKS

RIGHT NUMBER: 63-07035A

NAME & ADDRESS: MAURICE H FAUBION
9302 E CITRUS LN S
SUN LAKES AZ 85248

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.001 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 10/30/1967

POINT OF DIVERSION: T04N R03E S24 NWSW Within BOISE County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
DOMESTIC 1 HOME 01-01 12-31 0.001 CFS

PLACE OF USE: DOMESTIC Within BOISE County
T04N R03E S24 SWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - LICENSE
PROPERTY ALSO KNOWN AS LOT 1, BLK 1, PINES SUBDIVISION #1.

EXHIBIT #9
PAGES 1 TO 1

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-30-1998
PAGE: A-1718

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: SINKS

RIGHT NUMBER: 63-07035B

NAME & ADDRESS: JAN MAXEY
JEFF MAXEY
5534 MILLSTONE DR
BOISE ID 83714

SOURCE: SPRING TRIBUTARY: SINKS
QUANTITY: 0.003 CFS
THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.
PRIORITY DATE: 10/30/1967
POINT OF DIVERSION: T04N R03E S24 NWSW Within BOISE County
PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
DOMESTIC 2 HOMES 01-01 12-31 0.003 CFS
PLACE OF USE: DOMESTIC Within BOISE County
T04N R03E S24 SNNW
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.
EXPLANATORY MATERIAL: BASIS OF CLAIM - LICENSE
PROPERTY ALSO KNOWN AS LOTS 2 & 3, BLK 1, PINES SUBDIVISION.

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-30-1998
PAGE: A-1719

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: SINKS

RIGHT NUMBER: 63-07035C

NAME & ADDRESS: RICHARD A NESTORICK
HC 33 BOX 2436
BOISE ID 83706

SOURCE: SPRING TRIBUTARY: SINKS

QUANTITY: 0.001 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 10/30/1967

POINT OF DIVERSION: T04N R03E S24 NWSW Within BOISE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 1 HOME	01-01 12-31	0.001 CFS

PLACE OF USE: DOMESTIC Within BOISE County
T04N R03E S24 SWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

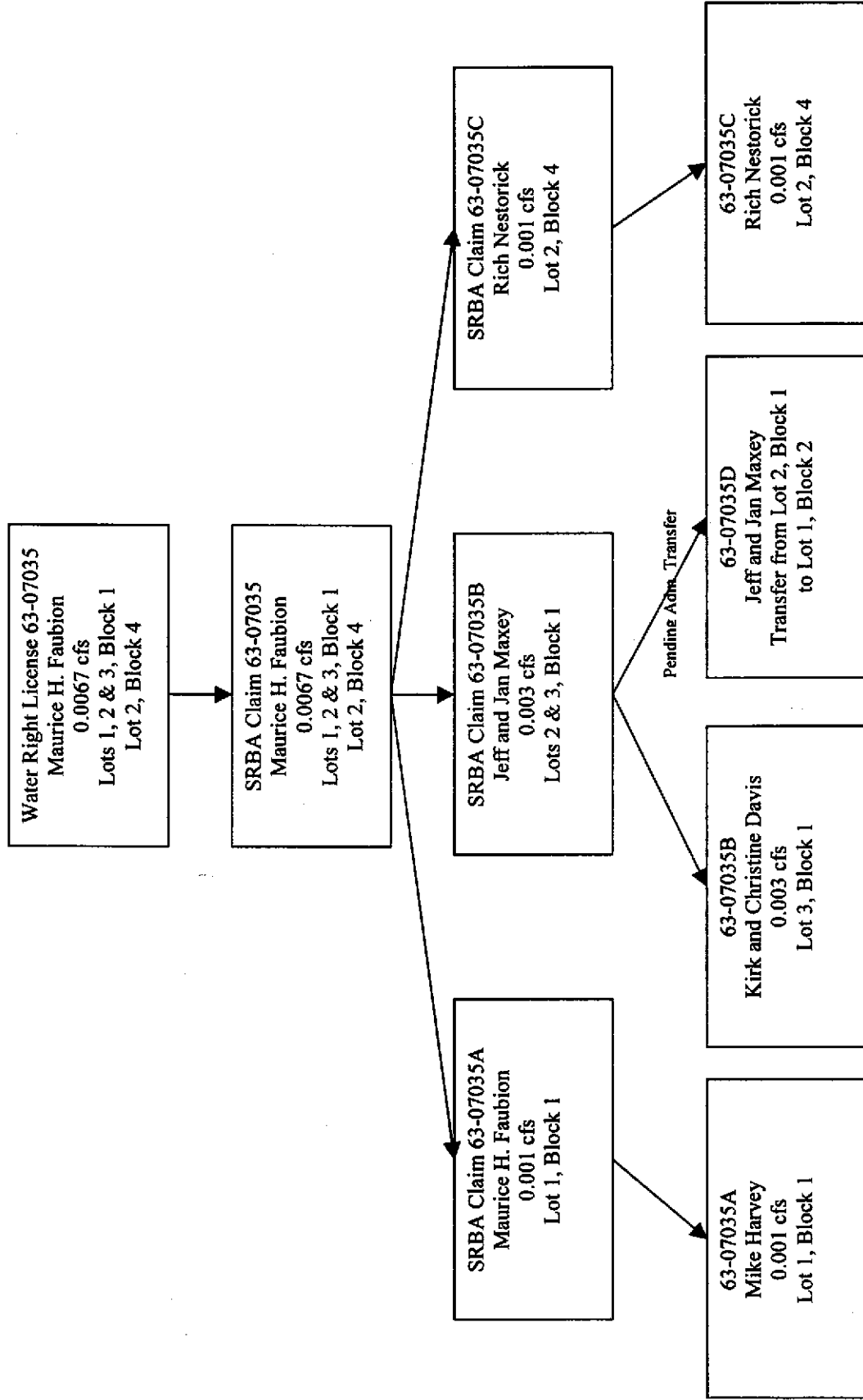
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - LICENSE
PROPERTY ALSO KNOWN AS LOT 2, BLK 4, PINES SUBDIVISION #1.

EXHIBIT #11

PAGES 1 TO 1

Brief Ownership Summary of Water Right 63-07035 **Serving Four Lots in Pines Subdivision #1** **From an unnamed spring located on USFS Land**



JAN 31 2000

70 JUN 28 PM 3:41

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO

In Re SRBA

Subcase: 63-07035C

Case No. 39576

**ORDER REQUESTING
INFORMATION OF IDWR SETTING
FORTH ITS PRACTICE FOR
LICENSING OR RECOMMENDING
DOMESTIC WATER RIGHTS FOR
WHICH THE DELIVERY SYSTEM IS
IN PLACE**

The court requests that IDWR submit information setting forth the Department's practice with regard to licensing and/or recommending domestic water rights where the delivery system is merely in place or "stubbed-in." The information supplied by IDWR may include attachments, and may include a description of subcases which originated from the same root right as this subcase, if necessary to explain IDWR's practice. Therefore, the court requests that IDWR submit this information by **February 11, 2000**.

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

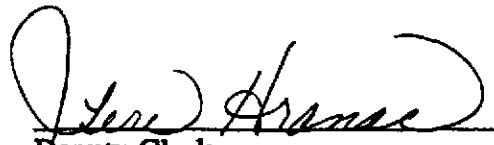
CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER REQUESTING INFORMATION OF IDWR was mailed on January 28, 2000, with sufficient first-class postage to the following:

Director of IDWR
PO Box 83720
Boise, ID 83720-0098

Jeffrey Maxey
48 Spring Canyon Rd
Boise, ID 83716

Charles Honsinger
Ringert Clark
PO Box 2773
Boise, ID 83701-2773


Deputy Clerk

RECEIVED

NOV 03 1999

Department of Water Resources

RECEIVED

SEP 20 1999

Department of Water Resources

Jeffrey A Maxey, Pro Se
HC 33 48 Spring Canyon Rd.
Boise, ID 83716

RECEIVED

OCT 26 1999

WATER RESOURCES
WESTERN REGION

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AD FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Amendment to Claim Objection
	)	
Case No. 39576	)	SUBCASE NO: 63-07035C
_____	)	

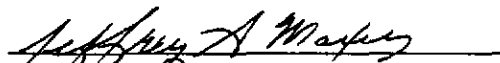
I Jeffrey A. Maxey wish to file an amendment to my original claim in order to give the
Court sufficient information on which to make a decision.

The following addition items are of importance for the Court consideration:

- the spring in question produces approximately one (1) gallon of water every two to three minutes, at best during a good year with rain. The license issued to my family allows for domestic use up to thirteen thousand (13,000) gallons a day. The two hundred and fifty (250) gallon holding tank currently can not replenish its self within a twenty four (24) hour time period. Due to the low water volume our house hold is currently rationing daily showers, laundry, and miscellaneous cleaning. The fact of the matter is that there is not enough water for two house holds. In addition, when the water lines were being replaced the previous owner of Mr. Nestorick's property had no interest in assisting with the replacement of the water lines. In fact, Mr. Nestorick also refused to help financially or physically with the replacement of the water lines.
- Richard A. Nestorick filed a Notice of Change of Water Right Ownership with inaccurate and false information, showing Jeff & Jan Maxey as former owners/claimants of the property he purchased, Lot 4 Blk 2, The Pines Subdivision #1, Robie Creek Idaho; when, in fact, the correct former owners are Richard R. and Roberta Faubion;
- when Faubion's sold the above property to Mr. Nestorick, it was with the understanding that there was no water rights on the property. Further, Faubion would have excluded any water rights that may have existed from the sale of the property, but did not realize that a water license could be obtained.

- due to the beneficial use requirement, a water right (or portion of a water right) may be lost if not used for a continuous five-year period. As stated in the original objection, the water in question has not been used on the property that Mr. Nestorick had purchased, since 1989;
- Mr. Nestorick or the previous land owners have never acquired and/or obtained a water use permit from the National Forest Service.

Dated: September 16, 1999


Jeffrey A. Maxey

CERTIFICATION OF MAILING

I certify that a true and correct copy of the Amendment to Claim Objection was mailed on 9-16-99, with Sufficient first-class postage to the following:

USDA FOREST SERVICE

Represented by:

US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724
Phone: 208-387-0835

JEFFREY A MAXEY
HC 33 48 SPRING CANYON RD
BOISE, ID 83716
Phone: 208-364-1820

RICHARD A NESTORICK
HC 33 BOX 2436
BOISE, ID 83706
Phone: 208-336-3889

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

RECEIVED

JUL 29 1999

Department of Water Resources

Richard A. Nestorick
36 Ponderosa Circle
Boise, Id 83716
July 25, 1999

RECEIVED

JUL 27 1999

WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Id 83705-5082

To whom it concern,

Please be informed that I have a new address at my property in the Robie Creek area. The post office has issued street addresses to everyone and they will not deliver mail after August 15, 1999 that is addressed with my old HC 33 Box 2436 address. I would like for you to change my address on all of your documents concerning me and my water right which is number 63-07035C. Thank you very much.

Sincerely,



Richard A. Nestorick

✓ O.K. to change address & file NCAP
7/29/99 R. Brown

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

A. Subcase: _63-07035C
STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America, Acting through the USDA Forest Service
Address: 550 West Fort Street
MSC 033
Boise, Idaho 83724
Daytime Phone: (208) 387-0835

Name and Address of Attorney, if any:

Randall J. Bramer
550 West Fort Street
MSC 033
Boise, Idaho 83724

C. CLAIMANT OF WATER RIGHT AS LISTED IN THE DIRECTOR'S REPORT

Name: Richard A Nestorick
Address: HC 33 Box 2436
Boise, ID 83706

D. I object to the following elements as recommended in the Director's Report.
(Please check the appropriate box(es)).

1. ☐ **Name and Address**

Should be:

2. ☐ **Source**

Should be:

3. ☐ **Quantity**

Should be:

4. ☐ **Priority Date**

Should be:

5. ☒ **Point(s) of Diversion**

Should be: See E below.

6. ☐ **Instream Flow Description**

Should be:

7. ☐ **Purpose(s) of Use**

Should be:

8. ☐ **Period of Year**

Should be:

9. ☐ **Places of Use**

Should be:

11. I object because:

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

The point of diversion shown in the Directors Report is on National Forest System land. The claimant is not authorized to occupy the National Forest for this purpose.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

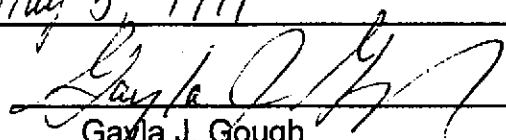
Michael Collette , duly sworn, upon oath, deposes and says:
(Name of person filing objection)

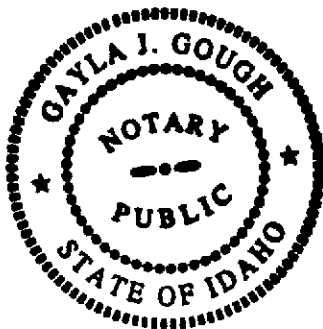
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


(Signature of person filing objections)


(Attorney signing in representative capacity)

Subscribed and sworn before me on: May 5, 1999


Gayla J. Gough



Notary Public for: Idaho
Residing at: Kuna, Idaho
Commission Expires: 11/17/2004

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on MAY 6 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

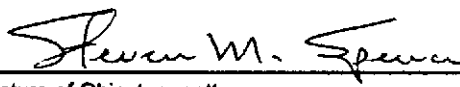
Name: Richard A Nestorick
Address: HC 33 Box 2436
Boise, ID 83706

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resource
Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

RECEIVED

MAY - 4 1999

Department of Water Resources
Adjudication Bureau

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 63-07035C
(Insert water right number)

DOMESTIC AND
STOCK WATER RIGHT
OBJECTION

Please fill in the following information:

B NAME AND ADDRESS OF PERSON OBJECTING

Name: Jeffrey A Maxey

Address: HC 33 48 Spring Canyon Rd.

Boise ID 83716

Daytime Phone: 364-1820

(208)

Name & Address of Attorney, if any:

C CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Richard A. Nestorick

Address: HC 33 Box 2436

Boise ID 83706

☒ I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

11. I object because:

☒ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

☒ **REASONS SUPPORTING OBJECTION(S):** This right was not
used from 1989 to present. Therefore,
this right has been forfeited ~~for more~~ because
of more than five years of continuous non-
use.

VERIFICATION (Must be Completed)

State of Idaho

County of Ada

Jeffrey A. Maxey, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Jeffrey A. Maxey
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: April 28th, 1999

Carter Fritschler
Notary Public for Idaho
Residing at: Kuna ID
My Commission Expires: 3-21-2000

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.



CERTIFICATE OF MAILING

I certify that on 4-28, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Richard A. Nestorick

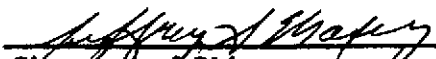
Address: HC 33 Box 2436
Boise ID 83706

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724


Signature of Objector or attorney
mailing on Objector's behalf

MEMORANDUM

February 25, 1997

TO: STEVE LESTER

FROM: JAN SHURTE

RE: APPT. FOR APP. FOR TRANSFER - JEFF MAXEY - 334-6653 (work)

I have received a request for assistance in completing an application for transfer from Jeff Maxey for Water Right No. 63-07035 aka Claim No. A63-07035B.

I became involved in this situation when a change of ownership came in for a portion of this right from Rich Nestorick. When we did the split, Jeff Maxey protested the idea that Mr. Nestorick had any claim to this water right. As it turns out the license was issued for 4 lots - Lots 1, 2 & 3, Block 1 and Lot 2, Block 4. Jeff Maxey purchased 3 lots altogether (Lots 2, 3 & 4, Block 1) which consists of 2 of the original lots licensed (Lots 2 & 3, Block 1). Rich Nestorick purchased Lot 2, Block 4 of the original license and an unknown owner owns Lot 1, Block 1 of the original license. Maurice Faubion filed his claim as licensed - all 4 lots. Therefore, the splits are A63-07035A - Maurice Faubion for Lot 1, Block 1 (new owner unknown), A63-07035B - Jeff Maxey for Lots 2 & 3, Block 1, and A63-07035C - Rich Nestorick for Lot 2, Block 4.

This does involve a water right controversy between Jeff Maxey and Rich Nestorick. In July, 1996 Jeff Maxey repaired the water system and put in a new pipeline to two of his three lots. One of the lots the pipeline goes to is a different lot than one of the two originally licensed. From talking to Mr. Maxey it appears that he ran the pipeline to Lots 3 & 4, Block 1, rather than Lots 2 & 3 which were the original lots licensed that he purchased. This is why he wants to file a transfer to change the place of use from Lot 2 to Lot 4 (note-he owns Lot 2 also). This would also involve a 1/41/4 description change. At the time Mr. Maxey repaired the water system he did not hook the other two lots back up to the system. Rich Nestorick now wants to hook his lot back up and is taking the position that it was illegally disconnected. Note: Mr. Nestorick purchased his property on August 1, 1996. I have advised both of them that this is a civil matter and only the court can determine who has to do what. Mr. Maxey is maintaining that Nestorick's portion has been forfeited through non-use by the previous owner from 1987 - present.

Due to the water controversy situation and the request to file a transfer, I felt it was time to involve water allocation staff. Could you please have someone from your staff call Jeff Maxey to set up an appointment as soon as they can. I told him someone would be calling him to set it up. Thanks, Jan.

*Jeff Maxey decided the lots are correct
& he does not want to do the transfer.
See Roy Graves. J*



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 15, 1996

RICHARD A NESTORICK
HC 33 BOX 2436
BOISE ID 83706

Dear Mr. Nestorick:

Enclosed is a computer generated copy of your portion of Claim No. A63-07035. This claim is numbered A63-07035C reflecting the split of this right.

Also enclosed are copies of an affidavit and letter we received in reference to a complaint concerning use of the spring listed on this claim. These documents state there has been a period of non-use of this spring to the lot you purchased. Please be advised that Idaho Code Section 42-222(2) states that forfeiture of a water right can occur after five years of non-use. Enclosed is a copy of this section for your review. The Department is not in the position to judge whether forfeiture has occurred, only a court action may determine forfeiture. If non-use for more than five years has occurred, please review the enclosed copy of the case law on crossing the land of another to re-develop or develop a water right. Basically, a water right does not give a right to trespass across the land of another, only the right to the use of the water. However, as in all water right matters, this can also be disputed in a court action.

If you have any questions concerning the information contained in this letter, please feel free to contact our office.

Sincerely,

Jan Shurte
Water Rights Supervisor
Adjudication Section
Western Region

JS:lh

Enclosures

cc: Jeff & Jan Maxey

October 29, 1996

TO WHOM IT MAY CONCERN

This is to attest that water on the Richard Faubion lot at the Pines Subdivision #1, Boise County, Idaho, has not been utilized since October of 1989.

Dorothy M. Faubion

Dorothy M. Faubion
for The Faubion Family Trust

State of Arizona, County of Maricopa

Donna J. Bobier

Notary *FOR DOROTHY M. FAUBION ONLY*

[Signature]



October 29, 1996

Dept. of Water Resources
C/O Jeff & Jan Maxey
Pine Subdivision #1
Robie Creek Road
Boise, Idaho 83706

To Whom It May Concern,

For your information, I am submitting a brief history on the spring that the Maxey's are filed on and is now being questioned by the new owner of Richard Faubion's property. The water lines to Richards property were only under the ground a few inches and were only intended for brief uses during the summer. The water service was never intended for full time use at Richards lot.

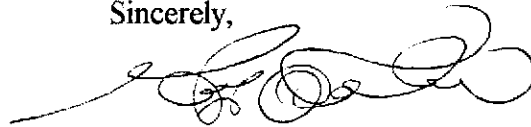
In 1990 the gophers did a fairly thorough job of destroying the water lines in several places. Richard showed no interest in physically or financially repairing these lines so they were basically abandoned. He had not visited the property for several years prior to 1990. Mr. Nestorick was made completely aware of the water situation long before he purchased Richard Faubion's property.

I would further protest allowing another claim for the following reasons:

First and foremost there is not enough water to accommodate another household. Currently the collection is about a gallon of water every 2 to 3 minutes, feeding into a 500 gallon holding tank.

I am currently filed on an unnamed stream that is fed by these springs. During the hot summer months this stream does not flow all day long. If you allow another filing it will jeopardize my water supply greatly and I would not care for that to happen. I am fully prepared to file a formal protest if necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Walcom', with a long horizontal line extending to the left.

Gary Walcom

October 29, 1996

Dear Jan & Jeff:

If I had remembered to take your address along to the bank, I could have sent this to you today. However, it will not be delayed very long, I'll get it into the box.

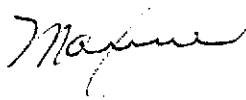
I looked back in my diary and found that Richard was there in 1987 as well as in 1984. I am sure we did not use the water up there to shower past 1988 as we were gone all summer traveling in 1989. We moved the shower down to the trailer after we put the big wing tank in and now I am not sure when we did that, except it was before 1990. So, I am positive the water was not utilized after 1989 for sure and probably not since Richard was there in 1988. As I told you, water was available up there because to supply water to the Hancocks cabin it had to go through Richard's lot.

I hope you get it all straightened out and Nestorich cannot file on your water system. It is too bad there always has to be a rotten apple in the barrel.

If I can do any more to help you, let me know.

Did Walcoms tell you I sold my rocks in the red shed? The fellow lives in Hill City, Kansas, and could not come get them before snow flies, so will pick them up in the spring. He will probably highgrade and leave behind the rejects so you and Walcoms can use them for your rock gardens or walls, or whatever.

Love,





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 13, 1996

Re: Notice of Claim to a Water Right No. A63-07035

JEFF MAXEY
JAN MAXEY
5534 MILLSTONE DR
BOISE ID 83714

Mr. & Mrs. Maxey:

Enclosed is a copy of the above referenced claim which reflects the change in ownership of the land and appurtenant water rights covered under the original filing.

The Department will contact you in the future concerning any requirements that may be needed in order to process this claim for final court decree.

If you have any questions concerning the enclosed claim, please feel free to contact this office.

Sincerely,

Lori Harris
Technical Records Specialist
Adjudication Section
Western Region Office

LH:1

Enclosure

~~MICROFILMED~~
OCT 07 1996

CONVERSATION MEMORANDUM

DATE 6/5/96
FILE A63-07035NAME OF PARTY Jeff Maxey
EMPLOYEE Steve LattaRE: NESTORIC NEW APPL. for Permit?
NEsturick?

Concerned a new party perhaps tapping into
pipeline from spring id A63-07035.

No new appl. filed this ~~name~~ NAME per
"APPS. Lis" or "WRQ1" (or P/O per
WRQ5).

Requested notification & comment letter if
party files new appl. — add'd Nestorick(k)
to APPS. Lis w/ "POSS APPL" flag.

To contact Jeff-

Current Home	Boise	323-7739
John	"	367-1776
Work	Boise	334-6653

MICROFILMED
OCT 07 1996



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 29, 1996

JEFF MAXEY
JAN MAXEY
5534 MILLSTONE
BOISE ID 83714

Re: Ownership Change for Notice of Claim to a Water Right No.
A63-07035

Mr. & Mrs. Maxey

We have been informed by Maxine Faubion that you have purchased property in Boise County from her and her husband, Maurice. Mr. Faubion had filed a claim to water right for domestic use from a spring on this property and they would like to have this claim transferred to your name. In order to do this we need to have the enclosed form completed and returned to us with a copy of your warranty deed. We will send you a copy of the claim transferred to your name when you return the required information to us.

If you have any questions regarding this letter, feel free to contact our office.

Sincerely,

Lori Harris
Technical Records Specialist
Adjudication Section
Western Region

LH:1

Enclosure

~~MICROFILMED~~
OCT 07 1996

RECEIVED
MAY 28 1996
WATER RESOURCES
WESTERN REGION

May 21, 1996

Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Water Right #63-07035
Maurice H. Faubion
9302 S. Citrus Lane
Sun Lakes, AZ 85148

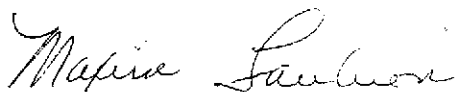
Gentlemen:

We have a claim for domestic water on a spring in Boise County to supply our property near Robie Creek. Due to illness of my husband we are selling the lots to Jeff and Jan Maxey of Boise, and would like to transfer the water rights to them. The water would still be used for domestic water on the same property.

According to the letter you wrote us in August, 1995, the final adjudication for Snake River Water has not been made as yet. Whatever the procedure is to transfer the claim, would you please contact the Maxeys and send proper forms?

Jeff and Jan Maxey
5534 Millstone
Boise, ID 83714
Phone 323-7739

Sincerely yours,



Maxine Faubion

~~MICROFILMED~~
~~OCT 07 1996~~



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 29, 1995

MAURICE H FAUBION
MAXINE FAUBION
9302 S CITRUS LANE
SUN LAKES AZ 85248

Mr. & Mrs. Faubion:

Enclosed is a copy of the claim you filed in the Snake River Basin Adjudication and proof report of the license for your spring in Boise County. The Department will contact you in the future regarding any requirements that may be needed to process this claim for final court decree.

If you have any questions regarding the enclosed claim, please feel free to contact this office.

Sincerely,

Adjudication Section
Department of Water Resources
Western Region Office

LH:l

~~MICROFILMED~~
OCT 07 1995

RECEIVED

Maurice H. Faubion
9302 S. Citrus Lane
Sun Lakes, AZ 85248

AUG 28 1995

WATER RESOURCES
WESTERN REGION

RECEIVED

AUG 28 1995

Department of Water Resources

Idaho Department of Water Resources
Statehouse
Boise, Idaho 83701

Gentlemen:

We have had a water right on a spring in Boise County since December 26, 1967. The permit no. is 63-7035, issued to Maurice H. Faubion, and the spring furnishes water to four other people, strictly domestic use, no irrigation or livestock use.

My brother-in-law, Richard Faubion, one of the users of the water, is selling his lot and he has been advised there is no water right in the name of Maurice H. Faubion.

The only thing I can find in my file is a form letter we received from IDWR stating the Snake River Basin water was being reviewed and claims had to be filed to keep the water right. My husband had written on the face of the letter "No action by me because source of water is-----" he didn't finish the sentence. I cannot ask him what happened, or why he felt he did not need to file the claim because he is ill and cannot remember. As dear to his heart as the water system was to him, I cannot believe he did not check into it and get an answer to the effect he did not need to file.

If there is a problem and we no longer have the right, can we still file and protect our water system? We have been using the water for over 25 years and definitely want to keep the right.

Please let me know if the right is still in effect, and if not, what I must do to renew it.

Sincerely,

Maxine Faubion
Maxine Faubion

AL3-07035

~~MICROFILMED~~
~~OCT 07 1996~~

Maurice H. Faubion
P.O. Box 111
527 Hotel Plaza
Boulder City, NV 89005

March 26, 1989

State of Idaho
Dept. Of Water Resources
Boise, Idaho

RECEIVED
MAR 31 1989
Department of Water Resources
Western Regional Office

Attn: Jan Shurte

Dear Jan:

Thank you pointing out my errors when I submitted my "Notice of Claim to a Water Right". If the enclosed paperwork does not correct them, please try again.

I modified the original claim form and initialed the changes; but I also filled out the new form you sent. I noticed that they are slightly different. Please use the one which seems best to you. My signatures on both are notarized.

My two neighbors which I deleted on the forms will, I assume, be welcome to my surplus water when available; but they will have no actual water right. I do not want the responsibility of providing them water on a regular basis. A widow owns L1, Blk 1, but does not use it.

I am enclosing copies of sub-division maps from which I hope you can determine if I have item # 10 correct. I am not familiar with surveying, but it seems to me that all the lots listed in the modified forms are in the southwest quarter of the northwest quarter of section 24.

Also enclosed is my check for \$25.

Sincerely Yours,

Maurice H. Faubion
Maurice H. Faubion

MICROFILMED
AUG 21 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

March 8, 1989

1 MAURICE FAUBION
C/O BEE'S MAIN SERV.
527 HOTEL PLAZA
1 BOUNDER CITY, NV 89005

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Dear Claimant(s):

This office has received the Notice of Claim(s) to a Water Right for the use of water within the Snake River Drainage Basin. However, due to the items checked below, we cannot process this claim(s). We are returning the claim(s) to you, along with your Check No. 1036 in the amount of \$ 25 for the adjudication filing fee. If your water use is for either domestic or stockwater, please read the enclosed brochure entitled, "The Snake River Basin Water Right Adjudication, Domestic and Stockwater Use" prior to completing the item(s) checked below.

_____ Fee - No fee received or inadequate fee received, fee due is _____.
See enclosed fee schedule for computation of fees.

_____ Late Notice of Claim - Claim has been received after filing deadline for _____ County. This date was _____. See enclosed Late Fee Notice.

_____ Item No. 2 - Date of priority - date water was first put to beneficial use.

_____ Item No. 3 - Source of Water

_____ Item No. 4 - Point of Diversion - must be shown by quarter-quarter (40 acre tract), section, township and range, except for spring sources which should be shown by quarter-quarter-quarter (10 acre tract), section, township and range. Lot and block for a subdivision are not acceptable as the legal description for the point of diversion, however, please include this information in the remarks section of your claim.

_____ Item No. 6 - Uses of Water

☒ Item No. 9 - Non-Irrigation Uses LICENSE ISSUED FOR 4 CABINS. SEE BACK PG.

☒ Item No. 10 - Place of Use - must be listed by quarter-quarter (40 acre tract), section, township, and range. Lot and block for subdivision are not acceptable as the legal description for the place of use, however, please include this information in the remarks section of your claim.

☒ Item No. 16 - Signature - this claim form does require your signature be affixed and notarized by a notary public. Note, the notary public signs below the signature blocks listed in this item.

FAUBION

MICROFILMED

AUG 21 1992

X Other: PLEASE MARK THE LOCATIONS OF THE CABINIS USING THIS
WATER SO WE CAN LIST THE 1/4 (40-ACRE TRACT) FOR ITEM No.
10. A SUBDIVISION MAP WOULD HELP TO LOCATE THIS ALSO.

If your uses are for domestic or stockwater and after reading the enclosed brochure you have decided to file the claim(s), please complete the above item(s) on your claim form(s), initial and date any changes or additions, and return the claim(s), with the fee, to our office prior to the deadline date for filing adjudication claims in your county. If you are returning a claim form which was received in our office, with the fee, by the deadline for your county, then as long as the corrected claim and fee are returned within 30 days of the date of this letter, no late fee will be charged. If your deadline is upcoming, please try to return the corrected claim(s) by that date. The deadline date for your county is 5/19/89. If you do not wish to file your claim(s), no further correspondence is needed.

Please feel free to contact this office if you have any questions concerning this letter.

Sincerely,

Jan Shurte

Jan Shurte
Water Rights Supervisor
Adjudication Section

JS:lh
Enclosures

NOTE: THIS LICENSE WAS ISSUED FOR 4 HOMES.
THEREFORE, 4 HOMES WILL MOST LIKELY BE
RECOMMENDED, SINCE IT IS AGAINST IDAHO
WATER LAW TO EXPAND THE ORIGINAL RIGHT.
HOWEVER, YOU CAN FILE AN ADDITIONAL CLAIM
FOR THE OTHER HOME. ENCLOSED IS THE
DOMESTIC CLAIM FORM FOR YOUR USE.

MICROFILMED

AUG 21 1992

FAUBION

