

State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

TAILINGS

Creek

IDAHO CITY

(BM 3906)

Water Tank

T6N R5E S26 NESW
Sanders P/U & P/D

TAILINGS

N

A

T

cutters

4000

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Chutes







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 63-31757
Date Received: 8/22/2003
Receipt No: W030873
Received By: g

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

STEVE SANDERS
112 COTTONWOOD ST
PO BOX 55
IDAHO CITY ID USA 83631

Phone: (208) 392-4938

JEAN SANDERS
112 COTTONWOOD ST
PO BOX 55
IDAHO CITY ID USA 83631

Phone: (208) 392-4938

2. Date of Priority: 12/31/1955

3. Source: UNNAMED STREAM Trib. to: MORES CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
06N	05E	26	NE SW	BOISE	

5. Description of diverting works:

Rock, dirt dam, pipe

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
DOMESTIC	01/01	12/31	0.04	

7. Total Quantity Appropriated is:

0.04 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
06N	05E	26	NE	SW	DOMESTIC	

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:

14. Remarks:

Source locally known as Smith Creek.

External domestic use only

located on Lt 110
address + p/u, p/d in for lots 110 + 112 < 1/2 ac
irrigation

15. Basis of Claim: Beneficial Use

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.

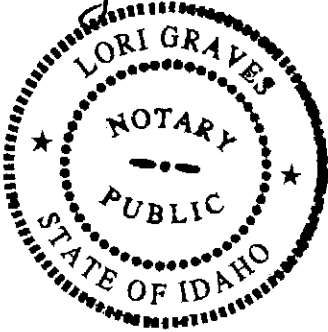
Signature of Claimant(s): Jan F Sanders Date: 8/26/03

Date:

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this

of Aug 2003



Lori Graves

Notary Public

Residing at Boise

My commission Expires 6/18/04

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4000

Idaho City, Idaho
Aug, 21/2003

To Whom It May Concern:

I have been asked to clarify a small problem of the usage of water from a drain ditch that has been named Smith Creek. I have been a resident of Idaho City since 1952 and have known and been friends of both Beth & Tommy Parkinson.

Now with that being said the property that the Sanders now own and the property that was Parkinson's Property being one and the Same, The water from the Drain Ditch that is called Smith Creek was and has been used for irrigation on that property as far back as the 1950s and to the best of my knowledge with out let up since that time.

If you have any further questions concerning this mater please feel free to get in touch with me.

Yours truly,



Marlin Read

104 Gold Road

P.O.Box 8

Idaho City, Idaho. 83631

05/31/2005

NOTICE OF ERROR
REPLY

RECEIVED

JUL 14 2005

WATER RESOURCES
WESTERN REGION

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: July 15, 2005

Water right number: 63-31757

STEVE SANDERS
112 COTTONWOOD ST
PO BOX 55
IDAHO CITY ID 83631

JEAN SANDERS
112 COTTONWOOD ST
PO BOX 55
IDAHO CITY ID 83631

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 7-10-05 SIGNATURE: Jean Sanders

Please print your name:

JEAN SANDERS

IDWR Regional Office, 2735 Airport Wy, Boise, ID 83705, 2083342190

09/08/2003

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-31757

NAME AND ADDRESS: STEVE SANDERS
112 COTTONWOOD ST
PO BOX 55
IDAHO CITY ID 83631

JEAN SANDERS
112 COTTONWOOD ST
PO BOX 55
IDAHO CITY ID 83631

SOURCE: UNNAMED STREAM

TRIBUTARY: MORES CREEK

QUANTITY: 0.040 CFS

The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 12/31/1955

POINT OF DIVERSION:

T06N R05E S26 NESW Within BOISE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.040 CFS
Domestic use is for 1 home.		

PLACE OF USE: DOMESTIC Within BOISE County

T06N R05E S26 NESW

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

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. Section 42-1412(6), Idaho Code.

The quantity of water decreed for this water right is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: Beneficial Use

Parcel #: RP100000264860A

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31757 V1

WATER RIGHT NUMBER: 63-31757 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	STEVE SANDERS 112 COTTONWOOD ST PO BOX 55 IDAHO CITY, ID 83631
Current Owner	JEAN SANDERS 112 COTTONWOOD ST PO BOX 55 IDAHO CITY, ID 83631

Priority Date: 12/31/1955

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
UNNAMED STREAM	MORES CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	01/01 to 12/31	0.040 CFS	
<u>Total Diversion:</u>		0.040 CFS	

Location of Point(s) of Diversion

UNNAMED STREAM	NE1/4SW1/4	Sec. 26, Twp 06N, Rge 05E, B.M.
BOISE County		

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05E	26									X								

Conditions of Approval:

1. C18 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. Section 42-1412(6), Idaho Code.
2. N11 The quantity of water decreed for this water right is not a determination of historical beneficial use.
3. N13 The quantity of water under this right shall not exceed 13,000 gallons per day.
4. X01 Domestic use is for 1 home.

Remarks:

1. Explanatory Parcel #: RP100000264860A

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31757 V1

Comments:

1. csaxton 9/8/2003 Purpose of Use

Comment: Domestic use is for external use only with less than 1/2 acre of irrigation.

Dates and Other Information:

Decreed Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Defendant:
 Plaintiff:
 Civil Case Number:
 Judicial District:
 Notice of Error Flag:
 State or Federal:
 Owner Name Connector: OR
 Water District Number:
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
Contacts	9/8/2003 10:57:12 AM	csaxton			Active
Priority Date	9/8/2003 11:24:13 AM	csaxton			Active
Summary			09/08/2003	csaxton	Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
POD	9/8/2003 11:11:28 AM	csaxton	Edited point location
POU	9/8/2003 11:13:51 AM	csaxton	Edited shape boundary
Priority Date	9/8/2003 11:24:14 AM	csaxton	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (No) 4. Is the basis of claim decree or license? (No) 7. Is the basis of claim a Application or Permit? (No) 8. Is the basis of claim a posted notice? (No) 9. Is the Priority Date claimed after the date a permit is required for the source and the water use? (Yes) 12. Does the claim file contain sufficient evidence of Priority Date? (Yes) 15. Is the basis of claim coded correctly? (No) 16. Is a Priority Date remark and/or condition required? Description for Question 12/13 - Affidavit
Contacts	9/8/2003 10:57:13 AM	csaxton	(No) 1. Do you want to schedule an appointment? Comment for 1: Desktop Review

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31757 V1

Summary	9/8/2003 11:26:50 AM	csaxton	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (No) 5. Does this right have any combined use limits with other rights? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (No) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?
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MEMORANDUM

DATE: 8/22/2003
FROM: Lori Graves
TO: Complaint File
RE: Sander's Illegal Diversion

IDWR received a telephone complaint 8/20/2003 from Scott Turner with the Idaho City Police Department. According to officer Turner, Jean and Steve Sanders built a dam and stopped the water flow in Smith Creek for a pond to irrigate their yard. He stated that downstream neighbors were upset because the stream had dried up and fish in the Creek have died.

The Sanders live at 112 Cottonwood Street. Their home is also a Bed & Breakfast business. The property legal description is T6N R5E S26 NESW. Smith Creek is not apparent on an area topo map. I visited the site on 8/21/2003 and found an unnamed stream behind the Sander's establishment with a rock and dirt diversion dam used to back up the water enough to flow through a pipe to a small pond located on their property, in which they have a 1 hp pump used to divert water for irrigation of their lawn and landscaping (<1/2 acre). This was obviously not a new diversion. What was new was a plastic barrier that the Sanders had placed just downstream of their dam to block the water from its natural flow pattern. Mrs. Sanders stated that her original dam had been vandalized and until they got it restored, they had to do something to back the water up for flow through their diversion pipe so that the fish in her small pond would not die. I asked the Sanders why they did not remove the plastic barrier after their original dam was fixed and they said they just had not gotten around to it. Needless to say, they removed the plastic barrier while I was there, which allowed the creek water to travel down its natural course.

The Sanders were very upset with my investigation. Although the original dam had been used for some time, they still did not have a water right listed in IDWR records. The Sanders stated that if they had to remove their dam, they were going to file a complaint against all the other people in Idaho City who diverted from streams running through town without a water right. Once the Sanders simmered down, we discussed the history of their home. In the 1860's, the site was a line shack for Idaho Canadian Dredging Company. In the 1950's, it was converted into a domestic home and water was diverted from the stream for lawn irrigation. The Sanders purchased the property in 1992.

Obviously, the Sanders need to file an adjudication claim to account for their current and historical use of water from the unnamed stream. The Sanders stated that they could obtain an affidavit establishing their historical priority date. On 8/26/03, IDWR received SRBA claim no. 63-31757 and affidavit from the Sanders for their diversion from the unnamed stream.

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TAILINGS

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(BM 3906)

Water Tank

T6N R5E S26 NESW
Sanders P/U & P/D

TAILINGS

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Sawyer

Graves, Lori

From: Lester, Steve
Sent: Monday, August 25, 2003 8:47 AM
To: Ballou, Erv
Cc: Graves, Lori; Nelson, Dan
Subject: RE: Complaint from Idaho City Police Department

Erv:

Lori visited the site. The owners are filing an adjudication claim for this use that has reportedly been around for a long time. So it appears to have some type of water right to cover it. The folks can fight about the adjudication claim if they want to. We don't need to take additional action at this time.

Thanks.

Steve

-----Original Message-----

From: Ballou, Erv
Sent: Monday, August 25, 2003 8:41 AM
To: Lester, Steve; Nelson, Dan
Cc: Spackman, Gary; Paul, Guy
Subject: RE: Complaint from Idaho City Police Department

Steve, Dan let me know is a valid water right or permit exists for this, if not then it is a stream channel violation and I can order out the dam. Erv

-----Original Message-----

From: Lester, Steve
Sent: Thursday, August 21, 2003 7:58 AM
To: Nelson, Dan
Cc: Spackman, Gary; Ballou, Erv; Paul, Guy
Subject: RE: Complaint from Idaho City Police Department
Importance: High

Dan:

Thanks for the heads up. This is a water right issue if water is being used for a beneficial use. Since Gary is out of the office for a while, I think we should proceed in handling it as another water use complaint even though it was not received in writing. Being notified verbally by a law enforcement office is serious enough to justify acting on a verbal complaint.

You and I can discuss it this morning. Erv and Guy do not need to do anything at this point. I am sending this note to let them know that we are on top of this one. The complaint is best handled by the regional office at this point.

Steve

-----Original Message-----

From: Nelson, Dan
Sent: Wednesday, August 20, 2003 4:13 PM
To: Ballou, Erv; Paul, Guy
Cc: Lester, Steve; Spackman, Gary
Subject: Complaint from Idaho City Police Department

Hello Gentlemen;

I recieved a telephone call today from officer Scott Turner of the Idaho City Police Department. According to Officer Turner, a Steve and Gene Sanders have built a dam and stopped the water flow in Smith Creek in Idaho City to create a pond to irrigate their yard. Smith Creek is a small stream that runs through Idaho City. The stream is not shown on the US Quadrangle maps. The Boise County Tax Lot information shows that the Sanders own property at 112 Cottonwood Street.

The place where the dam is constructed is in the back yard of the a Red Bed and Breakfast with a toplight over the driveway that is always on green. According to the officer, the nieghbors are upset, because the stream has dried up and some fish in the stream have died and creating a bug and pest problem. The officer wanted to issue a citation, but the county prosecuter told him to call us.

I have left a message with Guy Paul and Greg Martinez about this issue. I would appreciate some guidance on this issue.

Thank you.

Dan Nelson
Western Region

Scott Turner : 392-4584 web
4795 hmn

