



Idaho Department of Water Resources

63-31976

03N 10E S33



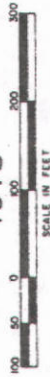
-  POU
-  POD
-  Sections
-  Quarter/Quarter

300 0 300 Feet



IDWR
Prepared by: Lori Graves
Date: 11-09-06
1986-87 Photography

PLAT SHOWING
WILLIS CARRIE'S PARADISE SUBDIVISION
 A PORTION OF SECTION 33, T3N, R10E, BM.
 ELMORE COUNTY, IDAHO
 1978



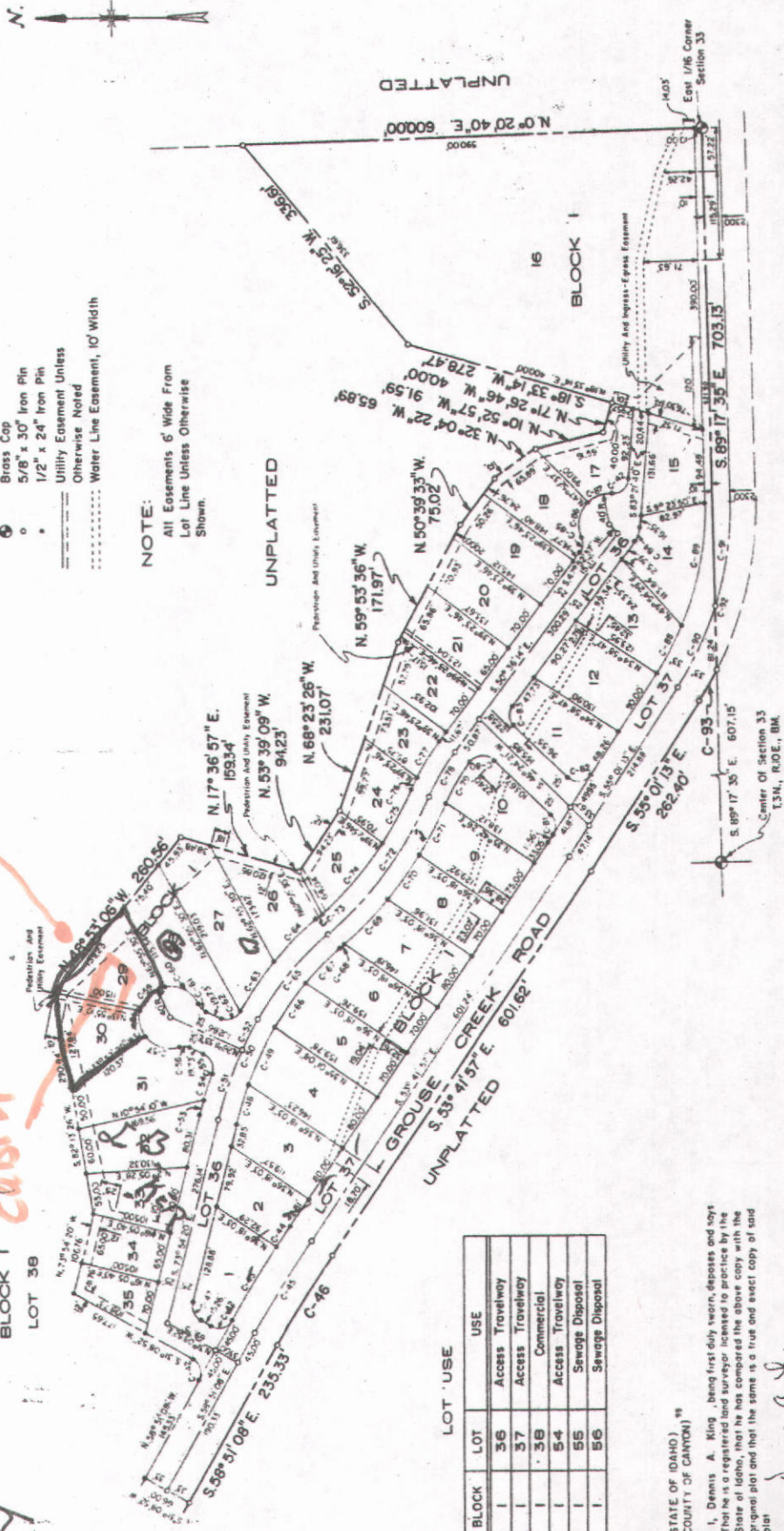
(SEE SHEET 1)

BLOCK 1
 LOT 38

Spring
cabin

- LEGEND**
- Subdivision Limits
 - Brass Cap
 - 5/8" x 30" Iron Pin
 - 1/2" x 24" Iron Pin
 - Utility Easement Unless Otherwise Noted
 - Water Line Easement, 10' Width

NOTE:
 All Easements 6' Wide From
 Lot Line Unless Otherwise
 Shown.



LOT USE

BLOCK	LOT	USE
1	36	Access
1	37	Access
1	38	Commercial
1	54	Access
1	55	Sewage Disposal
1	56	Sewage Disposal

STATE OF IDAHO)
 COUNTY OF CANYON)

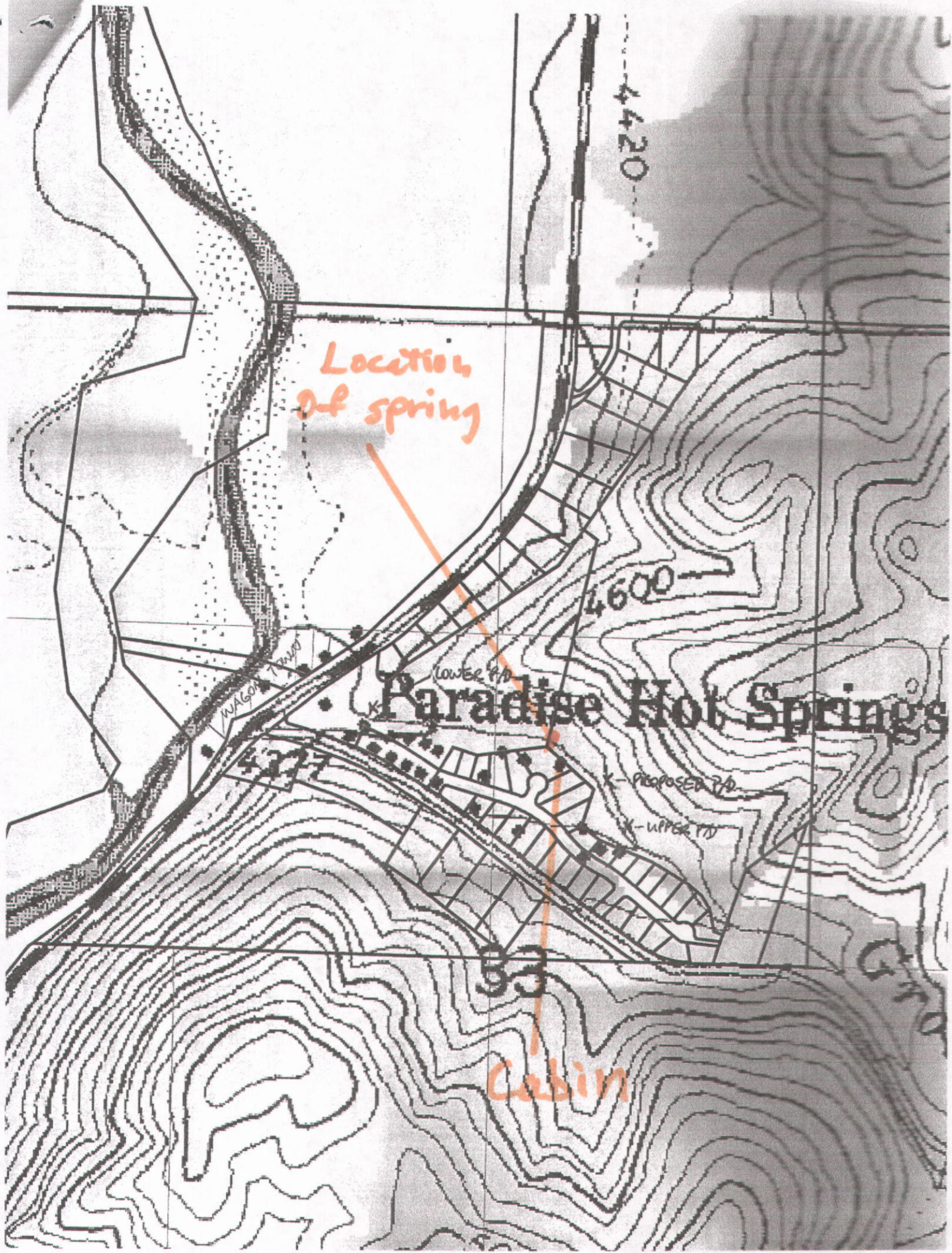
I, Dennis A. King, being first duly sworn, deposes and says
 that he is a registered land surveyor licensed to practice by the
 State of Idaho, that he has compared the above copy with the
 original plat and that the same is a true and correct copy of said
 plat.

Subscribed and sworn before me this 14
 day of May, 1978.

Dennis A. King
 Notary Public for Idaho
 Residing at Nampa, Idaho

J-U-B ENGINEERS, INC.
 Engineers, Planners
 Nampa, Idaho

DWG. NO. N771231S





RECEIVED

AUG 10 2004

DEPARTMENT OF
WATER RESOURCES

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 63-31976
Date Received: 8/10/2004
Receipt No: C074821
Received By: *M*

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

RECEIVED

AUG 13 2004

WATER RESOURCES
WESTERN REGION

1. Name of Claimant(s)

BOESIGER FAMILY CABIN TRUST Phone: (208)385-9494
131 E WILLIAMS ST
BOISE ID USA 83706

2. Date of Priority: 06/01/1958

3. Source: SPRING Trib. to: GROUSE CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
03N	10E	33	NW SW NE	ELMORE	

5. Description of diverting works:

Pump, 1 HP, mounted on top of concrete catch basin, piped across Grouse Creek and up to cabin located on Lots 29-30, Paradise Sub. Approx. 100 ft. of 3/4 inch poly pipe.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
HEATING	01/01	12/31	0.02	
DOMESTIC	01/01	12/31	0.02	

7. Total Quantity Appropriated is:
0.02 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:
Number of homes: 1

SCANNED

NOV 03 2004

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	10E	33	SW	NE	DOMESTIC	

11. Place of use in counties: ELMORE

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

13. Other Water Rights Used:

14. Remarks:

Water was carried manually from the spring to the cabin site beginning in 1958. The concrete basin and pump were installed in 1981. Hot water is used to fill and reheat hot-tub at each visit. Also used as back-up in case the Paradise system fails. Also used as a back-up with a generator in case power goes out.

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.

SCANNED
NOV 03 2004

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am TRUSTEE of
Title
BOESIGER FAMILY CABIN TRUST , that I have signed the foregoing
Organization
document in the space below as TRUSTEE of
Title
BOESIGER FAMILY CABIN TRUST and that the statements contained in the
Organization
foregoing document are true and correct. Richard Boesiger
Signature of Authorized Agent

TRUSTEE, BOESIGER FAMILY CABIN TRUST
Title and Organization

AUGUST 10, 2004
Date

State of Idaho)
County of Ada) SS.

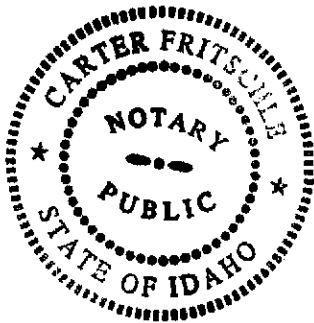
Subscribed and sworn (or affirmed) before me this
day 10th of August 2004

Carter Fritzsche

Notary Public

Residing at Kuna, ID

My commission Expires 3-21-2006



SCANNED
NOV 03 2004

RECEIVED

DEC 14 2006

DEPARTMENT OF
WATER RESOURCES

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

A. Subcase 63-31976

(insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: RANDY FLOWERS PRESIDENT PHOA

Address: 10071 MARTINGALE DR.

BOISE, ID. 83709

Daytime Phone: 208 322 5408

Name & Address of Attorney, if any:

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

Name: BOESEGER FAMILY CABIN TRUST

Address: 131 E. WELLEAMS ST.

BOISE, ID. 83704

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 of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☐ **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 OBJECTIONS(S):** PLEASE SEE ATTACHED LETTER
DATED 1-4-05 SENT TO IDWR, COPY OF CCRR FOR WELLES CARRIO'S
PARADISE SUBDIVISION (PAGE 4 ITEM H.)

F.

VERIFICATION (must be completed)

RECEIVED

DEPARTMENT OF
WATER RESOURCES

State of IDAHO)
)ss.
County of ADA)

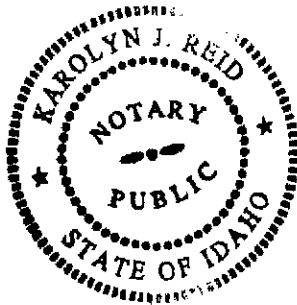
RANDY FOWERS, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Randy Fowers
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: 14th day of December, 2006



Karolyn J. Reid
Notary Public for State of Idaho
Residing at: 8896 Northview, Boise, ID, 83704
My Commission Expires: 6/15/2011

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 DECEMBER 15, 2006, 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: BOESSEMER FAMILY CABEN TRUST

Address: 131 E WELLMANS ST.

BOESSEMER, ID 83706

3. Copies to:

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

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

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



Signature of objector or attorney
mailing on Objector's behalf

January 4, 2005

Department of Water Resources
Attn. Lori Graves
2735 Airport Way
Boise, Idaho 83705-5082

RECEIVED
JAN 11 2005
DEPARTMENT OF
WATER RESOURCES

Dear Lori:

It has come to my attention that an application for water right (number 63-31976) has been filed with the Idaho Department of Water Resources and that this application is of interest to the Paradise Homeowners Association (PHOA). Please accept this letter as the position of PHOA in regard to this application.

PHOA is the current owners of the parcel of land where the diversion occurs. PHOA does not recognize and easement for the access to this diversion and will not willingly grant such an easement.

The cabin site referred to by this application is part of a legally plated subdivision and as such is subject to the By Laws and covenants of that subdivision. They state that no single lot within the subdivision may develop or use a water system other than the common system developed and provided to the lot by PHOA.

As a result of demand and planning by PHOA an application for the complex of springs, of which the spring referred to by 63-31976 is part, has been filed with Idaho Department of Water Resources (number 63-31526). The application has an earlier filing date than 63-31976 and was the result of a study conducted by the Board of PHOA concerning geothermal resources available to PHOA and their uses. This study did recognize the concrete basin that had been installed as a diversion but found that it had not been in use for a number of years and finds no agreement that allows its existence on PHOA property.

The beneficial uses identified by 63-31976 are part of the uses that PHOA identifies for its various licenses and permits in supplying water to its members. The applicant and place of use are members of PHOA.

Thanks you for your help in this matter.

Sincerely your,


Randy Fowers
President PHOA

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**James P. Speck, Esq.
Hogue, Speck & Aanestad, P.A.
Post Office Box 987
Ketchum, Idaho 83340**

(space above line for Recorder's Use)

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS:
WILLIS CARRIE'S PARADISE SUBDIVISION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS: WILLIS CARRIE'S PARADISE SUBDIVISION is made and entered into by the undersigned who constitute the record owners of Lot 38, Block 1 and more than 75% of the remaining Lots, all within the Willis Carrie's Paradise Subdivision (the "Subdivision").

RECITALS

A. Paradise Resort, Inc. established the Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision, recorded as Instrument No. 193442, records of Elmore County, Idaho (the "Declaration").

B. The Declaration was amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision recorded as Instrument No. 195095, records of Elmore County, Idaho

C. Article VIII of the Declaration provides for amendments by an instrument in writing signed and acknowledged by the record owners of Lot 38, Block 1 and more than 75% of the remaining Lots, all within the Subdivision. The undersigned who meet this requirement desire to amend and restate all of the provisions of the Declaration so that all of the restrictions may be found in a single recorded instrument.

THE DECLARATION

All of the property within the Subdivision, specifically including Lot 16 which had previously been excluded from the coverage of this Declaration, is and shall be held, conveyed, encumbered, leased and used subject to the following uniform covenants, conditions, restrictions and equitable servitude in furtherance of a plan for the Subdivision, improvements and to enhance the

value, desirability and attractiveness of such property. The restrictions set forth herein shall run with the real property, shall be binding upon all persons having or acquiring any interest in such real property or any part thereof; shall inure to the benefit of every portion of such real property and any interest therein, and shall inure to the benefit of and be binding upon each Owner and his respective successors in interest, and may be enforced by any Owner or his successors in interest, or by the Association.

ARTICLE I

DEFINITIONS

Definitions of the terms that are used in this Declaration shall be defined as follows unless the context clearly indicates a different meaning:

A. "Declaration" shall mean this instrument by which the within covenants, conditions and restrictions have been imposed upon the Property as defined below.

B. "Owner" shall mean a person or entity with an ownership interest in any Lot. In the event any Lot shall be conveyed pursuant to an escrow contract wherein the seller of said Lot retains record title as security, "Owner" shall mean that person or entity buying the Lot under said escrow contract, or his successors or assigns.

C. "Association" shall refer to the Paradise Homeowners' Association, a non-profit Idaho Corporation, who does own and shall be responsible for the maintenance and improvements of the roads, water system (s), and the sewerage system located on or within the vicinity of the Property.

D. "Committee" shall refer to the Architectural Committee, Maintenance Committee, or any other Committee established in the Bylaws of the Association or as deemed necessary by the Board of Directors of the Association.

E. "Subdivision" shall mean and refer to the Willis Carrie's Paradise Subdivision, as depicted on the Plat recorded as Instrument No. _____, records of Elmore County, Idaho.

F. "Lot" shall mean and refer to any of the lots within the Subdivision except Lots 36, 37, 54, 55 and 56, and including any new lots created by the permitted division of Lot 16 into two (2) lots or the single platted lot known as Lot 29 and 30, Block 1 into two (2) lots.

G. "Lot 38" shall mean and refer to Lot 38, Block 1 of the Subdivision.

H. "Declaration and Acceptance" shall mean and refer to the Declaration and Acceptance of the Association Members as to Their Rights, Duties Responsibilities and Liabilities to the Paradise Homeowners Association, Inc., Elmore County, Idaho, dated May 1, 1980, and recorded May 9, 1980 as Instrument No. 195096, records of Elmore County, Idaho.

ARTICLE II

USE OF PROPERTY

A. All of the Lots, except for Lot 38, may only be used for recreational/residential purposes and for no other purpose. No more than one main dwelling house and one guest house may be built, constructed or placed upon, or moved upon any one Lot. However, outbuildings used in connection with each building site may also be built thereon, subject to the restrictions of any applicable zoning, subdivision or other similar land use ordinances or regulations. Except as herein after set forth, no Lot may be divided into smaller parcels or lots. However, two main dwelling houses may be built, constructed or placed upon, or moved upon the single platted lot known as Lot 29 and 30, Block 1, or Lot 29 and 30 may be divided into two lots, all in accordance with any applicable zoning, subdivision or other similar land use ordinances or regulations. Furthermore, Lot 16 may be divided into two lots in accordance with any applicable zoning, subdivision or other similar land use ordinances or regulations.

B. Lot 38 shall or may be used for recreational and/or commercial uses.

C. Prior to the building, constructing or placing of any major improvements or structures on a Lot, and/or the construction of any fences, written plans shall be submitted to the appropriate Committee for its approval. In the event such plans are disapproved, said structures or improvements may not be constructed, built, or placed upon said Lot. The Committee shall have the option of permitting variances to the building restrictions set forth herein where size or shape of Lot or topography make strict application of the restrictions impractical or difficult. The prime concern of the Committee shall be that the design and location harmonize and compliment the natural environment to the extent practicable. Requests for variances shall be made to the Committee in writing, and the Committee's decision shall be made in writing within thirty (30) days of the request.

D. All structures shall be in accordance and compliance with any applicable zoning, subdivision or other similar land use ordinances or regulations. The set backs, lot coverage, and any other applicable building restrictions required by such ordinances or regulations shall apply and a signed and dated building permit from Elmore County will be required prior to any construction or modification of structures. Fences shall be set back a minimum of five (5) feet from property lines fronting on roads or access travel-ways to facilitate snow removal and utility maintenance. No buildings or other permanent improvements shall be placed on the utility easements, without first obtaining written consent from the owner of the easement. All permanent housing shall be a minimum of 750 square feet in area for a one-story dwelling, and a minimum of 900 square feet in area for a two-story dwelling. Sundecks, carports, patios and other enclosed or unroofed areas are not to be included in the computation of building area. No dwelling shall be erected or placed on any Lot that does not meet the building code for Elmore County which is in effect at the time said proposed building is to be erected or placed on a Lot.

E. When the construction of any building is begun, work thereon must be prosecuted diligently and the exterior must be tight and dry within two (2) years after construction is begun.

F. No basement, tent, shack, garage, barn or other out building erected on any Lot or any building site thereof shall be used at any time as a residence, temporary or permanent. No structure of a temporary character shall be used at any time as a residence. Except as set forth below, a trailer house may be used as a residence for up to two (2) years, during the construction of a permanent dwelling.

G. No mobile homes, manufactured homes or trailers shall be allowed for longer than two (2) years while a permanent structure is being constructed within the residential area.

H. No individual water or sewage disposal systems shall be permitted on any building site.

I. All wood, coal or pellet burning chimneys shall be equipped with spark screens approved by the appropriate Committee.

J. No noxious or offensive activities shall be carried on within the Subdivision nor shall anything be done therein which may be or become an annoyance or nuisance to any of the surrounding Owners. Motorcycles, all terrain vehicles or similar motorized recreational vehicles may be operated on the roads within the Subdivision only if the noise and dust generated by such use does not become noxious or offensive to any Owner and only for ingress to and egress from a Lot. Continuous or repetitive operation of any such motorized recreational vehicle on roads within the Subdivision is prohibited and shall be deemed a nuisance. The term noxious or offensive shall also apply to the open storage of disabled vehicles, trash, rubbish, garbage, other waste or other forms of bulk storage not normally associated with the recreational/residential use of property. Trash, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Incinerators and/or open burning of trash, garbage, rubbish or other waste shall not be allowed. Discharge of firearms, including, but not limited to, air rifles, pellet or BB guns, within the Subdivision is prohibited and shall be deemed a nuisance.

K. None of the property described above, except for Lot 38, shall be used for the purposes of carrying on or maintaining any business, commercial or industrial activities.

L. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs or cats. All dogs shall be on a leash or otherwise restrained. No dog shall be permitted to disturb the peace and quiet of the Subdivision.

M. No cutting of trees will be allowed on any Lot except as necessary for clearing building sites, utilities, other necessary type development and diseased or dying trees.

N. No more than one (1) sign of any kind shall be displayed to the public view from any Lot, except for Lot 38, and this one sign shall not exceed two (2) feet in overall dimension.

O. No excavation for stone, sand, gravel, earth or mineral shall be made upon a building site unless such excavation is necessary in connection with the erection of an approved structure thereon.

ARTICLE III

PARADISE HOMEOWNERS' ASSOCIATION

The Association owns certain water and sewerage facilities, together with certain roads, located and situated within the Subdivision. Every Owner of a Lot which is subject to assessment pursuant to this Declaration, shall be a member of the Association. Membership be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The Association shall have the responsibility for maintaining and improving said water and sewerage facilities and said roads.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

The Owner of any Lot, by acceptance of title thereto, whether by deed or sales agreement, and whether or not it shall be so expressed in such deed or sales agreement, is deemed to covenant and agree to pay to the Association:

A. Annual assessment or charges as determined by the Board of Directors of the Association.

B. Special assessments for capital improvements, such assessments to be established and collected as provided in the Declaration and Acceptance.

C. The annual and special assessments, together with penalties and interest costs, and reasonable attorney's fees, shall be a charge on the land and shall be made a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.

D. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or first deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to the payments which become due prior to such sale or transfer. However, the obligation for payment of the assessment, together with penalties, interest, and other costs, shall continue to be the personal obligation of the person who was the Owner of said Lot at the time when the assessment fell due. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon after a sale or transfer of any such Lot pursuant to foreclosure of a mortgage or deed of trust as above set forth.

ARTICLE V

COVENANTS AND RESTRICTIONS; CONSTRUCTION AND ENFORCEABILITY

A. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating mutually beneficial plans for the development of a recreational residential subdivision. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

B. All of the covenants, restrictions, reservations and servitude set forth herein shall run with the land and the grantee, by accepting the deed to such premises, accepts the same subject to such covenant, restrictions, reservations and servitude and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, restrictions, reservations and servitude jointly, separately and severally.

C. Each and every of the covenants, restrictions, reservations and servitude contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of such covenants, restrictions, reservations, and servitude shall for any reason be held to be invalid or unenforceable, all remaining covenants, restrictions, reservations and servitude shall nevertheless remain in full force and effect.

D. The Association shall have all of the powers of an Idaho non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Declaration and Acceptance, the Articles of Incorporation and the Bylaws of the Association, and any rules or regulations duly adopted by the Association, all as may be amended from time to time (hereinafter collectively referred to as the "Restrictions"). The Association shall have the power to do any, and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Restrictions, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of any of the foregoing provisions, the Association shall have the power and authority at any time:

1. Right of Entry and Enforcement. After twenty-four (24) hours written notice, to enter, without being liable to any Owner, upon any Lot for the purpose of enforcing by peaceful means the provisions of the Restrictions, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by said Restrictions. The Association shall also have the power and authority from time to time in its own name on its own behalf or on behalf of any Owner or Owners who consent and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise all of the provisions of said Restrictions.

2. Repair and Maintenance of Association Property. To paint, maintain, provide snow removal service for, and repair any real or personal property owned the Association and any improvements thereto.

ARTICLE VI

MODIFICATION AND AMENDMENT

The provisions of this Declaration may be altered and modified or amended by an instrument in writing signed and acknowledged by the Owners of two-thirds (2/3) of the Lots; provided, however, no such alteration, modification or amendment which adversely affects Lot 38 or its Owner shall be made unless it is signed and acknowledged by such Owner of Lot 38. Said alterations, modifications or amendments shall be effective upon recordation in the Office of the Recorder of Elmore County, State of Idaho.

IN WITNESS WHEREOF the undersigned have executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision as of the dates set on the following counterpart signature pages adjacent to their signatures.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

11/09/2006

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

RIGHT NUMBER: 63-31976

NAME AND ADDRESS: BOESIGER FAMILY CABIN TRUST
131 E WILLIAMS ST
BOISE ID 83706

SOURCE: SPRING

TRIBUTARY: GROUSE CREEK

QUANTITY: 0.020 CFS

The quantity of water under this right for domestic and heating uses shall not exceed 13,000 gallons per day.

PRIORITY DATE: 06/01/1958

POINT OF DIVERSION:

T03N R10E S33 NWSWNE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.020 CFS
HEATING	01/01 12/31	0.020 CFS
Domestic and heating uses are for 1 home.		

PLACE OF USE: DOMESTIC in ELMORE County

T03N R10E S33 SWNE

HEATING same as DOMESTIC

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: BASIS OF CLAIM - Beneficial Use

Place of use is located within Lots 29 & 30, Blk. 1; Willis Carries Paradise Subdivision.

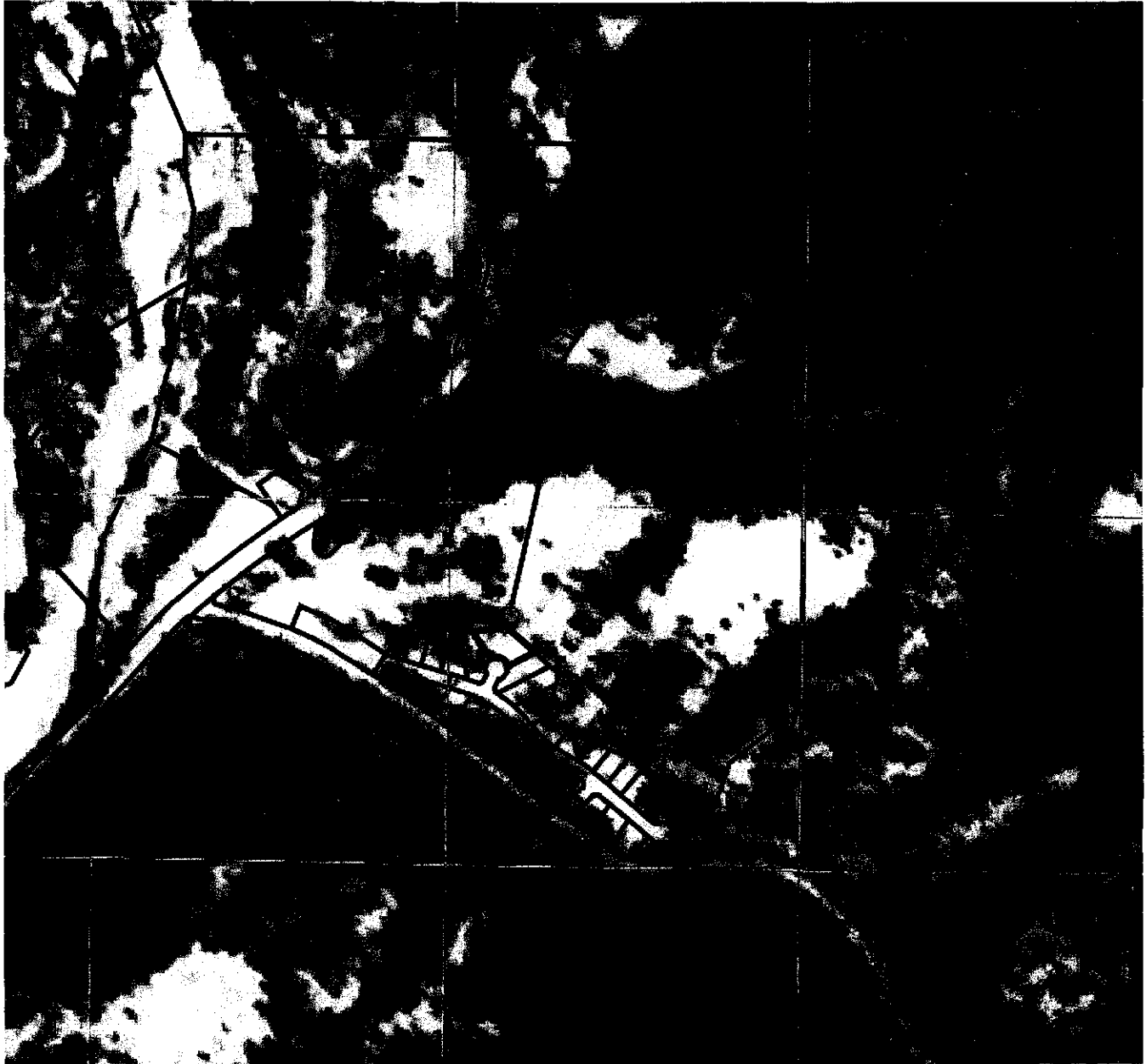
Parcel No. RP00038001029AA.



Idaho Department of Water Resources

63-31976

03N 10E S33



-  POU
-  POD
-  Sections
-  Quarter/Quarter

300 0 300 Feet



IDWR
Prepared by: Lori Graves
Date: 11-09-06
1986-87 Photography

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31976 V1

WATER RIGHT NUMBER: 63-31976 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BOESIGER FAMILY CABIN TRUST 131 E WILLIAMS ST BOISE, ID 83706
Attorney	HOFSTETTER LAW OFFICE LLC C/O DANA L HOFSTETTER 608 W FRANKLIN ST BOISE, ID 83702 (208)424-7800

Priority Date: 06/01/1958

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING	GROUSE 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	0.020 CFS	
HEATING	01/01 to 12/31	0.020 CFS	
<u>Total Diversion:</u>		0.020 CFS	

Location of Point(s) of Diversion

SPRING	NW1/4SW1/4NE1/4	Sec. 33, Twp 03N, Rge 10E, B.M.
ELMORE 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	
03N	10E	33			X														

HEATING same as DOMESTICConditions of Approval:

1. N13 The quantity of water under this right for domestic and heating uses shall not exceed 13,000 gallons per day.
2. 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.
3. X60 Place of use is located within Lots 29 & 30, Blk. 1; Willis Carries Paradise Subdivision.
4. X01 Domestic and heating uses are for 1 home.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-31976 V1

5. N11 The quantity of water decreed for this water right is not a determination of historical beneficial use.
6. Parcel No. RP00038001029AA.

Remarks:Comments:

1. Igraves 11/8/2006 Overlaps

Comment: Claimed uses and p/u are also covered on Paradise Homeowners Association (PHOA) license 63-10560 from separate springs and license 63-10559 from ground water for domestic uses only, no heating. The claimed uses and p/u are also covered on PHOA permit 63-32016, which was filed for additional spring water and lots listing the same springs as right 63-10560 plus proposed development of the spring area that claimant has listed. Combined limits not recommended because of domestic nature of use per Jan Shurte.

2. Igraves 11/8/2006 Controversy

Comment: PHOA submitted a letter dated 1/4/2005 in protest of this claim for the following reasons: 1. The claimed spring is on PHOA property, for which claimant does not have easement. 2. The claimant is a member of PHOA and the p/u is part of the PHOA subdivision, thereby subject to the By Laws and covenants that state no single lot within the subdivision may develop or use a water system other than the common system developed and provided by PHOA. 3. The uses claimed are fully covered by the PHOA water rights.

3. Igraves 11/8/2006 Diversion

Comment: See affidavit from Richard Boesiger for development history and system description.

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:

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

Combined Use Limits:Water Supply Bank:

RECEIVED

OCT 17 2006

WATER RESOURCES
WESTERN REGION

IN THE MATTER OF)
NOTICE OF CLAIM TO)
A WATER RIGHT NO. (S))

AFFIDAVIT

State of Idaho

County of _____)

Richard D. Boesiger

Deposes and says:

Our family has had a cabin at the site of the current existing cabin since the mid 1950's. We owned the cabin and the land was leased from the owner. The cabin had no plumbing and an outhouse and we cut a 4" pipe into the hot water spring out back and carried the hot water from the spring in 5 gal. buckets to the cabin to wash dishes and other uses. In the late 70's Willis Carrie bought the entire parcel and subdivided it into lots and we bought the 2 lots that the old cabin sat on. The old cabin was burned down during a slash burning operation.

We built the new cabin in 1981. At the time the proposed subdivision hot water system was not a sure thing so we installed at the hot water spring (in late '81 or early '82) a catch basin and pump and piping to heat the cabin and fill the outside hot tub. The catch basin is an approx. 2' by 2' by 2' high concrete box with a 1 horsepower elec. pump on top. The elec. pump can pump up to 8 gal. per minute, according to the flow meter we have located in the cabin and pumps at approx. 50 p.s.i. according to the pressure gauge. The lift is approx. 15'. The subdivision hot water delivery system was subsequently put in so we used the pump and hot water at the spring only for filling the hot tub and as a back-up to the subdivision system in the event a pump or part of the system failed. Our cabin is jointly owned by several families and is used in weekends on average twice per month with a few additional longer stays. The 400 gal. hot tub is always filled at the beginning of each use and is frequently refilled during the stay. The pump and hot water have also been used many times in the past to provide additional heat to the cabin during cold weather and to heat up the cabin quickly upon arrival.

We are the only people to have used or attempted to use the hot water spring going back to the mid 1950's.

Richard Boesiger
Signature

OCT. 16, 2006

claim # A63-31976

RECEIVED

OCT 17 2006

WATER RESOURCES
WESTERN REGION

To : Idaho Dept. of Water Resources
Or whomever it may concern

Re: Boesiger cabin hot water usage.

I was the developer of the Paradise Subdivision and sold two lots to the Boesiger family in 1980. I am aware the the Boesiger family had a cabin located approximately on these two lots for many years prior and that they leased the land from the previous owners. The Boesigers built a new cabin on the two lots in 1981 and installed a concrete catch basin, a pump and a pedestrian bridge across Grouse Creek to service the pump. I understood the purpose of the pump was to pump hot water from the hot water spring behind their cabin to the cabin for occasional use as a back-up to the subdivision hot water system and to fill a hot tub.

Respectfully,

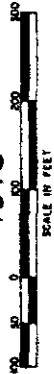
Jim Carrie



10-13-06

PLAT SHOWING WILLIS CARRIE'S PARADISE SUBDIVISION

A PORTION OF SECTION 33, 13N., R.10E., BM.
ELMORE COUNTY, IDAHO
1978

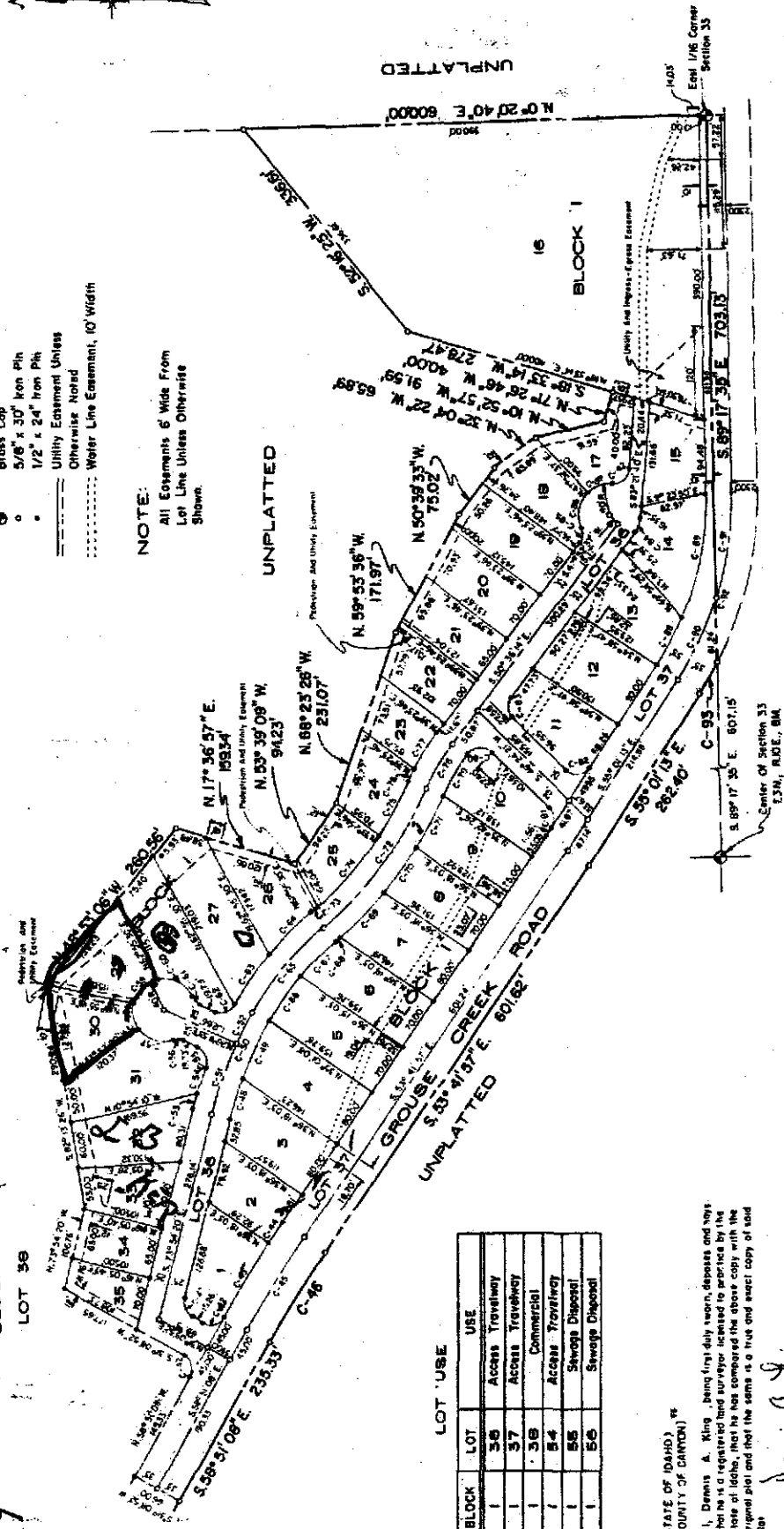


(SEE SHEET 1)

BLOCK 1
LOT 36

- LEGEND**
- Subdivision Limits
 - Brass Cap
 - 5/8" x 30" Iron Pin
 - 1/2" x 24" Iron Pin
 - Utility Easement Unless Otherwise Noted
 - Water Line Easement, 60' Width

NOTE:
All Easements 6' Wide From
Lot Line Unless Otherwise
Shown.



BLOCK	LOT	USE
1	36	Access Travelway
1	37	Access Travelway
1	38	Commercial
1	39	Access Travelway
1	40	Access Travelway
1	41	Access Travelway
1	42	Access Travelway
1	43	Access Travelway
1	44	Access Travelway
1	45	Access Travelway
1	46	Access Travelway
1	47	Access Travelway
1	48	Access Travelway
1	49	Access Travelway
1	50	Access Travelway
1	51	Access Travelway
1	52	Access Travelway
1	53	Access Travelway
1	54	Access Travelway
1	55	Access Travelway
1	56	Access Travelway
1	57	Access Travelway
1	58	Access Travelway
1	59	Access Travelway
1	60	Access Travelway
1	61	Access Travelway
1	62	Access Travelway
1	63	Access Travelway
1	64	Access Travelway
1	65	Access Travelway
1	66	Access Travelway
1	67	Access Travelway
1	68	Access Travelway
1	69	Access Travelway
1	70	Access Travelway
1	71	Access Travelway
1	72	Access Travelway
1	73	Access Travelway
1	74	Access Travelway
1	75	Access Travelway
1	76	Access Travelway
1	77	Access Travelway
1	78	Access Travelway
1	79	Access Travelway
1	80	Access Travelway
1	81	Access Travelway
1	82	Access Travelway
1	83	Access Travelway
1	84	Access Travelway
1	85	Access Travelway
1	86	Access Travelway
1	87	Access Travelway
1	88	Access Travelway
1	89	Access Travelway
1	90	Access Travelway
1	91	Access Travelway
1	92	Access Travelway
1	93	Access Travelway
1	94	Access Travelway
1	95	Access Travelway
1	96	Access Travelway
1	97	Access Travelway
1	98	Access Travelway
1	99	Access Travelway
1	100	Access Travelway

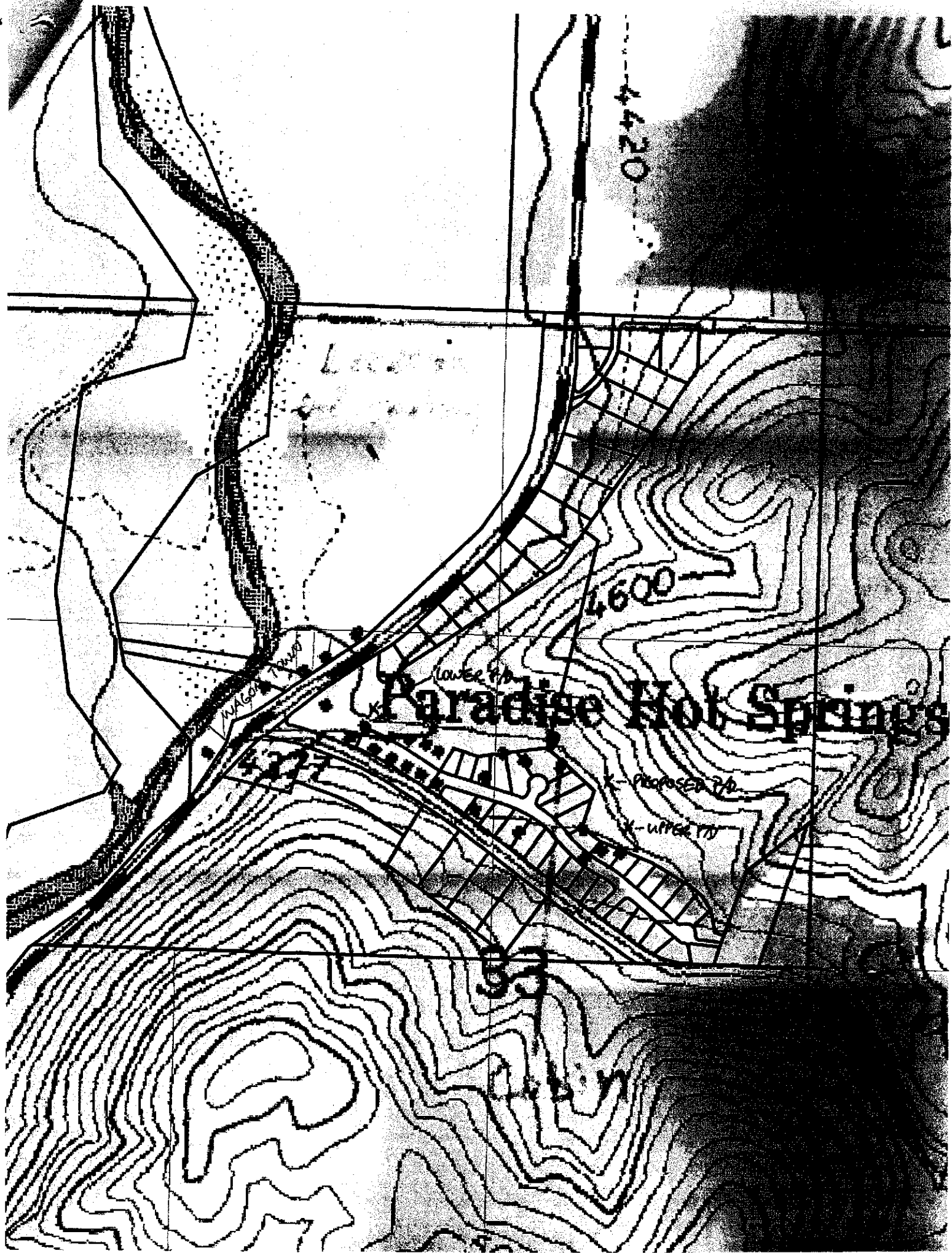
STATE OF IDAHO)
COUNTY OF CANYON)
I, Dennis A. King, being first duly sworn, deposes and says
that he is a registered land surveyor licensed to practice by the
State of Idaho, that he has compared the above copy with the
original plat and that the same is a true and correct copy of said
plat.

Subscribed and sworn before me this 14th
day of May, 1978.
Dennis A. King
Notary Public for Idaho
Residing at Nampa, Idaho



J-U-B ENGINEERS, INC.
Engineers, Planners
Nampa, Idaho

DWG. NO. N7712315







State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

October 5, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

BOESIGER FAMILY CABIN TRUST
131 E WILLIAMS ST
BOISE ID 83706

RE: EVIDENCE OF PRIORITY
Snake River Basin Claim No: A63-31976

Dear Claimants,

In the past, you submitted the above referenced claim during the Snake River Basin Adjudication (SRBA) claims taking. Enclosed is a computer generated print-out of the claim for your reference only, it is not necessary to return this print-out. You indicated, when this claim was filed, that the water right was based on "Beneficial Use" of the water. Water rights of this type are established by historical use of the water for a beneficial use purpose, dating back to the time the water was first used; this date being the "Priority Date" as shown on the enclosed print-out. Your claim has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is required to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water.

Enclosed is a pamphlet entitled "Evidence of Priority" which describes why evidence of the priority date is necessary, along with examples of types of evidence that can be submitted to fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled "**What Kind of Evidence is Required**" and "**Some Examples of Documents Which May Be Evidence of the Priority Date.**"

It is important that each element of the Notice of Claim be substantiated. The evidence should tend to show that diversion works were in place, that it was capable of diverting the claimed diversion rate, and that the diverted water was beneficially used for the claimed uses on or before the claimed priority date. **Please also provide the year that your cabin was built.**

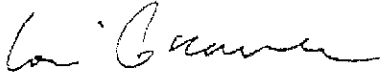
If no evidence is submitted, or we do not hear from you within the time limit below, your priority date, as claimed, may not be recommended to the SRBA court for decree. This could jeopardize your water use under this right if water availability problems arise in the future.

In addition, since it is our goal to decree the historical water right within the Snake River Basin as accurately as possible, **the location of the spring you claimed and cabin site needs to be identified on the attached aerial photo. Please provide as much detail about your diversion works as possible including pump make, horsepower, operating pressure, approximate water lift (in feet) to the cabin, etc.** If more information is needed, you will be receiving a call from us in order to set-up an appointment for a field exam.

Page 2

The above requested information needs to be submitted by October 19, 2006. Please let me know if you may not be able to submit the information or have any questions not covered by this letter and the enclosed pamphlet, by the date indicated above.

Respectfully,

A handwritten signature in cursive script, appearing to read "Lori Graves".

Lori Graves
Sr. Water Resource Agent

Enclosure: "Evidence of Priority" Pamphlet/Affidavit
Notice of Claim A63-31976
Aerial Photo

Cc: DANA HOFSTETTER
HOFSTETTER LAW OFFICE LLC
608 W FRANKLIN ST
BOISE ID 83702



CAI
Information Systems Solutions

Randy Fowers
President
rfowers@gocai.com

Computer Arts, Inc.

P.O. Box 9047

Boise, ID 83707

(208) 385-9335 • Fax (208) 338-1418

www.gocai.com

RECEIVED

JAN 06 2005

WATER RESOURCES
WESTERN REGION

January 4, 2005

Department of Water Resources
Attn. Lori Graves
2735 Airport Way
Boise, Idaho 83705-5082

Dear Lori:

It has come to my attention that an application for water right (number 63-31976) has been filed with the Idaho Department of Water Resources and that this application is of interest to the Paradise Homeowners Association (PHOA). Please accept this letter as the position of PHOA in regard to this application.

PHOA is the current owners of the parcel of land were the diversion occurs. PHOA does not recognize and easement for the access to this diversion and will not willingly grant such an easement.

The cabin site referred to by this application is part of a legally plated subdivision and as such is subject to the By Laws and covenants of that subdivision. They state that no single lot within the subdivision may develop or use a water system other than the common system developed and provided to the lot by PHOA.

As a result of demand and planning by PHOA an application for the complex of springs, of which the spring referred to by 63-31976 is part, has been filed with Idaho Department of Water Resources (number 63-31526). The application has an earlier filling date than 63-31976 and was the result of a study conducted by the Board of PHOA concerning geothermal resources available to PHOA and their uses. This study did recognize the concrete basin that had been installed as a diversion but found that it had not been in use for a number of years and finds no agreement that allows its existence on PHOA property.

The beneficial uses identified by 63-31976 are part of the uses that PHOA identifies for its various licenses and permits in supplying water to its members. The applicant and place of use are members of PHOA.

Thanks you for your help in this matter.

Sincerely your,



Randy Fowers
President PHOA
385-9335

RECEIVED

JUL 05 2005

WATER RESOURCES
WESTERN REGION

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**James P. Speck, Esq.
Hogue, Speck & Aanestad, P.A.
Post Office Box 987
Ketchum, Idaho 83340**

(space above line for Recorder's Use)

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS:
WILLIS CARRIE'S PARADISE SUBDIVISION**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS: WILLIS CARRIE'S PARADISE SUBDIVISION is made and entered into by the undersigned who constitute the record owners of Lot 38, Block 1 and more than 75% of the remaining Lots, all within the Willis Carrie's Paradise Subdivision (the "Subdivision").

RECITALS

A. Paradise Resort, Inc. established the Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision, recorded as Instrument No. 193442, records of Elmore County, Idaho (the "Declaration").

B. The Declaration was amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision recorded as Instrument No. 195095, records of Elmore County, Idaho

C. Article VIII of the Declaration provides for amendments by an instrument in writing signed and acknowledged by the record owners of Lot 38, Block 1 and more than 75% of the remaining Lots, all within the Subdivision. The undersigned who meet this requirement desire to amend and restate all of the provisions of the Declaration so that all of the restrictions may be found in a single recorded instrument.

THE DECLARATION

All of the property within the Subdivision, specifically including Lot 16 which had previously been excluded from the coverage of this Declaration, is and shall be held, conveyed, encumbered, leased and used subject to the following uniform covenants, conditions, restrictions and equitable servitude in furtherance of a plan for the Subdivision, improvements and to enhance the

value, desirability and attractiveness of such property. The restrictions set forth herein shall run with the real property, shall be binding upon all persons having or acquiring any interest in such real property or any part thereof; shall inure to the benefit of every portion of such real property and any interest therein, and shall inure to the benefit of and be binding upon each Owner and his respective successors in interest, and may be enforced by any Owner or his successors in interest, or by the Association.

ARTICLE I

DEFINITIONS

Definitions of the terms that are used in this Declaration shall be defined as follows unless the context clearly indicates a different meaning:

A. "Declaration" shall mean this instrument by which the within covenants, conditions and restrictions have been imposed upon the Property as defined below.

B. "Owner" shall mean a person or entity with an ownership interest in any Lot. In the event any Lot shall be conveyed pursuant to an escrow contract wherein the seller of said Lot retains record title as security, "Owner" shall mean that person or entity buying the Lot under said escrow contract, or his successors or assigns.

C. "Association" shall refer to the Paradise Homeowners' Association, a non-profit Idaho Corporation, who does own and shall be responsible for the maintenance and improvements of the roads, water system (s), and the sewerage system located on or within the vicinity of the Property.

D. "Committee" shall refer to the Architectural Committee, Maintenance Committee, or any other Committee established in the Bylaws of the Association or as deemed necessary by the Board of Directors of the Association.

E. "Subdivision" shall mean and refer to the Willis Carrie's Paradise Subdivision, as depicted on the Plat recorded as Instrument No. _____, records of Elmore County, Idaho.

F. "Lot" shall mean and refer to any of the lots within the Subdivision except Lots 36, 37, 54, 55 and 56, and including any new lots created by the permitted division of Lot 16 into two (2) lots or the single platted lot known as Lot 29 and 30, Block 1 into two (2) lots.

G. "Lot 38" shall mean and refer to Lot 38, Block 1 of the Subdivision.

H. "Declaration and Acceptance" shall mean and refer to the Declaration and Acceptance of the Association Members as to Their Rights, Duties Responsibilities and Liabilities to the Paradise Homeowners Association, Inc., Elmore County, Idaho, dated May 1, 1980, and recorded May 9, 1980 as Instrument No. 195096, records of Elmore County, Idaho.

ARTICLE II

USE OF PROPERTY

A. All of the Lots, except for Lot 38, may only be used for recreational/residential purposes and for no other purpose. No more than one main dwelling house and one guest house may be built, constructed or placed upon, or moved upon any one Lot. However, outbuildings used in connection with each building site may also be built thereon, subject to the restrictions of any applicable zoning, subdivision or other similar land use ordinances or regulations. Except as herein after set forth, no Lot may be divided into smaller parcels or lots. However, two main dwelling houses may be built, constructed or placed upon, or moved upon the single platted lot known as Lot 29 and 30, Block 1, or Lot 29 and 30 may be divided into two lots, all in accordance with any applicable zoning, subdivision or other similar land use ordinances or regulations. Furthermore, Lot 16 may be divided into two lots in accordance with any applicable zoning, subdivision or other similar land use ordinances or regulations.

B. Lot 38 shall or may be used for recreational and/or commercial uses.

C. Prior to the building, constructing or placing of any major improvements or structures on a Lot, and/or the construction of any fences, written plans shall be submitted to the appropriate Committee for its approval. In the event such plans are disapproved, said structures or improvements may not be constructed, built, or placed upon said Lot. The Committee shall have the option of permitting variances to the building restrictions set forth herein where size or shape of Lot or topography make strict application of the restrictions impractical or difficult. The prime concern of the Committee shall be that the design and location harmonize and compliment the natural environment to the extent practicable. Requests for variances shall be made to the Committee in writing, and the Committee's decision shall be made in writing within thirty (30) days of the request.

D. All structures shall be in accordance and compliance with any applicable zoning, subdivision or other similar land use ordinances or regulations. The set backs, lot coverage, and any other applicable building restrictions required by such ordinances or regulations shall apply and a signed and dated building permit from Elmore County will be required prior to any construction or modification of structures. Fences shall be set back a minimum of five (5) feet from property lines fronting on roads or access travel-ways to facilitate snow removal and utility maintenance. No buildings or other permanent improvements shall be placed on the utility easements, without first obtaining written consent from the owner of the easement. All permanent housing shall be a minimum of 750 square feet in area for a one-story dwelling, and a minimum of 900 square feet in area for a two-story dwelling. Sundecks, carports, patios and other enclosed or unroofed areas are not to be included in the computation of building area. No dwelling shall be erected or placed on any Lot that does not meet the building code for Elmore County which is in effect at the time said proposed building is to be erected or placed on a Lot.

E. When the construction of any building is begun, work thereon must be prosecuted diligently and the exterior must be tight and dry within two (2) years after construction is begun.

F. No basement, tent, shack, garage, barn or other out building erected on any Lot or any building site thereof shall be used at any time as a residence, temporary or permanent. No structure of a temporary character shall be used at any time as a residence. Except as set forth below, a trailer house may be used as a residence for up to two (2) years, during the construction of a permanent dwelling.

G. No mobile homes, manufactured homes or trailers shall be allowed for longer than two (2) years while a permanent structure is being constructed within the residential area.

H. No individual water or sewage disposal systems shall be permitted on any building site.

I. All wood, coal or pellet burning chimneys shall be equipped with spark screens approved by the appropriate Committee.

J. No noxious or offensive activities shall be carried on within the Subdivision nor shall anything be done therein which may be or become an annoyance or nuisance to any of the surrounding Owners. Motorcycles, all terrain vehicles or similar motorized recreational vehicles may be operated on the roads within the Subdivision only if the noise and dust generated by such use does not become noxious or offensive to any Owner and only for ingress to and egress from a Lot. Continuous or repetitive operation of any such motorized recreational vehicle on roads within the Subdivision is prohibited and shall be deemed a nuisance. The term noxious or offensive shall also apply to the open storage of disabled vehicles, trash, rubbish, garbage, other waste or other forms of bulk storage not normally associated with the recreational/residential use of property. Trash, garbage or other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Incinerators and/or open burning of trash, garbage, rubbish or other waste shall not be allowed. Discharge of firearms, including, but not limited to, air rifles, pellet or BB guns, within the Subdivision is prohibited and shall be deemed a nuisance.

K. None of the property described above, except for Lot 38, shall be used for the purposes of carrying on or maintaining any business, commercial or industrial activities.

L. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except dogs or cats. All dogs shall be on a leash or otherwise restrained. No dog shall be permitted to disturb the peace and quiet of the Subdivision.

M. No cutting of trees will be allowed on any Lot except as necessary for clearing building sites, utilities, other necessary type development and diseased or dying trees.

N. No more than one (1) sign of any kind shall be displayed to the public view from any Lot, except for Lot 38, and this one sign shall not exceed two (2) feet in overall dimension.

O. No excavation for stone, sand, gravel, earth or mineral shall be made upon a building site unless such excavation is necessary in connection with the erection of an approved structure thereon.

ARTICLE III

PARADISE HOMEOWNERS' ASSOCIATION

The Association owns certain water and sewerage facilities, together with certain roads, located and situated within the Subdivision. Every Owner of a Lot which is subject to assessment pursuant to this Declaration, shall be a member of the Association. Membership be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The Association shall have the responsibility for maintaining and improving said water and sewerage facilities and said roads.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

The Owner of any Lot, by acceptance of title thereto, whether by deed or sales agreement, and whether or not it shall be so expressed in such deed or sales agreement, is deemed to covenant and agree to pay to the Association:

A. Annual assessment or charges as determined by the Board of Directors of the Association.

B. Special assessments for capital improvements, such assessments to be established and collected as provided in the Declaration and Acceptance.

C. The annual and special assessments, together with penalties and interest costs, and reasonable attorney's fees, shall be a charge on the land and shall be made a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due.

D. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or first deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to the payments which become due prior to such sale or transfer. However, the obligation for payment of the assessment, together with penalties, interest, and other costs, shall continue to be the personal obligation of the person who was the Owner of said Lot at the time when the assessment fell due. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereon after a sale or transfer of any such Lot pursuant to foreclosure of a mortgage or deed of trust as above set forth.

ARTICLE V

COVENANTS AND RESTRICTIONS; CONSTRUCTION AND ENFORCEABILITY

A. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating mutually beneficial plans for the development of a recreational residential subdivision. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

B. All of the covenants, restrictions, reservations and servitude set forth herein shall run with the land and the grantee, by accepting the deed to such premises, accepts the same subject to such covenant, restrictions, reservations and servitude and agrees for himself, his heirs, administrators, and assigns to be bound by each of such covenants, restrictions, reservations and servitude jointly, separately and severally.

C. Each and every of the covenants, restrictions, reservations and servitude contained herein shall be considered to be an independent and separate covenant and agreement and in the event any one or more of such covenants, restrictions, reservations, and servitude shall for any reason be held to be invalid or unenforceable, all remaining covenants, restrictions, reservations and servitude shall nevertheless remain in full force and effect.

D. The Association shall have all of the powers of an Idaho non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Declaration and Acceptance, the Articles of Incorporation and the Bylaws of the Association, and any rules or regulations duly adopted by the Association, all as may be amended from time to time (hereinafter collectively referred to as the "Restrictions"). The Association shall have the power to do any, and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of the Restrictions, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of any of the foregoing provisions, the Association shall have the power and authority at any time:

1. Right of Entry and Enforcement. After twenty-four (24) hours written notice, to enter, without being liable to any Owner, upon any Lot for the purpose of enforcing by peaceful means the provisions of the Restrictions, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by said Restrictions. The Association shall also have the power and authority from time to time in its own name on its own behalf or on behalf of any Owner or Owners who consent and enjoin any breach or threatened breach of the Restrictions and to enforce, by mandatory injunctions or otherwise all of the provisions of said Restrictions.

2. Repair and Maintenance of Association Property. To paint, maintain, provide snow removal service for, and repair any real or personal property owned the Association and any improvements thereto.

ARTICLE VI

MODIFICATION AND AMENDMENT

The provisions of this Declaration may be altered and modified or amended by an instrument in writing signed and acknowledged by the Owners of two-thirds (2/3) of the Lots; provided, however, no such alteration, modification or amendment which adversely affects Lot 38 or its Owner shall be made unless it is signed and acknowledged by such Owner of Lot 38. Said alterations, modifications or amendments shall be effective upon recordation in the Office of the Recorder of Elmore County, State of Idaho.

IN WITNESS WHEREOF the undersigned have executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willis Carrie's Paradise Subdivision as of the dates set on the following counterpart signature pages adjacent to their signatures.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

MEMORANDUM

DATE: 12/16/2004

FROM: Lori Graves

TO: Application File

RE: 63-32016

*PHOA water
its analysis*

Paradise Homeowners Association Inc. encompasses:

1. Willis Carrie's Subdivision, which consists of Paradise Homeowners Association (PHOA) located east of Featherville Road and north of Grouse Creek Road.
2. Paradise Pines Subdivision, which consists of Paradise Pines Inc. (PPI) and Grouse Creek Cabins (GC) located east of Featherville Road and south of Grouse Creek Road.
3. Wagon Town Property (WTP) located west of Featherville Road.

There are a total of 76 heating connections within the boundary of the above properties as listed on the spreadsheet attached to the application. Currently, applicants have license 63-10560 and permit 63-12316 that cover heating uses within the association. The following is a brief description of each:

License 63-10560 covers 54 homes @ 2000 sq ft/hm, 1 lodge @ 6000 sq ft and 1 shop @ 1000 sq ft. The specific properties are lots 1-35, 39-46, 5 Trinity Springs cabins and Trinity Paradise Lodge (aka lot 38 for all on spreadsheet) and 6 Grouse Creek cabins. Heating use was limited to .64 cfs because of the heating system capacity during the time of the field exam in 1989. A system analysis was conducted by McClure Engineering for the licensing of permit 63-10560. They determined that 5 gpm/hm and 33 gpm/lodge was sufficient for heating and system capacity for the two developed geothermal springs was .96 cfs. Trinity Pool eventually receives all the water diverted from the springs, including the spent water used in the heating system, which is why recreation use was licensed at .96 cfs. Domestic use for Trinity Paradise Lodge was also included on the license.

As mentioned above, the department used an average of 2000 sq ft/hm in the flow rate calculations for heating use along with 6000 sq ft for the lodge and 1000 sq ft for the shop. Since flow rate was limited to .64 cfs, annual diversion volume was licensed based on $287 \text{ gpm} \times 240 \text{ dys/yr} \times 12 \text{ hrs/dy} \times 60 \text{ min/hr} = 49593600/325850 = 152 \text{ af/yr}$. Applicants feel that there was an oversight in the above volume calculation because the pumps have always operated continuously 24 hr/dy, rather than 12 hrs/dy. As a result, diverted annual volume is actually twice the amount licensed. Applicants wish to account for the 152 afa not licensed because of the oversight on this application.

12/16/04

Page 2

Applicants also feel that the average sq ft/hm should be 2500 sq ft rather than 2000 sq ft that was used in the licensing calculations. They want the sq footage built in excess of 2000 sq ft for licensed developed lots accounted for. These include lots 8, 10, 11, 17, 20, 23, 28, 29, 40 and 42. They also want to add 500 more sq ft to licensed undeveloped lots. These include lots 6, 7, 9, 12, 14, 15, 16, 18, 22, 25, 26, 27, 30, 32, 33, 39, 43, 44 and PPI 2. Please note that PPI 2 was licensed for a 1000 sq ft shop. According to the applicants, a home will be built on this lot rather than a shop resulting in an additional 1500 sq ft to be accounted for. Applicants also want 2500 sq ft/hm for lots not covered for heating use on the permit or license. These include lots 16B, 46-53, PPI 3 & 4, PHOA 1-3, and WTP 1-3. Please refer to the spreadsheet attached to the application, which lists the lots/service numbers and current "build status" of all 76 heating services.

Permit 63-12316 covers 1 home, aka PPI 6, and 1 recreation center, aka PPI 7. Lapsed permit 63-12230 covered PPI 3-5. The recreation center was planned to be built at ~4000 sq ft in size, but has been scrapped. Because permit 63-12230 lapsed, Steve Lester stated that 2 additional home lots could be recommended for licensing under permit 63-12316 instead of the recreation center because (per applicant) lots PPI 2-7 were stubbed into the heating system prior to the date proof was submitted for the permit. This would then leave only two PPI lots not covered to be included on application 63-32016. Three home lots @ 5 gpm/hm for heating use equates to .03 cfs that presumably will be recommended for licensing of permit 63-12316. The 3 home lots are undeveloped, but 2500 sq ft average/hm can be used in the licensing calculations based on the documented size of recent developments. Permit file 63-12316 will be noted with this memo and attachments for the licensing field exam.

The applicants also want to cover an additional 500 sq ft and 5 gpm for snow melt for each of the 76 services. This encompasses driveways, sidewalks etc.

$$5 \text{ gpm} \times 76 = 380 \text{ gpm} = .85 \text{ cfs}$$

To insure full heating volume is licensed based on system capacity, applicants included .67 cfs (301 gpm) already licensed and permitted for heating use. Total flow rate listed on the application is based on the following calculations:

$$\begin{aligned} 75 \text{ hms} \times 5 \text{ gpm} &= 375 \text{ gpm} + 33 \text{ gpm lodge} = 408 \text{ gpm necessary for internal heating} \\ 5 \text{ gpm/service} \times 76 \text{ services} &= 380 \text{ gpm estimated for external heating (snow melt)} \\ 408 \text{ gpm} + 380 \text{ gpm} &= 788 \text{ gpm} = 1.76 \text{ cfs (includes .64 licensed cfs and .03 permitted cfs} \\ &\text{likely to be licensed).} \end{aligned}$$

12/16/04

Page 3

As previously mentioned, the capacity of the two developed springs is .96 cfs. An additional spring has been proposed for development on this application. All three springs were listed to reflect a combined system. If the undeveloped spring can provide the additional flow rate requested, total system capacity volume would then be:

$$788 \text{ gpm} \times 240 \text{ dys/yr} \times 24 \text{ hrs/dy} \times 60 \text{ min/hr} = 272332800/325850 = 836 \text{ afa}$$

Based on the attached spreadsheet, total inside sq footage (built & requested) = *173580 sq ft. Plugging that figure into our heating requirement excel spreadsheet shows:

Required single floor flow rate and volume @ 2.32 cfs and 1106.0 afa

Required two floor flow rate and volume @ 1.86 cfs and 884.8 afa

The heating excel spreadsheet is not set up to account for snow melt heating. Regardless, it appears the volume amount for application 63-32016 will be based on system capacity.

Other rights used by the applicants include permit 63-31526 for recreation use in the PHOA pool from the two developed springs. They also have license 63-10559 and permit 63-12317 from ground water covering domestic, commercial and stockwater uses within the Association. They also have decree 63-4221 from Grouse Creek for cooling of Trinity Pool and irrigation uses within the association. Decree 63-27144 is for recreation use and storage in a pond from Grouse Creek and the S Fk Boise River. This right is in the name of Trinity Springs LTD and is located within the association's service area. SRBA late claim 63-31976, in the name of Boesiger Family Cabin Trust, was filed in August, 2004 for domestic and heating use from a spring located in the same ten acre tract as the new proposed spring. This party will be sent notice. No other rights are used.

*115000 licensed sq footage

5580 additional sq ft built in excess of 2000 licensed sq ft

10500 additional 500 sq ft for 19 undeveloped licensed lots + 1000 more sq ft for PPI 2

42500 sq ft for 17 lots not licensed or permitted

173580 Total built and proposed inside sq ft to be heated

CERTIFICATE OF SERVICE

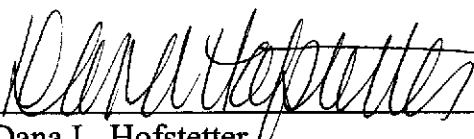
I hereby certify that on the 29th day of March, 2005, I caused to be served copies of the foregoing **Notice of Appearance** by the postage pre-paid methods indicated below:

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Boesiger Family Cabin Trust
131 East Williams Street
Boise, Idaho 83706
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

D:\4035.1\6399