

Bruce M. Smith, ISB No. 3425  
Carl J. Withroe, ISB No. 7051  
MOORE SMITH BUXTON & TURCKE, CHTD.  
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Boise, ID 83702  
Tel: 331-1800  
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RECEIVED  
MAY 30 2008  
DEPARTMENT OF  
WATER RESOURCES

Attorneys for Marion and Judy Groothuis

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

|                |   |                                 |
|----------------|---|---------------------------------|
| In re SRBA     | ) | Subcases 63-32403 & 63-32412    |
|                | ) |                                 |
|                | ) |                                 |
| Case No. 39576 | ) | AFFIDAVIT OF CARL J. WITHROE IN |
| _____          | ) | SUPPORT OF MOTION TO CONTINUE   |
|                | ) | INITIAL HEARING                 |

State of Idaho        )  
                              ss.  
County of Ada        )

Carl J. Withroe, first being duly sworn, states as follows:

1. My name is Carl J. Withroe. I am an adult human being over the age of 18 years, and the following statements are based on my own personal knowledge.

2. I am an attorney with the firm Moore Smith Buxton & Turcke in Boise, Idaho. This firm represents Mr. and Mrs. Groothuis with respect to water right numbers 63-32403 and 63-32412. These water rights are in Mr. and Mrs. Groothuis' name.

3. The water rights at issue in this matter, 63-32403 and 63-32412, are the subject of a water rights transfer application. Exhibit A attached to this Affidavit is a true and correct copy of the main portion of the transfer application. I have not included the 11 pages of attachments.

COPY

4. I telephoned the western regional office of the Department of Water Resources on Thursday, May 22, 2008, to inquire about the status of these applications. Later that day I received a voicemail from a department staffer explaining that it was being processed, but that they did not have an estimate for when they might be completed.

5. The Groothuis' position in the adjudication will depend on the outcome of the transfer application. A hearing at this time is therefore unnecessary.

Further this affiant sayeth naught.

\* \* \*

Dated this 29th day of May, 2008.

Carl J. Withroe  
Carl J. Withroe

State of Idaho                    )  
County of Ada                    ) S.S.

Subscribed and sworn to before me this 29th day of May, 2008.



Catherine A. Minyard  
Notary Public for Idaho  
Residing at Nampa, ID  
My Commission Expires on 04/15/2010

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29th day of May, 2008, I caused to be served the original and a true and correct copy of the foregoing Affidavit of Carl J. Withroe in Support of Motion to Continue Initial Hearing by the method indicated below, and addressed to the following:

1. Original via Federal Express Overnight Delivery to:

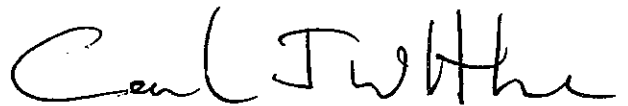
Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
P.O. Box 2707  
Twin Falls, ID 83303

2. Copies via U.S. Mail to:

Special Master Ted R. Booth  
253 Third Avenue North  
P.O. Box 2707  
Twin Falls, ID 83303

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720-0098

Chief, Natural Resources Division  
Office of the Attorney General  
P.O. Box 44449  
Boise, ID 83711-4449

A handwritten signature in cursive script, reading "Carl J. Withroe".

---

Bruce M. Smith  
Carl J. Withroe  
Attorneys for Marion and Judy Groothuis

COPY

Page 1 of 7 STATE OF IDAHO Transfer No. \_\_\_\_\_

**Department of Water Resources  
APPLICATION FOR TRANSFER OF WATER RIGHT**

**PART 1**

Name of Applicant Groothius, Marion D. & Judy L. Phone 938-1613  
Post Office address 3490 N. Saddleman Place, Eagle, ID 83616

**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use  
☐ Change nature of use ☐ Change period of use ☐ Other \_\_\_\_\_

2. Describe the reason for the proposed changes Please see Attachment A

**B. DESCRIPTION OF RIGHT(S) OF PORTION THEREOF, AFTER THE REQUESTED CHANGE**

| 1. Right Number                                           | Priority         | Amount<br>(cfs/ac-ft) | Nature<br>of Use  | Period of Use              |
|-----------------------------------------------------------|------------------|-----------------------|-------------------|----------------------------|
| <u>63-32706</u>                                           | <u>9/13/1874</u> | <u>.12cfs</u>         | <u>Irrigation</u> | <u>3/1</u> to <u>11/15</u> |
| <u>63-32711*</u>                                          | <u>7/14/1959</u> | <u>.06 cfs</u>        | <u>Irrigation</u> | <u>3/1</u> to <u>11/15</u> |
|                                                           |                  |                       |                   | to _____                   |
| <u>*63-32711 is groundwater, supplemental to 63-32706</u> |                  |                       |                   | to _____                   |

2. Total amount of water being transferred 0.13 cfs (Dry Cr.); 0.070 cfs (g/w) cubic feet per second and/or \_\_\_\_\_ acre-feet per annum.
3. Source of water Dry Creek (63-32706) tributary to Boise River; groundwater (63-32711)
4. Point(s) of Diversion:

| Lot | 1/4 | 1/4 | 1/4 | Sec | Twn. | Rge. | County | Local Name for diversion |
|-----|-----|-----|-----|-----|------|------|--------|--------------------------|
|     | SE  | SE  | NE  | 31  | 5N   | 2E   | Ada    | (Dry Cr)                 |
|     | SE  | NW  | NE  | 31  | 5N   | 2E   | Ada    | (Groundwater)            |
|     |     |     |     |     |      |      |        |                          |
|     |     |     |     |     |      |      |        |                          |

5. Lands irrigated or place of use: POU is same for 63-32706 and 63-32711

| Twn. | Rge. | Sec. | NE 1/4 |        |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |        | Total |
|------|------|------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|-------|
|      |      |      | 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 |       |
| 5N   | 3E   | 31   |        | 0.00   | 0.0    |        | 0.00   |        |        | 2.71   |        |        |        |        |        |        |        |        | 2.71  |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |
|      |      |      |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |        |       |

**EXHIBIT**

A

Total acres 2.71

PART 1

6. General Information:

a. Description of diversion system Diversion system shall be constructed upon transfer.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes XX No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer: The land from which the water will be transferred will not be irrigated. However, the place of use for the rights from which the water will be transferred is the perimeter of the Echanove Subdivision. The Bull Development rights are essentially the remainder of the original parent rights, and, because the parents have been allocated to all the lots and Bull Development holds no ownership interest in any lots in the Echanove Subdivision, this transfer is necessary to effectuate the intent of the deeds to the Groothuises.

d. Remarks:

**ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES**

This is to certify that I have examined Application for Transfer of Water Rights No. \_\_\_\_\_  
And said application is hereby \_\_\_\_\_, subject to the following limitation and conditions:

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

**Department of Water Resources**  
**APPLICATION FOR TRANSFER OF WATER RIGHT**

**PART 2**

(Attach one copy for each right)

**A. DESCRIPTION OF RIGHT AS RECORDED**

1. Right evidenced by:

- a. Decree No. \_\_\_\_\_ Decreed to \_\_\_\_\_  
 in case of \_\_\_\_\_ vs \_\_\_\_\_  
 dated \_\_\_\_\_ in \_\_\_\_\_ county of \_\_\_\_\_  
 b. License No. \_\_\_\_\_ issued by the Idaho Department of  
 Water Resources.  
 c. Claim No. 63-32706, 63-32711 on file with the Idaho Department of Water  
 Resources.  
 d. Transfer No. \_\_\_\_\_ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant  
 or other documents which show ownership. Label document as attachment A. Check  
 appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☒ Other (Please see Attach. A)

3. Source of water Dry Creek (63-32706) tributary to Boise River; groundwater (63-32711)

4. Date of priority 63-32706: 09/13/1874; 63-32711: 07/14/1959

5. Water is used for the following purposes:

32706 : amount .25cfs for Irrigation purposes from 3/1 to 11/15

32711 : amount .13 cfs for Irrigation purposes from 3/1 to 11/15

6. Total amount of water under right \_\_\_\_\_ cubic feet per second and/or \_\_\_\_\_  
 acre-feet per annum.

7. Point(s) of Diversion:

| Lot | 1/4 | 1/4 | 1/4 | Sec | Twn. | Rge. | County | Local Name for diversion |
|-----|-----|-----|-----|-----|------|------|--------|--------------------------|
|     | SE  | SE  | NE  | 31  | 5N   | 2E   | Ada    | Dry Cr.                  |
|     | SE  | NW  | NE  | 31  | 5N   | 2E   | Ada    | Groundwater              |
|     |     |     |     |     |      |      |        |                          |
|     |     |     |     |     |      |      |        |                          |

8. Lands irrigated or place of use:

| Twn.    | Rge. | Sec. | NE 1/4 |     |      |    | NW 1/4 |    |    |     | SW1/4 |    |    |    | SE 1/4 |    |    |      | Totals |
|---------|------|------|--------|-----|------|----|--------|----|----|-----|-------|----|----|----|--------|----|----|------|--------|
|         |      |      | NE     | NW  | SW   | SE | NE     | NW | SW | SE  | NE    | NW | SW | SE | NE     | NW | SW | SE   |        |
| 5N      | 2E   | 31   |        | 2.3 | 2.45 |    | 2.55   |    |    | 3.3 |       |    |    |    |        |    |    | 10.6 |        |
| (32706) |      |      |        |     |      |    |        |    |    |     |       |    |    |    |        |    |    |      |        |
| 5N      | 2E   | 31   |        | 2.3 | 2.45 |    | 2.55   |    |    | 3.3 |       |    |    |    |        |    |    | 10.6 |        |
| (32711) |      |      |        |     |      |    |        |    |    |     |       |    |    |    |        |    |    |      |        |
|         |      |      |        |     |      |    |        |    |    |     |       |    |    |    |        |    |    |      |        |
|         |      |      |        |     |      |    |        |    |    |     |       |    |    |    |        |    |    |      |        |
|         |      |      |        |     |      |    |        |    |    |     |       |    |    |    |        |    |    |      |        |
|         |      |      |        |     |      |    |        |    |    |     |       |    |    |    |        |    |    |      |        |

Total acres 10.6

9. Describe any other water rights used for the same purpose as described above \_\_\_\_\_

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use? unknown If yes, describe \_\_\_\_\_

### B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount .13cfs for Irrigation purposes from 3/1 to 11/15 (Dry Cr.)  
 amount .07cfs for Irrigation purposes from 3/1 to 11/15 (g/w)

2. Point(s) of Diversion:

|          | ¼  | ¼  | ¼  | Sec | Twn. | Rge. | County | Local Name for diversion |
|----------|----|----|----|-----|------|------|--------|--------------------------|
| 63-32706 | SE | SE | NE | 31  | 5N   | 2E   | Ada    | Dry Cr.                  |
| 63-32711 | SE | NW | NE | 31  | 5N   | 2E   | Ada    | Groundwater              |
|          |    |    |    |     |      |      |        |                          |
|          |    |    |    |     |      |      |        |                          |

3. Lands irrigated or place of use: Please also see Attachment B

| T  | R  | Sec. | NE 1/4 |      |      |    | NW 1/4 |    |    |      | SW 1/4 |    |    |    | SE 1/4 |    |    |    | Totals |
|----|----|------|--------|------|------|----|--------|----|----|------|--------|----|----|----|--------|----|----|----|--------|
|    |    |      | NE     | NW   | SW   | SE | NE     | NW | SW | SE   | NE     | NW | SW | SE | NE     | NW | SW | SE |        |
| 5N | 2E | 31   |        | 2.30 | 2.45 |    | 2.55   |    |    | 0.59 |        |    |    |    |        |    |    |    | 7.89   |
|    |    |      |        |      |      |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|    |    |      |        |      |      |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|    |    |      |        |      |      |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|    |    |      |        |      |      |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|    |    |      |        |      |      |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|    |    |      |        |      |      |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|    |    |      |        |      |      |    |        |    |    |      |        |    |    |    |        |    |    |    |        |

Total acres 7.89

### C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (Omit if there is no change)

1. amount 0.12cfs for Irrigation purposes from 3/1 to 11/15 (Dry Cr.)  
 amount 0.06 cfs for Irrigation purposes from 3/1 to 11/15 (groundwater)

2. Point(s) of Diversion:

| Lot | ¼  | ¼  | ¼  | Sec | Twn. | Rge. | County | Local Name for diversion |
|-----|----|----|----|-----|------|------|--------|--------------------------|
|     | SE | SE | NE | 31  | 5N   | 2E   | Ada    | Dry Cr.                  |
|     | SE | NW | NE | 31  | 5N   | 2E   | Ada    | Groundwater              |
|     |    |    |    |     |      |      |        |                          |
|     |    |    |    |     |      |      |        |                          |

## 3. Lands irrigated or place of use:

| Twn.  | Rge. | Sec. | NE 1/4 |    |    |    | NW 1/4 |    |    |      | SW 1/4 |    |    |    | SE 1/4 |    |    |    | Totals |
|-------|------|------|--------|----|----|----|--------|----|----|------|--------|----|----|----|--------|----|----|----|--------|
|       |      |      | NE     | NW | SW | SE | NE     | NW | SW | SE   | NE     | NW | SW | SE | NE     | NW | SW | SE |        |
| 32706 |      |      |        |    |    |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
| 5N    | 2E   | 31   |        |    |    |    |        |    |    | 2.71 |        |    |    |    |        |    |    |    | 2.71   |
| 32711 |      |      |        |    |    |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
| 5N    | 2E   | 31   |        |    |    |    |        |    |    | 2.71 |        |    |    |    |        |    |    |    | 2.71   |
|       |      |      |        |    |    |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|       |      |      |        |    |    |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|       |      |      |        |    |    |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|       |      |      |        |    |    |    |        |    |    |      |        |    |    |    |        |    |    |    |        |
|       |      |      |        |    |    |    |        |    |    |      |        |    |    |    |        |    |    |    |        |

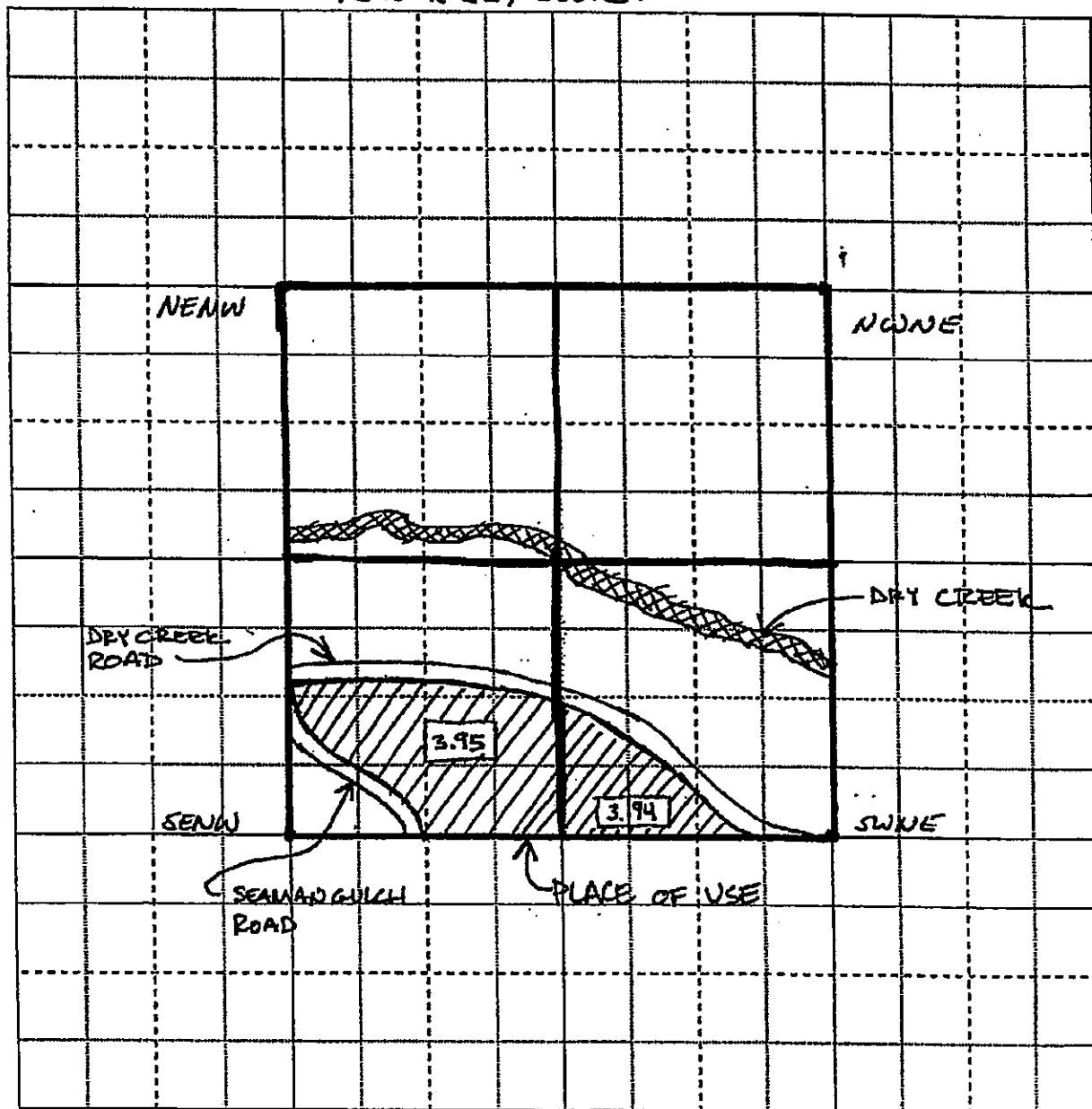
Total acres 2.71

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.

TSN R2E, Sec. 31



Scale: 2 inches equal 1 mile. Draw plan in ink.

Page 7 of 7

Transfer No. \_\_\_\_\_

**PART 3**

**B. CHANGES IN NATURE OF USE** N/A

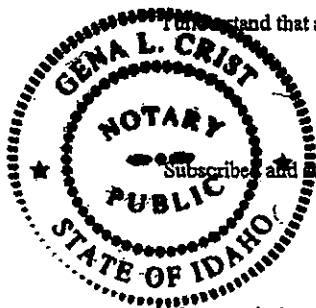
| 1. | <u>New Nature of Use</u> | <u>Amount(cfs/af-ft)</u> | <u>Hours/days/year</u> | <u>Period of Use</u> |
|----|--------------------------|--------------------------|------------------------|----------------------|
|    |                          |                          |                        | to                   |
|    |                          |                          |                        | to                   |

2. Quantity and quality of return flows and location of discharge: \_\_\_\_\_

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



\_\_\_\_\_  
(Signature of Applicant)

Subscribed and sworn to before me this 9<sup>th</sup> day of November, 20 07.

Gena L. Crist  
(Notary Public)

My commission expires 11-14-09

**FOR DEPARTMENT USE ONLY**

Transfer contains \_\_\_\_\_ pages and \_\_\_\_\_ attachments

Received by \_\_\_\_\_ Date \_\_\_\_\_ Protest filed by \_\_\_\_\_

Prelim. Check by \_\_\_\_\_ Fee \_\_\_\_\_

Receipted by \_\_\_\_\_ Date \_\_\_\_\_

Published in \_\_\_\_\_ Copies of protest forwarded by \_\_\_\_\_

Pub. Dates \_\_\_\_\_ Hearing held by \_\_\_\_\_ Date \_\_\_\_\_

Watermaster recommendations requested on \_\_\_\_\_ Recommended for ☐ approval ☐ denial

\_\_\_\_\_ received \_\_\_\_\_ by \_\_\_\_\_

Copy of transfer sent to lien holder \_\_\_\_\_