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AUG 28 2008

DEPARTMENT OF
WATER RESOURCES

Susan Wildwood, ISB 3327
SUSAN WILDWOOD, CHARTERED
P.O. Box 6502 – 2533 N. 26th
Boise, Idaho 83707
Telephone: (208) 383-0390 – Fax 433-8365

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	)	SUBCASE NO. 63-04256A
	)	
Case No. 39576	)	REQUEST FOR LEAVE TO FILE
	)	LATE OBJECTION TO PRIORITY DATE

COMES NOW, Western Idaho Development, Inc, (Western Idaho), Claimant under the above referenced Subcase and requests leave of Court to file a late objection to the priority date recommended by the Director of the Idaho Department of Water Resources (Director).

The grounds for the request are that the original claimant, Thomas Bender, could not be located at the time that Western Idaho's predecessors in title, Frederick Batt, et al., submitted documentation to prove up the priority date. Mr. Bender's original claim listed a priority date of April 1, 1949. See Exhibit 1.

The earliest date that Batt's could provide was 1977. See Exhibit 2, Affidavit of Norman A. Batt. Therefore, the Director recommended the earliest date submitted by Batts - 1977, rather than the date listed in the Bender claim - 1949.

At the Status Conference called by the Court on June 19, 2008, the undersigned, who is now counsel for Mrs. Priscilla Armenta, Subcase 63-2456C, was provided a copy of an Affidavit by Mrs. Edna Britton, who stated that she and her husband were the original purchasers and irrigators of the properties the subject of both the referenced sub-cases.

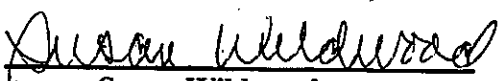
I met with Mrs. Britton on June 25, 2008 and obtained an Affidavit from her pertaining to the actual priority date for Subcase 63-2456C that indicates the original priority date was correctly listed as 1949. A copy of Mrs. Britton's Affidavit has been filed with the Idaho Department of Water Resources. The original is attached hereto as Exhibit 3.

At the same meeting, her son-in-law informed me that Mr. and Mrs. Bender were tragically killed in an automobile accident immediately after they sold the subject properties.

This information was not available to Western Idaho until the teleconference and the subsequent meeting with Mrs. Britton in June 2008.

Therefore, Western Idaho respectfully requests leave of Court to file the attached Late Objection to the priority date recommended by the Director. No party will be prejudiced thereby and the only other objector, Wilder Irrigation District (Wilder) did not object to the priority date recommended by the Director. As noted in the Certificate of Service attached hereto, Wilder has been served a copy of this Request for Leave to File Late Objection to Priority Date.

DATED this 27th day of August, 2008


Susan Wildwood
SUSAN WILDWOOD, CHARTERED

CLAIM TO A WATER RIGHT

Notice is hereby given that Mr. Tobias Bender

(name of plant)

of Route 6, Caldwell, Idaho 83605

(mailing address)

. claims a right to the diversion and beneficial use of

ground water or surface water tributary to Snake River

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Unnamed drain
(Sometimes recently referred to as the Lower Imbankment Drain)

- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

#1 Amount 1.60 Use Irrigation Period of Use: From April 1 To Oct. 31

#2	Amount	1.60	Use	Irrigation	Period of Use:	From	April 1	To	Oct. 31
	Amount		Use	Irrigation	Period of Use:	From	April 1	To	Oct. 31

Amount Use Period of Use: From April 1 To Oct 1
(chk, gmn (cont. inv. (both dates inclusive)
or a/f) stock, etc.)

- (3) Total quantity of water claimed: 2.2 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.

- (4) Priority claimed: (the date water was first applied to beneficial use) April 1, 1949

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

- (5) A) Point of diversion: (give location of point where water is diverted from its source)

#1 SE ¼ SW ¼ Sec. 35 Twp. 4 N Rge. 4 W B. M. County of Canyon

Additional points of diversion: B2 - SW4SW4, Sec. 35, T.4 N., R.4 W.

- b) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. Pump from drain through pipeline to
property. Pipeline located on quarter section line.

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

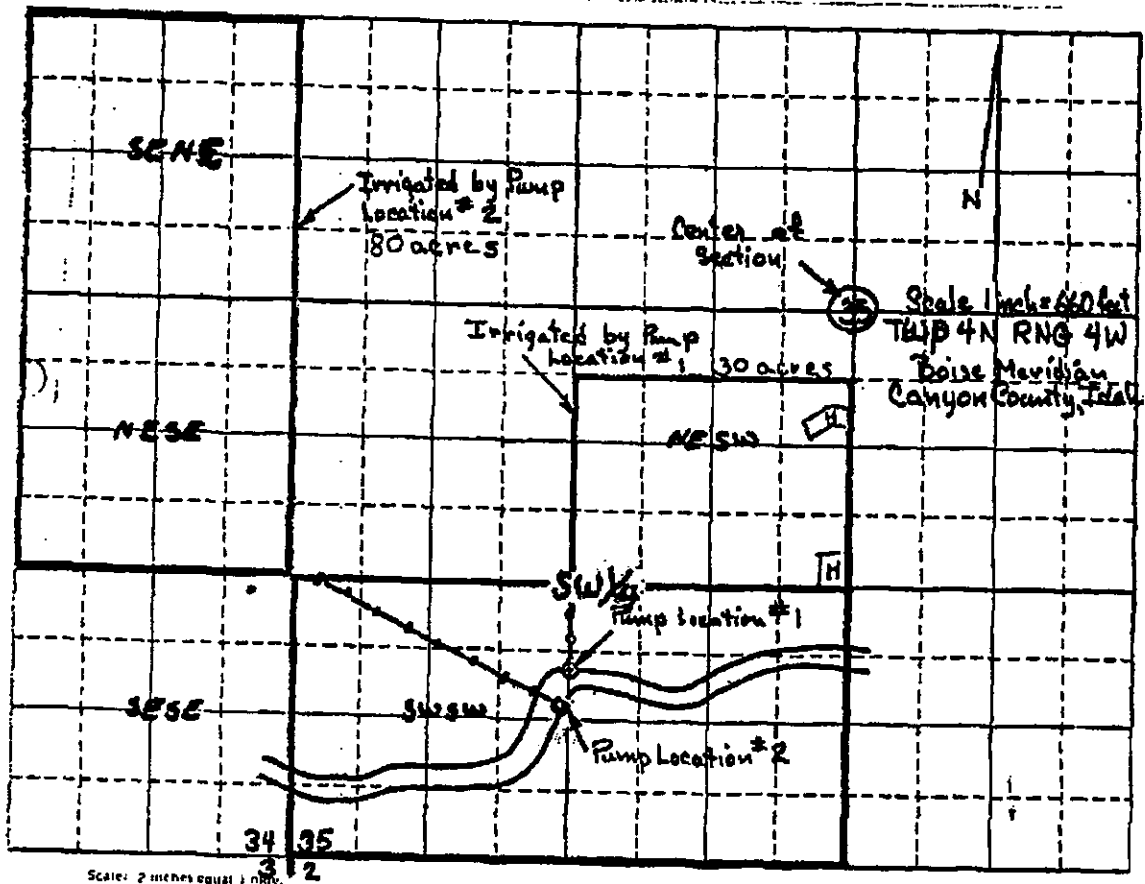
Total No. of acres _____

- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible:

- (7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks

63 4256



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho

County of Alta

ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 15 day of February, 19 74.

Notary Public

Residing at Boise, Idaho

My commission expires June 15, 1977

For Department Use Only

Received by OCB
Prelim. check by OCB
\$10.00 fee received by OCB
Approved for publication by OCB
Published in Boise
Dates 1 25 1 15 74

Date 2-15-74
Date 15 Feb. 1974
Date 2-15-74

Exception filed by:

Forwarded to
claimant by:

Date

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-4256

WATER RIGHT NUMBER: 63-4256

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	TOBIAS BENDER RT 6 CALDWELL, ID 83605

Priority Date: 04/01/1949
 Basis: Statutory Claim
 Status: Active

<u>Source</u>	<u>Tributary</u>
LOWER EMBANKMENT DRAIN	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to	10/31	2.200 CFS	
	<u>Total Diversion:</u>		2.200 CFS	

<u>Location of Point(s) of Diversion</u>		
LOWER EMBANKMENT DRAIN	SE1/4SW1/4	Sec. 35, Twp 04N, Rge 04W, B.M.
CANYON County		
LOWER EMBANKMENT DRAIN	SW1/4SW1/4	Sec. 35, Twp 04N, Rge 04W, B.M.
CANYON County		

Place of Use
 IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	04W	34				40.0										40.0			80.0
04N	04W	35								30.0									30.0

Total Acres: 110

Conditions of Approval:Remarks:Comments:

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FEB 24 2006

WATER RESOURCES
WESTERN REGION

IN THE MATTER OF)
NOTICE OF CLAIM TO)
A WATER RIGHT NO. (S))
A63-4256A)

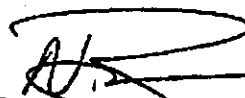
2-15-06

AFFIDAVIT

State of Idaho)
County of Canyon)

Norman A. Batt

deposes and says: We bought the water right of the 80
acres which it serves, in 1977, from Paul Munson.
The "Claim to a Water Right", however, was filed
by ^{previous} ~~several~~ owners BEFORE Munson, by Tobias Bender.
Mr. Bender filed the Claim in 1974, with a
priority claimed date of 1949. Bender had farmed there for years.
We know that this water diversion was used for
the specified 80 acres at least from 1970 on. We
believe that this usage existed from decades earlier,
but we can not prove that, & we do not have any
knowledge of the whereabouts of Tobias Bender.
A copy of the "Claim to a Water Right" by Tobias Bender
is enclosed.



(Signature)

Also of Note: We sold this property, & the water
right, in 2005 to Wesley Porter, dba Western Idaho
Development.

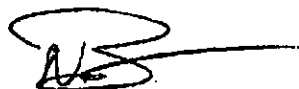


EXHIBIT 2

Jun 10 08 08:51a

JUN 09 08 12:24p

batt

2084538588

p.2

P.1

WILDER HOP CO.

1621 Idaho Avenue, Caldwell, ID 83605
Phone/Fax: 208 453 8588

June 9, 2008

Subject: Water Right on Lower Embankment Drain

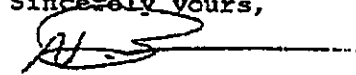
To Whom It May Concern:

I am writing this letter at the behest of James Porter, whose family now owns a piece of farm land, which my brother and I previously owned and farmed. The 80 acre piece of land in question is located in Section 34, Township 4 North, Range 4 West, Boise Meridian, Canyon County, Idaho. It has been irrigated for decades utilizing water from the Lower Embankment Drain, with a point of diversion located in SWSW, Section 35, T4N, R4W.

My brother and I purchased the 80 acres from Mr. Paul Munson in March of 1977. Mr. Munson had previously purchased the property from Mr. Walter Riess. To the best of my knowledge, Mr. Riess had purchased the farm from Mr. Tobias Bender. In February 1974, Mr. Bender filed a "Claim to a Water Right" with the Department of Water Administration, State of Idaho, claiming that water was first applied to this farm land from the Lower Embankment Drain in 1949.

As far as I know, Mr. Bender had continually farmed this 80 acres with water from above specified point of diversion. Certainly, my brother and I farmed the property from 1977 until we sold the property in 2005, always utilizing the water from the Lower Embankment Drain. If Mr. Bender's priority claim of 1949 is accurate, then the farm land and the Lower Embankment Drain have been physically and economically tied together for nearly 60 years.

Sincerely yours,


Norm Batt

STATE OF IDAHO)
)
COUNTY OF CANYON)

AFFIDAVIT OF Eona M. Britton
REGARDING PROPERTY HISTORY

I, Eona M. Britton being first duly sworn, deposes and states

that:

Approximately 1942, my husband Richard and I purchased 80 acres Northwest of Ustick, and Hyde Lane. We lived on the property. The West Canyon Elementary School is located on the property (now).

There was a pump in the lower embankment drain for irrigation when we bought it. We pumped from the drain into an upper pond and gravity irrigated.

We bought a second adjacent 80, now owned by ~~Peter~~ ^{Richard} ~~it is~~ west of what would be Boot Road. We bought in 1950.

We added another pump from the drain to get more water to the pond for the second 80.

We had to clean sagebrush from the second 80 and irrigated it from 1950 on.

We bought 30 acres in 1958. We irrigated it from the same system.

We sold all the property to Jorgasons in about 1965. He sold to Tobias Boder.

@ Western Idaho Development

[illegible]

Edna M. Britton
(Signature)

SUBSCRIBED AND SWORN to before me this 25th day of June 2008.

Susan Wilder
NOTARY PUBLIC FOR THE STATE OF IDAHO
Residing at Elise St, Idaho
My Commission expires: 01-31-13



Susan Wildwood, ISB 3327
SUSAN WILDWOOD, CHARTERED
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Boise, Idaho 83707
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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	)	SUBCASE NO. 63-04256A
	)	
Case No. 39576	)	CERTIFICATE OF SERVICE
_____	)	

I, Susan Wildwood, hereby declare under penalty of perjury that I am not a party to the within action and am over the age of 18. On August 27, 2008, I served the following persons with the Request for Leave of Court to File Late Objection to Priority Date, as follows:

Mr. Albert P. Barker
Barker Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83707-2139
Facsimile: 344-6034
Attorneys for Wilder Irrigation District

☐ Facsimile
☒ Mailing
☐ Hand Delivery

United States Department of Justice
Environment & Natl' Resources
550 West Fort Street, MSC 033
Boise, ID 83712
Facsimile: 334-1413
Attorney for USDI Bureau of Reclamation

☐ Facsimile
☒ Mailing
☐ Hand Delivery

Director
Idaho Department of Water Resources
P.O. Box 83720
Facsimile: 287-6700
Boise, ID 83720-0098

☐ Facsimile
☒ Mailing
☐ Hand Delivery

DATED this 27th day of August, 2008.

Susan Wildwood
Susan Wildwood