

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 37-21146
Date Received: 8/5/2003
Receipt No:
Received By:

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

1. Name of Claimant(s)

BETTE WILL GOWER Phone:
P O BOX 912
BELLEVUE ID USA 83313

MARK ALLEN GOWER Phone:
P O BOX 912
BELLEVUE ID USA 83313

2. Date of Priority: 06/12/1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
02N	18E	36	NE SW NW 3	BLAINE	

5. Description of diverting works:

DIVERSION DAM, HEADGATE, CANAL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	11/01	0.11	

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

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
01N	18E	24	SE NE	IRRIGATION	7.9
Section Acres					7.9
Total Acres					7.9

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

COPIED FROM REMARKS CLAIM 37-11688:
OTHER WATER RIGHTS USED - 37-11689. THIS CLAIM WAS PART OF DECREED RIGHT NUMBER 37-353.

8/05/2003: CLAIM 37-11688 WAS SPLIT BY OWNERSHIP INTO 37-21145 (FOSNOT) AND 37-21146 (GOWEN). - VH

15. Basis of Claim: Decreed

Form 42-247(12-1999) July, 2000

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

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s)	Adjudication Claim No(s)	Split	Water Right No(s)	Adjudication Claim No(s)	Split
1R A 37-11688					
1R 37-353B					
37-011685					

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question. **WITH ATTACHED LEGAL DESCRIPTION.**
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Robert E. Fosnott and Paul R. Fosnot
PO Box 290, Bellevue ID 83313
4. New Owner/Claimant(s) Mark Allen Gower and Bette Will Gower
Name Connector (Check one): [] and, [] or, [] and/or
PO Box 912
New Mailing Address Bellevue ID 83313
City, State and ZIP Code
New Telephone Number () _____
Date you acquired the property 7/31/03

RECEIVED

AUG 04 2003

Department of Water Resources
Southern Region

Form 42-24842-1-407(d) July, 2000

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)

John Allen Kerner
Debbie Will-Gower

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by _____ Date _____ Fee _____
 Received by _____ Date _____ Receipt No. _____
 Processed by _____/J Date _____ WR _____ Date _____

WARRANTY DEED

FOR VALUE RECEIVED

ROBERT E. FOSNOT, a married man, as his sole and separate property

the grantor, does hereby grant, bargain, sell and convey unto

MARK ALLEN GOWER AND BETTE WILL GOWER, husband and wife

the grantees, whose current address is **PO Box 912**
Bellevue, ID 83313

the following described premises, in **BLAINE COUNTY, IDAHO**, to wit:

Lot 1 of DEAN RANCH SUBDIVISION, BLAINE COUNTY, IDAHO, according to the official plat thereof, on file in the office of the County Recorder, as Instrument No. 169670, records of Blaine County, Idaho.

SUBJECT TO: Taxes, easements, restrictions, reservations, assessments and encumbrances as shown of record, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees and their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantees, that he is the owner in fee simple of said premises; that said premises are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: July 15, 2003

Robert E. Fosnot
Robert E. Fosnot

State of: MT

County of: MADISON

On this 21st day of July, 2003, Before me a Notary Public in and for said State, personally appeared Robert E. Fosnot known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Joanna Kallay
Notary Public

Residing at 90415

Comm. Expires 10-22-2006

IN 18E
SE 10E
Sec 24

AGGREGATE ACRES
SUBDIVISION

DEAN RANCH SUBDIVISION

HIGHWAY

STATE

10785

10783

10773

10769

10767

10759

10785

10749

10739

10737

13 18
24 19

8b
8a

7
6

5
4

3
2

1

← GOWER
VH

← Fosnot
SE 37-21145
VH

0 25

2514

2500

R. 18 E.
R. 19 E.

3

107

5

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: A37-11688
Date Received: 10/17/1988
Receipt No: M001608
Received By: GG

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ROBERT EARL FOSNOT 208-783-3642
Address: P.O. BOX 290
BELLEVUE, ID 83313

OR

Name: PAUL R. FOSNOT 714-622-3475
Address: 837 LAUREL AVE.
POMONA, CA 91767

2. Date of Priority: JUN 12, 1886

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
02N	18E	36	NE	SW	NW		BLAINE

5. Description of diverting works:
DIVERSION DAM, HEADGATE, CANAL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.400		

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

8. Total consumptive use is 69.7 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
01N	18E	24	SE		NE		IRR	7.9
			NE		SE		IRR	20.0
							Section Acres	27.9
							Total Acres	27.9

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
A37-16689

14. Remarks:
THIS CLAIM WAS PART OF THE DECREED RIGHT NUMBER 37-00353

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 12/13/1909

S. C. FROST, ET AL
Decree Plaintiff

vs

ALTURAS WATER CO., ET AL
Decree Defendant

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): *R. R. [Signature]* Date: *10/17/88*

Date: _____

State of Idaho)
County of BLAINE) SS.

Subscribed and sworn (or affirmed) before me this 17th day
of Oct 19 88

Marvin Gene Gibson
Notary Public

Seal

Residing at Boise, Id
My Commission Expires 9-2-1994



43° 30'

4819

T2N R18E
SECTION 36

4818

NE SW NW

660 000
FEET

4817

4816

27' 30"

4815

T2N
TIN

4814

MICROFILMED

FEB 25 1993





State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

December 12, 2006

Mark Gower
PO Box 912
Bellevue, ID 83313

JAMES E. RISCH
Governor

KARL J. DREHER
Director

RE: SRBA Recommendations 37-21146 & 37-21148

Dear Mr. Gower;

We have received your comments on the SRBA recommendations that were recently mailed to you for the irrigation rights on your property. I have checked the 1987, 2004 and 2006 aerial photos on our database, and found that the irrigated land appears to be the same on all three. The land that was irrigated in 1987, and that is still irrigated, is what was recommended. A copy of the 2006 photo is enclosed for your information.

I believe that the recommendations are correct, so I do not plan to change them. The Director's Report to the SRBA Court for your area will be issued on January 8. You can file a formal objection to the recommendations from then until November of 2007 if you so desire.

Regards,

James E. Stanton
Sr. Water Resource Agent



Idaho Department of Water Resources

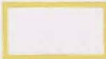
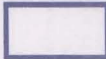
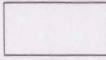
SCANNED
DEC 18 2006

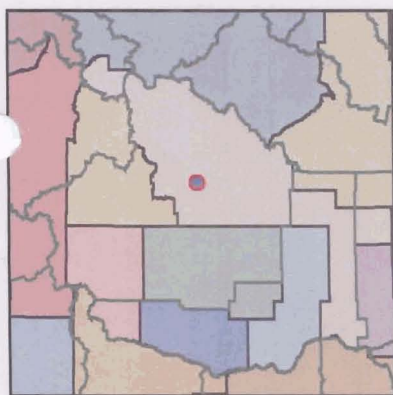
SRBA Recommendation:

37-21146

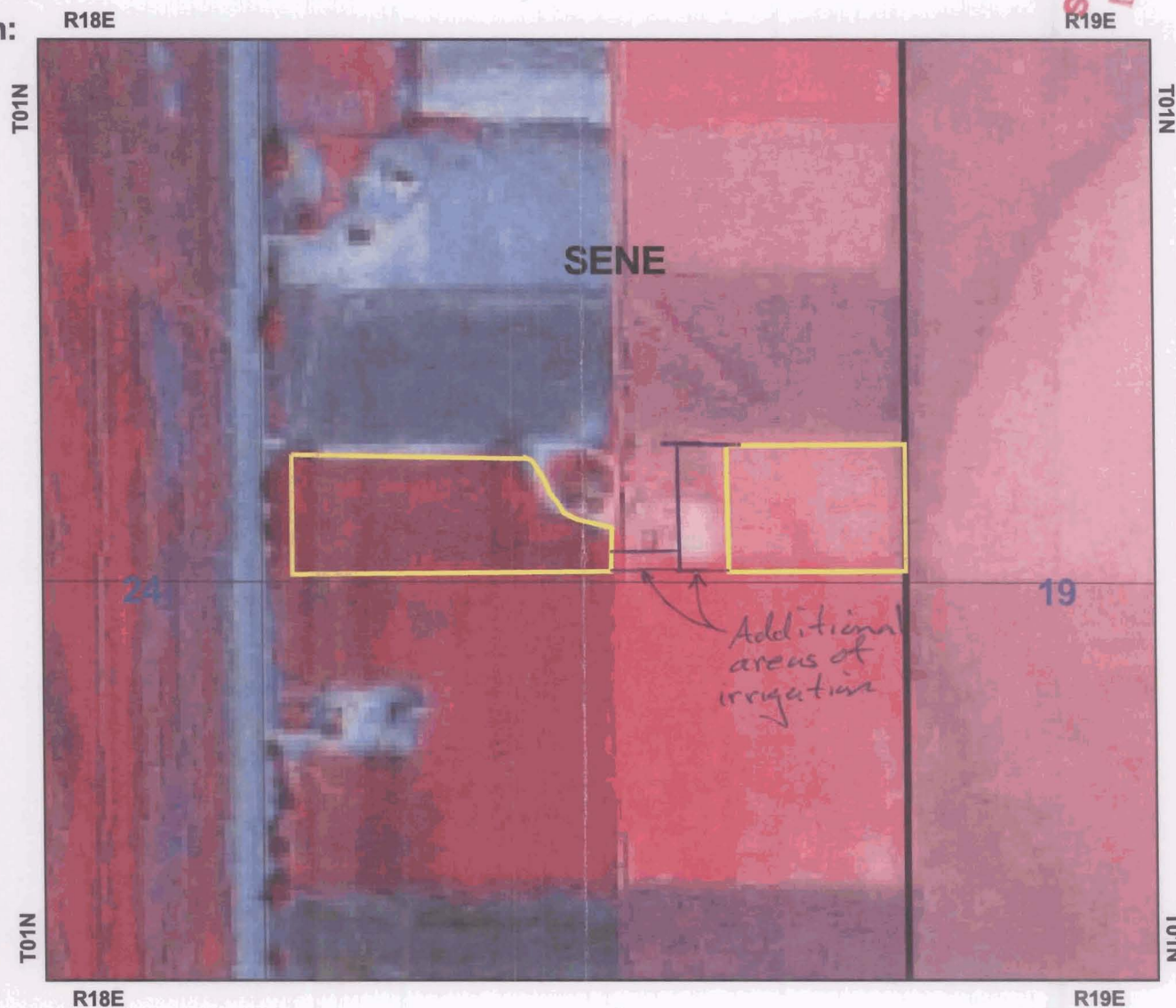
(Irrigation)

Legend

-  Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters



Blaine County
IDWR Basin 37



0 0.1 0.2 Miles

Prepared by M. Ciscell
On Wednesday, November 29, 2006
1987/88 Aerial Photography

12/01/2006

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

RIGHT NUMBER: 37-21146

NAME AND ADDRESS: BETTE GOWER
P O BOX 912
BELLEVUE ID 83313

MARK GOWER
P O BOX 912
BELLEVUE ID 83313

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 0.110 CFS

PRIORITY DATE: 06/12/1886

POINT OF DIVERSION:

T02N R18E S36 NESWNW Lot 3 Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	0.110 CFS

PLACE OF USE: IRRIGATION in BLAINE County

T01N R18E S24 SENE 5.50

5.5 ACRES TOTAL

Rights 37-21146 and 37-21148 when combined shall not exceed the
irrigation of 5.5 acres.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

The place of use is also known as Lot 1 of the Dean Ranch Subdivision.

This right is a portion of Right 37-353.

11/18/2006

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

RIGHT NUMBER: 37-21146

NAME AND ADDRESS: BETTE GOWER
P O BOX 912
BELLEVUE ID 83313

MARK GOWER
P O BOX 912
BELLEVUE ID 83313

SOURCE: BIG WOOD RIVER

TRIBUTARY: MALAD RIVER

QUANTITY: 0.110 CFS

PRIORITY DATE: 06/12/1886

POINT OF DIVERSION:

T02N R18E S36 NESWNW Lot 3 Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/15	0.110 CFS

PLACE OF USE: IRRIGATION in BLAINE County

T01N R18E S24 SENE 5.50

5.5 ACRES TOTAL

Rights 37-21146 and 37-21148 when combined shall not exceed the
irrigation of 5.5 acres.

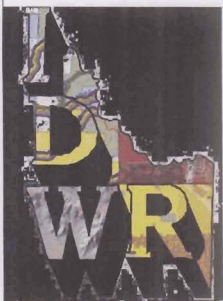
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

The place of use is also known as Lot 1 of the Dean Ranch Subdivision.

This right is a portion of Right 37-353.



Idaho Department of Water Resources

SRBA Recommendation:

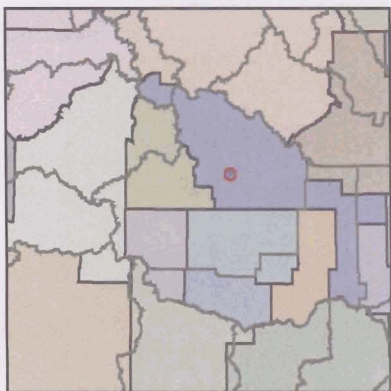
37-21146

37-21148

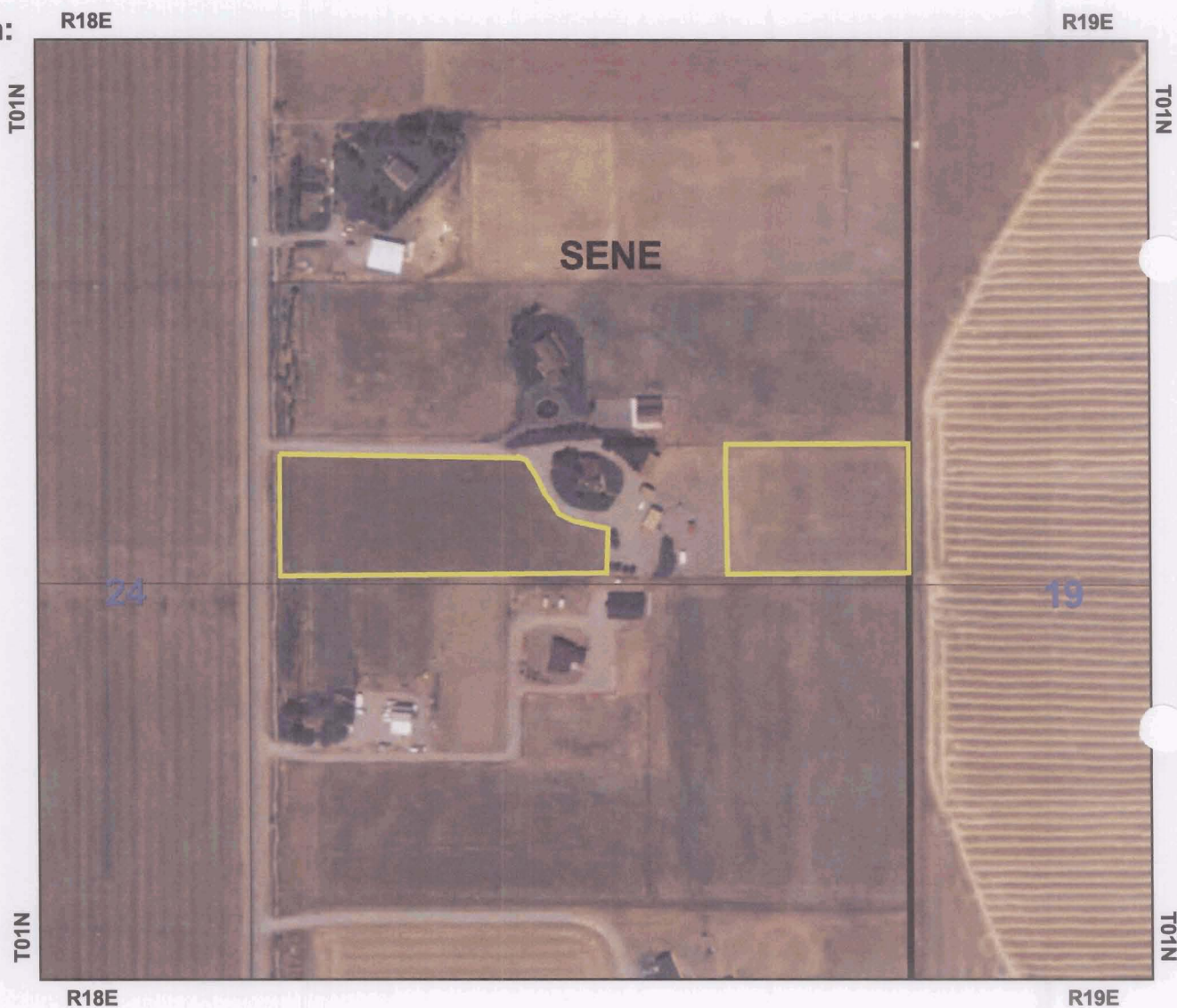
(Irrigation)

Legend

-  Point of Diversion
-  Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters



Blaine County
IDWR Basin 37



0 0.1 0.2 Miles

Owner: Bette Gower

NOTE: Only one owner is listed. There may or may not be more than this in the IDWR database.

Prepared by J. Stanton
On Saturday, November 18, 2006
2004 Aerial Photography

Water Right Report 37-11686

WATER RIGHT NUMBER: 37-11686

Status: Active

GROUND WATER

GROUND WATER SW1/4SE1/4NE1/4 Sec. 24, Twp 01N, Rge 18E, B.M.
BLAINE County

DOMESTIC

STOCKWATER

[illegible]

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-11686

Conditions of Approval:

1. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
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. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
4. PARCEL NO.01N18024075A STOCKWATER, 20 HORSES

Remarks:Comments:Dates and Other Information:

Licensed Date:
Decreed Date: 1/5/2001
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector: AND
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number: 39576
Judicial District: FIFTH
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:Water Supply Bank:



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 5, 2003

Mark A. Gower
Bette W. Gower
PO Box 912
Bellevue, Idaho 83313

RE: Snake River Basin Adjudication (SRBA)
Claim Numbers: 37-11688 & 37-11689A
Change of Ownership Notification

Dear Claimants:

With receipt of documentation showing that you have purchased lands associated with a portion of the above referenced Snake River Basin Adjudication claims, our records have been updated. The water right claims referenced above have been split between you and the Fosnots, giving each party a proportionate share of the diversion rate. As a consequence, the rights have been renumbered; the enclosed copies are for your records, please review these documents for accuracy in all respects. If you have any questions or concerns, please contact me at this office.

The SRBA is an ongoing process; in the future, you may be notified with more information concerning your water right claim. You also may be asked to provide more information to assist us in correctly recommending your water right to the SRBA Court. It is, therefore, important that IDWR be kept informed of changes in ownership and address. We thank you for your cooperation in the Adjudication.

Sincerely,

Vikie Hancock
Sr. Water Resource Agent
Southern Regional Office, Twin Falls
vhancock@idwr.state.id.us



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 5, 2003

Carolyn Baird
Sun Valley Title Company
221 S River Street, Suite 2A
Hailey, Idaho 83333

RE: Snake River Basin Adjudication (SRBA)
Change of Ownership – Fosnot to Gower
SRBA Claims 37-11688, 37-353B and Domestic Water Right 37-11685

Dear Ms. Baird:

IDWR's Southern Regional Office has received your Notice of Change of Ownership and check for \$25 on behalf of Mark Allen Gower, however I am returning the check and copies of the materials pending clarification of the following inconsistencies:

- 1) Domestic water right 37-11685 was decreed in the SRBA January 5, 2001. The right was identified as being located in the NESE of Section 24, T01N, R18E. Mr. Gower has purchased Lot 1 of the Dean Ranch Subdivision, which according to Blaine County Taxlot maps is located in the SENE Section 24. (It is possible that right 37-11685 should now be in the name of Mark Swenke who, it appears, purchased 2.7 acres and a residence located in the NESE Section 24 from Miller in 2000. Miller purchased the 2.7 acres from Fosnot in 1995).
- 2) 37-353B is currently in the name of Edward Stricker. It does not appear that this right was conveyed to Gower by Fosnot.
- 3) According to our records 37-11688, as well as 37-11689A, are claimed to be appurtenant to the lot Mr. Gower purchased - see the 7.9 acres identified in the SENE Section 24 on the print-outs of those claims. The documents you submitted are sufficient to change ownership of these rights, however, because the rights are also appurtenant to acreage in the NESE Section 24 retained by Fosnot, the claims will be split proportionately between the parties.

If you determine from the Fosnots or Gower that domestic water right 37-11685 was incorrectly decreed in the NESE Section 24 instead of on Lot 1 in the SENE Section 24, your client may file a transfer to change the recorded location of the right. As you can see, the domestic use from this ground

water well was claimed to have begun in 1920, so the age of the residence should help determine where the water right is correctly located.

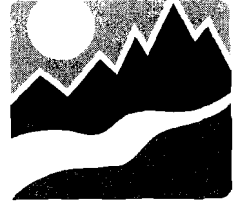
For your convenience, I have enclosed copies of all the Adjudication Claims and the decreed Water Right mentioned above. If you have questions I can be reached at this office by phone or email. We appreciate your help in updating IDWR's ownership records.

Sincerely,

Vikie Hancock
Sr. Water Resource Agent
Southern Adjudication Unit
email: vhancock@idwr.state.id.us

July 31, 2003

SUN VALLEY
TITLE
C O M P A N Y



Idaho Department of Water Resources
1341 Fillmore St
Suite 200
Twin Falls ID 83301-3380

RECEIVED
AUG 04 2003
Department of Water Resources
Southern Region

Re: 03-19020
Robert E. Fosnot
Mark Allen Gower
10739 State Highway 75 Blaine County, ID 83313

To Whom It May Concern:

Regarding the above, I have enclosed the following:

- Check in the amount of \$25.00
- Warranty Deed
- Change of ownership form

Sincerely,

Carolyn Baird
Escrow Officer

A37-11688

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

FILED
JUL 24 1997
Department of Water Resources

IN THE MATTER OF A CALL FOR)
DELIVERY OF WATER RIGHT NO.)
37-0353 TO OLSEN LIVESTOCK)
CONSULTANTS, INC.)
_____)

PRELIMINARY ORDER

Scott Campbell, an attorney representing Olsen Livestock Consultants, Inc., requested delivery of 0.40 cfs (20 miners inches) of water from the Big Wood River under water right No. 37-0353. After reviewing the files and records of the Department, Water District 37, and Blaine County, the Department of Water Resources enters the following Findings of Fact, Conclusions of Law, and Preliminary Order.

FINDINGS OF FACT

1. Water Right No. 37-0353 was decreed to James Johnson in the case of S. C. Frost, et al vs. Alturas Water Co., et al. The right is for 6.4 cfs to be diverted from the Big Wood River for irrigation of the E1/2SE1/4 of Section 13 and the E1/2NE1/4, Section 24, T1N R18E, B.M., Blaine County (approximately 160 acres). The water right has been diverted into the Wood River Valley Irrigation District No. 45 canal located within the SW1/4NW1/4, Section 36, T2N, R18E, for delivery to users of the water. The priority of right No. 37-0353 is June 12, 1886.

2. The decreed place of use for right No. 37-0353 was divided in the early 1970's into an 18 lot subdivision known as the Dean Ranch Subdivision. The records of the Department and Water District 37 indicate that right No. 37-0353 was appurtenant to and used upon the decreed place of use up to the time the land was subdivided and on some of the subdivision lots and other land each year thereafter. Lot 2, Block 1 of the subdivision has not been irrigated for more than 10 years as evidenced by a review of aerial photographs and other information available to the department.

3. Olsen Livestock Consultants, Inc. claims ownership of Lot 2, Block 1, Dean Ranch Subdivision. The deeds in the chain of title filed with Blaine County for this lot from the creation of the subdivision to the present are summarized as follows:

- a. M.D. and Katherine Dean deeded Lot 1 (approximately 8 acres) and Lot 2 (approximately 10 acres) with appurtenances to Charles A. and Debra Anne Curtis on November 1, 1974. Appurtenant water rights were not specifically described.

- b. Charles A. and D. Anne Curtis deeded Lot 1 with appurtenances to Robert E. Fosnot on October 19, 1978. Appurtenant water rights were not specifically described.
 - c. Charles A. and Debra Anne Curtis deeded Lot 2 with appurtenances to Dean R. and Judene Call on December 5, 1978. A water right with an 1887 priority date for 20 inches was specifically included.
 - d. Dean R. and Judene Call deeded Lot 2 with appurtenances to Robert D. and Sharyl M. Head on August 5, 1991. A water right with an 1887 priority date for 20 inches was specifically included.
 - e. Robert D. and Sharyl M. Head deeded Lot 2 with appurtenances to Olsen Livestock Consultants, Inc. on September 25, 1996. Appurtenant water rights were not specifically described.
4. Blaine County does not have any record of deeds transferring title of any part of Water Right No. 37-0353 separately from the appurtenant land during the time period of December 15, 1969 (date land was deeded to M. D. Dean) to November 1, 1974 (the date of the initial sale of Lot 1 and 2).
5. Water District 37 records list the following as the current owners of water right No. 37-0353:
- a. Harry L. Oppenheimer (20 miners inches) based upon a letter dated October 27, 1977 from M. D. Dean confirming the sale of the water to Jerry Lee Johnson, a February 16, 1978 warranty deed from Jerry Lee Johnson to Marvin Lotspeich, and a 1980 warranty deed from Marvin Lotspeich to Harry L. Oppenheimer.
 - b. Robert Kierstad (40 miners inches) based upon an October 28, 1977 letter from M. D. Dean confirming sale of water to Mr. Kierstad.
 - c. Ed Stricker (20 miners inches) based upon an October 29, 1977, letter from M. D. Dean confirming sale of the water to Mr. Stricker.
 - d. Gus Chek (10 miners inches) based upon a November 1, 1977, letter confirming sale of 20 inches of water to Mr. Chek. Mr. Chek subsequently sold 10 inches to Douglas Driever.
 - e. Douglas Driever (10 miners inches) based upon an October 4, 1991 letter from Gus Chek confirming sale of the water and Transfer No. 3679 approved by the department.

f. Robert Gardner (180 miners inches) based upon a June 25, 1982 letter from M. D. Dean confirming sale of the water to Mr. Gardner.

g. J Karl Bick (20 miners inches) based upon a June 25, 1982 letter from M. D. Dean to John Peterson and a quit claim deed dated November 3, 1993 from John Peterson to J Karl Bick.

h. Robert Fosnot (20 miners inches) based upon Transfer No. 2948 approved by the department.

6. The records of Water District 37 list a current owner for all 6.4 cfs (320 miners inches) of right No. 37-0353. Olsen Livestock Consultants, Inc. is not listed as a current owner by the water district. The watermaster records indicate that an assessment has not been paid for delivery of water for use on Lot 2, Block 1, Dean Ranch Subdivision since 1982 or earlier.

7. The following have claimed portions of right 37-0353 in the Snake River Basin Adjudication (SRBA):

- | | | |
|----|---|--------------------|
| a. | A37-0353 J. Karl & Judith G. Bick
(This claim was originally filed by John Peterson.) | 20 miners inches |
| b. | A37-0353B Edward & Jeannine Stricker | 20 miners inches |
| c. | A37-0353D Robert & Kathryn Gardner | 180 miners inches |
| d. | A37-0353E Harry L. Oppenheimer, Jr. | 20 miners inches |
| e. | A37-0353F William R. Long | 10 miners inches |
| f. | A37-0353G Douglas Driever
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| g. | A37-0353H Reid Kantenwein
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| h. | A37-0353J Tom Olsen | 13.5 miners inches |
| i. | A37-11688 Paul R. & Robert E. Fosnot — See 21145
(This claim is based upon water right No. 37-0353.) | 20 miners inches |

8. The SRBA claims on file total 303.5 miners inches.

9. The Water District 37 records show that Wood River Valley Irrigation District No. 45 has paid the Water District 37 assessments for 1997 for Gus Chek and for 1996 and 1997 for Robert Kierstad.

10. The Department, Water District 37, and Blaine County records do not show the transfer of an 1887 water right to Lot 2, Block 1, Dean Ranch Subdivision.

11. Water District 37 has been active each year since 1974 and earlier.

12. Rule 104 of the "Rules of Procedure of the Idaho Department of Water Resources", IDAPA 37.01.01, authorize the department to initiate a formal proceeding by issuing an informal determination that will become final in the absence of further action by the person(s) to whom the document is addressed.

CONCLUSIONS OF LAW

1. Water right No. 37-0353 has not been forfeited as evidenced by the Water District 37 records of delivery and use, although use has not occurred on Lot 2, Block 1 Dean Ranch Subdivision for many years.

2. Lot 2, Block 1 Dean Ranch Subdivision was included in the decreed place of use of water right No. 37-0353. Unless a change in place of use was made in accordance with a valid transfer procedure, water right No. 37-0353 is prorated uniformly to the place of use; i.e., 2 miners inches to each acre of the place of use, *Crow v. Carlson*, 107 Idaho 461 (1984).

3. A water right is an appurtenance to the land and passes by conveyance of the land unless it was specifically reserved in the deed or it can be clearly shown that it was known to both parties that the water right was not intended to be conveyed. *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911). Because the 1974 deed from M. D. and Katherine Dean to Charles A. and Debra Anne Curtis did not specifically reserve water rights from the sale, a proportionate share of water right 37-0353 remained appurtenant to the parcel. Deeds and letters confirming the sale of portions of the decreed water right issued by M. D. Dean subsequent to the 1974 deed to Curtis purporting to convey water rights could not have moved the water right from Lot 2.

4. The reference to an "1887" water right in the chain of title to Lot 2, Block 1, Dean Ranch Subdivision, appears to be a typographical error in describing the appurtenant May 12, 1886 priority water right because documentation has not been found to associate an 1887 priority water right with Lot 2, Block 1, Dean Ranch Subdivision. The inclusion of this reference to a water right in the deed to Mr. Call indicates that Mr. Curtis understood that a water right was appurtenant to Lot 2, Block 1, Dean Ranch Subdivision.

5. Section 42-607, Idaho Code, provides that a water user can not adversely possess the water rights of another user in an active water district.

6. The information available to the department indicates that a proportionate share of water right No. 37-0353 is appurtenant to Lot 2, Block 1, Dean Ranch Subdivision owned by Olsen Livestock Consultants, Inc. The watermaster of Water District 37 should be instructed to deliver the water to the authorized point of diversion for delivery and irrigation use.

7. The department is not able with the information presently available to determine which of the persons presently listed in the Water District 37 records as owning a portion of water right No. 37-0353 are not entitled to the full amount attributed to them. This matter is left for further determination by the department or the district court. Because some of the persons listed as owning part of the right are not calling for delivery under the right and have not done so for several years, the watermaster can satisfy the Olsen Livestock Consultant, Inc. call without otherwise changing the delivery to those entitled to use the water. If calls for water by those entitled to receive the water exceed the total amount of the right, delivery to each user will be proportionately reduced until the ownership issue is resolved.

ORDER

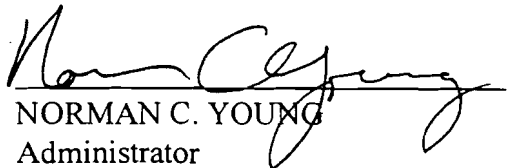
IT IS, THEREFORE, HEREBY ORDERED:

1. The watermaster of Water District 37 is instructed to deliver 0.20 cfs of water right 37-0353 with a June 12, 1886 priority date to the Wood River Valley Irrigation District No. 45 headgate in the SW1/4NW1/4, Section 36, T2N, R18E for use by Olsen Livestock Consultants, Inc. Prior to delivery of the water under this order, Olsen Livestock Consultants, Inc. shall have paid any applicable Water District 37 assessments.

2. This Order does not constitute a determination that Olsen Livestock Consultants, Inc. has a right-of-way, easement, or other necessary authorities and approvals needed to convey water through the Wood River Valley Irrigation District headgate and canal system.

3. This Order is a preliminary determination subject to revision if additional information is submitted indicating that water right No. 37-0353 is no longer appurtenant to Lot 2, Block 1, Dean Ranch Subdivision. All persons receiving this order and others using or claiming the use of water under right No. 37-0353 have the opportunity to seek reconsideration or file exceptions in accordance with Rule 730 of the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01.

Signed at Boise, Idaho, this 22ND day of July, 1997.


NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of July, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

Scott Campbell
Elam & Burke
PO Box 1539
Boise, Idaho 83701

J Karl and Judith G. Bick
PO Box 2014
Sun Valley, Idaho 83353

Gus Chek
PO Box 1984
Hailey, Idaho 83333

Robert and Kathryn Gardner
PO Box 470
Bellevue, Idaho 83313

William R. Long
11710 Mayfield Avenue
Los Angeles, California 90049

Robert Earl Fosnot
PO Box 290
Bellevue, Idaho 83313

E. Lee Schlender
PO Box 296
Hailey, Idaho 83333

Edward and Jeannine Sticker
10767 State Highway 75
Bellevue, Idaho 83313

Douglas Driever
PO Box 2072
Hailey, Idaho 83333

Harry L. Oppenheimer, Jr.
246 Summit Drive
Corde Madera, California 93925

Reid Kantenwein
PO Box 1525
Hailey, Idaho 83333

Paul R. Fosnot
837 Laurel Avenue
Pomona, California 91767


DEBORAH DREW-ELLIS
Legal Secretary