

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAH
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: A37-00457A
Date Received: 10/26/1988
Receipt No: S004884 *law*
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: THOMAS M. ROBERTSON 208-734-1224
Address: P.O. BOX 525
TWIN FALLS, ID 83303-0525

OR

Name: DAVID M. BERENSON, PHILIP ZIMET AND 208-734-1224
Address: DOUGLAS BRADSHAW, TRUSTEES
ELEANOR REINHEIMER WILL
P.O. BOX 525
TWIN FALLS, ID 83303-0525

2. Date of Priority: MAY 01, 1883

3. Source: TRAIL CREEK Trib. to: BIG WOOD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	18E	7	SW	SE			BLAINE

5. Description of diverting works:
24' CONCRETE WEIR, HEAD GATE, DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	4.800		

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

8. Total consumptive use is 200.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/30 COW-CALF PAIRS

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10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	18E	19	NE	NW		IRR	40.0
			SE	NW		IRR	40.0
						Section Acres	80.0
						Total Acres	80.0

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:

TRUSTEES UNDER WILL OF ELEANOR REINHEIMER

14. Remarks:

WATER IS IN PART LEASED TO IDAHO PARK FOUNDATION.
EXCESSIVE IRRIGATION FLOW FACT SHEET ATTACHED.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

Decree Plaintiff

vs

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 _____ wish to receive and 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): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____
My Commission Expires _____

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

A 37-00457 A

Date Received

10-26-88

Receipt Number

C004884

RECEIVED

OCT 26 1988

NOTICE OF CLAIM
TO A
WATER RIGHT

ACQUIRED UNDER STATE LAW

Department of Water Resources
Southern Region Office

Please type or print clearly

Thomas M. Robertson or Douglas Bradshaw,
David M. Berenson and Philip Zimet, Trustees
1. Name of Claimant (s) under the Will of Eleanor Reinheimer, Phone (208) 734-1224
deceased

Mailing Address Box 525, Twin Falls, Idaho Zip 83303-0525

2. Date of Priority (Only one (1) per claim) May 1, 1883

3. Source of water supply (a) Trail Creek
which is tributary to (b) Big Wood River

4. a. Location of existing point of diversion is: Township 4 N. Range 18 E. Section 7,
1/4 of SW 1/4 of SE 1/4, Govt. Lot, E., B.M., County of Blaine

Additional points of diversion if any: None

b. If instream flow, beginning point of claimed instream flow is: N/A

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. 24' wide concrete weir with splash boards in Trail Creek; concrete head gate behind weir servicing transmission ditch which carries claimants water and water of others for distance of approximately 1 mile to concrete division box which divides claimants water into claimant's ditch which carries claimants water an additional distance of approximately 1/4 mile to place of use.

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6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 4-1 to 11-1 amount 4.800 or _____

For Stock Water purposes from 4-1 to 11-1 amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.800 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 200.0 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 30 cow-calf pair

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
4 N.	18 E.	19					40			40									80

Total number of acres irrigated 80

11. In which county (ies) are lands listed above as place of use located? Blaine

12. Do you own the property listed above as place of use? Yes _____ No X

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

See attached sheet #3 or None ()

14. Remarks:

See attached sheet #1

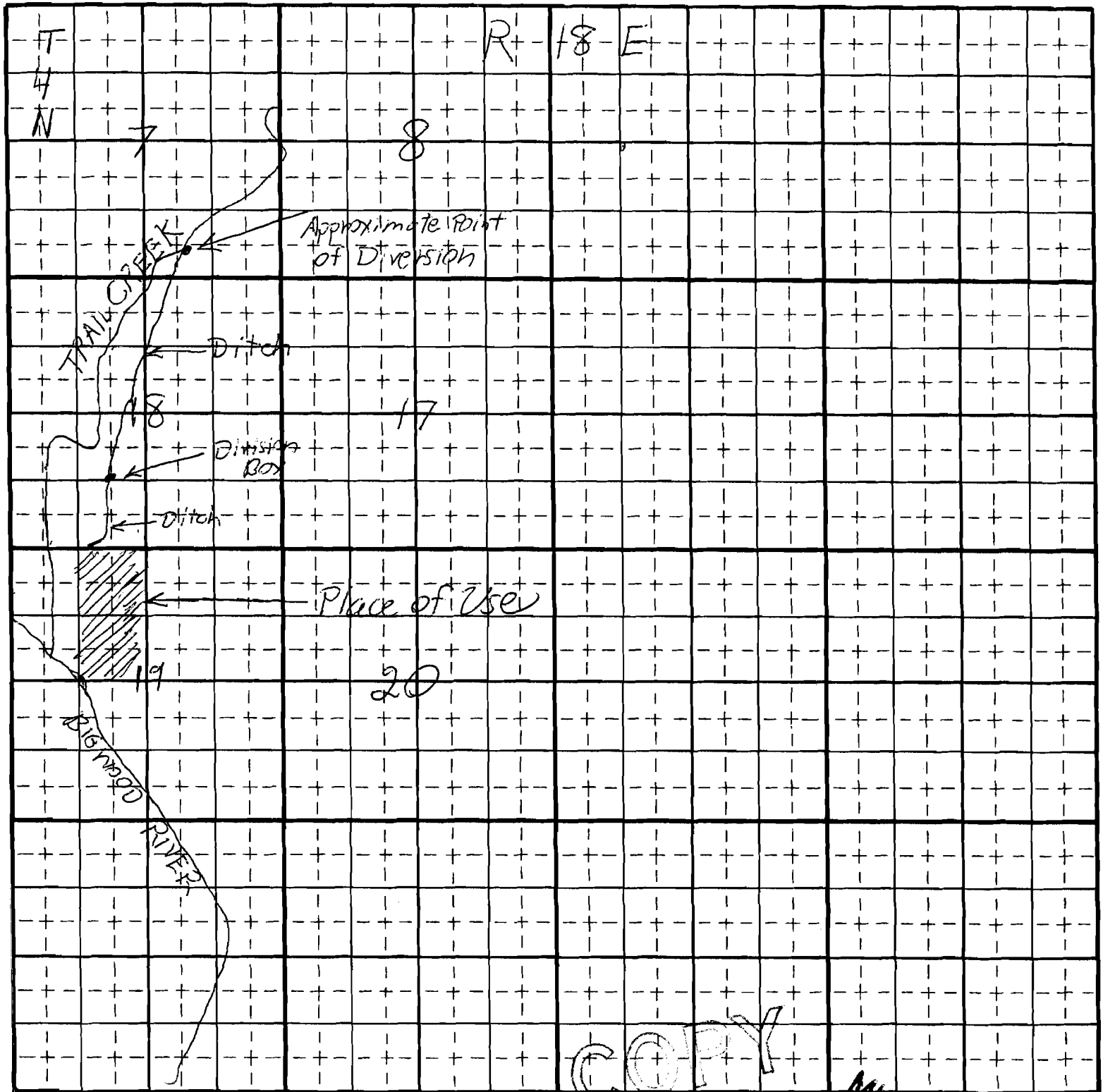
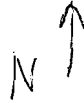
Last Name Robertson Ident No. _____

Copies: White -State, Yellow-Claimant

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Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile



Last Name Robertson

Ident No. _____

Copies: White-State, Yellow-Clamant

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15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree X
If applicable provide IDWR Water Right Number 37-0457
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant Frost Decree

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 X do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 2

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Thomas M Robertson Date October 24, 1988
Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Title _____
of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____
Title and Organization _____ Date _____

State of Idaho/or _____)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 24th day of October 19 88
Notary Public Sharon Benefield



Residing at _____
My Commission Expires _____

Please Print Name

17. Notice of Appearance: Thomas M. Robertson of the firm of
Notice is hereby given that I, Coleman, McIntyre, Ritchie & Robertson will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

COLEMAN, MCINTYRE, RITCHIE & ROBERTSON

Signature By: Thomas M Robertson

Address Box 525, Twin Falls, Idaho, 83303-0525

Date October 24, 1988

COPY

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FEB 22 1993

Last Name Robertson Ident. Number _____

Copies White-State, Yellow-Claimant

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

Receipt No: C004884

Date: 12/30/88
Time: 11:34:17

Received

From: COLEMAN, MC INTYRE

Type of Payment	Program Acct Class	Amount
ADJUDICATION FEE FOR THOMAS M. ROBERTSON	0410162 9337 6490	\$130.00
Total		\$130.00

CHECK 08299

WR/NO: A37-00457

Idaho Department of Water Resources

Region: STATE

Signature: Carter Fittable

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FEB 22 1993

Ident. No. _____

ATTACHMENT NO. 1

14. Remarks.

Claimant, Thomas M. Robertson of the firm of Coleman, McIntyre, Ritchie & Robertson is the attorney for and makes this claim on behalf of the Trustees under the Will of Eleanor Reinheimer, deceased, whose names are Douglas Bradshaw, David M. Berenson and Philip Zimet. The address of said Trustees is as follows:

c/o Zimet, Haines, Moss & Friedman
460 Park Avenue
New York, NY 10022

Said Trustees are the record owners of the real property to which the water right herein claimed is appurtenant and which property constitutes in part the property described as the place of use in Item 10 above. Said Trustees acquired in trust the property to which the water right herein claimed is appurtenant by devise from Eleanor Reinheimer, deceased.

The water herein claimed is in part leased by said Trustees to the Idaho Park Foundation, Inc., an Idaho corporation, whose address is as follows:

Idaho Park Foundation, Inc.
1020 West Franklin
Boise, ID 83702

The Idaho Park Foundation, Inc., is the record owner of the real property which constitutes the balance of the property described as the place of use in Item 10 above. The Idaho Park Foundation, Inc., acquired said balance of the property by devise from Eleanor Reinheimer.

Additional documents submitted with claim:

1. Fact Sheet for Excessive Irrigation Flows.
(Attachment 2)
2. Attachment 3 (Response to Item 13).

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ATTACHMENT NO. 2

Ident. No. _____

FACT SHEET

for

Excessive Irrigation Flows

This information is to be submitted with any application for permit or adjudication claim to water right for which the irrigation rate of flow requested/claimed is more than .02 cfs per acre. One exception is that .03 cfs per acre is allowed for up to five (5) acres.

Soil type and soil profile: _____

Soil water holding capacity: _____

Soil intake family (if known): _____

Field slope: _____

Anticipated crops: Alfalfa Hay

Method of irrigation: Flood irrigation from head ditch

ADJUDICATION CLAIM ONLY:

Is this method of irrigation the common local practice? yes

Have you changed the irrigated method from the one first developed? no

If yes, describe. _____

Remarks Highly porous soil conditions require flood method for
traditional surface irrigation practices. Using this method the
4.8 cfs herein claimed is only marginally adequate to irrigate the
acreage shown in Item 10 above.

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FEB 22 1993

Iden. No. _____

ATTACHMENT NO. 3

13. Other water rights used at same place and for the same purpose as described above.

a. For stock water purposes:

(1) Domestic Well;

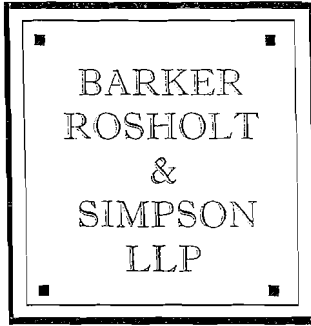
(2) Spring, Sinks, location of which recorded in Book 2 of Water Rights, page 355 on November 2, 1882, records of Blaine County, Idaho. (Undivided 1/2 interest)

b. For irrigation purposes:

(1) Big Wood River By-Pass Water.

MICROFILMED
FEB 22 1993

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington*



John A. Rosholt
jar@idahowaters.com

December 2, 2005

113 Main Ave. W., Suite 303
P.O. Box 485
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(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

205 N. Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

RECEIVED
DEC 05 2005
Department of Water Resources
Southern Region

Attn: Nick Treasure
Idaho Department of Water Resources (IDWR)
1341 Fillmore Street, Suite 208
Twin Falls, ID 83301-3380

Re: Snake River Basin Adjudication (SRBA) Claims 37-457 A, 37-457 B

Dear Mr. Treasure:

My letter to you dated October 20, 2005, prompted a response from the attorneys for the Idaho Foundation for Parks and Land (the Foundation) by letter to you dated November 10, 2005. I would offer the following three comments to the letter:

1. The Foundation's claim of ownership of water right 37-457 is based on the theory that it has acquired ownership by prescription. However, during all times subsequent to the Foundation's acquiring title to their property, water right 37-457 has been administered by the water master of water district 37. Idaho code § 42-607 provides in pertinent part:

So long as duly elected watermaster is charged with the administration of the waters within a water district, no water user within such district can adversely possess the right of any other water user.

In view of this statutory provision, the Foundation's claim of ownership by prescription is without merit.

2. The Foundation claims there is no evidence that the Foundation's use of the water right has been permissive use. This is not true. Eleanor Reinheimer's Will and the Decree of Distribution entered pursuant to her Will expressly provides for the continued leasing by Myrle Bowcutt of the Foundation property which implies the necessity of the continued use of the water right on the leased property so long as Bowcutt chose to exercise his right of tenancy. The use of the water since 1977 pursuant to the Bowcutt lease has been consistent with the provisions of the Will and Decree of Distribution by which both the Foundation and Trustees have been bound.

As further evidence of permissive use I am enclosing a copy of C.G. McIntyre's letter to Sharon Hubler dated April 15, 1977, in the last paragraph of which Mr. McIntyre states some arrangements will need to be made for the use on Foundation land (Parcel No. 2) of the water included in the bequest to the Trust of Parcel No. 1.

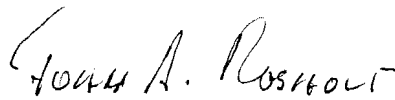
3. The Trustees of the Reinheimer Trust were not parties to controversy between the Foundation and the Weyyakin Ranch Property Owners Association and any representations as to ownership of water rights or agreements entered into by the Foundation in connection with that controversy are not binding upon the Trustees.

I believe that the preliminary director's report should reflect the place of use of water right 37-457 as set forth in both the Trustee's claim 37-457A and the Foundation's claim 37-457B. However, the director's report should reflect that title to water right 37-457 is held by the Trustees.

We remain available to confer in person or by phone at your request. Thank you for your consideration of this letter.

Respectfully,

Attorneys For The Trustee
BARKER ROSHOLT & SIMPSON LLP


John A. Rosholt

encs.

cc: Charles F Mc Devitt
Attys, Id Park Foundation

Douglas Bradshaw
Trustee

Thomas M. Robertson
Trust Attorney

PARRY, ROBERTSON, DALY & LARSON
LAWYERS

R. P. PARRY
T. M. ROBERTSON
JOHN H. DALY (1913-1988)
BERT LARSON
C. G. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE
J. EVAN ROBERTSON

THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

TELEPHONE
(208) 733-3722

OUR FILE NUMBER

April 15, 1977

Ms. Sharon Hubler
Executive Director
Idaho Park Foundation, Inc.
1514 West Franklin
Boise, Idaho 83702

Re: Estate of Eleanor K. Reinheimer, deceased

Dear Ms. Hubler:

Thank you for your letter of March 29, 1977, and
a copy of the lease agreement with Mr. Bowcutt.

To keep you advised, I am enclosing herewith a copy
of the Petition for Distribution of a Testate by Personal
Representatives. We will be forwarding this to Attorney Louis
Merlino, who represents the Personal Representatives in the
domiciliary proceedings in New York.

Also enclosed please find a copy of the Idaho Transfer
and Inheritance Tax Return filed for the estate. The return
has been accepted by the Idaho State Tax Commission.

We have been concerned about the rather casual legal
description of the Parcel identified as No. 2 in the Will of
Mrs. Reinheimer, which describes the area on which the home
and barn are located. We did have Jim W. Koonce, Professional
Engineer of Ketchum, Idaho, determine from maps obtained from
the Idaho State Highway Department that the barn is located on
the property to be retained by the son, Howard Reinheimer and
his issue. Actually the barn is located 9.41 feet inside
the description of Parcel No. 1.

After the Petition has been accepted by the Court
and notice of hearing properly given, the Personal Represen-
tatives will obtain a Decree from the Court and then issue
a Personal Representative's Deed to Idaho Park Foundation,
Inc.

All of the water right is included in the bequest
of Parcel No. 1. Some arrangement for the use of the water
on Parcel No. 2 must be arranged. If you have any questions
at any time, please let me know.

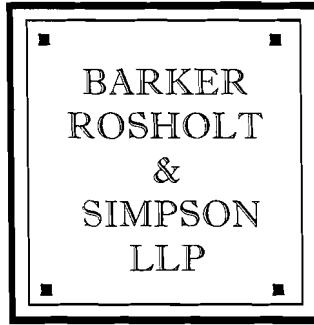
Sincerely,

C. G. MCINTYRE

CGM:kf

Encs.

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington*



John A. Rosholt
jar@idahowaters.com

October 20, 2005

113 Main Ave. W., Suite 303
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(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

RECEIVED
OCT 21 2005
Department of Water Resources
Southern Region

Attn: Nick Treasure
Idaho Department of Water Resources (IDWR)
1341 Fillmore Street, Suite 208
Twin Falls, Id 83301-3380

Re: Snake River Basin Adjudication (SRBA) Claims 37-457A, 37-457B

Dear Mr. Treasure:

This letter is in response to your letter dated September 22, 2005, to David M. Berenson, Philip Zimet and Douglas Bradshaw Trustees advising of IDWR's proposed recommendation for water right 37-457. David M. Berenson and Philip Zimet are now deceased and I have been retained by the surviving trustee, Douglas Bradshaw, to represent the trustee's interest in this water right in the SRBA. Mr. Bradshaw is trustee of the trust established under the will of Eleanor Reinheimer (the Reinheimer Trust).

I. Facts.

Both the trustee of the Reinheimer Trust and the Idaho Foundation for Parks and Land (the Foundation) filed claims to water right 37-457. Your letter advises that the Department intends to recommend that right 37-457 be decreed proportionally to acres owned by each claimant. It is true that the place of beneficial use in 1987 and in subsequent years has been on lands owned by the Trust and by the Foundation. However, the special facts and circumstances under which the Trust and the Foundation acquired their respective lands clearly substantiate the claim that the Trust is the owner of all of water right 37-457, notwithstanding that since becoming the owner of this right, the place of use of part of the right continued to be made on lands owned by the Foundation.

In 1976 and in years prior thereto the lands now owned by the Trust and the Foundation, including all the water rights were under the common ownership of Eleanor Reinheimer who died on April 9th of that year. This land, known as the Reinheimer Ranch consisted of approximately 115 acres located immediately south of the City of Ketchum. (The Ranch has

since been annexed into the city of Ketchum). Appurtenant to the Reinheimer Ranch was 240 inches (4.8cfs) of water from Trail Creek with the priority date of May 1, 1883. Eleanor Reinheimer's Will dated December 28, 1973 and First Codicil dated November 19, 1974 (Ex. "A") were admitted to probate in the Surrogate Court of New York County, State of New York, on May 7, 1976. The ancillary administration for Eleanor Reinheimer's Idaho real property was then commenced in the Fifth District Court in and for Blaine County, Case No. 7902

Under Article Fourth E. of her Will, Eleanor Reinheimer directed her executors to divide the Reinheimer Ranch into two separate parcels to be distributed to the trustees of the Trust and to the Foundation respectively subject to the conditions that the trustees maintain the trust parcel in its "present state" and that the Foundation retain its parcel in its "natural state." Trustee Zimet's letter of 12/29/87 clearly sets out the Trust's position. (Ex. "B").

Pursuant to the Decree of Distribution the personal representatives for the estate distributed Parcel 1, expressly including all the Trail Creek water right (right 37-457) to the trustees of the Trust and Parcel 2 to the Foundation. (Ex. "C"). As a precondition for the conveyance to the Foundation of Parcel 2, the Foundation executed and delivered to the personal representatives an Acceptance of Terms of Will (Ex. "D") by which it agreed to keep Parcel 2 in its natural state. (The Will also provided all controversies concerning the composition of Parcels 1 and 2 would be decided by the Trustees).

At the time of Eleanor Reinheimer's death, Parcel 2 as well as a portion of Parcel 1 was being leased to Myrle Bowcutt. Pursuant to Article Fourth E.4. of Eleanor Reinheimer's Will, Myrle Bowcutt continued leasing the Reinheimer Ranch under the same terms and conditions as he had done while Eleanor Reinheimer was alive. Therefore, even though the Trail Creek water right had been devised and conveyed to the Trust, the Trustees were obligated to permit the continued use on parcel 2 of that portion of the water which had historically been beneficially applied to that parcel in order to allow Myrle Bowcutt to exercise his bequest to continue to farm the ranch as he had before Eleanor Reinheimer's death. Myrle Bowcutt continued to lease the ranch until the summer of 2005 when he formally retired and relinquished his right to continue farming the Reinheimer Ranch. (Ex. "E"). Therefore, since 1977 when the Foundation acquired title to Parcel No. 2, the Trustees of the Reinheimer Trust have permitted a portion of the water delivered under right 37-457 to be used to irrigate that Parcel. Now that Myrle Bowcutt has relinquished his bequest to lease the property, the Trustees are withdrawing that permission and intend to proceed with transferring that portion of right 37-457 to other land owned by a third party, which they would have done in 1977 but for the rights reserved to Myrle Bowcutt under Eleanor Reinheimer's will.

The water cannot be transferred to the Foundation because the Foundation has agreed to keep its land in its natural state which is inconsistent with the continued irrigation of the property. That Eleanor Reinheimer devised all of right 37-457 along with Parcel 1 to her trustees, reserving none of the right to Parcel 2, is indicative that she meant that "natural state" was an unirrigated state.

II. Argument:

- I. At the time of Eleanor Reinheimer's death in 1976 right 37-457 was appurtenant to all the land now comprised by Parcel 1 and Parcel 2.
- II. In 1977 the Eleanor Reinheimer Estate conveyed to the trustees of the Reinheimer Trust together with Parcel 1 all of right 37-457.
- III. After the Estate conveyed ownership of right 37-457 to the Reinheimer trust, water delivered under the right continued to be beneficially used on both Parcel 1 and Parcel 2 with the permission of the Trust in order to allow Bowcutt to effectively exercise the leasehold right granted to him under Eleanor Reinheimer's Will.
- IV. Under Idaho law the ownership by the Reinheimer Trust of right 37-457 from 1977 to the present is consistent with the fact that the use of the right had continued to be located on land not owned by the Trust.

III. Legal Authority.

The seminal case regarding ownership of water rights used on land owned by another is *First Security Bank of Blackfoot v. State*, 49 Idaho 740 (1930). In *First Security*, a water user (Reese) was decreed certain water rights in Custer County for use on lands owned (Section 31) and not owned (Section 36) by him. At the time Reese's predecessor made the appropriation, the land in Section 36 was unsurveyed lands of the United States. This land, after survey, passed to the State of Idaho, however Reese continued to occupy the land as a lessee. Reese thereafter conveyed title to the land in Section 31, and all of the water rights appurtenant for lands in both Section 31 and 36 to the First Security Bank. At about the same time, the State had conveyed the land in Section 36 to the Wood Livestock Company. The Bank then sought to transfer the water rights from the land in Section 36 to lands owned by the Bank. The Department of Water Resources denied the Bank's proposed transfer so the Bank filed an action with the district court. The district court reversed the Department.

In affirming the district court's decision, the Idaho Supreme Court explained the following:

The First Security Bank does not own the land on which the water it desires to divert has heretofore been used, and hence the appellants urge that the commissioner of reclamation and the district court had no right to consider its application. We believe this position to be untenable for this reason. It is well settled in this state and elsewhere that a water right is a property right. [citations omitted]. One of the valuable incidents of this property right of which the owner cannot be deprived is the right to use it where he will and to change its place of

use, providing always that by such use or such change in the place of use the rights of others are not adversely affected.

* * *

The second point raised on this appeal involves the question of whether a water right may be perfected by a lessee of state land for use in connection with that land.

The trial court found that the water right in question here was not initiated either by the State or the Wood Livestock Company, the present owners of the land. As near as we can determine from the record, and the court so found, it was initiated by the predecessors of Reese and Ziegler while the land was a part of the public domain of the United States. Since that time the land on which the water has been used has been owned by the State of **Idaho** and since 1919 by the Wood Livestock Company.

Water may be appropriated for beneficial use on land not owned by the appropriator and this water right becomes the property of the appropriator. . . .

This court has repeatedly held that a water right is not necessarily appurtenant to the land on which it is used and may be separated from it, and this is the general rule. . . .

If the water right was initiated by the lessee, the right is the lessee's property unless the lessee was acting as agent of the owner. There is no reason why a lessee of state land should be excepted from this privilege.

First Security Bank, 49 Idaho at 744-46 (emphasis added).

Although the Bank had other lands it wished to transfer the water rights to, the Court upheld the general principle that a person can perfect a water right, and own that right, even though it is used on lands owned by another. The Idaho Supreme Court, in *In re Rice*, 50 Idaho 660 (1931), further acknowledged a water right's severability from the land to which it is appurtenant: "The water is subject to sale and transfer, as real estate. The right to its use cannot be denied, and it may be used upon land to which it was first made appurtenant or upon other lands to which it might become appurtenant." 50 Idaho at 666 (emphasis added).

It follows that if a water right can be perfected on lands owned by another, there is no reason why ownership of a water right and the underlying land cannot be split as well. The Idaho Attorney General's Office reached this same conclusion in an opinion given in 1988 concerning the question about issuance of stockwater right permits to landowners who lease their land to others for grazing purposes. In that opinion, the deputy attorney general cited *First Security Bank* and noted:

Thus, a bifurcation of ownership of the land and of the water right used on the land is allowed under Idaho law. *See also, Sanderson v. Salmon River Canal Co. Ltd.*, 34 Idaho 15 (1921); *Sarret v. Hunter*, 32 Idaho 536 (1919).

1988 Idaho Op. Atty. Gen. 41.

Therefore, presuming the facts surrounding the original conveyances of the Trust Parcel and the Foundation Parcel are resolved as the Trustee claims they should be (i.e. the water rights were passed to the Trust, not to the Foundation), it is our opinion that the Trust is the owner of the subject water rights even though they have been partially used on to the Foundation Parcel. There is nothing in Idaho law that prohibits a bifurcation of ownership between the land and the water rights.

IV. Conclusion.

Based upon the information herein provided, we ask that IDWR recommend to the SRBA Court that claim #37-457A be decreed to the Reinheimer Trust and that Claim 37-457B be recommended for dismissal.

We are available to confer in person or by phone at your request. Thank you for your consideration of the letter.

Respectfully

Attorneys For The Trustee
BARKER, ROSHOLT & SIMPSON LLP

BY John A. Rosholt
JOHN A. ROSHOLT

cc: Charles F. Mc Devitt
Attys, Id Parks Foundation

Douglas Bradshaw
Trustee

Thomas M. Robertson
Trust Attorney

LAST WILL AND TESTAMENT

** OF **

ELEANOR REINHEIMER

I, ELEANOR REINHEIMER, a resident of and domiciled
in the County of New York and State of New York, do hereby
make, publish and declare this as and for my Last Will and
Testament.

Property be disposed of as follows:

(1) I direct that my Executors divide "my Idaho Property" into the following two parcels:

PARCEL NO. 1

A parcel of land situate in and being in the Northeast quarter of the Northwest quarter (NE 1/4 NW 1/4) Section 19 in Blaine County, Idaho, bounded and described as follows:

BEGINNING at the southeast corner of said NE 1/4 NW 1/4 and along the easterly line of said NE 1/4 NW 1/4 of Section 19 a distance of 600 feet; thence west and parallel with the southerly line of NE 1/4 NW 1/4 of Section 19 a distance of

600 feet; thence south and parallel to the easterly line of NE 1/4 NW 1/4 of Section 19 a distance of 600 feet and thence east along the southerly line of NE 1/4 NW 1/4 of Section 19 600 feet point or place of beginning; excepting therefrom, however, the right of way of U. S. Highway 93.

Including also 240 inches of the waters of Trail Creek dating from May 1, 1883, and also an undivided one-half interest in a certain Spring, the location of which is recorded in Book 2 of Water Rights, Page 355, on November 2, 1882.

PARCEL NO. 2

All the rest and remainder of "my Idaho Property" not specifically bounded and described in Parcel No. 1.

2.R. (2) I direct that my Trustees shall, for the duration of the trust created by the provisions of ARTICLE NINTH, retain Parcel No. 1 in its present state without any change or alteration, to be used by my son during his lifetime and by his issue him surviving, and at the time the principal of the trust created by the provisions of ARTICLE NINTH are distributed, Parcel No. 1 shall be conveyed to my issue then living provided they will agree to retain the same in its present state (except for repairs and maintenance) and, in the event my said issue should not so agree, then and in such an event I give, devise and bequeath the same, in the same manner and to the same extent as Parcel No. 2, except that the Idaho Park Foundation, Inc. shall maintain and keep the present structures as a museum.

(3) I give, devise and bequeath Parcel No. 2, to the IDAHO PARK FOUNDATION, INC., 2263 Warm Springs Avenue Boise, Idaho, if it agrees to keep the same in its natural state and agrees, further, not to cause any structures to be erected thereon, and provided, however, that such devise and bequest shall be subject to easements thereon so that there shall be free and total access to and from Parcel No. 1, and subject to the terms and conditions of of Division 4 of this Article.

(4) If MYRLE BOWCUTT shall survive me and

shall, at the time of my death, be the lessee of any portion of Parcel No. 2, I direct that during said MYRLE BOWCUTT's lifetime, the foregoing provisions of this Part shall be subject to said MYRLE BOWCUTT's continued leasing of such portion thereof on terms similar to those which shall be in existence at the time of my death.

2.R. (5) To effectuate all of the foregoing provisions of this Part, my Executors and my Trustees are authorized to procure any surveys which they, in their sole and absolute discretion, shall deem advisable. I further direct that the decisions of my Executors and/or my disinterested Trustees shall be binding with respect to any and all controversies concerning the composition of my Idaho Residential Property, the extent of the aforementioned easements, and the rights of MYRLE BOWCUTT.

documents, such securities or other documents) at any time held by them.

The foregoing powers shall be supplemental and not exclusive, it being my intention that my Executors and my Trustees shall have all of the general powers of fiduciaries, and, in addition, said special powers and other powers reasonably to be implied therefrom or necessary for the proper exercise thereof. None of said powers shall be construed to limit in any manner any other thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of December, 1973.

Eleanor Reinheimer (L.S.)
Eleanor Reinheimer - Testatrix

WITNESSES:

Theodore William Shackelford, III
Ludwig Gustav Rader
Patrick Moore, Sr.

The foregoing instrument was, on the date thereof, signed, sealed, published and declared by ELEANOR REINHEIMER, the Testatrix above mentioned, as and for her Last Will and Testament, in the presence of us, who, in her presence, at her request, and in the presence of one another, have hereunto subscribed our names and residences as attesting witnesses;

DRAFT

December 29, 1987

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Ms. Hope Kading
President
Idaho Park Foundation, Inc.
1020 West Franklin
Boise, Idaho 83702

Re: Estate of Eleanor Reinheimer

Dear Ms. Kading:

As Executors of the Estate of Eleanor Reinheimer, and Trustees of the trust established thereunder, David Berenson, Douglas Bradshaw and I, having met with you and Larry Leisure on December 2, 1987, wish to set forth for the written record and, in doing so, expand our letter of September 25, 1987, to the effect that:

- (1) We are unanimously opposed to "annexation" by either Ketchum or Sun Valley.
- (2) We believe that the phrase "in its natural state" means just that - that is, after Merle Bowcott retires, the land should revert to its pre-farm state.
- (3) In any event, we feel that "natural state" includes neither a soccer field nor a bike path.

PHILIP ZIMET

May I have your comments
please

Philip Zimet

DRAFT

December 29, 1987

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

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President
Idaho Park Foundation, Inc.
1020 West Franklin
Boise, Idaho 83702

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- (2) We believe that the phrase "in its natural state" means just that - that is, after Merle Bowcott retires, the land should revert to its pre-farm state.
- (3) In any event, we feel that "natural state" includes neither a soccer field nor a bike path.

PHILIP ZIMET

May I have your comments
please.

Philip Zimet

PERSONAL REPRESENTATIVES' DEED

Douglas Bradshaw, David M. Berenson and Philip Zimet, Personal Representatives under the Will of Eleanor Reinheimer, deceased, do hereby Grant, Sell and Convey to The Idaho Park Foundation, Inc., whose address is 1514 West Franklin, Boise, Idaho, 83702, all right, title, interest and estate of the decedent, Eleanor Reinheimer, at the time of her death, and all right, title and interest that the estate may have subsequently acquired by operation of law or otherwise, in and to the real property situated in the County of Blaine, State of Idaho, described as follows:

The SW 1/4 SE 1/4, Section 18; Tax Lot No. 1157 in NW 1/4 NE 1/4, Section 19, Tax Lots 1642 and 1643 in NE 1/4 NW 1/4; and Tax Lots 1637, 2033 and 2034 in the SE 1/4 NW 1/4 of Section 19, all in Township 4 North, Range 18 East, Boise Meridian.

A parcel of land situate in and being all that part of Lot 1 of Section 19, Township 4 North, Range 18 East of the Boise Meridian, Blaine County, Idaho, bounded and described as follows:

Beginning at the northeast corner of Lot 1 of said Section 19; then west along the north line of said Section 19 a distance of 20.4 feet, more or less, to a point in the easterly right-of-way line of U.S. Highway No. 93; thence southeasterly along said easterly right-of-way line of highway a distance of 144 feet, more or less, to a point in the east line of said Lot 1 of Section 19; that is 142.3 feet, more or less, a distant south, measured along said east line, from the northeast corner of said Lot 1 of Section 19; thence north along the east line of said Lot 1 a distance of 142.3 feet, more or less, to the point of beginning; containing an area of 0.04 of an acre, more or less.

Except:

A parcel of land situate in and being in the NE 1/4 NW 1/4 of Section 19, Township 4 North, Range 18 East, Boise Meridian, Blaine County, Idaho, bounded and described as follows:

BEGINNING at the southeast corner of said NE 1/4 NW 1/4; thence north and along the easterly line of said NE 1/4 NW 1/4 of Section 19 a distance of 600 feet; thence west and parallel with the southerly line of NE 1/4 NW 1/4 of Section 19 a distance of 600 feet; thence south and parallel to the easterly line of NE 1/4 NW 1/4 of Section 19 a distance of 600 feet and thence east along the southerly line of NE 1/4 NW 1/4 of Section 19 600 feet to the place of beginning.

To have and to hold, all and singular the above mentioned and described premises, together with the appurtenances unto the Idaho Park Foundation, Inc., its successors and assigns forever; PROVIDED, HOWEVER, that this deed has been executed upon the agreement of the Idaho Park Foundation, Inc. to keep the premises in its natural state, and its agreement further, not to cause any structures to be erected thereon, as said agreements were required by the Last Will and Testament of Eleanor Reinheimer, deceased, as a condition to the execution of this Deed; and PROVIDED FURTHER, that this conveyance is subject to easements upon said premises so that there shall be free and total access to and from the parcel of land last hereinabove described as an exception herefrom, and subject further to the provisions of subparagraph 4 of Article FOURTH of the Will of Eleanor Reinheimer, which is on file with the District Court for Blaine County, Hailey, Idaho, as Case No. 7902, which Will is hereby incorporated by reference and which Will provides that if Myrle Bowcutt shall survive Eleanor Reinheimer and at the time of her death, be the lessee of any portion of the premises hereinabove first described that Eleanor Reinheimer directs that during said Myrle Bowcutt's lifetime the bequest of the premises hereinabove first described shall be subject to said Myrle Bowcutt's continued leasing of such portion thereof on terms similar to those which shall be in existence at the time of the death of Eleanor Reinheimer.

DATED this 31 day of July, 1977.

ESTATE OF ELEANOR REINHIMER,
DECEASED

BY Douglas Bradshaw
Douglas Bradshaw,
Personal Representative

BY David M. Berenson
David M. Berenson,
Personal Representative

BY Phillip Zimer
Phillip Zimer,
Personal Representative

STATE OF CALIFORNIA)

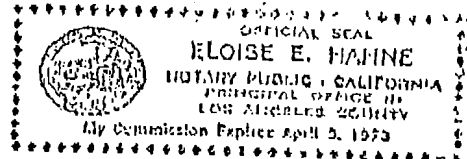
County of)

ss.

On this 17th day of June, in the year 1977,
before me, the undersigned, a Notary Public in and for said
County and State, personally appeared Douglas Bradshaw,
known to me to be the person whose name is subscribed to
the within instrument as Personal Representative, and acknow-
ledged to me that he executed the same as such Personal
Representative.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, the day and year in this certifi-
cate first above written.

NOTARY PUBLIC FOR CALIFORNIA



STATE OF NEW YORK)

County of New York)

ss.

On this 31 day of July, in the year 1977,
before me, the undersigned, a Notary Public in and for said
County and State, personally appeared Philip Zimet, known
to me to be the person whose name is subscribed to the within
instrument as Personal Representative, and acknowledged
to me that he executed the same as such Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, the day and year in this certifi-
cate first above written.

NOTARY PUBLIC FOR NEW YORK

LOUIS MERLINO
Notary Public, State of New York
No. 31-79003500
Qualified in New York County, N.Y.
Commission Expires March 30, 1978.

STATE OF NEW YORK)
County of *Orange*) ss.

On this 1st day of June, in the year 1977,
before me, the undersigned, a Notary Public in and for said
County and State, personally appeared David M. Berenson,
known to me to be the person whose name is subscribed to
the within instrument as Personal Representative, and acknow-
ledged to me that he executed the same as such Personal
Representative.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, the day and year in this certifi-
cate first above written.

Jeffrey Samberg
NOTARY PUBLIC FOR NEW YORK
JEFFREY SAMBERG
Notary Public, State of New York
No. 30-8746795
Qualified in Orange County
Commission Expires March 30, 1978

NOTARY PUBLIC
STATE OF NEW YORK
JAMES J. KELLY, JR.
Orange County, New York

Jeffrey Samberg
NOTARY PUBLIC
STATE OF NEW YORK
JEFFREY SAMBERG
Orange County, New York

David M. Berenson
NOTARY PUBLIC
STATE OF NEW YORK
DAVID M. BERENSON
Orange County, New York

No. 174658
Personal Representative
and

PERSONAL REPRESENTATIVE'S DEED

Douglas Bradshaw, David M. Berenson and Philip Zimet, Personal Representatives under the Will of Eleanor Reinheimer, deceased, do hereby Grant, Sell and Convey to David M. Berenson, Philip Zimet and Douglas Bradshaw, Trustees U/W of Eleanor Reinheimer, deceased, whose mailing address is in care of Zimet, Haines, Moss & Goodkind, Attorneys at Law, 460 Park Avenue, New York, New York, 10022, all right, title, interest and estate of the decedent, Eleanor Reinheimer, at the time of her death, and all right, title and interest that the estate may have subsequently acquired by operation of law or otherwise, in and to the real property situated in the County of Blaine, State of Idaho, described as follows:

A parcel of land situate in and being in the NE 1/4 NW 1/4 of Section 19, Township 4 North, Range 18 East, Boise Meridian, Blaine County, Idaho, bounded and described as follows:

BEGINNING at the southeast corner of said NE 1/4 NW 1/4; thence north and along the easterly line of said NE 1/4 NW 1/4 of Section 19 a distance of 600 feet; thence west and parallel with the southerly line of NE 1/4 NW 1/4 of Section 19 a distance of 600 feet; thence south and parallel to the easterly line of NE 1/4 NW 1/4 of Section 19 a distance of 600 feet and thence east along the southerly line of NE 1/4 NW 1/4 of Section 19 600 feet to the place of beginning.

Including 240 inches of the waters of Trail Creek dating from May 1, 1883, and also an undivided one-half interest in a certain Spring, the location of which is recorded in Book 2 of Water Rights, Page 355, on November 2, 1882, records of Blaine County, Idaho.

Except,

That part of the East half of the northwest quarter of Section Nineteen, Township Four North, Range Eighteen East, Boise Meridian, described as follows:

Beginning at a point S 2°18' W. 1031.2 feet from the quarter section corner common to Sections 18-19 in said township and range, running thence S 35°40' W. 378 feet thence N 44°50' W. 99 feet, thence N 40°38' East 375.3 ft. to point of beginning, containing 0.406 acres.

Also Except,

Beginning at a point on the N & S center line of said Section 19, which is S 0°38' W. 973 feet from the quarter section corner common to sections 18 and 19 aforesaid thence S 0°38' W. on said center line 876 feet, thence N 21°47' W 500 feet, thence North 25°40' East 454 feet to point of beginning, containing 1.91 acres.

Also Except,

A strip of land 66 feet wide, being 33 feet on either side of center line of said road as surveyed, across the N.E.1/4 N.W.1/4 of Section 19, Township 4 North, Range 18 East, Boise Meridian, Blaine County, Idaho.

Beginning at Station 30-/-60 of the Sawtooth Park Highway Survey, which station is approximately 1380 feet from the north 1/4 corner of Section 18, Township 4 North, Range 19 East, Boise Meridian; thence running in a general south east direction approximately 1780 feet to station 48-/-40 of said survey, which station is approximately 1385 feet from the north 1/4 corner of Section 19, Township 4 North, Range 18 East, Boise Meridian, as shown on the official plats of said Sawtooth Park Highway Survey on file in the office of the Department of Public Works of the State of Idaho.

To hold the hereinabove described premises for the duration of the Trust created by the provisions of Article NINTH of the Will of Eleanor Reinheimer, which Will is on file in the office of the District Court of Blaine County, Hailey, Idaho, Case No. 7992 which Will is hereby incorporated by reference and to hold the hereinabove described premises in its present state without any change or alteration, to be used by Howard E. Reinheimer, Jr., during his lifetime and by his issue him surviving, and at the time the principal of the trust created by the provisions of said Article NINTH of said Will of Eleanor Reinheimer are distributed, the hereinabove described premises shall be conveyed to the issue of Eleanor Reinheimer then living provided they will agree to retain the same in its present state (except for repairs and maintenance) and, in the event said issue should not so agree, then and in such an event, the hereinabove described premises shall be distributed to the Idaho Park Foundation, Inc., if it agrees to keep said hereinabove described premises

agrees further not to cause any structures to be erected except that the Idaho Park Foundation, Inc., shall maintain and keep the present structures as a museum.

Dated this 13 day of May, 1977.

ESTATE OF ELEANOR REINHIMER,
DECEASED.

BY Douglas Bradshaw
Douglas Bradshaw,
Personal Representative

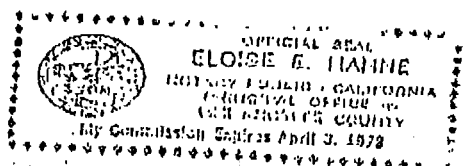
BY David M. Berenson
David M. Berenson,
Personal Representative

BY Philip Zimet
Philip Zimet,
Personal Representative

STATE OF CALIFORNIA }
County of San Diego } ss.

On this 13 day of May, in the year 1977,
before me, the undersigned, a Notary Public in and for said
County and State, personally appeared Douglas Bradshaw,
known to me to be the person whose name is subscribed to
the within instrument as Personal Representative, and acknowledged
to me that he executed the same as such Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, the day and year in this certifi-
cate first above written.



Eloise E. Hahne
NOTARY PUBLIC FOR CALIFORNIA

STATE OF NEW YORK

County of New York

ss.

On this 31 day of July, in the year 1977,
before me, the undersigned, a Notary Public in and for said
County and State, personally appeared Philip Zimet, known
to me to be the person whose name is subscribed to the within
instrument as Personal Representative, and acknowledged
to me that he executed the same as such Personal Representative.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, the day and year in this certifi-
cate first above written.

Louis Merlino
NOTARY PUBLIC FOR NEW YORK

LOUIS MERLINO
Notary Public, State of New York
No. 3170005500
Qualified in New York County
Commission Expires March 30, 1978.

STATE OF NEW YORK

County of NEW YORK

ss.

On this 23rd day of MAY, in the year 1977,
before me, the undersigned, a Notary Public in and for said
County and State, personally appeared David M. Berenson,
known to me to be the person whose name is subscribed to
the within instrument as Personal Representative, and acknow-
ledged to me that he executed the same as such Personal
Representative.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal, the day and year in this certifi-
cate first above written.

Seymour Karpas
NOTARY PUBLIC FOR NEW YORK

SEYMOUR KARPAS
Notary Public, State of New York
No. 31212524
Qualified in New York County
Commission Expires March 10, 1979

no. 174383

Personal Representative's Affidavit

STATE OF IDAHO,)
COUNTY OF BLAINE)I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT THE REQUEST OF James Robertson, Wiley T. Larsonon June 20 O'CLOCK A.M.June 20 A.D. 1922

RECORDED IN BOOK _____ ON PAGE _____

BY W. H. Hedges

CLERK OF THE COUNTY

BY Salina K. Susop
DEPUTYWITNESSES 3.4.00

/

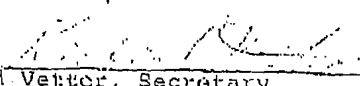
I, W. H. Hedges

CLERK OF THE COUNTY

DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS FILED IN MY OFFICE

THIS 20th DAY OF June, 1922

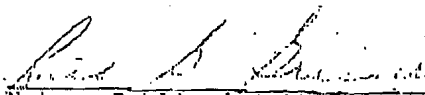
1 ATTEST:

2 
3 Richard Vetter, Secretary

4
5 STATE OF IDAHO)
6) ss.
7 County of Ada)

8 On this 17 day of January, 1977, before me, the
9 undersigned Notary Public in and for said state, personally
10 appeared Hope Kading and Richard Vetter, known to me to be
11 the persons whose names are subscribed to the foregoing
instrument as the President and Secretary respectively of
the Idaho Park Foundation, Inc., a corporation, and acknowledged
to me that they executed the same for the purposes and
consideration therein expressed, and as the act and deed of
said corporation.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 seal the day and year in this certificate first hereinabove
14 written.

15 
16 Notary Public for Idaho
17 Residing at Boise, Idaho

CLEMONS, COSHO, HUMPHREY & SAMUELSEN
COUNSELLORS AND ATTORNEYS AT LAW
110 BANK OF IDAHO BUILDING
BOISE, IDAHO 83702

RECEIVED
4-19

APRIL 16, 2005

TO:

IDAHO PARKS FOUNDATION FOR PARKS AND LANDS
5637 WARM SPRINGS AVENUE
BOISE, ID
83716-8700
ATTN: SHARON HUBLER

FROM:

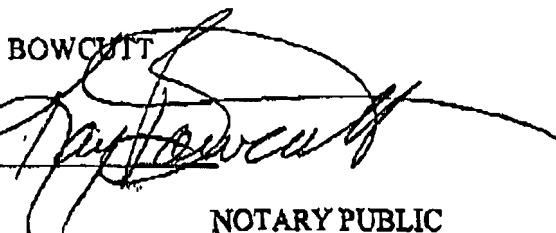
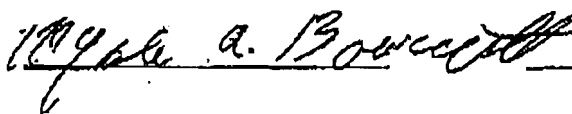
MYRLE BOWCUTT
4424 N 1325 E
BUHL, ID
83316

RE: REINHEIMER RANCH

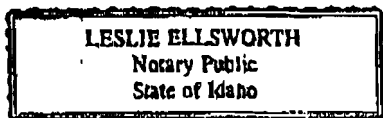
I FORMALLY RELINQUISH MY LIFE TIME LEASE OF THE REINHEIMER
RANCH BACK TO THE IDAHO FOUNDATION FOR PARKS AND LANDS.
EFFECTIVE 4-10-05

MYRLE BOWCUTT

KAY BOWCUTT



NOTARY PUBLIC
LESLIE ELLSWORTH




LESLIE ELLSWORTH
NOTARY FOR STATE OF IDAHO
RESIDING IN BUHL
EXPIRES: May 2, 2009

McDevitt & Miller LLP

Lawyers

420 W. Bannock Street

P.O. Box 2564-83701

Boise, Idaho 83702

(208) 343-7500
(208) 336-6912 (Fax)

Chas. F. McDevitt
Dean J. (Joe) Miller

November 10, 2005

Via U.S. Mail

Idaho Department of Water Resources (IDWR)

Attn: Treasurer

1341 Fillmore St., Ste. 208

Twin Falls, ID 83301-3380

RECEIVED

NOV 14 2005

Department of Water Resources
Southern Region

Re: Snake River Basin Adjudication (SRBA) Claims 37-457A, 37-457B

Dear Mr. Treasurer,

This letter is in response to the communication dated October 20, 2005 received by you from Barker, Rosholt & Simpson LLP on behalf of sole surviving Trustee of the Trust established under the will of Eleanor Reinheimer.

I. Facts. In the communication received by you from the legal representative of the Reinheimer Trust, no evidence of any agreement with anyone concerning the Water Right that is the subject of the matter in controversy, evidencing permissive use by what the Trust now claims is their ownership of water right 37-0457.

There is no evidence of any claim having been made to that Water Right by the Trust since the conveyance of parcel 2 to the Idaho Foundation for Parks and Lands in 1977.

A draft of a letter dated December 29, 1987 submitted by the Trust, in their communication there is no claim made by the Trust that they own Water Right 37-0457 (there is no evidence in the Foundation of the receipt of that communication) but is simply an attempt ten years after the conveyance to the Foundation of Parcel 2 to try to define what, in their opinion, "natural state" meant. They conclude that at least it does not mean the soccer field or a bike path (a copy of that document is appended).

The Idaho Foundation for Parks and Lands since 1977 has exercised dominion and control over the water obtained under and pursuant to Water Right 37-0457; it has maintained the McCoy Ditch which conveys the water to the Reinheimer Ranch; it has rebuilt when it was destroyed the diversion from Trail Creek of the water under Water Right 37-0457; it has publicly and as a matter of record claimed the ownership and been acknowledged to be the owner by the Water Master, the District Court, the disputant parties along the McCoy Ditch as evidenced by Settlement Agreements filed of record in Blaine County; and the lawyers who now represent the Reinheimer Trust. The Foundation has since 1977 exercised control of Water Right 37-0457 to the exclusion of all others; has paid all taxes, assessments and fees; has

maintained the diversion of the water pursuant to Water Right 37-0457 and has defended in Court and through negotiation the Foundation's ownership of Water Right 37-0457 and the easement appurtenant thereto.

Submitted herewith are affidavits of Don K. Weilmunster and Sharon Hubler. Mr. Weilmunster has been a Board Member of the Idaho Foundation for Parks and Lands since 1977 and the President of that organization since 1993 and has dealt with the Reinheimer Ranch based upon his ranching experience throughout the period of time in question. The affidavit set forth Mr. Weilmunster's understanding and those things that have happened within his certain knowledge evidencing the Foundation's ownership of Water Right number 37-0457. Ms. Hubler has been the Executive Director of the Idaho Foundation for Parks and Lands since prior to 1977 and continues in that capacity today. As such, she dealt with the Reinheimer Ranch, maintenance of ditches, re-establishment of diversion, correspondence and communication with the Water Master, communication with the Idaho Department of Water Resources as well as the neighboring subdivision who assisted in the maintenance of the McCoy Ditch. Ms. Hubler submits the evidence of the Foundation's exclusive exercise of control of Water Right 37-0457 since 1977 to the exclusion of all others.

2. Legal Authority. Paragraph FOURTH E(3) of the Last Will and Testament of Eleanor Reinheimer executed on the 28th day of December, 1973 reads as follows:

(3) I give, devise and bequeath Parcel No. 2, to the IDAHO PARK FOUNDATION, INC., 2263 Warm Springs Avenue Boise, Idaho, if it agrees to keep the same in its natural state and agrees, further, not to cause any structures to be erected thereon, and provided, however, that such devise and bequest shall be subject to easements thereon so that there shall be free and total access to and from Parcel No. 1 and subject to the terms and conditions of Division 4 of this Article.

Clearly the language "keep" in its natural state speaks in the present tense the state and condition in which Reinheimer Ranch parcel number 2 was at the time the will of Eleanor Reinheimer was executed. As paragraph E(4) of the same Will directing that MYRLE BOWCUTT shall during his lifetime have the "continued leasing" of those portions that he had at the time of his death.

No interpretation of this language could meet the strained attempt of counsel to say that it refers to a non-irrigated, pre-farmed condition. The Personal Representative's Deed conveying the property to the Idaho Foundation for Parks and Lands incorporates that Will by reference:

(4) If MYRLE BOWCUTT shall survive me and shall at the time of my death, be the lessee of any portion of Parcel No. 2, I direct that during said MYRLE BOWCUTT's lifetime, the foregoing provisions of this Part shall be subject to said MYRLE BOWCUTT's continued leasing of such portion thereof on terms similar to those which shall be in existence at the time of my death.

As the affidavits of Sharon Hubler with exhibits and Donald K. Weilmunster with exhibits point out, since 1977, the Idaho Foundation for Parks and Lands has held itself out and controlled Idaho Water Right 37-0457; has paid all fees, taxes, and assessments of any kind or nature assessed and imposed on that water right; has maintained the McCoy Ditch which is essential to the conveyance of the water represented by Water Right 37-0457; and has reconstructed at significant cost and expense the diversion in 1987 from a washed out condition to convey the water into the McCoy Ditch.

The Reinheimer Trust did agree in 1999 to pay "the Trust's cost of ditch maintenance share based on the percentage of water utilized on the Trust Land" (exhibit to Weilmunster Affidavit).

Water Right 37-0457 is a property right capable of ownership through prescription is long represented by Idaho case law which remains the rule today. Clearly the Idaho Foundation for Parks and Lands has met the essential elements of title through prescription and is the owner of Water Right 37-0457.

The law in the State of Idaho relative to prescriptive title to water and the nature of water right is succinctly set forth by Justice Shepherd in *Gilbert v. Smith* at 97 Idaho 740, to-wit:

Prescriptive title to water, which is real property, may be acquired by adverse use for five years. *Pfleuger v. Hopp*, 66 Idaho 152, 156, P.2d 316 (1945); *Mountain Home Irr. Dist. V. Duffy*, 79 Idaho 435, 440, 319 P.2d 965 (1957). Such use must be open, hostile, exclusive, continuous and under claim of Right. See *Carrington v. Crandall*, *supra*; *Pfleuger v. Hopp*, *supra*; *McGlochlin v. Coffin*, 61 Idaho 440, 103 P.2d 703 (1940); *Head v. Merrick*, 69 Idaho 106, 203 P. 2d 608 (1949); *Village of Fairview v. Franklin Maple Creek Pioneer Irr. Co.* 59 Idaho 7, 79 P.2d 531 (1938); *Frost v. Penfold*, 44 Idaho 651, 258 P. 534 (1927). Those elements of prescription must be shown by clear and convincing evidence and the burden to do so was on the claimant. *Loosli v. Heseman*, 66 Idaho 469, 162 P.2d 393 (1945).

This remains the law in the State of Idaho and was the law in 1977 to date.

The foregoing notwithstanding, the Idaho Department of Water Resources proposed settlement of the issue by decreeing to the Trust that portion that was used on the Trust property and to the Idaho Foundation for Parks and Lands that that was used upon Parcel 2 the Foundation property.

The Reinheimer Trust has taken no action to evidence ownership or a claim to ownership in and to Water Right 37-0457 and cannot now having laid in the weeds for more than 25 years, while the Idaho Foundation for Parks and Lands exercised dominion and control, paid all assessments, taxes and costs of the water right, of McCoy Ditch, the diversion and the protection of the easements necessary for the operation of the water right from third parties infringing upon those easements, claim that it had granted some permissive use to the then

Idaho Department of Water Resources (IDWR)
November 10, 2005
Page 4

lessee of the property . Water Right 37-0457 is the property of the Idaho Foundation for Parks and Lands through prescription.

We stand ready to confer with you at such time and place and in such manner as you deem appropriate.

Respectfully,

Attorneys for Idaho Foundation for Parks and Lands

McDEVITT & MILLER LLP

A handwritten signature in black ink, appearing to read 'Chas F. McDevitt', written over a horizontal line.

Chas F. McDevitt

CFM/lc
Enclosures

DRAFT

December 29, 1987

**CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

Ms. Hope Kading
President
Idaho Park Foundation, Inc.
1020 West Franklin
Boise, Idaho 83702

Re: Estate of Eleanor Reinheimer

Dear Ms. Kading:

As Executors of the Estate of Eleanor Reinheimer, and Trustees of the trust established thereunder, David Berenson, Douglas Bradshaw and I, having met with you and Larry Leisure on December 2, 1987, wish to set forth for the written record and, in doing so, expand our letter of September 25, 1987, to the effect that:

- (1) We are unanimously opposed to "annexation" by either Ketchum or Sun Valley.
- (2) We believe that the phrase "in its natural state" means just that - that is, after Merle Bowcott retires, the land should revert to its pre-farm state.
- (3) In any event, we feel that "natural state" includes neither a soccer field nor a bike path.

AFFIDAVIT

RECEIVED
NOV 14 2005
Department of Water Resources
Southern Region

STATE OF IDAHO)
 :SS
County of Ada)

ORIGINAL

Don K. Weilmunster, being first duly sworn on oath deposes and states as follows:

1. I make this affidavit based upon my own personal knowledge.
2. I have been a Board Member of the Idaho Foundation for Parks and Lands since 1977.
3. I have been the President of the Idaho Foundation for Parks and Lands since 1993.
4. Throughout my tenure as a Board Member and as President, I have dealt with the operation of the Reinheimer Ranch and the maintenance of that Ranch in the natural condition in which it was given to the Idaho Foundation for Parks and Lands by the Reinheimer Trust in 1977.
5. Throughout this entire period of time, the Idaho Foundation for Parks and Lands has claimed ownership of water right number 37-0457 with priority date of 5/01/1883, and has exercised control of that water right, performed all the functions of ownership including the maintenance of the McCoy Ditch which transmits the water to the Reinheimer Ranch and beyond, the negotiation with Weyyakin Subdivision who also use the McCoy Ditch; and the defense of claims by homeowners who have claimed some title in and to the Ditch.
6. In my capacity as President of the Idaho Foundation for Parks and Lands, I have had occasion at least on an annual basis to deal with Mr. Bradshaw, Trustee of the Reinheimer Trust. At no time in our discussion of the Reinheimer Ranch or problems that were incident to

the Ranch, the dwelling houses or barn, did Mr. Bradshaw claim any ownership or interest in or to water right number 37-0457 on behalf of the Reinheimer Trust.

7. I was indeed surprised when the Reinheimer Trust filed a claim to the water right and the Snake River Basin adjudication, and subsequently filed the assertions they have filed with the Idaho Department of Water Resources.

8. I had occasion to request of Mr. Bradshaw the payment by the Reinheimer Trust of a portion of the expenses that the Idaho Foundation for Parks and Lands was experiencing in connection with its ownership of the water right in that a portion of the water was being used by the Reinheimer Trust with the permission of the Idaho Foundation for Parks and Lands. Mr. Bradshaw indicated that he felt any contribution made by the Reinheimer Trust should be limited to the volume of water that they used which he estimated to be no more than 15 percent of the total water right (see Exhibit 1 appended hereto). At no time in those discussions did Mr. Bradshaw claim any ownership in and to water right number 37-0457, but simply indicated a willingness to pay some money as a “user” of water from that water right.

9. In 1997, 1998, and 1999, Mr. Slette of Rosholt, Robertson & Tucker engaged in negotiations resulting in documents clearly setting forth the ownership by the Idaho Foundation for Parks and Lands of water right number 37-0457, which were filed with the Blaine County Recorder, so their participation in a claim of ownership on the part of the Reinheimer Trust was indeed surprising.

10. The Idaho Foundation for Parks and Lands is and has been without question the owner of water right number 37-0457 since 1977 when the Reinheimer Ranch was deeded to the Idaho Foundation for Parks and Land.

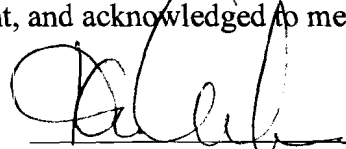
11. Further affiant sayeth not.

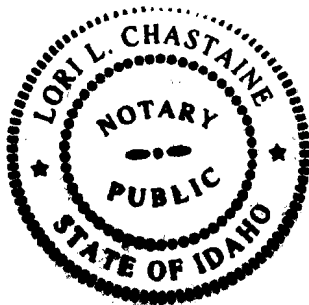
Dated this 9th day of November, 2005.


Donald K. Weilmunster

STATE OF IDAHO)
 :ss
County of Ada)

On this 9th day of November, 2005, before me Lori L. Chastaine, a notary public, personally appeared Donald K. Weilmunster 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.


Notary Public for IDAHO
Residing at: Boise
Commission Exp.: 9-21-06





Nov. 1, 1999

Mr. Don Weilmunster
IDAHO FOUNDATION FOR PARKS AND LANDS
5657 Warm Springs Ave.
Boise, Idaho 83712

Dear Don,

I received your fax outlining the total cost of maintaining the McCoy Ditch over the years. With the accumulated water assessments the total is \$28,573.99.

You and I discussed this on my last trip to Idaho and I agreed to pay the trust's share based on the percentage of water utilized on the trust land. As neither one of us is able to come up with the exact percentage, I would like us to agree on 15%. At that rate the Trust owes the Foundation \$4,286.10.

If you will kindly return the \$5,000.00 check along with the Note I sent you earlier I will send you a new check for the proper amount.

I hope this is satisfactory.

Best personal regards,

A handwritten signature in dark ink, appearing to be "Doug", is written over the typed name "Doug".

Doug

RECEIVED

NOV 14 2005

Department of Water Resources
Southern Region

AFFIDAVIT

STATE OF IDAHO)
 :SS
County of Ada)

ORIGINAL

Sharon Hubler, being first duly sworn on oath deposes and states as follows:

1. I make this affidavit based upon my own personal knowledge.

2. At all times herein set forth, I was and now am the Executive Director of the Idaho Foundation for Parks and Lands, a non-profit corporation. Idaho Foundation for Parks and Lands is fully qualified under §501(c)(3) of the Internal Revenue Code, and organized and existing under the laws of the state of Idaho.

3. In 1977 , the Trustees of the Reinheimer Trust conveyed to the Idaho Foundation for Parks and Land that certain real property known as the Reinheimer Ranch, excluding therefrom the dwelling house and barn. The Idaho Foundation for Parks and Lands undertook the care, operation, and control of the ranch and its constituent elements.

4. It is now and at all times was the understanding of the Idaho Foundation for Parks and Lands upon the conveyance of the Reinheimer Ranch property that the Foundation owned water right number 37-0457 with a priority date of 5/1/1883 for 4.80 cfs necessary for the irrigation and the maintenance of the Reinheimer Ranch in its then natural condition, and from that date forward, the Idaho Foundation for Parks and Lands claimed ownership and title to the water right to the exclusion of all others and undertook to exercise maintenance, operation and control of the water right and the McCoy ditch which conveyed the water incident to that water right from Trail Creek to the Reinheimer Ranch and beyond it to the Weyyakin Subdivision who owned water right number 37-0289.

5. In 1987, the diversion from Trail Creek was destroyed and the water was no longer being conveyed in the McCoy Ditch to Reinheimer Ranch or beyond. The Idaho Foundation for Parks and Lands undertook the expenditure of \$16,000.00 for the replacement of the diversion structure in order to obtain the water incident to water right number 37-0457 (see Exhibit 1 attached hereto).

6. Subsequent to that date, the contractor who performed the work sued the Reinheimer Ranch as the owner of water right 37-0457 for additional work performed. The suit was in the Fifth Judicial District of the state of Idaho in and for the County of Blaine, case number 14543 which the Idaho Foundation for Parks and Lands defended as the named owner of water right 37-0457, all of which is a matter of public record (see Exhibit 2 attached hereto).

7. The Idaho Foundation for Parks and Lands worked with the Weyyakin Subdivision to maintain the McCoy Ditch which in 1998 and 1999 again developed severe leaks, breaks, and other limitations on its ability to convey the water, all of which required the expenditure of significant sums of money from that date to the present time (see Exhibit 3 attached hereto).

8. The maintenance of the McCoy Ditch has cost the Foundation for Parks and Lands in excess of \$12,719.20.

9. Certain encroachments occurred on the McCoy Ditch which interfered with the operation of the McCoy Ditch and the ability to realize and use water right number 37-0457, which resulted in claims being made by homeowners and exercise of claims of ownership to portions of the ditch based upon building permits that had been issued by the City of Ketchum, Idaho. These homeowners included Kassebaum, Hare, and others, which required defense of

title to the McCoy Ditch and the easement appurtenant to water right number 37-0457 (see Exhibit 4 attached hereto).

10. The settlement with certain of those homeowners was memorialized in written agreements in which present counsel for the Reinheimer Trust participated, acknowledging that the Idaho Foundation for Parks and Lands was the owner of water right number 37-0457, which settlement agreements were filed of public record in Blaine county Idaho (see Exhibit 5 attached hereto) and gave notice to all of the claim of ownership of water right number 37-0457 by the Idaho Foundation for Parks and Lands. At no time was this ownership contested by the Reinheimer Trust or any other entity.

11. The Idaho Foundation for Parks and Lands worked with the Idaho Department of Water Resources and the Water Master charged with the delivery of water under and pursuant to water right number 37-0457, the Water Master acknowledged the Idaho Foundation for Parks and Lands as the owner of water right number 37-0457 (see Exhibit 6 attached hereto). At no time was this ownership of water right number 37-0457 contested by the Reinheimer Trust or any other entity.

12. Idaho Foundation for Parks and Lands in compliance with the Snake River Basin adjudication filed its claim to water right number 37-0457 and was shocked and surprised when the Reinheimer Trust filed its claim, which they had never asserted up and to that date. The Reinheimer Trust has not exercised any assertions of control or interest in or to the water right number 37-0457 and the lawyers presently representing the Reinheimer Trust have participated in documents in 1999 evidencing the ownership of that water right by the Idaho Foundation for Parks and Lands (see Exhibit 7 attached hereto).

13. The Idaho Foundation for Parks and Lands has continued to date to exercise control of the water right 37-0457 and is the owner thereof (see Exhibit 7 attached hereto).

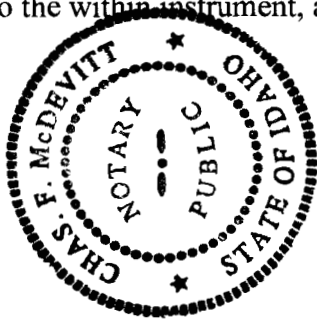
14. Further your affiant sayeth not.

Dated this 9th of November, 2005.

Sharon Hubler
Sharon Hubler

STATE OF IDAHO)
 :SS
County of Ada)

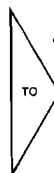
On this 9th day of November, 2005, before me Chas. F. McDevitt, a notary public, personally appeared Sharon Hubler known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Chas. F. McDevitt
Notary Public for IDAHO
Residing at: Boise
Commission Exp.: 10/26/2010

**UMEK CONCRETE CONSTRUCTION**P.O. Box 117
BELLEVUE, IDAHO 83313

(208) 788-3828

STATEMENTDATE Nov. 19, 1987*Idaho Foundation for Parks + Land*
% Don Weilmunster
*Baise, Idaho**Incorrect
Billing*TERMS: _____
PLEASE DETACH & RETURN THIS PORTION WITH YOUR REMITTANCE

AMOUNT ENCLOSED \$ _____

DATE	INVOICE NO. / DESCRIPTION	CHARGES	CREDITS	BALANCE
BALANCE FORWARD ▶				
	<i>Trail Creek Diversion Structure</i>			
	<i>As per plans by U.S. Dept</i>			
	<i>of Agriculture Soil</i>			
	<i>Conservation Service.</i>			
	<i>Labor and material, tax</i>			<i>\$ 16,644.00</i>
	<i>Extra</i>			
	<i>Bldg Permit from San Valley</i>			<i>297.00</i>
				<i>\$ 16,941.00</i>

FORM 301-2

UMEK CONCRETE CONSTRUCTION*Thank You*PAY LAST AMOUNT
IN THIS COLUMN

LAW OFFICES
GIVENS, McDEVITT, PURSLEY, WEBB & BUSER

REBECCA W. ARNOLD
ELEANORE S. BAXENDALE*
CHRISTOPHER J. BEESON
PAUL J. BUSER
JEFFREY C. FEREDAY
RAYMOND D. GIVENS
JAMES D. HANSEN
JUDITH K. HOLCOMBE
KENNETH R. McCLURE
CHAS. F. McDEVITT
LEO EDWARD MILLER
PATRICK J. MILLER
TERRY L. MYERS
STEVEN L. OLSEN
KENNETH L. PURSLEY
MICHAEL T. SPINK
CONLEY WARD
JAY L. WEBB

SUITE 200, PARK PLACE
277 NO. 6TH STREET
POST OFFICE BOX 2720
BOISE, IDAHO 83701

TELEPHONE
(208) 342-6571

TELECOPIER
(208) 343-9492

*ALSO ADMITTED IN OREGON

March 10, 1989

Mr. Don Weilmunster
Ms. Sharon Hubler
Idaho Foundation for
Parks and Lands
1020 W. Franklin Street
Boise, Idaho 83702

Re: Umek v. Idaho Foundation for Parks and Lands.

Dear Don and Sharon:

Enclosed please find your original file on the Trail Creek Diversion Structure. Also enclosed please find my proposed Order for Judge Alban to sign and a copy of the letter which I have sent to Gale Roberts.

I was a pleasure to meet and work with both of you on this file and I am pleased that the result was simple in straight forward, even though the circumstances were a bit unusual.

Very truly yours,



Michael T. Spink

MTS:pj
enclosures

LAW OFFICES
GIVENS, McDEVITT, PURSLEY, WEBB & BUSER

REBECCA W. ARNOLD
ELEANORE S. BAXENDALE*
CHRISTOPHER J. BEESON
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POST OFFICE BOX 2720
BOISE, IDAHO 83701

TELEPHONE
(208) 342-6571

TELECOPIER
(208) 343-9492

March 10, 1989

Gale Roberts
United States Department
of Agriculture
Soil Conservation Service
121 North River
Hailey, Idaho 83333

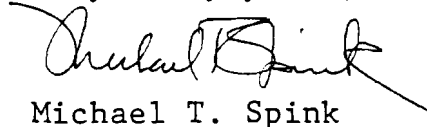
Re: Umek Construction vs. Idaho Foundation
for Parks and Lands.

Dear Mr. Roberts:

Thank you for being available to testify at the trial scheduled for March 8th in this matter. Because the Plaintiff was unable to proceed at trial, Mr. Umek agreed to dismiss the lawsuit. It was my understanding, however, that he will continue in his efforts to persuade the Soil Conservation Service to release the \$3,500.00 because the work added-up to be adequate.

In any event, I appreciate your cooperation and willingness to be available for trial.

Very truly yours,



Michael T. Spink

MTS:pj
cc: Idaho Foundation for
Parks and Lands
Don Weilmunster

7d 100

LAW OFFICES
GIVENS, McDEVITT, PURSLEY, WEBB & BUSER

REBECCA W. ARNOLD
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277 NO. 6TH STREET
POST OFFICE BOX 2720
BOISE, IDAHO 83701

TELEPHONE
(208) 342-6571

TELECOPIER
(208) 343-9492

*ALSO ADMITTED IN OREGON

March 10, 1989

Mr. John Umek
P.O. Box 117
Bellvue, ID 83313

Re: Umek v. Idaho Foundation for Parks and Lands.
Case No. 14543

Dear Mr. Umek:

Enclosed please find a copy of the Order which I have submitted to Judge Alban pursuant to your agreement and stipulation with Don Weilmunster at the trial of this matter. I am sending a copy of this letter and the Order to Steve Boller for his file and for his review.

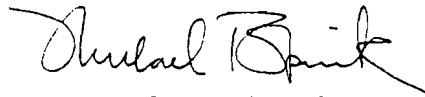
When the Judge called the case, he asked if you were ready to proceed. You indicated that you were not, and I acknowledged that it would not be fair to require you to proceed under the circumstances, but asked the Court to enter an award of costs and attorney's fees occasioned by the delay. The Judge seemed inclined to do this and asked you if you would be willing to proceed based upon that condition. At that point, you and Don Weilmunster held a conference off the record regarding the problem with the Soil Conservation Service and you indicated that you were not inclined to pay the Defendant's costs and attorneys' fees in a case of this magnitude.

When we went back on the record, you and I represented to the Court that we were willing to dismiss the case, with prejudice, provided that you would not be required to pay the Defendant's costs and attorney's fees. The Judge asked me to prepare an Order to that effect. I am writing this letter to you directly because, technically, I believe you are appearing on your own behalf at this point in the proceeding.

Mr. John Umek
March 10, 1989
Page 2

I will ask the Judge to provide each of us with a copy of the Order once it is filed with the clerk.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael T. Spink". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael T. Spink

MTS:pj
enclosure
cc: Steve Boller w/encl.
Don Weilmunster
Idaho Foundation for
Parks and Lands

Reinheimer's water right is #37-0457 with a priority date of 5/1/1883 for 240 inches or 4.80 c.f.s. Weyyakin's right (as shared on the McCoy ditch) is #37-0289 with a priority date of 5/1/1883 for 350 inches or 7.0 c.f.s. The length of the McCoy ditch is approximately 2.5 miles. The ratio on cost of repairs is 41% to the Foundation and 59%, to Weyyakin.

There were numerous neighbor complaints and a large blow-out occurred in 1997. We then were faced with about a 40-foot section that had been built upon. The bills from 1997 to 1999 reflect the increased costs, in both material and labor as well as legal costs engendered by the situation.

Ditch repair expenses:

1999	6/4	#1068	\$ 1,713.41 (for 1997) (Weyyakin)
1999	6/29	#1086	\$ 1,436.50 (EHM Engineering)
1999	7/12	#1104	\$ 2,549.54 (Rosholt, Robertson & Tucker)
1999	" "	#1105	\$ 3,065.16 (S. Erwin Excavation)
1999	" "	#1106	\$ 842.55 (Bruce Lium, Ph.D.)
2000	8/15	#1309	\$ 342.90 (Weyyakin for 1999)
2001	8/15	#1503	\$ 159.44 (Weyyakin for 2000)
2002	1/1	#1570	\$ 700.10 (Weyyakin for 2001)
2003	11/17	#1917)	\$ 135.70 (Weyyakin for 2002-2003)
2003	12/24	#1942)	\$ 135.70
2004	1/27	#1960)	\$ 271.38
2004	2/23	#1975)	\$ 271.38
2004	3/19	#1987)	\$ 271.38 total of \$ 1,085.54
2004	12/13	#2126	\$ 824.06 (Weyyakin for 2004)

For a total of \$12,719.20

S. Erwin Excavation

P.O. Box 1112

Bellevue, ID 83313

Estimate

DATE	ESTIMATE #
05/17/99	110

344-5910
Don

NAME / ADDRESS
Carl Strummell/Don Weilmunster
Weyakin Home Owner Association/Park Found

PROJECT	
DESCRIPTION	TOTAL
1. Clean up and export brush, trees, limbs, grass, roots and concrete.	600.00
2. Import and place 20 yards of rip rap for bank stabilization @ \$65.00 per yard.	1,300.00
3. Import and place 200 yards of structural fill to repair bank @ \$25.38 per yard.	5,076.00
4. Clean up lawn area and ditch bank on completion of ditch repair and place 3" of topsoil on damaged area.	600.00
5. Furnish and install 400 sq. ft. of ditch liner.	500.00
6. Estimate of Webb Landscape Repair plus 10%. \$ 3591.50.	
7. Asphalt repair on Oleirich driveway \$4.25 per sq. ft. including removal of damaged area. Repair base and place 2" Asphalt Patch. Minimum repair charge. \$300.00	
EXCLUSIONS: A: Import or export except stated.	
B: Repair of any asphalt surface at entry zone caused by normal work related movements.	
C: Repair or replacement of sod, sprinkler system or trees damaged by site access.	
D: Permits or site access documents.	
If acceptable please sign _____	
TOTAL	\$8,076.00

S. Erwin Excavation

P.O. Box 1112
Bellevue, ID 83313

Estimate

DATE	ESTIMATE #
05/04/99	110

NAME / ADDRESS
Dean Wall
Weyakin Home Owner Assoc. Irrigation Cana

PROJECT	
DESCRIPTION	TOTAL
1. Clean up and export brush, trees, limbs, grass, roots and concrete.	600.00
2. Import and place 20 yards of rip rap for bank stabilization @ \$65.00 per yard.	1,300.00
3. Import and place 200 yards of structural fill to repair bank @ \$25.38 per yard.	5,076.00
4. Clean up lawn area and ditch bank on completion of ditch repair and place 3" of topsoil on damaged area.	600.00
5. Furnish and install 400 sq. ft. of ditch liner.	500.00
EXCLUSIONS: A: Import or export except stated.	
B: Repair of any asphalt surface at entry zone caused by normal work related movements.	
C: Repair or replacement of sod, sprinkler system or trees damaged by site access.	
D: Permits or site access documents.	
TOTAL	\$8,076.00

September 25, 1996

Weyyakin Homeowners Association
Post Office Box 728
Ketchum, ID 83340

Attention: Brad & Virginia Scott, Weyyakin Managers

Dear Brad & Virginia,

Reference: My letter to you dated June 26, 1996

Enclosed please find copies of relevant bills detailed below. I am now asking you to reimburse me for these expenses as I have already paid the bills.

Jose Vilcapome	\$75.00
The Johnson Company	24.00
Wood River Steam Cleaners	460.00
The Johnson Company	108.50
TOTAL	667.50

In addition, at this time the sandbags are still necessary to keep the water from overflowing the ditch banks. This is an unattractive situation. I would appreciate hearing from you regarding what action you plan to take to maintain your canal.

Your prompt attention to these matters will be greatly appreciated.

Sincerely,



Richard Kassebaum
P.O. Box 2450
Ketchum, ID 83340
(208) 726-0002 (Office)
(208) 726-3701 (Home)

cc: Evan Robertson, Atty

June 26, 1996

Richard Kassebaum
P.O. Box 2450
Ketchum, Id. 83340
614 So. Leadville
726-3701
726-0002

Weyyakin Homeowners Association
Post Office Box 728
Ketchum, ID 83340

Attention: Brad & Virginia Scott, Weyyakin Managers

Dear Brad & Virginia,

On the night of June 8, 1996, the Reinheimer Ditch overflowed into the backyard of my house at 614 South Leadville. Nobody was home on that Saturday evening, but upon returning Sunday, June 9, 1996, we found the ditch had gone over its banks and caused water damage in the master bedroom suite at 614 South Leadville.

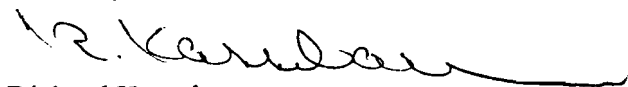
That Sunday I obtained sandbags and with the help of laborers sandbagged the ditch. In addition, at that time, I notified Mr. Bowcutt.

The laborers were further employed to move the furnishings from the bedroom suite to the living area and Wood River Steam Cleaners was called to pull up the carpet/pad and start the four-day process of drying and cleaning the area.

There was also some drywall damage as well as damage to the landscaping and sprinkler system.

I feel the damages will amount to \$1,000.00 to \$1,500.00. As the repair bills arrive I will forward copies to you so that you can reimburse me for these expenses.

Sincerely



Richard Kassebaum

cc: Evan Robertson, Atty

RK/jb

S. Erwin Excavation

P.O. Box 1112
Bellevue, ID 83313788-9501
720-0858 (cell)**Invoice**

DATE	INVOICE #
06/18/99	2153

BILL TO
Weyakin Homeowners Association Box 728 Ketchum, ID 83340 Att: Bill Negel

TERMS
Due on receipt

DATE	ITEM	DESCRIPTION	QUANTITY	RATE	AMOUNT
	Bid Item	1. Clean up & export brush, trees, limbs, grass, roots & concrete.		600.00	600.00
	Bid Item	2. Import & place 20 yds. of rip rap for bank stabilization @ \$65.00/yd.	20	65.00	1,300.00
	Bid Item	3. Import & place 200 yds. of structural fill to repair bank @ \$25.38/yd.	200	25.38	5,076.00
	Bid Item	5. Furnish & install 400 sq. ft. of ditch liner.		500.00	500.00
41% due from Idaho Park Foundation 59% due from Weyakin Homeowners Assoc.					
#1105					
Total					\$7,476.00

To: McDevitt, Thornton and Weilmunster
From: Sharon Hubler
Subject: Incoming bills on McCoy ditch
Date: June 17, 1999

I spoke with Carl Stremmel at his Ketchum residence this a.m. Things are looking good on the ditch and the pleasure is all ours!

We have paid the \$1700 pro-rata portion of 1997 emergency repairs.

We have the engineer's bill (attached) which will be paid for from the Hare's donation of \$4000. Up to \$1500 was allocated to engineer's expense in the agreement. Gary Slette, attorney, has deducted \$1000 from his bill. That may reduce it to the \$4500 range. Of that amount we owe 41% which should be offset by the \$2500 balance on the Hare funding.

We are seeing that the work done by Chuck Erwin is complete. That bill will be in the range of \$11,000, as predicted. Our share is 41%. Not as much difficulty in accessing the ditch as expected. Carl does not anticipate too heavy a bill from Webb Landscaping who were required to oversee any repair work on the Oelerich property. Dean Wall, who lives in Mackay, had his hands full with an inordinately high Big Lost River run-off; hence, he has participated only minimally. Evidently the work done on the blow-out area above Vincent McGuinness is recontoured nicely. McGuinness started giving off about "hydro-seeding." Carl says nix; however, Bill Nagel, maintenance manager for Weyyakin, will do a little seed cast if necessary.

Bruce Lium, Ph.D., water expert, was called in as part of researching permit concerns since this project was close to Trail Creek. Bill Nagel was the person who requested Lium's services. We'll see what bill emerges.

Carl and Bill Nagel will meet Friday, June 18, and go over bills. Carl plans to call our office early next week with more information. Carl said that this project has really made points with persons who live along the ditch. It's a wake-up call that the ditch has rights which are provided for in Idaho Code.

Richard Kassebaum, resident at 614 Leadville Avenue, Ketchum, has been flooded a couple of times. Once before the Weyyakin manager Brad Scott paid him off. He is trying to get reimbursed as before. This will not happen again, according to Carl. Right now Weyyakin is in small claims court with this person for about \$400. Foundation was not named.

Accounting

RECEIVED
6.28.99

Idaho Foundation

Received from Hare \$4,000.00

Paid EHM Engineering - 1,436.50

Weyyakin

pd to Shelt - not reimbursed
\$1,095.81

Foundation + \$2,563.50 (Towards Legal Expense 2,500.00)
59% = 1,475.00 41% = 1,025.00

Total Fee to be shared (legal) Rosholt,
Robertson & Tucker \$6,218.40

Idaho Foundation 41% = \$2,549.54
Weyyakin 59% = \$3,668.86 <1475.00> DUE FROM JDR

Total Fee to be shared (ditch repair) The American
Water Resources Company (Bruce Liem)
Statement 5/17/99 \$552.50 Total Pd by Weyyakin
Statement 6/9/99
minus Weyyakin only work, \$2,055.00 due now

Idaho Foundation 41% of 5/17/99 bill = \$226.53 DUE TO P.F.
41% of 6/9/99 bill = \$842.55

Weygakin Paid and Will ~~not~~
EAT

\$ 542.³¹

4/22/99

553.⁵⁰

1/31/99

THE AMERICAN WATER RESOURCES COMPANY

June 9, 1999

Weyyakin Homeowners Association
c/o Bill Nagel
P.O. Box 728
Ketchum, Idaho 83340

Statement: Maintenance and repair of irrigation ditch (water rights).

1. Consultation and logistics.

3 hours

\$255.00

2. Labor costs for cleaning and repair of irrigation ditch.

70.5 hours

2,115.00

Total Due

\$2,370.00

Thank you,


Bruce Lium

*Weyyakin
arch of ditch
only*
315.00
— 315.00
\$2,055.00

Foundation owes on this bill \$842.55

Weyyakin Pay \$1,527.45

OK

THE AMERICAN WATER RESOURCES COMPANY

May 17, 1999

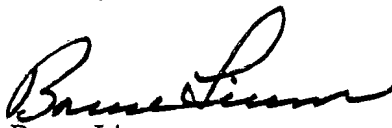
Bill
Mr. ~~Ray~~ Nagel
c/o Weyyakin Homeowners Association
P.O. Box 728
Ketchum, Idaho 83340

Statement: Weyyakin Water Right Irrigation Ditch Repair

Consultation with Dean Wall, Idaho Department of Water Resources and S. Erwin Excavation for repair of slumping area of irrigation ditch (Trail Creek area). No permits are required for repair work from Idaho Department Resources and City of Sun Valley.

6.5 hours	\$552.50
Total Due	<u>\$552.50</u>

Thank you,


Bruce Lium

*Foundation owes \$226.53
WEYYAKIN on this bill*

IN ACCOUNT WITH

ROSHOLT, ROBERTSON & TUCKER
ATTORNEYS AT LAW

P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
(208) 734-0700

IRS NO. 82-0367837

WEYYAKIN HOMEOWNERS ASSOCIATION
BRAD SCOTT
PO BOX 728
KETCHUM ID 83340

05/28/99
Account No: 13750-11433N
Statement No: 16633

WATER MATTERS

5/21/99

GDS CALLS TO J. SPECK; CALLS TO C. MCDEVITT; CALLS
FROM/TO C. STREMMEL.

5/22/99

GDS CALLS TO J. SPECK; CALL TO C. MCDEVITT; CALLS
FROM/TO SPECK; CALLS FROM/TO CARL; DRAFT LETTER
TO CARL, CHUCK AND BURKETT; CALLS FROM/TO CARL.

5/23/99

GDS REVIEW LETTER FROM SPECK AND O'CONNELL; CALLS
FROM/TO GARY BURKETT; CONFERENCE CALL WITH CARL
AND MCDEVITT; REVIEW 2ND LETTER FROM SPECK.

5/26/99

GDS CALLS FROM/TO SPECK; CALLS TO/FROM BURKETT.

5/27/99

GDS REVIEW LETTER FROM SPECK; CALLS FROM/TO CARL S.;
CALL TO SPECK; LETTER TO SPECK; REVISE AGREEMENT
RE: HARE.

5/28/99

GDS CALLS FROM/TO RANDY AT SPECK'S OFFICE; CALL TO C.
STREMMEL.

5/29/99

GDS CALL TO MCDEVITT; CALL TO SPECK; CALLS FROM CARL.

5/03/99

GDS CALLS FROM/TO B. HOLLAND; CALLS TO/FROM SPECK'S
OFFICE; CALL TO HOLLAND; CALLS TO CARL.

5/13/99

GDS CALLS TO SPECK; CALL TO B. HOLLAND; CALLS TO/FROM
C. STREMMEL.

IN ACCOUNT WITH

ROSHOLT, ROBERTSON & TUCKER
ATTORNEYS AT LAW

P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
(208) 734-0700

IRS NO. 82-0367837

WEYYAKIN HOMEOWNERS ASSOCIATION

(Continued)

05/28/99

Account No: 13750-11433N
Statement No: 16633

WATER MATTERS

5/17/99

GDS CALLS TO/FROM CARL AND J. SPECK.

5/18/99

GDS CALLS FROM/TO SPECK; CALL TO STREMMEL.

5/19/99

GDS CALLS TO/FROM SPECK; CONFERENCE CALL WITH SPECK,
HARE, CARL AND DON; REVIEW LATEST DRAFT OF
AGREEMENT; CALLS FROM CARL; CALL TO JIM; CALLS
FROM/TO MCDEVITT.

5/20/99

GDS CALLS FROM/TO SPECK; CALLS FROM/TO CARL.

For Current Services Rendered
COURTESY DISCOUNT

1,778.00
-1,000.00

Net Fees after Courtesy Discount

778.00

5/20/99 FAX CHARGES

118.00

Total Expenses and Advances

118.00

Total Current Work

896.00

Previous Balance

5,322.40

Balance Due

\$6,218.40
=====

Past Due Amounts			
0-27	28-57	58-87	88+
----	-----	-----	---
0.00	5,322.40	0.00	0.00

*Send check for
\$ 3,668.86
59% of Total*

FOR SERVICES RENDERED THROUGH MAY 20TH, 1999

IN ACCOUNT WITH

ROSHOLT, ROBERTSON & TUCKER
ATTORNEYS AT LAW

PO. BOX 1906
TWIN FALLS, IDAHO 83303-1906
(208) 734-0700

IRS NO. 82-0367837

WEYYAKIN HOMEOWNERS ASSOCIATION
BRAD SCOTT
PO BOX 728
KETCHUM ID 83340

04/30/99
Account No: 13750-11433N
Statement No: 16459

WATER MATTERS

03/23/99

GDS CALL FROM CARL; REVIEW LETTER TO HUBLER.

03/24/99

GDS CALLS FROM/TO C. STREMMEL; RESEARCH CRIMINAL
STATUTES; CONFERENCE CALL WITH C. STREMMEL AND D.
WERTH, PROSECUTOR; CONFERENCE WITH C. STREMMEL
AND C. DAGGETT, POLICE; CALL TO HARE; CALL TO
MATT AT JUDGE MAY'S OFFICE.

GDS CALLS ALL AFTERNOON TO/FROM CARL, VOGEL, PEEBLES,
DROUGAS, AND HARE; CALLS FROM/TO MCDEVITT;
RESEARCH CODE RE: CIVIL AND CRIMINAL ISSUES.

03/25/99

GDS TRAVEL TO/FROM KETCHUM; MEETING WITH CLIENTS;
MEETING WITH CLIENTS AND SPECK AT SITE; CALLS
FROM/TO MCDEVITT, PARK FOUNDATION ATTORNEY; CALLS
FROM/TO G. MARTENS, ENGINEER.

JAR REVIEW STATUTES ON DITCH RIGHT OF WAYS AND
MAINTENANCE.

03/26/99

GDS CALLS TO C. MCDEVITT; CALLS TO J. SPECK AND C.
STREMMEL; DRAFT LETTER TO SPECK; DRAFT LETTER TO
MCDEVITT; REVIEW SPECK LETTER AND DITCH PLANS.

03/29/99

GDS REVIEW J. SPECK LETTER; CALL TO C. MCDEVITT; CALL
TO C. STREMMEL; CALL TO GERALD AT EHM.

03/30/99

GDS REVIEW AGREEMENTS RE: DITCH USE; REVIEW TERMS OF
SPECK LETTER; NUMEROUS CALLS TO/FROM CARL; DRAFT
AGREEMENT RE: HARE.

IN ACCOUNT WITH

ROSHOLT, ROBERTSON & TUCKER
ATTORNEYS AT LAW

PO. BOX 1906
TWIN FALLS, IDAHO 83303-1906
(208) 734-0700

IRS NO. 82-0367837

(Continued)

04/30/99

WEYYAKIN HOMEOWNERS ASSOCIATION

Account No: 13750-11433N

Statement No: 16459

WATER MATTERS

03/31/99

GDS DRAFT LONG LETTER TO CITY OF SUN VALLEY;
REVIEW;REVISE HARE AGREEMENT; CALLS FROM/TO
STREMMEL; REVIEW/REVISE LETTER TO SUN VALLEY;
MORE CALLS WITH CARL; CALLS TO EHM.

JAR REVIEW AGREEMENT ON MCCOY DITCH.

04/07/99

GDS REVIEW LETTER RE: MCGUINNESS; REVIEW LETTER RE:
HARE; CALL TO STREMMEL; CALL TO G. BURKETT; CALLS
TO CHUCK MCDEVITT.

04/08/99

GDS CALL FROM CHUCK MCDEVITT; CALL TO J. SPECK.

04/09/99

GDS REVIEW EHM PROPOSAL; REVISE AGREEMENT RE: HARE;
DRAFT LETTER TO SPECK RE:MCGUINNESS; CALL TO
SPECK; CALL TO C. STREMMEL; CALL FROM MCDEVITT
RE: MANLAY MEETING.

04/12/99

GDS CALLS FROM/TO CARL; CALLS TO/FROM G. BURKETT;
LONG PHONE CALL WITH CARL; CALL TO C. BROCKWAY;
REVIEW AGREEMENT WITH CARL; CALLS FROM/TO J.
SPECK; CALLS FROM/TO RAND PEEBLES.

04/13/99

GDS CALLS FROM/TO CARL; CALLS FROM J. SPECK; CALLS
FROM CHUCK MCDEVITT.

04/14/99

GDS CALLS FROM/TO MCDEVITT, SPECK, STREMMEL, BROCKWAY
AND G. BURKETT; REVISIONS TO AGREEMENT; FURTHER
REVISION DRAFTS.

04/15/99

GDS CALLS FROM/TO C. STREMMEL; REVISIONS TO
AGREEMENT; CALLS TO/FROM SPECK; CALL TO CHUCK
MCDEVITT.

04/16/99

GDS CALLS TO J. SPECK; CALL TO CARL.

IN ACCOUNT WITH

ROSHOLT, ROBERTSON & TUCKER
ATTORNEYS AT LAW

P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
(208) 734-0700

IRS NO. 82-0367837

(Continued)

04/30/99

WEYYAKIN HOMEOWNERS ASSOCIATION

Account No: 13750-11433N

Statement No: 16459

WATER MATTERS

For Current Services Rendered 5,156.00

03/25/99	MISC - CHECK #28012 TO GDS RE: MILEAGE	
	REIMBURSEMENT TO/FROM HAILEY	46.15
04/20/99	MISC - GDS VISA CHG ON 3/25 RE: TRAVEL EXPENSE	13.25
04/20/99	FAX CHARGES	107.00

Total Expenses and Advances 166.40

Total Current Work 5,322.40

Previous Balance 542.31

04/26/99 PAYMENT -542.31

Balance Due \$5,322.40
=====

FOR SERVICES RENDERED THROUGH APRIL 20TH, 1999

FINANCE CHARGE: Periodic rate 1.5% monthly.

Exhibit 3

IN ACCOUNT WITH

ROSHOLT, ROBERTSON & TUCKER
ATTORNEYS AT LAW

PO. BOX 1906
TWIN FALLS, IDAHO 83303-1906
(208) 734-0700

IRS NO. 82-0367837

WEYYAKIN HOMEOWNERS ASSOCIATION
BRAD SCOTT
PO BOX 728
KETCHUM ID 83340

01/31/99
Account No: 13750-11433N
Statement No: 15903

WATER MATTERS

01/08/99

GDS CALLS FROM/TO CARL STREMMEL RE: WATER & DITCH
USES.

01/18/99

GDS RESEARCH QUESTIONS FROM CARL; DRAFT LETTER TO
CARL; DRAFT LETTER TO IDAHO PARKS; DRAFT LETTER
TO LANDOWNERS ON MCCOY DITCH; CALLS TO/FROM C.
BROCKWAY.

For Current Services Rendered 553.50

Total Current Work 553.50

Balance Due \$553.50
=====

*Pd by
WEYYAKIN
NOT ASKING REIMBURSEMENT*

FOR SERVICES RENDERED THROUGH JANUARY 20TH, 1999

Exhibit 3

*used
I.P.L.*

IN ACCOUNT WITH

ROSHOLT, ROBERTSON & TUCKER
ATTORNEYS AT LAW

PO. BOX 1906
TWIN FALLS, IDAHO 83303-1906
(208) 734-0700

IRS NO. 82-0367837

WEYYAKIN HOMEOWNERS ASSOCIATION
BRAD SCOTT
PO BOX 728
KETCHUM ID 83340

03/31/99
Account No: 13750-11433N
Statement No: 16300

WATER MATTERS

3/10/99

GDS REVIEW LETTER FROM J. SPECK; CALLS FROM/TO CARL
S.; CONFERENCE WITH JER; REVIEW S.V. ZONING ORD.

3/11/99

GDS CALLS TO/FROM R. VANNORT AT CITY OF SUN VALLEY;
CALLS TO/FROM CARL STREMMEL; CALLS TO S. HUSLER;
CONFERENCE CALL WITH S. HUSLER AND CARL.

3/12/99

GDS CALL TO C. STREMMEL; CALL TO C. BROCKWAY.

3/15/99

GDS CALLS FROM/TO CARL; REVIEW DEAN WALL INFORMATION;
CALL TO CARL.

For Current Services Rendered 540.00

Total Current Work 540.00

Previous Balance 555.81

3/05/99 PAYMENT -553.50

Balance Due \$542.31
=====

Past Due Amounts		
0-27	28-57	58-87
----	-----	-----
0.00	2.31	0.00

88+

0.00

*Pl. By
WEYYAKIN
NOT ASKING
REIMBURSEMENT*

FOR SERVICES RENDERED THROUGH MARCH 20TH, 1999



621 North College, Suite 100
Twin Falls, Idaho 83301
(208) 734-4888
FAX 734-6049
Fed. ID # 82-0439417

April 30, 1999

CARL STREMMEL
WEYYAKIN HOMEOWNER'S ASSOCIATION
P O BOX 4385
KETCHUM ID 83340

Job # 143-99

Project: Weyyakin Ditch - Progress Billing

	<u>Hrs/Rate</u>	<u>Amount</u>
Professional Engineer	10.50 59.76/hr	627.50
Secretary	1.50 20.00/hr	30.00
Survey Crew - 2 Man	7.00 60.00/hr	420.00
Professional services rendered	19.00	\$1,077.50
	<u>Qty/Price</u>	
Mileage	530 0.30	159.00
Total costs		\$159.00
TOTAL CURRENT CHARGES		\$1,236.50
BALANCE DUE		\$1,236.50

For Professional Services Thru April 25, 1999

NET 30 DAYS. A 1 1/2% FINANCE CHARGE (18% ANNUAL PERCENTAGE RATE)
will be applied to the previous balance at the time of billing.

PLEASE INCLUDE THE JOB NUMBER ON YOUR PAYMENT

Exhibit 3

May 31, 1999

621 North College, Suite 100
Twin Falls, Idaho 83301
(208) 734-4888
FAX 734-6049
Fed. ID # 82-0439417

*Paid by
Idaho Foundation
Fixed Bill
6/17/99*

CARL STREMMEL
WEYYAKIN HOMEOWNER'S ASSOCIATION
P O BOX 4385
KETCHUM ID 83340

Job # 143-99

Project: Weyyakin Ditch - Progress Billing

	<u>Hrs/Rate</u>	<u>Amount</u>
Professional Engineer	3.00 60.00/hr	180.00
Secretary	1.00 20.00/hr	20.00
Professional services rendered	4.00	\$200.00
Previous balance		\$1,236.50
BALANCE DUE		<u>\$1,436.50</u>

For Professional Services Thru May 23, 1999

*#1086
6-29-99*

June 29, 1999

Gary R. Burkett, P.E.
EHM Engineers, Inc.
621 North College, Suite 100
Twin Falls, Idaho 83301

Dear Gary:

We are missing the progress billing on Job# 143-99 which relates to the previous balance of \$1,236.50. We have the updated one, dated May 31, 1999 which includes Professional Services in the amount of \$ 200.00. It would be helpful if you could either fax 208-344-5910 or mail to Idaho Foundation for Parks and Lands, 5657 Warm Springs Avenue, Boise, Idaho 83712 the progress billing for \$1,236.50.

Thank you,

Sharon Hubler
Executive Director

City of Sun Valley

P.O. Box 416 • SunValley, ID. 83353 • 622-4438 • Fax: 622-3401

December 5, 1997

Brad Scott
Manager
Weyyakin Homeowners Association
P.O. Box 728
Ketchum, Id. 83340

Dear Brad:

Attached is a letter regarding water channel repairs performed by Mr. Dilworth. The repairs are not adequate and must be addressed as soon as possible. Ideally these repairs will be preformed before the spring run off. If they are not to be commenced immediately please inform the City of your timeline.

As mentioned in the attachment the City will need to see drawings and approvals prior to any work. Please call if you have any questions.

Sincerely,

Greg James
Building Inspector

Sharon,

These letters came to me yesterday. I am checking this out and will keep you posted.

*Regards -
Brad*

City of Sun Valley

P.O. Box 416 • SunValley, ID. 83353 • 622-4438 • Fax: 622-3401

December 5, 1997

Jay Dilworth
P.O. Box 1768
Hailey, Id. 83333

Dear Jay:

This letter is to recap our phone conversation of November 26, 1997. As we discussed, the irrigation channel, as it runs through the City of Sun Valley, must conform to the standards as set forth by our local codes and ordinances. The repair work that was preformed in the area of the Bitterroot Subdivision, specifically in the channel to the south of the home at 211 Bitterroot Road does not meet these standards.

The City will need to see the disturbed area returned to its natural state. We understand the strength of Trail Creek and are sympathetic to your difficulties, but the ground beneath the newly installed must pipe be restored in order to prevent further erosion damage and to stabilize the streambank.

Please submit approvals from all involved government agencies, (ie: the Department of Water Resources) prior to any stream or floodplain work. Due to the aesthetic value placed on a proper repair, the City will need to see drawings and/or related paperwork prior to any construction.

Sincerely,

Greg James
Building Inspector

cc: Terry Blau - Department of Water Resources
Brad Scott-Weyyakin Homeowners Association



Box 728, Ketchum, Idaho 83340
(208) 726-7444

December 8, 1997

Sharon Hubler
Idaho Foundation for Parks & Lands
5657 Warm Springs Avenue
Boise, Idaho 83712

Dear Sharon:

I have enclosed some bills that we incurred to maintain the irrigation ditch that we share. I have paid the following list of bills: *Details / Invoices on file sh*

\$667.50	Richard Kasselbaum
71.10	Lutz Rentals (chain saw)
277.60	Critter Gitters - Jim Lee (to trap beavers. You're not allowed to shoot them)
425.00	Excavate ditch, including in front of Kasselbaum's house
855.00	Jay Dilworth (labor)
926.98	Jay Dilworth (labor)
605.86	Jay Dilworth (labor)
<u>350.00</u>	Joe's Backhoe (20' culvert)

*paid #1068
6-4-99*

\$4,179.04 Total

$41\% = 1713.41$

Sharon, we feel that the Foundation should pay one-half of this cost. Also, I don't believe the situation will improve next summer. I hope that this doesn't send you into shock.

Please call me if you have any questions or would like to discuss this.

Sincerely,

Brad

Brad Scott

BS/jn

Enclosures

no

STATEMENT

JAY Dilworth
P.O. Box 1768
Hailey, Idaho
83333

6/16/97

Weyakkin H.O.A.

PLEASE RETURN THIS STUB WITH YOUR REMITTANCE. YOUR CANCELLED CHECK IS YOUR RECEIPT.

5/22	Locate Trackhoe	60 ⁰⁰
5/23	Survey Ditch N. of Gem St	60 ⁰⁰
5/23	Clean Ditch Behind Trackhoe	150 ⁰⁰
5/27	Turn Water Down Ditch	210 ⁰⁰
5/28	Clean Culverts	120 ⁰⁰
5/29	" " & Check Ponds	60 ⁰⁰
6/2	Adjust Water (Hinckley Flooding)	135 ⁰⁰
6/5	Shut Water Down (Trail Crk. Hi)	60 ⁰⁰
6/10	Threat off Jack S.W. Corner	30 ⁰⁰

PD,
6-16-97

TOTAL

~~885⁰⁰~~
~~207⁵⁰~~
677⁵⁰

PAID BY CHECK NO.

855¹⁰

REDIFORM, 8S 884
POLY PAK (50 Sets) 8P884

STATEMENT

JAY Dilworth
P.O. Box 1768
Hailey, Idaho
Ph # 782-468 83333

9/14/97

Weyyakia H.O.A.

c/o Reinheimer Ditch Repair
and MAINT.

PLEASE RETURN THIS STUB WITH YOUR REMITTANCE. YOUR CANCELLED CHECK IS YOUR RECEIPT.

DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
8/22	Repair BEAVER DAMAGE in Bitterroot Area - Labor	270 ⁰⁰		270 ⁰⁰
	Ply wood & 15 BAGS CONC. MIX	110 ⁸⁶		380 ⁸⁶
8/23	Strip Forms, open Headgate & Clean Debr.	90 ⁰⁰		470 ⁸⁶
9/6	Tear out Beaver Dams Clean Debris	135 ⁰⁰		605 ⁸⁶
			PC	99
			9-17	
PAY LAST AMOUNT IN BALANCE COLUMN ▲				

REDIFORM 8K872

STATEMENT

JAY Dilworth
P.O. Box 1768
Hailey, Idaho
83333

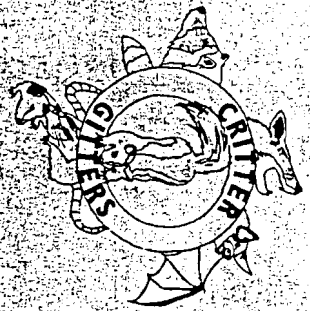
Weyyakia H.O.A.

Scon, Valley, Idaho

PLEASE RETURN THIS STUB WITH YOUR REMITTANCE. YOUR CANCELLED CHECK IS YOUR RECEIPT.

Reinheimer Ditch	
7/30 Remove BEAVER DAMS	
Labor	90 ⁰⁰
8/4 Install Culvert c/o BEAVER DAMAGED BANK	
Labor	270 ⁰⁰
8/5 Form & Pour wing walls For Culvert & Clean Down stream Culverts of Debris	
Labor	270 ⁰⁰
Concrete	263 ⁸⁹
Plywood	33 ²⁸
PC.	
9-18-97	
Total	\$ 926 ⁹⁸

PAID BY CHECK NO.



INVOICE

Jim Lee

460 Quincy Street
Twin Falls, ID 83301

INV. NO. _____

9/13/19 97-

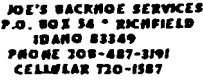
11 Kettie Condemnium Assoc.
Co. Brad Smith
P.O. Box 728
Bathurst, Idaho. 83340.-

TERMS: Net 30, days from date of invoice, interest rate will be computed on a 1-1/2% monthly basis (18% yearly). Should collection become necessary by legal suit or otherwise, the customer agrees to pay all cost and attorney fees.

QUANTITY	DESCRIPTION	AMOUNT
(12)	Trapping of beaver stream for beaver @ \$65.00 each. Total Mileage @ 492 miles @ 30¢ per mile (3) round trips	15 277.60
	Pd. 9-17-97	
	Total Cost @	15 277.60

208-733-2775

DATE	INVOICE NO.	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
		GEM STREET 5 HRS. KABOTA EXCAVATOR Kato Excavation Dig out Ditch	85.00	Pd. 5-30-97	425.00
CURRENT		30 DAYS	60 DAYS	90 DAYS	AMOUNT DUE
					425.00

**BILL TO:**

Weyyakin Homeowners
P.O. Box 728
Ketchum, ID 83340

Invoice No. 664

Job: *Ditch*

Total	\$350.00
--------------	-----------------

**THANKS FOR CHOOSING
JOE'S BACKHOE SERVICES!!**

THIS IS A CONTRACT

LUTZ RENTALS

TERMS: CASH IN ADVANCE

THE WORDS RENTER, BUYER, YOU AND YOUR MEANS THE PERSON WHO SIGNS THIS CONTRACT (OR ARE OBLIGATED UNDER ITS TERMS). WE, OUR AND DEALER REFER TO THE BUSINESS NAMED AT RIGHT.

100 LEWIS ST. P.O. BOX 2166
KETCHUM, IDAHO 83340
(208) 726-5421

ESTABLISHED OPEN ACCOUNTS ARE DUE AND PAYABLE NET 10TH OF MONTH, PAST DUE ACCOUNTS BEAR LATE PAYMENT PENALTIES AT 1-1/2% PER MONTH.

CUSTOMER ID=====CONTRACT NUMBER
00300 ***** CONTRACT CLOSING ***** 01-152502-04
05/17/97

WEY-YA-KIN HOMEOWNERS
P.O. BOX 728
KETCHUM, ID 83340

WEY-YA-KIN HOMEOWNERS
P.O. BOX 728
KETCHUM, ID 83340

7267444

OUT: WED 05/14/97 08:58
IN: SAT 05/17/97 16:33

ITEM NO.	QTY	DESCRIPTION	RATE	INFO	UNIT	EXTENDED
00-0210	1	SAW, CHAIN GAS 16"	L4	35.00	67.08	67.08
		RATES: 17.50/2H	35.00/D	87.50/W	140.00/M	
05-0062	1	CAN, GAS-FREE	AA	.00	.00	.00
		RATES:	.00/D	.00/W	.00/M	
05-0424	1	SCREW DRIVER	AA	.00	.00	.00
		RATES:	.00/D	.00/W	.00/M	
00-1151	1	OIL, BAR	BAR OIL	.00	.00	.00

pd
5-28-97

RECEIPTS SUMMARY				SUMMARY	
DATE	SEQ	METHOD	REF/PO	AMOUNT	
05/17/97	04	CHARGE		71.10	LAWN AND GARDEN 67.08
>>>>AMT DUE THIS INVOICE:				71.10	KETCHUM .67
					ID STATE 3.35
					TOTAL 71.10

I, the undersigned, hereby acknowledges that he has read and fully understands the within equipment rental contract and agrees to be bound by all of the terms, conditions and provisions hereof. Renter acknowledges that he has received a true and correct copy of this agreement at the time of execution hereof.

RETURN
EQUIPMENT BY:

SAT 05/17/97 16:33

X

SIGNATURE

THIS IS YOUR CONTRACT, READ BOTH SIDES BEFORE SIGNING

SALES AGENT
TONY LUTZ

DATE: CUSTOMER:
05/17 WEY-YA-KIN HOMEOWNERS

CONTRACT:
01-152502-04

Exhibit 3

July 22, 1998 -- THIRD REQUEST

7/22/98 - sent again to Weyyakin HOA

Vincent J. McGuinness

May 27, 1998

Board of Directors
Weyyakin Homeowners Association
Post Office Box 728
Ketchum, ID 83340

And

Idaho Foundation for Sands
5657 Warm Springs Avenue
Boise, ID 83712

Gentlemen:

As you know, some damage occurred to the man-made "stream" that feeds water to the Reinheimer Ranch and the Weyyakin area.

The damage was repaired relative to water flow. The problem remaining is that the repair job needs to be "adjusted."

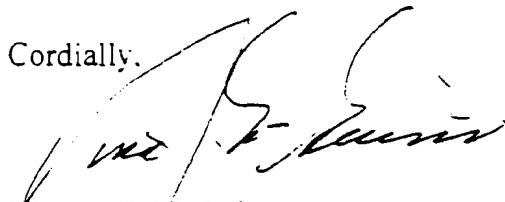
The key issues are:

- The conduit repair job is an "eyesore," especially as viewed from my home and yard at 211 Bitterroot Road.
- The hillside below the repair job on the Trail Creek side has completely fallen away. Until the hillside is rebuilt, we will be faced with continued erosion and the "eyesore" issue.

I would appreciate a reply which indicates the "plan of repair" and its timing.

Thank you.

Cordially,



Vincent J. McGuinness

VINCENT JAMES MCGUINNESS
1901 Ocean Way, Laguna Beach, CA 92651
Home: (949) 494-1622 Office: (949) 760-0505
Sun Valley: (208) 622-4902

July 22, 1998

Mr. Greg James
Building Inspector
City of Sun Valley
Box 416
Sun Valley, ID 83353

*Note: he called foundation
office on 8/31/98*

Dear Mr. James:

Re: THIRD REQUEST
 Man-Made "Stream" and Hillside Slide

I have not heard any response to my requests for information
regarding the hillside slide on and/or near my property.

Cordially,

Vincent J. McGuinness

Vincent J. McGuinness

VINCENT JAMES MCGUINNESS

1901 Ocean Way
Laguna Beach, CA 92651
(949) 494-1622
Fax: (949) 497-2879

August 27, 1998

Rec'd Aug. 31

Mr. Chris Kort
Idaho Foundation for Parks and Lands
5657 Warm Springs Avenue
Boise, Idaho 83712

Dear Mr. Kort:

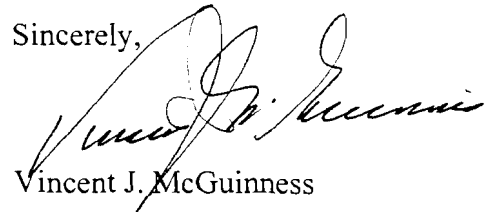
There is a manmade water channel that runs across part of my property at 211 Bitterroot Road, Sun Valley, Idaho (lot #32, Trail Creek Subdivision). It is my understanding that the water channel involved in this letter supplies water to the Reinheimer Ranch and the Weyyakin Homeowners area. There was some "natural" problem in the stream that led to a landslide that placed a large amount of debris in Trail Creek.

The debris in the creek has been repaired. The hole in the water channel has been repaired, but in an unsightly manner. The landslide needs to be repaired. There will be further erosion that will further damage the water channel that feeds the Reinheimer Ranch.

Mr. Chris Kort
August 27, 1998
Page 2

As you can see from several of my earlier communications, I have received no satisfaction relative to the need for a proper repair of this hillside slide area; i.e., proper in my mind is a reconstruction of the original land area to a condition that was similar to or identical to the condition prior to the landslide.

Sincerely,



Vincent J. McGuinness

VJM/pas
Enclosures

cc: Mr. Greg James, Building Inspector, City of Sun Valley
Box 416, Sun Valley, ID 83353

Mr. George Klingelhofer
P. O. Box 247, Sun Valley, ID 83353

Mr. John Oelerich
P. O. Box 1477, Ketchum, ID 83340

VINCENT JAMES MCGUINNESS

1901 Ocean Way
Laguna Beach, CA 92651
Home: (949) 494-1622 Office: (800) 204-1819
Sun Valley: (208) 622-4902

September 21, 1998

Mr. Greg James
Building Inspector
City of Sun Valley
Box 416
Sun Valley, ID 83353

Dear Mr. James:

The subject of this letter is the land slide that was created by water seepage from the canal that runs contiguous to Trail Creek (at least in the area of my property).

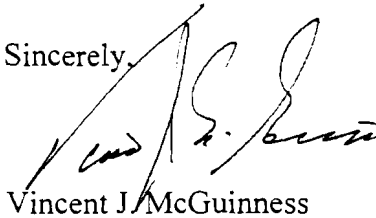
1. It seems that no one agency can help me to "force the issue" of properly repairing this area.
2. I am convinced that the seepage that continues to occur at this spot, plus any kind of erosion created by rain or snow, will result in further slides and the further depositing of debris into Trail Creek.
3. It appears that the slide immediately under the water channel is probably on my neighbor's property (George Klingelhofer, 213 Bitterroot Road). The bottom portion of the slide is clearly on my property. According to the personnel at the Weyyakin Community Association to whom I have spoken, the Weyyakin

Mr. Greg James
September 21, 1998
Page 2

Community Association and the Idaho Foundation for Parks and Lands own a seven-foot easement on either side of the channel. If that easement is horizontal (and I believe it is horizontal) it probably covers all or most of the slide area.

4. The second issue involved in this problem is the ugly eyesore that was created by the current repair of the channel.
5. Is there any way that the City of Sun Valley can apply its powers of jurisdiction to help me to return the slide area to its original condition?

Sincerely,



Vincent J. McGuinness

cc: Board of Directors, Weyyakin Homeowners Association
P. O. Box 728
Ketchum, ID 83340

Idaho Foundation for Parks and Lands, Attn: Chris Kort
5657 Warm Springs Avenue, Boise, ID 83712

Mr. George Klingelhofer
P. O. Box 247, Sun Valley, ID 83353

Mr. John Oelerich
P. O. Box 1477, Ketchum, ID 83340



Box 728, Ketchum, Idaho 83340

September 22, 1998

Dear Idaho Land and Parks Foundation:

I am writing to inform your board members of a potential serious problem. The "McCoy" Weyyakin irrigation ditch that you are in part responsible for. It has three leaks, one minor leak in the conduit that your board inspected in May of 1998. Last week during an inspection of the ditch with Charles Brockway Sr. (Hydrology Engineer) from Brockway Engineering. We discovered 2 leaks that need attention as soon as possible. These two leaks are going through the roots of trees from inside of ditch through bank or ditch and spilling down to Trail creek. One of the leaks is spilling approximately 10-15 gallons per minute the other leak is considerably larger and is spilling 120 to 150 gallons per minute. The leak at the conduit is spilling approximately 1-2 gallons per minute.

While I was preparing this letter today, we had an incident at 614 Leadville in Ketchum. Sun Valley Company released water from it's dam and did not notify me. The water flow in our ditch was increased by 4-6 inches in height on the freeboard, causing an overflow with water damage to the house. I was able to reduce flow at the headgate at Trail Creek but I want you to be informed about the situation.

Please advise on your position on repairing or fixing these hazardous conditions.

Thank You,

A handwritten signature in cursive script, appearing to read "Bill Nagel", with a long horizontal line extending to the left.

Bill Nagel,
Manager Weyyakin Homeowners Association

SPECK & AANESTAD

A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

March 5, 1999

Mr. Robert Van Nort
City Administrator
City of Sun Valley
PO Box 416
Sun Valley, ID 83353

RE: Vincent J. McGuinness - McCoy Ditch Repairs

Dear Mr. Van Nort:

My firm represents Mr. Vincent J. McGuinness who own a home at 211 Bitterroot Road in Sun Valley. Mr. McGuinness has previously contacted Greg James about the matter described below and I believe it is important that this request be directed to you in your capacity as City Administrator.

The McCoy Ditch, as you may know, carries certain irrigation water rights from a headgate in Trail Creek to the Weyyakin Subdivision and Reinheimer Ranch. A portion of the Ditch is located approximately ten feet up hill from Trail Creek and along the edge of my client's property. Some time in the summer of 1997 the Ditch developed a leak resulting in significant erosion and debris falling into Trail Creek. The debris in Trail Creek was eventually removed. The leak in the Ditch has been "repaired", but in an extremely unsightly manner which has been described in correspondence previously sent to Mr. James. The purpose of this letter is to request the City to investigate this repair and determine whether or not it has jurisdiction to require the users of the Ditch to take further actions. As discussed below, I believe it does have this jurisdiction and authority.

The Ditch appears to lie within the "OS-1" zoning district which requires conditional use permits for private utility structures and uses. Since the purpose of the Ditch is to furnish irrigation water to its users I believe the Ditch meets the definition of "private utility" in the Sun Valley Code. Therefore, the repair to any such structures should require a conditional use permit. This procedure was not followed.

The Sun Valley Code also defines a "nuisance" to include "any condition or use of real property which is detrimental to the normal use and enjoyment of adjacent or surrounding real property". There is little question that the current status of the Ditch with its makeshift repair and

Mr. Robert Van Nort
March 5, 1999
Page 2

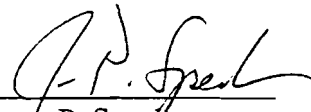
the failure to truly fix the eroded area is a "nuisance" from my client's perspective. As you know, a nuisance is prohibited and certain remedies are provided by the Code.

The users of the Ditch are responsible for its maintenance and any damage resulting from the failure to keep it in proper condition. However, my client has not been successful in requesting them to voluntarily repair the Ditch in an appropriate manner and return the eroded area to its former condition. We are now requesting the City's assistance in getting this done by asserting jurisdiction and enforcing the appropriate provision of the Sun Valley Code.

Please call me as soon as possible to discuss this matter. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

JPS:rsd

cc: client

Weyyakin Homeowners Association

Idaho Foundation for Parks and Lands ✓

ENGINEERS / SURVEYORS / PLANNERS

RECEIVED APR 9 1999

ENGINEERS, Inc.

APRIL 8, 1999

42-1207

10 concrete structure
superior

Pipe
split
14

Engineering
10/9

Carl Stremmel
603 Nez Perce Ct.
Ketchum, ID 83340

RE: Weyyakin Ditch

Mr. Stremmel,

We have reviewed the Weyyakin Ditch damage at the east end of Ketchum, Idaho. We have analyzed three alternatives for hydraulic capacity and have sized the following sections to carry 11.87 cfs.

will it support riprap - compact

1) 24 inch diameter PVC pipe

2) Concrete ditch with an inside floor width of 30 inches with 45 degree walls to 18 inches above the floor elevation.

3) An architectural ditch lined with block, 8 feet wide (inside dimension) 18 inches high.

With adequate maintenance any of the three listed sections have the capacity to carry the 11.87 cfs with 6 inches of ditch freeboard.

We have also evaluated each of the three sections, including the clay lined detail provided by Speck & Associates, for maintenance requirements.

Each of the three options is listed below according to our order of preference.

1) PVC pipe

A PVC pipe is the best alternative from a maintenance standpoint. This alternative is essentially not impervious and has the least likelihood of leakage. The pipe is not susceptible to being filled by sloughing off the steep hill to the south. The expected life of this system exceeds 50 years. A PVC pipe will require a screened inlet headwall and an exit structure. The inlet bar screen would require routine cleaning.

521 North College, Suite 100 • Twin Falls, Idaho 83301 • (208) 734-4888 • FAX 734-5049
Vascular Office Building, 200 S. Broadway • Ketchum, Idaho 83340 • (208) 726-3578
516 S. Capitol Boulevard, Suite 201 • Boise, Idaho 83702 • (208) 385-8770

surface of owner
CONSTRUCTION INSURANCE
QUALITY CONTROL
ENVIRONMENTAL
PROCEDURES
SUBDIVISIONS
STRUCTURAL
SEWER
WATER
HIGHWAYS
PLANNING
IN THE FIELDS OF

Backfill
24" pipe
instruct Backfill
stony
stony

2) Concrete Ditch

This alternative requires inlet and outlet headwalls. The concrete ditch bottom is reasonably impervious to root penetration. Roots coming through construction joints will require routine trimming.

The concrete ditch is susceptible to being filled by sloughing off the steep hill to the south. The concrete ditch bottom may also have some movement due to winter frost heaves although this can be minimized by constructing an adequate gravel base under the ditch. Some seepage from construction joints is to be expected. The expected life of this system is 30 years.

3) Architectural Ditch

The ditch section proposed by Speck & Aarnestad has an architectural block liner installed vertically which may require some maintenance due to displacement from frost heaving or displacement from the steep slope to the south. Inlet and outlet headwalls would be required. The expected life of this system is 10-15 years.

The liner proposed will limit seepage. However, root penetration in the next 5-10 years may provide conduits for leakage from the canal bank and bottom. The elevation of the water in the canal is only 0.7 feet below the new house finished floor and 2.66 feet above the lot finished grade. Leaking water could cause problems with the lot and house foundation.

The architectural ditch section is also susceptible to being filled by sloughing from the steep hill to the south.

- 4) One other alternative might be to construct a concrete liner with an architectural finish. This could provide the structural integrity of the concrete ditch and finish of the architectural ditch section.

Please review this information and respond as appropriate.

If you have any questions please call.

Respectfully,

EHM Engineers, Inc.


Gary R. Burkett, P.E.

cc: Gary Slette ✓

143-99



Box 728, Ketchum, Idaho 83340

Idaho Foundation for Parks and Lands
5657 Warm Springs Avenue
Boise, Idaho 83712

April 14, 1999

Dear Sharon and Members of the Board of Directors:

Over the past few weeks the homeowners of the Weyyakin Ranch and the Foundation have become painfully aware of the enormous problems we face in the protection and maintenance of our jointly owned irrigation ditch. These problems are immediate and potentially reoccurring ones resulting in aggravation and considerable exense with no end in sight. Dispensing with the excruciating details and after much consideration and professional advice, I propose the following solution:

- A.) We start this spring to pipe the ditch beginning at the property owned by Mr. & Mrs. Hare and continue it , at a minimum , past the other areas of continuing problems (McGuiness property) with the final intent to pipe and backfill the entire ditch over a period of two years, if necessary.
- B.) Since neither Weyyakin nor the Foundation has the ready cash required for such an undertaking on hand, we propose to borrow the funds necessary from a local Ketchum Bank and repay the total over three years. (Weyyakin will have an owners special assessment payable in three installments). The Foundation could participate in this loan and re-payment to the extent of its ditch ownership and obligation.

Time is of the essence given our current situation, and proper bidding and organizing of the project is critical. The cost at this point can only be estimated, but the best amount to use is \$140,000 total. The pursuit to recover any of the costs of this project is a completely separate issue. I am anxious to have your ideas and response and am available anytime to confer.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl W. Stremmel".

Carl W. Stremmel
Weyyakin Board of Directors

To: Don Weilmunster, Chas. McDevitt and Dean Thornton

From: Sharon H.

Subject: Call from Carl Stremmel re: R.R. ditch (5/10/99 at 3:15 p.m.)

Date: May 11, 1999

Carl Stremmel called on Monday, May 10, from Chicago. His numbers are 312/573-1555 and FAX 312/573/1444. He wanted to consult with the foundation on charges pertaining to the Reinheimer Ranch ditch. The major area of impact now is the McGuinness area (where the blow-out occurred). The intention now is to remove the culvert and use ditch liner. Carl immediately FAXED the estimate wherein Dean Wall from Mackay will supervise the person d/b/a Erwin Excavation from Bellevue. Dean Wall said it did not make economic sense to bring in the materials from Mackay -- unload -- and then reload for the project. Instead he proposes to use someone locally. This portion of the bill is for \$8,076.00.

Carl estimates the balance will not exceed \$11,000.00 since it is rather minor maintenance. He would like to get this part of the job done as soon as we can. This is to provide detail on the proposed charges so that the foundation can inspect for its 41%.

Next problem is that the contractors have already made on-ground contact with a person through whose property the equipment will have to go to gain access to the ditch. These are John & Kate Oelerich, located at 118 Baldy View Drive, Sun Valley (622-3235). They are asking for a written commitment on putting back, repairing anything ripped up by the equipment. What is our duty here? And would Judge McDevitt care to write such a commitment (or do we according to Idaho Code have to make this commitment)? He's not wanting to incur too much more legal since Gary Slette's bill for the city of Sun Valley contact is running \$5300.00. He's happy with the outcome that city of Sun Valley will revise its planning and zoning questionnaire as it relates to the ditch but continues to be concerned that we have no signed agreement with the Hares which he believes contains a cap on legal fees not to exceed \$2500.00. The Hares should be returning today, by the way.

Carl plans to return by June 15th, but he will return sooner if it is necessary on the ditch. He also indicated that he would be happy to help with a reception for our board and the Weyyakin board if it's before September 15. That would see to our proposed meeting scheduled in Sun Valley/Ketchum.



Box 728, Ketchum, Idaho 83340

March 18, 1999

Dear McCoy Ditch Area Land Owner:

For years, many if not all of you have enjoyed the seasonal flow of water through your property without necessarily knowing vital information about the irrigation ditch.

The Weyyakin Homeowner's Association and the Idaho Foundation for Parks and Lands jointly possess an irrigation right-of-way over your property at the location of what is known as the McCoy Ditch. Pursuant to Idaho Code §§ 42-1102 and 42-1204, this right away extends not only to the land covered by the Ditch itself, but also, "the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the Ditch, canal or conduit, and to occupy such width of the land along the bands of the Ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the Ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work."

The Idaho statutes also impose a duty on us, as the entities in control of such Ditch to maintain the Ditch in good order and repair. See Idaho Code §§ 42-1202 and 42-1203. Given its condition, we have decided to undertake substantial maintenance, repair and cleaning of the McCoy Ditch in 1999. This letter is to advise you that we will be undertaking such activity this spring in order to allow for the delivery of our water rights to our property. To the extent that the construction of driveways, bridges, walkways or culverts impede the delivery of our irrigation water or regular maintenance, you should be advised that the same will be removed. Given the statutory duties imposed upon us by the Idaho Code, we have no alternative other than to undertake this activity to insure delivery of all our water entitlement.

Anticipating that some homeowners might claim to have adversely possessed a portion of our easement, I would like to also advise you of the statutory language set forth in Idaho Code § 42-1208:

Rights-of-way of irrigation districts, Carey act operating Companies, non-profit irrigation entities, and lateral Ditch associations, are not subject to adverse possession, and no person shall prevent free access of authorized personnel on rights-of-way or construct any obstruction on rights-of-way in an effort to adversely possess said right-of-way.

We look forward to accomplishing this work as soon as weather permits, and wanted to advise you of our intentions and the law with regard to such activity. We will endeavor to work with you to the extent possible to minimize disruption to your property. If you have any questions or comments, please feel free to contact me.

Carl W. Stremmel, Jr.
Weyyakin Board of Directors
208-726-6566



May 26, 1999

Mayor
Thomas C. Praggastis

City Council
David F. Wilson
Council President
Kevin F. Laird
Linda O'Shea
James A. Dowen

City Administrator
Robert L. Van Nort

Ms. Sharon Huber
Idaho Foundation for Parks and Lands
5657 Warm Springs Ave.
Boise, ID 83712

Dear Ms. Huber:

The City of Sun Valley was recently informed by one of our citizens that a potential hazard exists in Trail Creek. In previous correspondence, the responsibility for the water gate installed in Trail Creek (Across from the Community School) rests with your Organization. In an effort to assist in the past, the City removed the boards during the spring runoff to avoid the potential flooding of homes in the Bitterroot area. However, metal poles still remain in the creek. In past years, trees, and other debris have been caught up in the poles, diverting water towards the Bitterroot homes.

As we are fast approaching a potential high risk flooding season, we urge you to consider taking corrective action to reduce the flood hazard exposure to our residents.

Your immediate attention to the potential hazard is appreciated.

Sincerely,

Robert L. Van Nort
CITY ADMINISTRATOR

cc: Weyyakin Homeowners Assoc.

622-4438
Gary Fox Struck
Superior - for S.V.
offered to help

11-10-98
didn't pull
two iron stakes

6-24-99
Carl Stremmel says
Bill Nagel took
care of this.
(telephone)



Box 728, Ketchum, Idaho 83340

September 8, 2000

Mr. Scott Curtis
PO Box 1835
Ketchum, ID 83340

Dear Mr. Curtis:

Attached is a copy of an agreement/letter in which you agreed to re-construct the McCoy Ditch according to certain engineering specifications. Your construction disturbed our original water transport ditch.

Due to an on-going erosion problem at the Lava St. site, Weyyakin Homeowners Association and the Idaho Foundation for Parks & Lands are asking you to please remedy this problem immediately. With Fall fast approaching, we need this taken care of to accommodate any Fall rains. You assured us this problem would be solved once the road was paved. As of Saturday morning, September 2, 2000, the problem still exists. The culvert under your roadway is being filled with silt eroding off the left side of the roadway, which in turn will impede our water flow in the McCoy Ditch.

Please contact me as to your plans to remedy this on-going issue.

Sincerely,
WEYYAKIN H.O.A.

A handwritten signature in black ink, appearing to read "Bill Nagel", written over a horizontal line.

Bill Nagel
Manager
(208) 726-7444

CC: Sharon Hubler, Idaho Foundation for Parks & Lands
Lisa Horowitz, City of Ketchum P&Z
Steve Butler, Galena Engineering

April 12, 2000

RE: LAVA STREET CULVERT REPLACEMENT

Dear Mr. Stremmel,

This is in regards to the culvert replacement that was performed by Scott Curtis during the Lava Street improvements this fall 1999. We will present our analysis of the new culvert compared to the existing culvert and our recommendations for bank stabilization and revegetation.

- The existing structure was a round, 36 inch diameter culvert placed at a 0.3% slope which is capable of carrying 21.9 cubic feet per second (cfs). Approximately 6" of silt, sand, and gravel had washed into the culvert reducing it's capacity to approximately 17.8 cfs.
- The new structure is a 42" x 29" squash culvert placed at a 0.3% slope which is capable of carrying the same 21.9 cfs as the round culvert. The ditch will be lined both 20 feet up and down stream of the culvert with a 30 ml HDPE liner covered with river rock. The liner will reduce the collection of sediment in the culvert and should help maintain it's design flow.

Scott Curtis has indicated that he will complete the remaining canal improvements by May 14, 2000. The improvements include installing 20 linear feet of 30 ml HDPE liner on the bottom and up the sides of the ditch to the elevation of the flowline. The liner will then be covered with 2 to 4 inch river rock. The disturbed banks will be compacted, and covered with jute matt from the top down to the waterline to meet the HDPE liner. A grass seed mix will then be placed on the matt. The matt will absorb water and should provide a moist medium for the germination of the seed mix. Please see the attached illustration of "Weyyakin Irrigation Ditch Improvements".

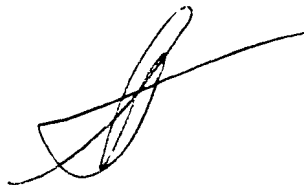
In addition, following our site meeting on April 12 with Bill Nagel and the City Staff, Scott has agreed to monitor the Lava Street borrow ditches leading to the canal for erosion and install any erosion control measures to prevent excessive wear on the ditch.

We hope that this letter addresses the details that you addressed during our site meeting. Please contact me if you have questions.

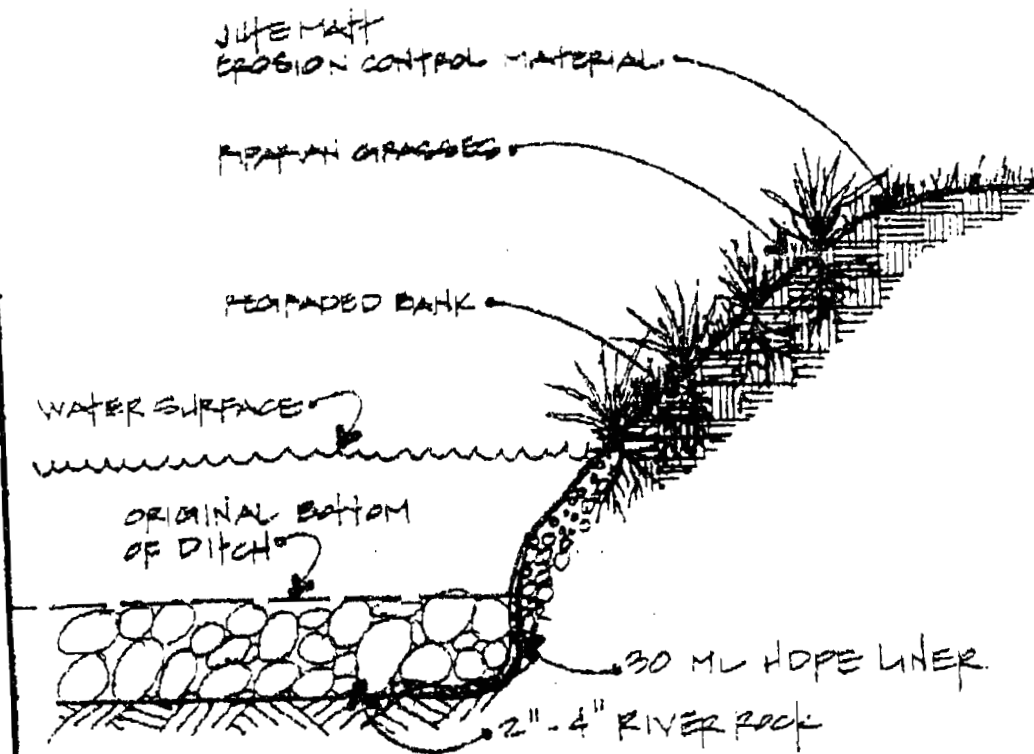
Sincerely,

Steve Butler, P.E.

Scott Curtis



Q:\WPDOCS\2910.01-Weyyakin-4-12-00.wpd



WEYYAKIN IRRIGATION DITCH IMPROVEMENT DETAIL

NOT TO SCALE

MATTHEWS SUBDIVISION
GALENA ENGINEERING, INC.
NOVEMBER 16, 1999
JOB. NO. 2910.01

MAR 29 '99 11:22 FROM RRT TWIN FALLS

TO 12083366912

PAGE.002/000

MAR-29-99 MON 10:49

SPECK & AANESTAD

FAX NO. 2087260752

P.02/03

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

120 EAST AVENUE
P. O. BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208)726-4421
FACSIMILE
(208)726-0752

March 29, 1999

VIA FACSIMILE - 1-208-736-0041
ORIGINAL WILL NOT FOLLOW

Mr. Gary Slette
Roshalt, Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83301

Re: Weyyakin Homeowners & IFPL - Hare

Dear Gary:

Thank you for your March 26, 1999 letter. My clients, Dick and Sue Hare, are willing to enter into an agreement with the Weyyakin Homeowners Association ("Weyyakin") and the Idaho Foundation for Parks and Land ("IFPL") which includes the four conditions described in your letter with the following comments and requested clarifications and changes:

1. Condition no. 1 is acceptable. The agreement should be signed by the Hares, Weyyakin and IFPL and recorded in the real property records of Blaine County. It will bind the Hares and their successors in interest to their properties located at 203 and 205 Snowbrush Lane in Sun Valley, Idaho. It will also bind Weyyakin, IFPL and their successors in interest to their water rights (37-00289 for 7.0 cfs and 37-00457 for 4.8 cfs, respectively).
2. Condition no. 2 is acceptable as long as the Hares' responsibility for maintenance of the ditch is limited to the section which crosses their two lots and to that reasonably necessary to deliver the above-described water rights across these lots no more than the normal or usual seepage and evapotranspiration losses. The Hares will line this section of the ditch in an effort to eliminate as much seepage loss as possible. In return, Weyyakin and IFPL will agree to accept delivery of their water rights through the reconstructed and improved ditch. They must also agree the current size of the ditch is adequate for the delivery of these rights. The watermaster's delivery records certainly support this request as water in excess of the decreed rights has been delivered into the ditch during ten of the past twelve years!
3. It may be more appropriate for the agreement to include the specific grant of an easement for conveyance of the decreed water rights through the ditch rather than the acknowledgment of an existing easement. The specific purposes and physical limits of the easement

MAR 29 '99 11:22 FROM RRT TWIN FALLS

TO 12083366912

PAGE.003/003

MAR-29-99 MON 10:49

SPECK & AANESTAD

FAX NO. 2087260752

P.03/03

Mr. Gary Slette

March 29, 1999

Page 2

could then be described. This would include an agreement by Weyyakin and IFPL that the Hares existing house at 203 Snowbrush Lane and proposed house at 205 Snowbrush Lane do not encroach upon or otherwise affect their rights under the easement.

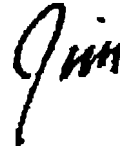
4. Condition no. 4 is acceptable with the addition of an appropriate provision for written notice to the Hares that required maintenance must be completed within a specific period, e.g. not less than thirty days, before Weyyakin and IFPL could complete the work, except in the event of an emergency. Furthermore, a *force majeure* provision should be included to excuse the Hares' performance due to events beyond their control, such as weather.

5. The Hares will pay for Gerald Martens fees and costs relating to the repair of the ditch.

I believe these are reasonable changes and in line with our discussions on site. I look forward to receiving your comments as quickly as possible.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation



James P. Speck

JPS/j

cc: client

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTIS
JERRY V. JENSEN
KIM K. SIMPSON
PATRICK D. MADIGAN
TIMOTHY J. STOVER
NORMAN M. SEMANCO

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83721-2139
TELEPHONE (208) 330-0700
FAX (208) 344-0034

DRAFT

March 31, 1999

City of Sun Valley
Attn: Mayor and City Council
P. O. Box 416
Sun Valley, ID 83353

RE: McCoy Ditch

Dear Mayor and Members of the City Council:

Our law firm represents the Weyyakin Ranch Property Owners Association, Inc. ("Weyyakin") with regard to issues pertaining to the use and delivery of its water rights. A recent situation prompted in part by the City of Sun Valley has resulted in potential litigation and needless expenditures for both parties involved in this situation, all of which could have been avoided with the City's assistance.

Both Weyyakin and the Idaho Foundation for Parks and Lands, Inc. receive their decreed Trail Creek water rights through the McCoy Ditch. The McCoy Ditch passes through the Trail Creek Subdivision on the south side of Sun Valley Road. Last year, the Sun Valley building inspector, Greg James, asserted the City's jurisdiction over the repair and maintenance of the McCoy Ditch, a ditch that has been in use for more than a century. In a telephone conversation I had with Mr. James, I advised him that after a review of the state law and the City's municipal codes, I found no basis in law for such an assertion. I communicated my discussion to both Mayor Praggastis and your city attorney, Rand Peebles. On March 20, 1998, Mr. James contacted Carl Stremmel, a board member of Weyyakin. Mr. Stremmel took notes of his conversation at the time

Mayor Praggastis and the
City Council Members
March 31, 1999
Page 2

of its occurrence. According to Mr. Stremmel's notes, Mr. James indicated he was uncertain of the City's jurisdiction, but asserted that the City was not going to be pushed around by anyone. During the course of the conversation, Mr. Stremmel advised Mr. James that Weyyakin and the Idaho Foundation for Parks and Lands, Inc. possessed a right-of-way for the McCoy Ditch, as well as the adjacent easement for cleaning, maintaining and repairing the ditch as statutorily prescribed in Idaho Code § 42-1204. Mr. James demanded that Mr. Stremmel write him a letter detailing what Weyyakin was going to do concerning the repair of the McCoy Ditch. When Mr. Stremmel indicated he was not going to write such a letter, Mr. James declared that he had grown tired of the conversation, and he rather unceremoniously hung up on Mr. Stremmel. That Mr. Stremmel and his fellow board members were offended by such conduct is of little consequence at this time. What does matter, however, is the City's subsequent conduct after having been expressly advised of the existence of the ditch easement, and the related statutory ditch maintenance easement.

On March 1, 1999, Mr. James issued a building permit (No. 99-002) to Richard and Susan Hare for construction in the Trail Creek Subdivision. The building permit allowed construction of a dwelling within a few feet of the McCoy Ditch, resulting in the creation of an encroachment on the statutorily declared easement for ditch maintenance using "such equipment as is commonly used, or is reasonably adapted, to that work". I.C. § 42-1204. Not only did the construction work impair that maintenance easement, the excavation undertaken by the Hares resulted in the total destruction of approximately forty (40) feet of the downstream embankment of the McCoy Ditch. Weyyakin first became aware of this activity on March 23 of this year. When questioned by Mr. Stremmel as to why he had not notified either Weyyakin or the Idaho Foundation for Parks and Lands concerning the proposed building construction on the underlying easements, Mr. James indicated that neither entity was entitled to be made aware of the building permit application because there was no easement recorded in Blaine County. I have advised Charles McDevitt, the attorney for the Idaho Foundation for Parks and Lands, of the City's position in this regard. Quite candidly, the Weyyakin board is dismayed at conduct of City officials in this situation. After having been expressly advised of the existence of a statutory easement for the ditch and a right-of-way for maintenance, it seems somewhat disingenuous to take the position that the City can summarily proceed to issue building permits that affect the property rights of one of its citizens simply because the statutory easement is not recorded in the records of Blaine County. Weyyakin board members believe that the City's action in issuing this recent building permit was precipitated by their refusal to submit to Mr. James' demands for design review approval of the repairs to the McCoy Ditch. They have asked me to research the issue concerning the City's liability concerning this matter because of the disastrous results that have ensued.

Until a decision is made by the Weyyakin board in that regard, however, the Weyyakin board members want to provide additional express notice to the City of Sun Valley that Idaho Code § 42-1204 (copy enclosed) which was adopted in 1881 is still in effect in Idaho. The board would request that you advise the Planning & Zoning Commission and your building department of the

Mayor Praggastis and the
City Council Members
March 31, 1999
Page 3

validity of statutorily declared rights-of-way, and the need to effectively and affirmatively deal with those issues when building permits are sought in areas traversed by irrigation ditches. Disputes about water and water rights in Idaho are as old as the territorial government. The Weyyakin board members would have hoped, however, that having imparted actual knowledge of the laws to a City employee, the necessity for this rancor could have been avoided. The Council's assistance in achieving a solution would be genuinely appreciated by Weyyakin.

If you have any questions or comments, please feel free to contact me.

Yours truly,

GARY D. SLETTE

GDS:rlw

Encls.

cc: Weyyakin Ranch Property Owners Association
Chas. F. McDevitt, Esq.
Rand Peebles, Esq.

rlw/gds/detector/sunvalle

RECEIVED APR 5 1999

cc: Carol Strommel
Chuck McDermott

April 1, 1999

Mayor
Thomas C. Praggastis**City Council**
David F. Wilson
Council President
Kevin F. Laird
Linda O'Shea
James A. Bowen**City Administrator**
Robert L. Van NortGary D. Slette
Rosholt, Robertson & Tucker
142 3rd Ave. North
P.O. Box 1906
Twin Falls, ID 83303-1906

RE: McCoy Ditch

Dear Mr. Slette:

In response to your letter of March 31, 1999, I would like to follow up on the City's action regarding the referenced ditch and City building permit No. 99-002. It is our understanding that you discussed this matter last week with our City Attorney.

As you may know, our Building Inspector has been in contact with the architect and the contractor for this project. They are aware of the right-of-way for the ditch and the damage that has occurred during construction for the foundation of the house. The site will be inspected by the City for conformance with the approved grading plan.

We apologize for any misunderstandings related to this matter, and look forward to a satisfactory resolution prior to this year's irrigation season.

Sincerely,

David F. Wilson
Council President

cc: Mayor and City Council

Add to ea
\$5.00

WILLIAM H. VANDERBILT

P.O. Box 4740
Ketchum, Idaho 83340

April 2, 1999



Sharon Hubler
Idaho foundation for Parks and Land
5657 Warm springs Ave.
Boise ID 83712

Dear Sharon,

This is to confirm our conversation of yesterday wherein I expressed my concerns about the cleaning and repair work to be done on the irrigation ditch that serves the Reinheimer Ranch. This ditch runs through my property, quite close to my home at 300 Garnet St, Ketchum.

As I mentioned in our conversation, Annie and I will be out of the country from April 7 to May 22, and thus will not be able to take part in any conversation about exactly how the improvement work, if it is necessary, will be done. For this reason we have asked Jim Speck, an old acquaintance and partner in the firm of Speck and Aanestad, to look out for our interests while we are away.

As I also mentioned, hiring Jim in no way reflects an aggressive approach to this issue on our part. Our goal is simply to make sure that in our absence everything possible is done to minimize the impact on our property of whatever work is deemed necessary to maintain the ditch. Specifically, if major improvements are required, we would like to have the work done by a crew of manual laborers rather than by a tractor or backhoe.

With this in mind, if any decisions are to be made, or if any work is to be done prior to my return on May 22, please contact Jim at his office (208-726-4421).

Annie and I greatly appreciate your attention to our concerns, as well as all the good work the Foundation has done on the Reinheimer Ranch.

Sincerely,

W.H. Vanderbilt

cc. Carl Stremmel, Weyyakin Board of Directors

RECEIVED APR 6 1999

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-1121
FACSIMILE
(208) 726-0752

April 5, 1999

Mr. Gary Slette
ROSHALT, ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83301

Re: Vincent J. McGuinness - Weyyakin Homeowners Association.

Dear Gary:

My client, Mr. Vince McGuinness, recently received a copy of the letter from Weyyakin Homeowners Association to the "McCoy Ditch Area Land Owners". As you may know, Mr. McGuinness has since December 1997 tried to get a commitment out of the Association to adequately repair the damage caused by a leak or overflow of the Ditch adjacent to his property during the summer of 1997. Failing to get a satisfactory response from the Association, Mr. McGuinness asked my firm for assistance.

The letter states the Association and the Idaho Foundation for Parks and Lands will be repairing the Ditch as soon as weather permits. Mr. McGuinness would like assurance that this includes a full repair of the Ditch at the area in question so it will not leak again and not be such an eyesore. The Association's and Foundation's responsibilities under the Idaho statutes require restoration of damaged lands as well as repair and maintenance of the Ditch. We would like to know the specific restoration plans as this will have a large impact on my client's property. It is very important this be done as soon as possible before further runoff and erosion make an already ugly scar much worse.

Please respond on behalf of the Association and Foundation as soon as possible. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation



James P. Speck

JPS/j
cc: client

AFTER RECORDING MAIL TO:
James P. Speck
Speck & Aanestad
A Professional Corporation
P.O. Box 987
Ketchum, Idaho 83340

RECEIVED
JUN 14 1999
SPECK & AANESTAD

AGREEMENT

428272
Agreement
BLAINE CO. REQUEST
OF: *Speck & Aanestad*
JUN 10 AM 10 54
MARSHA FIERMAN, CLERK
FEES \$ 30.00

THIS AGREEMENT is made and entered into this 28 day of May, 1999, by and among **WEYYAKIN RANCH PROPERTY OWNERS ASSOCIATION, INC.**, an Idaho corporation (hereinafter "Weyyakin"); **IDAHO FOUNDATION FOR PARKS AND LANDS, INC.**, an Idaho corporation (hereinafter "Foundation"); and **RICHARD HARE and SUSAN HARE**, husband and wife (hereinafter "Hares").

WITNESSETH:

WHEREAS, Hares are the owners of Lots 8 and 9 of Trail Creek Subdivision No. 2 (the "Hare Property") as the same is recorded in the official records of Blaine County, Idaho; and

WHEREAS, Weyyakin is the owner and holder of IDWR Water Right No. 37-00289 which entitles Weyyakin to receive 7.0 cfs of water diverted from Trail Creek and delivered to Weyyakin's real property via an irrigation ditch known as the McCoy Ditch; and

WHEREAS, the Foundation is the owner and holder of IDWR Water right No. 37-00457 which entitles the Foundation to receive 4.8 cfs of water diverted from Trail Creek and delivered to the Foundation's real property via the McCoy Ditch; and

WHEREAS, the McCoy Ditch traverses the Hare Property; and

WHEREAS, the parties hereto desire to set forth an agreement to provide for the future use, maintenance and repair of the portions of the McCoy Ditch located on the Hare Property;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Hares acknowledge that Weyyakin and the Foundation have an easement pursuant to I.C. §42-1101, et seq., in that portion of the existing water course known as the McCoy Ditch which passes over, on and through the Hare Property to deliver their water rights from Trail Creek to their respective properties, together with an easement for cleaning, maintaining and repairing the McCoy Ditch pursuant to I.C. § 42-1101, et seq., and I.C. § 42-1201, et seq.
2. The Hares are in the process of constructing a residence on Lot 9. As part of the construction on Lot 9, Hares have rebuilt a portion of the McCoy Ditch consistent with the specifications prepared by EHM Engineers ("EHM") of Twin Falls in a letter dated April 26, 1999, a true copy of which is attached hereto as Exhibit "A", and by this reference incorporated herein. Weyyakin and the Foundation accept the rebuilt portion of the McCoy Ditch and release the

Hares from any existing or outstanding claims or liabilities relating to the McCoy Ditch reconstruction.

3. As part of the consideration for this Agreement, Hares, for themselves and their successors in interest, agree to maintain in perpetuity that portion of the McCoy Ditch which crosses the Hare Property so that it continues to deliver the water which is diverted from Trail Creek pursuant to the decreed water rights of Weyyakin and the Foundation. Such maintenance shall be undertaken by the Hares as reasonably directed by either Weyyakin or the Foundation. Regular maintenance of the McCoy Ditch shall be conducted within thirty (30) days of notice being provided to the Hares, in writing, by either Weyyakin or the Foundation. Hares' performance of such regular maintenance shall be excused during periods of time when weather or an act of God will not allow such repairs to be undertaken. However, upon the termination of such restricting event, Hares shall immediately undertake to accomplish the routine maintenance called for by either Weyyakin or the Foundation. In the event of an emergency or a future failure of the portion of the McCoy Ditch located on the Hare Property, or if water deliveries are impeded in that portion of the McCoy Ditch located on the Hare Property, Hares shall rectify the problem as soon as possible following observation by them, or upon receipt of notice, either oral or written, by Weyyakin or the Foundation. In the event that the Hares do not either (a) restore the operation of the system within twenty-four (24) hours after such emergency or failure is discovered so that irrigation water can be delivered, or (b) if the nature of such emergency, failure or impedance is such that the same cannot with due diligence be repaired or restored within such twenty-four (24) hour period, commence such repair or restoration within the twenty-four (24) hours and diligently pursue the same until completion, Weyyakin and the Foundation reserve the right to rectify the problem on their own. In such event, Hares agree to be responsible for all costs of repairing the McCoy Ditch, and to pay such costs within thirty (30) days after being billed therefor. If Hares or their successors fail to timely undertake the regular maintenance of the McCoy Ditch, either Weyyakin and/or the Foundation may elect to do the maintenance and invoice the Hares or their successors as set forth herein above.
4. Hares and their successors in interest agree to indemnify and hold harmless Weyyakin and the Foundation, and their successors, from and against any and all claims, suits, damages, costs, losses, findings, penalties, assessments and expenses of whatever kind or nature in any manner proximately caused by the construction, operation, maintenance, repair, remodeling, use or existence of that portion of the McCoy Ditch which traverses the Hare Property. Such indemnity shall extend to costs and attorneys fees incurred by either Weyyakin and/or the Foundation that result from the filing or institution of any such claim. This indemnification shall not, however, relieve or release Weyyakin or the Foundation from any liability arising out of or resulting from the negligence or wrongful acts of Weyyakin or the Foundation, their agents or employees, in exercising their rights under this Agreement.
5. Weyyakin and the Foundation agree that so long as the Hares or their successors in interest abide by the covenants herein provided, the dwellings located on the Hare Property will not constitute an encroachment upon or otherwise affect the rights of Weyyakin or the

Foundation with regard to the easements described in paragraph 1 herein above.

6. Nothing herein shall be construed as a waiver or relinquishment of Weyyakin's and/or the Foundation's rights to receive a flow of water through the McCoy Ditch sufficient to meet their collective water rights. Nothing herein shall be deemed to preclude or prevent Weyyakin's or the Foundation's agents' and employees' right of ingress and egress now and in the future to and over the easement for the McCoy Ditch; however, as long as the Hares or their successors in interest abide by the covenants herein provided, such right of ingress and egress shall be limited to inspection of the McCoy Ditch. Weyyakin and the Foundation agree that a permanently buried pipe or conduit shall not be placed within the easement for the McCoy Ditch across the Hare Property unless it is done as a part of a project to pipe the entire McCoy Ditch from Trail Creek to the delivery junction for the Weyyakin and Foundation properties.
7. It is understood and agreed that any contractor or contractors employed by the Hares shall be agents of the Hares, and not an independent contractor, and Hares shall be liable as principal therefor.
8. The failure or refusal of either party hereto, or their successors in interest, to comply with any provision herein by which they are bound to comply shall constitute a default, and shall entitle the non-defaulting party to either seek specific performance, or to terminate this Agreement and to seek damages from the defaulting party, or their successors, for such non-compliance. In the event any party hereto is required to initiate legal proceedings to enforce its or their rights under this Agreement, such party shall be entitled to recover all costs and expenses incurred therein, including attorney fees and costs.
9. This Agreement shall be recorded in the Office of the Blaine County Recorder's Office and shall be construed and interpreted for all purposes as a covenant running with the land, binding the Hares and their successors in interest.
10. This Agreement contains the entire understanding and agreement of the parties hereto with respect to the subject matter hereof, and no prior written or oral agreement or understanding pertaining to any such matters shall be effective for any purpose. This Agreement may not be amended, modified, altered, changed, subtracted from or added to, except by an agreement in writing signed by all the parties to this Agreement, or their respective successors in interest.
11. This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto.
12. This Agreement shall be construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

"WEYYAKIN"
WEYYAKIN RANCH PROPERTY OWNERS
ASSOCIATION, INC.

By: 
ROBERT HOLLAND
Its: President

"FOUNDATION"
IDAHO FOUNDATION FOR PARKS
AND LANDS, INC.

By: 

Its: _____

"HARES"

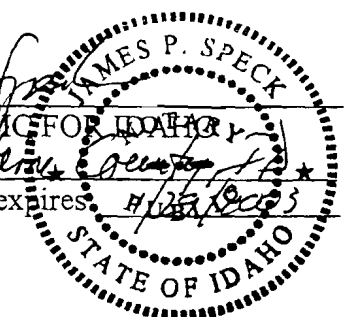

RICHARD HARE


SUSAN HARE

STATE OF IDAHO)
)ss.
County of Blaine)

On the 20 day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared RICHARD HARE, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

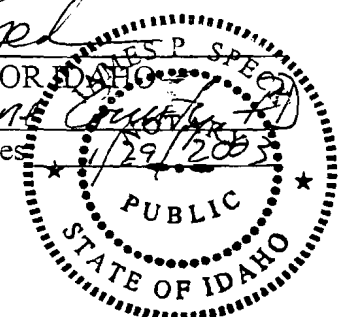
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

J. P. Speck
NOTARY PUBLIC FOR IDAHO
Residing at Blaine, Idaho
My commission expires 1/29/2003


STATE OF IDAHO)
)ss.
County of Blaine)

On the 20 day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared SUSAN HARE, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

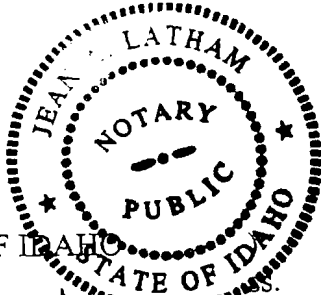
J. P. Speck
NOTARY PUBLIC FOR IDAHO
Residing at Blaine, Idaho
My commission expires 1/29/2003


STATE OF IDAHO)
)ss.
County of Blaine)

On this 21 day of June, 1999, before me, a Notary Public for the State of Idaho, personally appeared ROBERT HOLLAND, known or identified to me, to be the President of WEYYAKIN RANCH PROPERTY OWNERS ASSOCIATION, INC., and the person who executed the instrument on behalf of said corporation, and acknowledged to me that

such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



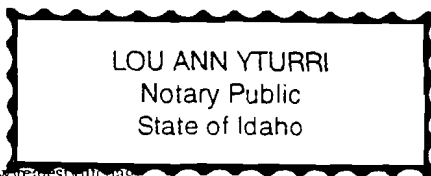
STATE OF IDAHO

County of Ada)

Jean A. Latham
NOTARY PUBLIC FOR IDAHO
Residing at Blaine Co
My commission expires 1-13-2001

On this 28th day of May, 1999, before me, a Notary Public for the State of Idaho, personally appeared Don K. Weilmunster, known or identified to me, to be the President of IDAHO FOUNDATION FOR PARKS AND LANDS, INC., and the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Seal

Lou Ann Yturri
NOTARY PUBLIC FOR IDAHO
Residing at Boise Id
My commission expires 11-23-2004

04/26/1999 14:40 2087346049

EHM ENGINEERS

PAGE 02

**Engineers, Inc.**

ENGINEERS / SURVEYORS / PLANNERS

EXHIBIT A

IN THE FIELDS OF:
PLANNING
SURVEYING
HIGHWAYS
WATER
SEWAGE
STRUCTURAL
SUBDIVISIONS
BRIDGES
ENVIRONMENTAL
QUALITY CONTROL
CONSTRUCTION MGMT.

April 26, 1999

Carl Stremmel
P.O. Box 4385
Ketchum, Id 83340

Carl,

Saturday, April 24th, we inspected the reconstruction of the Weyyakins ditch at the Hare guesthouse. We observed an earthen ditch between 1.6 and 1.9 feet deep and 4 to 8 feet wide. The architectural ditch section had not been constructed.

The following are our comments regarding that construction.

- 1) The reconstructed ditch depth runs between 1.6 and 1.9 feet from flowline to top of bank. The bottom of the reconstructed ditch width was between 4' - 0" and 4' - 4". The top was between 8' - 0" and 9' - 0".

These sections with a smooth earthen bottom are hydraulically capable of carrying 11.87 cfs.

- 2) The area between the ditch and the house has been filled relieving my concerns on leakage from the ditch.
- 3) We did not observe the methods of materials used to construct the ditch. It appears that native materials were used and that these were adequately compacted during placement. However, as with all new construction, there are no vegetation roots, which would aid in soil protection from erosion.

We calculate a velocity of approximately 2 feet per second for this section. This will displace finer clay and silt particles - leaving heavy sands and gravels.

- 4) Based on a hydraulic slope of 0.002 ft/ft we calculate the freeboard at the upstream property line to be 101.62 (100.62 + 0.19) = 0.24 feet. This is controlled because an existing downstream section at 95 feet from the upstream property line is operating at a hydraulic head elevation of 100.62 feet (BM centerline road at east fence line).

Please note that we analyzed the earthen ditch capacity as it existed on Saturday April 24th.

621 North College, Suite 100 • Twin Falls, Idaho 83301 • (208) 734-4888 • FAX 734-6049
Westside Office Building, 5th St. and 1st Ave. • Ketchum, Idaho 83340 • (208) 726-3578
516 S. Capital Boulevard, Suite 201 • Boise, Idaho 83702 • (208) 386-9170

04/26/1999 14:40 2087345049

EHM ENGINEERS

PAGE 03

- 5) The ditch section submitted in your April 22nd faxed to me contained 6 inches of gravel an EPDM or claymax 200 liner and decorative block.

If these items are installed in the existing ditch section without further excavation or fill, it is my opinion that the ditch will not have sufficient capacity to safely transmit 11.87 cfs.

6) Conclusion

- 1) I recommend a minimum of 6 inches of freeboard at 11.87 cfs. The 4/24/99 constructed sections provide only 3 inches at some places. The entire bank of the ditch should be raised a minimum of 3 inches for a 6 foot width along the entire length of the ditch.
- 2) If the liner, gravel, and architectural block sections are to be added to the ditch they should be installed so as to conform to the 24 inch depth shown on the architectural ditch sections. Adding these to the existing ditch results in 1.1 to 1.4 feet of total depth and a 2 foot bottom width.

If you have any questions please call.

Respectfully,

EHM Engineers, Inc.

Gary R. Burkett, P.E.

cc: Gary Slette

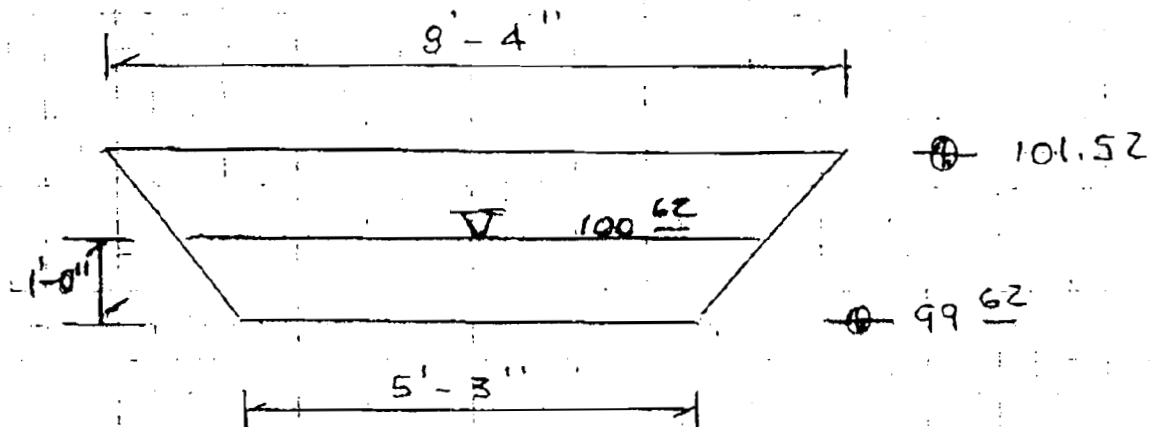


EHM Engineers, Inc.

ENGINEERS / PLANNERS / SURVEYORS 621 North College, Suite 100 Twin Falls, ID 83301 208/734-4888 FAX 734-5049

JOB NAME Weygarkin DITCH JOB NO. _____BY GRB DATE 4/26/99 SHEET _____ OF _____STATION 10 + 95

Earth undisturbed



$$A_{10} = 5.95 \text{ FT}^2$$

$$WP = 8.7 \text{ feet}$$

$$n = 0.0225$$

$$R_h^{2/3} = \left(\frac{A}{WP} \right)^{2/3} = \left(\frac{5.95}{8.7} \right)^{2/3} = 0.7762$$

$$S^{1/2} = (0.002)^{1/2} = 0.0447$$

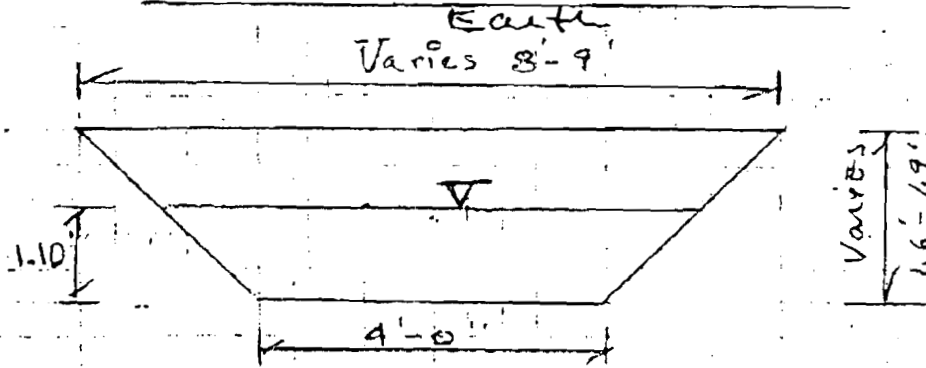
$$V = \frac{1.49}{0.025} (0.7762) (0.0447) = 2.07$$

$$Q = VA = 2.07 (5.95) = 12.31 \text{ cfs}$$



EHM Engineers, Inc.

ENGINEERS / PLANNERS / SURVEYORS 821 North College, Suite 100 Twin Falls, ID 83301 208/734-4888 FAX 734-5049

JOB NAME WEYAKIN DITCH JOB NO. _____BY GRB DATE 4/26/99 SHEET _____ OF _____RECONSTRUCTED SECTION

$$A = 1.10 (5.05) = 5.55 \text{ FT}^2$$

$$n_{\text{soil}} = 0.025$$

$$R_h^{2/3} = \left(\frac{A}{P} \right)^{2/3} = \left(\frac{5.55}{7.0} \right)^{2/3} = 0.8566$$

$$S^{1/2} = (0.002)^{1/2} = 0.0447$$

$$V = \frac{1.49}{n} R_h^{2/3} S^{1/2}$$

$$V = \frac{1.49}{0.025} (0.8566) (0.0447) = 2.28 \text{ FT/s}$$

$$Q = VA = 2.28 (5.55) = 12.66 \text{ CFS}$$

EXHIBIT B

$S = 0.003$ to 0.004 ft/ft.

$n(\text{DES}) = 0.04$

$n(\text{ROUTING}) = 0.030$

$d = 1.5'$, $B = 4'$ MIN.

ASSUME VERTICAL SINES

$n_{\text{weighted}} = 0.034$

① $S = 0.003$ ② ≈ 12.9 cfs FLOW ≈ 0.31 FLOW IN SUBCUT

③ $S = 0.004$ ④ ≈ 14.9 cfs FLOW ≈ 0.36 "

⑤ $S = 0.02$ ⑥ ≈ 33.3 cfs FLOW ≈ 0.79 " "

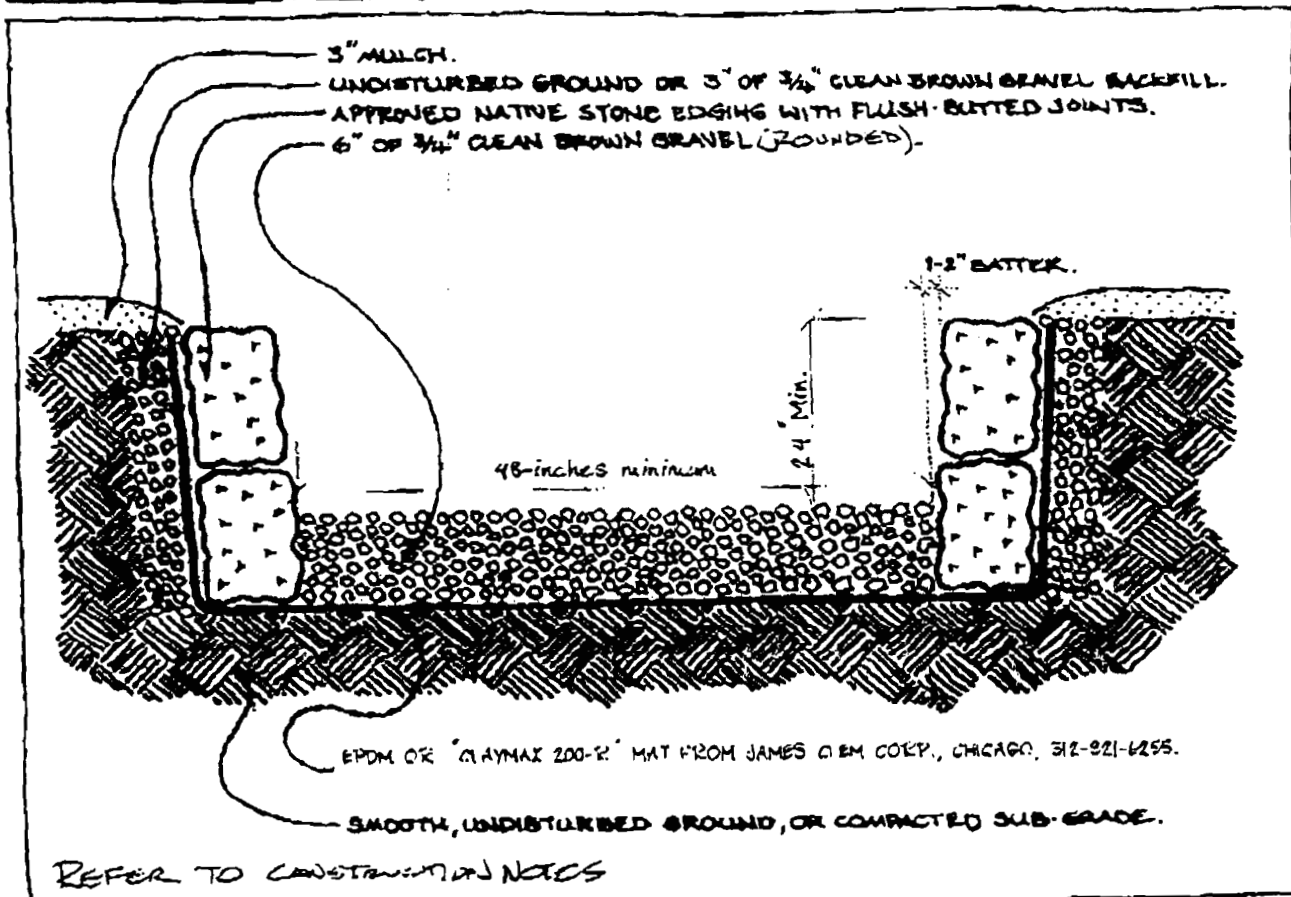


HARE GUEST RESIDENCE

MCCOY / WEYBARK DITCH

LOT 2 TRAIL CROSS SUB. NO. 2

CAPACITY.



CANAL DETAIL

© 1992 BY ALHEMIE

REFERENCE, PREPARED BY ALHEMIE DATED 1992

LANDSCAPE ARCHITECTURE

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

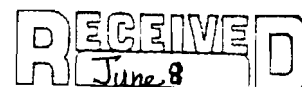
120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

June 7, 1999

Don K. Weilmunster, President
Idaho Foundation for Parks and lands
5657 Warm Springs Avenue
Boise, Idaho 83712



**Re: Agreement - Weyyakin Ranch Property Owners
Association, Inc./Idaho Foundation for Parks and Lands/
Richard and Susan Hare - McCoy Ditch**

Dear Don:

Enclosed is my client's check payable to the Foundation in the amount of \$4,000, a copy of which was previously forwarded to you with the above-referenced Agreement for signature. The Agreement has now been signed by all parties and forwarded to the office of the Blaine County Recorder to be recorded.

Thank you once again for your assistance for bringing this matter to a mutually acceptable resolution for all parties.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____

James P. Speck

A handwritten signature in cursive script, appearing to read "Jim", written over a horizontal line.

JPS:jal
Enclosures
cc: Client (w/encls.)
Gary Slette (w/encls.)

SPECK & AANESTAD

A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

JAMES P. SPECK
DOUGLAS J. AANESTAD
BENJAMIN W. WORST

June 7, 1999

Blaine County Recorder
206 1st Avenue South
Suite 200
Hailey, Idaho 83333

**RE: Agreement - Weyyakin Ranch Property Owners Association, Inc./
Idaho Foundation for Parks and Lands, Inc./Richard and Susan
Hare**

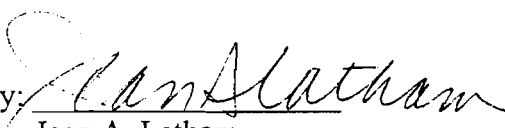
Dear Madam:

Enclosed please find an Agreement, together with our firm's check in the sum of \$30.00 for recording same. Please mail the original back to our office after recordation.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
Jean A. Latham
Assistant to James P. Speck

:jal
Enclosure
cc: Client
Gary Slette
Don Weilmunster



HOGUE & DUNLAP, L.L.P.
ATTORNEYS AT LAW

TERRY G. HOGUE
TRACY DUNLAP

16 WEST CROY STREET, SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

KETCHUM OFFICE
220 EAST AVENUE
POST OFFICE BOX 538
KETCHUM, IDAHO 83340
(208) 726-3289
FAX (208) 726-3340

OF COUNSEL
THOMAS B. CAMPION, JR.

September 4, 2002

VIA FACSIMILE ONLY 312-573-1444

VIA FACSIMILE ONLY 726-7745

Mr. Carl W. Stremmel
1040 N. Lakeshore Drive #11A
Chicago, IL 60611

VIA FACSIMILE ONLY: 726-9731

Mr. Bill Nagel, Secretary
Weyyakin Homeowner's Association
P.O. Box 728
Ketchum, Idaho 83340

Re: Sammis Issues

Dear Carl and Bill:

I am attaching to this letter the initial draft of an Agreement between the Association, the Idaho Foundation for Parks and Lands, Mr. and Mrs. Sammis, and Mr. and Mrs. Steppe. This draft follows the format of the Agreement Mr. Slette prepared for you in 1999 to settle the dispute with Mr. and Mrs. Hare.

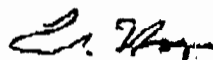
Please review the attachment and inform me of any additions or corrections you desire. Once it is in a form acceptable to you, I will forward a copy of same to Mr. Sammis.

Mr. Sammis was supposed to arrange a telephone conference between he, Mr. Steppe, and me a number of weeks ago. To date, I have not spoken with Mr. Steppe.

If you have questions, please telephone me.

Respectfully,

HOGUE & DUNLAP, LLP



Terry G. Hogue

TGH:ds

PRELIMINARY DRAFT FOR DISCUSSION PURPOSES ONLY

AGREEMENT

THIS AGREEMENT IS MADE and entered into this _____ day of September, 2002, by and among WEYYAKIN RANCH PROPERTY OWNERS ASSOCIATION, INC., an Idaho non-profit corporation (hereinafter "Weyyakin"); IDAHO FOUNDATION FOR PARKS AND LANDS, INC., an Idaho non-profit corporation (hereinafter "Foundation"); DONALD SAMMIS and _____ SAMMIS, husband and wife (hereinafter collectively "Sammis"); and STEVEN STEPPE AND _____ STEPPE, husband and wife (hereinafter collectively "Steppe"). Weyyakin, Foundation, Sammis, and Steppe are sometimes hereinafter collectively referred to as the "parties" and individually as a "party."

RECITALS

A. Weyyakin is the owner and holder of IDWR Water Right No. 37-00289 which entitles Weyyakin to receive 7.0 cfs of water diverted from Trail Creek and delivered to Weyyakin's real property via an irrigation ditch known as the McCoy Ditch; and

B. The Foundation is the owner and holder of IDWR Water Right No. 37-00457 which entitles the Foundation to receive 4.8 cfs of water diverted from Trail Creek and delivered to the Foundation's real property via the McCoy Ditch; and

C. Sammis is the former owner of and Steppe is the current owner of

legal description required

("the Property"); and

D. A sewer line and a water line which services the Property are currently located under the McCoy Ditch. Sammis is contractually obligated to Steppe to repair the sewer line and Steppe desires to make repairs to the water line in the location underneath the McCoy Ditch; and

E. The parties desire to set forth in this Agreement the terms and conditions under which Sammis and Steppe can make their desired repairs to the water line and sewer line.

AGREEMENT- 1

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

1. The foregoing Recitals are incorporated herein.
2. Sammis and Steppe acknowledge Weyyakin and the Foundation have an easement pursuant to I.C. § 42-1101, et seq. in that portion of the existing water course known as the McCoy Ditch to deliver their water rights from Trail Creek to their respective properties, together with an easement for cleaning, maintaining, and repairing the McCoy Ditch pursuant to I.C. § 42-1101, et seq. and I.C. § 42-1201, et seq.
3. Sammis and Steppe shall commence the repairs of the water line and sewer line on September _____, 2002, and complete such repairs and return the McCoy Ditch to its same condition as it was before such excavation and repairs occurred on or before to September _____, 2002. During the repair process, Sammis and Steppe shall encase the water line and sewer line in a manner acceptable to Weyyakin and the Foundation which will ensure the water line and sewer line can be repaired in the future without any further interference with, excavation of, or construction in, about or under the McCoy Ditch.
4. The specific work to be completed to repair the sewer line is as follows:
5. The specific work to be completed to repair the water line is as follows:

AGREEMENT- 2

6. It is understood and agreed any contractor or contractors employed by Sammis or Steppe shall be their agents and not independent contractors. Sammis and Steppe shall be personally liable as a principal for their contractor or contractors for any damages or expenses incurred by Weyyakin and the Foundation.

7. Sammis and Steppe represent and warrant any contractor or contractors employed by them to make the repairs described above shall be fully qualified to perform such work and shall have appropriate liability insurance and workers' compensation insurance. Sammis and Steppe represent and warrant any contractor or contractors employed by them shall complete the work in a safe manner and not endanger or damage any person or adjoining property.

8. Sammis, Steppe, and their successors-in-interest hereby indemnify and hold harmless Weyyakin and the Foundation, and their successors-in-interest, from and against any and all claims, suits, damages, costs, losses, penalties, assessments, and expenses of whatever kind or nature in any manner caused by the repair of the water and sewer line and excavation within, under, and about the McCoy Ditch. Such indemnity shall extend to all damages, costs, and fees, including attorney's fees, incurred by either Weyyakin or the Foundation that arise now or at anytime in the future because of this repair and excavation work completed by Sammis and Steppe.

9. Nothing herein shall be construed as a waiver or relinquishment of Weyyakin's or the Foundation's right to receive a flow of water through the McCoy Ditch sufficient to meet their collective water rights. Nothing herein shall be deemed to preclude or prevent Weyyakin or the Foundation's agents and employee's right of ingress or egress now or in the future to and over the easement for the McCoy Ditch.

10. The failure or refusal of any party, or their successors-in-interest, to comply with any provision herein by which they are bound to comply shall constitute a default, and shall entitle a non-defaulting party to seek specific performance and to seek damages from the defaulting party, or their successors, for such noncompliance. In the event any party is required to initiate legal proceedings to enforce its or their rights under this Agreement, such party shall be entitled to recover all costs and expenses incurred therein, including attorney fees and costs.

11. This Agreement shall be recorded in the office of the Blaine County Recorder's Office and shall be construed and interpreted for all purposes as a covenant running with the land, binding the parties and their successors-in-interest.

12. This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter hereof, and no prior written or oral agreement or understanding pertaining to any such matters shall be effective for any purpose. This Agreement may not be amended, modified, altered, changed, subtracted from or added to, except by an agreement in writing signed by all the parties to this Agreement, or their respective successors-in-interest.

AGREEMENT. 3

13. This Agreement shall be binding upon the heirs, successors, and assigns of the parties.

14. This Agreement shall be construed in accordance with the laws of the State of Idaho.

IN WITNESS WHEREOF, the Parties have executed the foregoing Agreement the day and year first written above.

"WEYYAKIN"
WEYYAKIN RANCH PROPERTY OWNERS
ASSOCIATION, INC.

By: _____
CARL STREMMEL
Its: President

"FOUNDATION"
IDAHO FOUNDATION FOR PARKS AND
LANDS, INC.

By: _____
DON K. WEILMUNSTER
Its President

"SAMMIS"

DONALD SAMMIS

(wife) SAMMIS

AGREEMENT- 4

"STEPPE"

STEVEN STEPPE

(wife) STEPPE

STATE OF IDAHO)
)
County of Blaine) ss.

On this _____ day of September, 2002, before me, the undersigned notary public in and for said state, personally appeared CARL STREMMEL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as President of the Weyyakin Ranch Property Owners Association, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Idaho
Residing at:
Comm. expires:

STATE OF IDAHO)
)
County of Blaine) ss.

On this _____ day of September, 2002, before me, the undersigned notary public in and for said state, personally appeared DON K. WEILMUNSTER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as President of The Idaho Foundation for Parks and Lands, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for Idaho
Residing at:
Comm. expires:

AGREEMENT- 5

STATE OF CALIFORNIA)
)
County of _____) ss.

On this _____ day of September, 2002, before me, the undersigned notary public in and for said state, personally appeared DONALD SAMMIS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for California
Residing at:
Comm. expires:

STATE OF CALIFORNIA)
)
County of _____) ss.

On this _____ day of September, 2002, before me, the undersigned notary public in and for said state, personally appeared _____ SAMMIS, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for California
Residing at:
Comm. expires:

AGREEMENT- 6

FROM :

SEP-04-2002 WED 04:38 PM ROGUE & DUNLAP, L.L.P.

PHONE NO. :

FAX NO. 1208/884230

Sep. 27 1997 12:00PM P8
P. 09

STATE OF CALIFORNIA)
) ss.
County of _____)

On this _____ day of September, 2002, before me, the undersigned notary public in and for said state, personally appeared STEVEN STEPPE, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for California
Residing at:
Comm. expires:

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of September, 2002, before me, the undersigned notary public in and for said state, personally appeared _____ STEPPE, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for California
Residing at:
Comm. expires:

F:\WPDATA\CORP\Weyyakin\agreement.wpd

AGREEMENT- 7

June 9, 1998

Checked with Carter Fritschle, IDWR

Reinheimer Water Right #A37-0457B

Department has **not** investigated any 37- decreed water rights; probably will do so in a few more years.

Checked our application which is for 80 Acres claimed for irrigation

Dated: May 1, 1883 for 240" or 4.8 cfs equivalent to 3"/acre

The Weyyakin Water Right is dated May 1, 1883 for **350" or 7 cfs**

After IDWR does its investigation they make a preliminary investigation, probably with a map. Next, is an opportunity to meet with us and go over recommendations.

Carter suggested having a soil profile done as part of justification of 3"/acre

Also, recommended talking to Sherl Chapman, Idaho Water Users' Association; he thinks the legislation was passed in 1996, fairly explicit on lateral ditch right-of-ways.



IDAHO FOUNDATION
for PARKS AND LANDS

July 16, 2003

DIRECTORS

DON K. WEILMUNSTER
President
1977 - 2003

FRED D. HARDER
Vice President
1981 - 2004

JOHN BARCLAY
Secretary/Treasurer
1981 - 2003

H. LARRY LEASURE
1975 - 2004

SHERLEY V. MIN
1977 - 2003

TERRY GESTRIN
1996 - 2004

C.M. "CHUCK" RICE
1997 - 2003

DOUGLAS PORTER
1999 - 2004

CHARLES F. McDEVITT
1999 - 2004

JAMIE ANDERSON
2000 - 2004

TONY VARILONE
2001 - 2004

SHARON HUBLER
Executive Director

ADVISORY BOARD

SHERMAN AKERS, POCATELLO
J. ROBB BRADY, IDAHO FALLS
RONALD E. DALY, BOISE
GOVERNOR ROBERT E. SMYLIE
ROYAL STILES, SODA SPRINGS
JERRY L. WRAY, BUHL

Mr. Harold Drussel, Sec./Treas.
Upper Big Wood River Water Users Association
152 Base Line Road
Bellevue, Idaho 83313

Dear Mr. Drussel:

It was good to visit on the telephone the other day. I have been checking on the information that you need for the 240 water shares held by the Idaho Foundation for Parks & Lands (formerly Idaho Park Foundation).

Before I forget, we appreciate your service of 27 years as Secretary.

The Point of Diversion is the McCoy Ditch. Turnout No. 3

The place where water is used:

That part of the Reinheimer Ranch in T 4 N; R 18 E; Section 19
NE ¼ NW ¼ and SE ¼ NW ¼

If you have any questions or need further information do not hesitate to let us know.

Sincerely,

Sharon Hubler
Sharon Hubler

IDAHO FOUNDATION FOR PARKS AND LANDS .

FAX NUMBER (208) 344-5910

COVER PAGE

DATE: July 27, 1999

TO: Water District No.37 & 37M

FROM: Sharon Hubler

NUMBER OF PAGES (INCLUDING COVER PAGE): One

I thank you for the information on the water diversion report for June. It is practical information considering what has been happening with the McCoy Ditch.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451



LEE R. PETERSON
Watermaster

FACSIMILE TRANSMISSION

TO: Idaho Parks Foundation
FAX NUMBER: 208-344-5910
FOR THE ATTENTION OF: _____
FROM: Water District 37 & 37M
FAX NO.: Same as phone 886-2451
NUMBER OF PAGES: 2
(INCLUDING THIS ONE)
DATE: 4/12/99 7/26/99 9/16/99
MESSAGE: Sorry this is so late I just got out
of the hospital.

=====

If you do not receive the above number of pages, or if there is any other problem, please call (208) 886-2451 at Shoshone, Idaho.

=====

The information contained in this fax is confidential and subject to attorney-client privilege. If the reader is not the intended recipient or the agent thereof, you are hereby notified that any dissemination, distribution or copying of the fax is prohibited. If you have received this fax in error, please notify us immediately and return the original by mail at our expense. Thank you.

WATER DISTRICT 37 & 37M

CANAL NAME	MC COY	CANAL NO.					3 1998
OWNER	IDAHO PARKS FOUNDATION & WEYYAKIN PARTNERS						
DATE	APRIL	MAY	JUNE	JULY	AUG	SEPT	DATE
1			11.40	8.04	10.60	9.00	1
2			11.40	8.04	10.60	9.00	2
3			11.40	8.04	10.60	9.00	3
4			11.40	8.04	10.60	9.00	4
5			11.40	8.04	10.60	9.00	5
6			11.40	8.04	10.60	9.00	6
7			11.40	8.04	9.00	9.00	7
8			11.40	8.04	9.00	9.00	8
9			11.40	8.04	9.00	9.84	9
10			11.40	8.04	9.00	9.84	10
11			11.40	8.04	9.00	9.84	11
12			11.40	8.04	9.00	9.84	12
13			11.40	8.56	9.00	9.84	13
14			11.40	8.56	9.00	9.00	14
15			10.60	9.00	9.00	9.00	15
16			10.60	9.00	9.00	9.00	16
17			11.00	9.00	9.00	9.00	17
18			11.00	9.00	9.00	8.04	18
19			10.60	9.00	9.00	8.04	19
20			10.60	9.00	9.00	8.04	20
21			10.60	9.00	8.04	9.84	21
22			10.60	9.44	8.04	9.84	22
23			10.60	9.44	8.04	8.04	23
24			10.60	9.84	9.00	8.04	24
25			10.60	9.84	9.00	6.96	25
26			5.68	9.84	9.00	6.96	26
27			5.68	9.84	9.00	6.96	27
28			5.68	9.84	9.00	6.96	28
29			6.96	11.40	9.00	6.96	29
30			6.96	11.40	9.00	6.96	30
31				10.60	9.00		31
TOTAL	0.00	0.00	307.96	278.08	285.72	258.84	

McCoy 3 *summit* YEARLY C F S
 240 . inches YEARLY ACRE FEET
 4.80 cfs TOTAL NO OF DAYS
 YEARLY MEAN

1131
 2239
 122
 9

Priority date 5/1/1883
Weyyakin 7.0 cfs
Parko Fund. 4.8 cfs
 11.8 cfs

37-0457
 5/1/1883

WATER DISTRICT #37 & 37-M

CANAL NAME MCCOY CANAL NUMBER 03 1992

OWNER IDA PARKS FOUNDATION & WEYYAKIN PARTNERS

DATE	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	DATE
1		11.80	12.10	12.10	1.00	1.00	1
2		11.80	12.10	12.10	1.00	1.00	2
3		11.80	12.10	12.10	1.00	1.00	3
4		11.80	12.10	12.10	1.00	1.00	4
5		11.80	12.10	12.10	1.00	1.00	5
6		11.80	12.10	12.10	1.00	1.00	6
7		11.80	12.10	12.10	1.00	1.00	7
8		12.10	12.10	12.10	1.00	1.00	8
9		12.10	12.10	12.10	1.00	1.00	9
10		12.10	12.10	12.10	1.00	1.00	10
11		12.10	12.10	12.10	1.00	1.00	11
12		12.10	12.10	12.10	1.00	1.00	12
13		12.10	12.10	12.10	1.00	1.00	13
14		12.10	12.10	12.10	1.00	1.00	14
15		12.10	12.10	1.00 <i>STOCK</i>	1.00	1.00	15
16		12.10	12.10	1.00 <i>WATER</i>	1.00	1.00	16
17		12.10	12.10	1.00	1.00	1.00	17
18		12.10	12.10	1.00	1.00	1.00	18
19		12.10	12.10	1.00	1.00	1.00	19
20		12.10	12.10	1.00	1.00	1.00	20
21		12.10	12.10	1.00	1.00	1.00	21
22	10.60	12.10	12.10	1.00	1.00	1.00	22
23	10.60	12.10	12.10	1.00	1.00	1.00	23
24	11.40	12.10	12.10	1.00	1.00	1.00	24
25	11.40	12.70	12.10	1.00	1.00	1.00	25
26	11.40	12.70	12.10	1.00	1.00	1.00	26
27	11.80	12.10	12.10	1.00	1.00	1.00	27
28	11.80	12.10	12.10	1.00	1.00	1.00	28
29	11.80	12.10	12.10	1.00	1.00	1.00	29
30	11.80	12.10	12.10	1.00	1.00	1.00	30
31		12.10		1.00	1.00		31

TOTAL 102.60 374.20 363.00 186.40 31.00 30.00

YEARLY C.F.S. 1087.20

YEARLY ACRE FEET 2152.656

TOTAL NO. OF DAYS 162

YEARLY MEAN 6.71

Priority Dates 5/1/883

Ida Parks 4.8 CFS

Weyyakin 7.0 CFS
11.8 CFS

1992 PRIORITY CUTS

Big Wood River Above Magic Reservoir Water District 37

Date of Priority Cut	Date Priority Cut Made
May 1, 1902	April 1, 1992
	April 1, 1992
July 15, 1887	
June 1901 to	
May 1886	April 1, 1992
	May 13, 1992
	May 14, 1992
June 30, 1884	June 23, 1992
	June 24, 1992
June 3, 1884	June 27, 1992
May 15, 1883	July 6, 1992
March 24, 1883	July 14, 1992
Dec 19, 1882	July 22, 1992
July 1, 1881	July 29, 1992

Upper Wood River Water Users Association

We need the following information
Concerning your 630 water shares

We need to know:

Where your head gate for diversion of water.

"Land Description." Where water is used.

And the description of the land that it is used on.

THIS IS VERY IMPORTANT!!

Bill Sherbine pres.

Jim Eakin vice pres.

Harold Drussel Sec./ Tres.

(27 years)

Amy. doing the watering.

Water Distribution

327-7900



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 7, 2003

RE: NOTICE of MEETING for Water Users

Dear Water User:

The Department, in cooperation with the Watermaster of District 37, has scheduled a meeting to discuss issues involving the use and delivery of the "saved water rights" on the Big Wood River which you may have an interest. Specifically, discussion will focus on the Baseline Bypass Canal and Extension Bypass Canal saved water rights.

The meeting will be held: DATE: FEBRUARY 28, 2003
 TIME: 10:00 AM
 PLACE: Shoshone School District Board Room
 409 N Apple St.
 Shoshone, ID

(1 block West of Hwy 75) (Hwy 75 is the main street through Shoshone)

HISTORY: Last year the Department received a request of the watermaster for direction on delivering "saved water rights" on the Big Wood River. On July 16, 2002, a meeting was held with some water users and the watermaster in an effort to identify and understand issues concerning delivery of saved rights on the Baseline Bypass Canal and Extension Bypass Canal. After the meeting a letter dated August 6th, 2002, was sent to the watermaster providing instruction as to how these "saved water rights" are to be delivered. (Copy attached)

Apparently the watermaster continues to field questions as to how these rights are to be delivered. With prospects of continued poor water availability this year and continued questions the meeting above has been scheduled to address delivery of these rights.

You are urged to attend the meeting if you have an interest in these matters.

Sincerely,

Allen Merritt, PE
Southern Region Manager



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
GovernorKARL J. DREHER
Director

August 6, 2002

RECEIVED

AUG - 7 2002

Lee Peterson
Watermaster District 37
PO Box P
Shoshone, ID 83352

Department of Water Resources

SUBJECT: "Saved Water" rights on Big Wood River involving Baseline Bypass and Extension Bypass Canals

Dear Lee:

Thank you for meeting with Bill Sherbine, Bill Yager, Tim Luke and me on July 16th to discuss the issues involving "saved water" that was decreed years ago as a result of development of the "Baseline Bypass" and "Extension Bypass" canals. As promised, this letter is in response to the July 16th meeting and subsequent discussions and is intended to augment or clarify past instructions provided by the department to you as watermaster for delivery of these "saved water" rights.

This same subject was addressed in a memo dated 8/20/1992 to you from Tim Luke thru Gary Spackman and in a letter dated 7/24/1994 to Dave Sellgren from Tim Luke. From the discussion on July 16th, it appears there is general agreement when the "saved water" becomes good (deliverable); however, there is not agreement as to when the "save water" is to be curtailed or trimmed back relative to delivery of senior priority rights through the Baseline Bypass and Extension Bypass canals.

This letter provides some explanation and analysis concerning the Chapman and Coffin decree "saved water" rights. Attached to this letter is an Outline of Watermaster Instructions concerning distribution of these rights.

Initiation of "saved water":

As documented in the 1992 memo, it has been the practice that when the flow of the Big Wood River at the head of the Baseline Bypass canal has diminished so that all of the flow can be safely diverted into the Baseline Bypass canal then the river is considered separated. At this time the Chapman decree "saved water" is understood to be deliverable. Similarly the Coffin decree "saved water" is deliverable when the 6/15/1883 priority water rights are completely curtailed under a priority call. This latter interpretation is based on the Coffin decree findings and descriptions of the historic methods of distributing "saved water" from

Baseline Bypass and Extension Bypass system are diminished by 5 cfs then it is equitable that the Chapman decree "saved water" be diminished or curtailed by 8% (5 / 58.84).

Delivery of "saved water" during non-irrigation season

In reading the Chapman decree there appears to be some provision for "winter saved water". This letter is not intended to provide direction for delivery of this water. If called for by the Big Wood Canal Company the department will provide further direction to you if requested after further study of this issue.

Other Issues:

Equally important to the issue of initiating and/or curtailing the "saved water" is how to deliver it to the proper users. As the decrees and your records indicate the largest portion of the "saved water" is in the name of the Upper Big Wood River Water Users Assn. (UBWRWUA). Please note that review of our records finds that UBWRWUA has failed to file claims in the Snake River Basin Adjudication. It is understood that this entity is a shareholder type organization that distributes their water based on shares in the association to their shareholders up and down the Big Wood River. I've been told that in the past UBWRWUA has annually provided a list to the watermaster so that distribution can be made. I understand that the latest list of shareholders was provided by the UBWRWUA in 1994. I understand that updates have been requested by you but have not been provided. You indicate your inspection of the 1994 list reveals numerous holdings are by either people that have died or by people with numerous diversions and you do not currently know where to deliver all of the water. During the July 16th meeting it was evident a dispute exists on whose responsibility (watermaster or association) it is to keep track of the UBWRWUA's shares and where it is to be delivered.

It is a reasonable expectation that it is the responsibility of the UBWRWUA to annually report to the watermaster where it's rights are to be delivered identifying the number of inches at the headgates of its shareholders. If they fail to do so, then the watermaster should refuse delivery. Once identified, the shareholders should then call for water when it is available. If not called for the watermaster should not deliver the water.

In the past it may have been the practice to rotate blocks of shares though the Big Wood River system above Magic Reservoir. This practice appears inconsistent with the local public interest and statutes requiring transfers. This practice should not continue unless the Department or the SRBA court provides further approval or direction.

These shares cannot be "wild cards" allowed to move at will. The 1969 transfer act requires processing of an application for transfer if a change in use is made of these rights. These rights are not grandfathered from this requirement anymore than any other right existing before 1969. The UBWRWUA should at least annually, but actually anytime a change is made in shareholders, notify the watermaster of the change. If any change of shareholders or change by shareholder results in a change in element of the right [point of

conversations with you and your deputy, Otis (Tinker) Disbennett. The Coffin decree of 7/18/1941 says: *"It being difficult accurately to fix the time when the flow of the river above and into the Dry Beds becomes an independent source of supply non-tributary to the stream below the Dry Beds, during the existence of prior rights diverted in the Dry Beds the time during any irrigation season when the right herein adjudicated becomes effective shall be deemed to be when water rights in said stream with priority of June 15, 1883 are shut off;...."* This statement supports the practice for initiation of delivery of the Coffin decree "saved water" rights but it has not generally been the element to make the Chapman decree "saved water" rights deliverable. Logically, the Chapman decree "saved water" is only good when water is flowing through the Baseline Bypass canal to make delivery of rights in the "dry beds" or below. Chapman decree "saved water" rights should continue to be initiated upon separation of the river as described above.

It is our understanding from our meeting on July 16 that the June 15, 1883 priority rights were fully curtailed just within the previous day or two of our visit. We agreed that the Coffin decree "saved water" rights were on and that the Chapman "saved rights" had been on since the time that the entire flow of the river was dammed and turned into the Baseline Bypass canal near the Glendale Bridge. We noted also that a significant portion of the flow in the Baseline Bypass continued past the canal heading for the Extension Bypass and was returning to the river (lower portion of the dry beds). We understand that this lower reach of the Baseline Bypass canal that runs westerly toward the river (lower portion of the dry beds) is frequently dammed off and all of the flow is put into the Extension Bypass canal. The lower reach of the Baseline Bypass canal apparently had not been dammed off yet because there was more flow available at this point than could be placed entirely in the Extension Bypass canal. The additional flow returning to the river was being used to satisfy some of the rights senior to 6/15/1883 at Canal 61 and the Wood River Ranches' diversion. I understand from recent discussion with you that the lower reach of the Baseline Bypass canal may soon be dammed off if not already.

Curtailment of "saved water":

The more difficult issue to address is when to curtail delivery of the "saved water".

The Coffin decree findings states that: *"Nothing in these findings or in this decree is intended to impair or affect said priorities through Canal No. 61."* The Coffin decree findings list rights ranging from 7/10/1880 to 10/28/1886 totaling 39.7 cfs at Canal 61. Those senior to 6/15/1883 total 30.2 cfs with priorities ranging from 7/10/1880 to 5/15/1883 at Canal No. 61. The Coffin decree findings also indicate that the capacity of the Extension Bypass is 35 cfs. These Coffin decree findings have been the basis for the 8/20/1992 memo statement that; *"We interpret this language to mean that the Stewart rights (Those at Canal No. 61) with priority dates before June 15, 1883 must be delivered before any "saved water" (By-pass or Extension By-pass) can be allocated."* And *"However, we do wish to make clear that none of the saved rights should be delivered when the senior priority Stewart rights (i.e.; prior to 6/15/1883) can not be delivered."* These instructions still appear to be valid regarding the Coffin decreed "saved water" rights. In other words, the

Coffin decree "saved water" should be curtailed when any of the Canal 61 rights below the Extension Bypass prior to 6/15/1883 are called for and cannot be fully delivered. The capacity of Extension Bypass canal and the amount of water called for at this location are factors that should also be considered when delivering the 18 cfs of the Coffin decreed "saved water" rights. For example, if the capacity or the amount called for at Canal 61 is less than the sum of the priority rights that can be delivered to it then the remaining flow within the Bypass Extension should accrue toward the 18 cfs of "saved water" but delivery of the Coffin "saved water" must be limited to 18 cfs.

As for the Chapman decree "saved water" rights, the statement in the 7/24/1994 letter to Sellgren also appears valid which states: *"The Chapman decree does not specifically state when the 18 cfs is not deliverable, or whether any of the 18 cfs is cut back according to the diminishing flow of the river that is turned into the Bypass."* Logically, if you take the negative of the statement above then "saved water" is not good when water is not flowing through the Baseline Bypass canal to make delivery of rights in the "dry beds" or below. It is not reasonable to conclude that the most senior rights should be continuously cut in order to deliver "saved water" with a 1920 priority. Similarly, it is not reasonable to conclude that all "saved water" should be continuously cut in order to deliver senior priority rights that may have been cut absent the construction of the "bypass" system. Noting that the Chapman decree is not clear, it appears most appropriate that full delivery of the 18 cfs Chapman "saved water" can only be made to the extent that such savings exist by use of the Baseline Bypass canal in fully delivering the senior priority rights, including those senior rights at Canal No. 61 as well as senior rights delivered to several other diversions on the Baseline Bypass and Extension Bypass canals. Since the Chapman decree lacks clear direction concerning any potential curtailment or reduction of the Chapman "saved water" rights, IDWR believes that an equitable approach for distribution of this "saved water" and the most senior priority rights must be established when flows in the Baseline Bypass are inadequate to provide delivery of water to rights with priorities senior to 6/15/1883. IDWR believes the most equitable approach of distribution during these critical river stages is to proportionately reduce delivery of both the Chapman decree "saved water" and water rights senior to 6/15/1883. IDWR therefore directs the watermaster to proportionately reduce delivery as outlined below.

As we understand your records indicate that in addition to the Canal 61 rights, there is a total of 25.94 cfs of water rights with priorities senior to 6/15/1883 diverted through the Baseline Bypass and Extension Bypass system (including the Baseline Canal, Dittoe Ditch, McGonigle Ditch and the Brown/Blincoe/Wood River Ranches diversions and below). The sum of all the priority rights prior to 6/15/1883 below the heading of the Baseline Bypass is 58.84 cfs. In periods of extreme drought it is known there are times when the most senior priority water rights along the Baseline Bypass/Extension Bypass system and Canal 61 are either partially filled or cannot be satisfied even after turning all the remaining flow of the Baseline Bypass into the Extension Bypass. As stated above the Chapman decree "saved water" rights should be diminished any time the flow at the head of the Baseline Bypass is less than required to fill these senior priority rights off of the Baseline Bypass and Extension Bypass system. For example, if the rights senior to 6/15/1883 which are delivered in the

diversion, place of use, nature of use, etc.] an application for transfer is to be filed by the association. The watermaster should not distribute such changes without an approved transfer. Although filing of an SRBA claim at this point in time is not a prerequisite for delivery of the rights, SRBA claims need to be filed to tie down the elements of the "saved water" rights that may be owned by the association. The claims should reflect use in 1987 and if any changes have been made since 1987 appropriate transfers should be considered.

Hopefully this letter provides sufficient direction for your delivery. I expect that these issues may be taken up for further determination by the SRBA court as that process continues. The direction provided under this letter and attached outline should be followed until further direction is provided by the Department or upon further determination by the SRBA court. If you have questions please feel free to contact this office.

Sincerely,


Allen Merritt, PE
Southern Region Manager

Attachment

CC: William Sherbine, 153 Baseline Rd, Bellevue, ID 83313)
Harold Drussell, 152 Baseline Rd, Bellevue, ID 83313)
Tim Luke and Norm Young - IDWR State Office
Doug Jones - IDWR SRBA
Jo Beeman - 409 W. Jefferson St, Boise, ID 83702

7-10-03

Talked via telephone to Harold Drussel Trail Creek
240 shares (instead of inches) McLoy Ditch
point of diversion.
Tinker Osbennett, District Watermaster
acceptable, description of land

Outline Of Watermaster Instructions
Delivery of "Saved Water" from use of Baseline Bypass and Extension
Bypass Canals
Chapman and Coffin Decrees

1. Initiate Delivery of Chapman decree "Saved Water"

Delivery initiated at time when Big Wood River near Glendale Bridge is dammed and all flow of water from river can be conveyed to the Baseline Bypass canal.

2. Initiate Delivery of Coffin decree "Saved Water"

Delivery initiated when Big Wood River priority rights of 6/15/1883 are cut or not deliverable due to insufficient water supply in Big Wood River system. This priority cut occurs after the flow of the river is dammed at Glendale Bridge and the river is turned into the Baseline Bypass. If this cut is made and a portion of the remaining flow in the lower reach of the Baseline Bypass cannot be turned into the Extension Bypass due to insufficient carrying capacity of the Extension Bypass canal, then remaining flow shall be delivered past the heading of the Extension Bypass to the river for delivery of senior rights at Canal No. 61 or the Wood River Ranches diversion.

3. Curtail Delivery of Coffin decree "Saved Water"

The Coffin "saved water" should be curtailed when rights below the heading to the Extension Bypass that are senior to 6/15/1883 can not be fully delivered. (Normally after lower reach of Baseline Bypass is dammed and all remaining Baseline Bypass water is turned into the heading of the Extension Bypass.)

4. Reduction of Chapman decree "Saved Water"

Delivery of the Chapman "saved water" should be based on the prorata share of senior priority water (prior to 6/15/1883) deliverable in the Baseline Bypass and Extension Bypass system. (For example if 20 cfs out of the 58.84 cfs is delivered (34%) then 6.12 cfs of the 18 cfs of "saved water" could be delivered.) *Proportionate reduction of priority rights along the Baseline Bypass and Extension Bypass system should be done in accordance with priority dates (i.e., reduce most junior rights first).*

5. Curtail Delivery of Chapman decree "Saved Water"

Delivery of Chapman "saved water" should be curtailed when delivery of all priority rights through the Baseline Bypass canal is futile (See Item 6 below) or not called for during the irrigation season. *Note: This is not intended to include "Winter saved water" decreed to Big Wood Canal Company under right 37-895.*

6. Futile Call Determination: Baseline Bypass Saved Water Rights & Senior Priority Rights

The watermaster should follow the direction provided by the letter dated July 11, 2002 from Norm Young of IDWR to Lee Peterson, Water District 37 watermaster, when considering

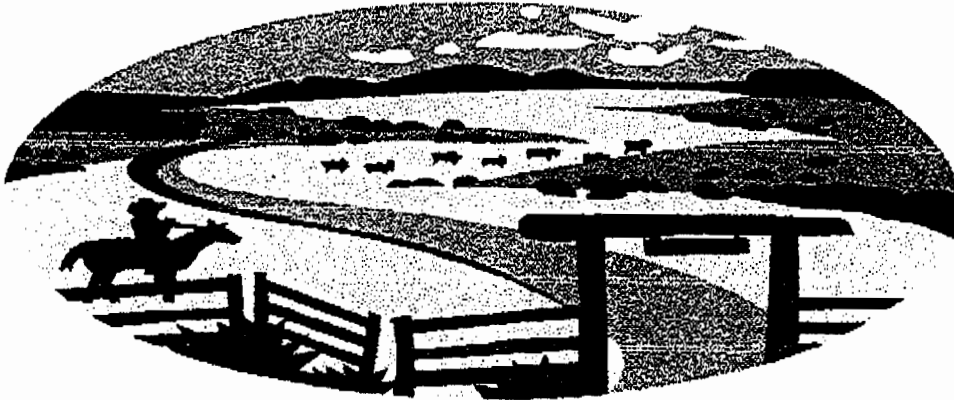
or making a futile call determination.

7. Delivery of "Saved Water" to Holders of Chapman and Coffin Decreed Rights

For the "saved water" rights held by the Upper Big Wood River Water Users Association (UBWRWUA), the UBWRWUA must provide to the watermaster an updated list of shareholders names, amount of shares held by each shareholder and locations of points of diversions where shares are to be delivered. Until an updated list is received from the UBWRWUA the watermaster will deliver any "saved water" decreed to the UBWRWUA based on the last updated list that is on record at the water district office. "Saved water" shall be delivered only to those shareholders that are valid water users as per the water district records. For this purpose, a valid water right user shall be any individual or organization that also holds other valid water rights in the district subject to delivery and assessment by the watermaster. The watermaster will deliver the "saved water" to the normal points of diversion that are associated with these valid water right users. Other decreed rights in the Chapman and Coffin decrees should be delivered based on ownership of those rights as reflected by IDWR water right records and the watermaster's records.

8. Rotation of "Saved Water"

Rotation of blocks of "saved water", particularly rotation of blocks under the UBWRWUA rights should not continue unless IDWR or the SRBA court provides approval or direction. IDWR may authorize the watermaster to rotate portions of the "saved water" if the UBWRWUA provides the information as outlined in item 7 above and if the UBWRWUA provides the watermaster with a proposed rotation scheme. Any new rotation scheme must be approved either in a new permanent transfer or temporary drought transfer. Any rotation scheme will be subject to review and approval by both IDWR and the watermaster.



Carl W. Stremmel, Jr.
P.O.Box 4385
Ketchum, Idaho 83340

DATE: 8/7/00

TO: Sharon

FROM: CARL W. STREMMEL

PAGES INCLUDING COVER SHEET: _____

MESSAGE: Sharon, The total bills paid, as you can see, are
more than \$660.00 for labor, but we only charge you
for work from the headgate to the divider box!

Any Questions, call

Regards, Carl

TELEPHONE: 208 726-6566

FAX: 208 726-7745



Box 728, Ketchum, Idaho 83340

McCoy Ditch Repairs and maintenance spring 2000

Labor Total	\$660.00	51% = \$ 336.60
		49% = \$ 323.40
Chain Saw Rental	\$ 31.80	51% = \$16.22
		49% = \$15.58
Concrete	\$ 8.00	51% = \$4.08
		49% = \$3.92

TOTAL	51% = \$356.90
	49% = \$342.90

THESE BILLS ARE ONLY FOR THE SECTION OF THE DITCH FROM THE HEADGATE AT TRAIL CREEK TO THE DIVIDER BOX. (SPLITS TO WEYYAKIN AND RHIEHNIMER RANCH AT DIVIDER.)

THIS WAS COMPLETED 5/12/00

1309
8/15/00

Terry Pfau/Prop Mgmt.

P.O. Box 3757

Hailey, Idaho 83333

(208) 788-9406 fax N/A

Invoice No.

INVOICE**Customer**

Name Weyyakin Homeowners Assoc.
Address P.O. Box 728
City Ketchum State Id. ZIP 83340
Phone _____

Date 5/9/00
Order No. _____
Rep _____
FOB _____

Qty	Description	Unit Price	TOTAL
20	Hrs. Weyyakin ditch <i>Worked Alone</i>	\$30.00	\$600.00

Payment Details

- ☐ Cash
☒ Check
☐

SubTotal	\$600.00
Shipping & Handling	\$0.00
Taxes Idaho	
TOTAL	\$600.00

Office Use Only

GOD BLESS

THANK YOU IN ADVANCE FOR YOUR PAYMENT

06/01/00

TERRY M. PFAU "PROPERTY MANAGEMENT"
621 WHITETAIL DR.
P.O. BOX 3757
HAILEY, ID. 83333
(208) 788-9406

To Whom It May Concern:

The following is a list of work done on the Weyyakin ditch:

Day 1 (8 HOURS)

From gate above Bitterroot to first bridge at Baldy View Lane

- A Poured crete mix and covered with pond liner in 6 foot stretch of ditch
- B Removed several large rocks.
- C Cut out trees with chain saw that were over ditch.
- D Raked leaves and removed debris.

Terry cleaned & returned tools to Weyyakin garage

Day 2(8 HOURS)

From Baldy View Lane to Garnet Rd. culvert.

- A Raked leaves and removed debris.
- B Cut out trees with chain saw.
- C Cleaned packed leaves out of ditch in front of Garnet Rd. culvert.

Terry cleaned & returned tools to garage

Day 3 (4HRS)

From Garnet Rd. to Weyyakin weir

- A Raked leaves and removed debris.

Terry cleaned & returned tools & pond liner to the garage.

TOTAL JOB: (20 HRS.)

Sincerely

Terry M. Pfau
P.O. Box 3757
Halley Id. 83333
(208) 788-9406

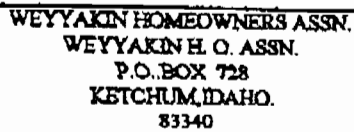


Exhibit 7



INVOICE NO.

OUR ORDER NO.,

FINANCE CHARGE of _____
 _____ % PER MONTH
 _____ % ANNUAL
 (PERCENTAGE RATE) will

TERMS: NET CASH 10th OF MONTH FOLLOWING PURCHASE. ACCOUNTS PAST DUE SUBJECT TO A SERVICE CHARGE IN ACCORDANCE WITH HOUSTON LUMBER COMPANY CREDIT POLICY. ITEMS RETURNED IN SALEABLE CONDITION WILL BE CREDITED LESS 15% FOR STOCKING & HANDLING.

RECEIVED THE ABOVE IN GOOD CONDITION:

THIS IS A CONTRACT

THE WORDS "RENTER", "BUYER", "YOU" AND "YOUR" MEANS THE PERSON WHO SIGNS THIS CONTRACT. (OR ARE OBLIGATED UNDER ITS TERMS). WE, OUR AND DEALER REFER TO THE BUSINESS NAMED AT RIGHT.

LUZ RENTALS

100 LEWIS ST. P.O. BOX 2166
KETCHUM, IDAHO 83340
(208) 726-5421

TERMS: CASH IN ADVANCE

ESTABLISHED OPEN ACCOUNTS ARE DUE AND PAYABLE NET 10TH OF MONTH. PAST DUE ACCOUNTS BEAR LATE PAYMENT PENALTIES AT 1 1/2% PER MONTH.

***** CONTRACT LISTING *****

WEY-YA-KIN HOMEOWNERS
P.O. BOX 728
KETCHUM, ID 83340

WEY-YA-KIN HOMEOWNERS
P.O. BOX 728
KETCHUM, ID 83340

7267444

DATE: FRI 05/05/00 07:17
IN: FRI 05/05/00 11:13

20.00/ea 40.00/ea 160.00/ea 160.00/ea

Sed. Repair
05/03/00 Change

Amount
\$1.30
\$1.00

LAWN AND GARDEN
KETCHUM
IN STATE

TOTAL \$ 31.80

Renter acknowledges that he has read and fully understands the whole equipment rental contract and agrees to be bound by all the terms, conditions, and provisions hereof. Renter acknowledges that he has received a true and correct copy of this agreement at the time of execution hereof.

RETURN EQUIPMENT BY:

FRI 05/05/00 14:13

X *[Signature]*
SIGNATURE

THIS IS YOUR CONTRACT, READ BOTH SIDES BEFORE SIGNING



Carl W. Stremmel, Jr.
P.O.Box 4385
Ketchum, Idaho 83340

DATE: 8/15/01

TO: Sharon - Idaho Foundation

FROM: CARL W. STREMMEL

PAGES INCLUDING COVER SHEET: 4

MESSAGE: _____

TELEPHONE: 208 726-6566 FAX: 208 726-7745



Box 728, Ketchum, Idaho 83340
(208) 726-7444 - Telephone • (208) 726-9731 - Fax
weyyakin@svidaho.net - email

Mc Coy Ditch Maintenance 2001

Pressure treated lumber	\$72.84
Chainsaw	\$18.56
Waders	\$ 20.00
Labor	\$215.00
Total	\$326.40
I.F. FOR P.&L. 49%=	\$159.94

Please pay this amount.

These charges are for work from the divider
box to headgate.

1503
8-15-01

ORIGINAL COPY

LUZT RENTALS

100 LEWIS ST. P.O. BOX 2166
KETCHUM, IDAHO 83340
(208) 726-5421
FAX (208) 726-3091

STATEMENT

42446

Statement of Account

WEY-YA-KIN HOMEOWNERS
P.O. BOX 728
KETCHUM, ID
83340

Cust ID: 230300 Date: 05/11/01 Page: 1

Date	Paid	Contract #	Description	PO #	Ref #	Charges	Credits
05/11/01		01-255581-02	SAW, CHAIN GAS 16"			19.55	

Current	Over 30	Over 60	Over 90	Total Due
19.55	0.00	0.00	0.00	19.55

NET BALANCE DUE 10TH OF MONTH. A FINANCE CHARGE
OF 1-1/2% PER MONTH (18% ANNUALLY) WILL BE ADDED
TO OVERDUE ACCOUNTS

ASSOCIATION

1458

WILSON LINGER - KETCHUM
1000 WILSON SPRINGS ROAD
P. O. BOX 2276
KETCHUM, IDAHO 83340
1-200-7
P. 6 W-21 P-1
CASH SALE
1328977
07/05/01
15:51

204-14 STD & BTP PRESSURE TIGHT
12510140 2.00 6.73 EA 13.50
201MEASRD PLUS SCREW 3"
4330540A 1.60 1.33 LB 3.10
218-16 1/2 & BTP PRESSURE TIGHT
1251216A 4.00 12.39 EA 51.96

SUBTOTAL 66.72
KETCHUM, ID TAX 4.12
TOTAL 72.84
PAID BY: CHECK 72.84

PLEASE RETAIN THIS RECEIPT FOR REFUNDS
THANK YOU FOR SHOPPING WITH US!!!

TION

1458

BUSINESS AS USUAL



RECEIVED
12-14-01

Box 728, Ketchum, Idaho 83340
(208) 726-7444 - Telephone • (208) 726-9731 - Fax
weyyakin@svidaho.net - email

Mc Coy Ditch Repairs

Fall 2001

Paul Gibbs	Concrete work	\$1052.00
Labor	8 hrs. @ \$18.00	\$ 153.00
Materials		\$ 204.85
Photos		<u>\$ 18.92</u>
Total		\$ 1428.77
Weyyakin	51%	\$ 728.67
Id. Parks & Lands Fd.	<u>49%</u>	\$ 700.10

Sharon please reimburse Weyyakin since we have paid these bills in full.
I have included some of the photos we took during the work.

AM

/03

al Basis

Weyyakin HOA
Account QuickReport
 April 1 through October 29, 2002

Type	Date	Num	Name	Memo	Split	Amount
OPERATING EXPENDITURES						
McCoy Ditch						
Bill	5/30/2002		John Supernaugh	Ditch Maint./...	Accounts Pay...	441.00
Check	5/30/2002	1855	Bud Gonzalez	Ditch Maint.	Cash in Bank	448.00
Check	5/30/2002	1856	Journey Acker	Ditch Mainte...	Cash in Bank	448.00
Bill	6/25/2002		John Supernaugh	55.5 hrs.	Accounts Pay...	90.00
Check	7/6/2002	1905	Anderson Lumber	Sandbags	Cash in Bank	47.70
Bill	7/15/2002		Silver Creek Outfitters	Ditch maint. ...	Accounts Pay...	42.40
Bill	7/15/2002		Hogue & Dunlap, LLP	Sammis	Accounts Pay...	260.00
Bill	8/12/2002		Hogue & Dunlap, LLP	Sammis sew...	Accounts Pay...	133.92
Total McCoy Ditch						1,911.02
Total OPERATING EXPENDITURES						1,911.02
TOTAL						1,911.02

*- Bill
Hogue to
attorneys*

Park Foundation 41% - \$783.52
WEYYAKIN HOA 59% - \$1127.50

5-7-03

Seepage & siltation - around diversion

look @ doing some corrective Spring 2004

*Suggested measurement of cfs. diversion before
 changing anything (Brookway) but Carl Strommel
 does not cater to using Brookway
 like*

To: Don Weilmunster

From: Sharon

Dated: May 12, 2003

Reinheimer Ranch Water Discussion

Reinheimer water Right #37-0457 with a priority date of 5/1/1883 is for 240 inches or 4.80 c.f.s. Weyyakin's, #37-0289 with a priority date of 5/1/1883 is for 350 inches or 7.0 c.f.s. Reinheimer's is equivalent to 3" an acre, probably not justifiable according to a Idaho Dept. of Water Resources source, without having a soil profile done. The ditch length is approximately 2.5 miles.

Therefore, the ratio on cost of repairs is 41%, Foundation and 59%, Weyyakin.

The turn-out is described as McCoy No. 03, and the ditch rider checks the headgate every other day and turns in his figures every two weeks. The figures are of course for both Weyyakin and the Foundation. For example, in 1999, from June 11 to September 30 the mean c.f.s. diversion was 9.0 c.f.s. out of a possible 11.8 c.f.s.

The Foundation handled the costs and the management of the diversion structure on Trail Creek in the fall of 1987, through a generous grant by Jim Boswell. Weyyakin was built in 1983.

The former manager for Weyyakin was Brad Scott – we felt that he was billing us excessively. Our part of a bill for 1997 was \$ 1,713.41 and we did not pay that until we went into an agreement with Carl Stremmel/Bill Nagel at Weyyakin and paid the bill June 4, 1999. Our concern at that time was expressed as "hearing after-the-fact" of work being performed.

In 1998, the Foundation was informed of substantial leaks in the McCoy ditch and that began the process of repair.

The \$ 4,000 donation from Sue and Dick Hare was paid \$ 1,436.50 to EHM Engineers, Inc. and \$ 2,549.54 toward legal services by Rosholt, Robertson.

We settled out the rest of the expense with \$ 4,286.10 coming from the Reinheimer Estate on the total of \$ 3,907.71 paid by the Foundation.

Our share of **Ditch Maintenance for 2001** was \$ 159.94. However, that same year the diversion structure (due to rebar being bent and so forth) needed repairs and the Foundation paid \$ 700.10 as its portion. The bill submitted for **Ditch Maintenance for 2002** is \$ 783.52 and you have the detail. In looking through the file the office was contacted both August 28, 2002 and September 25, 2002 on the Sammis problem. You received memos on both contacts. I feel that the Foundation was given notification. However, as to the maintenance paid out between 5/30/2002 to 6/25/2002 for labor totaling \$ 1,427.00* we were not contacted. Maybe you could speak with Bill and get clarification. Bill Nagel's numbers are 208/720-2414 on the cell phone and 208/726-7444 at the Weyyakin Homeowners' Office.

- John Supernaugh 441.00; Bud Gonzalez 448.00; Journey Acker 448.00; and John Supernaugh 90.00

WEYYAKIN HOMEOWNERS' ASSOC.

P. O. BOX 728
KETCHUM, ID 83340

IDAHO PARKS & LANDS FOUNDATION

Billing for ditch maintenance

DATE	DESCRIPTION	AMOUNT
May-02	Labor to clear ditch	1337.00
Jun-02	Labor to clear ditch	90.00
Jul-02	Sandbags	47.70
May-03	Labor to clear ditch	812.00
May-03	Sandbags	70.62
Jun-03	Labor to clear ditch	54.00
TOTAL		2211.32

*This includes Attorney's Fees**> Labor \$660.00
Materials \$706.20*

Weyyakin HOA

PO Box 728

Ketchum, ID 83340

208/726-7444

STATEMENT

DATE

10/20/2004

HOMEOWNER

Idaho Foundation for Parks & Lands
 5657 Warm Springs Avenue
 Boise ID 83716-8700

RECEIVED
 10-25-04

		DUE DATE	Account #	AMOUNT DUE	AMOUNT ENC.
		10/20/2004		\$824.06	
DATE	DESCRIPTION			AMOUNT	BALANCE
09/30/2004	Balance forward				0.00
10/20/2004	McCoy Ditch: spring cleanup			509.92	509.92
10/20/2004	McCoy Ditch: headgate replacement			314.14	824.06
# 2126 12-13-04					
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	AMOUNT DUE
824.06	0.00	0.00	0.00	0.00	\$824.06

McCoy Ditch Expenses - Summer 2004

Weyyakin Parks Fdtn

Spring start up: clean out and get water running

5/12/2004 Labor	306.00	205.02	100.98
5/19/2004 Materials: replace diversion boards in river	113.40	66.91	46.49
5/20/2004 Labor	517.50	346.73	170.78
5/25/2004 Materials: replace diversion boards in river	31.20	18.41	12.79
5/26/2004 Labor	324.00	217.08	106.92
6/4/2004 Labor	175.50	103.55	71.96
Sub Total		957.68	509.92

Headgate replacement:

9/23/2004 Labor	72.00	42.48	29.52
9/27/2004 Labor	108.00	63.72	44.28
9/27/2004 Materials	186.75	110.18	76.57
10/1/2004 Labor	247.50	146.03	101.48
10/3/2004 Materials	16.95	10.00	6.95
10/3/2004 Labor	63.00	37.17	25.83
10/7/2004 Labor	72.00	42.48	29.52
Sub Total		452.06	314.14

Total		1409.74	824.06
--------------	--	----------------	---------------

Summary**Spring start up: clean out and get water running**

Labor	450.63
Materials	59.29
Subtotal	509.92

Headgate replacement:

Labor	230.63
Materials	83.52
Subtotal	314.14

Total	824.06
--------------	---------------



November 17, 2003

DIRECTORS

DON K. WEILMUNSTER
President
1977 - 2003

FRED D. HARDER
Vice President
1981 - 2004

JOHN BARCLAY
Secretary-Treasurer
1981 - 2003

H. LARRY LEASURE
1975 - 2004

SHIRLEY A. MIN
1977 - 2003

TERRY GESTRIN
1996 - 2004

C.M. "CHUCK" RICE
1997 - 2003

DOUGLAS PORTER
1999 - 2004

CHARLES E. McDEVITT
1999 - 2004

JAMIE ANDERSON
2000 - 2004

TONY VARILONE
2001 - 2004

SHARON HUBLER
Executive Director

ADVISORY BOARD

SHERMAN AKERS, POCA TELLO
I. ROBB BRADY, IDAHO FALLS
RONALD E. DALY, BOISE
GOVERNOR ROBERT E. SMYLLIE
ROYAL STILES, SODA SPRINGS
JERRY L. WRAY, BUHL

Bill Nagel, Weyyakin Manager
P.O. Box 728
Ketchum, Idaho 83340

Dear Bill:

This will confirm our conversation last week in which we talked over the billing situation for 2002 and 2003 on the McCoy Ditch. The total amount owed to Weyyakin by the Foundation is \$ 1,085.54 and we intend to pay this in installments of \$ 135.70 with no delinquency for a period of eight months beginning this November and ending June, 2004.

I have also expressly asked you to let us know of any need for legal fees in advance. The reason for this request is that the Foundation may have options that we could pursue that would end up costing less.

Very truly yours,

Don K. Weilmunster, President

5657 Warm Springs Avenue + Boise, Idaho 83716-8700 + (208) 344-7141 + FAX (208) 344-5910

DEDICATED TO PRESERVATION, HERITAGE, AND RECREATION ESTABLISHED 1972
www.idaholands.org

NOTICE OF ERROR
REPLY

RECEIVED

JAN 22 2007

DEPT. OF WATER RESOURCES
SOUTHERN REGION

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 37-457A

DOUGLAS BRADSHAW, TRUSTEE under the Will of Eleanor Reinheimer
c/o Thomas M. Robertson
P.O. Box 525
Twin Falls, Idaho 83303-0525
Telephone Number: (208) 734-1224

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

QUANTITY: Should be 4.8 cfs for irrigation, and 0.02 cfs for stockwater use as claimed.

PURPOSE OF USE: Should add stockwater use as claimed.

PLACE OF USE: Should be 80 acres in the NENW, SENW, Township 4 North, Range 18 East, Section 19, Blaine County, as claimed.

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

See above.

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

See original claim. Also see letters of John Rosholt of Barker Rosholt & Simpson LLP of October 20, 2005 and December 2, 2005 in response to the inquiries of Nick Treasure of IDWR.

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

DATE:

January 17, 2007

SIGNATURE:

Thomas M. Robertson attorney for Douglas Bradshaw, Trustee

Please print your name: Thomas M. Robertson attorney for Douglas Bradshaw, Trustee

09/23/2005

**NOTICE OF ERROR
REPLY**

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 37-457A

DAVID M. BERENSON, PHILIP ZIMET AND DOUGLAS BRADSHAW, TRUSTEES

1 ASHBURN PLACE

FAIR LAWN NJ 07410

Telephone Number: (208)734-1224

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

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

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

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

DATE: _____ SIGNATURE: _____

Please print your name: _____

IDWR Regional Office,

09/23/2005

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

RIGHT NUMBER: 37-457A

NAME AND ADDRESS: DAVID M. BERENSON, PHILIP ZIMET AND DOUGLAS BRADSHAW, TRUSTEES
1 ASHBURN PLACE
FAIR LAWN NJ 07410

SOURCE: TRAIL CREEK

TRIBUTARY: BIG WOOD RIVER

QUANTITY: 0.420 CFS

PRIORITY DATE: 05/01/1883

POINT OF DIVERSION:
T04N R18E S7 SWSE 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	0.420 CFS

PLACE OF USE: IRRIGATION Within BLAINE County
T04N R18E S19 NENW 5.0

5 ACRES TOTAL

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

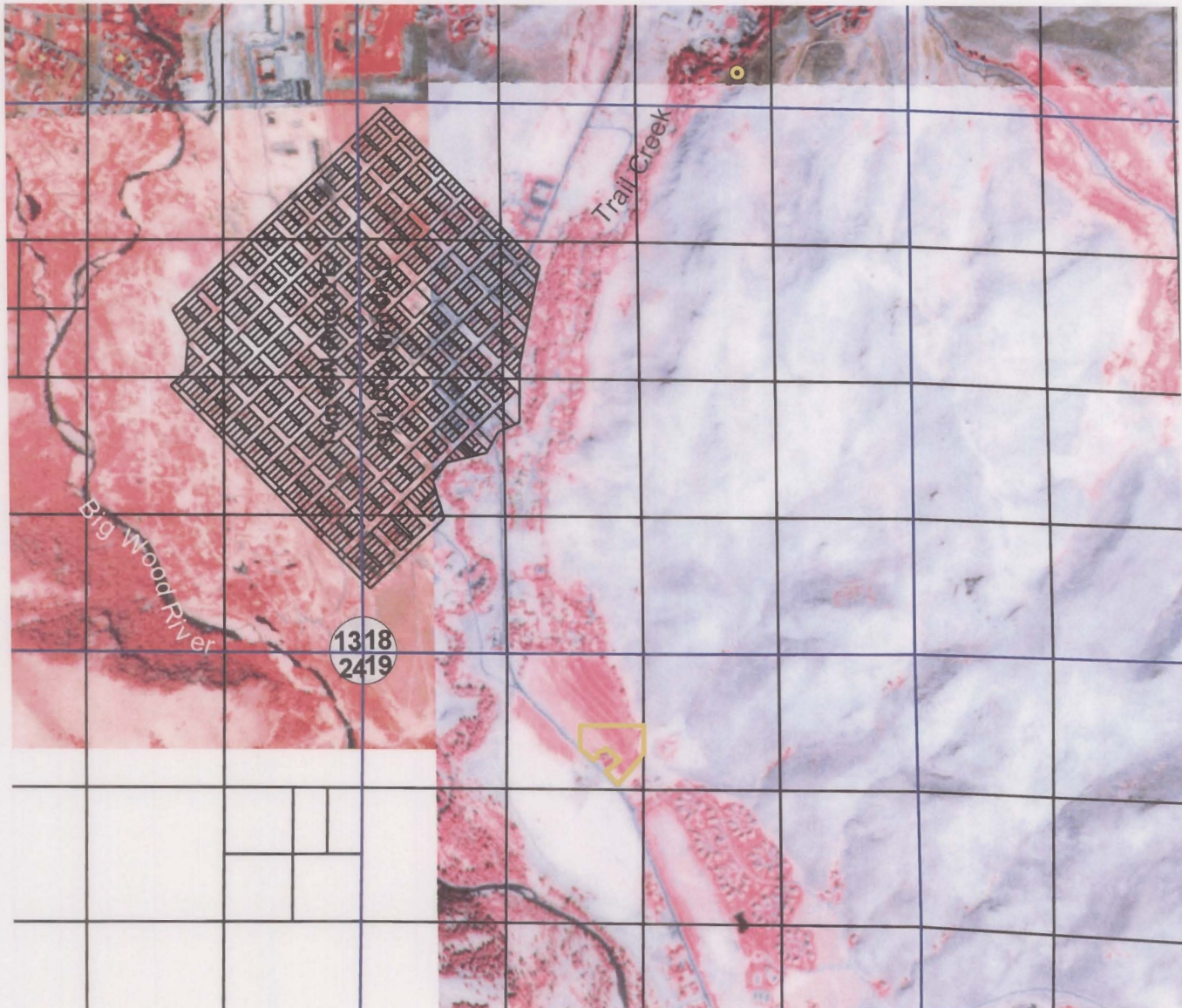
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

This right is a split from former right 37-457

A portion of Right 37-457A cfs is used for conveyance loss due to distance from POD.

RECOMMENDED PLACE OF USE FOR 37-457A



1320 0 1320 2640 3960 Feet

PLACE OF USE

TWP 04N, RNG 18E, SEC 07

Data entry on September 23, 2005



● RECOMMENDED POINT OF DIVERSION

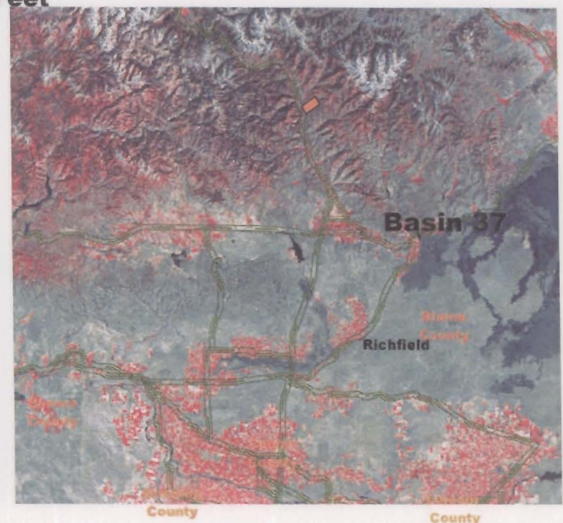
□ RECOMMENDED PLACE OF USE

□ TOWNSHIP LINES

□ SECTION LINES

□ LOCATION IN BASIN

GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
DATA ENTRY BY NICK TREASURE



09/23/2005

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

RIGHT NUMBER: 37-457A

NAME AND ADDRESS: DAVID M. BERENSON, PHILIP ZIMET AND DOUGLAS BRADSHAW, TRUSTEES
1 ASHBURN PLACE
FAIR LAWN NJ 07410

SOURCE: TRAIL CREEK

TRIBUTARY: BIG WOOD RIVER

QUANTITY: 0.420 CFS

PRIORITY DATE: 05/01/1883

POINT OF DIVERSION:

T04N R18E S7 SWSE Within BLAINE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
04/15 10/31

QUANTITY
0.420 CFS

PLACE OF USE: IRRIGATION Within BLAINE County

T04N R18E S19 NENW 5.0

5 ACRES TOTAL

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

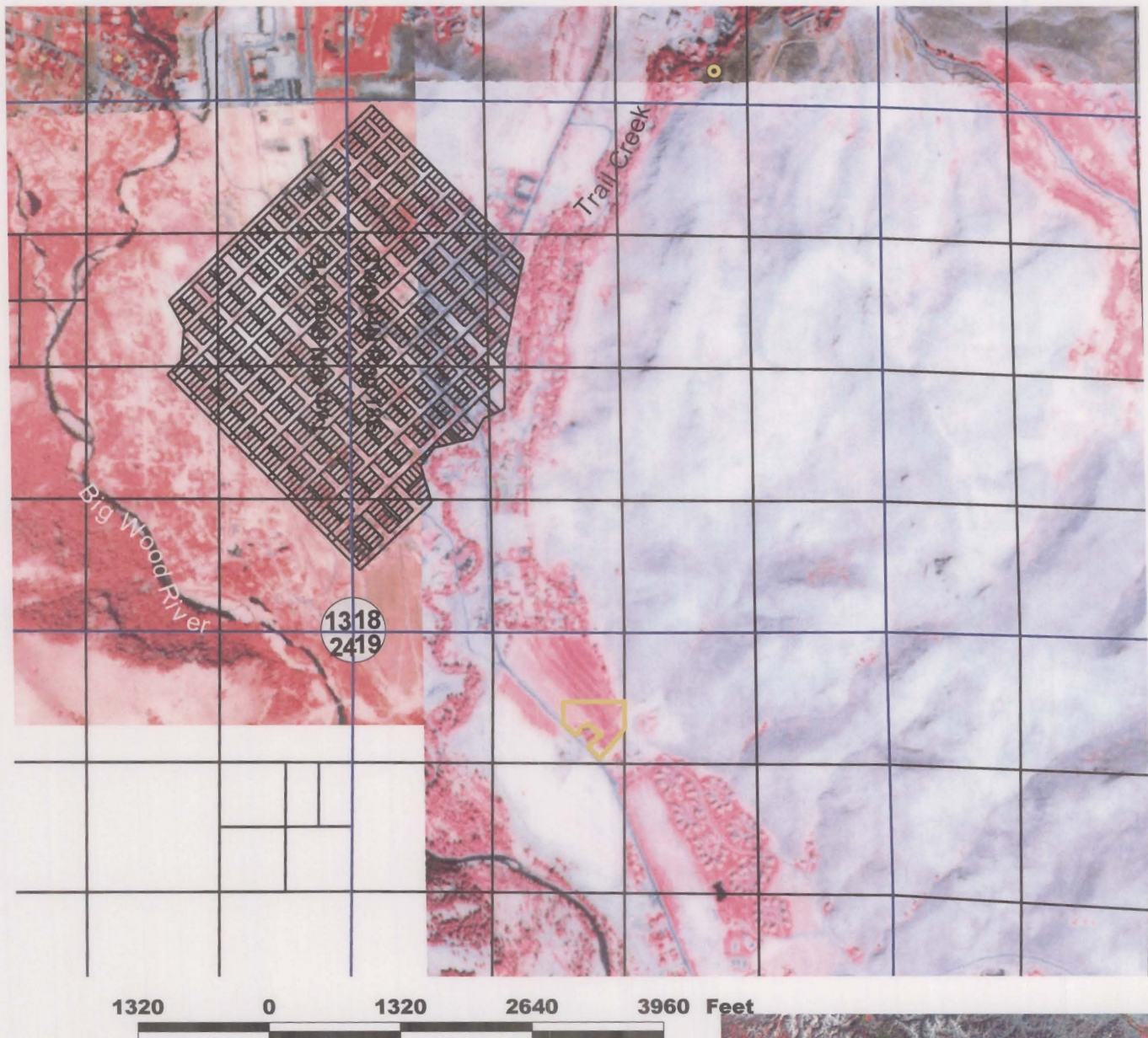
This right is a split from former right 37-457

A portion of Right 37-457A cfs is used for conveyance loss due to distance from POD.

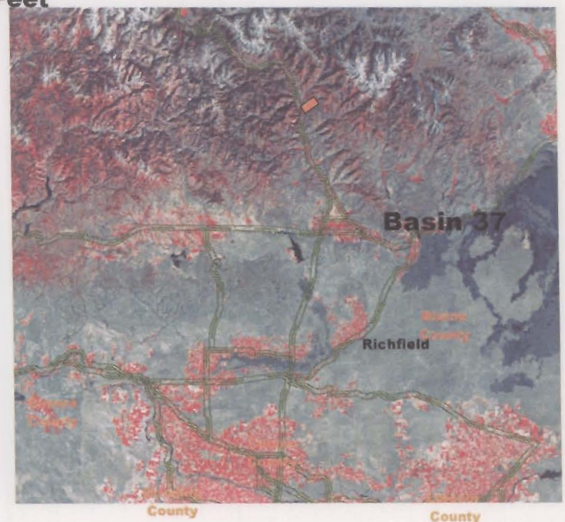
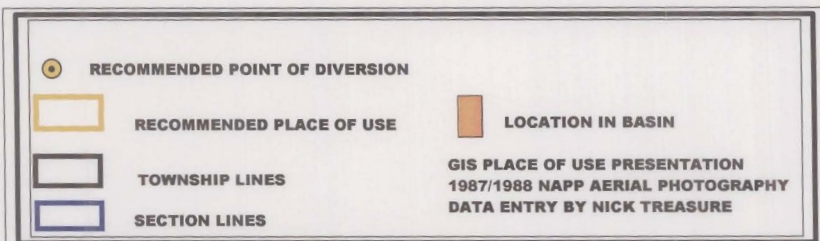
VERIFIED BY NT

Idaho Department of Water Resources

**RECOMMENDED PLACE OF USE FOR
37-457A**



PLACE OF USE
TWP 04N, RNG 18E, SEC 07
Data entry on September 23, 2005





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

DEPT INTERNET WEB SITE: www.idwr.idaho.gov

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 22, 2005

David M. Berenson, Philip Zimet and Douglas Bradshaw Trustees
1 Ashburn Place
Fair Lawn, NJ 07410

RE: SNAKE RIVER BASIN ADJUDICATION (SRBA) CLAIM(S): 37-457A, 37-457B

Dear Trustees

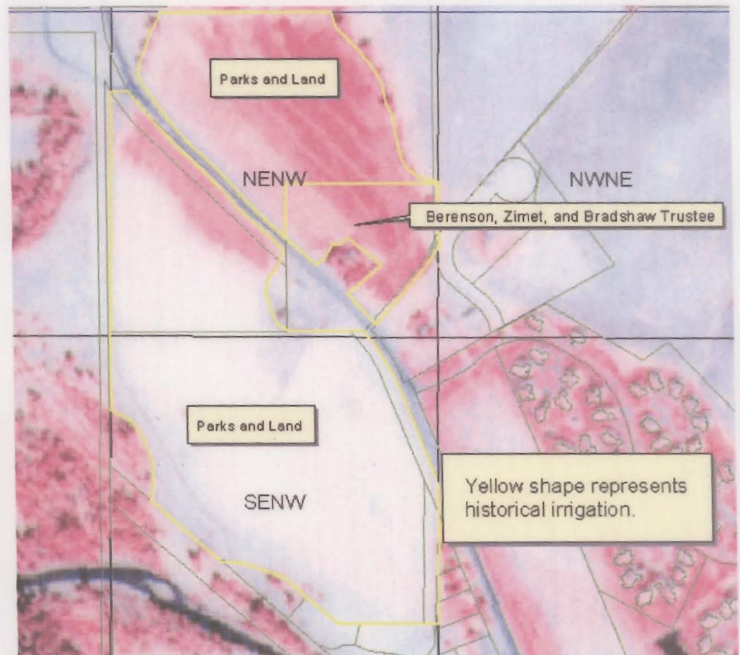
The Idaho Department of Water Resources (IDWR) is presently investigating water right claims in the Upper Big Wood Basin in preparation for submittal of Director's Report recommendations to the SRBA Court later this year.

Currently we are reviewing decreed water right 37-457. This water right consists of 4.8 cfs of water from Trail Creek with the priority date of May 01, 1883. The location is Twp 04N, Rng18E, Section 19 NENW, SENW.

The following claims have been made on decreed water right 37-457:

- Claim 37-457A: David M. Berenson, Philip Zimet and Douglas Bradshaw Trustees. Claimed the full 4.8 cfs for the purpose of irrigation. Place of use claimed is 80 acres.
- Claim 37-457B: Idaho Foundation for Parks and Land. Claimed the full 4.8 cfs for the purpose of irrigation, 0.02 cfs for stockwater. Place of use claimed is 80 acres.

According to the Blaine County taxlots, Idaho Foundation for Parks and Land owns portions of both the NENW, SENW of section 19. David M. Berenson, Philip Zimet and Douglas Bradshaw Trustees now own only a portion of the NENW of section 19. (See map)



Based on these findings the following recommendation will be made to the SRBA court:

- Divide the 4.8 cfs of decreed water proportionally to acres owned by each claimant. The acres recommended will reflect what has been historically irrigated on each claimants tax lot.

Please notify the agency as soon as possible with any concerns to the findings above. A preliminary directors report will be sent to each claimant for review and corrections prior to submittal to the SRBA court.

We appreciate your cooperation in this important adjudication process. Feel free to call me at the number above with any questions that may arise.

Sincerely

A handwritten signature in black ink that reads "Nick Treasure". The signature is fluid and cursive, with the first name "Nick" being more prominent than the last name "Treasure".

Nick Treasure

Water Resource Agent

E-mail address: nick.treasure@idwr.idaho.gov

Enclosures

CC: Idaho Foundation for Parks and Land

acres.

McCarter, Hugh F. $\frac{1}{2}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$, and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 32, T. 1 N., R. 13 E.

McCarter, Orla J. E. $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 28, and E $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 33, T. $\frac{1}{2}$ S., R. 21 E., containing 160 acres.

McCoy, George W. E $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 19, T. 4 N., R. 18 E., Containing 80 acres.

McCoy, James F. W $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 31, T. 4 N., R. 18 E., containing 80 acres.

McFall, Matt. SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 24, T. 5 S., R. 16 E., N $\frac{1}{2}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 25, T. 5 S., R. 16 E., NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 25, T. 5 S., R. 16 E., and SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 24, T. 5 S., R. 16 E., containing 240 acres. Also, S $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 25, T. 5 S., R. 16 E., containing 160 acres.

McGhee, Barkley J. W $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 1, T. 1 S., R. 12 E.

McLeod, George A. E $\frac{1}{2}$ of SE $\frac{1}{4}$ and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 29, and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 32, T. 1 N., R. 13 E., containing 160 acres.

McLochlin, James SW $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, and Lot 3, of Sec. 7, T. 2 S., R. 21 E., containing 160 acres.

McLochlin, Walter NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 19, T. 2 S., R. 21 E. Also, W $\frac{1}{2}$ of NW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 20, T. 2 S., R. 21 E.

S, J. W.	50	"	Jan. 1, 1881.	Spring Creek.
us, Justus	120	"	. 1, 1885.	Little Wood Riv
i, William	160	"	Aug. 15, 1889.	Big Wood River.
"	160	"	May 15, 1884.	Soldier Creek.
er, Hugh F.	40	"	June 1, 1886.	" "
" "	60	"	Sept. 1, 1883.	Corral Creek.
er, Orla J.	100	"	June 1, 1884.	" "
			Apr. 1, 1882.	Little Wood River.
George W.	240	"		(Also shares in Little Wood River Canal Co.)
James F.	All of		May 1, 1883.	Trail Creek.
" "	60 inches.		June 1, 1883.	Clear Creek Spring.
Matt.	200	"	June 1, 1900.	Big Wood River.
"	70	"	June 3, 1884.	Little Wood River.
"			July 17, 1884.	" " "
				Also shares in Big Cottonwood Canal Co.
Barkley J.	120	"	June 1, 1886.	Chimney Creek.
George A.	125	"	June 1, 1885.	Corral Creek.
n, James	100	"	June 1, 1886.	Silver Creek.
n, Walter B.	125	"	Apr. 1, 1888.	" "
e, Andrew	630	"	Apr. 1, 1880.	Deer Creek.
e, Patrick	340	"	Apr. 1, 1880.	" "
L. T.	25	"	Apr. 17, 1883.	Big Wood River.
"	225	"	June 20, 1884.	" " "
"	50	"	June 2, 1890.	" " "
Dennis	100	"	Apr. 30, 1884.	Little Wood River.
Edward	60	"	Apr. 1, 1884.	" " "
TRIN	75	"	June 1, 1883.	Elk Creek.
"	80	"	June 1, 1893.	Elk Creek and Minnehaha Creek.
hn	22	"	Apr. 17, 1883.	Big Wood River.

Water Right Number - 37-00457 Adj. Flag Translation: Standard Water Right Number Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - Address - - - - - +

*** C - CURRENT OWNER ***
MC COY GEORGE W. 1 -
2 -
3 -
City- State- Zip-
Phone -

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - +
05/01/1883 17 D - DECREED

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
TRAIL CREEK BIG WOOD RIVER

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County Stream Index (Blank if no Index Code)

04N 18E 7 SW SE (13) BLAINE

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume

01 - IRRIGATION 4.800

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
4.800

+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County

04N 18E 19 NE NW 01 IRRIGATION (13) BLAINE
04N 18E 19 SE NW 01 IRRIGATION (13) BLAINE

Total Acres:

+ - - Diversion Means - McCOY #3 HEADGATE

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use -

+ - - - - Remarks - - - - - +
P/D NOT GIVEN IN DECREE BUT DETERMINED FROM WATERMASTER.
AC. IRRIG. NOT SPECIFIED. FARM = 80 AC.

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

+ - - Decree Plaintiff - - - + + - - Decree Defendant - - - + + - Decree Date - +
S. F. P., ET. AL. ALTURAS WATER COMPANY, ET. AL. 12/13/1909

MICROFILMED
FEB 22 1993

Water right number - 37-00457

Adj. flag translation: Standard Water Right Number

+ - - Microfilm Rolls -

+ - - Audit Fields - 02/11/86

05/28/88 CONVERT

+ - - - - - Water Rights Dates and Flags Area - - - - - +

Proof Due Date	- 00/00/0000	Field Exam Made	- 00/00/0000	Field Exam Fee	-
Approved/Denied	- 00/00/0000	Protested Date	- 00/00/0000	Swan Falls	-
Proof Made Date	- 00/00/0000	Hearing Date	- 00/00/0000	Temporary Right	- P
Start Work Date	- 00/00/0000	Verified Date	- 07/01/1985	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	- 37
Licensed Date	- 00/00/0000	Appl Received	- 00/00/0000	Transfer/Amended	-
Decree Date	- 12/13/1909				

MICROFILMED
FEB 22 1993

DATE RECEIVED 10-26-88

CK # 08299

AMOUNT \$ 130

YES

NO

1. Is the name and address complete with zip code?
2. Is a priority date entered?
- Is the water use exempt from the Permit requirements, or if it is not exempt, has a Permit been approved or a License issued?
A Permit is required: (1) for groundwater developed after March 25, 1963 (except single family domestic and stockwater wells using less than 13,000 gpd), or (2) for surface water developed after May 20, 1971 (except for instream stockwater). USE CARE IF CLAIM IS RETURNED. REFER TO ADJUDICATION MEMOS # 1 (ADJ. CLAIMS/APPLICATIONS) AND # 9 (REJECTION OF CLAIMS). EXPLAIN IN COMMENTS.
3. (a) Is a source entered?
- (b) Is a tributary to entered? (if required) N/A
4. Is the legal description of the p.d. sufficient?
5. Is there a description of the diverting works?
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form.
- Is the period of use included?
- Is a quantity claimed for each use?
7. Is a total quantity claimed entered?
8. If required is a consumptive use entered? N/A
- Is the consumptive use correct? N/A
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4. N/A
10. Is (are) the place(s) of use and purpose(s) indicated?
11. Is (are) the county(ies) entered?
12. Is the ownership of p.u. checked?
13. Are other water rights listed or "none" indicated?
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) N/A
15. Is the basis of the claim indicated?
16. Is the claim signed by the claimant, and is the signature appropriate? (If an individual is the claimant, has that individual signed the claim, or if an organization is the claimant, is the organization signature block complete?)
- Has the claim been signed, sealed, and dated by a notary?
- Was this claim filed on time, or was an extension granted?
- Is the fee enclosed correct? Exempt
- If this claim is based on an existing water right, has the identification number been entered? N/A
- Should this claim be receipted and data entered?

Claim checked by:

Comments:

MICROFILMED
FEB 22 1993