RECEIVED
JUN 30 2009
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
JUN 29 2009
By _____ Clerk
Deputy Clerk

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

In Re SRBA	**Subcase: 27-12180**
Case No. 39576	**ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM**

On August 6, 2008, Gemco Limited Partnership, by and through counsel, Robert L. Harris, filed a *Motion to File Late Notice of Claim* for the above-captioned water right. A hearing on the *Motion to File Late Notice of Claim* was held on November 18, 2008. No party appeared in opposition to the *Motion.* However, following a review of the file and after hearing comments in open court, the Court referred this matter to a special master to make findings consistent with the I.R.C.P. 55(c) standard.

On May 7, 2009, Special Master Brigette Bilyeu issued a ***Special Master's Report and Recommendation on Motion to File Late Notice of Claim*** recommending that the late claim be granted. Pursuant to I.R.C.P. 53(e)(2) and ***SRBA Administrative Order 1***, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the ***Special Master's Report and Recommendation*** and wholly adopts them as its own

THEREFORE, IT IS ORDERED that the *Motion to File a Late Notice of Claim* for the above-captioned water right is **granted.**

The original Notice of Claim, as well as any attached filing fees, and a copy of this ***Order*** will be forwarded to the Idaho Department of Water Resources for further action. This modifies the provisions of ***SRBA Administrative Order 1*** 4d(2)(h).

IT IS SO ORDERED.

Dated June 29, 2009.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM was mailed on June 29, 2009, with sufficient first-class postage to the following:

GEMCO LIMITED PARTNERSHIP
Represented by:
ROBERT L HARRIS
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Julie Murphy
Deputy Clerk

50
300
LATE 52.5
402.5

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 27-12180
Date Received: 7/1/2008
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
AUG - 6 2008
By _____ Clerk
_____ Deputy Clerk

1. Name of Claimant(s)

GEMCO LIMITED PARTNERSHIP Phone: 208-232-6886

PO BOX 4026
POCATELLO ID USA 83201

2. Date of Priority: 03/12/1903

3. Source: GROUND WATER , GROUND WATER Trib. to: ,

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County	Type
02S	35E	35	NE	SW	BINGHAM	
02S	35E	35	NE	SW	BINGHAM	

5. Description of diverting works:

two wells/pump to sugar factory

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
INDUSTRIAL	01/01	12/31	3	
COMMERCIAL	01/01	12/31	0.04	

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

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres

02S	35E	35	NE	SW	INDUSTRIAL
			NE	SW	COMMERCIAL

11. Place of use in counties: BINGHAM

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

13. Other Water Rights Used:

14. Remarks:

commercial use is for a office in a sugar factory.
industrial use is for a sugar factory

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am RICHARD D. KIRKHAM of
Title
GEMCO LIMITED PARTNERSHIP, that I have signed the foregoing
Organization
document in the space below as PARTNER / AUTHORIZED AGENT of
Title
GEMCO LIMITED PARTNERSHIP and that the statements contained in the
Organization
foregoing document are true and correct. Richard A Kirkham
Signature of Authorized Agent

PARTNER / AUTHORIZED AGENT
Title and Organization

July 1, 2008
Date

State of Idaho)
) SS.
County of Bonneville)

Subscribed and sworn (or affirmed) before me this July 1, 2008

of _____ 20__ Ernest M Carlsen
Notary Public

ERNEST M. CARLSEN NOTARY PUBLIC STATE OF IDAHO

residing at Idaho Falls ID.

My commission Expires 8-14-2009

DOCUMENTAION ON CLAIM OF WATER RIGHT

July 1, 2008

HISTORY OF FACTS

Gemco Limited Partnership is the owner of Real Property in Blackfoot, Bingham County, Idaho, legally described in Exhibit 1, and hereinafter referred to as the "Property" and claims a historic right to ground water at that location.

Gemco Limited Partnership is currently in possession of a Permit to Appropriate Water under Permit No. 27-07510. In filing for this permit, which was granted March 26, 1990, the partners erroneously believed that they were establishing their claim to a water right.

Gemco Limited Partnership discovered this error when they filed an application for a transfer of the water right from the Department of Water Resources on June 3, 2008.

Gemco Limited Partnership now desires to file a Late Adjudication Claim in order to establish their water right claim and to further establish the correct priority date for that water as March 12, 1903.

Gemco Limited Partnership provides the following evidence, arguments, and proofs of their claim as herein set forth and attested to herein by the Partners.

EVIDENCE

HISTORICAL EVIDENCE INDICATES THAT SIGNIFCANT GROUND-WATER USAGE AT THE PROPERTY DATES BACK TO 1903.

Historically the Property was the site of a significant beet sugar factory built in 1903 & 1904. The original owner of the plant was the Snake River Sugar Company, Ltd. Construction of the plant was completed in November 1904.[1] The plant was 240 feet long, 65 feet wide, and 60 feet high.[2] Constructed by the Kilby Manufacturing Company, the plant had an original capacity of 600 tons of beets per day.[3] The plant capacity was increased in 1911 to 800 tons per day.[4] In terms of water usage, this is a particularly significant fact since the ratio of water needed to produce a pound of sugar is a minimum of 1.14 gallons per pound of sugar produced.[5] Thus a factory rated for 600 tons of production per day would need a water source capable of producing a minimum of 1,368,000 gallons of water per 24-hour period.[6] This equals 950 gallons of water per minute or the equivalent of 2.1166 CFS.[7] No viable factory rated for such production would ever be built without first proving the water resource that is so fundamental to its success therefore a water source equal to or exceeding 3 CFS is a reasonable conclusion.

Sugar beet factories of the early 1900s were water intensive operations. For example, the factory in Lehi, Utah, constructed in 1891 and 1892 was a 300-ton per day factory. That is exactly one half the capacity of the Blackfoot factory. The Lehi plant was served by eight wells that ranged from 65 to 135 feet deep and had a collective capacity of 500 gallons of water per minute.[8] A reliable, high volume water source is simply paramount for the success of sugar plant technology of that era.[9]

The water for a beet sugar factory had to be pure water since it was used to process food-grade sugar that was sold throughout the world. Pure water, such as can only be extracted from high-quality wells, is essential in the production process. A brief description of the process bears out this fact. Beets are first conveyed from sheds through a flume that flowed in a current of warm water. From the flume the beets are carried to a washer in the factory then raised by a 16-foot "beet wheel" to a cutter. The cutter slices the beets into "cossettes" or strips that look something like French fries. The slices are then dropped into large wrought-iron diffusers each with a capacity of two and one half tons. Here they are cooked for the extraction of their sugar. This process was done in hot water where the sugar was soaked out of the cossettes. The cooking of the strips was a continuous process of filling the cells with pure soft water that was extracted from the wells at the plant and continued until the sugar was exhausted from the pulp.[10]

In addition to the creation of the "thin juice" from which sugar is made by combining pulp and water, there are other related processes occurring in the plant that also use significant amounts of water. For example, water is needed for washing, producing steam, fluming (transporting beets via water), preparing the cossettes or beet strips, and many other sundry processes requiring water.[11] No sugar factory would ever be built without first determining that ample supplies of water are available. Additionally the water supply must be available in the drier months of the year since sugar is produced immediately following harvest in the fall of the year. Processing must be done while the sugar in the beet is prime, thus processing began at the first harvest and continued around the clock until all the beets were processed.

The Blackfoot Property was acquired by the Idaho Sugar Company from rival Snake River Valley Sugar Company, which dissolved in January 1908.[12] The Idaho Sugar Company eventually merged with the Utah Sugar Company and formed the Utah-Idaho Sugar Company who continued to operate the Blackfoot plant and maintained a fire protection system connected to the wells that served the property until the property was sold to the current owners in 1984.

PRODUCTION RECORDS PROVE WATER

According to Leonard Arrington's definitive history of beet sugar production published in 1966, the Blackfoot Sugar Plant processed an estimated 50,000 tons of beets for the 1905 season.[13] The water required to produce that tonnage that year would have been approximately 114,000,000 gallons.[14] Assuming a 90-day production run for beets that year, the water requirement for 1905 would have been 880 gallons per minute[15].

Production records in later years indicate that the plant capacity only increased with time.

In 1920, the upgraded plant processed 800 tons of sugar beets per day according to Burnham's Manual of Mid-Western Securities.[16] Other sources, including The History Of Bingham County, also indicate that production continued to increase with the years. The Bingham History features a section in its pages on the Blackfoot Sugar Factory and captions a 1930s era photograph of the plant with the following sentence, "U&I Sugar Company – 1400 tons per day"[17]. Increased production required and ever expanding dependency on a reliable and voluminous water source such as the Blackfoot Sugar Plant was fortunate enough to have secured in 1903.

where we are through the loyalty of the local grocers and the people of Blackfoot." (Employed 35 people)

After the death of the founder, C. F. Smith and son Lowell, the business was sold in 1955 to Benjamin F. Teagartin. Frank and Ralph still reside in Blackfoot. Frank recently sold his daughter, Lorraine, that if he had his life to live over, he would still go into the bakery business.

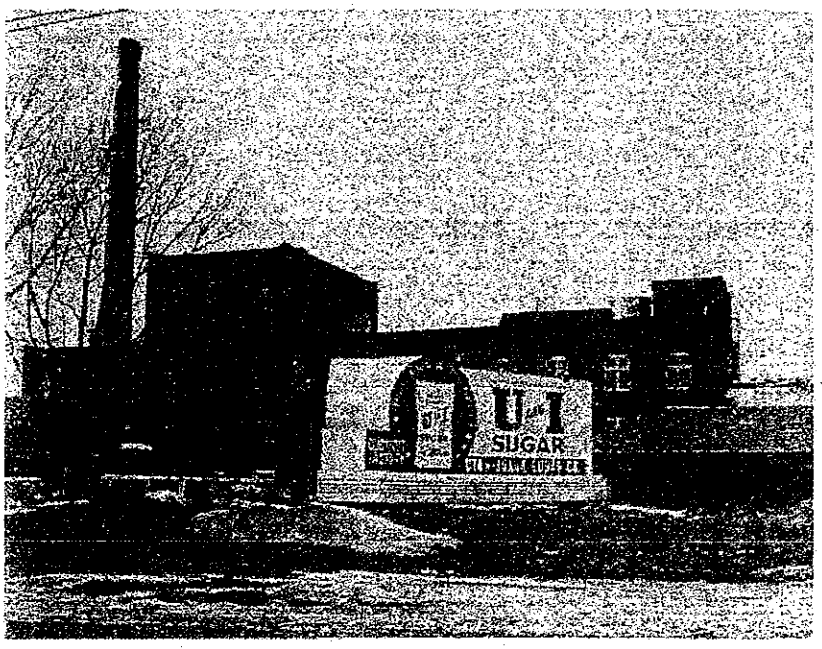
Frank Smith died May 20, 1983.

SUGAR FACTORY

The Blackfoot Sugar Factory was used in France before it was purchased and shipped to Blackfoot. The sugar factory construction began in 1904 but was not finished and was sold to Idaho Sugar Company in 1905. Several companies merged into the Utah-Idaho Sugar Company.

The Segar industry had just started. Beets were loosened in the ground by a blade that was pulled along the side of each row. Next they were pulled and topped by hand with a beet knife and put in piles, then loaded by hand into a wagon pulled by horses and hauled to the beet dump or receiving stations and then on to the factory. Groveland grew the first beets in the Snake River Valley.

Gottfred Malm related that when the smokestack was built and finished that men working at the top of the stack came down bringing all the equipment with them. These men weren't aware that one man was still up at the top inside the stack. This man was left without equipment to descend, so he removed his homemade knit wool socks, unraveled them, tied the yarn together, lowered one end to the ground where a rope was tied to the yarn which the stranded man pulled up the stack. He secured the rope at the top and lowered himself to the ground.



U & I Sugar Factory - capacity 1400 tons per day

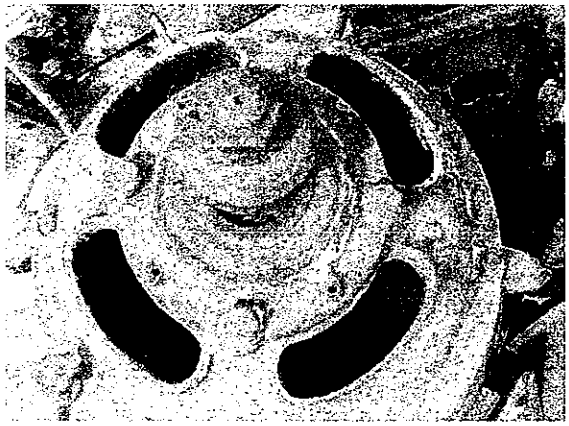
John "Jack" Peterson made a hydraulic press so he could bend the iron to make the bands for the sugar factory smokestack which had started to crack, no big cracks, but they figured it might fall down, so the bands were put on to hold it together. He tells about the brick layer of the "stack" doing a hand stand on the cornice when he finished. The smokestack stood 75 years before it gave way to elements and use, finally tumbling to the ground. It was 210 feet.

Joe Jehle, a bricklayer and his partner were working

ORIGINAL WELLS AND PUMPS PROVIDE FURTHER EVIDENCE FOR CLAIM

In all likelihood, the original pumps used at the sugar factory were steam driven pumps since steam was the standard water-pump technology at the turn of the century. While those first motors and pumps are long gone, some interesting pumping relics still remain as evidence of the tremendous amount of water that was extracted at the Blackfoot Plant.

In 1984, Dale Kirkham removed the vertical turbine pump and motor from Well #2 that lifted water 90 feet to the surface for production use. The motor that was mounted on the pump is rated at 75 horsepower [18]. The pump itself was removed from the motor and eventually sold as scrap, but the Fairbanks Morse electric motor that drove the pump is still in possession of the Owner. This older electric motor, likely dating back to the 1940s, indicates the pumping capacity of the Well #2. According to Tana Root of Layne Pump Corporation, a 75 hp motor with no pressure is capable of delivering up to 2600 gallons of water per minute.[19] This illustrates the tremendous potential of the well and the water source.



In addition to the Well #2, there is another active well on the property. Well #1 is also a high capacity well that served as the primary water source for many years for the fertilizer plant that has occupied the property since 1984. Additionally, Dale Kirkham recollects still a 3rd well located approximately 70' north of Well #2 that was

decommissioned when a portion of the building collapsed on the well during demolition in 1984. These wells were all original to the sugar factory and as far as can be ascertained all the wells on the Property date back to the time of the sugar plant's construction in 1903.

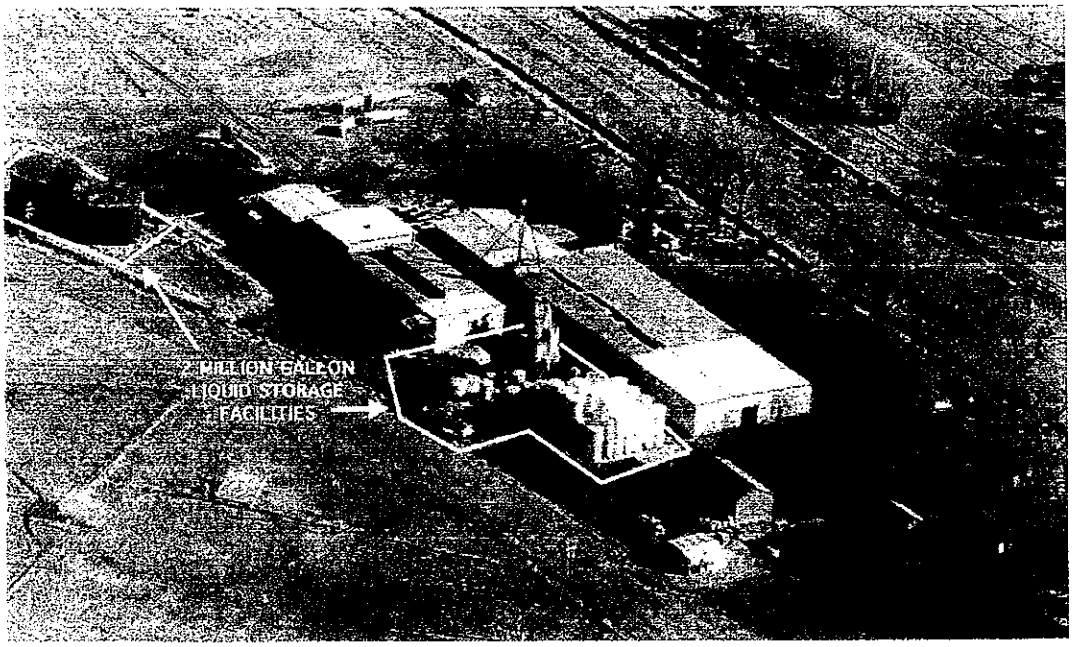
WATER USED FOR THE PRODUCTION OF LIQUID FERTILIZER.

On February 14, 1984 the UI Group (Formerly the Utah Idaho Sugar Company) sold the plant to Dale and Bodell Kirkham. Later the couple became the General Partners of Gemco Limited Partnership, the current owner of record, and transferred the Property into the partnership[20]. At the time of acquisition in 1984 Kirkham recognized the water as a major asset of the property. He realized that the water would make it possible to attract another manufacturer to the property who could rely on the resource and use the it to great advantage.

This proved to be precisely the case. Immediately after the acquisition, much of the plant was dismantled and sold as scrap and the buildings were converted to warehouse storage for fertilizer products[21]. Within weeks of the Kirkhams taking possession on the Property, negotiations began with the fertilizer producer and distributor Pacifex, a subsidiary of ConAgra Inc. Eight months after the purchase the parties entered into a formal lease agreement that was signed September 19, 1984.[22] The Blackfoot Morning News writing about the company reported that Pacifex had "moved its plant from Power County west of Pocatello to the Blackfoot location after the firm's Owner became convinced that Blackfoot would be a better location for the business because it was more centrally located to southeastern Idaho's largest farming area."[23] The article specifically mentions a "deep well on the property" and goes on to say that "Pacifex buys raw product from most of the major fertilizer manufacturers and turns it into liquid for sale to fertilizer dealers."[24]

Pacifex began converting dry fertilizer is converted into liquid fertilizer immediately after setting up their operations by combining raw materials in a manufacturing process with water extracted from the wells on the property. In the process heat is combined with the raw materials to suspend them in solution.

Pat McGrane, Operations Manger for UAP, (Formerly Pacifex) has worked at the Blackfoot fertilizer plant since February 10, 1986. On July 1, 2008, Mr. McGrane signed an affidavit attesting to his first hand knowledge of two of the wells on the Property that have been used by the fertilizer company to produce liquid fertilizer since the plant went into production in 1984 wherein the operation was required to extract tremendous amounts of water to be held on premises in one of the several million gallon storage tanks now located on the property (See Exhibit 3, "Affidavit #1").



THE CURRENT WELL PUMP PRODUCES 340 GALLONS OF WATER PER MINUTE

Today the UAP Fertilizer Company, the current tenant, occupies the former Sugar Factory property and buildings. UAP uses two of the original wells that were drilled in the early 1900s by the sugar factory for its main production of liquid fertilizer. The primary water source for operations today comes from Well #2. Well #1 is kept as a backup water source and served as the primary water source for the fertilizer company for many years. It is believed that other wells also existed on property prior to UAP's occupancy in 1984.[25]

According to McGrane, the casing of Well #2 is 12 inches in circumference and has a depth of 120'. The fertilizer plant currently extracts water from Well #2 through a 6" draw pipe that extends down into the well. The draw pipe is attached to a 20 horsepower pump that sits at a depth of 90 feet. This pump is capable of producing 340 gallons per minute @ 170 TDH.[26] Well #2 produces more than enough water to meet the needs of the fertilizer company's current annual production, which is estimated at more than 6,000,000 gallons of water per year.[27] The fact that the well has the capacity to produce this proven volume of water over 100 years after it was drilled helps to validate the property owners claim and the well's potential to the minimum limits of the current pump now in place.

THE OWNERS BELIEVED THAT THEIR 1990 FILING WITH THE DEPARTMENT OF WATER RESOURCES WAS FOR A WATER CLAIM

In the early 1990s issues surrounding ground-water rights came to the attention of the Owner. The Owner asked personnel at the Department of Water Resources what they needed to do to protect their water claims on various properties in South East Idaho that they own that have wells serving the property. The guidance that was given at the time was that it was necessary for the owner to register all water diversions in Idaho with the Department of Water Resources. The Owners believed at that time that the paper work they filed met the requirements to establish their various claims. (See application for permit - Exhibit 4). Altogether the owner filed paperwork on 14 diversions in Southeast Idaho, including the Blackfoot Property. About this same time owners Kirk and Dale Kirkham had a meeting in the Idaho Falls with Craig L. Saxton of the department of Water Resources. Mr. Saxton helped the them fill out all the forms required by the Department, and the required fees were paid.

The following is a brief description of the various communications that have taken place between the Owner and the Department of Water Resources since 1990:

1. Records in the Owner's possession show that On March 26, 1990, an Application for Permit was filed (see Exhibit 4). The Application was acknowledged in a letter from the DWR (See Exhibit 5) and the process of advertising began. No protests to the application came forward so on July 9, 1990 a Permit to Appropriate Water was issued for the Property (See Exhibit 6).

2. On May 31, 1992 the DWR sent the Owner a letter under the heading "PROOF DUE NOTICE" together with a form for the Owner to fill out and return entitled "PROOF OF BENEFICIAL USE". This form was filed and signed by Kirk Kirkham on June 15, 1992, on which he referenced in that the well was drilled in 1903 and that the use being applied for was for commercial purposes. A fee of $175 was returned with the form (See Exhibit 7).

3. On July 8, 1992 the DWR acknowledged the receipt of the form and the fee (See Exhibit 8). On July 11, 1990 the DWR sent a "PERMIT APPROVAL NOTICE" to the Owner from the Statehouse in Boise (See Exhibit 9). On July 13, 1992 the Owner also received another letter from the DWR in Boise entitled "PROOF ACKNOWLEDGEMENT LETTER" wherein the Owner was notified that the next step in the process for developing the water right was for the department "to conduct a field examination to determine and confirm the use being made of the water." (Exhibit 10)

4. Although the paper trail in the Owner's possession ends at this point, Kirk Kirkham remembers that the field examination of Blackfoot and other properties did take place. Mr. Kirkham's recollection is that following the examinations in 2001 the DWR asked the Owner to submit historical proof of beneficial use such as a well driller's log. The Owner searched through all the historical records available at that time but could not provide a well driller's log as requested by the field examiner and it wasn't learned until April of 2008 that driller's logs were not kept in 1903 and therefore it would be impossible to provide such historical

documentation[28]. In response to that request on June 11, 2001 the Owner submitted historical affidavits and claims for several diversions including the Blackfoot Property. The result was that some diversions received the requested priority dates while others were denied, including Blackfoot. The following is a summary regarding the 14 applications filed that year: 9 have a partial decree, 1 has a license, and Blackfoot remains still in the permit stage.

5. On June 1, 2008 Rich Kirkham applied with the DWR for a transfer of the water right to change the nature of the use from "Commercial" to "Industrial." The Application was denied on June 3, 2008 because "Water right 27-07510 is still in the permit stage" and that they "cannot process a transfer on a permit. This is only allowed if the water right is either a license or decree." (Exhibit 11)

6. On June 3, 2008, Rich placed a phone call to Gene Hanson of the Department of Water resources seeking assistance and clarification about the options for the Blackfoot water situation. Gene advised us to bring our historical evidence to his office and file a Late Ajudication Claim.

7. On July 1, 2008 Rich Kirkham, Kirk Kirkham, and Dale Kirkham met with Dave Carlsen at his office at the Department of Water Resources. Dave reviewed this case material and assisted us in preparing a motion to file a late notice of claim, case 39576, subcase 27-12180.

PETITION

THEREFORE, given the above stated evidence and claims, the Owner respectfully requests that the Court recognize this water claim and ask that the court decree the same and/or grant the appropriate a licenses for 3.0 CFS water right with a priority date of 1903.

Signed Dale B Kirkham

Dale B. Kirkham
General Partner
Gemco Limited Partnership

Signed _____

Richard D. Kirkham
Partner
Gemco Limited Partnership

Signed _____

Dale B. Kirkham, Jr.
Partner
Gemco Limited Partnership

END NOTES & DOCUMENTATION

[1] See "Minutes of Meetings of Snake River Valley Sugar Company, Limited, March 30, 1904 to January 24, 1908," MSS, Utah-Idaho Sugar Company Archives and "Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

[2] Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

[3] Ibid, p. 66

[4] Ibid, Appendix B, p. 185-186, also see Exhibit 15.

[5] Based on formulas provided in Technology of Beet Sugar Manufacture: A Textbook Describing the Theory and Practice of the Process of Manufacture of Beet Sugar, p.11, Great Western Sugar Company, First Edition, Denver 1920, see on-line edition at: http://books.google.com/books?id=w3JBAAAAIAAJ&pg=PA157&lpg=PA157&dq=ratio+water+to+manufacture+sugar&source=web&ots=-eM6NvGETO&sig=Z-ydMFuejrmMIyda3dA4K7Pnt_s&hl=en&sa=X&oi=book_result&resnum=4&ct=result#PPP11,M1 Also see Exhibit 2.

[6] The following formula is used to make this calculation: 600 tons = 1,200,000 pounds. At a ratio of 1.14 gallons to 1 pound of sugar (See Endnote 4) the approximate amount water needed to process 1.2 million pounds of beets is 1,368,000 gallons.

[7] See CFS Conversion Calculator hosted by Western-Water at http://www.western-water.com/GPM_formulas.htm

[8] See "Minutes of Meetings of Snake River Valley Sugar Company, Limited, March 30, 1904 to January 24, 1908", p. 10, 28-29

[9] Early factory operations are described in *Salt Lake Tribune*, October 8, 1891; *Scientific American*, LXV (December 5, 1891; and Webb MSS, passim).

[10] Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966, by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

[11] See processes described in Technology of Beet Sugar Manufacture: A Textbook Describing the Theory and Practice of the Process of Manufacture of Beet Sugar

[12] See "Razing rekindles sweet memories" by Emily Hone, Post-Register, circa 1984

[13] Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

[13] Ibid, p. 66-67.

[14] Using the formula of 1.14 gallons of water per pound of sugar, 50,000 tons of production would require 114,000,000

[15] 114,000,000 / 90 days = 1,266,666 gallons per day / 24 = 52,777 gallons per hour / 60 minutes = 880 gallons per minute.

[16] Burnham's Manual of Mid-Western Securities, copyright and published in 1921 by John Burnham & Company Inc., 41 South La Salle Street, Chicago, p. 520-521. This reference sites the tonnage produced by all U&I plants that year including the Blackfoot Plant.s

[17] History of Bingham County, p.120

[18] The Fairbanks-Morse Pump removed from Well #2 is still in the possession of the owners and they have submitted photos of the unit (see Exhibit 14). The identification plate of the unit bears the following information: 75 HP, 440/220 volts, 3-phase,

Type:QSZV, Frame:GH505V, No:425.046, Delta Connection, 1470 RPM@ 50 Cycles, 1760 RPM @ ? Cycles. The unit is described as being approximately 3' in height and 2.5' in diameter.

[19] See Exhibit 16, copy of email from Layne Pump Co., indicating the mathematical potential for a 75 hp motor when mounted to a vertical turbine pump.

[20] At that time Dale and Bodell Kirkham were also the majority stockholders for Dale's Auto Supply Co., Inc.

[21] See "Pocatello businessman buys sugar factory", by Dan Myers of The News, The Morning News, Blackfoot, Idaho, February 23, 1984.

[22] See "Lease Agreement" dated September 19, 1984, Gemco Limited Partnership Archives.

[23] See "Blackfoot landmark revived", by Emily Hone, The Post-Register, Idaho Falls, Idaho, Sunday, March 8, 1987.

[24] Ibid

[25] Dale Kirkham recollects at least one other well located approximately 70' north of Well #2 that was decommissioned when a portion of the building collapsed on the well during demolition in 1984.

[26] See pump data sheet. TDH is a pressure designation meaning Top Dead Head.

[27] According to McGrane, one of the products manufactured at the plant is called "1034." In 2007 the company produced 17,000 tons of this product, which required 1.5 million gallons of water. McGrane says this one product represents about 25% to 30% of the company's total products that use water as a main ingredient in 2007.

[28] Bob Cushman of Cushman Well Drilling informed Kirk Kirkham in a phone conversation in April 2008 that such well drilling records were neither kept nor required in 1903.

EXHIBIT 1
LEGAL DESCRIPTION

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA
STANDARD COVERAGE POLICY

3-9127

SCHEDULE A

AMOUNT

EFFECTIVE DATE

March 14, 1984
at 2:17 p.m.

INSURED

DALE B. KIRKHAM and BODELL S. KIRKHAM

1. The title to the fee simple estate or interest in the land described below is at the date hereof vested in:
DALE B. KIRKHAM and BODELL S. KIRKHAM, as husband and wife

2. The land referred to in this policy is described as follows:

A portion of the W½ of Section 35, Township 2 South, Range 35, East of the Boise Meridian, Bingham County, Idaho, described as:

Beginning at a point on the North and South center line of Section 35, Township 2 South, Range 35, E.B.M., which point is 3353 feet North and 2618.45 feet East of the SW corner of said Section 35, thence S 61°41' W 430.5 feet; thence N 37°14' W 180.3 feet; thence S 86°13' W 82 feet; thence S 48°27' W 472.87 feet; thence N 57°54' W 87.4 feet; thence S 40°11' W 475.4 feet; thence S 59°35' W 260.7 feet; thence S 32°21' W 159.3 feet; thence S 19°12' E 249.5 feet; thence S 31°45' W 183.5 feet; thence N 58°15' W 73.5 feet; thence S 31°45' W 156.6 feet; thence S 58°15' E 73.5 feet; thence S 31°45' W 139.6 feet; thence S 1°35' W 392.5 feet; to a point said point being a corner post situate 1 foot South of a point designated by a concrete boundary marker, said marker being 1355.09 feet North and 822.68 feet East of the SW corner of said Section 35, thence East to the NW boundary line of Yellowstone Highway; thence Northeasterly along the West line of said highway approximately 2500 feet more or less to the point of Beginning.

EXCEPTING THEREFROM THE FOLLOWING PARCELS:

PARCEL I:
Beginning at a point situate 1395.58 feet North and 1074.83 feet East of the Southwest Corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 79 feet; thence S 11°30' W 28.4 feet; thence S 41°30' E 58.4 feet; thence S 89°55' E 94.2 feet along a steel pipe post and woven wire fence; thence N 38°54' E 55 feet along a woven wire fence to the point of beginning.

(continued on page 2)

AMERICAN LAND TITLE COMPANY, INC.

Countersigned:

Authorized Officer or Agent

Issued at: Blackfoot, Idaho

Page 1 of Sched. A Pol No. 74-00-009848

Lawyers Title Insurance Corporation

A Stock Company

Home Office – Richmond, Virginia

SCHEDULE A ..... cont'd.

PARCEL II:
Beginning at a point situate 1452.38 feet North and 1120.67 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 73 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 73 feet along a woven wire fence to the point of beginning.

PARCEL III:
Beginning at a point situate 1510.74 feet North and 1167.77 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 75 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 75 feet along a woven wire fence to the point of beginning.

PARCEL IV:
Beginning at a point situate 1588.56 feet North and 1230.57 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M., Thence N 51°06' W 143.8 feet; thence S 38°54' W 100.0 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 100.0 feet along a woven wire fence to point of beginning.

PARCEL V:
Beginning at a point situate 1667.93 feet North and 1294.62 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 102 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 102 feet along a woven wire fence to point of beginning.

PARCEL VI:
Beginning at a point 1354.09 feet North and 822.6 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M., Bingham County, Idaho, and running thence N 1°35' E 392.5 feet; thence N 31°45" E 479.7 feet; thence N 20°09' E 514.8 feet; thence N 59°35' E 49.2 feet; thence N 40°11' E 30 feet; thence Southeasterly along a 30 foot radius curve to a point S 10°50' E 34.4 feet from the previous course; thence S 20°09' W 557.9 feet; thence S 31°45' W 464.1 feet; thence S 1°35' W 179, feet thence S 09°07' E 128 feet to a steel corner post; thence S 11°30' W 28.4 feet; thence S 41°30' E 58.4 feet; thence S 89°55' E 30.0 feet; thence S 81°47' E 104 feet to the Intersection of the West line of State Highway 91-191 and the North line of the SW¼ of the SW¼ of Section 35, thence S 38°54' W along the West line of said state highway 88 feet; thence N 58°38' W 155 feet; thence N 88°39' W 65.5 feet to the point of beginning.

PARCEL VII:
Beginning at a point 1 foot South of a concrete boundary marker which is situated 1354.09 feet North and 822.6 feet East of the Southwest corner of said Section 35, thence N 1°35' E along a wire fence 76.0 feet; thence S 39°41' E 99.9 feet; thence N 89°39' W along a steel post and woven wire fence 65.5 feet to the point of beginning.

EXHIBIT 2

Technology of Beet Sugar Manufacture: A Textbook Describing

Dry Substance and Brix.—In section A of this chapter "Per Cent Dry Substance" was defined as the "Percentage of solid matter in a solution", and it was stated that the "Brix" of a pure sugar solution was the same as the "Per Cent Dry Substance", while when dealing with impure sugar solutions the "Brix" represented only the approximate "Per Cent Dry Substance".

The determination of the "Brix" of a solution is very simple and is made by immersing a *Brix Hydrometer in the solution to be tested and reading off the "Brix" at that point where the surface of the liquid comes in contact with the scale of the hydrometer. (Note—The solution being tested must be of the temperature for which the hydrometer was standardized or a temperature correction applied.) On the other hand, the determination of the "Per Cent Dry Substance" is a rather slow and complicated matter and "Brix" instead of "Per Cent Dry Substance" is used for all practical control and for a good many calculations.

An understanding of the meaning of "Dry Substance" or "Brix" permits the making of many technical calculations regarding the quantity of water needed to be evaporated in order to raise a solution from one density to another, regarding how much juice a pump on any service must handle, etc., etc. As an example:

> How much water must be evaporated from 10,000 pounds of thin juice at 12° Brix to raise it to a thick juice at 65° Brix?

In concentrating a juice from one density to another only water is evaporated and there is the same quantity of dry substance in the thick juice as was originally present in the thin juice.

> Thus, the 10,000 pounds of thin juice at 12° Brix contains $10{,}000 \times \frac{12}{100} = 1200$ pounds of dry substance, and there must be contained in the thick juice at 65° Brix the same quantity of dry substance as in the thin juice, or 1200 pounds of dry substance, and since it is 65° Brix the weight of the thick juice must be $1200 \times \frac{100}{65} = 1846$ pounds, and the water evaporated is, 10,000 pounds (weight of thin juice) minus 1846 (weight of thick juice) = 8154 pounds.

*A Brix hydrometer is scaled to indicate the percentage of sugar in a pure sugar solution. It derives its name from one of the early investigators who determined the specific gravity values of sugar solutions on which the scale is based.

EXHIBIT 3

AFFIDAVIT

I, Pat McGrane, do hereby affirm and attest the following facts:

1. I have personal knowledge of at least two historic wells located at 1701 N. West Main, Blackfoot, Idaho, the current site of my employer, UAP, and the former location of the Blackfoot Sugar Factory.

2. I have been employed at this location since February 10, 1986.

3. I have personally been involved with or have been responsible for the production and storage of liquid fertilizer produced at this location during my time of employment, the water for which was extracted from the wells on the property.

4. I have personally been involved with or have been responsible for the maintenance and operations of the wells during my time of employment.

5. I have personal knowledge that one of these wells (referred to as Well #2) has the following characteristics:

    a. The well casing of Well #2 is 12" in circumference
    b. The well has a depth of 120'.
    c. The fertilizer plant currently extracts water from Well #2 through a 6" draw pipe that drops down into the well casing.
    d. The draw pipe is attached to a 50 horsepower pump that sits at a depth of 90 feet.
    e. This pump is capable of producing 340 gallons of water per minute @ 170 GDH.
    f. Well #2 produces more than enough water to meet the needs of the fertilizer company's current annual production, which in 2007 is estimated at 6,000,000 gallons of water per year.

I do solemnly attest that these facts are true to the best of my knowledge, and I sign my name as witness to the same on this the 1 day of July, 2008.

Signed Pat McGrane

Address: 1701 N. W. Main

Notary

On this the 1 day of July, 2008, before me personally appeared Pat McGrane, known to me (or satisfactorily proven) to be the person whose name is subscribed to this Afidavit and acknowledged that he executed the same.

In witness whereof I hereunto set my hand and official seal.

Kathy Kirkham

Kathy, Kirkham - Notary Public

KATHY KIRKHAM
NOTARY PUBLIC
STATE OF IDAHO

Commission expires: March 13, 2012. Notary Address is 2055 Garrett Way, Building 1, Suite 2, Pocatello, Idaho 83201

EXHIBIT 1 P1

Form 202
6/85

Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Dale B. Kirkham or Dale B. Kirkham Jr. Phone 232-6886
   Post office address P.O. Box 4026 Pocatello, Id. 83201
2. Source of water supply GROUNDWATER which is a tributary of _____
3. Location of point of diversion is _____ ¼ of NE ¼ of SW ¼, Govt. Lot _____
   Sec. 35 Township 2S Range 35E B.M. Bingham County; additional
   points of diversion if any: _____
4. Water will be used for the following purposes:
   Amount 3.0 (cfs ~~or acre-feet per annum~~) for Commercial purposes from 1/1 to 12/31 (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated is (a) 3.0 (cubic feet per second) and/or (b) _____ (acre feet per annum)
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. Two wells one for office use
   Second well to storage tanks for mixing fertilizer
   b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
   reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
   _____ to _____ inclusive.
   c. Proposed well diameter is EXISTING 16" to 12" inches; proposed depth of well is 510' 312' feet.
   d. Is ground water with a temperature of greater than 90°F being sought? NO
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
   5 years (*minimum 1 year*).

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 4

To Kirk Kirkham	From Joe
Co.	Co.
Dept.	Phone #
Fax #	Fax #

8. Description of proposed uses (*if irrigation only, go to item 9*):
   a. Hydropower; show total feet of head and proposed capacity in KW. _____
   b. Stockwatering; list number and kind of livestock. _____
   c. Municipal; show name of municipality. _____
   d. Domestic; show number of households. _____
   e. Other; describe fully. Commercial - office use + mixing fertilizer

9. 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 the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
25	35E	35									C								

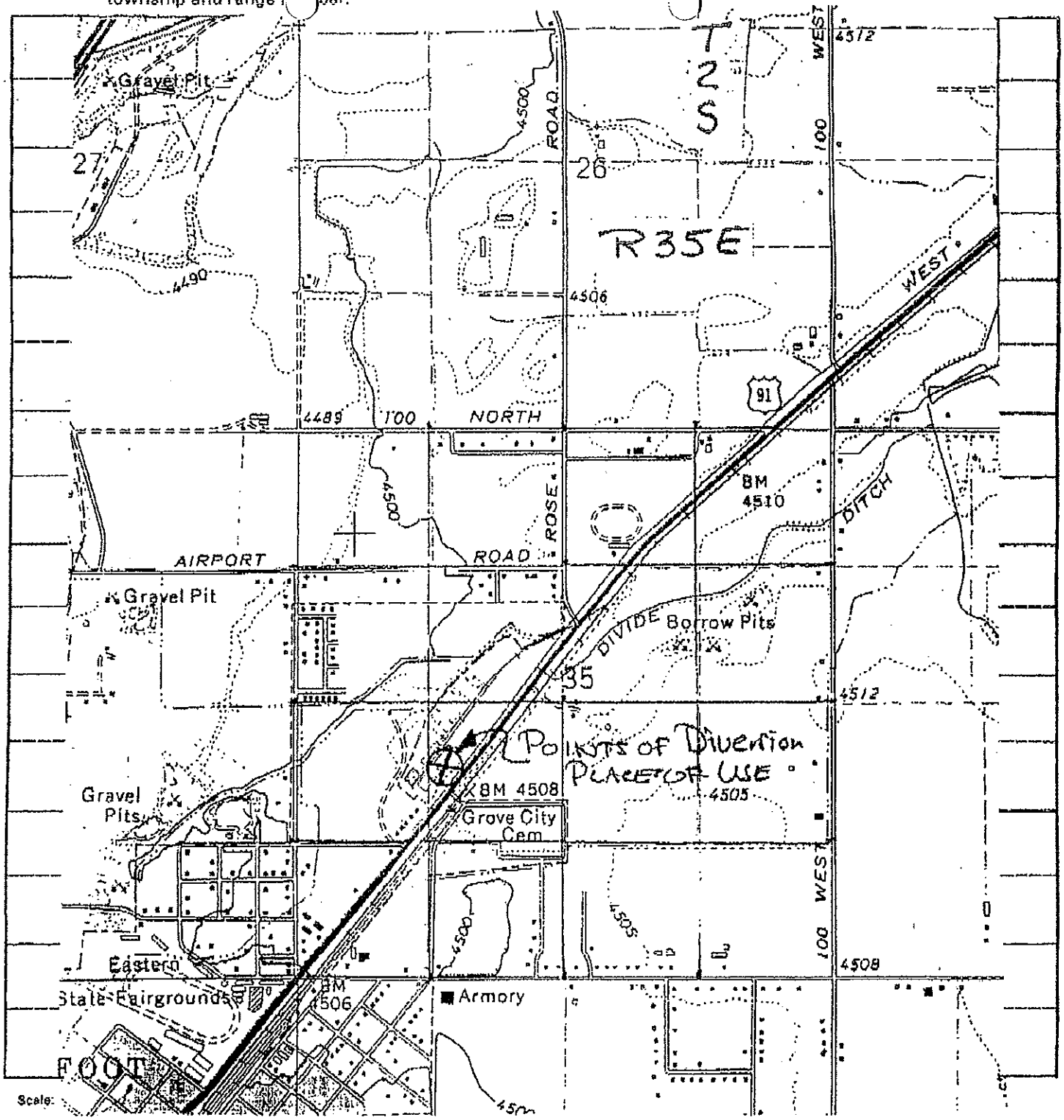
Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. NONE

11. a. Who owns the property at the point of diversion? Applicant
    b. Who owns the land to be irrigated or place of use? "
    c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: _____

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



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Dale B. Kirkham Jr.
(Applicant)

MAR-14-'97 THU 08:19 ID: TEL NO: #252 P04

Assisted by Kew
Received by _____ Date 3/26/90 Time 1500hrs Preliminary check by _____

Received by Assistant A. Kew Date 3/26/90 Time 1500hrs Preliminary check by _____

Fee $ 85.00 Receipted by Kew # 012536 Date 26 Mar 1990

Publication prepared by RB Date 5-17; 24-90 Published in Morning News

Publication approved Kew Date 6-14-90

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

EXHIBIT 5

State of Idaho
DEPARTMENT OF WATER RESOURCES
150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

10-May-1990

Dale B. Kirkham

Pocatello, ID 83201

RE: Application for Permit No. 27-7510, 29-7939, 29-7941, 29-7942

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the Morning News on MAY 17 & 24, 1990. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

EXHIBIT 6 1-2

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 27-07510

Proposed Priority: March 26, 1990 Maximum Diversion Rate: 3.00 CFS
This is to certify, that DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO, ID 83201
has applied for a permit to appropriate water from: GROUNDWATER
and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
COMMERCIAL	01/01 to 12/31	3.00 CFS

LOCATION OF POINT(S) OF DIVERSION: NESW Sec. 35, Township 02S, Range 35E BINGHAM County

PLACE OF USE: COMMERCIAL

TWN	RGE	SEC	
02S	35E	35	NESW

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1992.
2. Subject to all prior water rights.
3. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
4. The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
5. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
7. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.
8. Commercial use is for an office.

EXHIBIT 6 2-2

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 27-07510

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this

9th day of July, 1990.

for R. Glenn Saxton

R. Keith Higginson, Director

EXHIBIT 3 (-1

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 31, 1992

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO ID 83201

2S 35E Sec 35
comp. office
Blackfoot

RE: PERMIT NO. 27-07510 PROOF DUE NOTICE

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before August 1, 1992. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Karen L. Gustafson
Karen L. Gustafson
Secretary/Records Manager

Enclosures

EXHIBIT 7, H
deck 55548

Form 217
11/91

OFFICE USE ONLY
Amt. of Fee $_____
Date _____
Receipt No. _____
Receipt by _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 27-07510 Telephone No. 232-6886
2. Name(s) of Permit Holder(s): Dale B. Kirkham or DB Kirkham
3. Mailing Address: Box [illegible] Pocatello
4. Source of Water: unnamed creek

   If GROUNDWATER, Well Driller's Name: _____ Date Drilled: 1903

   OPTIONAL:
   Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

   Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

   Irrigation _____ (No. of acres) Other Commercial

6. Total rate and/or volume for which proof is submitted 3.0 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

   Measuring device: Required? ___ Yes ___ No Installed? ___ Yes ___ No
   OR
   Flow Measurement Port: Required? ___ Yes ___ No Installed? ___ Yes ___ No

8. Fee Enclosed: $ 175.00 (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

   Phil McGarry 1-800-999-8511
   Name Telephone No.

   Sugar Factory - Blackfoot Idaho
   Address

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

6-15-92 Dale B. Kirkham
Date Signature (and title, if on behalf of a company or organization)

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resource

Receipt No:

Date:
Time:

Received
From:

Type of Payment	Program Acct	Amount
	Total	

EXHIBIT 8, 41

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 8, 1992

Dale B. Kirkham and Dale B. Kirkham Jr.
P.O. Box 4026
Pocatello, ID 83201

Re: Permit No. 27-07510

Dear Permit Holder:

The Department is in receipt of the proof of beneficial use and fee for the above referenced permit.

The license exam fee for 3.00 cfs is $150. Since you submitted $175, you are entitled to a $25 refund. I have begun the process to refund the $25 and it will arrive under separate cover.

I will continue to process the proof of beneficial use. If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Karen L. Gustafson

Karen L. Gustafson
Secretary/Records Manager

C: Fiscal

EXHIBIT 1, 1-2

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Statehouse
Boise, Idaho 83720
(208) 327-7900
July 11, 1990

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO, ID 83201

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 27-07510

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

You should be aware that the groundwater you propose to divert is located within a drainage basin where surface waters are regulated during the months of low flow. It is possible that diversion of groundwater may have an adverse impact on these surface water flows. Information available to us at this time does not warrant refusing to issue permits in your area, but we do caution that diversions of groundwater are not allowed to deplete flows available for surface water users with earlier priority dates. Siting your well as far from surface sources as possible and casing out upper water producing zones may reduce the potential of interference.

Section 42-235, Idaho Code, requires that a "drilling permit" must be obtained from the department for all wells constructed after July 1, 1987. A drilling permit is a separate permit that must be issued in addition to your permit to appropriate water. Commencement of well construction or diversion of water under your permit to appropriate water is prohibited unless a drilling permit is obtained.

Please note the requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you

EXHIBIT 4, 2-2

commence construction, no later than one year from the date the permit was approved.

We have enclosed a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

Sincerely,

Gary Spackman

GARY SPACKMAN, Supervisor
Water Right Permits Section

GS: SC
Enclosures

EXHIBIT 10, 1-1

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 13, 1992

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO ID 83201

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 27-07510

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls at (208)525-7161.

Sincerely,

Karen L. Gustafson

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov
EASTERN REGION

C. L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

June 3, 2008

GEMCO LIMITED PARTNERSHIP
PO BOX 4026
POCATELLO, IDAHO 83205

RE: Application for Transfer

Dear Applicant (s):

The Department of Water Resources has received your application for transfer. After preliminary review of the application, it has been determined that we are unable to process it at this time. We are returning your application and the filing fee. The reason for this action is described below.

-Water right 27-07510 is still in the permit stage and we can not process a transfer on a permit. This is only allowed if the water right is either a license or decree.

Please feel free to contact this office if you have any questions.

Sincerely,

Denise Kidman
Water Resource Agent

Enclosures

EXHIBIT 12, 1-4

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 287-4800 FAX: (208) 287-6700 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

August 3, 2007

DALE B KIRKHAM, DALE B KIRKHAM JR
PO BOX 4026
POCATELLO ID 83201

Re: Notice Regarding Participation in a Ground Water District as a Nonmember for Mitigation Purposes Only, Surface Water Coalition Delivery Call, Water District Nos. 34, 110, 120, and 130.

Affected Right No(s): 27-7510

Dear Water Right Holder:

This letter provides notice pursuant to 2006 Idaho Session Laws 1089 that you may need to join a ground water district solely for mitigation purposes to ensure that the above referenced ground water rights are included in a 2007 mitigation or replacement water plan (herein referred to as mitigation plan) approved by the Idaho Department of Water Resources (Department). **Recipients of this notice have fifteen (15) days to petition to join a ground water district for mitigation of the above referenced ground water right(s) or provide evidence that the right(s) is included in one of several Department accepted mitigation plans** provided by the Idaho Ground Water Appropriators (IGWA) and its member ground water districts, the Idaho Dairy Association (IDA), or the Water Mitigation Coalition (WMC). Petitions to join a ground water district should be filed with the ground water district located nearest the lands to which your right(s) is appurtenant.

A warning letter was sent to you on May 10, 2007 notifying you that the right(s) identified above would likely be curtailed in 2007 as a result of the delivery call made by members of the Surface Water Coalition, comprised of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. Fortunately, curtailment of junior ground water rights was avoided this year as a result of the mitigation plans provided by IGWA, IDA and WMC. Your water right(s) may not be covered by one of these mitigation plans.

The above referenced right(s) may not currently be included in a ground water district because it is either located outside the boundaries of a ground water district or is used for non-irrigation purposes. Other recipients of this notice include members of the Jefferson-Clark Ground Water District and the Carey Valley Ground Water District, both organized in November, 2006. IGWA has advised the Department that these ground water districts are not yet IGWA members. These two ground water districts therefore are not covered by IGWA's 2007 mitigation plan. If you are a member of one of these ground water districts you will need to work with the district to assure that the above right(s) are included or covered by the IGWA mitigation plan.

EXHIBIT 12, 2-2

The Director of the Department may take any appropriate action within his authority to assure that recipients of this letter and the right or rights identified herein are covered by an approved mitigation plan. If your right(s) identified in this notice have already been included in a ground water district for mitigation purposes or is included in another approved mitigation plan, then please contact the water district watermaster directly or have the ground water district or other mitigating entity contact the watermaster with verification regarding inclusion of your rights. Generally, a petition for annexation or inclusion of rights in the ground water district for mitigation purposes is acceptable.

Maps and contact information for ground water districts can be found on the IDWR website at: http://www.idwr.idaho.gov/water/districts/other_water_districts.htm . Information pertinent to all orders and correspondence concerning the Surface Water Coalition delivery call can be found on the IDWR website at: http://www.idwr.idaho.gov/Calls/Surface%20Coalition%20Call/default.htm. The delivery call was made under the Department's Rules for Conjunctive Management of Surface and Ground Water Sources (IDAPA 37.03.11). This notice has been sent pursuant to the Director's Order of May 2, 2005 issued in response to the Surface Water Coalition delivery call and Legislative House Bill No. 737, 2006 Idaho Session Laws 1089, adopted by the Idaho Legislature in 2006.

Sincerely,

David R. Tuthill, Jr.
Director

Copies: Idaho Ground Water Appropriators, Inc. – Lynn Tominaga
Aberdeen-American Falls Ground Water District
Bingham Ground Water District
Bonneville-Jefferson Ground Water District
Magic Valley Ground Water District
North Snake Ground Water District
Jefferson-Clark Ground Water District
Carey Valley Ground Water District
Randall C. Budge – Racine Olson Chartered
Michael C. Creamer – Givens Pursley LLP
John K. Simpson – Barker Rosholt & Simpson, LLP
Josephine Beeman – Beeman & Associates
Lyle Swank – IDWR Eastern Region and Water District No. 110
Allen Merritt – IDWR Southern Region
Earnest Carlsen – Water District No. 120
Cindy Yenter – Water District No. 130
Bob Schaeffer – Water District No. 34

EXHIBIT 17

Assessment Notice

Bingham Groundwater District

208-684-9634

KIRKHAM, JR., DALE B
PO BOX 4026

POCATELLO, ID 83201

Patron # 614

November 20, 2007

NOTICE IS HEREBY GIVEN that the charges for the year 2008 assessments will be levied, pursuant to Title 42, Chapter 52, Idaho Code, at the rate of $35.00 per cubic foot per second (CFS) for assessment and $315.00 per cubic foot per second (CFS) for mitigation. Year round users of water will have an alternate fee for assessment and mitigation that includes the (regular rate x 1.73) for stock (STO-04), industrial (IND-07), cooling (COO-25), municipal (MUN-40), and domestic (DOM-43) per CFS. For commercial use an alternate fee for assessment and mitigation includes the (regular rate x 7.3) per CFS that each member is authorized pursuant to its ground water rights. A minimum of $25.00 will be assessed per assessment.

PURSUANT TO IDAHO LAW, the assessment is due and payable on or before December 31, 2007, after which date unpaid assessments become a lien against the lands to which the water rights used to determine assessments are appurtenant. Deliquent assessments shall bear interest and, in addition, shall be subject to a penalty in the amount of $15.00 per delinquent assessment.

Water Right Number(s):	Year	Type	Point of Diversion	Diversion Rate: (CFS)	Cost Per CFS:	Assessment	Interest	Penalty	Due
27-07510	2008	Assessment	COM 02S 35E 35 NESW	3	$ 35.00	766.50	0.00	0.00	766.50
						Total for Assessment			**$766.50**
27-07510	2008	Mitigation	COM 02S 35E 35 NESW	3	$ 315.00	6898.50	0.00	0.00	6898.50
						Total for Mitigation			**$6,898.50**

		Assessment	Interest	Penalty	Total Due
Total For Year:	2008	$7,665.00	$0.00	$0.00	$7,665.00

Total DUE: $7,665.00

Please detach and mail with payment in the pre-addressed, stamped envelope.

Bingham Groundwater District

P.O. Box 1268

Blackfoot, ID 83221-1268

KIRKHAM, JR., DALE B
PO BOX 4026

POCATELLO, ID 83201

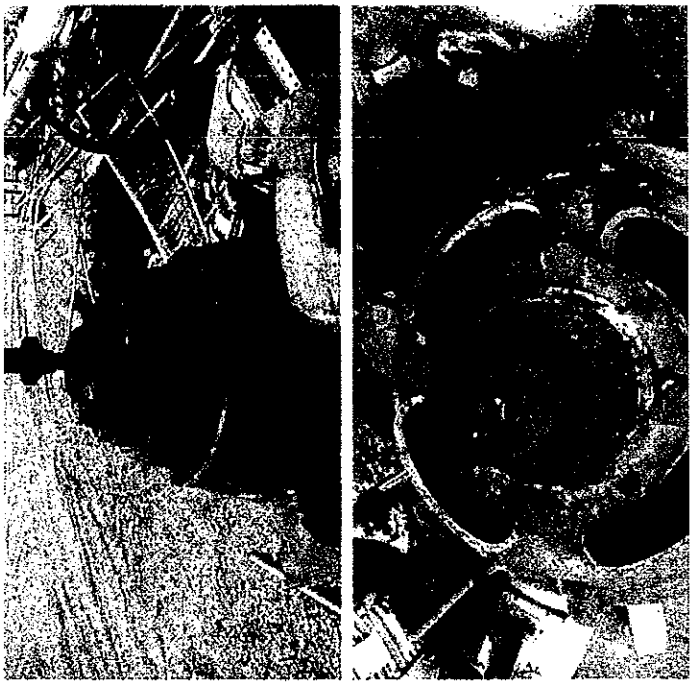
Total DUE: $7,665.00

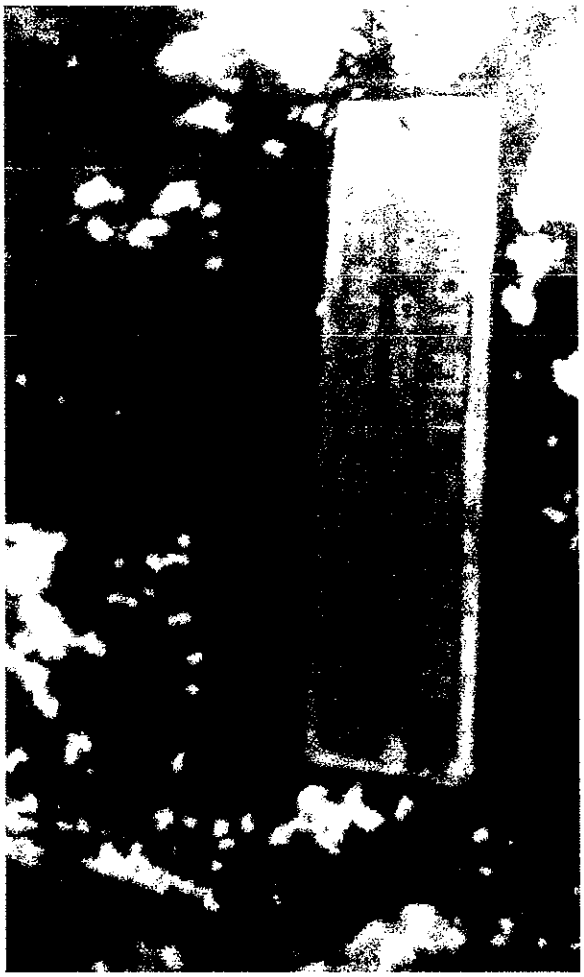
IF THE PROPERTY HAS BEEN SOLD OR TRANSFERED YOU MUST INFORM BINGHAM GROUND WATER DISTRICT AND IDAHO DEPARTMENT OF WATER RESOURCES IN IDAHO FALLS.

614

EXHIBIT 14

PHOTOS OF 75HP FAIRBANKS-MORSE PUMP REMOVED FROM WELL #2 IN 1984. STILL IN POSSESSION OF THE OWNER





sugar was produced by the factory that year. Within three years (*i.e.*, in 1906) 503 farmers planted 5,174 acres of beets, harvested 84,228 tons, and the factory produced 207,615 hundred-pound bags of sugar. A railway spur from the factory to Bear River City constructed in 1916 facilitated the delivery of beets. The daily slicing capacity varied between 600 and 1,000 tons until 1922 when a rate of 1200 tons was reached. This was gradually increased until 1935, when the rated capacity was 1600 tons. In 1966 the rated capacity is 2,500 tons per day. In 1965, 458 farmers in the Garland district planted 10,745 acres of beets with a yield of 173,283 tons. Total production of the factory in 1965 was 901,211 hundred-pound bags of sugar.

Idaho Falls Factory, 1903-1966

The Idaho Falls, Idaho, factory was erected in 1903 by E. H. Dyer & Company for the Idaho Sugar Company. Cost of the factory, which is at Lincoln, a short distance east of Idaho Falls, was approximately $500,000. The original capacity was 600 tons. During the first season 628 growers planted 5,274 acres and harvested 36,600 tons of beets. The factory produced 72,304 hundred-pound bags of sugar. Within three years the factory was processing double this figure. Because of the improved relative advantages of growing sugarbeets in preference to other crops the Idaho Falls factory had a particularly big year in 1933 when 500,025 bags of sugar were produced. The capacity of the factory remained at 900 tons until 1922, when it was increased to 1,200 tons per day. The daily slicing capacity is now rated at 4,000 tons. In 1965, 631 farmers in the Idaho Falls district planted 39,594 acres of sugarbeets and harvested 528,187 tons. The plant produced 1,425,997 bags of sugar in 1965.

During the 62 years which the Idaho Falls factory has been in operation, farmers in the district have produced 7,148,780 tons of sugarbeets, and from these the factory has extracted 25,643,968 hundred-pound bags of sugar. Utah-Idaho Sugar has expended in excess of $100 million in the district for beets, labor, and materials.

Sugar City Factory, 1904-1947

Erected at Sugar City, Idaho, in 1904 by E. H. Dyer & Company for the Fremont County Sugar Company, the original capacity was 700 tons. This was soon enlarged to 900 tons per day; in 1922 the capacity was further increased to 1,200, and still later to 1,700 tons per day. During its initial campaign the Sugar City plant handled 33,272 tons of beets and produced 62,526 hundred-pound bags of sugar. Within two years (*i.e.*, in 1906) it was producing 200,335 bags of sugar. As with the

Idaho Falls factory the Sugar City factory experienced a particularly heavy campaign during the depression year of 1933 when it produced 432,160 hundred-pound bags of sugar. That proved to be the peak year of its operation. Because of labor shortages and acreage limitations under the Sugar Act, the factory did not operate in 1940 and 1941, but operated during the peak war year of 1942 when 205,562 bags of sugar were produced. That was the final year of operation. With the improvement of country roads and farm transportation facilities, and the lack of a local labor supply, it became more economical to process beets at large, efficient, centralized plants and for that reason the Sugar City factory was closed. In 1945 the batteries were installed in the Gunnison plant at Centerfield. Sugarbeets produced in the Sugar City district were then processed in the Idaho Falls factory. The final dismantling occurred in 1947.

During the 37 years which the Sugar City factory was in operation, farmers in the district produced 2,107,898 tons of sugarbeets, and from these the factory extracted 8,100,481 100-pound bags of sugar. U and I and its predecessors expended an estimated $25 million in the district for beets, labor, and supplies.

The Sugar City factory is the only factory besides the Lehi factory which constructed an auxiliary cutting plant. This was located on the Egin Bench at Parker, Idaho, some six miles distant. This cutting station operated satisfactorily for several years, but was dismantled in 1915 when certain machinery was moved to the Garland plant.

Blackfoot Factory, 1904-1952

In 1904 a French plant which had been erected at Binghamton, New York, was moved to Blackfoot, Idaho, under the sponsorship of Snake River Valley Sugar Company, Limited. Manager was F. Adair Monroe. The capacity of this plant was 600 tons per day; it was increased to 800 tons in 1911. The company had difficulty securing adequate contracts from growers in the region, and in 1905 the plant was acquired by The Idaho Sugar Company (successor to Idaho Sugar Company and Fremont County Sugar Company). The original cost of the plant and facilities was approximately $750,000. During the 1905 campaign the factory processed 14,850 tons of beets and manufactured 28,076 bags of sugar. In 1906 the factory produced 102,005 bags of sugar. The factory was closed in 1910 because of Curly Top and again in 1922, 1926, and 1927. The factory was marginal in the sense that the beet acreage was seldom enough to enable the plant to reach capacity operations. Having achieved a production in 1915 of 218,895 bags of sugar, the factory did not reach this figure again until 1933. The peak year

Exhibit 15, 1-2

was 1940 when the factory processed 104,206 tons of beets and manufactured 368,007 bags of sugar. After closing down in 1945, the factory was reopened for brief campaigns in 1946 and 1947. The factory was closed after the 1948 campaign and dismantled in 1952. In 39 years of operation, the Blackfoot factory produced 587,544,900 pounds of sugar. In 1954 the site was converted into a company-owned sugar storage warehouse. The beets from the district are now processed in the Idaho Falls plant.

Nampa Factory, 1906-1916

Constructed by E. H. Dyer & Company in 1905-1906 for Western Idaho Sugar Company, the Nampa, Idaho, factory had an original capacity of 600 tons. Located in the center of a sagebrush area the district was plagued from the very beginning by Curly Top disease. During the first year 5,428 acres were planted for a yield of 43,050 tons of beets. The factory produced 106,305 bags of sugar. The production of sugar was only slightly higher in 1907, although the acreage had jumped to 8,935. By 1908 production had dropped to 88,735 bags of sugar. The factory did not operate in 1909, and operated for only a short period in 1910 when 12,207 bags of sugar were produced. In four years of operation (1906-1908, 1910), the Nampa plant manufactured 32,609,100 pounds of sugar. The factory was idle from 1911 to 1916, when the machinery was moved to Spanish Fork, Utah.

Elsinore Factory, 1911-1942

E. H. Dyer & Company constructed the Elsinore, Utah, factory for Utah-Idaho Sugar Company in 1911. Cost of the factory was $620,000. The original capacity was 500 tons, which was built up to 650 tons by 1916 and to 900 tons by 1925. During its first campaign 628 growers planted 5,754 acres of sugar beets, produced a tonnage of 47,375 tons of beets, and the factory manufactured 107,150 hundred-pound bags of sugar. The peak year of the factory was 1916 when 813 farmers planted 5,229 acres and harvested 71,261 tons, from which the factory manufactured 169,780 hundredweight of sugar. During most of its years a paying enterprise, the Elsinore factory was "done in" by Curly Top. It was not operated in 1926. When reopened in 1927 it produced only 44,560 bags of sugar and in the next year only 32,473 bags of sugar. The factory was closed in 1928 and the beets from the district were processed in the Gunnison or Spanish Fork factories. Some of the materials and machinery were sold in 1942 and the plant was then dismantled. During World War II the warehouse was converted into a potato-drying plant. Under a government contract dried potatoes were made into a flour for shipment to Europe.

During the 17 years which the factory operated, Elsinore produced 1,881,289 one hundred-pound bags of sugar.

Fallon Factory, 1911-1917

When the historic Watsonville, California, factory, constructed by Spreckels with German machinery in 1888, ceased operation in 1899, it remained idle until acquired by Henry Hinze. Hinze, who occasionally speculated in beet sugar factories, hoped that the newly-opened Truckee-Carson Reclamation project in western Nevada might serve as a center for the production of sugarbeets. Under the auspices of the Nevada Sugar Company a 500-ton factory was built at Fallon in 1911. Because of Curly Top and the failure of the company to educate the local farmers in the art of growing sugarbeets, the factory was not a success. The farmers also had difficulty with irrigation because the land was not level. The beets either drowned or were scorched. The factory operated for short campaigns in 1911 and 1912, and then remained idle until 1916 when overtures were made to Utah-Idaho Sugar to buy the factory. After careful investigation U and I decided to operate the factory for one or two years on a lease basis to determine whether it would be a profitable acquisition. Although the farmers contracted for 3,760 acres of beets the crop was less than 20,000 tons. U and I was unable to obtain sufficient beet contracts to justify operating for another year and the ownership reverted to the original interests. The factory remained idle from 1918 to 1921, when it was purchased by Michigan capitalists organized as the Lahontan Valley Sugar Company. This group operated it for one unsuccessful season. In 1923 the factory was purchased by the Consolidated Independent Sugar Company of Utah, which operated factories at Hooper, Utah, and Rigby, Idaho. When this farmers' cooperative failed, the plant was sold, in 1925, to the Northwestern Sugar Refining Company, owned by Fred Hinze and A. W. Black of Bay City, Michigan. They planned to move it to a California district. Failing in this, they sold it in 1926 to some Nevada capitalists (Fallon Sugar Company) who secured contracts and operated it in 1927. The campaign was not profitable and the Michigan bondholders once again assumed control. In 1934 the machinery was junked and shipped to Japan.

Payson Factory, 1913-1940

When the Strawberry Valley Reclamation Project was completed in 1913 U and I had hopes that the irrigated acreage would be expanded sufficiently to justify the erection of an additional factory. E. H. Dyer & Company constructed the 500-ton Payson, Utah, factory for Utah-Idaho

EXHIBIT 15, 2-2

EXHIBIT 16

From: "Tawna Root" <troot@laynepump.com>
Subject: **RE: photos of vertical turbine?**
Date: July 2, 2008 3:04:25 PM MDT
To: "'Rich Kirkham'" <rich@richkirkham.com>

Okay, here is today's lesson
Gpm x TDH divided by 3960 divided by efficiency (.80) = bhp

So bhp x 3960 x .80 divided by gpm = tdh

And bhp x 3960 x .80 divided by tdh = gpm

Tdh = lift + loss + (psi X 2.31)

Therefore 50 hp x 3960 x .80 divided by 300 gpm = 528 tdh
528 less lift of 90'? Less friction loss of 2' = 436 divided by 2.31 = 188 psi at pump

Without knowing what the pump was, you could do 2600 gpm with no pressure or 100 gpm with 1000 psi with a 75 hp motor. I am told your motor dates back to probably late 40's or early 50's. (before my time and nothing I have ever seen before) If you can find the head which I didn't see in any of your pictures, you might find a serial number. I was told to try Golden West irrigation in Idaho Falls and anyone else up there that might have been open in the 40's. Then track by owners of the property in the 40's. Call me if you have any questions.

-----Original Message-----
From: Rich Kirkham [mailto:rich@richkirkham.com]
Sent: Wednesday, July 02, 2008 10:42 AM
To: troot@laynepump.com
Subject: photos of vertical turbine?

I thought of another question. Do you have any idea how many gallons a minute a pump/motor like this might be able to deliver? The tag on the unit says it is 75HP. The well it sat on is 120' deep. The casing is 12". The current pump that is in the well is rated at 50 HP and sits on a 6" draw pipe and sits at a depth of 90 feet. It delivers 300 gallons per minute.

Even an educated guess or a range would be helpful.

Thanks

Rich

a

Idaho Department of Water Resources Receipt

Receipt ID: C088909

Payment Amount $402.50 Date Received 6/30/09 10:16 Region STATE

Payment Type Check Check Number 40893

Payer HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Comments Subcase: 27-12180, Gemco Limited Partnership

Fee Details

Amount	Description	Fund	Fund Detail	PCA	Subobject
$402.50	ADJUDICATION FILING FEE	0337		41503	1155

SRT

Signature Line (Department Representative)