



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

RECEIVED
JUL 13 2009
DEPARTMENT OF
WATER RESOURCES

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com
E-mail: rharris@holdenlegal.com

July 10, 2009

Garrick Baxter
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: Executed Water Rights Agreement and Stipulation to Withdraw Objections for
Water Right No. 75-4026

Dear Garrick:

Enclosed for your records is a copy of the executed and recorded Water Rights Agreement signed by all parties to Subcase No. 75-4026. With the execution of this agreement, the parties have also agreed to stipulate to the withdrawal of the objections previously filed. If a copy of this agreement is recorded in the Department's water rights backfile, it appears the water right could be decreed as it is currently recommended. I would recommend that the Department add a notation stating that this water right is subject to a separate Agreement recorded as Instrument No. 280073, recorded in the Records of Lemhi County, Idaho. Perhaps this should be done with an SF5. Let me know what you think.

Best Regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

G:\WPDATA\RLH\15459-01 Twin Peaks\Garrick Baxter ltr 071009.wpd:cdv

State of Idaho) SS No 280073
County of Lemhi)
This instrument was filed for record at the request
of Helen Kidwell, John, Crapo, PLLC
at 10 o'clock a.m. 10-20 2009
and duly filmed and indexed in the records of Lemhi
County
Terri J. Morton
Ex-Officio Recorder
By Elyse Caran Deputy
Fee 30.00
Return to _____

WATER RIGHTS AGREEMENT

THIS WATER RIGHTS AGREEMENT (this "Agreement") IS MADE and entered into to be effective as of June ~~20~~²⁰⁰⁹, 2009, by and between SALMON RIVER PROPERTIES, INC, a Nevada Corporation (hereinafter, "SRP") of PO Box 4495, Chatsworth, CA, 91313, and ERIK F. STORLIE and TAMARA L. KAISER, husband and wife (hereinafter, "Storlie and Kaiser"), of 3217 Humboldt Avenue South, Minneapolis, MN, 55408. Collectively, SRP and Storlie and Kaiser are referred to herein as the "Parties."

RECITALS:

- A. SRP is the owner of certain property located in Lemhi County, Idaho, commonly known as the Twin Peaks Ranch. Storlie and Kaiser are the also owners of certain property in Lemhi County, which is generally located upstream on Hat Creek from Twin Peaks Ranch.
- B. On May 8, 1990, SRP filed a "Notice of Claim to a Water Right Acquired Under State Law" in the Snake River Basin Adjudication ("SRBA") for Water Right No. 75-4026, which claimed the right to divert 6.0 cfs from Hat Creek for the irrigation of 184.8 acres.
- C. After investigating the SRP water rights claim for 75-4026, the Idaho Department of Water Resources ("IDWR") recommended that the water right be adjudicated for 2.11 cfs from Hat Creek for the irrigation of 77.2 acres. A copy of the recommendation is attached as Exhibit A. A GIS map depicting the location of the recommended place of use on an aerial photo is attached as Exhibit B. The GIS data used to prepare Exhibit B was downloaded from IDWR's interactive mapping website.
- D. On July 17, 2007, Ward Michael Whitmore, on behalf of SRP, filed an objection to IDWR's recommendation for Water Right No. 75-4026 regarding the recommended place of use.
- E. On September 28, 2007, Storlie and Kaiser filed an objection to IDWR's recommendation for Water Right No. 75-4026 claiming that the water right should not exist. Storlie and Kaiser are the owners of Water Right Nos. 75-4199, 75-4200, and 75-14494, all of which are diverted from tributaries to Hat Creek, and are senior in priority to SRP's Water Right No. 75-4026.
- F. Storlie and Kaiser are also owners of Water Right No. 75-2137, which is diverted from a tributary to Hat Creek and in junior in priority to SRP's Water Right No. 75-4026.

- G. Storlie and Kaiser are concerned that any further residential development of the place of use of Water Right No. 75-4026 will raise water delivery issues which could potentially jeopardize their ability to use water under Water Right No. 75-2137.
- H. The Parties now desire to resolve their differences regarding Water Right No. 75-4026 as follows:

AGREEMENTS

1. **DEVELOPMENT RESTRICTION AT WATER RIGHT PLACE OF USE:**
 - a. As of the effective date of this Agreement, SRP hereby agrees that it will not construct any additional residences on any lots covered by the place of use depicted on Exhibit B, which is described in the place of use portion of Exhibit A, unless it agrees to subordinate Water Right No. 75-4026 to Water Right No. 75-2137. This limitation applies even if a home is constructed on a lot that is outside but lies adjacent to the depicted water rights place of use. If no additional residential homes are constructed, Water Right No. 75-4026 shall not be subordinate to Water Right No. 75-2137.
 - b. In the event SRP elects to allow the construction of any additional residential home within the place of use depicted on Exhibit B, which is described in the place of use portion of Exhibit A, SRP will thereafter subordinate Water Right No. 75-4026 to Water Right No. 75-2137, which is owned by Storlie and Kaiser, and file all necessary documentation with IDWR or any other entity or court to subordinate Water Right No. 75-4026 to Water Right No. 75-2137.
2. **WITHDRAWAL OF OBJECTIONS.** Upon execution of this Agreement, the Parties hereby also agree to withdraw their pending objections to Water Right No. 75-4026 by executing the Stipulation to Withdraw Objections attached hereto as Exhibit C, and permit Water Right No. 75-4026 to be decreed in the SRBA as it is currently recommended in Exhibit A.
3. **RELIANCE UPON STATEMENTS / INTEGRATION AND MERGER:** The parties hereto specifically acknowledge that they have executed this Agreement without relying upon any statements or representations written or oral, as to any statement of law or fact made by any other party or attorney. The parties to this Agreement have read and understand the Agreement, and warrant and represent that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party. This Agreement represents the sole entire and integrated Agreement by and between the parties hereto, and supersedes any and all prior understandings or agreements whether written or oral except as specifically provided herein.

4. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and shall inure to the benefit of each parties' officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.
5. **WAIVER OF MODIFICATION:** No provision of this Agreement may be waived, modified, or amended except by written agreement executed by all of the parties hereto.
6. **ENFORCEMENT:** This Agreement is a valid and binding obligation of the parties, and their successors or assigns. It shall be admissible and enforceable according to its terms, and venue in any subsequent action shall rest within the State of Idaho. This Agreement is subject to interpretation in accordance with the laws of the State of Idaho.
7. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

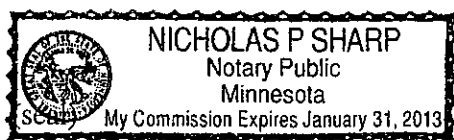
Erik F. Storlie
Erik F. Storlie

Tamara L. Kaiser
Tamara L. Kaiser

STATE OF MINNESOTA)
)ss.
County of Hennepin)

On this ~~20~~^{June} day of ~~April~~, 2009, before me a notary public in and for said State, personally appeared Erik F. Storlie and Tamara L. Kaiser known or identified to me (or proved to me on the oath of Erik F. Storlie and Tamara L. Kaiser) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

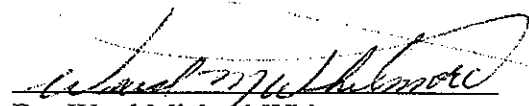
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



June 20, 2009

Nick P. Sharp
Notary Public for Minnesota
Residing at: Calhoun Isles- Wells Fargo
My commission expires: January 31, 2013

SALMON RIVER PROPERTIES, INC.



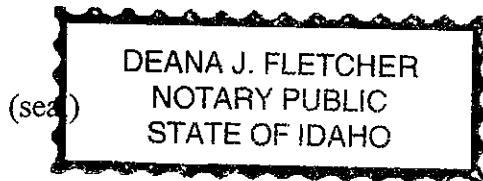
By: Ward Michael Whitmore

Its: Secretary

STATE OF IDAHO)
)ss.
 County of Lemhi)

On this 19th day of May, 2009, before me a notary public in and for said State, personally appeared Ward Michael Whitmore known or identified to me (or proved to me on the oath of Ward Michael Whitmore) to be the secretary of the corporation that executed the instrument or 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 Public for Idaho
 Residing at: Salmon, Id
 My commission expires: 7-26-2010

280073

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

4/22/2009

WATER RIGHT NO. 75-4026

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	SALMON RIVER PROPERTIES INC BOX 4495 CHATSWORTH, CA 91313
Attorney	JORDAN P SMITH 807 MAIN ST SALMON, ID 83467 (208)756-2257

Priority Date: 07/18/1932

Basis: Beneficial Use

Status: Active

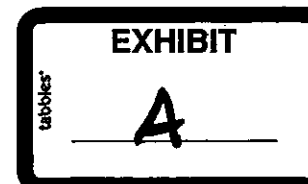
<u>Source</u>	<u>Tributary</u>
HAT CREEK	SALMON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	2.11 CFS	
Total Diversion			2.11 CFS	

Location of Point(s) of Diversion:

HAT CREEK	SWNW	Sec. 20	Township 17N	Range 21E	LEMHI County
HAT CREEK	SWSWNW	Sec. 20	Township 17N	Range 21E	LEMHI County

Place(s) of use:



280073

Place of Use Legal Description: IRRIGATION LEMHI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
17N	21E	17	7	NWSW	17	8	SWSW	30						
		18	3	SENE	3.3									
			5	NESE	22									
		20	2	NENW	4.1	3	SENW	0.8						

Total Acres: 77.2

Conditions of Approval:

1.	C18	This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
----	-----	---

Dates:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

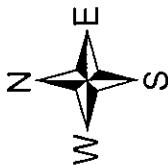
Cary Act Number:

Mitigation Plan: False

Close

PLACE OF USE FOR WATER RIGHT NO. 75-4026

280073



Legend

75-4026_POU

Salmon_River

gcdb_sections



2004 NAIP Aerial Photo



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Idaho State Bar Number 7018

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

Case No. 39576

Subcase No.: 75-4026

**STIPULATION TO WITHDRAW
OBJECTIONS**

Salmon River Properties, Inc, by and through its counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, PLLC, and Erik Storlie and Tamara L. Kaiser, hereby withdraw their objections of record to the above-numbered subcase, and further stipulate that Water Right No. 75-4026 should receive a partial decree as it is currently recommended to the court. The parties have resolved their objections by agreement, and hereby request that the trial currently set for this matter on June 23, 2009 be vacated.

EXHIBIT

tabbles

C

Robert L. Harris
Attorney for Salmon River Properties, Inc.

DATED: _____

Erik F. Storlie

DATED: _____

Tamara L. Kaiser

DATED: _____

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of May, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

2. Copies to:

Erik F. Storlie
Tamara L. Kaiser
3217 Humboldt Ave. S.
Minneapolis, MN 55408

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

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

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Robert L. Harris

G:\WPDATA\RLH\15459 Salmon River, Twin Peaks\Stipulation.wpd:bel