

08/19/2005

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

RIGHT NUMBER: 78-7109

NAME AND ADDRESS: MARVIN MORTENSON
HC 75 BOX 3545
NEW MEADOWS ID 83654

GLORIA K MORTENSON
HC 75 BOX 3545
NEW MEADOWS ID 83654

SOURCE: SPRING

TRIBUTARY: SINKS

QUANTITY: 0.020 CFS
8.000 AFY

PRIORITY DATE: 05/04/1978

This right is subordinated to right 78-7265.

POINT OF DIVERSION:

T22N R01E S26 NWSNW Within IDAHO County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 12/01	0.020 CFS 8.00 AFY

PLACE OF USE: IRRIGATION Within IDAHO County

T22N R01E S26	NENW	1.0	T22N R01E S26	SWNW	0.2
T22N R01E S26	SENW	0.8			

2 ACRES TOTAL

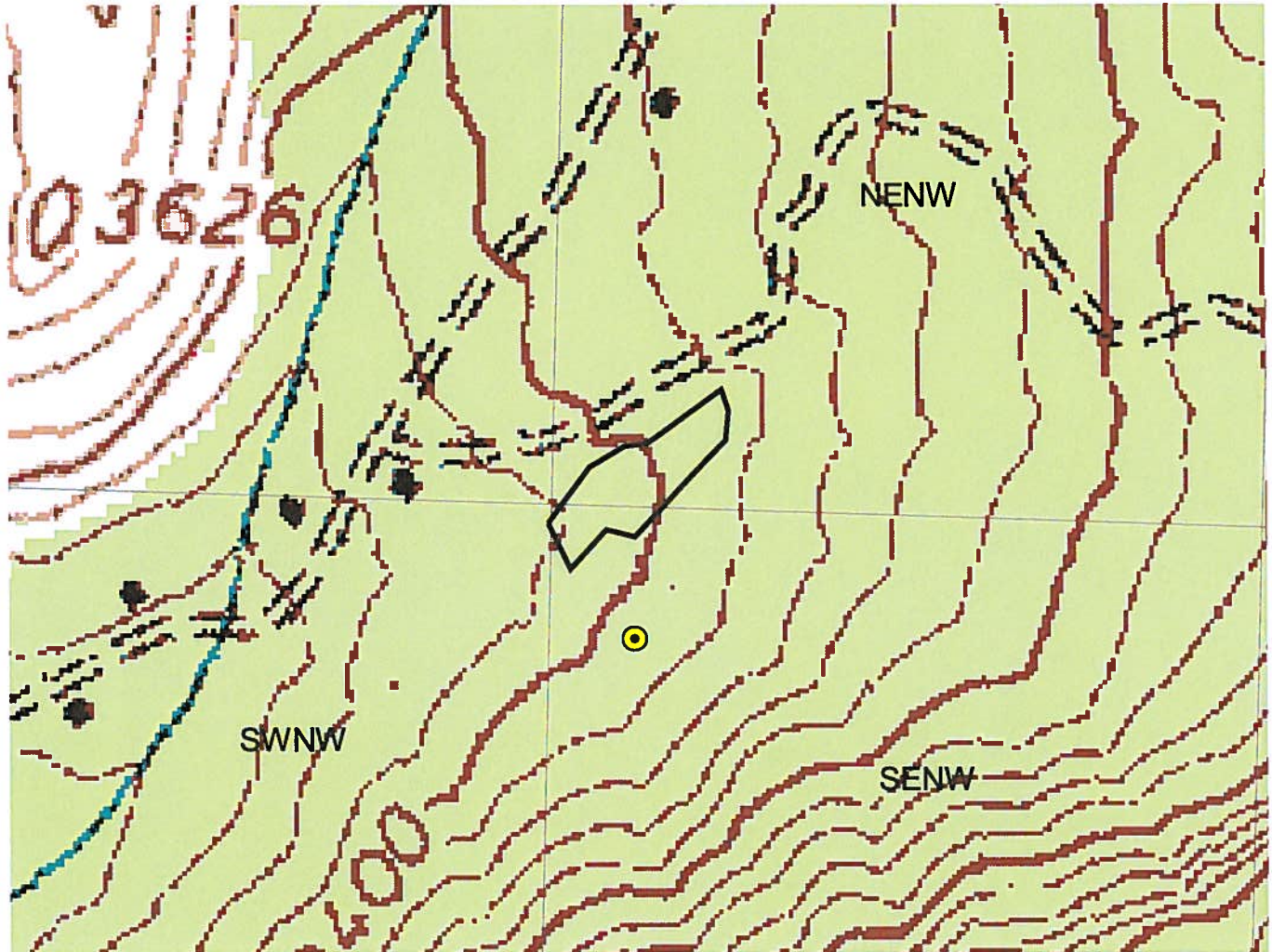
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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 - License

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

78-7109



0 200 400 Feet

Section 26
T22N R1E



● Point of Diversion

□ Place of Use

Map prepared on August 18, 2005
By Kenneth Knoblock
Idaho Department of Water Resources

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

RECEIVED**AUG 09 2004****WATER RESOURCES
WESTERN REGION**

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

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

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
<u>78-7324</u>	_____	___	_____	_____	___
<u>78-7109</u>	_____	___	_____	_____	___
<u>78-10343</u>	_____	___	_____	_____	___
_____	_____	___	_____	_____	___
_____	_____	___	_____	_____	___

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

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).
OR
 If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) DAVID G. & CAROLYN PITTS
HC 75 Box 3552, New Meadows, ID 83654
4. New Owner/Claimant(s) MARVIN AND/OR GLORIA MORTENSON
 Name Connector (Check one): ☐ and, ☐ or, ☒ and/or
 New Mailing Address HC 75 Box 3545
 City, State and ZIP Code NEW MEADOWS, ID 83654
 New Telephone Number (208) 628-2744
5. Date you acquired the property 5-10-2002
5-10-2003

SCANNED
AUG 09 2004

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
Telephone: (208) 385-9200
Twin Falls (208) 734-3345

Attorney for Plaintiffs

1992 MAR 19 PM 4: 58

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED *[Signature]*

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.)

GLENN E. BAUM and NETTA BAUM,)
husband and wife, and FLOYD)
D. WEST and FLORENCE WEST,)
husband and wife,)

Plaintiffs,)

vs.)

DAVID G. PITTS and CAROLYN)
PITTS, husband and wife,)

Defendants.)

Case No. 39576

O R D E R

Pursuant to notice and agreement, the parties joined in a
telephonic conference with the Court this 18th day of March,
1992;

Jim Jones, appearing on behalf of plaintiffs.

Kirk MacGregor, of Dee, MacGregor and Fales, appearing on
behalf of defendants.

Clive J. Strong, Deputy Attorney General, State of Idaho, appearing on behalf of the Director of the Idaho Department of Water Resources.

The plaintiffs have filed a motion for preliminary injunction in the Snake River Basin Adjudication (SRBA), raising certain disputes between the plaintiffs and the defendants (the parties) as to the use of a spring and its waters, located on defendants' land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, Township 22 North, Range 01 East, Boise Meridian, as particularly described in the motion. The plaintiffs and defendants have signed a stipulation, dated October 30, 1991, resolving their disputes.

The parties' rights to water from the spring are pending determination in the SRBA. The director of the Idaho Department of Water Resources (director) has not examined the claims filed by the parties to these rights and does not join in the stipulation, except to the extent that the director will observe the subordination of defendants' irrigation right to plaintiffs' domestic right and such subordination shall be included in the director's report and decreed by this court in accordance with Title 42, Chapter 14, Idaho Code.

IT IS THEREFORE ORDERED, as follows:

1. That the stipulation entered into between the parties on October 30, 1991, a copy of which is attached hereto and incorporated herein, is hereby ratified, approved and confirmed as between the parties, except as to the provisions of paragraph 1 thereof that would alter the priority dates of the parties'

rights, and the parties shall hereafter comply in all respects with the terms of the same, as hereby modified.

2. That State Water License No. 78-07109 and Adjudication Claim No. A78-07109 be, and they are hereby permanently and fully subordinated in all respects to State Water License 78-07265 and Adjudication Claim No. A78-07265. Said subordination shall be utilized and observed by the director of the Idaho Department of Water Resources in the director's report hereinabove referenced.

DATED this 19 day of March, 1992.


DANIEL C. HURLBUTT, JR.
District Judge

Re: Phone Conv. w/ Dave Shaw:
We will most likely condition Pitts' irrev. right to say it has been subordinated to Baum/Best's right per their agreement. However, per highlighted exception above, the priority dates will not be changed. Too bad for Pitts. SS

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED

NOV -5 PM 4:04

BY _____
CLERK

Grayled DEPUTY

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
Telephone: (208) 385-9200
Twin Falls (208) 734-3345

Attorney for Plaintiffs

COPY

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.

GLENN E. BAUM and NETTA BAUM,
husband and wife, and FLOYD
D. WEST and FLORENCE WEST,
husband and wife,

Plaintiffs,

vs.

DAVID G. PITTS and CAROLYN
PITTS, husband and wife,

Defendants.

Case No. 39576

STIPULATION

WHEREAS, the parties, being the sole claimants to the waters
of a certain spring located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26,
Township 22 North, Range 01 East, Boise Meridian, on property
owned by defendants, David G. Pitts and Carolyn Pitts, husband
and wife, which real property is more particularly described in

Exhibit "A" hereto, which exhibit is incorporated herein by this reference; and

WHEREAS, plaintiffs Glenn E. Baum and Netta Baum, husband and wife, and Floyd D. West and Florence West, husband and wife, claim a domestic water right in and to said spring, as well as an easement for access to the same, the same being for the use and benefit of the real property described in Exhibit "B" hereto, which exhibit is incorporated herein by this reference; and

WHEREAS, the rights associated with said spring, as claimed in the Snake River Basin Adjudication, are as follows:

1. Adjudication Claim No. A78-10343, Priority 1/1/62, for .02 cfs for domestic use for January 1 - December 31, based on beneficial use. (Defendants)
2. Adjudication Claim No. A78-07109, Priority 5/4/78, for .02 cfs for irrigation of two acres for March 1 - December 1, based on License 78-07109. (Defendants)
3. Adjudication Claim No. A78-07265, current priority 7/30/85, for .02 cfs for domestic use for January 1 - December 31, based on License 78-07265. (Plaintiffs) An amended claim has been filed, reflecting a 1973 conveyance to plaintiffs of a water right in the spring by defendants' predecessor in interest; and

MICROFILMED
OCT 24 1996

WHEREAS, the parties' conflicting claims have been brought to the Court for resolution and the parties have reached a compromise with respect thereto that they wish to reduce to writing and have confirmed by the Court;

IT IS THEREFORE STIPULATED, as follows:

1. The parties acknowledge that plaintiffs' predecessors in ownership of the real property described in Exhibit B began beneficially using the waters of the spring located on the real property described in Exhibit A for domestic purposes in 1975 and agree that the priority date of License 78-07265 and Adjudication Claim No. A78-07265 should be July 30, 1975, instead of July 30, 1985. The parties do hereby request that the Court enter an Order amending said license and claim to specify the July 30, 1975, priority date for plaintiffs' .02 cfs for domestic use for January 1 - December 31. It is understood and agreed that defendants' first priority right for domestic use, dating to January 1, 1962, and evidenced by Adjudication Claim A78-10343, shall not be hereby affected, the intent hereof being to subordinate defendants' irrigation use to plaintiffs' domestic use.

2. Defendants and their heirs, successors and assigns, recognize and at all times hereafter shall observe the priority of plaintiffs and their heirs, successors and assigns to the waters of said spring for domestic uses under the terms of License 78-07265 and Adjudication Claim No. A78-07265, as

amended, over defendants' irrigation water right represented by License No. 78-07109 and Adjudication Claim No. A78-07109. Plaintiffs relinquish and waive all other claims to entitlement to the waters of said spring.

3. Plaintiffs shall be entitled to a permanent easement for access to said spring for conveyance of water from the spring to their property and for maintenance and repair of the spring and the conveyance facilities. Any repairs, maintenance or renovation shall be done in a proper and workmanlike manner and shall not damage, interfere with or diminish the rights of the defendants in and to said spring. Plaintiffs agree to use the existing gate installed by defendants in the fence separating their respective properties for access to said spring.

4. Plaintiffs shall have the immediate right to reinstall their water supply pipeline into the spring at sufficient depth to ensure a pure and potable supply of domestic water, free from surface debris, and shall have the continuing right to draw from and maintain said installation, provided that plaintiffs shall not place their water supply pipeline at a lower depth than the defendants' existing pipeline. Plaintiffs shall install a valve, permitting them to draw up to 5 gallons per minute flow from said spring, taking necessary steps to set said valve at a 5 gallon per minute maximum. Plaintiffs and their successors agree to limit their usage to a maximum of 5 gallons per minute so long as defendants or any person related to them by blood or marriage

MICROFILMED

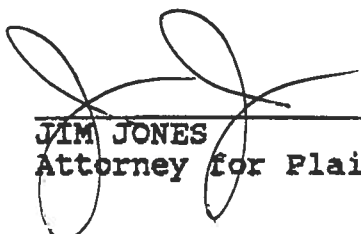
OCT 24 1996

within the second degree own the property described in Exhibit A hereto.

5. The parties shall take such joint action as may be necessary to protect the purity and integrity of said spring, including steps to fully enclose the spring in order to prevent debris and contaminants from entering the same.

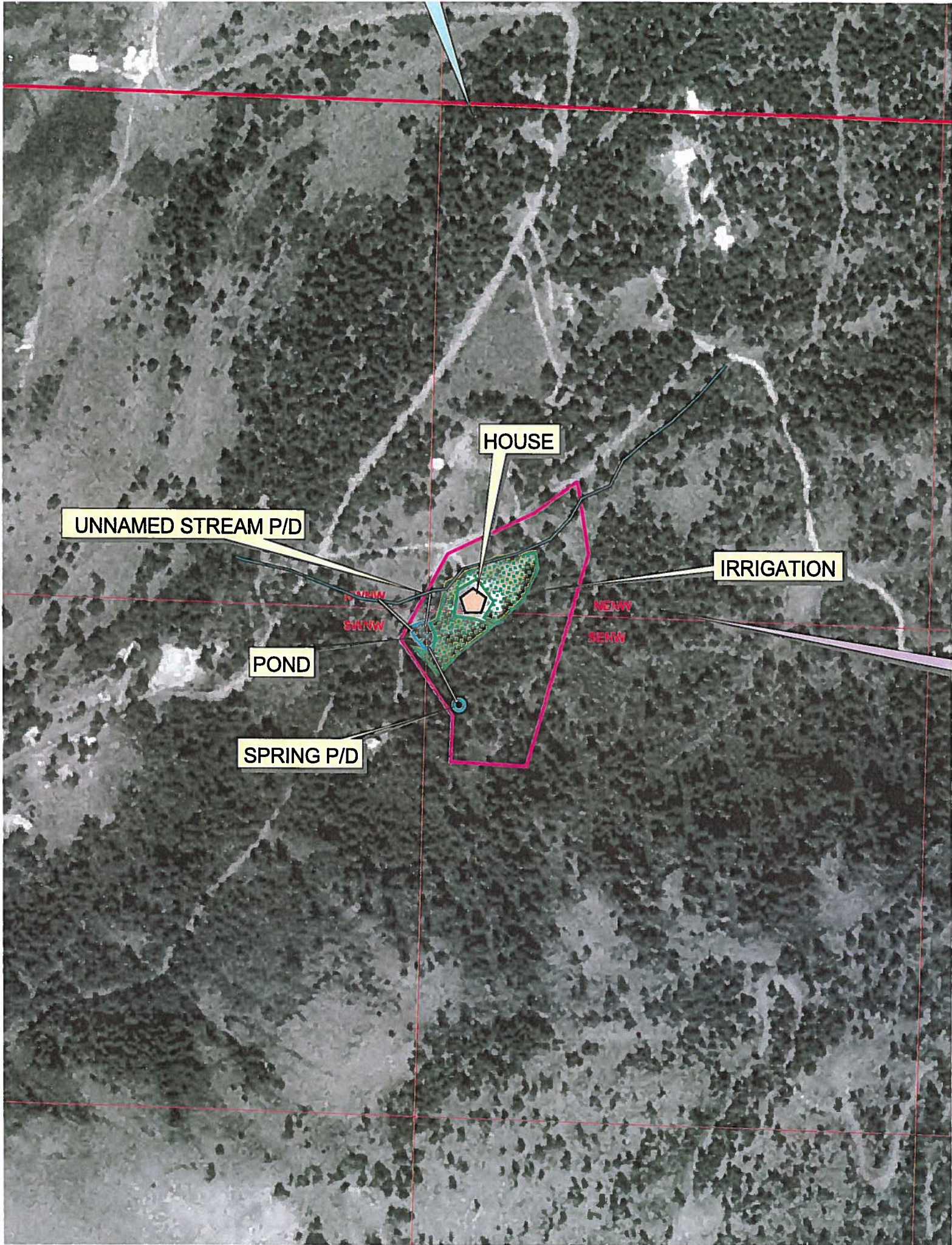
6. In the event that either party institutes suit to enforce the provisions of this agreement or to secure redress for its breach, the prevailing party in such litigation shall be entitled, in addition to any other relief granted by the Court, to a reasonable award of attorney fees.

DATED this 30 day of October, 1991.



JIM JONES
Attorney for Plaintiffs

KIRK A. MACGREGOR
Attorney for Defendants



HOUSE

UNNAMED STREAM P/D

IRRIGATION

POND

SPRING P/D

NENW
SUNW

NENW
SENW

WARRANTY DEED
Dated 5-10-02

SCANNED

AUG 09 2004

August 5th, 2004

Mr. Daniel A. Nelson, Water Resource Agent
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082
Phone: 208-334-2190
Fax: 208-334-2348
Email: dnelson@idwr.state.id.us

RECEIVED
AUG 09 2004
WATER RESOURCES
WESTERN REGION

Marvin W. and Gloria K. Mortenson
H.C.75 Box 3545
13 B Elk Lake Road
New Meadows, Idaho 83654
Phone: 208-628-2744
Fax: Same as Phone #
Email: mgmtwo@citlink.net

Dear Daniel,

Attached is our Check for \$25.00 for 78-10343¹³²⁴ along with the
Following:

- 1 – Eight (8) ^{-profile reports} Pages of Notice of Change in Water Right Ownership
- 2 – Five (5) Pages of Warranty Deed
- 3 – Four (4) Pages of Application for Permit

Dan, Gloria and I again thank you for your time in helping us apply for
The water permit ---

Regards,


Marvin W. Mortenson

Marv & Gloria Mortenson
H.C. 75 Box 3545
New Meadows, ID 83654-9600

SCANNED
AUG 09 2004

422437

REO LN #0027015783

WARRANTY DEED

GRANTOR, WASHINGTON MUTUAL BANK FSB, of Mailstop N180104, 19980 Plummer St., Chatsworth, CA 91311, for a good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to MARVIN WARD MORTENSON and GLORIA KAY MORTENSON, husband and wife, of HC 75 Box 3545, New Meadows, ID 83654, as GRANTEE, and to grantee's heirs and assigns forever, all of the following described real estate located in the County of Idaho, State of Idaho, to wit:

See Exhibit "A" attached hereto and hereby incorporated by this reference.

TOGETHER with all improvements, water, water rights, ditches, ditch rights, easements, hereditaments and appurtenances thereto.

Subject to:

1. General taxes for the year 2002, which are a lien, not yet due and payable.

2. Subject to the rights of other to use the road on the Northerly boundary of said property.

3. Right of Way Easement, including the terms and conditions thereof, by and between THEODORE STILLMAN and IDAHO POWER COMPANY, recorded April 24, 1948, under Instrument No. 159349, in Book 80 page 552, records of Idaho County, Idaho.

4. Easement as set forth in Warranty Deed, including the terms and conditions thereof, by and between MAUDIE H. SILVA DURGAN and ELMER DURGAN, wife and husband, Grantors, and LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife, Grantees, recorded May 10, 1974, under Instrument No. 253806, records of Idaho County, Idaho.

5. Subject to easement as set forth in Order, including the terms and conditions thereof, filed 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, GLENN E. BAUM and NETTA BAUM, husband and wife, and FLOYD D. WEST and FLORENCE WEST, husband and wife, Plaintiffs vs. DAVID G. PITTS and CAROLYN PITTS, husband and wife, Defendants, Case No. 39576, recorded March 25, 1992, under Instrument No. 362691, records of Idaho County, Idaho.

6. Power Line Easement, including the terms and conditions thereof, by and between DAVID G. PITTS and CAROLYN S. PITTS, and IDAHO POWER COMPANY, a corporation, recorded November 12, 1996, under Instrument No. 390097, records of Idaho County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees that they are

1 the owners in fee simple of said premises; that they are free from all
2 encumbrances, and that they will warrant and defend the same from all
3 lawful claims whatsoever, except general taxes for the year 2002, and
4 easements, reservations, restrictions and rights-of-way of record or in
use.

5 Except as otherwise expressly provided in this instrument, GRANTORS,
6 hereby declare pursuant to Title 5, Chapter 2 of the Idaho Code, that in
7 the event GRANTORS shall have permitted or suffered at any time prior to
8 the making of this instrument, any person or entity to possess, use or
9 occupy the above-described premises, or any portion thereof, for any
purpose, with or without the knowledge of GRANTORS, it was not the intent
of GRANTORS, by permitting or suffering such possession, use or
occupation, to thereby define property boundaries or ownership thereof.

10 In construing this deed, and where the context so requires, the
11 singular includes the plural and the masculine, the feminine and the
neuter.

12 IN WITNESS WHEREOF, Grantors have hereunto subscribed their names to
13 this instrument this 13th day of May 2002.

14 Diane Aitken
15 WASHINGTON MUTUAL BANK FSB
16 By: Authorized Agent
Diane Aitken, Asst. Vice President

17 STATE OF _____)
18 County of _____) ss.

19 On this _____ day of May, 2002, before me, _____, a
20 Notary for the said County and State, personally appeared
21 _____, known or identified to me to be the
22 _____ of WASHINGTON MUTUAL BANK FSB, that executed the
23 instrument on behalf of said WASHINGTON MUTUAL BANK FSB, and acknowledged to me
24 that such WASHINGTON MUTUAL BANK FSB, executed the same.

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

3
4 (NOTARY SEAL)

see attached
Notary Public for State of _____,
Residing at _____, therein.
My commission expires on _____.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of LOS ANGELES

On May 13, 2002 before me, _____
Date

Susan Chopp, Notary
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Diane Aitken
Name(s) of Signer(s)

☐ personally known to me - ~~OR -~~ ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Susan Chopp
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Warranty Deed

Document Date: 5/13/02 Number of Pages: 3

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Diane Aitken

- ☐ Individual
☒ Corporate Officer
Title(s): Asst. Vice President
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

N/A

Signer Is Representing:

Washington Mutual Bank, FSB

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer Is Representing:

SCANNED
AUG 09 2004

File No. 15801

EXHIBIT A**SCHEDULE C**

Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho
Section 26: A parcel of land (being Tax Numbers 69 and 94) located in the NW¼, more particularly described as follows:
Commencing at the ¼ Corner common to Sections 26 and 27 of said Township and Range;
thence N.44°28'42"E., 1753.30 feet to the TRUE POINT OF BEGINNING;
thence S.37°26'45"E., 246.95 feet to a point;
thence S.00°00'00"W., 116.99 feet to a point;
thence N.90°00'00"E., 179.81 feet to a point;
thence N.00°00'00"E., 631.40 feet to a point (shown by a survey as N.00°11'09"E., 631.382 feet);
thence S.63°56'01"W., 255.83 feet to a point (shown by a survey as S.64°07'27"W., 255.743 feet);
thence S.25°56'01"W., 229.00 feet to the TRUE POINT OF BEGINNING.

AND A parcel of land (being Tax Number 95) located in the NW¼ said Section, Township and Range, more particularly described as follows: Commencing at the ¼ Corner common to Sections 26 and 27 of said Township and Range;
thence N.44°28'42"E., 1753.30 feet to a point;
thence N.25°56'01"E., 229.00 feet to a point;
thence N.63°56'01"E., 255.83 feet (shown by a survey as N.64°07'27"E., 255.743 feet) to the TRUE POINT OF BEGINNING;
thence S.00°00'00"W., 631.40 feet (shown by a survey as S.00°11'09"W., 631.382 feet) to a point;
thence N.15°00'00" (+-) E., 545.00 (+-) feet (shown by a survey as N.15°06'57"E., 545.191 feet) to a point on the East side of the Perimeter Boundary Road;
thence N.11°00'00"W., 190.00 feet to a point on the South side of the main 30 foot access road;
thence S.51°53'41"W., 132.00 (+-) feet to the TRUE POINT OF BEGINNING.

STATE of IDAHO	
County of Idaho	
Recorded at request of	
IDAHO COUNTY TITLE CO.	
at	12:05 p.m. on 5-16-02
ROSE E. GEHRING	
By	Sandy Goins
Fees \$	15.00
	Recorder Deputy

SCANNED

AUG 09 2004

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: A78-07109
Date Received: 4/26/1988
Receipt No: W000135
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: DAVID G. PITTS 208-628-3010
Address: HC 75, BOX 3552
NEW MEADOWS ID 83654

2. Date of Priority: MAY 4, 1978

3. Source: SPRING Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
22N	01E	26	NW	SE	NW		IDAHO

5. Description of diverting works:
SPRINKLERS & GRAVITY FLOW, WITH PIPELINE TO HOME.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/01	12/01	0.020		

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

8. Total consumptive use is 4.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
22N	01E	26	SE	NW		IRR	2.0
Section Acres							2.0

10. Place of Use: Continued

Total Acres 2.0

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:
A79-10343 FOR DOMESTIC PURPOSES.

14. Remarks:
CHANGE IN OWNERSHIP COMPLETED BY L.R.W. ON 1/30/91.

15. Basis of Claim: LICENSE

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 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 _____

NOTE: This copy of Claim No. A78-07109 reflects a correction in the amount of cfs for irrigation uses from .02 to .04 cfs. A license was issued for .04 - claim changed to dom. - .02 & irrig. - .02 for a total of .04, then since this could not be amended to add dom. use it was changed back to irrig. only with .02 & a total of .04 - it should have been .04 for irrig. with a total of .04 per license. Therefore, data entry corrected & copy attached.

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: A78-07109
Date Received: 4/26/1988
Receipt No: W000135
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: DAVID G. PITTS 208-628-3010
Address: HC 75, BOX 3552
NEW MEADOWS, ID 83654

2. Date of Priority: MAY 4, 1978

3. Source: SPRING Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
22N	01E	26	NW	SE	NW		IDAHO

5. Description of diverting works:
SPRINKLERS & GRAVITY FLOW, WITH PIPELINE TO HOME.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/01	12/01	0.020		

7. Total Quantity Appropriated is:
~~0.040~~ C.F.S. (and/or) A.F.A.
0.02

8. Total consumptive use is 4.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
22N	01E	26	SE	NW		IRR	2.0
Section Acres							2.0

10. Place of Use: Continued

Total Acres 2.0

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:
A79-10343 FOR DOMESTIC PURPOSES.

14. Remarks:
CHANGE IN OWNERSHIP COMPLETED BY L.R.W. ON 1/30/91.

15. Basis of Claim: LICENSE

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 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 _____

RECEIVED

DEC 20 1990

CHANGE IN OWNERSHIP

Department of Water Resources Page 1

This form is solely for purposes of notifying IDWR of a change in ownership of an adjudication claim.

☒ Water Right Number(s): A78-10343 & A78-07109

☒ Name and Address of Former Claimant(s): WERNER KOLB & LIESELOTTE KOLB

H.C. 75 Box 3552

NEW MEADOWS, IDAHO 83654

☒ New Claimant(s): DAVID G. PITTS

☒ New Mailing Address: H.C. 75 Box 3552

NEW MEADOWS, IDAHO 83654

New Telephone Number: (916) 628-3010

☐ Does the change in ownership result in a splitting of the water right claimed? yes ☒ no

If yes, then describe the portion of the water right that is now claimed by the new owner:

☒ Attach proof of ownership
Describe proof attached:

(Proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former claimant.)

☒ Signature of New Claimant(s): David G. Pitts

Date: November 7th 1990

RECEIVED
NOV 27 1990

Department of Water Resources
Western Regional Office

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OCT 06 1992

CHANGE IN OWNERSHIP

Page 2

[] Signature of Former Claimant(s): Werner Kolb
Rieschette Fulle
Date: 12-15-90

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: By:

Further Action Needed:

Further Action Taken

Date: By:

Final Review and Data-Entry

Date: By:

Claim Numbers of Split, if any:

After form has been completed, please return to the nearest IDWR office below:

WESTERN REGIONAL OFFICE
2735 AIRPORT WAY
BOISE, IDAHO 83705
(208) 334-2190

EASTERN REGIONAL OFFICE
150 SHOUP SUITE #15
IDAHO FALLS, IDAHO 83402
(208) 525-7161

STATE OFFICE
1301 N. ORCHARD ST.
STATEHOUSE MAIL
BOISE, IDAHO 83720
(208) 327-7906

SOUTHERN REGIONAL OFFICE
222 SHOSHONE STREET EAST
TWIN FALLS, ID 83301
(208) 734-3578

NORTHERN REGIONAL OFFICE
1910 NORTHWEST BLVD. SUITE 210
COEUR D'ALENE, IDAHO 83814
(208) 765-4639

CONVERSATION MEMORANDUM

DATE 11-27-90

FILE A78-10343
A78-7109

NAME OF PARTY Mrs. David A. Pitts

EMPLOYEE Linda Werner

RE: Change in ownership

- Called & asked Mrs. Pitts to send me
proof of ownership & she said she would

5:00 - David Pitts called me back & said the
realtor sent us a copy of warranty deed. No
deed was found in the file so I sent him the
ownership change form so he could get the
seller's signature.

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OCT 26 1992

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: A78-07109

Date Received: 4/19/1988

Receipt No: W000135

APR 26 1988

Department of Water Resources
Western Regional Office

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

1. Name: WERNER KOLB
Address: HC 75 BOX 3552
NEW MEADOWS, ID 836540000

2. Date of Priority: MAY 04, 1978

3. Source: SPRING Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
22N	01E	26	NW	SE	NW		IDAHO

5. Description of diverting works:
SPRINKLERS & GRAVITY FLOW, WITH PIPELINE TO HOME.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/01	12/01	0.020		
DOMESTIC	01/01	12/31	0.020		

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

8. Total consumptive use is 4.0 Acre Feet Per Annum.

9. Non-irrigation uses:
DOMESTIC USE FOR ONE HOME

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
22N	01E	26	SE	NW		IRR	2.0
			SE	NW		DOMEST	

Section Acres 2.0

A78-07109

Page 1

Date: 04/19/88

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NOV 16 1997

10. Place of Use: Continued

Total Acres 2.0

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:
NONE

14. Remarks:

THE DOMESTIC USE SHOWN ON THIS RIGHT HAS BEEN IN USE SINCE THIS SPRING WAS DEVELOPED. IRRIGATION NOW INVOLVES TWO ACRES OF LAND RATHER THAN THREE, THEREFORE, THE DOMESTIC USE IS BEING ADDED TO THIS RIGHT IN PLACE OF THE ONE ACRE OF IRRIGATION. MR. SPERLE, THE ORIGINAL OWNER, HAS VERIFIED THE DOMESTIC USE AND ERRONEOUSLY DID NOT INCLUDE IT IN THE ORIGINAL FILING.

15. Basis of Claim: LICENSE
Water Right Number:

78-7109

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 Individuals:

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

Signature of Claimant(s): Werner Kolb Date: 4-22-88

Date: _____

State of Idaho)
County of Idaho) SS.

Subscribed and sworn (or affirmed) before me this 22 day

of April 19 88

Clay Francis
Notary Public

Seal

Residing at Riggins

My Commission Expires 10-10-88

K

JUN 20 1991

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

Department of Water Supply
Western Regional Office

**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

Date Received

Receipt Number

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT

ACQUIRED UNDER STATE LAW

For Domestic and/or Stockwater Purposes

Where Daily Use is less than 13,000 gallons per day. Filing fee \$25

Please type or print clearly

1. Name of Claimant (s) Floyd D. and Florence West (208) 654-2147
Glenn E. and Netta Baum Phone () (208) 733-5254
P.O. Box 32A, Declo, Idaho 83323
Mailing Address 1208 Blue Lakes S., Twin Falls, Idaho Zip 83301

2. Date of Priority (Only one (1) per claim) January 1, 1962

3. Source of water supply (a) spring
which is tributary to (b) Elk Creek

4. Location of point of diversion is: Township 22 N. Range 01 E
Section 26, NW 1/4 of SE 1/4 of NW 1/4, Govt. Lot _____, B.M.,
County of Idaho

Additional points of diversion if any: _____

5. Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate 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. storage tank and pipeline

6. Water is claimed for the following: (Limited to Domestic and/or Stockwater only. See Instructions)

(Both dates are inclusive) (cfs)

For domestic purposes from 01/01 to 12/31 amount 0.020

For _____ purposes from _____ to _____ amount _____

7. Total quantity claimed 0.020 (cfs) 0.60AFA

8. Total consumptive use claimed is *de minimus*

9. Non-irrigation uses. Describe fully. (Domestic: give number of households served; Stockwater: Type and number of livestock) 1 - domestic

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Copies Whic-Sam, Ic

COPIES White-Save Yellow-Claimant

OCT 06 1992

10. Place a "D" for domestic and "S" for stockwater use in the corresponding place of use below.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4			
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4
22N	01E	26								D								

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

12. Do you own the property listed above as place of use? Yes X No _____
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.
License 78-07265 or None ()

14. Remarks: This right preceeds license 78-07265 in priority and has been pertinent to the property pursuant to warranty deed from owner of adjoining property dated October 15, 1973.

15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____ Attached deed

If applicable provide IDWR Water Right Number *

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

* portion of claim number A78-10343 (see attached affidavit)

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments 1

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

Signature of Claimant (s) Floyd D. West

Date 10-13-91

Denise West

Date 10-14-91

Hella Baun

Glenn E. Baun

For Organizations: I do solemnly swear or affirm that I am Notary Public

of _____, that I have signed the foregoing

document in the space below as _____ of _____

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 Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this

14

day of

June

19 91

Notary Public

Denise Lee

Residing at

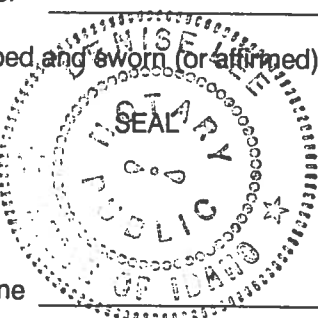
Twin Falls

My Commission Expires

11-4-94

Last Name _____

Ident No. _____



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AFFIDAVIT OF CLAIMANT

STATE OF IDAHO)
 : ss
County of Twin Falls)

GLENN E. BAUM, being duly sworn, deposes and says:

1. I am one of the claimants in the foregoing Amended Notice of Claim to a Water Right. The other claimants are my wife, Netta Baum, and Floyd D. West and Florence West, husband and wife.

2. When we originally filed our claim in the Snake River Adjudication proceeding, we were not aware of the priority date we should have claimed for our water right. Upon investigation of our water right, we have determined that we should have stated a January 1, 1962, priority date. Our water right was conveyed to us by warranty deed from Maudie H. Silva Durgan and Elmer Durgan, husband and wife, on October 15, 1973. A true and correct copy of the deed is attached hereto as Exhibit "A". A corrected warranty deed, dated January 17, 1974, attached hereto as Exhibit "B", more fully describes the water right conveyed by the Durgans. Immediately prior to the conveyance, the Durgans owned the property now owned by these claimants, as well as the property upon which the spring was located. The property retained by the Durgans at the time of the conveyance is the property to which water right claim A78-10343 is appurtenant. In this amended claim the claimants assert an entitlement to a

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OCT 06 1987

portion of that water right, with priority date of January 1, 1962.

3. The water right conveyed to claimants' predecessors in interest from the Durgans was put to beneficial use in 1975. Claimants' predecessors in interest, Lyle D. and Peggy J. Albrecht, started building a cabin on the property in 1974 and finished it in 1975. At that time Lyle Albrecht laid a plastic pipe from the spring for a distance of approximately 15 feet to a 5,000 gallon storage tank on said property and then piped the water on top of the surface to his house. He started using the water at that time for domestic purposes at the cabin. These facts and additional background are laid out in a copy of a letter from William D. Collins, attorney at law, attorney for the Albrechts, to Mr. & Mrs. Werner Kolb, the predecessor in interest of David G. Pitts, who currently owns the property that had been retained by the Durgans.

4. The water claimed by the claimants has been beneficially used continuously for domestic purposes since 1975. Claimants and their predecessors have shared equally in the spring with David Pitts' predecessors in interest, have openly claimed a right in and to said spring and exercised an ownership interest and right in and to the said spring and its waters and have asserted an interest adverse to any asserted priority of David Pitts' predecessors in interest to their full knowledge and acquiescence.

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Glenn E. Baum
GLENN E. BAUM

SUBSCRIBED AND SWORN To before me this 13 day of June,
1991.



Denise Lee
NOTARY PUBLIC FOR IDAHO
Residing at: Waukegan Falls
My Commission Expires: 11/94

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OCT 06 1992

251909

WARRANTY DEED

For Value Received

MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband and wife
the grantors, do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife
the grantee, the following described premises, Idaho County Idaho, to wit:

Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T22N, R1E, B.M.;
thence 100 feet South to THE REAL POINT OF BEGINNING; thence 278 feet
East, more or less; thence 345 feet in a southerly direction; thence
636 feet W; thence 228 feet N. to THE REAL POINT OF BEGINNING.

This Deed also includes right and easement to a certain spring of
water that originates on the property retained by the grantors.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s,
their heirs and assigns forever. And the said Grantors do hereby covenant to and
with the said Grantee s, that they are the owner in fee simple of said premises; that said
premises are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.
Dated:

October 15, 1973

Maudie H. Silva Durgan
Elmer Durgan

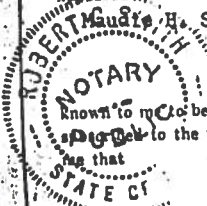
STATE OF IDAHO, COUNTY OF Valley

On this 15th day of October, 1973,
before me, a notary public in and for said State, personally

appeared

Maudie H. Silva Durgan and Elmer Durgan

known to me to be the persons who so name s
to the within instrument, and acknowledged to
me that they executed the same.



Notary Public
McCall, Idaho

Residing at
Comm. Expires 2/4/77

JENSEN-GRAVES CO.

STATE OF IDAHO, COUNTY OF Idaho

I hereby certify that this instrument was filed for record at
the request of *Lyle D. Albrecht*.

at 50 minutes past 10 o'clock in
this 15th day of Nov
1973, in my office, and duly recorded in Book
of Deeds at page

BOB L. WAITE

Ex-Officio Recorder

By *Verda Albrecht* Deputy.

Fees \$ *1.00*
Mail to: *Signatures Address*
Lyle Albrecht -
P.O. Box 118
Weiser, Idaho 83672

Exhibit A

MICROFILMED

OCT 06 1992

252654

WARRANTY DEED

For Value Received

MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband

and wife

the grantors, do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife, whose address
10011 Skycliff Avenue, Boise, Idaho 83705

the grantees, the following described premises, in Idaho County Idaho, to-wit:

-- --Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T. 22 N., R. 1 East, B. M., thence 100 feet South to the real point of beginning; thence 278 feet East, more or less; thence 345 feet in a southerly direction; thence 636 feet West; thence 190 feet more or less in a northerly direction; thence 235 feet in a Northeasterly direction to a point; thence Easterly approximately 197 feet to the Real point of beginning-- --

This Deed is made specifically to correct that certain deed between the same two parties and dated October 15, 1973, and recorded in Idaho County as Instrument #251909.

This Deed also includes a right and an easement to a certain spring of water that originates on the property retained by the Grantors, and also access to the above property through the Grantor's property on the established road.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: Jan. 17, 1974

*Elmer Durgan**Maudie H. Silva Durgan*

STATE OF IDAHO, COUNTY OF Valley

On this 17 day of January, 1974, before me, a notary public in and for said State, personally appeared Maudie H. Silva Durgan and Elmer Durgan

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Blade A. Shelton
Notary Public
Residing at McCall, Idaho
Comm. Expires March 24, 1975

STATE OF IDAHO, COUNTY OF Idaho

I hereby certify that this instrument was filed for record at the request of *Lyle D. Albrecht*

at 47 minutes past 10 o'clock m.,
this 24 day of Jan,
1974, in my office, and duly recorded in Book
of Deeds at page

BOB J. WAITE

Ex-Officio Recorder

By *Quillie D. ...* Deputy.

Fees \$ 1.00

Mail to: *Quillie D. ...*

Exhibit B

MICROFILMED

OCT 06 1992

October 9, 1985

Mr. and Mrs. Werner Kolb
Elk Lake Road
Riggins, Idaho 83549

Dear Mr. and Mrs. Kolb:

Our firm represents Mr. and Mrs. Lyle D. Albrecht. Mr. Albrecht said that he met with you recently and the problems with respect to the use of the spring may be resolved. However, I felt that he should provide you with the background information relating to his use of water.

Mr. and Mrs. Albrecht purchased their property in 1974 from Maudie Durgan and Elmer Durgan. At that time the Durgans owned the $3\frac{1}{4}$ acres sold to Albrecht plus the land ultimately sold to you. The Deed from the Durgans to the Albrechts recited that it included the right and easement to a certain spring of water that originates on the property retained by Durgans. The Albrechts purchased the property acquiring an easement across the Durgan property to take water from the spring for their use on their land. Mr. Albrecht started building his cabin in 1974 and finished it in 1975. At that time he laid a plastic pipe from the spring for a distance of approximately 15 feet to the 5,000 gallon storage tank on his property and then piped the water on top of the surface to his house. He started using the water at that time.

Mr. Albrecht advises me when he made his purchase the Durgans also were making a use of the water from the spring for their residence. Under Idaho law when each party commenced a use of the water, each acquired a water right. Durgans, with the first use, have a prior right to the spring but only to the extent that they applied it to beneficial use. Any water in excess of what they had applied to beneficial use was subject to appropriation by Albrecht. I understand that Mr. Sourley, your predecessor, filed an application for a water right with the Idaho Department of Water Resources. Mr. Albrecht has similarly filed an application. The Department of Water Resources made their final inspection last week and will be issuing a water license in the near future for the Albrecht right. According to the field check by the Department of Water Resources, there is ample water to fill both uses.

Exhibit C

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2025 00 4000

Mr. and Mrs. Wenner Kolb
October 9, 1985
Page 2

Mr. and Mrs. Albrecht have been trying to sell their property, Linda L. Cook on September 7, 1985, had offered to purchase the property. After they made that offer and later in the month the Cooks met with you. They were told by you that there had been litigation between your predecessor, Mr. Spurley, and the Albrechts which eliminated the Albrecht water right and easement. They were also told that you would, under no circumstances, permit the continued use by Albrecht of the water or the easement. As a result of your statements the Cooks backed out of the purchase and acquired another parcel elsewhere. For your information, there has never been any litigation between the Spurleys and Mr. and Mrs. Albrecht. Also, the Spurleys recognized the Albrecht right and did not interfere with its use. As a result of your action, the Albrechts have been damaged for loss of the sale.

Mr. Albrecht, after meeting with you, felt that you may have received some misrepresentation from Mr. Spurley regarding the use of the water and the easement. Regardless of what transpired between you and Mr. Spurley it is my conclusion that you knew of the Albrecht right. Ms. Dolina Gill, a real estate agent for Blevins Agency in Biggins, states that you had looked at the Albrecht property prior to purchasing the Spurley land. You were aware that the Albrechts were using water from the spring and observed the water pipe leading to the house. I also understand from the title company, that your title insurance policy lists an exception for the Albrecht easement and water right.

Without waiving any claim that the Albrechts have for damages³ that exist at this time, they want to impress upon you that any interference with their water right or the easement will be opposed. Also, any similar denials that the water right and easement exist to prospective purchasers will result in legal action.

Mr. Albrecht feels that with your conversation there should not be a problem in the future and I trust that those differences have been worked out and the two of you can be good neighbors. I have enclosed a copy of a correction warranty deed from the Durcans to Mr. and Mrs. Albrecht dated May 8, 1974 for your information which states the easement and water right granted. Mr. Albrecht conveyed the property to his father and mother while he was out of state and when he returned they conveyed it back to him. In the interim, the Spurleys had also executed a deed June 7, 1978 to the father

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OCT 06 1992

Mr. and Mrs. Werner Kolb
October 9, 1985
Page 3

and mother granting that easement and water right. A copy
of that deed is also enclosed.

Very truly yours,

COLLINS & HAYLY

William D. Collins

WDC/kgm

Enclosures

cc: Lyle Albrecht

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OCT 06 1992

EXHIBIT A

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho, and more particularly described as follows:

Commencing at the $\frac{1}{4}$ corner common to Sections 26 and 27, Township 22 North, Range 1 East, Boise Meridian;

Thence North $44^{\circ}28'42''$ East, 1753.30 feet to the TRUE POINT OF BEGINNING;

Thence South $37^{\circ}26'45''$ East, 246.95 feet to a point;

Thence South $0^{\circ}00'00''$ West, 116.99 feet to a point;

Thence North $90^{\circ}00'00''$ East, 179.81 feet to a point;

Thence North $0^{\circ}00'00''$ East, 631.40 feet to a point;

Thence South $63^{\circ}56'01''$ West, 255.83 feet to a point;

Thence South $25^{\circ}56'01''$ West, 229.00 feet to the TRUE POINT OF BEGINNING

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OCT 24 1996

EXHIBIT B

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho, and being more particularly described as follows:

Commencing at the $\frac{1}{4}$ corner common to Sections 26 and 27, Township 22 North, Range 1 East, Boise Meridian:

Thence North 44°28'42" East, 1753.30 feet to the True Point of Beginning;

Thence South 44°51'04" West, 202.76 feet to a point;

Thence South 29°29'20" West, 60.00 feet to a point;

Thence South 18°29'09" West, 251.56 feet to a point;

Thence North 90°00'00" East, 582.25 feet to a point;

Thence North 0°00'00" East, 121.50 feet to a point;

Thence South 90°00'00" West, 179.81 feet to a point;

Thence North 0°00'00" East, 116.99 feet to a point;

Thence North 37°26'45" West, 246.95 feet to the True Point of Beginning.

Together with an easement and right to the joint use of a spring and the water that originates in that spring which is located on property lying east of and adjacent to the above-described property. The spring lies on what was formerly known as the eastern portion of Tax 24 and which easement and spring is referred to in Idaho County instrument #253806.

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OCT 24 1996

CERTIFICATE OF MAILING

I HEREBY CERTIFY that one true and correct copy of the foregoing ORDER was mailed this 19th day of March 1992 in an envelope with sufficient first-class postage prepaid thereon to the following:

Six Copies To:

David B. Shaw, Chief
Adjudication Bureau
Idaho Department of
Water Resources
1301 North Orchard
Boise, ID 83706

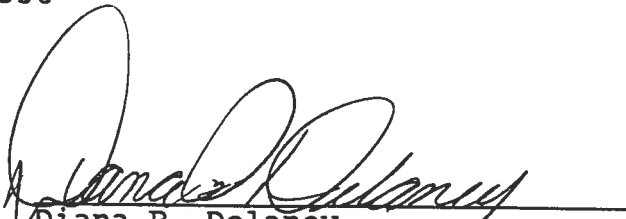
One Copy Each To:

Clive Strong
Office of the Idaho
Attorney General
Room 210, Statehouse
Boise, ID 83720

Peter G. Monson
Indian Resources Section
Environment & Natural Resources
Division
P.O. Box 44378
Washington, DC 20026-4378

Jim Jones
960 Broadway, Suite 310
Boise, ID 83706

Kirk MacGregor
Dee, MacGregor and Fales
416 West Main Street
Grangeville, ID 83530


Diana R. Delaney
Legal Secretary and Deputy
Clerk of the Court

2/21/96
-82

FIELD EXAM 11/10/92 for Permit 78-07324
for Pitts.

SAME Spring AS :

A 78-07109
A 78-10343 } Pitts

A 78-07265 Baum et al

} SEE SRBA
Court's Order
3/19/92 e
priority dates
these rights

P/d continued NWSNW 5.26

Topo from Exam SEE 78-07301 Exam
("master map")

Photos " " SEE 78-07324 Exam

File this with : A 78-07109
copies of A 78-07265
A 78-10343

MICROFILMED
OCT 24 1996

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
Telephone: (208) 385-9200
Twin Falls (208) 734-3345

Attorney for Plaintiffs

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.

GLENN E. BAUM and NETTA BAUM,
husband and wife, and FLOYD
D. WEST and FLORENCE WEST,
husband and wife,

Plaintiffs,

vs.

DAVID G. PITTS and CAROLYN
PITTS, husband and wife,

Defendants.

Case No. 39576

MOTION TO SHORTEN TIME FOR
HEARING AND ORDER SHORTENING
TIME FOR HEARING AND
SCHEDULING HEARING

COME NOW the plaintiffs and move the Court for an order shortening the time for scheduling a hearing on plaintiffs' Motion for Preliminary Injunction and setting the hearing on said matter for September 16, 1991 or as soon thereafter as is practicable. This motion is based upon the need for an immediate resolution of this matter, as set forth in the accompanying

affidavit of Glenn E. Baum, and in order to avert irreparable injury to plaintiffs.

DATED this 30th day of August, 1991.

/s/ Jim Jones
JIM JONES

ORDER

It appearing from plaintiffs' Motion to Shorten Time for Hearing and the accompanying affidavit of plaintiff Glenn E. Baum, that good cause exists therefor;

IT IS HEREBY ORDERED That the time for hearing of plaintiffs' Motion for Preliminary Injunction be shortened and that the hearing of said motion be scheduled before this Court for 9:00 o'clock 9.m. on October 1, 1991.

DATED this 30th day of August, 1991.

/s/ Daniel C. Hurlbutt
DISTRICT JUDGE

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
Telephone: (20) 385-9200
Twin Falls (208) 734-3345

Attorney for Plaintiffs

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PITTS, husband and wife,)

Defendants.)
_____)

Case No. 39576

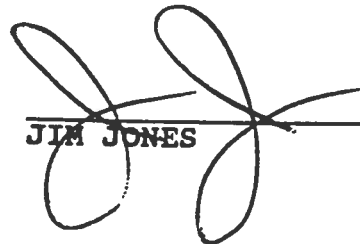
NOTICE OF HEARING

TO: DEFENDANTS DAVID G. PITTS AND CAROLYN PITTS, HUSBAND
AND WIFE.

PLEASE TAKE NOTICE that on Tuesday, the 1st day of
October, 1991, at the hour of 9:00 o'clock a.m. of
said day, or as soon thereafter as counsel can be heard, at the
courtroom of the above-entitled court in Twin Falls, Idaho,

plaintiffs will call up for hearing their Motion for Preliminary Injunction, a copy of which is attached hereto and served herewith. Plaintiffs have requested oral argument on said motion. You are advised to attend said hearing, either personally or through counsel, and participate therein as may be appropriate.

DATED this 30th day of August, 1991.



JIM JONES

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
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Twin Falls (208) 734-3345

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vs.)

DAVID G. PITTS and CAROLYN)
PITTS, husband and wife,)
Defendants.)
_____)

Case No. 39576

MOTION FOR PRELIMINARY
INJUNCTION

DESCRIPTIVE SUMMARY

Plaintiffs and defendants are adjoining property owners in Idaho County. Plaintiffs own the real property described in Exhibit "B" hereto (Parcel B) and defendants own the property described in Exhibit "A" hereto (Parcel A). Both parties have

water rights in a small spring located on Parcel A. The rights associated with the spring are as follows:

1. Adjudication Claim A78-10343, Priority 1/1/62, .02 cfs for domestic use for January 1 - December 31, based on beneficial use. (Defendants)
2. Adjudication Claim A78-07109, Priority 5/4/78, .02 cfs for irrigation of two acres for March 1 - December 1, based on License 78-07109. (Defendants)
3. Adjudication Claim A78-07265, current priority 7/30/85, .02 cfs for domestic use for January 1 - December 31, based on License 78-07265. (Plaintiffs) An amended claim has been filed, reflecting a 1973 conveyance to plaintiffs of a water right in the spring by defendants' predecessor in interest.

Plaintiffs contend that the application for license 78-07265 did not reflect the true priority and manner of acquisition of the right. Plaintiffs have filed an amended adjudication claim, seeking a portion of defendants' 1/1/62 priority claim. Despite the fact that plaintiffs and their predecessors in ownership of Parcel B have utilized waters of the spring for domestic purposes for approximately 15 years, defendants cut plaintiffs' pipeline on February 21, 1991, and have refused to allow plaintiffs to obtain waters from the spring ever since.

In this proceeding the plaintiffs seek a preliminary injunction against defendants, allowing plaintiffs to utilize the waters of the spring during the pendency of this action. Plaintiffs also seek attorneys fees. The motion is supported by the affidavits of Lyle D. Albrecht and plaintiff Glenn E. Baum, both of which are filed and served herewith.

MOTION FOR PRELIMINARY INJUNCTION

COME NOW Plaintiffs, through their attorney of record, and move the Court for entry of a preliminary injunction against the defendants, David G. Pitts and Carolyn Pitts, husband and wife, providing as follows:

- (1) Requiring David G. Pitts and Carolyn Pitts to restore to the plaintiffs the year-around use and enjoyment of at least three gallons per minute flow from the spring located on Parcel A for the benefit of the dwelling house located on Parcel B.
- (2) Requiring David G. Pitts and Carolyn Pitts to reinstall plaintiffs' waterpipe in said spring for conveyance of domestic water to plaintiffs' storage tank located on Parcel B and to maintain said pipeline, or to permit plaintiffs to maintain the same, so that it will provide an uninterrupted flow of water to plaintiffs' property for their domestic and culinary use.

(3) Restraining and enjoining David G. Pitts and Carolyn Pitts and their agents, servants and employees from interfering in any way with the use and enjoyment by plaintiffs on a year-round basis of at least three gallons per minute from the spring on Parcel A.

(4) Restraining and enjoining David G. Pitts and Carolyn Pitts from utilizing the waters of the spring on Parcel A for any purpose other than licensed purposes and specifically prohibiting said defendants from utilizing any of the waters of said spring for a certain fish pond located on their property.

Plaintiffs respectfully request that the Court award them reasonable attorneys fees for prosecuting the matter.

This motion is based upon the affidavits filed herein and on the ground that plaintiffs will suffer immediate and irreparable injury unless they are restored to the use of their domestic water by order of this court. Plaintiffs and their predecessors in ownership of Parcel B have utilized the waters of said spring for domestic purposes for approximately 15 years until defendants cut the pipeline providing water from the spring to plaintiffs' property on February 21, 1991. Plaintiffs have no other reliable source of water for their cabin. Entry of such a preliminary injunction would not prejudice the interests of the defendants.

ORAL ARGUMENT ON SAID MOTION IS REQUESTED.

DATED this 30th day of August, 1991.

/s/ Jim Jones
JIM JONES

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho, and being more particularly described as follows:

Commencing at the $\frac{1}{4}$ corner common to Sections 26 and 27, Township 22 North, Range 1 East, Boise Meridian: thence North $44^{\circ}28'42''$ East, 1753.30 feet to the True Point of Beginning; thence South $44^{\circ}51'04''$ West, 202.76 feet to a point; thence South $29^{\circ}29'20''$ West, 60.00 feet to a point; thence South $18^{\circ}29'09''$ West 251.56 feet to a point; thence North $90^{\circ}00'00''$ East, 582.25 feet to a point; thence North $0^{\circ}00'00''$ East, 121.50 feet to a point; thence South $90^{\circ}00'00''$ West, 179.81 feet to a point; thence North $0^{\circ}00'00''$ East, 116.99 feet to a point; thence North $37^{\circ}26'45''$ West, 246.95 feet to the True Point of Beginning.

Together with an easement and right to the joint use of a spring and the water that originates in that spring which is located on property lying east of and adjacent to the above described property. The spring lies on what was formerly known as the eastern portion of Tax 24 and which easement and spring is referred to in Idaho County instrument #253806.

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CUHIRT A

(Tract No. 1) Revised May 1, 1978

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho and being more particularly described as follows:

Commencing at the 1/4 Corner Common to Sections 26 and 27, T.22N., R.1E., B. M.; Thence North $44^{\circ} 28' 42''$ East, 1753.30 ft. to the TRUE POINT OF BEGINNING; Thence South $37^{\circ} 26' 45''$ East, 246.95 feet to a point; Thence South $0^{\circ} 00' 00''$ West, 116.99 feet to a point; Thence North $90^{\circ} 00' 00''$ East, 179.81 feet to a point; Thence North $0^{\circ} 00' 00''$ East, 631.40 feet to a point; Thence South $63^{\circ} 56' 01''$ West, 255.83 feet to a point; Thence South $25^{\circ} 56' 01''$ West, 229.00 feet to the true point of beginning; Comprising 3.25 acres more or less.

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OCT 24 1996

EXHIBIT R

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
Telephone: (20) 385-9200
Twin Falls (208) 734-3345

Attorney for Plaintiffs

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D. WEST and FLORENCE WEST,)
husband and wife,)

Plaintiffs,)

vs.)

DAVID G. PITTS and CAROLYN)
PITTS, husband and wife,)

Defendants.)

Case No. 39576

AFFIDAVIT OF LYLE D.
ALBRECHT

STATE OF IDAHO)
COUNTY OF ADA) ss

Lyle D. Albrecht, being duly sworn, deposes and says:

1. I am one of the grantees described in the warranty deed attached hereto as Exhibit A, which deed is incorporated herein by this reference. My wife, Peggy J. Albrecht, and I purchased

the described parcel of property from Maudie H. Silva Durgan and Elmer Durgan, husband and wife, in 1973. We wanted to insure a supply of water to the property so that we could meet our domestic water needs. We reached an agreement with the grantors whereby they transferred a right to use the water of a certain spring on the property they retained, which property is described in Exhibit B hereto. (Parcel B).

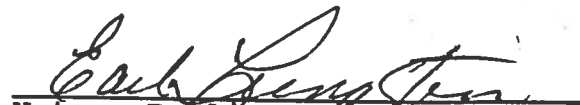
2. My wife and I started building a cabin on our property in 1974 and finished it in 1975 around the 15th of August. When the cabin was finished, I installed a system to pipe the water from the spring on Parcel B to the cabin. I laid a piece of plastic pipe in the spring so that it would pipe water to a 5,000 gallon storage tank on my property. The water was then piped on the surface of the ground to the house. When the water system was completed, my wife and I used it continually to serve the domestic uses of the cabin until we sold the property on July 1, 1986. When we sold the property, we conveyed our right in the spring. We deemed the water right a part of the real property.

3. We did have some trouble over our water right with Werner Kolb, who then owned Parcel B, and we secured the services of William D. Collins, attorney at law, to get the situation resolved. Mr. Collins wrote Mr. Kolb a letter, a copy of which is attached hereto as Exhibit C, and we were then able to reach an accommodation whereby we continued our use of the spring. Our

general usage over the ten-year period was approximately 2 1/2-3
gallons per minute.


LYLE D. ALBRECHT

SUBSCRIBED AND SWORN TO before me this 29th day of August,
1991.


Notary Public for Idaho
Residing at Bain County, Id.
My commission expires 9-94

251909

WARRANTY DEED

1973-10-15

1973-10-15

1973-10-15

POOR ORIGINAL

For Value Received

MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife

the grantee, the following described premises, Idaho County Idaho, to wit:

Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T22N, R1E, B.M.;
thence 100 feet South to THE REAL POINT OF BEGINNING; thence 278 feet
East, more or less; thence 345 feet in a southerly direction; thence
636 feet W; thence 228 feet N. to THE REAL POINT OF BEGINNING.

This Deed also includes right and easement to a certain spring of
water that originates on the property retained by the grantors.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s,
their heirs and assigns forever. And the said Grantors do hereby covenant to and
with the said Grantee s, that they are the owner in fee simple of said premises; that said
premises are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated:

October 15, 1973

Maudie H. Silva Durgan
Elmer Durgan

STATE OF IDAHO, COUNTY OF Valley

On this 15th day of October, 1973,
before me, a notary public in and for said State, personally

appeared Maudie H. Silva Durgan and Elmer Durgan

known to me to be the person s who s name s
appeared to the within instrument, and acknowledged to
me that they executed the same.

Residing at
Comm. Expires 2/4/77

Notary Public
McCall, Idaho

STATE OF IDAHO, COUNTY OF Idaho

I hereby certify that this instrument was filed for record at
the request of Lyle D. Albrecht.

at 50 minutes past 10 o'clock m.,
this 15th day of Nov
1973, in my office, and duly recorded in Book
of Deeds at page

BOB L. WAITE

Ex-Officio Recorder

By Verna Ulmer Deputy.

Fees \$ 1.00
Mail to: Lyle Albrecht
P.O. Box 11A

INSTRUMENT NO.

Exhibit A

Weaver, 244 836 72

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(Tract No. 1) Revised May 1, 1978

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho and being more particularly described as follows:

Commencing at the 1/4 Corner Common to Sections 26 and 27, T.22N., R.1E., B. M.; Thence North 44° 28' 42" East, 1753.50 ft. to the TRUE POINT OF BEGINNING; Thence South 37° 26' 45" East, 246.95 feet to a point; Thence South 0° 00' 00" West, 116.99 feet to a point; Thence North 90° 00' 00" East, 179.81 feet to a point; Thence North 0° 00' 00" East, 631.40 feet to a point; Thence South 63° 56' 01" West, 255.83 feet to a point; Thence South 25° 56' 01" West, 229.00 feet to the true point of beginning; Comprising 3.25 acres more or less.

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OCT 24 1996

EXHIBIT B

FROM ORIGINAL

October 9, 1985

Mr. and Mrs. Werner Kolb
Elk Lake Road
Riggins, Idaho 83549

Elk Lake Road

Riggins, Idaho

Dear Mr. and Mrs. Kolb:

Our firm represents Mr. and Mrs. Lyle B. Albrecht. Mr. Albrecht said that he met with you recently and the problem with respect to the use of the spring may be resolved. However, I felt that he should provide you with the background information relating to his use of water.

Mr. and Mrs. Albrecht purchased their property in 1971 from Maudie Durgan and Elmer Durgan. At that time the Durgans owned the $3\frac{1}{2}$ acres sold to Albrecht plus the land ultimately sold to you. The Deed from the Durgans to the Albrechts recited that it included the right and easement to a certain spring of water that originates on the property retained by Durgans. The Albrechts purchased the property acquiring an easement across the Durgan property to take water from the spring for their use on their land. Mr. Albrecht started building his cabin in 1974 and finished it in 1975. At that time he laid a plastic pipe from the spring for a distance of approximately 15 feet to the 5,000 gallon storage tank on his property and then piped the water on top of the surface to his house. He started using the water at that time.

Mr. Albrecht advises me when he made his purchase the Durgans also were making a use of the water from the spring for their residence. Under Idaho law when each party commenced a use of the water, each acquired a water right. Durgans, with the first use, have a prior right to the spring but only to the extent that they applied it to beneficial use. Any water in excess of what they had applied to beneficial use was subject to appropriation by Albrecht. I understand that Mr. Sourley, your predecessor, filed an application for a water right with the Idaho Department of Water Resources. Mr. Albrecht has similarly filed an application. The Department of Water Resources made their final inspection last week and will be issuing a water license in the near future for the Albrecht right. According to the field check by the Department of Water Resources, there is ample water to fill both uses.

Exhibit C

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OCT 24 1996

Mr. and Mrs. Inner Kolb
October 9, 1985
Page 2

POOR ORIGINAL

Mr. and Mrs. Albrecht have been trying to sell their property, Linda L. Cook on September 7, 1985, had offered to purchase the property. After they made that offer and later in the month the Cooks met with you. They were told by you that there had been litigation between your predecessor, Mr. Spurley, and the Albrechts which eliminated the Albrecht water right and easement. They were also told that you would, under no circumstances, permit the continued use by Albrecht of the water or the easement. As a result of your statements the Cooks backed out of the purchase and acquired another parcel elsewhere. For your information, there has never been any litigation between the Spurleys and Mr. and Mrs. Albrecht. Also, the Spurleys recognized the Albrecht right and did not interfere with its use. As a result of your action, the Albrechts have been damaged for loss of the sale.

Mr. Albrecht, after meeting with you, felt that you may have received some misrepresentation from Mr. Spurley regarding the use of the water and the easement. Regardless of what transpired between you and Mr. Spurley it is my conclusion that you knew of the Albrecht right. Ms. Dolina Gill, a real estate agent for Plevins Agency iniggins, states that you had looked at the Albrecht property prior to purchasing the Spurley land. You were aware that the Albrechts were using water from the spring and observed the water pipe leading to the house. I also understand from the title company, that your title insurance policy lists an exception for the Albrecht easement and water right.

Without waiving any claim that the Albrechts have for damages that exist at this time, they want to impress upon you that any interference with their water right or the easement will be opposed. Also, any similar denials that the water right and easement exist to prospective purchasers will result in legal action.

Mr. Albrecht feels that with your conversation there should not be a problem in the future and I trust that those differences have been worked out and the two of you can be good neighbors. I have enclosed a copy of a correction warranty deed from the Durgans to Mr. and Mrs. Albrecht dated May 8, 1974 for your information which states the easement and water right granted. Mr. Albrecht conveyed the property to his father and mother while he was out of state and when he returned they conveyed it back to him. In the interim, the Spurleys had also executed a deed June 7, 1978 to the father

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OCT 24 1996

POOR ORIGINAL

Mr. and Mrs. Werner Kolb
October 9, 1985
Page 3

and mother granting that easement and water right. A copy
of that deed is also enclosed.

Very truly yours,

COLLINS & HAVLY

William D. Collins

WDC/kgm

Enclosures

cc: Lyle Albrecht

MICROFILMED
OCT 24 1996

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
Telephone: (20) 385-9200
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Attorney for Plaintiffs

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PITTS, husband and wife,)

Defendants.)
_____)

Case No. 39576

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30th day of August, 1991, I
served true and correct copies of the following-listed documents,
to-wit:

Motion to Shorten Time for Hearing and Order Shortening
Time for Hearing and Scheduling Hearing

Motion for Preliminary Injunction

Notice of Hearing

Affidavit of Glenn E. Baum

Affidavit of Lyle D. Albrecht,

**by placing the same in the United States mail, postage prepaid,
addressed to the following:**

**David G. Pitts
HC 75, Box 3552
New Meadows, ID 83645**

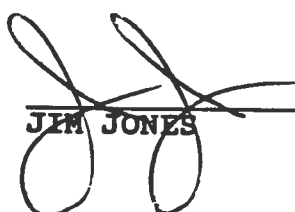
**Kirk A. MacGregor
Attorney at Law
P.O. Drawer 463
Grangeville, ID 83530**

**Attorney General Larry Echohawk
Statehouse Mail, Room 210
Boise, Idaho 83720**

**David Shaw
Adjudication Bureau Chief
Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, Idaho 83720 (6 copies)**

**Peter Monson
Trial Attorney
United States Department of Justice
Land and Natural Resources Division
Indian Resources Section
P.O. Box 44378
Washington, D. C. 20026-4378**

DATED this 30th day of August, 1991.



JIM JONES

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
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Plaintiffs,)

vs.)

DAVID G. PITTS and CAROLYN)
PITTS, husband and wife,)

Defendants.)

Case No. 39576

AFFIDAVIT OF GLENN E. BAUM

STATE OF IDAHO)
COUNTY OF TWIN FALLS) ss

Glenn E. Baum, being duly sworn, deposes and says:

1. I am one of the plaintiffs in the above-entitled
action. This affidavit is made upon my own personal knowledge,

and I am competent to testify as to the matters herein stated. This affidavit is submitted in support of plaintiffs' Motion for Preliminary Injunction.

2. In May of 1988 the four plaintiffs purchased a parcel of real property located in Idaho County, Idaho, a description of which is attached hereto as Exhibit "A" and incorporated herein by this reference. Said parcel is hereinafter referred to as "Parcel A." As stated in Exhibit "A", the conveyance included "an easement and right to the joint use of a spring and the water that originates in that spring." The spring is located on adjacent property currently owned by the defendants. The description of defendants' real property is contained in Exhibit "B", which exhibit is incorporated herein by this reference. Said parcel is hereinafter referred to as "Parcel B."

3. Attached hereto as Exhibits "C", "D", "E", and "F" are true and correct copies of deeds that I obtained from the county recorder of Idaho County, Idaho, each reflecting its respective recording number. Exhibit "C" reflects a conveyance of Parcel A to Lyle D. Albrecht and Peggy J. Albrecht, husband and wife, predecessors in interest to the plaintiffs. Immediately before the conveyance, the grantors, Maudie H. Silva Durgan and Elmer Durgan, husband and wife, were the owners of both Parcel A and Parcel B. Exhibits "D" and "E", both of which reflect a "right and an easement to a certain spring of water that originates on the property retained by the grantors (Parcel B)," reflect that

they were made to correct previous deeds. Exhibit "F" is a quitclaim deed from the Durgans' successor in interest to Parcel B, namely, Gideon W. Sperle and Loma S. Sperle, husband and wife. It, too, reflects the conveyance of a water right in the spring to the owners of Parcel A.

4. At the time we took over the property, a plastic pipe was located between the spring on Parcel B and a water storage tank located on Parcel A. A pipe ran between the storage tank and our cabin to supply domestic water to the cabin. We replaced the tank shortly after we purchased the property and took necessary action to insure a continuous flow of water from the spring to the tank and on to the cabin. From the time we got the new system operational, we had water running through it to the cabin on a year-round basis so as to keep the pipes clean, to keep the domestic water fresh, and to keep the system from freezing up. Although we could have drawn a greater gallonage, I set the valve so that there would be a maximum flow of approximately three gallons per minute. That was done so as to insure that the spring would overflow its banks on a continuous basis, allowing floating debris to spill over the sides so that the spring itself would be pure.

5. Not long after we purchased our property, we encountered problems with Werner Kolb, who was then the owner of Parcel B. Mr. Kolb contended that we did not have any rights in the spring and threatened to cut us off. Mr. Kolb had been in

touch with the Western Region Office of the Idaho Department of Water Resources and had been advised that his water right was prior to ours. A copy of the August 12, 1988, letter he received from the Department is attached hereto as Exhibit "G". That letter did not reference the conveyance of a water right to the spring. This was not the first dispute that had taken place between subsequent owners of the two parcels. We obtained a copy of a letter written to Mr. Kolb by an attorney for the original grantee of parcel A, a copy of which letter is attached hereto as Exhibit "H". I brought the contents of this letter to Mr. Kolb's attention some time during the latter part of August or first part of September in 1988, and he relented somewhat, as indicated in the letter he wrote to me and my wife on September 23, 1988, which is attached hereto as Exhibit "I". Incidentally, my wife and I did not agree to the terms stated in his letter, but we did have an uninterrupted supply of water during the rest of the time he owned parcel B. In fact, about the time he wrote the letter, Mr. Kolb cemented a portion of the spring and placed our pipe in the cement wall around the spring so as to feed the plastic pipe that fed our water supply to parcel A. Another pipe, larger than ours and adjacent to it in the cement wall, furnished his water needs. We didn't object that his pipe was larger because he never used his full purported allocation. The spring has always produced enough to take care of the usage for Parcel B and to, additionally, serve our needs very adequately.

6. When defendants purchased parcel B, Mr. Pitts told me that we had no right to the spring and that we needed to get our pipe out of it. About the first week in December of 1990, Mr. Pitts told me that he planned to construct a pond on Parcel B. He said he would use it for fire protection and that it would also be a fish pond. He said he planned to use the water from the spring to fill the pond. He proceeded with the construction of the pond and it was finished around the last part of April, 1991. He started filling the pond at that time and appears to be diverting almost all of the flow of the spring into the pond. Even with a substantial flow of water, the pond does not seem to be filling significantly and it is a real mess. During the early part of January, 1991, Mr. Pitts advised me that he was going to build a new house on Parcel B for his father-in-law and that he would need to furnish water to that house. A power line has recently been installed into the property and a meter has also been emplaced so it looks as if he plans to move ahead with the new house.

7. On or about February 17, 1991, Mr. Pitts furnished us with a letter claiming that we had no water right in the spring and stating that he would terminate our usage of it. A copy is attached hereto as Exhibit "J". We strenuously disagreed with the content of the letter and refused to sign for its receipt. On February 18, 1991, our water supply was cut off, due to a break in the pipe. I don't know how the break occurred, but I do

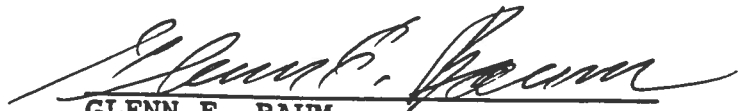
have a hunch. In any event, I repaired the pipe a couple of days later, but on February 21, 1991, Mr. Pitts cut the pipe serving our property and threw it over the fence. After that he proceeded to fence in the spring, and we have been without water ever since.

8. I obtained a copy of the application for permit that had been filed with the Department of Water Resources by the original grantee of parcel A, and a copy of the same is attached hereto as Exhibit "K". The application does not reference the conveyance of a water right in the spring that was made by the Durgans and later confirmed by the Sperles. Therefore, upon the advice of our attorney, we filed an amended claim with the Department of Water Resources on or about June 19, 1991, seeking a portion of the parcel B water right pursuant to the Durgan and Sperle conveyance. A copy of our amended filing is attached hereto as Exhibit "L" and incorporated herein by this reference.

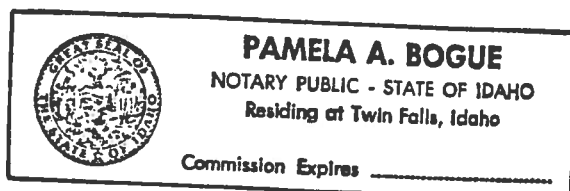
9. We have tried to be good neighbors with Mr. Pitts, but he has been extremely difficult to deal with. In order to avoid a confrontation we tried to develop an alternate source of water, but it just hasn't worked. Since he took out our pipe, we have been without culinary water and have had to haul water to the property, which has been very inconvenient. We are seeking a preliminary injunction to avert irreparable injury to our water system. When Mr. Pitts cut off our water, our water heater almost burned up. We had depended on a year-round flow to keep

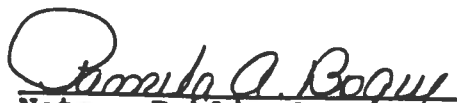
the system clean and sterile and to prevent it from freezing. The water temperature is 54° so the system does not freeze, even during a colder winter. Should the Court grant our request for a preliminary injunction, I would need to be present, either to reinstall our pipe, or to make sure that the system was properly sterilized in conjunction with Mr. Pitts' reinstallation of the pipe. It is very important that this matter be decided and that the system be placed back in operation before the cold weather sets in.

10. We have tried to work this matter out with Mr. Pitts on a number of occasions, both personally and through legal counsel. Nothing has worked because he refuses to recognize that we have any legitimate claim to any water in the spring, as indicated by the attached letters our attorney received from his attorney (Exhibits "M" and "N"). We have obligated ourselves to pay for the services of an attorney to vindicate our rights in this proceeding and believe it appropriate that defendants bear the cost of such services.


GLENN E. BAUM

SUBSCRIBED AND SWORN TO before me this 23rd day of August, 1991.




Notary Public for Idaho
Residing at _____
My commission expires 8-20-93

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho, and being more particularly described as follows:

Commencing at the $\frac{1}{4}$ corner common to Sections 26 and 27, Township 22 North, Range 1 East, Boise Meridian: thence North 44°28'42" East, 1753.30 feet to the True Point of Beginning; thence South 44°51'04" West, 202.76 feet to a point; thence South 29°29'20" West, 60.00 feet to a point; thence South 18°29'09" West 251.56 feet to a point; thence North 90°00'00" East, 582.25 feet to a point; thence North 0°00'00" East, 121.50 feet to a point; thence South 90°00'00" West, 179.81 feet to a point; thence North 0°00'00" East, 116.99 feet to a point; thence North 37°26'45" West, 246.95 feet to the True Point of Beginning.

Together with an easement and right to the joint use of a spring and the water that originates in that spring which is located on property lying east of and adjacent to the above described property. The spring lies on what was formerly known as the eastern portion of Tax 24 and which easement and spring is referred to in Idaho County instrument #253806.

MICROFILMED

OCT 24 1996

EXHIBIT A

(Tract No. 1) Revised May 1, 1978

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho and being more particularly described as follows:

Commencing at the 1/4 Corner Common to Sections 26 and 27, T.22N., R.1E., B. M.; Thence North $44^{\circ} 28' 42''$ East, 1753.30 ft. to the TRUE POINT OF BEGINNING; Thence South $37^{\circ} 26' 45''$ East, 246.95 feet to a point; Thence South $0^{\circ} 00' 00''$ West, 116.99 feet to a point; Thence North $90^{\circ} 00' 00''$ East, 179.81 feet to a point; Thence North $0^{\circ} 00' 00''$ East, 631.40 feet to a point; Thence South $63^{\circ} 56' 01''$ West, 255.83 feet to a point; Thence South $25^{\circ} 56' 01''$ West, 229.00 feet to the true point of beginning; Comprising 3.25 acres more or less.

MICROFILMED

OCT 24 1996

EXHIBIT B

251909

WARRANTY DEED

INDEXED

RECORDED

FILED

POOR ORIGINAL

For Value Received

MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband and wife
the grantors, do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife
the grantees, the following described premises, _____ Idaho _____ County Idaho, to wit:

Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T22N, R1E, B.M.;
thence 100 feet South to THE REAL POINT OF BEGINNING; thence 278 feet
East, more or less; thence 345 feet in a southerly direction; thence
636 feet W; thence 228 feet N. to THE REAL POINT OF BEGINNING.

This Deed also includes right and easement to a certain spring of
water that originates on the property retained by the grantors.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s,
their heirs and assigns forever. And the said Grantors do hereby covenant to and
with the said Grantee s, that they are the owner in fee simple of said premises; that said
premises are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.
Dated:

October 15, 1973

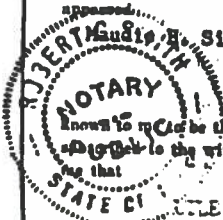
Maudie H. Silva Durgan
Elmer Durgan

STATE OF IDAHO, COUNTY OF Valley

On this 15th day of October, 1973,
before me, a notary public in and for said State, personally

appeared _____ Silva Durgan and Elmer Durgan

known to me to be the persons who signed the same as
grantees in the within instrument, and acknowledged to
me that they executed the same.



Residing at _____
Comm. Expires 2/4/77

Notary Public
McCall, Idaho

STATE OF IDAHO, COUNTY OF Idaho

I hereby certify that this instrument was filed for record at
the request of *Lyle D. Albrecht*.

at 50 minutes past 10 o'clock a.m.,
this 15th day of Nov 1973, in my office, and duly recorded in Book
of Deeds at page _____

BOB L. WAITE

Ex-Officio Recorder

By *Verda Elmer*

Fees \$ *1.00*
Mail to: *Lyle Albrecht*
P.O. Box 118

MICROFILMED

OCT 24 1996

Verda Elmer
Idaho 83672

EXHIBIT C

POOR ORIGINAL 252654

WARRANTY DEED

For Value Received

MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband

and wife

the grantors, do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife, whose address
10011 Skycliff Avenue, Boise, Idaho 83705

the grantees, the following described premises, in Idaho County Idaho, to-wit:

-- --Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T. 22 N., R. 1 East,
B. M., thence 100 feet South to the real point of beginning; thence 278 feet
East, more or less; thence 345 feet in a southerly direction; thence 636 feet
West; thence 190 feet more or less in a northerly direction; thence 235 feet
in a Northeasterly direction to a point; thence Easterly approximately 197
feet to the Real point of beginning-- --

This Deed is made specifically to correct that certain deed between the same two
parties and dated October 15, 1973, and recorded in Idaho County as Instrument
#251909.

This Deed also includes a right and an easement to a certain spring of water
that originates on the property retained by the Grantors, and also access to
the above property through the Grantor's property on the established road thereon.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee s,
their heirs and assigns forever. And the said Grantor s do hereby covenant to and
with the said Grantee s, that they are the owner s in fee simple of said premises; that they are free
from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: Jan. 17, 1974

Elmer Durgan

Maudie H. Silva Durgan

STATE OF IDAHO, COUNTY OF Valley
On this 17 day of January, 1974,
before me, a notary public in and for said State, personally
appeared Maudie H. Silva Durgan
and Elmer Durgan

known to me to be the person s whose name s are
subscribed to the within instrument, and acknowledged to
me that they executed the same.

Sheldon McCall
Notary Public
Residing at McCall, Idaho
Comm. Expires March 24, 1975

STATE OF IDAHO, COUNTY OF Idaho.
I hereby certify that this instrument was filed for record at
the request of Lyle D. Albrecht
at 47 minutes past 10 o'clock a.m.,
this 24 day of Jan.
1974, in my office, and duly recorded in Book
of Deeds at page

BOB J. WAITE
Ex-Officio Recorder

By *Quillie L. L...* Deputy.

Fees \$ 1.00

Mail to: *Winter address*

INSTRUMENT No.

MICROFILMED

OCT 24 1996

EXHIBIT D

POOR ORIGINAL

(Optional)
Recorded
Microfilmed
Indexed

☐
☐
☐

Platted
Deed Card
Compared

☐
☐
☐

Key Punched
Master File
Abstracted

☐
☐
☐

To Treasurer

☐
☐

253806

INDEXED
TRACED

WARRANTY DEED

MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband and wife,
of County of Adams
hereby CONVEYS or GRANTS and WARRANTS TO

GRANTOR(S)
State of Idaho

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife,
whose address is 10011 Skycliff Avenue, Boise, Idaho, 83705

of Boise County of Ada
for the sum of Ten and no/100
the following described tract(s) of land in IDAHO

GRANTEE (S)
State of Idaho
Dollars (\$10.00)
County, State of Idaho:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Location of above described property

House No.

Street

WITNESS the hands of said Grantors this

8th day of MAY A.D. 1974
+ Maudie H. Silva Durgan
+ Elmer Durgan



State of Idaho
County of Idaho

as On the 8th day of MAY A.D. 1974

personally appeared before me

Maudie H. Silva Durgan and Elmer Durgan
the signer(s) of the within instrument, who duly acknowledged to me that they executed the same.

James L. Daille
(NOTARY PUBLIC)

Residing at: Ribbons

My Commission expires: 5-4-74

MAIL DEED TO:

MAIL TAX NOTICE TO:

Name

Address

City & State

WARRANTY DEED

No.

-10-

Dated

19

STATE OF IDAHO

County of

as

I hereby certify that this instrument was
filed for record at request of

at minutes past
o'clock M, the day

of A.D. 19
in my office, and duly recorded in Book
of at page

Ex-Officio Recorder

By Deputy

Per, &

MICROFILMED

OCT 24 1996

EXHIBIT E, p.1

Grantors MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband and wife.
 Grantees LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife.

EXHIBIT "A"

Beginning at the NW Corner of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 26
 T. 22 N., R. 1 E., S.M., thence 100 feet South to the Real Point
 of beginning; thence 278 feet East, more or less; thence 345 feet
 in a Southerly direction; thence 636 feet West; thence 190 feet more
 or less in a Northerly direction; thence 235 feet in a Northeasterly
 direction to a point; thence Easterly approximately 197 feet to
 the Real Point of beginning.

This deed is made specifically to correct certain deeds between the
 same two parties and dated October 15, 1973, recorded in Idaho
 County as Instrument #251909 and January 24, 1974, recorded in
 Idaho County as Instrument #252654.

This deed also includes a right and an easement to a certain
 spring of water that originates on the property retained by the
 Grantors, and also access to the above property through the
 Grantor's property on the established road thereon.

Filed and recorded at the request of Lyle Albrecht
 at 10:56 o'clock A.M. this 10 day of May 1974
Bob A. Nantz By _____ Deputy
 Ex-Officio Auditor and Recorder
 Idaho County, Idaho Fee \$ 2.00

10011 Skycliff ave
 Boise, Id. 83705

MICROFILMED

OCT 24 1996

EXHIBIT E, p.2

POOR ORIGINAL

274218

QUITCLAIM DEED

For Value Received

GIDEON W. SPERLE AND LOMA S. SPERLE, husband and wife

do hereby convey, release, remise and forever quit claim unto

WALTER J. ALBRECHT AND VIRGINIA ONEN ALBRECHT, husband and wife

the following described premises, to-wit:

(Tract No. 2) Revised May 1, 1978

A tract of land located in Section 26, Township 22 North, Range 1 East, Boise Meridian, Idaho County, Idaho and being more particularly described as follows:

Commencing at the 1/4 Corner Common to Sections 26 and 27, T. 22N., R. 1E., B.M.; Thence North 44° 28' 42" East, 1753.30 feet to the TRUE POINT OF BEGINNING; Thence South 44° 51' 04" West, 202.76 feet to a point; Thence South 29° 29' 20" West, 60.00 feet to a point; Thence South 18° 29' 09" West 251.56 feet to a point; THENCE NORTH 90° 00' 00" East, 582.25 feet to a point; Thence North 0° 00' 00" East, 121.50 feet to a point; Thence South 90° 00' 00" West 179.81 feet to a point; Thence North 0° 00' 00" East, 116.99 feet to a point; Thence 37° 26' 45" West, 246.95 feet to the true point of beginning; Comprising 3.25 acres more or less.

This Deed also includes right and easement to a certain spring of water that originates on the property retained by the grantors.

together with their appurtenances.

Dated:

STATE OF IDAHO, COUNTY OF

On this 7 day of June, 1978, before me, a notary public in and for said State, personally appeared Gideon W. Sperle & Loma S. Sperle

known to me to be the persons who in name subscribed to the within instrument, and acknowledged to me that they executed the same.

Notary Public
Idaho
Expires 6.1.1979

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at the request of Gideon W. Sperle

at 30 minutes past 8 o'clock P.M. this 5th day of July 1978, in my office, and duly recorded in Book of Deeds at page

J. WAITE

Ex-Officio Recorder

By Loma S. Sperle Deputy.

Fees \$ 1.00
Mail to:

INSTRUMENT NO.

MICROFILMED

OCT 24 1996

EXHIBIT F



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Mr. Werner Kolb
HC 75, Box 3552
New Meadows, ID. 83654

August 12, 1988

Re: Domestic Use of the Spring

Dear Werner:

Your letter of 8/3/88 to Jan Shurte was received and entered in your water right file. Because I visited the site recently, Jan relayed the letter to me. The dispute concerning the spring on your land involves two key issues.

One, the historical domestic use of the water at your home will be recorded with the enclosed adjudication claim (A78-10343) for .02 cfs. One purpose of the adjudication is to clarify and record such historical beneficial uses of public water. We will retain the supporting evidence that you submitted that documents the use from 1962. Please review the claim, answer item 16, sign the form and have it notarized, and return it with the \$25 fee to me as soon as possible.

Two, domestic rights may replace other rights despite priority dates. A junior domestic right may condemn part or all of a senior right but only through proper legal procedures that include just compensation for the taking of real property as covered by the Idaho Constitution, Article XV, Section 5. However, this is a moot point because your domestic use can be documented to 1962. The Baum-West domestic use dates to 1985 and thus possesses no power to take any of the senior domestic right.

The Baum-West license, 78-07265, was recorded in the adjudication by claim number A78-07265 on 5/26/88. The water right covers .02 cfs for year-round domestic use. This right, with its 7/30/85 priority date, clearly remains the junior right and must respect the seniority of the Kolb rights. The Department advises the parties that the Kolb irrigation (3/1-12/1) and domestic (1/1-12/31) rights, totaling .04 cfs, have priority and must be satisfied first before the junior use occurs. Idaho water law is clear in this matter.

MICROFILMED
OCT 24 1996

EXHIBIT G

POOR ORIGINAL

October 9, 1985

Mr. and Mrs. Werner Kolb
Elk Lake Road
Riggins, Idaho 83549

Dear Mr. and Mrs. Kolb:

Our firm represents Mr. and Mrs. Lyle B. Albrecht. Mr. Albrecht said that he met with you recently and the problem with respect to the use of the spring may be resolved. However, I felt that he should provide you with the background information relating to his use of water.

Mr. and Mrs. Albrecht purchased their property in 1974 from Maudie Durgan and Elmer Durgan. At that time the Durgans owned the $3\frac{1}{4}$ acres sold to Albrecht plus the land ultimately sold to you. The Deed from the Durgans to the Albrechts recited that it included the right and easement to a certain spring of water that originates on the property retained by Durgans. The Albrechts purchased the property acquiring an easement across the Durgan property to take water from the spring for their use on their land. Mr. Albrecht started building his cabin in 1974 and finished it in 1975. At that time he laid a plastic pipe from the spring for a distance of approximately 15 feet to the 5,000 gallon storage tank on his property and then piped the water on top of the surface to his house. He started using the water at that time.

Mr. Albrecht advises me when he made his purchase the Durgans also were making a use of the water from the spring for their residence. Under Idaho law when each party commenced a use of the water, each acquired a water right. Durgans, with the first use, have a prior right to the spring but only to the extent that they applied it to beneficial use. Any water in excess of what they had applied to beneficial use was subject to appropriation by Albrecht. I understand that Mr. Sourley, your predecessor, filed an application for a water right with the Idaho Department of Water Resources. Mr. Albrecht has similarly filed an application. The Department of Water Resources made their final inspection last week and will be issuing a water license in the near future for the Albrecht right. According to the field check by the Department of Water Resources, there is ample water to fill both uses.

MICROFILMED

OCT 24 1996

EXHIBIT H

Mr. and Mrs. Albrecht have been trying to sell their property, Linda L. Cook on September 7, 1985, had offered to purchase the property. After they made that offer and later in the month the Cooks met with you. They were told by you that there had been litigation between your predecessor, Mr. Spurley, and the Albrechts which eliminated the Albrecht water right and easement. They were also told that you would, under no circumstances, permit the continued use by Albrecht of the water or the easement. As a result of your statements the Cooks backed out of the purchase and acquired another parcel elsewhere. For your information, there has never been any litigation between the Spurleys and Mr. and Mrs. Albrecht. Also, the Spurleys recognized the Albrecht right and did not interfere with its use. As a result of your action, the Albrechts have been damaged for loss of the sale.

Mr. Albrecht, after meeting with you, felt that you may have received some misrepresentation from Mr. Spurley regarding the use of the water and the easement. Regardless of what transpired between you and Mr. Spurley it is my conclusion that you knew of the Albrecht right. Ms. Dolina Gill, a real estate agent for Blevins Agency iniggins, states that you had looked at the Albrecht property prior to purchasing the Spurley land. You were aware that the Albrechts were using water from the spring and observed the water pipe leading to the house. I also understand from the title company, that your title insurance policy lists an exception for the Albrecht easement and water right.

Without waiving any claim that the Albrechts have for damages that exist at this time, they want to impress upon you that any interference with their water right or the easement will be opposed. Also, any similar denials that the water right and easement exist to prospective purchasers will result in legal action.

Mr. Albrecht feels that with your conversation there should not be a problem in the future and I trust that those differences have been worked out and the two of you can be good neighbors. I have enclosed a copy of a correction warranty deed from the Durcans to Mr. and Mrs. Albrecht dated May 8, 1974 for your information which states the easement and water right granted. Mr. Albrecht conveyed the property to his father and mother while he was out of state and when he returned they conveyed it back to him. In the interim, the Spurleys had also executed a deed June 7, 1978 to the father

Mr. and Mrs. Werner Kolb
October 9, 1985
Page 3

POOR ORIGINAL

and mother granting that easement and water right. A copy
of that deed is also enclosed.

Very truly yours,

COLLINS & HAYLY

William D. Collins

WDC/kgm

Enclosures

cc: Lyle Albrecht

MICROFILMED
OCT 24 1996

September 23, 1988

HAND DELIVERED

Mr. and Mrs. Glenn Baum
HC 75
New Meadows, ID 83654

Dear Mr. and Mrs. Baum:

Re: Water Rights to Kolb Spring

As the recent (August 12, 1988) letter of Mr. Steve Lester, Idaho Department of Water Resources, points out, we are legally entitled to .04 cfs of water from the spring located on our property. The spring is currently not producing .04 cfs, and we are not sure how much water the spring will produce in the future. However, we are willing to allow you to use water from the spring that we are not currently using. We have therefore placed your water intake pipe into the concrete reservoir wall somewhat above our current water intake pipe. Under conditions as they exist now, with the spring's current output and our current use, you should have enough water to fill your water reservoir.

However, we wish to make clear that by allowing you to use water from the spring as outlined above, we are not waiving any of our legal water rights. In particular, we reserve the right to use our full water rights allocation of .04 cfs in the future. This means that in the future, there may not be enough water to reach your water intake pipe, especially if the output of the spring decreases. In addition, your current use of water from the spring should in no way be construed to be adverse to our legal water rights.

Sincerely,

Werner Kolb, Lieselotte Kolb

Werner and Lieselotte Kolb

Received:

Glenn and Netta Baum

Dated:

MICROFILMED

OCT 24 1996

EXHIBIT I

HAND DELIVERED

17 FEB 91

MR. & Mrs. Glenn Baum
HC 75
New Meadows, ID. 83654

re: Water usage of Pitts spring.

Dear Mr. & Mrs. Baum:

As per our conversation in December 1990; I am hereby delivering written notice that as of 1 JUN 91 you and your household will no longer be provided water from my spring.

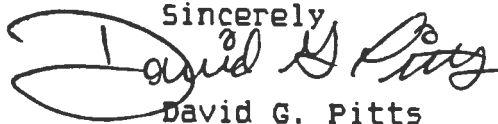
Prior to but no later than 1 JUN 91, you will be required to obtain your own source of water. Any and all agreements made between yourself and any and all previous owners of said spring are hereby null and void thus no longer being honored.

Registration of the spring on parcel # T-69 owned by David G. Pitts is solely registered by the same David Pitts with the State of Idaho's Department of Water Resources located in Boise.

Also be advised that at anytime prior to the 1 JUN 91 date you fail to obey my requirements of your usage of my spring; your water will be immediately terminated.

1. Valve to be opened no more than $\frac{1}{4}$ turn from the closed position.
2. Do not attempt to gain access to the fenced area of spring.

Sincerely,


David G. Pitts

Received: _____
Glenn Baum date

Witnessed: _____
Shannon R. Zuber date

Refilled

MICROFILMED

OCT 24 1996

EXHIBIT J

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

APPROVED

POOR ORIGINAL

1. Name of applicant LYLE D & FR PERRY J. ALBRECHT Phone 462-3442
Post office address 10328 FAIRVIEW, POISEL, ID 83304
2. Source of water supply SPRING which is a tributary of FAIR CREEK
3. Location of point of diversion is SE % of NW % of Section 26 Township 22N
Range 1E B.M. IDAHO County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 0.04 for DOMESTIC purposes from 1-1 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 0.04 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. STORAGE TANK & PIPELINE
TO PLACE OF USE.

b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
(Month/Day) (Month/Day)

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 years (minimum 1 year - maximum 5 years).

B. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: SE % of NW % of Section 26 Township 22N
Range 1E B.M.

(2) Amount of power to be generated: _____ horsepower under _____ feet of head.

(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be supplied with domestic water 1.

(5) If water is to be used for other purposes describe: _____

MICROFILMED

OCT 24 1996

EXHIBIT K

POOR ORIGINAL

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

TWP	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
22N	1E	210								0									

Total number of acres to be irrigated _____

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

9. a. Who owns the property at the point of diversion G. W. SPERLE
- b. Who owns the land to be irrigated or place of use APPLICANTS
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing APPLICANTS HAVE RIGHT OF WAY TO SPRING FROM PREVIOUS OWNERS PRIOR TO SPERLE

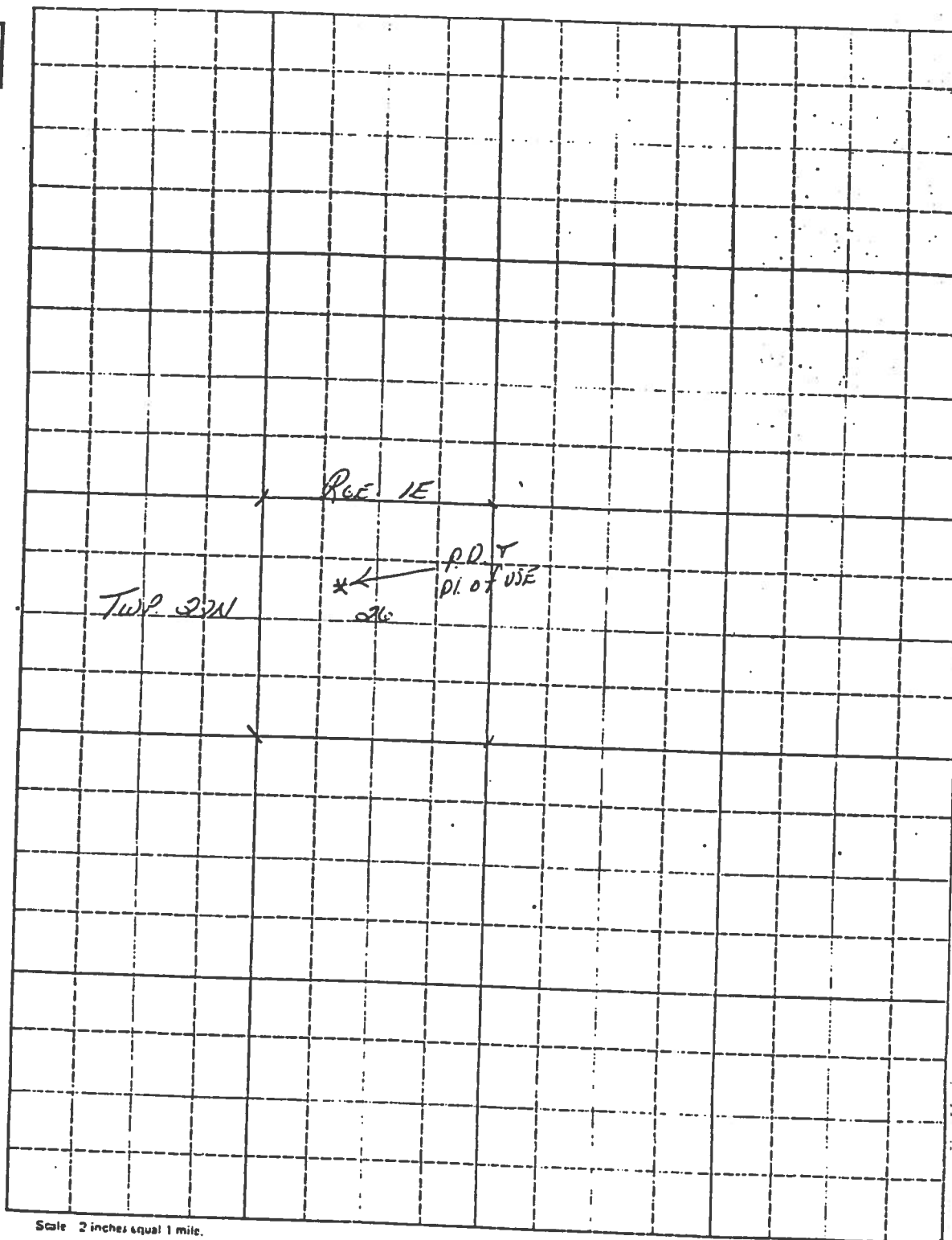
10. Remarks _____

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OCT 24 1996

1. Name of proposed project. Show clearly the proposed point of diversion, place of use, section number, township and range number.

POOR ORIGINAL



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.

Lyle All-weather
(Applicant)

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OCT 24 1996

POOR ORIGINAL

Received by JP Date 7/31/85 Time 3:00 P.M.
Preliminary check by 615 Fee \$ 30.00
Received by JP Date 7/30/85 # 36112
Publication prepared by AP Date 8/8/85
Published in Idaho County Free Press
Publication dates 8/14 & 8/21/85
Publication approved JP Date 9/3/85
Protests filed by: none
Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by DRT tw

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. 78-7265, and said application is hereby APPROVED.

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 October 1, 19 86.
- 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. Other: The issuance of this permit in no way grants any right-of-way or easement across the land of another.

Witness my hand this 26th day of September, 1985.

J. Glen Sayton
Chief, Operations Bureau

MICROFILMED
OCT 24 1996

JUN 23 1991

Department of Water Resources
Western Regional Office

Jim Jones
Attorney
960 Broadway, Suite 310
Boise, Idaho 83706
(208) 385-9200

Of Counsel
Benoit, Alexander, Sinclair
Doerr, Harwood & High
126 2nd Avenue North
Twin Falls, Idaho 83301
(208) 734-3345

Mailing Address:
P.O. Box 2225
Boise, Idaho 83701
Fax: (208) 336-5753

June 19, 1991

Adjudication Bureau
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

The foregoing is a true and certified copy of
the document on file at the department of
Water Resources

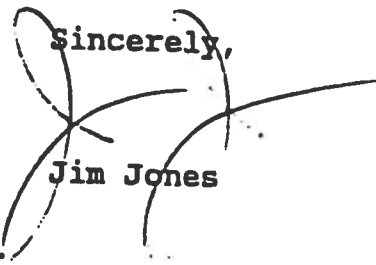
Signed this 21 day of August, 1991

Valerie J. Hoff

Dear Friends:

Enclosed is an amended Notice of Claim that I would like to have filed on behalf of Mr. & Mrs. Floyd West and Mr. & Mrs. Glenn Baum. I have appended a supporting affidavit. Their initial claim in the Adjudication did not properly characterize the manner in which they acquired their water right, nor the appropriate priority. They received their water right from a conveyance of a portion of a right filed in the adjudication as Claim A78-10343. I hope I have properly characterized that on the enclosed Amended Notice of Claim. If there is anything more that needs to be done, please let me know.

Sincerely,


Jim Jones

JTJ/tg

Enclosure

MICROFILMED

OCT 24 1996

EVU7RTT /

JUN 20 1991

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

Department of Water Resources
Western Regional Office

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

Date Received

Receipt Number

AMENDED

**NOTICE OF CLAIM
TO A
WATER RIGHT**

ACQUIRED UNDER STATE LAW

For Domestic and/or Stockwater Purposes

Where Daily Use is less than 13,000 gallons per day. Filing fee \$25

Please type or print clearly

- Name of Claimant (s) Floyd D. and Florence West Phone () (208) 654-2147
Glenn E. and Netta Baum Phone () (208) 733-5254
Mailing Address P.O. Box 32A, Declo, Idaho 83323
1208 Blue Lakes S., Twin Falls, Idaho Zip 83301
- Date of Priority (Only one (1) per claim) January 1, 1962
- Source of water supply (a) spring
which is tributary to (b) Elk Creek
- Location of point of diversion is: Township 22 N. Range 01 E
Section 26 . NW 1/4 of SE 1/4 of NW 1/4 . Govt. Lot _____ , B.M.,
County of Idaho
Additional points of diversion if any: _____
- Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate 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. storage tank and pipeline
- Water is claimed for the following: (Limited to Domestic and/or Stockwater only. See Instructions)
(Both dates are Inclusive)
For domestic purposes from 01/01 to 12/31 amount 0.020 (cfs)
For _____ purposes from _____ to _____ amount _____
- Total quantity claimed 0.020 (cfs) 0.60AFA
- Total consumptive use claimed is de minimus
- Non-irrigation uses. Describe fully. (Domestic: give number of households served; Stockwater: Type and number of livestock) 1 - domestic

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Copies: White-Statc, Yellow-Claimant

OCT 24 1996

10. Place a "D" for domestic and "S" for stockwater use in the corresponding place of use below.

TWP	RNG	SEC	NW 1/4				NW 1/4				SW 1/4				SE 1/4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
22N	01E	26								D								

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

12. Do you own the property listed above as place of use? Yes X No
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.
License 78-07265 or None ()

14. Remarks: This right preceeds license 78-07265 in priority and has been pertinent to the property pursuant to warranty deed from owner of adjoining property dated October 15, 1973.

15. Basis of Claim (check one) Beneficial Use X Posted Notice License Permit
Decree Attached deed

If applicable provide IDWR Water Right Number *
Court Case Number Decree Date
Plaintiff vs Defendant

* portion of claim number A78-10343 (see attached affidavit)

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments 1

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

Signature of Claimant (s) *Joseph D. White* Date 10-14-91
John E. Cannon Date 10-14-91
Sharon E. Cannon

For Organizations: I do solemnly swear or affirm that I am *Notary Public* Title

of Organization , that I have signed the foregoing

document in the space below as Title of 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 Idaho)
County of Twin Falls) SS.

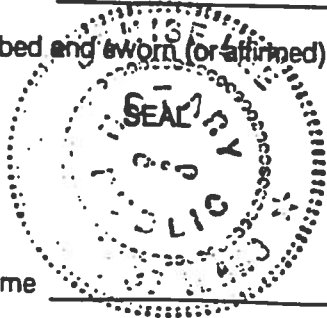
Subscribed and sworn (or affirmed) before me this 14 day of June 19 91

Notary Public *Denise Lee*

Residing at Twin Falls

My Commission Expires 11-4-94

Last Name Ident No. Copies White-State, Yellow-Claimant



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OCT 24 1996

AFFIDAVIT OF CLAIMANT

STATE OF IDAHO)
 : ss
County of Twin Falls)

GLENN E. BAUM, being duly sworn, deposes and says:

1. I am one of the claimants in the foregoing Amended Notice of Claim to a Water Right. The other claimants are my wife, Netta Baum, and Floyd D. West and Florence West, husband and wife.

2. When we originally filed our claim in the Snake River Adjudication proceeding, we were not aware of the priority date we should have claimed for our water right. Upon investigation of our water right, we have determined that we should have stated a January 1, 1962, priority date. Our water right was conveyed to us by warranty deed from Maudie H. Silva Durgan and Elmer Durgan, husband and wife, on October 15, 1973. A true and correct copy of the deed is attached hereto as Exhibit "A". A corrected warranty deed, dated January 17, 1974, attached hereto as Exhibit "B", more fully describes the water right conveyed by the Durgans. Immediately prior to the conveyance, the Durgans owned the property now owned by these claimants, as well as the property upon which the spring was located. The property retained by the Durgans at the time of the conveyance is the property to which water right claim A78-10343 is appurtenant. In this amended claim the claimants assert an entitlement to a

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OCT 24 1996

portion of that water right, with priority date of January 1, 1962.

3. The water right conveyed to claimants' predecessors in interest from the Durgans was put to beneficial use in 1975. Claimants' predecessors in interest, Lyle D. and Peggy J. Albrecht, started building a cabin on the property in 1974 and finished it in 1975. At that time Lyle Albrecht laid a plastic pipe from the spring for a distance of approximately 15 feet to a 5,000 gallon storage tank on said property and then piped the water on top of the surface to his house. He started using the water at that time for domestic purposes at the cabin. These facts and additional background are laid out in a copy of a letter from William D. Collins, attorney at law, attorney for the Albrechts, to Mr. & Mrs. Werner Kolb, the predecessor in interest of David G. Pitts, who currently owns the property that had been retained by the Durgans.

4. The water claimed by the claimants has been beneficially used continuously for domestic purposes since 1975. Claimants and their predecessors have shared equally in the spring with David Pitts' predecessors in interest, have openly claimed a right in and to said spring and exercised an ownership interest and right in and to the said spring and its waters and have asserted an interest adverse to any asserted priority of David Pitts' predecessors in interest to their full knowledge and acquiescence.

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OCT 24 1996

Glenn E. Baum
GLENN E. BAUM

SUBSCRIBED AND SWORN To before me this 13 day of June,
1991.



Denise Lee
NOTARY PUBLIC FOR IDAHO
Residing at: Low Falls
My Commission Expires: 11/94

MICROFILMED
OCT 24 1996

251909

WARRANTY DEED

POOR ORIGINAL

For Value Received

MAUDIE H. SILVA DUGAN and ELMER DUGAN, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife

the grantees, the following described premises, _____ Idaho _____ County Idaho, to wit:

Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T22N, R1E, S.M.;
thence 100 feet South to THE REAL POINT OF BEGINNING; thence 278 feet
East, more or less; thence 345 feet in a southerly direction; thence
636 feet W; thence 228 feet N. to THE REAL POINT OF BEGINNING.

This Deed also includes right and easement to a certain spring of
water that originates on the property retained by the grantors.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee,
their heirs and assigns forever. And the said Grantors do hereby covenant to and
with the said Grantee, that they are the owner in fee simple of said premises; that said
premises are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.
Dated:

October 15, 1973

Maudie H. Silva Dugan
Elmer Dugan

STATE OF IDAHO, COUNTY OF Valley

On this 15th day of October, 1973,
before me, a notary public in and for said State, personally
appeared _____

Maudie H. Silva Dugan and Elmer Dugan

known to me to be the persons whose names are
signed to the within instrument, and acknowledged to
me that they executed the same.

Notary Public
McCall, Idaho

Residing at _____
Comm. Expires 2/4/77

STATE OF IDAHO, COUNTY OF Idaho

I hereby certify that this instrument was filed for record at
the request of *Lyle D. Albrecht*.

at 50 minutes past 10 o'clock on
this 8th day of Nov
1973, in my office, and duly recorded in Book
of Deeds at page _____

BOB L. WAITE

Ex-Officio Recorder

By *Verda Winer* Deputy.

Fees \$ *1.00*
Mail to: *Lyle Albrecht*
P.O. Box 118

Winn. J. L. 83672

Exhibit A

MICROFILMED

OCT 24 1996

252654

WARRANTY DEED

For Value Received MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband and wife

the grantors do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife, whose address is 10011 Skycliff Avenue, Boise, Idaho 83705

the grantees, the following described premises, in Idaho County Idaho, to-wit:

-- --Beginning at the NW corner of the SE 1/4, NW 1/4, Sec. 26, T. 22 N., R. 1 East, S. 1 N., thence 100 feet South to the real point of beginning; thence 278 feet East, more or less; thence 345 feet in a southerly direction; thence 636 feet West; thence 190 feet more or less in a northerly direction; thence 235 feet in a Northeasterly direction to a point; thence Easterly approximately 197 feet to the Real point of beginning-- --

This Deed is made specifically to correct that certain deed between the same two parties and dated October 15, 1973, and recorded in Idaho County as Instrument #251909.

This Deed also includes a right and an easement to a certain spring of water that originates on the property retained by the Grantors, and also access to the above property through the Grantor's property on the established road.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owner in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: Jan. 17, 1974

Elmer Durgan
Maudie H. Silva Durgan

STATE OF IDAHO, COUNTY OF Valley
On this 17 day of January, 1974, before me, a notary public in and for said State, personally appeared Maudie H. Silva Durgan and Elmer Durgan

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same.

Blair A. Shelton
Notary Public
Residing at McCall, Idaho
Comm. Expires March 24, 1975

STATE OF IDAHO, COUNTY OF Valley
I hereby certify that this instrument was filed for record at the request of Lyle D. Albrecht at 47 minutes past 10 o'clock on this 24 day of Jan. 1974, in my office, and duly recorded in Book of Deeds at page

BOB J. WAITE
Ex-Officio Recorder

By *Patricia Adams* Deputy
Fees \$ 1.00
Mail to: *Patricia Adams*

Exhibit B

POOR ORIGINAL

October 9, 1985

Mr. and Mrs. Werner Kolb
Elk Lake Road
Riggins, Idaho 83549

Dear Mr. and Mrs. Kolb:

Our firm represents Mr. and Mrs. Wyle B. Albrecht. Mr. Albrecht said that he met with you recently and the dispute with respect to the use of the spring may be resolved. However, I felt that he should provide you with the background information relating to his use of water.

Mr. and Mrs. Albrecht purchased their property in 1971 from Maudie Durgan and Elmer Durgan. At that time the Durgans owned the 3 1/4 acres sold to Albrecht plus the land ultimately sold to you. The Deed from the Durgans to the Albrechts recited that it included the right and easement to a certain spring of water that originates on the property retained by Durgans. The Albrechts purchased the property acquiring an easement across the Durgan property to take water from the spring for their use on their land. Mr. Albrecht started building his cabin in 1974 and finished it in 1975. At that time he laid a plastic pipe from the spring for a distance of approximately 15 feet to the 5,000 gallon storage tank on his property and then piped the water on top of the surface to his house. He started using the water at that time.

Mr. Albrecht advises me when he made his purchase the Durgans also were making a use of the water from the spring for their residence. Under Idaho law when each party commenced a use of the water, each acquired a water right. Durgans, with the first use, have a prior right to the spring but only to the extent that they applied it to beneficial use. Any water in excess of what they had applied to beneficial use was subject to appropriation by Albrecht. I understand that Mr. Sourley, your predecessor, filed an application for a water right with the Idaho Department of Water Resources. Mr. Albrecht has similarly filed an application. The Department of Water Resources made their final inspection last week and will be issuing a water license in the near future for the Albrecht right. According to the field check by the Department of Water Resources, there is ample water to fill both uses.

Exhibit C

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OCT 24 1996

POOR ORIGINAL

Mr. and Mrs. Albrecht have been trying to sell their property, Linda L. Cook on September 7, 1985, had offered to purchase the property. After they made that offer and later in the month the Cooks met with you. They were told by you that there had been litigation between your predecessor, "r. Sourley, and the Albrechts which eliminated the Albrecht water right and easement. They were also told that you would, under no circumstances, permit the continued use by Albrecht of the water or the easement. As a result of your statements the Cooks backed out of the purchase and acquired another parcel elsewhere. For your information, there has never been any litigation between the Sourleys and Mr. and Mrs. Albrecht. Also, the Sourleys recognized the Albrecht right and did not interfere with its use. As a result of your action, the Albrechts have been damaged for loss of the sale.

Mr. Albrecht, after meeting with you, felt that you may have received some misrepresentation from Mr. Sourley regarding the use of the water and the easement. Regardless of what transpired between you and Mr. Sourley it is my conclusion that you knew of the Albrecht right. Ms. Dolina Gill, a real estate agent for Blevins Agency iniggins, states that you had looked at the Albrecht property prior to purchasing the Sourley land. You were aware that the Albrechts were using water from the spring and observed the water pipe leading to the house. I also understand from the title company, that your title insurance policy lists an exception for the Albrecht easement and water right.

Without waiving any claim that the Albrechts have for damages that exist at this time, they want to impress upon you that any interference with their water right or the easement will be opposed. Also, any similar denials that the water right and easement exist to prospective purchasers will result in legal action.

Mr. Albrecht feels that with your conversation there should not be a problem in the future and I trust that those differences have been worked out and the two of you can be good neighbors. I have enclosed a copy of a correction warranty deed from the Durcans to Mr. and Mrs. Albrecht dated May 8, 1974 for your information which states the easement and water right granted. Mr. Albrecht conveyed the property to his father and mother while he was out of state and when he returned they conveyed it back to him. In the interim, the Sourleys had also executed a deed June 7, 1978 to the father

MICROFILMED
OCT 24 1996

Mr. and Mrs. Werner Kolb
October 9, 1985
Page 3

POOR ORIGINAL

and mother granting that easement and water right. A copy
of that deed is also enclosed.

Very truly yours,

COLLINS & BART

William D. Collins

WDC/kgm

Enclosures

cc: Lyle Albrecht

MICROFILMED
OCT 24 1996

LAW OFFICES
DEE, MACGREGOR AND FALES

WILLIAM J. DEE
W. C. MACGREGOR, JR.
DAREN W. FALES

MACGREGOR BUILDING
416 W. MAIN
POST OFFICE DRAWER 463
GRANCEVILLE, IDAHO 83530
AREA CODE 208
TELEPHONES 983-1740
983-0250
983-0252

June 21, 1991

Jim Jones
Attorney at Law
960 Broadway, Suite 310
Boise, ID 83706

Dear Mr. Jones:

I have been hired by Mr. and Mrs. Dave Pitts to represent them in a water rights dispute involving your clients, Glen Baum and Floyd West.

The Pitts have two valid water rights to a spring located on their land near Riggins, Idaho. They have a domestic use water right (claim A78-10343), with a priority date of 1/1/62, which consists of .02 cubic feet per second (cfs). In addition, they have a water right for irrigation purposes on the same spring (A78-01709), with a priority date of 5/4/78, which consists of .02 cfs for irrigation of two (2) acres. Thus, their total water right to the spring consists of .04 cfs. It is my understanding that your clients, Mr. Baum and Mr. West, claim a water right to the same spring located on the Pitts land. The Baum/West domestic use water right (A78-07265) has a priority date of 7/30/85 for .02 cfs.

Thus, the Baum/West water right is junior to the Pitts. The Baum/West water right entitles them to the use of water from the Pitts spring only if there is a flow of more than .04 cfs. If there is, then they are entitled to a use of .02 cfs. However, the Pitts have had the spring measured by the State of Idaho Department of Water Resources who claim that the spring does not produce .04 cfs and never will.

As you know, Mr. Baum and Mr. West also claim to have an easement across the Pitt's property. Such easement does give Mr. Baum and Mr. West a right to use the water from the Pitt's spring. But, Mr. Baum and Mr. West only have a water right to any excess above .04 cfs. Enclosed is a copy of said easement which details their rights. However, the easement does not mention the water rights each party is entitled to. Consequently, Mr. Baum and

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OCT 24 1996

Exhibit m

Jim Jones
June 21, 1991
Page 2

Mr. West have an easement to the Pitts spring but are only entitled to the use of water from the spring if there is a flow of more than .04 cfs.

I have enclosed a copy of a letter from Steve Lester, Senior Water Resource Agent for the State of Idaho, Department of Water Resources and a letter from Cindy Hodges, Water Resource Agent for the Department of Water Resources, which explains their opinions as to the respective water rights of the parties involved. Hopefully those letters can be used in advising your clients.

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

Sincerely,

DEE, MacGREGOR & FALES


KIRK A. MacGREGOR

KAM:pjs
Enc.

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OCT 24 1996

LAW OFFICES
DEE, MacGREGOR AND FALES

WILLIAM J. DEE
W. C. MacGREGOR, JR.
DAREN W. FALES

MACGREGOR BUILDING
416 W. MAIN
POST OFFICE DRAWER 463
GRANGEVILLE, IDAHO 83530
AREA CODE 208
TELEPHONES 983-1740
983-0250
983-0252

July 24, 1991

Mr. Jim Jones
960 Broadway, Suite 310
Boise, ID 83706

Dear Mr. Jones:

I have discussed your June 24, 1991 letter with Mr. and Mrs. Pitts and they wholeheartedly resist and disagree with your assertions as to the Baum's/West's having a co-equal water right to the spring located on the Pitts' land. Our position is clearly stated in my June 21, 1991 letter to you. I am sorry the position taken by the Idaho Department of Water Resources was not enough to convince you.

I discussed the Pitts' water right with John Westruff of the Idaho Department of Water Resources and he feels that the position taken by Cindy Hodges and Steve Lester is correct. Their positions were clearly stated in the letters I enclosed to you with my letter of June 21, 1991.

John Westruff informed me that any filing of a water right dispute in the Snake River Adjudication regarding water rights in the New Meadows area will not be heard until August 8, 1995. Therefore, I will be filing a quiet title action in Idaho County to resolve the water rights of the respective parties in this action.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

DEE, MacGREGOR & FALES


KIRK A. MacGREGOR

KAM:jak
cc: Mr. and Mrs. David Pitts

MICROFILMED

OCT 24 1996

Exhibit N

AFFIDAVIT OF CLAIMANT

STATE OF IDAHO)
 : ss
County of Twin Falls)

GLENN E. BAUM, being duly sworn, deposes and says:

1. I am one of the claimants in the foregoing Amended Notice of Claim to a Water Right. The other claimants are my wife, Netta Baum, and Floyd D. West and Florence West, husband and wife.

2. When we originally filed our claim in the Snake River Adjudication proceeding, we were not aware of the priority date we should have claimed for our water right. Upon investigation of our water right, we have determined that we should have stated a January 1, 1962, priority date. Our water right was conveyed to us by warranty deed from Maudie H. Silva Durgan and Elmer Durgan, husband and wife, on October 15, 1973. A true and correct copy of the deed is attached hereto as Exhibit "A". A corrected warranty deed, dated January 17, 1974, attached hereto as Exhibit "B", more fully describes the water right conveyed by the Durgans. Immediately prior to the conveyance, the Durgans owned the property now owned by these claimants, as well as the property upon which the spring was located. The property retained by the Durgans at the time of the conveyance is the property to which water right claim A78-10343 is appurtenant. In this amended claim the claimants assert an entitlement to a

MICROFILMED
OCT 24 1996

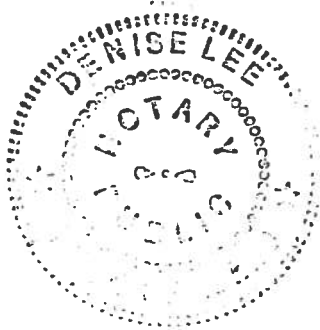
portion of that water right, with priority date of January 1, 1962.

3. The water right conveyed to claimants' predecessors in interest from the Durgans was put to beneficial use in 1975. Claimants' predecessors in interest, Lyle D. and Peggy J. Albrecht, started building a cabin on the property in 1974 and finished it in 1975. At that time Lyle Albrecht laid a plastic pipe from the spring for a distance of approximately 15 feet to a 5,000 gallon storage tank on said property and then piped the water on top of the surface to his house. He started using the water at that time for domestic purposes at the cabin. These facts and additional background are laid out in a copy of a letter from William D. Collins, attorney at law, attorney for the Albrechts, to Mr. & Mrs. Werner Kolb, the predecessor in interest of David G. Pitts, who currently owns the property that had been retained by the Durgans.

4. The water claimed by the claimants has been beneficially used continuously for domestic purposes since 1975. Claimants and their predecessors have shared equally in the spring with David Pitts' predecessors in interest, have openly claimed a right in and to said spring and exercised an ownership interest and right in and to the said spring and its waters and have asserted an interest adverse to any asserted priority of David Pitts' predecessors in interest to their full knowledge and acquiescence.

Glenn E. Baum
GLENN E. BAUM

SUBSCRIBED AND SWORN To before me this 13 day of June,
1991.



Denise Lee
NOTARY PUBLIC FOR IDAHO
Residing at: Tim Falls
My Commission Expires: 11/94

MICROFILMED
OCT 24 1996

251909

WARRANTY DEED

INDEXED
RECORDED
FILED

POOR ORIGINAL

For Value Received

MAUDIE H. SILVA DUGAN and ELMER DUGAN, husband and wife
the grantors, do hereby grant, bargain, sell and convey unto

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife
the grantees, the following described premises, Idaho County Idaho, to wit:

Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T22N, R1E, B.M.;
thence 100 feet South to THE REAL POINT OF BEGINNING; thence 278 feet
East, more or less; thence 345 feet in a southerly direction; thence
636 feet W; thence 228 feet N. to THE REAL POINT OF BEGINNING.

This Deed also includes right and easement to a certain spring of
water that originates on the property retained by the grantors.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee,
their heirs and assigns forever. And the said Grantors do hereby covenant to and
with the said Grantee, that they are the owner in fee simple of said premises; that said
premises are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.
Dated:

October 15, 1973

Maudie H. Silva Dugan
Elmer Dugan

STATE OF IDAHO, COUNTY OF Valley

On this 15th day of October, 1973,
before me, a notary public in and for said State, personally
appeared,

Maudie H. Silva Dugan and Elmer Dugan

known to me to be the persons whose names are
signed to the within instrument, and acknowledged to
me that they executed the same.

Notary Public
Residing at
Comm. Expires 2/4/77
McCall, Idaho

STATE OF IDAHO, COUNTY OF Idaho

I hereby certify that this instrument was filed for record at
the request of *Lyle D. Albrecht*.

at 50 minutes past 10 o'clock a.m.,
this 15th day of Nov
1973, in my office, and duly recorded in Book
of Deeds at page

BOB L. WAITE

Ex-Officio Recorder

By *Verda Albrecht* Deputy.

Fees \$ *1.00*
Mail to: *Lyle Albrecht*
St. 1. Box 11A

JOHN-MARSHALL CO.

Exhibit A

Weaver, Idaho 83672

MICROFILMED

OCT 24 1996

252654

WARRANTY DEED

For Value Received MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto
 LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife, whose address
 1001 Skycliff Avenue, Boise, Idaho 83705
 the grantees, the following described premises, in Idaho County Idaho, to-wit:

---Beginning at the NW corner of the SE $\frac{1}{4}$, NW $\frac{1}{4}$, Sec. 26, T. 22 N., R. 1 East, B. M., thence 100 feet South to the real point of beginning; thence 278 feet East, more or less; thence 345 feet in a southerly direction; thence 636 feet West; thence 190 feet more or less in a northerly direction; thence 235 feet in a Northeasterly direction to a point; thence Easterly approximately 197 feet to the Real point of beginning---

This Deed is made specifically to correct that certain deed between the same two parties and dated October 15, 1973, and recorded in Idaho County as Instrument #251909.

This Deed also includes a right and an easement to a certain spring of water that originates on the property retained by the Grantors, and also access to the above property through the Grantor's property on the established road.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: Jan. 17, 1974

Elmer Durgan
Maudie H. Silva Durgan

STATE OF IDAHO, COUNTY OF Valley
 On this 17 day of January, 1974,
 before me, a notary public in and for said State, personally
 appeared Maudie H. Silva Durgan
 and Elmer Durgan

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same.

Blady A. Shelton
 Notary Public
 Residing at: McCall, Idaho
 Comm. Expires March 24, 1975

STATE OF IDAHO, COUNTY OF Idaho
 I hereby certify that this instrument was filed for record at the request of *Lyle D. Albrecht*
 at 47 minutes past 10 o'clock a.m.,
 this 24 day of Jan.
 1974, in my office, and duly recorded in Book of Deeds at page

BOB J. WAITE
 Ex-Officio Recorder

By *Quillen D. ...*
 Deputy.

Fees \$ 1.00
 Mail to: *Post office address*

Exhibit B

MICROFILMED
 OCT 24 1996

POOR ORIGINAL

October 9, 1985

Mr. and Mrs. Werner Kolb
Elk Lake Road
Riggins, Idaho 83549

Dear Mr. and Mrs. Kolb:

Our firm represents Mr. and Mrs. Lyle D. Albrecht. Mr. Albrecht said that he met with you recently and the problems with respect to the use of the spring may be resolved. However, I felt that he should provide you with the background information relating to his use of water.

Mr. and Mrs. Albrecht purchased their property in 1971 from Maudie Durgan and Elmer Durgan. At that time the Durgans owned the 3 1/4 acres sold to Albrecht plus the land ultimately sold to you. The Deed from the Durgans to the Albrechts recited that it included the right and easement to a certain spring of water that originates on the property retained by Durgans. The Albrechts purchased the property acquiring an easement across the Durgan property to take water from the spring for their use on their land. Mr. Albrecht started building his cabin in 1974 and finished it in 1975. At that time he laid a plastic pipe from the spring for a distance of approximately 15 feet to the 5,000 gallon storage tank on his property and then piped the water on top of the surface to his house. He started using the water at that time.

Mr. Albrecht advises me when he made his purchase the Durgans also were making a use of the water from the spring for their residence. Under Idaho law when each party commenced a use of the water, each acquired a water right. Durgans, with the first use, have a prior right to the spring but only to the extent that they applied it to beneficial use. Any water in excess of what they had applied to beneficial use was subject to appropriation by Albrecht. I understand that Mr. Sourley, your predecessor, filed an application for a water right with the Idaho Department of Water Resources. Mr. Albrecht has similarly filed an application. The Department of Water Resources made their final inspection last week and will be issuing a water license in the near future for the Albrecht right. According to the field check by the Department of Water Resources, there is ample water to fill both uses.

Exhibit C

MICROFILMED

OCT 24 1996

POOR ORIGINAL

Mr. and Mrs. Albrecht have been trying to sell their property, Linda L. Cook on September 7, 1985, had offered to purchase the property. After they made that offer and later in the month the Cooks met with you. They were told by you that there had been litigation between your predecessor, "r. Spurley, and the Albrechts which eliminated the Albrecht water right and easement. They were also told that you would, under no circumstances, permit the continued use by Albrecht of the water or the easement. As a result of your statements the Cooks backed out of the purchase and acquired another parcel elsewhere. For your information, there has never been any litigation between the Spurleys and Mr. and Mrs. Albrechts. Also, the Spurleys recognized the Albrecht right and did not interfere with its use. As a result of your action, the Albrechts have been damaged for loss of the sale.

Mr. Albrecht, after meeting with you, felt that you may have received some misrepresentation from Mr. Spurley regarding the use of the water and the easement. Regardless of what transpired between you and Mr. Spurley it is my conclusion that you knew of the Albrecht right. Ms. Dolina Gill, a real estate agent for Blevins Agency in Biggins, states that you had looked at the Albrecht property prior to purchasing the Spurley land. You were aware that the Albrechts were using water from the spring and observed the water pipe leading to the house. I also understand from the title company, that your title insurance policy lists an exception for the Albrecht easement and water right.

Without waiving any claim that the Albrechts have for damages that exist at this time, they want to impress upon you that any interference with their water right or the easement will be opposed. Also, any similar denials that the water right and easement exist to prospective purchasers will result in legal action.

Mr. Albrecht feels that with your conversation there should not be a problem in the future and I trust that those differences have been worked out and the two of you can be good neighbors. I have enclosed a copy of a correction warranty deed from the Durgans to Mr. and Mrs. Albrecht dated May 8, 1974 for your information which states the easement and water right granted. Mr. Albrecht conveyed the property to his father and mother while he was out of state and when he returned they conveyed it back to him. In the interim, the Spurleys had also executed a deed June 7, 1978 to the father

MICROFILMED
OCT 24 1996

Mr. and Mrs. Werner Kolb
October 9, 1985
Page 3

POOR ORIGINAL

and mother granting that easement and water right. A copy
of that deed is also enclosed.

Very truly yours,

COLLINS & HAYLY

William D. Collins

WDC/kgm

Enclosures

cc: Lyle Albrecht

MICROFILMED
OCT 24 1996

JIM JONES
960 Broadway, Suite 310
Boise, Idaho 83706
Telephone: (20) 385-9200
Twin Falls (208) 734-3345

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE _____ JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF _____

GLENN E. BAUM and NETTA BAUM,	)	Case No.
husband and wife, and FLOYD	)	
D. WEST and FLORENCE WEST,	)	
husband and wife,	)	AFFIDAVIT
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
DAVID G. PITTS and MRS.	)	
DAVID G. PITTS, husband and	)	
wife,	)	
	)	
Defendants.	)	
_____	)	

STATE OF IDAHO	)	
	)	ss
COUNTY OF TWIN FALLS	)	

Glenn E. Baum, being duly sworn, deposes and says:

1. I am one of the plaintiffs in the above-entitled action. This affidavit is made upon my own personal knowledge, and I am competent to testify as to the matters herein stated.

2. In May of 1988 the four plaintiffs purchased a parcel of real property located in Idaho County, Idaho, a description of which is attached hereto as Exhibit A and incorporated herein by

this reference. Said parcel is hereinafter referred to a "Parcel A." As stated in Exhibit A, the conveyance included "an easement and right to the joint use of a spring and the water that originates in that spring." The spring is located on adjacent property currently owned by the defendants. The description of defendants' real property is contained in Exhibit B, which exhibit is incorporated herein by this reference. Said parcel is hereinafter referred to as "Parcel B."

3. Attached hereto as exhibits C, D, E, and F are true and correct copies of deeds that I obtained from the county recorder of Idaho County, Idaho, each reflecting its respective recording number. Exhibit C reflects a conveyance of Parcel A to Lyle D. Albrecht and Peggy J. Albrecht, husband and wife, predecessors in interest to the plaintiffs. Immediately before the conveyance the grantors, Maudie H. Silva Durgan and Elmer Durgan, husband and wife, were the owners of both Parcel A and Parcel B. Exhibits D and E, both of which reflect a "right and an easement to a certain spring of water that originates on the property retained by the grantors (Parcel B)," reflect that they were made to correct previous deeds. Exhibit F is a quitclaim deed from the Durgans' successor in interest to Parcel B, namely, Gideon W. Sperle and Loma S. Sperle, husband and wife.

4. At the time we took over the property, a plastic pipe was located between the spring on Parcel B and a water storage tank located on Parcel A. A pipe ran between the storage tank

and a cabin to supply domestic water to the cabin. We replaced the tank shortly after we purchased the property and took necessary action to insure a continuous flow of water from the spring to the tank and on to the cabin. From the time we got the new system operational, we had water running through it to the cabin on a year-round basis so as to keep the pipes clean and to keep the system from freezing up. Although we could have drawn a greater gallonage, I set the valve so that there would be a maximum flow of approximately three gallons per minute. That was done so as to insure that the spring would overflow its banks on a continuous basis, allowing floating debris to spill over the sides so that the spring itself would be pure.

5. Not long after we purchased our property, we encountered problems with Werner Kolb, who was then the owner of Parcel B. Mr. Kolb contended that we did not have any rights in the spring and threatened to cut us off. Mr. Kolb had been in touch with the Western Region Office of the Idaho Department of Water Resources and had been advised that his water right was prior to ours. A copy of the August 12, 1988, letter he received from the Department is attached hereto as Exhibit G. That letter did not reference the conveyance of a water right to the spring. This was not the first dispute that had taken place between subsequent owners of the two parcels. We obtained a copy of a letter written to Mr. Kolb by an attorney for the original grantee of parcel A, a copy of which letter is attached hereto as

Exhibit H. I brought the contents of this letter to Mr. Kolb's attention some time during the latter part of August or first part of September in 1988, and he relented somewhat, as indicated in the letter he wrote to me and my wife on September 23, 1988, which is attached hereto as Exhibit I. Incidentally, my wife and I did not agree to the terms stated in his letter, but we did have an uninterrupted supply of water during the rest of the time he owned parcel B. In fact, about the time he wrote the letter Mr. Kolb cemented a portion of the spring and placed a pipe in the cement wall around the spring so as to feed the plastic pipe that fed our water supply to parcel A. He placed another pipe in the cement wall (about two inches below our supply pipe) to furnish his water needs. We didn't object because he never used his full purported allocation, and, in fact, the works were not in place so that the full right allocated to the property could be utilized. We always had more than sufficient water to serve our need.

6. When defendants purchased parcel B, Mr. Pitts told me that we had no right to the spring and that we needed to get our pipe out of it. On or about February 17, 1991, he furnished us with a letter to that effect. A copy is attached hereto as Exhibit J. We strenuously disagreed with the content of the letter and refused to sign for its receipt. On February 18, 1991, our water supply was cut off, due to a break in the pipe. I don't know how the break occurred, but I do have a hunch. In

any event, I repaired the pipe a couple of days later, but on February 21, 1991, Mr. Pitts cut the pipe serving our property and threw it over the fence. After that he proceeded to fence in the spring, and we have been without water ever since. Mr. Kolb has indicated that another house will be built on parcel B and that it will need some of "his" water. He recently constructed a pond on his property, apparently for fish, and is using the water to fill the pond. It is a bit of a mess.

7. I obtained a copy of the application for permit that had been filed by the original grantee of parcel A, and a copy of the same is attached hereto as Exhibit K. The application does not reference the conveyance of a water right in the spring that was made by the Durgans and later confirmed by the Sperles. Therefore, upon the advice of our attorney, we filed an amended claim with the Department of Water Resources on or about June 19, 1991, seeking a portion of the parcel B water right pursuant to the Durgan and Sperle conveyance.

8. We have tried to be good neighbors with Mr. Pitts, but he has been extremely difficult to deal with. In order to avoid a confrontation we tried to develop an alternate source of water, but it just hasn't worked. Since he took out our pipe, we have been without culinary water and have had to haul water to the property, which has been very inconvenient.

GLENN E. BAUM

SUBSCRIBED AND SWORN TO before me this _____ day of August,
1991.

at _____

Notary Public for Idaho
Residing

My commission expires _____

POOR ORIGINAL

State of Idaho

DEPARTMENT OF WATER RESOURCES
FIELD REPORTRECEIVED
BY: S. E. K. W. J. L. G. I. N. A.
T 220, 215

Irrigation - 3 acres

JAN 26 1986

78-7109

Permit No.

CONTACT WITH PERMIT HOLDER

Department of Water Resources

DATE INITIALS

REMARKS

☒ Appointment letter mailed: 4/29/81

nlh

no appt. made.

☐ Telephone call made: 8/30/82

(List Telephone No. used) 628-3484 JG

☐ Appointment scheduled for: 1:30 JG.

(Date, time, location) 9/1/83

ELK LAKE RD. UP APPROX. 1/2 - 3/4 MILE.

EXAMINATION

Date 9/1/82 Accompanied by MRS. SPEERLE ✓ Total Q measured NONE ✓

f source is surface water, estimate total flow of source

Methods of measurement ESTIMATION. *See Below. Meets Permit requirements?

Measurement calculations:

8 9/16" NOZZLES AT 15 PSI = 2.2 gpm per head x 8 = 17.6 gpm ÷
1.98 x 152 WYDS x .04 = 12.1 AF > 3 x 4.0 AF/AC = 12.0 AF/AC ✓ 450 = 0.04 cfs
0.04 / 3 AC = 0.013 cfs/AC - ACCEPTABLE J.J.

WELL/DIVERSION * NO.	HP	MOTOR MAKE	MOTOR SERIAL NO.	PUMP MAKE	PUMP SERIAL NO.	MEASURING DEVICE TYPE	CONDITION OF MEAS. DEV.	REMARKS

System Description SPRING W/HEADBOX W/SCREEN INTO 10" PIPELINE TO 6" THEN
TO .3" PIPELINE DOWN TO SPRINKLER SYSTEM, APPROXIMATELY
10' DOWN TO LOWN AREA. VALVE TO TOWN ON R OFF.

Code with map on reverse side. Disregard code if only one.

RECOMMENDED AMOUNTS

Irrigation requirement = 4.0 AFA/Acre

USE

Q (cfs)

V (afa)

FROM

TO

IRRIGATION - 3 AC.

0.04 ✓

12.0 AF ✓

5/4 10/4

3/1 12/1

8 9/16" NOZZLES - 15 PSI

Per Water User
Handbook

Total

0.04 ✓

12.0 AF ✓

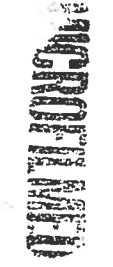
Remarks SOURCE IS ONLY ONE SPRING WHICH ORIGINATES OUT FROM UNDER
AN OLD TREE TRUNK IN A POOL. THE PIPE IS SET AT THE BOTTOM
OF THE POOL (1' SQUARE APPROX.).

MRS. SPEERLE DID NOT CONNECT THE SPRINKLER LINE UP AS IT HAD
BEEN TAKEN DOWN FOR WINTER - THE PSI WAS ESTIMATED. THE
DRYING PIPE SIZE LED TO BELIEVE THE 15 PSI WAS POSSIBLE. THE
FILLING WAS AT LOW FLOW AT THE TIME OF THE EXAM.

RECEIVED

POOR ORIGINAL

MAP (Attach Aerial Photo)



A hand-drawn map on a grid. The map features a creek labeled 'CREEK' and 'EL'. A spring is labeled 'SPRING'. A road is labeled 'TWP. 22N' and 'R. 22N'. There is also a label 'PGE. 11E AC' and '3'.

SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)

Point(s) of diversion: SE 1/4, NW 1/4, SW 1/4, Twp. 22N, RGE. 1E, B.M.

[illegible]

Recommended Amendments:

- ☐ Change P.D. as reflected above
- ☐ Change P.U. as reflected above
- ☐ Add P.D. as reflected above
- ☐ Add P.U. as reflected above
- ☒ None
- ☐ Other

Examiner's Signature [Signature] Date 12/6/83
 Checked by [Signature] Date 1/15/85
 Approved by [Signature] Date 5-9-86

**Jim Jones
Attorney
960 Broadway, Suite 310
Boise, Idaho 83706
(208) 385-9200**

**Of Counsel
Benoit, Alexander, Sinclair
Doerr, Harwood & High
126 2nd Avenue North
Twin Falls, Idaho 83301
(208) 734-3345**

**Mailing Address:
P.O. Box 2225
Boise, Idaho 83701
Fax: (208) 385-9599**

August 15, 1991

RECEIVED
AUG 16 1991

**Lynne Krogh-Hampe
Deputy Attorney General
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83720**

Department of Water Resources

Dear Lynne:

I have a dilemma that you might be able to help with. Enclosed are two affidavits I prepared for one of my clients, outlining the problem.

In a nutshell, my clients purchased some vacation property near New Meadows in 1988. Culinary water comes from a spring on adjoining property. The water right situation is spelled out in the attached copy of a letter written on April 25, 1991, by Cindy Hodges. When my clients' predecessor filed for his water right he did not mention in the application that the right was based on a conveyance of a portion of the rights to the spring that were established in the 60's when both parcels were in common ownership. A warranty deed, conveying a portion of the spring right to my clients' parcel, is attached to one of the affidavits. We have filed an amended claim in the adjudication, seeking recognition of the right conveyed.

We have tried to deal with the owner of the adjoining property, David Pitts, but haven't had much luck. In February he cut my clients' pipeline to the spring and has denied them access to the spring ever since. I have tried to convince him and his lawyer that they may not do so, but their stock response is that two letters from the Department of Water Resources have confirmed that they are in the right. I am enclosing copies of the two letters they rely on, although I think they misconstrue them. They seem to have the belief that my clients are not entitled to any water because Pitts has (at least currently) a prior right for .04 cfs for domestic and irrigation uses, that the spring does not produce more than that amount, and that, whether Pitts is using the water or not, my clients do not have an entitlement unless more than .04 cfs is being produced by the spring.

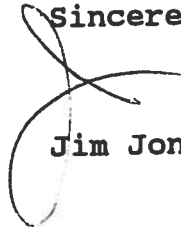
**MICROFILMED
OCT 24 1996**

Lynne Krogh-Hampe
August 15, 1991
Page 2

In any event, I guess our next step is to go to court. The problem is that my clients are of fairly modest means, and it would be nice if there were some way to get this matter resolved without filing suit. Since Pitts and his attorney have placed such great reliance on the letters from IDWR (both of which were written before the amended adjudication claim was filed and before the question of the conveyance was brought up), I wonder if it would be appropriate for the Department to take another look to see whether the matter is as cut and dried as it appeared to be earlier. In addition, it might be well to drop Mr. Pitts and his counsel a line to let them know that, even though a person has priority, he cannot deny a junior right when the water is not being used to serve the senior right. Additionally, the water is now being diverted into a fish pond, which appears to me to be an unauthorized use. If it were possible to provide them with some additional legal guidance from an unbiased source, the necessity of going to court might be averted. Could you give me a call when you have had a chance to look at this stuff? Thanks!

With best wishes, I am,

Sincerely,



Jim Jones

JTJ/eo

MICROFILMED
OCT 24 1996

Werner Kolb

New Meadows, 8-3-1988
HC 75 Box 3552-Idaho 83654

Ms. Jan Shurte
Sr. Water Resource Agent
State of Idaho Dept. of Water Resources
2735 Airport Way

Boise, Idaho 83705

RECEIVED
AUG 5 1988

Department of Water Resources
Western Regional Office

Dear Ms. Shurte,

Through no fault of mine, I find myself in some serious trouble with my Waterrights. You were very efficient and helpful in the past, please suffer through my case history with me:

Since 1962 this property used water from its spring for domestic and irrigation use. (Neighbors are willing to give an affidavit)

In 1978 the previous owner, Mr. Sperle (now in Arizona) realized that he had to file for Waterrights. An inspection at this time should have advised Mr. Sperle that he needed domestic as well as irrigation rights. (The pipeline into the house was very visible) This was not done, nobody, including me knew of the word "domestic". In my four letters (one even was registered) to Mr. Jim Johnson, I asked for a review of my waterrights, especially since some statements were inaccurate and I was wondering about the wintermonths without irrigation. I am from Wisconsin and had no idea that I had to specify "Domestic".

Mr. Johnson never advised me, he always used the words "Water-rights" and did not respond to my expressed fear, that some "Legality" would ruin this household. Never was I advised of the word "Domestic" which was not stated in my waterrights.

Ironically, this "Legality" now is exactly threatening me. Mr. Johnson obviously never even looked at my "Waterrights".

78-7265 → My new neighbors have a domestic waterright for this spring on my property since 1985. Their house was never connected to a waterline just last week their bathroom was finished, three weeks ago they received electric connection and last year their septic system was installed. Until now my waterright was never challenged. Also, as I had pointed out in my letters, this spring does not deliver 18 gal/min. for me, not even mentioning the 8 gal/min. for my new neighbors.

If their new domestic Waterright has priority over my old Waterright because this little word "Domestic" was not included and the spring goes down further, my house becomes worthless.

MICROFILMED
OCT 24 1996

Since I was forced by a plantclosing into early retirement,
my fixed income is low.

I hope this mess will be straightened out. I hold the Water-
department and Mr. Johnson directly responsible!

Sincerely,

Werner Kolb

Werner Kolb

MICROFILMED
OCT 24 1996

POOR ORIGINAL

AFFIDAVIT

I moved to the Elk Lake Road area in Idaho County, Idaho in 1962
At that time the house now occupied by Werner J. Kolb was occupied by
Oral E. Rader's daughter.

In 1964 Oral E. Rader sold the house to Maudie H. Silva
(See Deed No. 217046 attached)

in 1977 Maudie H. Silva sold this property to Gideon W.
Sperle.

In 1986 Gideon W. Sperle sold this property to Werner J. Kolb.
I know that the spring referred to in the above mentioned deed #217046
has been used by the occupants of the Kolb house for domestic purposes
continuously since 1962.

Muriel R. Givens
Muriel R. Givens
3555 Elk Lake Road
Idaho County, Idaho

State of Idaho, County of Idaho

On this 8 day of August 1988
before me, a notary public in and for
said State, personally appeared

MURIEL R. GIVENS

known to me to be the person whose name
is subscribed to the within instrument, and
acknowledged to me that she executed
the same.

Mary O'Leary
Notary Public
Residing at Riggins, Idaho

RECEIVED
Aug. 10 1988

Department of Water Resources
Western Regional Office

MICROFILMED
OCT 24 1996

217046

WARRANTY DEED

For Value Received ORAL E. RADER and EVELYN RADER, husband and wife,

the grantor s, do hereby grant, bargain, sell and convey unto

MAUDIE H. SILVA, a widow woman

the grantee , the following described premises, in Idaho County Idaho, to wit:

-- -- --Beginning at the ^{with beginning} quarter corner which is the NW corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, S. 26, T. 22 N., R. 1 E., B. M., thence 90 feet North to the real point of beginning:

Thence E. 278 feet to a point;
 Thence S. 535 feet to a point;
 Thence W. 636 feet to a point;
 Thence N. 190 feet to a point;
 Thence Northeasterly 418 feet to the real point of beginning-- -- --

This parcel contains 6 $\frac{1}{2}$ acres more or less-- -- --

Together with all right and title to a certain spring of water that originates on the above described property-- -- --



TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee , her heirs and assigns forever. And the said Grantor s do hereby covenant to and with the said Grantee , that t he y are the owner s in fee simple of said premises; that they are free from all incumbrances

and that the y will warrant and defend the same from all lawful claims whatsoever.

Dated: Sept. 10, 1964

Oral E. Rader
Evelyn Rader

STATE OF IDAHO, COUNTY OF VALLEY

On this 10th day of Sept. , 1964 , before me, a notary public in and for said State, personally appeared Oral E. Rader and Evelyn Rader

known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that they executed the same.

Residing at

McCall

Comm. Expires 7/25 - 1965

Notary Public

STATE OF IDAHO, COUNTY OF IDAHO

I hereby certify that this instrument was filed for record at the request of ORAL AND ABSTRACT CO.

at 24 minutes past 3 o'clock m., this 24 day of Sept, 1964, in my office, and duly recorded in Book of Deeds at page

CARL T. REUTER

Ex-Officio Recorder

By Bob J. Harte Deputy.Fees \$.90

Mail to: Maudie H. Silva
 Council, Idaho

INSTRUMENT No.



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 8, 1994

Jim Jones, Esq.
Jim Jones and Associates
960 Broadway, Suite 310
Boise, ID 83706

RE: Glenn Baum -- David Pitts, Idaho County Dispute

Dear Jim:

I have received your letter dated March 4, 1994, in which you requested that Mr. Baum be notified if Mr. Pitts seeks an application to drill a well in the vicinity of a much-disputed spring in Idaho County.

I will circulate your request to our staff, and we will attempt to notify Mr. Baum if a water right application is filed by Mr. Pitts with our office. However, this technique is not a fail-safe assurance of notification. The two techniques to ensure that notification takes place are for Mr. Baum to either (1) read the legal notices in the Idaho County Free Press, or (2) subscribe to the New Water Right Filings mailing service (by contacting Ms. Kris Rhodes of our State Office at 327-7907 for a cost of \$30.00 per year).

As you are aware, a ground water diversion for domestic purposes as defined in §42-111, I.C. does not require a water right application to be filed. A well drilled for such purposes requires only a well drilling permit, for which there is no protest procedure. Thus, Mr. Baum would be able to protest only if the proposed use of water exceeds the definition of domestic and a water right application is filed by Mr. Pitts.

Please feel free to contact me if you have concerns about the review process that I have outlined.

Sincerely,

A handwritten signature in cursive script that reads "David R. Tuthill, Jr.".

David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

MICROFILMED

AUG 08 1994

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

16:51:09
12/10/91

CLAIM NUMBER: A78-07109

PAGE: 1
GENERAL INFORMATION

NOTE: CDR written up per
field exams conducted in
1983 & 1985 on the spring. The
CDR's written up per request
by Adq. attorney due to a
pending agreement between
the 2 parties using this spring.
May need to do a field exam
at time of verification if needed.

LAST: SPERLE ADDRESS: CITY: NEW MEADOWS PHONE NUMBER: 208-000-0000 OWNER CODE: 0	FIRST: G. W. STATE: ID ID ZIP: 83654
LAST: SPERLE ADDRESS: CITY: NEW MEADOWS PHONE NUMBER: 208-000-0000 OWNER CODE: 0	FIRST: LOMA S. STATE: ID ID ZIP: 83654
LAST: KOLB ADDRESS: HC 75 BOX 3552 CITY: NEW MEADOWS PHONE NUMBER: 208-000-0000 OWNER CODE: 0	FIRST: WERNER STATE: ID ID ZIP: 836540000
LAST: PITTS ADDRESS: HC 75, BOX 3552 CITY: NEW MEADOWS PHONE NUMBER: 208-628-3010 OWNER CODE: C	FIRST: DAVID G. STATE: ID ID ZIP: 83654
FIELD EXAM REQUIRED?	FIELD EXAMINER
VERIFICATION REQUIRED DUE TO REMARKS?	DATABASE Y

CLAIM REMARKS: CHANGE IN OWNERSHIP COMPLETED BY L.R.W. ON 1/30/91.

MICROFILMED
OCT 06 1992

XLA
CONTACT PERSON: _____ PHONE NUMBER: () - -
DATE OF FIELD EXAM: __/__/__ APPOINTMENT MADE: Y() N() TIME: __: __ A() P()
ACCOMPANIED BY: _____ PHONE NUMBER: () - -
RELATIONSHIP TO CLAIMANT: _____
DIRECTIONS TO PROPERTY / REMARKS:

A. AJ CLAIM: # A78-07109 PRIORITY DATE: 05-04-1978 STAGE: L
B. WR RECORD: # 78-07109 PRIORITY DATE: 05-04-1978 STAGE: L

C. FIELD EXAM REQUIRED?
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE N FIELD EXAMINER RB

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N(☒)

REMARKS: Same as licensed.

RECOMMENDED PRIORITY DATE:
05-04-1978

REVIEWED BY [Signature] DATE 12-12-91

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TMP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A78-07109	22N	01E	26	NW	SE	NW		IDAHO

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
A78-07265 NONE
A78-10343

WR RECORDS IN SAME 40 ACRE TRACT
78-07265
78-07318
78-07324

SOURCE: SPRING

TRIB: SINKS

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TMP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
78-07109	22N	01E	26		SE	NW		IDAHO

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX
A78-07265 NONE
A78-10343

SOURCE: SPRING

TRIB: ELK CREEK

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY?	(Y/N)	DATABASE	FIELD EXAMINER
DUE TO SOURCE DISCREPANCY?	(Y/N)	Y	NW - 10-acre parcel discrepancy only.

REMARKS:

Note: Spring does not flow - during field exam in 1983 I can remember the spring under the tree with no flow. Also during exam for 78-07265 conducted in 1985.

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RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	LOT	COUNTY
22N	1E	26	NW	SE	NW	IDAHIO

SOURCE:

SPRING

REVIEWED BY:

TRIB: SHINKS

DATE:

12-72-91

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OCT 06 1992

A. ROOT WATER RIGHT NUMBERS: A78-07109

B. POJ LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
22N	01E	26	SE	NW		PITTS, DAVID G.	A78-07109 / 2.0	78-07109 / 3.0			
			SE	NW		GIVENS, M. R.	A78-02072 / 8.5	78-02072 / 8.0			
			SE	NW		PITTS, DAVID		78-07324 /			
			SE	NW		ALBRECHT, LYLE D.		78-07265 /			
			SE	NW		ZUBER, SHANNON REGINALD		78-07318 / 0.2			
TOTAL ACRES							A78-07109	2.00		3.00	

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y () N ()
 IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DATABASE Y
 FIELD EXAMINER NO

DUE TO POJ DISCREPANCY? (Y/N)

PRESUMPTION FLAG:

REMARKS:

Reduction to 2 acres from license - still verified by field exam in 1983 & irrigation was taking place when Dave Foster visited the site in 1988. However, he did not measure the area irrigated as he was there on a later right problem over side of the young.

RECOMMENDATIONS:

TOTAL ACRES: 2

REVIEWED BY: [Signature]

DATE: 12/12/91

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A78-07109	FROM 03-01 TO 12-01	.020 CFS
IRRIGATION		.040 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
78-07109	FROM 03-01 TO 12-01	.040 CFS
IRRIGATION		12.00 AF/A
TOTAL DIVERSION RATE/VOLUME CLAIMED		.040 CFS
		12.00 AF/A

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

DUE TO WATER-USE DISCREPANCY? (Y/N)
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)

FIELD EXAMINER
DATABASE
N
Y
N

NO - see below

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☒) N(☐)
Y(☐) N(☐)

Explain in remarks, below.

REMARKS:

Amount of water for Irig. should be .04 cfs. The amount was divided when domestic use was added however, when removed the total licensed should remain with the irrigation amount - .04 cfs. Amount calculated using sprinkler heads & ps. at time of exam in 1983 should, .04 cfs used for irrigation only.

Y(☒) N(☐)

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

AJ TOTAL CLAIMED DIVERSION RATE: 0.040 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 0.040 CFS

total agrees

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***

** If an amount smaller than the original diversion rate is **

** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

FIELD

DATABASE EXAMINER

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) N

NO

FLOW MEASUREMENT

B. MEASUREMENT METHOD *ESTIMATE*, SEE ATTACHED CALCULATIONS. *See attached field exam conducted in 1983.*

C. ARE OTHER WATER RIGHTS USED? Y(☐) N(☐) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: A79-10343 FOR DOMESTIC PURPOSES.

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A78-07109	SPRING	PITTS, DAVID G.	0.040	0.020		
A78-02072	UNNAMED STREAMS	GIVENS, M. R.	1.290	0.009		

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

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OCT 06 1992
OCT 26 1992

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES 2 x 0.02 CFS/ACRE = .04 CFS
(Taken from p/u review)

1b. CALCULATIONS

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N(X)

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 4.0 AF/A

ACRES 2 x CONSUMPTIVE VOL. AF/A FOR AREA 3.0 =

TOTAL CONSUMPTIVE USE 6.0 AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = N/A AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

surface water

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

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OCT 1 1987

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	03-01 12-01	DATABASE EXAMINER 0.020 <u>4.84</u>	DATABASE EXAMINER <u>4.1A</u>	DATABASE EXAMINER 4.0 <u>6.0</u>

TOTAL FOR THIS RIGHT

REVIEWED BY: 

DATE: 12/2/91

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP FORFEIT/ABANDON
ADDITIONAL DIV. AMOUNT _____

ACCEPTED AS CLAIMED ()
NEEDS REVIEW ()
() ()
() ()

Ownership Change

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 78-07109

TOTAL DIVERSION RATE OF WR SPLITS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "WR" CLAIM NUM.	"WR" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A78-07109	0.040	-		78-07109	0.040
TOTAL CFS		0.040				0.040

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, is the written review sheet attached? (Y/N)

FIELD EXAMINER OK

DATABASE Y

REMARKS:

AUTHENTICATION:

SIGNATURE: JAN SHUTE

DATE: 12-12-91

NAME OF FIELD EXAMINER: JAN SHUTE

TITLE: WR. RTS. SUPERVISOR

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

16:51:09
12/10/91

CLAIM NUMBER: A78-07109

PAGE: 12
QUICKLOOK INFORMATION

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	NO	N/A	11-OFFICE VERIFICATION PRO	NO		12/12/91		
POINT OF DIV	Y		12/12/91	NO				
SOURCE	Y			YES				
PLACE OF USE	Y			NO				
DIV. AMOUNT CFS/VOLUME	Y			YES				
CONSUMPTIVE USE	NO			NO				
PURPOSES	NO			NO				
PERIOD OF USE	NO			NO				
BASIS OF CLAIM	NO			NO				
REMARKS	Y			YES				

"VERIFIED BY" CODES

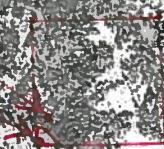
TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
NAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

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OCT 06 1992

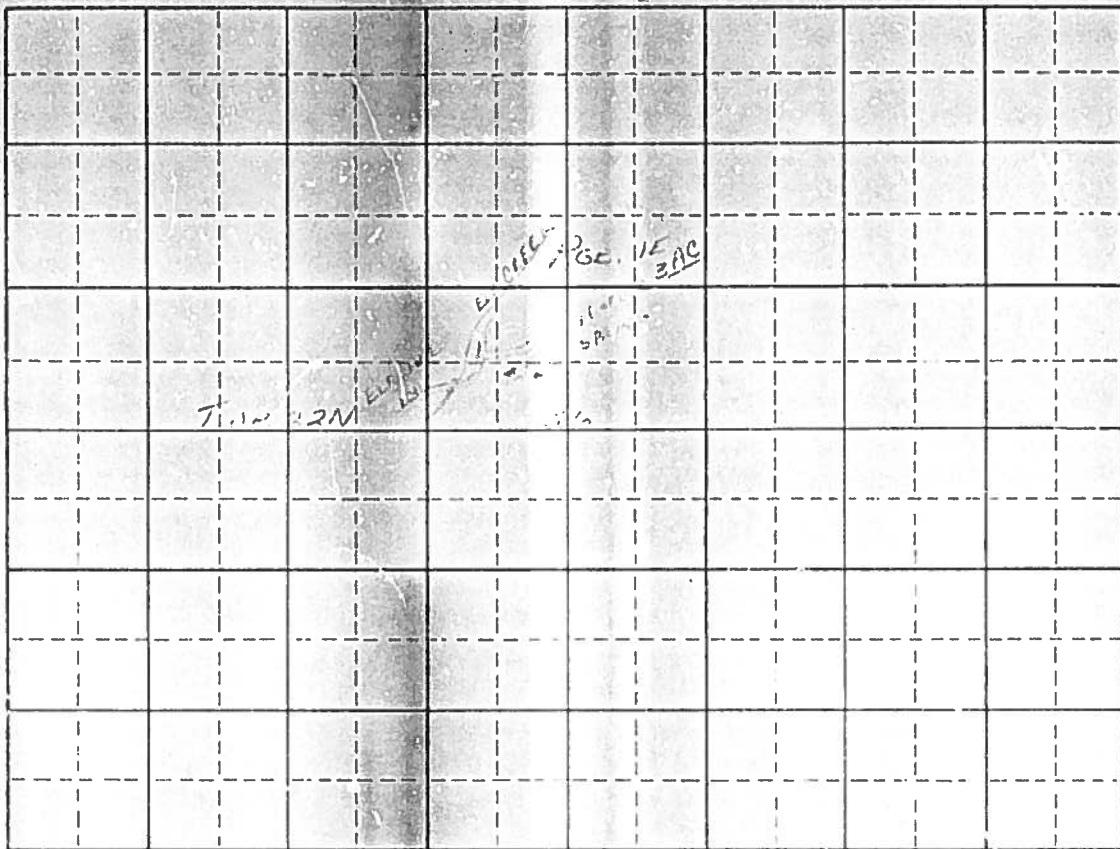
78-07109
78-10343

WATER
PLANT
ELK



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OCT 06 1992

MAP (Attach Aerial Photo)



SCHEMATIC DIAGRAM OF SYSTEM

(Include distance from pump to measuring device, if applicable.)

Point(s) of diversion: See map

Place(s) of Use

TWP	RGE.	SEC.	NE 1/4				NW 1/4				SE 1/4				SW 1/4				TOTALS
			NE 1/4	NW 1/4	SE 1/4	SW 1/4	NE 1/4	NW 1/4	SE 1/4	SW 1/4	NE 1/4	NW 1/4	SE 1/4	SW 1/4	NE 1/4	NW 1/4	SE 1/4	SW 1/4	

Recommended Amendments:

- ☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☒ None
☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

Examiner's Signature

Checked by

Approved by

Date

te

Date

MICROFILMED

OCT 06 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

A78-07109

RECEIVED
OCT 21 1991

October 18, 1991

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Department of Water Resources
Western Regional Office

Jim Jones
Attorney at Law
P. O. Box 2225
Boise, ID 83701

Dear Mr. Jones:

I am writing in response to your letter of October 10, 1991. I am concerned that there may have been a misunderstanding as to the purpose of Jan Shurte's letter to you dated October 8, 1991.

The primary purpose of the letter was to inform you that IDWR may not accept an amendment to a claim by anyone other than the persons who originally filed the claim, or someone who has properly filed a notice of change in ownership of the claim, neither of which apply in your clients' circumstances. As noted by Ms. Shurte, your clients need to file their own notice of claim for their domestic use from the spring.

The second purpose of this letter was to inform you that if such a claim were filed, additional information would be necessary before IDWR could recommend the claim to be decreed in the Director's Report, and why additional information would be necessary. As she correctly noted, the information currently available to IDWR would not support a beneficial use priority prior to 1975. However, a beneficial use right with a 1975 priority could not be recommended, due to the effect of the mandatory permit statute.

IDWR is, of course, aware of your Motion for Preliminary Injunction that is currently pending before the district court. The court's ruling in the motion will not be a determination of your client's water right claims; such a determination will still be dependent on the filing of appropriate claims, IDWR's investigation and recommendation of the claims in the Director's Report, and proceedings before the court on any objections filed to the report.

Sincerely,

A. LYNNE KROGH-HAMPE
Deputy Attorney General

MICROFILMED

OCT 26 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

October 15, 1991

Kirk MacGregor, attorney
Dee, MacGregor, Fales and MacGregor
PO Box 463
Grangeville ID 83530

RE: correspondence copies

Dear Kirk:

Enclosed are the correspondence copies you requested. They will serve to give you some background information on the water rights involved in this matter. I was not able to find any direct references to the ownership issue.

I'm sorry these are so tardy, as I have just learned of the October 18 hearing date in Twin Falls. IDWR should be represented at this hearing.

Please let me know if I can be of any further assistance.

Sincerely,

Cindy Hodges
Sr. Water Resource Agent

Enclosures

MICROFILMED

OCT 06 1992

OCT 11 1991
Department of Water Resources
Boise Regional Office

Jim Jones
Attorney
960 Broadway, Suite 310
Boise, Idaho 83706
(208) 385-9200

Of Counsel
Benoit, Alexander, Sinclair
Doerr, Harwood & High
126 2nd Avenue North
Twin Falls, Idaho 83301
(208) 734-3345

Mailing Address:
P.O. Box 2225
Boise, Idaho 83701
Fax: (208) 385-9599

October 10, 1991

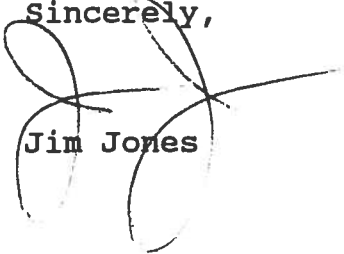
Jan Shurte
Water Rights Supervisor
Adjudication Section
Department of Water Resources
2735 Airport Way
Boise, ID 83705

Dear Ms. Shurte:

Thanks for your letter of October 8 and the legal analysis you made of the amended Baum/West claim (Claim No. A78-07265). For your information, there are several ways (conveyance, adverse possession) a person can secure a portion of another party's water right, including the priority. It is not likely that a court would rule that an apparent conveyance of a water right in a warranty deed did not convey some portion of an existing water right.

However, we won't have to wait long to find out what a court would do. If you will check the adjudication docket, you will find that this matter is to be considered by Judge Hurlbutt on October 18. A Motion for Preliminary Judgment in this case is scheduled to be heard at that time. I'm surprised that the Department would be issuing legal opinions on adjudication matters that are before the court for determination. The court will make the ultimate determination here and it seems unwise to be issuing opinions that may run counter to the determinative decisions of the court.

Sincerely,


Jim Jones

JTJ/tg

MICROFILMED

OCT 16 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

October 8, 1991

CECIL D. ANDRUS

Mr. Jim Jones, Attorney
PO Box 2225
Boise ID 83701

GOVERNOR
R. KEITH HIGGINSON

DIRECTOR

Dear Mr. Jones:

We have received a Notice of Claim to a Water Right in the name of Floyd D. and Florence West and Glenn E. and Netta Baum for a spring tributary to Elk Creek, in Idaho County.

In your letter dated June 19, 1991, you stated that this is an amended Notice of Claim and referenced Claim No. A78-10343. However, Claim No. A78-10343 is in the name of David J. Pitts and unless there has been a properly documented change of ownership of the property covered by this specific claim, only Mr. Pitts may amend it.

Your clients may file a separate beneficial use claim on this spring claiming a 1962 priority date. However, the earliest Warranty Deed granting easement is dated 1973, and Mr. Baum stated in his affidavit that domestic use did not begin on this parcel until 1975, which is the date Lyle and Peggy Albrecht completed construction of their cabin. In order to claim a 1962 priority for the Baum/West property based on the beneficial use on the Pitts property would later require strong evidence that the spring water was being used at that time on the both properties. Mr. Baum states in his affidavit that the water right in question was "conveyed to us by warranty deed". In fact, only the easement to the spring was conveyed by the deed, since only one domestic water right had been established through actual use of the water at that time. Durgans, in effect, conveyed to the Albrechts permission to access the spring and develop their water right from it. A water right is not established until developed and put to beneficial use; therefore, there was no water right to convey. At best, a 1975 priority is the earliest documented for the parcel currently owned by your clients.

One more point of law will have an impact on your clients' filing decisions. May 20, 1971 has been set by the State of Idaho as the mandatory filing date for all surface water uses; that is, all new appropriations of surface water commencing after May 20, 1971 require a permit issued by the Department of Water Resources. Albrecht's domestic use was a new use in 1975; it did not exist before that time and hence required a permit, although one was not obtained until 1985. The resulting water right is documented by license 78-7265 and corresponding Claim No. A78-7265, with a priority date of June 30, 1985.

MICROFILMED

OCT 06 1992

We cannot refuse to accept a new claim from your clients, however, we cannot accept it as an amendment to expand Claim No. A78-10343 unless Mr. Pitts agrees to do so. You can file a new claim, based on beneficial use, with whatever priority date your clients wish to claim, keeping in mind that the mandatory filing deadline of May 20, 1971, could cause problems for a claim with a later date of priority. The \$25 filing fee required for a domestic claim must also be submitted with this claim. We are returning this claim to you for your decision on whether to file a new claim and return it with the \$25 filing fee, or if your clients wish to just retain the original 1985 priority claim filing under Claim No. A78-07265.

If you have any questions concerning this letter, please contact me.

Sincerely,

Jan Shurte
Water Rights Supervisor
Adjudication Section

JS:lh

MICROFILMED

OCT 06 1989

RECEIVED
JUN 20 1991

**Jim Jones
Attorney
960 Broadway, Suite 310
Boise, Idaho 83706
(208) 385-9200**

Department of Water Resources
Western Regional Office

Of Counsel
Benoit, Alexander, Sinclair
Doerr, Harwood & High
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Twin Falls, Idaho 83301
(208) 734-3345

Mailing Address:
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Fax: (208) 336-5753

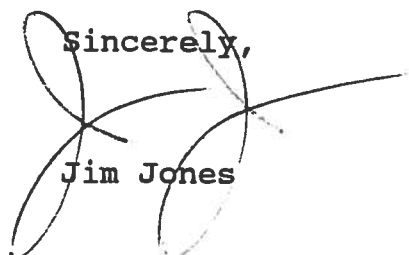
June 19, 1991

Adjudication Bureau
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Dear Friends:

Enclosed is an amended Notice of Claim that I would like to have filed on behalf of Mr. & Mrs. Floyd West and Mr. & Mrs. Glenn Baum. I have appended a supporting affidavit. Their initial claim in the Adjudication did not properly characterize the manner in which they acquired their water right, nor the appropriate priority. They received their water right from a conveyance of a portion of a right filed in the adjudication as Claim A78-10343. I hope I have properly characterized that on the enclosed Amended Notice of Claim. If there is anything more that needs to be done, please let me know.

Sincerely,


Jim Jones

JTJ/tg

Enclosure

MICROFILMED
OCT 06 1992

LAW OFFICES
DEE, MACGREGOR AND FALES

WILLIAM J. DEE
W. C. MACGREGOR, JR.
DAREN W. FALES

MACGREGOR BUILDING
416 W. MAIN
POST OFFICE DRAWER 463
GRANGEVILLE, IDAHO 83530
AREA CODE 208
TELEPHONES 983-1740
983-0250
983-0252

June 21, 1991

Jim Jones
Attorney at Law
960 Broadway, Suite 310
Boise, ID 83706

Dear Mr. Jones:

I have been hired by Mr. and Mrs. Dave Pitts to represent them in a water rights dispute involving your clients, Glen Baum and Floyd West.

The Pitts have two valid water rights to a spring located on their land near Riggins, Idaho. They have a domestic use water right (claim A78-10343), with a priority date of 1/1/62, which consists of .02 cubic feet per second (cfs). In addition, they have a water right for irrigation purposes on the same spring (A78-01709), with a priority date of 5/4/78, which consists of .02 cfs for irrigation of two (2) acres. Thus, their total water right to the spring consists of .04 cfs. It is my understanding that your clients, Mr. Baum and Mr. West, claim a water right to the same spring located on the Pitts land. The Baum/West domestic use water right (A78-07265) has a priority date of 7/30/85 for .02 cfs.

Thus, the Baum/West water right is junior to the Pitts. The Baum/West water right entitles them to the use of water from the Pitts spring only if there is a flow of more than .04 cfs. If there is, then they are entitled to a use of .02 cfs. However, the Pitts have had the spring measured by the State of Idaho Department of Water Resources who claim that the spring does not produce .04 cfs and never will.

As you know, Mr. Baum and Mr. West also claim to have an easement across the Pitt's property. Such easement does give Mr. Baum and Mr. West a right to use the water from the Pitt's spring. But, Mr. Baum and Mr. West only have a water right to any excess above .04 cfs. Enclosed is a copy of said easement which details their rights. However, the easement does not mention the water rights each party is entitled to. Consequently, Mr. Baum and

Jim Jones
June 21, 1991
Page 2

Mr. West have an easement to the Pitts spring but are only entitled to the use of water from the spring if there is a flow of more than .04 cfs.

I have enclosed a copy of a letter from Steve Lester, Senior Water Resource Agent for the State of Idaho, Department of Water Resources and a letter from Cindy Hodges, Water Resource Agent for the Department of Water Resources, which explains their opinions as to the respective water rights of the parties involved. Hopefully those letters can be used in advising your clients.

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

Sincerely,

DEE, MacGREGOR & FALES


KIRK A. MacGREGOR

KAM:pjs
Enc.

LAW OFFICES
DEE, MacGREGOR AND FALES

WILLIAM J. DEE
W. C. MacGREGOR, JR.
DAREN W. FALES

MacGREGOR BUILDING
416 W. MAIN
POST OFFICE DRAWER 463
GRANGEVILLE, IDAHO 83530
AREA CODE 208
TELEPHONES 983-1740
983-0250
983-0252

July 24, 1991

Mr. Jim Jones
960 Broadway, Suite 310
Boise, ID 83706

Dear Mr. Jones:

I have discussed your June 24, 1991 letter with Mr. and Mrs. Pitts and they wholeheartedly resist and disagree with your assertions as to the Baum's/West's having a co-equal water right to the spring located on the Pitts' land. Our position is clearly stated in my June 21, 1991 letter to you. I am sorry the position taken by the Idaho Department of Water Resources was not enough to convince you.

I discussed the Pitts' water right with John Westruff of the Idaho Department of Water Resources and he feels that the position taken by Cindy Hodges and Steve Lester is correct. Their positions were clearly stated in the letters I enclosed to you with my letter of June 21, 1991.

John Westruff informed me that any filing of a water right dispute in the Snake River Adjudication regarding water rights in the New Meadows area will not be heard until August 8, 1995. Therefore, I will be filing a quiet title action in Idaho County to resolve the water rights of the respective parties in this action.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

DEE, MacGREGOR & FALES


KIRK A. MacGREGOR

KAM:jak
cc: Mr. and Mrs. David Pitts



State of Idaho DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

April 25, 1991

Jim Jones, Attorney
P.O. Box 2225
Boise, ID 83701

David G. Pitts
H.C. 75 Box 3552
New Meadows, ID 83645

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

RE: Letter of April 2, 1991 from Mr. Jones' office to David G. Pitts

Gentlemen:

I am responding at the request of Mr. Pitts to a letter he received from Mr. Jones concerning water rights from a spring located on Mr. Pitts' property. The purposes of this letter are to verify the water rights which have been issued or claimed on the spring, and to discuss the priority of those rights and the implications of priority as interpreted from Idaho water law.

The water rights associated with this spring are as follows:

1. Adjudication claim A78-10343, priority 1/1/1962, .02 cubic feet per second (cfs) for domestic use, based on beneficial use.

Originally filed by Werner Kolb, this claim was conveyed to current owner David G. Pitts by means of a documented change of ownership.

2. Adjudication claim A78-07109, priority 5/4/1978, .02 cfs for irrigation of two (2) acres, based on license 78-07109.

The license was issued to Werner Kolb. The adjudication claim was filed by Mr. Kolb and was also conveyed via change of ownership to Mr. Pitts.

3. Adjudication claim A78-07265, priority 7/30/1985, .02 cfs for domestic use, based on license 78-07265.

The license was issued to Lyle and Peggy Albrecht. The adjudication claim was filed by Floyd and Florence West and Glenn and Netta Baum.

The two water rights currently held by Mr. Pitts are viewed as the senior water rights on the spring. Priority for A78-07109 is confirmed by license; priority for A78-10343 has been documented to 1962 and said documentation is on file with the Department. While the priority has not been verified for this beneficial use claim, there is little reason to believe it will not be accepted as claimed. Priority for claim A78-07265 held by Mr. Jones' clients is also confirmed by license. In Idaho, all rights must be satisfied in order based on priority date. Senior rights must be satisfied at the demand and option of the senior right holder before any junior rights may be satisfied. Even in the event priority is not accepted as claimed for A78-10343, claim A78-07109 for .02 cfs held by Mr. Pitts will still be the senior right.

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OCT 06 1992

Jones/Pitts, 4/25/91, Pg. 2

Because domestic and irrigation uses of water are intermittent, there are often situations created such as this one where the total licensed and/or claimed flows against a particular source exceed the maximum available flow. The maximum available flow need not necessarily equal the additive flows from all rights in order for there to be adequate water available. For example, if the spring in question produces an average of 0.02 cfs, or 9 gallons per minute, the annual production volume would be 14.5 acre-feet. The in-house volume requirement for one household for one year is about 0.6 acre-feet, and the irrigation requirement for 2 acres in the New Meadows area is 8.0 acre-feet per irrigation season. This indicates that while there will be periods of time when all rights cannot be satisfied on the basis of flow alone (for example, during irrigation), there is adequate volume being produced to satisfy each right over the term of a year. With proper storage facilities, the periods when rights to each home can be satisfied is significantly lengthened.

Therefore, the licensed flow rate of .02 cfs for 78-07265 represents the right to collect any excess flows which may be available above and beyond those necessary to satisfy senior rights, but does not guarantee any portion of the prescribed right at any time. In the event of shortage, all rights are still considered subject to priority delivery.

A second point of controversy surrounding these water rights appears to be easement to the spring. The Department has no jurisdiction over easement or right-of-way. The issuance of any permit, license or claim to a water right should in no way be construed as granting easement or right-of-way across the land of another. Any separate agreement entered into between any parties concerning easement to this spring is strictly a civil matter between the parties.

Mr. Jones' office recently requested a copy of the claim filed by his clients. The request, received by our State Office, was forwarded to this office. Enclosed with this correspondence to Mr. Jones' office only is a copy of that claim and a proof copy of the license upon which the claim is based, which establishes the priority date. Additional information is available upon request.

This letter is not intended to be a testimony against or for either party involved in this conflict. I hope it will be of help in your respective reviews of the situation.

Please feel free to contact me at 334-2190 if you have any questions.

Sincerely,

Cindy Hodges
Water Resource Agent

Enclosures (Jones)

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OCT 06 1992

RECEIVED
APR 5 1991

Mr. David Tuthill
Western Region Manager
2735 Airport Way
Boise, ID. 83705

Department of Water Resources
Western Regional Office

re: Spring claim # A78-07109 & A78-10343

3 Apr 91

Dear Mr. Tuthill:

As per my phone conversation with Cindy Hodges of your office, I am submitting my request for your help regarding the Water Rights of my spring.

Mr. Glen Baum owns the parcel and vacation home next to my place of residence. He has Junior water rights (claim # A78-7265) to my Senior. ie., I am to receive .04 cfs domestic and irrigation prior to Mr. Baums .02 cfs he has petitioned. As per Mr. Lester of your office; The spring does not at this time produce .04 cfs nor is there any reason to believe it has in the past or will in the future. Therefore, Mr. Baum has no right to our spring, or reason for easement of our property to the spring.

I never
said this

SL
4/17/91

Today we received a letter from Mr. Baums Attorney (copy enclosed) Mr. Jim Jones, 960 Broadway, Suite 310. Boise, ID. 83706 (208) 385-9200. Stating that Mr. Baum is entitled to water from our spring. Obviously Mr. Jones has not been given all the paperwork needed in order for him to see the overall picture in this matter. ie., Our Senior Right Deeds.

Enclosed is a copy of the agreement Mr. Baum signed with the previous owners (The Kolbs) of our Home/spring. This without a doubt verifies Mr. Baums knowledge of limited water rights and that in the past he has (by the good graces of past owners) been permitted to use water not deeded to him.

Mr. Tuthill this letter is giving you full permission to respond to Mr. Baum through his attorney instructing him of our Senior Water Rights and that due to the lack of water being produced by the spring; the Baums have no rights to any water and/or easement to said spring.

On Previous dates I have had phone conversations with Lynn Krogh-ham'pe (referred by Cindy Hodges). Lynn stated that according to provisions in sections 42-213 and 42-212 which states Motion injunction of Snake River Basin Adjudication that the Baums really have no rights to the spring at all. Also, Mr. Steven Lester is fully aware of this ongoing problem with the Baums as well as how much water the spring is/is not producing.

- Again, I do
not know
how much flow
is produced

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Mr. Tuthill I am trying to keep this matter from going to court, that is why I am requesting your professional assistance in this matter. Hopefully, your letter will end the present and future problems which may arise regarding the use of my spring.

Thank you for your time.

Respectfully submitted,



David G. Pitts
H.C. 75, Box 3552
New Meadows, ID. 83654
(208) 628-3010

Jim Jones
Attorney
960 Broadway, Suite 310
Boise, Idaho 83706
(208) 385-9200

Of Counsel
Benoit, Alexander, Sinclair
Doerr, Harwood & High
126 2nd Avenue North
Twin Falls, Idaho 83301
(208) 734-3345

Mailing Address:
P.O. Box 2225
Boise, Idaho 83701
Fax: (208) 336-5753

April 2, 1991

Mr. David G. Pitts
Elk Creek Road
New Meadows, ID 83654

Dear Mr. Pitts:

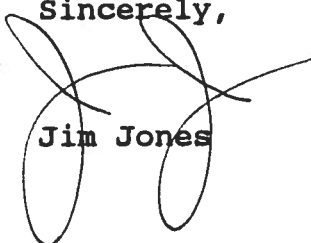
I have been retained by Mr. & Mrs. Glenn Baum and Mr. & Mrs. Floyd West to try to work out a problem that they have encountered in obtaining their rights to waters from a spring that arises on your property, as well as access to the spring.

Enclosed are copies of deeds which establish the water right and easement benefitting the property currently owned by my clients. It is quite clear that the Baums and Wests have a domestic water right in the spring and an easement to gain access to the spring. Those rights were conveyed by a warranty deed from the Durgans, who owned both parcels of property at the time. These are rights that go with the property and they can be enforced by the subsequent holders of title, including the Wests and Baums.

These rights have been observed by all subsequent holders of title to my clients' parcel, as well as your parcel. In fact, the Kolbs, who you acquired your parcel from, placed an outlet in the spring to serve my clients' water right.

My clients intend to exercise their rights and, in the event that you continue to interfere with their right to the spring or their right to have access to the same, we shall pursue legal action. I hope that this does not become necessary.

Sincerely,


Jim Jones

JTJ/tg

Enclosures

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OCT 06 1992



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Date January 30, 1991

[David G. Pitts
HC75 Box 3552
New Meadows, ID 83654]

Notice of Claim No.(s) A78-07109 & A78-10343

Dear Claimant:

Enclosed is a copy(s) of the above referenced claim(s) which reflect the change in ownership of the land and appurtenant water rights covered by this claim(s).

The Department will contact you in the future concerning any requirements that may be needed in order to process this claim(s) for final court decree.

If you have any questions concerning the enclosed claim(s), please feel free to contact this office.

Sincerely,

Linda Werner

Linda A. Werner
Sr. Water Resource Agent
Adjudication Section

Enclosure(s)

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OCT 06 1992

November 28, 1990

David G. Pitts
HC 75, Box 3552
New Meadows, ID 83654

SUBJECT: Notice of Claim to a Water Right
Change in Ownership

Dear Mr. Pitts:

I have searched through both water right files, A78-07109 and A78-10343, and did not find a copy of the warranty deed.

I am returning your Change in Ownership form. Please have Mr. Kolb sign the back of this form. That will be all that is required to make the change.

Sincerely,

Linda A. Werner
Sr. Water Resource Agent
Adjudication Section

Enclosure

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OCT 06 1992

Mailed change in ownership
10-29-90 JDL

Lori —

RECEIVED
OCT 26 1990

Department of Water Resources
Western Regional Office

October 22, 1990

State of Idaho
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Werner Kolb Water Rights No. A78 10343 & No. A78 07109
Domestic and Irrigation

Have been transferred to me by
WARRANTY DEED effective Nov. 1, 1990

Please advise if there is any fee
for this transfer, or any forms
for me to complete this transfer.

Yours truly,

Daves Pitts
DAVES PITTS
% of Werner Kolb
HC 75 Box 3552
New Meadows, Idaho
83654

PS See your letter of August 12, 1988 Confirming the Water
Rights of Werner Kolb

DP/MO

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OCT 06 1992

September 23, 1988

HAND DELIVERED

Mr. and Mrs. Glenn Baum
HC 75
New Meadows, ID 83654

Dear Mr. and Mrs. Baum:

Re: Water Rights to Kolb Spring

As the recent (August 12, 1988) letter of Mr. Steve Lester, Idaho Department of Water Resources, points out, we are legally entitled to .04 cfs of water from the spring located on our property. The spring is currently not producing .04 cfs, and we are not sure how much water the spring will produce in the future. However, we are willing to allow you to use water from the spring that we are not currently using. We have therefore placed your water intake pipe into the concrete reservoir wall somewhat above our current water intake pipe. Under conditions as they exist now, with the spring's current output and our current use, you should have enough water to fill your water reservoir.

However, we wish to make clear that by allowing you to use water from the spring as outlined above, we are not waiving any of our legal water rights. In particular, we reserve the right to use our full water rights allocation of .04 cfs in the future. This means that in the future, there may not be enough water to reach your water intake pipe, especially if the output of the spring decreases. In addition, your current use of water from the spring should in no way be construed to be adverse to our legal water rights.

Sincerely,

Werner Kolb, Lieselotte Kolb

Werner and Lieselotte Kolb

Received:

Glenn Baum
Glenn and Neta Baum

Dated:

OCT 10 1988

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OCT 06 1992

September 14, 1988

MEMORANDUM

TO: File #'s A78-07109, A78-07265, and A78-10343

FROM: Jan Shurte

SUBJECT: Late Fee Waiver and reasons for filing Claim
No. A78-10343

Werner Kolb originally filed Claim No. A78-07109, per my advice, for both domestic and irrigation. The reasoning behind this was due to a phone conversation with both Werner Kolb and the original owner, Mr. Sperle. It appeared that the domestic use had been in use since prior to the irrigation and that when they filed the application for permit on A78-07109, they mistakenly filed only for the irrigation. Mr. Kolb upheld that and so did the neighbors in the area. The problem with this spring is that the people next door (Claim No. A78-07265) also have a right and easement to the use of the spring. However, Mr. Kolb feels they have last rights, but since their domestic use was not filed on it appears on paper that the Kolb's have no domestic right. Since the Kolb's domestic rights were to have begun in 1962, Steve Lester decided one claim for irrigation filed under A78-07109 and one for domestic with a new #. I agreed. We then amended A78-07109 to show what the license reflects.

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OCT 06 1992



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

*Copies sent to Baum and West
(78-07265)*

Mr. Werner Kolb
HC 75, Box 3552
New Meadows, ID. 83654

August 12, 1988

Re: Domestic Use of the Spring

Dear Werner:

Your letter of 8/3/88 to Jan Shurte was received and entered in your water right file. Because I visited the site recently, Jan relayed the letter to me. The dispute concerning the spring on your land involves two key issues.

One, the historical domestic use of the water at your home will be recorded with the enclosed adjudication claim (A78-10343) for .02 cfs. One purpose of the adjudication is to clarify and record such historical beneficial uses of public water. We will retain the supporting evidence that you submitted that documents the use from 1962. Please review the claim, answer item 16, sign the form and have it notarized, and return it with the \$25 fee to me as soon as possible.

Two, domestic rights may replace other rights despite priority dates. A junior domestic right may condemn part or all of a senior right but only through proper legal procedures that include just compensation for the taking of real property as covered by the Idaho Constitution, Article XV, Section 5. However, this is a moot point because your domestic use can be documented to 1962. The Baum-West domestic use dates to 1985 and thus possesses no power to take any of the senior domestic right.

The Baum-West license, 78-07265, was recorded in the adjudication by claim number A78-07265 on 5/26/88. The water right covers .02 cfs for year-round domestic use. This right, with its 7/30/85 priority date, clearly remains the junior right and must respect the seniority of the Kolb rights. The Department advises the parties that the Kolb irrigation (3/1-12/1) and domestic (1/1-12/31) rights, totaling .04 cfs, have priority and must be satisfied first before the junior use occurs. Idaho water law is clear in this matter.

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OCT 06 1992

I hope that an amiable solution can be reached. Perhaps the spring simply will not provide adequate water for the involved rights, or perhaps a shared use of the resource can be reached. Please contact this office if additional help may be provided.

Sincerely,

Steve Lester
Sr. Water Resource Agent

SL: s

Encl.

cc: Glenn & Netta Baum
Floyd & Florence West

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OCT 06 1992

Department of Water
Resources, Western Region
Boise, Id.

4-21-88

RECEIVED
APR 26 1988

Department of Water Resources
Western Regional Office

Dear Ms. Shunte,

Thank you very much for your prompt response to my request. I appreciate very much your effort and your efficiency in resolving my year long frustrating attempt to review my water rights with Mr. Johnson.

Enclosed a check of \$52 and the completed claim.

To avoid future problems with our spring and the "water rights" of Mr. Albrecht, now Erickson, let me again explain:

Mr. Albrecht never completed his house, never lived in it, never connected a waterline to his house (Bathroom and faucets are not finished), has no electric connection and only last fall completed a septic system. The spring does not deliver enough

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APR 16 1997

88-15-4

water for two households in the summer.

Our spring does not support two
water rights!

Again, Thank you,

Sincerely,

Werner Koll

The second future-problem with our spring

and the "water rights" of the Albrecht, von Eickenstein,

and our spring system:

The Albrecht never completed his house,

even though it never connected a connection to

his house (bathroom and kitchen are not finished),

has no electric connection and only last fall completed

a septic system. The spring does not deliver enough

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1982 11 2 1982

File in 78-7109

April 19, 1988

Werner Kolb
HC 75, Box 3552
New Meadows, ID 83654

Dear Mr. Kolb:

Enclosed is the Adjudication Claim for Water Right No. 78-7109. I have completed this claim per our phone conversation showing your domestic use and two acres of irrigation.

Please note the remarks section of this claim which states the circumstances surrounding the change in your water right license. I also changed the tributary from Elk Creek to Sinks.

If this claims meets with your approval, please have it signed before a notary and returned to this office with the following fee: \$50 flat fee plus \$1/acre = \$52 total fee. Also enclosed is a pamphlet the Department is circulating which explains the Snake River Adjudication along with the most recent fee sheet for your review. This may help you to understand why you are filing this claim and what will be happening to it in the future. Feel free to call or write me concerning any questions or problems you may have with this claim.

Sincerely,

JAN SHURTE
Sr. Water Resource Agent

JS:j
Enclosure

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Department of Water Resources
Western Region

RECEIVED

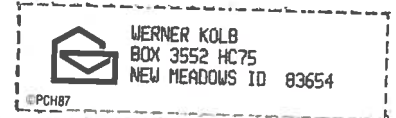
APR 11 1988

Department of Water Resources
Western Regional Office

4-8-88

Werner Kolb

Water Right No. 73-7109



628-3559

Dear Ms Shute,

The Water Right Phone Nr. 1-800-451-424 gave me the advise to contact you. I would appreciate if you could help me.

For one year I tried to have a review of my Water Rights, set up by the previous owner of this property, because they are based on errors and omissions. Mr. Jim Johnson, Supervisor of Water Rights in Boise, has given me the "runaround" and has been of ^{no} help!

This household has been using the water of a spring on my 3.3 acres for years and it would be a disaster if any "Legality" would interfere. The overflow of the spring for the most part of the year does not reach any river, it seeps

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away. I want "domestic use" included in

my water rights.

I have "improved" the spring, periodically
cleaned it and put a roof over it.

Please help me to protect this household!

Thank you,

Werner Koll