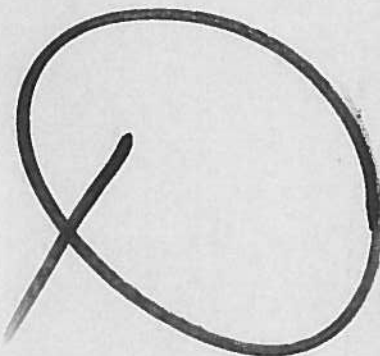


Dept. of Water Resources  
Adjudication Bureau  
P. O. Box 83720  
Tucson, ID 83720-0098

ADDRESS SERVICE  
REQUESTED

78

78-1265 / not in list  
78-1344

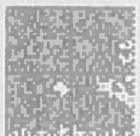


Use Undervalue As Addressed  
Labels to Forward

RECEIVED  
NOV 27 2003  
DEPARTMENT OF  
WATER RESOURCES

NETTA BAUM  
GLENN E BAUM  
3661 N 3000 E  
TWIN FALLS ID 83301

FIRST CLASS



UNITED STATES POSTAGE  
\$00.87  
02 1A  
0004369393  
NOV 17 2006  
MAILED FROM ZIP CODE 83702

78

78-7265 ✓

Dept. of Water Resources  
Adjudication Bureau  
P. O. Box 83720  
Boise, ID 83720-0098

Q

Not Deliverable As Addressed  
Unable To Forward



RECEIVED  
JAN 10 2007  
DEPARTMENT OF  
WATER RESOURCES

NETTA BAUM  
GLENN E BAUM  
3661 N 3000 E  
TWIN FALLS ID 83301

FIRST CLASS



UNITEL  
02 1A  
000431 0839  
MAILED FROM ZIP CODE 83702  
\$00.870  
JAN05 2007

08/19/2005

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

RIGHT NUMBER: 78-7265

NAME AND ADDRESS: FLORENCE WEST  
BOX 32A  
DECLO ID 83323

NETTA BAUM  
3661 N 3000 E  
TWIN FALLS ID 83301

FLOYD D WEST  
206 N 840 E  
DECLO ID 83323

GLENN E BAUM  
3661 N 3000 E  
TWIN FALLS ID 83301

SOURCE: SPRING

TRIBUTARY: ELK CREEK

QUANTITY: 0.011 CFS  
0.600 AFY

PRIORITY DATE: 07/30/1985

Right 78-7109 is subordinated to this right.

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>       |
|-----------------------|----------------------|-----------------------|
| DOMESTIC              | 01/01 12/31          | 0.011 CFS<br>0.60 AFY |

PLACE OF USE: DOMESTIC Within IDAHO County

T22N R01E S26 SNNW

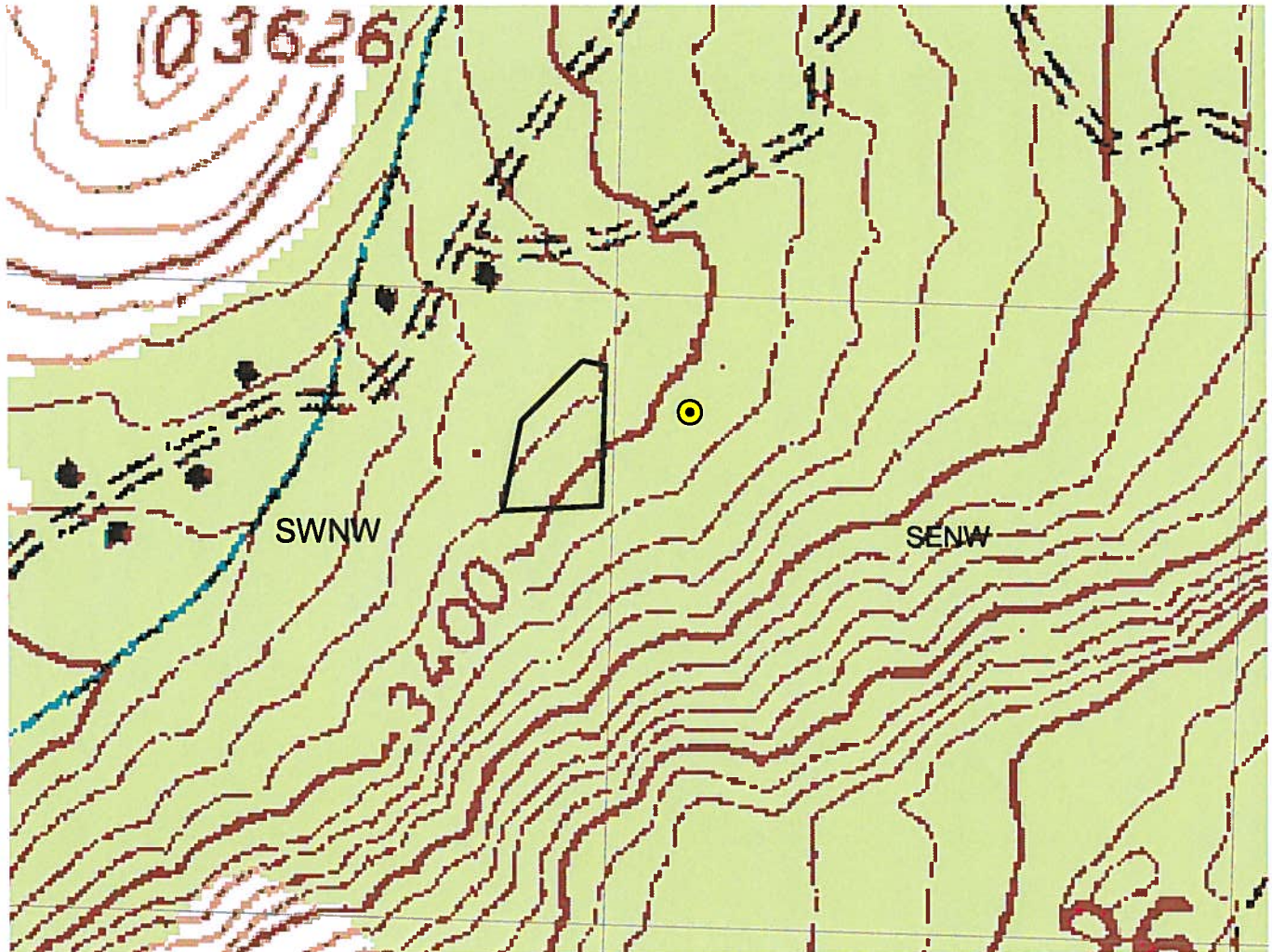
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

# 78-7265



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

RECEIVED

AUG 30 2005

DEPARTMENT OF  
WATER RESOURCES

8-13-05

Dear Sir,

Please find a change of  
address.

Floyd D. West  
207 N 840 E  
Declo, Ida 83323

RECEIVED  
SEP 06 2005  
IDWR/North

78-7265 Im

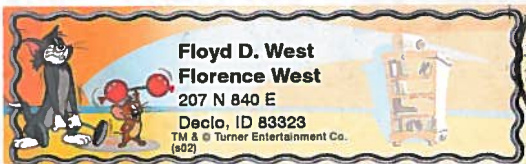
45-10642 P.D.

Record Modified Floyd & Florence

AS 8-31-05

cc: W.A.

Phone disconnected  
& listing.



Dept of Water Resources  
adjudication Bureau

P.O. Box 83720

Boise ID 83720-0098

SCANNED

AUG 31 2005

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: **A78-07265**  
Date Received: 5/26/1988  
Receipt No: C000966  
Received By: \_\_\_\_\_

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

1. Name: FLOYD D. WEST 208-654-2147  
Address: BOX 32A  
DECLO ID 83323  
AND/OR  
Name: FLORENCE WEST 208-654-2147  
Address: BOX 32A  
DECLO ID 83323  
AND/OR  
Name: GLENN E BAUM 208-733-5254  
Address: 3661 N 3000 E  
TWIN FALLS ID 83301  
AND/OR  
Name: NETTA BAUM 208-733-5254  
Address: 3661 N 3000 E  
TWIN FALLS ID 83301

2. Date of Priority: JUL 30, 1985

3. Source: SPRING Trib. to: ELK CREEK

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:  
STORAGE TANK & PIPELINE

6. Water is used for the following purposes:

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

7. Total Quantity Appropriated is:  
0.020 C.F.S. (and/or) 0.60 A.F.A.

**MICROFILMED**  
**AUG 08 1994**

8. Total consumptive use is \_\_\_\_\_ Acre Feet Per Annum.

9. Non-irrigation uses:  
1-DOMESTIC

10. Place of Use:

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

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:  
NONE

14. Remarks:

AGREEMENT WITH NEIGHBOR. TRIBUTARY MAY BE SINKS RATHER THAN ELK CREEK SINCE THE SPRING DOES NOT FLOW.

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: \_\_\_\_\_

MICROFILMED

AUG 08 1994

State of Idaho )  
 ) ss.  
County of \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public

Seal

Residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_

CHANGE IN ADDRESS OF NOTICE OF CLAIM

[ ] Water Right Number (s): A78-07265

[ ] Old Mailing Address: Glenn E Baum & Netta Baum  
1208 Blue Lakes Blvd So.  
Twin Falls ID 83301

[ ] New Mailing Address: 3661 N. 3000 E.  
T.F. ID 83301

New Telephone Number: ( ) - Same

[ ] Signature of Claimant: Glenn Baum

Date: March 1 1993

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: 3-1-93

By: JAL

Further Action Needed:

Further Action Taken

Date:

By:

Final Review and Data-Entry

Date: 3-1-93

By: JAL

Note: Floyd/Florence ~~to~~  
West address to remain  
the same.

MICROFILMED

AUG 08 1994

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: A78-07265

Date Received: 5/26/1988

Receipt No: 2000966

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: FLOYD D. WEST 208-654-2147  
Address: BOX 32A  
DECLO, ID 83323  
AND/OR  
Name: FLORENCE WEST 208-654-2147  
Address: BOX 32A  
DECLO, ID 83323  
AND/OR  
Name: GLENN E. BAUM 208-733-5254  
Address: 1208 BLUE LAKES BLVD. SOUTH  
TWIN FALLS, ID 83301  
AND/OR  
Name: NETTA BAUM 208-733-5254  
Address: 1208 BLUE LAKES BLVD. SOUTH  
TWIN FALLS, ID 83301

2. Date of Priority: JUL 30, 1985

3. Source: SPRING Trib. to: ELK CREEK

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:  
STORAGE TANK & PIPELINE

6. Water is used for the following purposes:

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

7. Total Quantity Appropriated is:  
0.020 C.F.S. (and/or) 0.60 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

A78-07265

Page 1

Date: 05/26/88

MICROFILMED

OCT 06 1992

9. Non-irrigation uses:  
1-DOMESTIC

10. Place of Use:

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

11. Place of use in counties: IDAHO

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

13. Other Water Rights Used:  
NONE

14. Remarks:  
AGREEMENT WITH NEIGHBOR

15. Basis of Claim: LICENSE  
Water Right Number:

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): Floyd D. West Date: 5-26-88  
\_\_\_\_\_  
Date: \_\_\_\_\_

State of Idaho )  
County of Ada ) SS.

Subscribed and sworn (or affirmed) before me this 26<sup>th</sup> day

of May 19 88

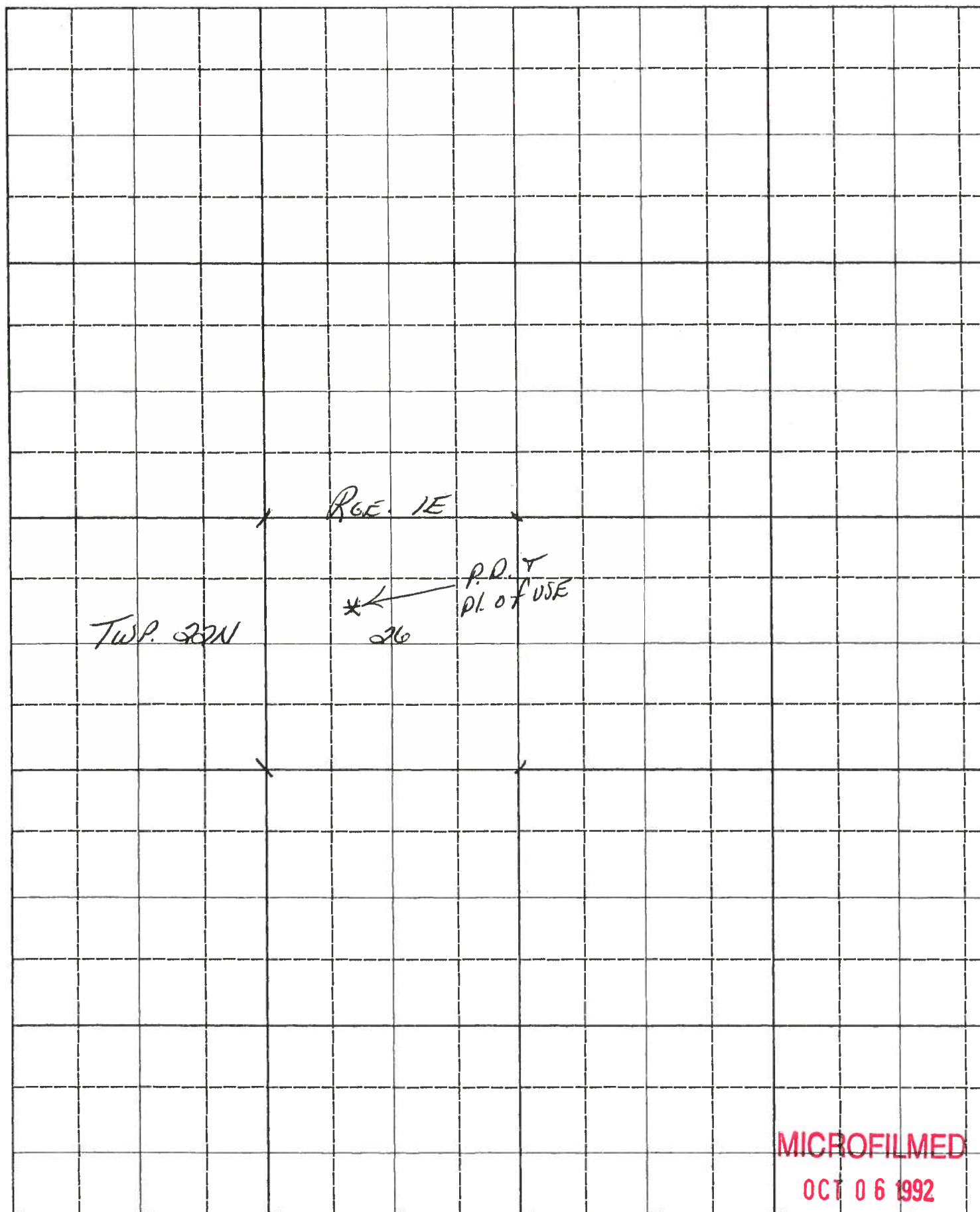
Nena B. Simpson  
Notary Public

Seal

Residing at Caldwell, Id

My Commission Expires 3/24/94

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



RECEIVED  
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

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

**MICROFILMED**  
Copies: White-State, 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        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) *[Signature]* Date 10-13-91

*[Signature]* Date 10-14-91

For Organizations: I do solemnly swear or affirm that I am *[Signature]* Title       

of        Organization       , that I have signed the foregoing

document in the space below as        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.

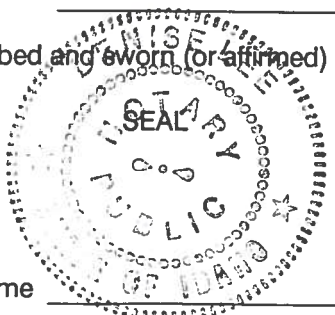
Subscribed and sworn (or affirmed) before me this 14 day of June 19 91

Notary Public Denise Lee

Residing at Twin Falls

My Commission Expires 11-4-94

Last Name        Ident No.       



COPIES WHILE STATE, YELLOW CLAIMANT

OCT 06 1992

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 06 1992

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.

MICROFILMED

OCT 06 1992

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: Wau Falls  
My Commission Expires: 11/94

MICROFILMED  
OCT 16 1992

251909

## WARRANTY DEED

INDEXED  
FILED  
RECORDED

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:

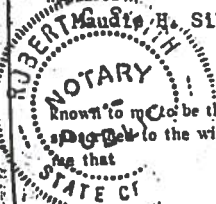
October 15, 1973

*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 *Maudie H. Silva Durgan and Elmer Durgan*



known to me to be the person s who go name s  
and 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 Almer* Deputy.

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

*Winn, 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  
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 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

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.

*Shirley 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 *Shirley A. Shelton* Deputy

Fees \$ 1.00

Mail to: *Printer's address*

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 3½ 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 06 1992

Mr. and Mrs. Wenner Kolb  
October 9, 1995  
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 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

MICROFILMED  
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 & HAWLEY

William D. Collins

WDC/kgm

Enclosures

cc: Lyle Albrecht

MICROFILMED  
OCT 06 1992

file in A78-072

RECEIVED

APR - 1 1992

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

Department of Water Resources  
Western Regional Office

1992 MAR 19 PM 4: 58

DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO  
FILED *Shavey*

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

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/West's right per their agreement. However, per highlighted exception above, the priority date will not be changed. Too bad for Pitts. SS

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
FILED

OCT NOV -5 PM 4:04

BY \_\_\_\_\_

CLERK

*Prangled* 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

MICROFILMED

OCT 24 1996

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

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.

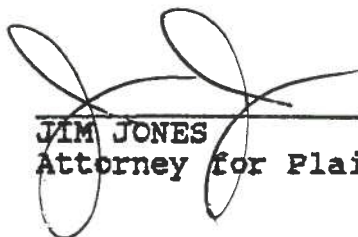
4. Plaintiffs shall have the immediate right to reinstall their water supply pipeline into the spring at sufficient depth to ensure a pure and potable supply of domestic water, free from surface debris, and shall have the continuing right to draw from and maintain said installation, provided that plaintiffs 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

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

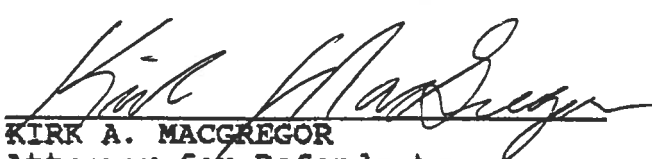
5. The parties shall take such joint action as may be necessary to protect the purity and integrity of said spring, including steps to fully enclose the spring in order to prevent debris and contaminants from entering the same.

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

## 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

MICROFILMED

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.

MICROFILMED  
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

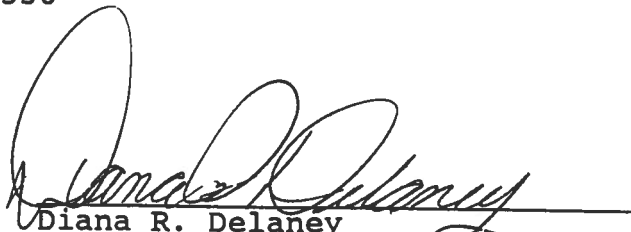
One Copy Each To:

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

ORDER SETTING SCHEDULING CONFERENCE

-1-

MICROFILMED  
OCT 24 1996

2/21/96  
-JL

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

SAME Spring AS:

A78-07109  
A78-10343 } Pitts

A78-07265 Baum et al

} SEE SRBA  
Court's Ord  
3/19/92 &  
priority date  
these rights

P/d continued NWSENW 5.26

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

Photos " " SEE 78-07324 Exam

File<sub>A</sub> this with: A78-07109  
copies of A78-07265  
A78-10343

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

MOTION TO SHORTEN TIME FOR HEARING  
AND ORDER SHORTENING TIME FOR HEARING  
AND SCHEDULING HEARING - Page 1

MICROFILMED

OCT 24 1996

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

DATED this 30<sup>th</sup> 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 30<sup>th</sup> 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

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

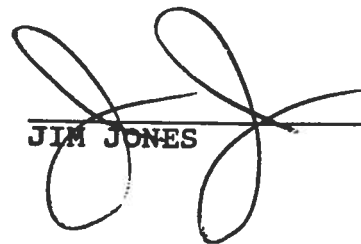
NOTICE OF HEARING

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

PLEASE TAKE NOTICE that on Tuesday, the 15<sup>th</sup> 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  
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 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 30<sup>th</sup> 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°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, 1753.50 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

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 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

AFFIDAVIT OF LYLE D.  
ALBRECHT

STATE OF IDAHO )  
COUNTY OF ADA ) ss

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

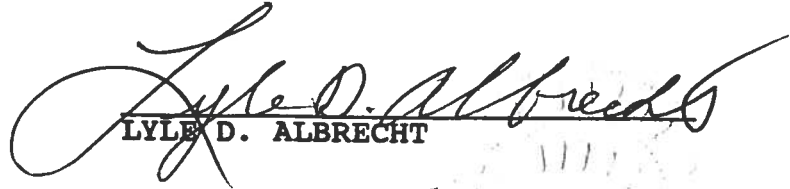
1. I am one of the grantees described in the warranty deed attached hereto as Exhibit A, which deed is incorporated herein by this reference. My wife, Peggy J. Albrecht, and I purchased

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 15<sup>th</sup> 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 29<sup>th</sup> day of August,  
1991.

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

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 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 t h e y are the owner in fee simple of said premises; that said  
premises are free from all incumbrances

and that t h e y 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

NOTARY

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

Notary Public  
McCall, Idaho

Residing at  
Comm. Expires 2/1/77

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 *Vesta Ulmer* Deputy.

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

INSTRUMENT NO.

Exhibit A

Weaver, Idaho 83672

MICROFILMED

OCT 24 1996

(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

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. Lyda B. Albrecht. Mr. Albrecht said that he met with you recently and the questions 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

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. 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 Plevins 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

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 & HAWLEY

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 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

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

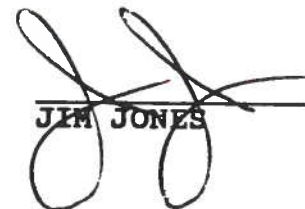
Kirk A. MacGregor  
Attorney at Law  
P.O. Drawer 463  
Grangeville, ID 83530

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  
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

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

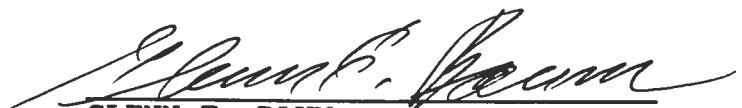
have a hunch. In any event, I repaired the pipe a couple of days later, but on February 21, 1991, Mr. Pitts cut the pipe serving our property and threw it over the fence. After that he proceeded to fence in the spring, and we have been without water ever since.

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.

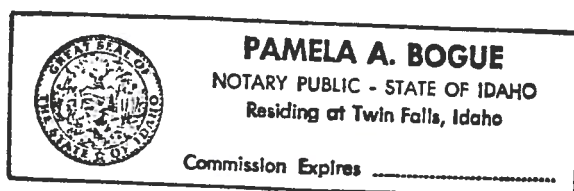
9. We have tried to be good neighbors with Mr. Pitts, but he has been extremely difficult to deal with. In order to avoid a confrontation we tried to develop an alternate source of water, but it just hasn't worked. Since he took out our pipe, we have been without culinary water and have had to haul water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

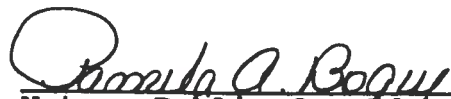
the system clean and sterile and to prevent it from freezing. The water temperature is 54° so the system does not freeze, even during a colder winter. Should the Court grant our request for a preliminary injunction, I would need to be present, either to reinstall our pipe, or to make sure that the system 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 27<sup>th</sup> 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, 1753.50 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

For Value Received

POOR ORIGINAL

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,  
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 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 signed the name of  
the within instrument, and acknowledged to me that  
they executed the same.

STATE OF IDAHO

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 Ulmer* Deputy.

Fees \$ *1.00*  
Mail to: *Lyle Albrecht*

St. 1. Box 11A

Wein, Idaho 83672 OCT 24 1996

EXHIBIT C

MICROFILMED

252654

## WARRANTY DEED

For Value Received

MAUDIE H. SILVA DURGAN and ELMER DURGAN, husband

and wife

POOR ORIGINAL

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 hereon.

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

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

*Blaise 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 *Quicke Haines* Deputy.

Fees \$ 1.00

Mail to: *Burt's 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, GRANTOR(S)  
of County of Adams State of Idaho  
hereby CONVEYS or GRANTS and WARRANTS TO

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 \_\_\_\_\_

8<sup>th</sup> day of May A.D. 1974  
Maudie H. Silva Durgan  
Elmer Durgan



State of Idaho  
County of Idaho

as

On the 8<sup>th</sup> 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. Dailly  
(NOTARY PUBLIC)

Residing at: Ribbons

My Commission expires: 5-4-74

MAIL DEED TO:

MAIL TAX NOTICE TO:

Name \_\_\_\_\_

Address \_\_\_\_\_

City & State \_\_\_\_\_

Zip \_\_\_\_\_

Page 1

By \_\_\_\_\_

Deputy \_\_\_\_\_

Ex-Officio Recorder \_\_\_\_\_

In my office, and duly recorded in Book \_\_\_\_\_

of \_\_\_\_\_ A.D. 19 \_\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M., 19 \_\_\_\_\_

at \_\_\_\_\_ minutes past \_\_\_\_\_

I hereby certify that this instrument was

and for record at request of \_\_\_\_\_

County of \_\_\_\_\_

STATE OF IDAHO

Dated \_\_\_\_\_, 19 \_\_\_\_\_

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

My Office \_\_\_\_\_

My Residence \_\_\_\_\_

My Birth Date \_\_\_\_\_

My Birth Place \_\_\_\_\_

My Education \_\_\_\_\_

My Occupation \_\_\_\_\_

My Marital Status \_\_\_\_\_

My Religion \_\_\_\_\_

My Political Party \_\_\_\_\_

My Social Security Number \_\_\_\_\_

My Driver's License Number \_\_\_\_\_

My Vehicle Registration Number \_\_\_\_\_

My Tax Identification Number \_\_\_\_\_

My Employer's Identification Number \_\_\_\_\_

My Business Address \_\_\_\_\_

My Business Phone Number \_\_\_\_\_

My Business Fax Number \_\_\_\_\_

My Business E-mail Address \_\_\_\_\_

My Business Website \_\_\_\_\_

My Business Social Media \_\_\_\_\_

My Business Other \_\_\_\_\_

MICROFILMED

OCT 24 1996

EXHIBIT E, p.1

POOR ORIGINAL

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., E.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 12:50 o'clock P.M. this 10 day of May 1974  
Bob A. White 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

INDEXED ☒  
TRACTED ☒  
FILED ☒  
ASSESSOR ☒

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 OWEN 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 Blaine  
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 and  
subscribed to the within instrument, and acknowledged to  
me that they executed the same.

Mary O'Leary  
Notary Public  
Idaho  
Residing at Boise, Idaho  
Comp. Expires 1978 6.1.79

STATE OF IDAHO, COUNTY OF Blaine  
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

W. J. WAITE

Ex-Officio Recorder

By Lucille H. Hume  
Fees \$ 1.00 Deputy.  
Mail to:

INSTRUMENT No.

MICROFILMED  
OCT 24 1996  
EXHIBIT F



CECIL D. ANDRUS  
Governor

*Copy for Baum*

State of Idaho  
DEPARTMENT OF WATER RESOURCES  
WESTERN REGION, 2735 Airport Way, Boise, Idaho 83705 • (208) 334-2190

R. KEITH HIGGINSON  
Director

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

August 12, 1988

Re: Domestic Use of the Spring

Dear Verner:

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

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 questions 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 3½ 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. Tinner 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 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 & HAYLEY

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.

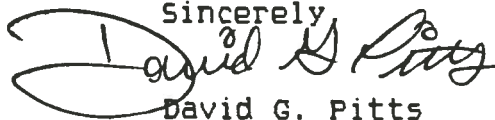
Prior to but no later than 1 JUN 91, you will be required to obtain your own source of water. Any and all agreements made between yourself and any and all previous owners of said spring are hereby null and void thus no longer being honored.

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

*Refused*

**MICROFILMED**

**OCT 24 1996**

**EXHIBIT J**

POOR ORIGINAL

Form 202  
3/78

Ident. No. 76-7265

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

APPROVED

1. Name of applicant LYLE D & MRS PEGGY J. ALBRECHT Phone 462-3442

Post office address 10378 FAIRVIEW, BOISE, ID 83704

2. Source of water supply SPRING which is a tributary of FAIR CREEK

3. Location of point of diversion is SE  $\frac{1}{4}$  of NW  $\frac{1}{4}$  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)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)

Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)

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.

c. Proposed well diameter is \_\_\_\_\_ inches; proposed depth of well is \_\_\_\_\_ feet.

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).

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: SE  $\frac{1}{4}$  of NW  $\frac{1}{4}$  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 |        |
| 33N | 1E    | 26   |        |        |        |        |        |        |        | 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. N. SPERLE

b. Who owns the land to be irrigated or place of use APPLICANTS

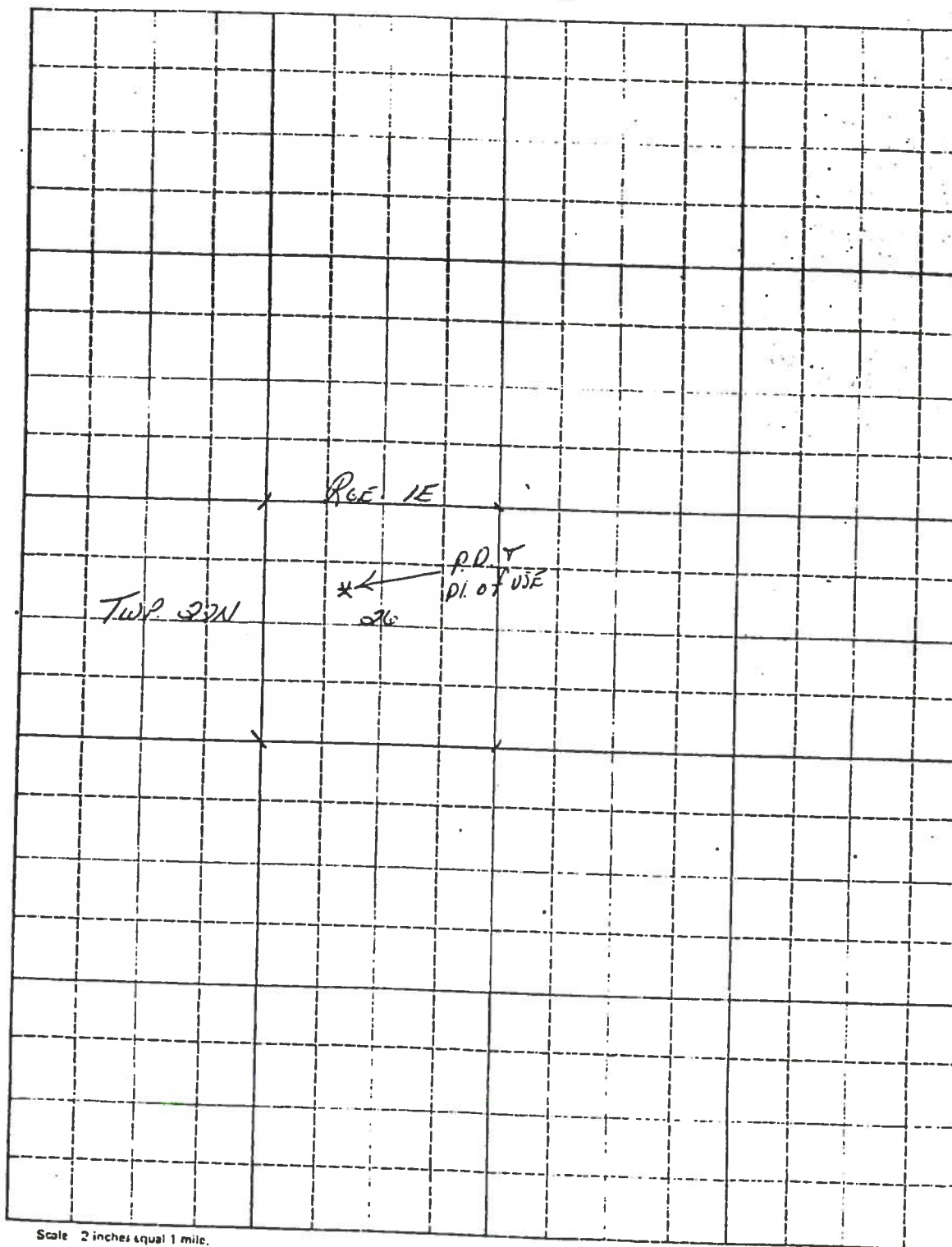
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing APPLICANTS HAVE RIGHT-OF-WAY TO SPRING FROM PREVIOUS OWNERS PRIOR TO SPERLE

10. Remarks \_\_\_\_\_

MICROFILMED  
OCT 24 1996

POOR ORIGINAL

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



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

*Lytle Albright*  
(Applicant)

MICROFILMED  
OCT 24 1996

POOR ORIGINAL

Received by JP Date 7/30/85 Time 3:00 P.M.  
Preliminary check by 615 Fee \$ 30.00  
Receipted by JP Date 7/30/85 # 36119  
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 26<sup>th</sup> day of September, 1985.

A. Glen Saxton  
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

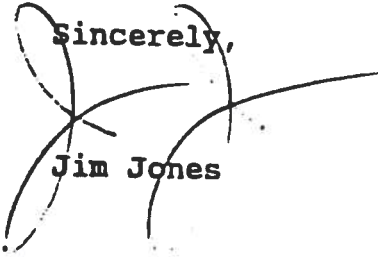
Signed this 21 day of August, 1991

Valerie J. Hott

**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**

**EXHIBIT L**

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

1. Name of Claimant (s) Floyd D. and Florence West Phone ( ) (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

MICROFILMED

OCT 24 1996

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        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. Whit Date 10-13-91  
Theresa Brown Date 10-14-91  
Glenn E. Brown

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        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.

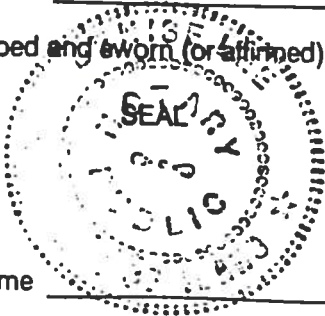
Subscribed and sworn (or affirmed) before me this 14 day of June 19 91

Notary Public Denise Lee

Residing at Twin Falls

My Commission Expires 11-4-94

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



MICROFILMED  
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

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.

MICROFILMED  
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: Tim Falls  
My Commission Expires: 11/94

MICROFILMED  
OCT 24 1996

251909

## WARRANTY DEED

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, 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 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 &  
appeared 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 a.m.  
this 17th 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* Deputy.

Fees \$ *1.00*  
Mail to: *Lyle Albrecht*  
*St. I. Box 118*

Exhibit A

Weiss, John 83672

MICROFILMED

OCT 24 1996

252654

WARRANTY DEED

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

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

LYLE D. ALBRECHT and PEGGY J. ALBRECHT, husband and wife, whose address is 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 east side of said 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.

*Maude 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 *Spencer D. ...* Deputy

Fees \$ 1.00  
Mail to: *Private address*

Exhibit B

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. Wile B. Albrecht. Mr. Albrecht said that he met with you recently and the questions 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. 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 Plevins 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 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 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 & BARTY

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  
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

MICROFILMED

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.

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  
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.

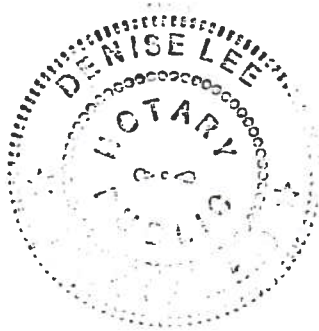
3. The water right conveyed to claimants' predecessors in interest from the Durgans was put to beneficial use in 1975. Claimants' predecessors in interest, Lyle D. and Peggy J. Albrecht, started building a cabin on the property in 1974 and finished it in 1975. At that time Lyle Albrecht laid a plastic 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.

MICROFILMED  
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 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:

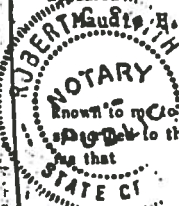
October 15, 1973

*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

Maudie H. Silva Durgan and Elmer Durgan



Known to me to be the persons who go by the name s  
and who are 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 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 Ulmer* Deputy.

Fees \$ *1.00*  
Mail to: *Lyle Albrecht -*  
*Box 11 A*

JOHN-GRANES CO.

Exhibit A

Wein, Idaho 83674

MICROFILMED

OCT 24 1996

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  
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 Valle-

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 are  
subscribed to the within instrument, and acknowledged to  
my satisfaction that they executed the same.

*Shirley A. Shelton*  
Notary Public

Residing at McCall, Idaho  
Comm. Expires March 24, 1975

STATE OF IDAHO, COUNTY OF Blaine

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 *Shirley A. Shelton* Deputy.

Fees \$ 1.00

Mail to: *Postoffice*

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 B. 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

Mr. and Mrs. Wenner 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, "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. 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 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

**Attorney for Plaintiffs**

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 MRS. )  
DAVID G. PITTS, husband and )  
wife, )  
 )  
Defendants. )

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

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  
LICENSING REPORT

OCT 30 1985

Permit No.

78-7365

Department of Water Resources

1. Measurement Calculations

- a) Field Measurement Calculations (Include theoretical capacities and system capacity)

Estimated at 1 gallon per minute  
based on permit holders info.

$$1 \text{ gpm} \div 150 = 0.002$$

can allow .02 cfs.

- b) Volume Calculations for Irrigation:

$$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$$

$$V_{DIR} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$$

$$V = \text{Smaller of } V_{IR} \text{ and } V_{DIR} =$$

- c) Volume Calculations for Other Uses:

DOMESTIC IN HOUSE ONLY - 16 AF ✓

2. Overlap Review

- a) Other water rights with same place of use: NONE ✓

- b) Other water rights with same point of diversion:

78-7109 - FOR 3 ACRES

1 RR. AT .04 CFS. NOT FOR THIS HOME, BUT NEXT  
DOOR.

- c) Analysis:

#78-7109 - NO  
exam in  
file - 11/4/85

NOT FOR THIS HOME  
NOT FOR THIS HOME

RECEIVED

## RECOMMENDED AMOUNTS

POOR ORIGINAL

- Allowable Maximums: 0.02 g/g ✓ 0.02 g/g ✓

- [illegible]

- [illegible]

9. Recommended Conditions/Remarks:

10. 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
11. Examiner's Signature *Jan Shute*
- Checked in Regional Office by *DET*
- Approved in State Office by *K. Walker*
- Date *10/16/85*
- Date *10/30/85*
- Date *11/4/85*

1. Owner: Lytle D. or Peggy Alquist Permit No. 78-2265  
Current Address: 10378 Franklin, Boise, ID 83704 Phone No. 462-3442

2. Accompanied by: No one HOME (SUMMER HOME) EXAM. DATE: 10/4/85  
Address: \_\_\_\_\_ Phone No. \_\_\_\_\_

Relationship to Permit Holder: \_\_\_\_\_  
3. Source: Spring tributary to Elkh Creek

| Well/Diversion*<br>No. | Motor<br>Make | HP | Motor<br>Serial No. | Pump<br>Make | Pump Serial No. or<br>Discharge Size |
|------------------------|---------------|----|---------------------|--------------|--------------------------------------|
|                        |               |    |                     |              |                                      |
|                        |               |    |                     |              |                                      |
|                        |               |    |                     |              |                                      |
|                        |               |    |                     |              |                                      |
|                        |               |    |                     |              |                                      |

\*Code with points of diversion, system diagram & photos on reverse side. Disregard if only one.

5. System Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

2" black PVC pipeline from spring into 500 gallon storage tank & down to home. All gravity flow. Spacing singulated under a hard pipe & 2 systems used it. Other Permit is #78-7109

| Measurement Equipment | Type | Make | Model No. | Serial No. | Size | Calib. Date |
|-----------------------|------|------|-----------|------------|------|-------------|
|                       |      |      |           |            |      |             |
|                       |      |      |           |            |      |             |
|                       |      |      |           |            |      |             |
|                       |      |      |           |            |      |             |

7. Measurements

None made.

**3. Point(s) of Diversion:**

### Indicate Method of Determination

[illegible]

Place(s) of Use:

Irrigation - give acres served by system at time of exam.  
Indicate Method of Determination

[illegible]

1994

78-7109 - See Form 219B

- [illegible]

4. Remarks \_\_\_\_\_

- CONSULTANT SEAL

**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.

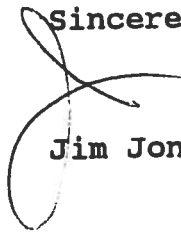
**MICROFILMED**  
OCT 24 1996

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

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

MICROFILMED  
OCT 24 1996

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.

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  
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

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

Werner J. Kolb - STATE OF IDAHO

WATER RIGHT PERMIT NO. A78-07109

CIVIL CODE NO.

39576

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

REVENUE STAMPS



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

--- - - - - Beginning at the <sup>Quarter</sup> 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.

Oral E. Rader Notary Public  
 Residing at McCall, Idaho

Comm. Expires 9/25 - 1965

STATE OF IDAHO, COUNTY OF IDAHO

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

INLAND ABSTRACT CO.

at 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. Staite Deputy.

Fees \$ .90

Mail to: Maudie H. Silva  
 Council, Idaho

INSTRUMENT No.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

16:51:09  
12/10/91

PAGE: 12  
QUICKLOOK INFORMATION

CLAIM NUMBER: A78-07265

| WR ELEMENT                | FIELD EXAM<br>Y/N | CORRESPONDENCE<br>SENT/RECEIVED<br>BY WHOM/DATE | FIELD EXAM<br>BY WHOM/DATE | CHANGE<br>CLAIM<br>Y/N | VERIFIED BY<br>CODE | COMPLETED<br>REVIEW<br>WHOM/DATE | COMPLETED<br>DATA ENTRY<br>WHOM/DATE | VERIFIED<br>DATE<br>WHOM/DATE |
|---------------------------|-------------------|-------------------------------------------------|----------------------------|------------------------|---------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE             |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| POINT OF DIV              |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| SOURCE                    |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| PLACE OF USE              |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| DIV. AMOUNT<br>CFS/VOLUME |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| CONSUMPTIVE USE           |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| PURPOSES                  |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| PERIOD OF USE             |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| BASIS OF CLAIM            |                   |                                                 |                            |                        |                     |                                  |                                      |                               |
| REMARKS                   |                   |                                                 |                            |                        |                     |                                  |                                      |                               |

"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.

See note on  
CVR in A78-  
07109 as to  
why CVR was  
written early.

MICROFILMED  
OCT 06 1992

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

16:51:09  
12/10/91

CLAIM NUMBER: A78-07265

PAGE: 1  
GENERAL INFORMATION

LAST: WEST  
ADDRESS: BOX 32A  
CITY: DECLO  
PHONE NUMBER: 208-654-2147  
OWNER CODE: C  
FIRST: FLOYD D.  
STATE: ID ID ZIP: 83323

LAST: WEST  
ADDRESS: BOX 32A  
CITY: DECLO  
PHONE NUMBER: 208-654-2147  
OWNER CODE: C  
FIRST: FLORENCE  
STATE: ID ID ZIP: 83323

LAST: BAUM  
ADDRESS: 1208 BLUE LAKES BLVD. SOUTH  
CITY: TWIN FALLS  
PHONE NUMBER: 208-733-5254  
OWNER CODE: C  
FIRST: GLENN E.  
STATE: ID ID ZIP: 83301

LAST: BAUM  
ADDRESS: 1208 BLUE LAKES BLVD. SOUTH  
CITY: TWIN FALLS  
PHONE NUMBER: 208-733-5254  
OWNER CODE: C  
FIRST: NETTA  
STATE: ID ID ZIP: 83301

FIELD EXAM REQUIRED?  
VERIFICATION REQUIRED DUE TO REMARKS?  
FIELD EXAMINER

DATABASE  
Y

CLAIM REMARKS: AGREEMENT WITH NEIGHBOR. TRIBUTARY MAY BE SINKS RATHER THAN ELK CREEK SINCE THE SPRING DOES NOT FLOW.

7 see pg. 5

MICROFILMED

OCT 06 1992

CONTACT PERSON: N/A - IN-OFFICE VERIFICATION

PHONE NUMBER: ( ) - -

TIME: - : - A( ) P( )

APPOINTMENT MADE: Y( ) N( )

PHONE NUMBER: ( ) - -

DATE OF FIELD EXAM: \_\_\_/\_\_\_/\_\_\_

ACCOMPANIED BY: \_\_\_\_\_

RELATIONSHIP TO CLAIMANT: \_\_\_\_\_

DIRECTIONS TO PROPERTY / REMARKS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A. AJ CLAIM: # A78-07265 PRIORITY DATE: 07-30-1985 STAGE: L  
B. WR RECORD: # 78-07265 PRIORITY DATE: 07-30-1985 STAGE: L

C. FIELD EXAM REQUIRED?  
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE EXAMINER  
N NO

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

REMARKS: None as licensed.

RECOMMENDED PRIORITY DATE:  
07-30-1985

REVIEWED BY [Signature] DATE 12-12-91

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT     | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY  |
|-----------|------|------|------|-----|-----|-----|-----|-------|
| A78-07265 | 22N  | 01E  | 26   | NW  | SE  | NW  |     | IDAHO |

OTHER AJ CLAIMS WITH SAME AJ POD  
A PREFIX  
A78-07109  
A78-10343

WR RECORDS IN SAME 40 ACRE TRACT  
78-07109  
78-07318  
78-07324

SOURCE: SPRING

TRIB: ELK CREEK

B. WR POINT OF DIVERSION AND SOURCE:

| RIGHT    | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY  |
|----------|------|------|------|-----|-----|-----|-----|-------|
| 78-07265 | 22N  | 01E  | 26   | NW  | SE  | NW  |     | IDAHO |

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT  
A PREFIX  
R PREFIX

78-07109

A78-07109  
A78-10343  
NONE

SOURCE: SPRING

TRIB: ELK CREEK

C. FIELD EXAM REQUIRED?

| DUE TO POD DISCREPANCY?<br>(Y/N) | DUE TO SOURCE DISCREPANCY?<br>(Y/N) | DATABASE<br>Y<br>N | FIELD<br>EXAMINER |
|----------------------------------|-------------------------------------|--------------------|-------------------|
|                                  |                                     |                    |                   |

*Due to 10-acre discrepancy only.*

REMARKS:

*P.D. verified by both maps on field exams*

|                                               |      |      |     |     |     |        |
|-----------------------------------------------|------|------|-----|-----|-----|--------|
| RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: |      |      |     |     |     |        |
| TWP.                                          | RGE. | SEC. | 1/4 | 1/4 | LOT | COUNTY |
| 22N                                           | 1E   | 26   | NW  | SE  | NW  | Idaho  |
| SOURCE: SPRING                                |      |      |     |     |     |        |
| REVIEWED BY: <i>[Signature]</i>               |      |      |     |     |     |        |
| DATE: 12/12/91                                |      |      |     |     |     |        |

\* Spring was not flowing during both exams conducted in 1983 & 1985 - all claims for this spring will show ponds as tributary.

MICROFILMED  
OCT 06 1992

A. ROOT WATER RIGHT NUMBERS: A78-07265

B. POU LISTING

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

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

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

FIELD EXAMINER  
DATABASE Y  
*NO DISCREPANCY*

PRESUMPTION FLAG:

REMARKS:

*No irrigation - in-house use only.*

RECOMMENDATIONS:

TOTAL ACRES:

REVIEWED BY:

DATE:

*[Signature]* *12/2/91*

A. AJ CLAIMED USES:

| PURPOSES           | MONTH/DAY                           | DIVERSION QUANTITY |
|--------------------|-------------------------------------|--------------------|
| A78-07265 DOMESTIC | FROM 01-01 TO 12-31                 | .020 CFS           |
|                    | TOTAL DIVERSION RATE/VOLUME CLAIMED | .60 AF/A           |

B. WR RECORDED USES:

| PURPOSES          | MONTH/DAY                           | DIVERSION QUANTITY |
|-------------------|-------------------------------------|--------------------|
| 78-07265 DOMESTIC | FROM 01-01 TO 12-31                 | .020 CFS           |
|                   | TOTAL DIVERSION RATE/VOLUME CLAIMED | .60 AF/A           |

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

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

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

RECOMMEND TO WR STANDARDS OR OTHER?

REMARKS:

Y(☒) N(☐)  
Y(☐) N(☐)

Explain in remarks, below.

MICROFILMED  
OCT 06 1992

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS? Y( ☒ ) N( ☐ )

AJ TOTAL CLAIMED DIVERSION RATE: 0.020 CFS  
 HR ROOT RIGHT TOTAL DIVERSION RATE: 0.020 CFS

\*\*\* 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?  
 DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) N  
 FIELD EXAMINER NO

B. MEASUREMENT METHOD ESTIMATE, SEE ATTACHED CALCULATIONS. SEE ATTACHED FIELD EXAM CONDUCTED IN 1985

C. ARE OTHER WATER RIGHTS USED? Y( ☒ ) N( ☐ ) IF YES COMPLETE OVERLAP REVIEW.  
 OTHER RIGHTS LISTED IN CLAIM: NONE A78-07109 & A78-10343

LIST ALL RIGHTS WITH A SAME POJ AND IRRIGATION USAGE:

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

NO RIGHTS WITH SAME POJ BUT NOT USED FOR IRRIGATION

NOTE: Exam indicates that per information from permit holder at that time (ALBRECHT) the pipe diverted approx. 1 gallon per minute or .002 cfs - rounded up & given .02 cfs for in-house domestic use (Dept's max. for in-house only) & usual amount given.

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

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

1b. CALCULATIONS

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

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

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = AF/A

ACRES x CONSUMPTIVE VOL. AF/A FOR AREA =  
TOTAL CONSUMPTIVE USE AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = 0.60 AF/A

ACRES x DIVERSION VOL. AF/A FOR AREA =  
TOTAL DIVERSION VOLUME AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y( ) N( )

*Domestic use - no AF required*

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

A. CHECK ONLY THE FOLLOWING THAT APPLY:

ACCEPTED AS CLAIMED ( )  
NEEDS REVIEW ( )

OWNERSHIP  
FORFEIT/ABANDON  
ADDITIONAL DIV. AMOUNT

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 78-07265

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE 0.020  
EXAMINER .02

SPLITS:

| OLD RIGHT NUMBERS | CURRENT CLAIM NUMBERS | DIVERSION RATE | CURRENT "R" CLAIM NUM. | "R" DIV. RATE | WR RIGHT NUMBERS | DIVERSION RATE |
|-------------------|-----------------------|----------------|------------------------|---------------|------------------|----------------|
| -                 | A78-07265             | 0.020          | -                      | -             | 78-07265         | 0.020          |

TOTAL CFS 0.020

DIVERSION RATE REVIEW

FIELD EXAMINER YES

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)

REMARKS:

AUTHENTICATION:

SIGNATURE:

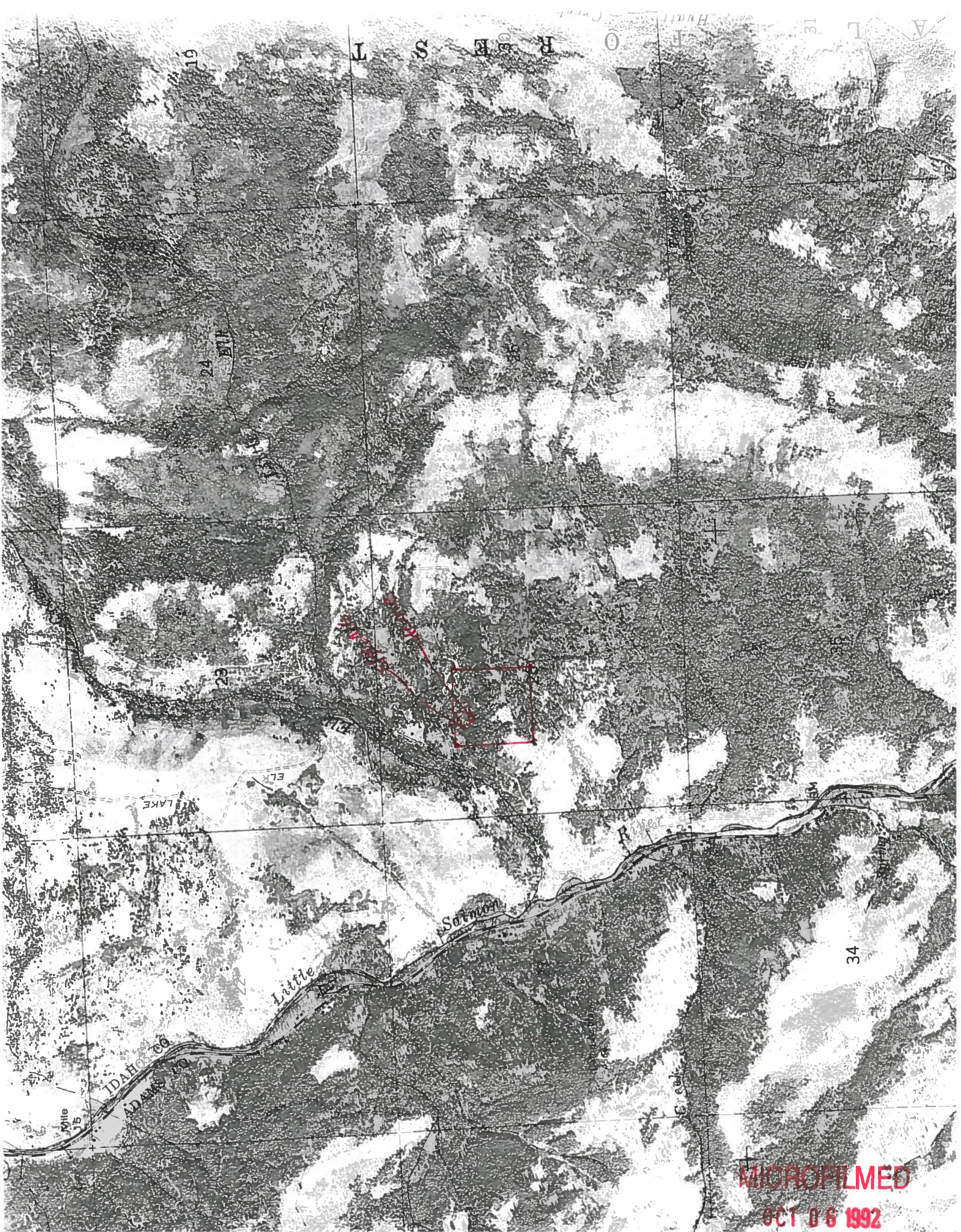
DATE: 12-12-91

NAME OF FIELD EXAMINER:

TITLE: WTR. RES. SUPERVISOR

MICROFILMED

OCT 06 1992



MICROFILMED

OCT 06 1992

67 30 1285

## BENEFICIAL USE FIELD REPORT

## Management of Water Resources

1. Owner: Teyle D on Roger Albrecht Permit No. 78-1295  
 Current Address: 10398 Buckle, Spring, SD 58704 Phone No. 2162-3444
2. Accompanied by: No one EXAM. DATE 10/4/85  
 Address: \_\_\_\_\_ Phone No. \_\_\_\_\_  
 Relationship to Permit Holder \_\_\_\_\_
3. Source: Spring tributary to Elk Creek

[illegible]

\*Code with points of diversion, system diagram & photos on reverse side. Disregard if only one.

5. System Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

3" black PVC pipeline from spring into 500 gallon storage tank & down to home. All private, & low spring is situated under a huge sycamore & 2 cypress trees. Other Permit is # 8-709.

| Measurement Equipment | Type | Make | Model No. | Serial No. | Size | Calib. Date |
|-----------------------|------|------|-----------|------------|------|-------------|
|                       |      |      |           |            |      |             |
|                       |      |      |           |            |      |             |
|                       |      |      |           |            |      |             |
|                       |      |      |           |            |      |             |

7. Measurements ☐ Additional data/computation sheets attached

None made.

8. Point(s) of Diversion: Indicate Method of Determination

[illegible]

- |    |                  |                                                                                               |
|----|------------------|-----------------------------------------------------------------------------------------------|
| 9. | Place(s) of Use: | Irrigation - give acres served by system at time of exam.<br>Indicate Method of Determination |
|----|------------------|-----------------------------------------------------------------------------------------------|

[illegible]

**Total Acres**

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
LICENSING REPORT

007-80 185

Permit No.

Department of Water Resources

## 1. Measurement Calculations

## a) Field Measurement Calculations (Include theoretical capacities and system capacity)

Estimated at 1 gallon per minute  
based on permit holder's info.

$$1 \text{ gpm} \div 450 = 0.002 \checkmark$$

can allow .02 cfs  $\checkmark$

## b) Volume Calculations for Irrigation:

$$V_{in} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$$

$$V_{on} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$$

$$V = \text{Smaller of } V_{in} \text{ and } V_{on} =$$

## c) Volume Calculations for Other Uses:

DOMESTIC - IN HOUSE ONLY - 16 AF  $\checkmark$

## 2. Overlap Review

## a) Other water rights with same place of use:

NONE  $\checkmark$

## b) Other water rights with same point of diversion:

78-7109 - FOR 5 ACRES

IRR. AT .04 CFS. NOT FOR THIS HOME, BUT NEXT

door.

## c) Analysis:

#78-7109-120

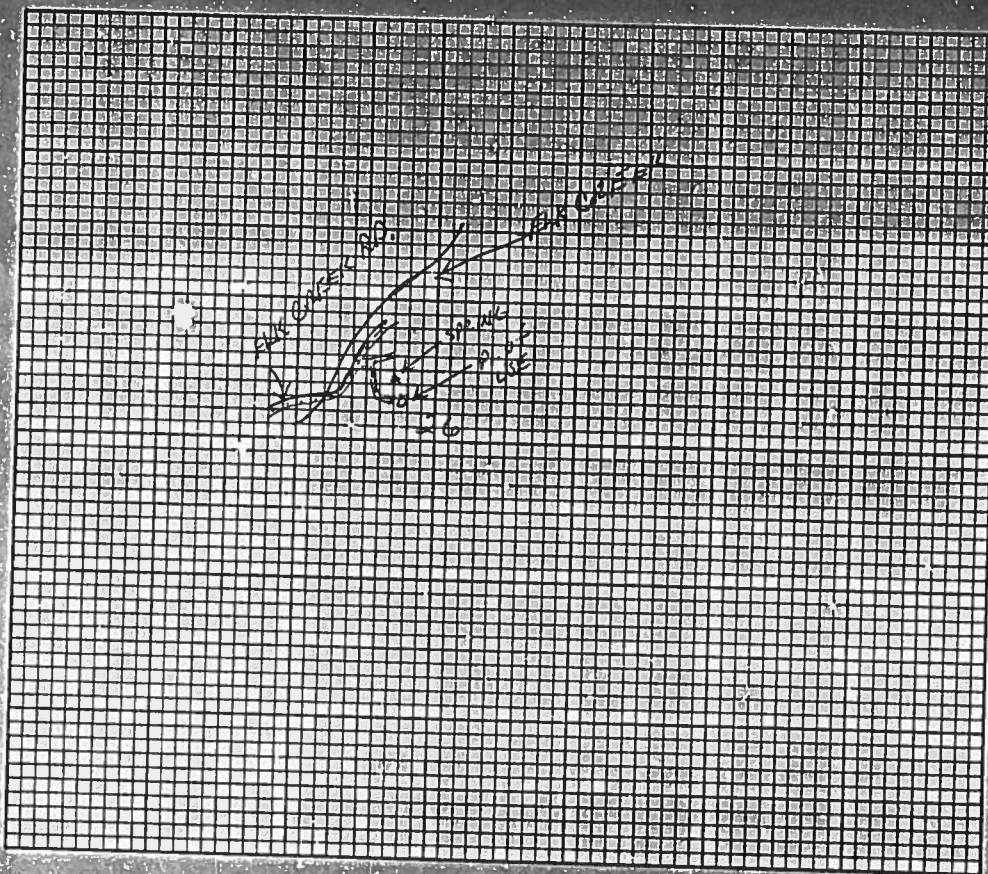
exam in

file - 11/4/85

10. Other water rights on these lands

11. Other water right diverted from same p.d.

12. Diversion and Delivery System Diagram. Indicate all major components and distances between components. Indicate ditch size/pipe I.D. as applicable. Indicate on systems with measurement port the distance between the port and the nearest component/pipe bend/restriction both upstream and downstream and the inside pipe diameter at the measurement port. On multiple diversion systems indicate how diversion systems are connected.



13. ☐ Photo of Diversion & System Attached

☐ Aerial Photo of Place of Use Attached  
or Map of Irrigated Acreage Attached

14. Remarks

15. 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

16. Examiner's/Consultant's Signature

*John Smith*

Date 10/10/85

Consultant's License Number

IDWR Director's Authorization to Conduct

Beneficial Use Examination

10/4/85

Date

CONSULTANT SEAL

MICROFILMED

NOV 05 1985

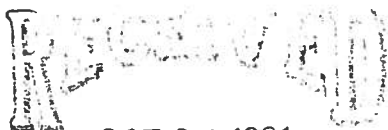


State of Idaho

DEPARTMENT OF WATER RESOURCES

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

A 78-07265



October 18, 1991

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

OCT 21 1991

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 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

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*

Cindy Hodges  
Sr. Water Resource Agent

Enclosures

MICROFILMED

OCT 06 1992



State of Idaho  
DEPARTMENT OF WATER RESOURCES

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

FILE IN 78-07265

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

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  
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

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**



# 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.

**MICROFILMED**

**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)

MICROFILMED

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.

MICROFILMED  
OCT 06 1992