

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Robert L. Harris, Esq.

Holden, Kidwell, Hahn & Crapo, PLLC

PO Box 50130

Idaho Falls, ID 83405-0130

DRAFT

75-14179

14180

14448

14608

14609

14610

14611

75-7032

75-7177

(Space Above for Recorder's Use)

WATER RIGHTS SETTLEMENT AGREEMENT

Subcase Nos: 75-7032, 75-7177, 75-14179, 75-14180, 75-14448, 75-14608, & 75-14609

THIS WATER RIGHTS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of August, 2011, by and among SUNSET HEIGHTS WATER DISTRICT, of P.O. Box 4, Salmon, Idaho 83467 (hereinafter referred to as "Sunset"), CECIL JACKSON and JUDITH BAILEY JACKSON, of 42 Wild Rose Rd., Salmon, Idaho 83467 (hereinafter referred to as "Jackson" or the "Jacksons"), MICHAEL JOSEPH TYACKE, of P.O. Box 2156, Idaho Falls, Idaho 83403 (hereinafter referred to as "Tyacke"), and the STATE OF IDAHO DEPARTMENT OF LANDS, of P.O. Box 83720, Boise, Idaho 83720-0050 (hereinafter referred to as the "State"). The foregoing parties are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS:

- A. The water rights of Jackson, Sunset, Tyacke, and the State—Water Right Nos. 75-7032, 75-7177, 75-14179, 75-14180, 75-14448, 75-14608, and 75-14609 (hereinafter, the "Water Rights")—have been adjudicated or are being adjudicated in the District Court of

the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, Case No. 39576 in the Matter of the Snake River Basin Adjudication (the “SRBA”).

- B. Sunset has submitted water right claims in the SRBA for Water Right Nos. 75-14180 and 75-14448, and has received certain Director’s Report Recommendations, to which certain objections have been filed.
- C. Tyacke has filed responses to those objections in order to participate in the SRBA proceedings for Water Right Nos. 75-14180 and 75-14448.
- D. Water Right Nos. 75-7032, 75-7177, and 75-14179 received SRBA partial decrees on November 17, 2008.
- E. A certain unrecorded agreement dated December 21, 1972 was entered into by the Parties’ predecessors-in-interest to the property to which the Water Rights are appurtenant. This agreement was entered into by and between Ralston W. Adams & Rachel L. Adams and George L. Hyde & Althea R. Hyde, and is hereinafter referred to as the “1972 Agreement.” A copy of the 1972 Agreement is attached hereto as Exhibit A.
- F. The 1972 Agreement was entered into in order to resolve a protest filed by George and Althea Hyde in response to an application for water right permit filed by Ralston and Rachel Adams for development of a water supply for domestic and/or irrigation purposes from a spring for the Sunset Heights Subdivision (Water Right No. 75-7032). After the Parties entered into the 1972 Agreement, the Idaho Department of Water Resources issued a water right license for Water Right No. 75-7032 for the municipal water supply. The 1972 Agreement generally allowed for the development of a municipal water source from a spring for the Sunset Heights Subdivision, in exchange for up to 0.4 cfs to be provided to the Hydes from the South Fork of Sevenmile Creek as replacement water.
- G. The exchange water was intended to replace spring water that is a tributary source of supply for water rights from Hyde Creek, which have been recommended in the SRBA as Water Right Nos. 75-14608 and 75-14609.¹

¹ Tyacke submitted a claim for a water right based on beneficial use in the SRBA (numbered 75-4393), which was objected to by the State on grounds that 75-4393 overlapped onto State ground leased by Tyacke. Tyacke and the State have now agreed to split Water Right No. 75-4393 into two water rights, with Water Right No. 75-14608 owned solely by Tyacke, and Water Right No. 75-14609 jointly owned by Tyacke and the State (subject to a settlement agreement entered into between Tyacke and the State).

- H. Water Right Nos. 75-14608 and 75-14609 are appurtenant to property owned by Tyacke and the State. Both Water Right Nos. 75-14608 and 75-14609 have a priority date of April 1, 1878, and are the most senior of the Water Rights addressed in this Agreement.
- I. The exchange water contemplated under the 1972 Agreement is of critical importance to Sunset, as it mitigates for Sunset's only current source of municipal water for its residential subdivision. The exchange water is also critical to Tyacke, who uses the exchange water to irrigate that portion of his property that can only be flood irrigated by diversions from the Hyde Creek drainage system. Tyacke further utilizes such exchange water to irrigate property owned by the State of Idaho pursuant to Water Right No. 75-14609.
- J. The provisions of the 1972 Agreement have generally been upheld by the Parties and their successors-in-interest, but the various claims filed by the Parties have created confusion as to how the Water Rights—particularly the claim for Water Right No. 75-14180 filed by Sunset—should be adjudicated and conditioned. There are also logistical matters of providing replacement water that were not clearly addressed by the 1972 Agreement.
- K. Therefore, since the filing of objections to certain of each other's water right claims, the Parties desire to incorporate the concept contained in the 1972 Agreement into the settlement documents to be filed in the SRBA in order to resolve the various objections, and to address matters not addressed in the 1972 Agreement. The Parties have therefore negotiated with each other and now desire to enter into this Agreement for the purpose of fully compromising and settling all of their pending claims and objections to the Water Rights, and to supersede the 1972 Agreement with this Agreement to better define the rights, obligations, and responsibilities of the Parties.

AGREEMENTS:

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED among the Parties as follows:

1. **INDIVIDUAL WATER RIGHT ELEMENTS.** The Parties shall execute Standard Form 5 documents stipulating to the elements of the Water Rights set forth on Exhibit B

attached hereto, subject to the conditions set forth in this Agreement. The contents of this Agreement shall therefore be specifically referenced by assigned Instrument Number after this Agreement is executed by all of the Parties and recorded in the records of Lemhi County, Idaho as set forth on the attached Exhibit B documents.

2. **WATER RIGHT NO. 75-14180.** Water Right No. 75-14180 shall be decreed in the name of Sunset, but shall be appurtenant to the place of use of Water Right Nos. 75-14608 and 75-14609, and the use of Water Right 75-14180 shall be subject to the provisions of this Agreement.
3. **EXCHANGE WATER OBLIGATION.** Sunset and its successors and assigns shall be obligated to provide exchange water equal to the amount diverted from the spring by Sunset (up to a maximum of 0.4 cfs) to the owners of the place of use for Water Right Nos. 75-14608 (currently Tyacke) and 75-14609 (currently Tyacke and the State of Idaho). To the extent necessary, Sunset shall file an “Application for Exchange of Water” with the Idaho Department of Water Resources to represent this obligation. Sunset shall not divert water from the spring without providing exchange water to Tyacke consistent with this Agreement.
4. **EXCHANGE WATER DELIVERY LOCATION.** Sunset shall divert the exchange water from the South Fork of Sevenmile Creek under Water Right No. 75-14180, which amount shall be delivered and measured at a splitter structure (the “Jackson splitter”) and immediately thereafter delivered to the heading of the “Tyacke Cross-cut Ditch,” which is a certain ditch currently belonging to Tyacke directly below the “Jackson splitter” that is one hundred (100) feet in length, more or less, and is located within the SW1/4SW1/4NE1/4 of Section 16, Township 20N, Range 22E.B.M. The Tyacke Cross-cut Ditch conveys the exchange water supplies from the South Fork of Sevenmile Creek into what is commonly known as the “Tyacke Ditch,” which carries water diverted from the North Fork of Sevenmile Creek. Water from both the North Fork of Sevenmile Creek and South Fork of Sevenmile Creek is then delivered to the property of the owner(s) of Water Right Nos. 75-14608 and 75-14609 through Hyde Creek.
5. **WATER MASTER TO ADMINISTER EXCHANGE WATER FROM SOUTH FORK OF SEVENMILE CREEK.** Unless the Parties unanimously agree otherwise in

writing, the Tyacke exchange water shall be measured and distributed at the “Jackson splitter” by a watermaster to be hired and paid for by the Parties. Each of the current Parties and their successors and assigns (excepting the State)—Jackson, Sunset, and Tyacke—shall each pay for 1/3 of the costs associated with employment of said watermaster. Sunset shall comply with Paragraph 7 of this Agreement to provide water diversion information to the watermaster to ensure proper measurement and delivery. The Parties further agree:

- a. The frequency and scope of the activities of the watermaster will be agreed upon by the parties.
- b. The watermaster will use standard measuring practices, methodologies, and materials.
- c. The records of the watermaster will be available to all parties immediately upon request.
- d. The watermaster shall monitor, measure, verify, and record flows at the following locations:
 - i. The point of diversion of Water Right Nos. 75-14179 and 75-14180 located on the South Fork of Sevenmile Creek.
 - ii. The “Jackson splitter” where the South Fork of Sevenmile Creek exchange water diverts into the Tyacke Ditch.
 - iii. The point where the spring water exits the Sunset water treatment facility to be used in the Sunset Heights development.
 - iv. The Sunset Heights reservoir inlet and outlet, upon use of exchange water from the reservoir.
 - v. Other locations as necessitated by use of alternate replacement sources.
 - vi. Other locations agreed to by the parties.

6. **JOINT OWNERSHIP OF PIPELINE AND DITCH FROM SOUTH FORK OF SEVENMILE CREEK.** The diversion structure, pipeline, and open ditch leading from the South Fork of Sevenmile Creek to the “Jackson splitter” is currently owned by Jackson, and such structures are hereinafter referred to as the “Jackson/Sunset Diversion Structures”. The Jackson/Sunset Diversion Structures traverse across lands owned by the

United States Forest Service (“USFS”) and the United States Department of Interior Bureau of Land Management (“BLM”), and Jackson is currently the only owner of the rights-of-way for the Jackson/Sunset Diversion Structures identified by the USFS as right-of-way number 5506-01, and identified by the BLM as right-of-way number IDI-20967, as evidenced by the documents attached at Exhibit C. With regards to BLM right-of-way IDI-20967 and USFS right-of-way 5506-01, Jackson and Sunset agree as follows:

- a. **Conveyance of ½ Interest in Jackson/Sunset Diversion Structures.** Jackson will convey a ½ undivided interest in the Jackson/Sunset Diversion Structures as well as its associated rights-of-way by executing a deed in the form of Exhibit D, and both Jackson and Sunset shall be joint owners in the Jackson/Sunset Diversion Structures, with all of its attached responsibilities and liabilities as provided by Idaho law, including, but not limited to, secondary easements to access and monitor diversions from the South Fork of Sevenmile Creek.
- b. **Forest Service and BLM rights-of-way.** Jackson and Sunset shall cooperate and jointly accomplish any and all matters required by the BLM to have Sunset listed as a co-owner of the right-of-way identified as IDI-20967, as well as accomplish any and all matters required by the Forest Service to have Sunset listed as a co-owner of the right-of-way identified as 5506-01.
- c. **Cost-Sharing.** All costs associated with the repair, maintenance, rehabilitation, or replacement of the Jackson/Sunset Diversion Structures shall be shared 50% by Jackson and 50% by Sunset, provided that such costs are agreed to as set forth in the following Paragraph 6.d.
- d. **Decision making.** All repair, maintenance, rehabilitation, and/or replacement, must be agreed to unanimously by both Jackson and Sunset. Otherwise, if there is disagreement as to the extent of repair, maintenance, rehabilitation, and/or replacement for the Jackson/Sunset Diversion Structures, Jackson and Sunset agree as follows:
 - i. **First Engineer/Consultant.** The party requesting repair, maintenance, rehabilitation, and/or replacement (hereinafter, the “Work”) shall, at said party’s sole cost and expense, employ an engineer and/or consultant to

determine whether the Work is necessary for the proper operation of the Jackson/Sunset Diversion Structures. The party requesting the Work must provide a copy of the engineer/consultant's recommendations and findings for the other party's review. In the event the other party agrees with the proposed Work after reviewing the engineer/consultant's report, such Work shall thereafter be performed. In the event the other party disagrees with the engineer/consultant's recommendations and findings, then a second engineer/consultant shall be employed, and parties shall proceed as follows.

- ii. **Second Engineer/Consultant.** In the event a second party disagrees with the first party's engineer/consultant, the second party shall then be required to hire their own engineer/consultant—the second engineer/consultant—at their sole cost and expense to determine if the proposed Work is necessary or appropriate. In the event the second engineer agrees with the first engineer, the Work shall proceed. In the event the two engineers/consultants are unable to agree as to whether the proposed Work is necessary and appropriate, then those two engineers/consultants shall together select a third engineer who shall consult with the two engineers/consultants and thereafter render an opinion as to whether the proposed Work is necessary and appropriate.
- iii. **Third Engineer/Consultant.** The third engineer/consultant's opinion shall govern the conduct of the parties. The costs of the third engineer/consultant shall be shared equally between Jackson and Sunset. If the opinion of the third engineer is that the proposed Work is not necessary and appropriate, then the Work will not be performed. If the third engineer/consultant's opinion is that the proposed Work is necessary and appropriate, then Work shall be performed.
- iv. **Deliberations.** The parties shall be free to consult with each other and with the engineers/consultants during this deliberative process and to propose changes to Work that will be agreeable to Jackson and Sunset.

The engineers shall advise the parties of changes that could be made to the proposal to make it acceptable to the other party. Neither party shall assert any privilege regarding any communication with the engineers/consultants and neither party shall instruct their engineer/consultant to withhold any information from any other party or to refuse to consult with any party.

- e. **Emergency.** In case of an emergency, Jackson and Sunset shall immediately notify the owner(s) of Water Right Nos. 75-14608 and 75-14609 of such emergency and repair the Jackson/Sunset Diversion Structures as expeditiously as possible, without delay, in order to provide the requisite exchange water as soon as possible. If there will be a delay in repair of greater than 72 hours, Sunset must either initiate an alternate supply of exchange water to the owner(s) of Water Right Nos. 75-14608 and 75-14609, or stop use of the spring until exchange water is available.
- f. **Alternative Water Supply.** To the extent Sunset provides an alternate supply of exchange water, such exchange water supply must be agreed to by the owner(s) of Water Right Nos. 75-14608 and 75-14609 in writing, which agreement cannot be unreasonably withheld. The exchange water supplies must be delivered to the owner(s) of Water Right Nos. 75-14608 and 75-14609 in such a manner that it can be distributed with the existing irrigation system of the owner(s) of Water Right Nos. 75-14608 and 75-14609.

7. **EXCHANGE WATER OBLIGATION AND DELIVERY AMOUNT.**

- a. **Sunset Obligation to Provide Exchange Water.** Sunset, through the watermaster, shall be solely responsible for delivering exchange water to the owners(s) of Water Right Nos. 75-14608 and 75-14609 pursuant to Water Right No. 75-14180. Other than coordination of water allocation at the “Jackson splitter”, Jackson shall have no obligation or responsibility with regards to the exchange water delivery.
- b. **Location of Water Measurement:** Sunset diverts from the spring to a facility where water treatment occurs, then to reservoir storage prior to delivery to its

customers for domestic and irrigation purposes. Excess flows from the spring (those flows not diverted by Sunset) return to the natural stream which is tributary to Hyde Creek. Water use measurement occurs at the point the spring water exits the treatment facility to be used in the Sunset Heights development. Water use does not include excess flows from the spring that return to Hyde Creek.

- c. **Water Usage Information.** Sunset shall provide to the watermaster, the owner(s) of Water Right Nos. 75-14608 and 75-14609, and to Jacksons and their successors and assigns, measurements of its diversions from the spring (as described in Paragraph 7.b) under Water Right No. 75-7032, either in gallons per minute or cubic feet per second, on the 1st and the 15th of each month, beginning on April 1st of each year and ending on October 15th of each year, to ensure that the appropriate amount of exchange water is provided to the authorized place of use of Water Right Nos. 75-14608 and 75-14609. Sunset shall provide Tyacke reasonable access to inspect and verify Sunset's water system and usage information upon request.
- d. **Water Usage Calculation Methodology.** It is understood that Sunset generally determines its water usage by measuring and recording the total volume exiting the treatment facility and thereby used within the subdivision over a certain time period, and then converting that volume to a rate of gallons per minute. By way of example, in July of 2008 (a month with 31 days), Sunset used a total of 1,699,217 gallons. After dividing that total amount by the number of days in July (31), and then minutes in a day (1440), the rate of usage was 38.1 (.085 cfs) gallons per minute. The Parties hereby agree that the methodology employed by Sunset is acceptable to them as the methodology for determining the amount of exchange water Sunset is to provide.

- 8. **ALLOCATION OF WATER BETWEEN JACKSON AND SUNSET DELIVERED TO THE JACKSON SPLITTER.** Jackson's water right (Water Right No. 75-14179) and Sunset's water right (Water Right No. 75-14180) have the same priority date, and the amounts delivered to them at the "Jackson splitter" shall be accomplished pursuant to the prior appropriation doctrine for distribution of water pursuant to water rights with the

same priority dates, as provided under Idaho law, when the amount of water available to satisfy their rights drops below the total amount authorized under both rights.

9. **EXCHANGE WATER AUTHORIZED USES.** Water Right No. 75-14180 shall only be diverted by Sunset to the owner(s) of Water Right Nos. 75-14608 and 75-14609 for exchange water purposes, and such exchange water shall be used for irrigation purposes at the place of use for Water Right Nos. 75-14608 and 75-14609 and any subsequent splits of such water rights.
10. **EXCHANGE WATER SUPPLIES OTHER THAN WATER RIGHT NO. 75-14180.**
 - a. **Sunset Heights Reservoir.** To the extent the amount of water available to Sunset under Water Right No 75-14180 to offset its uses under Water Right No. 75-7032 is not sufficient, Sunset may provide, and the owners of Water Right Nos. 75-14608 and 75-14609 hereby agree to accept, storage water from the Sunset Heights Reservoir authorized pursuant to Water Right No. 75-7177. To the extent any authorization is needed from IDWR, Sunset shall seek and obtain such consent at its sole cost and expense. Sunset shall not divert water from Hyde Creek to replenish reservoir storage after March 15th or prior to November 15th each year.
 - b. **Other Mitigation Supplies.** Nothing herein is intended to prevent Sunset or any other Party from obtaining alternate exchange water supplies in the future through water right purchase, water right permitting, or otherwise, to satisfy the exchange of spring water as called for in this Agreement. Such exchange water supplies must be agreed to in writing by the owner(s) of Water Right Nos. 75-14608 and 75-14609, which agreement cannot be unreasonably withheld. The alternate exchange water supplies must be delivered to the owner(s) of Water Right Nos. 75-14608 and 75-14609 in such a manner that it can be distributed with the existing irrigation system of the owner(s) of Water Right Nos. 75-14608 and 75-14609.
11. **MONITORING OF HYDE CREEK.** Within sixty (60) days of the execution of this Agreement, Sunset shall add to its bylaws and/or rules and regulations that its

users/members are not to engage in unauthorized diversions, pumping, siphoning, etc., of water from Hyde Creek that will adversely affect water flows in Hyde Creek.

12. **RESTRAINT ON ALIENATION.** Water Right No. 75-14180 shall not be conveyed or transferred by Sunset to any person or entity without specific written consent from the owner(s) of Water Right Nos. 75-14608 and 75-14609. The intent of this provision is to ensure that Sunset does not sever Water Right No. 75-14180, and transfer the water right elsewhere to the detriment of the owner(s) of Water Right Nos. 75-14608 and 75-14609.
13. **EXCHANGE WATER DELIVERY DATES.** In order to meet the requirements of this Agreement, the exchange water from the South Fork of Sevenmile Creek shall be delivered at the beginning of the irrigation season when requested by the owner(s) of Water Right Nos. 75-14608 and 75-14609, but no earlier than April 1st, provided that the Jackson/Sunset Diversion Structures are free of snow and capable of delivering the exchange water. To the extent that the Jackson/Sunset Diversion Structures are not free of snow and are therefore incapable of delivering the exchange water, Jackson and Sunset agree to undertake reasonable efforts to free said ditch and pipeline from snow as soon as practical from when water is requested by the owner(s) of Water Right Nos. 75-14608 and 75-14609. Water will not be shut off under Water Right Nos. 75-14608 and 75-14609 before October 31st of each year without prior agreement of Sunset and Tyacke.
14. **TYACKE DITCHES.** The owner(s) of Water Right Nos. 75-14608 and 75-14609—excluding the State of Idaho—shall be responsible for and liable for repair or maintenance of the Tyacke Cross-cut Ditch and the Tyacke Ditch.
15. **MEASURING DEVICES.**
 - a. **Installation and Maintenance.** All of the Parties shall install measuring devices and diversion structures, or maintain previously installed measuring devices or diversion structures, in accordance with IDWR specifications.
 - b. **Location.**
 - a. Sunset shall be responsible for installation and maintenance of measuring devices at the following locations:
 - i. The point at which spring water exits the Sunset Heights treatment facility;

- ii. The Sunset Heights reservoir inlet and outlet, upon use of exchange water from the reservoir.
 - b. Sunset and Jackson shall be mutually responsible for installation and maintenance of measuring devices at the following locations:
 - i. The point of diversion for water right 75-14179 and water right 75-14180 from the South Fork of Sevenmile Creek;
 - ii. The “Jackson splitter” where the South Fork of Sevenmile Creek water diverts into the Tyacke ditch.
 - c. **Inspection.** The owner(s) of Water Right Nos. 75-14608 and 75-14609 may inspect the “Jackson splitter” without providing notice to the other Parties, at any time the owner(s) of Water Right Nos. 75-14608 and 75-14609 are inspecting the Tyacke Ditch. As co-owners of the Jackson/Sunset Diversion Structures, both Sunset and Jackson shall have the right to inspect the “Jackson splitter”, as well as the Jackson/Sunset Diversion Structures without prior notice to any Party.
- 16. **SUNSET DIVERSION STRUCTURE.** The present spring diversion structure and weir (and their similar replacements) associated with Water Right No. 75-7032, shall be operated, maintained, and replaced at the sole cost and obligation of Sunset.
- 17. **WITHDRAWAL OF SRBA OBJECTIONS.** The Parties hereby agree to resolve their respective objections to Water Rights covered in this Agreement, and shall sign the necessary Standard Form 5s prepared by IDWR in order to settle their pending water rights according to the terms of this Agreement. It is understood and agreed that IDWR may include other standard conditions, which the Parties shall have the opportunity to review prior to the execution of the Standard Form 5s.
- 18. **DISALLOWAL OF CLAIM NO. 75-14448.** Provided that the terms of this Agreement are honored and implemented by the SRBA, and in conjunction with execution and incorporation of this Agreement as set forth above, Sunset hereby agrees to execute a Standard Form 5 document providing that Water Right No. 75-14448 shall be disallowed in the SRBA.
- 19. **AMENDMENT TO PRIORLY ISSUED PARTIAL DECREES.** The Parties understand and agree that it will be necessary to amend the partial decrees for Water

Right Nos. 75-7032, 75-7177, and 75-14179 in order to fully comply with the intent of this Agreement. The Parties hereby agree to file any necessary documents with the SRBA court providing that the partial decrees for Water Right Nos. 75-7032, 75-7177, and 75-14179 be amended to include reference to this Agreement and to incorporate the provisions of this Agreement as set forth above.

20. **GOVERNING LAW.** The Parties agree that this Agreement shall be governed by, and be construed in accordance with the laws of the State of Idaho.
21. **ENTIRETY OF AGREEMENT.** This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the Parties, and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written, between them other than are herein set forth.
22. **WAIVER.** The failure or any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise of the same or of any other right, nor shall any waiver of any right with respect to any occurrence be construed as a waiver of such right with respect to any other future occurrence.
23. **BINDING EFFECT.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties.
24. **RECORDING.** This Agreement shall be recorded in the records of Lemhi County, Idaho. Sunset, the Jacksons, Tyacke, and the State each agree to pay ¼ of the cost of recording this Agreement.

Dated this ____ day of August, 2011.

SUNSET HEIGHTS WATER DISTRICT

By: _____
Print: _____
Its: _____

ATTEST:

By: _____
Print: _____

Cecil Jackson

Judith Bailey Jackson

Michael Tyacke

STATE OF IDAHO DEPARTMENT OF LANDS

By: _____
Print: _____
Its: _____

EXHIBIT A
1972 Agreement

114
MAY 1973
Department of Water Administration
Eastern District Office

A G R E E M E N T

THIS AGREEMENT, Made and entered into this 21st day of December, 1972, by and between RALSTON W. ADAMS and RACHEL L. ADAMS, husband and wife, parties of the first part, hereinafter called 'Adams', and GEORGE L. HYDE and ALTHEA R. HYDE, husband and wife, parties of the second part, hereinafter called 'Hyde', --

WITNESSETH:

WHEREAS, Adams and Hyde are owners of certain separate tracts of land situated in Lemhi County, and more particularly described in Exhibit A attached hereto and made a part hereof, for which the second parties claim to be able to furnish proof of prior diversion and appropriation water rights dating back to the year 1873; and

WHEREAS, Adams filed application for permit #75-7032 before the Department of Water Administration to appropriate public waters from a spring situated in the Northeast Quarter of the Northeast Quarter, Section 17, Township 20 North of Range 22 E.B.M.; and

WHEREAS, Hyde filed a protest against the approval of said application, and an informal hearing was held on said protest before the Department of Water Administration on October 16, 1972; and

WHEREAS, The parties hereto desire to settle their differences in regards to said application and enter into an agreement for the exchange of water rights:

NOW, THEREFORE, For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree as follows:

I

That Adams shall deliver waters of the South Fork of Seven Mile Creek, to which Adams has accrued a beneficial water right,

to a certain ditch belonging to Hyde, via a certain ditch, one hundred (100) feet in length, more or less, at a point within the Southwest of the Southwest of the Northeast, Section 16, Township 20 North of Range 22 E.B.M., as more particularly described in Exhibit B; that Adams shall construct said diversion ditch and Hyde shall maintain said ditch.

II

That Adams shall exchange for waters from the South Fork of Seven Mile Creek in equal shares, measured in cubic feet per second or fraction thereof, for waters from a certain spring situated in the Northeast quarter of the Northeast quarter of Section 17, Township 20 North of Range 22 E.B.M.; that Adams shall have the privilege and right of using said spring water for domestic and/or irrigation purposes, and Hyde grants a right and easement to divert said waters from said spring.

III

That Adams shall have the right to divert a quantity of water from said spring in an amount not to exceed .40 cubic feet per second and to use said waters on the East Half of Section 8, Township 20 North of Range 22 E.B.M. and to obtain a permit from the Department of Water Administration of the State of Idaho as an exclusive appropriator and user of said .40 cubic feet per second of water; that a diversion and a weir, constructed in accordance with specifications approved by the State of Idaho, shall be placed at the diversion point on said irrigation ditch and at the diversion point on said spring; that Adams shall pay for the costs of construction of the weir on the ditch and for the costs of construction of the weir and measuring device at the spring; that the amount of the said water to be exchanged shall be determined by a propeller - flow meter placed within the

diversion at the spring; that the maintenance of the diversion on the ditch shall be borne by Hyde and maintenance of the diversion on the spring shall be borne by Adams; that it is specifically understood and agreed by the parties hereto that no larger amount of water shall be diverted from the Adams ditch from Seven Mile Creek to the Hyde ditch than Adams uses of waters from the spring, and the second parties shall at any and all times have the right of inspection of the weir, measuring devices, flow meters and such other diversion works as may be used by the parties hereto, wherever they are located.

IV

That Hyde covenants and agrees to withdraw the water protest filed September 18, 1972 against application #75-7032, application for the appropriation of public waters of the State of Idaho, filed by Ralston W. and/or Rachel Adams, a notice thereof having been published in the Recorder Herald at Salmon, Idaho on August 31, 1972 and September 7, 1972, and by these presents does withdraw said protest; and, the parties hereto agree that a copy of this agreement shall be sent to the Department of Water Administration of the State of Idaho.

V

That this agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof, and this agreement specifically includes and supersedes a certain Stipulation and Memorandum of Agreement, dated October 16, 1972, and entered into certain informal hearing on application #75-7032, at the Lemhi County Courthouse at Salmon, Idaho; and that there are no agreements or representations between the parties relating to the subject matter hereof other than that expressly contained herein. This agreement may not be modified or amended orally, and no attempted modification or amendment shall be binding unless it is in writing and signed by both parties.

VI

It either party finds it necessary to file any formal action to enforce any provision of this agreement, then the losing party

EXHIBIT A

Ralston W. Adams and Rachel L. Adams Property:

The following described real property situate in the County of Lemhi, State of Idaho, more particularly described as follows, to-wit:

The East One-Half of Section 8, Township 20 North, Range 22, East of the Boise Meridian.

George L. Hyde and Althea R. Hyde Property:

The following described real property situate in the County of Lemhi, State of Idaho, more particularly described as follows, to-wit:

West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$), East Half of the Northwest Quarter ($E\frac{1}{2}NW\frac{1}{4}$) and the East Half of the Southwest Quarter ($E\frac{1}{2}SW\frac{1}{4}$) of Section Thirty-two (32), Township Twenty-one (21) North of Range Twenty-two (22) East of the Boise Meridian.

Together with all water and water rights, ditch and ditch rights appertaining thereto or used in connection therewith.

Excepting therefrom, the Northwest fifteen acres of said Northeast Quarter of the Northwest Quarter of Section thirty-two.

shall pay all costs in connection therewith, including reasonable attorney fees for the prevailing party.

VII

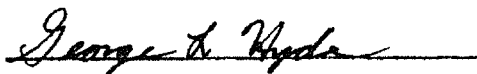
It is further understood and agreed by the parties hereto that each and every covenant and condition herein contained shall bind and inure to the heirs, executors, administrators and authorized assigns of the parties hereto.

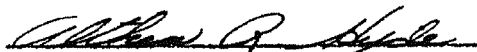
IN WITNESS WHEREOF The parties hereto have hereunto set their hands and seals the day and year first above written.





Parties of the First Part





Parties of the Second Part

75-7032

EXHIBIT B
Water Right Descriptions

08/01/2011

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 75-14608

NAME AND ADDRESS: MICHAEL JOSEPH TYACKE
PO BOX 2156
IDAHO FALLS ID 83403

SOURCE: HYDE CREEK

TRIBUTARY: SALMON RIVER

QUANTITY: 1.940 CFS
2.92 AFY

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

The rights listed below are limited to a total combined diversion rate of 2.0 cfs and to a total combined annual volume of 3.0 AF for irrigation storage. Combined Right Nos.: 75-14608 and 75-14609.

PRIORITY DATE: 04/01/1878

POINT OF
DIVERSION:

T20N R22E S5 SWNE Within LEMHI County
T21N R22E S32 SESW Within LEMHI County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION FROM STORAGE	04/01 10/31	2.92 AFY
IRRIGATION	04/01 10/31	1.940 CFS
STOCKWATER	01/01 12/31	0.400 CFS
IRRIGATION STORAGE	01/01 12/31	2.92 AFY

PLACE OF USE:

IRRIGATION in LEMHI County

T21N R22E S32	NWNE	33.00	T21N R22E S32	SWNE	22.00
T21N R22E S32	NENW	25.00	T21N R22E S32	SENW	41.00
T21N R22E S32	NESW	30.00	T21N R22E S32	SESW	3.80

IRRIGATION FROM STORAGE in LEMHI County

T21N R22E S32	NWNE	33.00	T21N R22E S32	SWNE	22.00
T21N R22E S32	NENW	25.00	T21N R22E S32	SENW	41.00
T21N R22E S32	NESW	30.00	T21N R22E S32	SESW	3.80

STOCKWATER in LEMHI County

T21N R22E S32	NESW	
---------------	------	--

154.8 ACRES TOTAL

Right Nos. 75-14608 and 75-14609 are limited to the irrigation of a combined total of 145 acres in a single irrigation season.

The rights listed below are limited to the irrigation of a combined total of 159.2 acres in a single irrigation season. Combined Right Nos.: 75-14608, 75-14609, 75-14610 and 75-14611.

08/01/2011

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

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

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

The operation, use and administration of this water right is subject to a private water right agreement effective _____, 2011, between Sunset Heights Water District, Cecil and Judith Bailey Jackson, Michael Tyacke, and the State of Idaho, and recorded in the Lemhi County Recorder's Office as Instrument No. _____.

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 - Beneficial Use

Use of this right is combined with water from Pope Ditch Co.

This right is a split from former right 75-4393.

08/01/2011

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 75-14609

NAME AND ADDRESS: MICHAEL JOSEPH TYACKE
PO BOX 2156
IDAHO FALLS ID 83403

STATE OF IDAHO
DEPARTMENT OF LANDS
300 N 6TH ST, STE 103
PO BOX 83720
BOISE ID 83720-0050

SOURCE: HYDE CREEK

TRIBUTARY: SALMON RIVER

QUANTITY: 0.090 CFS
0.08 AFY

The rights listed below are limited to a total combined diversion rate of 2.0 cfs. Combined Right Nos.: 75-14608 and 75-14609.

Right Nos. 75-14608 and 75-14609 are limited to a total combined annual volume of 3.0 AF for irrigation storage.

PRIORITY DATE: 04/01/1878

POINT OF
DIVERSION:

T20N R22E S5 SWNE Within LEMHI County
T21N R22E S32 SESW Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	04/01 10/31	0.08 AFY
IRRIGATION	04/01 10/31	0.090 CFS
IRRIGATION STORAGE	01/01 12/31	0.08 AFY

PLACE OF USE: IRRIGATION in LEMHI County

T21N R22E S32 NWSE 4.40

IRRIGATION FROM STORAGE same as IRRIGATION

4.4 ACRES TOTAL

Right Nos. 75-14608 and 75-14609 are limited to the irrigation of a combined total of 145 acres in a single irrigation season.

The rights listed below are limited to the irrigation of a combined total of 159.2 acres in a single irrigation season. Combined Right Nos.: 75-14608, 75-14609, 75-14610 and 75-14611.

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.

The operation, use and administration of this water right is subject to a private water right agreement effective _____, 2011, between Sunset Heights Water District, Cecil and Judith Bailey Jackson, Michael Tyacke, and the State of Idaho, and recorded in the Lemhi County Recorder's Office as Instrument No. _____.

08/01/2011

The ownership of water right no. 75-14609 is governed by a private agreement executed by the Idaho Department of Lands and Michael Joseph Tyacke dated July 15, 2010.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Use of this right is combined with water from Pope Ditch Co.

Access to the place of use of water right no. 75-14609 is governed by a private agreement executed by the Idaho Department of Lands and Michael Joseph Tyacke dated July 15, 2010.

This right is a split from former right 75-4393.

08/01/2011

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 75-14180

NAME AND ADDRESS: SUNSET HEIGHTS WATER DIST
PO BOX 4
SALMON ID 83467

SOURCE: SOUTH FORK SEVENMILE CREEK

TRIBUTARY: SALMON RIVER

QUANTITY: 0.400 CFS

PRIORITY DATE: 06/06/1895

POINT OF
DIVERSION:

T20N R22E S20 NENW Within LEMHI County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	04/01 10/31	0.400 CFS
PLACE OF USE:	<u>IRRIGATION in LEMHI County</u>		
	T21N R22E S32 NWNE	18.00 33.00	T21N R22E S32 SWNE 22.00
	T21N R22E S32 NENW	25.00	T21N R22E S32 SENW 41.00
	T21N R22E S32 NESW	30.00	T21N R22E S32 SESW 4.00 3.80
	145 154.8 ACRES TOTAL		

Right Nos. 75-14608, 75-14609 and 75-14180 are limited to the irrigation of a combined total of 145 acres in a single irrigation season.

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.

The operation, use and administration of this water right is subject to a private water right agreement effective , 2011, between Sunset Heights Water District, Cecil and Judith Bailey Jackson, Michael Tyacke, and the State of Idaho, and recorded in the Lemhi County Recorder's Office as Instrument No. .

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

08/3/2011

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
75-14448	SUNSET HEIGHTS RECREATION ASSN PO BOX 4 SALMON ID 83467	Disallowed	Recommended as Right No. 75-14180.

EXHIBIT C
BLM Easement Held by Jackson (IDI-20967)



United States
Department of
Agriculture

Forest
Service

Salmon-Challis
National Forest
Salmon/Cobalt Ranger District

311 McPherson St.
Salmon, ID 83467
208 756-5200

File Code: 2720

Date: August 1, 2005

Cecil Jackson and Judith Bailey-Jackson
42 Wild Rose Road
Salmon, ID 83467

Dear Mr. and Mrs. Jackson:

We received all the necessary documentation, including the Warranty Deed, to transfer the Agriculture Irrigation and Livestock Water System Easement on Sevenmile Creek currently issued to William and Gloria Stigall to you. A new easement will not be issued. This letter serves as official notification that the easement has been transferred to you.

Enclosed is a copy of the original easement and operating plan. We recommend that you have the easement recorded with the Lemhi County Recorder.

If you have any questions concerning the easement or operating plan, please contact Norma Staaf, Special Use Administrator, at 208-756-5232.

Sincerely,

TERRY HERSHEY
District Ranger

Enclosure

cc:

Jordan P. Smith, Attorney
Bob Klarich, RO



FS-2700-9a (9/95)
OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE Forest Service AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT Act of October 21, 1976, Act of October 27, 1986 (Pub. L. 99-545), 36 CFR 251, Subpart B	Holder No. <u>5506-01</u>	Issue Date <u>5/26/99</u>	Expir. Date <u>0X</u>
	Use Code <u>911</u>	Authority <u>676</u>	Auth. Type <u>10</u>
	Region/Forest/District <u>04/13/05</u>		State/County <u>16/059</u>
	Cong. Dist.	Latitude	Longitude

THIS EASEMENT issued this 26th day of May, 1999, by the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to The Estate of Ralston Adams, hereinafter called the Holder.

WHEREAS, the Holder has applied for an easement under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by P. L. 99-545 (90 Stat. 2743; 43 U.S.C. 1761), for agricultural irrigation or livestock watering system facilities located on lands owned by the United States on the Salmon National Forest, in the County of Lemhi, State of Idaho.

WITNESSETH

WHEREAS, upon acceptance of this easement the Holder relinquishes all right, title, and interest in and to any easement issued for the same lands by the United States by any previous grant or permit.

NOW THEREFORE, the United States does hereby grant, subject to valid existing rights, an easement for occupancy with water conveyance system facilities of lands shown on the map and specifically described by a centerline description contained in Exhibit A, attached hereto and incorporated herein, as provided by the Holder and hereby accepted by the Authorized Officer. The width of the easement is ten feet, five feet on either side of the centerline as described.

This easement is issued subject to the following terms, provisions, and conditions applicable to the Holder, its permittees, contractors, assignees, and successors in interest.

1. AUTHORIZED USE. This easement authorizes only the right-of-way and water conveyance system facilities as constructed and operated on October 21, 1976, as specified herein.
2. EXTENSIONS or ENLARGEMENTS. This easement does not authorize extensions or enlargements of the water conveyance system.
3. FEES. This easement is issued free of charge.
4. TRANSFERABILITY. This easement is fully transferable provided the water conveyance system facilities are used for agricultural irrigation or livestock watering. Holder shall notify Grantor within sixty (60) days of any address change or change in ownership.
5. TENURE. This easement shall continue for as long as the above described lands and water conveyance system facilities are used, operated, and maintained in accordance with the terms and conditions herein described.

6. OPERATION and MAINTENANCE.

- a. Holder agrees to operate and maintain the facilities and use the authorized easement in accordance with applicable Federal, State, and local laws, regulations, and standards.
- b. Holder shall notify, consult with, and obtain concurrence of the Grantor for operation and maintenance of the authorized facilities.
- c. Holder agrees to install and maintain an operable headgate at each diversion structure. Such headgate shall be capable of controlling the amount of water entering the system.
- d. Holder will not use fire or herbicides on the authorized right-of-way except as permitted in writing by the Grantor.
- e. Holder agrees to operate and maintain the facilities and use the authorized easements in accordance with the operation and maintenance plan contained in Exhibit B, attached hereto and incorporated herein.

7. EMERGENCY REPAIRS.

- a. Except for emergency repairs required to protect the environment, property of the United States, or public health and safety, the Holder may not use materials on National Forest System lands outside the easement prior to obtaining written authorization and paying for the materials to be used. Holder's use of material within the easement is limited to maintenance of the water conveyance system facility.
- b. If the water conveyance system facilities authorized by this Easement are allowed to deteriorate to the point of threatening persons or property, and the Holder, after notification by the Grantor, refuses to perform the repairs and maintenance required to remove the threat to persons or property, Grantor shall have the right to undertake such repair and maintenance and to assess the Holder for the costs of such repair and maintenance, regardless of whether Grantor had required the Holder to furnish a bond or other security.

8. INDEMNIFICATION. Holder shall indemnify the United States against liability for any and all injury, loss, or damage, including fire suppression costs, that the United States may suffer as a result of claims, demands, losses, or judgements caused by the Holder's use or occupancy under this easement.

9. LIABILITY. Holder is liable for and agrees to repair damage to National Forest System lands caused by Holder's negligence, intentional acts, or of failure to comply with the terms and conditions of this easement or of any law or regulation applicable to the National Forests.

10. SITE RESTORATION. Holder shall, upon termination of this easement, stabilize the site as required by the Grantor. If Holder does not stabilize the site, the Holder agrees to pay the costs of such stabilization if undertaken by the Grantor.

11. SPECIAL PROVISIONS.

The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, and assigns.

A. NONEXCLUSIVE USE. The Grantor reserves the right to use or permit others to use the easement area, provided such use does not unreasonably interfere with the rights and privileges hereby authorized.

B. TERMINATION. This easement may be terminated with consent of Holder, or if Holder fails to exercise the rights and privileges authorized for any continuous period of five (5) years or more. This easement expires according to its terms if Holder uses the water conveyance system for any purpose other than agricultural.

irrigation or livestock watering. Grantor may take action to terminate this easement under 7 CFR 1.130 - 1.151, for noncompliance with applicable statutes and regulations, or the terms and conditions of this easement.

C. FOREST SERVICE REPRESENTATIVE. The District Ranger, Salmon Ranger District, is responsible for administering this easement. The Holder should contact the District Ranger regarding any questions concerning the occupancy and use authorized and the provisions of this authorization.

D. WATER RIGHTS/ADJUDICATION. Should, subsequent to the issuance of this easement, an adjudication of the water right or water system authorized by this easement establish the fact that the Holder did not have a valid water right for the use of the water or a water system which meets the requirements of this act, then coincidental with the date of the decree, this easement shall expire on its own terms based upon the failure of the permit holder to meet the requirements of this Act. Upon expiration, all right, title, and interest in and to the subject area shall revert to the United States, or its successors or assigns.

ACCEPTANCE On this 18th day of May, 1999, I, the undersigned General Personal Representative of the Holder have read, understand, and accept the terms and conditions of this easement.

Rachael Adams
RACHAEL ADAMS, General Personal Representative of the Holder

ACKNOWLEDGMENT

STATE OF Idaho)
COUNTY OF Lander) ss.

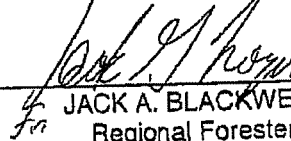
The foregoing instrument was acknowledged before me this 18th day of May, 1999
by Erin G. Robie

[Signature]
Notary Public

My commission expires: 4/10/2004

I WITNESS WHEREOF, the Secretary of Agriculture by the Regional Forester, Forest Service, has executed this Easement pursuant to delegations of authority specified in 7 CFR 2.60 and 36 CFR 251.52 on the day and date written above.

UNITED STATES OF AMERICA


 JACK A. BLACKWELL
 Regional Forester
 Intermountain Region

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These rules, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

The reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or operate operation and/or maintenance plan; average 1 hour per response for inspection reports; logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

Mar 03 11 09:53a

P.3

RALSTON.W. ADAMS Ditch Easement

EXHIBIT A

COUCH SURVEYING • MAPPING

J. COUCH
PROFESSIONAL LAND SURVEYOR
ID • MONTANA
MINERAL SURVEYOR

1021 MAIN STREET
SALMON, IDAHO 83467
(208) 756-3019

PROPERTY DESCRIPTION FOR PIPELINE RIGHT OF WAY

A parcel of land located in the NE4NW4, Section 20, T. 20 N.
R. 22 E., B.M., Lemhi County, Idaho more particularly described
as follows:

Commencing at the North Quarter Corner of said Section 20, a
distance of 244.40 feet on a bearing of S. 89° 48' 00" W. along the
north boundary of said Section 20 to a point in the center of an
existing pipeline and being the REAL POINT OF BEGINNING.

Thence the following courses and distances along the cen-
ter of an existing pipeline:

Thence S. 3° 49' 43" E. 91.55 feet;

Thence S. 29° 07' 28" W. 136.12 feet;

Thence S. 2° 22' 47" W. 131.93 feet;

Thence S. 5° 26' 11" E. 129.65 feet;

Thence S. 12° 28' 15" E. 74.52 feet to the inlet and
REAL POINT OF ENDING, said point bears S. 27° 20' 22" W. 613.24
feet from the North Quarter Corner of Section 20.

COUNTY RECORDER CERTIFICATION

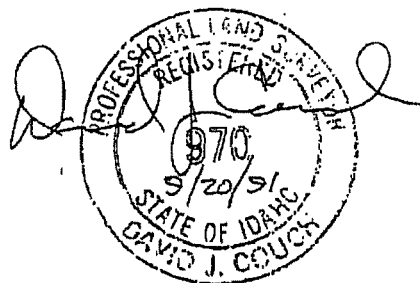
INSTRUMENT NUMBER _____

TIME _____ DATE _____

BOOK _____ PAGE _____

RECORDS OF LEMHI COUNTY, STATE OF IDAHO

RECORDER



U.S. FOREST SERVICE APPROVAL

James W. Boyer 5-7-92
FOREST ENGINEER DATE

Charles J. Hoffman 5/6/92
FOREST LAND SURVEYOR DATE

SURVEYING IN THE SALMON & CHALLIS AREA SINCE 1970

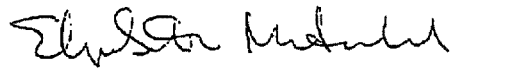
EXHIBIT B
OPERATION AND MAINTENANCE PLAN
FOR
Sevenmile Irrigation Pipeline System
Easement Holder: Ralston Adams

The easement incorporates this Operation and Maintenance Plan (O & M Plan) and any attachments thereto; and the Holder agrees to operate and maintain the facilities and use the granted land in accordance with the following stipulations:

1. Use only maintenance routes agreed to and to repair all damage resulting from said use.
2. The Holder shall inspect the facility prior to use each year and make necessary repairs. Work that is considered other than routine maintenance and/or minor repairs shall be discussed in advance with the Forest officer. All repairs shall be acceptable to and completed by the date agreed to by the Holder and the Forest officer.
3. The Holder will contact the Forest officer for approval before proceeding with work that is other than routine operations. Some of these situations are:
 - a. Bringing in and using heavy equipment.
 - b. Using other than approved maintenance routes for access.
 - c. Motorized use in a closed area in an emergency situation.
 - d. Using herbicides for control of noxious weeds along the right of way and around the intake structure.
 - e. Reconstruction or re-routing of the pipeline (the latter would also entail a new easement).
4. This O & M Plan will be reviewed annually by the Holder and may be amended by mutual agreement when signed and dated by the Holder and the appropriate line officer.


Holder's Signature

10/23/98
Date


District Ranger's Signature

October 30/99
Date



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Salmon Field Office

50 Highway 93 South

Salmon, Idaho 83467

<http://www.id.blm.gov/offices/salmon>



In Reply Refer To:
2800 (340)
IDI-20967

APR 19 2005

DECISION

Cecil T. Jackson
42 Wild Rose Road
Salmon, ID 83467

Right-of-Way IDI-20967

Successor in Interest Recognized

Right-of-Way IDI-20967 was recognized on July 17, 1984 to Ralston W. Adams for two irrigation ditches located in T. 20 N., R. 22 E., section 17, SWNE, W2SE and lot 2 under the Act of July 26, 1866. On January 12, 2001, Ron and Gloria Stigall applied for and were recognized as successors in interest for the right-of-way.

On March 25, 2005, you submitted evidence showing that you are now the holder of the right-of-way.

Therefore, Cecil T. Jackson is hereby recognized as the successor in interest to right-of-way IDI-20967.


for David E. Krosting
Field Manager

Van Bussum, Monica

From: Rob Harris [rharris@holdenlegal.com]
Sent: Tuesday, August 02, 2011 11:50 PM
To: mrmjt@aol.com; tyson.nelson@ag.idaho.gov; Courtney, Andrea; jrigby@rex-law.com; RBrown@spfwater.com; rwood@rex-law.com
Cc: Cooley-Denney, Suzy; Baxter, Garrick; Van Bussum, Monica; Cecil Jackson
Subject: FINAL Sunset/Jackson/Tyacke/State Agreement with Attachments
Attachments: Agreement.ExhibitA.1972Agreement.pdf; Agreement.Exhibit B.FINAL.pdf; Agreement.Exhibit C.pdf; Compare.7.25.2011 with 8.2.2011.docx; SunsetAgreement 8 2 2011.doc

All:

Attached is a final version of the agreement and all of the attachments referenced in the Agreement. This should be the final version.

I have incorporated all of Mr. Tyacke's suggestions, and made a few additional non-substantive "clean-up" changes that are explained below. I have also attached a compare document to show the changes between Mr. Tyacke's suggestions and my changes.

First, I appreciate IDWR providing the SF5 descriptions, and I think they are most helpful. Paragraph 1 has been amended to remove the actual instrument reference condition from this paragraph because with the Exhibit B documents (the water right reports emailed earlier by IDWR's attorney, Andrea Courtney) are much better to use than my previous Exhibit B spreadsheet. Scanned versions of these documents are attached as the Exhibit B documents. Please note that there was not an SF5 for Water Right No. 75-14448 to be disallowed, so I prepared it, and it is included in the Exhibit B documents. Because these Exhibit B documents contain the condition referring to this Agreement (which will be recorded), I amended Paragraph 1 and deleted the condition that was there before (again, because it is already included in the Exhibit B documents). Keeping it in the paragraph would be redundant.

The remaining changes consist of changing the month references to August, as well as a few grammatical changes.

The only potentially substantive change is an addition to Paragraph 5.d., where there is reference to where the watermaster is supposed to measure and monitor. There appears to have been an oversight to not include the South Fork of Sevenmile diversion where the exchange water (as well as Jacksons' irrigation right) is diverted. This is obviously an important measurement site. The South Fork of Sevenmile diversion point has been added, and I rearranged the order of the other identified locations to group the South Fork of Sevenmile sites (the point of diversion and the Jackson splitter) and then the Sunset diversion structures (measurements from the spring and reservoir). I also added a catch-all to included other locations agreed to by the parties, simply because the parties may agree in the future to additional locations for measurement.

Lastly, David Stanish previously wanted me to be consistent with reference to "the owner(s) of Water Right Nos. 75-14608 and 75-14609," and I made this change to the emergency section of the Agreement.

I do not anticipate any additional changes that need to be made. However, if anyone sees any other changes that must be made, let me know on Wednesday, so any final changes can be made before the pre-trial conference on Thursday. We want to report that we have a final agreement to Special Master Dolan. I had hoped to have this emailed earlier today, but did not get it finalized as I'd hoped. I apologize for the delay, but again, think this version is final.

Thanks,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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From: mrmjt@aol.com [mailto:mrmjt@aol.com]
Sent: Tuesday, August 02, 2011 8:02 PM
To: tyson.nelson@ag.idaho.gov; andrea.courtney@idwr.idaho.gov; Rob Harris; jrigby@rex-law.com; RBrown@spfwater.com
Cc: suzy.cooley-denney@idwr.idaho.gov; garrick.baxter@idwr.idaho.gov; Monica.VanBussum@idwr.idaho.gov
Subject: Re: revised SF5s 75-14608, -14609 & -14180

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All:

Can anyone provide me with the most recent version of the Settlement Agreement?

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Andrea L. Courtney

Deputy Attorney General

Idaho Department of Water Resources

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Boise, Idaho 83720-0098

Phone: (208) 287-4810

Fax: (208) 287-6700

EXHIBIT D

Quitclaim Deed for ½ Undivided Interest in BLM Easement Held by Jackson (IDI-20967) and
USFS Easement Held by Jackson (5506-01)

*RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:*

Robert L. Harris, Esq.
Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130
Idaho Falls, ID 83405-0130

(Space Above For Recorder's Use)

QUITCLAIM DEED

THIS INDENTURE is made this ____ day of August, 2011, between CECIL JACKSON and JUDITH BAILEY JACKSON, of 42 Wild Rose Rd., Salmon, Idaho 83467 (hereinafter referred to as the "GRANTOR"), and SUNSET HEIGHTS WATER DISTRICT, of PO Box 4, Salmon, Idaho 83467 (hereinafter referred to as "GRANTEE").

WITNESSETH, that the GRANTOR, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) lawful money of the United States of America and other good and valuable consideration to GRANTOR, in hand paid by the GRANTEE, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever QUITCLAIM unto the GRANTEE, and to GRANTEE's successors and assigns forever, (1) a ½ undivided interest in a United States Bureau of Land Management ("BLM") right-of-way identified as IDI-20967, and (2) an ½ undivided interest in a United States Forest Service right-of-way identified as 5506-01, both of which are located in the County of Lemhi, State of Idaho.

TOGETHER, with the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and any reversions, remainders, or rents, issues and profits therefrom.

TO HAVE AND TO HOLD the said easements unto the GRANTEE, and to GRANTEE's successors and assigns forever.

In construing this Quitclaim Deed and where the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, the GRANTOR has executed the within instrument the day and year first above written.

GRANTOR

Cecil Jackson

Judith Bailey Jackson

STATE OF IDAHO)
)ss.
County of Lemhi)

On the _____ day of August, 2011, before me, the undersigned, a notary public in and for said State, personally appeared Cecil Jackson and Judith Bailey Jackson, husband and wife, known or identified to me to be the persons who executed the instrument, and acknowledged to me that they executed the same.

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

(seal)

Notary Public for Idaho
Residing at _____, Idaho
My Commission Expires:

Van Bussum, Monica

From: Rob Harris [rharris@holdenlegal.com]
Sent: Wednesday, August 03, 2011 10:26 AM
To: mrmjt@aol.com; tyson.nelson@ag.idaho.gov; Courtney, Andrea; jrigby@rex-law.com; RBrown@spfwater.com; rwood@rex-law.com
Cc: Cooley-Denney, Suzy; Baxter, Garrick; Van Bussum, Monica; Cecil Jackson
Subject: A few more changes
Attachments: SunsetAgreement 8 3 2011.doc

All:

Roxanne Brown made a good point on Paragraph 7(c), which talks about when Sunset is supposed to report information, and there was an inconsistency with that paragraph and paragraph 13. We have changed paragraph 7 c) to require reporting on the 1st and 15th of each month instead of the 15th and 30th, in order to be consistent with paragraph 13.

Roxanne also caught some typos in the quitclaim deed (Exhibit D), which have been corrected.

If you haven't yet begun to review the agreement, start with the attached version, which incorporates Roxanne's changes.

Thanks,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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Cc: 'suzy.cooley-denney@idwr.idaho.gov'; 'garrick.baxter@idwr.idaho.gov'; 'Monica.VanBussum@idwr.idaho.gov'; 'Cecil Jackson'
Subject: Amended Exhibit B

All:

Monica emailed me an official disallowed SF5 for Water Right No. 75-14448, and I have re-scanned Exhibit B. Please substitute this document for the one I emailed last night. The only change is the last page.

Let me know if you have any questions.

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Attached is a final version of the agreement and all of the attachments referenced in the Agreement. This should be the final version.

I have incorporated all of Mr. Tyacke's suggestions, and made a few additional non-substantive "clean-up" changes that are explained below. I have also attached a compare document to show the changes between Mr. Tyacke's suggestions and my changes.

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