

RECEIVED
OCT 03 2011
DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone (208) 424-7800
Facsimile: (208) 424-8774
Email: Dana@IdahoWaterLaw.com

Attorney for Greg and Ann Obendorf,
The Tina Iest Family L.L.L.P., and
THEDRAKE LLC

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

In Re SRBA	)	
	)	Subcase Nos. 63-33570 and 63-33571
	)	
Case 39576	)	AFFIDAVIT OF DANA L. HOFSTETTER
	)	
	)	
_____	)	

STATE OF IDAHO	)
	) ss.
COUNTY OF ADA	)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

(1) I am Dana L. Hofstetter, counsel of record in this matter for Greg and Ann
Obendorf.

(2) During recent settlement negotiations concerning other SRBA Subcases, it became apparent that certain historic water uses on Greg and Ann Obendorf's property had not been claimed in the SRBA. A true and correct copy of the legal description for Greg and Ann Obendorf's subject property is attached hereto as Exhibit A.

(3) Those historic water uses are described in SRBA Claim Nos. 63-33570 and 63-33571, submitted in connection with respective Motions to File Late Notice of Claim filed contemporaneously with this Affidavit.

(4) Attached hereto as Exhibit B is a true and correct copy of an aerial photograph of portions of Sections 23 and 24 of Township 5 North, Range 5 West, Boise Meridian, from the year 1939 that I obtained from Mike Ciscell of the Idaho Department of Water Resources ("IDWR"). That aerial photograph evidences irrigation on Greg and Ann Obendorf's property dating back to at least 1939.

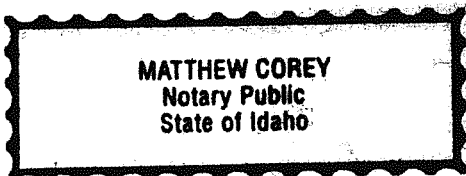
(5) Attached hereto as Exhibit C is a true and correct copy of excerpts of the IDWR License file for Water Right No. 63-3201. These excerpts establish that the 167 acres in SRBA Late Claim No. 63-33571 were being irrigated by 1960 and that the diversion works had a capacity of over 6 cubic feet per second ("cfs").

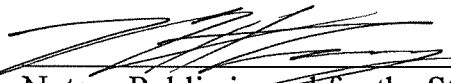
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 29th day of September, 2011.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 29th day of September, 2011.




Notary Public in and for the State of Idaho
Residing at: Boise
My Commission Expires: 9/9/2016

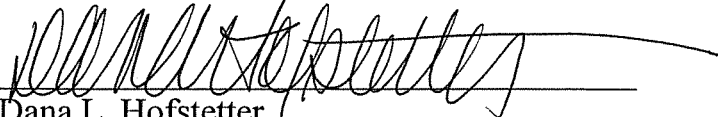
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 30th day of September, 2011, by U.S. Mail postage pre-paid to:

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

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

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


Dana L. Hofstetter

8704797

WARRANTY DEED

FOR VALUE RECEIVED, DENNIS O. HEITMAN and JERE HEITMAN, husband and wife, the Grantors, do hereby grant, bargain, sell and convey unto GREGORY R. OBENDORF and ANN M. OBENDORF, husband and wife, the Grantees, whose current address is 2106 Almaden Drive, Meridian, Idaho 83642, their interest in and to the real property located in Canyon County, Idaho, more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all and singular the tenements, heritaments and appurtenances thereto belonging or in anywise appertaining, hereinafter referred to as the "Premises."

SUBJECT TO:

1. That certain Mortgage in favor of First Interstate Bank of Idaho, n.a., as Beneficiary, recorded March 13, 1975, as Instrument No. 746615, and re-recorded March 14, 1975, as Instrument No. 746701, records of Canyon County, Idaho; and

2. That certain contract between Oregon Short Line Railroad Company and Union Pacific Railroad Company and Double "D" Land, Inc., dated January 1, 1968, relating to a drain ditch encroachment and the amendment thereto dated August 22, 1980.

TO HAVE AND TO HOLD the said Premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. The said Grantors do hereby covenant to and with the said Grantees that they are the owners in fee simple of said Premises; that they are free from all encumbrances, except those listed herein and liens and easements of record or in use, and that they will warrant and defend the same from all lawful claims whatsoever.

DATED this 4th day of March, 1987.

Dennis O. Heitman
DENNIS O. HEITMAN

Jere Heitman
JERE HEITMAN

WARRANTY DEED - 1

EXHIBIT

A

Recording No. 208

EXHIBIT "A"

REAL PROPERTY DESCRIPTION

A portion of Section 23 and the South 1/2 of Section 24 in Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at the Northwest corner of the Northeast 1/4, Northwest 1/4 of said Section 23 said point being the TRUE POINT OF BEGINNING:

thence Southerly 2640 feet more or less along the Westerly Boundary of the East 1/2 of the Northwest 1/4 of said Section 23 to the Point of Intersection with East West mid-section line of said Section 23;

thence Easterly 2640 feet more or less along the East West mid-section line of said Section 23 to a Point of Intersection with the Westerly Boundary of the East 1/2 of the Southeast 1/4 of said Section 23;

thence Southerly 2640 feet more or less along said Westerly Boundary of the East 1/2 of Southeast 1/4 to the Point of Intersection with the Southerly Boundary Line of said Section 23;

thence Easterly 5140 feet more or less along the Southerly Boundary of Sections 23 and 24 to Point of Intersection with the Southwesterly Boundary of the Oregon Short Line Railroad Right-of-Way;

thence Northwesterly 9050 feet more or less along said Southwesterly Boundary of the Oregon Short Line Railroad Right-of-Way to the Point of Intersection with the Northerly Boundary of Section 23;

thence South 89° 49' West, 255 feet along said Northerly Boundary of Section 23 to the TRUE POINT OF BEGINNING.

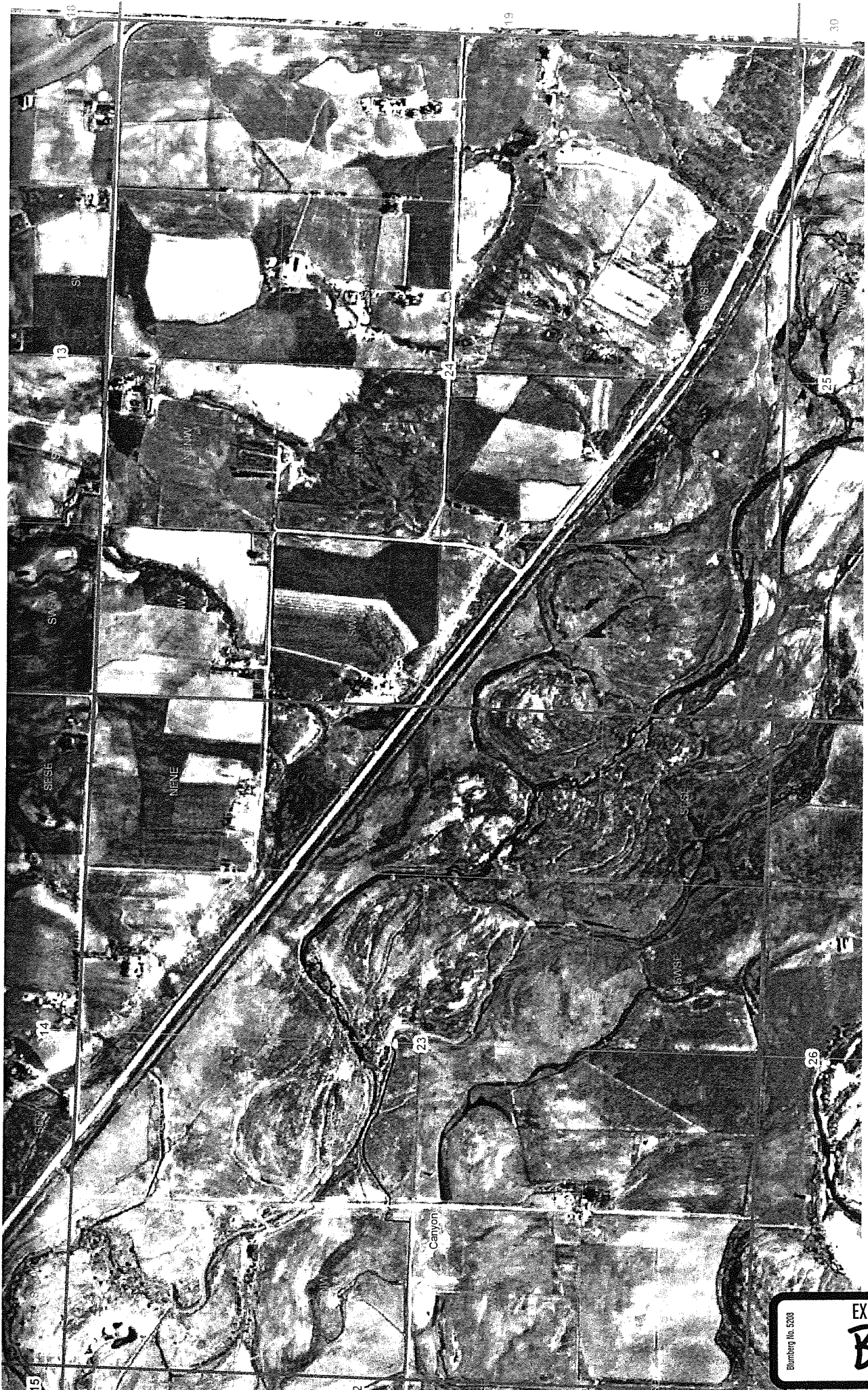
Above described area consists of approximately 312 acres.

87 MAR 4 PM 3 40
RECORDED
CANYON COUNTY RECORDER
BY *[Signature]*
REQUEST PIONEER TITLE CO
BY *[Signature]*

15000000

8704797

EXHIBIT "A"



Bloomberg No. 5203

EXHIBIT

B

MEMO

To: Appropriations Section
From: James Booker
Re: Permit No. 63-3201
Date: August 30, 1971

A headgate has been installed with a diversion dam so as to allow as much as 6.0 to 7.0 c.f.s. to flow, depending on the gate opening. At the time of the examination, no water was flowing (headgate closed). I think we can license this permit for .02 c.f.s./ac. as the diversion works can transfer more than enough water.

*Holder has used 3.34 cfs on 167
acres Recommended license for this
amount*

63 2291

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Boise, Idaho

*Affidavit of Publication
will be sent over today.*

Permit No. _____

RECEIVED
MAY 17 1967

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

Department of Reclamation

~~and Commission~~

DEPOSITION OF HOLDER

Ques. 1. State your name, residence occupation and postoffice address: Virgil G. Hinshaw

Land Development - 3317 Wagonwheel Road, Boise, Idaho

Ques. 2. If acting in behalf of corporation, state its name, principal place of business (if foreign corporation, give name of postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf:

Double 'D' Land, Inc., 419 First National Bank Bldg. Boise, Idaho, Vice President
authorized by President Harry M. Daum, Double 'D' Land, Inc., Boise, Idaho

Ques. 3. State number, approval date of permit, and date of priority: 28729

May 27, 1965, May 23, 1960

Ques. 4. State source of water supply: Cole Slough, Tributary of Boise River

Give location of point of diversion, showing subdivision, section, township and range

SW 1/4 SE 1/4, SE 1/4 SW 1/4, Sec 24 T. 5 N., R. 5 W., B.M., Canyon County

Ques. 5. Describe your works of diversion: Headgates, Ditches and 3 pipe flumes

_____ ; state amount of water they are capable of conveying from point of diversion to place of use: 5.1 sec. feet; Give name of canal or ditch

or other works by which water is conducted to such place of use: None

_____ ; if a well, state depth of well _____ ; depth and size of

casing _____ ; depth to water _____ ; if pump is used,

state discharge of pump: _____ ; tell how it was measured or determined _____

_____ ; if sprinkler irrigation, give number and size of nozzles and operating pressure: _____

Ques. 6. State for what purpose water is used: Irrigation

(If for irrigation, name each subdivision in which used and number of acres in each subdivision that have actually been irrigated with said water:

255 Acres - 20 Ac in SE 1/4 NE 1/4; 40 Ac in NE 1/4 SE 1/4; 40 Ac in SE 1/4 SE 1/4;

All in Sec. 23 and 2 Ac in SW 1/4 NW 1/4; 15 Ac NE 1/4 SW 1/4; 30 Ac NW 1/4 SW 1/4;

40 Ac in SW 1/4 SW 1/4; 40 Ac SE 1/4 SW 1/4; 25 Ac SW 1/4 SE 1/4; 3 Ac in SE 1/4

SE 1/4 All in Sec. 24. And all lands in T. 5 N., R. 5 W., B.M.

28729

State nature of all improvements which have been made as a direct result of said use:

Headgates, Ditches, and Flumes

Ques. 6-a: If this is a ground water permit, give name and address of person that drilled the well: _____

Ques. 7. If for other than irrigation purposes, show full legal description of place of use and state purpose for which water is used:

None

Ques. 8: If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder:

By purchase of land from & Assignment of permit by A. N. Lockyear & Verna Lockyear

Quest. 9: State when and in what amount the water diverted under above mentioned permit has been first used: May 23, 1960 5.1 sec. feet - Time used since first use:

Continuous yearly use

Ques. 10. Describe all other water rights appurtenant to same place of use: _____

Approximately 1 9nch to the acre on the SE 1/4 SE 1/4 Sec. 23 T. 5 N., R. 5 W.,

B.M. from the Boise River

(sign) *Firgibbush*

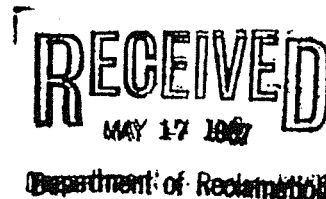
I hereby certify that the foregoing testimony was read to the above subscribed, before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in

Caldwell, Idaho, County of Canyon

State of Idaho, on this 15th day of May, A. D. 1967.

My commission expires: 9-1-68

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Boise, Idaho



Permit No. _____

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

~~and Completion of Works~~

DEPOSITION OF WITNESS

The deposition of two witnesses on this form, taken separately, required in each case.

Ques. 1 State your name, age, residence, occupation and postoffice address:

Jean Milar - 44 - 10120 Overland Road Boise, Idaho

Civil Engineer - 10120 Overland Road Boise, Idaho

Ques. 2 Are you acquainted with Harry M. Daum, the holder of
Permit No. 28729? How long have you known him and where does he reside?

Four years. Parma, Idaho

Ques. 3. Have you read or heard said Permit No. 28729 read, and are you familiar
with its provisions and conditions: Yes X No. _____

Ques. 4. State source of water supply: Cole Slough - a tributary of the Boise River

Give location of place of diversion, showing subdivision, section, township and range

SW 1/4 SE 1/4 & SE 1/4 SW 1/4 Section 24, T. 5 N., R. 5 W., B.M. Canyon County

Describe works for conveying water to place of use: Headgates, ditches and pipe flumes

Ques. 5. How many second feet of water do you estimate said works will safely conduct
to place of use: 5.1 second feet How much water have you seen being so
conveyed? 5.1 second feet

Ques. 6 If for irrigation, show number of acres irrigated in each subdivision, giving
full legal description:

255 Acres - 20 Ac in SE 1/4 NE 1/4; 40 Ac in NE 1/4 SE 1/4; 40 Ac in SE 1/4 SE 1/4;

All in Sec. 23 and 2 Ac in SW 1/4 NW 1/4; 15 Ac NE 1/4 SW 1/4; 30 Ac NW 1/4 SW 1/4;

40 Ac in SW 1/4 SW 1/4; 40 Ac SE 1/4 SW 1/4; 25 Ac SW 1/4 SE 1/4; 3 Ac in SE 1/4

SE 1/4 All in Sec. 24. And all lands in T. 5 N., R 5 W., B.M.

28729

Ques. 7. If for other than irrigation purposes, show full legal description of place of use, and state purpose for which water is used.

None

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Productive sandy loam soil requiring one miners inch per acre.

Ques. 9. Have you any ownership interest in the works, water or lands above mentioned?

If so, in what way and to what extent? No

Ques. 10. When did you first see this water used? Summer 1965

Other times you have seen such use: Several times during the 1966 irrigating season

(Signed):

Jean Malar

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Caldwell

 , County of Canyon, State of Idaho, on
this 15th day of May, A. D. 19 67

[Signature]

Notary Public for the State of Idaho

Residing Caldwell

My commission expires 9-4-68

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Boise, Idaho

RECEIVED
MAY 17 1967

Permit No. _____

Department of Reclamation

PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

~~and Completion of Works~~

DEPOSITION OF WITNESS

The deposition of two witnesses on this form, taken separately, required in each case.

Ques. 1 State your name, age, residence, occupation and postoffice address:

Harold T. Badley - 53 - Route 1 Parma, Idaho

Ranch Manager Route 1 Parma, Idaho

Ques. 2 Are you acquainted with Harry M. Daum, the holder of
Permit No. 28729? How long have you known him and where does he reside?

5 years - Route 1 - Parma, Idaho

Ques. 3. Have you read or heard said Permit No. 28729 read, and are you familiar
with its provisions and conditions: Yes X No. _____

Ques. 4. State source of water supply: Cole Slough - Tributary of Boise River

Give location of place of diversion, showing subdivision, section, township and range
SW 1/4 SE 1/4, SE 1/4 SW 1/4, Sec. 24, T. 5 N., R. 5 W., B.M. Canyon County

Describe works for conveying water to place of use: Headgates, Ditches

and 3 Pipe Flumes

Ques. 5. How many second feet of water do you estimate said works will safely conduct
to place of use: 5.1 second feet How much water have you seen being so
conveyed? 5.1 second feet

Ques. 6 If for irrigation, show number of acres irrigated in each subdivision, giving
full legal description:

255 Acres - 20 Ac in SE 1/4 NE 1/4; 40 Ac in NE 1/4 SE 1/4; 40 Ac in SE 1/4 SE 1/4;

All in Sec. 23 and 2 Ac in SW 1/4 NW 1/4; 15 Ac NE 1/4 SW 1/4 30 Ac NW 1/4 SW 1/4;

40 Ac in SW 1/4 SW 1/4; 40 Ac SE 1/4 SW 1/4; 25 Ac SW 1/4 SE 1/4; 3 Ac in SE 1/4

SE 1/4 All in Sec. 24. And all lands in T. 5 N., R. 5 W., B.M.

28729

Ques. 7. If for other than irrigation purposes, show full legal description of place of use, and state purpose for which water is used.

None

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Productive Sandy Loam requiring one miners inch per acre

Ques. 9. Have you any ownership interest in the works, water or lands above mentioned?

If so, in what way and to what extent? No

Ques. 10. When did you first see this water used? 1960

Other times you have seen such use: Continuously every irrigating season since

(Signed):

J. T. Badley

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Caldwell

 , County of Canyon, State of Idaho, on
this 15th day of May, A. D. 19 67

[Signature]

Notary Public for the State of Idaho

Residing Caldwell

My commission expires 9-1-68

63-3201

Application For Permit To Appropriate the Public Waters of the State of Idaho

APPLICATION NO. 36710
PERMIT NO. 28729
DISTRICT NO.

Double "D" Land
Assigned to Samuel Development Corp
#99224722
Bank Bldg.
Boise
Idaho

1. Name of Applicant: **A. N. Locklear**

Postoffice address: **Rt. #1, Parma**

County: **Canyon**

State: **Idaho**

I. If applicant is a corporation, give:

(a) Date and place of incorporation:

(b) Amount of capital stock:

(c) Amount paid in:

(d) Names and addresses of directors:

II. The financial resources of the applicant are:

(a) Cash on hand:

(b) Treasury stock:

(c) Bond to be issued:

(d) Other resources:

2. Quantity of water claimed: **5.1**

cubic feet per second.

3. Source of water supply:

Cole Slough

which is a tributary of **Boise River**

4. Location of point of diversion:

feet distant from the

corner of Section **24**, T. **5 N.**, R. **5 W.**, B.M., and **1/4** in the **SW 1/4 SE 1/4 & SE 1/4 SW 1/4**
of section **24**, T. **5 N.**, R. **5 W.**, B.M., County of **Canyon**

5. Water is to be used for **Irrigation and stock watering**

6. If for mining, milling, power or manufacturing purposes, give:

(a) Point of use of water:

feet distant from

corner of Section

T. **5 N.**, R. **5 W.**, B.M., in the

of Section of

T. **5 N.**, R. **5 W.**, B.M.

(b) Amount of power generated:

H.P., under

feet head.

(c) Water is to be returned to

at a point

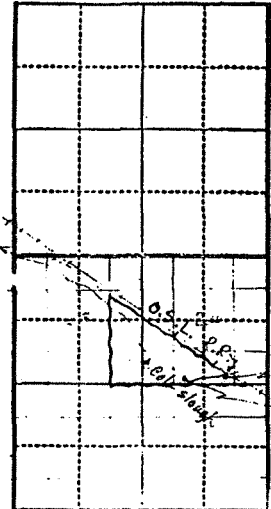
feet

distant from the corner of Section

T. **5 N.**, R. **5 W.**, B.M., in the

of Section

T. **5 N.**, R. **5 W.**, B.M.



7. Estimated cost of works: \$ **5000.00**

8. Kind of works: **Headgates, ditches and 3 flumes**

9. Height of dam

feet; length of dam at top

feet; length of dam at bottom

feet; material used in dam:

10. Size of headgate: Width **#1 2 ft.**
#2 4 ft.

feet; height

#1 - 2 1/2 ft.
#2 - 5 ft.

feet.

11. Ditch: Width at bottom

6

feet; width at water line

6

feet; depth of water

4

feet;

dimensions of flume:

Diameter of pipe **18 to 42**

inches; length of conduit

1.4

miles.

Average grade per mile **3%**

feet.

12. The time required for the completion of such work is

5

years.

13. The time required for the complete application of the water to the proposed use is

6

additional years.

14. The land to be irrigated is described in the following tabulation: See remarks.

15. Existing water rights and/or valid permits appurtenant to the lands to be irrigated are: **Approx. 1 inch to the acre on the SE 1/4 Sec. 23, out of the Boise River which has not been used.**

16. (a) Is reservoir to be used? **No** If so, fill in (b) and (c) below:
(b) Name of Reservoir and number of Storage Permit:
(c) Date of filing of Application for Storage Permit and Name of Applicant:

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

s/ **A. N. Locklear** Applicant.

By Agent.

Date of first receipt at Department of Reclamation: **11:30 A.M. May 23, 1960**

Returned to applicant for correction:

Corrected application received:

Approval of State Reclamation Engineer

The number of this permit is **28729**
Recorded in Book **101** Page **28729** Approved **May 27, 1960**

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho, and hereby approve the same, subject to the following limitations and conditions:

Bond in the sum of \$ to be filed on or before
Work to begin on or before **July 27, 1960** and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before **November 27, 1962**

The whole of said work to be completed on or before **May 27, 1965**

Beneficial use of water appropriated in accordance herewith, to be made on or before **May 27, 1971**

WITNESS My hand this **27th** day of **May, 1960**

s/ **GEO. N. CARTER**
State Reclamation Engineer.

IN TESTIMONY WHEREOF, WE, **W. E. DREWLOW, Acting**, Governor of the State of Idaho, and **ARNOLD WILLIAMS**, Secretary of State of the State of Idaho, have caused this instrument to be executed in the name of the State of Idaho, and caused the Great Seal of the State of Idaho to be hereunto affixed, this **27th** day of **May**, 19 **60**.

Countersigned: **STATE OF IDAHO**
(SEAL) By s/ **ARNOLD WILLIAMS** Secretary of State. By s/ **W. E. DREWLOW, Acting** Governor.

REMARKS: This Permit is being made to replace Permit No. 19985 which was cancelled in May, 1952. The works had been completed, however the notices of time for making the proofs were not received and the proofs were never made.

14.

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5 N	5 W	23 24	20				2				15	30	40	40	40		25	3	100 155
Total No. of acres to be irrigated																		255	
ASSIGNMENT ✓																			FI. LICENSE ISSUED FOR 3 YRS 16-45-80
For value received, I hereby assign all of my right, title and interest in and to Permit to appropriate the Public Waters of the State of Idaho, No. 28729 to Daum Development Corporation of 419 1st National Bank Bldg., Boise, Idaho.																			
/s/ A.N. Locklear, Permit Holder /s/ Verna Locklear, Wife of Permit Holder																			
STATE OF IDAHO) : ss County of Canyon)																			
On this 26th day of May, 1965, before me, a Notary Public for the State of Idaho, residing at Boise, Idaho personally appeared A.N. LOCKLEAR and VERNA LOCKLEAR known to me to be the persons whose names are subscribed to the within instrument and duly acknowledged to me that they executed the same.																			
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.																			
/s/ Virgil G. Hinshaw Notary Public Residing at Boise, Idaho																			
My commission expires: 12/2/68.																			
(SEAL)																			

FT.
LICENSE ISSUED FOR 3 YRS.
LICENSE PAG. NO.

Permit No. 29729 ✓
 CERTIFICATE OF COMPLETION OF WORKS

TO ALL WHOM IT MAY CONCERN:

This is to certify that A. N. LOCKLEAR - Assignee - DAUM DEVELOPMENT CORPORATION of Parma, County of Canyon, and State of Idaho, the holder of Permit No. 28729, issued upon Application No. 36710 bearing date of priority of May 23, 1960, authorizing the diversion of 5.1 second feet of waters of Cole Slough County of Canyon, State of Idaho, for irrigation and stock water purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 5.1 second feet of the waters of Cole Slough, tributary of Boise River; that the points of diversion of said waters ~~SW₁SE₁~~, ~~SE₁SW₁~~, Sec. 24, T. 5 N., R. 5 W., B.M. and that the lands proposed to be irrigated by the use or place of use of said water are described as follows, to-wit:

SE₁NE₁, E₁SE₁, Sec. 23; ~~SW₁NW₁~~, ~~SW₁~~, S₁SE₁, S. 24, T. 5 N., R. 5 W., B.M.

Witness my hand this 2nd day of June, A. D. 1965.

/s/ RALPH W. THOMAS
 Deputy State Reclamation Engineer

Proof of Completion of Works Made: May 27, 1965

SEE CERTIFICATE OF AMENDMENT OF
 ARTICLE OF INCORPORATION
 IN FILE . .

The certificate changes the name of Daum Development Corporation to Double 'D' Land, Inc.

Recorded: March 31, 1967.