

12-14
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DEC 14 2012

DEPARTMENT OF
WATER RESOURCES

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

In RE SRBA)
Case No. 39576)
)
)
) Subcase No. 73-12037
) (Sullivan)
)

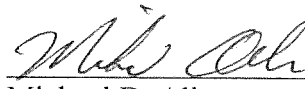
State of Idaho)
) ss.
County of Twin Falls)

I, MICHAEL D. ALLEN, being first duly sworn upon my oath, hereby depose and state:

1. I am a competent adult over the age of eighteen years, and the statements made herein are based on my own personal knowledge of the events described.
2. Attached to this Affidavit are true and correct copies of the following documents:
 - Exhibit 1 - Notice of Claim to a Water Right Acquired Under State Law
Water Right No. A73-10014 (Nov. 27, 1989);
 - Exhibit 2 - Notice of Claim to a Water Right Acquired Under State Law
Water Right No. 73-12037 (Nov. 27, 1989);
 - Exhibit 3 - Notice of Claim to a Water Right Acquired Under State Law –
Water Right No. 73-12038 (Nov. 27, 1989);
 - Exhibit 4 - IDWR's Preliminary Recommendation of Water Rights Acquired
Under State Law. Water Right No. 73-12037 (Aug. 31, 2006);
 - Exhibit 5 - IDWR's Correspondence dated Dec. 6, 2006 to Robert P. Sullivan
 - Exhibit 6 - Standard Form 1 - Objection to Water Right No. 73-12037
(Dec. 6, 2007);
 - Exhibit 7 - Standard Form 1 - Objection to Water Right No. 73-12038
(Dec. 19, 2007);

- Exhibit 8 - IDWR's – Standard Form 5 – Stipulated Elements of a Water Right – Water Right No. 73-12038 (March 2009);
- Exhibit 9 - 1. IDWR's Special Master Report filed June 25, 2009
2. Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 73-12038
3. Notice of Special Master's Recommendation Water Right(s): 73-12038
4. Certificate of Mailing
5. Order of Partial Decree (Decreeing 3.2 C.F.S. to Water Right No. 73-12038) (August 6, 2009);
- Exhibit 10- IDWR's Correspondence dated March 10, 2010 to Curt R. Thomsen;
- Exhibit 11- Order of Partial Decree – Subcase 73-12037 (June 30, 2010); and
- Exhibit 12- First Amended Complaint – *Robert P. Sullivan v. Robert P. Dreyer*, State of Idaho, Fifth Judicial District, Blaine County (Case No. CV-2010-889).

DATED this 12th day of December, 2012.


Michael D. Allen

NOTARIAL OFFICER

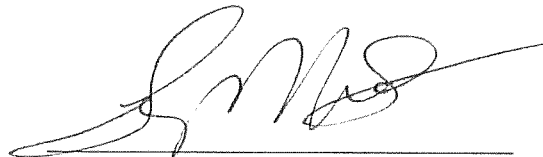
STATE OF WYOMING)
) ss.
COUNTY OF LINCOLN)

The foregoing was subscribed and sworn to before me on this 12th day of December 2012 by MICHAEL D. ALLEN

WITNESS my hand and official seal.



My Commissions Expires: 9-26-2013


Notarial Officer

CERTIFICATE OF SERVICE

I certify that on the 12th day of December, 2012, I mailed the original and copies of this form, including all attachments, to the following via US Mail -1st Class, postage prepaid and addressed as follows:

(Original)

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

(Copies)

Director of IDWR
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Curt M. Thomsen
Thomsen Stephens Law Offices
PO Box 600
Challis, ID 83404



Michael D. Allen

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 1

73-12038

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: A73-10014
Date Received: 11/27/1989
Receipt No: 14005256
Received By: AD

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: M. LINDEN WRING
Address: H.C. 62 BOX 1130
ELLIS, ID

208-876-4404

83235

2. Date of Priority: MAY 10, 1911

3. Source: BIG CREEK

Trib. to: PAHSIMEROI RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
13N	24E	21	SE	SE	NE		CUSTER

5. Description of diverting works:
CONCRETE HEADGATE TO EARTHEN CANAL (FIRST DIV. ON CREEK)

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	12/01	9.600		

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

8. Total consumptive use is 1200.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

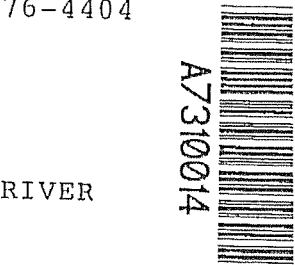
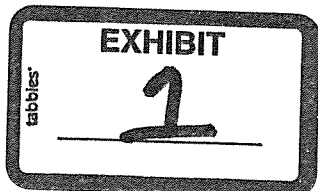
Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
13N	24E	19	SW	NE		IRR	40.0
			SE	NE		IRR	40.0
			NW	SE		IRR	40.0

Section Acres 120.0

A73-10014

Page 1

Date: 11/27/89



RECORDED
DEC 14 1989

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
13N	24E	20	NE		NE		IRR	40.0
			NW		NE		IRR	40.0
			SW		NE		IRR	40.0
			SE		NE		IRR	40.0
			NE		NW		IRR	40.0
			SW		NW		IRR	40.0
			SE		NW		IRR	40.0
							Section Acres	280.0
		21	NW		NW		IRR	40.0
			SW		NW		IRR	40.0
							Section Acres	80.0
							Total Acres	480.0

11. Place of use in counties: CUSTER, LEMHI

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

13. Other Water Rights Used:
NONE

14. Remarks:

THIS CLAIM IS BASED ON A COMBINATION OF DECREED RIGHTS AS LISTED BELOW:

73-00020 1.60 CFS
73-00021 4.60 CFS
73-00024 3.40 CFS

TOTAL 9.60 CFS

THE WATERS HAVE HISTORICALLY BEEN DIVERTED AND USED BEYOND THE SUGGESTED IRRIG. SEASON OF 4/1 TO 11/1.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

Decree Plaintiff

vs

Decree Defendant

A73-10014

Page

2

Date: 11/27/89

MICROFILMED
DEC 14 1989

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: 1 Map

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): M. Linjen Waring Date: 11/27/89
_____ Date: _____

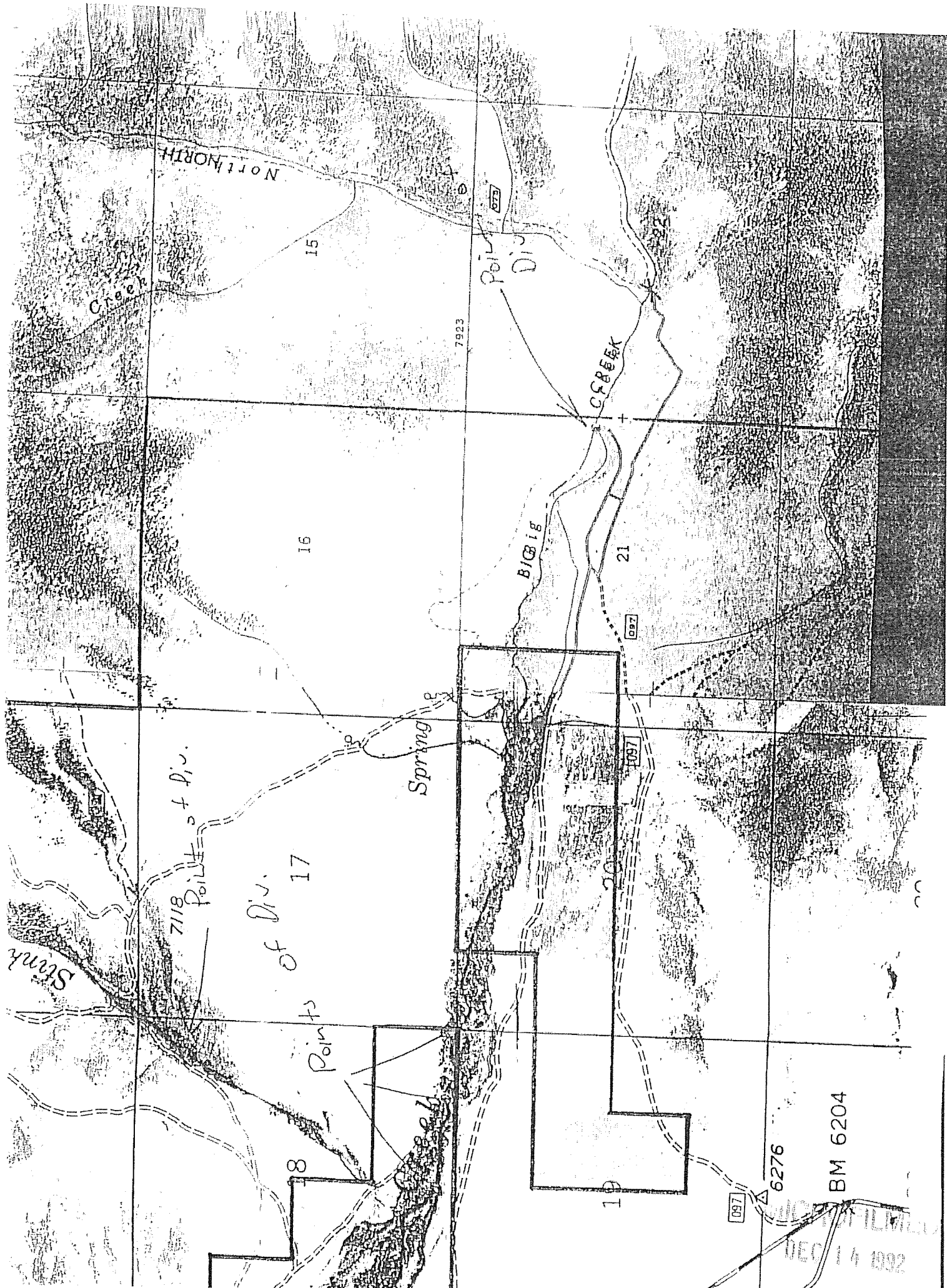
State of Idaho)
County of Custer) SS.

Subscribed and sworn (or affirmed) before me this 27th day
of Nov. 19 89

[Signature]
Notary Public

Seal

Residing at Kimberly, Id.
My Commission Expires 6/30/94



In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 2

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 73-12037
Date Received: 11/27/1989
Receipt No: M005256
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

DAWN M SULLIVAN Phone: (209) 931-2305
ROBERT P SULLIVAN
5537 E MORADA LN
STOCKTON CA USA 95212

GARNEY B HALL Phone: (805) 489-6983
VICTORIA F HALL
1955 OAK WY
ARROYO GRANDE CA USA 93420

2. Date of Priority: 05/10/1911

3. Source: BIG CREEK Trib. to: PAHSIMEROI RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13N	24E	21	SE SE NE	CUSTER	

5. Description of diverting works:

CONCRETE HEADGATE TO EARTHEN CANAL (FIRST DIV. ON CREEK)

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	12/01	6.4	

7. Total Quantity Appropriated is:
6.4 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:



10. Place of use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
13N	24E	19	SW	NE		IRRIGATION	40
			SE	NE		IRRIGATION	40
			NW	SE		IRRIGATION	40
						Section Acres	120
13N	24E	20	NW	NE		IRRIGATION	40
			SW	NE		IRRIGATION	40
			NE	NW		IRRIGATION	40
			SW	NW		IRRIGATION	40
			SE	NW		IRRIGATION	40
						Section Acres	200
						Total Acres	320

11. Place of use in counties: CUSTER, LEMHI

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 3

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 73-12038
Date Received: 11/27/1989
Receipt No: M005256
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

BIG CREEK RANCH LLC Phone: (208)726-4276
PO BOX 3823
KETCHUM ID USA 83340

2. Date of Priority: 05/10/1911

3. Source: BIG CREEK Trib. to: PAHSIMEROI RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
13N	24E	21	SE SE NE	CUSTER	

5. Description of diverting works:

CONCRETE HEADGATE TO EARTHEN CANAL (FIRST DIV. ON CREEK)

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	12/01	3.2	

7. Total Quantity Appropriated is:
3.2 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:



Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
13N	24E	20	NE	NE		IRRIGATION	40
			SE	NE		IRRIGATION	40
						Section Acres	80
13N	24E	21	NW	NW		IRRIGATION	40
			SW	NW		IRRIGATION	40
						Section Acres	80
						Total Acres	160

11. Place of use in counties: LEMHI, CUSTER

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 4

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

08/31/2006

RIGHT NUMBER: 73-12037
NAME AND ADDRESS: DAWN M SULLIVAN
5537 E MORADA LN
STOCKTON CA 95212
ROBERT P SULLIVAN
5537 E MORADA LN
STOCKTON CA 95212
GARNEY B HALL
1955 OAK WY
ARROYO GRANDE CA 93420
VICTORIA F HALL
1955 OAK WY
ARROYO GRANDE CA 93420

COPY

SOURCE: BIG CREEK
QUANTITY: 4.600 CFS
PRIORITY DATE: 05/10/1911

TRIBUTARY: PAHSIMEROI RIVER

POINT OF DIVERSION: T13N R24E S21 SESENE Within CUSTER County

PURPOSE AND
PERIOD OF USE:

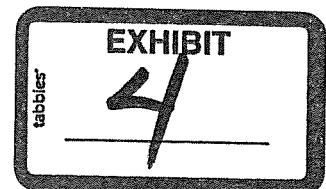
<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	4.600 CFS
PLACE OF USE: <u>IRRIGATION Within CUSTER County</u>		
T13N R24E S20 NWNE	1.40	T13N R24E S20 SWNE 38.00
T13N R24E S20 NENW	5.50	T13N R24E S20 SENW 40.00

84.9 ACRES TOTAL

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed



In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 5



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

December 6, 2006

ROBERT P SULLIVAN
5537 E MORADA LN
STOCKTON CA 95212

Re: Snake River Basin Adjudication (SRBA)
Preliminary Recommendation #73-12037

Dear Mr. Sullivan,

I appreciate the dilemma you face reconciling the deed you have for the property you acquired and the water rights recommended by IDWR for the property. Mr. Wring filed Claim 73-10014 in 1989 asserting the water right represented the combination of water rights described in a prior decree of Maelzer v. Smith adjudicated in 1921. I have enclosed a copy of Mr. Wring's claim and the pertinent page from the 1921 decree. As a further aid, I have enclosed a map showing the property described for each of the 1921 water rights of interest as well as the places of use of the recommended water rights for you and your neighbor.

You will see illustrated on the map former water rights 73-20 (1.6 cfs or 80 miners inches) and 73-21 (4.6 cfs or 230 miners inches) correspond to the water rights and the properties of you and your neighbor. However, former water right 73-24 (3.4 cfs or 170 miners inches) lies about a mile west of your properties. The division of the Wring property was along the same lines as the former owners of 73-20 and 73-21. No record has been produced that shows 73-24 was transferred or conveyed to the property you and your neighbor own. Nothing in any of the deeds described any specific water right or amounts of water for the property other than yours referring to 73-10014. As a result, 1.6 cfs has been recommended to 73-12038 for your neighbors, and 4.6 cfs has been recommended to 73-12037 for your property. The difficulty is the records of water rights from 1921 forward do not overcome the disparate ownership of water rights claimed. Mr. Wring clearly filed a claim for a total of 9.6 cfs. Finding 9.6 cfs is appurtenant to the land claimed has not been possible from the records discovered to date.

IDWR has a responsibility to investigate the claim and make a recommendation to the SRBA Court based on the available records including the prior decree. The Court has the sole authority to confirm the water rights that have been claimed. Submitting the Director's Report of recommendations is not the last straw. You can continue to



Robert P. Sullivan
December 6, 2006
Page 2 of 2

research the matter after the Director's Report is issued and your objection, if any, is filed. IDWR is always open to settling contested water right recommendations before the Court when new information becomes available to eliminate extensive litigation, hearings, and trial.

Mr. Sullivan, I would suggest communicating with water master Ted O'Neal (876-4260) in the Pahsimeroi River basin for the records and reasons for the delivery of water from the creek for your property. Also, combing the county records could be a source for any possible conveyance of the third water right 73-24 that may have become appurtenant to your property. I look forward to further correspondence and communication as you uncover new information.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Shaff', with a stylized flourish at the end.

Donald V. Shaff, MPA
Adjudication Bureau Chief

Enclosures

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 6

Post-Net Fax Note	7671	Date	# of pages
To: Robert Sullivan	From: Janie Burg		
Co./Dept.	Co. IDWR		
Phone #	Phone # 208-525-7161		
Fax # 209-464-8179	Fax # 208-525-7177		

RECEIVED
DEC 06 2007
DEPARTMENT OF
WATER RESOURCES

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

A. Subcase 73-12037

(Insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: ROBERT P. AND DAWN M. SULLIVAN

Address: 5537 EAST MORADA LANE

STOCKTON, CALIFORNIA 95212

Daytime Phone: 209-464-8772

Name & Address of Attorney, if any:

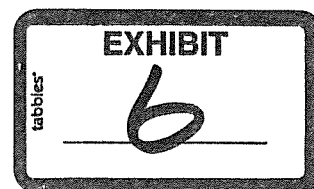
C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: ROBERT P. & DAWN M. SULLIVAN/GARNEY B. & VICTORIA F.

Address: 5537 EAST MORADA LANE

HALL

STOCKTON, CALIFORNIA 95212



17. I agree to the following conditions to be included in the Director's Report (Please
check the appropriate box(es):

1. ☐ Name and Address
Should be _____

2. ☐ Source
Should be _____

3. ☒ Quantity
Should be 320 INCHES PRIORITY DATE 5/10/1911

4. ☒ Priority Date
Should be 5/10/1911

5. ☐ Point of Diversion
Should be _____

6. ☐ Instream Flow Beginning and Ending Point
Should be _____

7. ☐ Purpose(s) of Use
Should be _____

8. ☐ Period of Year
Should be _____

9. ☐ Place of Use
Should be _____

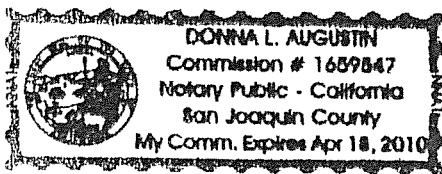
10. ☐ I object because
(a) _____

(b) The water is not recommended for the use recommended with
the amount recommended above

11. REASONS SUPPORTING OBJECTIONS: WRONG AMOUNT/WRONG AREA
OUR PURCHASE OF THIS PROPERTY WAS DUE IN LARGE PART TO THE
DETRIMENTAL RELIANCE ON THE TERMS OF THE WATER ALLOCATION
FOUND WITH THIS DEED. TO REDUCE OR NEGATE THE TERMS ON WHICH
WE RELIED WOULD DESTROY THE USE, ENJOYMENT AND PRODUCTIVITY
OF OUR LAND CAUSING GREAT HARDSHIP TO THE OWNERS OF SAID
PROPERTY

JURAT

State of CALIFORNIA
County of SAN JOAQUIN } ss.



Subscribed and sworn to (or affirmed) before me
this 26th day of November, 2007, by

(1) Robert P. Sullivan
Name of Signer(s)

(2) _____
Name of Signer(s)

Donna Augustin
Signature of Notary Public

OPTIONAL

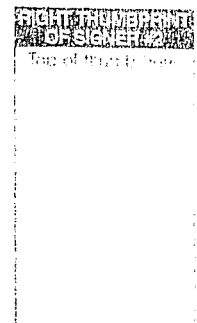
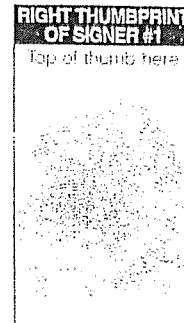
Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Standard Form Objection

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____



F.

VERIFICATION (must be completed)

State of California)

County of San Joaquin)

Robert P. Sullivan

(Name of person filing objection)

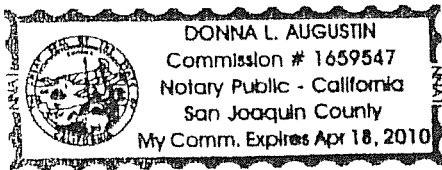
duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by J.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

[Signature]
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: November 26, 2007



Donna L. Augustin

Notary Public for CALIFORNIA

Residing at: 9526 Oakwilde Ave

My Commission Expires: April 18, 2010

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on NOVEMBER 29, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
255 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: ROBERT P. & DAWN SULLIVAN

Address: 5537 EAST MORADA LANE
STOCKTON, CALIFORNIA 95212

3. Copies to:

U.S. WR Document Depository
PO Box 83720
Boise, ID 83720-0090

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

[Signature]
Signature of objector or attorney
mailing on Objector's behalf

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 7

RECEIVED

DEC 19 2004

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

A. Subcase 73-12038

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: David A. Laatz and Natalie M. Laatz

Address: 704 Wenonah Av.
Oak Park, IL 60304

Daytime Phone: (708) 955-5626

Name & Address of Attorney, if any:

James P. Speck
SPECK & AANESTAD
A Professional Corporation
PO Box 987
Ketchum, ID 83340

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: David A. Laatz and Natalie M. Laatz

Address: 704 Wenonah Av.
Oak Park, IL 60304



D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be:
2. ☐ **Source**
Should be:
3. ☒ **Quantity**
Should be: 3.2 cfs
4. ☐ **Priority Date**
Should be:
5. ☐ **Point(s) of Diversion**
Should be:
6. ☐ **Instream Flow Description**
Should be:
7. ☐ **Purpose(s) of Use**
Should be:
8. ☐ **Period of Year**
Should be:
9. ☒ **Place of Use**
Should be: T.13., R.24E., B.M., Custer County, Section 20: NENE - 20A, SENE -40A; Section 21: NWNW - 20A, SWNW - 30A; 110A total
10. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):**

F.

VERIFICATION (Must be completed)

State of Idaho)
) ss.
County of Blaine)

James P. Speck, being first duly sworn, upon oath, deposes and says:

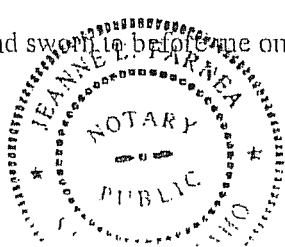
That I am the party/claimant filing this objection, as defined by I.C. § 42-1401A(1) and (6), or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

J. P. Speck
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

December 17, 2007



Jeanne Farnea
Notary Public for Idaho
Residing at Shoshone, Idaho
My Commission expires 05/05/09

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.**
You must also send a copy to all of the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on December 18, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

2. One copy to the claimant of the water right at the following address:

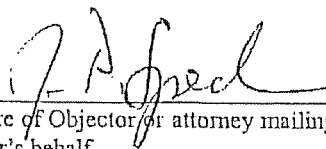
Name: David A. Laatz and Natalie M. Laatz
Address: 704 Wenonah Av.
Oak Park, IL 60304

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, Box 33
Boise, Idaho 83734



Signature of Objector or attorney mailing on
Objector's behalf

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 8

RECEIVED

MAR 12 2009

DEPARTMENT OF
WATER RESOURCES

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

SPECK & AANESTAD

A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

JAMES P. SPECK
DOUGLAS J. AANESTAD

March 11, 2009

Clerk of the SRBA District Court
P. O. Box 2707
Twin Falls, ID 83303-2707

Re: Subcase No. 73-12038 / David and Natalie Laatz

To the Clerk of the Court:

Enclosed please find an original and a copy of a Standard Form 5 for water right number 73-12038, claimed by David and Natalie Laatz. Please file the SF5, file-stamp the copy and return it to me in the self-addressed envelope included in this mailing for that purpose.

Thank you for your time and attention to this matter. Please let me know if you have any questions or require further information.

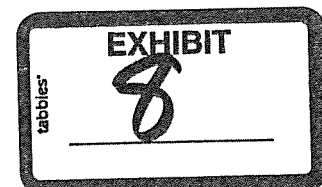
Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
Jennifer Pinkerton
Assistant to James P. Speck

Enclosure

cc w/ encl: David Tuthill, IDWR
Christopher Bromley, IDWR
Client



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

In Re SRBA

Case No. 39576

) Subcase No. 73-12038
)
)
)
)
)
)
)

STANDARD FORM 5

STIPULATED ELEMENTS OF A
WATER RIGHT

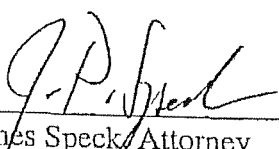
This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

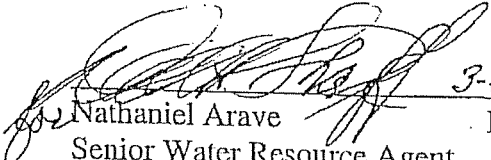
The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

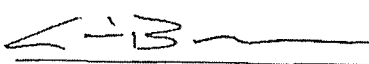
CLAIMANTS/OBJECTORS:

David & Natalie Laatz

 3.7.08
James Speck Attorney Date

IDWR Concurrence:

 3-04-09
Nathaniel Arave Date
Senior Water Resource Agent

 3/4/09
Chris Bromley Date
Deputy Attorney General
Attorney for IDWR

3/04/09

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

RIGHT NUMBER: 73-12038
NAME AND ADDRESS: DAVID A LAATZ
704 S WENONAH AV
OAK PARK IL 60304
NATALIE M LAATZ
704 S WENONAH AV
OAK PARK IL 60304

SOURCE: BIG CREEK
QUANTITY: 3.20 1-6 CFS
PRIORITY DATE: 05/10/1911

TRIBUTARY: PAHSIMEROI RIVER

POINT OF DIVERSION:

T13N R24E S21 SESENE Within CUSTER County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	1-6 3.20 CFS

PLACE OF USE:

IRRIGATION in CUSTER County

<u>T13N R24E S20</u>	<u>NENE</u>	<u>16.00</u>	<u>T13N R24E S20</u>	<u>SENE</u>	<u>40 33</u>
<u>T13N R24E S21</u>	<u>NWNW</u>	<u>8.50</u>	<u>T13N R24E S21</u>	<u>SWNW</u>	<u>32 3-8</u>

~~36-8~~ 96.5 ACRES TOTAL

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

CERTIFICATE OF MAILING

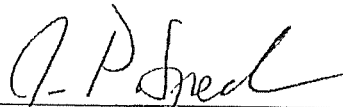
I certify that on March 11, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
P.O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

DAVID A LAATZ
NATALIE M LAATZ
Represented by:
JAMES P. SPECK
SPECK & AANESTAD
120 EAST AVENUE
PO BOX 987
KETCHUM, ID 83340

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098



Signature of person or attorney mailing form

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 9

RECEIVED

JUN 26 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 25 2009

By _____
Clerk
Deputy Clerk

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

In Re SRBA

Case No. 39576

) Subcase 73-12038
) (Laatz)
)
) SPECIAL MASTER REPORT
)

Findings of Fact

The Director of the Idaho Department of Water Resources filed his *Director's Report, Irrigation & Other Uses, Reporting Area 23, Basin 73* on January 25, 2007. He recommended claim 73-12038 to David and Natalie Laatz, 704 S. Wenonah Avenue, Oak Park Illinois, 60304, for 1.6 cfs from Big Creek to irrigate 36.8 acres in Custer County from April 1 to October 31 with a priority date of May 10, 1911, based on a decree.

The Laatzes filed an *Objection* on December 19, 2007, objecting to quantity and place of use. On March 12, 2009, the Laatzes, with IDWR's concurrence, filed a *Standard Form 5* agreeing to 3.2 cfs to irrigate 96.5 acres.

Conclusions of Law

The Laatzes are entitled to a partial decree adjudicating a water right as described in the *SF-5* and the attached *Special Master Recommendation for Partial Decree for Water Right 73-12038*.

DATED June 25, 2009.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication



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

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUN 25 2009

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 73-12038

By _____
Clerk
Deputy Clerk

NAME AND ADDRESS: DAVID A LAATZ
NATALIE M LAATZ
704 S WENONAH AV
OAK PARK, IL 60304

SOURCE: BIG CREEK TRIBUTARY: PAHSIMEROI RIVER

QUANTITY: 3.20 CFS

PRIORITY DATE: 05/10/1911

POINT OF DIVERSION: T13N R24E S21 SESENE Within Custer County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	3.20 CFS

PLACE OF USE:	Irrigation	Within Custer County
	T13N R24E S20	SENE 40.0
	S21	NWNW 8.5
	96.5 Acres Total	SWNW 32.0

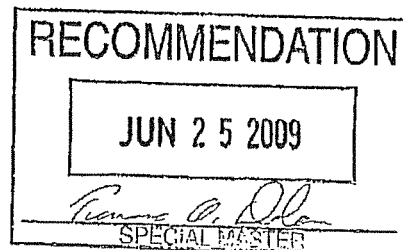
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication



DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
JUN 25 2009	
By _____	Clerk
_____	Deputy Clerk

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

In Re SRBA
Case No. 39576

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

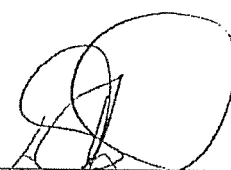
Water Right(s): 73-12038

On June 25, 2009, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

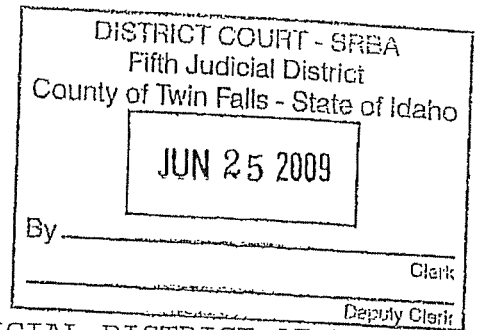
Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED June 25, 2009.



DIANA R. DELANEY
Deputy Clerk



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

In Re SRBA

Case No. 39576

CERTIFICATE OF MAILING

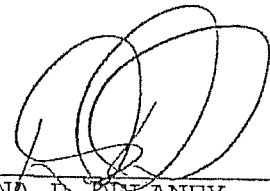
Water Right(s): 73-12038

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on June 25, 2009, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

DAVID A LAATZ
NATALIE M LAATZ
Represented by:
JAMES P. SPECK
SPECK & AANESTAD
120 EAST AVENUE
PO BOX 987
KETCHUM, ID 83340
Phone: 208-726-4421



DIANA R. DELANEY
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
06/25/09

RECEIVED
AUG 07 2009
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
AUG - 6 2009
By _____ Clerk Deputy Clerk

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

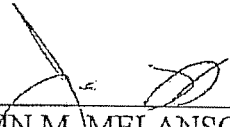
In Re SRBA	)	ORDER OF PARTIAL DECREE
	)	
Case No. 39576	)	Subcase No. 73-12038
	)	(Laatz)
_____	)	

On June 25, 2009, a *Special Master's Report and Recommendation* was filed for the above-captioned water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order I*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report and Recommendation* and wholly adopts them as its own.

Therefore, IT IS ORDERED that the above-captioned water right be decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED August 6, 2009.

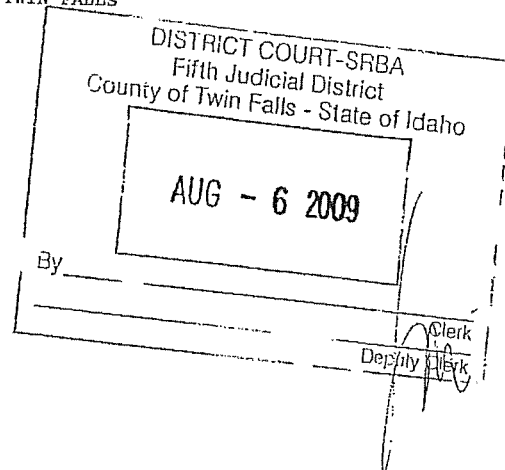

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 73-12038



NAME AND ADDRESS: DAVID A LAATZ
NATALIE M LAATZ
704 S WENONAH AV
OAK PARK, IL 60304

SOURCE: BIG CREEK TRIBUTARY: PAHSIMEROI RIVER

QUANTITY: 3.20 CFS

PRIORITY DATE: 05/10/1911

POINT OF DIVERSION: T13N R24E S21 SESENE Within Custer County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	3.20 CFS

PLACE OF USE:	Irrigation	Within Custer County
	T13N R24E S20 NENE 16.0	SENE 40.0
	S21 NWNW 8.5	SWNW 32.0
	96.5 Acres Total	

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2009 AUG 06 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

In Re SRBA

Case No. 39576

)
)
)
)

CERTIFICATE OF MAILING

Water Right(s): 73-12038

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 73-12038 was mailed
on August 06, 2009, with sufficient first-class postage prepaid
to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

DAVID A LAATZ
NATALIE M LAATZ
Represented by:
JAMES P. SPECK
SPECK & AANESTAD
120 EAST AVENUE
PO BOX 987
KETCHUM, ID 83340
Phone: 208-726-4421

JULIE MURPHY
Chief Deputy Clerk

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 10



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 10, 2010

CURT R THOMSEN
PO BOX 600
CHALLIS ID 83226

RE: Snake River Basin Adjudication (SRBA) Subcase 73-12037
Your Client(s): Robert and Dawn Sullivan, Garney and Victoria Hall

Dear Mr. Thomsen,

I am responding to your letter dated January 14, 2010. Thank you for getting me that information for review so quickly. I apologize that it has taken me so long to get back to you.

I have reviewed the information you submitted and feel that there is enough evidence to support that additional acreage was historically irrigated under this water right.

For your review, I am enclosing a DRAFT revised recommendation along with a map outlining the proposed amended place of use.

In your January 14, 2010 letter, you asked if I could explain why the Department can only support a diversion rate of 4.6 cfs. In short, the additional 1.8 cfs claimed above the 4.6 cfs that was recommended, is claimed to be from a decreed right 73-24 described in Maelzer v. Smith adjudicated in 1921. This water right was not decreed to your client's property and IDWR does not have evidence showing it was transferred from the decreed place of use to your clients ground. For your convenience I have enclosed a letter dated December 6, 2006, where Donald Shaff addresses this issue with Mr. Sullivan. Perhaps that letter will help explain the Departments stance.

Please look over the information enclosed. If your clients agree with the revised recommendation, we can circulate settlement documents for signature. As always, please feel free to contact me with any questions.

Sincerely,

Craig L. Saxton
Water Right Supervisor
Adjudication Bureau
craig.saxton@idwr.idaho.gov

Enclosure(s)



In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 11

RECEIVED

JUL 01 2010

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
JUN 30 2010	
By _____	Clerk
_____	Deputy Clerk

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

) ORDER OF PARTIAL DECREE

Case No. 39576

) Subcase No. 73-12037
) (Sullivan & Hall)
)

On May 25, 2010, a *Special Master's Report and Recommendation* was filed for the above-captioned water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report and Recommendation* and wholly adopts them as its own.

Therefore, IT IS ORDERED that the above-captioned water right be decreed as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED

June 30, 2010


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication



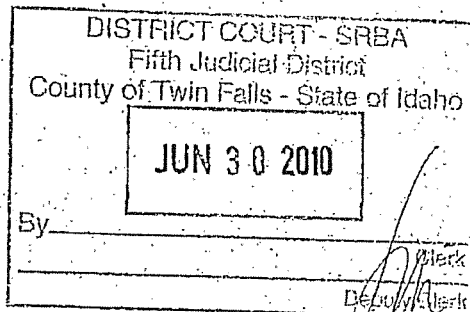
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 73-12037



NAME AND ADDRESS:

DAWN M SULLIVAN
ROBERT P SULLIVAN
PO BOX 205
SWAN VALLEY, ID 83449

GARNEY B HALL
VICTORIA F HALL
1955 OAK WY
ARROYO GRANDE, CA 93420

SOURCE:

BIG CREEK TRIBUTARY: PAHSIMEROI RIVER

QUANTITY:

4.60 CFS

PRIORITY DATE:

05/10/1911

POINT OF DIVERSION:

T13N R24E S21 SESENE Within Custer County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE
Irrigation

PERIOD OF USE
04-01 TO 10-31

QUANTITY
4.60 CFS

PLACE OF USE:

Irrigation

T13N R24E S19

S20

SWNE 40.0
NWSE 33.0
NWNE 15.0
NENW 22.0
SENE 40.0

Within Custer County

SENE 40.0
SWNE 38.0
SWNW 40.0

268.0 Acres Total

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Waldman
Presiding Judge of the
Snake River Basin Adjudication

2010 JUN 30 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA

Case No. 39576

CERTIFICATE OF MAILING

Water Right(s): 73-12037

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 73-12037 was mailed
on June 30, 2010, with sufficient first-class postage prepaid
to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

DAWN M SULLIVAN
ROBERT P & DAWN M SULLIVAN
ROBERT P SULLIVAN
Represented by:
CURT R THOMSEN
THOMSEN STEPHENS LAW OFFICES
PO BOX 600
CHALLIS, ID 83404
Phone: 208-879-6655

GARNEY B HALL
VICTORIA F HALL
1955 OAK WY
ARROYO GRANDE, CA 93420
Phone: 805-489-6983

CERTIFICATE OF MAILING

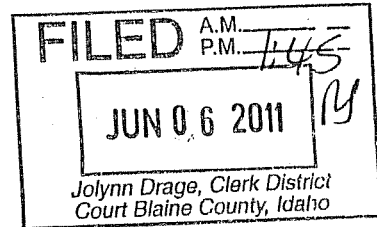
JULIE MURPHY
Chief Deputy Clerk

PAGE 1
06/30/10

In RE SRBA – Case No. 39576
(Subcase No. 73-12037 – Sullivan)

EXHIBIT 12

Michael D. Allen (ISB No. 7727)
Sanderson Law Office
P.O. Box 159
Afton, WY 83110
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*Attorney for Plaintiffs Robert P. Sullivan,
Dawn M. Sullivan, Garney B. Hall, and
Victoria F. Hall*



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF BLAINE

ROBERT P. and DAWN M. SULLIVAN,)
husband and wife, and GARNEY B. and)
VICTORIA F. HALL, husband and wife.)

Plaintiffs,)

vs.)

ROBERT P. DREYER.)

Defendant.)
_____)

Case No. CV-2010-889

FIRST AMENDED COMPLAINT

COME NOW, Plaintiffs, Robert P. Sullivan, Dawn M. Sullivan, Garney B. Hall and Victoria F. Hall, by and through their attorney, Michael D. Allen, and pursuant to Rule 15(a) of the Idaho Rules of Civil Procedure, hereby files its First Amended Complaint in the above matter without leave of the Court, no responsive pleading having yet been filed.

Plaintiffs complain and for causes of action allege:



GENERAL ALLEGATIONS

1. Defendant, Robert P. Dreyer, is to the best of Plaintiffs' knowledge, an individual residing in Blaine County, Idaho and within the jurisdiction of this Court, and was served with a summons and copy of the original complaint in this proceeding on March 21, 2011.

2. In 2003 Plaintiffs began negotiations with Dreyer for the purchase of certain real property (the Property) owned by Dreyer. A material consideration in the negotiations was the existence of 320 inches of water rights appurtenant to the Property. 320 inches is the equivalent of 6.4 CFS (Cubic Feet per Second) of water.

3. Dreyer entered a contract and executed a Warranty Deed conveying the Property, along with water rights consisting of "320 inches with a priority date of 5/10/1911, No. A37-10014" to the Plaintiffs on September 16, 2003. A copy of the Warranty Deed is attached hereto as Exhibit A. Dreyer was paid in full the agreed contract amount of \$220,000.00 for the sale of the Property and water rights.

4. As part of the proceedings of the General Adjudication Of Rights To The Use Of Water From The Snake River Basin Water System, the initial Notice Of Claim To A Water Right Acquired Under State Law dated March 17, 2005, submitted by the Plaintiffs provided that the quantity of water appropriated for use by the Plaintiffs on the property purchased from Dreyer was 6.4 CFS.

5. On August 31, 2006, the Idaho Department of Water Resources (IDWR) made a Preliminary Recommendation of Water Rights Acquired Under State Law, as pertaining to water right number 73-12037 on the Property the Plaintiffs purchased from Dreyer. IDWR's

Preliminary Recommendation stated the Property had only 4.6 CFS (equivalent to 230 inches) of water rights for the total Property.

6. The Plaintiffs timely objected to IDWR's recommendation of August 31, 2006, maintaining they had purchased water rights from Dreyer pursuant to water right No. A37-10014 providing for 320 inches (6.4 CFS) on the Property as stated in the Warranty Deed from Dreyer.

7. On December 6, 2006, IDWR sent Plaintiff Robert Sullivan a letter in which Donald Shaff, IDWR's Adjudication Bureau Chief, explained to Robert that he could only find evidence of 4.6 CFS of water rights appurtenant to the Property.

8. IDWR sent Plaintiffs a letter on January 26, 2007, notifying them that it had recommended to the Snake River Basin Adjudication (SRBA) that 4.6 CFS be decreed to water right 73-12037 appurtenant to the property the Plaintiffs purchased from Dreyer. The Plaintiffs timely objected to IDWR's January 26, 2007 recommendation.

9. On April 5, 2007, Plaintiff Robert Sullivan forwarded to Dreyer IDWR's preliminary determination of the Property's appurtenant water rights. Sullivan asked Dreyer to correct the problem.

10. The District Court administering the SRBA sent a letter to the Plaintiffs on November 30, 2007, stating that water right number 37-10014 is owned by Larry and Kathrine Whittaker pursuant to a November 27, 2000 Partial Decree. The Whittakers, not the Plaintiffs or Dreyer before them, are the owners of the water right specified in the Warranty Deed conveying the Property to the Plaintiffs.

11. After subsequent SRBA proceedings, Curt R. Thomsen, acting as Plaintiffs' attorney, wrote Dreyer on September 30, 2009, to inform him that seemingly only 230 inches

(4.6 CFS) of water were transferred to the Plaintiffs, and that Dreyer may have retained 90 (1.8 CFS) inches in his name on property still in his possession. Thomsen requested that Dreyer take the necessary steps to convey the remaining 90 inches to Plaintiffs.

12. Dreyer did not and has not attempted to transfer any water rights that remained in his possession following the initial sale of the Property to ensure the Plaintiffs have 320 inches of water.

13. Following subsequent SRBA proceedings, on May 9, 2010, the Plaintiffs, with IDWR's concurrence, filed a Standard Form 5 stipulation to a water rights decree of 4.6 CFS over 268 acres of the Property the Plaintiffs purchased from the Dreyer under water right number 73-12037.

14. On May 25, 2010, a Special Master's Report and Recommendation was filed for water right number 73-12037 appurtenant to the Property, recommending it be decreed at 4.6 CFS over 268 total acres.

15. An Order of Partial Decree for water right number 73-12037, adopting the Special Master's Recommendation, was entered on June 30, 2010.

FIRST CAUSE OF ACTION: MISTAKE OF FACT

16. Plaintiffs reallege and incorporate paragraphs 1 through 15 as though the same were set forth here in full.

17. When Plaintiffs and Dreyer executed the Warranty Deed conveying the Property, both parties believed 320 inches of water rights ran appurtenant to the Property under water right number 37-10014 or that Dreyer owned this water right and had the ability to transfer such.

18. The quantity of water rights transferred with the property was a material and fundamental element of the contract, which the Plaintiffs relied on when agreeing to the purchase price.

19. Plaintiffs discovered on November 30, 2007, that water right 37-10014 belonged to Larry and Kathrine Whittaker and not to Dreyer or the Plaintiffs. According IDWR's determinations, the water rights running appurtenant to the Property are designated as number 73-12037.

20. The SRBA issued a partial decree, adjudicating water right number 73-12037 at 4.6 CFS (230 inches) over 268 acres of the Property on June 30, 2010.

21. As a result of the parties' mutual mistake of facts as to the quantity of water rights appurtenant to the Property and ownership of the water rights stated in the Warranty Deed from Dreyer, the contract for the purchase of the Property should be reformed to reflect a reduced purchase price.

22. Plaintiffs paid Dreyer the full contract amount as agreed for the Property and 320 inches (6.4 CFS) of water rights. The Property's value with only 4.6 CFS (230 inches) is reduced in an amount in excess of \$10,000 to be proven a trial.

SECOND CAUSE OF ACTION: RESTITUTION / UNJUST ENRICHMENT

23. Plaintiffs reallege and incorporate paragraphs 1 through 22 as though the same were set forth here in full.

24. Plaintiffs paid Dreyer the agreed contract amount in full for the Property and water rights based on the mutual mistake that 320 inches (6.4 CFS) of water rights were

conveyed with the Property. Only 4.6 CFS (230 inches) have been conveyed, and, therefore, 1.8 CFS (90 inches) less than that agreed to by the parties was conveyed to the Plaintiffs

25. Dreyer has been mistakenly overpaid by approximately \$48,000.00 and Plaintiffs are entitled to restitution from Dreyer. The value of the water rights was not separately stated from the land value in the purchase agreement between Dreyer and the Plaintiffs and therefore Plaintiffs base this restitution amount on the anticipated rental value of 1.8 CFS of water over a 5 year period if leased through the Water Supply Bank managed by the Idaho Water Resource Board. Assuming the current default rental rate of \$14 per acre-foot, after subtracting administrative fees, the annual rental value would be approximately \$9,600.00 and approximately \$48,000.00 over a five (5) year period.

WHEREFORE, Plaintiffs pray this Court for Judgment as follows:

1. The parties' contract pertaining to the sale and purchase of the Property and appurtenant water rights be modified to reflect the value of the Property with only 4.6 CFS (230 inches);
2. That Dreyer make restitution to the Plaintiffs in the amount \$48,000.00;
3. Reasonable attorney fees be paid to Plaintiffs pursuant to Idaho Code §§ 12-120 and 12-121;
4. A reasonable attorney's fee in the sum of \$2,500.00 if a default judgment is entered against defendants, but otherwise to be set by the Court, and;
5. For such other and further relief as the Court deems just and equitable.

DATED this 3RD day of June, 2011.



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*Attorney for Plaintiffs Robert P. Sullivan,
Dawn M. Sullivan, Garney B. Hall, and
Victoria F. Hall*

CERTIFICATE OF SERVICE

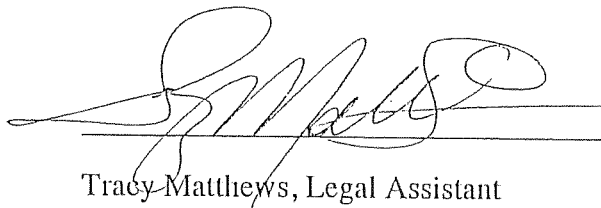
I hereby certify that on this 3RD day of June, 2011, a true and complete copy of the foregoing document was delivered to the following by U.S. mail, postage prepaid:

James P. Speck, Esq.

Speck & Aanestad, a Professional Corporation

P.O. Box 987

Ketchum, Idaho 83340



Tracy Matthews, Legal Assistant

Order No. 53081
AT-1853

WARRANTY DEED

FOR VALUE RECEIVED

ROBERT P. DREYER, an unmarried man

GRANTOR(s), do(es) hereby GRANT, BARGAIN, SELL and CONVEY unto

ROBERT P. SULLIVAN and DAWN M. SULLIVAN, husband and wife and
GARNEY B. HALL and VICTORIA F. HALL, husband and wife

GRANTEE(s) whose address is: 5537 E. Morada Lane, Stockton, CA 95212

the following described real property in Custer County and Lemhi County Idaho, to wit:

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

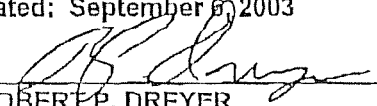
TOGETHER WITH THE FOLLOWING DESCRIBED WATER RIGHTS:

320 Inches with a priority date of 5/10/1911, No. A37-10014

Subject To: Taxes, easements established or of record, restrictions and encumbrances of record, rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit.

TO HAVE AND TO HOLD said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except as described above and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: September 9, 2003

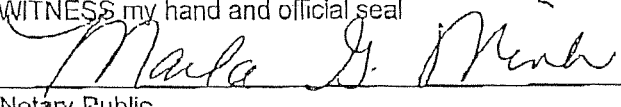

ROBERT P. DREYER

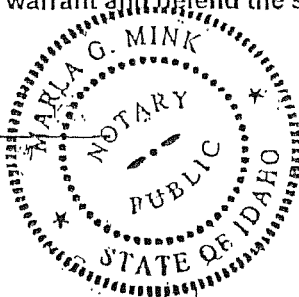
State of Idaho

County of Blaine

On this 9th day of September in the year 2003, before me, the undersigned, personally appeared ROBERT P. DREYER known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/he/they executed the same.

WITNESS my hand and official seal


Notary Public
Commission Expires: 02/12/2009



State of Idaho)
County of Lemhi) SS No. 255994 (3)

This instrument was filed for record at the request
of Alleance Water
at 11:10 o'clock am 9-17 2003
and duly filed and indexed in the records of Lemhi
County Terri J. Morton
Ex-Officio Recorder
By Brenda Watling Deputy
Fee 6.00
Return to AT

227798
Custer County Req. of
Alleance
Time 3:36 PM Date 9/16/2003
Ethel M. Peck, Clerk
Lisa Baker \$ 6.00
Deputy



227798

255994

LEGAL DESCRIPTION
EXHIBIT 'A'

TOWNSHIP 13 N., RANGE 24 E., B.M., CUSTER COUNTY, IDAHO.

SECTION 19: ALL OF THE S1/2NE1/4; ALL OF THE NW1/4SE1/4

SECTION 20: ALL OF THE SW1/4NE1/4 AND THE S1/2NW1/4 AND
ALSO ALL OF THAT PART OF THE NE1/4NW1/4 AND THE NW1/4NE1/4
LYING SOUTH OF BIG CREEK.

TOWNSHIP 13 N., RANGE 24 E., B.M., LEMHI COUNTY, IDAHO.

SECTION 20: ALL OF THAT PART OF THE NE1/4NW1/4 LYING AND
BEING ON THE NORTH AND EAST SIDE OF BIG CREEK; AND ALSO, ALL
OF THAT PART OF THE NW1/4NE1/4 LYING AND BEING ON THE NORTH
AND EAST SIDE OF BIG CREEK.