

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 43-13113
Date Received: 8/9/2001
Receipt No:
Received By:

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

1. Name of Claimant(s)

GARY B HARPER
2040 E 850 S
DECLO ID USA 83323

Phone: (208)645-2227

SUSAN C HARPER
2040 E 850 S
DECLO ID USA 83323

Phone: (208)654-2227

2. Date of Priority: 10/05/1959

3. Source: GROUND WATER

Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
12S	26E	11	SE SE NW	CASSIA	
12S	26E	11	SW SW SE	CASSIA	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	0.77	

7. Total Quantity Appropriated is:
0.77 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
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12S	26E	11	SW	SW	IRRIGATION	2
			SE	SW	IRRIGATION	40
			NW	SE	IRRIGATION	5
					Section Acres	47
					Total Acres	47

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

14. Remarks:

THIS CLAIM IS A SPLIT OF 43-2478 AS THE RESULT OF AN OWNERSHIP CHANGE OF PART OF THE PROPERTY TO GARY HARPER. THE DESCRIPTION OF THE PLACE OF USE IS FICTITIOUS AND MERELY REPRESENTS THE PROPORTIONATE SHARE OF THE ACRES THAT WILL BE WITHIN THE RECOMMENDED PPU OF 126 ACRES. 8/9/01 jr

15. Basis of Claim: License

16. Signature(s)

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

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

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

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
<u>43 2478</u>	_____	✓	_____	_____	_____
<u>43 2332</u>	_____	✓	_____	_____	_____
<u>10150 B</u>	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

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

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) J. MAX JONES
4. New Owner/Claimant(s) GARY B HARPER
Name Connector (Check one): [] and, [] or, [] and/or
- New Mailing Address 2040 E. 850 S.
- City, State and ZIP Code DECILO, ID 83323
- New Telephone Number (208) 645-2227
5. Date you acquired the property 13 July 2001

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number <u>43 2478</u>		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	<u>.825 CFS</u>	
Stock		
Domestic		
Other		
Total		

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number <u>43 2332</u>		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	<u>.825 CFS</u>	
Stock		
Domestic		
Other		
Total		

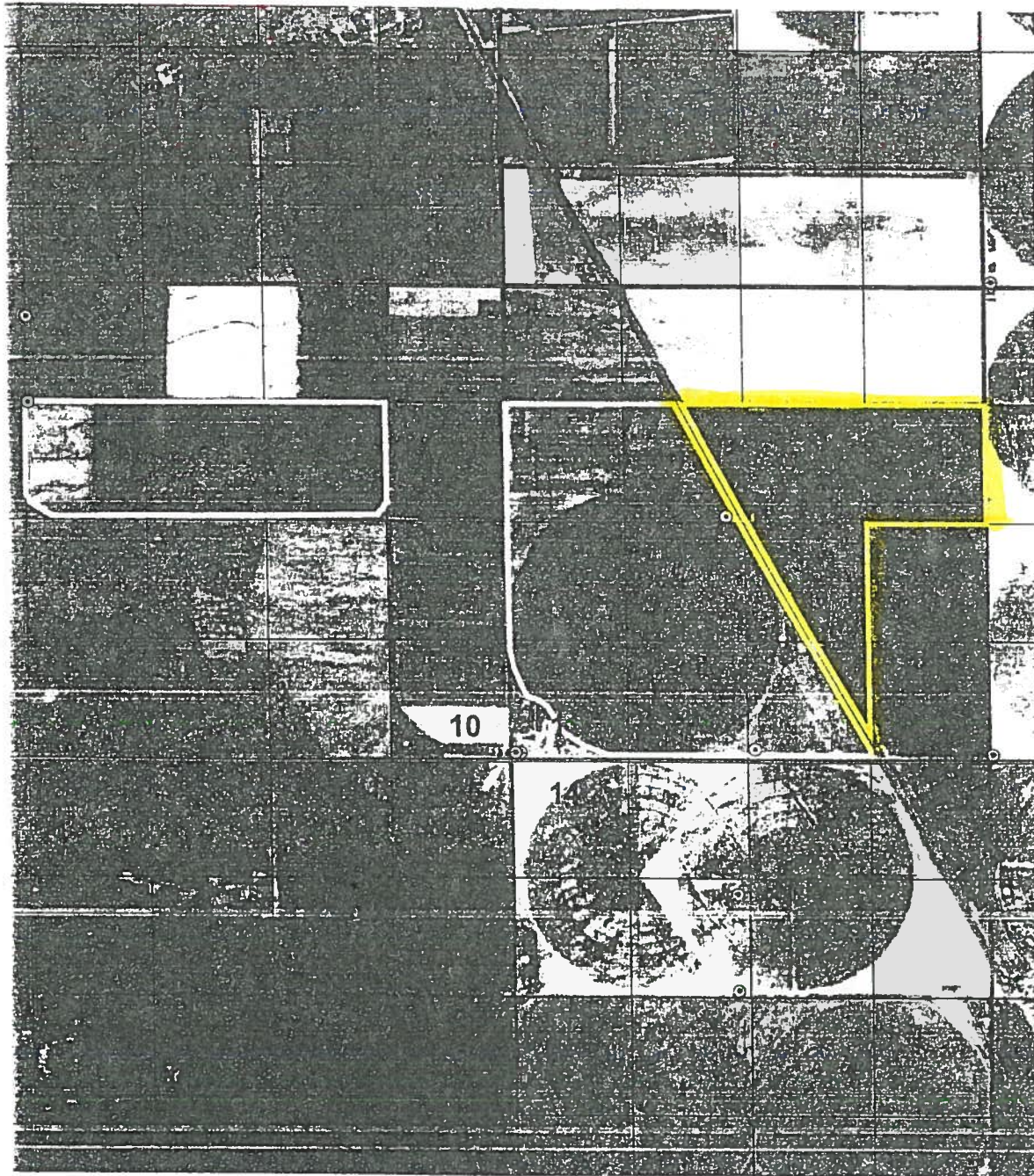
7. Signature of New Owner(s) or Claimant(s) Gary B. Harper
(include title if applicable)

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by _____ Date _____ Fee _____
 Receipted by _____ Date _____ Receipt No. _____
 Processed by _____ AJ Date _____ WR _____ Date _____

43-00423A, 43-02332, 43-02402,
43-02478, 43-10150A, & 43-10150B



0 1320 2640 Feet

RECOMMENDED PLACE OF USE
DATA ENTRY ON MAR. 7, 2001
TWP 12S, RNG 26E, SEC. 10 & 11



- Point of diversion
- Place of use
- Quarter-quarter lines
- Section lines

Gis Place of Use Presentation
1987/1988 Napp Photography
Prepared by Jeanie Robertson

WARRANTY DEED
("Sale Property")

For Value Received, **Larry Cooper and Barbara Jean Cooper**, husband and wife, ("Grantors"), do hereby grant, bargain, sell and convey unto **J. Max Jones and Diane D. Jones**, ("Grantees"), whose address is:

J. Max Jones and Diane D. Jones
c/o Joseph Jones
2060 E. 1000 S.
Declo, ID 83323

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

See legal description attached as Exhibit A.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees and their heirs and assigns forever. The Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises, that the premises are free from all encumbrances save and except that encumbrance more particularly identified below:

That certain mortgage dated May 18, 2000 and recorded in the records of Cassia County on May 23, 2000 as instrument no. 269403. Larry Cooper and Barbara Jean Cooper are the named mortgagors and D.L. Evans Bank is the named mortgagee. D.L. Evans Bank assigned its interest in the mortgage to U.S. Bank Trust National Association pursuant to that certain assignment, dated May 18, 2000 and recorded May 23, 2000 in the records of Cassia County as instrument no. 269404.

Furthermore, this conveyance shall be subject to all building and zoning laws and regulations, all easements, rights of way, covenants and restrictions, and any reservations of record, including but not limited to the following:

1. Any and all rights to sand and gravel, pursuant to the Royalty Agreement by and between Loughmiller Reclamation, LLC and Larry K. Cooper and Barbara Jean Cooper, dated February 16, 2000, as amended by an Amendment to the Royalty Agreement, dated July 12, 2001.
2. That certain mineral rights reservation that is more particularly described in Exhibit B.

Subject to the foregoing exceptions and limitations, Grantors covenant that they will forever warrant the title to said premises.

GRANTORS:

7.14.01
Dated

7-14-01.
Dated

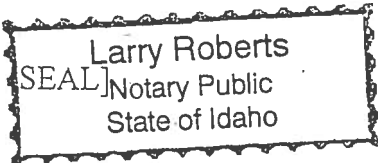
[Signature]
Larry Cooper

[Signature]
Barbara Jean Cooper

STATE OF IDAHO)
 :SS
County of Cassia)

On this 14TH day of July, 2001, before me, the undersigned, a Notary Public in and for said County and State, personally appeared LARRY COOPER and BARBARA JEAN COOPER, husband and wife, known to me to be the persons whose names are subscribed to the within 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.



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at Burley, ID
My Commission Expires: 6-30-03

Legal Description of property being sold

PARCEL NO. 1:

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 11: SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM, all that portion deeded to the State of Idaho
for highway purposes.

Section 10: SW $\frac{1}{4}$ NE $\frac{1}{4}$

PARCEL NO. 2:

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 11: S $\frac{1}{2}$ N $\frac{1}{2}$, EXCEPT highway right-of-way.

EXHIBIT

A

276120

CASSIA COUNTY, IDAHO
DARRELL M. ROSKELLEY
RECORDER

FEE/200 DEPUTY *WA*

'01 JUL 16 PM 2 24

RECORDED AT THE REQUEST OF
LAND TITLE & ESCROW

Mineral Reservation contained in Deed recorded May 2, 1961 as Instrument No. 1447, which reads as follows: "Reserving, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including without limiting the generality of the foregoing, coal, oil, gas and sandstone or valuable rock deposits and rights thereto, together with the sole and exclusive and perpetual right, to explore for and remove and dispose of said minerals by any means or methods suitable, to Martin F. Sanders, his heirs and assigns, including the right of access to, and use of, such parts of said described lands upon and below the surface thereof as may be necessary and convenient for any purpose in connection with the exploration for, removal, storage, disposition and transportation of said minerals and the deposition of tailings and together also with the perpetual right to remove and subjacent support from the surface of sand lands, except such as is necessary for the support of permanent structures erected thereon, prior to the time such right is exercised, without thereby incurring any liability whatsoever for damages so caused." (Affects Parcel Nos. 1, 3 and additional property not included herein)

EXHIBIT

B

tabbles

- a. Any and all rights to sand and gravel, pursuant to the Royalty Agreement by and between Loughmiller Reclamation, LLC and Larry K. Cooper and Barbara Jean Cooper, dated February 16, 2000, as amended by an Addendum to Royalty Agreement, dated July 12th, 2001 (copies of said Agreement and addendum are attached to the Exchange Agreement as Exhibits K and L.
- b. That certain mineral rights reservation that is more particularly described in Exhibit E to this Sales Agreement.

2. **Water Rights.** Coopers agree that 9.82 C.F.S. of ground water, as may be reflected generally in Exhibits C-1 through C-8 shall be transferred to Jones' for irrigation of the Cooper A and Cooper B Properties. The attached licenses (Exhibits C-1 through C-8) indicate that some of the ground water has heretofore irrigated land ("Retained Land") that is not included within either the Cooper A Property or the Cooper B Property parcels. Jones' shall be responsible to file the appropriate forms with the Department of Water Resources to change the place of use from the Retained Land to land within either the Cooper A Property or the Cooper B Property. Also attached to this Agreement as Exhibits C-9 and C-10 are the water licenses for Coe Creek. Those licenses provide that some of the Coe Creek water has irrigated some of the Cooper A Property and/or Cooper B Property. Jones' acknowledge that none of the Coe Creek Water shall hereafter be used to irrigate Cooper A Property or Cooper B Property. Coopers shall be responsible to file the appropriate forms with the Department of Water Resources to change the place of use of Coe Creek water from Cooper A Property and Cooper B Property lands to the Retained Land. Coopers and Jones' agree to cooperate with each other in good faith to the extent necessary to complete the water right transfers by filing the appropriate forms with the Department of Water Resources within eighteen (18) months of closing. Any additional ground water rights as pertaining to the Cooper A and B Properties above the referenced 9.82 C.F.S. shall remain with Coopers and are not transferred to Jones. Jones shall grant to Coopers a point of diversion at the well located near the house on the Cooper Property, for purposes of facilitating Coopers' application for the referenced ground water rights above the referenced 9.82 C.F.S. only. In the event that Coopers receive confirmation from the Department of Water Resources for additional water above the 9.82, then Coopers shall be required to change the point of diversion for that additional water to a site away from the Cooper A and Cooper B Properties.

3. **Improvements.** A house, barn, buried irrigation main line, together with the pumps and wells, are located on and are part of the Real Property.

4. **Cooper Mortgage.** Both the Cooper A Property and the Cooper B Property are

Legal Description of property being sold

PARCEL NO. 1:

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 11: SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$

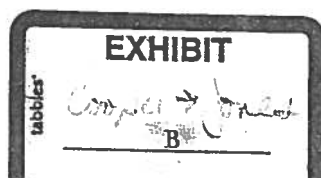
EXCEPTING THEREFROM, all that portion deeded to the State of Idaho
for highway purposes.

Section 10: SW $\frac{1}{4}$ NE $\frac{1}{4}$

PARCEL NO. 2:

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 11: S $\frac{1}{2}$ N $\frac{1}{2}$, EXCEPT highway right-of-way.



Legal Description of property being exchanged

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 3: E $\frac{1}{2}$ SE $\frac{1}{4}$, LESS the following described parcel:

Commencing at the Southeast corner of said Section 3; thence along the East line of said Section, North a distance of 1414.2 feet, more or less, to the True Point of Beginning, said point beginning 50.0 feet distance northeasterly, measured at right angles, from the centerline of the abandoned main track of the Raft River Branch of the Oregon Short Line Railroad Company, as formerly constructed and operated;

Thence along a straight line parallel with said centerline of abandoned main track, North 27°15' West a distance 750.0 feet, more or less, to the most easterly corner of the second described parcel of land conveyed by the Union Pacific Railroad Company to Martin F. Sanders by Quitclaim Deed dated May 5, 1949, UPRR Co. L.S.D.A. 1788;

Thence along the Southeast line of said parcel South 62°45' West a distance of 100.0 feet, to a point that is 50.0 feet distant Southwesterly, measured at right angles, from said centerline of abandoned main track;

Thence along a straight line parallel with said centerline of abandoned main track and the Southeasterly extension thereof, South 27°15' East a distance of 944.16 feet, more or less, to a point on the East line of said Section 3;

Thence along said East line of Section 3, North a distance of 218.4 feet to the True Point of Beginning.

Section 10: E $\frac{1}{2}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$



WARRANTY DEED

For Value Received, **J. MAX JONES** and **DIANE D. JONES**, husband and wife, as Grantors, do hereby grant, bargain, sell and convey unto **GARY B. HARPER** and **SUSAN HARPER**, husband and wife, as Grantees, whose address is:

2040 East 850 South
Malta, Idaho 83342

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

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE
MERIDIAN, CASSIA COUNTY, IDAHO

Section 11: That part of the SE 1/4 NW 1/4, the S 1/2 NE 1/4 and
the W 1/2 SE 1/4 lying East of the East boundary of
Highway 81.

TO HAVE AND TO HOLD said premises, with their appurtenances unto the said Grantees and their heirs and assigns forever. The Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises, that the premises are free from all encumbrances and that they will forever warrant the title to said premises. This conveyance, however, is subject to federal patents; building or use restrictions; building and zoning regulations and ordinances of any governmental unit; all rights of way and easements claimed, established or of record; accruing taxes and assessments for 2001 and subsequent years; discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records; and unpatented mining claims.

In addition to the foregoing, said conveyance shall be subject to the following:

1. Any and all rights to sand and gravel, pursuant to the Royalty Agreement by and between Loughmiller Reclamation, LLC and Larry K. Cooper and Barbara Jean Cooper, dated February 16, 2000, as amended by an Amendment to the Royalty Agreement, dated July 12, 2001.
2. That certain mineral rights reservation that is more particularly described in Exhibit B.

DATED as of this 13th day of July, 2001.

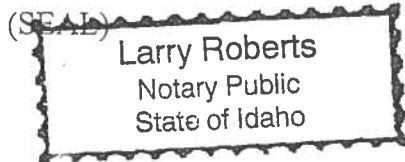
J. Max Jones
J. Max Jones

Diane D. Jones
Diane D. Jones

STATE OF IDAHO)
 :SS.
COUNTY OF CASSIA)

On this 13th day of July, 2001, before me, the undersigned, a Notary Public in and for said County and State, personally appeared **JOSEPH JONES**, known or identified to be the person whose name is subscribed to the within instrument as attorney in fact of **J. MAX JONES** and **DIANE D. JONES**, and acknowledged to me that he subscribed the names of **J. MAX JONES** and **DIANE D. JONES** thereto as principals, and his own name as attorney in fact.

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



[Signature]
NOTARY PUBLIC STATE OF IDAHO

Residing at: Burley, Idaho

Commission expires: 6-30-03

Mineral Reservation contained in Deed recorded May 2, 1961 as Instrument No. 1447, which reads as follows: "Reserving, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including without limiting the generality of the foregoing, coal, oil, gas and sandstone or valuable rock deposits and rights thereto, together with the sole and exclusive and perpetual right, to explore for and remove and dispose of said minerals by any means or methods suitable, to Martin F. Sanders, his heirs and assigns, including the right of access to, and use of, such parts of said described lands upon and below the surface thereof as may be necessary and convenient for any purpose in connection with the exploration for, removal, storage, disposition and transportation of said minerals and the deposition of tailings and together also with the perpetual right to remove and subjacent support from the surface of sand lands, except such as is necessary for the support of permanent structures erected thereon, prior to the time such right is exercised, without thereby incurring any liability whatsoever for damages so caused." (Affects Parcel Nos. 1, 3 and additional property not included herein)

276125

CASSIA COUNTY, IDAHO
DARRELL M. ROSKELLEY

RECORDER

FEE 9.00 DEPUTY W. H. H.

01 JUL 16 PM 2 32

RECORDED AT THE REQUEST OF

LAND TITLE & ESCROW



REAL ESTATE PURCHASE AND SALE AGREEMENT
("Jones/Harper")

THIS AGREEMENT is made and entered into effective as of March 1, 2001 by and between **J. Max Jones and Diane D. Jones, husband and wife**, herein collectively referred to as, ("**Jones**") and **Gary B. Harper and Susan Harper, husband and wife**, or their assignees, herein collectively referred to as ("**Harpers**").

RECITALS

A. Jones' own the following real and personal property:

1. The real property is located in Cassia County, Idaho, is legally described in the attached Exhibit A and shall be referred to in this Agreement as the "Real Property". Currently, irrigation water for the Real Property is provided by two wells on other property ("Other Jones' Property") owned by Jones' and described in Exhibit B. The licenses for the irrigation water from the two wells are 43-2478, 43-2332 and 10150B. 1.65 CFS, of the water, in total, from those wells irrigates the Real Property. That portion (1.65 CFS) of the water from the licenses listed above shall be referred to as the "Real Property Water Share".
2. The personal property is comprised entirely of one used, six tower Valley pivot and is hereafter identified in this Agreement as the "Irrigation Equipment".

B. Harpers desire to purchase and Jones' desire to sell all of the Real Property and Irrigation Equipment subject to terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants entered into herein, the parties hereby agree as follows:

1. **Sale of Real Property and Irrigation Equipment.** Jones' shall sell and Harpers shall purchase, upon the terms and conditions herein provided, the Real Property and the Irrigation Equipment. All appurtenances thereto that are now on or used in connection with the Real Property shall be included in this sale subject to the following:

- a. Any and all rights to sand and gravel, pursuant to the Royalty Agreement by and between Loughmiller Reclamation, LLC and Larry K. Cooper and Barbara Jean Cooper, dated February 16, 2000, as amended by an Addendum to Royalty Agreement, dated July 12, 2001 (copies of said Agreement and addendum are attached hereto as Exhibits C and D).

- b. That certain mineral rights reservation that is more particularly described in Exhibit E to this Agreement.

The parties agree that the water right is limited to 1.65 CFS of the water allowed by the licenses identified in the Recitals section of this Agreement.

2. **Improvements.** Except for a buried irrigation main line and fences there are no other improvements to the Real Property.

3. **Proration.** The parties shall prorate the 2001 real property taxes and Irrigation Equipment taxes, if any, as of January 1, 2001 based on the 2000 tax assessment. No proration of utility billings shall be required; however, Harpers shall make arrangements with Raft River Electric to have all utility services to the premises for 2001 and subsequent years billed to Harpers. Jones' shall be responsible for all of the taxes assessed against the Real Property and Irrigation Equipment for 2000 and prior years.

Inasmuch as the effective date of this Agreement is March 1, 2001, interest shall be charged on the purchase price at the rate of 9.35% per annum from that date to the date of closing. Harpers shall be required to pay Jones' the accrued interest at closing.

4. **Cooper Mortgage.** The Real Property is now encumbered by a mortgage ("Cooper Mortgage") executed by Larry Cooper and Jean Cooper in favor of U.S. Bank. As a condition for closing, Sellers shall be required to obtain a release of the Real Property from the Cooper Mortgage.

5. **Price.** The total price to be paid Jones' by Harpers for the Real and Irrigation Equipment described in this agreement shall be the sum of \$140,000.00, which sum shall be paid in cash at closing.

6. **Change in Point of Diversion.** The Real Property Water Share is appurtenant to the Real Property and, therefore, shall be transferred to Harpers with the transfer and conveyance of the Real Property; however, Harpers shall be required to change the "point of diversion" from the well located on the Jones' Other Property to the Real Property or any other location selected by Harpers. Harpers agree to complete "point of diversion" within 24 months of closing. In no event, however, shall Harpers be entitled to water from the well located on the Other Jones Property.

7. **Warranty Deed and Bill of Sale.** At the closing of this agreement, Jones' shall execute and deliver to the Harpers a warranty deed conveying to Harpers fee title to the Real Property, free and clear of all liens and encumbrances, but subject to real property taxes and

assessments for 2001 and subsequent years, rights reserved in federal patents, state or railroad deeds, building and use restrictions, building and zoning regulations and ordinances; all rights of way and easements claimed, established or of record; encumbrances which are not shown by public records and which were created prior to Seller's ownership of the property; discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records; unpatented mining claims and claims or title to water or water rights. At closing, Jones' shall also deliver to Harpers a bill of sale to the Irrigation Equipment. Title to the Irrigation Equipment shall be transferred free and clear of all encumbrances created by Sellers but without any other warranty. Except as otherwise provided in this Agreement, Harpers shall take both the Real Property and Irrigation Equipment AS IS.

8. **Title Policy Commitment.** At least 10 days in advance of closing, Jones' shall deliver to Harpers a title insurance policy commitment. Harpers shall have five days from receipt of the commitment or until 24 hours prior to closing, whichever period of time is less, within which to object in writing to the condition of the title as set forth in the title report. If the Harpers do not so object, Harpers shall be deemed to have accepted the condition of the title. It is agreed that if the title to said premises is not marketable, or cannot be made so at or prior to closing, this agreement shall be null and void at Harpers' option.

9. **Title Policy.** At closing, Jones' shall purchase for Harpers, from the sales proceeds paid at closing, a standard owner's title insurance policy in the sum of \$140,000, subject to the usual printed exceptions, easements and reservations of record and accruing taxes. The face amount of the policy is deemed to equal the purchase price of the Real Property.

10. **Professional Representation.** The parties understand that Merrill & Merrill, Chartered represents Jones' in this transaction and that Harpers have been advised to consult with their own counsel.

11. **Environmental Representation.** To Jones' best information and belief, Jones' represent, with respect to the Real Property and the water sources located on or under the Real Property, that there has been no spill, discharge, release, cleanup or contamination of or by any hazardous or toxic waste or substance.

12. **Pre-closing Default and Remedies.** If, after all conditions of this Agreement are satisfied and Jones' are ready and able to perform, Harpers refuse to consummate the sale, Jones' shall be entitled to any and all remedies allowed by Idaho law, including specific performance. If Harpers are ready and able to perform and Jones' refuse to close the transaction and deliver possession, Harpers shall be entitled to specific performance and all other remedies allowed by law. Moreover, if any condition preliminary to closing this Agreement is not timely satisfied, this Agreement shall be voidable at the option of the party in whose favor the unsatisfied condition runs.

13. **Attorney's Fees.** Should Jones', at their option, elect to employ the services of attorneys at law to represent them in the enforcement of any obligation undertaken by Harpers in connection herewith, or to participate in legal proceedings in any way connected herewith, as plaintiff or intervener, Harpers do hereby agree to pay Jones' a reasonable attorney's fee. In the event of litigation and in the event Harpers are the prevailing party, then Jones' shall pay Harpers a reasonable attorneys' fee.

14. **Notices.** Any communications between the parties hereto or notices provided hereunder may be given by mailing the same, postage prepaid, to Jones' and to Harpers at the addresses provided below:

To Jones':

J. Max Jones and Diane D. Jones
c/o Joseph Jones
2060 E. 1000 S.
Declo, ID 83323

To Harpers:

Gary B. and Susan Harper
2040 E. 850 S.
Malta, ID 83342

15. **Binding on Heirs.** This agreement is binding upon the heirs, successors and assigns of the respective parties.

16. **No Waiver.** Jones'' waiver of any of the provisions of this contract shall not constitute a waiver with respect to any of the other terms provided by this contract.

17. **Closing.** Closing of this transaction shall occur at Title Land and Escrow Co's office on or before July 13, 2001. The parties shall bear their own legal expenses and the parties shall equally split the closing agent fee, and recording fees. The parties agree that Jones' shall pay the cost of title insurance. At closing Jones' shall sign the warranty deed and bill of sale required by this Agreement.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto and may not be changed, amended, altered or modified except by an instrument in writing signed by the parties or parties sought to be charged with such change, amendment, alteration or modification.

19. **Captions to Paragraphs.** The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

IN WITNESS WHEREOF the parties have executed this agreement on the dates recited below, with the understanding that this Agreement is effective as of July 13, 2001:

Sellers:

Date: July 13, 2001

J. Max Jones
J. Max Jones

Date: July 13, 2001

Diane D. Jones
Diane D. Jones

Buyers:

Date: July 13, 2001

Gary B. Harper
Gary B. Harper

Date: July 13, 2001

Susan Harper
Susan Harper

EXHIBIT A
(Jones/Harper)

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE
MERIDIAN, CASSIA COUNTY, IDAHO

Section 11: That part of the SE 1/4 NW 1/4, the S 1/2 NE 1/4 and
the W 1/2 SE 1/4 lying East of the East boundary of
Highway 81.

Exhibit "B"

PARCEL NO. 1:

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 11: SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM, all that portion deeded to the State of Idaho
for highway purposes, and

ALSO EXCEPTING,

Beginning at the Southwest corner of said Section 11;
Thence North 318.99 feet;
Thence South 89°08' East 299.07 feet;
Thence South 0°52' West 318.95 feet;
Thence North 89°08' West 294.25 feet to the Point of Beginning.

Section 10: SW $\frac{1}{4}$ NE $\frac{1}{4}$

PARCEL NO. 2:

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 11: S $\frac{1}{2}$ N $\frac{1}{2}$, EXCEPT highway right-of-way.

**EXCEPTING THEREFROM the following described tract from
Parcels No. 1 and No. 2;**

**That part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, the S $\frac{1}{2}$ NE $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ lying East
of the East boundary of Highway 81.**

PARCEL NO. 3:

TOWNSHIP 12 SOUTH, RANGE 26 EAST OF THE BOISE MERIDIAN,
CASSIA COUNTY, IDAHO

Section 3: E $\frac{1}{2}$ SE $\frac{1}{4}$, LESS the following described parcel:

Commencing at the Southeast corner of said Section 3; thence along the East line of said Section, North a distance of 1414.2 feet, more or less, to the True Point of Beginning, said point beginning 50.0 feet distance northeasterly, measured at right angles, from the centerline of the abandoned main track of the Raft River Branch of the Oregon Short Line Railroad Company, as formerly constructed and operated;

Thence along a straight line parallel with said centerline of abandoned main track, North 27°15' West a distance 750.0 feet, more or less, to the most easterly corner of the second described parcel of land conveyed by the Union Pacific Railroad Company to Martin F. Sanders by Quitclaim Deed dated May 5, 1949, UPRR Co. L.S.D.A. 1788;

Thence along the Southeast line of said parcel South 62°45' West a distance of 100.0 feet, to a point that is 50.0 feet distant Southwesterly, measured at right angles, from said centerline of abandoned main track;

Thence along a straight line parallel with said centerline of abandoned main track and the Southeasterly extension thereof, South 27°15' East a distance of 944.16 feet, more or less, to a point on the East line of said Section 3;

Thence along said East line of Section 3, North a distance of 218.4 feet to the True Point of Beginning.

Section 10: E $\frac{1}{2}$ SE $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$

Section 11: Part of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, more particularly described as follows:

Beginning at the Southwest corner of said Section 11;

Thence North 318.99 feet;

Thence South 89°08' East 299.07 feet;

Thence South 0°52' West 318.95 feet to a point;

Thence North 89°08' West for a distance of 294.25 feet to the Point of Beginning.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 10, 2001

GARY HARPER
2040 E 850 S
DECLO ID 83323

RE: OWNERSHIP CHANGE/SPLITS COOPER-HARPER

Dear Gary,

Enclosed are your new preliminary recommendations and layout for the rights involved with the property you purchased from Max Jones via Larry Cooper. Since all the groundwater rights were recommended to the entire place of use, they all needed to be involved in the split. As a result, you do have a total of 1.65 cfs, but of the 126 acres you purchased, be aware that 29 of them are expansion acres with no additional diversion rate or volume and have the priority date of June 30, 1985. (See 43-13117)

The new right numbers are different from the original numbers because our new computer system no longer allows for us to add suffixes like A or B, but assigns a new number. At the bottom of the new recommendations, you can determine from which right they were split. You should be able to proceed with the transfer process now.

If you have any questions, feel free to give me a call at the office.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jeanie'.

Jeanie Robertson
Sr. Water Resource Agent

VERIFIED BY XR 8/8/01
08/08/2001

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

RIGHT NUMBER: 43-13113
NAME AND ADDRESS: GARY B HARPER
SUSAN C HARPER
2040 E 850 S
DECLO, ID 83323

SOURCE: GROUND WATER

QUANTITY: 0.77 CFS
188 AFY

USE OF THIS RIGHT WITH RIGHT NO. 43-13111 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 0.83 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 200 AF.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 1.65 CFS AND TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 388 AF. COMBINED RIGHT NOS.: 43-
13109, 43-13111, 43-13113, 43-13115, & 43-13117.

PRIORITY DATE: 10/05/1959

POINT OF DIVERSION:	T12S R26E S11	SESENW	Within CASSIA County
	T12S R26E S11	SWSWSE	Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03-15 11-15	0.77 CFS 188.00 AFY

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>					
T12S R26E S11	SWNE	40	T12S R26E S11	SENE	40
T12S R26E S11	SENW	10	T12S R26E S11	NWSE	29
T12S R26E S11	SWSE	7			

126 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 43-13111 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 50 ACRES IN A SINGLE
IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 126 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 43-13109, 43-13111, 43-13113, 43-
13115, & 43-13117.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 47 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE 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

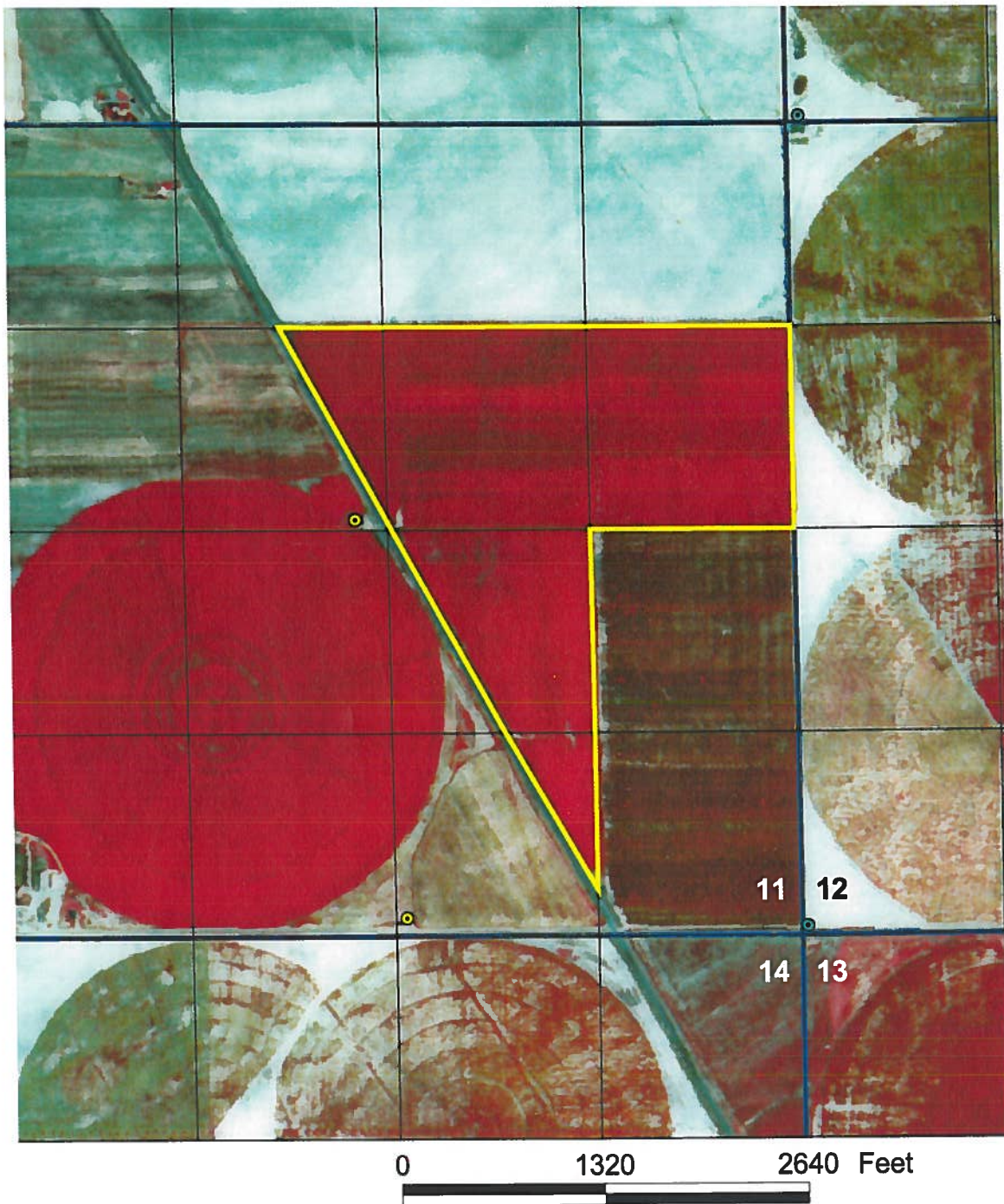
THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT NO. 43-13117 IS AN EXPANSION OF THE FOLLOWING RIGHT
NOS. PURSUANT TO SECTION 42-1416B, IDAHO CODE.: 43-13109, 43-
13111, 43-13113, & 43-13115.

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 43-2478.

43-13109, 43-13111, 43-13113, 43-13115 & 43-13117



RECOMMENDED PLACE OF USE
DATA ENTRY ON AUG. 10, 2001
TWP 12S, RNG 26E, SEC. 11



- Point of diversion
- Place of use
- Quarter-quarter lines
- Section lines

Gis Place of Use Presentation
1987/1988 Napp Photography
Prepared by Jeanie Robertson

Memorandum

To: 43-423A, 43-13108, 43-13109, 43-13110, 43-13111, 43-13112, 43-13113, 43-13114, 43-13115, 43-13116, & 43-13117

CC: Files

From: Jeanie Robertson 

Date: 8/13/2001

Re: Ownership Changes/Splits

An ownership change was received from Gary Harper for part of the Larry Cooper property (claims originally filed by Allen Bros.). He had a deed and sales agreement from Max Jones. I told him we needed a copy of the deed where Cooper sold to Jones, which he later provided. There were also problems with the way the sales agreement split the water rights. The property was recommended as a ppu of 494 acres, of which Harper bought about 126 acres. There were 3 licenses, two of which were recommended with the same 3 cfs when combined, a beneficial use right, an expansion claim, and one surface water right. The sales agreement specified that a total of 1.65 cfs of groundwater was to be conveyed, .55 cfs each from 43-2478, 43-2332, and 43-10150B. (43-2402 was recommended as limited to the same 3 cfs as 43-2478 but it was not mentioned in the agreement.) 43-10150B is an expansion claim and as such has no real diversion rate. I told him we could not honor that agreement as far as splitting the rights and ended up splitting all of the groundwater rights proportionately. The total diversion rate did end up to be 1.65 cfs and because of the expansion claim, Harper ended up with 29 expansion acres. Rights 43-13108 through 43-13117 now represent the splits of the old rights. I just reduced the place of use for the surface water right (43-423A) to the 368 acres which Cooper retained, since it was limited to 360 acres. Jones has not filed an ownership change for the rest of the property yet, so I left his part under Cooper for now...A Transfer will need to be filed by Harper to correct the points of diversion and by Cooper and Jones to separate the surface water (Cooper) from the groundwater (Jones).

CONFIDENTIAL