

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: A43-10382
Date Received: 6/ 7/1989
Receipt No: C007289
Received By: See

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: RANDALL JAY FARLEY • 208-824-5577
Address: HC 72
MALTA, ID 83342
AND/OR
Name: LINDA DIANE FARLEY 208-824-5577
Address: HC 72
MALTA, ID 83342

2. Date of Priority: MAY 10, 1978

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
15S	26E	23	NW	SW	NE		CASSIA

5. Description of diverting works:
WELL AND PUMP.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.030		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/ ONE HOUSEHOLD

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MAR 04 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	26E	23	SW	NE		DOMEST	

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:

A43-04098A (FOR IRRIG. AND STOCKWATER)

14. Remarks:

CHANGE OF OWNER 5-10-1991 SCC.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
County of _____) SS.

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

Notary Public

Seal

Residing at _____

My Commission Expires _____

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NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

DATE OF CLOSING: _____

LEGAL DESCRIPTION OF PROPERTY: Township 15 S. Range 26 E.
Section 23, 1/4 of SW 1/4 of NE 1/4, Govt. Lot _____, BM.
Lot _____, Block _____, Subdivision/Townsite _____.
If you have additional legal descriptions, please attach separate sheet.

- ☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)
- ☐ Water Right Number(s)
Assigned by IDWR: A43-04098A + A43-10382
- ☐ Name and Address of Former Owner/Claimant(s)(Seller): JANICE CRANK
2246 TANGLEWOOD LN
EMMETT ID 83617
- ☐ New Owner/Claimant (Purchaser): RANDALL JAY +/OR LINDA DIANE FARLEY
- ☐ New Mailing Address: HC 72
MALTA ID 83342
- ☐ New Telephone Number: (208) 824-5577
- ☐ Does the change in ownership result in a splitting of the water right owned/claimed? yes X no
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

- ☐ Attach proof of ownership, describe proof attached: WARRANTY DEED

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

- ☐ Signature of New Owner/Claimant(s): Randall J. Farley Date 5-10-91

Date _____
- ☐ Signature of Former Owner/Claimant(s): _____ Date _____

Date _____

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY: Initial Review and Data-Entry

Date: 5/10/91 By: SCC

Further Action Needed: NO

Further Action Taken

Date: _____ By: _____

Final Review and Data-Entry

Date: _____ By: _____

Claim Numbers of Split, if any:

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MAR 04 1993

Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner

212595

WARRANTY DEED

For Value Received

JANICE CRANK, a single person

the grantor do hereby grant, bargain, sell and convey unto
 RANDALL JAY FARLEY AND LINDA DIANE FARLEY, husband and wife
 HC-72 Malta, Idaho 83342

the grantees, the following described premises, to-wit:

TOWNSHIP 15 SOUTH, RANGE 26 EAST, BOISE MERIDIAN
 Section 23: Part of the W $\frac{1}{2}$ NE $\frac{1}{4}$, more particularly
 described as follows:

Beginning at a point which is 558 feet North of
 the Southwest corner of the said NE $\frac{1}{4}$;
 Thence East 849 feet;
 Thence North 2,082 feet;
 Thence West 849 feet;
 Thence South 2,082 feet to the Point of Beginning.

EXCEPTING Mineral and Geothermal Rights.

ALL IN CASSIA COUNTY, STATE OF IDAHO.

SUBJECT TO:

General taxes for the year 1991, and subsequent years.

EASEMENT, dated November 22, 1983, to HYDRA-CO ENTERPRISES,
 INCORPORATED, a corporation, executed by Janice Crank, a
 widow, recorded December 23, 1983 as Instrument No. 157082 on
 Film No. 161, records of Cassia County, Idaho.

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

Dated: March 12, 1991

Janice Crank
 JANICE CRANK

STATE OF IDAHO, COUNTY OF CASSIA:

On this 20th day of March, 1991 before me, a
 notary public in and for said State, personally appeared

JANICE CRANK, a single person

known to me to be the person whose name is subscribed to the
 within instrument, and acknowledged to me that she executed the same.

Residing at Burley, Idaho Comm Expires 2/20/92

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RECORDED AT THE REQUEST OF
 CASSIA COUNTY ABSTRACT
 COMPANY
 FRANKLIN FARMS
 RECORDS
 FEB 26 3 16 PM '91

225
 225

212595
 1993

Memorandum of Sales Agreement of Land

Following are details of agreement between Harriett Crank and Ivan Darrington covering sale of a property in Sec. 23, Twp. 15 S. Range 26 EDM. NE 1/4 of Sec. 23.

Of the 160 acres in the trace, 40 are to be withheld for Harriett Crank, namely

Beginning at a point 558 feet north of the Southwest corner of the Northeast Quarter, hence East 849 feet, thence North 2082 feet, thence West ~~85~~ 849 feet, thence South 2082 feet to a point of beginning -- containing 40.66 acres.

The remaining part of the 160 acres is to the property of Ivan Darrington -- a total of 119.33 acres.

Owner will be responsible for keeping up reservoir. Maintaining, cleaning and repairing of the reservoir will be done by owner of the 40.66 acres -- and Ivan Darrington will have ingress and egress to reservoir at all time; he will have right of way for necessary ditches and right to clean and repair same. In case reservoir is not maintained by owner of the 40.66 acres, Ivan Darrington will have the right to clean and maintain reservoir, and the owner of the 40.66 acres will be responsible for the costs. Reservoir will be drained only for cleaning.

Water rights.

Harriett Crank reserves all heat rights from the BLM well, excepting a 2-inch pipe of water for Ivan Darrington. All water from the BLM hot well, excepting a 1-inch pipe for Harriett Crank's use, is to be the property of Ivan Darrington. ~~There is no~~ All water used by Harriett Crank for heat (excepting the 1-inch for culinary use) is to be returned to the reservoir or ditch for Ivan Darrington.

All royalties for geothermal are the property of Harriett Crank--on the entire 160 acres. All surface lease money on the 120 acres is to go to Ivan Darrington. Mineral rights are covered in geo-thermal lease, royalties to Harriett Crank on entire 160 acres.

Harriett Crank

Ivan Darrington



Jan. 14, 1975

Bridge, Idaho.

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MAR 04 1993

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: A43-10382
Date Received: 6/07/1989
Receipt No: 603289
Received By: AS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JULIE CRANK 208-365-5928
Address: 2246 TANGLEWOOD LN.
EMMETT, ID 83617

AND/OR

Name: JANICE CRANK 208-365-5928
Address: 2246 TANGLEWOOD LN.
EMMETT, ID 83617

2. Date of Priority: MAY 10, 1978

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
15S	26E	23	NW	SW	NE		CASSIA

5. Description of diverting works:
WELL AND PUMP.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.030		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/ ONE HOUSEHOLD

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
15S	26E	23	SW NE		DOMEST	

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:
A43-04098A (FOR IRRIG. AND STOCKWATER)

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): X Janice Crank Date: 6/7/89
Date: _____

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 7th day
of June 19 89

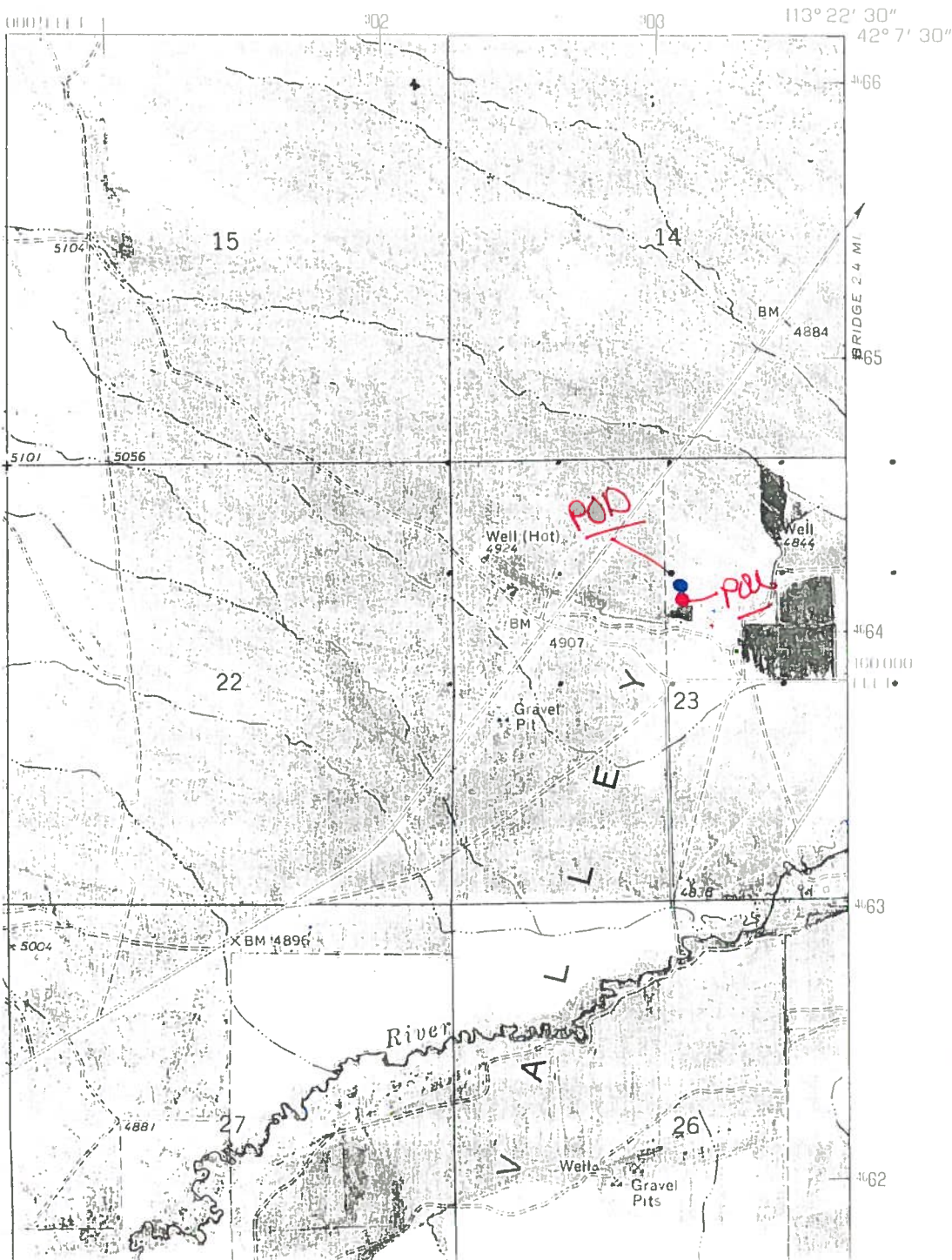
Anna Baunhoff
Notary Public

Seal

Residing at Anna Baunhoff, Notary Public
Residing at Boise, Idaho
My Commission Expires December 7, 1994

DD81

CHOKECHERRY CANYON ORTHOPHOTOQUAD
IDAHO



APB-10380

MICROFILMED
MAR 04 1993

05/09/2001

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June 15, 2001

Water right number: 43-10382

RANDALL JAY FARLEY

HC 72

MALTA ID 83342

Telephone Number: (208)824-5577

LINDA DIANE FARLEY

HC 72

MALTA ID 83342

Telephone Number: (208)824-5577

RECEIVED

JUN 07 2001

Department of Water Resources
Southern Region

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation; no changes need to be made.

DATE: 6/4/01 SIGNATURE: Randall J Farley
Please print your name: Randall J Farley

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, 2087363033

05/09/2001

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

RIGHT NUMBER: 43-10382
NAME AND ADDRESS: RANDALL JAY FARLEY
HC 72
MALTA ID 83342
LINDA DIANE FARLEY
HC 72
MALTA ID 83342

RECEIVED
JUN 07 2001
Department of Water Resources
Southern Region

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.030 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 05/10/1978

POINT OF DIVERSION:

T15S R26E S23 NWSWNE Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	1/01 12/31	0.030 CFS

PLACE OF USE:

DOMESTIC Within CASSIA County
T15S R26E S23 SWNE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY
FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF
THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A
POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
PARCEL NO. RP15S26E230750

05/09/2001

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June 15, 2001

Water right number: 43-10382

RANDALL JAY FARLEY

HC 72

MALTA ID 83342

Telephone Number: (208)824-5577

LINDA DIANE FARLEY

HC 72

MALTA ID 83342

Telephone Number: (208)824-5577

RECEIVED

JUN 08 2001

Department of Water Resources
Southern Region

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):
2. Describe the changes you wish to make in the proposed recommendation:
3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 6/4/01

SIGNATURE:

Please print your name:

Randall J Farley

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, 2087363033

AJ5856NP

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

DATE: AUG-18-1997

PAGE: A-177

RIGHT NUMBER: 43-10382

NAME & ADDRESS: LINDA DIANE FARLEY
RANDALL JAY FARLEY
HC 72
MALTA ID 83342

SOURCE: GROUNDWATER

QUANTITY: 0.03 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 05/10/1978

POINT OF DIVERSION: T15S R26E S23 NWSWNE Within CASSIA County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 1 HOME	01-01 12-31	0.03 CFS

PLACE OF USE: DOMESTIC Within CASSIA County
T15S R26E S23 SWNE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
PARCEL NO. RP15S26E230750

Claim proofread by: KT

Date: 9-5

AJ5856NP

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

DATE: AUG-8-1997
PAGE: A-182

RIGHT NUMBER: 43-10382

NAME & ADDRESS: LINDA DIANE FARLEY
RANDALL JAY FARLEY
HC 72
MALTA ID 83342

SOURCE: GROUNDWATER

QUANTITY: 0.03 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 05/10/1978

POINT OF DIVERSION: T15S R26E S23 NWSNE Within CASSIA County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 1 HOME	01-01 12-31	0.03 CFS

PLACE OF USE: DOMESTIC Within CASSIA County
T15S R26E S23 SWNE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
PARCEL NO. RP15S26E230750

Claim data entry by: KS T

Date: 8/13/97

Data entry verified by: [Signature]

Date: 8-15-97

WATER RIGHT NUMBER - A43-10382

PREFIX TRANSLATION: ADJUDICATION CLAIM

+ - - OTHER RIGHTS FOR SAME USE - A43-04098A (FOR IRRIG. AND STOCKWATER)

+ - - - - - REMARKS - - - - -
CHANGE OF OWNER 5-10-1991 SCC.

+ - - - - - OLD WATER RIGHT NUMBERS - - - - -
NO OLD WATER RIGHT NUMBERS FOUND.

+ - - - - - CONDITIONS OF APPROVAL - - - - -
NO CONDITIONS OF APPROVAL FOUND.

+ - - - - DECREE PLAINTIFF - - - +

+ - - - - DECREE DEFENDANT - - - +

+ - - DECREE DATE - +
00/00/0000

+ - - AUDIT FIELDS - 06/07/89 BAUMHOFF 05/10/91 CLELLAND

+ - - - - - COMMENTS - - - - -
NO COMMENTS FOUND

+ - - - - - ADJUDICATION RIGHTS DATES AND FLAGS AREA - - - - -

COURT REPORT FILING	-	00/00/0000	FIELD INSPECTION MADE	-	00/00/0000	CIVIL CASE NUMBER	-	39576
OBJECTION FILED DATE	-	00/00/0000	FIELD INSPECTION FLAG	-		OLD CASE NUMBER	-	
RESPONSE FILED DATE	-	00/00/0000	VERIFIED DATE	-	00/00/0000	OLD JUDICIAL DISTRICT	-	
CLAIM RECEIVED DATE	-	06/07/1989	LAST AMENDED DATE	-	00/00/0000	TEMPORARY RIGHT	-	P
PROOF DUE DATE	-	00/00/0000	PROOF MADE DATE	-	00/00/0000	WATER DISTRICT	-	
LICENSED DATE	-	00/00/0000	RECEIPT NUMBER	-	C007289	FEDERAL/STATE INDICATOR	-	S
CLAIMS TAPE ERROR FLG	-		PQU OWNERSHIP FLAG	-	Y	PRESUMPTION FLAG	-	
FEE EXEMPT FLAG	-		NAME CONNECTOR	-				

RP 158 26E 230750

variously described

part of W 1/2 NE 4

begin at pt. 358 N of SW corner of NE 2

Thence East 849

Norby 2082

we 34 2149

500 24 2082

DATA ENTRY

ENTERED 11-21-98 mmb

CHECKED 6/16/92 AB

Verified By:
Topo Map/Ortho-PQ
ASCS Map
Watermaster Records
NAPP Photos
Field Exam
Other (See Remarks)
County Records
Witness Statement
Project Records
IDIVR Records

CERTIFIED

OCT 17 1991

WATER EXAMINER

VERIFIED

OCT 17 1991

**IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)**

DATE: 10/22/96
PAGE: 1

(REGIONAL)

Water Source: GROUNDWATER

Tributary to:

Stage: BENEFICIAL USE

Point(s) of Diversion:

T15S R26E S23

ANSWER

CASSIA County

Place of use legal Description for: DOMESTIC use

NE

MEM

MS

SE

[illegible]

POU County: CASSIA

Non-Irrigation Uses: 1 HOME

Other Rights: 43-04098A

Conditions of Approval:

N13 - THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000

- GALLONS PER DAY.

N11 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

Remarks: EXP PARCEL NO. RP15S26E230750

Dates: Exam Made Date: 04/27/1992 Verified Date: 10/22/1996 Objection Filed Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

COPY

RECEIVED

MAY 28 1998

Department of Water Resources
Southern Region

1998 MAY -8 AM 11:50

CASSIA COUNTY CLERK

BY _____ DEPUTY

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

In Re: SRBA
Case No. 39576

EDSIL IVAN DARRINGTON and
BARBARA DARRINGTON, husband
and wife,

Plaintiffs

v.

RANDALL J. FARLEY and LINDA
FARLEY, husband and wife,

Defendants

Cassia County Case No. CV 92-00778D

SRBA Case No. 94-00008

MEMORANDUM DECISION:

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Appearances By:

William A. Parsons, Parsons Smith & Stone, for Plaintiffs
Edsil Ivan Darrington and Barbara Darrington
Gregory W. Moeller, Rigby Thatcher Andrus Rigby
Kam & Moeller, for Defendants Randall J. Farley
and Linda Diane Farley

I.

PROCEDURAL HISTORY

Plaintiffs Edsil Ivan Darrington and Barbara Darrington, husband and wife, initiated Cassia County Case No. CV-92-00778D by filing a *Complaint* in Cassia County. Defendants Randall J.

MEMORANDUM DECISION
G:\ORDERS\DARRING.MD
5/6/98

436-10382

Farley and Linda Farley, husband and wife, answered generally denying the allegations in the complaint and counterclaimed.

The Farleys filed a *Motion for Disqualification* pursuant to I.R.C.P. 40(d)(1). An *Order of Disqualification and Assignment* was granted and the case was assigned to this court.

The Farleys filed a *Motion for Summary Judgment*, to which the Darringtons filed a *Memorandum in Opposition to Motion for Summary Judgment*. Summary judgment was granted dismissing count three of the complaint. Summary judgment was denied as to all other counts in the complaint and counterclaim on the basis that genuine issues of material fact remained.

Trial was held, during which the court found that further investigation of the water rights at issue was necessary. Therefore, the trial was bifurcated and the Idaho Department of Water Resources (IDWR) was ordered to conduct further investigation. Following IDWR's further investigation, the second phase of the trial took place. Both parties briefed all issues presented. This decision follows.

II.

FINDINGS OF FACT

This is a dispute over ownership of a water right to a "hot water well" (hot well). The water from this well was initially licenced as number 19094/43-02283 to Ben V. Schmidt in 1941. The license authorized the diversion of .92 cfs of water from a hot well for the irrigation of 46 acres. In 1954, Mr. Schmidt was granted permit number 43-02413 which allowed him to drill a cold water well to irrigate the land previously irrigated by the hot well. The rights to water from the hot well were transferred from Ben V. Schmidt to Guy and Lois I. Creek in 1966. The Creeks subsequently transferred the hot well right to Janice and Paul Crank, who, in 1969, transferred the right to Harriet P. Crank.

The Crank property was divided on May 21, 1975, when Harriet Crank sold 120 acres to the Darringtons. Harriet Crank retained ownership of the 40-acre parcel of land upon which the hot well is located. The water from the hot well flowed into a ditch on Harriet Crank's property and then into a reservoir after the "heat" has been used. The reservoir is also located on Harriet Crank's retained 40 acres.

On May 23, 1975, Harriet Crank and the Darringtons entered into a *Memorandum Agreement*. The *Memorandum Agreement* was recorded in the Cassia County Recorder's Office on October 12, 1977. The agreement, in pertinent part, states:

Darringtons shall have the right to use the water in the reservoir and the right to ingress and egress to the reservoir and the right of way for necessary ditches to remove water from the reservoir and together with the right to repair and maintain the ditches from the reservoir. No cattle shall water at the reservoir. . . .

All heat rights from the well identified in the preceding paragraph hereof, shall belong to Crank, except a 2 inch pipe of water for heat may be used by Darringtons, provided however, that all water, except that used under the amount reserved by Crank in the preceding paragraphs, shall be returned to the reservoir for the use by Darringtons for irrigation or livestock water away from the reservoir.

Memorandum Agreement (Plaintiffs' Exhibit 2) §§ 2, 5.

In 1991, the Farleys purchased the 40-acre tract of land with the hot well and reservoir from Janice Crank, Harriet Crank's daughter-in-law. The Farleys admit that, as Crank's successors in interest, they are bound by the *Memorandum Agreement* allocating the water rights from the hot well, to the extent its provisions remain enforceable.

On April 27, 1992, Steve Clelland, IDWR Field Agent, prepared a field exam covering the Farleys' property, the hot well, and the reservoir at issue. *Defendants' Exhibit I*. At the time of his 1992 investigation, Mr. Clelland observed the condition of the culvert and headgate which would remove water from the reservoir for use on the Darringtons' property. In 1992, Mr. Clelland found no water being diverted directly from the reservoir in accordance with the *Memorandum Agreement*. The only diversion made by the Darringtons in 1992 was a PVC pipe above the reservoir running from the ditch on the Farleys' property. Mr. Clelland noted that the culvert which would carry water directly away from the reservoir to the Darringtons' property looked as though it had not been used for some time. Neither did Mr. Clelland note a two-inch pipe being used for "heat purposes."

On May 4, 1992, the Farleys submitted an application for permit number 43-07138 to IDWR for the diversion of .22 cfs of groundwater from the hot well for heating, recreational, and domestic purposes. On June 22, 1992, the Darringtons filed a protest against approval of the application.

Subsequently, the Darringtons filed a complaint in the district court of Cassia County. The Darringtons assert that the Farleys illegally interfered with the Darringtons' right to the water from the hot well.

On October 8, 1996, in response to this court's *Order to IDWR for Further Investigation*, IDWR Field Agents Steve Clelland and Frank Hitchcock investigated the land and irrigation works in dispute. The Agents first met with the Farleys and observed that the hot well head was a sealed system and that there was no two-inch pipe to deliver water to the Darringtons for "heat purposes." *Response to SRBA Order* at 2. The flow from the hot well was measured at .14 cfs. *Id.* The Agents located the ditch from the hot well to the reservoir where Agent Clelland had previously seen the PVC pipe used by the Darringtons to divert water. *Id.* The Agents then examined the ditch that would have delivered water in accordance with the *Memorandum Agreement*. *Id.* Agent Clelland determined that the ditch was in unusable condition and that it appeared to not have carried water since his initial investigation in 1992. *Id.*

Agents Clelland and Hitchcock then proceeded to investigate the Darringtons' land and irrigation works. *Id.* The Agents asked to see the stock water mechanism used for the water from the hot well. *Id.* The Darringtons were only able to point out several pieces of PVC pipe laying around the fence that divided their land from the Farleys'. The Agents did not observe any stock troughs or watering sites, and the six-acre field appeared to be irrigated from the direction opposite the hot well. *Id.* When questioned about their use of the hot well water, the Darringtons conceded that they needed to supplement the hot well water to irrigate the entire acreage claimed. *Id.*

At trial, neither party established, through credible evidence, that the facts surrounding this dispute are inconsistent with the investigation by IDWR.

The Darringtons seek to enforce the *Memorandum Agreement*. *Post Trial Brief and Argument of Plaintiffs* at 2. The Farleys argue that the Darringtons' have forfeited their right to use water from the hot well. *Defendants' Post Trial Reply Brief* at 2-3. In the alternative, the Farleys assert that the Darringtons do not have a right to use the water from the hot well in any way inconsistent with the *Memorandum Agreement*. *Id.* at 3. Finally, the Farleys argue that the

Darringtons cannot be entitled to damages based on crop loss because the Farleys' were not proven to be at fault. *Id*

III.

ISSUE PRESENTED

Have the Darringtons Forfeited Their Right to Water Under the *Memorandum Agreement*?

IV.

ANALYSIS

Both the Darringtons and the Farleys admit that the *Memorandum Agreement* controls their respective rights to the water of the "hot well," absent a finding of forfeiture or abandonment. The Darringtons seek enforcement of their right to take water from the reservoir and a two-inch pipe of "heat rights" under the *Memorandum Agreement*. The Farleys allege that the Darringtons' have forfeited their rights due to five consecutive years of nonuse.

The *Memorandum Agreement* does not supersede Idaho statutory law concerning the appropriation and use of water; a contractual right to water may be lost by forfeiture. Forfeiture is not favored in Idaho and must be proven by clear and convincing evidence by the party asserting it. *Jenkins v. State Dept. of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982). A water right is forfeited if it is unused for five years, absent a legal excuse. *Id*. Clear and convincing evidence was offered at trial to support the Farleys' allegation that the Darringtons have forfeited their right to water from the hot well.

Specifically, the evidence provided by IDWR Field Agent Steve Clelland supporting forfeiture is clear and convincing. On April 27, 1992, Agent Clelland examined the area around the reservoir. In detailed notes, Agent Clelland wrote:

There is [sic] remains of a culvert used to drain the pond through the dam but the control device looks unusable and Mrs. Farley said it does not work at all. The only way to empty the pond is to divert the incoming flows and evaporate the pond dry. Below the dam is an old ditch that hasn't carried water for over 5 years or more. This ditch runs off through the Farley property.

Defendants' Exhibit I at 2. Agent Clelland also noted that photographs taken in August 1976 and in August 1987 show no flows extending beyond the "pond." On October 8, 1996, at the request of this court, Agent Clelland reexamined the area around the reservoir. Again, the condition of the ditch was in disrepair:

This culvert was in unusable condition based upon my observations, same as my exam on 4/27/1992. I began to walk the old ditch to see the condition of the ditch and possible deliveries it could make. I traced the full length of the ditch until no ditch could be identified; the ditch appears to have not carried water in several years. There were several large breaches of the ditch along the entire length of the ditch and no observable repairs were noted anywhere on the ditch.

Response to SRBA Order at 2. Based on his examinations, Agent Clelland summarized his findings of the Darringtons' claim as:

A43-02283 is based on a license which indicated more acres than have ever been irrigated and possibly with more water than ever flowed After observing the lands and diversions claimed it appears this right has not been used in many years.

The diversion structure on the pond has deteriorated beyond use and the delivery ditch shows evidence of not carrying water for several years. The ditch is in severe disrepair and will not hold water at several points along the way. . . .

The claim for stock use did not appear valid based on the descriptions given by the claimant. . . .

Mr. Darrington claims he has photographs of the past times he used this water and he told me Ben Schmidt is still living in Nevada. It appears he has several resources to support his position and yet has not pursued them.

The recommendation for this right based on the evidence available to IDWR is for disallowal.

Id. at 5. It is found that Agent Clelland's findings and testimony are consistent and were not credibly contradicted at trial.

The testimony of George Darrington, the Darringtons' son, supported the findings of Agent Clelland. George Darrington testified that the last time he was aware that the headgate at the reservoir was actually used to deliver water to the Darringtons' property was around 1984.

The Farleys have established, by clear and convincing evidence, a *prima facie* case of forfeiture of the Darringtons' right to water from the reservoir. The Darringtons assert that the right has been used. However, the Darringtons concede that such use has been in violation of the *Memorandum Agreement*.

The Darringtons' argue that the water has been put to beneficial use by diverting it with PVC pipe above the reservoir. The Darringtons had a contractual right to take water from the reservoir. *Memorandum Agreement* at 3. The Darringtons also had the right of "ingress and egress to the reservoir and the right of way for necessary ditches [sic] to remove water from the reservoir and together with the right to repair and maintain the ditches from the reservoir." *Id*. However, the Darringtons did not have the right to divert the water above the reservoir. "[A]n easement does not give its owner the right to commit a trespass upon the servient tenement, or to exercise the use of the easement in any manner which happens to suit his pleasure." 2C. Kinney, *THE LAW OF IRRIGATION AND WATER RIGHTS*, § 992 at 1754 (1912).

One of the fundamental tenets of Idaho water law is that a trespasser cannot beneficially use water and acquire a lawful water right.¹ *Lemmon v. Hardy*, 95 Idaho 778, 780, 519 P.2d 1168, 1170 (1974). This court is equally convinced that proof of beneficial use by trespass cannot establish a "use" of water to rebut a claim of forfeiture. The Darringtons' attempts at diversion of the water above the reservoir cannot be considered instances of beneficial use.

The *Memorandum Agreement* also provides the Darringtons "heat rights" to the water from the hot well: "All heat rights from the well . . . shall belong to Crank, except a 2 inch pipe of water for heat may be used by Darringtons. . . ." The Farleys maintain that the Darringtons have forfeited the heat rights. The Darringtons assert that the water has been used for irrigation and stock water purposes.

Agent Clelland was unable to find evidence of stock watering or irrigation use from the "two inch heat right." Again, Agent Clelland's testimony was not persuasively contradicted at

¹ It is generally held that a water right initiated by trespass is void. That is to say, one who diverts water and puts it to a beneficial use by aid of a trespass does not, pursuant to such trespass, acquire a water right. Any claim of right thus initiated is void. *Basset v. Swenson*, 51 Idaho 256, 259, 5 P.2d 722, 723 (1931).

trial. Nor was there mention of a "heat right" in the Darringtons' complaint. The Farleys have established, by clear and convincing evidence, that if the "heat right" ever was used by the Darringtons, it has been forfeited.

The questionable evidence of use provided by the Darringtons was also in violation of I.C. § 42-233(1). The Farleys persuasively cite I.C. § 42-233(1) as setting forth the rules for appropriations from geothermal wells:

The appropriation may be perfected by means of the application, permit and license procedure as provided in this chapter for groundwater, provided that low temperatures geothermal resources shall be utilized primarily for heat value and secondarily for the value as water. Usage of a low temperature geothermal resource primarily for reasons other than heat value is not a beneficial use of the resource, unless the director of the Department of Water Resources exempts the proposed use.

The Darringtons purported to use the "heat right" for irrigation and stock watering use. Therefore, the Darringtons' purported use of the "heat right" is in violation of I.C. § 42-233(1) which mandates that geothermal resources be used primarily for heat value and secondarily as water. Any use of water by the Darringtons in violation of I.C. § 42-233(1) cannot be considered beneficial use to rebut a claim of forfeiture.

The Darringtons have forfeited their right to water from the hot well based on clear and convincing evidence establishing five years of consecutive nonuse as recommended by IDWR.

The Farleys also seek an award of attorney's fees under I.R.C.P. 54(e)(1), which states: "[A]ttorney's fees may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation." IT IS FOUND THAT the Darringtons are not liable for attorney's fees under the above standard. The Farleys' claim for attorney's fees is DENIED.

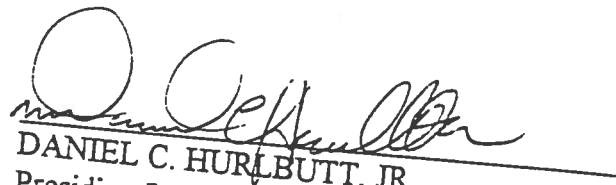
V.

ORDER

1. Claims A43-04098A, A43-109382, A43-10655 by Farleys shall be licensed in conformity with the Recommendation of IDWR Field Agent Steve Clelland.
2. Claim A43-02283 is found to be forfeited, and therefore denied.

IT IS SO ORDERED.

DATED May 6, 1998


DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

LIST OF MAPS USED AND ATTACHMENTS

CLAIM NUMBER: 0000000000

MAPS AND AERIAL PHOTOGRAPHS USED TO REVIEW THIS NOTICE OF CLAIM TO A WATER RIGHT

TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED)	IF USED, SUPPLY APPROPRIATE DATE AND OTHER INFORMATION	COPY INCLUDED IN FILE?
☒ ORTHOPHOTOQUAD	DATE OF PHOTO 1976	Y(☒) N(☐)
☐ TOPOGRAPHIC	DATE FIELD CHECKED 8-8-87	Y(☐) N(☐)
☒ NAAPP	389-55 8-8-87	Y(☐) N(☒)
	373-175 7-4-87	Y(☐) N(☒)
☒ ASCS AERIAL PHOTO	16031-389	Y(☐) N(☐)
☐ ASCS COLOR SLIDE	1987 flight CC38	Y(☐) N(☐)
☐ BLM OR USFS AERIAL PHOTO		Y(☐) N(☐)
☐ TOWNSHIP SURVEY (GOVERNMENT PLAT)		Y(☐) N(☐)
☐ SCS SOIL SURVEY MAP		Y(☐) N(☐)
☐ SUBDIVISION PLAT MAP		Y(☐) N(☐)
☐ OTHER		Y(☐) N(☐)
☐ OTHER		Y(☐) N(☐)
☐ OTHER		Y(☐) N(☐)

LIST OF ATTACHMENTS (CHECK IF ATTACHED)	IF ATTACHED, SUPPLY APPROPRIATE INFORMATION	NO. OF PAGES	NOTES
☐ LICENSING FIELD EXAM	DATE OF FIELD EXAM		
☐ WATER RIGHT LICENSE	DATE LICENSE SIGNED		
☐ IDWR APPROVED TRANSFER	DATE TRANSFER APPROVED		
☐ SYSTEM DESCRIPTION	DATE DRAWN		
☒ PHOTOGRAPHS IDWR	DATE(S) PHOTOS TAKEN		
☐ SPLIT RIGHT REVIEW	DATE REVIEW COMPLETED		
☐ HUBBLE ANALYSIS	DATE ANALYSIS COMPLETED		
☐ CONVEYANCE LOSS ANALYSIS	DATE ANALYSIS COMPLETED		
☒ FLOW MEASUREMENT CALCULATIONS	DATE SYSTEM MEASURED		
☐ OTHER	DATE		
☐ OTHER	DATE		

ORIGINAL

CLAIM

Photo 43-36 by FH
#13

10-8-96



Shows approximate location of
Domestic well; buried underground
where car is parked.
Farley House in view also.

ID by SCL
1/8/97

AA3-10382

Reformat

DATE: 10/22/96
PAGE: 1

SCC

TOTAL DIVERSION: 0.03 CFS

Stage: BENEFICIAL USE

SE

11/2

$$\frac{N}{13}$$

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. DARRINGTON

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Frank Hitchcock

◇◇◇◇◇◇

October 17, 1996 11:41am

NAME:
FRANK HITCHCOCK

RE:
DARRINGTON V FARLEY CLAIMS

THE FOLLOWING CLAIM NUMBERS WERE UPDATED TO LOCATION-LEGAL WHEN THEY WERE TAKEN BY LEGAL FOR REVIEW. STEVE CLELLAND WAS CALLED AS A WITNESS IN THE TRIAL 09-26, 27-1996. FILES WERE RETURNED AS THE COURT ISSUED AN ORDER DIRECTING A FIELD EXAM BY STEVE.

THE CLAIM NUMBERS WERE UPDATED THIS AM (SEE ATTACHED) TO CLELLAND AND ARE HERE IN SOUTHERN OFFICE:

A43-02283	DARRINGTON
A43-02413	DARRINGTON
A43-04098A	FARLEY
A43-10382	FARLEY ✓
A43-10655	FARLEY

MEMO BY FH WHO ACCOMPANIED STEVE ON FIELD EXAM 10-08-1996. FH HAS CLAIM REVIEW RESPONSIBILITY FOR USAGES IN BASIN 43 WHERE THE USAGES ARE LOCATED SOUTH OF MALTA.

WR-Number	Location	Reg	Type-Description	Date
A36-00121	LEGAL	S	Reviewed, Conditions Pending	04/24/96
A36-04052	LEGAL	S	Legal	08/30/96
A36-07034	LEGAL	S	Legal	09/30/96
A36-07347	LEGAL	S	Legal	09/30/96
A36-10283A	LEGAL	S	Legal	08/30/96
1) A43-02283	LEGAL	S	Legal (WAR CIN 50)	09/27/96
1) A43-02413	LEGAL	S	Legal (WAR CIN 50)	09/27/96
1) -04098A "		"	"	
2) -10382V "		"	"	
2) -10655 "		"	"	

END OF DATA...ENTER MENU OPTION AND/OR PRESS ENTER TO CONTINUE
(Enter=Cont) (GOLD7=This Query) (Menu _____)

1) CIX 09 F.E. Review
2) CWC 55 REV- Cond Pending (as previously ID)

RECEIVED
OCT 16 1996
Department of Water Resources
Southern Region

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

RE:
SRBA Case No. 39576
Darrington v Farley
Case No. 94-00008
Cassia County Case No.
92-00778D
ORDER TO IDWR FOR
FURTHER INVESTIGATION
10-02-1996

A43-02283, A43-02327, A43-02413 BUT NOT A43-10280 (SOURCING STINE CREEK WELL AWAY FROM POD/POU *OF* THE SUBJECT PROPERTIES IN THE SUIT.

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-04098A

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IDWR Employee/Agent Steve Clelland

October 2, 1996 11:25am

NAME: **RANDALL FARLEY** CALLOUT 824-5519 RE: **EXAM APPT.**

CALLER: CALLED TO SET UP EXAM TIME ... TUESDAY 10/8/96 @ 9 AM

From: DWR60::SCLELLAN "STEVE @ SOUTHERN" 2-OCT-1996 08:38:54.76
To: DWR03::CHONSING, DWR03::DTUTHILL, DJONES, FHITCHCO
CC: SCLELLAN
Subj: darrington vs. farley (2)

Dear Gentlemen,

>As you can see below I will be receiving an order to examine and report on the
>two rights listed below. I will contact their respective attorneys today to
>schedule the exam times; I am trying to set up something next week.

**** ADDED STATEMENT ***

I forgot to mention, I have asked Frank to accompany me on this exam. I feel this is important since he will have future dealings with Mr. Darrington in the future for other water right claims. Plus this will provide an additional witness in the field and avoid conflicts of "my word against Mr. Darrington".

COMMUNICATION DOCUMENTATION

Claim No. SEE BELOW

IDWR Employee/Agent Steve Clelland

October 1, 1996 5:00 PM

NAME:	RE:
JUDGE DAN HURLBUTT	DARRINGTON V. FARLEY
CALLIN	

HE ASKED ABOUT THE POSSIBLE TIMING FOR A FIELD EXAM AND REPORT. HE HAS VISITED WITH DAVE TUTHILL AND THEY AGREE A SIMPLE REPORT IS SUFFICIENT VERSUS A FULLY PREPARED DIRECTOR'S REPORT.

WE AGREED TO SET THE DEADLINE FOR OCTOBER 25, 1996 AND HE WILL ISSUE AN ORDER AS SUCH.

CLAIMS: A43-04098A & A43-02283.

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. SEE BELOW

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Steve Clelland

October 2, 1996 10:56am

NAME:
BILL PARSONS

678-8382

RE:
ORDER TO EXAM A43-02283

I CALLED TO INFORM HIM OF THE JUDGE'S DECISION AND ASKED IF I COULD CONTACT MR. DARRINGTON DIRECTLY... HE AGREED.

October 2, 1996 11:00am

NAME:
GREG MOELLER

356-3633

RE:
ORDER TO EXAM A43-04098A

I CALLED TO INFORM HIM OF THE JUDGE'S DECISION AND ASKED IF I COULD CONTACT MR. FARLEY DIRECTLY TO SET UP THE APPT... HE AGREED. HE SAID THEY HAVE BEEN HAVING SOME PHONE PROBLEMS AND HE GAVE ME MR. FARLEY'S WORK NUMBER: 824-5519.

From: DWR60::SCLELLAN "STEVE @ SOUTHERN" 2-OCT-1996 08:32:41.21
To: DWR03::CHONSING, DWR03::DTUTHILL, DJONES, FHITCHCO
CC: SCLELLAN
Subj: DARRINGTON VS. FARLEY CASE

Dear Gentlemen,

As you can see below I will be receiving an order to examine and report on the two rights listed below. I will contact their respective attorneys today to schedule the exam times; I am trying to set up something next week.

COMMUNICATION DOCUMENTATION

Claim No. SEE BELOW

IDWR Employee/Agent Steve Clelland

October 1, 1996 5:00 PM

NAME: JUDGE DAN HURLBUTT CALLIN RE: DARRINGTON V. FARLEY

HE ASKED ABOUT THE POSSIBLE TIMING FOR A FIELD EXAM AND REPORT. HE HAS VISITED WITH DAVE TUTHILL AND THEY AGREE A SIMPLE REPORT IS SUFFICIENT VERSUS A FULLY PREPARED DIRECTOR'S REPORT.
WE AGREED TO SET THE DEADLINE FOR OCTOBER 25, 1996 AND HE WILL ISSUE AN ORDER AS SUCH.
CLAIMS: A43-04098A & A43-02283.

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-04098A

A43-02283

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Steve Clelland

October 1, 1996 11:17am

NAME:

GREG MOELLER

RE:

CALLOUT 356-3633

DARRINGTON V. FARLEY CASE

I CALLED TO INQUIRE ABOUT THE OUT COME OF THIS CASE. HE RELAYED THAT THE JUDGE WANTS A MORE COMPLETE FINDING BY THE DEPT. FOR ALL RIGHTS AFFECTED BY THIS DECISION. HE BELIEVED THE COURT WOULD ISSUE AN ORDER TO ME REQUESTING FURTHER EXAMINATIONS OF THESE RIGHTS. HE SUGGESTED I CALL THE COURT; I AGREED I WOULD AND LET HIM KNOW.

Ray W. Rigby
Gregory W. Moeller
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for Defendants/Counterclaimants

RECEIVED

SEP 24 1996

Department of Water Resources
Southern Region

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

EDSIL IVAN DARRINGTON and
BARBARA DARRINGTON, husband and
wife,

Plaintiffs/Counterdefendants,

vs.

RANDALL J. FARLEY and LINDA DIANE
FARLEY, husband and wife,

Defendants/Counterclaimants.

Case No. CV 92-00778D

SUBPOENA DUCES TECUM

The State of Idaho to:

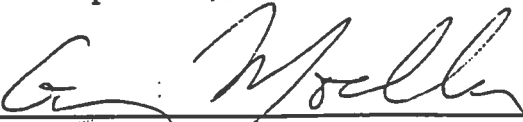
STEVE CLELLAND, WATER AGENT
ADJUDICATION BUREAU
IDAHO DEPARTMENT OF WATER RESOURCES
222 SHOSHONE ST. EAST
TWIN FALLS ID 83301

You are hereby commanded to appear before Judge Daniel C. Hurlbutt, of
the above-entitled court at the courtroom at Twin Falls, Twin Falls County Idaho, on the
26th and 27th days of September 1996, as a witness in the above entitled action, and
bring with you:

All records pertaining to the water rights of Plaintiffs/Counterdefendants or Defendants/Counterclaimants in possession of the Department of Water Resources

You are further notified that if you fail to appear at the place and time specified above, that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which he may sustain by your failure to attend as a witness.

DATED This 23rd day of September, 1996.



Gregory W. Moeller
Attorney for Defendants/Counterclaimants

COMMUNICATION DOCUMENTATION

COPY

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-04098A

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IDWR Employee/Agent Frank Hitchcock

September 20, 1996 2:36pm

NAME:
GREGORY W. MOELLER-RIGBY THATCHER

RE:
DARRINGTON V FARLEY 09-26-
96 IN DIST. CT-JUDGE
HURLBUTT.

GREG REPRESENTS THE FARLEYS AND ARRANGED TO COME IN AT 1 PM AFTER TALKING TO SCC ON THE PHONE YESTERDAY. SCC CAME IN ALTHOUGH HE WAS SCHEDULED OFF TODAY.

SCC WENT THROUGH A43-04098A CLAIM FILE WITH GREG WHILE I OBSERVED SINCE I'VE NEVER BEEN TO THE PROPERTY EVEN THOUGH I HAVE BEEN GIVEN THE FILE TO REVIEW AS PART OF UPPER RAFT RIVER VALLEY CLAIMS IN 43.

GREG TOOK A LETTER-SIZE COPY I HAD MADE OF THE ASCS MAP CC 38 1987 FLIGHT COPIED BY FH IN 1994 FIELD SEASON FOR CLAIM REVIEWS. THE PAGE WAS OF THE NE QUADRANT OF SECTION 23 15S 26E ESPECIALLY THE SWNE SUBJECT PROPERTY CLAIMED POU BY FARLEY IN THEIR SRBA CLAIMS.

SCC WILL BE SUBPOENAED AS A WITNESS FOR THE 09-26 AND 27-1996 TRIAL TO TESTIFY TO HIS FINDINGS WHEN HE DID A FIELD REVIEW OF THE CLAIMED USAGE IN BENEFICIAL USE CLAIM A43-04098A.

SD-0401-2
MODIFY

Idaho Department of Water Resources
File Inventory Information Modify

Date: 09/20/96
Time: 16:43:38

Water Right Number: A43-10382

Office	Location	Type	Description	Reg	Date
HITCHCOC	CWC	55	Reviewed, Conditions Pending	S	09/20/96
HITCHCOC	CIN	50	Pending Claim Review	S	07/19/94
SOUTHERN	SHELVES	ZZ	Initial Entry	S	03/11/93

(GOLD2=Update)

(GOLD8=Cancel)

(GOLD9=Override Call-Up)

(Enter=Exit)

COMMUNICATION DOCUMENTATION

COPY

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. SEE BELOW

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Frank Hitchcock

September 16, 1996 8:53am

NAME:
FARLEY, DARRINGTON & STEWART, REID

RE:
PARSONS ESQ. REQUEST TAKEN
BY COREY SKINNER & CCS SENT

WHEN I CAME IN MONDAY, 09-16-1996, AFTER TAKING SICK LEAVE ON 09-13-96, I FOUND A CC OF LETTER TO MR PARSONS FROM COREY LISTING PROFILE REPORTS SENT TO PARSONS PER HIS REQUEST. I RAN CCS OF THE AJ/WR PROOFS AND PROFILES RESPECTIVELY FOR FILES AND WILL ATTACH THIS JCOM ENTRY AS WELL. CHECKED WITH SRBA COURT-TIFFANY SAYS THERE IS A COURT DATE SET FOR DARRINGTON V FARLEY, 09-26 & 27. I WILL ASK SCC WHO HAS BEEN CALLED IN THE PAST BY FARLEY FOR ANY RECENT CONTACTS OR INFORMATION HE MAY HAVE RECIEVED.



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301-6105 (208) 736-3033
Fax (208) 736-3037

PHILIP E. BATT
Governor

KARL J. DREHER
Director

September 13, 1996

William A. Parsons
Parsons, Smith, Stone & Fletcher
137 West 13th Street
Box 910
Burley, ID 83318

FRANK,
F.Y.I.

Dear Mr. Parsons:

Pursuant to your request, I have researched the department records concerning the water rights that you inquired about today. Please find the following profile reports enclosed for your convenience:

WATER RIGHT RECORDS

Profiles printed ✓
✓43-02283
✓43-02327
✓43-02413
✓43-02461
✓43-04098

SNAKE RIVER BASIN ADJUDICATION RECORDS

✓ H-BC
FARLEY
FARLEY
DARRINGTON
DARRINGTON
STENART, REID
" "
DARRINGTON
blue A43-04098A ✓
blue A43-10655 ✓
green A43-02413 ✓
green A43-02283 ✓
green A43-02327 ✓
green A43-02461 ✓
green A43-10280 ✓
blue - not ready for
fill work.
green - ready for fill
work.
ADD -10382 by H 09-16-96 by sec 4-28-92

If you have any questions, or need any further assistance, feel free to contact me at your convenience.

Sincerely,

Corey Skinner, EIT
Dam Safety Section

Enclosures

09-26+27-96
DARRINGTON
✓
FARLEY



Claim No. See Below

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Steve Clelland

September 9, 1996 5:01pm

NAME:

DIANE FARLEY

CALLIN

RE:

QUESTIONS

SHE ASKED SEVERAL QUESTIONS ABOUT THE RIGHTS CLAIMED BY DARRINGTON AND HOW THEY RELATE TO THE AGREEMENT BY CRANK. I TOLD HER I DO NOT KNOW BUT THESE DECISIONS AND ANSWERS ARE TO BE RESOLVED BY THE JUDGE.

SHE SAID HER ATTORNEY, GREG MULNER, WANTED TO MEET ME AND GO OVER THE RIGHTS AND ASK ME ABOUT POSSIBLE TESTIMONY. HIS NUMBER IS 356-3633.

A43-04098A

A43-10382

A43 - 10655

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. SEE BELOW

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Steve Clelland

September 6, 1996 3:51pm

NAME:

RANDY & DIANNE FARLEY

RE:

CAMEIN

QUESTIONS FOR TRIAL

THEY CAME IN WITH QUESTIONS ABOUT THE WATER USES AND RIGHTS AT THE CRANK WELL IN BASIN 43. THEY ARE PREPPING FOR A TRIAL ON SEPT. 26 BEFORE JUDGE HURLBUTT RE: DARRINGTON vs. FARLEY.

I PROVIDED THEM WITH COPY OF THE CLAIM FILED BY DARRINGTON, A43-02283 AND A POU PORTION FROM THE CLAIM A43-02413 FOR OVERLAP REVIEW. ALSO RAN A NAME QUERY TO ID ALL THE FARLEY RIGHTS AND PRINT OUT LIST OF THOSE AJ & WR NUMBERS: A43-4098A, A43-10382, A43-10655 AND PERMIT 43-07318.

I ASKED THEM IF IDWR WAS GOING TO BE INCLUDED IN THE PROCESS SINCE SOME REVIEW HAS ALREADY BEEN PREPARED BUT THEY WERE NOT SURE.

6/9/94

COMMUNICATION DOCUMENTATION A43-10382

Claim No. A43-10655

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent STEVE CLELLAND

Date 7-28-94

Contact Person(s) DIANE FARLEY

Nature of Contact called re: up & coming hearing.

Substance of Communication

She wanted to know if Loren Holmes or myself would attend the hearing of Tuesday ~~July~~ Aug 2ND 1994 in front of Judge Hurlbutt. I said I would not and didn't know about Loren. She asked if this hearing typically upheld the WR position - I said I didn't know.

She asked about SRBA progress - I told her the field exams are being done in Basin #3 by Frank Hitchcock and I would work w/ him to complete these related claims due to my previous work; based on that review done earlier, I didn't think Darrington had a right for use of the Hot water flows. She said Darrington is preparing and installing Diversion works off the Ditch.

R PROOF

X

CVR

X

MAPS

X

PHOTOS

MISC

MICROFILMED

MAR 04 1993

Water Right Number - R43-10382

Prefix Translation:

RESEARCH

Old (D) Number -

*** C - CURRENT OWNER ***
FARLEY
Last Name
First Name
LINDA DIANE
1 - HC 72
2 -
3 -
City- MALTA
Phone - 208-824-5577
1 - HC 72
2 -
3 -
City- MALTA
Phone - 208-824-5577
State- ID Zip- 83342

FARLEY
RANDALL JAY
State- ID Zip- 83342

*** O - ORIGINAL OWNER ***
CRANK
JANICE
1 - 2246 TANGLEWOOD LN
2 -
3 -
City- EMMETT
Phone - 208-365-5928
1 - 2246 TANGLEWOOD LN
2 -
3 -
City- EMMETT
Phone - 208-365-5928
State- ID Zip- 83617

CRANK
JULIE
State- ID Zip- 83617

Priority Date - 05/10/1978
Region - 17 SOUTHERN
Stage - J - BENEFICIAL USE
Status -

Source - GROUNDWATER
Tributary -

Point of Diversion -
TWN Rng Sec Tract Lot Rflg County
15S 26E 23 NW SW NE (31) CASSIA

Code Description Period From Period To Water Use Diversion Rate Diversion Volume
43 - DOMESTIC 01/01 12/31 0.030

Total Div. Rate - 0.030
Total Div. Volume -
Total Consumptive Use - 0.0
KW Usage -

Place of Use -
TWN Rng Sec Tract Lot Acres Code Description County
15S 26E 23 SW NE 43 DOMESTIC (31) CASSIA

Total Acres:

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Water right number - R43-10382

Prefix Translation: RESEARCH

+ - - Diversion Means - WELL AND PUMP.

+ - - Non-Irrigation Use - DOMESTIC, 1 HOME

+ - - Other Rights for Same Use - 43-04098A

PARCEL NO. RP15S26E230750

No Old Water Right Numbers Found

No Conditions of Approval found.

+ - - Decree Plaintiff - - - +

+ - - Decree Defendant - - - +

+ - Decree Date - +
00/00/0000

Date: 04/21/1992 User Id: SMITH Subject: COPIED FROM REMARKS

CHANGE OF OWNER 5-10-1991 SCC.

Date: 04/28/1992 User Id: CLELAND Subject: IDWR WILL COMPLETE REVIEW

THIS RIGHT IS USED WITH OTHER RIGHTS THAT REQUIRE MEASUREMENTS AND OWNERSHIP VERIFICATION.

+ - - Audit Fields - - +
04/28/92 CLELAND

Adjudication Rights Dates and Flags Area		Civil Case Number
Court Report Filing	- 00/00/0000	- 04/27/1992
Objection Filed Date	- 00/00/0000	- 00/00/0000
Response Filed Date	- 00/00/0000	- 00/00/0000
Claim Received Date	- 06/07/1989	- 00/00/0000
Field Inspection Made	- 04/27/1992	- 00/00/0000
Field Inspection Flag	-	-
Verified Date	- 00/00/0000	- 00/00/0000
Last Amended Date	- 00/00/0000	- 00/00/0000
Receipt Number	- C007289	-
POU Ownership Flag	- Y	-
Name Connector	- AND/OR	-
Federal/State Indicator	- S	-
Presumption Flag	-	-
Notice of Error Flag	-	-

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CLAIM NO. A43-10382

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
CLAIM VERIFICATION EXAM SHEET
FOR DOMESTIC AND STOCKWATER CLAIMS IN PLACE OF A CVR

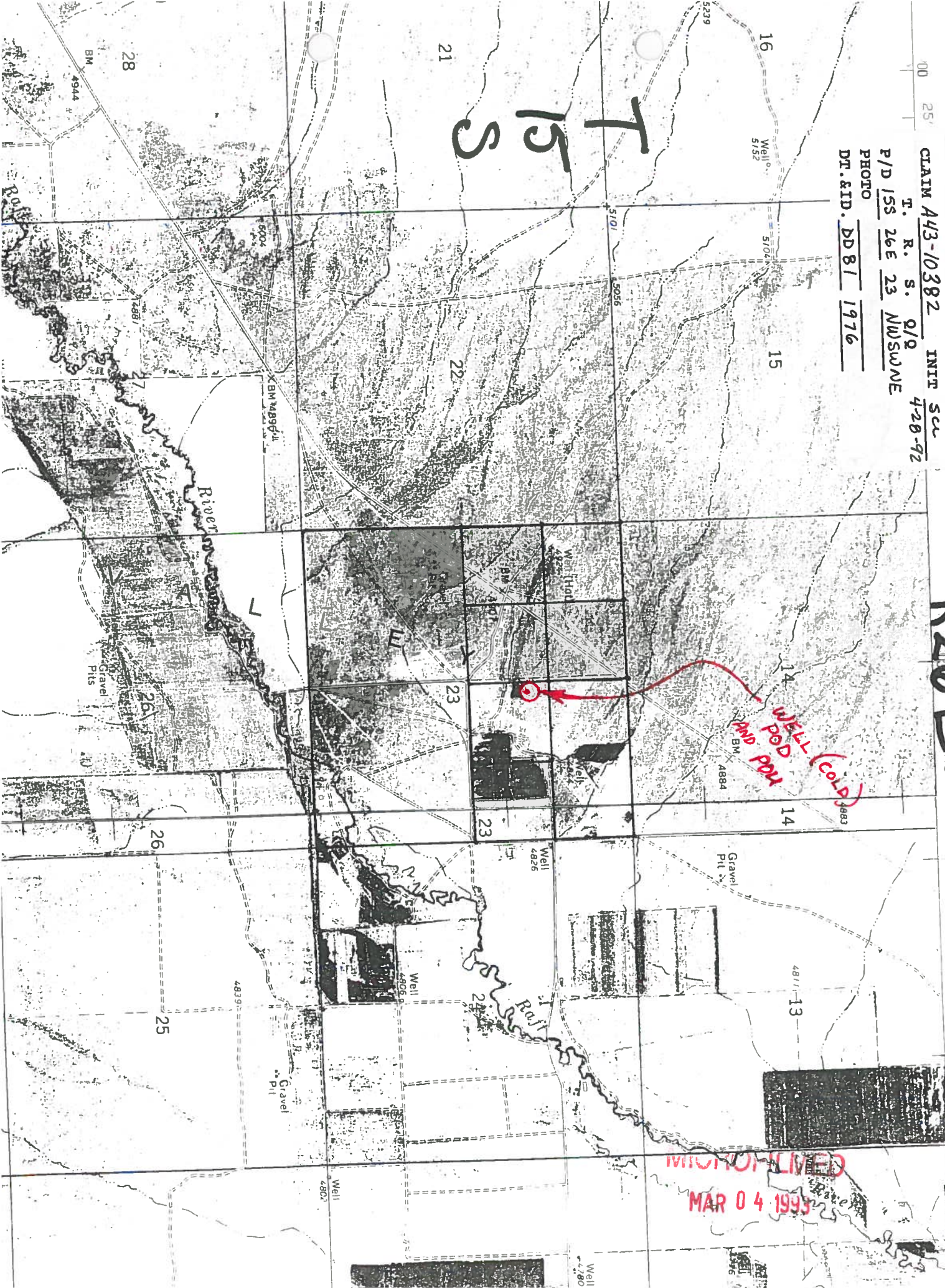
1. ☒ No Change NAME:
☐ NEW OWNER: _____
☒ No Change ADDRESS: _____
☐ NEW ADDRESS: _____
- ☒ DATA ENTRY STANDARDS CHECKED?
2. ☒ No Change - DATE OF PRIORITY: No Field Verification Needed.
☐ CHANGE- Priority date, per claimant, is _____.
(if the priority date, based on your exam, seems questionable, explain in COMMENTS.)
3. ☒ No Change - SOURCE:
☐ CHANGE - Different Source found: _____
4. ☒ No Change - POINT OF DIVERSION:
☐ Point of diversion is different than the claim
New P/D: Twp. _____, Rge. _____, Sec. _____, _____ 1/4 _____ 1/4 _____ 1/4
- Note: If the 10-acre tract is shown on the claim, then verification of the 10-acre parcel is needed. Otherwise the 10-acre tract is not required, unless the source is a spring.
5. ☒ No Change - DESCRIPTION OF DIVERTING WORKS:
☐ Incomplete desc., complete items missing, IF KNOWN.
HP of pump _____ Static water level _____ Well depth _____
Casing size _____ Pumping water level _____ Gravity flow _____
Method of irr. _____
6. ☒ No Change - WATER USES:
☐ Different uses, (list uses found).
- | | | | | |
|-----------|------------|----------|------------------|----------|
| Use _____ | From _____ | To _____ | Amount _____ cfs | _____ af |
| Use _____ | From _____ | To _____ | Amount _____ cfs | _____ af |
7. ☒ No Change - TOTAL VOLUME:
☐ Change found, The new total is, -- -- -- _____ cfs _____ af
8. N/A
9. ☒ No Change - NON-IRRIGATION USES: Completed on claim
☐ Incomplete on claim - Exam found:
Domestic - No. of homes _____ Stockwater - No. of head _____
Other: _____
- ☒ DATA ENTRY STANDARDS (correct to..)

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CLAIM 443-10382 INIT SC
T. R. S. 9/9
P/D 155 26E 23 NW SW NE
PHOTO
DT. & ID. DD 81 1976

T
15
S



MICHON LIVED
MAR 04 1993

FIELD EXAM NOTES

BY: STEVE CLELLAND

DATE: 4-27-92

RE: A43-04098A, A43-10382 & A36-10655

This day I went to examine the system and uses of this hot water well. I met with Mrs. Farley and then followed the ditch + pipeline flows up to the artesian wellhead. There was an old control head valve at the well site where it appears the flows from this well were controlled in the past. The water was at or near boiling point although no measurement was made. The water flows down a ditch and about 50 feet downstream is set a V-notch weir. The weir pool has been filled up with gravel and the weir edges are corroded and have mineral deposits built up. I explained to Mrs. Farley how to upgrade the weir to get a more accurate measurement. They had previously measured $4\frac{1}{2}$ " over the weir. (chart shows this flow is 0.211 cfs.) Downstream from the well, about 600', the screened inlet to a $1\frac{1}{2}$ " black plastic pipe begins and it lays in the bottom of the ditch down to the pond below. There it is buried underground and comes up in the small greenhouse beside the house on the ~~east~~^{north} side of the pond. The Ditch continues on and empties into the pond.

There was another diversion made from the ditch about 80' from the pond. This diversion was a 6" pvc pipe placed in the side of the Ditch and it belongs to

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Ivan Darrington. The Diversion appears to be a brand new development. It does not follow any old diversion ditch channel and although I found some older ditch beds on the site, they all eventually dump back to the pond. Mrs. Diane Farley said this pipe was placed there this spring. No moss or corrosion on the pipe would support that statement.

Mrs. Farley said they laid the 1 1/2" pipe in the ditch last year. She said prior to their purchase of the property she had been told Harriet Crank used another pipeline from the ditch to her house. Mrs. Crank also used the pond itself for domestic uses.

There is evidence of pipelines all over the place. the pond is about 200' x 200' and has a large Dike at the East end of the pond. There is remains of a culvert used to drain the pond through the Dam but the control device looks unuseable and Mrs. Farley said it does not work at all. The only way to empty the pond is to Divert the incoming flows and evaporate the pond dry.

Below the Dam is an old ditch that hasn't carried water for over 5 years or more. This Ditch runs off through the Farley property. There was a small area below the Dam where sagebrush had been cleared off. Mrs. Farley said this was a garden site for Harriet Crank.

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At this point, based on the evidence I have seen, this well water has been running into the pond for years. It does not appear to ever overflow. It seems to be well established that Harriet Crank lived at the pond site and this water was her only source of potable water or any type water.

The OPQ DD81 is from a photograph taken on August 20, 1976 and this photo shows the water flow from the well to the pond. No flows appear to extend beyond the pond.

The same appears true for the photo taken in 8-8-87, NAPP 389-55, DD81 NE; water flows from the well to the pond.

I measured the water in the $1\frac{1}{2}$ " pipe to the house using the 5 gallon Bucket method. It was consistent at 35 seconds to fill 5 gallons. This calculates out to 0.02 cfs; the same amount claimed in the adjudication under A43-04098A.

The Farley's still need to prove the priority date claimed. Since the Diversion point is the well, changes in their delivery system do not require transfers. (i.e. the addition of the $1\frac{1}{2}$ " pipe in 1991.)

I also left an application for permit with Mrs. Farley. They plan to expand their use of the water for more watering of their home. They also plan to access the actual well source and control the flows therein.

RECORDED
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