

RECEIVED

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DEPARTMENT OF  
WATER RESOURCES

John Alfred Simpson (Objector)  
774 Lemhi Road  
Salmon, ID 83467

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

**In Re SRBA**

**Subcase 74-15911 (Tracy)**

**Case No. 39576**

**Tracy First Set of Discovery**

**Response to Discovery Requests (Interrogatories) From Chris M. Bromley, Attorney for Vince  
and Malinda Tracy**

**Interrogatory 1: My objection is based upon the following:**

- 1. Insufficient evidence has been presented by the Tracy's or the Idaho Department of Water Resources (hereafter referred to as Department) in the October 17, 2014 Supplemental Director's Report (hereinafter referred to as Report) of the Tracy's property having been irrigated with waste water as part of a water right enlargement.**
- 2. A prior claim (74-10168) was filed in 1990 by Kirk Knudsen and I filed a notice of change in 2000 for use of the waste water.**
- 3. I have an existing license/right (74-15624) to use the waste water.**
- 4. The erroneous recommendation of the Department that the Tracy's claim be allowed after my prior claim was disallowed. In the Report the Department failed to acknowledge that my property has also been irrigated with waste water originating from water right 74-178B. A preponderance of evidence supports the historic use of waste water on my property and not the Tracy's.**
- 5. The Department's erroneous determination of a 1976 priority date for the Tracy's claim. In Attachment C of the Report, Boyd Stokes states the land on which the Tracy's live has not been irrigated since 1976.**
- 6. The Department's reversal of its own recommendation to disallow the Tracy's claim after the Tracy's retained council that was once an employee of the Department.**

**Response to Interrogatories - 1**

- 7. The Department's slow processing and evaluation of my 1990 claim. It took 15 years to review and make a determination.**
- 8. The lack of guidance and bad advice received from Department staff that I drop pursuit of my claim and submit an application for a permit.**
- 9. The Supplemental Director's report failed to mention that my property was once a part of the same farm owned by James Stoddard. It also failed to mention that when Stoddard constructed the pond it also captured and conveyed waste water to my property.**

**Interrogatory 2: In defense of my objection I am submitting the following exhibits:**

**(A) Copy of a portion of a USDA aerial photo taken during the irrigation season in 1978 showing the actual enlargement (irrigation) of land with water from rights 74-179C, 74-180B, 74-4006 depicting irrigation and utilization of waste water. In the photo a portion of the former Lot 1 Sunrise Hills Subdivision above the Jolly Ditch appears to be irrigated. The photo does not show any evidence of irrigation on that portion of Lot 1 that is now Lot 5 of the Barracks Lane Subdivision and owned by the Tracy's. The photo also confirms that my property was being irrigated with water conveyed via a ditch that originates above the pond.**

**(B) A copy of a portion of a USDA aerial photo taken in 1989. The photo confirms that sometime between 1978 and 1989, irrigation of that portion of Lot 1 Sunrise Hills above the Jolly ditch had ceased. The conveyance ditch from the pond to Lot 1 had been eliminated.**

**(C) A copy of a Google Earth aerial photo taken in 1992. The 1992 photo also shows the pond outlet and ditch have been filled in. There is no evidence of that upper portion of Lot 1 Sunrise Hills being irrigated or Lot 5 Barracks Lane being irrigated.**

**(D) Copy of the 1983 survey plat for the Sunrise Hills Sub-division.**

**(E) A copy of the 1992 survey plat for the Barracks Lane Sub-division. Lot 1 of Sunrise Hills was subdivided into 10 lots (Barracks Lane) by David Freel. Comparison of the two survey plats shows that portion of Lot 1 Sunrise Hills formerly irrigated is not within the boundary of Lot 5 Barracks Lane Sub-division. The Jolly Ditch/Easement is the property boundary between Lot 5 and Lots 3 and 4 (formerly part of Lot 1 Sunrise Hills).**

**(F) Copy of the 1993 Warranty Deed showing ownership transfer for Lot 5 (Barracks Lane) from Freel to Wiscombe. There is no mention of waste water rights being conveyed on Wiscombe's or any subsequent warranty deeds for ownership of Lot 5 since it was transferred from Stokes to Freel.**

**(G) Copy of the Warranty Deed for Lot 5 showing ownership transfer from Collins to Tracy. There is no mention of waste water being conveyed on the Tracy's Warranty Deed.**

**(H) Comparison of Lot 1 Sunrise Hills Subdivision and Barracks Lane Subdivision property boundaries. The existing Jolly ditch/easement serves as the upper property boundary between Lot 5 Barracks Lane and Lots 3 and 4 (now owned by Eagle Valley) . Exhibit A confirms that only the portion of Lot 1 above the Jolly ditch / property boundary easement was ever irrigated with waste water. The land below the Jolly Ditch may have historically been flood irrigated. However, it is more logical to assume it was irrigated from the Jolly Ditch. Unfortunately for the Tracy's, the Warranty Deed from Stokes to Freel shows there was never any intent to convey water rights with the property.**

**(I) Affidavit from Mel Domko (Lot 9 Barracks Lane Subdivision) stating that there has not been any irrigation of Lot 5 Barracks Lane for almost 20 years.**

**(J) Copy of Idaho State Statutes (42-701) that states all water right holders are required to have a lockable / controllable headgate which the Tracy's do not have.**

**(K) Affidavit from Geri Roach stating that my property has been irrigated since she moved next door in 1994.**

**(L) Affidavit from John Tracy (Former Water Master for Bohannon Creek) verifying that my property has historically been irrigated with waste water from the pond and ditches.**

**(M) Current Google Earth image showing layout of property boundaries, sub-divisions and location of landowners.**

**Interrogatory 3: If the Tracy's claim is granted as recommended by the Department it will cause me harm because the Tracy's water right will have a priority date that is earlier than the priority date for my water right. I would have to let the waste water from the pond pass to the Tracy's property which is below my property. The availability and quantity of waste water from Eagle Valley is extremely variable. During the irrigation season waste water from pasture on the Eagle Valley Ranch is generally available for about a week in late May/early June. If the spring runoff in Bohannon Creek lasts long enough, ECR pasture above my property will be irrigated a second time about four weeks later. The duration and quantity of waste water is very irregular and can vary by the hour/day depending upon ditch flow and frequency of irrigation changes (tarp sets) on pasture above. At times the flow of available water is so little that I cannot divert enough to fill my pipe/ditch and spread on my property. There are times when the flow of water from the pond is more water than the capacity of my pipe/ditch and the excess flows past my property to where the Tracy's began diverting on their property a few years ago.**

**Interrogatory 4: I believe claim no. 74-15911 (Tracy) should not exist because the Department has already issued a license/ water right for me to use the waste water. I was disappointed that my prior claim was disallowed by the Department, despite a preponderance of evidence that there has been a consistent history of waste water use on my property. However, no evidence to support the affidavits of Robert Stoddard and Alvin Bailey that the Tracy's property was irrigated with waste water from the pond has been presented by the Tracy's or the Department.**

**Interrogatory 5:**

**a: I assert that the right to use all water under claim no. 74-15911 was forfeited in 1976 when irrigation of the land where the Tracy's live was discontinued as stated by Boyd Stokes.**

**b: The basis for my assertion being that there is no evidence presented that Lot 1 in Sunrise Hills subdivision was irrigated with waste water prior to or since it was subdivided into the ten Barracks Lane Subdivision lots. Subsequent warranty deeds do not mention transfer of any water rights to owners of Barracks Lane Subdivision lots. The ditch that once conveyed water to a portion of Lot 1 Sunrise Hills was abandoned and filled in sometime between 1978 and 1989 as indicated by aerial photographs.**

**c: See exhibits A-M which I acquired from Lemhi County, Idaho Department of Fish and Game, Google Earth, the Department's website, Geri Roach, Mel Domko, John Tracy.**

**Interrogatory 6: Robert Stoddard states the pond was constructed to irrigate ground both above and below the Jolly Ditch. I have provided evidence that water was at one time diverted from the pond to irrigate land currently owned by Eagle Valley Ranch. Lots 3 and 4 Barracks Lane Subdivision encompass a portion of what was once Lot 1 of the Sunrise Hills Sub-division. Exhibits A,B,C do not show evidence of water being conveyed via a culvert to property now owned by the Tracys or any evidence of irrigation below the Jolly ditch. Alvin Bailey states he worked for the Swahlen Ranch from 1976 to 1999 and that the Tracy property and surrounding land was irrigated. Mr. Bailey's statement is vague and does not substantiate the Tracy's claim nor is his statement supported by photographic evidence or the Affidavit from Mel Domko.**

**Interrogatory 7: I disagree with the conclusion of the October 17, 2014 Supplemental Director's report for claim 74-15911 for the following reasons:**

- 1. Attachment B, Warranty Deed from Stokes to Freel mentions transfer of only waste water for Lot 1 Sunrise Hills Subdivision. Exhibits A,B,C show only that portion of Lot 1 above the Jolly ditch as being irrigated. The sale / subdivision of Lot 1 and absence of any mention of waste water rights being transferred to subsequent owners in Warranty Deeds proves there was never any intent for the lots in Barracks Lane sub-division to be irrigated. The Supplemental Director's Report states the following: "aerial photography indicates the possibility of irrigation on the Tracy POU". The report goes on to state "Given an established consistent history of irrigation on the Tracy POU, backed by aerial photography it appears Tracy has an established water right" . Exhibits A-M disprove this conclusion. Insufficient evidence has been provided in the Supplemental Director's Report for the Basis of Claim or establishment of a 1976 priority date.**

**Interrogatory 8: No, I do not believe there is any basis for claim 74-15911 as stated above.**

**Interrogatory 9: If the Tracy's are granted a water right, the point of diversion should be on their own property near the confluence with the Jolly Ditch as indicated on the map generated to accompany their Motion to File a Late Notice of Claim. Idaho Statutes, Title 42-701 states that a water user must maintain a controllable and lockable headgate near the point where the water is diverted. The Tracy's do not have a headgate at the location on their property where they have been diverting water. In the Supplemental Director's report, Attachment G indicates the POD as being at the pond which is on Eagle Valley Ranch property. Currently there is no means of controlling outflow from the pond. The Tracy's do not have permission to access the pond via the easement across my property. As a condition of my permit/license I was required by the Department to install a lockable/controllable headgate. In all fairness, if granted a water right, the Tracy's should be required to comply with the statutes was required of me.**

**Interrogatory 10: The place of use for water right 74-15911 should be on my property for the following reasons:**

- 1. There was a prior claim filed in 1990 for use of waste water on my property.**
- 2. In 2000 I purchased my property and filed a notice of change of water right. In support of that claim and subsequent application for permit I provided to the Department photographs of the pond/ditches and a letter from the former water master (John Tracy) stating my property was historically irrigated with waste water from Eagle Valley Ranch.**
- 3. Exhibits A,B,C, disprove the Tracy's claim their property has been consistently irrigated. Exhibits A,BC,I,K,L,M provide evidence of consistent irrigation on my property utilizing the waste water in question.**

4. On August 19, 2014, after the first scheduling conference, I called Mr. Fritschle and invited him to come to Salmon and let me show him the existing and historic irrigation infrastructure for use of the waste-water from Eagle Valley Ranch. He declined my offer stating a site visit was not necessary. He/I did discuss the Department's processing of my 1990 claim for use of waste water. Mr. Fritschle admitted that my claim was mis-handled by the Department and there had been an incomplete review of records by previous Department personnel. He went on to say the Department was still cleaning up messes left behind by Roxanne Brown. Mr. Fritschle stated to me that at the time when I was pursuing my claim, "the Department gave out some bad advice" ie: the recommendation of Department staff for me to drop pursuit of my claim and apply for a permit. On November 10, 2014 during the second scheduling conference, Mr. Fritschle admitted that my claim should have been allowed with a 1972 priority date.

In summary, I vehemently object to the Tracy's claim and the conclusion of the Department's October 17, 2014 Supplemental Director's Report. Furthermore, I intend to file a petition with the Department claiming injury in response to the Notice of Enlargement of Water Right published on November 20, 2014.

As I have told Mr. Tracy and Mr. Bromley, I do not object to the Tracy's use of waste-water that flows past my property onto theirs. I do, however, object to the Tracy's having a right with a priority date senior to mine. If the Tracy's wish to re-submit their application for permit to develop a water right for use of the waste water that flows past my property and onto their property I would not have any objection. Should this matter ultimately end up in court, I hope that the Judge will agree that there is little evidence to support the Tracy's claim and that Claim 74-15911 be disallowed as so ordered by Judge Wildman on July 1, 2014.

John Alfred Simpson

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of December, 2014, I served to a true and correct copy of the foregoing document to the person(s) whose names and addresses appear below by the method indicated and as was instructed by Special Master Terrence A. Dolan during a telephone conference on November 10, 2014:

**Malinda and Vincent Tracy**

X U.S. Mail/Postage Prepaid

**Represented by:**

**Chris M. Bromley**

**380 S. 4<sup>th</sup> Street, STE 103**

**Boise, ID 83702**

**Phone: 208-287-0991**

**Director of IDWR**

**PO Box 83720**

**Boise, ID 83720-0098**

**Clerk of the District Court**

**Snake River Basin Adjudication**

**253 Third Avenue North**

**PO Box 2707**

**Twin Falls, ID 83303-2707**



Exhibit A

USDA

T21 R23

1978 PL 1

#128

16059-278-224

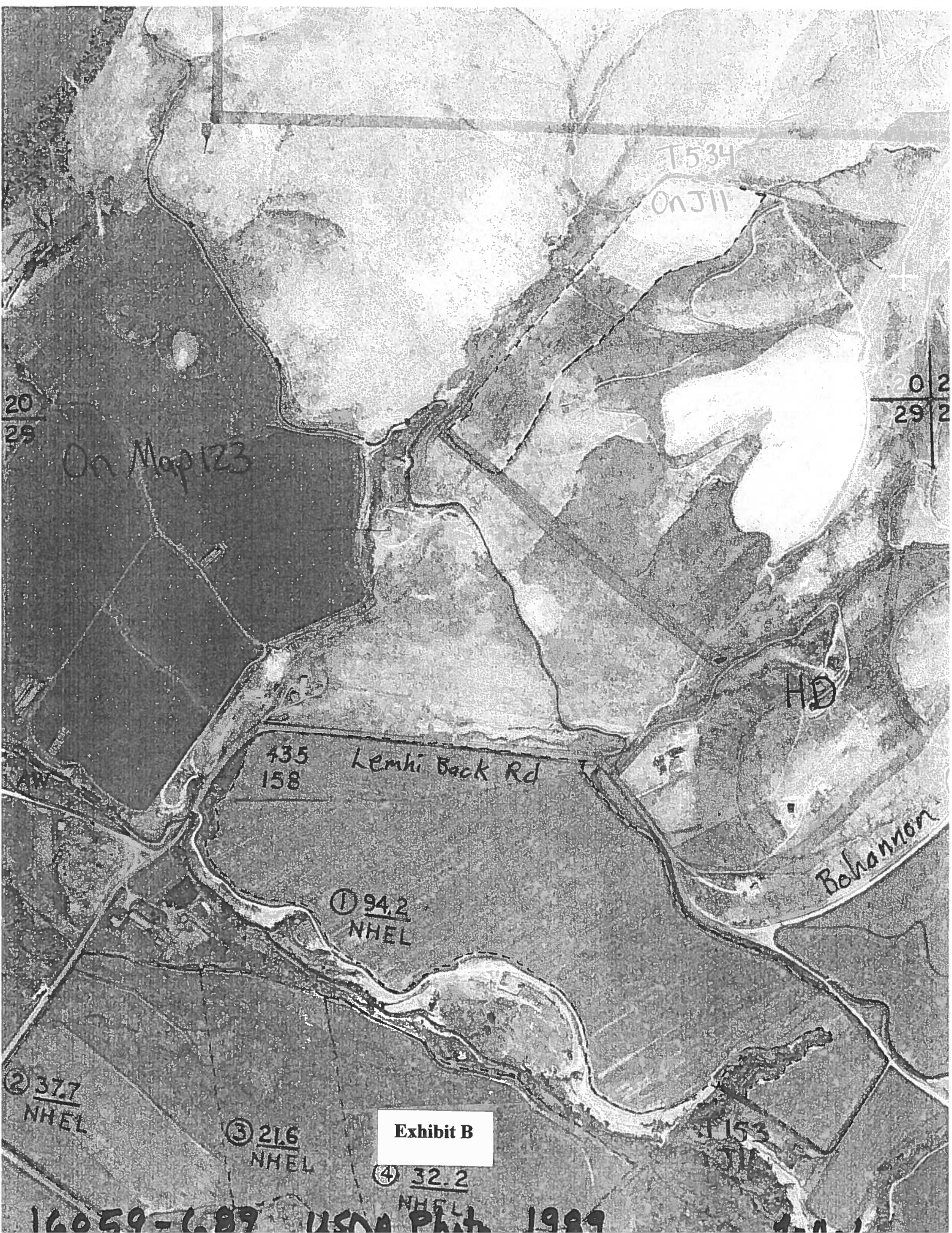


Exhibit B

1992 Photo Google Earth



Exhibit C

Lot 8 and Key Map

NOTES  
1. All 1/4's remain to an access easement, have a 10' (10') foot wide permanent public utility, drainage, and irrigation easement.  
2. Each 1/4's contains a 10' (10') foot wide permanent public utility, drainage, and irrigation easement unless otherwise noted.

LEGEND

- Set 1/4 - 30' Street Bar w/ 3/4" Alum. Cap as Section Corner
- Set 1/4 - 30' Street Bar w/ 1/2" Alum. Cap as 1/4 Corner
- Set 1/4 - 30' Street Bar w/ Plastic Cap as Section Corner
- Set 1/4 - 30' Street Bar w/ Plastic Cap as Point on Line
- Boundary Line
- Left Line
- Lot Number
- Set 1/4 - 30' Street Bar w/ Plastic Cap as Easement Boundary Corner

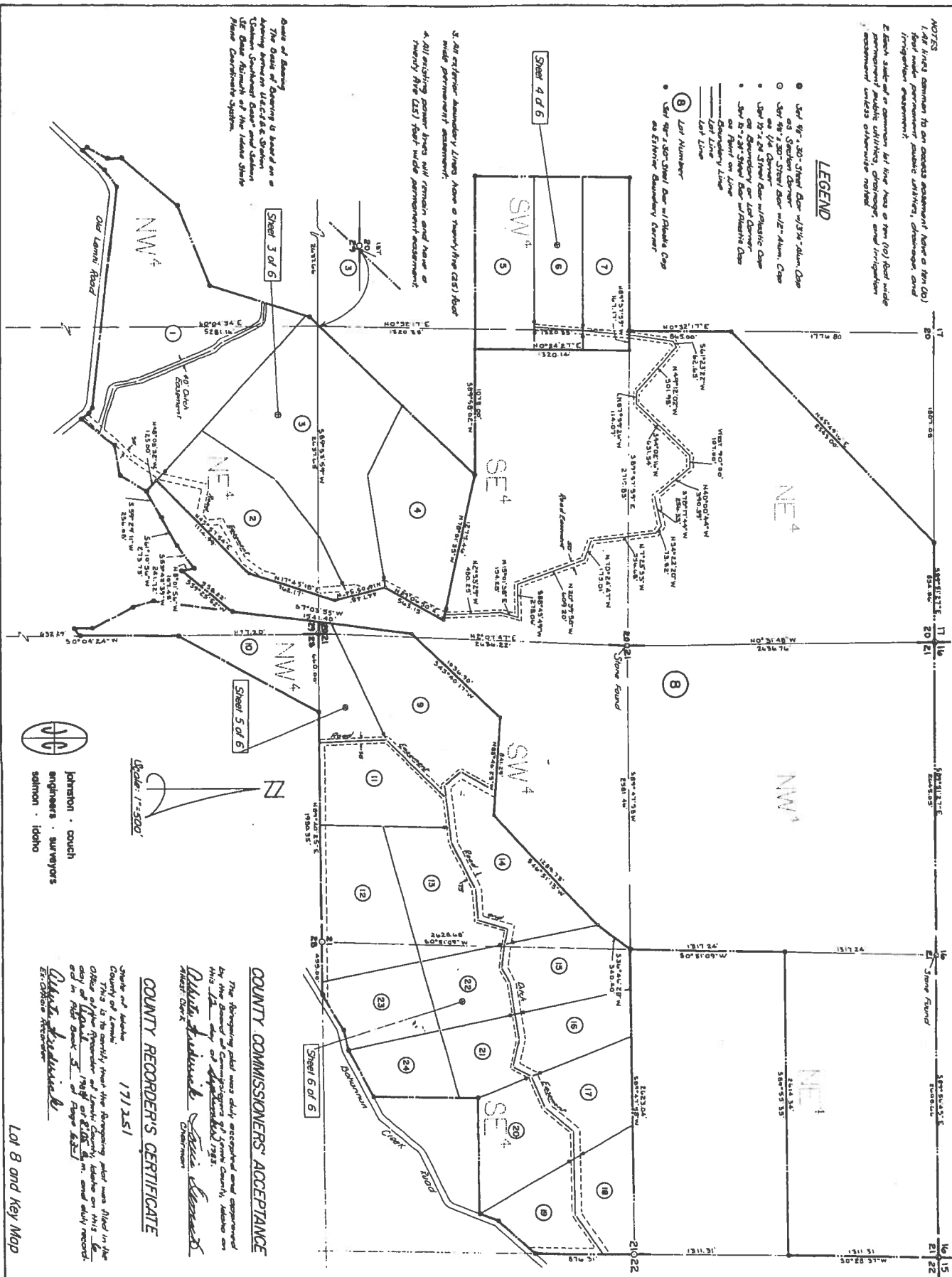


Exhibit D

COUNTY COMMISSIONERS' ACCEPTANCE

The foregoing plat was duly accepted and approved by the Board of Commissioners of Linn County, Idaho on this 15th day of September 1993.  
*Robert J. Friedman*  
County Clerk

COUNTY RECORDER'S CERTIFICATE

171251  
This is to certify that the foregoing plat was filed in the Office of the Recorder of Linn County, Idaho on this 6th day of November 1993 at 8:00 a.m. and duly recorded in Book 5, of Page 63-1.  
*Robert J. Friedman*  
County Recorder

Lot 8 and Key Map

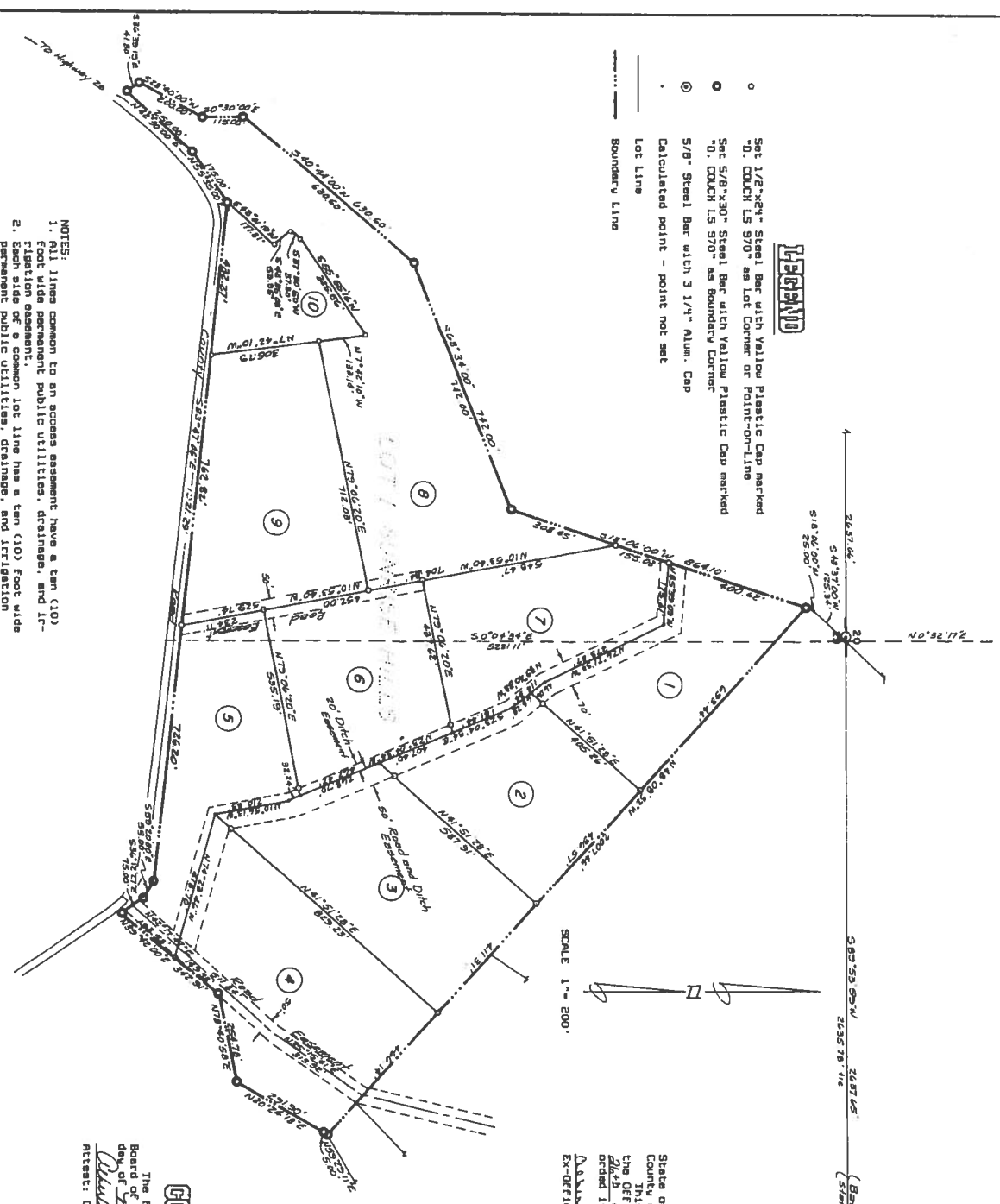
*Book 6 Page 14*

(State of Idaho)  
(State Plane Coord System)  
20.21  
20.20

**LEGEND**

- Set 1/2"x24" Steel Bar with Yellow Plastic Cap marked "D. COUCH LS 970" as Lot Corner or Point-on-Line
- Set 5/8"x30" Steel Bar with Yellow Plastic Cap marked "D. COUCH LS 970" as Boundary Corner
- 5/8" Steel Bar with 3 1/4" Alum. Cap
- Calculated point - point not set
- Lot Line
- Boundary Line

SCALE 1" = 200'



- NOTES:
1. All lines common to an access easement have a ten (10) foot wide permanent public utilities, drainage, and irrigation easement.
  2. Each side of a common lot line has a ten (10) foot wide permanent public utilities, drainage, and irrigation easement unless otherwise noted.
  3. All exterior boundary line have a twenty-five (25) foot wide easement unless otherwise noted.
  4. All existing power lines will remain and have a twenty-five (25) foot permanent easement.

**RECORDERS CERTIFICATE**  
COUNTY  
214659

State of Idaho  
County of Lemhi  
This is to certify that the foregoing plat was filed in the Office of the Recorder of Lemhi County, Idaho, on this day of May 1972 at 10:02 a.m. and duly recorded in Plat Book 6 at Page 14.  
Attest: \_\_\_\_\_ by \_\_\_\_\_  
Ex-Officio Recorder

**COUNTY COMMISSIONERS ACCEPTANCE**

The foregoing plat was duly accepted and approved by the Board of Commissioners 1972.  
*Chairman*  
*Attest: Clerk*  
Chairman  
Attest: Clerk



**COUCH SURVEYING**  
David J. Couch, PLS  
1021 Main St., Salmon, Idaho 83467  
(208) 756-2019

# WARRANTY DEED

## For Value Received

CHARLES DAVID FREEL AND JEANNE MARIE FREEL, husband and wife

the grantor S, do hereby grant, bargain, sell and convey unto

MARK L. ALLEN AND JACKLYN J. ALLEN, husband and wife

whose current address is

707 NEYMAN ST.  
SALMON, ID 83467

the grantee S, the following described premises, in.....LEMHI.....County Idaho, to wit:

Lot 5 of Barracks Lane Subdivision, according to the official plat thereof, filed for record in Book 6 of Plats at Page No. 6, records of Lemhi County, Idaho. . .

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee S, their heirs and assigns forever. And the said Grantor S do hereby covenant to and with the said Grantee S, that they are the owner S in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: JULY 12, 1990

Charles David Freel Jeanne Marie Freel  
CHARLES DAVID FREEL JEANNE MARIE FREEL

STATE OF IDAHO, COUNTY OF LEMHI  
On this 12th day of JULY, 1990,  
before me, a notary public in and for said State, personally  
appeared,

CHARLES DAVID FREEL AND JEANNE  
MARIE FREEL, husband and wife

known to me to be the person S whose name S are  
subscribed in the within instrument, and acknowledged to  
me that they executed the same.

Laurie M. Santee  
LAURIE M. SANTEE Notary Public  
Residing at SALMON, Idaho  
Comm. Expires 6-19-1995

State of Idaho )  
County of Lemhi ) ss No. 207174

This instrument was filed for record at  
the request of American Land Title  
at 10:11 o'clock A m 7-13 19 90

and duly filmed and indexed in the  
records of Lemhi County

Alberta Wladerrick

Ex-Officio Recorder  
By Jesse J. Morton Deputy  
Fees 3.00

Furnished by the AMERICAN LAND TITLE CO., Pocatello, Idaho

## WARRANTY DEED

For Value Received STEVE COLLINS AND MISTY COLLINS

the grantor s, do hereby grant, bargain, sell and convey unto

VINCENT TRACY AND MELINDA TRACY, husband and wife,  
125 Holly Creek Rd, Leadore ID 83464  
the grantee s, the following described premises, in Lemhi County Idaho, to wit:

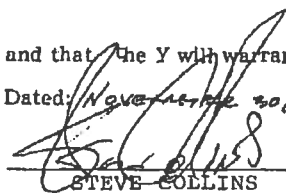
Lot 5 of Barracks Lane Subdivision, according to the official plat thereof, filed for record in Book 6 of Plats at Page 6 official records of Lemhi County, Idaho, and amended in Book 6 of Plats at Page 6A and further amended in Book 6 of Plats at Page No. 14, records of Lemhi County, ID

The above conveyance is made free and clear of all other encumbrances except: Rights of way and easements, reservation in Federal patents and state deeds, or other restrictions imposed by law, building and use restrictions of records, building and zoning regulations and ordinances of any governmental unit whether of sight or of record.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantor sdo hereby covenant to and with the said Grantees, that they the owners in fee simple of said premises; that they are free from all incumbrances

and that the Y will warrant and defend the same from all lawful claims whatsoever.

Dated: November 30, 2004

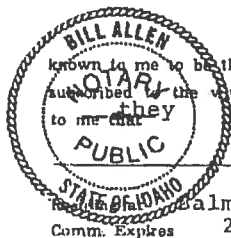
  
STEVE COLLINS

  
MISTY COLLINS

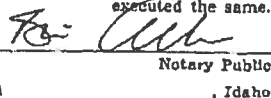
STATE OF IDAHO, COUNTY OF Lemhi--ss

On this 30<sup>th</sup> day of Nov, 19 2004  
before me, a notary public in and for said State, personally appeared

STEVE COLLINS AND  
MISTY COLLINS



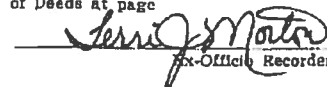
known to me to be the persons whose names are  
subscribed to the within instrument, and acknowledged  
to me that they executed the same.

  
Notary Public  
Idaho

STATE OF IDAHO, COUNTY OF Lemhi

I hereby certify that this instrument was filed for record at the request of Lemhi Title

at 50 minutes past 8 o'clock P.M.,  
this 30<sup>th</sup> day of December  
2004, in my office, and duly recorded in Book  
of Deeds at page

  
Notary Public

By \_\_\_\_\_ Deputy,

Fees \$300

Mail to:

INSTRUMENT NO. 261113



## GENERAL AFFIDAVIT

As a resident in the county of Lemhi within the state of Idaho,  
Mel Domko personally approached me, the undersigned Notary, and  
made his/her sworn testimony in a general affidavit, that the following statement is  
completely factual and true to the best of his/her belief and knowledge.

### Statement:

I, Mel Domko, purchased a home located on Lot 9 of Barracks Lane Subdivision in 1995. My home/property is adjacent to Lot 5 which is the property on which Vince and Malinda Tracy currently reside. In 1995 there was not a home on the Tracy property nor was their property being irrigated. The Tracy property (Lot 5) has not been irrigated by any of the previous owners since I have lived here which is almost 20 years. The first time I observed any irrigation occurring on the Tracy's property was about 2-3 years ago. On the Tracy property, at a location just above where the water flows into the Jolly Ditch, the Tracys constructed an earthen berm and directed water into a pipe laid over the ditch. The water they have been using is that which flows off Eagle Valley Ranch and past the point of diversion/ditch used by Al Simpson and prior owners of his property.

Mel Domko, 752 Lemhi Road, Salmon, ID 83467 Phone: (208) 756-6968

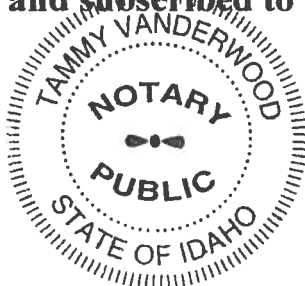
Affiant Signature:

Mel Domko

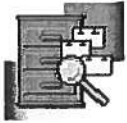
Date Signed:

the NOV. of 21<sup>ST</sup> 20 14

Sworn and subscribed to before me on this day, 21 of NOVEMBER 20 14



Tammy Vanderwood  
Notary Public



# Idaho Statutes

## TITLE 42

### IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

#### CHAPTER 7

#### HEADGATES AND MEASURING DEVICES

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -- PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN -- MEASURING AND REPORTING OF DIVERSIONS -- PENALTY FOR FAILURE TO COMPLY -- ENFORCEMENT PROCEDURE -- REPORT FILING FEE. (1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(2) If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices, or has not executed an agreement in lieu of a measuring device as provided in subsection (2) of this section, upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(4) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete

## GENERAL AFFIDAVIT

As a resident in the county of Lemhi within the state of Idaho,  
Geri Roach personally approached me, the undersigned Notary, and  
made his/her sworn testimony in a general affidavit, that the following statement is  
completely factual and true to the best of his/her belief and knowledge.

### Statement:

I, Geri Roach, moved into my present home located on East Foothills Drive in 1994. My home/property is adjacent to property currently owned by John A. Simpson. There is an irrigation ditch that crosses my property. The ditch originates on Eagle Valley Ranch (formerly Swahlen Ranch) and conveys irrigation water to John A. Simpson's pasture. In 1994, Mark and Keri Ellis owned the home/property where John A. and Susan Simpson now live. Mark Ellis utilized the ditch that crosses my property and the ditch from a shallow pond on Eagle Valley to divert irrigation water to his pastures. Since John A. Simpson acquired the property from Mark and Keri in 2000, John has made improvements to the ditch out of the pond and continued to irrigate pasture with water when it runs off the fields on Eagle Valley Ranch.

Geri Roach, 31 E. Foothill Road, Salmon, ID 83467 Phone: (208) 756-8477

Affiant Signature:

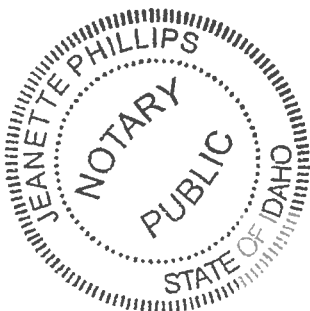
*Geri Roach*

Date Signed:

the 2<sup>nd</sup> of December 2014

Sworn and subscribed to before me on this day,

2 of December 2014



*Jeanette Phillips*  
Notary Public

*expires: 3-10-2020*

Exhibit K

## AFFADAVIT

As watermaster for Bohannon Creek, Lemhi County, Idaho, I am familiar with the historic and present application of irrigation water diverted from Bohannon Creek. In regards to Mr. Al Simpson's claim for a water right to beneficially use wastewater that runs off adjacent lands irrigated with water diverted from Bohannon Creek, I, John Tracey, can attest to the historic application of Bohannon Creek wastewater to lands currently owned by Al and Susan Simpson. The presence of a small dam/collection pond and conveyance ditch that was once used to convey irrigation wastewater to property now owned by Mr. Simpson is clear evidence of prior application of wastewater to property that he purchased approximately four years ago. Utilizing an existing collection pond and ditch, previous landowners conveyed wastewater runoff from adjacent flood irrigated agricultural lands and used that water to irrigate approximately six acres of land now owned by Mr. Simpson. The collection pond and ditch were once part of an agricultural ditch system that collected and distributed irrigation water diverted from a creek diversion referred to as Bohannon Creek diversion No. 6 located in Section 29, Township 21N, Range 23E. The Bohannon No. 6 diversion has a 1912 priority date.

Signature:

*John Tracey*

Date:

*July 28, 2004*



**Exhibit M**