

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: A43-04098A
Date Received: 2/ 3/1992
Receipt No: C007289
Received By: _____

COPY FOR
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY FOR
YOUR FILES

1. Name: RANDALL JAY FARLEY
Address: HC 72
MALTA ID 83342

208-824-5577

219-2967

AND/OR

Name: LINDA DIANE FARLEY
Address: HC 72
MALTA ID 83342

208-824-5577

2. Date of Priority: JAN 1, 1935

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

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

5. Description of diverting works:

WELL 430' DEEP, 12" CASING-ARTESIAN, DITCH TO POND-PUMP FROM POND

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		
HEATING	01/01	12/31	0.040		

7. Total Quantity Appropriated is:

0.080 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

DOMESTIC, 1 HOME & GARDEN; HEATING, 1 HOME

10. Place of Use:

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

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:
NONE

14. Remarks:

NOTE THE DOMESTIC USE WITH A PRIORITY DATE FROM 1935 WAS NOT TRANSFERRED TO THE DARRINGTON'S BUT WAS RETAINED BY MRS. CRANK FOR USE IN HER NEW HOME, LOCATED IN THE NW, SE, NW OF SECTION 23.

CHANGE OF OWNER 5-10-1991 SCC.

15. Basis of Claim: BENEFICIAL USE

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Harriett P. Crank &/or Janice Crank
(Name of Claimant)

Blue Pond, Malta, Idaho 83342
(Mailing Address)

Telephone No. 645-2589
(Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use) 1935

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

groundwater tributary to _____

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

	(cfs, gpd, AFA)	(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive)	
			(Mo., Day)	(Mo., Day)
Quantity	<u>0.20 cfs</u>	Use <u>irrigation</u>	Period of Use From <u>Apr 1</u>	To <u>Nov 1</u>
Quantity	<u>0.02 cfs</u>	Use <u>domestic</u>	Period of Use From <u>Jan 1</u>	To <u>Dec 31</u>
Quantity	<u>0.02 cfs</u>	Use <u>livestock</u>	Period of Use From <u>Jan 1</u>	To <u>Dec 31</u>
Quantity	_____	Use _____	Period of Use From _____	To _____
Quantity	_____	Use _____	Period of Use From _____	To _____

- (4) 0.20 cfs TOTAL QUANTITY USED.
(cfs, gpd, AFA)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)

NW 1/4 NW 1/4, Sec. 23 Twp. 15S Rge. 26E B.M., County of Cassia
Additional points of diversion: _____

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CIVIL CASE NUMBER: 39576

Ident. Number: A43-04098A
Date Received: 6/ 7/1989
Receipt No: C007289
Received By: SW

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: JAN 1, 1935

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

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

5. Description of diverting works:
WELL 430' DEEP, 12" CASING-ARTESIAN, DITCH TO POND-PUMP FROM POND

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.020		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/ ONE HOUSE LAWN AND GARDEN IRRIG. & STOCKWATER

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:
NONE

14. Remarks:

THIS CLAIM REPRESENTS A SPLIT OF THE STATUTORY CLAIM FILED BY HARRIETT P. CRANK. CLAIMING 1" OR 0.02 CFS OF THE NATURAL ARTESIAN FLOW FROM THE WELL LOCATED IN THE SW, NW, NW OF SECTION 23. THE REMAINING FLOW WAS SOLD TO IVAN DARRINGTON FOR IRRIGATION AND STOCKWATER, THE HEATING RIGHTS FROM THIS WELL WERE RETAINED BY THE CLAIMANT EXCEPT FOR 2". WATER TEMP. 200+ DEGREES.

NOTE THE DOMESTIC USE WITH A PRIORITY DATE FROM 1935 WAS NOT TRANSFERRED TO THE DARRINGTON'S BUT WAS RETAINED BY MRS. CRANK FOR USE IN HER NEW HOME, LOCATED IN THE NW, SE, NW OF SECTION 23.

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 _____



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

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

MICROFILME

MAR 05 1993

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 W¹/4 NE¹/4, more particularly
 described as follows:

Beginning at a point which is 558 feet North of
 the Southwest corner of the said NE¹/4;
 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 s
 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 26th 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.

Notary at Burley Idaho Comm Expires 2/20/92

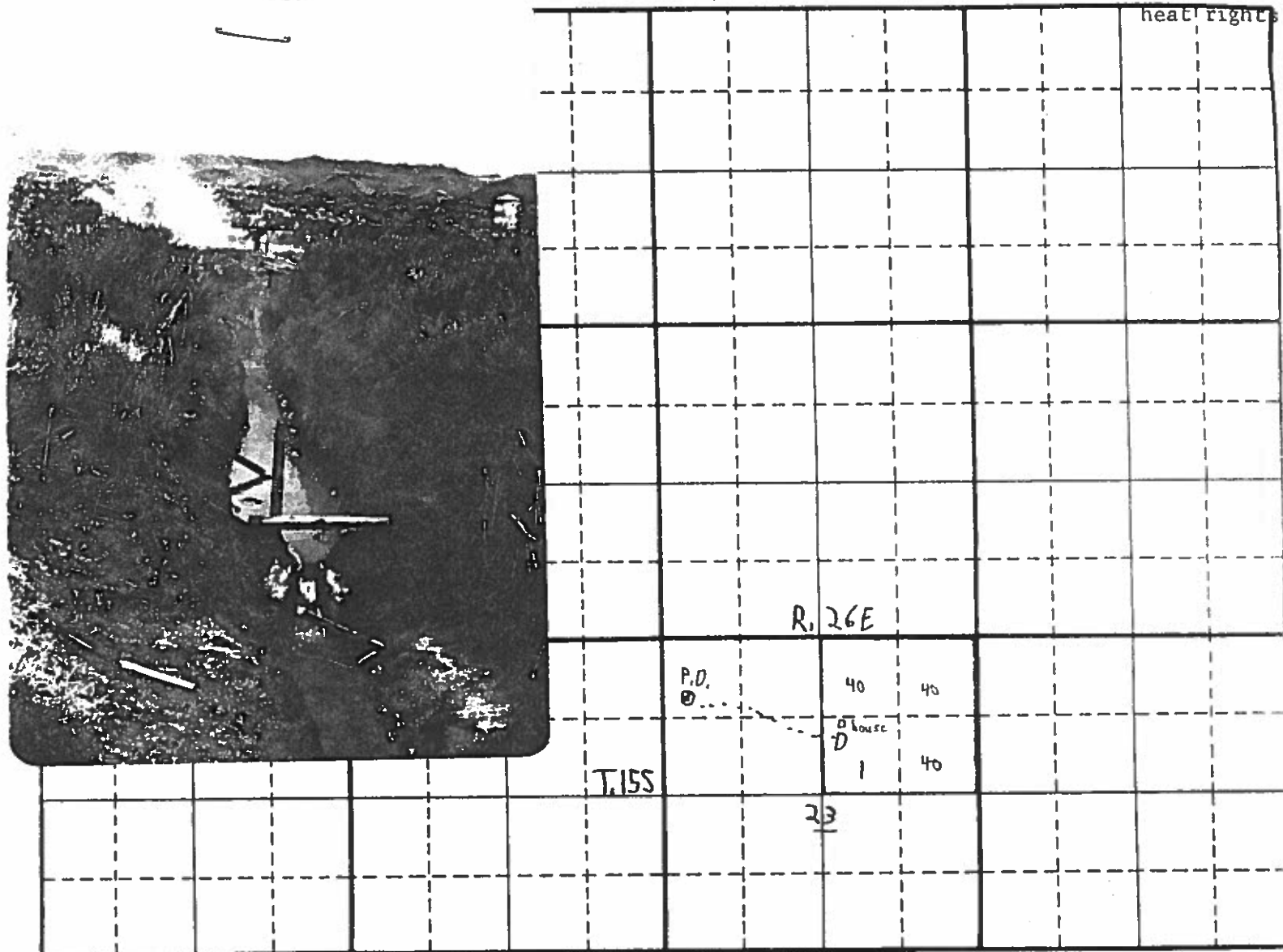
RECORDED AT THE REQUEST OF
 CASSIA COUNTY ABSTRACT
 FILM 225
 MAR 26 3 16 PM '91
 CASSIA COUNTY, IDAHO
 FRANKLIN & SONS
 RECORDERS
 FEE \$30.00

212595

MICROFILM

MAR 05 1993

- (8) Remarks This same well also provides irrigation water on property owned by another.
Output of well is open discharge all year; recently-installed valve is rusted
open. Water not used evaporates or sinks away in pond. 120 acres irrigated
is owned by Ivan Darrington; well output, except 1" used by applicants for
domestic use. was sold to Mr. Darrington in 1978. Claimants kept all but 2" of
water rights.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

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

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

[Signature]
 (Claimant)

Sworn to before me this 16th day of September, 1980.

[Signature]
 Notary Public
 Residing at Twin Falls, Id

My commission expires Life

FOR DEPARTMENT USE ONLY

Received by G. C. Johnston Date 9-16-80 Exception filed by: _____ Forwarded to _____ Date _____
 Prelim. check by [Signature] Date 9-19-80 _____ claimant by: _____
 \$20.00 fee received by [Signature] Date 9-16-80 46599 16633
 Published in [Signature] _____
 Dates 10/2 & 10/4/80 _____

10. Place of Use:

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

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:
NONE

14. Remarks:

NOTE THE DOMESTIC USE WITH A PRIORITY DATE FROM 1935 WAS NOT TRANSFERED TO THE DARRINGTON'S BUT WAS RETAINED BY MRS. CRANK FOR USE IN HER NEW HOME, LOCATED IN THE NW, SE, NW OF SECTION 23.

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):

Ronald J. Farley
Linda Claire Farley

Date: 2-3-92

Date: 2/3/92

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 _____

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
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CIVIL CASE NUMBER: 39576

Ident. Number: A43-04098A
Date Received: 6/ 7/1989
Receipt No: C007289
Received By: SC

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

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: JAN 1, 1935

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
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5. Description of diverting works:

WELL 430' DEEP, 12" CASING-ARTESIAN, DITCH TO POND-PUMP FROM POND

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		
HEATING	01/01	12/31	0.040		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

DOMESTIC, 1 HOME & GARDEN; HEATING, 1 HOME

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 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. ~~Therebetween~~ 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

Harriett Crank
Ivan Darrington

Jan. 14, 1975

Bridge, Idaho.

Memo of Sale

ROFILME

MAR 05 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: A43-04098A
Date Received: 6/07/1989
Receipt No: C007289
Received By: AB

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JANICE CRANK 208-365-5928
Address: 2246 TANGLEWOOD LN.
EMMETT, ID 83617
AND/OR
Name: JULIE CRANK 208-365-5928
Address: 2246 TANGLEWOOD LN.
EMMETT, ID 83617
2. Date of Priority: JAN 01, 1935
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 SW NW NW CASSIA
5. Description of diverting works:
WELL 430' DEEP, 12" CASING-ARTESIAN, DITCH TO POND-PUMP FROM POND
6. Water is used for the following purposes:
Purpose From To C.F.S (or) A.F.A.
DOMESTIC 01/01 12/31 0.020
7. Total Quantity Appropriated is:
0.020 C.F.S. (and/or) A.F.A.
8. Total consumptive use is Acre Feet Per Annum.
9. Non-irrigation uses:
D/ ONE HOUSE LAWN AND GRADEN IRRIG. & STOCKWATER

A43-04098A

Page 1

Date: 06/07/89

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MAR 05 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:
NONE

14. Remarks:

THIS CLAIM REPRESENTS A SPLIT OF THE STATUTORY CLAIM FILED BY HARRIETT P. CRANK. CLAIMING 1" OR 0.02 CFS OF THE NATURAL ARTESIAN FLOW FROM THE WELL LOCATED IN THE SW, NW, NW OF SECTION 23. THE REMAINING FLOW WAS SOLD TO IVAN DARRINGTON FOR IRRIGATION AND STOCKWATER, THE HEATING RIGHTS FROM THIS WELL WERE RETAINED BY THE CLAIMANT EXCEPT FOR 2". WATER TEMP. 200+ DEGREES.

NOTE THE DOMESTIC USE WITH A PRIORITY DATE FROM 1935 WAS NOT TRANSFERRED TO THE DARRINGTON'S BUT WAS RETAINED BY MRS. CRANK FOR USE IN HER NEW HOME, LOCATED IN THE NW, SE, NW OF SECTION 23.

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 Janine 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

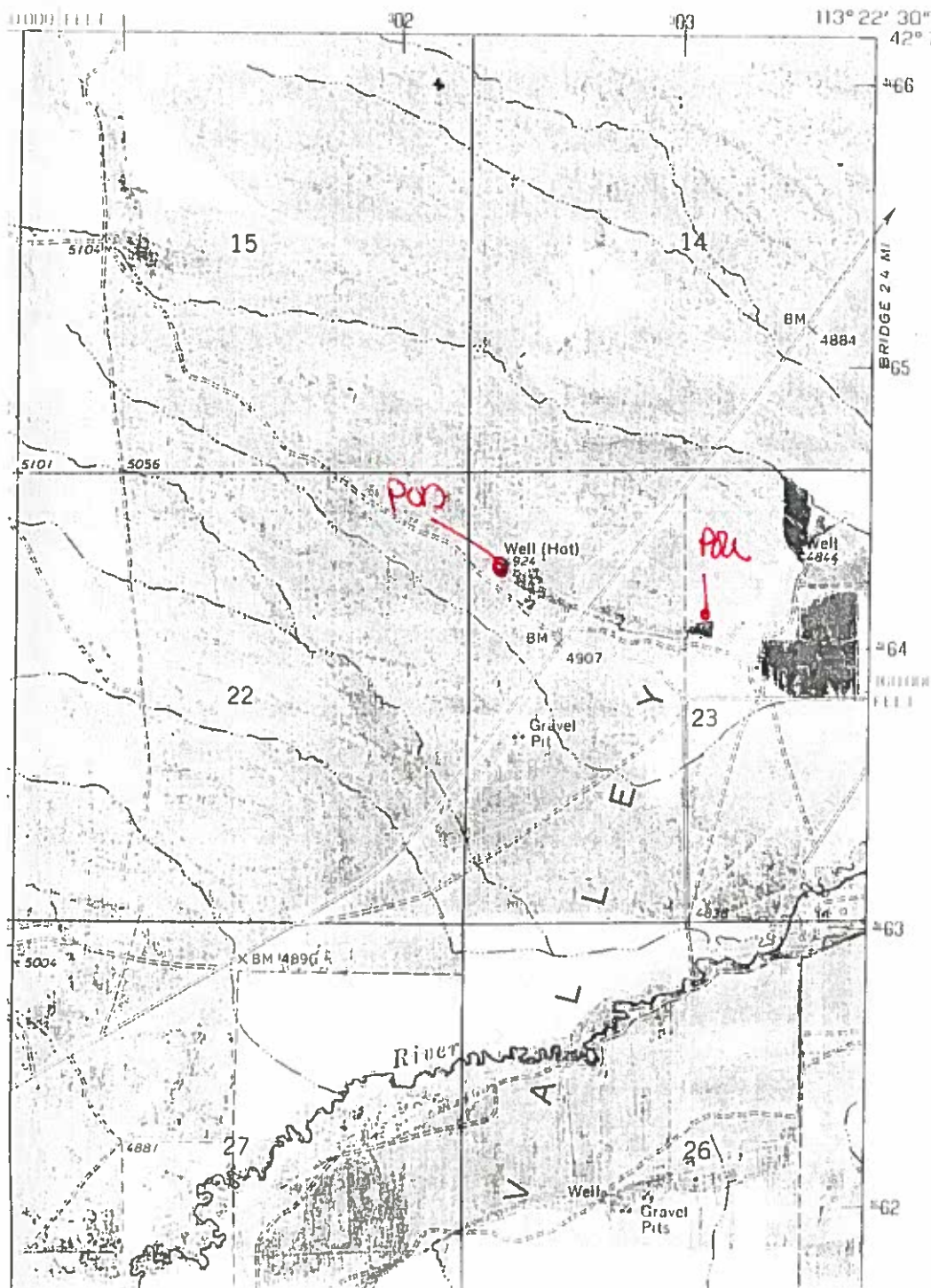
Anna Baunhoff
Notary Public

Seal

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

DD81

CHOKECHERRY CANYON ORTHOPHOTOQUAD
IDAHO



A43 -04098A

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MAR 05 1993

WATER RIGHT NUMBER - A43-04098A

PREFIX TRANSLATION: ADJUDICATION CLAIM

TWN	RNG	SEC	TRACT	LOT	ACRES	CODE	DESCRIPTION	COUNTY
15S	26E	23	SW NE			43	DOMESTIC	(31) CASSIA

+ - - DIVERSION MEANS - WELL 430' DEEP, 12" CASING-ARTESIAN, JITCH TO POND-PUMP FROM POND

+ - - NON-IRRIGATION USE - D/ ONE HOUSE LAWN AND GARDEN IRRIG. & STOCKWATER

+ - - OTHER RIGHTS FOR SAME USE - NONE

+ - - REMARKS - - - - -

THIS CLAIM REPRESENTS A SPLIT OF THE STATUTORY CLAIM FILED BY HARRIETT P. CRANK. CLAIMING 1" OR 0.02 CFS OF THE NATURAL ARTESIAN FLOW FROM THE WELL LOCATED IN THE SW, NW, NW OF SECTION 23. THE REMAINING FLOW WAS SOLD TO IVAN DARRINGTON FOR IRRIGATION AND STOCKWATER, THE HEATING RIGHTS FROM THIS WELL WERE RETAINED BY THE CLAIMANT EXCEPT FOR 2". WATER TEMP. 200+ DEGREES.

NOTE THE DOMESTIC USE WITH A PRIORITY DATE FROM 1935 WAS NOT TRANSFERED TO THE DARRINGTON'S BUT WAS RETAINED BY MRS. CRANK FOR USE IN HER NEW HOME, LOCATED IN THE NW, SE, NW OF SECTION 23.

CHANGE OF OWNER 5-10-1991 SCC.

+ - - OLD WATER RIGHT NUMBERS - - - - -
A4304098+ - - CONDITIONS OF APPROVAL - - - - -
NO CONDITIONS OF APPROVAL FOUND.+ - - DECREE PLAINTIFF - - - +
+ - - DECREE DEFENDANT - - - +
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
OBJECTION FILED DATE - 00/00/0000
RESPONSE FILED DATE - 00/00/0000
CLAIM RECEIVED DATE - 06/07/1989
PROOF DUE DATE - 00/00/0000
LICENSED DATE - 00/00/0000
CLAIMS TAPE ERROR FLG -
FEE EXEMPT FLAG -

FIELD INSPECTION MADE - 00/00/0000
FIELD INSPECTION FLAG -
VERIFIED DATE - 00/00/0000
LAST AMENDED DATE - 00/00/0000
PROOF MADE DATE - 00/00/0000
RECEIPT NUMBER - C007289
POU OWNERSHIP FLAG - Y
NAME -

CIVIL CASE NUMBER - 39576
OLD CASE NUMBER -
OLD JUDICIAL DISTRICT - P
TEMPORARY RIGHT -
WATER DISTRICT -
FEDERAL/STATE INDICATOR - S
PRESUMPTION FLAG -

VERIFIED
JUL 24 1991

CERTIFIED
JUL 24 1991
WATER EXAMINER

RP 15526E350350
DATA ENTRYENTERED
CHECKED

4/16/92

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

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: 43-4098A

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

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

RECEIVED

JUN '01

Department of Water Resources

RECEIVED

JUN 08 2001

Department of Water Resources
Southern Region

02/08/2001

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

RIGHT NUMBER: 43-4098A

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

SOURCE: GROUND WATER

QUANTITY: 0.02 CFS

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

PRIORITY DATE: 01/01/1935

POINT OF DIVERSION: T15S R26E S23 SWNWNW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
HEATING	01-01 12-31	0.02 CFS
DOMESTIC 1 HOMES	01-01 12-31	0.02 CFS

PLACE OF USE:

HEATING Within CASSIA County
T15S R26E S23 SWNE
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.

PARCEL NO. RP15S26E230750

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Memorandum

To: GLEN SAXTON

CC: FILE A43-04098A

From: STEVE CLELLAND *SC*

Date: 06/17/98

Re: PERMIT 43-07318

Glen, I have reviewed the Farley SRBA claims in light of the recent decision by Judge Hurlbutt. I have confirmed the database is correct for the recommendation of a partial decree by the court.

I believe the pending permit 43-07318 has potential to increase the flow rate beyond that allowed in the SRBA claims and it does not duplicate uses or flows found in those claims.

It appears the only claim that may overlap with the permit is the claim A43-04098A. They both contain uses for Heat and Domestic and the permit may result in an increase in the total flow used by the Farleys for these uses. They have changed the diversion system to deliver the water to their home since my original exam, which may have increased the total amount diverted.

The recreation use for a pool does not overlap with the other recreation uses already granted under the SRBA claim A43-10655. In my last discussion with the Farley's they indicated they had not yet fully constructed the pool under this permit, however, they are planning on the construction if the extension is granted for the permit.

AJ0749NP
No. R43-04098A

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

DATE: 06/17/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	RANDALL JAY FARLEY	01/01/1935	HEATING	01-01 12-31	0.02 CFS	
C	LINDA DIANE FARLEY		DOMESTIC	01-01 12-31	0.02 CFS	
	HC 72					
	MALTA ID 83342					
	(208) 824-5577			TOTAL DIVERSION:	0.02 CFS	

Water Source: GROUNDWATER

Tributary to:

Stage: BENEFICIAL USE

Point(s) of Diversion: T15S R26E S23 SWNWNW

CASSIA County

Place of use Legal Description for: HEATING

	NE				NW				SW				SE			
T R S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	: Lt Ac	Lt Ac	Lt Ac	Lt Ac
15S 26E 23	:			H	:				:				:			

Place of use Legal Description for: DOMESTIC

	NE				NW				SW				SE			
T R S	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	: Lt Ac	Lt Ac	Lt Ac	Lt Ac	: Lt Ac	Lt Ac	Lt Ac	Lt Ac
15S 26E 23	:			D	:				:				:			

POU County: CASSIA

Non-Irrigation Uses: 1 HOME

Other Rights: 43-10382

Conditions of Approval:

- N11 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
- N13 - THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks: GEN PARCEL NO. RP15S26E230750

Dates: Exam Made Date: 04/27/1992 Verified Date: 06/17/1998 Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

COPY

RECEIVED

MAY 28 1998

Department of Water Resources
Southern Region

COURT OF
DISTRICT
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

43-04098A

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



IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION
222 SHOSHONE AVE
TWIN FALLS ID 83301
(208) 736-3033

PHILIP E BATT
GOVERNOR

KARL J DREHER
DIRECTOR

October 25, 1996

Honorable Judge Daniel C. Hurlbutt,

Please consider this letter as my request for an extension of time regarding the report you ordered to re-investigate the water rights and claims of Mr. and Mrs. Darrington and Mr. and Mrs. Farley.

I believe I can deliver this report by Monday October 28, 1996 if you will so allow.

I hope you find the report I submit to be the information you have requested and if I can be of further assistance please advise me so.

Sincerely,

A handwritten signature in cursive script that reads "Steve Clelland".

STEVE CLELLAND
Water Resource Agent

ENC:

TIME LINE EVENTS DARRINGTON & FARLEY

1923	Artesian Hot Well drilled by John Schmidt.
7/30/1930	43-02583 Rept of Engineer. Cottonwood Cr. States this is flood water and was not used since 1926; indicates rare use. No SRBA Claim.
1/01/1935	A43-10655 Claim for Recreation/Wildlife/Aest.
2/11/1941	43-02283 Permit for Hot Well (3.0 cfs).
2/17/1943	43-02283 Proof filed by Ben Schmidt.
5/26/1943	43-02283 Rept of Engineer (0.92 cfs).
9/21/1954	43-02413 Approved Permit (Note: only overlapping water right mentioned in this application is for the right 43-02583, Cottonwood Creek water that is very rarely used.)
7/18/1958	43-02413 Rept of Engineer (2.44 cfs). (Revised: 105 acres & 2.10 cfs)
1971	Water Right unknown: Darrington drills North well in NENWNE, S23, T15S, R26E.
1971	A43-02283 Six acres east of house last irrigated, no explanation given.
1974	A43-02283 Never irrigated before this date. Six acres west of house cleared of brush.
1974-1975	400 inches of water delivered to the NENE of Section 23 from test wells by EG&G (Geothermal study).
1/14/1975	Memorandum of Sales Agreement of Land. Contract between H. Crank & I. Darrington.
8/20/1976	OPQ DD81: Aerial photo with topo features.
5/10/1978	A43-10382 Domestic well drilled north of pond.
7/21/1979	ASCS Color Slide: K-40 K-42. View of pond & acres.
09/16/1980	43-04098 Statutory Claim filed by H. Crank

ATTACHMENT #3

TIME LINE

P.1

"Remarks: This same well also provides irrigation water on property owned by another. Output of well is open discharge all year; recently-installed valve is rusted open. Water not used evaporates or sinks away in pond. 120 acres irrigated is owned by Ivan Darrington; well output, except 1" used by applicants for domestic use, was sold to Mr. Darrington in 1978. Claimants kept all but 2" of heat right."

1987	ASCS Map CC38:NAPP 16031-389: listed 78.3 acres within the identified irrigation boundaries.
7/14/1987	NAPP Infra-red Photo: 373-175, DD82 NW.
8/08/1987	NAPP Infra-red Photo: 389-55, DD81 NE.
12/ /1990	Mr. Darrington claims to open pond and release water for irrigation. Water delivered via original ditch system.
3/12/1991	Warranty Deed: sale from Janice Crank to Farley's.
4/28/1992	IDWR Complaint investigation and SRBA Exam.
5/05/1992	43-07318 Permit Application by Farley's for additional flows and uses of the hot well.
1994	Measurement of North and South wells; per Mr. Darrington.
9/ /1995	43-02413 Well failure, no longer producing water.
1996	43-02413 Well un-repaired; unused this season.
10/02/1996	SRBA Court Order to re-examine rights affected by hot well system.
10/08/1996	IDWR Exam in response to SRBA Court Order.
10/25/1996	IDWR Report to SRBA Court due this day.

=====

Dates of the SRBA claim filings and amendments were not included in this listing.

ATTACHMENT #3

Time Line P.2

RESPONSE TO SRBA ORDER

SRBA CASE NO. 39576

SRBA Case No. 94-00008

Cassia County Case No. CV 92-00778D

PURPOSE:

SRBA Presiding Judge, Daniel C. Hurlbutt, Jr. signed an ORDER dated October 2, 1996, requesting me to further investigate the water right license 43-02283. Said report is due October 25, 1996. Due to the overlapping and competing nature of the above right with other rights in the area, the examination and review for this right is accompanied by the full review for the claims filed by both the Darrington's and the Farley's.

SRBA CLAIM NUMBERS AND WATER RIGHT NUMBERS:

A43-02283	43-02283	DARRINGTON
A43-02413	43-02413	DARRINGTON
A43-04098A	43-04098	FARLEY
A43-10382	N/A	FARLEY
A43-10655	N/A	FARLEY

ATTACHMENTS:

All originals on file with IDWR.

1. Orthophoto Quad (OPQ) map copy showing place of use.
2. ASCS map copy with field notes and post-field review.
3. Time Line of events related to these water rights.
4. Profile reports of the five claims described above.

EXAMINATION PROCESS:

Upon receiving the Order, I called the attorneys for both parties to schedule appointments. Both attorneys indicated I should contact the claimants directly which I proceeded to do; appointments were set for October 8, 1996. I requested IDWR employee Frank Hitchcock to accompany me on this investigation since he has been dealing with SRBA reviews of claims in the area and has future reviews to do for Mr. Darrington's other rights in the area. I agreed Frank should take any photographs needed with documentation and he would also take notes of my conversations with the claimants.

On the morning of October 8, 1996 we met with Mr. and Mrs. Farley at their home; time was 10:20 am. First we discussed the domestic well filing, A43-10382, and located its general site. Since the well is buried it is not visible above ground for confirmation and we accepted Mr. Farley's statement of its location point.

From there we walked southeast to the north end of the dam on

the pond. This is a good place to view the lower areas and the old ditch that used to deliver water from the dam, as claimed by A43-02283. I inspected the face and toe of the dam for possible culverts, pipes or wet spots. At the head of the old ditch there was an indentation in the toe of the dam which is most likely the location of the old culvert. 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.

Returning to the dam we observed and discussed the condition of the old control structure used to deliver water from the dam. The structure appears unstable and unusable; it continues to deteriorate from my last examination.

On the southside of the pond I located the incoming ditch that supplies the pond with water and the site where I had previously observed the 6 inch PVC pipeline diverting water away from the ditch and pond to Mr. Darrington during my exam on 4/27/1992.

Next we drove to the hot well location and noted the wellhead was now a sealed system; this included the domestic diversion to Farley's under right A43-04098A. We measured the water flow in the ditch using a broad-crested weir and observed a flow of 0.14 cfs or 7 miner's inches. This flow represents everything in the well's production because Mr. Farley had turned off all diversions to his house from the wellhead. This was confirmed again after the return to the house.

As a part of IDWR's efforts to more accurately locate and monitor wells, the wellhead was banded and tagged with a GPS number A0002742. The Global Positioning System (GPS) was used to collect satellite data for future use in IDWR activities.

After a lunch break we met with Mr. Darrington at 1:40 pm near the homes in the southeast corner of SWNE of section 23. Mr. Darrington led us off to view the fields and wells he uses; he remained in his vehicle and we followed in ours. We drove easterly to a farm road that parallels the north-south mainline and turned north. We stopped at a point near the north end of the 6 acre field, a midpoint in the south half of the NE 1/4. Here Mr. Darrington explained how the fields were being dried up due to lack of water he claims is caused by his inability to deliver the water from the hot well. The 6 acre field east of his houses has not been recently irrigated; Mr. Darrington states this field has not been irrigated since 1971. I observed the 6 acre field west of his houses is not irrigated as we drove in to meet. (Note: the 1987 NAPP photos show both these fields having been irrigated and the remaining acreage of the total 81 acres has been irrigated in these photos.)

Next stop is at the south well. This well was permitted and licensed under water right 43-02413 for 2.10 cfs or 105". Mr. Darrington describes how the old ditch from the pond used to flow across the fields, almost on the same line as the quarter-quarter line between NENE and SENE, in an easterly direction. The lands in

the SENE appear irrigated as we viewed this area.

Continuing straight north we drove to the north well site. I had no record for this well or water right. Mr. Darrington mentioned something about being told by IDWR he didn't need to file before he drilled this well in 1971. Based on my observations in the field it appears he has added a point of diversion and should have filed a transfer.

From this vantage point he explained how the geothermal water from EG&G (a geothermal research group) was delivered to his farm during 1974-1975. He estimated he received about 400 inches of water from this source. It was used on the northern end of the irrigated portion of his farm. Although the northern end of the farm was not currently irrigated and did not appear to have been irrigated in 1996, the land is not in question as being irrigated pursuant to water right 43-02413 and did appear irrigated on the 1987 NAPP aerial photo.

Mr. Darrington explained the north well was being diverted around the west edge of the field to a booster pump located at the south well. I asked if he had ever had the two wells measured and he thought about two years ago then he states the wells were flowing 50" (1.00 cfs) at the north well and 45" (0.90 cfs) at the south well. He tells me the south well was burned up last year in September of 1995 and they haven't had the money to fix it.

[Mr. Darrington called me on October 21, 1996 and told me he had more current flow data for the wells. He said the numbers he gave in the field were from 1941. Sometime before 1990, Jerry Udy with Raft River Electric had determined a flow at the south well of 210 gpm (0.47 cfs) and at the north well a flow of 380 gpm (0.85).]

We return down the access road back to the 6 acre field east of the house. Here I ask Mr. Darrington to show me the stock water uses he made of the hot well water. He points out several joints of PVC laying around the fence lines and says Farley's kept throwing the pipes over the fence. My observations at this site found no evidence of stock troughs or watering sites. The field did not appear to be irrigated from the westerly direction, but rather, the ditch at the top (north end) of the field appears to slope from east to west.

I showed the ASCS map CC38 to Mr. Darrington and explained that the areas shown on this map appear to be exactly the same as what he has just shown and described to us. I point out the calculated acreage for the map is 78.3 acres and with the amount of water he says the wells produce, 95 inches, he should have adequate water supply for the irrigation of the entire farm as observed. He reminds me the south well is broken and that is why he needs the water from the hot well so badly; to make up the difference.

I asked him how many acres could he irrigate with the water from the hot well; his response was 25 acres. I asked again to confirm the question and answer given. He went on to say he could raise 4-ton per acre alfalfa with that hot water on the 25 acres. I challenged him and told him there could be no way to raise that quality of a crop on 25 acres. I told him we had measured the flow from the well and at best you could only irrigate about 7 acres with that source. Mr Darrington conceded he had to add other water with the hot water to fully irrigate the 25 acres he had claimed.

I state I am here to collect the information and the SRBA Court will make the final ruling on these issues, I will simply report the facts and observations I make here in the field.

I explain the GPS program and ask if we can place tags on /or near his wells. He agrees and we part company. GPS tag number for the south well is A0002743 and the north well is A0002744.

SUMMARY OF REVIEW AND SRBA CLAIMS:

<< See attached Profile Reports of each right for details >>

FARLEY CLAIMS - No change was found to have occurred in the proposed recommendation of these three rights.

A43-04098A is valid for Domestic use at 0.02 cfs and/or for Heating use at 0.02 cfs; total combined use of the right 0.02 cfs.

A43-10382 is found to be a valid Domestic well use. Allow diversion rate as measured of 0.03 cfs for one home.

A43-10655 uses were confirmed as claimed for Recreation, Wildlife & Aesthetic. Flow rate was as measured did not confirm the diversion actually used. Measurement was for 0.14 cfs instead of the claimed amount 0.21 cfs. Also, the claimed priority date pre-dates the license on which Mr. Darrington's claim A43-02283 is based upon. The claim by Farley's states 1935 but to date no supporting evidence has been given to verify that date. A more reasonable scenario would place the actual date for these uses at the time Ben Schmidt filed for the cold water well license 43-02413 in 1954. His application states the only other water use on these lands, which includes the 46 acres claimed by Mr. Darrinton for hot well use, was water from Cottonwood Creek and it was stated to be rare and unreliable. No mention of the hot well water right.

DARRINGTON CLAIMS - After a more thorough exam of the two rights claimed here there appears to be some legal issues I am not qualified to resolve and there is an emotional element to the claims as they were described to me by Mr. Darrington. Fortunately I am not authorized or qualified to address that element of a water right.

A43-02283 is based on a license which indicated more acres than have ever been irrigated and possibly with more water than ever flowed. Assuming the license was accurate, the flow of this well has continued to decline since 1941, from 0.92 cfs to the most current measurement of 0.14 cfs. 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 PVC pipe laying about the area and seen diverting water in 1992 has the appearance of new pipe and no mention was made of this being a replacement for previous pipelines.

The claim for stock use did not appear valid based on the descriptions given by the claimant. He did give a detailed account of the stockwater use as supplied by the nearby domestic well.

To summarize this proposed recommendation I would say the right was abandoned in 1954 when Ben Schmidt drilled the cold water well, referred to above as the south well under right 43-02413. The whole process listed on the development of this right of filling the reservoir, cooling overnight and then irrigating all day indicates to me to be a very inefficient system. Drilling the well eliminated all the hassles with the hot water. At this point in time I believe it is possible to establish the claim A43-10655 filed by Farleys.

The Agreement between Harriet Crank and Mr. Darrington in 1975 is puzzling and is left to the court to resolve. Mr. Darrington's use of the pond water or hot well water is conflicting by several of his own statements, some of which are described above. The amount of water available from the hot well cannot replace the 45" lost from the burn out of the south well so the loss of the hot water well is not the sole cause of the non-irrigated acres found at our exam - 41 acres dry. It appears Mr. Darrington may be demonstrating some resumption of use of this right but it does clearly cause injury to the Farleys if the water is not used as described in Mr. Darrington's claim or the base license; i.e. taking the water from the pond and not the ditch above.

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.

A43-02413 is a simple system based on past license with the only changes being a correction in acres and to implement the accomplished transfer statutes to add a second point of diversion (the north well). The 6 acre field west of the homesite was first irrigated in 1974 and could be assumed under the license.

In listening to Mr. Darrington describe this area during the 1974-1975 period, I believe the wells were producing marginal flows to begin with and certainly not the full licensed amounts. The offer by EG&G to supply 400" allowed the farm to be fully and adequately irrigated in some time. At this point there was even enough water to break out the 6 acre field to the west. However, after the geothermal projects were completed and the water sources capped off the farm returned to its previous drier status. In an attempt to obtain more water perhaps this is when the 1975 agreement was proposed.

REQUEST FOR EXTENSION:

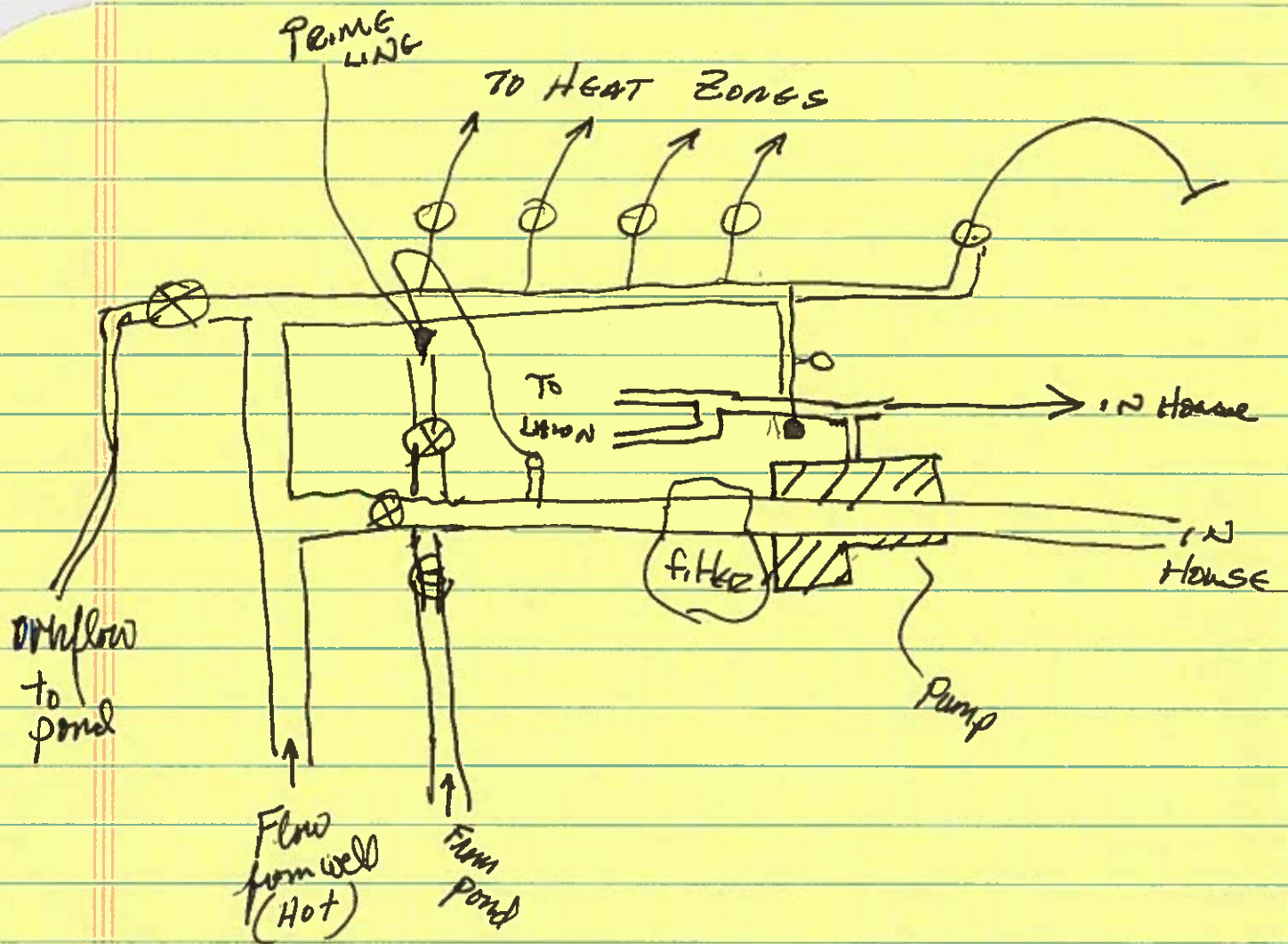
I called the court at 4:30 pm on Friday, October 25 to request some additional time to complete this report. I was told to submit a letter requesting the extension and forward it to the court. That letter accompanies this report.

Submitted by

Steve C. [Signature]

Date

10/28/1996



MANIFOLD SET UP @ Farley's

SC/FH 10-8-94

DARRENTON V FARLEY

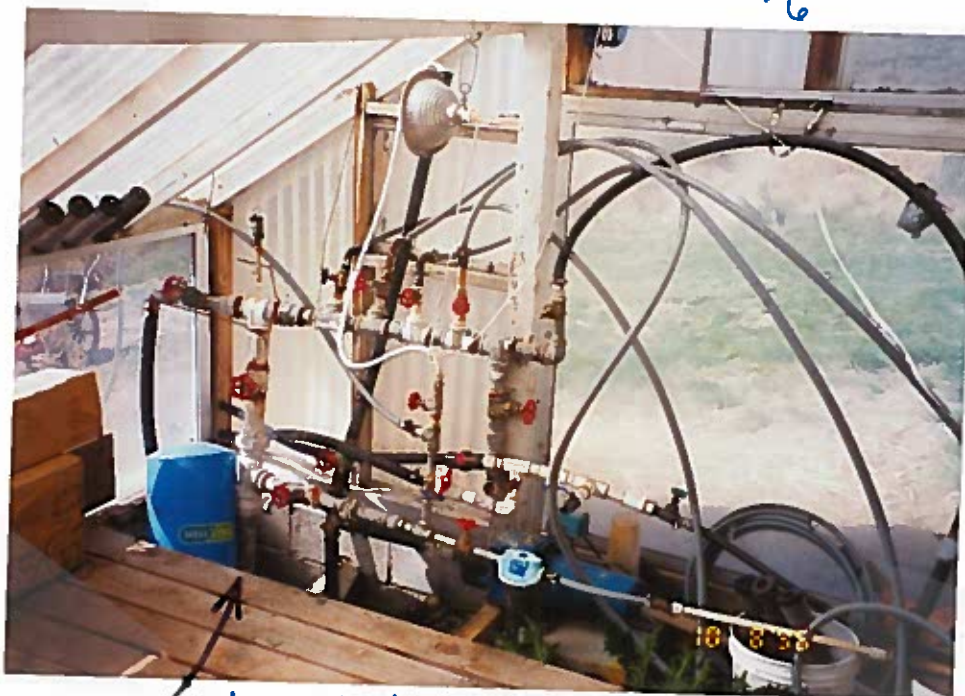
10-08-1996

10 Aug 86
8/9/97

Photos by Ft
43-38 #6 #5

10-8-96

#6



View of Heating System Manifold
in Farley Home
Line in from
Well Head

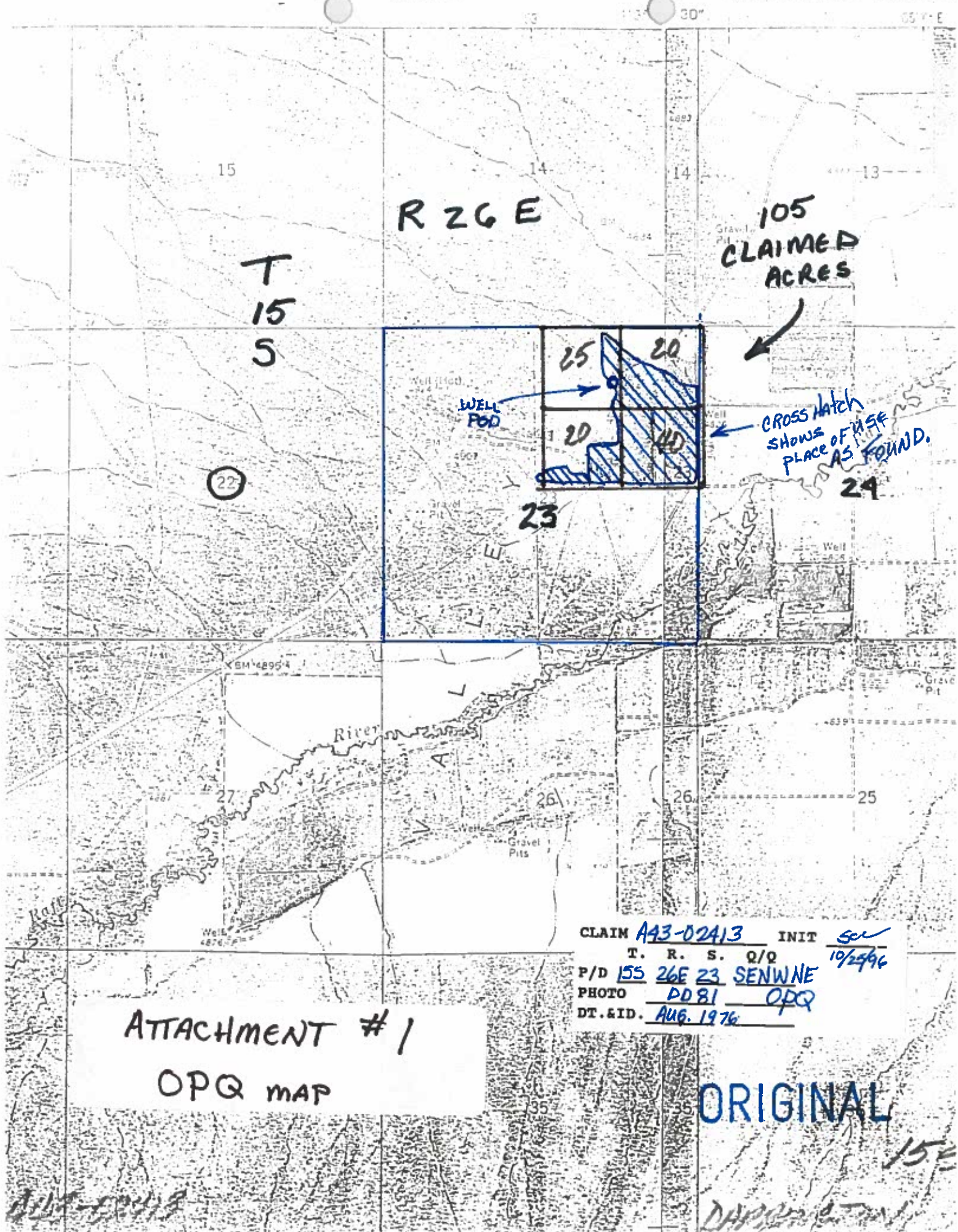
#5



Same as above.

A43-10655
FARLEY

CHOCHECHERRY CANYON ORTHOPHOTOQUAD DEPARTMENT OF THE INTERIOR
IDAHO GEOLOGICAL SURVEY



FIELD MAP

10-02-1446
43-02283

A * 6AC - broken
SCC — out
per CN
IVAN D. 1974

file # GFS
R00821B

10-08-96

file # GP3
R100821A -

NORTH WELL

**SOUTH
WELL**

43-02413

POD
SE NW NE

EARLEY'S HOME

OLD FISH

WELL DITCH

A (sec
* above

EG 650

Acres Developed 1979 →

ORIGINAL

ATTACHMENT #2

ASCS MAP

- see photo #5, 3³⁸ PM 10-08-96.
 well can be
 open discharge thru ditches or
 into plastic pipe along field edge
 on the west. CC 38
 see photo #6, 3³² PM 10-08-96 for
 irrigable acres NW of T1540
 - see photo #4 4⁰⁴ PM 10-08-96
 for PIA W of hay stack yard

T
15
S

R20E

notations by
FRANK
HITCHCOCK
10-08-96
on site w/ STEVE
CLELLAND.

NAME USED: _____ DATE: _____
 ASCS CL 3B CODE 1987
 ORTHO BURLEVILLE
 MAP 16037-389
 REM low elevation
CASSIA COUNTY ASCS.

**TIME LINE EVENTS
DARRINGTON & FARLEY**

1923	Artesian Hot Well drilled by John Schmidt.
7/30/1930	43-02583 Rept of Engineer. Cottonwood Cr. States this is flood water and was not used since 1926; indicates rare use. No SRBA Claim.
1/01/1935	A43-10655 Claim for Recreation/Wildlife/Aest.
2/11/1941	43-02283 Permit for Hot Well (3.0 cfs).
2/17/1943	43-02283 Proof filed by Ben Schmidt.
5/26/1943	43-02283 Rept of Engineer (0.92 cfs).
9/21/1954	43-02413 Approved Permit (Note: only overlapping water right mentioned in this application is for the right 43-02583, Cottonwood Creek water that is very rarely used.)
7/18/1958	43-02413 Rept of Engineer (2.44 cfs). (Revised: 105 acres & 2.10 cfs)
1971	Water Right unknown: Darrington drills North well in NENWNE, S23, T15S, R26E.
1971	A43-02283 Six acres east of house last irrigated, no explanation given.
1974	A43-02283 Never irrigated before this date. Six acres west of house cleared of brush.
1974-1975	400 inches of water delivered to the NENE of Section 23 from test wells by EG&G (Geothermal study).
1/14/1975	Memorandum of Sales Agreement of Land. Contract between H. Crank & I. Darrington.
8/20/1976	OPQ DD81: Aerial photo with topo features.
5/10/1978	A43-10382 Domestic well drilled north of pond.
7/21/1979	ASCS Color Slide: K-40 K-42. View of pond & acres.
09/16/1980	43-04098 Statutory Claim filed by H. Crank

"Remarks: This same well also provides
irrigation water on property owned by another.

Output of well is open discharge all year; recently-installed valve is rusted open. Water not used evaporates or sinks away in pond. 120 acres irrigated is owned by Ivan Darrington; well output, except 1" used by applicants for domestic use, was sold to Mr. Darrington in 1978. Claimants kept all but 2" of heat right."

1987	ASCS Map CC38:NAPP 16031-389: listed 78.3 acres within the identified irrigation boundaries.
7/14/1987	NAPP Infra-red Photo: 373-175, DD82 NW.
8/08/1987	NAPP Infra-red Photo: 389-55, DD81 NE.
12/ /1990	Mr. Darrington claims to open pond and release water for irrigation. Water delivered via original ditch system.
3/12/1991	Warranty Deed: sale from Janice Crank to Farley's.
4/28/1992	IDWR Complaint investigation and SRBA Exam.
5/05/1992	43-07318 Permit Application by Farley's for additional flows and uses of the hot well.
1994	Measurement of North and South wells; per Mr. Darrington.
9/ /1995	43-02413 Well failure, no longer producing water.
1996	43-02413 Well un-repaired; unused this season.
10/02/1996	SRBA Court Order to re-examine rights affected by hot well system.
10/08/1996	IDWR Exam in response to SRBA Court Order.
10/25/1996	IDWR Report to SRBA Court due this day.

=====

Dates of the SRBA claim filings and amendments were not included in this listing.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

January 7, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

GREGORY W MOELLER
RIGBY THATCHER ANDRUS RIGBY KAM & MOELLER
PO BOX 250
REXBURG ID 83440-0250

RE: CASSIA COUNTY CASE 92-00778D, DARRINGTON VS FARLEY

Dear Mr. Moeller,

It was brought to my attention that you have not received a copy of some correspondence in this case. Enclosed please find a copy of the letter I received and my response to that letter from Mr. Parsons dated December 10, 1996.

Please feel free to contact me if you have further questions.

Sincerely,

STEVE CLELLAND
Water Resource Agent

ENC:

cc: Jared Kimball, SRBA Court

443-4698 A



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

December 24, 1996

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

WILLIAM A PARSONS
PARSONS SMITH STONE & FLETCHER LLP
PO BOX 910
BURLEY ID 83318

RE: CASSIA COUNTY CASE 92-00778D

Dear Mr. Parsons,

You are correct in noting the six acre field in question did indeed show as irrigated in the more recent photos; at least those after 1971. The report of the 1971 date was given to me by Mr. Darrington and I recall questioning this in the field because of what the photos had shown. Mr. Darrington consistently gave the answer of 1971 so that was the information reported.

I believe the photos show this parcel as having been irrigated after 1971 as you have stated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Clelland', with a long horizontal flourish extending to the right.

STEVE CLELLAND
Water Resource Agent

PARSONS, SMITH, STONE & FLETCHER, LLP

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

December 10, 1996

RECEIVED

DEC 12 1996

Department of Water Resources
Southern Region

Mr. Steve Clelland
Idaho Department of Water
Resources
1341 Fillmore - Suite 200
Twin Falls, Idaho 83301

RE: Cassia County Case 92-00778D

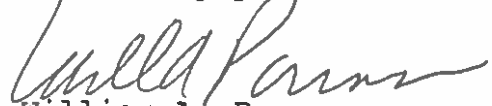
Dear Steve:

We received your response to SRBA Order and have reviewed it with Mr. Darrington. It appears to me that there is either a typographical error or a misunderstanding about the irrigation on the six acre field. Your report shows in two places that it has not been irrigated since 1971. It is believed that it was irrigated until 1991 and has not been irrigated since 1991. I believe this is consistent with the photos and either it is a typo or it is a misunderstanding.

You can obviously have in your report whatever you want but I do believe that the field has been irrigated since 1971.

Let me know your thoughts.

Very truly yours,


William A. Parsons

WAP:rt

FARLEY → 4098 A
(Hot well)

Domest Heating

= R =
.02 cfs
Dom
Heating

per

Meas. Bucket Method = 0.02 cfs

35 sec to fill 5 gallons

$$\left(\frac{5 \text{ gal}}{35 \text{ sec}} \right) \left(\frac{60 \text{ sec}}{1 \text{ min}} \right) = \frac{300}{35} = 8.57 \text{ gpm}$$
$$= 0.019 \text{ cfs}$$

Basin: Stat. Claim 9/16/80
by H. Crank

SC remarks: "This well..."

- copy -

@ reg flag

— indicates "well output" sold to D.
indicates water is used by
Dorington to irrigate 120 Ac

W. Deed: Janice C. → Farley 1991
"excepting mineral & geothermal rights"
3/12/91

silent on WR's

Memo of Sale: 1/19/75

* additional uses
must be developed
under

43-7318

5/5/92
Permit for:

Heat .04

Dom .04

Rec .04

.08

approved

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 <u>1976</u> IDWR ID NO. <u>DD81</u>	Y(☒) N(☐)
() TOPOGRAPHIC	DATE FIELD CHECKED _____ IDWR ID NO. _____	Y(☐) N(☐)
☒ NAPP	<u>389-55 8-8-87</u> <u>373-175 7-11-87</u> DATE OF PHOTO _____ IDWR ID NO. <u>DD81 NE</u> <u>DD82 NW</u>	Y(☐) N(☒)
☒ ASCS AERIAL PHOTO # <u>16031-389</u>	DATE OF PHOTO <u>1987 flight</u> <u>CC38</u>	Y(☐) N(☐)
() ASCS COLOR SLIDE	DATE OF PHOTO _____	Y(☐) N(☐)
() BLM OR USFS AERIAL PHOTO	DATE OF PHOTO _____	Y(☐) N(☐)
() TOWNSHIP SURVEY (GOVERNMENT PLAT)	DATE OF SURVEY _____	Y(☐) N(☐)
() SCS SOIL SURVEY MAP	DATE ISSUED _____	Y(☐) N(☐)
() SUBDIVISION PLAT MAP	DATE OF MAP _____	Y(☐) N(☐)
() OTHER _____	DATE _____	Y(☐) N(☐)
() OTHER _____	DATE _____	Y(☐) N(☐)
() OTHER _____	DATE _____	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 <u>IDWR</u>	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 _____

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-04098A

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 6, 1997 4:13pm

NAME:
DIANE FARLEY

CALLEDIN

RE:
HURLBUTT'S DECISION

SHE ASKED ME IF I HAD HEARD ANYTHING ON THE DECISION AND I TOLD HER NOTHING MORE THAN WHEN I WALKED OUT OF THE COURT LAST YEAR. I SUGGESTED SHE CALL THE COURT.

Photos by Soc
R43-1
10-8-96



View East -

Overview of the Reservoir site.
Taken from inlet ditch area.

A43-4098A

ID by SC
1/9/97

#11



Photos by FH
43-38 #8 #11

10-8-96

SETTING WEIR IN DITCH.

#8



FINAL SET-UP OF WEIR IN
HOT WELL DITCH TO FARLEYS.

A43-4098A

#9



Photo by FH
43-38 #9-#10
10-8-96

View of Gage in
Broad Crested Weir.
@ Crank Hot Well.

#10



10 by sec
10/97

A43-04098A

10 Aug 96
1/9/97

#7

PHOTOs by FH
A3-38 #7 #12 #13
10-8-96



CLELLAND & FARLEY INSTALL
GPS TAG TO WELL HEAD.

View SE with ditch to Farley's
pond in Background.

#12



View SE of WELL HEAD & Ditch.

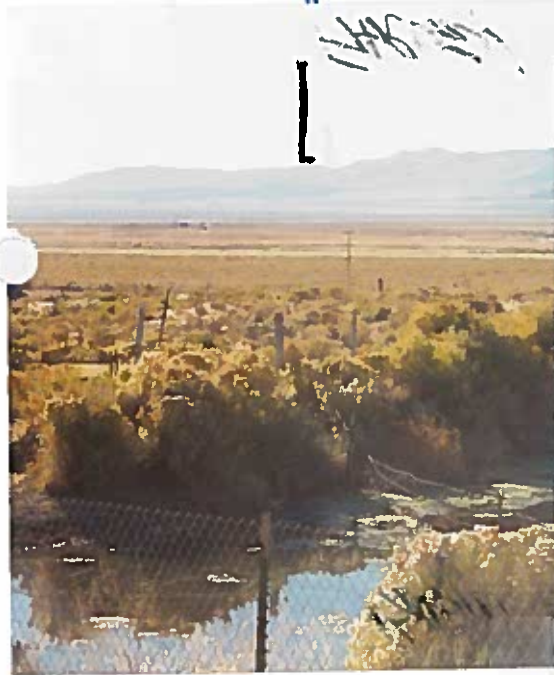
#13



FARLEY Points to BYPASS LINE WHILE USE TO FARLEY
IS RIGGED FROM HEAD TO FARLEY HOUSE.

A43-04098A

Photo by FH
43-36 #6 #7 #8
10-8-96



||
match
Edge with
photos #9-#12



View South of pond
from ~~East~~ side.
North

ID by SEC
1/8/97

A43-4098A

Photos by FH
43-36 #9-#12



match
line

View SE - shows overview
Towards Darrington Place of Use
(green fields) from Farley Home at pond.

A43-4098A
Farley

Photo at
end matches
with #8 on
other sheet.

Phms by FH
43-36 #3 & 4
10-8-96



View SE - shows small pasture area irrigated by
Farleys from the pond. (see also photo #5)

10 by SEC
1/8/97

A43-4098 A
FARLEY

Photo 43-36 by FH
#5
10-8-96

Bank of
Dam



Shows line pump/siphoned down
to pasture below dam.

(see photos #1-#4)

ID by SW
1/8/97

A43-4098A
For Loy

10 Jy 5cc
1/8-97

Photos by FH
43-36 #1 #2
10-8-96



#1

Shows area below dam
and portion of old diversion ditch.
People mark the location of old
culvert opening.

old
ditch line



Top of Dam
#2

View South

Ditch Line

WIDER SHOT SHOWS FRONT OF DAM
and Beginning of Diversion Ditch.

A43-4098A

#1



Photos by FH
43-37 #1 #2
10-8-96

View NE - overview of Farley's
house + the pond.



ID by SCC
1/8/97

View East

↑
Flow + Location of
Ditch from Well to Pond.

A43-4098 A

ID by Sec
1/9/97

Photo by FH
43-39-#3
10-8-96

#3



View South -

↑
FLOW

Broad Crested weir in ditch above Pond.

A43-4098A

↑
N



RANDALL FARLEY
A43-04098 A



H. CRANK WELL @ BRIGDE SPRING

423' DEEP

213° F GEOTHERMAL H₂O

Dilute Al ... 11/27/92

MEMORANDUM

TO: STEVE
FROM: FH
DATE: 10-18-1996
RE: DARRINGTON V FARLEY

Here are all the claim jackets that were involved in the trial and the specific claims that were reviewed in the field.

The A43-02283 Darrington claim jacket is full of all the related notes from the field exam, photo logs, court order, Moeller's subpoena, all our JCOMS and any explanatory journal entries to document the paper trail from the time of the contact from Moeller back in September. The originals of the court's Order and the subpoena are in this file.

The other two Farley claims have copies of the subpoena and the journal entries as needed but not the whole package as in the two main claims for each party in the case.

The litigation folder has copies of everything that I filed in the claim file for the license 43-02283 that was the subject of the court's order. There are also copies of the Cottonwood Creek research from the VAX system and miscellaneous map displays in the very back for future use.

I made separate copies of the my field notes before and after you made your additions as well as copies of the sketches you made.

The photos that I took are all marked (both sets) and the logs are tucked into each processing packet which is marked inside and out as I do my claim photos for file retrieval. Each packet has a log sheet outside for quick reference although the descriptions by print number are abbreviated.

The only thing that isn't done as of today is your set of pictures. I have included them with the rest of the claim files and exhibits but you'll have to ID them yourself. Also, I didn't tape together any of the prints that were panoramic shots unless you want me to do so.

COPY

A36-04098A

36

DATE	ROLL	PIC #	
10-08-96			FARLEY, RANDY
			#400090
38	Roll 1	13	looking So over gate/car - old well
50		12	No - so
		11	from below house...
		10	
		9	tenant house in fore ground...
		8	
		7	
		6	
55		5	pumping down to plot / garden below
57		4	
		3	E over garden area
		2	
59		1	So. over "digging" - fence cattle
			culvert - ditch area down fence
			line to Ely Forest - spec in old
			ditch - flood area - & evidence of
			the actual pipeline.
			#400091
00	Roll 2	13	culvert - metered - w/ sec. - above
			old ditch (-> W)
03		12	look on garden plot towards dam
			above. (-> W)
			ditch would hold
			water from culvert
			around fence line
			along plot...
05		11	-> E down fence line
			practically line @ junction w/ fence No. 50
		10	1 -> E around ditch curves over to
		9	"

COPY of log

10¹⁰

RANDY FARLEY-

JOURNAL FOR ADJUDICATION

FIELD WORK

AREA OF CONC.

PAGE 2 of 3

FARLEY, RANDY

10-08-1996

DATE	ROLL	PIC #	
13		8	Looking SE → down fence line to DARRINGTON'S Tenant house
35		7	→ing out W over ditch towards W. site
39			→ing E down fence line - pan around mill field to the SOUTH
"		2	→ing E over "the" ditch down pond
"		1	→ N/E over to house
1:55	Roll 3	38	#400093 (HOT)
56		13	→ N/E over POD - discharge is W/ ALL usage shut down.
1:07		12	→ E over ditch - was piped during Nat's episode (S)
11			is piped (\$12,000) worth
			buried to house per claimant.
		11	→ W over ditch - SCC leveling flume
		10	flume reading
		9	" "
40		8	→ W @ discharge to show level
2:00		7	→ SE over well head - SCC/claimant installing GPS site tag #0002742 on crown of well head
		6	→ing SW over control valve in line:
		5	- on " side adjacent to the pond.
			SCC did schematic sketch - claimant demonstrated all valves were closed to go to the issue. W discharge from well head measured (above) over full volume

COPY

PHOTO LOG BY FRANK HITCHCOCK

10-08-1996

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.

SD-0602-1

Office: CLELLAND

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
✓A43-02283	LEGAL	S	Legal	09/27/96
✓A43-02413	LEGAL	S	Legal	09/27/96

(WR CIN 50)
(WR CIN 50)

"
"
"

① - 04098A ✓ "
② - 10382 "
② - 10655 "

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

(Menu _____)

① CIX 69 F.E. Review
② CMC 55 REV- Contd Binding (as previously ID)

RECEIVED

OCT 16 1996

Department of Water Resources
Southern Region

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-02283 ET AL

—
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 10, 1996 1:16pm

NAME:
FARLEY, RANDALL/LINDA

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

FIELD WORK DONE JOINTLY BY STEVE CLELLAND (A WITNESS IN THE CASE) AND FRANK HITCHCOCK (REVIEWING AGENT FOR CLAIMS IN THE UPPER RAFT RIVER VALLEY-BASIN 43) AS A RESULT OF JUDGE DANIEL C. HURLBUTT, JR.'S ORDER AS A RESULT OF TESTIMONY/PROCEEDINGS IN THE NOTED CASE.

A COPY OF FIELD NOTES BY FRANK HITCHCOCK HAS BEEN PLACED INTO THE FILES OF FARLEY AND DARRINGTON AS THE INVESTIGATION WAS ORDERED FOR LICENSE 43-02283 TO BE REPORTED TO THE COURT ON OR BEFORE 10-25-96.

THE CLAIM NUMBERS OF FARLEY ARE AS FOLLOWS:

A43-04098A, A43-10382, AND A43-10655.

THE CLAIM NUMBERS OF DARRINGTON ARE AS FOLLOWS:

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.

A43-040
-1065

10-08-96

9²⁵ AM

-7-

FARLEY, RANDAL

RANDY ~~FAIRLEY~~ @ the home place
sprinklers from pond...

- ★ Don well buried up (old well...)
during trouble w/ rats, etc
very successful...
pumped mud, etc.
now used to dilute HOT WATER.

LOC/POV/POD

6-8' ft SW of the gate to the
home
(under car today - buried)

1 3/4 I.D. guy pipe used -

to the
WEST

(BEM - Ivan - trespassing? - rats...
said would be in trespass w/o
permit... went back to BEM -
BEM guy buried (W.) the R.O.W.
along the ditch - 50'?

947 WATER IS COOLED IN POND TO USE
30 PSI in gun barrel
HTG system for house

1 of 2 DARRINGTON v FARLEY

10-08-1996

- 2 -

3 or 4 pipes into pond
did CRANK abandon garden?

10.25 siphon thru dam @ inlet
control

11.30 GPS @ well head above homestead
tag: A0002742

GPS: file: R100817A (sum)
R100817B (collected)

12.00 to lunch in MATA —

2 of 2 DARRINGTON V FARLEY

10-08-96

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.

October 2, 1996 11:25am

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

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 08:38:54.76
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: 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.

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

CALLOUT 356-3633

RE:
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.

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

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. _____

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 23, 1996 4:19pm

NAME:

BILL PARSONS

PHONE: 678-8382

CALLIN

RE:

SKAGGS OWNERSHIP ERROR

SECOND ISSUE:

HE ASKED ABOUT ME BEING THE WITNESS AT THE FARLEY TRIAL...
ASKED IF I WOULD SAY MORE THAN MY MEMO. I DIDN'T THINK SO. HE
SAID THAT DARRINGTON AND I WOULD BE AT ODDS OVER THAT IRRIGATION
USE THEN... I KNEW THAT WAS SO.

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-04098A 8 

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 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: 16:43:12

Water Right Number: A43-04098A

Office	Location	Type	Description	Reg	Date
HITCHCOC	CWC	55	Reviewed, Conditions Pending	S	09/20/96
HITCHCOC	CIN	50	Pending Claim Review	S	07/26/94
SOUTHERN	SHELVES	ZZ	Initial Entry	S	03/11/93

(GOLD2=Update)

(GOLD8=Cancel)

(GOLD9=Override Call-Up)

(Enter=Exit)

IDAHO ATTORNEYS & FIRMS

1995

1995

- MILLER, Phillip R.** (Thompson Ashcraft) ... (208) 587-9797
PO Box 506, Mountain Home, ID 83647
- MILLER, Robert L.** (Meuleman Miller) (208) 342-6066
PO Box 955, Boise, ID 83701
- MILLER, Thomas A.** (Hawley Troxell) (208) 344-6000
PO Box 1617, Boise, ID 83701
- MILLS, Charlton** (Jensen Mills) (208) 263-8538
517 N 4th Ave, Sandpoint, ID 83864-1594
- MIMURA, Mark J.** (Canyon County) (208) 454-7391
1115 Albany St, Caldwell, ID 83605 Fax (208) 454-7474
- MIMURA, Susan Lynn** (Boise City) (208) 384-3870
PO Box 500, Boise, ID 83701-0500 Fax (208) 384-3990
- MINDER, Carolyn M.** (208) 362-1232
7283 Obsidian, Boise, ID 83709 Fax (208) 362-6826
- MINER, Clinton E.** (Golcochea) (208) 343-0022
PO Box 607, Boise, ID 83701
- MINER, Susan D.** (Hawley Troxell) (208) 344-6000
PO Box 1617, Boise, ID 83701
- MITCHELL, John T.** (208) 664-8111
408 E Sherman, Ste 316, Coeur d'Alene, ID 83814 Fax (208) 664-8113
- MITCHELL, Robert C.** (208) 389-9105
1087 W River St, Ste 150, Boise, ID 83702 Fax (208) 389-9294
- MITCHELL, Thomas A.** (208) 664-8111
408 E Sherman, Ste 316, Coeur d'Alene, ID 83814 Fax (208) 664-8113
- MOELLER, Gregory W.** (Rigby Thatcher) (208) 356-3633
PO Box 250, Rexburg, ID 83440-0250

MOFFATT THOMAS BARRETT ROCK & FIELDS

Eugene C. Thomas	John W. Barrett
R. B. Rock	Richard C. Fields
Robert E. Bakes	Paul S. Street
Larry C. Hunter	Glenna M. Christensen
Mark S. Prusynski	Morgan W. Richards, Jr.
Michael G. McPeck	Stephen R. Thomas
Jon S. Gorski	Gerald T. Husch
Thomas V. Munson	Kirk R. Helvie
Thomas C. Morris	Michael E. Thomas
James C. DeGlee	Patricia M. Olsson
Grant T. Burgoyne	Stephen J. Osgood
Patrick J. Kole	David S. Jensen
Ray E. Smith	Allen K. Davis
Mark A. Ellison	James L. Martin
Josephine P. Beerman	Kelly Greene McConnell
Jacque L. Palmer	

911 W Idaho, Ste 300, PO Box 829, Boise, ID 83701 (208) 345-2000
Fax (208) 365-5384

Gary T. Dance
Bradley J. Williams

Andrew R. Doman

525 Park Ave, Ste 2D, PO Box 1367, Idaho Falls, ID 83403 (208) 522-6700
Fax (208) 522-5111

845 W Center, Ste C, PO Box 4941, Pocatello, ID 83201 (208) 233-2001
Fax (208) 232-8001

MOLLERUP, Richard W. (Meuleman Miller) (208) 342-6066
PO Box 955, Boise, ID 83701

MONTGOMERY, Gary L. (Marcus Merrick) (208) 342-3563
737 N 7th St, Boise, ID 83702-5575

MONTGOMERY, Judson B. (Givens Pursley) (208) 342-6571
PO Box 2720, Boise, ID 83701

WR0743NP
(00-26)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT

09/20/96 15:29:36
Page 1

Water Right Number - 43-07318

Prefix Translation: WATER RIGHT

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***

FARLEY	RANDALL JAY	1 - HC 72	
		2 -	
		3 -	
		City- MALTA	State- ID Zip- 83342
		Phone - 208-645-2577	
FARLEY	LINDA DIANE	1 - HC 72	
		2 -	
		3 -	
		City- MALTA	State- ID Zip- 83342
		Phone - 208-645-2577	

+ - - Priority Date - - + + - - Region - - - + + - - Stage - - - + + - - Status - - - -
05/05/1992 17 SOUTHERN P - PERMIT

+ - - - - Source - - - - - + + - - - - Tributary - - - - -
GROUNDWATER

Point of Diversion							Diversion Name	Diversion Rate	Diversion No.
Twn	Rng	Sec	Tract	Lot	Rflg	County			
15S	26E	23	NW NW		(31)	CASSIA			

Water Use		Diversion Rate	Diversion Volume	
Code	Description	Period From	Period To	
22 - HEATING		09/01	06/01	0.040
43 - DOMESTIC		01/01	12/31	0.040
46 - RECREATION		01/01	12/31	0.040

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
0.080

Place of Use							Description	County
Twn	Rng	Sec	Tract	Lot	Acres	Code		
15S	26E	23	SW NE			22 HEATING		(31) CASSIA

+ - - Diversion Means -

+ - - Non-Irrigation Use -

+ - - Other Rights for Same Use - A43-04098A

+ - - - - Remarks - - - - -

The rate of diversion authorized under this permit when combined with the rate of diversion for Adjudication Claim No. A43-0405 to the extent determined to be valid in the SRBA shall not exceed a total of 0.08 cfs. This rate is further described as follows:

0.04 cfs for heating from September 1 to June 1
0.04 cfs for recreation year-round
0.04 cfs for domestic use year-round

PERMIT

Water right number - 43-07318

Prefix Translation: WATER RIGHT

+ - - - - - Remarks - - - - -

for a maximum diversion rate of 0.08 cfs.
The applicant shall return to the reservoir the water which is diverted under terms of this permit for heating and recreation purposes.
If the permit holder plans to enlarge, modify or reconstruct the existing well, the permit holder shall obtain a drilling permit pursuant to Section 42-235, Idaho Code. Prior to any construction on the well, the permit holder shall file a drilling prospectus and a surety bond with the Department in the minimum amount of five thousand dollars (\$5,000) pursuant to Section 42-233, Idaho Code. The drilling prospectus shall provide for the prevention of uncontrolled surface or subsurface flow from the well.
Heating use is for 1 home and 1 pool.
Domestic use is for 1 home.
Recreational use is for pool.

+ - - - - - Old Water Right Numbers - - - - -

No Old Water Right Numbers found.

+ - - - - - Conditions of Approval - - - - -

- 26A - Project construction shall commence within one year from the
- date of permit issuance and shall proceed diligently to
- completion unless it can be shown to the satisfaction of the
- Director of the Department of Water Resources that delays were
- due to circumstances over which permit holder had no control.
01C - A flow measurement port or other device as specified by the
- Department shall be installed by the right holder to provide for
- the installation of measuring equipment and the determination of
- the rate of diversion by the Department.
004 - The issuance of this right does not grant any right-of-way
- or easement across the land of another.

+ - - - Decree Plaintiff - - - + + - - - Decree Defendant - - - + + - Decree Date - +

00/00/0000

+ - - - - - Comments - - - - -

Date: 03/01/1993 User Id: MILLER Subject: CGWA EXEMPTION

This permit's uses are exempt from the Raft River Critical Groundwater Area and the Snake River Basin Moratorium criteria.

Date: 03/27/1995 User Id: VAULT Subject: Extension of Time Received

Extension of Time Received

+ - - Audit Fields - 05/15/92 BALDWIN 06/22/92 SKAGGS 06/22/92 BALDWIN 01/26/93 BALDWIN 03/01/93 MILLER
03/01/93 MILLER 03/02/93 MILLER 03/27/95 COMMENTS 04/03/95 JYARBROU

+ - - - - - Water Rights Dates and Flags Area - - - - -

Proof Due Date	- 04/01/1998	Field Exam Made	- 00/00/0000	Field Exam Fee	-
Approved/Denied	- 02/26/1993	Protested Date	- 00/00/0000	Swan Falls	- C
Proof Made Date	- 00/00/0000	Hearing Date	- 00/00/0000	Temporary Right	- P
Exam to S.O. Date	- 00/00/0000	Verified Date	- 00/00/0000	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	- C032366	Water District	- 43B

IDAHO ATTORNEYS & FIRMS

1995

4-2477

7-7900

27-7866

15-5262

13-3914

32-4639

33-2600

33-2602

85-6200

64-1561

164-2121

364-2132

345-7800

233-1113

664-2161

765-5117

263-6714

263-6726

364-2101

522-0700

528-2091

522-2513

883-3414

882-6532

342-4591

382-4267

382-3971

459-1541

459-1541

454-2532

524-5380

232-5167

323-1401

746-3646

529-1195

529-1300

377-6703

377-6578

icker & Associates®

1995

RICHARDS, Morgan W., Jr.

PO Box 829, Boise, ID 83701

RICHARDSON, Betty H.

Box 32, Boise, ID 83707

RICHARDSON, Harry D.

PO Box 1247, Boise, ID 83701

RICHARDSON, Peter J.

999 Math St, Ste 911, Boise, ID 83702-9010

RICHERT, Steven V.

PO Box 6009, Pocatello, ID 83205-6009

RICHMAN, Harvey

111 N 2nd St, Ste 200, Coeur d'Alene, ID 83814

RICHTER WIMBERLY P.S.

Robert's Drummond

410 Sherman Ave, Ste 317, Coeur d'Alene, ID 83814

Dennis Hession

(208) 667-6065
Fax WA# (509) 455-4217

RICKS & RAMEY, A PROFESSIONAL CORP

Steven K. Ricks

200 N 4th St, Ste 300, Boise, ID 83702

Frederick L. Ramey

(208) 344-3549
Fax (208) 344-3792

RICKS, Steven K.

200 N 4th St, Ste 300, Boise, ID 83702

RIDDLEMOSER, Jack C.

712 E Fairview Ave, Ste 3, PO Box 37, Meridian, ID 83680

RIEDNER, Gary J.

206 E 8th St, PO Box 9203, Moscow, ID 83843-1703

RIGBY, Jerry R.

PO Box 250, Rexburg, ID 83440-0250

RIGBY, Ray W.

PO Box 250, Rexburg, ID 83440-0250

RIGBY THATCHER ANDRUS RIGBY KAM & MOELLER, CHARTERED

Ray W. Rigby

G. Rich Andrus

Michael S. Kam

Gordon S. Thatcher

Jerry R. Rigby

Gregory W. Moeller

25 N 2nd E, PO Box 250, Rexburg, ID 83440-0250 (208) 356-3633
Fax (208) 356-0768

Idaho Falls (208) 529-5531

RILEY, Richard A.

PO Box 1868, Boise, ID 83701

RILEY, Robert H.

PO Box 4229, Pocatello, ID 83205

(Eberle Berlin) (208) 344-8535

(Quane Smith) (208) 233-1113

Looking for a Prosecuting Attorney?

Listed by county
starting on page 74

Tucker & Associates®

Page 187

WR0743NP
(OD-26)

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROOF READING REPORT

09/20/96 15:29:36
Page 3

Water right number - 43-07318 Prefix Translation: WATER RIGHT

+ - - - - Water Rights Dates and Flags Area - - - - -

Licensed Date	- 00/00/0000	Appl Received	- 05/04/1992	Transfer/Amended	-
Decree Date	- 00/00/0000	Name Connector	- AND	POU Ownership Flag	- Y
Presumption Flag	-				

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. _____

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 19, 1996 2:52pm

NAME:

GREG MOELLER

CALLIN

RE:

APPT FOR FRIDAY 20TH

HE REPRESENTS MR. & MRS. FARLEY IN BASIN 43 AND WOULD LIKE TO MEET WITH ME TOMORROW TO REVIEW THE FILE AND THE UPCOMING TRIAL ON THE 26-27. I TOLD HIM I HAD PLANNED TO BE OUT OF THE OFFICE TOMORROW. NO ALTERNATIVES SEEM POSSIBLE NEXT WEEK... I OFFERED TO COME IN FRIDAY AT 1 PM AND MEET WITH HIM.

I ALSO SUGGESTED THAT FRANK HITCHCOCK BE IN ON THIS APPT SINCE HE MUST DEAL WITH THE PARTIES IN THAT AREA.

PHONE: 356-3633

ORIGINAL

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

09-26+27-96
DARRINGTON
✓
FARLEY

SNAKE RIVER BASIN ADJUDICATION RECORDS

✓ H-BC
FARLEY
FARLEY
DARRINGTON
DARRINGTON
STEWART, 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 water.
green - ready for fill
water.
-10382 added by H-BC to file.

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

Sincerely,

Corey Skinner

Corey Skinner, EIT
Dam Safety Section

Enclosures

09-16-96, CN COREY, 11:40 AM:

list of #s taken from
a receipt provided w/ 04098A
written in.

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 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** CAMEIN RE: **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.



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

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

43-02283
43-02327
43-02413
43-02461
43-04098

SNAKE RIVER BASIN ADJUDICATION RECORDS

A43-04098A
A43-10655
A43-02413
A43-02283
A43-02327
A43-02461
A43-10280

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

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A43-04098A

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

April 17, 1995 2:25pm

NAME:

DIANE FARLEY

CALLIN

RE:

QUESTIONS ON SRBA

SHE WANTED TO KNOW HOW SOON THE SRBA WOULD RESOLVE THEIR CLAIMS... I TOLD HER I DID NOT KNOW; THE COURT IS STILL REVIEWING THE FIRST REPORT WE SUBMITTED 4-5 YEARS AGO.

SHE SAYS DARRINGTON IS PLANNING TO DIVERT THE WATER THROUGH THE CULVERT IN THE DAM.

I TOLD HER THE DARRINGTON CLAIMAT THIS POINT OF REVIEW IS BEING RECOMMENDED FOR DISALLOWAL SINCE I COULD FIND NO EVIDENCE OF USE. SHE SAID DARRINGTON CALLED MY REPORT OF THE MATTER A BUNCH OF LIES. CLAIM: A43-04098A.

RECEIVED

APR 17 1995

Department of Water Resources
Southern Region

COPY

RECEIVED
SEP 30 1994
Department of Water Resources
Southern Region Office
OCT 04 1994

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

In the Matter of the Application for Permit
No. 43-07318 in the Name of Randall Jay
Farley and Linda Diane Farley.

Case No. SP 93-00103

ORDER OF DISMISSAL

IVAN DARRINGTON,

Protestant - Appellant,

vs.

RANDALL JAY FARLEY and LINDA
DIANE FARLEY,

Applicants - Respondents,

and

IDAHO DEPARTMENT OF WATER
RESOURCES,

Respondents.

William A. Parsons, Parsons, Smith Stone & Fletcher, for Ivan Darrington

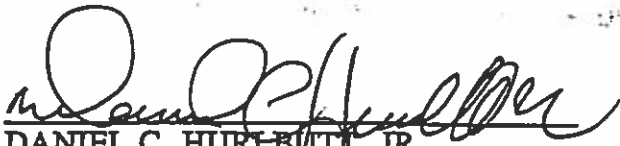
Phillip J. Rassier, Deputy Attorney General, for Idaho Department of Water
Resources

Randall and Linda Farley, Pro Se

On September 29, 1994, this court entered an *Order Accepting Stipulation to Dismiss
Appeal.*

IT IS ORDERED for the reasons stated in the *Order Accepting Stipulation to Dismiss Appeal*, Cassia County Case No. SP 93-103 is DISMISSED with prejudice.

DATED September 29, 1994.


DANIEL C. HURLBUTT, JR.
District Judge

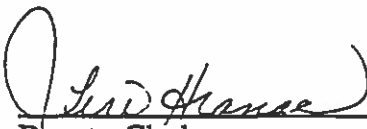
CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF DISMISSAL was mailed on September 29, 1994, with sufficient first-class postage to:

William A. Parsons
Parsons, Smith, Stone & Fletcher
P.O. Box 910
Burley, ID 83318

Phillip J. Rassier
Deputy Attorney General
Department of Water Resources
Statehouse
Boise, ID 83720-9000

Randall & Linda Farley
HC 72
Malta, ID 83342


Deputy Clerk

IDWR issued Farleys water right permit 43-07318 pursuant to I.C. § 42-203A. (R. at 82.)

Ivan Darrington (Darrington) protested Farleys' application for permit 43-07318. (R. at 85.)

A final decision and order issuing the permit and denying Farley's protest was issued by IDWR on February 26, 1993. (R. at 80.) Darrington filed a petition for judicial review of the final decision pursuant to I.C. § 42-1701(4) and chapter 52, title 67, Idaho Code. (R. at 85.)

Judicial review of an administrative proceeding before IDWR is limited to the agency record (I.C. § 42-67-5277), and the standard for appellate review is defined by I.C. § 67-5279.

Oral argument was heard on August 2, 1994. All parties stipulated to having the matter heard by telephone conference.

At hearing on August 2, 1994, William Parsons, counsel for Darrington, advised the court that the parties had reached an oral stipulation that the "court could affirm the administrative decision as to the issuance of the water permit to the Farleys, and at the same time make an express finding that the decision is not *res judicata*, nor is it collateral estoppel as to Darrington in any further proceeding in the adjudication (SRBA) should one occur; and it is not *res judicata* in the current case pending in Cassia County involving the construction of the memorandum agreement which is the topic--or which appears in the administrative decision." (Reporter's Transcript, August 2, 1994, p. 4 ll. 1-11.)

By this statement, Parsons was stipulating that the instant appeal would be dismissed if certain findings and conclusions regarding the Memorandum Agreement executed by Harriet Crank (predecessor-in-interest to Farleys) and Darrington on May 23, 1975 (Memorandum Agreement), which was mentioned in the body of the administrative decision, could not be operative as *res judicata* or collateral estoppel.

Phil Rassier, counsel for IDWR, agreed to the oral stipulation as recited at hearing. Rassier stated "[t]hat if the court is inclined to affirm the department's decision, that is certainly what we request; but also if it assists the parties and Mr. Darrington if the court clarifies that the department's administrative decision shall not have the effect of prohibiting the parties in any way from ^{proceeding} [sic] with a full determination of their other water rights, of the legal

meaning, that is clearly appropriate and clearly what the department thought and intended and wished in its decision." (Tr. p. 7 ll. 8-21.) (Emphasis added.)

By this statement, Rassier stipulates that IDWR is estopped from affirmatively defending, in any lawsuit, that the doctrines of *res judicata* or collateral estoppel apply as to the interpretation, implementation or construction of the Memorandum Agreement.

Farleys did not object to the court's acceptance of the oral stipulation to dismiss the immediate appeal. (Tr. p. 8 ll. 21-24.)

The court has found no legal authority for the proposition that parties can stipulate and bind a court as to what is or is not *res judicata* or collateral estoppel, nor have the parties provided legal authority for such a proposition.

What is operative as *res judicata* (claim preclusion) or collateral estoppel (issue preclusion) is a matter of application of law by a court.

This court agrees with the parties that legal argument relative to the construction or implementation of the terms of the Memorandum Agreement will not be barred by the doctrines of *res judicata* or collateral estoppel in subsequent lawsuits, if any, among parties to this administrative appeal. The following reasoning is illustrative of this court's conclusion.

Recently, the Court has reaffirmed the basic statement of the doctrine of *res judicata* (claim preclusion) that has guided our courts for seventy years:

We think the correct rule to be that in an action between the same parties upon the same claim or demand, the former adjudication concludes parties and privies not only as to every matter offered and received to sustain or defeat the claim but also as to every matter which might and should have been litigated in the first suit.

Joyce v. Murphy Land & Irrigation Co., 35 Idaho 549, 553, 208 P. 241, 242-43 (1922) (quoted with approval in *Kawai Farms, Inc. v. Longstreer*, 121 Idaho 610, 614, 826 P.2d 1322, 1326 (1992) and *Diamond v. Farmers Ins.*, 119 Idaho 146, 148, 804 P.2d 319, 321 (1990)).

In affirming a summary judgment in *Diamond*, the Court traced the evolution of *res judicata* (claim preclusion) in this state since *Joyce*, and concluded:

We approve the Court of Appeals holding in *Aldape v. Akins*, 105 Idaho 254, 668 P.2d 130 (Ct. App. 1983) that a valid and final judgment rendered in an action extinguishes all claims arising out

of the same transaction or series of transactions out of which the cause of action arose.

Diamond, 119 Idaho at 150, 804 P.2d at 323.

In *Aldape*, the Court of Appeals pointed out:

The transactional concept of a claim is broad, and . . . the bar of claim preclusion is similarly broad. . .

. . . .

The bar of claim preclusion may apply even where there is not a substantial overlap between the theories advanced in support of a claim, or in the evidence relating to those theories.

105 Idaho at 259, 668 P.2d at 135.

In *Diamond*, the Court employed the analysis used by the Court of Appeals in *Aldape* and the Restatement (Second) of Judgments § 24 (1982), to determine whether the second action sought remedies with respect to all or any part of the transaction out of which the first action arose. 119 Idaho at 151, 804 P.2d at 324. In *Aldape*, the Court of Appeals quoted the test from Restatement (Second) of Judgments § 24 (1982):

"What factual grouping constitutes a "transaction . . . [is] to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage."

105 Idaho at 259, 668 P.2d at 135.

Magic Valley Radiology, P.A. v. Helen Kolough, 123 Idaho 434, 436-437, 849 P.2d 107 (1993).

The application for permit did not and could not involve "litigation" about the construction or implementation of the Memorandum Agreement. The subject matter embodied by that Memorandum Agreement is not properly the subject of an I.C. § 42-2034 hearing, and IDWR is estopped from asserting any affirmative defense that any finding of fact and conclusion of law regarding the Memorandum Agreement contained in the Agency's Memorandum Decision and Order is operative as *res judicata* or collateral estoppel in the Cassia County Case No. 92-00778 or in any SRBA proceeding.

IT IS ORDERED that with the above-stated conditions, the oral stipulation to dismiss Cassia County Case No. Sp-93-00103 is accepted.

An order of Dismissal of Cassia County Case No. SP-93-00103 shall issue separately.

DATED September 29, 1994.


DANIEL C. HURLBUTT, JR.
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ACCEPTING STIPULATION TO DISMISS APPEAL was mailed on September 29, 1994, with sufficient first-class postage to:

William A. Parsons
Parsons, Smith, Stone & Fletcher
P.O. Box 910
Burley, ID 83318

Phillip J. Rassier
Deputy Attorney General
Department of Water Resources
Statehouse
Boise, ID 83720-9000

Randall & Linda Farley
HC 72
Malta, ID 83342


Deputy Clerk

ROUTING SLIP

TO: ALLEN MERRITT

FROM: PHIL RASSIERO

DATE: 9-30-94 TIME: _____

PER: _____	
Our Conversation	
Your Request	
The Attached	

FOR YOUR:		REVIEW AND:	
Information	☒	Take Proper Action	
Approval		Comment	
Signature		Draft A Reply	

ATTACHED TO BE:			
Posted		Returned To Me	
Circulated		Filed	
Distributed		Copied (_____ copies)	

MAY WANT 40 PHOTOCOPIES IN THE DARRINGTON and FARLEY CLAIM FILES.

~~St~~ Don C. Carter ~~HHS~~ Helen ⁰¹²
✓ Southern AJ

February 23, 1993

Attached are copies copy of the Final Memorandum Decision and Order, Proposed Memorandum Decision and Order, Certificate of Mailing and cover letter sent in reference to the matter of application for permit no. 43-07318 in the name of Randall Jay and Linda Dinae Farley.

Copies forwarded to

IDWR - Northern Region - Bob Haynes

IDWR - Southern Region - Loren Holmes

IDWR - Eastern Region - Ron Carlson

IDWR - Western Region - Dave Tuthill

Legal Division - Phil Rassier

Adjudication Bureau - Dave Shaw

Water Allocation Bureau - Glen Saxton

Karen Gustafson

Tim Luke

JJ Seifert

Pam Skaggs

Erv Ballou

George Austiguy

Darla Block

Brenda Miller

Cindy Zimmerman

Carolyn Andregg

Sharla Curtis

Jim Johnson

RECEIVED

MAR 04 1993

Department of Water Resources
Southern Region Office

File in
A43-04098A



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 2, 1993

Re: In the Matter of Application for Permit No. 43-07318
in the name of Randall Jay and Linda Diane Farley

Dear Permit Holder:

Enclosed is a copy of the Final Memorandum Decision and
Order issued in reference to the above mentioned permit.

Any person who does not agree with the decision of the
department may request a rehearing before the Director
within 20 days, or may appeal directly to the district
court within 30 days of the date the decision is mailed.

If you have any questions concerning this matter, please
feel free to contact this office.

Sincerely,

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enc: Final Order
Certificate of Mailing
Copy of Approved Permit

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	FINAL ORDER ADOPTING
PERMIT NO. 43-07318	)	PROPOSED MEMORANDUM
IN THE NAME OF RANDALL JAY AND	)	DECISION AND ORDER
LINDA DIANE FARLEY	)	

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on February 8, 1993, pursuant to Section 67-5211, Idaho Code; and,

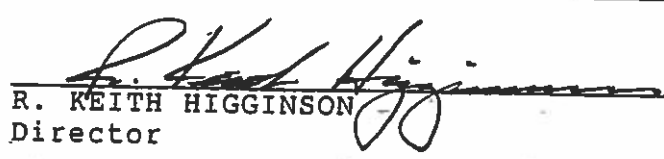
WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order, and Application for Permit No. 43-07318 is APPROVED.

IT IS FURTHER ORDERED that proof of construction of works and application of water to beneficial use shall be submitted on or before April 1, 1995.

Dated this 26TH day of FEBRUARY, 1993.



R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of March, 1993, I mailed a true and correct copy of the foregoing Final Order Adopting the Proposed Memorandum Decision, postage prepaid, to the following:

Ivan Darrington

Box 136
Almo, ID 83312

Randall/Linda Farley

HC 72
Malta, ID 83342

Roger D. Ling

PO Box 396
Rupert, ID 83350



Karen L. Gustafson
Secretary/Records Manager

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 43-07318 IN THE)
NAME OF RANDALL JAY FARLEY AND)
LINDA DIANE FARLEY)
_____)

PROPOSED MEMORANDUM

DECISION AND ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protested application for permit, the department having held a conference and a hearing in the matter, the Director of the department makes the following Findings of Fact, Conclusions of Law, Analysis and Order:

FINDINGS OF FACT

1. On May 4, 1992, Randall Jay Farley and Linda Diane Farley (applicant) submitted application for permit no. 43-07318 (application) to the department proposing the diversion of 0.22 cubic feet per second (cfs) of ground water to be used for heating, recreation and domestic purposes.

2. The proposed point of diversion is an existing artesian well (well) located in SWNWNW Section 23, T15S, R26E, BM., in Cassia County. This well is located on Bureau of Land Management land and is sometimes known as Bridge Spring. The well is approximately 430 feet deep, has a twelve (12) inch diameter casing and discharges water at a temperature of approximately 190 degrees Fahrenheit. The water discharged from the well flows in a ditch in an easterly direction approximately one-half (1/2) mile to an existing pond (reservoir) adjacent to the applicant's proposed place of use.

3. On June 22, 1992, Ivan Darrington (protestant) filed a protest against approval of the application.

4. On January 26, 1993, the department conducted a hearing on the matter at Burley, Idaho. The applicant was represented by Roger Ling, attorney-at-law and the protestant represented himself.

5. Issues identified in the matter by the protestant include the following:

a) that approval of the application will reduce the amount of water under existing water rights,

b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated,

- c) that the application is not made in good faith, and is made for delay or speculative purposes,
- d) that the applicant does not have sufficient financial resources with which to complete the work involved therein,
- e) that the application will conflict with the local public interest, and
- f) that the application is contrary to the conservation of water within the state of Idaho.

6. Exhibits accepted as part of the record include the following:

- a) Applicant's Exhibit No. 1. - Memorandum Agreement entered into on May 23, 1975 between Harriett P. Crank (Crank), a widow, and Edsil Ivan Darrington and Barbara Darrington, husband and wife.
- b) Protestant's Exhibit A - Warranty Deed dated May 21, 1975 between Harriet P. Crank, a widow, and Edsil Ivan Darrington and Barbara Darrington, husband and wife.
- c) Protestant's Exhibit B - Agreement between Ben V. Schmidt and Luceal Schmidt, husband and wife, and Guy Creek and Lois I. Creek, husband and wife, said agreement dated February 1, 1966.
- d) Protestant's Exhibit C - Agreement of Sale entered into on July 24, 1968 between Guy Creek and Lois I. Creek, husband and wife, and Paul Crank, a bachelor.

7. The hearing officer officially noticed certain department files and records including the following:

- a) License file 19094/43-02283.
- b) Claim to a water right no. 43-04098.
- c) Snake River Basin Adjudication claim no. A43-04098A filed by the applicant.
- d) Snake River Basin Adjudication claim no. A43-02283 filed by the protestant.

8. On May 26, 1943, the department conducted a field examination in connection with permit no. 19094/43-02283 which the department had issued on February 17, 1941, to Ben V. Schmidt who formerly owned the land of the applicant and protestant. The examination showed that the source of water (a hot artesian well) was located in the SE1/4NW1/4 section 23, T15S, R26E, BM. The examination also showed that water was diverted for irrigation from a reservoir located in the SW1/4NE1/4 section 23, T15S, R26E, BM. The exam shows that two (2) ditches were used to divert water from the reservoir.

9. As a part of the proof of application of water to

beneficial use for permit no. 19094/43-02283, on February 17, 1943, the permit holder, Ben V. Schmidt, filed a deposition with the department stating that he cools the water overnight in a reservoir and then uses the water for irrigation. The reservoir is the same reservoir involved in the pending protested matter.

10. On February 22, 1944, the department issued license no. 19094/43-02283 to Ben V. Schmidt based on the findings of the field examination described in Finding of Fact 8. above. The license authorized the diversion of 0.92 cfs of water from a hot well for the irrigation of 46 acres in Section 23, T15S, R 26E, BM. This license provided for the diversion of one (1) miner's inch per irrigated acre.

11. On September 16, 1980, Harriet P. Crank and Janice Crank filed Claim to a Water Right no. 43-04098 with the department pursuant to provisions of section 42-243, Idaho Code. Crank claimed the use of water from a hot artesian well with point of diversion in the NW1/4NW1/4 section 23, T15S, R26E, BM. The rate of diversion claimed was a total of 0.20 cfs for irrigation, domestic and livestock uses.

12. The applicant has filed Snake River Basin Adjudication (SRBA) claim no. A43-04098A with the department which claims the diversion and use of 0.08 cfs of water from the well for domestic and heating purposes. The priority of use claimed is January 1, 1935. The point of redirection associated with the claim is a screened inlet to a 1-1/2 inch black plastic pipe which has been placed in the bottom of the ditch and which conveys water from the well to the pond. The screened inlet is located in the ditch approximately 600 feet from the well.

13. The protestant has filed SRBA claim no. A43-02283 with the department which claims the diversion and use of 0.92 cfs of water from the well for the irrigation of 46 acres in the S1/2NE1/4 Section 23, T15S, R26E, BM. The point of diversion claimed is SWNE Section 23, T15S, R26E, BM. and the priority of use claimed is February 11, 1941.

14. In 1975, the applicant's immediate predecessor-in-interest, Harriett P. Crank, and the protestant entered into an agreement (1975 agreement). Among other provisions, the agreement specifically included the following:

- a) Crank owned all the heat rights in the water diverted from the well except for a two (2) inch pipe of water which could be used for heat by Darrington.
- b) Crank was to return the water which she used to the reservoir for use by Darrington for irrigation or livestock use.
- c) Crank was entitled to that portion of the well measured under the standard of a one-inch pipe of water.

d) Darrington was entitled to all other water from the well (except the Crank portion delivered through the one-inch pipe).

15. The 1975 agreement also states that the protestant "... shall have the right to use the water in the reservoir and the right of ingress and egress to the reservoir and the right of way for necessary ditches to remove water from the reservoir together with the right to repair and maintain ditches from the reservoir", (emphasis added).

16. Even though the protestant emphatically states that the parties and successors-in-interest to the 1975 agreement are bound by and obliged to comply with provisions of the agreement, the testimony presented clearly shows that at times, the parties have not complied with the terms and intent of the agreement. Examples of non-compliance include failure of Crank and successors to always clean the reservoir and the protestant's practice of periodically diverting water from the ditch leading to the reservoir thus depriving Crank and successors of the opportunity to use "all the heat rights" in the water.

17. Within the last five (5) years, the protestant has diverted water directly from the reservoir for irrigation and stockwater purposes and has diverted water from the ditch leading from the well to the reservoir thus preventing the water in the ditch from reaching the reservoir. The diversion works used to divert water from the reservoir, however, are presently in disrepair and are not operable.

18. The total rate of diversion (0.22 cfs) applied for by the applicant was based on the total rate of flow measured in the ditch about 50 feet from the well and was not determined by a calculation of heat transfer from the water needed in connection with the proposed uses.

19. The application proposes the heating of applicant's home which is a one story building with an area of approximately 2,500 square feet.

20. The applicant has made preparation for heating use of the water by adding additional insulation to the applicant's home and by purchasing and installing some space heating equipment.

21. The rate of diversion generally authorized by the department for single family domestic use is 0.04 cfs.

22. The applicant's recreation use will be a reuse of water diverted for either domestic or heating.

CONCLUSIONS OF LAW

1. Section 42-230, Idaho Code, defines a low temperature geothermal resource as follows:

...All ground water having a temperature of greater than eight-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit in the bottom of the well...

2. The correct location of the hot artesian well which is the source of water in the captioned matter is within the NW1/4NW1/4 section 23, T15S, R26E, BM, not within the SE1/4NW1/4 as shown on license 19094/43-02283.

3. The protestant has not filed and the department has not approved any document which authorizes the change in point of diversion of licensed water right no. 43-02283 from the original diversion points at the reservoir to a point on the ditch which extends from the well to the reservoir.

4. While the provisions of the 1975 agreement between Crank and the protestant are not binding on the department, the agreement clearly shows that the intent was for Crank to use all of the heat in the water except for the heat in the water which would discharge through a 2 inch diameter pipe for use by the protestant. The agreement also clearly shows that the protestant was to divert water from the reservoir after the water had been used by Crank and discharged back to the reservoir.

5. The provisions of the 1975 agreement allowing use of the heat in the water by Crank or successor-in-interest Farley can not be fulfilled if the protestant diverts water from the ditch upgradient from the applicant's diversion thus preventing the water from reaching the applicant's point of diversion.

6. The protestant is entitled to divert water from the reservoir to the extent SRBA adjudication claim no. A43-02283 is determined to be valid in the SRBA. The protestant is not entitled to divert water from the ditch which carries water from the well to the reservoir.

7. The validity and extent of SRBA claim no. A43-04098A filed by the applicant and of SRBA claim no. A43-02283 filed by the protestant will be determined in the SRBA.

8. Applicant's proposed use of the water is non-consumptive except for incidental irrigation associated with domestic use.

9. Approval of the application will not injure water rights of the protestant. The applicant's use of the water for its heat will not diminish the amount of water available for non-heating uses.

10. The water supply is sufficient for the purposes for which it is sought to be appropriated and will provide a sufficient amount of heat for successful heating of the applicant's home and for the recreation and domestic uses sought by the applicants.

11. The application was made in good faith and was not made for delay or speculative purposes.

12. The applicant has sufficient financial resources with which to complete the work proposed in the application and, in fact, has already purchased and installed part of the equipment for heating the applicant's home.

13. The application is in the local public interest, since the use of low temperature geothermal resource water primarily for its heat value and secondarily for value as water is consistent with provisions of section 42-233(1), Idaho Code.

14. The application is not contrary to the conservation of water resources in Idaho and will allow the heat in the low temperature geothermal resource water to be used rather than wasted in a cooling reservoir.

15. Water is available for the uses proposed by the applicant.

16. The rate of diversion which the department approves should be based on calculations of the amount of heat transfer from the water needed to satisfy the applicant's proposed uses. The rate should not merely be based on the rate of water flow which the well discharges.

17. The applicant is authorized to divert water from the well rather than just redivert water from the ditch extending from the well to the pond if the applicant can obtain needed rights-of-way or other approvals.

18. The department should partially approve the application and issue a permit to the applicant with certain conditions and limitations.

ANALYSIS

The 1975 agreement between Crank and Darrington appears to divide up the use of the heat in the water discharging from the hot artesian well. When the agreement was signed, there was no recorded water right which supported the existence of a water right used for heating purposes or which supported the division of the use of heat in the water between the parties to the agreement. While the agreement is not binding on the state or the department, a decision of the department within the terms of the department's authority which is consistent with the agreement, appears to be desirable for the affected parties.

On one hand, the protestant insists that the provisions of the 1975 agreement are effective and binding on the parties and on the other hand the protestant has at times diverted all the water from the ditch leading to the pond thus precluding Crank or successors-in-interest to Crank to comply with the contract terms by utilizing the heat in the water. Even if the agreement did not exist, allowing use of the heat in the low temperature geothermal water resource water rather than allowing the heat to be wasted in a cooling reservoir is in the public interest and conserves energy.

Such approval, however, may not injure existing water rights.

Water rights of record do not authorize the protestant to divert water from the ditch before the water enters the reservoir. The terms of the 1975 agreement with respect to heating use can be met if the protestant diverts and uses water from the reservoir after the applicants have used the heat in the water and have returned the water to the reservoir.

The extent of the right of the protestant to use the water for heating will have to be determined in some proceeding other than the matter of this protested application.

The department calculated heat transfer requirements for the uses proposed by the applicant, since the applicant did not have and did not provide evidence of heat transfer and associated rate of flow requirements at the hearing. Assumptions in the department's determination of heat flow requirements include the following:

a) Design water temperature	=	120 degrees F.
b) Area of floor space	=	2,500 square ft
c) Temperature outside	=	-10 degrees F.
d) Temperature inside	=	70 degrees F.
e) Building efficiency *	=	0.67
f) Temperature required	=	72 degrees F.
g) Days/yr temp. below 70 degrees	=	270 days
h) Hrs/day temp. below 70 degrees	=	12 hours

* 0.67 is considered to be average efficiency as compared to Best (0.28), Good (0.44), Average (0.67) and Poor (1.11).

Using these assumptions, the required rate of flow for heating use was calculated to be 0.04 cfs.

The department should issue a permit authorizing the following diversion rates:

0.04 cfs for heating from September 1 to June 1
0.04 cfs for recreation year-round
0.04 cfs for domestic use year-round
0.08 cfs Maximum diversion rate

ORDER

IT IS THEREFORE, hereby ORDERED that application for permit no. 43-07318 is hereby APPROVED subject to the following limitations and conditions:

1. Use of water under this permit is subject to all prior water rights.

2. The issuance of this permit in no way grants any right-of-way or easement across the land of another.

3. The rate of diversion authorized under this permit when combined with the rate of diversion for adjudication claim no. A43-04098A to the extent determined to be valid in the SRBA shall not exceed a total of 0.08 cfs. This rate is further described as follows:

0.04 cfs for heating from September 1 to June 1
0.04 cfs for recreation year-round
0.04 cfs for domestic use year-round

0.08 cfs Maximum diversion rate

4. The applicant shall return to the reservoir the water which is diverted under terms of this permit for heating and recreation purposes.

5. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless the permit holder can show to the satisfaction of the Director of the department that delays were due to circumstances over which the permit holder had no control.

6. The permit holder shall install and maintain a device acceptable to the department by which the department can measure the rate of diversion.

7. If the permit holder plans to enlarge, modify or reconstruct the existing well, the permit holder shall obtain a drilling permit pursuant to section 42-235, Idaho Code. Prior to any construction on the well, the permit holder shall file a drilling prospectus and a surety bond with the department in the minimum amount of five thousand dollars (\$5,000) pursuant to section 42-233, Idaho Code. The drilling prospectus shall provide for the prevention of uncontrolled surface or subsurface flow from the well.

8. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before the date shown in the final Memorandum Decision and Order of the department.

Signed this 8th day of February, 1993.


L. GLEN SAXTON
Hearing Officer

R PROOF



CVR



MAPS



PHOTOS



MISC



MICROFILMED

FILME

0 5 1993

Water Right Number - R43-04098A

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - +

+ - First Name - - +

+ - - - - Address - - - - -

*** C - CURRENT OWNER ***
FARLEY

RANDALL JAY

1 - HC 72

2 -

3 -

City- MALTA

State- ID Zi

Phone - 208-824-5577

FARLEY

LINDA DIANE

1 - HC 72

2 -

3 -

City- MALTA

State- ID Zi

Phone - 208-824-5577

*** O - ORIGINAL OWNER ***
CRANK

JULIE

1 - 2246 TANGLEWOOD LN

2 -

3 -

City- EMMETT

State- ID Zip- 83617

Phone - 208-365-5928

CRANK

JANICE

1 - 2246 TANGLEWOOD LN

2 -

3 -

City- EMMETT

State- ID Zip- 83617

Phone - 208-365-5928

CRANK

HARRIETT P

1 - BLUE POND

2 -

3 -

City- MALTA

State- ID Zip- 83342

Phone - 208-000-0000

+ - - Priority Date - - +
01/01/1935+ - - Region - - - +
17 SOUTHERN+ - - Stage - - - +
J - BENEFICIAL USE

+ - - Status - - -

+ - - Source - - - - - +
GROUNDWATER

+ - - Tributary - - - - -

+ - - Point of Diversion - - - - - +

Twn	Rng	Sec	Tract	Lot	RFlg	County
15S	26E	23	SW NW NW		(31)	CASSIA

Code	Description	Period From	Period To	Water Use	Diversion Rate	Diversion Volume
43 - DOMESTIC		01/01	12/31		0.020	N/A
22 - HEATING		01/01	12/31		0.020	14.5

+ - Total Div. Rate - + + - Total Div. Volume - +
0.020+ - Total Consumptive Use - + + - KW Usage - +
0.0

14.5

R - RECORD

MICROFILME

MAR 05 1993

Needs
Water
Temp
& combine
use w/
-10655

Water right number - R43-04098A

Prefix Translation: RESEARCH

Tw	Rng	Sec	Tract	Lot	Acres	Code	Description	County
15S	26E	23	SW NE			22	HEATING	(31) CASSIA
15S	26E	23	SW NE			43	DOMESTIC	(31) CASSIA

Total Acres:

+ - - Diversion Means - WELL 430' DEEP, 12" CASING-ARTESIAN, DITCH-PIPELINE TO POND-HOUSE

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

+ - - Other Rights for Same Use - 43-10382

Parcel No.	Remarks
PARCEL NO. RP15S26E230750	B05 OR B07 Water Temp.
4304098	Old Water Right Numbers

Conditions of Approval
No Conditions of Approval found.

Decree Plaintiff	Decree Defendant	Decree Date
		00/00/0000

-Comments-

Date: 04/07/1992 User Id: SMITH Subject: COPIED FROM REMARKS
NOTE THE DOMESTIC USE WITH A PRIORITY DATE FROM 1935 WAS NOT TRANSFERRED TO THE DARRINGTON'S BUT WAS RETAINED BY MRS. CRANK FOR
USE IN HER NEW HOME, LOCATED IN THE NW, SE, NW OF SECTION 23.
CHANGE OF OWNER 5-10-1991 SCC.

Date: 04/28/1992 User Id: CLELLAND Subject: IDWR WILL COMPLETE REVIEW
BECAUSE THIS WATER RIGHT IS TIED IN WITH SEVERAL NONE DOMESTIC CLAIMS WHICH MUST ALL BE VIEWED TOGETHER AS A SYSTEM. ALSO THERE
IS SOME QUESTION AS TO THE OWNERSHIP OF THE RIGHTS INVOLVED.

+ - - Audit Fields - - +

04/28/92 CLELLAND

+ - - Adjudication Rights Dates and Flags Area - - -

Court Report Filing	- 00/00/0000	Field Inspection Made	- 04/27/1992	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	- 02/03/1992	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- C007289	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

MICROFILME
MAR 05 1993

CLAIM NO. A43-040984

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.) **NEEDS PROOF OF EVIDENCE. (copy 4-28-9)*
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. _____ ** per field Exam notes.*

6. ☒ No Change - WATER USES:
☐ Different uses, (list uses found).
Use Dom. (43) From _____ To _____ Amount _____ cfs _____ af
Use Heat. (22) From _____ To _____ Amount _____ cfs 14.5 af

7. ☒ No Change - TOTAL VOLUME:
☐ Change found, The new total is, -- -- -- cfs 14.5 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..)

MICROFILME

MAR 05 1993

CLAIM A43-04098A INIT SC
T. R. S. Q/Q 4-28-92
P/D 153 26E 23 SWNW
PHOTO SWNW
DT. & ID. DD81 1976

K26 E 113° 22' 30"

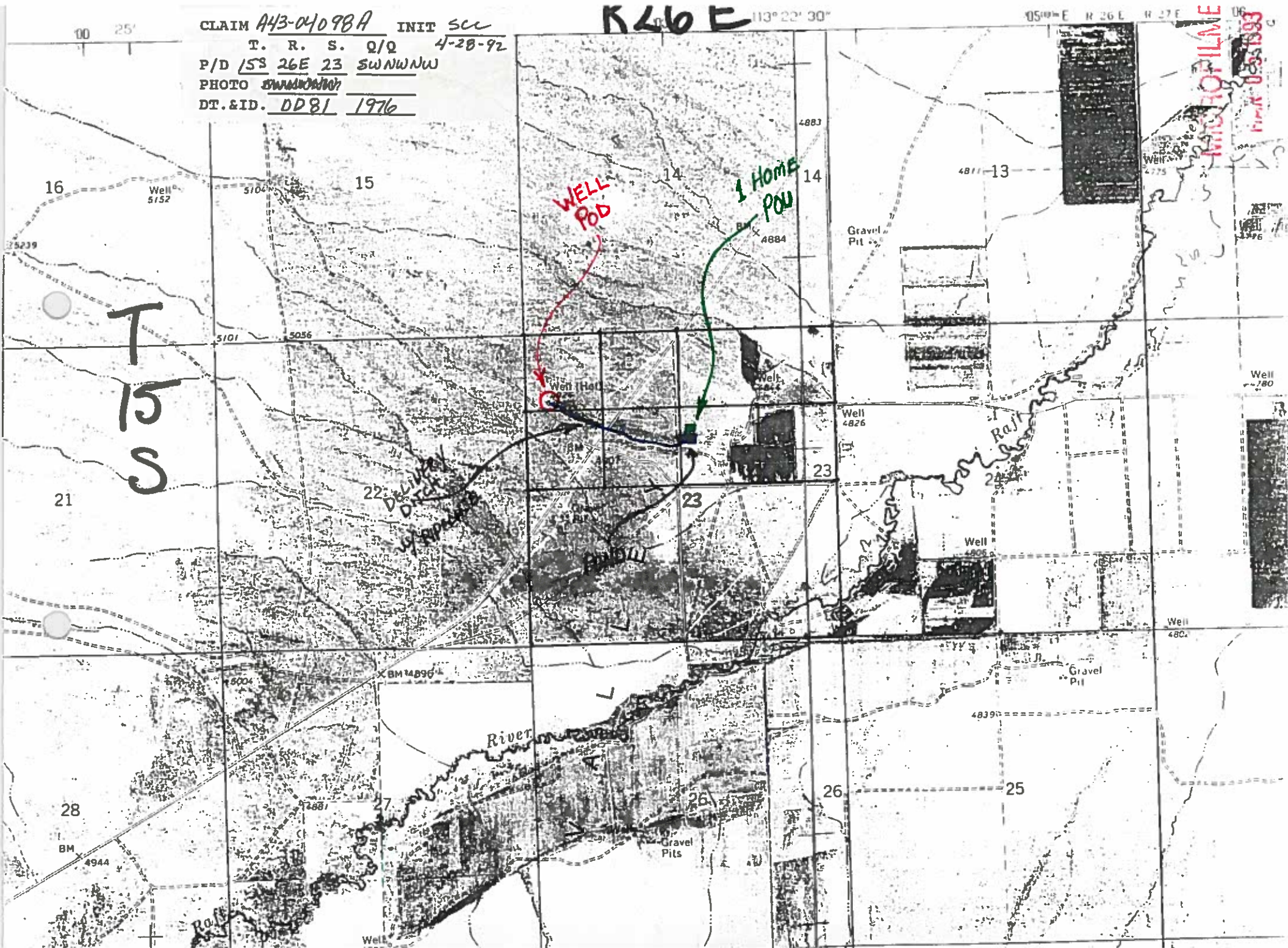
05100-E R 26 E R 27 E 06

**T
15
S**

**WELL
POD**

**1 HOME
POD**

WINDMILL
113° 22' 30"



STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

LICENSE EXAM
43-2283

DATED

5-26-1943

Permit No. 19094

Proof of Application of Water to Beneficial Use

Deposition of Holder

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

Ans. Ben V. Schmidt, Bridge, Idaho, farmer, P.O. Bridge, Idaho

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

Ans. NO

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. 19094- Feb-11-1941 date of priority, Feb-11-1941

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. a Bot well- in the SW $\frac{1}{4}$ Sec. 23, Twp. 15 S. Range 26 EBM
well is located 40 rods north of the SW corner of the SW $\frac{1}{4}$ Sec 23, Tp 15 S Range 26 E.B.M.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Drilled well and ditch, and cooling reservoir.
3 cub. feet per second. open ditch.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. irrigation and domestic use.

SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec 23, Twp 15 S. R 26 E. B.M.

(South $\frac{1}{4}$ NW $\frac{1}{4}$, Sec, 24, Twp 9. R 26 E. B.M.) 160 acres.

Ques. 7. If for other than for irrigation purposes; state how applied, amount of horse power generated, etc.

Ans. no

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STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Permit No. 19094

This proof is for Beneficial Use

In Water District No.

1. Name of applicant Ben V. Schmidt, Bridge, Idaho

2. Source of water supply: Well

3. Location of point of diversion: Is in the $5\frac{1}{2}$ E $1\frac{1}{2}$ N of Section 23

T. 15 S. R. 36 E. County of Cassia

4. Describe works as they exist, giving dimensions and capacities of same: A drilled Artesian Well 414 feet deep, cased 80 feet with 8" steel casing; thence via natural draw to a small cooling reservoir of about $\frac{1}{2}$ acre in area, behind a 9ft. earth dam which is 200ft in length.

5. Water is used for: Irrigation and domestic use

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation):

$5\frac{1}{2}$ E $1\frac{1}{2}$ N Section 23, Twp. 15 South, Range 36 East, S. E.

NOTE:

SEC 5-12-92

the license & exam & Depositions for 43-2413 do not indicate the hot water is still in use. see microfiche file.

(Submit map on attached plat, showing location and detail)

8. What large stream would the water here appropriated finally reach?

NONE

Remarks: This water has a temperature of $213\frac{1}{2}$ degrees"

This examination was made on the 26th. day of

(Signed)

May
Aud. J. L. Loman

Engineer

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MAR 05 1993

CONVERSATION MEMORANDUM

EMPLOYEE: STEVE CLELLAND

FILE

A43-10655

A43-04098A

RE: A43-04098A; proof of priority; AMENDMENTSDATE 2-3-92

NAME OF PARTY

RANDALL + LINDA FARLEY(OFFICE VISIT)

We discussed the priority request by our office. They will be responding with affidavits. I suggested they send a copy of their easement from the BLM to access the well site. They will send it.

They are going to research the previous Warranty Deeds to see if there was any connection or mention of the water rights.

Their concern came up about the effect of a signed agreement by a previous owner + neighbor, on their water rights. I suggested they claim what they believed was correct. They told me the neighbor has been interfering with their efforts to maintain their water diversion works. He has even threatened them legally and physically. At this time no record can be found to indicate the neighbor has any claim to a water right from this same well.

I told the claimants I cannot give legal advice as a lawyer, but I did suggest ways they may pursue to support their Notice of Claims as filed.

I will present the agreement between Harriet Crank and Ivan Parrington to our legal staff to determine its effects, if any, on the water rights records.

NOTED

MAR 05 1993

CONVERSATION MEMORANDUM

EMPLOYEE: STEVE CLELLAND

FILE A43-04098A

RE: WATER RIGHT EASEMENT

DATE 4-23-92

NAME OF PARTY

SCOTT BARKER - BLM BURLEY 678-5514

I returned his call.

He was somewhat confused at the situation regarding this well. Mr. Darrington had been in to see him and was very angry. Darrington told Scott the water was all his.

BLM policy on easements based on grandfather rights is that the ditch was there prior to 1974(?) and that there is a VALID Water Right. These rights in question were developed prior to the date but they are not confirmed rights. Therefore the BLM easement is dependent on the SRBA resolution of these water rights.

The BLM easement is not a valid proof of the use of the water right. At this point it would appear neither Darrington or Farley have the right to cross BLM grounds. Scott is writing a letter to inform Farley of this point. Scott also mentioned he has some photographs of the Site.

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MAR 05 1993

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	RANDALL JAY FARLEY	01/01/1935	HEATING	01-01 12-31	0.04 CFS	
C	LINDA DIANE FARLEY HC 72 MALTA ID 83342 (208) 824-5577		DOMESTIC	01-01 12-31	0.04 CFS	
TOTAL DIVERSION:					0.08 CFS	

Water Source: GROUNDWATER

Tributary to:

Stage: BENEFICIAL USE

Point(s) of Diversion: T15S R26E S23 SWNW

CASSIA County

Place of use Legal Description for: HEATING

NE				NW				SW				SE											
T	R	S		NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:
				Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac	
15S	26E	23	:				H	:					:					:					:

Place of use Legal Description for: DOMESTIC

NE				NW				SW				SE											
T	R	S		NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:
				Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac		Lt	Ac	Lt	Ac	
15S	26E	23	:				D	:					:					:					:

POU County: CASSIA

Non-Irrigation Uses: DOMESTIC, 1 HOME & GARDEN; HEATING, 1 HOME

Other Rights: NONE

Other Water Rights Listing Overlapping Place(s) of use:
A43-02283 A43-02413 A43-04098

Non-Irrigation Use: DOMESTIC, 1 HOME & GARDEN; HEATING, 1 HOME

Remarks: NOTE THE DOMESTIC USE WITH A PRIORITY DATE FROM 1935 WAS NOT TRANSFERRED TO THE DARRINGTON'S BUT WAS RETAINED BY MRS. CRANK FOR USE IN HER NEW HOME, LOCATED IN THE NW, SE, NW OF SECTION 23.
CHANGE OF OWNER 5-10-1991 SCC.

Dates: Exam Made Date:

Verified Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

A43-2283 (2-11-1941)
well & pump 0.92 cfs

POD: 5.23 SENW

POU: 5.23
SWNE 6.0
SENE 40.0

A43-2413 (9-21-1954)
well & pump 2.1 cfs

POD: 5.23 NWNE

POU: NEK
20
25
20
40

MAR 05 1993

A43-04098A
FARLEY

FIELD EXAM INFO

4-27-92

By STEVE CLELLAND

5-GALLON METHOD

I made 3 measurements with the assistance of Mrs. Farley. Each time took 35 seconds to fill the 5 Gallon mark.

$$\left(\frac{5 \text{ GAL}}{35 \text{ SEC}} \right) \left(\frac{60 \text{ SEC}}{1 \text{ MIN}} \right) = 8.57 \text{ GPM}$$

$$= 0.019 \text{ cfs}$$

$$= 0.02 \text{ cfs}$$

The measurement was made from the 1 1/2" Black pipeline after it was bypassed through the House. The Bypass empties into the pond. All the water used for heat is returned back to the pond.

(at the well site was a power pole & meter.
the pole number was # 280352.)

The Total Ditch flow measurement is to be done at a later date for A43-10655.

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MAR 05 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 gravels 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

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 $1\frac{1}{2}$ " 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 $200' \times 200'$ 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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MAR 05 1993

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 transfer (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 heating of their home. They also plan to access the actual well source and control the flows therein.

MAR 05 1993

Table 11.—Discharge of 90° V-notch weir in second-feet. Computed from the formula $Q=2.49 H^{3/2}$. (See sec. 21.)

Head in feet	Discharge in second-feet	Head in feet	Discharge in second-feet	Head in feet	Discharge in second-feet
0.20	0.046	0.55	0.564	0.90	1.92
.21	.052	.56	.569	.91	1.97
.22	.058	.57	.574	.92	2.02
.23	.065	.58	.579	.93	2.08
.24	.072	.59	.584	.94	2.13
.25	.080	.60	.590	.95	2.19
.26	.088	.61	.595	.96	2.25
.27	.096	.62	.601	.97	2.31
.28	.106	.63	.606	.98	2.37
.29	.115	.64	.612	.99	2.43
.30	.125	.65	.618	1.00	2.49
.31	.136	.66	.624	1.01	2.55
.32	.147	.67	.630	1.02	2.61
.33	.159	.68	.636	1.03	2.68
.34	.171	.69	.642	1.04	2.74
.35	.184	.70	.648	1.05	2.81
.36	.197	.71	.654	1.06	2.87
.37	.211	.72	.660	1.07	2.94
.38	.226	.73	.666	1.08	3.01
.39	.240	.74	.672	1.09	3.08
.40	.256	.75	.678	1.10	3.15
.41	.272	.76	.684	1.11	3.22
.42	.289	.77	.690	1.12	3.30
.43	.306	.78	.696	1.13	3.37
.44	.324	.79	.702	1.14	3.44
.45	.343	.80	.708	1.15	3.52
.46	.362	.81	.714	1.16	3.59
.47	.382	.82	.720	1.17	3.67
.48	.403	.83	.726	1.18	3.75
.49	.424	.84	.732	1.19	3.83
.50	.445	.85	.738	1.20	3.91
.51	.468	.86	.744	1.21	3.99
.52	.491	.87	.750	1.22	4.07
.53	.515	.88	.756	1.23	4.16
.54	.539	.89	.762	1.24	4.24
				1.25	4.33

Table 12.—Discharge correction coefficient, C , for determining effect of velocity of approach to weirs. Computed from the formula $C = \frac{Q'}{Q} = \frac{D^{3/2}}{H^{3/2}}$. (See sec. 23.)

H	A	$H^{3/2}$	0.2	0.4	0.6	0.8	1.0	1.5	2.0	2.5	3.0	3.5	4.0	5.0
0.4	0.0025	0.0002	1.014	1.007	1.004	1.004	1.004	1.002	1.002	1.002	1.001	1.001	1.001	1.001
.5	.0039	.0003	1.027	1.013	1.009	1.006	1.006	1.004	1.003	1.002	1.002	1.002	1.002	1.001
.6	.0056	.0005	1.037	1.019	1.013	1.009	1.008	1.005	1.004	1.003	1.003	1.002	1.002	1.002
.7	.0076	.0007	1.050	1.026	1.017	1.013	1.011	1.007	1.006	1.004	1.004	1.003	1.003	1.003
.8	.0099	.0010	1.064	1.033	1.022	1.016	1.014	1.009	1.007	1.006	1.005	1.004	1.003	1.003
.9	.0126	.0014	1.082	1.042	1.029	1.021	1.018	1.012	1.009	1.007	1.006	1.005	1.005	1.004
1.0	.0155	.0019	1.098	1.051	1.034	1.027	1.022	1.015	1.011	1.009	1.007	1.006	1.005	1.005
1.1	.0188	.0025	1.122	1.062	1.041	1.031	1.026	1.017	1.013	1.011	1.009	1.008	1.007	1.006
1.2	.0224	.0033	1.141	1.072	1.049	1.037	1.031	1.021	1.016	1.013	1.011	1.009	1.008	1.007
1.3	.0263	.0041	1.163	1.084	1.057	1.043	1.036	1.024	1.018	1.015	1.012	1.011	1.009	1.008
1.4	.0305	.0051	1.186	1.096	1.066	1.050	1.041	1.028	1.021	1.017	1.014	1.012	1.011	1.010
1.5	.0350	.0064	1.208	1.109	1.075	1.057	1.047	1.032	1.024	1.019	1.016	1.014	1.012	1.011
1.6	.0398	.0079	1.225	1.122	1.084	1.065	1.052	1.035	1.027	1.022	1.018	1.016	1.014	1.012
1.7	.0449	.0095	1.254	1.135	1.093	1.071	1.059	1.040	1.031	1.025	1.021	1.018	1.016	1.014
1.8	.0504	.0111	1.277	1.149	1.104	1.080	1.065	1.045	1.034	1.027	1.023	1.020	1.017	1.016
1.9	.0561	.0132	1.308	1.165	1.115	1.089	1.072	1.049	1.038	1.030	1.025	1.022	1.019	1.017
2.0	.0622	.0154	1.335	1.181	1.126	1.097	1.079	1.055	1.042	1.034	1.028	1.025	1.021	1.019
2.1	.0686	.0179	1.363	1.197	1.137	1.106	1.087	1.062	1.048	1.037	1.031	1.027	1.024	1.021
2.2	.0752	.0206	1.391	1.213	1.149	1.118	1.094	1.065	1.050	1.039	1.034	1.029	1.026	1.023
2.3	.0822	.0235	1.420	1.231	1.161	1.124	1.102	1.071	1.054	1.044	1.037	1.032	1.028	1.025
2.4	.0895	.0268	1.449	1.248	1.176	1.134	1.110	1.077	1.059	1.047	1.040	1.034	1.030	1.027
2.5	.0972	.0303	1.480	1.266	1.187	1.145	1.119	1.083	1.063	1.051	1.043	1.037	1.033	1.029
2.6	.1051	.0340	1.511	1.285	1.200	1.155	1.128	1.088	1.065	1.055	1.046	1.040	1.035	1.032
2.7	.1133	.0381	1.542	1.303	1.213	1.166	1.137	1.095	1.073	1.059	1.050	1.043	1.038	1.034
2.8	.1219	.0426	1.573	1.322	1.228	1.178	1.146	1.100	1.078	1.063	1.053	1.046	1.041	1.036
2.9	.1307	.0472	1.606	1.341	1.242	1.189	1.155	1.108	1.083	1.067	1.057	1.049	1.043	1.039
3.0	.1399	.0524	1.637	1.361	1.256	1.199	1.165	1.115	1.088	1.072	1.061	1.053	1.046	1.041



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

KEITH HIGGINSON
DIRECTOR

RECEIVED

February 8, 1993

FEB 11 1993

Dear Interested Party:

Department of Water Resources
Southern Region Office

Enclosed are copies of the Proposed Memorandum Decision and Order and the Order Issuing the Proposed Memorandum Decision and Order.

Any party who appeared at the hearing is given the opportunity to file exceptions or briefs, or to request oral arguments within 15 days of the date of this mailing. At the end of that time, the director will issue his final decision adopting, modifying, rejecting or replacing the proposed decision. Copies of that decision and order shall also be mailed to all parties.

If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

L. Glen Saxton
Chief, Water Allocation Bureau

Enc: Proposed Memorandum Decision and Order
Order Issuing Proposed Memorandum Decision and Order
Certificate of Mailing

Southern - This is the proposed only. Final to follow, if no exceptions are filed, in 15 days.
Kara

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MAR 05 1993

BEFORE THE DIRECTOR OF THE DEPARTMENT
OF WATER RESOURCES OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 43-07318 IN THE NAME OF)
RANDALL JAY FARLEY AND LINDA DIANE)
FARLEY

ORDER ISSUING
PROPOSED MEMORANDUM
DECISION

R. Keith Higginson, Director of the Department of Water Resources, Having reviewed the attached proposed decision prepared by this appointee, L. Glen Saxton, who conducted the hearing or who has read the record in this case, hereby approves the same as a proposed decision pursuant to Idaho Code, Section 67-5211.

Each party to these proceedings who appeared at the hearing is given the opportunity, pursuant to Idaho Code, Section 42-1701A and 67-5211, to file exceptions to the proposed decision and to present briefs and oral arguments. If no timely and proper exceptions are received, an order by the Director will be entered adopting the proposed decision as his final decision.

I.
EXCEPTIONS

A. To be considered by the Director, exceptions must:

1. be received by the Director on or before the 15th day following the day of service of this Order and the proposed decision,

2. specifically identify the portions of the proposed decision to which exceptions are made and specifically state the grounds for those exceptions, and

3. be sent to each of the parties who appeared or their attorneys.

II.
BRIEFS

A. Any briefs in support of exceptions to the proposed decision shall be filed with the Director at the same time that party's exceptions are filed with the Director.

B. All response briefs to the exceptions must be filed with the Director within 15 days after the exceptions were served upon the responding party.

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III.

A. No oral arguments before the Director on the proposed decision will be held unless specifically requested by a party filing exceptions to the proposed decision and unless that request is filed with the Director concurrently with the filing of that party's exception.

B. If oral arguments have been properly requested by a party filing exceptions, any other party, upon reasonable notice to the Director, shall have the right to present oral argument in response to the exceptions filed.

C. Oral arguments before the Director on exceptions to the proposed decision shall be heard at the discretion of the Director, pursuant to Idaho Code, Section 42-1701A. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour the oral arguments will take place and of the period of time allocated for the arguments of this case. Unless the Director orders otherwise, all oral arguments shall be heard in Boise, Idaho.

IV.

CERTIFICATE OF SERVICE

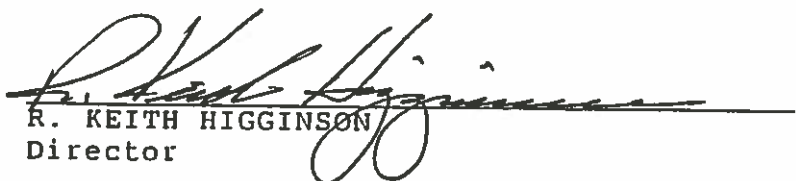
All exceptions, briefs, requests for oral argument and other matters filed with the Director in connection with the proposed decision shall be served on all other parties to these proceedings in accordance with Rule 7.2.

V.

FINAL DECISION

Following the submission of all exceptions, briefs and oral arguments, if they are heard, the Director shall issue a final decision adopting, modifying or rejecting and replacing the proposed decision. Copies of the decision and order shall be served on all parties.

Dated this 8th day of February, 19 93.


R. KEITH HIGGINSON
Director

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 43-07318 IN THE)
NAME OF RANDALL JAY FARLEY AND)
LINDA DIANE FARLEY)

PROPOSED MEMORANDUM

DECISION AND ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protested application for permit, the department having held a conference and a hearing in the matter, the Director of the department makes the following Findings of Fact, Conclusions of Law, Analysis and Order:

FINDINGS OF FACT

1. On May 4, 1992, Randall Jay Farley and Linda Diane Farley (applicant) submitted application for permit no. 43-07318 (application) to the department proposing the diversion of 0.22 cubic feet per second (cfs) of ground water to be used for heating, recreation and domestic purposes.

2. The proposed point of diversion is an existing artesian well (well) located in SWNWNW Section 23, T15S, R26E, BM., in Cassia County. This well is located on Bureau of Land Management land and is sometimes known as Bridge Spring. The well is approximately 430 feet deep, has a twelve (12) inch diameter casing and discharges water at a temperature of approximately 190 degrees Fahrenheit. The water discharged from the well flows in a ditch in an easterly direction approximately one-half (1/2) mile to an existing pond (reservoir) adjacent to the applicant's proposed place of use.

3. On June 22, 1992, Ivan Darrington (protestant) filed a protest against approval of the application.

4. On January 26, 1993, the department conducted a hearing on the matter at Burley, Idaho. The applicant was represented by Roger Ling, attorney-at-law and the protestant represented himself.

5. Issues identified in the matter by the protestant include the following:

a) that approval of the application will reduce the amount of water under existing water rights,

b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated,

- c) that the application is not made in good faith, and is made for delay or speculative purposes,
- d) that the applicant does not have sufficient financial resources with which to complete the work involved therein,
- e) that the application will conflict with the local public interest, and
- f) that the application is contrary to the conservation of water within the state of Idaho.

6. Exhibits accepted as part of the record include the following:

- a) Applicant's Exhibit No. 1. - Memorandum Agreement entered into on May 23, 1975 between Harriett P. Crank (Crank), a widow, and Edsil Ivan Darrington and Barbara Darrington, husband and wife.
- b) Protestant's Exhibit A - Warranty Deed dated May 21, 1975 between Harriet P. Crank, a widow, and Edsil Ivan Darrington and Barbara Darrington, husband and wife.
- c) Protestant's Exhibit B - Agreement between Ben V. Schmidt and Luceal Schmidt, husband and wife, and Guy Creek and Lois I. Creek, husband and wife, said agreement dated February 1, 1966.
- d) Protestant's Exhibit C - Agreement of Sale entered into on July 24, 1968 between Guy Creek and Lois I. Creek, husband and wife, and Paul Crank, a bachelor.

7. The hearing officer officially noticed certain department files and records including the following:

- a) License file 19094/43-02283.
- b) Claim to a water right no. 43-04098.
- c) Snake River Basin Adjudication claim no. A43-04098A filed by the applicant.
- d) Snake River Basin Adjudication claim no. A43-02283 filed by the protestant.

8. On May 26, 1943, the department conducted a field examination in connection with permit no. 19094/43-02283 which the department had issued on February 17, 1941, to Ben V. Schmidt who formerly owned the land of the applicant and protestant. The examination showed that the source of water (a hot artesian well) was located in the SE1/4NW1/4 section 23, T15S, R26E, BM. The examination also showed that water was diverted for irrigation from a reservoir located in the SW1/4NE1/4 section 23, T15S, R26E, BM. The exam shows that two (2) ditches were used to divert water from the reservoir.

9. As a part of the proof of application of water to

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beneficial use for permit no. 19094/43-02283, on February 17, 1943, the permit holder, Ben V. Schmidt, filed a deposition with the department stating that he cools the water overnight in a reservoir and then uses the water for irrigation. The reservoir is the same reservoir involved in the pending protested matter.

10. On February 22, 1944, the department issued license no. 19094/43-02283 to Ben V. Schmidt based on the findings of the field examination described in Finding of Fact 8. above. The license authorized the diversion of 0.92 cfs of water from a hot well for the irrigation of 46 acres in Section 23, T15S, R 26E, BM. This license provided for the diversion of one (1) miner's inch per irrigated acre.

11. On September 16, 1980, Harriet P. Crank and Janice Crank filed Claim to a Water Right no. 43-04098 with the department pursuant to provisions of section 42-243, Idaho Code. Crank claimed the use of water from a hot artesian well with point of diversion in the NW1/4NW1/4 section 23, T15S, R26E, BM. The rate of diversion claimed was a total of 0.20 cfs for irrigation, domestic and livestock uses.

12. The applicant has filed Snake River Basin Adjudication (SRBA) claim no. A43-04098A with the department which claims the diversion and use of 0.08 cfs of water from the well for domestic and heating purposes. The priority of use claimed is January 1, 1935. The point of redirection associated with the claim is a screened inlet to a 1-1/2 inch black plastic pipe which has been placed in the bottom of the ditch and which conveys water from the well to the pond. The screened inlet is located in the ditch approximately 600 feet from the well.

13. The protestant has filed SRBA claim no. A43-02283 with the department which claims the diversion and use of 0.92 cfs of water from the well for the irrigation of 46 acres in the S1/2NE1/4 Section 23, T15S, R26E, BM. The point of diversion claimed is SWNE Section 23, T15S, R26E, BM. and the priority of use claimed is February 11, 1941.

14. In 1975, the applicant's immediate predecessor-in-interest, Harriett P. Crank, and the protestant entered into an agreement (1975 agreement). Among other provisions, the agreement specifically included the following:

- a) Crank owned all the heat rights in the water diverted from the well except for a two (2) inch pipe of water which could be used for heat by Darrington.
- b) Crank was to return the water which she used to the reservoir for use by Darrington for irrigation or livestock use.
- c) Crank was entitled to that portion of the well measured under the standard of a one-inch pipe of water.

d) Darrington was entitled to all other water from the well (except the Crank portion delivered through the one-inch pipe).

15. The 1975 agreement also states that the protestant "... shall have the right to use the water in the reservoir and the right of ingress and egress to the reservoir and the right of way for necessary ditches to remove water from the reservoir together with the right to repair and maintain ditches from the reservoir", (emphasis added).

16. Even though the protestant emphatically states that the parties and successors-in-interest to the 1975 agreement are bound by and obliged to comply with provisions of the agreement, the testimony presented clearly shows that at times, the parties have not complied with the terms and intent of the agreement. Examples of non-compliance include failure of Crank and successors to always clean the reservoir and the protestant's practice of periodically diverting water from the ditch leading to the reservoir thus depriving Crank and successors of the opportunity to use "all the heat rights" in the water.

17. Within the last five (5) years, the protestant has diverted water directly from the reservoir for irrigation and stockwater purposes and has diverted water from the ditch leading from the well to the reservoir thus preventing the water in the ditch from reaching the reservoir. The diversion works used to divert water from the reservoir, however, are presently in disrepair and are not operable.

18. The total rate of diversion (0.22 cfs) applied for by the applicant was based on the total rate of flow measured in the ditch about 50 feet from the well and was not determined by a calculation of heat transfer from the water needed in connection with the proposed uses.

19. The application proposes the heating of applicant's home which is a one story building with an area of approximately 2,500 square feet.

20. The applicant has made preparation for heating use of the water by adding additional insulation to the applicant's home and by purchasing and installing some space heating equipment.

21. The rate of diversion generally authorized by the department for single family domestic use is 0.04 cfs.

22. The applicant's recreation use will be a reuse of water diverted for either domestic or heating.

CONCLUSIONS OF LAW

1. Section 42-230, Idaho Code, defines a low temperature geothermal resource as follows:

...All ground water having a temperature of greater than eight-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit in the bottom of the well...

2. The correct location of the hot artesian well which is the source of water in the captioned matter is within the NW1/4NW1/4 section 23, T15S, R26E, BM, not within the SE1/4NW1/4 as shown on license 19094/43-02283.

3. The protestant has not filed and the department has not approved any document which authorizes the change in point of diversion of licensed water right no. 43-02283 from the original diversion points at the reservoir to a point on the ditch which extends from the well to the reservoir.

4. While the provisions of the 1975 agreement between Crank and the protestant are not binding on the department, the agreement clearly shows that the intent was for Crank to use all of the heat in the water except for the heat in the water which would discharge through a 2 inch diameter pipe for use by the protestant. The agreement also clearly shows that the protestant was to divert water from the reservoir after the water had been used by Crank and discharged back to the reservoir.

5. The provisions of the 1975 agreement allowing use of the heat in the water by Crank or successor-in-interest Farley can not be fulfilled if the protestant diverts water from the ditch upgradient from the applicant's diversion thus preventing the water from reaching the applicant's point of diversion.

6. The protestant is entitled to divert water from the reservoir to the extent SRBA adjudication claim no. A43-02283 is determined to be valid in the SRBA. The protestant is not entitled to divert water from the ditch which carries water from the well to the reservoir.

7. The validity and extent of SRBA claim no. A43-04098A filed by the applicant and of SRBA claim no. A43-02283 filed by the protestant will be determined in the SRBA.

8. Applicant's proposed use of the water is non-consumptive except for incidental irrigation associated with domestic use.

9. Approval of the application will not injure water rights of the protestant. The applicant's use of the water for its heat will not diminish the amount of water available for non-heating uses.

10. The water supply is sufficient for the purposes for which it is sought to be appropriated and will provide a sufficient amount of heat for successful heating of the applicant's home and for the recreation and domestic uses sought by the applicants.

11. The application was made in good faith and was not made for delay or speculative purposes.

12. The applicant has sufficient financial resources with which to complete the work proposed in the application and, in fact, has already purchased and installed part of the equipment for heating the applicant's home.

13. The application is in the local public interest, since the use of low temperature geothermal resource water primarily for its heat value and secondarily for value as water is consistent with provisions of section 42-233(1), Idaho Code.

14. The application is not contrary to the conservation of water resources in Idaho and will allow the heat in the low temperature geothermal resource water to be used rather than wasted in a cooling reservoir.

15. Water is available for the uses proposed by the applicant.

16. The rate of diversion which the department approves should be based on calculations of the amount of heat transfer from the water needed to satisfy the applicant's proposed uses. The rate should not merely be based on the rate of water flow which the well discharges.

17. The applicant is authorized to divert water from the well rather than just redivert water from the ditch extending from the well to the pond if the applicant can obtain needed rights-of-way or other approvals.

18. The department should partially approve the application and issue a permit to the applicant with certain conditions and limitations.

ANALYSIS

The 1975 agreement between Crank and Darrington appears to divide up the use of the heat in the water discharging from the hot artesian well. When the agreement was signed, there was no recorded water right which supported the existence of a water right used for heating purposes or which supported the division of the use of heat in the water between the parties to the agreement. While the agreement is not binding on the state or the department, a decision of the department within the terms of the department's authority which is consistent with the agreement, appears to be desirable for the affected parties.

On one hand, the protestant insists that the provisions of the 1975 agreement are effective and binding on the parties and on the other hand the protestant has at times diverted all the water from the ditch leading to the pond thus precluding Crank or successors-in-interest to Crank to comply with the contract terms by utilizing the heat in the water. Even if the agreement did not exist, allowing use of the heat in the low temperature geothermal water resource water rather than allowing the heat to be wasted in a cooling reservoir is in the public interest and conserves energy.

Such approval, however, may not injure existing water rights.

Water rights of record do not authorize the protestant to divert water from the ditch before the water enters the reservoir. The terms of the 1975 agreement with respect to heating use can be met if the protestant diverts and uses water from the reservoir after the applicants have used the heat in the water and have returned the water to the reservoir.

The extent of the right of the protestant to use the water for heating will have to be determined in some proceeding other than the matter of this protested application.

The department calculated heat transfer requirements for the uses proposed by the applicant, since the applicant did not have and did not provide evidence of heat transfer and associated rate of flow requirements at the hearing. Assumptions in the department's determination of heat flow requirements include the following:

a) Design water temperature	=	120 degrees F.
b) Area of floor space	=	2,500 square ft
c) Temperature outside	=	-10 degrees F.
d) Temperature inside	=	70 degrees F.
e) Building efficiency *	=	0.67
f) Temperature required	=	72 degrees F.
g) Days/yr temp. below 70 degrees	=	270 days
h) Hrs/day temp. below 70 degrees	=	12 hours

* 0.67 is considered to be average efficiency as compared to Best (0.28), Good (0.44), Average (0.67) and Poor (1.11).

Using these assumptions, the required rate of flow for heating use was calculated to be 0.04 cfs.

The department should issue a permit authorizing the following diversion rates:

0.04 cfs for heating from September 1 to June 1
0.04 cfs for recreation year-round
0.04 cfs for domestic use year-round

0.08 cfs Maximum diversion rate

ORDER

IT IS THEREFORE, hereby ORDERED that application for permit no. 43-07318 is hereby APPROVED subject to the following limitations and conditions:

1. Use of water under this permit is subject to all prior water rights.

2. The issuance of this permit in no way grants any right-of-way or easement across the land of another.

3. The rate of diversion authorized under this permit when combined with the rate of diversion for adjudication claim no. A43-04098A to the extent determined to be valid in the SRBA shall not exceed a total of 0.08 cfs. This rate is further described as follows:

0.04 cfs for heating from September 1 to June 1
0.04 cfs for recreation year-round
0.04 cfs for domestic use year-round

0.08 cfs Maximum diversion rate

4. The applicant shall return to the reservoir the water which is diverted under terms of this permit for heating and recreation purposes.

5. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless the permit holder can show to the satisfaction of the Director of the department that delays were due to circumstances over which the permit holder had no control.

6. The permit holder shall install and maintain a device acceptable to the department by which the department can measure the rate of diversion.

7. If the permit holder plans to enlarge, modify or reconstruct the existing well, the permit holder shall obtain a drilling permit pursuant to section 42-235, Idaho Code. Prior to any construction on the well, the permit holder shall file a drilling prospectus and a surety bond with the department in the minimum amount of five thousand dollars (\$5,000) pursuant to section 42-233, Idaho Code. The drilling prospectus shall provide for the prevention of uncontrolled surface or subsurface flow from the well.

8. Proof of construction of works and application of water to beneficial use shall be submitted to the department on or before the date shown in the final Memorandum Decision and Order of the department.

Signed this 8th day of February, 1993.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of February, 1993, I mailed a true and correct copy of the foregoing Proposed Memorandum Decision and Order and Order Issuing the Proposed Memorandum Decision and Order, postage prepaid, to the following:

Ivan Darrington

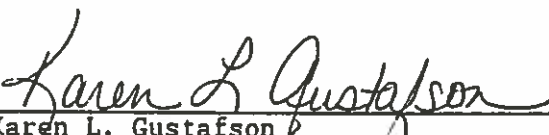
Box 136
Almo, ID 83312

Randall/Linda Farley

HC 72
Malta, ID 83342

Roger D. Ling

PO Box 396
Rupert, ID 83350



Karen L. Gustafson
Secretary/Records Manager

MICROFILMED
MAR 05 1993



V-NOTCH WEIR
NEEDS IMPROVEMENTS
TO BE ACCURATE.



DIVERSION TO HOG SCALDING
POND. HASN'T BEEN USED RECENTLY.

PHOTOS BY: SCC 4-27-97

FARLEY
A43-4098A

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APR 05 1993

↑ PITCH
FLD.

MICROFILMED
MAR 05 1993

FARLEY
A43-4098A



WELL SITE
IN BACKGROUND.

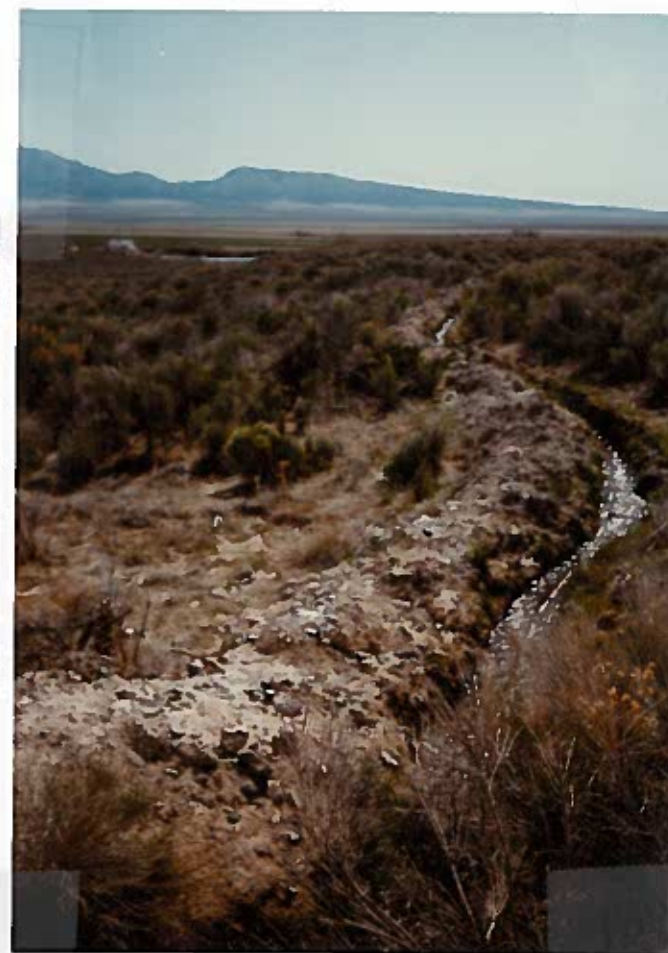
HOUSE & POND
IN BACKGROUND.



SE VIEW
DOWNSTREAM OF DITCH

N-WEST VIEW
UPSTREAM OF
DITCH

FARLEY'S DOMESTIC LINE
BEGINS HERE.



TYPICAL DITCH
VIEW WITH PIPE
IN DITCH BOTTOM.

PHOTOS BY SCL 4-27-92

FARLEY
A43-4098A

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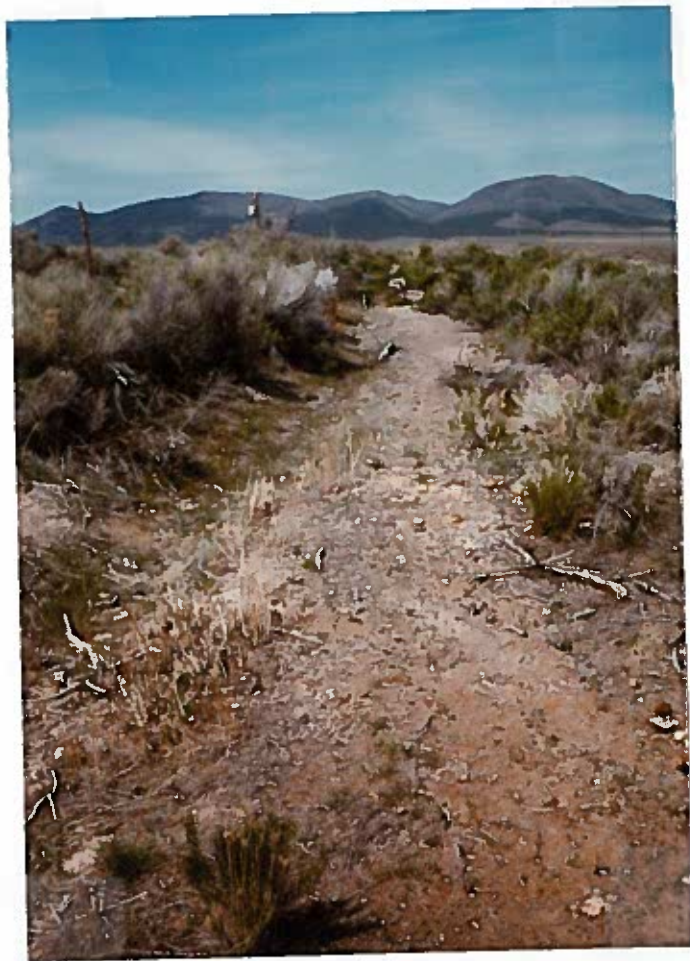
MAR 05 1993



VIEW WEST
PIPELINE to House
& Ditch To pino.



VIEW SE
DARRINGTON'S NEW
DIVERSION FROM the Ditch.
DEVELOPED IN APRIL 1992.
(PER MRS. FARLEY)



POSSIBLE OLD DITCH
SITE BUT WATER WOULD
STILL END UP IN THE POND.

NO DITCHES FOUND TO BYPASS POND
FOR IRRIGATION USES.



DARRINGTON'S NEW DIVERSION
CROSSES EXISTING ROAD BED.

NO EVIDENCE OF PREVIOUS DITCHS
ON THIS SITE FOR SAME PURPOSE.

FARLEY A43-4098A

PHOTOS BY SCC
4-27-92

UNRECORDED

MAR 05 1993

↓
DITCH
FLOW
TO POND

FARLEY A43-4098 A

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MAR 05 1993



↑
HISTORICAL
FLOW
OF DITCH.

↑ Flow

THIS DIVERSION
WAS DEVELOPED
IN APRIL 1992.

PIPELINE DOES
NOT REPLACE
ANY PREVIOUS
DITCH SITE.



PARRINGTON PIPELINE TO POU FOR IRRIGATION.



PIPELINE CROSSES
EXISTING ROADWAY.
BLM GROUNDS up to the
FENCE IN the BACKGROUND.

PHOTOS BY SEE 4-27-92

PHOTOS BY SCL
4-27-92



SMALL CLEARING ONCE
USED FOR IRRIGATION.

← DAM BELOW
↘ LOOKING DOWN FACE



IRRIGATION DITCH & DRAIN CULVERT
11-1-1992 11:15 AM - SCL

FARLEY A43-4098A

MAR 10 5 1992
MICROFILMED



DAM ABOVE
VIEW

NOTE: RECREATION
USES FROM
PAST.



STOCK WATER PIPELINE FROM THE
11-1-1992 11:15 AM - SCL

PITCH TO POND

FARLEY A43-4098A

MAR 05 1993

MICROFILMED



VIEW WEST

POND SITE
AS VIEWED FROM DAM.
T15S. R26E.
SEC. 23
SW NE

PHOTOS BY SUE
4-27-92



← OLD CULVERT USED TO
DRAIN POND + DELIVER
COOLED WATER TO
IRRIGATION DITCH BELOW
THE DAM.

— NO LONGER IN USE.

RETURN FLOW SITE
AFTER WATER IS
USED TO HEAT THE
HOUSE.
MEASUREMENT HERE
OF 0.02 cfs.

FARLEY
A43-4098A

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MAR 05 1993



HOUSE IS ON
NORTH SIDE
OF POND.

↑
DITCH
INFLOW
TO POND



SOUTH-WEST EDGE
OF POND

NOTE: LOWERED
WATER LINE
DUE TO ADDITIONAL
DIVERSIONS AWAY FROM
THE POND.

PHOTOS BY SC 4-27-92



←
DITCH
w/
V-notch
Weir



HOT WATER WELL
AT BRIDGE SPRING

FARLEY
A43-4098A

NO FILM
MAR 05 1993

V-NOTCH WEIR
BELOW WELL



SW NW NW
SEC. 23

TISS. R26E.

PHOTOS BY
SCC
4-27-
1992

A43-04098A
FARLEY

MICROFILMED

MAR 05 1993

INFLOW
LINE OF
WATER →



SYSTEM OF LINES TO DOMESTIC
& HEATING SYSTEMS IN FARLEY HOUSE.

PHOTOS BY SCC
4-27-92