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DEPARTMENT OF
WATER RESOURCES

JEFFREY P BAKER
715 N Chisholm Ct
Post Falls, ID 83854
208-262-9248

WILLIAM H. ROSS
P.O. Box 161
St. Maries, ID 83861
208-245-3065

Appearing pro se

Appearing pro se

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

In Re CSRBA

Case No. 49576

)
)
)
)
)
)

SUBCASE NO. 92-10502

TRIAL BRIEF

NAMES AND ADDRESSES OF PERSONS OBJECTING

Jeffrey P. Baker
715 N Chisholm Ct.
Post Falls, ID 83854
Daytime phone: 208-262-9248; Cell: 208-640-1425

William H. Ross
P.O. Box 161
Saint Maries, ID 83861
Daytime phone: 208-245-3065; Cell 208-660-4744

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Darcy McInturff
17786 E Canary Creek Rd
Cataldo, ID 83810

Douglas McInturff
17786 E Canary Creek Rd
Cataldo, ID 83810

Jeffrey P. Baker
715 N Chisholm Ct.
Post Falls, ID 83854

William H. Ross
P.O. Box 161
St. Maries, ID 83861

I.

INTRODUCTION

This trial brief refers to SUPPLEMENTAL DIRECTOR'S REPORT, REGARDING SUBCASE NO. 92-10502, dated April 20, 2016, prepared by the Idaho Department of Water Resources, Gary Spackman, Director, Carter Fritschle, Manager, Adjudication Section. For clarity of presentation the comments will parallel the format and address the relevant issues mentioned in the Supplement Report ("706 Report"). Some exhibits cited in these comments refer to the 706 Report attachments labeled from A to EE. All exhibits in this trial brief are listed in section VI, page 10, and bound separately.

II.

SUMMARY OF THE ISSUE

The 706 Report, p.1, states, "After investigation of the claim, IDWR was unable to make a determination which, or if any, of the claimants had exclusive ownership of the water right." It is the position of the Objectors, Jeffrey P. Baker and William H. Ross, that a

water right was perfected, but ownership stayed with the land. The fact that the name on the Permit was other than the landowner and there was not a deed that separated the appurtenant water right from the land is at the root of the confusion and conflict concerning ownership. IDWR determined the conflict concerning ownership must be adjudicated by the court.

III. DISCUSSION

The 706 Report, p. 2, correctly states that application for Permit 92-7090 was made in the name of St. Maries Wild Rice Growers (SMWR) and that the company did not own the property on which the place of use is located. The property was owned by Albert and Ludie Best. (Exhibit 1)

WHAT IS THE MEANING OF APPURTENANT?

The approved Water Right License 92-7090 stated as condition number 2, "This water right is appurtenant to the described place of use." (Exhibit 2, p.1)

"Appurtenant to place of use" means "A water right that belongs to the legal owner of the land described as the place of use on the water right," according to "Water Glossary" of Ridenbaugh Press, publishers of the Snake River Basin Adjudication Digest and other publications. Ridenbaugh Press says the terms and definitions are based on material developed by the Idaho Department of Water Resources, and other agencies. (Exhibit 3) <http://www.ridenbaugh.com/srba/watglos.htm>

Condition 2 of the Water Right License is consistent with Idaho Code §42-101, which states in part:

“... and the right to the use of any of the public waters which have heretofore been or may hereafter be allotted or beneficially applied, shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied...”

Common understanding of this section of Idaho Code is that a water right stays with the land unless contracted away by deed or other legal conveyance.

The deed to Albert and Ludie Best's land and the place of use includes “...all and singular the hereditaments and appurtenance thereunto belonging...” (Exhibit 1, page 1)

IS A DEED REQUIRED?

Under some circumstances water rights are not necessarily appurtenant to the land. Water right ownership in Idaho is legally treated as real property and can be separated from land ownership, *but it must be conveyed by deed*. I. C. §55-101, I.C. §55-601. *Hale v. McCammon Ditch Co.*, 72 Idaho 478, 488, 244 P.2d 151 (1952). (Ex. 16, p.1 of 3)

Regarding Water Right License 92-7090, Idaho Code says the water right is appurtenant, condition number 2 on the License says it is appurtenant, and the landowner's deed says it includes all appurtenances. IDWR Records department does not have a deed that separates the appurtenant water right from the place of use.

An official at IDWR said they do things differently now than they did in 1981, implying more attention is given to determining legal ownership when application is made. In a recent discussion with an IDWR Regional Manager, he said in those cases where the applicant for permit is other than the landowner the permit is required to be put in the name of the landowner, unless a deed severs the appurtenant water right from ownership of the place of use. These two comments by two different IDWR officials are

consistent with the requirement on IDWR "Notice of Change in Water Right Ownership" forms. The form requires a copy of the most recent deed, title policy, contract of sale or other legal document indicating ownership of the water right. I. C. §42-207. No record has been found indicating compliance with this requirement. A deed separating the appurtenant water right from the place of use was not submitted in 1981 with the original application. The required deed was not submitted in 2005 with the filing of the Bruner/McInturff change of ownership form. (Exhibit 4) It was not submitted because such a deed does not exist.

It was certainly not the intent of the landowners, Albert and Ludie Best, to separate, sell, trade, or in any way convey a water right appurtenant to their land to SMWR, or any other party. In fact the Objectors believe the landowners did not even know SMWR had applied for the water right.

The original landowners died and the property was separated and conveyed to their heirs, the Bakers and the Rosses. Albert Best died October 9, 1991 and Ludie Best died September 2, 1995.

The current landowners, Bakers and Rosses, argue that the water right was properly perfected but ownership remained with the landowners. Ownership was never separated from the land. The water right was conveyed without expressly mentioning the water right via the same instrument that conveyed the land to which the water right is appurtenant. *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984), I.C. §42-220. (Ex. 16, p. 1 of 3)

The instrument conveying a portion of the original real property is a warranty made with Ludie Best as Grantor and the Rosses as Grantees. (Ex. 5)

The instrument conveying real property to the Bakers was a deed made by co-personal representatives of the Estate of Ludie M. Best, deceased, Grantors, to Jeffrey P. Baker

and Mary Lou Baker, husband and wife, as Grantees. The deed includes the statement, "with all appurtenances." (Ex. 6, p. 2 of 3)

WHAT IS THE IMPORTANCE OF A WRITTEN LONG-TERM LEASE?

SMWR had a verbal agreement to grow wild rice on the owner's land and share the crop. The intent of the landowner was to be able to terminate the verbal agreement at any time and prohibit trespass. SMWR did not have a written lease much less a "long-term lease" as Al Bruner stated in the original application. (See 706 Report p.3, and Exhibit 7, p. 2 of 5)

Condition number 6 states, "Issuance of this permit in no way grants a right-of-way or easement across the land of another." (Exhibit 2, p. 2 of 2)

SMWR did not have a long-term lease that granted "easement across the land of another" therefore had no guarantee of access to point of diversion, place of use, or beneficial use. Without these elements there is no water right. (IDWR website: "A water right is authorization to use water in a prescribed manner, not to own the water itself. Without diversion and beneficial use, there is no water right.")

Lemmon v. Hardy says you can't get a water right on land you don't own. If the applicant doesn't have any means of acquiring the land stated in their application they cannot get a water right. Persons may not speculate by getting a water right and then seeking a place of use. "The rule as to trespass and water rights in Idaho appears to be that a water right initiated on the unsurveyed public domain is valid, but a water right initiated by trespass on private property is invalid." *Lemmon v. Hardy*, 519 P. 2d 1168, 95 Idaho 778 - Idaho: Supreme Court, 1974. (Ex. 16, p. 1 of 3)

SMWR was not a trespasser because the company had verbal permission to be on the property. But, verbal permission did not give guaranteed long-term access to the

necessary elements of a water right; the landowner retained access to these elements therefore could be the only party exercising the rights of ownership to the water right.

DOES A NAME ON A LICENSE ALWAYS REFLECT LEGAL OWNERSHIP?

The name put on the permit can be more a convenience, or convention, than a statement of accurate legal ownership. In *Snider v. Arnold*, there was a conflict between the name on a Forest Service special use permit and the actual legal ownership of the property. The court held that even where the evidence is conflicting, it may still be substantial and competent, and it is for the district court to weigh the evidence and judge the credibility of witnesses, citing *Clayson v. Zebe*, 153 Idaho 228, 234, 280 P.3d 731, 737 (2012). (*Snider v. Arnold*, 289 P. 3d 43, 153 Idaho 641 - Idaho: Supreme Court, 2012.) (Ex. 16, p. 2-3)

The Supplemental Director's Report correctly states that IDWR approved Transfer No. 4547 and listed Jeffrey P. Baker as the owner on the approved transfer document on April 12, 1995. At the time Baker had a ten-year lease with the landowner which gave him access to the necessary elements of a water right. (Exhibit 8). With the lease, Baker had more basis for water right ownership than SMWR. However, it is the position of the Objectors that even with Baker's name on the Transfer, the ownership of the water right remained with the landowner. If the court finds to the contrary, that IDWR putting a name on a license constitutes ownership, then the McInturffs need to show deeds that complete a chain of title going back to the original appurtenance of the water right to the land. No such deeds severing the water right from the land are found in IDWR records.

DID THE 2001 SALES AGREEMENT EXCLUDE LICENSES PRETAINING TO BAKER'S FIELD?

The McInturffs claim ownership of water rights by virtue of a sales agreement between Bruner and McInturff. The sales agreement is not in the form of the required deed.

Furthermore, water rights to Baker's fields are excluded from the sales agreement with this statement: "The licenses pertaining to Jeff Bakers (sic) fields were given to him earlier." (Ex. 9, p. 2 of 3).

It should be noted that SMWR was administratively dissolved 6 Feb 1998. (Ex. 10)

IV.

Remedy Sought

SMWR did not have a deed, or the other elements of a water right. Likewise, the McInturffs who claim to be successors to SMWR currently do not have a deed, diversion, beneficial use, place of use, a valid sales contract, or a lease. For them to be awarded any part of ownership in the water right appurtenant to our land would be a miscarriage of justice and contrary to the intent of Idaho Code.

The fact that the Permit was issued in the name of SMWR gave a false impression of ownership when none legally existed. This has caused conflict referred to in the 706 Report. Had the Permit been issued in the name of the landowners, years of confusion and conflict could have been avoided. Therefore, the Baker's and the Rosses, request the court to exercise its equitable power under the legal concept of constructive trust.

The Bakers and the Rosses request the court to exercise its power of equitable construction according to legislative intent and within the spirit and general meaning of the Idaho Code. (Black's Law Dictionary, p. 386) (Ex. 16, p. 3 of 3)

Specifically, we request the court award the original Permit 92-7090, renumbered 92-10502, to the Bakers and Rosses as sole owners, split according to current place of use ownership. We request the water right be split so that ownership matches land ownership. We request that the Rosses be awarded a renumbered water right with a July 21, 1981 priority date, separate points of diversion and place of use located on their

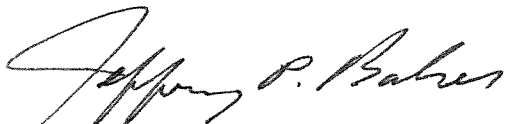
land, and with their own beneficial use. We request the same for Baker ownership—separate water right number, July 21, 1981 priority date, separate place of use, separate point of diversion, and separate beneficial use, and according to current land ownership.

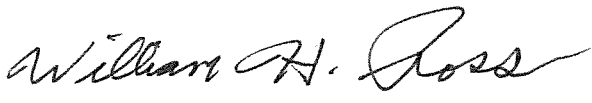
V.
Conclusion

The McInturffs do not have the required elements of a water right. Awarding the McInturffs any portion of the water right under these circumstances would be a miscarriage of justice and contrary to legislative intent and the meaning of Idaho Code. An equitable construction by the court could prevent the injustice.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED June 6, 2016


JEFFREY P. BAKER


WILLIAM H. ROSS

VI.
Exhibits

1. Deed of Albert and Ludie Best, "all...appurtenances"
2. Water Right License 92-7090
3. Water Glossary, Ridenbaugh Press,
<http://www.ridenbaugh.com/srba/watglos.htm>
4. Change of Ownership, McInturff, dated August 17, 2005.
5. Deed of William and Marie Ross, "with all...appurtenances..."
6. Deed of Jeffrey and Mary Lou Baker, "with all appurtenances."
7. Application for Permit 92-7090, approved September 24, 1981.
8. Ludie Best and Baker 10-year lease, 6/26/1994, replaced SMWR verbal lease.
9. Sale of Wild Rice Harvesting Business, Bruner to McInturff, dated July 15, 2001.
10. Idaho Secretary of State, SMWR admin dissolved, 6 Feb 1998
11. Baker sells interest in SMWR, effective 12/31/1988
12. Baker resigns as President of SMWR and member of Board, 3/1/1989
13. Baker letter to Doug McInturff, 10/23/2012, initial request for help in adjudication
14. Baker letter to Doug and Darcy McInturff, 9/4/2014, expiration of lease
15. Baker letter to Doug and Darcy, 11/27/2015, request for out of court settlement
16. Case Law Citations in Trial Brief 92-10502
17. Timeline in support of Trial Brief 92-10502

CERTIFICATE OF MAILING

I certify that on June 6, 2016 I mailed the original and copies of this Trial Brief including all attachments, to the following persons:

Original to:

Clerk of the District Court
Coeur d' Alene-Spokane River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

One copy to the claimants of the water right at the following address:

Darcy and Douglas McInturff
17786 E Canary Creek Rd.
Cataldo, ID 83810

William H. Ross
PO Box 161
St. Maries, ID 83861

Jeffrey P. Baker
715 N Chisholm Ct.
Post Falls, ID 83854

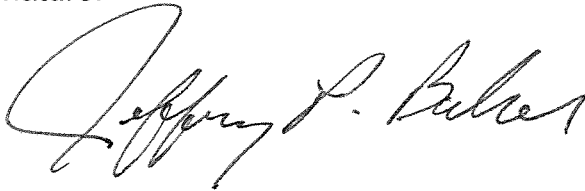
Copies to:

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

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

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

Signature:

A handwritten signature in black ink, reading "Jeffrey P. Baker". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent part.

Jeffrey P. Baker
Appearing pro se

EXHIBITS

SUBCASE NO. 92-10502

Exhibits

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2. Water Right License 92-7090
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Q-2
P435

W4B

THIS INDENTURE, Made the 20 day of February in the year of our Lord one thousand nine hundred and sixty , between

ALICE LINDSTROM, a widow
of Benewah County, State of Idaho, part y. of the first part, and
ALBERT BEST and LUDIE BEST, his wife,
of Benewah County, State of Idaho, part ies. of the second part.

WITNESSETH, That said part y. of the first part, for and in consideration of the sum of Ten and no/100 (\$10.00) Dollars and other valuable consideration XENAKY in hand paid by the said part ies. of the second part, the receipt whereof is hereby acknowledged, and the said part ies. of the second part forever released and discharged therefrom ha s granted, bargained, sold, remised, released, alienated and confirmed and by these presents do es grant, bargain, sell, release, alienate and confirm unto the said part ies. of the second part, and to their heirs and assigns forever all the following described lot s, pieces, or parcel of land situated in the County of Benewah and State of Idaho, and known and described as follows, to-wit:
Lots Four (4), Seven (7), Eight (8), Nine (9), Ten (10) and Elevene (11), Section Two (2), and the South Half of the Northwest Quarter (S¹/₂ NW¹/₄), Sec 2 Township Forty-five (45) North, Range Two (2) West Boise Meridian, and

All that portion of the East Half of the Northeast Quarter of the Southeast Quarter (E¹/₂ NE¹/₄ SE¹/₄) of Section Three (3), in Township Forty-five (45) North of Range Two (2) West of Boise Meridian, lying and being between the right-of-way of the Chicago, Milwaukee and Puget Sound Railway Company and the St. Maries River, and containing three (3) acres more or less, more particularly described as follows: Commencing at a point where the South line of said right-of-way intersects the East line of said Section Three (3), thence South along said East line of said Section to the St. Maries River; thence Northwesterly along the North side of said river for a distance of 792 feet; thence North to the South line of said right-of-way; thence East along the South line of said right-of-way, Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof and all the estate, right, title, interest, claim or demand whatsoever of the said part y. of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances, to have and to hold the said premises above bargained and described, with the appurtenances unto the said part ies. of the second part, their heirs and assigns forever.

And that the said part y. of the first part, for her heirs, executors and administrators do es covenant, grant, bargain, and agree to and with the said parties. of the second part their heirs and assigns, that at the time of ensealing delivery of these presents they are well seized of the premises above conveyed as of good, sure, perfect, absolute and indefeasible estate of inheritance in law and fee simple, and ha ve good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear of all former or other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind or nature soever:

and the above bargained premises in the quiet and peaceable possession of said part ies. of the second part their heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said part y. of the first part shall and will warrant and defend.

IN WITNESS WHEREOF, The said part y. of the first part has hereunto set her hand and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

Alice Lindstrom (SEAL)
(SEAL)
(SEAL)
(SEAL)

STATE OF IDAHO } ss.
County of Benewah

I, the undersigned Notary Public, in and for said County, in the State aforesaid, do hereby certify that

ALICE LINDSTROM, a widow
his wife, personally known to me as the real person whose name subscribed to the foregoing Deed appeared before me in person, and acknowledged that she executed and delivered the said Deed as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20 day of February in the year of our Lord, one thousand nine hundred and sixty

(Notarial Seal Affixed)
NOTARY PUBLIC for the State of Idaho
residing at St. Maries, Idaho,
My commission expires Feb. 24, 1961

Ray A. Bowen
Notary Public in and for Idaho;
Res: & P.O. Add: St. Maries, Ida.
Comm. exp.;

STATE OF IDAHO } ss.
County of Benewah

Filed for record at the request of Ray A. Bowen Agency on the 12 day of August, 1968, at 2:06 o'clock P. M., and recorded in book Q-2 of Deeds on page 435

Fees, \$2.00

By Grace Bertholf

County Recorder.

Deputy.

Exhibit 1

to the place of beginning.

Excepting a tract of land in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, Township 45 North Range 2 West Boise Meridian more fully described as follows: Beginning at a point which is post #1, which point is 330.0 feet South and 660.0 feet East of the NW $\frac{1}{16}$ Corner of Section 2, thence N 33°25' E 54.7 feet to corner #2, thence S 58°10' E 234.4 feet to Corner #3, thence S 8°40' W 57.6 feet to Corner #4, thence S 2°30' E 187.1 feet to Corner #5, thence S 55°00' W 132.0 feet to Corner #6, thence S 73°07' W 97.7 feet to Corner #7, thence N 20°56' W 352.4 feet to Corner #8, thence N 33°25' E 136.6 feet to Post #1 the point of beginning and enclosing an area of 2.48 acres, more or less: also excepting therefrom

A parcel of land located in the NW $\frac{1}{4}$, Sec. 2, Twp 45N, R2 W.B.M. more particularly described as follows: From a point on the St. Maries River County road marked by an iron pipe set in the ground and described as corner #3 in Tax #309, which is identical to corner #1 of this tract. Thence North 58 degrees & 10 Minutes West along the NE boundary of Tax #309 for 279.5 ft. to corner #2; Thence North 49 degrees West 342.5 ft. to corner #3; Thence North 69 degrees West 429.0 ft. to corner #4; Thence North 39 degrees & 30 minutes West 76.6 ft. to corner #5; Thence North 27 degrees West 85.8 ft. to corner #6; Thence North 22 degrees West 85.8 ft. to corner #7; Thence North 19 degrees West 112.2 ft. to corner #8; Thence North 68 degrees East 60.7 ft. to corner #9; Thence South 85 degrees East 146.5 ft. to corner #10; Thence South 52 degrees East 262.0 ft. to Corner #11; Thence North 87 degrees East 235.0 ft. to corner #12; Thence South 86 degrees East 301. ft. to corner #13; Thence South 50 degrees East 299.0 ft. to corner #14; Thence South 85 degrees East 182.2 ft. to corner #15; Thence South 10 degrees East 150.0 ft. to corner #16; thence South 10 degrees West 150.0 ft. to corner #17; Thence South 53 degrees West 144.0 ft. to corner #18; Thence South 65 degrees West 223.2 ft. to the point of beginning which is corner #1 and enclosing 13.0 acres, more or less. Excepting that portion lying in Lot 3 of said Section, Township and Range.

A. B.
L. B.

A. B.
L. B.

CHADLER
COUNTY RECORDER
DEPUTY
BY
30
CLERK
DEPUTY
WITNESSES my hand and official seal
this 30 day of
1922

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 92-07090

Priority: July 21, 1981

Maximum Diversion Rate: 2.60 CFS
Maximum Diversion Volume: 390.0 AF

This is to certify, that ST. MARIES WILD RICE INC.

P.O. BOX 293

ST. MARIES ID 838610000 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 21, 1981; and has submitted Proof of Beneficial Use on August 18, 1986. An examination indicates that the works have a diversion capacity of 3.060 cfs of water from:

ST. MARIES RIVER tributary to ST. JOE RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	2.60 CFS	390.0 AF

LOCATION OF POINT(S) OF DIVERSION: SWNE , Sec. 2, Township 45N, Range 02W
BENEWAH County

<u>PLACE OF USE: IRRIGATION</u>		<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
<u>TWN</u>	<u>RGE</u>	<u>SEC</u>			
45N	02W	2	NWNE 30	SWNE 20	SENE 5
			NESW 30	NWSW 30	SWSW 5
			NWSE 10		
					130

Total number of acres irrigated: 130

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.0 afa per acre for the lands above.

RECORDED

JUN 8 1986

State of Idaho
Department of Water Resources

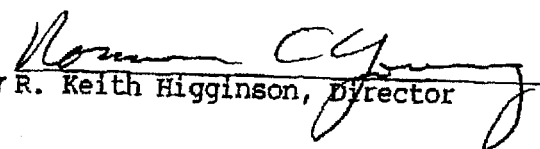
WATER RIGHT LICENSE

WATER RIGHT NO. 92-07090

CONDITIONS/REMARKS:

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

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 15TH day of MAY, 1992.


Acting for R. Keith Higginson, Director

JUN 29 1992

Search



Web



Images



Hide



Ne

WEEK OF
Update soon!



Welcome to
Ridenbaugh
Press!

[National Water
Rights Digest](#)
[Snake River
Basin
Adjudication
Digest](#)
[Idaho Public
Affairs Digest](#)

OUR
CATALOGUE



CRD

Services

Client Relations
Development
grows
your client base

On the
Road

48 states/14
months:
What we saw ...

Drop us a
line

Watch for updates!

See us in
Navigator 3.0

This web site
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WATER GLOSSARY

Terms and definitions are based on material developed by the Metropolitan Water District of Southern California, the Texas Environmental Center, the Department of Water Resources of Nevada, the Idaho Department of Water Resources, and other materials.

ABANDONED WATER RIGHT A water right which was not put to beneficial use for a number of years, generally 5 to 7 years.

ABANDONED WELL A well which is no longer used. In many places, abandoned wells must be filled with cement or concrete grout to prevent pollution of ground water bodies.

ABOVEGROUND STORAGE TANK A non vehicular device (including any associated piping that is made of non earthen materials) located on or above the surface of the ground, or on or above the surface of the floor of a Structure below the ground, such as mineworking basement or vault; and designed to contain an accumulation of petroleum products.

ABSORB To take in. Many things absorb water.

ACID a substance that has a pH value between 0 and 7.

ACRE FEET The amount of water required to cover one acre one foot deep. Also abbreviated as ac-ft.

ACRE-FOOT An expression of water quantity. One acre-foot will cover one acre of ground one foot deep. An acre-foot contains 43,560 cubic feet, 1,233 cubic meters, or 325,829 gallons (U.S.).

ADJUDICATION A court proceeding to determine all rights to the use of water on a particular stream system or ground water basin.

AERATION The process of bubbling air through a solution, sometimes cleaning water of impurities by exposure to the air.

ALKALINE Quality of being bitter due to alkaline content (pH is greater than 7)

APPLICATION, WATER RIGHT An official request for permission to initiate a water right; includes a description of the proposed project, a map of the project and a legal description of the property involved.

APPROPRIATE To authorize the use of a quantity of water to an individual requesting it.

APPURTENANT TO PLACE OF USE A water right that belongs to the legal owner of the land described as the place of use on the water right.

AQUA Prefix meaning water.

AQUEDUCT A man-made pipe or conduit made for bringing water from a source.

AQUICLUDE A formation which, although porous and capable of absorbing water slowly, will not transmit water fast enough to furnish an appreciable supply for a well or a spring.

AQUIFER A water bearing stratum of permeable rock

ARID An adjective applied to regions where precipitation is small in quantity; where agriculture is impracticable.

ARIDITY The quality or state of being arid, dry or

Exhibit 3

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED
AUG 17 2005
DEPARTMENT OF
WATER RESOURCES

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

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

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
92-07090	_____	___	_____	_____	___
91-07094	_____	___	_____	_____	___
_____	_____	___	_____	_____	___
_____	_____	___	_____	_____	___
_____	_____	___	_____	_____	___

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

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

OR

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

3. Name and Address of Former Owner/Claimant(s) Alexander Bruner Coeur d'Alene
5507 N. Parkwood Lane ID 83815
4. New Owner/Claimant(s) Douglas A. McInturff
 Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
- New Mailing Address 17786 E. Canary Creek Rd.
 City, State and ZIP Code Cataldo ID 83810
 New Telephone Number 208 689-9308
5. Date you acquired the property 06/2001

SUPPORT DATA

Attachment S

Exhibit 4, p. 1 of 2

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

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

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

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

Logan A. McElroy

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

For Office Use Only

Received by _____ Date 8-17-05 Fee \$ 50.00/xs
 Receipted by MM Date _____ Receipt No. C078888
 Processed by _____ AJ Date _____ WR _____ Date _____

WARRANTY DEED

WARRANTY DEED, made this 5th day of March, 1992, between LUDIE M. BEST, a widow, of Route 1, Box 260, City of St. Maries, County of Benewah, State of Idaho 83861, herein referred to as "Grantor"; and WILLIAM H. ROSS and A. MARIE ROSS, husband and wife, of P.O. Box 161, City of St. Maries, County of Benewah, State of Idaho 83861, herein referred to as "Grantees".

WITNESSETH:

That Grantor, for good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and does, by these presents grant, bargain, sell, convey, and confirm unto Grantees and their heirs and assigns forever, all the following described real estate situated in Benewah County, State of Idaho, to-wit:

A parcel encompassing parts of Lots Two (2), Three (3) and Five (5) of the Southeast Quarter of the Quarter (SE 1/4 NW 1/4) of Section Township Forty-five (45) North, Range Two (2) West, Boise Meridian. The boundary of this parcel is described as:

Exhibit 5

Beginning at the North 1/4 Corner of said Section Two (2). Running thence N 89°37'00" E, along the north line of Section Two (2), a distance of 968.61 feet to a point on the west bank of the St. Maries River; thence southerly, along said riverbank, a distance of 2,154.7 feet, the chord of the arc of this riverbank bears S 01°21'15" W - 2,079.11 feet, to the

intersection of said riverbank with the centerline of a drainage ditch; thence N $71^{\circ}03'15''$ W, along said ditch centerline, a distance of 447.30 feet; thence N $77^{\circ}16'15''$ W, along said ditch centerline and this ditch centerline projected, a distance of 504.87 feet to a point on the easterly right-of-way boundary of the St. Maries River Railroad - Bovil Branch. This right-of-way runs parallel to and 50 feet offset easterly from the centerline of said railroad. Thence Northeasterly, along said right-of-way boundary, on a 623.69 foot radius curve left, concave to the northwest, through a central angle of $18^{\circ}20'15''$, an arc distance of 199.61 feet, the chord of this curve segment bears N $10^{\circ}13'30''$ E - 198.76 feet; thence northerly, along said right-of-way boundary, on a spiral curve segment, the chord of which bears N $04^{\circ}27'45''$ W - 127.20 feet; thence northerly along said right-of-way boundary on a 1,482.69 foot radius curve left, concave to the west, through a central angle of $11^{\circ}24'00''$, an arc distance of 295.01 feet, the chord of this curve segment bears N $13^{\circ}02'30''$ W - 294.52 feet; thence along said right-of-way boundary on a spiral curve segment, the chord of which bears N $19^{\circ}48'15''$ W - 81.40 feet; thence N $20^{\circ}20'30''$ W, along said right-of-way boundary on a tangent segment, a distance of 459.70 feet; thence along said right-of-way boundary on a spiral curve segment, the chord of which bears N $19^{\circ}06'30''$ W - 146.70 feet; thence along said right-of-way boundary on a 1,096.28 foot radius curve right, concave to the east, through a central angle of $08^{\circ}16'00''$, an arc distance of 158.17 feet, the chord of this curve segment bears N $12^{\circ}27'30''$ W - 158.03 feet; thence along said right-of-way boundary on a spiral curve segment, the chord of which bears N $05^{\circ}48'45''$ W - 146.70 feet; thence N $04^{\circ}34'30''$ W, along said right-of-way boundary, on a tangent segment, a distance of 263.55 feet to the intersection of this right-of-way boundary and the north line of Section Two (2); thence S $89^{\circ}30'00''$ E,

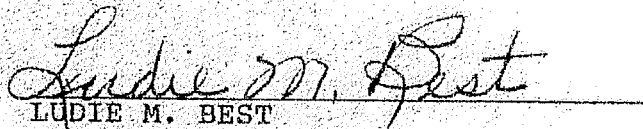
along said north section line, a distance of 342.50 feet to the point of beginning. Enclosing an area of 55.49 acres.

This parcel has been assigned Benewah County Assessor's Tax No. 1192 and is depicted on a survey plat recorded as Instrument No. 183779.

TOGETHER, with all tenements, easements, hereditaments and appurtenances thereunto belonging.

Grantor, for herself, her heirs and assigns, does hereby covenant, warrant and shall defend the quiet and peaceable possession of said premises by the Grantees, their heirs and assigns forever against the lawful claims of all persons.

IN WITNESS WHEREOF, Grantor has hereunto set her hand and seal on the day and year first above written.


LUDIE M. BEST

Grantor

STATE OF IDAHO)
) ss.
 County of Benewah)

On this 5th day of March, 1992, before me, the undersigned, a Notary Public in and for the said State, personally appeared LUDIE M. BEST, a widow, known to me to be the person whose name is subscribed to the above and foregoing WARRANTY DEED, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.

Richard J. Mettler
 Notary Public, State of Idaho
 Residing at: St. Maries
 Commission expires: 2-6-92

RECEIVED

188496

Cristine Ashwood, Deputy
 02 MAR 6 P 2:59

McFadden Law Office
 KAY SATHEN, CLERK *da*

STATE OF IDAHO }
 County of Benewah } ss

I, Deanna Bramblett, Clerk of the above entitled Court & County Recorder do hereby certify the foregoing to be a full, true and correct copy of the original. WTD..... as the same now appears on file and on record in my office.

WITNESS my hand and official seal

This 2 day of June, 2016
 By Deanna Bramblett Clerk
 By [Signature] Deputy

WARRANTY DEED

86-2914

204535

RECEIVED

'36 MAY 31 PM 10 39

BENEWAH COUNTY
KAY SATHER, CLERK
Kay Sather
Benewah County

CO-PERSONAL REPRESENTATIVES
DEED

THIS DEED, made by DAVID MITCHELL BEST and KATHRYN ALBERTA FRANZ, co-personal representatives of the ESTATE OF LUDIE M. BEST, DECEASED, Grantors, to JEFFERY P. BAKER and MARY LOU BAKER, husband and wife, of 2709 Longbranch Road, City of Union, County of Boone, State of Kentucky 41091, as Grantees.

WHEREAS, Grantors are the personal representatives of said estate, filed as Probate Number SP95-00090, in Benewah County, Idaho;

THEREFORE, for valuable consideration, Grantors sell and convey to Grantees the real property in Benewah County, Idaho, to-wit:

Exhibit 6, p. 1 of 3

All that part of Government Lots Five (5), Eight (8), Nine (9) and Ten (10) and the South Half of the Northwest Quarter (S1/2 NW1/4) lying South of the right of way of the St. Maries River Railroad and North of the St. Maries River in Section 2, Township 45 North, Range 2 West, Boise Meridian, and all that part of the East Half of the Northeast Quarter of the Southeast Quarter (E1/2 NE1/4 SE1/4) lying and being between the right of way of the St. Maries River Railroad and the St. Maries River in Section 3, Township 45 North, Range 2 West, Boise Meridian;

CO-PERSONAL REPRESENTATIVES
DEED

EXCEPTING THEREFROM that part of Government
Lot Five (5) previously deeded to William
Ross, et ux, and recorded 3/6/92 as
Instrument No. 188496, Benewah County
Records,

with all appurtenances.

EXECUTED this 25TH day of May, 1996.

David Mitchell Best

DAVID MITCHELL BEST

Co-Personal Representative of the
Estate of Ludie M. Best,
Deceased.

Kathryn Alberta Franz

KATHRYN ALBERTA FRANZ

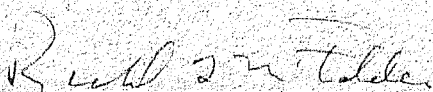
Co-Personal Representative of the
Estate of Ludie M. Best,
Deceased.

Exhibit 6, p. 2 of 3

STATE OF IDAHO)
 : ss.
County of Benewah)

On this 25th day of May, 1996, before me, the undersigned, a Notary Public in and for the said State, personally appeared DAVID MITCHELL BEST and KATHRYN ALBERTA FRANZ, known to me to be the persons whose names are subscribed to the above and foregoing CO-PERSONAL REPRESENTATIVES DEED, as co-personal representatives of the Estate of Ludie M. Best, deceased, and acknowledged to me that they executed the same as such personal representatives.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.



Notary Public, State of Idaho
Residing at: St. Maries
Commission expires: 02/06/97

Exhibit 6, p. 3 of 3

CO-PERSONAL REPRESENTATIVES
DEED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT **APPROVED**

To appropriate the public waters of the State of Idaho

1. Name of applicant ST MARIES WILD RICE GROWERS Phone 689-3259

Post office address c/o Al Bruner, Route 2, Box 176, Harrison, Idaho 83833

2. Source of water supply StMaries River which is a tributary of St Joe River

3. Location of point of diversion is SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 2 Township 14N

Range 2W B.M. Benewah County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 26 cfs for irrigation purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. ~~2.6~~ 2.6 cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. A 24" screw gate with attached CMP
has been installed for years and will be utilized as the inflow structure.
Post season drainage will be by pump installed downstream.

b. Height of storage dam none feet, active reservoir capacity _____ acre-feet; total reservoir
capacity _____ acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial
use is 5 years (minimum 1 year — maximum 5 years).

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M.

(2) Amount of power to be generated: _____ horsepower under _____ feet of head.

(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____

(5) If water is to be used for other purposes describe: BAR JO INN

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

[illegible]

Total number of acres to be irrigated 130

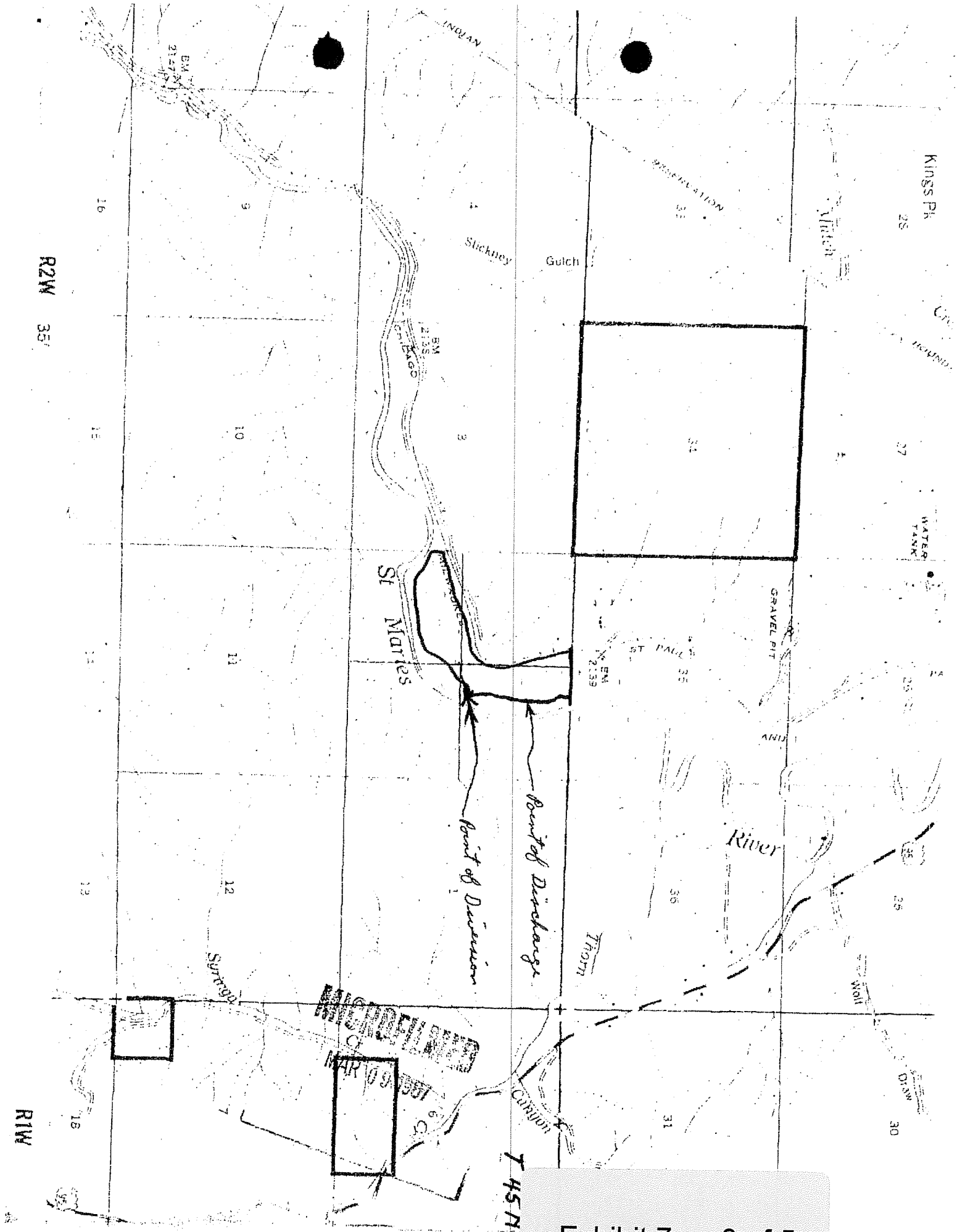
c. Describe any other water rights used for the same purposes as described above.

9. a. Who owns the property at the point of diversion Albert Best, StMaries River Road, StMaries, Id.

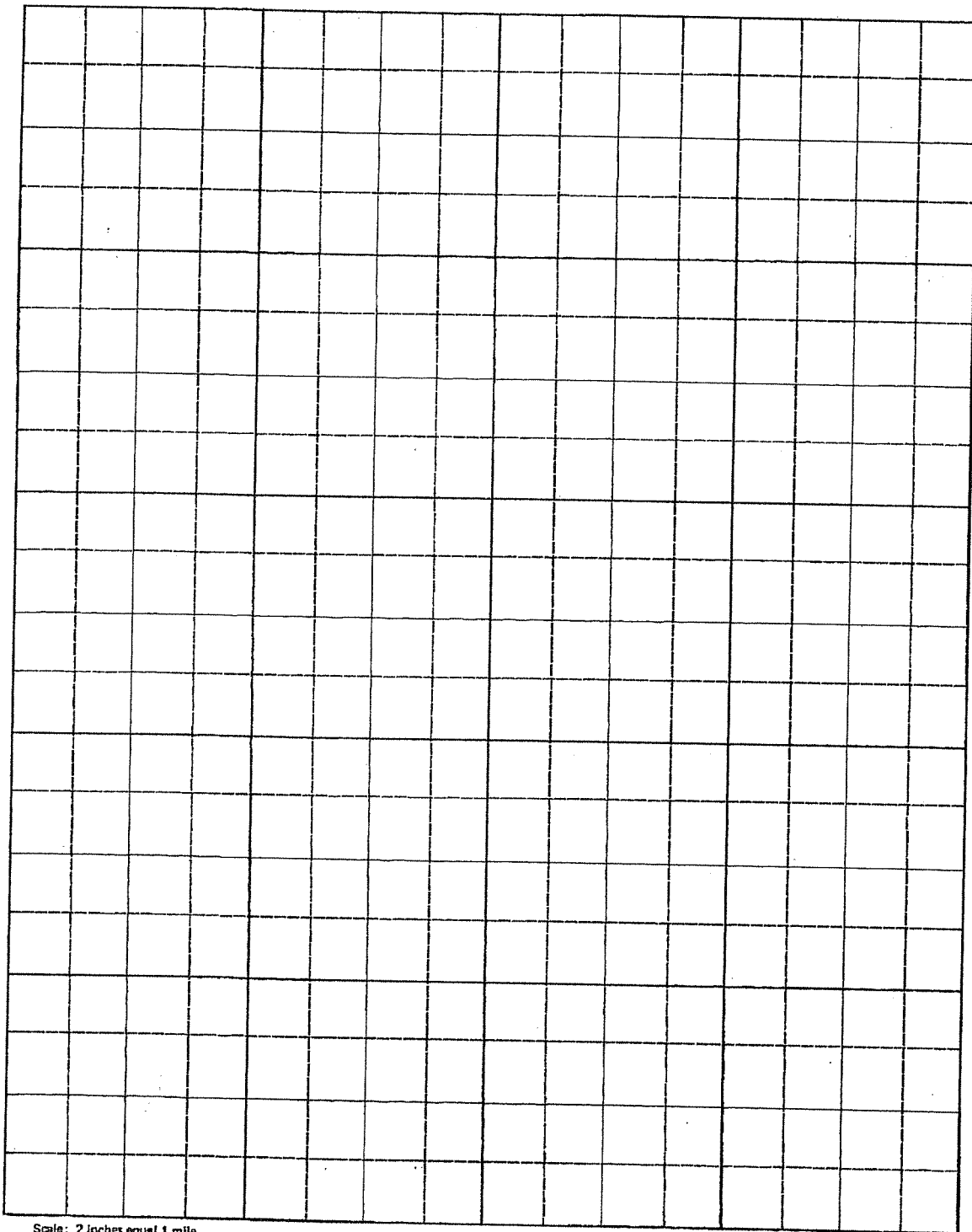
b. Who owns the land to be irrigated or place of use same

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Sharecrop/long term lease

10. Remarks Commercial production of wild rice is to be undertaken which requires the farmland to be flooded at a depth of 24" for an extended period.



11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

MICROFILMED

MAR 09 1987

Al W. Bruner

(Applicant)

(Manager/Consultant)

Processed Priority 7/21/1981

Received by PM Date 7/21/81 Time 11:04am
Preliminary check by PM Fee \$ 85.00
Receipted by PM Date 7/22/81 (18256)
Publication prepared by PM Date 7/23/81
Published in Idaho Statesman
Publication dates 7/29 + 8/5/81
Publication approved PM Date 8/21/81
Protests filed by: none

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by PM RC

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 92-7090, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 19 86.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other: A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
The issuance of this permit in no way grants any right-of-way or easement across the land of another.

Witness my hand this 24 th day of September, 19 81

A. Glen Saxton
Chief, Operations Bureau

MICROFILMED
MAR 09 1981

COPY

LEASE AGREEMENT

This LEASE AGREEMENT, made and entered into this 26 day of June, 1994, by and between LUDIE M. BEST, a widow, of Route 1, Box 260, St. Maries, Benewah County, Idaho 83861, hereinafter called the "Lessor" and Riviere du Bois Farms, Inc. an Idaho Corporation, of St. Maries, Benewah County, Idaho 83861, hereinafter called the "Lessee".

SECTION ONE DEMISE AND DESCRIPTION OF PROPERTY

Lessor does hereby lease to Lessee those certain parcels of real property, commonly known as "Best 2", "Best 3", the riverbank adjacent to these fields, and a barn located on the property. "Best 2" and "Best 3" consist of (a) Lots Two (2), Five (5) and part of Lot Three (3), less Tax Number 353 and Tax Number 362; and (b) Lots Eight (8), Nine (9), Ten (10) and Eleven (11), all of which are located in the Northwest Quarter (NW 1/4) of Section Two (2), less Tax Numbers 406-1 and 406-2. The East Half of the Northeast Quarter of the Southeast Quarter (E 1/2 NE 1/4 SE 1/4) of Section Three (3), Township Forty-Five (45) North, Range Two (2) West Boise Meridian (Tax Number 108). Tax Number 970, being a part of the Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) and part of the Northwest Quarter of the Southwest Quarter (NW 1/4 SW 1/4) of Section Two (2), Township Forty-five (45) North, Range Two (2) West, Boise Meridian.

The portion of the described property embraced in this lease is that area previously occupied under lease by St. Maries Wild Rice, Inc., where wild rice was sown and harvested, except the field commonly known as "Best 1" (title to which is now held by William Ross and Marie Ross). In addition, this Lease Agreement includes all of the riverbank and the exclusive use of the barn located on the property. The lease **does not** include hillside or timberland owned by Lessor.

SECTION TWO TERM OF THE LEASE

The initial term of this lease shall be for ten (10) years, and ten (10) months, beginning March 1, 1994 and ending December 31, 2004.

SECTION THREE USE OF PROPERTY

Lessee leases the property subject hereof for the primary purpose of growing wild rice crops and/or such other secondary crops or uses for subject leased property from time to time as lessee in it's sole discretion deems appropriate.

SECTION FOUR

RENT

Subject to adjustments as provided herein, Lessee will pay rent to Lessor, at such place or places as may be designated from time to time by Lessor, in installments as follows:

(1) On September 30, 1994, and the same date of each successive year, **until the first crop is harvested** a rental payment of \$1,000.00 will be made. It is anticipated that the first crop will be harvested in September 1995.

(2) Beginning September 30, 1995, or after the first crop is harvested, and continuing for each and every remaining year of this lease agreement, Lessor will receive as rent one-third of the gross proceeds Lessee receives from both the sale of the green wild rice crop grown and harvested, as well as one-third of the gross proceeds from secondary crops or uses of the demised premises during any subsequent crop year.

Rental payments due under sub-paragraph (1) hereof will be paid in full on September 30. Rental payments due under sub-paragraph (2) hereof will be paid in four (4) equal quarterly installments, on December 31 of the harvest year; and March 31; June 30 and September 30 of the year following the harvest year.

For purposes of establishing the rental payable hereunder, it is agreed and understood that the rental payable to Lessor shall be determined by the **gross proceeds** Lessee receives for it's annual green wild rice crop, as well as gross proceeds received from the sale of secondary crops or uses of the demised premises. Lessee will provide Lessor with appropriate written verification as to the volume of green wild rice crops taken from the leased property during any crop year and the gross proceeds received therefore.

SECTION FIVE

WARRANTIES OF TITLE AND QUIET POSSESSION

Lessor covenants that Lessor is seized of the demised premises in fee simple and has full right to make this lease, and Lessee shall have quiet and peaceable possession of the demised premises during the term hereof.

Lessee agrees to conduct the operation of draining, tilling, and re-seeding the fields in a good and workmanlike and expeditious manner. In that effort, it may be desirable for Lessee to use earth moving equipment to level the fields to enhance production. These improvements shall be made at Lessee's sole discretion and expense, and said improvements will

remain with the property at the expiration of the term of the lease unless otherwise covered by a separate written agreement between the parties hereto.

The cost of development and improvement of the leased property will be at the sole expense of Lessee, and will not be chargeable to Lessors herein, nor will such costs be allowed to become a lien or encumbrance upon the property subject of this lease agreement.

SECTION SIX **LESSOR'S RIGHT OF ENTRY**

Lessor will not impede or interfere with Lessee's management and operation of the land during the term of this lease. Lessor does, however, reserve the right to enter upon the demised premises at reasonable times for the purpose of inspecting the crop and the wild rice growing operation.

SECTION SEVEN **WASTE AND NUISANCE PROHIBITED**

Lessee agrees in all respects to manage and to farm the demised property in a good and workmanlike manner, and to keep all improvements thereon including diking, ditching, fencing or other improvements in as good condition and repair as the same now are, reasonable wear and tear excepted. In addition Lessee will comply with all local, state and federal laws, and rules and regulations applicable to the farming operation conducted hereunder.

SECTION EIGHT **INDEMNIFICATIONS OF LESSOR**

Lessee, in its operation and farming of the demised property described herein, will be solely responsible for such operation to all third parties, and Lessee agrees to indemnify and to hold harmless Lessor as against any liability or obligation arising to third parties by reason of Lessee's performance of this lease. Lessee will suffer or permit no liens to attach to the property.

SECTION NINE **SUBLETTING AND ASSIGNMENT**

Lessee may assign or sublease the demised premises in whole or in part without Lessor's consent, provided the demised premises are assigned or subleased to a person or entity capable of providing Lessor with the reasonable expectation that the provisions of this lease agreement will be maintained and with the reasonable expectation that Lessor's interests herein will remain secure.

SECTION TEN
NOTICES

All notices, demands, or other writings in this lease provided to be given or made or sent, or which may be given or made or sent, by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as follows:

TO LESSOR: Route 1, Box 260
St. Maries, Idaho 83861

TO LESSEE: Route 1, Box 260A
St. Maries, Idaho 83861

SECTION ELEVEN
OPTION TO RENEW

Lessor grants to lessee, subject to the conditions set forth below, the right and option to renew this lease for a period of five (5) years, beginning on January 1, 2005, and expiring on December 31, 2009 at a rental determined as provided in Section 4 above, and otherwise subject to any and all of the terms and conditions herein contained herein, except that there shall be no further option to renew the lease. This option must be exercised by the giving to Lessor, on or before September 30, 2004, written notice of the exercise thereof by Lessee, but Lessee shall in no event be entitled to renew the term thereof, even though such notice be timely given, unless Lessee shall have performed all of its obligations hereunder, and shall not be in default in the performance of any thereof, on the date of the expiration of the initial term hereof.

SECTION TWELVE
DEFAULT

In the event of any claimed breach of this lease by Lessee, Lessor hereby agrees that there cannot be a summary cancellation or rescission of this lease agreement, until such time as the crops for the year in question have been harvested and delivered to market in accordance with the terms of this agreement, and the gross proceeds have been distributed to Lessor and Lessee as provided herein. With the exception of the remedy of forfeiture of Lessee's crops Lessor shall have available any and all other remedies Lessor may have against Lessee as available both at law or in equity.

SECTION THIRTEEN
LESSEE'S OPTION TO TERMINATE

Lessee shall have the right, by written notice to Lessor

given at least sixty (60) day prior to the effective date as provided in the written notice, to terminate this lease and surrender its leasehold and on such effective date Lessee shall be relieved from all further liability hereunder, and shall deliver possession of the demised premises to Lessor.

SECTION FOURTEEN
NOTICE OF DEFAULT

Lessee shall not be deemed to be in default hereunder in the payment of rent or the payment of any other moneys as herein required unless lessor shall first give to lessee ten (10) days' written notice of such default and Lessee fails to cure such default within said ten (10) days.

Except as to the provisions or events referred to in the preceding sentence of this Section, Lessee shall not be deemed to be in default hereunder unless Lessor shall first give to Lessee thirty (30) days' written notice of such default, and Lessee fails to cure such default within such thirty (30) day period, or, if the default is of such a nature that it cannot be cured within thirty (30) days, Lessee fails to commence to cure such default within such period of thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence.

SECTION FIFTEEN
ATTORNEY'S FEES

If any action at law or in equity shall be brought to recover any rent under this lease, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this lease, or for the recovery of the possession of the demised premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs reasonable attorney's fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

SECTION SIXTEEN
PARTIES BOUND

The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

SECTION SEVENTEEN
TIME OF THE ESSENCE

Time is of the essence of this lease, and of each and every covenant, term, condition, and provision hereof.

SECTION EIGHTEEN
SECTION CAPTIONS

The captions appearing under the section number designations of this lease are for convenience only and are not a part of this lease and do not in any way limit or amplify the terms and provisions of this lease.

In witness whereof, the parties have executed this lease at St. Maries, Idaho this 26 day of June, 1994.

LESSOR:

Ludie M. Best
Ludie M. Best

LESSEE:

Riviere du Bois Farms, Inc.

by: Mary Lou Baker
President, Mary Lou Baker

ATTEST:

Jeffrey P. Baker
Secretary, Jeffrey P. Baker

SALE OF WILD RICE HARVESTING BUSINESS

AGREEMENT

This AGREEMENT dated July 15TH, 2001 between Alexander W. Bruner (hereinafter Al Bruner) and Judith C. Bruner, husband and wife of Coeur d' Alene, Idaho, AND Douglas P. Mc Inturff and Darcy Mc Inturff, (hereinafter Doug Mc Inturff) husband and wife, of Garwood Idaho, is for the sale and transfer of all the wild rice harvesting and incidental equipment owned by the Bruners at St Maries Idaho. This sale and transfer will include all equipment, leases, water rights, harvest agreements, good will and other items, owned by the Bruners, associated with the wild rice industry in St Maries.

Al Bruner further agrees to assist Doug Mc Inturff by providing growing, harvest, technical, industry and other important information as may be reasonably required. He agrees that, without additional charge, he will train Doug Mc Inturff in the operation of the boats and harvesters as may be reasonably necessary during the summer and early fall of 2001. He will be available by telephone, family dinners and e-mail for advice beyond this period.

Al Bruner will assist in the transfer of the County lease on the building and will provide introductions to various persons associated with the business and industry in St Maries Idaho; Salem, Oregon and throughout the U.S. and Canada. He will also assist with obtaining necessary temporary laborers and boat operators.

Al Bruner also agrees to transfer the equipment, as listed, in a "field ready" condition not later than August 20, 2001. Excluded in the "field ready" condition is the utility boat which will be transferred in its present as is condition. A separate payment of \$1,265 will be made by Doug Mc Inturff toward the necessary equipment repairs.

Al Bruner will also do the preliminary investigations relative to new growing areas, and bidding on the Benewah wild rice harvest. For this, and other similar services as may be required, Doug Mc Inturff agrees to provide reimbursement for reasonable and actual expenses incurred plus a consulting fee of \$100.00 per day as approved in advance.

It is agreed that the total sale price shall be \$15,000.00. A down payment of \$5,000.00 was paid on July 15TH of 2001. And the remaining \$10,000.00 shall be paid in two equal payments of \$5000.00 each. The first within 30 days after the end of the 2001 harvest and the final payment in January of 2002.

The attached document titled, "EQUIPMENT, June 2001", lists the equipment to be included and is made a part of this sale agreement.

Signed this 15TH day of July, 2001

EQUIPMENT

June 2001

BUILDING: Pole frame 40' x 70'; constructed in 1986-87. 50'x 50'x 6" reinforced Concrete slab behind building.

The building is located on Benewah County property at the St Maries Airport. The lease is without charge. However, the building reverts to County ownership when no longer used in the wild rice industry. It will be necessary to meet with the County Commissioners and transfer ownership. The annual property taxes on the building and farm equipment are about \$300.

The 1996 flood did considerable damage to the sheetrock walls and insulation in the offices and bathroom and rendered the building unusable for food products in their final form. The structure of the building was not harmed. The traveling chain hoist is very handy and will lift the entire frame works from the boats when major repairs are needed. The sewer system is not hooked up.

The shed, ovens, gas equipment, fork lift, pallet jack and conveyor belong to Larry Payne of St Maries Wild Rice, Inc. of Salem Oregon. To keep the operation going he will need to cure, roast and store the rice there until it is shipped to Salem. I am sure he will be easy to get along with about the building and utilities cost sharing. I suspect he would be very receptive to giving up this work to you in the future.

WATER RIGHTS:

The existing water rights included are registered with the Idaho Department of Water Administration as No. 92-07090 and No. 91-07094. These are valuable and absolutely essential to the operation. They are legal licenses which permit pumping water from the rivers into the fields at the specified rate. The licenses pertaining to Jeff Bakers fields were given to him earlier.

EQUIPMENT:

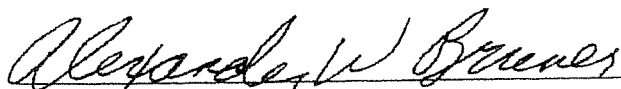
Wild rice pontoon airboat harvester #1 (largest) complete with 16' impact header. While there has been little maintenance done in the last year, it does not appear to be in need of any major repairs. It is in need of a thorough cleaning, tuning and servicing including a carburetor overhaul most likely. The header needs the tray and most of the screening replaced. Other minor repairs are needed. The estimated cost to have it field ready \$350-450).

Wild rice pontoon harvester #2 (smaller) complete with 14' all aluminum header. It was not used last year and appears to be missing a few minor parts. It was in good operating condition the year before. It also needs a thorough cleaning,

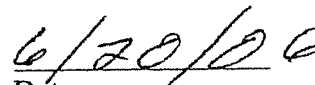
NOV 29 2006

WATER RESOURCES
WESTERN REGION

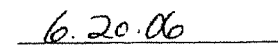
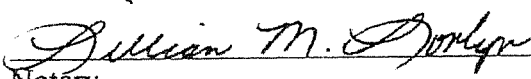
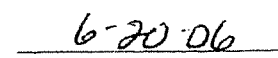
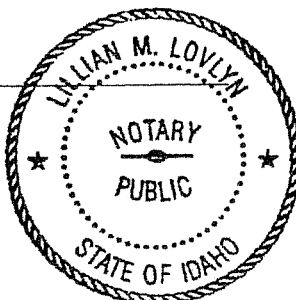
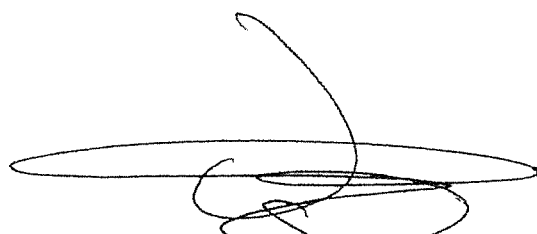
Pursuant to the "Sale of Wild Rice Harvesting Business Agreement", the transaction transpired as outlined, July 15, 2001. Douglas A. McInturff and Darcy D. McInturff purchased from Alexander W. Bruner and Judith C. Bruner, for the sum of \$15,000.00, the equipment listed under the "Equipment June 2001" attachment, along with the water rights numbers 92-07090 and 91-07094, as well as the rights to run the business.



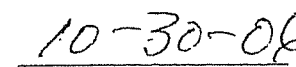
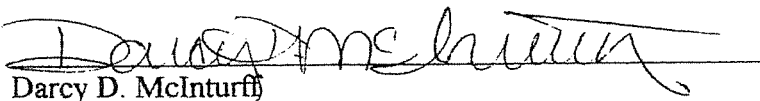
Alexander W. Bruner
5507 N. Parkwood Lane
Coeur d'Alene, ID 86815


Date

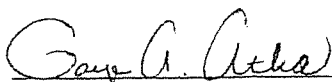
Judith C. Bruner


Date
Notary
Date

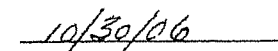
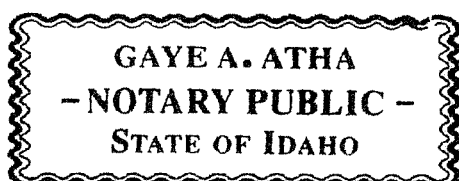
Douglas A. McInturff
17786 E. Canary Creek Road
Cataldo, ID 83810


Date

Darcy D. McInturff


Date

Notary


Date

Commission Expires
11/22/06



Web



Images



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Ne



IDAHO SECRETARY OF STATE

Viewing Business Entity

Lawrence Denny, Secretary of State

[[New Search](#)] [[Back to Summary](#)]
 [[Monitor ST. MARIES WILDRICE, INC. business filings](#)]

ST. MARIES WILDRICE, INC.

P. O. BOX 276
 ST. MARIES, ID 83861

Type of Business: CORPORATION, GENERAL BUSINESS

Status: ADMIN DISSOLVED 06 Feb 1998

State of Origin: IDAHO

Date of 13 Feb 1984

Origination/Authorization:

Current Registered Agent: LLOYD WELLOCK, CPA
 618 COLLEGE AVE
 ST MARIES, ID 83861

Organizational ID / Filing C75038

Number:

Number of Authorized Stock 100000

Shares:

Date of Last Annual Report: 24 Oct 1988

Original Filing:

[[Help Me Print/View TIFF](#)]

Filed 13 Feb 1984 INCORPORATION [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Annual Reports:

[[Help Me Print/View TIFF](#)]

Report for year 1996 ANNUAL REPORT [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 1995 ANNUAL REPORT [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 1995 MISCELLANEOUS [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 1994 ANNUAL REPORT [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 1994 MISCELLANEOUS [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 1993 ANNUAL REPORT [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 1992 ANNUAL REPORT [View Image \(PDF format\)](#) [View Image \(TIFF format\)](#)

Report for year 1992 CHNG [View Image](#)

Exhibit 10

AGREEMENT

This agreement entered effective December 31, 1988 between Jeffrey P. Baker and Mary Lou Baker ("the Baker's"), parties of the first part and Al W. Bruner and Judith C. Bruner ("the Bruner's"), parties of the second part whereby the Baker's agree to sell, and the Bruner's agree to purchase, all their right, title and interest in St. Maries Wildrice, Inc. ("the Corporation") which consists of nine hundred and forty (940) shares of \$ 10.00 par value common stock, non-assesable and fully paid, of the Corporation. Consideration for the sale shall be fifty thousand and fifty-nine dollars and fifty-five cents (\$50,059.55).

I - CONSIDERATION

The purchase price is to be paid by the Bruner's as follows:

Payment at date of signing	\$ 4,609.55
Promissory Note *	45,450.00

Total purchase price	\$ 50,059.55
	=====

* Promissory note of even date is hereby incorporated by reference into this agreement.

The Promissory note is to be deposited with the Bowen Agency, an escrow agent, for escrowing purposes. A copy of the Promissory Note is attached to this agreement as Exhibit "A".

II - SECURITY

This agreement and the promissory note of the Bruner's is hereby secured as follows:

A - The Baker's 940 shares of common stock is to endorsed in blank and deposited with the escrow agent and to be released to the Bruner's upon total payment of the outstanding balance plus accrued interest on the Promissory Note.

B - The Bruner's will endorse in blank and deposit with the escrow agent 19 shares of common stock currently owned by the Bruner's. The common stock is to be released to the Bruner's upon total payment of the outstanding balance plus accrued interest on the Promissory Note.

III - PROVISIONS OF DEFAULT ON PROMISSORY NOTE

The parties to this agreement hereby agree to the following terms and conditions should the Bruner's default on any of the terms of the Promissory Note or this agreement:

A - Notice of default shall be provided by the Baker's stipulating the nature of the default. Such notice will be provided by "Certified Mail" and the date the letter is placed in the U.S. Mail, to the last known address of the Bruner's, shall be the "control date" for the following terms:

A - If default occurs within the first three years of this agreement, the Bruner's shall have thirty (30) days from the "control date" to cure the default.

B - If default occurs after the third annual installment has been paid, then the Bruner's shall have one (1) year from the "control date" to cure the default.

IV - RIGHTS OF THE BAKER'S UPON DEFAULT

Should the Bruner's fail to cure any default within the prescribed time the Baker's shall have the following rights under the terms of this agreement:

A - The Baker's will take possession of the 959 shares of stock held by the escrow agent and, at the Baker's discretion they shall have the right, but are not required, to purchase the Bruner's 921 shares of common stock now owned, but unescrowed, by the Bruner's based upon the following formula:

Total equity of St. Maries Wildrice, Inc., determined in accordance with generally accepted accounting principles, on the date of default divided by the total number of shares of the Corporation's stock outstanding times the number of shares owned, but unescrowed, by the Bruner's.

V - ADDITIONAL COVENANTS

The Bruner's hereby covenant as follows:

A - Issuance of Additional Shares

Should St. Maries Wildrice, Inc. issue additional shares of stock, the Bruner's shall endorse and deposit with the escrow agent sufficient shares of the Corporation's voting stock to ensure that at all times at least 51 % of the voting stock of the Corporation is on deposit with the escrow agent,

B - St. Maries Wildrice, Inc. shall not enter into any long-term debt obligations which would be collateralized with the fixed assets of the Corporation, without first obtaining the written consent of the Baker's. Such written consent will not be unreasonably withheld. Debt secured by accounts receivable, inventory and other current assets does not require the Baker's approval.

C - Should the Bruner's sell the assets or stock of the Corporation to a third party during the term of this agreement, the Bruner's agree to share equally the proceeds of the sale between \$ 220,000.00 and \$ 260,000.00 between the Baker's and themselves. Proceeds in excess of \$ 260,000.00 shall be allocated exclusively to the Bruner's. Additionally, upon the occurrence of a subsequent sale the remaining unpaid balance of the Promissory Note plus accrued interest shall become due and payable from the proceeds of the sale.

D - The parties to this agreement hereby acknowledge that St. Maries Wildrice, Inc. is obligated to the Baker's on a promissory of even date in the original amount of \$ 59,940.45 less \$ 5,390.45 paid by the Corporation upon execution of this agreement and the parties further agree that the terms and conditions of this agreement extend to the Corporation's Promissory Note which is hereby incorporated into this agreement by reference and a copy is attached as exhibit "B". The original of the promissory note is deposited with the escrow agent.

E - The parties agree that the escrow fees are to be shared equally by the three parties to this agreement.

The parties hereby warrant this agreement supersedes all previous agreements, whether written or oral, between the parties and may only be amended by the written consent of all parties.

Dated this 1st day of March, 1989.

Sellers:

Jeffrey P. Baker 3-1-89
Jeffrey P. Baker Date

Mary Lou Baker 3-1-89
Mary Lou Baker Date

Buyers:

Al W Bruner 3-1-89
Al W. Bruner Date

Judith C Bruner 3/1/89
Judith C. Bruner Date

As to Article V - B, C and D of this agreement:

St. Maries Wildrice, Inc.

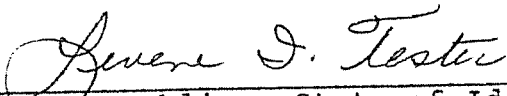
By Al W Bruner 3-1-89
Al W. Bruner, President Date

(Notary Public affidavits attached)

State of Idaho)
 :
County of Benewah)

On this 15th day of March, 1989, before me, the undersigned, a Notary Public in and for the State of Idaho personally appeared AL. W. BRUNER and JUDITH C. BRUNER, known to me to be the persons whose names are subscribed to the written instrument and acknowledge to me that they executed the same.

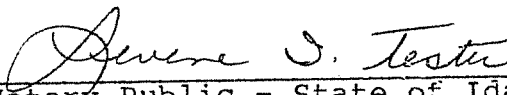
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.


Notary Public - State of Idaho
Residing at St. Maries therein
My Commission expires: 11-6-89

State of Idaho)
 :
County of Benewah)

On this 15th day of March, 1989, before me, the undersigned, a Notary Public in and for the State of Idaho personally appeared AL. W. BRUNER, President St. Maries Wildrice, Inc. known to me to be the person whose name is subscribed to the written instrument and acknowledge to me that he executed the same on behalf of St. Maries Wildrice, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.


Notary Public - State of Idaho
Residing at St. Maries therein
My Commission expires: 11-6-89

State of Utah)

County of Salt Lake

On this 15th day of March, 1989, before me, the undersigned, a Notary Public in and for the State of Utah personally appeared JEFFREY P. BAKER and MARY LOU BAKER known to me to be the persons whose names are subscribed to the written instrument and acknowledge to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Connie Mitchell
Notary Public - State of Utah
Residing at Sandy, Utah therein
My Commission expires: 9-19-91

St Maries Wild Rice, Inc.
Minutes of Special Board of Director's Meeting

Pursuant to the foregoing consent and waiver of notice a special Board of Directors meeting of St Maries Wild Rice, Inc. was held at Suite G07, 222 7th Street, St Maries, Idaho on March 1, 1989 at 1:00 pm.

Those present were as follows:

Jeffrey P. Baker
Al W. Bruner

Representing all of the Board of Director's - Others Present:
L.A. Wellock

The meeting was called to order by Jeffrey P. Baker, President.

Mr. Baker stated that he was desirous of resigning his position as President and as a member of the Board of Directors of the Corporation.

Mr. Baker then nominated Al W. Bruner to succeed him as President.

Upon motion duly made and seconded, Mr. Al W. Bruner was appointed President.

Upon motion duly made and seconded, it was agreed to accept the resignation of Jeffrey P. Baker.

Mr. Bruner then appointed Judith C. Bruner as acting Secretary-Treasurer of the Corporation.

Mr. Bruner suggested the Board of the Corporation convert the Notes due to Mr. Baker dated July 1, 1984 and September 30, 1986 to one consolidated current Promissory Note in the amount of \$59940.45. (Original notes have been updated to reflect payments, exchanges and accrued interest to arrive at the consolidated figure.)

Mr. Bruner further suggested the Corporation make payment to Mr. Baker in the above amount according to the attached schedule over a five year period with interest ~~on the unpaid balance~~ to accrue at 10% on the unpaid balance. This proposal was approved by Mr. Baker.

Upon motion duly made and seconded Mr. Bruner was authorized to issue the following promissory note on behalf of the Corporation with an effective date of March 1, 1989:

Mr. Jeffrey P. Baker \$59,940.45

There being no further business to come before the Board of Directors at this time, the meeting was adjourned.

M. Mullock
Witness

Al W. Bruner
Al W. Bruner, President

M. Mullock
Witness

Judith C. Bruner
Judith C. Bruner, Sect./Treas.

Jeffrey P. Baker
Jeffrey P. Baker/Approval

October 23, 2012

Doug McInturff
17786 E. Canary Creek Rd
Cataldo, ID 83810

Re: Claim to Water Right License 92-10503, formerly 92-7090

Dear Doug,

The Idaho Department of Water Resources is trying to sort out our conflicting water right claims on our lower wild rice field (RP45N02W02100CA).

License 92-7090 (since re-numbered to 92-10503) was originally issued to St. Maries Wild Rice when Al and I were partners. Mary Lou and I sold our interest in the business to Al in 1988.

The Mary Lou Baker Trust currently owns the 92-10503 Place of Use and any appurtenant water rights.

It is our understanding of Idaho Code Title 42-101 that water rights stay with the land unless contracted away by other agreement. No such agreement was ever signed by us or the previous owners of this land. Yet, we understand that your sale agreement with Al dated July 15, 2001 and signed in 2006 includes "water rights." At no time did we, or the previous landowners, of the Place of Use for this water contract away or in any way intentionally give up water rights to this land.

We feel the intent of Title 42-101 that water rights stay with the land unless contracted away by other agreement is fair, practical, and makes common sense. After discussing this at length with IDWR and submitting my own written statement, it seems the easiest way to resolve the IDWR conflict is for you and Darcy to withdraw your water right claim. I would very much appreciate your help.

If you can help me resolve this issue, please sign the enclosed Withdrawal of Water Right Claim and mail it in the addressed envelope. Please call if there are any questions.

Thanks,

Jeffrey P. Baker
715 N Chisholm Ct
Post Falls, ID 83854

Home: 208-262-9248
Cell: 208-640-1425

September 4, 2014

Douglas and Darcy Mc Inturff
17786 E Canary Creek Rd
Cataldo, ID 83810

Re: Water Right 92-10502

Dear Doug and Darcy,

As you know, the Coeur d'Alene-Spokane River Basin Adjudication (CSRBA) process is underway. I assume you received a printout of IDWR's preliminary recommendation for reporting claims to the CSRBA District Court. I am in the process of filing a "Notice of Error Reply" in an effort to resolve errors before the report is finalized and filed with the CSRBA Court. This letter is to clarify the status of our letter of agreement dated September 9, 2008.

The letter of agreement states that the lease expires after the 2014 harvest. In terms of Idaho water law, with the expiration of the lease there will be no easement, actual or implied, to the point of diversion, place of use, nor beneficial use.

I believe that the "Sale of Wild Rice Harvesting Business Agreement" on file with IDWR does not properly transfer ownership of the water right appurtenant to our land. The intent of paragraph labeled "Water Rights" appears to exclude water rights on our land with the following: "The licenses pertaining to Jeff Bakers (sic) fields were given to him earlier."

I'm sorry we couldn't correct the record several years ago when the issue first came up. It would have simplified the adjudication process. Nevertheless, these are the points that I plan to use to clarify the record and include on my Notice of Error Reply.

Sincerely,

Jeffrey P. Baker

Exhibit 14

November 27, 2015

Douglas and Darcy McInturff
17786 E Canary Creek Rd
Cataldo, ID 83810

Re: Water Right 92-10502

Dear Doug and Darcy,

As you know Special Master Brigitte Bilyeu has set December 2 as the deadline to obtain counsel and file notice of appearance, and December 9 for the scheduling conference.

At the October 6 initial hearing, the Court and IDWR encouraged us to try to reach a settlement out of court. The purpose of this letter is to ask again for settlement to save the Court, IDWR, you and I a lot of time, trouble, and expense.

I understand your position is that you bought the water rights from Al Bruner with the "Sale of Wild Rice Harvesting Business Agreement" on file at IDWR, dated July 15, 2001. My position is that you could not have bought the water rights because Al never legally owned them. Without a deed Al couldn't prove he was the former owner. Without a deed you will not be able to transfer the water right to another point of diversion, or another place of use. You will not be able to legally sell the water right to another without a deed showing you own what you wish to sell. Mistakes were made by putting your name on this water right and by not requiring proper documentation, but the adjudication process will correct those mistakes and they will not be repeated.

Associated with your sales agreement is the IDWR form "Notice of Change in Water Right Ownership" in which Alexander Bruner is listed as "Former Owner/Claimant(s) and you are listed as "New Owner/Claimant(s)." IDWR procedures required Al to provide a deed or other written conveyance document that indicated he was in fact the Former Owner. There is no record that document was provided.

Paragraph 2 B in the change in ownership form requires "A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, WITH ATTACHED LEGAL DESCRIPTION." The change cannot be properly processed without documentation of ownership. IDWR procedures in para 2 B are supported by Idaho Code: Water rights are appurtenant to the land (Idaho Code 42-101). A water right to irrigate my field from the St. Maries River is real property (Idaho Code 55-101). Real property must be transferred by an "instrument in writing" according to Idaho Code and the Statute of Frauds (Idaho Code 55-601). See enclosed Idaho Code.

Al had no instrument in writing, deed, title policy, contract of sale or other legal document that separated the ownership of the water right from the appurtenant land own by Albert and Ludie Best. The "conditions" of original water right 92-7090 has this statement: "This water right is appurtenant to the described place of use." That statement is consistent with Idaho Code 42-101. Al was not in fact the "Former Owner" on the "Notice of Change in Water Right Ownership" form. There never was a transfer of ownership, or separation of water right from the land.

The "CONTRACT OF SALE" in para 2 B refers to a contract between Bruner and the owners of the appurtenant land, which would have been Albert and Ludie Best. It does not refer to the sales agreement between Bruner and McInturff on file with IDWR. The sales agreement is not a conveyance document.

The deed to our land includes the phrase "with all appurtenances." That means water rights are "the complement of, or one of the appurtenances of" the land as in the black letter law of Idaho Code 42-101. There is no deed or instrument in writing that legally separated the appurtenant water right from the land.

Such a "deed, title policy, contract of sale" as required by para 2 B cannot be found on the IDWR website under water right 92-07090 or 91-07094. I checked with Jean Hersley at the IDWR records department in Boise and she told me she couldn't find such a deed anywhere in IDWR records.

We know such a document doesn't exist. I was a partner in St. Maries Wild Rice in 1981 when Al originally filed for a water right on my father-in-law's property. I will swear under penalty of perjury that there was no written agreement to grow wild rice on the property, much less a deed that separated the water right from the appurtenant land. Ab Best and Aaron Robinson were of the "old school" where a handshake was all that was needed. They didn't want the sharecrop arrangement or lease in writing. They certainly would have never agreed, verbally or in writing, to separate the water right from their land. I knew at the time the water right was not separated from the land and told Al so. I never considered water rights assets of the company. Neither SMWR nor Al "owned" them.

In the discovery phase of the adjudication proceedings the court may ask you to produce the required "deed, title report, contract of sale." If you can't produce a legal written conveyance document my position before the court will be that without a deed, diversion, place of use, beneficial use, and without a valid sales agreement you should be removed from the water right on my land.

In your Objection letter to the Court, you say: "At no point in time are the names Jeffrey P. Baker and William Ross associated with 92-10502, formerly 92-07090." That is factually incorrect. IDWR records show that I was a principal owner of SMWR. Furthermore, my name is on Transfer No. 4547, Water Right No. 92-07090 issued April 12, 1995. Transfer No. 4547 is the first item referred to under "Conditions of Approval" on the most current version of water right 92-7090.

IDWR records going back to the original water right will be used as evidence in court. Significantly, in the 34-year history of this water right the record shows attention to the technical details of the water right such as proof of beneficial use, points of diversion, flow rates, acre feet per acre, etc. but nowhere is there evidence of a deed, title report, contract of sale that separates the ownership of the water right from the appurtenant land. Such a deed does not exist.

I encourage you to read the enclosed pertinent sections of the Idaho Code and if necessary run this by legal counsel. We could avoid needless hassle by coming to an agreement as the Special Master and IDWR encouraged us to do.

Can we reach a resolution?

Jeff

Case Law Citations in Trial Brief 92-10502

Hale v. McCammon Ditch Co.

https://scholar.google.com/scholar_case?case=12546904431122751167&q=Hale+v.+McCammon+Ditch+Co.+&hl=en&as_sdt=4,13

Irrigation ditches and water rights are real property and thus can only be conveyed and transferred as other real property. Title to real estate may be transferred by contract or deed of the owners, adverse possession, or condemnation, or by operation of law. Sec. 9-503, I.C.; Ada County Farmers' Irrigation Co. v. Farmers' Canal Co., 5 Idaho 793, 51 P. 990, 40 L.R.A. 485; Burnham v. Freeman, 11 Colo. 601, 19 P. 761.

Crow v. Carlson

https://scholar.google.com/scholar_case?case=13974265198559510254&q=Crow+v.+Carlson+&hl=en&as_sdt=4,13

I.C. § 42-220 provides that "all rights to water confirmed under the provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted." Such is a codification of the law as it has existed since 1903. See 1903 Idaho Sess. Laws, p. 233, § 9; R.C. & C.L. § 3262 (1908); C.S. § 5580 (1919); I.C.A. § 41-214 (1932).

Lemmon v. Hardy

https://scholar.google.com/scholar_case?case=14461939425189357993&q=Lemmon+v.+Hardy&hl=en&as_sdt=4,13

Kinney states that a " * * * settler upon the unsurveyed lands of the United States has never been regarded as a trespasser * * * ."[11] The cases clearly do not support the broad proposition that all trespassers may establish valid water rights.

Furthermore in the case of Bassett v. Swenson[12] it was held that,

"It is quite 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." [13]

The Bassett case involved a trespass upon land privately owned. The rule as to trespass and water rights in Idaho appears to be that a water right initiated on the unsurveyed public domain is valid, but a water right initiated by trespass on private property is invalid.

In the case at bar the land designated as the point of diversion and place of use in appellants' original application was private property not owned by the appellants and therefore no valid water right could be developed on it. Since no valid water right was possible, it can be concluded that the application was filed for speculative purposes, not for development of a water right....

...The appellants in this action had shown no means of acquiring the land stated in their original application.

The appellants' filing an application for a water permit with no possessory right in the land designated as the place of use amounted to speculation in and of itself...

Snider v. Arnold

https://scholar.google.com/scholar_case?case=212476914418153232&q=Snider+v.+Arnold&hl=en&as_sdt=4,13

The Sniders, the Arnolds, and the Cascade District Ranger all signed this permit transfer form, however the circumstances surrounding its signing are disputed with the Arnolds claiming that the Sniders' names and signatures were added after Bette signed the form as an accommodation to the Sniders. Despite both the Arnolds and the Sniders being listed as permittees on the application, 45*45 the Forest Service returned the permit in the Arnolds' names alone because of a new directive limiting special use permits to one person or entity or to a husband and wife. Ron claims he knew that this would be the outcome and never represented otherwise to the Sniders either before or after he submitted the permit application. In contrast, Toni claims, and the district court found, that Ron made statements to her that they would jointly own the cabin and permit despite the permit being in the Arnolds' name alone. The district court also found that

Toni had a confidential relationship with her brother and trusted him to hold title to the permit for both couples...

... The district court recognized that there was conflicting testimony in this case, but found Toni and Steve to be more credible than Ron and Bette. This Court has held that even where the evidence is conflicting, it may still be substantial and competent, and it is for the district court to weigh the evidence and judge the credibility of witnesses. *Clayson v. Zebe*, 153 Idaho 228, 234, 280 P.3d 731, 737 (2012).

Black's Law Dictionary, 4th Edition, page 1681

<http://www.nationallibertyalliance.org/files/docs/Books/Black's%20Law%204th%20edition,%201891.pdf>

"Constructive trusts" do not arise by agreement or from intention, but by operation of law, and fraud, active or constructive, is their essential element. Actual fraud is not necessary, but such a trust will arise whenever circumstances under which property was acquired made it inequitable that it should be retained by him who holds the legal title. Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or [under] the broad doctrine that equity regards and treats as done what in good conscience ought to be done, and such trusts are also known as "trusts ex maleficio" or "ex delicto" or "involuntary trusts" and their forms and varieties are practically without limit, being raised by courts of equity whenever it becomes necessary to prevent a failure of justice. *Union Guardian Trust Co. v. Emery*, 292 Mich. 394, 290 N.W. 841, 845

TIMELINE SUPPORTING TRIAL BRIEF

SUBCASE NO. 92-10502
Case No. 49576

TIMELINE

7/21/1981 Alexander Bruner and Jeffrey P Baker, partners in St. Maries Wild Rice Growers filed for water right in the name of the partnership. The application stated there was a long-term lease on the property for growing wild rice. There was no written lease for farming. The deed to this land was in the names of Albert and Ludie Best and included a property description and the phrase “with all appurtenances” in accordance with IC 42-101. No agreement, written or verbal separated the water right from the appurtenant land.

7/21/1981 Water right 92-7090 is granted to the partnership, priority date July 21, 1981.

9/25/1986 Al Bruner, representing St. Maries Wild Rice Growers, assigns interest in Permit No. 92-7090 to St. Maries Wild Rice, Inc., (SMWR).

11/25/1986 Letter to St. Maries Wild Rice, Inc. from IDWR acknowledges receipt of the assignment and proof of beneficial use.

7/8/87 “Beneficial Use Field Report” prepared by field examiner.

11/18/1988 Letter to IDWR naming directors and officers of St. Maries Wild Rice, Inc. were listed as follows: President: Jeffrey P. Baker; Sec/Treas/Gen. Mgr: Al W. Bruner.

12/31/1988 Jeffrey Baker sells his interest in St. Maries Wild Rice, Inc. to Al Bruner, effective December 31, 1988. Bruner has a verbal agreement to farm Baker’s land, appurtenant to water right 92-7125 for the purpose of growing wild rice. Bruner/SMWR

continues to grow rice on land owned by Albert Best appurtenant to water right 92-07090 (later renumbered 92-10502)

3/1/1989 Special Board of Director's Meeting of St. Maries Wild Rice, Inc. in which Jeffrey Baker resigns his position as President and as a member of the Board of Directors of the Corporation.

10/9/1991 Albert Best dies. Ludie Best is surviving spouse and sole beneficiary of the estate.

5/15/1992 Water Right No. 92-07090 issued by IDWR to certify that SMWR has complied with the terms and conditions of the permit. On same date IDWR removed condition of approval that a measuring device be installed on permit No. 92-07090.

3/22/1993 Jeffrey P. Baker filed "Application for Transfer of Water Right" for change in point of diversion along with a letter written to Ken Knoblock dated 3/19/93. Note: The transfer analysis sheet completed by IDWR personnel indicated "proof of ownership" was reviewed noting that Baker was President of St. Maries Wild Rice, Inc. This is incorrect. Baker resigned as President and as a Board member March 1, 1989, after selling all his interest in SMWR to Al Bruner, effective 12/31/1988. Proof of ownership should have been established by checking for a deed. It was the belief of Baker and the landowner that the water right stayed with the land as an appurtenance, as indicated on the deed for the land of place of use.

6/7/1993 Application withdrawn with letter to Mr. Al Beardslee.

7/7/93 Letter from IDWR addressed to Jeffrey P. Baker, "water right holder" acknowledges the withdrawal of the above referenced Transfer.

3/1/1994 A ten year lease of same Best property is signed between Ludie Best and Jeffrey and Mary Lou Baker for the exclusive management of the property and place of use. The term of the lease was from March 1, 1994 to December 31, 2004. This lease removed SMWR as lessee under the verbal lease that had been in effect.

12/19/1994 Application for Transfer of Water Right filed by Jeffrey P. Baker.

1/13/1995 IDWR Water Right Profile Report lists St. Maries Wild Rice, Inc. with owner code "C".

4/11/1995 IDWR Water Right Profile lists Jeffrey P. Baker with owner code "C".

4/12/1995 Transfer No. 4547 of Water Right No. 92-07090, issued by IDWR to certify that Jeffrey P. Baker has requested a change to the above captioned water right. (Time stamped by IDWR 4/18/1995). Jeffrey P Baker is only name listed on the Transfer of Water right Application to transfer.

4/13/1995 Letter to Jeffrey P. Baker addressed, "Dear Water Right Holder(s):" from Jim Johnson, Manager, Water Rights Permit Section, announcing approval of the transfer.

5/2/1995 and 5/22/1995 "Notice of Application for Water Right Transfer No. 4547" listing the present right holder as Jeffrey P. Baker published in the St. Maries Gazette Record, per request from R. Keith Higginson, Director, IDWR.

9/2/1995 Ludie Best dies.

5/25/1996 Jeff and Mary Lou Baker purchased the Best property with appurtenant Water Right 92-07090 from the Best estate. The deed includes real property "with all appurtenances".

2/6/1998 St. Maries Wild Rice, Inc. administratively dissolved, Idaho Sec of State.

8/17/2005 IDWR received and time stamped a "Notice of Change in Water Right Ownership" between Alexander Bruner and Douglas A. McInturff.

Paragraph 2B requires the following to be submitted with the form: "A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, WITH ATTACHED LEGAL DESCRIPTION." No record has been found indicating compliance with this requirement.

9/9/2008 The Bakers and the McInturffs entered into a lease agreement that authorizes the McInturffs to use the Bakers' property. That lease ended after the 2014 harvest.

11/10/2009 IDWR received a CSRBA Notice of Claim to a Water Right for 92-7090 from Jeffrey P. Baker

6/6/2011 IDWR received a competing claim for the same water right from Douglas and Darcy McInturff.

9/2012 IDWR renumbered 92-7090 to 92-10502.

10/1/2012 IDWR received a statement of Jeffrey P. Baker and Mary Lou Baker stating that the Bruner/McInturff transfer of ownership was not proper. The water right was not Bruner's to convey. Furthermore, the last line of the paragraph excludes Baker's water rights from the sales agreement with this quote: "The licenses pertaining to Jeff Bakers (sic) field were given to him earlier."

10/23/2012 Baker sent letter to McInturffs requesting help clearing up the conflicting water right claims and enclosed a "Withdrawal of Water Right Claim" letter.

1/2013 Baker phone call from California to McInturffs requesting further help with the conflicting water right.

9/4/2014 Baker letter sent to the McInturffs informing them that with the expiration of the lease there will be no easement, actual or implied, to the point of diversion, place of use, nor beneficial use, and that the Bruner/McInturff sales agreement did not transfer ownership of the Baker water right.

1/14/2014 Baker hand delivers to Chad Goodwin at IDWR a letter addressed to Shawn Maxey detailing the history of License 92-7090 and re-asserting the Baker claim.

3/25/2014 William H. Ross submitted a claim for 92-7090

10/6/2015 Initial Hearing in St. Maries Federal Building

11/27/2015 Baker sends letter to McInturffs requesting a negotiated settlement out of court.

4/28/2016 Settlement Hearing at IDWR CdA, video conference

5/24/2014 Settlement Hearing at IDWR Cda, video conference

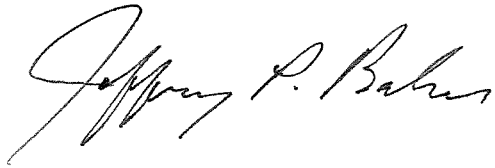
6/1/2016 Status Conference call scheduled 1:00pm (PT)

6/15/2016 Pre-Trial scheduled 1:00pm (PT)

7/7/2016 Trial scheduled

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED June 6, 2016

A handwritten signature in black ink, reading "Jeffrey P. Baker". The signature is written in a cursive style with a large, stylized "J" and "B".

Jeffrey P. Baker