

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-18957
Date Received: 9/15/1989
Receipt No: W005966
Received By: Rch

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: OWYHEE MOTORCYCLE CLUB INC. 208-888-7357
Address: C/O RICK HENSON
P.O. BOX 733
BOISE, ID 83701

2. Date of Priority: DEC 31, 1958

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02E	15	SW	SE			ADA

5. Description of diverting works:
120'D., 8" CAS., SUB. PUMP, P. TO CLUB HS/DOM. HOME/SPR. SYS.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		
COMMERCIAL	01/01	12/31	0.230		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
DOMESTIC 1 HOME/CLUB HS, COMM. USE IS FOR WATERING TRACK(S)

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02E	15	SE	SW		COMMER	

A63-18957

Page 1

Date: 09/15/89

SCANNED
OCT 05 2006

MICROFILMED
SEP 01 1992

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02E	15	SW	SE		DOMEST	
			SW	SE		COMMER	

11. Place of use in counties: ADA

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

13. Other Water Rights Used:

NONE

14. Remarks:

COMMERCIAL USE IS FOR CLUB HS. & WATERING OF TRACKS
DOMESTIC USE INCLUDES UP TO 1/2 ACRE OF IRRIGATION WITH HOME.
HOME IS COMBINED WITH CLUB HS.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am TREASURER of _____
Title

OWYHEE MOTORCYCLE CLUB, that I have signed the foregoing
Organization

document in the space below as TREASURER of _____
Title

OWYHEE MOTORCYCLE CLUB and that the statements contained in the
Organization

foregoing document are true and correct.

Vernon Carlberg
Signature of Authorized Agent

TREASURER OWYHEE MOTORCYCLE CLUB
Title and Organization

7/15/89
Date

State of Idaho)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 15th day
of Sept 19 89

Ron Howerton
Notary Public

Seal

Residing at Ron Howerton
Residing at Boise, Idaho
My Commission Expires December 8, 1994



ReceiptID	Amount	BasinNumber	SequenceNum	SplitSuffix	Type
W005966	123.00	63	18957		Claim

RECEIVED

AUG 11 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2009 AUG 10 PM 12 01

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

In Re SRBA

Case No. 39576

) SPECIAL MASTER'S REPORT
)
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)
) FOR WATER RIGHT 63-18957

I. FINDINGS OF FACT

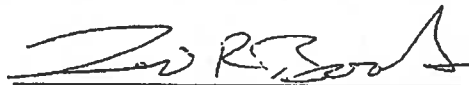
A notice of claim was filed for the above-captioned water right pursuant to I.C. § 42-1409. The Director of the State of Idaho Department of Water Resources (IDWR) examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of this water right.

Objections were timely filed by The Terteling Co., Inc, through its attorney Charles L. Honsinger, and by the Edwards Family, LLC, through its attorney Dana Hofstetter. On May 1, 2009, IDWR filed an *Amended Director's Report*. No objections were filed to the *Amended Director's Report*, and the objection period has expired. There are therefore no unresolved objections and this water right may be decreed with the elements as set forth in the *Amended Director's Report*.

II. CONCLUSIONS OF LAW

Therefore based on the file and record herein, IT IS RECOMMENDED that water right 63-18957 be decreed with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

Dated Aug 10, 2009



Theodore R. Booth
Special Master
Snake River Basin Adjudication

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

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG 10 2009

By _____

Clerk

Deputy Clerk

In Re SRBA)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 63-18957

NAME AND ADDRESS: OWYHEE MOTORCYCLE CLUB INC
6600 CARTRIGHT RD
BOISE, ID 83703

SOURCE: GROUND WATER

This water right does not authorize the diversion of a low
temperature geothermal resource or other geothermal resource.
This water right is diverted from a well locally referred to as
the "Owyhee Motorcycle Club well."

QUANTITY: 0.16 CFS
27.93 APY

The quantity of water under this right for domestic use shall
not exceed 13,000 gallons per day.

PRIORITY DATE: 12/31/1958

POINT OF DIVERSION: T04N R02E S15 SWSE Within Ada County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Commercial	01-01 TO 12-31	0.16 CFS
			27.93 APY
	Domestic	01-01 TO 12-31	0.04 CFS

Domestic use is for 1 home and clubhouse associated with a
motorcycle club and includes up to 1/2 acre of irrigation.
Commercial use is for a clubhouse and watering of tracks for
dust control associated with a motorcycle club.

PLACE OF USE:	Commercial		Within Ada County
	T04N R02E S15	SESW	SWSE
	Domestic		Within Ada County
	T04N R02E S15	SWSE	

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

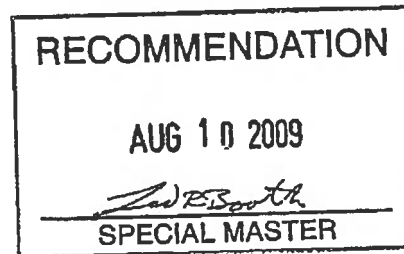
The quantity of water decreed for this water right for domestic
use is not a determination of historical beneficial use.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication



DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho AUG 10 2009 By _____ _____ Deputy
--

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

In Re SRBA)
))
Case No. 39576)
))
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

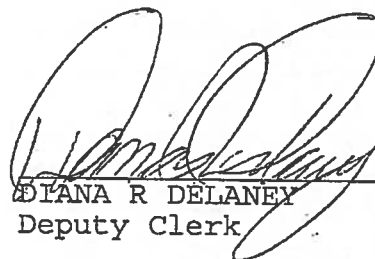
Water Right(s): 63-18957

On August 10, 2009, Special Master THEODORE R. BOOTH issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED August 10, 2009.


DIANA R DELANEY
Deputy Clerk

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 10 2009	
By _____	Clerk _____
Deputy Clerk _____	

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

In Re SRBA)
)
Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 63-18957

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on August 10, 2009, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

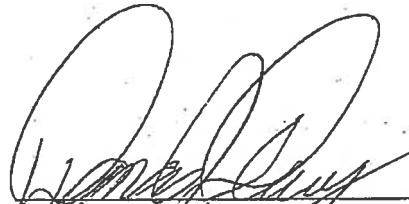
THE TERTELING CO INC
Represented by:
CHARLES L. HONSINGER
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

EDWARDS FAMILY LLC
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702
Phone: 208-424-7800

CERTIFICATE OF MAILING

PAGE 1
08/10/09

OWYHEE MOTORCYCLE CLUB INC
Represented by:
JULIE K. FISCHER
5680 E FRANKLIN RD, STE 220
NAMPA, ID 83687
Phone: 208-475-2200



DIANA R DELANEY
Deputy Clerk

Julie Klein Fischer
 MORROW & FISCHER, PLLC
 332 North Broadmore, Suite 102
 Nampa, Idaho 83687
 Telephone: (208) 475-2200
 Facsimile: (208) 475-2201
 ISB No.: 4601
jfischer@morrowdinius.com

Attorneys for Owyhee Motorcycle Club

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

In Re SRBA

Case 39576

) SUBCASE NO. 63-18957
)
) MOTION TO DISMISS
)
)
)
)
)

COMES NOW, Owyhee Motorcycle Club, Inc. ("OMC") through its attorney of record, Julie Klein Fischer, and moves this court for an order dismissing the above-captioned matter. This Motion is brought pursuant to Idaho Rule of Civil Procedure 41(a) and is based on the facts and reasons set forth below:

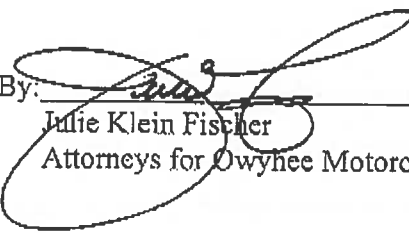
On January 30, 2009 this Court entered an *Order Requesting 706 Report / Amended Director's Report from IDWR* ("Order"). Specifically, the Order required the Department to

prepare and serve on the parties a report detailing the basis for its recommendation. *Id.* p. 1. The Order also required the Department to file an Amended Director's Report to correct an error in the quantity element of the subject water right. Both the 706 Report and Amended Director's Report were due April 30, 2009, and any objection(s) to the Amended Director's Report were due by May 28, 2009." Order p. 2. The Order clearly stated that the objections and responses on file in *this* case would not survive the filing of an Amended Director's Report.

The Department timely complied with the Order by filing and serving the 706 Report and Amended Director's Report. As of this date no objections to the Amended Director's Report have been lodged, and there no longer is a controversy over the Department's recommendation for Right No. 63-18957. Accordingly, OMC respectfully requested the matter be dismissed, with prejudice.

DATED this 19th day of June, 2009.

MORROW & FISCHER, PLLC

By: 

Julie Klein Fischer

Attorneys for Owyhee Motorcycle Club

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 19 day of June, 2009, a true and correct copy of the above and foregoing document was served upon the following by:

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

☒

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 287-6700

Chief, Natural Resources Division
Office of the Attorney general
State of Idaho
PO Box 44449
Boise, ID 83711-4449

☒

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 854-8072

Edwards Family LLC
c/o Dana Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702

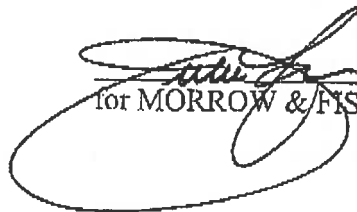
☒

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 424-8774

The Terteling Co. Inc.
c/o Charles L. Honsinger
RINGERT LAW.
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

☒

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 342-4657


for MORROW & FISCHER, PLLC

MORROW & FISCHER, PLLC

ATTORNEYS AT LAW

332 N. Broadmore Way, Ste. 102
Nampa, Idaho 83687
Phone: (208) 475-2200
Fax: (208) 475-2201

Facsimile

DATE: June 19, 2009

TO: IDWR Document Depository

FAX NO.: 287-6700

FROM: Julie Klein Fischer / Laura

PAGES: 4
(Incl. Cover Page)

RE: *SRBA Case No. 39576*
Subcase No. 63-18957

COMMENTS: Please see the attached:

1. Motion to Dismiss.

ORIGINAL: ☒ Will NOT follow ☐ Will follow by U.S. Mail ☐ Will follow by electronic mail

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the ATTORNEY-CLIENT PRIVILEGE. This information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

If you do not receive all pages, please call Laura as soon as possible at (208) 475-2200.

William A. Morrow Julie Klein Fischer Shelli D. Stewart

qualification are set forth in my curriculum vitae attached hereto as Exhibit "A".

4. My company, HydroLogic, Inc. conducted the "pre-inspection" referred to in the Affidavit of Charles L. Honsinger in Support of Motion to Compel. Mr. Paul Drury, Owyhee Motorcycle Club's ("OMC") expert also attended that pre-inspection.

5. It is my understanding that the issue in this case is the quantity of water available from OMC's well. The amount of water available from a well is a function of:

A. The available drawdown in the well (pump-setting minus non-pumping water level).

B. The specific capacity of the well (ratio of discharge to drawdown under pumping conditions).

C. The capacity and performance curve of the pumping plant.

It is impossible to correctly assess the well's specific capacity and sustainable yield without first obtaining, at the very least, non-pumping and pumping water levels.

6. Mr. Drury stated to HydroLogic that he had not measured water levels in the OMC well.

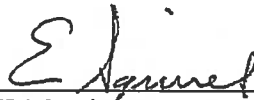
7. Simply measuring an instantaneous discharge rate, for a short time period, does not constitute a pumping test to determine capacity of the well.

8. HydroLogic's preliminary inspection of the OMC well established that the necessary means of measuring the well were not part of the OMC well head plumbing. We had no information regarding pump size, setting, and/or performance. There was no flow-meter or exposed discharge for us to measure. There was no monitoring tube for measuring water levels.

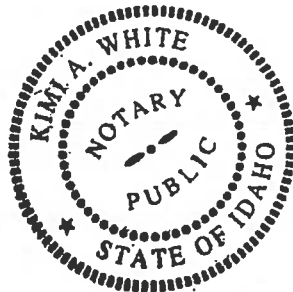
There were no reliable pressure gages for measuring system pressures.

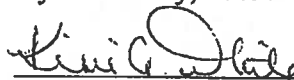
9. As a result of our pre-inspection, HydroLogic, Inc. recommended the minimum procedure necessary to properly determine the capacity of the well. There is simply nothing less, other than the second proposal I made to Mr. Honsinger that is attached as Exhibit "C" to his affidavit, that can be done to determine the OMC well's yield. Even then, as outlined in my proposal, that process will not provide all necessary information we would typically obtain and use to evaluate a water well (including the details of well construction that are currently unknown) to confirm the accuracy of our calculations. At issue in this subcase is the capacity of Claimant Owyhee Motorcycle Club, Inc.'s diversion and distribution system.

Further your affiant sayeth naught.

By: 
Ed Squires

Sworn to and subscribed before me this 23rd day of January, 2009.




Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 24/01/10

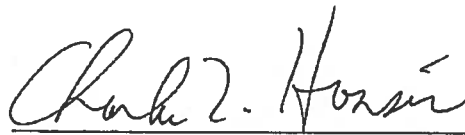
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2009, I caused to be served a true and correct copy of the foregoing document via U.S.mail and facsimile to the following:

Julie Klein Fisher
Morrow Dinius
5680 East Franklin Road, Ste. 220
Nampa, Idaho 83687
Fax: (208)475-2201

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720
Fax: (208) 287-6700

Edward Family LLC
c/o Dana Hofstetter
Hofstetter Law office, LLC
608 West Franklin Street
Boise, Idaho 83702
Fax: (208)424-8774



Charles L. Honsinger

RECEIVED

FEB 02 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JAN 30 2009	
By _____	Clerk
Deputy Clerk	

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

In Re SRBA	) Subcase 63-18957
	)
Case No. 39576	) ORDER DENYING MOTION TO
	) COMPEL
	)
	) ORDER REQUESTING 706 REPORT /
	) AMENDED DIRECTOR'S REPORT
	) FROM IDWR;
	)
	) ORDER SETTING SCHEDULING
	) CONFERENCE

I. ORDER DENYING MOTION TO COMPEL

On January 2, 2009, The Terteling Company, Inc. (TTCI), objector, through its attorney Charles L. Honsinger, filed a *Motion to Compel* seeking an order requiring claimant Owyhee Motorcycle Club to permit TTCI and its experts to enter upon land owned by Owyhee Motorcycle Club for the purpose of inspecting the water diversion and distribution system that is used in connection with the subject water right. The motion was heard on January 27, 2009. In accordance with the comments of this Special Master and the comments of the participants at the hearing, TTCI's *Motion to Compel* is denied without prejudice.

II. ORDER REQUESTING 706 REPORT /
AMENDED DIRECTOR'S REPORT FROM IDWR

Pursuant to Idaho Rule of Evidence 706, and Idaho Code § 42-1401B, it is ordered that IDWR shall prepare and serve upon the parties to the subcase and the SRBA Court a report detailing the basis for its recommendation. Additionally, because there is

an error¹ in the quantity element of the previously filed *Director's Report*, an *Amended Director's Report* shall be filed contemporaneously therewith. The deadline for filing the 706 Report and the *Amended Director's Report* is **April 30, 2009**. The 706 report may address any or all of the elements of the water right claim as IDWR deems appropriate, but particular emphasis should be placed upon the disputed element of quantity.

In accordance with I.R.E. 706, a deposition of IDWR may be taken by any party; and IDWR may be called to testify by any party or by the Court pursuant to I.R.E. 614(a); and IDWR shall be subject to cross-examination by each party.

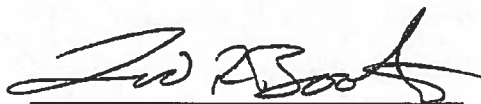
Notice of the filing of the *Amended Director's Report* shall be published on the Court's Docket Sheet in May, 2009, and objections to the *Amended Director's Report* shall be filed by **May 28, 2009**. The objections and responses currently on file will not survive the filing of the *Amended Director's Report*, and the parties are required to file new objections / responses as they deem necessary.

III. ORDER SETTING SCHEDULING CONFERENCE

A scheduling conference will be held on **June 23, 2009 at 10:00 AM Mountain Time** at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.

Dated

Jun 30, 2009



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

¹ The *Director's Report* recommended a quantity of 0.16 cfs, with an annual limitation of 142.40 AFY. One cfs running continuously for one year yields 723.94 AF. Therefore, 0.16 cfs running continuously for one year would yield 115.83 cfs ($723.94 \times 0.16 = 115.83$).

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO COMPEL ORDER REQUESTING 706 REPORT ORDER SETTING SCHEDULIN CONFERENCE was mailed on January 30, 2009, with sufficient first-class postage to the following:

THE TERTELING CO INC

Represented by:

CHARLES L. HONSINGER

455 S THIRD ST

PO BOX 2773

BOISE, ID 83701-2773

Phone: 208-342-4591

EDWARDS FAMILY LLC

Represented by:

DANA L. HOFSTETTER

608 WEST FRANKLIN STREET

BOISE, ID 83702

Phone: 208-424-7800

OWYHEE MOTORCYCLE CLUB INC

Represented by:

JULIE K. FISCHER

5680 E FRANKLIN RD, STE 220

NAMPA, ID 83687

Phone: 208-475-2200

DIRECTOR OF IDWR

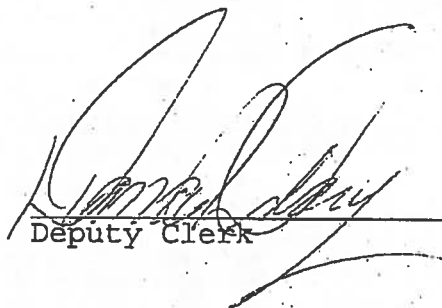
PO BOX 83720

BOISE, ID 83720-0098

ORDER

Page 1 1/30/09

FILE COPY FOR 01245 Deputy Clerk



Consultants in
natural
resources and
the environment

Denver • Boise • Durango • Western Slope

**OWYHEE MOTORCYCLE CLUB
WATER RIGHT CLAIM NO. 63-18957
ADA COUNTY, IDAHO**

Prepared for—

Julie Klein Fischer, Esq.
Morrow Dinius & Fischer, PLLC
5680 E. Franklin Rd., Ste. 220
Nampa, Idaho 83687

Prepared by—

Paul E. Drury, P.E.
ERO Resources Corporation
3314 Grace St.
Boise, Idaho 83703
(208) 373-7983

March 5, 2009



ERO Resources Corp.

3314 Grace Street

Boise, ID 83703

(208) 373-7983

Fax: (208) 373-7985

www.eroresources.com

eroboise@eroresources.com

**OWYHEE MOTORCYCLE CLUB
WATER RIGHT CLAIM NO. 63-18957
ADA COUNTY, IDAHO**

MARCH 5, 2009

Introduction

This report provides additional evidence to support the Idaho Department of Water Resources (IDWR) recommendation for water right 63-18957 owned by the Owyhee Motorcycle Club (OMC). To prepare this report, ERO Resources Corp. (ERO) reviewed the claim, recommendations, and adjudication back file obtained from the IDWR website online data base. ERO also performed site visits on June 24 and July 17, 2008 to collect data regarding the diversion and distribution system, acquire information to describe the water system operations, and to conduct flow measurement tests to verify the diversion capacity.

The diversion and distribution system has been developed to provide domestic, irrigation, and commercial water to the Owyhee Motorcycle Club located in Township 4 North, Range 2 East SW¼ SE¼ Section 15 in Ada County, Idaho. This property is located north of Boise off of Cartwright Road.

IDWR Claim Review

IDWR conducted a desk top review of claim 63-18957 to verify elements of the water right including the rate of flow and annual diversion volume. IDWR contracted Intrepid Engineering Services (Intrepid) to conduct the on-site investigation portion of the review.

The online water right back file for 63-18957 contains a field report prepared by Intrepid dated November 19, 2001 for the Snake River Basin Adjudication as part of the IDWR claim review. This field report describes the diversion works as an 8 inch casing, 120 feet deep, with a 5 horsepower submersible pump.

Intrepid's field report concludes that the flow rate from the subject well is 0.16 cfs based on a 5 hp pump, a lift of 50 feet, a discharge pressure of 60 psi, and an efficiency of 70%.

IDWR's recommended annual volume limit is 142.4 acre-feet per year, but is in error. Notes in the water right back file indicate the annual volume should be 19 acre-feet and not 142.4 acre-feet as recommended.

Description of Diversion and Distribution

The OMC diversion works consist of a well located near the south property line in the SW¼ SE¼ Section 15. The well drillers report could not be located for this well. There is no name plate data for the pump available. There is no meter installed on the diversion works. A photograph of the diversion works is shown in Figure 1. The motor starter in the pump house indicates the pump is 5 horsepower. The pump and motor is submersible. Access to the nameplate data for make, model and serial number is not possible without pulling the pump.



Figure 1. Owyhee Motorcycle Club Diversion Works

The distribution system consists of a 1.5 inch diameter steel pipe from the well to two pressure tanks located in the pump house. A pressure gage is installed on the distribution piping inside of the pump house. A total of four distribution lines lead from the pressure tanks to the place of use. A 1.25 inch line leads to the trailer house for domestic use. A 1.5 inch line leads to the club house for domestic use. A 2 inch and a 1.5 inch line lead to storage tanks located throughout the property. Water from the storage tanks is pumped with booster pumps through

sprinkler systems and hoses for dust suppression and preparation of dirt tracks. A photograph of the distribution works is shown in Figure 2.



Figure 2. Owyhee Motorcycle Club Distribution Works

Six water storage tanks are located throughout the property. These tanks are used to store water prior to the application of water to the motorcycle tracks for dust suppression. Members of the OMC estimate the combined storage volume of the six tanks is about 46,000 gallons. Discussions with OMC and notes in the IDWR claim back file indicate that the OMC facility conducts approximately 60 races per year. In addition to race days, the facility is open for practice once a week during the summer months. Prior to opening and during races and practices, the storage tanks are filled and drained for track conditioning. At a discharge rate of 0.16 cfs for 80 days (60 race days plus 20 practice days), the annual volume pumped is approximately 25 acre-feet. This volume is sufficient to operate the facility.

Flow Measurement Test

Paul Drury, P.E., a water resource engineer with ERO, conducted two flow measurement tests on July 17, 2008. The first test utilized an ultra-sonic flow meter to measure the flow rate in a closed pipe. Discharge was measured in the 1.5 inch diameter steel discharge pipe using a Peek PolySonic meter, Model Number DCT-7088, Serial Number 33508, Calibrated June 2006. The meter requires temporary installation of transducers on the outside of the pipe. Transducers

were installed on a straight run of pipe near the well head in a WW configuration at a spacing of 5.2 inches. Flow measurement was recorded to be 59.5 gpm (0.13 cfs) at an in line pressure of 83 psi at the pump house after the flow rate stabilized at a constant rate. The back pressure (83 psi) is higher than under normal operating conditions because only one discharge pipe was open for the test. Normal operations will have other pipes open for filling of tanks and other uses, which would lower the back pressure. A lower back pressure would result in a higher flow rate from the well.

The second test, used to confirm the results of the first test, utilized the time to fill a container of known volume. The test was started once the flow rate and pressure stabilized. The measured flow rate of 59.5 gpm was confirmed by the time to fill a 58.5 gallon drum (59 seconds) at an in line pressure of 83 psi at the pump house. The flow test configuration is shown in Figure 3.



Figure 3. Flow measurement at the Owyhee Motorcycle Club

Both tests determined the flow rate to be 0.13 cfs at a discharge pressure of 83 psi. This flow rate compares favorably with Intrepid's flow value of 0.16 cfs, which is based on a lower discharge pressure (60 psi). Paul Drury observed and recorded the flow meter and pressure gage during both tests.

The flow measurement tests conducted by Paul Drury reflect normal operating conditions during fill of the below ground tank at the Motocross Track with the exception that no other uses

(domestic) or other tank filling was taking place at the same time. The pump discharges to this tank at atmospheric conditions; there is an air gap between the discharge pipe and the water level in the tank; and the discharge pressure is constant. The measured discharge of 0.13 cfs is a conservative estimate of the flow rate the water system is capable of producing. As mentioned above, only one of the four discharge lines from the pump house was open during the test. If all four discharge lines were open, the flow rate would be greater due to less back pressure. In addition, ground water pumping from nearby wells on the adjacent property to the south may have caused aquifer affects that reduced the flow rate measured during the tests.

Conclusion

IDWR should file an amended report indicating the recommended diversion rate of 0.16 cfs and annual volume limit of 25 acre-feet. Data collected by ERO supports conclusions made by Intrepid that the ground water pumping system at OMC is capable of a diversion rate of 0.16 cfs. IDWR recommendation for water right 63-18957 should reflect that diversion rate.

ERO estimates that an annual volume of 25 acre-feet is appropriate and sufficient for operations at OMC. An annual volume limit of 25 acre-feet represents a fair estimate of the annual use based on a diversion rate of 0.16 cfs for 80 days/year. IDWR recommendation for water right 63-18957 should reflect that annual volume.

RECEIVED

JAN 05 2009

Department of Water Resources
Adjudication Bureau

2009 JAN 02 AM 10:39
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA) ORDER SETTING HEARING
Case No. 39576)
SUBCASE NO: 63-18957

Please be advised that Special Master THEODORE R. BOOTH
has set for hearing the MOTION TO COMPEL.

TUESDAY, JANUARY 27, 2009 at 01:30 PM (MT)

SRBA
253 - 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

IT IS SO ORDERED.

Dated: JANUARY 02, 2009

/S/ THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Page 1 1/02/09

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING HEARING was mailed on JANUARY 02, 2009, with sufficient first-class postage to the following:

THE TERTELING CO INC

Represented by:

CHARLES L. HONSINGER

455 S THIRD ST

PO BOX 2773

BOISE, ID 83701-2773

Phone: 208-342-4591

EDWARDS FAMILY LLC

Represented by:

DANA L. HOFSTETTER

608 WEST FRANKLIN STREET

BOISE, ID 83702

Phone: 208-424-7800

OWYHEE MOTORCYCLE CLUB INC

Represented by:

JULIE K. FISCHER

5680 E FRANKLIN RD, STE 220

NAMPA, ID 83687

Phone: 208-475-2200

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

RECEIVED
JAN 02 2009
DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case 38576

Subcase No. 63-18957

MOTION TO COMPEL

COMES NOW, Objector The Terteling Company, Inc. (hereinafter "TTCP") by and through its attorneys of record, Ringert Clark, Chartered, and hereby move this Court to issue an Order requiring Claimant Owyhee Motorcycle Club, Inc. to permit TTCP and its experts and consultants to enter upon real property owned by Owyhee Motorcycle Club located at 6600 Cartwright Road, Boise ID 83703 (T04N R02E Section 15, SESW, SWSE) for the purpose of inspecting the water diversion and distribution system located on said property as ordered by this Court from the bench on June 16, 2008. This Motion is made pursuant to I.R.C.P. 26(a) and/or I.R.C.P. 37(a), and is supported by the Affidavit of Charles L. Honsinger in Support of Motion to Compel submitted herewith.

COPY

DATED this 30th day of December, 2008.

RINGERT CLARK CHARTERED

By: 
Charles L. Honsinger
Attorneys for Plaintiff

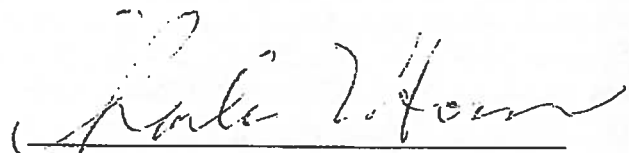
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 2008, I caused to be served a true and correct copy of the foregoing document via U.S. mail and facsimile to the following:

Julie Klein Fisher
Morrow Dinius
5680 East Franklin Road, Ste. 220
Nampa, Idaho 83687
Fax: (208)475-2201

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720
Fax: (208) 287-6700

Edward Family LLC
c/o Dana Hofstetter
Hofstetter Law office, LLC
608 West Franklin Street
Boise, Idaho 83702
Fax: (208)424-8774


Charles L. Honsinger

RECEIVED
JAN 02 2009
DEPARTMENT OF
WATER RESOURCES

CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third Street, P.O. Box 455
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
Attorneys for Claimants The Terteling Company, Inc.

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

In Re SRBA

Case 38576

)
) Subcase No. 63-18957
)
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AFFIDAVIT OF CHARLES L. HONSINGER
IN SUPPORT OF MOTION TO COMPEL

STATE OF IDAHO

COUNTY OF ADA

)
) ss
)

CHARLES L. HONSINGER, being first duly sworn upon his oath, deposes and says that:

1. I am the attorney for the objector The Terteling Company, Inc. ("TTCP") in the above captioned Snake River Basin Adjudication subcase.

2. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

3. On June 11, 2008, TTCI filed its Motion to Enter upon Land for Inspection of Water Diversion and Distribution System/Motion to Compel supported by the Affidavit of Charles L. Honsinger.

COPY

4. The Owyhee Motorcycle Club ("OMC") filed its Objection to Motion to Enter upon Land for Inspection of Water Diversion and Distribution System/Motion to Compel and supporting Affidavit of Julie Klein Fischer on June 13, 2008.

5. The Court heard TTCI's Motion on June 16, 2008, granting the same from the bench.

6. After the Court granted TTCI's Motion, I communicated with Julie Klein Fischer, counsel for OMC, to discuss the work that TTCI's expert, HydroLogic, Inc. needed to do. I explained to Ms. Klein Fischer that Mr. Squires would need to visit the OMC property to do a "pre-inspection" to determine what further work would be necessary. HydroLogic conducted the "pre-inspection" on July 23, 2008 accompanied by an expert from ERO Resources representing OMC.

7. On August 19, 2008, I forwarded a copy of a Draft Technical Memorandum authored by Ed Squires of HydroLogic, Inc. to Ms. Fischer. A true and accurate copy of the Draft Technical Memorandum together with the e-mail message with which it was transmitted is attached hereto as Exhibit "A". The Draft Technical Memorandum details the work conducted by HydroLogic during the "pre-inspection" together with a "Recommendations" section detailing the work necessary to determine the production capacity of the OMC water system.

8. On September 9, 2008, I received an e-mail message from Ms. Fischer stating that her client would object to the additional work proposed by HydroLogic, Inc., but that she preferred to work through her concerns that the scope of work was too great. A copy of that e-mail message is attached hereto as Exhibit "B".

9. On September 15, 2008, after speaking with Ed Squires of HydroLogic, Inc., I

forwarded Ms. Fischer a proposal for additional work to determine the capacity of OMC's system that was not as extensive as that proposed in HydroLogic's August 19, 2008 Draft Technical Memorandum. A copy of the e-mail forwarding that proposal is attached hereto as Exhibit "C". I noted in my e-mail that if the diminished work did not provide the needed information, TTCI reserved the right to file a Motion to Compel the work contemplated in the Draft Technical Memorandum.

10. On November 4, 2008, Ms. Fischer responded to the limited scope of work proposed by TTCI with a letter to me (a true and accurate copy of which is attached hereto as Exhibit "D") stating that OMC would not permit such work without further direction from the Special Master, even though the letter admits Ms. Fischer's knowledge that a further inspection would be needed.

11. As Ms. Fischer's letter specified that there were alternative methods that could be employed to obtain data, I requested that she let us know the specifics of such alternatives so that TTCI and its consultant could evaluate them. Attached hereto as Exhibit "E" are two separate e-mails requesting such details. To date, I have not yet received information regarding the alternatives referenced in the November 4, 2008 letter.

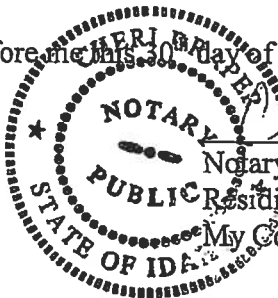
12. As indicated by HydroLogic Inc.'s August 19, 2008 Draft Technical Memorandum (see Exhibit A, ¶1.e,f; ¶4), the information needed to establish the capacity of OMC's system could not be obtained at the July 23, 2008 "pre-inspection." Accordingly, HydroLogic, Inc. indicates the procedures necessary to obtain the needed information (see Exhibit A, ¶6). It is these procedures to which TTCI's Motion to Compel is directed.

Further your affiant sayeth naught.

By: Charles L. Honsinger

Charles L. Honsinger

Sworn to and subscribed before me this 30th day of December, 2008.



Notary Public for Idaho

Residing in MELBOURN, Idaho

My Commission Expires: 12-23-2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 2008, I caused to be served a true and correct copy of the foregoing document via U.S.mail and facsimile to the following:

Julie Klein Fisher
Morrow Dinius
5680 East Franklin Road, Ste. 220
Nampa, Idaho 83687
Fax: (208)475-2201

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720
Fax: (208) 287-6700

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Boise, Idaho 83702
Fax: (208)424-8774

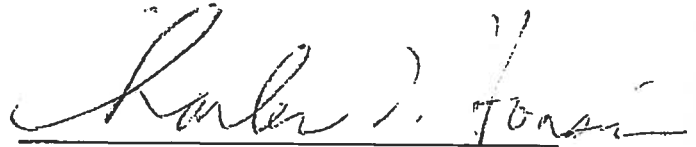

Charles L. Honsinger

Exhibit A

Charlie Honsinger

From: Charlie Honsinger
Sent: Tuesday, August 19, 2008 2:01 PM
To: Julie Fischer
Subject: FW: 8-19-2008 Evaluation of the Owyhee Motorcycle Club Ground Water Production Capacity
Attachments: 7-23- 2008 Data Needs Determined From the Field Reconnaissance of the Owyhee Motorcycle Club Water System by Hydro Logic 8-19-2008.doc; image001.jpg

Importance: High

Julie: I am forwarding a copy of Ed Squires' Initial Technical report. As you can see, he needs to do further work, including a pump test and a camera inspection to complete his work. Can you please give me a call after you review the report so we can discuss dates on which that work can be conducted? Thanks.

Charlie

Charlie Honsinger
Ringert Law Chartered Lawyers
P.O. Box 2773
Boise, ID 83701
Tel: (208) 342-4591
Fax: (208) 342-4657
clh@ringertlaw.com

From: Ed Squires [mailto:ed@hydrologicinc.net]
Sent: Tuesday, August 19, 2008 1:33 PM
To: Charlie Honsinger
Subject: 8-19-2008 Evaluation of the Owyhee Motorcycle Club Ground Water Production Capacity
Importance: High

Hydro Logic, Inc.

1002 W. Franklin St. Boise, ID 83702 (208) 342-8369 Fax: (208) 342-3100 Cell: (208) 631-6781

Dear Charlie,

I have finally been able to devote some time to getting you an outline report covering our first preliminary field reconnaissance of the Owyhee Motorcycle Club's water system. As we expected, there are several measurements that we were not able to obtain and these are described in the attached outline. This should not be construed as a negativity in any way to how OMC operates its system, it is just the typical way small water systems are built and operated in Idaho (without good means of monitoring) by contractors and because well owners often are unaware of the need for good monitoring. The proposed work is very straight forward and we can leave the well exactly as we found it (or we can leave the monitoring tube in the well for OMC's future use.

We stand ready to do the final measurements as soon as possible. Obviously, TTCI would pay for the necessary tubes and pump work. Please provide us with as much advance notice as possible for our scheduling. Feel free to pass this along to Julie Fisher.

Ed

DRAFT TECHNICAL MEMORANDUM

TO: Charles L. Honsinger/ Ringert Law/ Boise, Idaho

FROM: Ed Squires/ Hydro Logic, Inc. / Boise, Idaho

DATE: August 19, 2008

SUBJECT: Reconnaissance Level Inspection of the Owyhee Motorcycle Club Water System

1) Overview:

- a) The Terteling Company, Inc. (TTCI) has objected to the SRBA water right claims of the Owyhee Motorcycle Club (OMC) in Stewart Gulch, Ada County, Idaho.
- b) TTCI has requested that OMC allow an on site evaluation of the OMC water system and OMC has agreed to such and inspection.
- c) TTCI hired Hydro Logic, Inc. (HLI), a local ground water consulting firm to conduct a field-examination of the OMC water system to determine the capacity of the system and the quantity of ground water historically and currently diverted and used.
- d) On July 23, 2008, Loren Pearson, of HLI, met on site with Derrick Personette (863-2481), of the OMC, and Paul Drury, of ERO Resources, Corp. in Boise. Mr. Personette, a long-standing member of the OMC and sitting member of the Board of Directors, is familiar with the extent and operation of the OMC water system and was very helpful on site. Mr. Drury, a consultant hired by OMC, has conducted some previous testing of the OMC water system (described below).
- e) A field reconnaissance-level, inspection of the OMC water system was conducted on July 23, 2008 but several key components and characteristics of the well and water system were unable to be determined from the inspection because there are apparently no records or because the required measurements could not be obtained owing to on-site constraints.
- f) This Memorandum details remaining information needed for us to characterize the production capacity of the OMC water system.

2) SCOPE OF THE FIELD WORK:

a) General:

- i) GPS locations of permanent major structures such as the well, storage tanks, control valves, etc. were obtained for the entire system.
- ii) Digital photographs of all significant features and fittings were obtained, downloaded and stored.

b) Supply Well:

- i) This is a six (6) inch diameter steel-cased well located in a concrete and wood frame pump house directly behind (south of) the OMC Clubhouse.
- ii) The six inch casing appears to have been recently repaired and/or extended as a newer length of casing is welded onto the older casing visible near the current ground level at the well head (pump house has a sloping dirt floor).

- iii) According to Derrick Personette, there are no sand-production problems with the well and the OMC has not apparently experienced any problems with its well as far as he can remember.
- iv) Loren Pearson measured the non-pumping water level in the well at 29.22 feet below the top edge of the 6-inch casing using a disinfected electric well sounder inserted through the well head casing after removing the well cap head. The top of the 6-inch casing is 5 ½ feet above the dirt and (partially) concrete floor of the pump house at the well. Loren did not attempt to measure pumping water levels because there was no information available on the existing pump setting and no designated monitoring tube in which to take the measurements.
- v) According to Derrick, the well was probably drilled in 1958 when the Clubhouse was built to supply water for bathrooms and irrigation.
- vi) OMC apparently does not have a Well Driller's Report for the well. HLI has done an extensive search for a record for this well including 1) the IDWR digital, hard copy, and microfiche well log files at the Western Regional Office (including searching for the record in a mis-filed location), 2) the personal files of drillers, 3) HLI's own data base, and 4) water rights files of the IDWR. We have not been able to locate a well log for the OMC well.
- vii) The well cover securing and capping the well identifies Hiddleston Drilling and Pump Co., Inc. ((208) 587-9055
- viii) Testing of the OMC well by Paul Drury:
 - (1) Mr. Drury has apparently tested the OMC well on two separate occasions. Neither test, however, included any water level measurements in the well; either before or during pumping.
 - (2) During one test the well produced 75 to 60 gallons/minute at 83 PSI (the flow was not kept constant) discharging to the nearby creek through a 1½" fire hose for about twenty minutes.
 - (3) Drury's other test pumped water to the underground storage tank at the Motocross Track starting when the tank was "empty" until the float valve at the tank shut the flow off. Flow during this tank test was measured with a through the pipe ultrasonic flow meter at 59.5 gallons/minute.

c) Supply Well Pump:

- i) A relatively new-looking service sticker by Boise Valley Pump and Well Drilling is present on the pump panel (208) 343-1915 Ron Murphy.
- ii) Neither, Derrick Personette nor Paul Drury had any information about the installed pumping plant.
- iii) HLI contacted Ron Murphy at Boise Valley Pump to find they had apparently kept no records of the installed pump either.
- iv) The electrical panel for the well pump is a Franklin, Model # 2821139310, 5 HP, 230 V, 60 HZ panel without a variable frequency drive unit.
- v) The well head pressure gage was reading 91 psi with the pump off.

d) Well Head Plumbing:

- i) The well pump discharges through a 1½" galvanized steel line to two "Well-Mate" 86-gallon hydro-pneumatic pressure tanks (Model # WM25-WB) prior to being discharged through various line sizes to the rest of the OMC distribution system.
- ii) Four discharge pipes exit the pump house.
 - (1) A 1¼" diameter black polyethylene line is the domestic supply for the trailer house (caretaker's quarters).
 - (2) A 1½" diameter black polyethylene line supplies the Clubhouse.
 - (3) A 1½" diameter SCH40 PVC line supplies water to tanks located at the Short Track, Pee Wee Track, sprinklers at the Snack Shack, and sprinklers towards the front gate.
 - (4) A 2" diameter SCH40 PVC line supplies water to the underground tank at the Motorcross Track to the northeast.

e) Water Distribution System:

- i) Loren Pearson documented the booster pumps, main lines, sprinklers, and tanks of the water system including photographs and GPS locations.
- ii) These aspects are not covered in detail here because these facilities are not immediately germane to the use of ground water compared to the specifications and working conditions of the well pump for which we have no good information at this time.

f) Water Storage:

- i) Six tanks are in use at the OMC to store water for dust abatement.
 - (1) Below ground tank at Motocross Track: storage volume not measured, but estimated to be approximately 5,000 gallon capacity.
 - (2) Two tanks on the hill above the Clubhouse: each tank is 8 feet in diameter and 22 feet long which is ~8,000 gallons each for a total capacity of ~16,000 gallons (HLI calculation).
 - (3) Above ground tank adjacent to Pee Wee Track: 6 feet in diameter and 10 feet tall is a capacity of ~2,000 gallons (HLI calculation).
 - (4) Above ground tank at Short Track: 7.5 feet in diameter and 30 feet long is capacity of ~10,000 gallons.
 - (5) Below ground tank at Short Track: storage volume not measured, but estimated to be approximately 5,000 gallon capacity.
 - (6) Two pressure tanks are used at the well: ~30 gallons storage each equals ~60 gallons.

3) WATER USES:

a) Domestic:

- i) A Caretaker residence (trailer house) is occupied year-round.
- ii) According to Derrick this is a typical single family household water use.

b) Irrigation:

- i) Approximately one-half acre total of grassed area is watered around the "Snack Shack" and near the caretaker trailer house.

c) Commercial:

- i) Dust-abatement is apparently the single largest water use although we infer that the dust watering serves a second purpose of preparing the track surfaces for use.
- ii) All dirt track surfaces can be watered down by sprinklers and/or by hand watering with fire hoses.
- iii) According to Mr. Personette, OMC's main commercial use of water coincides with its racing season, Memorial Day weekend through Labor Day: about three months during an average moisture year.
- iv) Additionally, Derrick explained that, during race season, water is used Wednesday evenings from 4 p.m. until 10 p.m. for the club members to use the track as they please. (* This water use is from storage and cannot be used to determine the diversion rate from the well per se.).
- v) When asked about the periods of use of the dust abatement uses, Derrick explained that watering of the tracks takes place before and during sanctioned races which typically occur four days per month, Thursday/Friday and Saturday/Sunday, with one track being utilized for each two day period. Any other special events for club members during the month would also require dust abatement.
- vi) Clubhouse uses portable toilets and not bathrooms with flush toilets.

4) CONCLUSIONS RELATED TO EVALUATING THE OMC WATER SYSTEM:

- a) **There is no known information regarding the details of well construction including:**
 - i) Depth of well.
 - ii) Completion interval.
 - iii) Type of openings (screen, perforations, etc.).
- b) **There is no data regarding the installed pump except it is less than 5 HP including:**
 - i) Pump performance curve.
 - ii) Depth setting in the well.
 - iii) Drop pipe diameter.
 - iv) Pump Make and Model.
- c) **There is no useful hydraulic testing data or water level monitoring for the well:**
 - i) A valid pump test of the well has not been completed.
 - ii) Short-term "testing" by ERO included no water level measurements and discharge was not regulated at a constant rate.
- d) **There is no instantaneous flow or totalizing meter installed in the system.**

- i) For testing of the well, and at the expected range of discharge rates, timed filling of a container of known volume would work.
 - e) **No monitoring tube exists in the well.**
 - i) Loren Pearson was able to measure a non-pumping water level at 29.22 feet bmp.
 - ii) Measuring pumping water level is more risky not knowing the current pump setting and or the condition of the intake of the pump (sounding tape could get sucked into intake).
 - iii) The risk of getting the electric sounding tape tangled up with the submersible pump wire also exists without a designated monitoring tube.
 - iv) If the well construction is such that cascading water is present, the pumping water level could only be measured within a designated tube.
 - f) **A single pressure gauge has not been checked for accuracy.**
 - i) At least two identically-reading gages would be needed to confirm system pressure.
 - g) **The hydraulic testing by ERO Resources is too short- term and has no water level data.**
 - i) Paul Drury's first test of the well was conducted for twenty minutes with a varying discharge rate and no water level measurements.
 - ii) Paul's second test was for three hours, the time necessary to fill one of the tanks with a varying discharge rate and no water level measurements.
 - iii) No meaningful conclusions can be drawn with respect to the sustainable pumping rate of the OMC well from this data.
- 5) **PRELIMINARY CONCLUSIONS RELATED TO OMC'S WATER USAGE:**
- a) Best estimate of current reservoir storage volume at OMC is ~ 44,000 gallons (0.14 ac-ft).
 - b) Aerial photography shows that the area of the race tracks has increased significantly over the years since 1963.
 - i) The main water use claimed is for dust abatement of the track area.
 - ii) We are currently evaluating historical aerial photography to delimit the periods of track expansion since inception of the OMC.
 - c) The non-pumping water level in the well is 29.22 feet below top of existing casing.
 - d) All dirt track surfaces can be watered down by sprinklers and/or by hand with fire hoses.
 - e) Water use at OMC includes minor domestic use, some irrigation of grass near trailer house, and the rest for dust abatement.
 - f) The 142 ac-ft recommended by the IDWR is simply not possible.

6) **RECOMMENDATIONS:**

- a) **Verify the Make, Model, and Depth Setting of the Installed Pumping Plant.**
 - i) Will require removal of the pumping plant to obtain depth setting, motor HP, and pump Model No.
- b) **Verify the Details of Well Construction and Current Condition of the Well:**
 - i) While the pump is out of the well, inspect the inside wall of the well.
 - ii) To protect against future liability and to document that no damage was caused to the OMC well as a result of removing the existing pump, TTCI should pay for a camera inspection of the well.
 - iii) At the same time, details of well construction can be ascertained such as are needed for the installation of a monitoring tube for hydraulic testing.
- c) **Install a PVC Monitoring Tube in the Well.**
 - i) Coincident with the re-installation of the pumping plant, a designated water level monitoring tube should be installed.
 - ii) This can be temporary and removed when the testing is completed or it can be left in the well for use by OMC.
 - iii) We recommend a 1-inch diameter schedule 80 PVC pipe for this purpose.
- d) **Conduct a Hydraulic Test of the Well and Pumping System:**
 - i) Conduct a constant-discharge draw down test of the well.
 - (1) Testing should be of minimum 24-hour duration and 48-hours would be better.
 - (2) Water level drawdown and recovery should be monitored.
 - (3) A means of accurately measuring flow is required (flow-meter recommended but timed filling of a known volume is acceptable).
 - (4) Well should be allowed to recover for several days prior to testing to allow water level to recover and for documentation of antecedent water level trend in the well prior to the test.

7) SOME ROUGH CALCULATIONS:

- a) Continuous Use of Well 365 Days Per Year:
 - i) Well is not used in this manner and calculation is made for conceptual purposes only.
 - ii) Assuming the well could produce the 60 gpm reported by Paul Drury on a continuous basis without shutting off.
 - iii) $60 \text{ gpm} \times 1440 \text{ minutes/day} \times 365 \text{ days/year} = 31,536,000 \text{ (96.8 ac-ft)}$.
 - iv) This is 45 acre feet less than the IDWR recommended.
- b) Continuous Use of Well During 90-Day Racing Season:
 - i) Well is not used in this manner and calculation is made for conceptual purposes only.

ii) Assuming the well could produce the 60 gpm reported by Paul Drury on a continuous basis for the three month racing season without shutting off.

iii) $60 \text{ gpm} \times 1440 \text{ minutes/day} \times 90 \text{ days} = 7,776,000 \text{ gallons} (\sim 24 \text{ ac-ft}).$

c) Half Time Use of the Well:

i) Well is not used in this manner and calculation is made for conceptual purposes only.

ii) Assuming the well can produce 60 gpm on a sustained basis, it would take 12 hours to fill the full complement of storage at OMC ($60 \text{ gpm} \times 720 \text{ minutes} = 43,200 \text{ gallons}$).

iii) Assuming the OMC storage is drained every day for the three month racing season OMC would use $\sim 4\text{MG}$ ($\sim 12 \text{ ac-ft}$).of water per year for commercial use.

Exhibit B

Charlie Honsinger

From: Julie Fischer [jfischer@morrowdinius.com]
Sent: Tuesday, September 09, 2008 1:33 PM
To: Charlie Honsinger
Subject: RE: Hi

Hi Charlie,

Yes, I have visited with them. To be honest, after reviewing the proposed scope of work, I believe it is outside what the SRBA court authorized, at least in concept. I know you anticipated two visits to the property, and the first was to determine what the system looked like and what testing might be done (on a second visit). I intend to file an objection to the proposed activities and seek to limit any additional testing to something more reasonable. I'd prefer to work through it with you and your client before filing an objection, so let me know how you want to proceed.

Thanks.

Julie

From: Charlie Honsinger [mailto:clh@ringertlaw.com]
Sent: Tuesday, September 09, 2008 1:24 PM
To: Julie Fischer
Subject: Hi

Heard from your client yet about the pump test?

charlei

Charlie Honsinger
Ringert Law Chartered Lawyers
P.O. Box 2773
Boise, ID 83701
Tel:(208)342-4591
Fax:(208)342-4657
clh@ringertlaw.com

Exhibit C

Charlie Honsinger

From: Charlie Honsinger
Sent: Monday, September 15, 2008 4:30 PM
To: Julie Fischer
Subject: FW: 9-15-2008 TTCI/OMC Settlement Negotiations and Hydrogeologic Studies
Attachments: image001.jpg

Importance: High

Julie: Here is an alternative procedure that Ed Squires came up with that is not as extensive as that he proposed earlier. How does this proposal sound? If it does not give them the information they need, we reserve the right to move to compel the work that Ed originally wanted to do. If this works, let me know, and I'll try to set it up asap.

On another note, we filed a stipulation with dates on it that I believe is now obsolete – the Court did not enter an order pursuant to our stipulation. How do you suggest we proceed now as far as setting a trial date and discovery schedule?

Charlie

Charlie Honsinger
Ringert Law Chartered Lawyers
P.O. Box 2773
Boise, ID 83701
Tel:(208)342-4591
Fax:(208)342-4657
clh@ringertlaw.com

From: Ed Squires [mailto:ed@hydrologicinc.net]
Sent: Monday, September 15, 2008 2:16 PM
To: Charlie Honsinger
Subject: 9-15-2008 TTCI/OMC Settlement Negotiations and Hydrogeologic Studies
Importance: High

Hydro Logic, Inc.

1002 W. Franklin St. Boise, ID 83702 (208) 342-8369 Fax: (208) 342-3100 Cell: (208) 631-6781

Dear Charlie:

In response to Owyhee Motorcycle Club's (OMC) rejection of our investigative plan to resolve the SRBA objections, I can suggest an alternative approach that may accomplish the objective. In this scenario, Hydro Logic, Inc. (HLI) could conduct only the hydraulic testing portion of our proposed plan. It is possible, but not certain, that such a test would adequately address The Terteling Company, Inc.'s (TTCI) concerns over the water use from the OMC well. In other words, our original plan considered the possibility of installing a monitoring tube and determining the depth of the pump bowls to ensure that we are able to obtain measurements throughout the testing. We could, as a fall-back position, attempt to conduct the testing and to obtain the measurements without removing the pump and installing a monitoring tube and, of course, without the guarantee that we would be able to obtain measurements as the water level drops throughout the test. The reason that we would not be able to measure could be because the submersible pump wire could prevent us from lowering our sounder in the small diameter well as the water level drops. We were able to measure the shallow (~15 feet bgl) non-pumping water level during our first visit so it may be possible to measure the well all the way through the proposed test period; we just have no way of knowing in advance.

Additionally, under this scenario, understand that we would not be to obtain a camera inspection of the well that would be helpful to our evaluation and OMC's own knowledge about its own system.

We are certainly willing to attempt to carry out such a test with the caveat that there is no 100% assurance that we will be able to obtain all of the information we seek after having expended the effort to conduct the test. To that end, you may wish to run this Plan-B by the client and, if TTCI is willing to take the risk that we may not obtain the necessary data, the OMC for their approval.

Let us know if this option works with everybody.

Ed Squires

Exhibit D

Kevin E. Dinius
Julie Klein Fischer
William A. Morrow
Shelli D. Stewart
Dennis P. Wilkinson

Morrow Dinius

Attorneys at Law

5680 E. Franklin Rd., Ste. 220
Nampa, ID 83687
Telephone: (208) 475-2200
Fax: (208) 475-2201
www.morrowdinius.com

Email: jfischer@morrowdinius.com

November 4, 2008

Sent Via Email

Charles Honsinger
Ringert Clark
455 South Third Street
Boise, Idaho 83701

Re: *Owyhee Motor Cycle Club Right No. 63-18957*

Dear Charlie:

We have had a chance to review and consider the revised proposal submitted by your consultant, Ed Squires, regarding further testing of the Owyhee Motorcycle Club well. Although we appreciate Mr. Squires' agreement to limit the scope of the work originally proposed, the testing remains unacceptable.

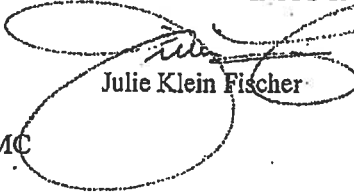
As you know, over OMC's objections, Special Master Booth authorized Terteling to visit the OMC property and inspect the water diversion and distribution system thereon, which has been done.¹ Unless I misunderstood the ruling, Special Master Booth did not authorize extensive testing of the OMC pump and well, or an investigation by your client of well construction details.

Without further direction from Special Master Booth, we cannot agree allow your client to perform the tests and work proposed. The proposal far exceeds what is necessary to verify the elements of the OMC water right, including rate of flow. There are less intrusive ways to measure the flow, such as those employed by OMC's consultants, and we would not object to Mr. Squires performing similar tests.

Please let me know how you intend to proceed, or if we need to raise this matter with Special Master Booth.

Sincerely,

MORROW DINIUS & FISCHER, PLLC


Julie Klein Fischer

Cc: William Henning, President OMC

¹ Admittedly, you indicated Mr. Squires first wanted to conduct a field reconnaissance-level inspection to determine what equipment might be necessary to measure the OMC flow during a follow up site visit.

Exhibit E

Charlie Honsinger

From: Charlie Honsinger
Sent: Tuesday, November 11, 2008 2:56 PM
To: Julie Fischer
Subject: RE: Scan from Morrow Dinius

Julie: What is ERO's proposed alternative? Let us know so we can evaluate it. Thanks.
Charlie

Charlie Honsinger
Ringert Law Chartered Lawyers
P.O. Box 2773
Boise, ID 83701
Tel:(208)342-4591
Fax:(208)342-4657
clh@ringertlaw.com

-----Original Message-----

From: Julie Fischer [mailto:jfischer@morrowdinius.com]
Sent: Tuesday, November 04, 2008 4:03 PM
To: Charlie Honsinger
Subject: FW: Scan from Morrow Dinius

Charlie,

Please see attached letter regarding OMC.

Thank you.

Julie Klein Fischer
MORROW DINIUS & FISCHER, PLLC
5680 e. Franklin, Suite 220
Nampa, Idaho 83687
208.475.2200 telephone
208.475.2201 fax
jfischer@morrowdinius.com

Charlie Honsinger

From: Charlie Honsinger
Sent: Tuesday, December 02, 2008 10:21 AM
To: Julie Fischer
Subject: RE: Scan from Morrow Dinius

Julie: Can you please let me know whether ERO has a proposed alternative? I have time starting tomorrow, and if I don't hear from you about the alternative, feel that I must draft and file a Motion to Compel.

Charlie Honsinger
Ringert Law Chartered Lawyers
P.O. Box 2773
Boise, ID 83701
Tel:(208)342-4591
Fax:(208)342-4657
clh@ringertlaw.com

-----Original Message-----

From: Julie Fischer [mailto:jfischer@morrowdinius.com]
Sent: Tuesday, November 11, 2008 2:57 PM
To: Charlie Honsinger
Subject: RE: Scan from Morrow Dinius

ok

-----Original Message-----

From: Charlie Honsinger [mailto:clh@ringertlaw.com]
Sent: Tuesday, November 11, 2008 2:56 PM
To: Julie Fischer
Subject: RE: Scan from Morrow Dinius

Julie: What is ERO's proposed alternative? Let us know so we can evaluate it. Thanks. Charlie

Charlie Honsinger
Ringert Law Chartered Lawyers
P.O. Box 2773
Boise, ID 83701
Tel:(208)342-4591
Fax:(208)342-4657
clh@ringertlaw.com

-----Original Message-----

From: Julie Fischer [mailto:jfischer@morrowdinius.com]
Sent: Tuesday, November 04, 2008 4:03 PM
To: Charlie Honsinger
Subject: FW: Scan from Morrow Dinius

Charlie,

Please see attached letter regarding OMC.

Thank you.

Julie Klein Fischer
MORROW DINIUS & FISCHER, PLLC
5680 e. Franklin, Suite 220
Nampa, Idaho 83687
208.475.2200 telephone
208.475.2201 fax
jfischer@morrowdinius.com

RECEIVED

DEC 24 2008

DEPARTMENT OF
WATER RESOURCES

2008 DEC 22 AM 11:30
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

In Re SRBA	)	ORDER SETTING SUBCASE
	)	FOR SCHEDULING CONFERENCE
Case No. 39576	)	
_____		SUBCASE NO: 63-18957

The Scheduling Conference for this subcase will be
held as follows:

TUESDAY, JANUARY 27, 2009 at 01:30 PM (MT)
SRBA
253 - 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

Parties and their attorneys, if any, shall attend the
Scheduling Conference and shall be prepared to discuss the
following matters:

1. Claimant representation and alignment of the parties;
2. Identification of the issues;
3. Admissions of facts and documents;
4. Amendment of pleadings, if required;
5. Discovery and discovery cut-off dates;
6. Expert witnesses, if planned;
7. Pre-trial conference dates;
8. Motions;
9. Settlement/alternative dispute resolution; and
10. Firm trial date.

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

(continued)

The date for the scheduling conference will not be changed unless a Stipulation to Reset is received by the court fourteen (14) days before the date of the scheduling conference. Parties who wish to change the date of the scheduling conference must do the following:

1. Contact the clerk of the SRBA Court and obtain alternative dates and times (208-736-3011).
2. Contact each party to the subcase(s) or their attorney, if any, and reach an agreement on the alternative date(s) and time(s) provided by the clerk.
3. Prepare a Stipulation to Reset the hearing. The hearing must be reset on one of the dates and times provided by the clerk. The stipulation must specify the date(s) and time(s) agreed to and must contain a statement that you have contacted each party or their attorney and that all have agreed on the alternative date(s) and time(s). The court will send a notice resetting the hearing.
4. If the parties cannot agree on one of the alternative dates and times provided by the clerk, the party wishing to change the date and time must file an Expedited Motion to Reset with the court at least 21 days prior to the scheduled hearing.

IT IS SO ORDERED.

Dated: DECEMBER 22, 2008

/S/ THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING
SUBCASE FOR SCHEDULING CONFERENCE was mailed on DECEMBER 22, 2008,
with sufficient first-class postage to the following:

THE TERTELING CO INC

Represented by:

CHARLES L. HONSINGER

455 S THIRD ST

PO BOX 2773

BOISE, ID 83701-2773

Phone: 208-342-4591

EDWARDS FAMILY LLC

Represented by:

DANA L. HOFSTETTER

608 WEST FRANKLIN STREET

BOISE, ID 83702

Phone: 208-424-7800

OWYHEE MOTORCYCLE CLUB INC

Represented by:

JULIE K. FISCHER

5680 E FRANKLIN RD, STE 220

NAMPA, ID 83687

Phone: 208-475-2200

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

Julie Klein Fischer
MORROW DINIUS
5680 East Franklin Road, Suite 220
Nampa, Idaho 83687
Telephone: (208) 475-2200
Facsimile: (208) 475-2201
ISB No.: 4601
jfischer@morrowdinius.com

Attorneys for Owyhee Motorcycle Club

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

In Re SRBA

Case 38576

) SUBCASE NO. 63-18957
)
)
) AFFIDAVIT OF JULIE KLEIN
) FISCHER
)

STATE OF IDAHO)

:ss

County of Canyon)

JULIE KLEIN FISCHER, being first duly sworn, deposes and says:

1. I am the attorney of record for Owyhee Motorcycle Club in this matter.
2. This affidavit is made based on my own personal knowledge of the facts herein.
3. Attached hereto as Exhibit A, is a true and correct copy of pertinent excerpts from the Deposition of 30(b)(6) Witness, Joe Terteling.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 13 day of June, 2008.


JULIE KLEIN FISCHER

SUBSCRIBED AND SWORN to before me this 13 day of June, 2008.

(SEAL)



Laura M. Heisel
Notary Public for Idaho
My commission expires: 01-19-2013

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 13 day of June, 2008, a true and correct copy of the above and foregoing document was served upon the following by:

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

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 287-6700

Chief, Natural Resources Division
Office of the Attorney general
State of Idaho
PO Box 44449
Boise, ID 83711-4449

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 854-8072

Edwards Family LLC
c/o Dana Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 424-8774

The Terteling Co. Inc.
c/o Charles L. Honsinger
RINGERT CLARK, Chtd.
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 342-4657

[Signature]
for MORROW DINTUS

T:\Clients\O\Owyhee Motorcyclo Club 22151.000\Pleadings\Owyhee Motorcyclo Club Pleadings\Aff of JKF.Obj to Mot for Site Visit.doc

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

In Re SRBA)
Case No. 39576) SUBCASE NO. 63-18957
)
_____)

DEPOSITION OF 30(b)(6) WITNESS, JOE TERTELING

March 21, 2008

REPORTED BY:

COLLEEN P. KLINE, CSR No. 345

Notary Public

Exhibit A

Page 18

1 Q. That I just read?
 2 A. Yes.
 3 Q. So you don't have any dispute that the
 4 point of diversion, to the extent that means the
 5 well --
 6 A. Okay. If you specify well, I agree
 7 with you.
 8 Q. -- that's properly recommended in the
 9 Exhibit No. 3, the Department's recommendation;
 10 correct?
 11 A. I believe the well to be correct.
 12 Q. Okay. You were posing some questions
 13 to me that you had concerns about where tanks
 14 are, and some other things that would help you
 15 answer my original question, why did you object
 16 to the point of diversion.
 17 Can you explain to me what your
 18 concerns are with respect to tanks or springs
 19 that you believe may be located on the Owyhee
 20 Motorcycle Club property?
 21 A. Well, I've been told by members that
 22 there are springs up there, and I'm not aware of
 23 those springs. But I've been told that's why the
 24 tank was overflowing. So I don't believe that's
 25 correct, but I've been told that.

Page 19

1 Q. What members told you that there are
 2 springs?
 3 A. I don't know the guy's name. I just
 4 said, here's water running down. You ought to
 5 turn off your pump. You are wasting water. He
 6 said, that's a spring.
 7 Q. When did that occur?
 8 A. Five years ago.
 9 Q. Five years ago. How many people have
 10 told you there are springs on --
 11 A. The one fellow.
 12 Q. Just the one guy?
 13 A. One fellow.
 14 Q. Do you know if he's a member of the
 15 Club?
 16 A. I assume so.
 17 Q. Were there any other members around
 18 when you had that conversation with him?
 19 A. There was a little kid around, but I
 20 don't know who he was either.
 21 Q. Okay. Probably some motorcycles, too.
 22 If you look at the recommendation which
 23 is Exhibit No. 3, it says the source of Owyhee
 24 Motorcycle Club's water right as ground water.
 25 Do you have a belief that the Club is claiming

Page 20

1 some other source of -- any other sources of
 2 water --
 3 A. No.
 4 Q. -- than ground water?
 5 A. No.
 6 Q. That was a bad question, but I think
 7 you understood what I meant.
 8 Okay. The spring issue, you explained
 9 that. Someone told you there might be springs.
 10 But you don't think there are springs, though; is
 11 that right?
 12 A. No, I don't think so.
 13 Q. All right. How would that show you the
 14 point of diversion -- where the springs are
 15 springing from?
 16 A. Is that what they do? What was the
 17 question?
 18 Q. I'm just going back to -- you made some
 19 comments when I asked you why Terteling had
 20 objected to the point of diversion. And then you
 21 raised some concerns that you weren't able to
 22 answer that, because you had some concerns about
 23 tanks, and springs, and things like that.
 24 I'm just trying to understand why your
 25 concerns about tanks and springs would affect

Page 21

1 your -- well, how that would play into your
 2 objection to the point of diversion?
 3 A. They wouldn't have been the same point
 4 of diversion.
 5 Q. A spring would be a different point of
 6 diversion --
 7 A. Yes.
 8 Q. -- than the well?
 9 A. Yes.
 10 Q. Okay. Very good. And just so that we
 11 don't drive our court reporter crazy, let me
 12 finish the question before you answer. And I'll
 13 try to do the same for you; okay?
 14 A. Okay.
 15 Q. Thanks. Okay. What is your concern
 16 about tanks being located on the property? Can
 17 you explain that?
 18 A. Not being an attorney, I don't know if
 19 that's the point of diversion or not. But when
 20 we classified as the well as the point of
 21 diversion, I think we settled that question.
 22 Q. Okay. You are comfortable with that
 23 then. Fair enough. I just wanted to make sure I
 24 hadn't misunderstood something that you said.
 25 Let's turn next to -- in the objection

6 (Pages 18 to 21)

Page 22

1 that's on file, No. 4 is marked "Priority Date."
 2 That's on page 2 of the objection. That's
 3 Exhibit No. 3. All right?
 4 And the comment under the "Priority
 5 Date" mark is "Only domestic priority." What do
 6 you mean by that?
 7 A. Let me read that.
 8 Q. Sure. Go ahead.
 9 A. (Witness reading.) I think -- my
 10 instructions were clear or not clear to
 11 Charlie -- they started out with no more than a
 12 domestic well.
 13 Q. Okay.
 14 A. Later they enlarged the well so it
 15 could have produced more than the domestic
 16 minimums. So I think my objection follows dates
 17 and quantity. And we'll get to quantity later
 18 on.
 19 Q. Yeah, I want to stick with the priority
 20 date right now.
 21 I just didn't understand what you mean
 22 by "only domestic priority"?
 23 A. Well, I think it's a separation between
 24 in the old days when they used the domestic, and
 25 some date when they started going commercial.

Page 23

1 Q. Okay. Let's back up. You said, it
 2 started out only a domestic well. When did it
 3 start out as a domestic well?
 4 A. I believe Ron Stevens' father drilled
 5 that well. And if he's alive, he would be the
 6 person to answer that.
 7 Q. Have you made any inquiry to Ron
 8 Stevens about his father's role in drilling the
 9 well?
 10 A. No, I have not.
 11 Q. Who is Ron Stevens?
 12 A. He's a well driller, who I believe is a
 13 member.
 14 Q. A member of?
 15 A. The OMC.
 16 Q. And what's the basis of your belief
 17 that Ron Stevens' father drilled the Owyhee
 18 Motorcycle Club well?
 19 A. Ron's drilled a couple of wells for us.
 20 I've sat with him, talked to him, BS'd. And I
 21 think he mentioned his dad drilled that well.
 22 Q. So just in passing he's mentioned that
 23 to you?
 24 A. Yes.
 25 Q. Has he given you any indication of when

Page 24

1 that occurred?
 2 A. No.
 3 Q. Do you have any idea when that well
 4 might have been drilled?
 5 A. No. But certainly after -- well, I
 6 don't know.
 7 Q. Okay. Why do you say it started out as
 8 a domestic well? What's the basis of that
 9 comment?
 10 A. I'm saying it didn't exceed the
 11 quantity allowed for domestic well.
 12 Q. What's the quantity that you believe is
 13 allowed for a domestic well?
 14 A. Oh, is it .13 or -- no, it's .0
 15 something.
 16 Q. And --
 17 A. Point -- and cfs.
 18 Q. Sure.
 19 A. Which basically equals what? 18
 20 gallons per minute, or nine gallons per minute?
 21 Can I coach at 18 or 9? It's one of those two.
 22 I can't multiply it in my head.
 23 MR. HONSINGER: We've spoke about this
 24 before. And I think that the term you are
 25 searching for is .02 cfs and nine gallons a

Page 25

1 minute and 13,000 gallons a day.
 2 Q. (BY MS. KLEIN FISCHER) Okay.
 3 A. Actually, it's on Charlie's card. If I
 4 could look up his card I could have it.
 5 Q. So what you are saying, Mr. Terteling,
 6 is that Mr. Honsinger's description of what
 7 constituted domestic water right, or what the
 8 limitations are of a domestic water right. That
 9 quantity is your understanding of what Owyhee
 10 Motorcycle Club originally diverted; is that
 11 right?
 12 A. No, I don't even know if we got that.
 13 They had a bad well.
 14 Q. All right. Let me finish the line of
 15 questioning we're on.
 16 You said they had a domestic well at
 17 the beginning. And how do you define "domestic
 18 well"?
 19 A. Small quantity.
 20 Q. The small quantity that Mr. Honsinger
 21 just gave us the formula for?
 22 A. I tried to figure out later on -- not
 23 in the beginning, the quantity. But are we
 24 saying in the beginning?
 25 Q. Well, we haven't defined what the

7 (Pages 22 to 25)

Page 34

1 answer is, no. I haven't seen any sprinklers. I
2 haven't seen any connections to the pump to the
3 clubhouse. Obviously, the caretaker, whenever
4 they moved in, used the poor quality water, small
5 quantities.

6 I think when they acquired the water
7 tank, they tried to sprinkle the road, not the
8 tracks. I think the tracks were covered with the
9 crankcase drainings.

10 Q. (BY MS. KLEIN FISCHER) With what?

11 A. Crankcase drainings oil. So you
12 wouldn't put water on top of that, because it
13 sets up just like blacktop. So they didn't water
14 the tracks. It was just a little dust control
15 for people coming in and out, run the water tank
16 down and back, and that was about it.

17 Q. When did this all occur?

18 A. Prior to when they approved the well.

19 Q. And we'll get to that. But you are
20 saying that you think the well was improved about
21 ten years ago; is that right?

22 A. That's correct.

23 Q. So is it your testimony you did not
24 ever observe past ten years from this year? So
25 what '97, '98?

Page 35

1 A. '98.

2 Q. Prior to 1998, you did not ever observe
3 Owyhee Motorcycle Club sprinkling its tracks, or
4 applying any water to the tracks?

5 A. I would say before the crankcase
6 drainings were down they -- I don't know. They
7 wouldn't have had the truck by then. So I have
8 to observe something to have my personal
9 observation come to my personal conclusion.

10 Q. I agree. I just --

11 A. So I observed something.

12 Q. Okay. But you can't tell me what it is
13 you observed; right?

14 A. Well --

15 MR. HONSINGER: Counsel, let's take a
16 break for a minute, if we can?

17 MS. KLEIN FISCHER: Sure.

18 (A recess was had.)

19 MS. KLEIN FISCHER: Let's go back on
20 the record.

21 MR. HONSINGER: Counsel, now that we're
22 back on the record, we'll stipulate to the fact
23 that we don't have any evidence to contradict Guy
24 James' claim that the priority date of a well
25 that was drilled was 1958. We will continue to

Page 36

1 dispute the quantity, though.

2 MS. KLEIN FISCHER: Okay. Fair enough.
3 And I appreciate that.

4 Just so that we're clear, let's mark
5 that No. 4.

6 (Exhibit 4 marked.)

7 Q. (BY MS. KLEIN FISCHER) Just so it's
8 clear in our record, Mr. Terteling, the
9 Motorcycle Club did obtain this affidavit that's
10 marked as Exhibit No. 4 from a fellow named Guy
11 James, who is a former club member. And the best
12 information that they've been able to obtain is
13 that the well was drilled in 1958. And, in fact,
14 that's the priority date that Owyhee Motorcycle
15 has claimed for its water right. Have you seen
16 that affidavit before?

17 A. Yes.

18 Q. So when Mr. Honsinger referred to "Guy
19 James," this is the fellow that we're talking
20 about; was that your understanding as well?

21 A. Yes.

22 Q. Okay. Although you stipulated then to
23 the fact that the well was likely drilled in
24 1958, you don't agree with the quantity
25 recommended with the 1958 priority date; is that

Page 37

1 correct?

2 A. That's correct.

3 Q. And if you look back at Exhibit No. 2,
4 which is the objection that the Terteling Company
5 has filed. On page 2, No. 3, "Quantity" is
6 marked with the comment, "Only Domestic
7 Quantity." Do you see that?

8 A. Yes.

9 Q. Can you explain to me what you mean by
10 that objection? Well, let me backup.

11 What do you believe the quantity of the
12 Owyhee Motorcycle Club was in 1958?

13 A. Well, let's take other than my
14 observations, let's take the Guy James study that
15 they used the water to mix the floor of the
16 clubhouse. I would estimate that if you poured
17 that in two hours, and you mixed a batch for five
18 minutes, you would need a coffee can, that much
19 every five minutes. So what he's telling you
20 that the highlight of his day was, he had a
21 coffee can every five minutes of water.

22 Q. He doesn't say in there that's the only
23 thing they used it for; does he?

24 A. It was his highlight of his statement.
25 I read it.

10 (Pages 34 to 37)

Page 42

1 Q. Risers?

2 A. -- risers, and putting sprinkler heads
3 on them, and would turn them on, and have
4 different valving systems.

5 Q. How big of an area was originally
6 sprinkled, if you can recall?

7 A. I think they sprinkled one or two acres
8 at a time. Two acres, probably, at a time.

9 Q. How big was the pipe that was laid?

10 A. I do know the pipe coming out of the
11 well is an inch and a half.

12 Q. How do you know that?

13 A. Because I looked at it.

14 Q. Okay. When did you look at it?

15 A. Yesterday. And it's a new well casing,
16 too.

17 Q. And you observed that yesterday as
18 well?

19 A. Yes.

20 Q. Was anybody with you when you went out
21 there yesterday?

22 A. Yes.

23 Q. Who?

24 A. My son Andy. But that didn't answer
25 your question. Your question is: What size

Page 43

1 water line?

2 Q. Yes, that was my question.

3 A. And they ran that down from the tanks
4 that they put up on the hills. They have two big
5 tanks up there. And I talked to a fellow named
6 Brett Judy. And he said that in the late '90s
7 that line was broken, and he replaced it.

8 Q. What line; the one coming out of
9 the --

10 A. He had lines coming out from the tanks.
11 And that size -- I don't know what size it is,
12 but those are the ones that run into the
13 sprinklers.

14 Q. Right. So the tanks sit up on the
15 hill, and then it gravity feeds to the
16 sprinklers; correct?

17 A. That's right.

18 Q. Do you know how the tanks are built?

19 A. Through this well with an
20 inch-and-a-half pipe going to it.

21 Q. Okay. So your testimony is an
22 inch-and-a-half runs to the tanks on the hill, is
23 pumped up to there, and then the sprinklers run
24 out of the tanks, gravity fed; is that right?

25 A. Right, unless there is some close

Page 44

1 thing, close that I don't know. But it didn't
2 look like the water run to the caretaker's house,
3 so...

4 Q. And your testimony is that you think
5 that whole system was put into place or started
6 being put into place sometime roughly ten years
7 ago?

8 A. Yes.

9 Q. Okay. Prior to that, was there
10 sprinkling of the track? I think you said, yes.

11 A. You asked me when do I think it
12 started, and I said ten years ago, and it's a
13 round number.

14 Q. Okay. And that's fair. I'm not trying
15 to tie you specifically to that date.

16 A. I know.

17 Q. But I think I asked before 1998 whether
18 or not you ever observed any sprinkling on the
19 track?

20 A. Not that I recall. Well, sprinkling
21 perhaps with the water truck.

22 Q. Okay.

23 A. The aerial photos will tell you when
24 the TT track went out, and when they rebuilt this
25 other track, et cetera.

Page 45

1 Q. When is the first time -- can you tell
2 me when you may have observed a water truck
3 sprinkling the track?

4 A. I don't know. I said they may have. I
5 said early on the tracks were blacktopped, and
6 I'm sure they didn't sprinkle them.

7 Q. Okay. Do you have any idea when
8 sprinkling of the track may have begun, whether
9 it's by sprinkler or water truck?

10 A. Well, I'm sure the water truck was
11 before. And I would be curious when they bought
12 it. They ought to have that record. I would
13 like to look at your records, you know, when they
14 bought the truck.

15 Q. Did you ever personally observe the
16 water truck sprinkling the tracks?

17 A. Not the tracks, but the road.

18 Q. Okay. The road?

19 A. Yes.

20 Q. And, yeah, you are making a
21 distinction, and I failed to acknowledge that
22 between the roads to keep dust down and then
23 actually watering the track; right?

24 A. Yes, that's correct.

25 Q. All right. I think we got a bit off

12 (Pages 42 to 45)

Page 46

1 track. The recommendation for the water rights?

2 A. Is there a pun intended?

3 Q. No, that was a bad one if it was.

4 The recommendation by the Department,
5 which is one of your exhibits there, No. 3. It
6 says, the commercial purposes for watering the
7 track. And you can look at that.

8 A. That's all right. Go ahead.

9 Q. I'm just wondering, do you dispute that
10 the track is watered with water from the well?

11 A. What time frame?

12 Q. Any time frame.

13 A. When it was oiled, yes.

14 Q. And you don't know at what point in
15 time they ceased oiling the track and commenced
16 sprinkling it; is that right?

17 A. Well, they moved the tracks around.

18 They changed the tracks. And I'm talking flat
19 tracks, not just motor-cross.

20 Q. Okay.

21 A. I would think they would know that
22 better than I do.

23 Q. I know. But it's your objection, so
24 I've got to understand what the basis of it is.

25 A. Just observation.

Page 47

1 Q. Okay. What observations have you made?

2 A. In the old days, they used to put oil
3 down on the tracks. And sometime when the EPA
4 came around, they couldn't use the old crankcase,
5 and used lighter oil that burned their eyes. And
6 they said, how can this be more environmentally
7 friendly if the light-weight oil burns their eyes
8 and the old crankcase drainings set up like
9 blacktop?

10 Q. Do you know when they stopped using oil
11 on the track and started to sprinkle it?

12 A. Well, you know, to hedge, I'll say it
13 calls for speculation, I'm sure.

14 Q. I just want to know if you know. It
15 may very well call for speculation. I would
16 agree with that. So do you know, that's the
17 question?

18 A. My answer is, it calls for speculation.
19 I would rather not.

20 MR. HONSINGER: If you don't know, it's
21 okay to say it, Joe.

22 THE WITNESS: If I could back into the
23 aerial photos, if I could back into their
24 testimony, I could come up with a better judgment
25 than I don't know. Because if it triggers some

Page 48

1 memory thing, then I can say, sure. You know, I
2 had a 1963 car, and that's when it was, but...

3 Q. (BY MS. KLEIN FISCHER) As of today, do
4 you know right now? Do you know at what point in
5 time, and I don't even care if you give me a
6 month, a year, that they quit oiling the track
7 and started sprinkling it?

8 A. It would be -- my only hedge is, and
9 which I've stated, it would be when the EPA
10 started. So when did the EPA start getting
11 involved in things, telling you you couldn't use
12 crankcase drainings? So that's the only thing I
13 know.

14 Q. But you don't know the dates that the
15 EPA started, got on them with that?

16 A. No, but that could be figured out.

17 Q. Okay. What do you, meaning Terteling
18 Company, believe the correct commercial quantity
19 of water is for the Owyhee Motorcycle Club right?

20 A. I've tried to estimate that based on
21 the information that you've provided to the
22 Department of Water Resources. So I would guess
23 50 gallons a minute; 50, 60, somewhere in there.

24 Q. And you said you arrived at that 50
25 gallons per minute based on information that's in

Page 49

1 the Department files?

2 A. Well, information you've provided to
3 the Department files --

4 Q. Okay.

5 A. -- has some information in it.

6 Q. Can you tell me specifically what
7 information you've relied on to arrive at that?

8 A. The second to the last page, if I could
9 see that report, I'll show you where it is. I
10 didn't rely on that. I just said in conjunction
11 with that. I also relied on my own judgment.

12 Q. Well, let's start with that. What
13 judgment calls have you made to arrive at the 50
14 gallons a minute? And I understand you're --

15 A. I understand that the tank is 100 feet
16 in the air.

17 Q. This is the tank that's used to
18 sprinkle the track?

19 A. There is two major tanks up on top.
20 You just call them black and red.

21 Q. Okay.

22 A. They were the same color. They were
23 yesterday anyway.

24 Q. Okay.

25 A. I also estimated that they're a

13 (Pages 46 to 49)

Page 50

1 300-foot run from the well to the tanks.
 2 Q. Okay.
 3 A. I observed the pipe is an
 4 inch-and-a-half.
 5 Q. Coming out of the well?
 6 A. Coming out of the well.
 7 Q. Okay.
 8 A. Okay. You throw all those pump curves
 9 and friction losses and efficiencies of the pump
 10 and the altitude, and that's where I come to 50,
 11 60 gallons.
 12 Q. Okay. Did you put together any formula
 13 or calculations that support that?
 14 A. Yes.
 15 Q. Do you have them with you?
 16 A. I don't have them.
 17 Q. Are they available?
 18 MR. HONSINGER: We do.
 19 THE WITNESS: I gave them to my
 20 attorney.
 21 MR. HONSINGER: Is that (indicating)
 22 what you are speaking of?
 23 THE WITNESS: Yes.
 24 MR. HONSINGER: Okay.
 25 MS. KLEIN FISCHER: Can we have copies?

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1 Yeah, you can hand it to me. It's not going to
 2 do me a whole lot of good.
 3 MR. HONSINGER: I have a copy for you
 4 as well. There is a copy for the court reporter.
 5 MS. KLEIN FISCHER: Let's go ahead and
 6 mark that.
 7 (Exhibit 5 marked.)
 8 Q. (BY MS. KLEIN FISCHER) Okay. We're
 9 looking at what's marked as Exhibit No. 5. And
 10 would you tell me what that is?
 11 A. That's a calculation I made last night
 12 after observing the inch-and-a-half sized pipe
 13 coming out of the well. If you had a five
 14 horsepower motor, how many gallons per minute you
 15 would get.
 16 Q. And I'm not going to even attempt to
 17 delve into this.
 18 A. No, I can walk you through it.
 19 Q. But this calculation is what you use to
 20 arrive at your testimony that the commercial
 21 component of the Owyhee Motorcycle Club well is
 22 50 gallons per minute?
 23 A. Actually, I de-rated it for efficiency,
 24 and I do not know that number. But with my
 25 altitude correction, I came up with 44 gallons

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1 per minute.
 2 Q. And at what point in time do you
 3 believe that Owyhee Motorcycle Club began using
 4 this commercial component?
 5 A. Ten years ago.
 6 Q. And what's that based on?
 7 A. My observation of the well driller's
 8 rig sitting on the hole.
 9 Q. Your observation of what?
 10 A. The well driller's rig on the hole.
 11 Q. Earlier in your deposition you made a
 12 comment that they redid it ten years ago.
 13 A. Okay.
 14 Q. So are you talking about some work that
 15 was performed to the well?
 16 A. Yes.
 17 Q. Okay. And what work do you believe was
 18 performed on the Owyhee Motorcycle Club well some
 19 ten years ago?
 20 A. Well, I think the permit should say
 21 that. So if I could have a copy of the permit,
 22 if you hand it to me, I'll reference it.
 23 Q. Permit for what?
 24 A. Re-working the well.
 25 Q. If I had one, I would give it to you.

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1 A. Okay. So you don't have one?
 2 Q. No. What evidence do you have that the
 3 well was re-worked ten years ago? Tell me what
 4 you know.
 5 A. Well, they moved on a well driller's
 6 rig, not a work over rig.
 7 Q. And when did you see that?
 8 A. Ten years ago.
 9 Q. And how do you know it was ten years
 10 ago? How can you --
 11 A. Well, I know it's after we drilled a
 12 well over in our field that the light turned on
 13 to them and said, there is water down there
 14 better than we got. So a year later, they
 15 drilled their own well, or re-drilled their well.
 16 So that's how I back into the ten years. I think
 17 our well was drilled in '97.
 18 Q. Okay. In 1997, you drilled a well?
 19 A. Right.
 20 Q. And sometime after that, you observed a
 21 well driller's rig at the Owyhee Motorcycle Club
 22 property?
 23 A. That's correct.
 24 Q. Okay. How long was it there?
 25 A. Well, I didn't go by there often, but I

14 (Pages 50 to 53)

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1 would say -- you know, I would have to speculate
2 on one week, two weeks, because I didn't drive up
3 there all the time.

4 Q. One to two weeks you physically drove
5 out and saw it?

6 A. No, our property is within 100 feet of
7 where this well is.

8 Q. You can see it from your place?

9 A. Yes.

10 Q. Okay.

11 A. Easily, just right there on our
12 property, it's there.

13 Q. So you can see it from your home?

14 A. No.

15 Q. So you have to go out to your property?

16 A. No. We were irrigating at that time,
17 putting in new sprinkler. So I would go by there
18 once in a while.

19 Q. Who else, if anyone, observed the well
20 driller's rig on the Owyhee Motorcycle Club
21 property?

22 A. Well, I would have to figure out who
23 was working for me back then.

24 Q. Okay. So you don't know at this point
25 if anyone else observed it?

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1 A. Looking for somebody alive.

2 Q. Okay.

3 A. I don't know if a fellow named Doug
4 Hunt would have been up there ten years ago or
5 not.

6 Q. Is he somebody that worked for you?

7 A. Yes. I don't know who is alive that
8 was up there.

9 Q. Who was drilling your well for you at
10 that time?

11 A. Okay. God, I know that answer, but I
12 don't recall at this moment.

13 Q. Okay. Would that person have observed
14 the --

15 A. No, he was up there the year before.

16 Q. Okay. A year before. Did you notice a
17 name, or obtain any information about whose well
18 or drill rig was on the property?

19 A. It would have been Stevens or
20 Hiddleston. And the last time we met with the
21 president, they thought it was Hiddleston.

22 Q. And I appreciate that. But the
23 question was: Did you observe who it was?

24 A. No. But yesterday, the top of the well
25 casing has "Hiddleston" on it.

Page 56

1 Q. Okay. So you don't know who owned the
2 rig that was at Owyhee Motorcycle Club?

3 A. I think it was Hiddleston. Your guys
4 confirmed it was Hiddleston. And the name
5 Hiddleston is on top of the well pipe. So it
6 makes me, like Ivory Snow, 99 percent sure.

7 Q. I understand. But you don't have any
8 knowledge based on your own observation who was
9 out there?

10 A. There has to be a reason why I think it
11 was who it was. But I can't visualize, you know,
12 who it was, and I didn't go over there at the
13 time.

14 Q. You did?

15 A. Did not.

16 Q. So you didn't physically go over and
17 observe what work was being performed?

18 A. Well, no, but I know they had trouble
19 getting over the well.

20 Q. How do you know that?

21 A. Because they had a Cat in there, I
22 think, smoothing it up to get that rig in there.

23 Q. What did you observe with the Cat
24 smoothing the well over?

25 A. The rig, it's not an easy place to get

Page 57

1 to.

2 Q. So what did you observe? You observed
3 the Cat smoothing out the ground, so the rig
4 could get in towards the well?

5 A. Or maybe build a road platform. I
6 don't know. I just saw a Cat there.

7 Q. So you saw a Cat. And do you know what
8 it was doing out there?

9 A. Building a platform or access or
10 something.

11 Q. So not with any certainty?

12 A. Certain enough that it was preparing
13 the site.

14 Q. Preparing the site for what?

15 A. Well rig.

16 Q. So you observed a Cat out there --

17 A. But the certain -- you know, when the
18 Cat was working, I didn't know what it was doing.
19 It was just working. Later when the rig was
20 sitting there, it's deducted logic that the Cat
21 was on the site for access for a well rig.

22 Q. Okay. How long was the Cat out there
23 doing work; do you know?

24 A. Sometime when I was driving by. I only
25 drove by periodically. So when -- since I saw it

15 (Pages 54 to 57)

Page 66

1 A. But I don't recall. You know, just
2 back there somewhere.

3 MR. HONSINGER: Counsel, I think when
4 the witness was speaking of typical of the era,
5 he was speaking of assuming that the well was
6 drilled in the 1950s and 1960s. I believe he was
7 referring to that era, rather than 20 years ago
8 when he was there.

9 Q. (BY MS. KLEIN FISCHER) Is that
10 accurate? Is that what you meant?

11 A. I don't have a firm time concept of
12 when I was there, other than I've been there for
13 a long time. You know, but not often did I tramp
14 around over there. Even though we had an
15 easement to go through, and we did go through
16 there regularly.

17 Q. Other than just your knowledge that
18 wells drilled in, you know, the late '50s
19 typically had a smaller casing than eight inches,
20 do you have any independent recollection of
21 observing the size of the Owyhee Motorcycle Club
22 well prior to yesterday?

23 A. Yes.

24 Q. Okay. And what do you recall?

25 A. I would say, six inches or smaller.

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1 Q. And again, do you know roughly when you
2 made that observation?

3 A. So how long ago was 20 years ago?
4 What's the answer?

5 MR. HONSINGER: 1988.

6 THE WITNESS: I think it was before
7 that. It was 30 years ago.

8 Q. (BY MS. KLEIN FISCHER) '78. I mean,
9 if you are just guessing, I mean -- if you don't
10 know, then you don't know. That's fair.

11 A. Well, it's foggy. So I'm back 30 years
12 now. It gets foggier the farther back I go.

13 Q. Did you ever measure it?

14 A. No.

15 Q. Okay. Now, you also said that you made
16 observations after the well rig was out there, in
17 roughly ten years ago, that the quantity of water
18 used by Owyhee Motorcycle Club changed; is that
19 accurate?

20 A. Yes.

21 Q. Okay. Tell me what observations you
22 made following seeing the well rig out there.

23 A. Well, the amount of sprinklers and
24 tanks installed to water more and more ground.

25 Q. Okay. Before the well rig was out

Page 68

1 there, how many tanks were present?

2 A. Two.

3 Q. Okay. And how many were present after
4 the well rig was out there?

5 A. You've claimed six or something in your
6 water report.

7 Q. I just want to know based on your
8 observations right now.

9 A. I know of three today.

10 Q. Three today. So you believe one
11 additional tank was added after the well rig was
12 present on the property?

13 A. I'm not familiar with the rest of them.

14 You know, if you claim six, or however many you
15 claim today, I'm not sure, you know, where all
16 these are.

17 Q. Yeah. Set aside what --

18 A. I know of three.

19 Q. Okay. Set aside what's been claimed.
20 I want to know -- I mean, I want to know what you
21 saw and observed. Because you said that you
22 don't -- after the well rig was there, you
23 testified, I believe, that you observed changes
24 in the quantity and quality of water being used.

25 A. You know, I can't tell you specifically

Page 69

1 where those tanks -- they came in with Brett
2 Judy.

3 Q. I'm sorry, what?

4 A. Brett Judy was up there.

5 Q. Okay.

6 A. I can't specifically say whether it was
7 before the rework of the well or after the well.

8 Q. And when you say --

9 A. Now --

10 Q. I'm sorry. Go ahead.

11 A. And we established that was ten years
12 ago. In that time frame, I think they had the
13 second one. I think they had one. God, I think
14 it was red. Then I think they put another one up
15 higher. Today they are both at the same height.
16 Yesterday they were at the same height, but
17 they've moved them around again.

18 Q. So you are not positive if that
19 occurred before or after the well was out there?

20 A. Well, I think there was one before, and
21 maybe the second one added after.

22 Q. You don't know for sure, though?

23 A. It was close, you know, about the same
24 time frame.

25 Q. And those are the tanks that we talked

18 (Pages 66 to 69)

Page 74	Page 76
1 component. 2 A. Just date. 3 Q. The priority date. You don't dispute 4 that there is some commercial use? 5 A. No, we don't. 6 Q. Okay. What do you -- 7 MR. HONSINGER: Counsel, I think what 8 his testimony has been, is that right now there 9 is commercial use of approximately 50 gallons per 10 minute. 11 MS. KLEIN FISCHER: I think that's 12 fair. But I would like to hear from him. 13 Q. (BY MS. KLEIN FISCHER) I'm just trying 14 to get at what -- you are objecting to the 15 priority date for a commercial component of the 16 right? 17 A. Yes. 18 Q. But you would agree, I mean, at least 19 your position would be that 50 gallons per 20 minute -- 21 A. My calculation I put 44 gallons, but 22 I'm not sure of the efficiency factor. So 50 is 23 wrong. 24 Q. And what is your testimony as to when 25 that commercial use commenced?	1 A. No. My observations were that it was a 2 poor well before that, not now. 3 Q. When we talk about quality, we're 4 talking about the quality of the well then, not 5 the quality of the water, is that fair? 6 A. No. No. No. 7 Q. Okay. 8 A. Well, both. The old well wasn't a good 9 well. The old water wasn't good water. The new 10 well seemed adequate, and seems, you know, fine. 11 Q. Okay. And when we talked earlier about 12 why you thought the old well wasn't a good well, 13 and that was, I think, based on conversations 14 with caretakers? 15 A. That's correct. 16 Q. Okay. In terms of quality, correct? 17 A. That's taste? 18 Q. Yes. 19 A. And I imagine it had iron sulfate in 20 it. It was kind of yellow, junky stuff that 21 turns your clothes yellow. 22 Q. What do you know about the quality of 23 the water after 1998? How did it change? 24 A. Nothing. It looks fine driving by, you 25 know, what's coming out of the sprinklers. I
Page 75	Page 77
1 A. Ten years ago. 2 Q. And that's based on? 3 A. Observation. 4 Q. All the things you've told me today? 5 A. That is correct. 6 Q. The observation of the drill rig being 7 placed on the property some ten years ago? 8 A. That's part of it. 9 Q. Your observations we've talked about in 10 terms of quantity of water, is that right? 11 A. Well, either I'm going to say, yes or 12 no. You haven't finished. 13 Q. Well, I want to stop at quantity. Your 14 observations on quantity, the sprinklers and the 15 tanks? 16 A. We mentioned the 50 gallons a minute as 17 a calculation. And that's a lot of water out of 18 an inch-and-a-half of pipe going 100 feet in the 19 air, just FYI. 20 Q. Okay. We didn't talk about quality. 21 Did you make -- I don't know if I even care. But 22 did you make observations of the quality of the 23 water? Is -- 24 A. After the ten years? 25 Q. Yes.	1 have not run a sample on it. 2 Q. Did it look different coming out of the 3 sprinklers prior to 1998? 4 A. It looks like something I would drink. 5 Q. I'm sorry? 6 A. It looks like something you would 7 drink. 8 Q. Now it does? 9 A. Yes. 10 Q. And prior to 1998, you observed a 11 difference in the way the water looked as to now? 12 MR. HONSINGER: I'll object to the form 13 of the question. I don't think he's testified 14 that there were sprinklers prior to 1998. 15 THE WITNESS: That is correct. 16 Q. (BY MS. KLEIN FISCHER) Okay. Well, I 17 just want to get at what you observed that makes 18 you think that the quality of that water has 19 changed from 1998 on? 20 A. I just think it looks fine now. And 21 according to the other caretakers, it wasn't fine 22 back then. 23 Q. Okay. That's it? 24 A. Just observation. 25 Q. And you've observed --

20 (Pages 74 to 77)

Page 78

1 A. I've run no chemical samples on it.
 2 Q. And you've observed what about the
 3 quality of the water? You observed it coming out
 4 of the sprinklers?
 5 A. Yes.
 6 Q. Anything else?
 7 A. No.
 8 Q. Okay. Do you have any information that
 9 Owyhee Motorcycle Club has ever used a well on
 10 its property, other than the one that we've been
 11 talking about today?
 12 A. Well, we've eliminated springs. So I
 13 guess the answer is, no.
 14 Q. Have you retained any experts in this
 15 case to assist you in preparing your objections?
 16 I think you talked about Squires having helped
 17 you evaluate things early on. So anyone other
 18 than that?
 19 A. I don't know whether he's advised me
 20 much on this. Mr. Honsinger did most of the
 21 work. But Ed has been around, and I've always
 22 talked to him.
 23 Q. Aside from the calculations you've
 24 performed in connection with the commercial
 25 component of the Owyhee Motorcycle Club water

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1 Q. If this matter goes to a hearing, would
 2 you expect Mr. Squires to offer testimony on your
 3 behalf?
 4 A. He's a good expert witness. Whether we
 5 need an expert witness, I would have to ask my
 6 counsel. I don't know.
 7 Q. At this point in time, would you
 8 anticipate calling him as an expert in this case?
 9 A. I would have to ask my counsel.
 10 Q. Okay. So you don't know?
 11 A. I know he's a good expert witness. But
 12 what expertise he has in this, I don't know.
 13 Q. Has he given you any reports or
 14 information relevant to the Owyhee Motorcycle
 15 Club well?
 16 A. Not that I can recall.
 17 Q. Okay. Have you performed any testing
 18 of Owyhee Motorcycle Club's wells volumetric
 19 quantity?
 20 A. No. Other than the observation of
 21 filling the water tank. I've tried to ask people
 22 how long it took to fill the water tank.
 23 Q. And that's what we talked about before,
 24 you asked somebody how long it took?
 25 A. Yes.

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1 right, have you had any other engineers,
 2 hydrologists perform any tests with respect to
 3 the Owyhee Motorcycle right?
 4 A. No.
 5 Q. Have you performed any testing of
 6 Owyhee --
 7 A. But I do think you mentioned Squires.
 8 He was the geologist on our well that we drilled
 9 in '97. I think he talked to the people about
 10 your well -- your well, the OMC well -- in trying
 11 to ascertain where we wanted to drill our well or
 12 not, and if he had any logs or not. Do you have
 13 any logs? I know you ask the questions. Have
 14 you seen any?
 15 Q. That's all right.
 16 A. I think in locating our well, that
 17 would be a logical source point to compare. And
 18 I can't tell you what he found out about back
 19 then.
 20 Q. I guess a better question is: Have you
 21 retained Mr. Squires in connection with this
 22 objection?
 23 A. We probably talked to him. And God, I
 24 wouldn't be surprised if he didn't bill me if I
 25 talked to him.

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1 Q. So you haven't performed any of your
 2 own testing --
 3 A. Yes.
 4 Q. -- on our well?
 5 A. No.
 6 Q. All right. And you haven't requested,
 7 at least through formal discovery, any
 8 opportunity to go make those tests as of today;
 9 is that correct?
 10 A. That's correct.
 11 Q. Other than what we've talked about, do
 12 you have any information about Owyhee Motorcycle
 13 Club's historic or past volumetric quantity?
 14 A. Other than observations we've talked
 15 about earlier.
 16 Q. Okay. Obviously, this case is set for
 17 hearing, I think, in fairly short order. If it
 18 goes to hearing, what witnesses would you expect
 19 to call to testify on your behalf?
 20 A. Well, I would have -- you brought up a
 21 point, what employees have I had who have seen
 22 this. You know, I would have to scratch my head.
 23 But I think, you know, I know my own
 24 observations. I thought that was adequate.
 25 Q. Okay. And it may be. I'm just asking

21 (Pages 78 to 81)

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1 if there is anybody else, aside from you and your
2 observations, that you would rely on to prove
3 your objections?

4 A. Well, I would like to interview all the
5 caretakers that have lived there.

6 Q. Okay. Anybody else that you think
7 would have relevant knowledge that you might want
8 to rely on to prove your case?

9 A. If I could get a list of your
10 directors, I could go on down through them, and
11 query some of them that were there at that time.
12 Because surely, they authorized the payment. So
13 we could go to your books and look for payment
14 for Hiddleston.

15 Q. So maybe some board members that might
16 have knowledge. Do you know specifically who
17 those folks are today that might have that
18 information?

19 A. No, but you guys do. And the same way
20 with your treasurers, their reports go back into
21 that time frame.

22 Q. Have you identified any documents,
23 other than your formula, that you would use to
24 establish or prove your case if this matter went
25 to hearing?

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1 A. Aerial photos.

2 Q. Okay.

3 A. Infrared photos.

4 Q. Okay. Fair enough. You talked about
5 that earlier.

6 Anything else that you might rely on?

7 A. Well, if we get into this, if we get
8 cranking and get talking to people, I'm sure my
9 memory will come back up. Which if it does, if I
10 start focusing on something, actually 20 years
11 ago, and start backing into the time frame, my
12 brain slowly dies and comes into focus. If it's
13 important, you know, I can do it.

14 Q. Sure. And I understand what you are
15 saying. Today is my chance to get to talk to
16 you, though. So I may not get that chance again.
17 So I need to know, as you sit here today, if
18 you've identified any particular documents or
19 people that you would potentially rely on to
20 prove your case?

21 A. Well, there is several things that IDWR
22 thinks that I don't agree with. The area of use,
23 the quantity. I don't know about their dates and
24 when. But I think I recall most of this myself.

25 Q. Okay. So maybe you would look at some

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1 of the records that are contained in the
2 Department of Water Resources files?

3 A. Well, no. I just don't agree with some
4 of their statements. I think the area which is
5 covered, I think is exaggerated. I think the
6 quantities are exaggerated. The dates I think
7 were increased. You know, I don't think. I know
8 it was increased. So I just have problems with
9 the form that was filed. And we've stipulated to
10 some of it, so here we are.

11 Q. And, yeah, I just want to be clear,
12 too. You may not like the stipulation, but I
13 think we have boiled it down to, if I'm not
14 mistaken, that your objection consists of an
15 objection to the commercial component of the
16 Owyhee Motorcycle Club's water right; is that
17 fair?

18 A. Well, quantity and date.

19 Q. Okay. Sure. Yeah, the date. Yeah, I
20 guess depending on the date that could affect --

21 A. Of those two.

22 Q. -- the availability of that.

23 A. And acreage, too, your acreage is
24 wrong.

25 Q. What do you mean by that?

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1 A. How many acres do you claim that is
2 commercial?

3 Q. Tell me what you mean. If you are
4 objecting to something other than what we're
5 talking about, I don't know acreage.

6 A. Well, you've claimed the full 80 acres
7 that uses water on.

8 Q. Okay. You haven't objected to the
9 place of use for this water right?

10 A. Well, I'm just telling you where it's
11 wrong.

12 MR. HONSINGER: Counsel, let's go off
13 the record for a minute.

14 MS. KLEIN FISCHER: All right.

15 (Discussion held off the record.)

16 MS. KLEIN FISCHER: Let's go back on
17 the record.

18 Q. (BY MS. KLEIN FISCHER) Okay. Off the
19 record you just had a discussion with Counsel
20 regarding the place of use for the commercial
21 component of Owyhee Motorcycle Club's right?

22 A. Right.

23 Q. Is that --

24 A. They haven't dust controlled the north
25 half of their 80.

22 (Pages 82 to 85)

Page 86

1 Q. Okay. Aside from the objection to the
2 commercial component of Owyhee Motorcycle Club's
3 water right, have we resolved all of the other
4 issues?

5 MS. KLEIN FISCHER: And jump in,
6 Charlie, if you think I'm misstating what our
7 agreement is. I want to make sure I understand
8 what our agreement is when we finish this
9 deposition.

10 MR. HONSINGER: The Terteling Company
11 objection is to the commercial component of the
12 Water Right No. 63-18957.

13 MS. KLEIN FISCHER: Okay.

14 MR. HONSINGER: So I think the answer
15 to your question is, yes.

16 MS. KLEIN FISCHER: Okay.

17 Q. (BY MS. KLEIN FISCHER) Now, you told
18 me you wished they would do more dust control?

19 A. Off the record, you are quoting me off
20 the record.

21 Q. I am. I heard you off the record. Do
22 you think that's going to be easier if you attack
23 and reduce the commercial component of Owyhee
24 Motorcycle Club's water right?

25 A. I think those two statements are

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1 oxymorons to each other.

2 Q. Well, how are they going to control
3 dust if you successfully reduce or challenge the
4 commercial component of their water right?

5 A. Are we talking about in the past or the
6 future or today?

7 Q. I'm talking about going forward from
8 today.

9 A. Today.

10 Q. Going forward today, right now it's
11 been recommended. Is that what you want to do?

12 A. I think I want to establish when the
13 commercial use was enlarged from the domestic
14 quantity that they had.

15 Q. Okay. Just a couple more questions,
16 and we're just about finished.

17 Do you dislike the fact that Owyhee
18 Motorcycle Club is adjacent to your property?

19 A. They've been a challenge. And when
20 they race in the stream bed, it washes down in my
21 reservoir and causes me damage. When I
22 removed -- the last time it washed out, I wrote
23 them a letter and said, don't try to fix this in
24 high water. High water runoff, they get in there
25 and muck around with dozers and Cats, which

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1 damaged my property.

2 I then had it removed, and sent them a
3 bill, and they didn't pay me. I don't know why
4 they didn't pay me. Okay. This year, I also
5 removed some more material, and I am planning on
6 sending them another bill.

7 So they keep encroaching on my ground.
8 As the tracks come around, they throw dirt every
9 time. Every thousand motorcycles go around, they
10 keep encroaching on my property. And then when
11 the neighbor's cattle get in to their property,
12 they kick them in onto my property. That isn't
13 right.

14 I think there is some noise ordinance
15 past 10:00 that I think they ought to observe
16 better. I think some of their members will take
17 off their mufflers and be above the noise levels.
18 I've said earlier that they don't adequately
19 control the dust. So the dust floats around all
20 over the place.

21 Some of their members will challenge
22 some of -- you know, like my son, to have a fist
23 fight and settle it. In fact, that's the way
24 they have challenged both of my sons, to settle
25 it in fist fights.

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1 Q. To settle what; this water right
2 dispute?

3 A. No.

4 Q. Anything?

5 A. It's just anything. I mean, that's
6 just the mentality. So I would prefer to move
7 them. But I don't want to stop them as a Club,
8 because I believe in any family sport that you
9 are with your children, it's a good activity.
10 It's better to be working with your kids.

11 I also don't want them running them all
12 over wild on the Boise front. I think they are
13 better to have organized and controlled races.
14 And people still get killed. A guy got killed
15 last year.

16 So I would like to work with them. And
17 see, eventually if I could trade them ground.
18 I've kept 200 acres in Seaman's Gulch that
19 doesn't have a flowing stream through it, and has
20 exactly the same soil. And has a neighbor of the
21 Ada County Dump, and it's a basin that reflects
22 out. So I've kept that piece of ground thinking
23 that someday it might be a good trade.

24 Q. Does it have a good well on it?

25 A. Yes.

23 (Pages 86 to 89)

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
JUN 16 2008	
By _____	Clerk
_____	Deputy Clerk

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

In Re SRBA	)	Subcase 63-18957
	)	
Case No. 39576	)	ORDER GRANTING MOTION TO
	)	ENTER UPON LAND FOR INSPECTION
	)	OF WATER DIVERSION AND
	)	DISTRIBUTION SYSTEM / MOTION TO
	)	COMPEL
	)	
	)	ORDER VACATING TRIAL AND
	)	REQUESTING PROPOSED TRIAL
	)	SCHEDULE

On June 11, 2008, The Terteling Company, Inc., objector in the above-captioned subcase, through its attorney Charles L. Honsinger, filed a *Motion to Enter Upon Land for Inspection of Water Diversion and Distribution System / Motion to Compel*, seeking an order allowing access for the objector's expert to inspect the water diversion and distributions system of the Owyhee Motorcycle Club, Inc. The matter was heard on June 16, 2008. The objector having demonstrated good cause, and in the interests of justice, the motion is hereby granted.

In granting objector's *Motion*, this Special Master notes that the *Director's Report* for the water right claim recommends a quantity of 0.16 cfs and an annual volume limitation of 142.40 AFY. This annual volume limitation is clearly in error in relation to the quantity of 0.16 cfs – as 0.16 cfs running 24 hours a day, year round, would amount to 115.86 AFY.¹ Therefore, statutorily provided *prima facie* weight of the *Director's*

¹ A diversion rate of approximately 0.197 cfs would be required in order to divert 142.40 AFY, again running 24 hours a day, year round. Because one of the purposes of use of the water right claim is for dust abatement, it is inconceivable that such use would require diversion of water in all seasons of the year.

ORDER GRANTING MOTION TO ENTER UPON LAND FOR INSPECTION OF WATER DIVERSION AND DISTRIBUTION SYSTEM / MOTION TO COMPEL

ORDER VACATING TRIAL AND REQUESTING PROPOSED TRIAL SCHEDULE
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Report would not apply to the annual volume limitation as reported. Accordingly, in the absence of trial testimony from qualified experts regarding the quantity element of the water right claim, this Special Master would be concerned about the validity and accuracy of the information that may be presented at trial in the situation where the *Director's Report* is known to be in error as to annual diversion volume. It is for this reason that the *Motion* is granted.

The currently scheduled trial date will unlikely allow sufficient time for the inspection of the diversion and distribution works by the objector's expert, the preparation of an expert report, the review of that report by claimant's expert, and the taking depositions that may be necessary. **Therefore, the July 17, 2008 trial date is vacated.** Counsel for the claimant and objector are ordered to confer as to a new trial schedule which shall include deadlines for the following:

- 1) The date and time for the inspection of the diversion and distribution works;
- 2) The date for disclosure of a report prepared by objector's expert;
- 3) The date for disclosure of a rebuttal expert report;
- 4) The deadline for the completion of depositions of the parties expert witnesses;
- 5) The deadline for disclosure of fact witnesses;
- 6) A trial date (please contact Diana Delaney at 736-3011 for trial date / location)

The parties are ordered to file a proposed joint schedule including these dates and deadlines **no later than Tuesday, June 24, 2008.** In the event that the parties are unable to agree as to any part of a schedule, counsel shall contact the Clerk of the Court and request a hearing date / time for a scheduling conference.

Dated June 14, 2008



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

Therefore, if the 142.40 AFY number is correct, the rate of diversion would necessarily have to be something much greater.

ORDER GRANTING MOTION TO ENTER UPON LAND FOR INSPECTION OF WATER DIVERSION AND DISTRIBUTION SYSTEM / MOTION TO COMPEL

ORDER VACATING TRIAL AND REQUESTING PROPOSED TRIAL SCHEDULE
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Page 2 of 2

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO ENTER UPON LAND; ORDER VACATING TRIAL & REQUESTING PROPOSED TRIAL SCHEDULE was mailed on June 16, 2008, with sufficient first-class postage to the following:

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Represented by:

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Phone: 208-342-4591

EDWARDS FAMILY LLC

Represented by:

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OWYHEE MOTORCYCLE CLUB INC

Represented by:

JULIE K. FISCHER

5680 E FRANKLIN RD, STE 220

NAMPA, ID 83687

Phone: 208-475-2200

DIRECTOR OF IDWR

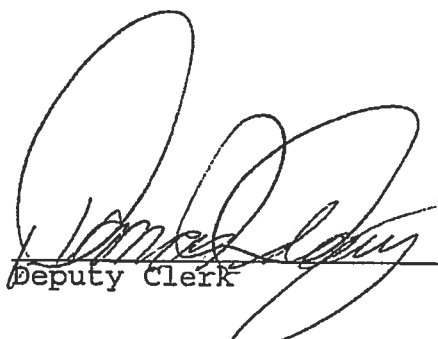
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BOISE, ID 83720-0098

ORDER

Page 1 6/16/08

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Attorneys for Owyhee Motorcycle Club

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

In Re SRBA	)	SUBCASE NO. 63-18957
	)	
	)	
Case 38576	)	OBJECTION TO MOTION FOR
	)	EXPEDITED HEARING
	)	
	)	
	)	

COMES NOW, Owyhee Motorcycle Club, Inc. ("OMC") through its attorney of record, Julie Klein Fischer, and objects to Terteling Company, Inc's ("Terteling") Motion for Expedited hearing as follows:

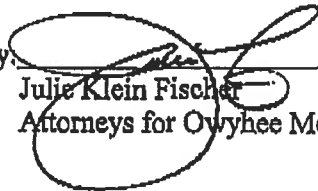
1. On Wednesday, June 11, 2008, Terteling filed a *Motion to Enter Upon Land For Inspection of Water Diversion and Distribution System/Motion to Compel*. At the same time, Terteling requested an expedited hearing for Monday, June 16, 2008.

2. In addition to already scheduled matters, counsel for OMC had depositions on Friday June, 13, 2008 thereby limiting the time available to respond to the Motion(s).
3. Further, OMC's counsel has a summary judgment hearing at 1:30 on Monday the 16th, as well as two other deadlines (that day) that require briefing and/or an objection.
4. There has been insufficient time for OMC's counsel to prepare a detailed response and objection, and the hearing scheduled for Monday has caused significant time pressures.

Thus, while OMC understands that little time remains before trial – hence the motion to expedite the hearing on Terteling's motion – it is requested that said hearing be moved to a time more convenient for all parties.

DATED this 13 day of June, 2008.

MORROW DINTUS

By: 

Julie Klein Fischer
Attorneys for Owyhee Motorcycle Club

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 13 day of June, 2008, a true and correct copy of the above and foregoing document was served upon the following by:

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State of Idaho
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Boise, ID 83711-4449

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Edwards Family LLC
c/o Dana Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702

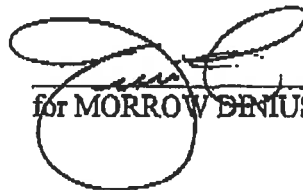
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The Terteling Co. Inc.
c/o Charles L. Honsinger
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for MORROW DENNIS

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Attorneys for Owyhee Motorcycle Club

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

In Re SRBA

Case 38576

) SUBCASE NO. 63-18957
)
)

) OBJECTION TO MOTION TO
) ENTER UPON LAND FOR
) INSPECTOIN OF WATER
) DIVERSOIN ANDDISTRUBITON
) SYSTEM/MOTION TO COMPEL
)

COMES NOW, Owyhee Motorcycle Club, Inc. ("OMC") through its attorney of record, Julie Klein Fischer, and objects to Terteling Company, Inc's ("Terteling") Motion for access to the OMC property as follows:

BACKGROUND AND STATEMENT OF THE CASE

Owyhee Motorcycle Club, Inc. is a non-profit corporation that has operated a motorcycle park in Ada County since the 1940s. OMC is governed by a volunteer board.

OBJECTION TO MOTION TO ENTER UPON LAND FOR INSPECTOIN OF WATER DIVERSOIN
 ANDDISTRUBITON SYSTEM/MOTION TO COMPEL - 1

The OMC property contains a care-taker's residence, a club house, and one well out of which the subject water right is diverted. The water is both domestic and commercial (for dust control on the race tracks).

The OMC property is adjacent to property owned by Terteling who would like to see the park moved. See pps. 87-89 of Exhibit A attached to the Affidavit of Julie Fischer ("Fischer Aff.") containing excerpts from the deposition of Joe Terteling wherein he explains his dislike for the proximity of the park to his property, irritation with dust and noise, and that he would like to see it moved.

OMC timely filed a beneficial use claim in the adjudication for its water right. The Department then recommended the right as follows:

Source:	Groundwater
Quantity:	0.160 CFS; 142.40 AFY
Priority Date:	3/01/1963
Point of Diversion:	T04N R02E S15 SWSE within Ada County
Purpose:	Domestic .040; Commercial .16

Two objections were filed to the OMC right. One by Edwards Family, LLC (which was settled on an agreement that OMC's water was not geothermal) and one by Terteling.

Terteling's objection, filed in April 2006, raised objections to OMC's quantity, priority, and point of diversion.

The initial hearing was held on December 6, 2006. Thereafter, status conferences were held on May 1, 2007, July 31, 2007 and October 2, 2007. As a result of the October 2007 status conference the Court entered a Trial Scheduling Order (dated October 4, 2007) setting the matter for hearing on April 15, 2008. Pursuant to the same Order, discovery was to be completed by March 14, 2008, and witnesses were to be disclosed by February 14, 2008. The only discovery

conducted in this matter was two Rule 30(b)(6) depositions: One of William Henning on behalf of OMC, and one of Joe Terteling on behalf of The Terteling Company on April 4, 2008.

At the pretrial conference, the parties notified the Special Master that settlement negotiations continued and that they would like to reset the trial to provide more time for settlement talks. The Court agreed, and the matter was re-set for trial on May 28, 2008.

On Tuesday, May 27, 2008 the parties held a status conference with the Court, and the trial was again vacated due to a death in the family of OMC's counsel (the funeral being scheduled for the same day as trial). At that time, the hearing was reset for July 17, 2008 and the parties agreed to a new witness disclosure deadline (at the request of attorney Nick Spencer). Significantly, there was no request for additional discovery or any indication the parties were not prepared for trial which would have commenced the following day.

In early June, settlement discussions broke down, and the pending motion was filed.

ARGUMENT

1. Discovery is Closed and Terteling has No Good Cause to Reopen the Same.

While it is not the intention of OMC to be uncooperative, this case has been pending for over two years, and the discovery deadlines are long passed. Terteling has had more than sufficient time to visit the OMC property and conduct the discovery it now seeks.

Additionally, any claim that Terteling needs access (at this late date) to prepare for trial is disingenuous *because Terteling already has had access to the Property*. In the deposition of Joe Terteling (taken as a Rule 30(b)(6) deposition) Mr. Terteling testified he had been to the OMC property the prior day with his son Andy (albeit without permission). *See Exhibit A to Fischer Aff. p. 42, ll. 10-24.* Mr. Terteling testified during his site visit that he had observed an eight-inch well casing; the size of the connected pipes; and two water storage tanks (red and black in

color) placed about one hundred feet in above ground, *Id.* p. 49, ll. 15-23; p. 69, ll. 14-17. Additionally, Mr. Terteling's inspection was detailed enough to discover the name "Hiddleston" on the top of the well (*Id.* p. 55, ll. 24-25) and from his site visit and observations, Mr. Terteling was able to calculate what he believes to be OMC's current rate of diversion. *Id.* p. 50-51.

Mr. Terteling (an engineer) also testified (after the expert disclosure deadline) that he had not retained an expert. Accordingly, there is no reason to open discovery since Mr. Terteling has already been to the property and the time to disclose experts (to the extent that is the purpose for the site visit) is long past.

Further, Terteling has not ever, at any status or other conference, requested the court modify its scheduling order, or requested additional discovery. In fact, at his deposition it was confirmed Terteling had not requested any opportunity to test or examine the OMC well or property through formal discovery. *See Exhibit A to Fischer Aff.*, p. 81. Rather, Terteling conducted his own site visit and now that it has been unable to settle with OMC seeks to reopen discovery in an attempt to support its objections.

Had Terteling needed additional information or discovery to support its objections, the issue should have been raised sooner. The trial is scheduled to begin in just over one month and to reopen discovery at this time would be expensive, cause delay and prejudice OMC.

2. The Site Visit is an Attempt to Obtain Support for Terteling's Objections.

Terteling objected to the OMC water right on three bases: priority date, point of diversion and quantity. It was not until Mr. Terteling was deposed that Terteling conceded it had no basis or evidence for two of its objections, and could offer no substantive support for the third.

Regarding the point of diversion objection, the following questions concluded a lengthy discussion about the same:

Q. So you don't have any dispute that the point of diversion, to the extent that means the well --

A. Okay. If you specify well, I agree with you.

Q. --that's properly recommended in the Exhibit No. 3, the Department's recommendation; correct?

A. I believe the well to be correct.

See Exhibit A to Fischer Aff., p. 18, ll. 3-11.

Similarly, after a considerable amount of testimony, Mr. Terteling also conceded that he had no evidence to contradict OMC's evidence of priority:

MR. HONSINGER: Counsel, now that we're back on the record, we'll stipulate to the fact that we don't have any evidence to contradict Guy James' claim that the priority date of a well that was drilled in 1958. We will continue to dispute the quantity, though.

Id., p. 35, ll. 21-25, p. 36, l. 1. (See also pps. 22-25 inquiring about evidence to support the priority date objection).

Next, Terteling ultimately stipulated that it had no objection to OMC's domestic right with a 1958 priority date:

Q. Okay, We had a discussion off the record where you had a chance to visit with Counsel. And it's my understanding that The Terteling Company will stipulate to a domestic water right with the priority date of 1958. "Domestic" being as defined by law. The term "domestic" being how ever the law or Department denies a domestic water right; is that fair?"

A. That's fair.

Terteling also agreed it did not dispute there is some commercial use by OMC. *Id.*, p. 74.

At one point during the deposition, Mr. Terteling challenged the place of use for the OMC right (*Id.*, p. 85) but upon further examination, it was agreed that the only unresolved objection after the deposition was to the commercial component of Water Right No. 63-18957:

Q. Okay. Aside from the objection to the commercial component of Owyhee Motorcycle Club's water right, have we resolved all of the other issues?

MS. KLEIN FISCHER: And jump in, Charlie, if you thing I'm misstating what our agreement is. I want to make sure I understand what our agreement is when we finish this deposition.

MR HONSINGER: The Terteling Company objection is to the commercial component of the Water Right No. 63-18957.

Id., p. 86, ll. 1-12.

While there is considerable more discussion in the record regarding Terteling's objections to the commercial component of the water right, the support therefore is meager, and based on speculation.

In sum, Terteling has abandoned two of its three claims, and, on the eve of trial is hoping to visit the property to discover facts to support objections it filed, and forced OMC to defend.

It is too late, not to mention prejudicial, to launch into a fact finding mission a month before trial. As mentioned above, this matter has been pending for over two years and OMC has spent considerable time and money simply getting Terteling to concede it had no evidence for at least two of its objections. If Terteling is now allowed to reopen discovery, OMC will be required to spend even more time and money participating in site visits, deposing experts and further employing its own experts to counter any arguments or opinions expressed by Terteling.

//

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//

//

CONCLUSION

For the reasons set forth herein, OMC respectfully requests the Court deny Terteling's motion, and honor the existing deadlines the parties have agreed upon, and relied upon.

DATED this 13 day of June, 2008.

MORROW DINIUS

By: _____

Julie Klein Fischer
Attorneys for Owyhee Motorcycle Club

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 13 day of June, 2008, a true and correct copy of the above and foregoing document was served upon the following by:

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for MORROW DINIUS

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Kevin E. Dinius
Julie Klein Fischer
William A. Morrow
Shelli D. Stewart
Dennis P. Wilkinson

Morrow Dinius

Attorneys at Law

5680 E. Franklin Rd., Ste. 220
Nampa, ID 83687
Telephone: (208) 475-2200
Fax: (208) 475-2201
www.morrowdinius.com

Email: jfischer@morrowdinius.com

FACSIMILE TRANSMISSION

Date: June 13, 2008

To: IDWR Document Depository – 287-6700
Clive Strong – 854-8072
Dana Hofstetter – 424-8774
Charles L. Honsinger – 342-4657

From: Julie Klein Fischer/Laura

No. of Pages: 4 (*including coversheet*)

RE: *In Re SRBA Case No. 38576*
Subcase No. 63-18957

Please see the attached:

1. Notice of Substitution of Counsel

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the ATTORNEY-CLIENT PRIVILEGE. This information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

If you do not receive all pages, please call Laura as soon as possible at (208) 475-2200.

The original of this faxed document will not be sent unless requested by the recipient.

Julie Klein Fischer
 MORROW DINIUS
 5680 East Franklin Road, Suite 220
 Nampa, Idaho 83687
 Telephone: (208) 475-2200
 Facsimile: (208) 475-2201
 ISB No.: 4601
jfischer@morrowdinius.com

Attorneys for Owyhee Motorcycle Club

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

 In Re SRBA

Case 38576

)
)
)
)
)
)
)
)

SUBCASE NO. 63-18957

NOTICE OF SUBSTITUTION OF
 COUNSEL

TO THE ABOVE-ENTITLED COURT AND TO COUNSEL OF RECORD:

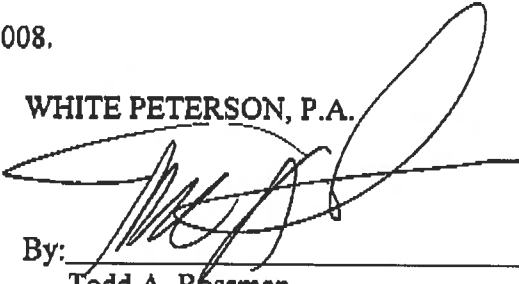
NOTICE IS HEREBY GIVEN, pursuant to Rule 11(b) of the Idaho Rules of Civil Procedure that Morrow Dinius hereby substitutes as counsel of record for Owyhee Motorcycle Club in the above-entitled action in the place of White Peterson, P.A., and hereby enters its notice of appearance on behalf of Owyhee Motorcycle Club in all matters set forth above.

All further pleadings should be served on counsel for Owyhee Motorcycle Club as follows:

Julie Klein Fischer
Morrow Dinius
5680 East Franklin Road, Suite 220
Nampa, ID 83687
208-475-2200
208-475-2201 (facsimile)
jfischer@morrowdinius.com

DATED this 13th day of June, 2008.

WHITE PETERSON, P.A.

By: 
Todd A. Robsman
Withdrawing Attorneys

DATED this 13 day of June, 2008.

MORROW DINIUS

By: 
Julie Klein Fischer
Substitute Attorney

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 13 day of June, 2008, a true and correct copy of the above and foregoing document was served upon the following by:

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

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 287-6700

Chief, Natural Resources Division
Office of the Attorney general
State of Idaho
PO Box 44449
Boise, ID 83711-4449

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 854-8072

Edwards Family LLC
c/o Dana Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 424-8774

The Terteling Co. Inc.
c/o Charles L. Honsinger
RINGERT CLARK, Chtd.
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 342-4657


for MORROW DINIUS

T:\Clients\O\Owyhee Motorcycle Club 22151.000\Pleadings\Owyhee Motorcycle Club Pleadings\Not of Substitution.doc

CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third Street, P.O. Box 455
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Objector The Terteling Company, Inc.

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

In Re SRBA

Case 38576

Subcase No. 63-18957

**NOTICE OF EXPEDITED HEARING FOR
MOTION TO ENTER UPON LAND FOR
INSPECTION OF WATER DIVERSION AND
DISTRIBUTION SYSTEM/MOTION TO
COMPEL**

PLEASE TAKE NOTICE that hearing on Objector, The Terteling Company, Inc.'s, Motion to Enter Upon Land for Inspection of Water Diversion and Distribution System/Motion to Compel will be held on Monday, the 16th day of June, 2008, at 10:00 o'clock a.m. before Special Master Theodore R. Booth, at the Snake River Basin Adjudication located at 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing the number 255-383-1099 and when prompted entered the code 675342.

DATED this 11th day of June, 2008.

RINGERT LAW CHARTERED

By: Charles L. Honsinger
Charles L. Honsinger
Attorneys for The Terteling Company, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2008, I caused to be served a true and correct copy of the foregoing document via U.S. mail and facsimile to the following:

Julie Klein Fisher
Morrow Dinius
5680 East Franklin Road, Ste. 220
Nampa, Idaho 83687
Fax: (208)475-2201

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720
Fax: (208) 287-6700

Edward Family LLC
c/o Dana Hofstetter
Hofstetter Law office, LLC
608 West Franklin Street
Boise, Idaho 83702
Fax: (208)424-8774

Charles L. Honsinger
Charles L. Honsinger

CHARLES L. HONSINGER (ISB #5240)
 RINGERT CLARK CHARTERED
 455 S. Third Street, P.O. Box 455
 Boise, Idaho 83701-2773
 Telephone: (208) 342-4591
 Facsimile: (208) 342-4657
 Attorneys for Claimants The Terteling Company, Inc.

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

In Re SRBA

Case 38576

Subcase No. 63-18957

AFFIDAVIT OF CHARLES L. HONSINGER

STATE OF IDAHO

COUNTY OF ADA

) ss

CHARLES L. HONSINGER, being first duly sworn upon his oath, deposes and says that:

1. I am the attorney for the objector The Terteling Company, Inc. in the above captioned Snake River Basin Adjudication subcase.
2. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
3. The discovery deadline in this case was originally set on March 14, 2008. Trial was originally scheduled for April 14, 2008. Trial was rescheduled for May 28, 2008, and was again rescheduled to be held on July 17, 2008. No discovery deadline was set at the same time

AFFIDAVIT OF CHARLES HONSINGER- Page 1

that the trial was rescheduled in either instance. The reason for rescheduling trial dates is that the parties have been discussing settlement of their differences.

4. At issue in this subcase is the capacity of Claimant Owyhee Motorcycle Club, Inc.'s diversion and distribution system.

5. Because of settlement discussions that have been ongoing, Objector The Terteling Company, Inc. has not, until now, requested permission from Claimant for it and its experts and consultants to enter upon Claimant's real property located at 6600 Cartwright Road in Boise, Idaho to inspect the diversion and distribution system thereon. After informing Claimant's attorney of its desire to inspect the property, Claimant's attorney has recently informed Objector's attorney that the inspection sought by Objector The Terteling Company, Inc. is not authorized by Claimant Owyhee Motorcycle Club, Inc.

6. The inspection sought by Objector will not in any way prejudice Claimant, and, in the interests of justice, should be granted.

7. There is no other method by which Objector will be able to accurately determine the capacity of Claimant's water diversion and distribution system that is at issue in this proceeding.

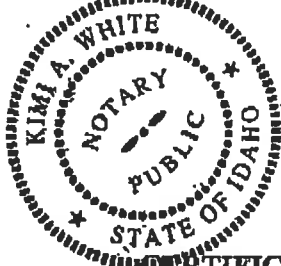
8. An expedited hearing is necessary to hear Objector's Motion to Enter Upon Land and Motion to Enlarge Time because trial is approaching fast, and the parties need to prepare for the same.

Further your affiant sayeth naught.

DATED this 11th day of June, 2008.

By: Charles L. Honsinger
Charles L. Honsinger

Sworn to and subscribed before me this 11th day of June, 2008.



Kim A. White
Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 04/01/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2008, I caused to be served a true and correct copy of the foregoing document via U.S. mail and facsimile to the following:

Julie Klein Fisher
Morrow Dinius
5680 East Franklin Road, Ste. 220
Nampa, Idaho 83687
Fax: (208)475-2201

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720
Fax: (208) 287-6700

Edward Family LLC
c/o Dana Hofstetter
Hofstetter Law office, LLC
608 West Franklin Street
Boise, Idaho 83702
Fax: (208)424-8774

Charles L. Honsinger
Charles L. Honsinger

CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third Street, P.O. Box 455
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Objector The Terteling Company, Inc.

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

In Re SRBA

Case 38576

Subcase No. 63-18957

MOTION TO ENTER UPON LAND FOR
INSPECTION OF WATER DIVERSION AND
DISTRIBUTION SYSTEM/MOTION TO
COMPEL

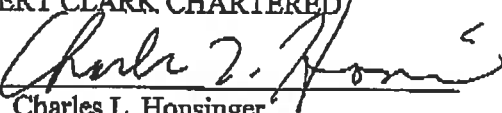
COMES NOW, Objector The Terteling Company, Inc. (hereinafter "TTCI") by and through its attorneys of record, Ringert Clark, Chartered, and hereby move this Court to issue an Order requiring Claimant Owyhee Motorcycle Club, Inc. to permit TTCI and its experts and consultants to enter upon real property owned by Owyhee Motorcycle Club located at 6600 Cartwright Road, Boise ID 83703 (T04N R02E Section 15, SESW, SWSE) for the purpose of inspecting the water diversion and distribution system located on said property. This Motion is made pursuant to I.R.C.P. 26(a) and/or I.R.C.P. 37(a), and is supported by the Affidavit of Charles L. Honsinger submitted herewith. An expedited hearing is requested.

MOTION TO ENTER UPON LAND FOR INSPECTION OF WATER DIVERSION AND
DISTRIBUTION SYSTEM/MOTION TO COMPEL - Page 1

DATED this 11th day of June, 2008.

RINGERT CLARK CHARTERED

By:


Charles L. Honsinger
Attorneys for Plaintiff

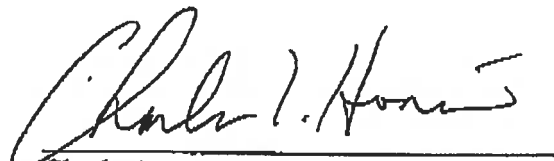
CERTIFICATE OF SERVICE

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Julie Klein Fisher
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Edward Family LLC
c/o Dana Hofstetter
Hofstetter Law office, LLC
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Boise, Idaho 83702
Fax: (208)424-8774


Charles L. Honsinger

CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third Street, P.O. Box 455
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

**Attorneys for Claimants The Terteling Company, Inc.
and T-7, LLC**

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

In Re SRBA

Case 38576

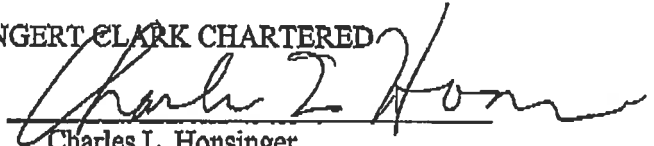
Subcase No. 63-18957

MOTION FOR EXPEDITED HEARING

COMES NOW, Objector The Terteling Company, Inc. (hereinafter "TTCI") by and through its attorneys of record, Ringert Clark, Chartered, and hereby moves this Court for an expedited hearing to address TTCI's Motion to Enter Upon Land for Inspection of Water Diversion and Distribution System/Motion to Compel. The grounds for this motion are that the trial date is fast approaching and the parties need to know whether the inspection will be permitted so that they can conduct discovery accordingly. This Motion is made pursuant to I.R.C.P. 26(7), and is supported by the Affidavit of Charles L. Honsinger submitted herewith.

DATED this 11th day of June, 2008.

RINGERT CLARK CHARTERED

By: 

Charles L. Honsinger
Attorneys for Plaintiff

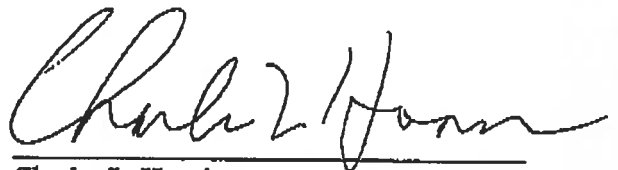
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2008, I caused to be served a true and correct copy of the foregoing document via U.S. mail and facsimile to the following:

Julie Klein Fisher
Morrow Dinius
5680 East Franklin Road, Ste. 220
Nampa, Idaho 83687
Fax: (208)475-2201

IDWR Document Depository
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Fax: (208) 287-6700

Edward Family LLC
c/o Dana Hofstetter
Hofstetter Law office, LLC
608 West Franklin Street
Boise, Idaho 83702
Fax: (208)424-8774


Charles L. Honsinger

W
RECEIVED

MAY 26 2008
DEPARTMENT OF
WATER RESOURCES

2008 MAY 23 PM 10:32
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA	)	NOTICE SETTING STATUS
	)	CONFERENCE
Case No. 39576	)	
_____	)	SUBCASE NO: 63-18957

Please be advised that Special Master THEODORE R. BOOTH
has set a Status Conference in the above subcase(s)
as follows:

TUESDAY, MAY 27, 2008 at 10:00 AM (MT)

IDAHO SUPREME COURT BUILDING
451 WEST STATE STREET
BOISE, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

Dated: MAY 23, 2008

/S/ DIANA R DELANEY

Deputy Clerk

Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Page 1 5/23/08

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING STATUS CONFERENCE was mailed on MAY 23, 2008, with sufficient first-class postage to the following:

THE TERTELING CO INC

Represented by:

CHARLES L. HONSINGER

455 S THIRD ST

PO BOX 2773

BOISE, ID 83701-2773

Phone: 208-342-4591

EDWARDS FAMILY LLC

Represented by:

DANA L. HOFSTETTER

608 WEST FRANKLIN STREET

BOISE, ID 83702

Phone: 208-424-7800

OWYHEE MOTORCYCLE CLUB INC

Represented by:

JULIE K. FISCHER

5700 E FRANKLIN RD, STE 200

NAMPA, ID 83687-7901

Phone: 207-466-9272

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

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MAY 28 2008

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAY 27 2008	
By _____	Clerk
Deputy Clerk	

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

In Re SRBA

Case No. 39576

) Subcase: 63-18957

) ORDER CONTINUING TRIAL DATE;

) ORDER SETTING DEADLINE FOR
) DISCLOSURE OF WITNESSES AND
) EXHIBITS

IT IS ORDERED that the trial in Subcase 63-18957 currently set for May 28, 2008, is continued. Trial in this matter will be Thursday, July 17, 2008, at 9 a.m., at the Idaho Supreme Court Building.

IT IS FURTHER ORDERED that exchange of exhibits and disclosure of all witnesses, except impeachment witnesses, shall be completed by Thursday, July 10, 2008. All non-disclosed witnesses, except impeachment witnesses, shall be excluded from testifying in the trial unless permitted by the Special Master in the interests of justice. I.R.C.P. 16(e)(6)(J).

DATED May 27, 2008.



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER CONTINUING TRIAL DATE; ORDER SETTING DEADLINE FOR DISCLOSURE OF WITNESSES AND EXHIBITS was mailed on May 27, 2008, with sufficient first-class postage to the following:

THE TERTELING CO INC
Represented by:
CHARLES L. HONSINGER
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

EDWARDS FAMILY LLC
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702
Phone: 208-424-7800

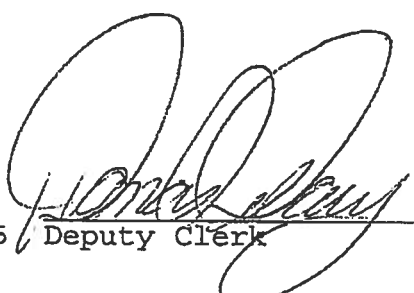
OWYHEE MOTORCYCLE CLUB INC
Represented by:
JULIE K. FISCHER
5700 E FRANKLIN RD, STE 200
NAMPA, ID 83687-7901
Phone: 207-466-9272

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

ORDER CONTINUING TRIAL DATE

Page 1 5/27/08

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Deputy Clerk

COPY

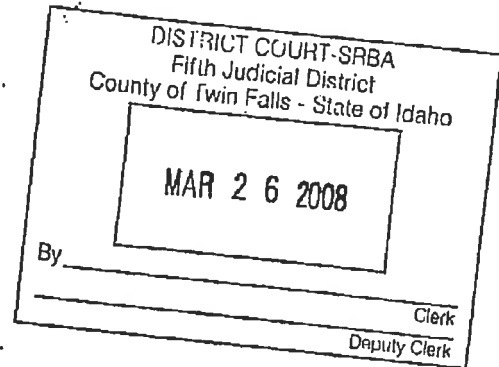
RECEIVED

MAR 27 2008

DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter (ISB #3867)
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774

Attorney for Edwards Family LLC



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

In Re SRBA

Case No. 39576

SUBCASE NO.: 63-18957

STIPULATION TO PARTIALLY
RESOLVE SUBCASE

DESCRIPTIVE SUMMARY

This is a stipulation to resolve Edwards Family LLC's Objection to the Idaho Department of Water Resources Director's Report recommendation for claimant Owyhee Motorcycle Club, Inc.'s water right number 63-18957.

STIPULATION

In order to resolve the Edwards Family LLC's Objection to the Idaho Department of Water Resources Director's Report recommendation for claimant Owyhee Motorcycle Club, Inc.'s water right number 63-18957, the parties hereby stipulate and agree that the claimant's water right number 63-18957 should include the following language in the source element of the water right description: "This water right does not authorize the diversion of a low temperature geothermal resource or other geothermal resource. This water right is diverted from a well locally referred to as the 'Owyhee Motorcycle Club well.'" All decrees, whether partial or final, should include that remark in the source element for this water right.

This stipulation does not resolve the Objection filed in this subcase by attorney Charlie Honsinger, on behalf of The Terteling Company Inc or the Objection filed by attorney Julie Klein Fischer on behalf of the claimant. The Terteling Company and claimant's Objections will be resolved separately and apart from this stipulation.

This stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties hereto agree that no offers and/or statements made in the course of negotiations shall be construed as admissions against interest or be used in any legal proceeding, and that this agreement is not and shall not be used as precedent for any other claim to a water right.

This stipulation was entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence whatsoever.

After the filing of this stipulation, Edwards Family LLC shall remain a party to this subcase and its attorney of record shall continue to receive service of subcase documents.

By: William J. Henning
William Henning, President
Owyhee Motorcycle Club, Inc., Claimant

Dated: 10/12/07

By: Julie Klein Fischer
Julie Klein Fischer
Attorney for Owyhee Motorcycle Club, Inc.

Dated: 10-12-07

By: Garnette Monnie
Garnette Monnie, Member
Edwards Family LLC, Objector

Dated: 3^{brn} / 13 / 08

By: Dana L. Hofstetter
Dana L. Hofstetter
Attorney for Edwards Family LLC

Dated: 3/13/08

IDWR Concurrence:

By: Nicholas B. Spencer
Nicholas B. Spencer
Deputy Attorney General for IDWR

Dated: 3-17^{NBS}-08

By: Vicky L. Music
Vicky L. Music
Senior Water Resource Agent, IDWR

Dated: 3/18/08

CERTIFICATE OF MAILING

I certify that on 3/24, 2008, I mailed the original and copies of the foregoing document, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

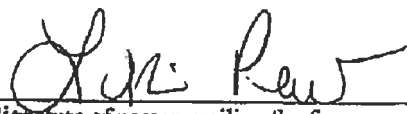
2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0098

Julie Klein Fischer
White Peterson, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702

Charles L. Honsinger
Ringert Clark
P.O. Box 2773
Boise, Idaho 83701-2773



Signature of person mailing the form

RECEIVED

APR 07 2008

**DEPARTMENT OF
WATER RESOURCES**

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR - 4 2008	
By _____	Clerk
_____	Deputy Clerk

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

In Re SRBA

SUBCASE 63-18957

Case No. 39576

NOTICE CONTINUING TRIAL DATE

NOTICE IS GIVEN that the trial in this subcase currently set for April 14, 2008, is continued. Trial in this matter will be May 28, 2008, at 9 a.m., at the Idaho Supreme Court Building, Lower Conference Room, 451 West State Street, Boise, Idaho.

DATED April 4, 2008.



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the NOTICE CONTINUING TRIAL DATE was mailed on April 04, 2008, with sufficient first-class postage to the following:

THE TERTELING CO INC
Represented by:
CHARLES L. HONSINGER
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

EDWARDS FAMILY LLC
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702
Phone: 208-424-7800

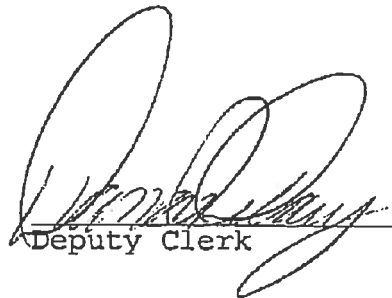
OWYHEE MOTORCYCLE CLUB INC
Represented by:
JULIE K. FISCHER
5700 E FRANKLIN RD, STE 200
NAMPA, ID 83687-7901
Phone: 207-466-9272

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

NOTICE CONTINUING TRIAL DATE

Page 1 4/04/08

FILE COPY FOR 01245 Deputy Clerk



RECEIVED

FEB 24 2008

DEPARTMENT OF
WATER RESOURCES

Julie Klein Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
ISB No. 4601
jkf@whitepeterson.com

Attorney for Owyhee Motorcycle Club, Inc.

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

In Re SRBA	)	A. Subcase No. 63-18957
	)	
Case No. 39576	)	NOTICE OF TAKING 30(b)(6)
	)	DEPOSITION OF THE
		TERTELING CO., INC.

NOTICE OF DEPOSITION: Notice is hereby given that, pursuant to the applicable Idaho Rules of Civil Procedure, the undersigned will, upon oral examination before a person authorized by applicable laws to administer oaths, take the deposition of the deponent at the time, date and place following:

Deponent:	The Terteling Co., Inc.
Time:	9:00 A.M.
Date:	March 21, 2008
Place:	Ringert Clark, Chtd. 455 S Third Boise, ID 83701

Pursuant to Idaho Rule of Civil Procedure 30(b)(6), you are required to make a designation of that agent, employee or representative of The Terteling Co., Inc., who is the custodian of or most knowledgeable regarding the following:

1. The Terteling Co. Inc.'s objection to the IDWR's recommendation of water right no. 63-18957; including without limitation knowledge of the basis for the objection.

2. The facts and circumstances forming the basis of Terteling's objection to the point of diversion; priority date and quantity recommended for water right no. 63-18957.

3. The facts supporting any contention that the point of diversion for water right 63-18957 (and/or the well located therein) was altered, enlarged, expanded or changed at anytime.

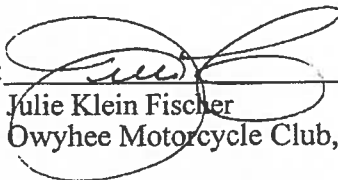
4. Terteling's position, if any, regarding what it believes to be the correct point of diversion; priority date and quantity of water right 63-18957.

NOTICE IS FURTHER GIVEN that the deponent is required to produce upon such examination the following:

1. Any and all documents, electronic or otherwise, related to or supporting Terteling's objection to the IDWR's recommendation of water right no. 63-18957, including without limitation, documents relied upon or reviewed in forming the basis for the objection(s); and documents relied upon or reviewed in connection with preparing for the noticed deposition.

DATED this 27 day of February, 2008.

WHITE PETERSON, P.A.

By: 

Julie Klein Fischer
Owyhee Motorcycle Club, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 27 day of February, 2008, a true and correct copy of the above and foregoing document was served upon the following by:

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

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Chief, Natural Resources Division
Office of the Attorney general
State of Idaho
PO Box 44449
Boise, ID 83711-4449

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US Mail
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Edwards Family LLC
c/o Dana Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, ID 83702

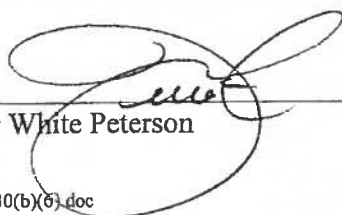
X

US Mail
Overnight Mail
Hand Delivery
Facsimile

The Terteling Co. Inc.
c/o Charles L. Honsinger
Ringert Clark Chartered
PO Box 2773
Boise, ID 83701

X

US Mail
Overnight Mail
Hand Delivery
Facsimile



for White Peterson

cg:W:\Work\O\Owyhee Motorcycle Club 22151.000\Deposition Notice 30(b)(6).doc

CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, Idaho 83701
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
MAR 07 2008
DEPARTMENT OF
WATER RESOURCES

Attorneys for The Terteling Company, Inc.

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

In Re SRBA

Case No. 39576

)
) SUBCASE NO. 63-18957
)

) NOTICE OF TAKING 30(b)(6)
) DEPOSITION OF THE OWYHEE
) MOTORCYCLE CLUB, INC.
)

TO: OWYHEE MOTORCYCLE CLUB, INC., and its attorney of record,
Julie Klein Fisher of the firm WHITE PETERSON, P.A.

Notice is hereby given that, pursuant to the applicable Idaho Rules of Civil Procedure, the undersigned will, upon oral examination before a person authorized by applicable laws to administer oaths, take the deposition of the deponent on the 21st day of March, 2008, at the hour of 1:00 o'clock p.m. of said day and continuing each and every day thereafter until completed, at the offices of RINGERT CLARK CHARTERED, 455 S. Third Street, Boise, Idaho 83702. Oral examination will continue from time to time until completed.

Pursuant to Idaho Rules of Civil Procedure 30(b)(6), you are required to make a designation of that agent, employee or representative of the Owyhee Motorcycle Club, Inc., who is the custodian of or most knowledgeable regarding the following:

NOTICE OF TAKING DEPOSITION 30(b)(6) DEPOSITION OF OWYHEE MOTORCYCLE CLUB, INC. - Page 1

COPY

1. Owyhee Motorcycle Club's claim to water right no. 63-18957, including the basis of the claimed priority date and quantity.
2. Owyhee Motorcydle Club's objection to the recommendation of water right no. 63-18957.
3. IDWR's recommendation of water right no. 63-18957.
4. The history of use of water right no. 63-18957.

NOTICE IS FURTHER GIVEN that the deponent is required to produce upon such examination the following:

1. Any and all documents, electronic or otherwise, related to or supporting Owyhee Motorcycle Club's claim to water right no. 63-18957, and/or IDWR's recommendation of water right no. 63-18957 and/or Owyhee Motorcycle Club's objection thereto, including documents related to historical use of water right nol. 63-18957, which shall include a list of Owyhee Motorcycle Club members during the period from 1957 to 1970; together with documents relied upon or reviewed in connection with preparing for the noticed deposition.

DATED this 5th day of March, 2008.

RINGERT CLARK CHARTERED

By: Charles L. Honsinger
Charles L. Honsinger
Attorney for The Terteling Company, Inc.

CERTIFICATE OF SERVICE

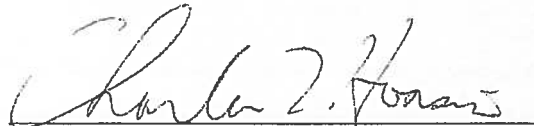
I HEREBY CERTIFY that on this 5th day of March, 2008, I caused to be served a true and correct copy of the foregoing document via U.S. mail, postage prepaid to the following:

Julie Klein Fisher
White Peterson, P.A.
5700 East Franklin Road, Ste. 200
Nampa, Idaho 83687-7901

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Edward Family LLC
c/o Dana Hofstetter
Hofstetter Law office, LLC
608 West Franklin Street
Boise, Idaho 83702


Charles L. Honsinger

RECEIVED

FEB 07 2007

DEPARTMENT OF
WATER RESOURCES

Julie Klein Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
ISB Nos. 4601, 5850, 6559
jkf@whitepeterson.com

Judy L. Geier
EVANS KEANE, LP
PO Box 959
Boise, ID 83701-0959
Telephone: (208) 384-1800
Facsimile: (208) 345-3514
ISB No. 6559
jgeier@evanskeane.com

Attorneys for Owyhee Motorcycle Club, Inc.

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

In Re SRBA	)	A. Subcase No. 63-18957
	)	
Case No. 39576	)	MOTION TO FILE LATE
	)	OBJECTION

COMES NOW, Owyhee Motorcycle Club, Inc., ("OMC") by and through its undersigned counsel of record, the law firm of White Peterson, P.A., and moves this Court for an Order allowing

COPY

the filing of a late objection for water right number 63-18957. This Motion is based on the following facts and is supported by the Verification of Julie Klein Fischer.

BACKGROUND

OMC is an Idaho non-profit corporation that owns water right 63-18957. OMC's beneficial use claim for water right 63-18957 asserts it is entitled to .270 cfs for domestic and commercial uses and a priority date of December 31, 1958.

The Department recommended a lower quantity of .16 cfs and a later priority date of March 1, 1963. At that time, the OMC Board believed the Department's recommendation was sound.

Two objections were filed to the recommendation for water right 63-18957. The first was filed by The Terteling Co. Inc., through its counsel, Charles L. Honsinger. Terteling objected to the quantity, priority and point of diversion for the OMC right. The second objection was filed by Edwards Family LLC, through its counsel, Dana Hoffstetter. The Edwards objection relates to source and quantity.

On December 6, 2007, a status conference was held related to the objections. At that time, OMC and Edwards Family LLC discussed resolution of the Edwards objection and it appears that can occur through acknowledgement that the OMC water is not geothermal. The parties also notified the Special Master on that date that OMC intended to file a late objection as it has newly discovered evidence related to the priority date of its water right. The parties agreed to work toward resolution of the objections, and second status conference was set for May 6, 2007.

STANDARD

A motion to file a late objection may be granted upon a showing of good cause pursuant to Idaho Rule of Civil Procedure 55(c). *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcases 65-7267 *et al* (January 31, 2001).

GOOD CAUSE EXISTS TO ALLOW OMC'S LATE OBJECTION

Owyhee Motorcycle Club submits the following as good cause in support of this Motion.

Owyhee Motorcycle Club seeks to object to the recommended quantity and priority date for its water right no. 63-18957. As stated above, the Board in place at the time the priority date and quantity of water were recommended, accepted that recommendation. However, upon further research by the OMC Board and Club members, it was determined that the recommended priority date and quantity were not accurate. With respect to the priority date, it was learned that a former OMC member may have evidence of an earlier priority date. Accordingly, current OMC President, Bob Henning, attempted to locate, and ultimately made contact with, Guy James a gentleman who was involved in building the OMC club house in 1958. Subsequently, an affidavit was obtained by Mr. James to aid in establishing the earlier priority date. OMC did not have sufficient evidence on which to base an objection until locating Mr. James.

Next, as referenced above, OMC's water right no. 63-18957 is subject to two pending objections which remain unresolved. An order granting this motion will not disrupt those proceedings or prejudice the parties because pending objections are not yet resolved. This objection, if allowed, will simply be resolved or heard in conjunction with the other objections.

PERTINENT DOCUMENTS ATTACHED

1. Affidavit of Guy James in support of establishing priority date is attached as Exhibit 1.
2. A fully completed Standard Form 1 Objection is attached hereto as Exhibit 2.

CONCLUSION

For the foregoing reasons, OMC respectfully requests the Court allow the late objection to be filed, late, in the on-going Snake River Basin Adjudication.

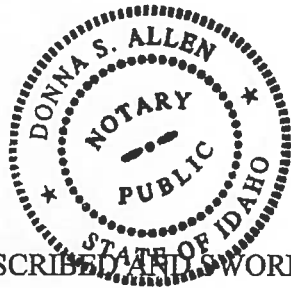
VERIFICATION

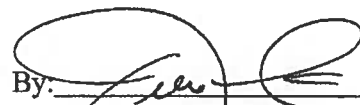
STATE OF IDAHO)
 :SS.
County of Canyon)

I, JULIE KLEIN FISCHER, being first duly sworn, upon oath, depose and say:

1. That I am the attorney for the parties filing this objection, and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.
2. That I certify that the Motion to File Late Objection in the above-referenced sub-case is well-grounded, and not filed for any proper purpose.
3. That I have read SRBA Administrative Order 1, Rules of Procedure, as amended September 30, 1996.

WHITE PETERSON, P.A.



By: 
Julie Klein Fischer
Owyhee Motorcycle Club, Inc.

SUBSCRIBED AND SWORN to before me this 6 day of February, 2007.


Notary Public for Idaho
Commission expire: 07/19/09

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 4 day of February, 2007, a true and correct copy of the above and foregoing document was served upon the following by:

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Chief, Natural Resources Division
Office of the Attorney general
State of Idaho
PO Box 44449
Boise, ID 83711-4449

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US Mail
Overnight Mail
Hand Delivery
Facsimile

Edwards Family LLC
c/o Dana Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, ID 83702

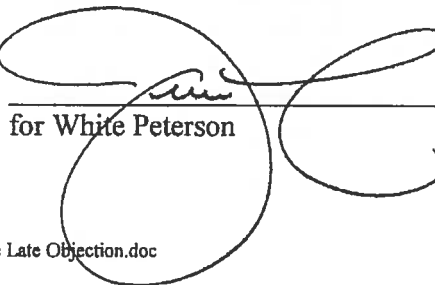
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☐
☐
☐

US Mail
Overnight Mail
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Facsimile

The Terteling Co. Inc.
c/o Charles L. Honsinger
Ringert Clark Chartered
PO Box 2773
Boise, ID 83701

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☐
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☐

US Mail
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for White Peterson

da:\Work\O\Owyhee Motorcycle Club 22151.000\Motion to File Late Objection.doc

EXHIBIT 1

EXHIBIT 2

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

In Re SRBA)

Case No. 39576)

A. Subcase 63-18957

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Owyhee Motorcycle Club, Inc.

Address: 9100 W. Halstead Dr.

Boise, ID 83704

Daytime Phone: 208-466-9272

Name & Address of Attorney, if any:

Julie Klein Fischer, White Peterson, P.A.

5700 E. Franklin Road, #200

Nampa, ID 83687

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Owyhee Motorcycle Club, Inc.

Address: Julie Klein Fischer, White Peterson, P.A.

5700 E. Franklin Rd., #200, Nampa, ID 83687

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: _____
4. ☒ **Priority Date**
Should be: 1958
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☐ **I object because:**
 - ☐ This water right Should not exist.
 - ☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTIONS(S): See attached Motion to File Late Objection.

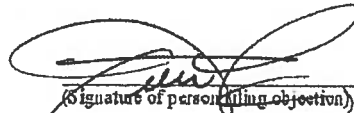
F.

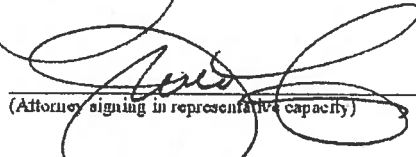
VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Canyon)

Julie Klein Fischer, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

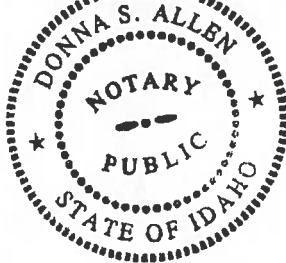
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


(Signature of person filing objection)


(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

February 6, 2007



Donna S. Allen
Notary Public for Idaho

Residing at: Nampa

My Commission Expires: 7/19/09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on February 4, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Owyhee Motorcycle Club, Inc.

Address: 9100 W. Halstead Dr.

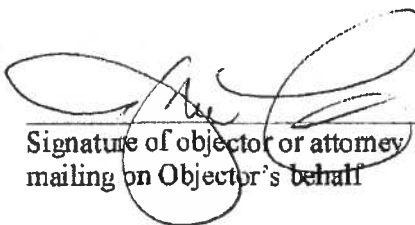
Boise, ID 83701

3. Copies to:

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

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

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf

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

In Re SRBA)

Case No. 39576)

A. Subcase 63-18957

(Insert water right number
From the Objection Form)

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: Edwards Family LLC
Address: 4106 Sand Creek Street
Boise, Idaho 83703
Daytime Phone: (208) 342-7548

Name & Address of Attorney, if any:
Dana L. Hofstetter, ISB # 3867
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
(208) 424-7800

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: The Terteling Co. Inc.
Address: 3823 North 36th Street
Boise, Idaho 83703

SCANNED
OCT 05 2006

D. I am responding to the objections to the following elements. (Please check the appropriate box(es))

1. ☐ Name and Address
2. ☐ Source
3. ☒ Quantity
4. ☒ Priority Date
5. ☒ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☐ Purpose(s) of Use
8. ☐ Period of Year
9. ☐ Place of Use
11. Recommendation
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

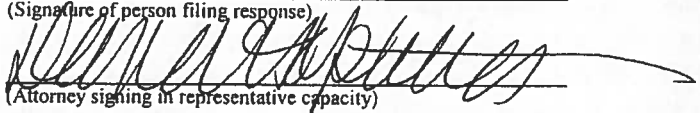
E. VERIFICATION (Must be Completed)

State of Idaho)
) ss:
County of Ada)

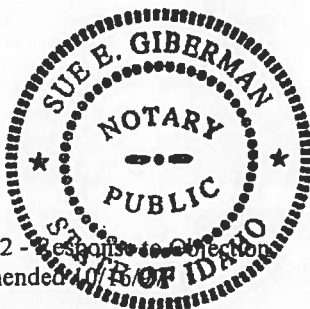
Dana L. Hofstetter duly sworn, upon oath, deposes and says:
(Name of person filing response)

That I am the party/claimant filing this response as defined by I.C. § 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing response)


(Attorney signing in representative capacity)

Subscribed and sworn to before me on: June 23, 2006



Sue E. Giberman
Notary Public for the State of Idaho
Residing at: Boise Idaho
My Commission Expires: 2-25-09

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on June 23, 2006, I caused to be hand delivered the original and caused to be mailed copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Owyhee Motorcycle Club Inc.
Address: 6600 Cartright Road
Boise, Idaho 83703

3. One copy to the party who filed the objection at the following address:

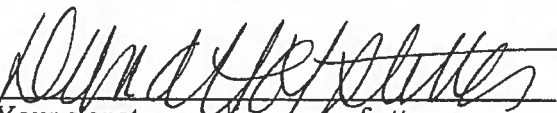
Name: Charles L. Honsinger
Address: Ringert Clark Chartered
P.O. Box 2773
Boise, Idaho 83701

4. Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449


Your signature or signature of attorney
mailing on your behalf

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

In Re SRBA)

Case No. 39576)

A. Subcase 63-18957

(Insert water right no.)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: THE TERTELING CO INC.

Address: 3823 North 36th Street
Boise, Idaho 83703

Daytime Phone: 208 338-5200

Name & Address of Attorney, if any:
Charles L. Honsinger
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTORS'S REPORT

Name: OWYHEE MOTORCYCLE CLUB, INC.

Address: 6600 CARTWRIGHT ROAD
Boise, Idaho 83703

COPY

D. I object to the following elements as recommended in the Director's Report. (Please check the Appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____

2. ☐ **Source**
Should be: _____

3. ☒ **Quantity**
Should be: Only domestic quantity

4. ☒ **Priority Date**
Should be: Only domestic priority

5. ☒ **Point(s) of Diversion**
Should be: Is recommended in the incorrect 1/4 1/4 section

6. ☐ **Instream Flow Description**
Should be: _____

7. ☐ **Purpose(s) of Use**
Should be: _____

8. ☐ **Period of Year**
Should be: _____

9. ☐ **Place of Use**
Should be: _____

10. ☐ **I object because:**

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION (S):** There is insufficient evidence to establish the priority date recommended. Point of Diversion is in wrong 1/4 1/4 section.

VERIFICATION (must be completed)

Charles L. Honsinger, duly sworn, upon oath, deposes and says:

Charles L. Honsinger
Charles L. Honsinger

Page 2

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will no be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on April 20, 2006, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the Claimant of the water right at the following address:

Name: OWYHEE MOTORCYCLE CLUB, INC.

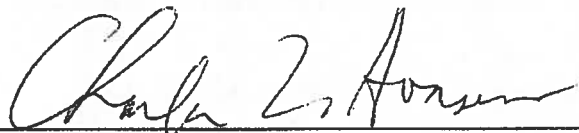
Address: 6600 CARTWRIGHT ROAD
Boise, Idaho 83703

3. Copies to:

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449



Signature of Objector or attorney
mailing on Objector's behalf

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

In Re SRBA

Case 39576

A. Subcase 63-18957

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Edwards Family LLC

Address: 4106 Sand Creek Street

Boise, Idaho 83703

Daytime Phone: 208-342-7548

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Owyhee Motorcycle Club Inc.

Address: 6600 Cartright Road

Boise, Idaho 83703

D. I object to the following elements as recommended in the Director's Report.
(Please check the appropriate box(es)):

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: See Section E
3. ☒ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. **I object because:**
 - ☒ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** To the extent that this water right authorizes the diversion of water from the Stewart Gulch Geothermal Aquifer it should not exist pursuant to *Silkey v. Tiegs*. Otherwise, the following provision should be listed under "Other Provisions Necessary for Definition or Administration of this Water Right:" The diversion and use of geothermal water is not authorized under this right. Also, the local name for the cold water well should be described. The total annual volume authorized to be diverted for all purposes under this right should be limited to an amount reasonable and historically used for the authorized purposes. The recommended annual diversion volume of 142.4 afa for "Commercial" purposes exceeds the volume that can be diverted using the maximum allowed diversion rate continuously year-round and is unreasonably large for the purposes authorized.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Signature of person filing objection

Dana L. Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on: April 20, 2006



Sue E. Gibermon
Notary Public for the State of Idaho
Residing at: Boise Idaho
My Commission expires: 2-25-09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on April 21, 2006, I filed the original with the SRBA Court and mailed copies of ~~this~~ ^{the} Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via Hand Delivery*)
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

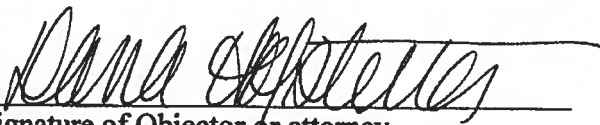
Name: Owyhee Motorcycle Club Inc.
Address: 6600 Cartright Road
Boise, Idaho 83703

3. Copies to:

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

Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MCS 033
Boise, ID 83724


Signature of Objector or attorney
mailing on Objector's behalf

11/02/2005

RECEIVED

NOV 29 2005

WATER RESOURCES
WESTERN REGION

NOTICE OF ERROR
REPLY

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: November 18, 2005

Water right number: 63-18957

OWYHEE MOTORCYCLE CLUB INC

6600 CARTRIGHT RD

BOISE ID 83703

Telephone Number: (208)888-7357

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

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

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

EB5 I AGREE with this proposed recommendation: no changes need to be made.

DATE: 11/22/05 SIGNATURE: E. A.

Please print your name: Eric Steiner

IDWR Regional Office, 2735 Airport Wy, Boise, ID 83705, 2083342190

08/15/2005

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

RIGHT NUMBER: 63-18957

NAME AND ADDRESS: OWYHEE MOTORCYCLE CLUB INC
6600 CARTRIGHT RD
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.160 CFS
142.400 AFY

The quantity of water under this right for domestic use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 03/01/1963

POINT OF DIVERSION:

T04N R02E S15 SWSE Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.040 CFS
COMMERCIAL	01/01 12/31	0.160 CFS 142.40 AFY

COMMERCIAL USE IS FOR CLUB HOUSE & WATERING OF TRACKS FOR DUST CONTROL ASSOCIATED WITH A MOTORCYCLE CLUB.

DOMESTIC USE IS FOR 1 HOME AND CLUBHOUSE ASSOCIATED WITH A MOTORCYCLE CLUB AND INCLUDES UP TO 1/2 ACRE OF IRRIGATION .

PLACE OF USE: COMMERCIAL Within ADA County

T04N R02E S15 SESW T04N R02E S15 SWSE

DOMESTIC Within ADA County

T04N R02E S15 SWSE

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

The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

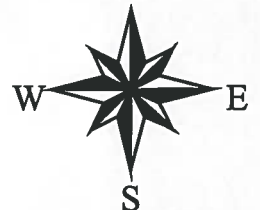
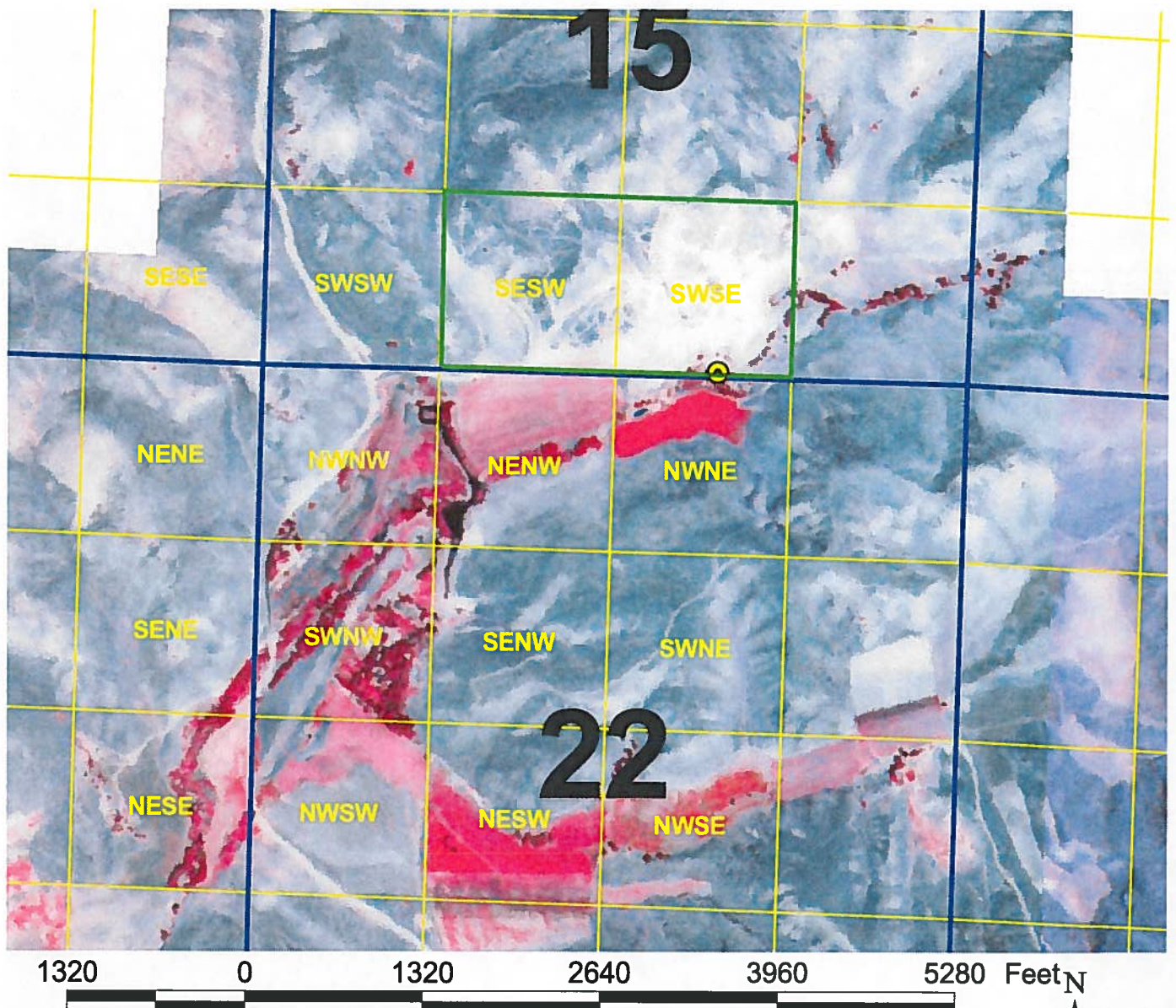
EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
PARCEL NO. S0615348400.

Water Right 63-18957



State of Idaho
Idaho Department of Water Resources
Western Region

T4N R2E SECTION 15
Water Right (s): 63-18957



GIS Place of Use Illustration
1987 NAPP Photography
Prepared By: Vicky Music
Date: August 2005

- Point of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-18957 V1

WATER RIGHT NUMBER: 63-18957 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	OWYHEE MOTORCYCLE CLUB INC 6600 CARTRIGHT RD BOISE, ID 83703 (208)888-7357

Priority Date: 03/01/1963
Basis: Beneficial Use
Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	01/01 to 12/31	0.040 CFS	
COMMERCIAL	01/01 to 12/31	0.160 CFS	142.40 AF
	<u>Total Diversion:</u>	0.160 CFS	142.40 AF

Location of Point(s) of Diversion

GROUND WATER	SW1/4SE1/4	Sec. 15, Twp 04N, Rge 02E, B.M.
ADA County		

Place of Use

DOMESTIC Within ADA County

T04N R02E S15 SWSE

COMMERCIAL Within ADA County

T04N R02E S15 SESW T04N R02E S15 SWSE

Conditions of Approval:

1. N12 The quantity of water under this right for domestic use shall not exceed 13,000 gallons per day.
2. COMMERCIAL USE IS FOR CLUB HOUSE & WATERING OF TRACKS FOR DUST CONTROL ASSOCIATED WITH A MOTORCYCLE CLUB.
3. N10 The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use.
4. DOMESTIC USE IS FOR 1 HOME AND CLUBHOUSE ASSOCIATED WITH A MOTORCYCLE CLUB AND INCLUDES UP TO 1/2 ACRE OF IRRIGATION .
5. PARCEL NO. S0615348400.
6. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 63-18957 V1

Remarks:Comments:

1. vmusic 8/15/2005 COMMERCIAL USE

Comment: MOTORCYCLE CLUB. HAS ABOUT 30 RACES PER YEAR. NO DOMESTIC USE BECAUSE PLUMBING IN CLUBHOUSE IS NO GOOD. USE WATER FOR DUST CONTROL DURING RACE TIME. WATER 1 OR 2 DAYS BEFORE A RACE. HAVE 4 TANKS THAT ARE KEPT FULL DURING THE SUMMER. 2000 GAL, 5000 GAL, 8000 GAL. DO NOT KNOW CAPACITY OF 4TH TANK.

2. vmusic 8/15/2005 COMMERCIAL CALCULATION FOR ANNUAL VOLUME

Comment: INTREPID CALCULATED WELL CAPACITY AT .16 CFS. $.16 \text{ CFS} \times 448.4 \times 60 \times 24 = 103,404 \text{ GPD} \times 60 \text{ DAYS PER YEAR} = 6,202,211 \text{ GAL PER YEAR} / 43560 = 142.4 \text{ AFA.}$

3. vmusic 8/15/2005 EVIDENCE OF PRIORITY

Comment: MADE SEVERAL INQUIRES BUT DID NOT GET EXACT INFO. SEE LETTERS IN THE FILE FROM CLUB MEMBERS. 1964 AERIAL SHOWS ACTIVITY ON THE SITE. I AM PRETTY SURE THE WELL WENT IN THE 1950S BUT CAN NOT BE SURE WHEN SO ADVANCED PRIORITY DATE TO 1963.

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
General	8/15/2005 9:56:16 AM	vmusic	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (No) 4. Is the basis of claim decree or license? (No) 7. Is the basis of claim a Application or Permit? (No) 8. Is the basis of claim a posted notice? (No) 9. Is the Priority Date of this water use after the date a permit is required for the source and the water use? (Yes) 12. Does the claim file contain sufficient evidence of Priority Date? (Yes) 15. Is the basis of claim coded correctly? (No) 16. Is a Priority Date remark and/or condition required? Description for Question 12/13 - AERIAL PHOTOS AND LETTER FROM CLUB
Source	8/15/2005 10:08:53 AM	vmusic	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim an Application or Permit? (No) 6. Is the basis of claim a Posted Notice? (No) 7. Is there evidence that there has been a change in the source? (Yes) 10. Does the file contain all the necessary information to verify the source? (No) 11. Is a Source remark and/or condition required? Description for Question 10 - INTREPID EXAM

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-18957 V1

POU	8/15/2005 10:09:34 AM	vmusic	(No) 1. Is the basis of this claim a Decree or License? (Yes) 2b. Is the POU required? (No) 3. Is the basis of claim a Application or Permit? (No) 7. Is there evidence that there has been a change in the POU? (Yes) 13. Does the file contain all the necessary information to verify the POU? (No) 14. Is a POU remark and/or condition required? Description for Question 13 - INTREPID EXAM, AERIALS
Use	8/15/2005 10:10:14 AM	vmusic	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Purpose of Use? (Yes) 11. Does the file contain all the necessary information to verify the Water Use? (Yes) 13. Is a Purpose of Use remark and/or condition required? Description for Question 10,11,12 - AERIALS, INTREPID EXAM
Season	8/15/2005 10:10:59 AM	vmusic	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administratively determined? (Yes) 15. Is irrigation claimed as a Purpose of Use? (No) 18. Is a Period of Use remark and/or condition required?
POU	8/15/2005 10:16:28 AM	vmusic	Updated shape for Active POU
Summary	8/15/2005 10:31:20 AM	vmusic	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (No) 5. Does this right have any combined use limits with other rights? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (No) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?
POU	8/15/2005 10:16:17 AM	vmusic	Updated shape for Active POU

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-18957 V1

Quantity	8/15/2005 10:13:04 AM	vmusic	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is the basis of claim a posted notice? (Yes) 7. Is a flow measurement required? (Yes) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 10. Is a irrigation a purpose of use? (Yes) 12. Is a Quantity remark or condition required? Description for Question 7 - INTREPID CALCULATED THEORETICAL Description for Question 10 - .16 CFS X 448.4 X 60 MINUTES X 24 HOURS = 6,204,211 GAL PER YEAR / 43560 = 142.4 AFA
POD	8/15/2005 10:08:14 AM	vmusic	Updated shape
Contacts	8/15/2005 9:55:22 AM	vmusic	(No) 1. Do you want to schedule an appointment? Comment for 1: DESKTOP REVIEW
POD	8/15/2005 9:56:47 AM	vmusic	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the POD? (Yes) 9. Does the file contain all the necessary information to verify the POD? (No) 10. Is a POD remark and/or condition required?
POU	8/15/2005 10:16:01 AM	vmusic	Updated shape for Active POU

Water Supply Bank:

Kevin E. Dinius
Julie Klein Fischer
William A. Morrow
Shelli D. Stewart
Dennis P. Wilkinson



5680 E. Franklin Rd., Ste. 220
Nampa, ID 83687
Telephone: (208) 475-2200
Fax: (208) 475-2201
www.morrowdinius.com

E-mail: jfischer@morrowdinius.com

FACSIMILE TRANSMISSION

Date: January 20, 2009

To: IDWR Document Depository – 287-6700
Chief, Natural Resources Division – 854-8072
Dana Hofstetter – 424-8774
Charles Honsinger – 342-4657

From: Julie Klein Fischer/Laura

No. of Pages: 6 (*including coversheet*)

RE: **SRBA**
Case No. 39576
Subcase no. 63-18957

Please see the attached:

1. Response to Motion to Compel.

CONFIDENTIALITY NOTICE

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the ATTORNEY-CLIENT PRIVILEGE. This information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

If you do not receive all pages, please call Laura as soon as possible at (208) 475-2200.

The original of this faxed document will not be sent unless requested by the recipient.

Julie Klein Fischer
 MORROW DINIUS
 5680 East Franklin Road, Suite 220
 Nampa, Idaho 83687
 Telephone: (208) 475-2200
 Facsimile: (208) 475-2201
 ISB No.: 4601
jfischer@morrowdinius.com

FAX FILED
1/20/09

Attorneys for Owyhee Motorcycle Club

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

_____	)	SUBCASE NO. 63-18957
In Re SRBA	)	
	)	
	)	RESPONSE TO MOTION TO
Case 39576	)	COMPEL
	)	
	)	
	)	
_____	)	

COMES NOW, Owyhee Motorcycle Club, Inc. ("OMC") through its attorney of record, Julie Klein Fischer, and objects to Terteling Company, Inc's ("Terteling") Motion to Compel as follows:

Background

1. On June 11, 2008, Terteling filed a *Motion to Enter Upon Land For Inspection of Water Diversion and Distribution System/Motion to Compel*.

2. On June 13, 2008, OMC objected to Terteling's motion on the basis that, i) discovery deadlines had long passed and the request was untimely; ii) Mr. Terteling already had made his own site inspection (albeit unauthorized); and iii) the motion was an obvious, last minute, attempt to try and find support for Terteling's objection to OMC's water right.¹

3. The Court granted Terteling's Motion on June 16, 2008 reasoning that because the Director's Report erroneously recommended an incorrect annual volume, it is appropriate for the parties to use experts to establish the correct amount of water being used by OMC. Accordingly, Terteling would be allowed to "inspect" the diversion and distribution works. Notably, the order does not comment on the scope of the "inspection" to be allowed, and is absent any permission to "test" the well or pump. *See Order Granting Motion To Enter Upon Land For Inspection of Water Diversion and Distribution System. Motion to Compel*, p. 2.

4. Following a reconnaissance inspection of the OMC diversion works and well (in August 2008), Terteling proposed additional extensive testing and work on site, including removal of the OMC pump; inspection of the well without the pump in place; installation of a monitoring tube; and draw down testing. *See Exhibit A to Honsinger Affidavit in Support of Motion to Compel ("Honsinger Aff.")*.

5. In response to OMC's refusal to allow the extensive and potentially risky testing, Terteling submitted a revised proposal. After consultation with OMC's retained experts, ERO Resources, the revised proposal also was rejected as is noted in the November 4, 2008 letter from

¹ Recall that Mr. Terteling admitted in his deposition that he had no evidence to support Terteling's objections to OMC's priority date and point of diversion; and no substantive proof for the objection related to purpose of use (i.e. commercial component of the OMC right). *See Objection to Motion to Enter Upon Land*, p. 4 -5.

Julie Fischer to Charlie Honsinger. *See Exhibit D to Honsinger Aff.* At that time, OMC made it clear that there are less intrusive ways to obtain accurate and reliable data, and that reasonable, less invasive testing might be allowed. However, OMC also made it clear that absent further direction from the Special Master, regarding the scope of the "inspection," Terteling was not allowed to remove OMC's pump or perform the other extensive and disruptive testing.

6. The pending motion to compel requests nothing other than permission to enter the OMC property "for the purpose of inspecting the water diversion and distribution system located on said property as ordered by this Court..." *Motion to Compel*, p. 1. Unfortunately, that already has been done. What is at issue, is the scope of work Terteling should be allowed to conduct on the OMC property.

Arguments

The testing requested by Terteling far exceeds what the IDWR typically relies upon in connection with a claim review and is unnecessary. As this Court knows, the purpose of an IDWR claim review is to verify the elements of the water right including the rate of flow. The recommendations found in Terteling's Draft Technical Memorandum are not required as part of a water right claim review. Details regarding construction, pump installation, and pump tests are irrelevant to the claim review. In addition, the installation of a flow meter, monitoring tube, or second pressure gage is extraneous to determining the discharge capacity of the OMC water system.

OMC's expert, Paul Drury with ERO Resources, conducted two flow measurement tests on July 17, 2008. The first test utilized an ultra-sonic flow meter to measure the flow rate in a closed pipe. The second test, used to confirm the results of the first test, utilized the time to fill a container of known volume. Both tests (the descriptions of which are over simplified in this

legal brief) allowed ERO to determine a rate of flow using methods generally relied upon in the industry, all without over extensive, invasive testing.²

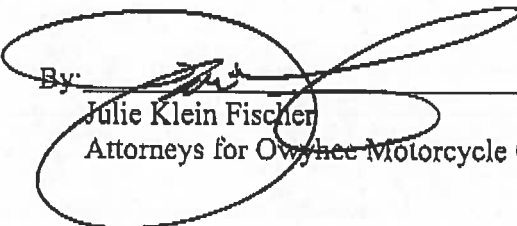
Accordingly, OMC objects to the scope of work proposed by Terteling. However, should further testing (not just inspecting) be permitted, OMC requests the Court define the scope the permissible testing, and include the following conditions in any ensuing Order:

1. Any further investigation of the OMC well and diversion works, including pump testing, shall be conducted during a period when adjacent wells on the Terteling property are not being pumped and after aquifer levels have stabilized.

2. Terteling shall be required to indemnify OMC with a performance bond valued at 150 % of the cost to replace the OMC well and water system. The cost to replace the OMC well and water system shall be determined by a registered professional engineer selected by Paul Drury and Ed Squires (experts for each OMC and Terteling).

Respectfully submitted this 20th day of January, 2009.

MORROW DINIUS & FISCHER, PLLC

By: 

Julie Klein Fischer
Attorneys for Owyhee Motorcycle Club

² In an effort to control the costs of this matter, ERO has not prepared a final report in connection with this litigation. However, based on the pending motion, counsel for OMC will attempt to obtain a final report from ERO, for the benefit of the Special Master, prior to the hearing on Terteling's Motion to Compel.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 20th day of January, 2009, a true and correct copy of the above and foregoing document was served upon the following by:

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

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 287-6700

Chief, Natural Resources Division
Office of the Attorney general
State of Idaho
PO Box 44449
Boise, ID 83711-4449

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 854-8072

Edwards Family LLC
c/o Dana Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702

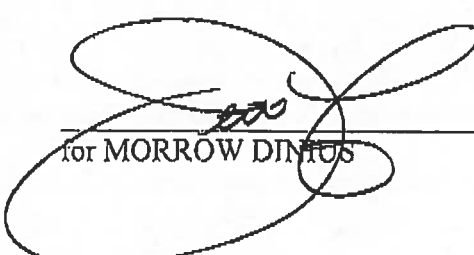
X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 424-8774

The Terteling Co. Inc.
c/o Charles L. Honsinger
RINGERT CLARK, Chtd.
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X to 342-4657


for MORROW DINTUS

T:\Clients\O\Owyhee Motorcycle

OMC 2008 RACE SCHEDULE of EVENTS

2008
race schedule

Master Calendar		
November	17th	STWS RD 1
November	23rd	STWS RD 2
November	24th	STWS RD 3
December	2nd	MXWS RD 1
December	16th	Public Practice
January	6th	MXWS RD 2
January	20th	MXWS RD 3
February	2nd	STWS RD 4
February	3rd	MXWS RD 4
February	9th	STWS RD 5
February	10th	STWS RD 6
February	16th	STWS RD 7
February	17th	STWS RD 8
February	17th	MXWS RD 5
March	2nd	MXWS RD 6
March	16th	MXWS RD 7
March	15th, 16th	ISS RD 1 OMC
March	29th, 30th	Idaho Vintage Race
April	5th, 6th	WILD WEST
April	6th	MXWS RD 8
April	19, 20	Idaho Old Timers
April	27th	KTM/ Public Practice
May	10, 11	MXSS RD 1, 2
May	15th, 17th	MXSS RD 3, 4
May	17th, 18th	Vet National
June	20, 21	STSS RD 5 & 6
June	21st, 22nd	MXSS RD 3, 4
July	11th, 12th	STSS RD 5 & 6
July	12th, 13th	MXSS RD 5, 6
August	2, 3	MXSS RD 7, 8
September	28, 29	MXSS RD 9, 10
September	13th, 14th	ISS RD 7 OMC
October	11, 12	MXSS RD 11, 12
November	2nd	MXSS RD 13
November	16th	Turkey Race

Motocross Winter Series	Date	Event	Motocross Summer Series	Date	Event
December	2nd	WS RD 1	April	27th	KTM/ Public Practice
December	16th	Public Practice	May	10, 11	MX RD 1, 2
January	6th	WS RD 2	May	17, 18	Vet National
January	20th	WS RD 3	June	21st, 22nd	MX RD 3, 4
February	3rd	WS RD 4	July	12th, 13th	MX RD 5, 6
February	17th	WS RD 5	August	2, 3	MX RD 7, 8
March	2nd	WS RD 6	September	28, 29	MX RD 9, 10
March	16th	WS RD 7	October	11, 12	MX RD 11, 12
March	29, 30th	Idaho Vintage Race	November	2nd	MX RD 13
April	5th, 6th	Wild West	November	16th	Turkey Race
April	6th	WS RD 8			
April	19, 20	Idaho Old Timers			

Idaho State Series	Date	Location	Short Track Winter Series	Date	Event
March	15th, 16th	OMC	November	17th	RD 1
April	12th, 13th	Glenns Ferry	November	23rd	RD 2
May	3rd, 4th	Clay Peak	November	24th	RD 3
June	7th, 8th	Pleasant Valley	February	2nd	RD 4
July	5th, 6th	Preston	February	9th	RD 5
August	23, 24	Kimberly	February	10th	RD 6
September	13th, 14th	OMC	February	16th	RD 7
			February	17th	RD 8

MXSS Motocross Summer Series
ISS Idaho State Series
MXWS Motocross Winter Series
STWS short track winter series
STSS Short track summer series

Short Track Summer Series	Date	Event
MAY	10th, 11th	RD 1 & 2
JUNE	20, 21st	RD 1 & 4
JULY	11th, 12th	RD 5 & 6

March 5 days 3 events + 3 8
 Apr 5 days 3 events + 4 days prep 9
 May 5 days 3 events + 4 days prep 9
 June 3 days 2 events + 3 days 6
 July 3 days 2 events + 4 day 7
 Aug 2 day 1 ev + 3 5
 Sept 4 day 2 ev + 3 7
 Oct 2 d 1 EV + 2 4

12 races & race preparation
 21 3 wed/mo x 8 months = 24
 113

not sprinkled?



Department of State.

CERTIFICATE OF INCORPORATION

I, GEO. H. CURTIS, Secretary of State of the State of Idaho, and legal custodian of the corporation records of the State of Idaho, do hereby certify that the original of the articles of incorporation of

OWYHEE MOTORCYCLE CLUB, INC.

was filed in the office of the Secretary of State on the twelfth day of March A. D. One Thousand Nine Hundred Forty and is duly recorded in Book A-35 of Record of Domestic Corporations, of the State of Idaho, and that the said articles contain the statement of facts required by Section 29-103 and Sections 29-1001 to 29-1005, inclusive, Idaho Code, Annotated.

I FURTHER CERTIFY, That the persons executing the articles and their associates and successors are hereby constituted a corporation, by the name hereinbefore stated, for perpetual existence from the date hereof, with its registered office in this State located at Boise in the County of Ada, and as such are subject to the rights, privileges and limitations granted to Non-Profit Cooperative Associations, as provided in Chapter 10, Title 29, Idaho Code, Annotated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State. Done at Boise City, the Capital of Idaho, this 12th day of March, in the year of our Lord one thousand nine hundred Forty, and of the Independence of the United States of America the One Hundred Sixty-Fourth.

Secretary of State.

ARTICLES OF ASSOCIATION OF THE
OWYHEE MOTORCYCLE CLUB, INC.

- - - -

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, being five natural persons of full age and citizens and bona fide residents of the State of Idaho, have this day voluntarily associated ourselves together for the purpose of forming a non-profit cooperative association under Chapter 10, Title 29, Idaho Code Annotated, and we do hereby certify:

ARTICLE I

That the name of said corporation shall be:

OWYHEE MOTORCYCLE CLUB, INC.

ARTICLE II

The purposes for which this association is formed are:

(a) to promote the use of motorcycles for recreational and pleasure purposes by the members of the association and the public generally.

(b) To cooperate with all law enforcement officers in the enforcement of all motor vehicle and traffic laws, ordinances and regulations.

(c) To promote the proper use of the highways and to encourage the proper maintenance and construction of the state highways;

(d) To affiliate or associate with other similar associations or organizations of a state or national kind and such organizations within the state of Idaho.

(e) To purchase, hold, convey, mortgage and encumber real and personal property and to borrow money with or without securing the same with the property of the association as the

purposes of the association may require.

(f) To organize, promote and advertise safety and educational campaigns in the use of the highways of this state; especially in the use of motorcycles and similar vehicles thereon.

(g) To carry on and promote any undertakings which are calculated directly or indirectly to promote the interests of this association and generally to have, enjoy and exercise all the rights, powers and privileges which have now or may hereafter be conferred upon non-profitable cooperative associations organized under the laws of the state of Idaho, and to do all things necessary, suitable, convenient or proper for the accomplishment of the purposes and this to the same extent and as fully as natural persons might or could do.

ARTICLE III.

The term for which this corporation shall exist shall be perpetual.

ARTICLE IV.

The location and post office address of its registered office in this state and its principal place of business shall be at Boise City, Ada County, Idaho.

ARTICLE V.

This association is a non-profit sharing membership corporation without capital stock. All persons interested in the purposes of this association, as hereinbefore set forth shall, upon election to membership and the payment of the required fee, be eligible to membership herein. The rights and interests of all members of this association shall be equal. This association shall not issue any capital stock but shall issue membership certificates to each member thereof, which

certificates cannot be assigned so that the transferree can by such transfer become a member of the association, except by resolution of the board of directors and under such regulations as the by-laws may prescribe.

ARTICLE VI.

The number of directors of this association shall be five, and the names and post office addresses of the directors who are to act in the capacity of directors until the election of their successors are:

NAMES	ADDRESSES
<u>Paul Cassel</u>	<u>512 - 5 Ave So, Nampa, Idaho,</u>
<u>C. E. Hughes</u>	<u>815 - 7th St. So. Nampa Idaho</u>
<u>L. M. Easterby</u>	<u>715 - 9 Ave So. Nampa, Idaho</u>
<u>E. R. Emerson</u>	<u>21st & Sunset, Boise, Ida.</u>
<u>Alon A. Gamble</u>	<u>2616 Fairview, Boise, Ida.</u>

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 26th day of ^{February} ~~January~~, 1940.

NAME	ADDRESSES
<u>Paul Cassel</u> (SEAL)	<u>512 - 5 Ave So, Nampa, Ida.</u>
<u>C. E. Hughes</u> (SEAL)	<u>815 - 7th St. Nampa Idaho</u>
<u>L. M. Easterby</u> (SEAL)	<u>715 - 9 Ave So. Nampa, Idaho</u>
<u>E. R. Emerson</u> (SEAL)	<u>21st & Sunset</u>
<u>Alon A. Gamble</u> (SEAL)	<u>2616 Fairview, Boise, Ida.</u>

STATE OF IDAHO,)
) ss.
County of Ada.)

On this 26th day of February, 1940, before me,
Florence Sabala, a Notary Public in and for said
state personally appeared Paul & Mabel, Charles
& Hughes, L M Easterday, C R Emerson
Dan & Gable, and _____
_____, known to me to be the persons whose names are sub-
scribed to the within and foregoing instrument and acknow-
ledged to me that they executed the same.

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

Florence Sabala
Notary Public for Idaho,
Residence: Boise, Idaho.

Music, Vicky

From: Julie Fischer [jkf@WHITEPETERSON.com]
Sent: Monday, April 07, 2008 11:18 AM
To: Music, Vicky
Attachments: April 1, 2008 Honsinger ltr..pdf

Vicky,

I am attaching a letter from Charlie Honsinger proposing settlement in 63-18957. In addition, the following information is from Bill Henning's deposition (summarized by me). I have asked him to fill in some of the missing data, like tank sizes, and will get that to you asap.

- commercial use for watering the track occurs primarily during the dry summer months typically April to October, but depends on the season
- There exist five storage tanks for watering the tracks: (2) on the east hill; (1) on the pee wee track (near entrance road); (1) on east hill of short track facility; and (1) on the infield of the short track.
- Commercial use for washing off bikes can occur year around. There are two spigots available for this purpose at all times, year around.
- Water also is used to water down ingress and egress road using old water truck
- Races occur year around, but there are an estimated two per month. Water is used by filling the tanks ahead of race day, then sprinkling the tracks. Tanks are refilled as water is used
- The tracks are also watered every Wed. night during the dry months for practices.

There isn't a dispute/objection regarding the domestic use, so I have only provided information on the commercial use.

Again, when I get the last bit of data from Bill I will get it to you and we should be able to arrive at an accurate volume. I appreciate your assistance.

Julie Klein Fischer
White Peterson, PA
5700 E. Franklin, Ste. 200
Nampa, Idaho 83687
208.466.9272 tel.
208.466.4405 fax

4/7/2008



April 1, 2008

Transmitted by Facsimile

Julie Klein Fischer
White Peterson, P.A.
5700 E. Franklin Road, Ste. 200
Nampa, ID 83687-7901
Fax: (208)466-9272

Laura E. Burri
Ashley S. Christensen
Jeffrey R. Christensen
David P. Clalborne
D. Blair Clark *
S. Bryon Farda
Jon C. Gould
David Hamnerquist
Charles L. Honsinger **
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid *
Daniel V. Steenson

Re: Owyhee Motorcycle Club Water Right No. 63-18957

Dear Julie:

Per our discussion after the depositions regarding the above-referenced water right last Friday, March 21, this letter constitutes The Terteling Company, Inc.'s proposal to settle the SRBA dispute over that water right.

As you are aware, my client's primary concern is with the volume of water used by Owyhee Motorcycle Club pursuant to its water right. The recommendation of water right no. 63-18957 provides for 142.4 acre-feet per year. I think you agree with me that Mr. Henning's deposition testimony establishes that Owyhee Motorcycle Club will simply never use even close to that authorized volume. Beyond that, the volume currently recommended far exceeds even that which could be diverted under the authorized diversion rate (it appears to be an error in the recommendation). Thus, our proposal will address a volume limitation on the water right that is more in line with the Club's actual use.

Based upon Mr. Henning's testimony that there are 6 tanks on the Club property, and that there is at least one 10,000 gallon tank and one 5,000 gallon tank, we assume that there is 50,000 gallons of total storage on the Club's property. It appears that the use of the tanks for track and road sprinkling is limited to 12 races and 24 practice days per year - for a total of 36 days of commercial use. Thus, we propose a limitation on the commercial use of the water right of 5.5 acre-feet per year (50,000 gallons per day X 36 days per year = 1,800,000 gallons used per year for road/track sprinkling. 1,800,000 gallons ÷ 325,850 gallons in each acre-foot = 5.52 acre-feet per year). This limitation on commercial use will not affect the already legally mandated 13,000 gallons per day volumetric limitation on the domestic portion of the water right. Other elements of

Julie Klein Fischer

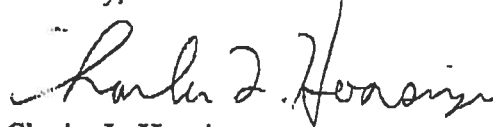
April 1, 2008

Page 2

the water right will remain as recommended.

We look forward to hearing from you soon regarding this proposal. Please contact me once you have discussed the same with your clients. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles L. Honsinger".

Charles L. Honsinger

cc: Client

Music, Vicky

From: Julie Fischer [jfischer@morrowdinius.com]
Sent: Friday, February 13, 2009 10:00 AM
To: Music, Vicky
Cc: Henning, William
Subject: FW:
Attachments: Race 08 Schedule.xls

Vicki, this is the information I pinned down after the depo with Bill Henning. He also gave me the attached race track schedule. Keep in mind they prep the track before and after races, so the water is used more than on just race days....but this gives you a general idea of the schedule. There also are regular practices (at least one a week) so the water is used for practices. There are two spigots that are used year around for washing bikes during races and practices. There are six tracks altogether. (Bill may have said five during the depo). The ingress and egress road is watered with a water truck as needed. The tanks are apparently always full (i.e. kept full) except for when the system is winterized.

Tanks Sizes:

Short track tank on the hill 9500
 Short track buried we are not exactly sure the some people thing around 5000 to 8000
 Pee Wee tank 4500
 MX on the hill 8200
 MX on the hill 8200
 MX buried we are not exactly sure we think around 5000 to 8000

I know you probably had much of this information, but I thought I'd pass it along to be sure.

Also, I guess we cannot convert the e-transcripts of the depositions. My assistant is copying them and I will put them in the mail to you today (they aren't scanning due to some weird issues so that is our only solution). If my runner is headed to Boise I'll have her deliver instead of mail – otherwise, please look for the transcripts on Monday.

Thanks Vicki

Julie

tank capacity = 40,500 - 46,500

Julie Klein Fischer
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
ISB Nos. 4601, 5850, 6559
jklf@whitepeterson.com

Judy L. Geier
EVANS KEANE, LP
PO Box 959
Boise, ID 83701-0959
Telephone: (208) 384-1800
Facsimile: (208) 345-3514
ISB No. 6559
jgeier@evanskeane.com

Attorneys for Owyhee Motorcycle Club, Inc.

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

In Re SRBA	)	A. Subcase No. 63-18957
	)	
Case No. 39576	)	AFFIDAVIT OF GUY JAMES
	)	

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

GUY JAMES, Being first duly sworn deposes and says:

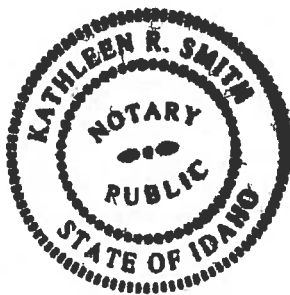
1. This affidavit is being submitted as evidence of priority for Water Right No. 63-18957, Owyhee Motorcycle Club, Inc.
2. The facts contained herein are based on my own personal knowledge.
3. I have been a Boise resident for 70 years.
4. I held many offices of the Owyhee Motorcycle Club. These offices included Treasurer from 1957 to 1958; Vice President from 1959 to 1964; 1968 Club President; and 1969 to 1979 Club Referee.
5. In 1958 we built the clubhouse for Owyhee Motorcycle Club.
6. We used the new well located just behind and to the north to get the water needed to mix the concrete used to pour the floor for the clubhouse.

FURTHER YOU AFFIANT SAYETH NAUGHT.

DATED this 15th day of December, 2006.


GUY JAMES

SUBSCRIBED AND SWORN TO Before this 15th day of December, 2006.




KATHLEEN R. SMITH
NOTARY PUBLIC FOR IDAHO
My commission expires: 6/28/08

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 6 day of February ~~December~~, 2006, a true and correct copy of the above and foregoing document was served upon the following by:

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

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X

Chief, Natural Resources Division
Office of the Attorney general
State of Idaho
PO Box 44449
Boise, ID 83711-4449

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X

Edwards Family LLC
c/o Dana Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, ID 83702

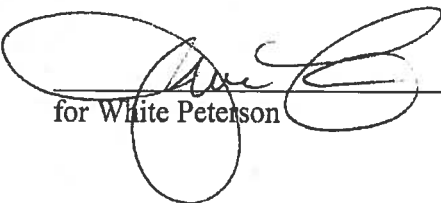
X

US Mail
Overnight Mail
Hand Delivery
Facsimile X

The Terteling Co. Inc.
c/o Charles L. Honsinger
Ringert Clark Chartered
PO Box 2773
Boise, ID 83701

X

US Mail
Overnight Mail
Hand Delivery
Facsimile X



for White Peterson



63-18957

Nicky

RED LION
HOTELS

Julie Peterson

Called & doesn't think she
can make it here by
10 AM tomorrow for the
Owyhee Motorcycle Club
Conference ~~tomorrow~~. She
thinks she can make it
by 10:30. Charlie Honsinger
is agreeable to the change.
If you can't make it then
call her cell 724-6659 before
9 AM tomorrow.

Sandy

RESERVATIONS: redlion.com • 800-Red Lion

WHITE PETERSON

ATTORNEYS AT LAW

SARAH H. ARNETT
KEVIN E. DINIUS
JULIE KLEIN FISCHER
CHRISTOPHER D. GABBERT
WM. F. GIGRAY, III
JILL S. HOLINKA
WILLIAM A. MORROW
WILLIAM F. NICHOLS *

WHITE PETERSON, P.A.
CANYON PARK AT THE IDAHO CENTER
5700 E. FRANKLIN RD., SUITE 200
NAMPA, IDAHO 83687-7901
TEL (208) 466-9272
FAX (208) 466-4405

CHRISTOPHER S. NYE
PHILIP A. PETERSON
TODD A. ROSSMAN
SHELLI D. STEWART
TERRENCE R. WHITE **
DENNIS P. WILKINSON

* Also admitted in OR
** Also admitted in WA

July 30, 2007

Via Facsimile and Email

Charles Honsinger
Ringert Clark
455 South Third Street
Boise, Idaho 83701

Re: *Owyhee Motor Cycle Club Right No. 63-18957*
I.R.E. 408 Communication

Dear Charlie:

As agreed during our recent settlement conference, my clients attempted to obtain information related to their ground water well. Specifically, your client, Mr. Terteling, suspected the well had been enlarged or deepened sometime after the claimed priority date which formed the basis of the Terteling objection, at least in part. We agreed to try and obtain this information for your clients without formal discovery in an effort to resolve the objections as expeditiously as possible.

We have inquired of past club members, as well as Hiddleston Drilling, to obtain information about work performed on the subject well, if any. We have learned the following:

1. The well casing was raised from its below grade location to above grade sometime within the last 10 – 15 years. Approximately five feet of casing was added. This apparently was done to avoid well contamination.
2. Hiddleston has repaired and replaced the pump located in the well on several occasions: In June 1998, the pump was replaced then

July 27, 2007
Page Two

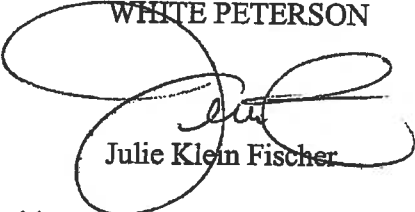
was repaired under warranty in September 1998. A new pump was installed again in 2004. The pump size has remained the same.

3. There is no information the well was ever deepened or enlarged.

I trust this information will satisfy your clients that the water right has not been expanded. However if you have any information to the contrary, please let me know. Otherwise, I am hopeful that with this information the objections can be resolved.

Sincerely,

WHITE PETERSON



Julie Klein Fischer

Cc: William Henning, President OMC

bur

Guy James

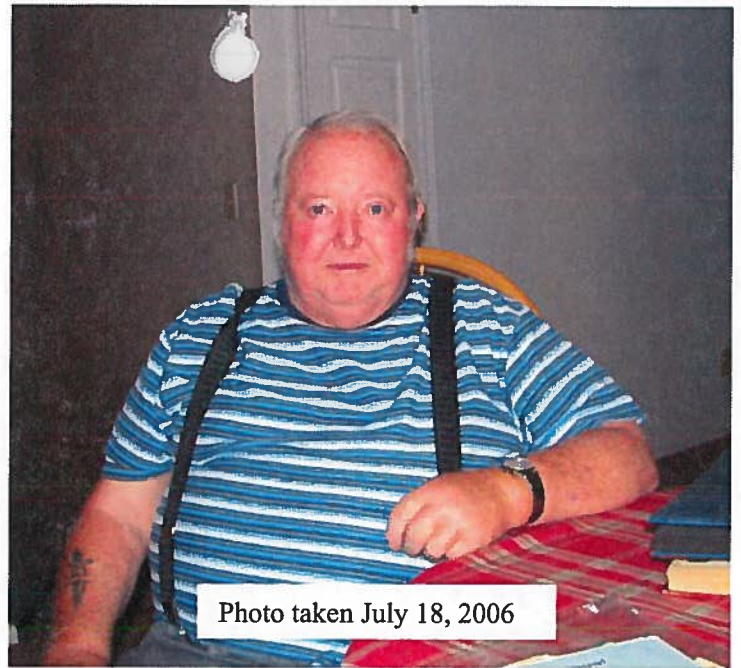
10400 W. Granger
Boise 83704
208-323-0913

Boise resident = 70 years

At Current Address = 21 years

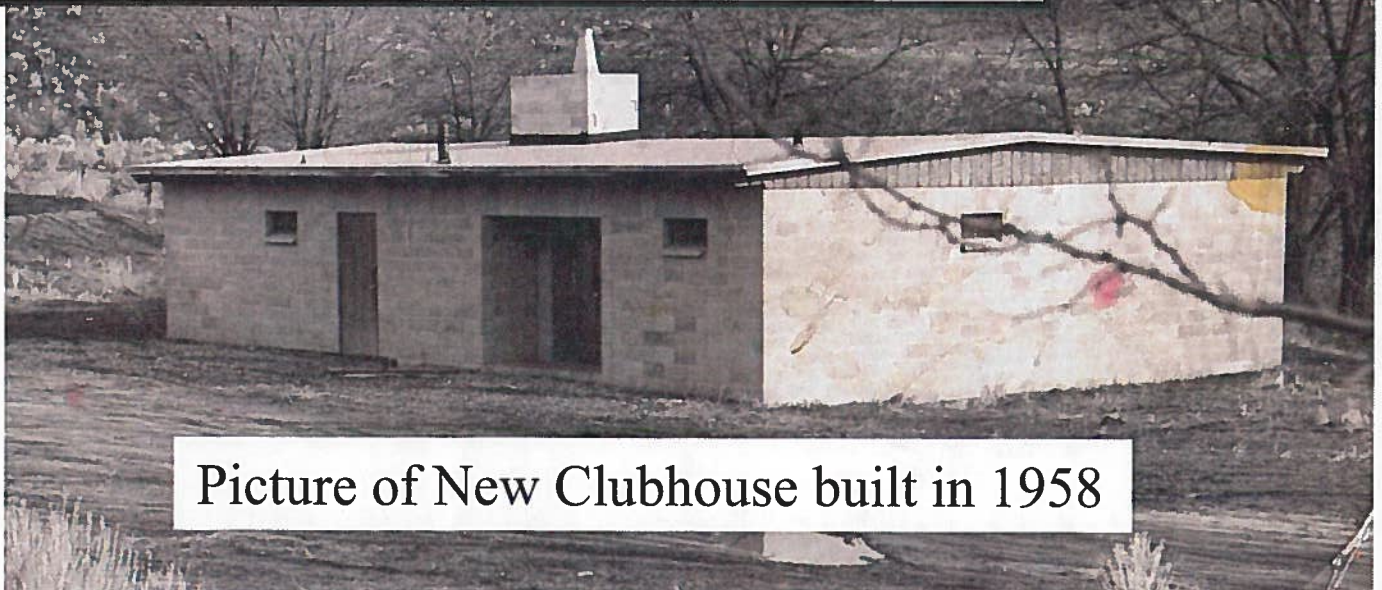
Owyhee Motorcycle Club
offices held:

1957-1958 Treasurer; Ron DeShambo-President
1959-1964 Vice President under Bill Dunn
1968 Club President
1969-1979 Club Referee



"I remember the building of our new clubhouse in 1958. We used the new well located just behind and to the North to get the water needed to mix the concrete we used to pour the floor with"

Guy James



January 6, 2005

Mike Jackson
23304 Lansing Lane
Middleton ID 83644

Department of Water Resources
2735 Airport Way
Boise ID, 83705-5082
Fax: 334-2348
Attn: Vicky L. Music

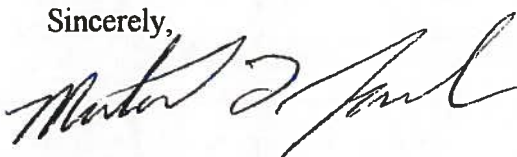
Dear Vicky,

As per our phone conversation we, the Owyhee Motorcycle Club Board Members, contacted some of the past club members from the 50's, 60's and 70's to check on changes with any water uses and no one knew of any major changes in how we have used our water.

I personally contacted past members, including Lew Alter, Dean Husky, Al Russel and Ken Krist and found they could not recall any changes in water usage.

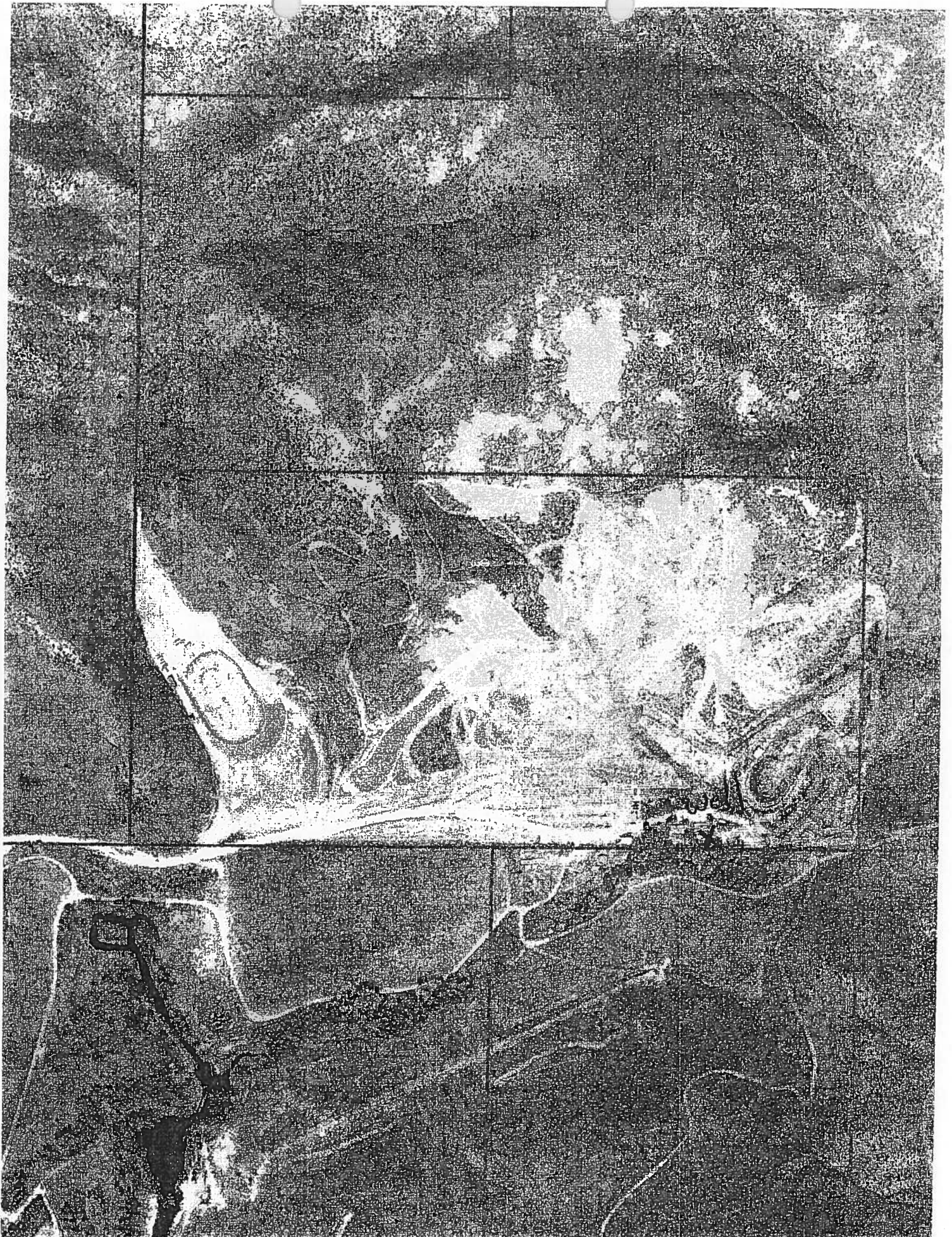
I apologize for the lateness of this letter, but I didn't receive your letter until November, and it took some time to track down the past members who have since retired or moved on.

Sincerely,



Mike L. Jackson
O.M.C. Club President

1-31-05 - call to Mike re EOP - ~~no~~ letter is not what I needed. He will let me know something.



RECEIVED

JAN 07 2005

WATER RESOURCES
WESTERN REGION

January 6, 2005

Mike Jackson
23304 Lansing Lane
Middleton ID 83644

Department of Water Resources
2735 Airport Way
Boise ID, 83705-5082
Fax: 334-2348
Attn: Vicky L. Music

Dear Vicky,

As per our phone conversation we, the Owyhee Motorcycle Club Board Members, contacted some of the past club members from the 50's, 60's and 70's to check on changes with any water uses and no one knew of any major changes in how we have used our water.

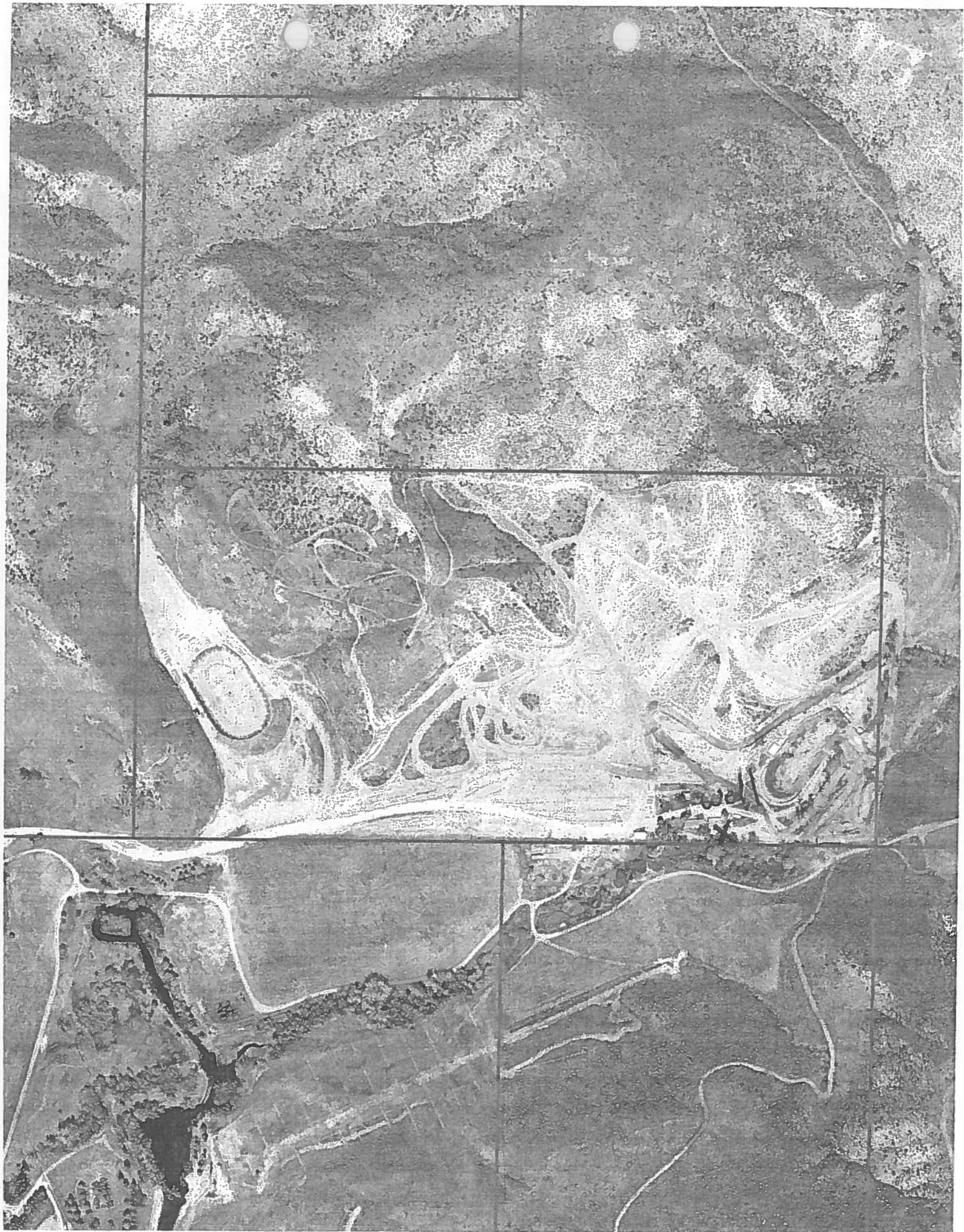
I personally contacted past members, including Lew Alter, Dean Husky, Al Russel and Ken Krist and found they could not recall any changes in water usage.

I apologize for the lateness of this letter, but I didn't receive your letter until November, and it took some time to track down the past members who have since retired or moved on.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike L. Jackson", written in a cursive style.

Mike L. Jackson
O.M.C. Club President





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

September 2, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

OWYHEE MOTORCYCLE CLUB
PEACEFUL COVE LANE
BOISE, ID 83702

RE: EVIDENCE OF PRIORITY
Snake River Basin Claim No(s): A63-18957

Dear Claimant(s),

In the past, you submitted the above referenced claim(s) during the Snake River Basin Adjudication (SRBA) claims taking. Enclosed is a computer generated print-out of the claim(s) for your reference only, it is not necessary to return this print-out or re-file it. You indicated, when this claim was filed, that the water right(s) was based on either a "Statutory Claim" or "Beneficial Use" of the water. Water rights of this type are established by historical use of the water for a beneficial use purpose, dating back to the time the water was first used; this date being the "Priority Date" as shown on the enclosed print-out. Your claim(s) has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is required to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water.

Enclosed is a pamphlet entitled "**Evidence of Priority**" which describes why evidence of the priority date is necessary, along with examples of types of evidence that can be submitted to fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled "**What Kind of Evidence is Required**" and "**Some Examples of Documents Which May Be Evidence of the Priority Date.**"

If no evidence of your priority date is submitted, or we do not hear from you within the time limit below, your priority date, as claimed, may not be recommended to the SRBA court for decree. This could jeopardize your water use under this right(s) if water availability problems arise in the future.

The required evidence supporting the priority date(s) requested needs to be submitted by September 24, 2004. Additionally, please indicate the location of the well on the enclosed map and return it to me with your evidence of priority. Please let me know if you may not be able to submit proof of priority or have any questions not covered by this letter and the enclosed pamphlet, by the date indicated above.

Respectfully Submitted,

Vicky L. Music
Water Resource Agent
Adjudication Bureau

Enclosure: "Evidence of Priority" pamphlet
Notice of Claim Report A63-18957

NOTE: If you no longer own the property upon which this claim was filed, please contact this office immediately. Idaho State law requires that the Department be notified of a change of owner or address on a water right.

message

For Lori
From Mike Jackson
Time 3:10 Date 9-29-04
Phone 585-9393

☐ URGENT!.....

ALB-18957

Dean Husty was teenage
Husty



sk

SD-165

IDAHO DEPARTMENT OF WATER RESOURCES
DETAIL RECEIPT SUMMARY SCREENDATE 09/13/90
TIME 15:35:51REC/NO - W005966 AR/NO -
FROM: - HENSON, RICKRECEIPT TYPE - CK DOC/NO - 6063
REMARKS -

MOST CURRENT RECEIPT

TYPE OF PAYMENT	PROGRAM	ACCT	CLASS	FEE
ADJUDICATION FEE	410162	9337	6490	123.00

TOTAL DUE - 123.00

WR/NO	WR FEE	WR/NO	WR FEE	WR/NO	WR FEE
A6318957	123.00				

(ENTER=CONTINUE)

(GOLD7=SELECTION SCREEN)

(GOLD8=EXIT TO MENU)

① fee for A6318957 is \$73.00
② late fee paid 50.00
③ total \$123.00
④ No corr. needed

MICROFILMED
SEP 01 1992

RECEIVED

SEP 22 1989

denied

Date Received

RECEIVED

SEP 18 1989

YES
5/9/89

Department of Water Resources

Department of Water Resources
Western Regional Office

State of Idaho
Department of Water Resources
**REQUEST FOR EXTENSION OF TIME
TO FILE ADJUDICATION CLAIM(S)**

The Idaho Department of Water Resources will consider this form as a request by the claimant for an additional period of time in which to file claim(s) beyond the 90 days allowed by Section 42-1409(10), Idaho Code.

Owyhee Motorcycle Club, Inc. (208) 342-5189
Name of Claimant Phone Number

P.O. Box 733 BOISE IDAHO 8
Mailing Address City State Zip

ADA 8 SEP 1989
County(s) where place of use is located Date claim originally due

A63-18957
Identify water right(s) for which extension is requested

State why an extension of time is requested explaining how a diligent effort has been made to meet the deadline:

EVERY ATTEMPT TO GET INFORMATION ON PAST WATER RIGHTS AND
WELL DRILLING DATE WAS MADE, BUT DUE TO THE DIFFICULTY IN
CONTACTING PAST BOARD MEMBERS OF THE CORPORATION WHO HAD THIS
INFORMATION, THE INFORMATION WAS NOT AVAILABLE UNTIL AFTER
THE FILING DEADLINE

Claimant requests an extension to OCT 15, 19 89

Hermion Carder SEP 15, 19 89
Signature Date of request

TREASURER, Owyhee Motorcycle Club
Title

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

The above request for extension of time is hereby [☐ granted] [☒ denied] for the following reasons:

Notice of commencement mailed to above address
5/9/89. No indication when effort to collect data began.

and if granted the filing deadline is extended to _____, 19 _____

Signed this 20 day of September, 19 89

DAVID B. SHAW
Director or his designated agent

Mail to: Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

DAVID B. SHAW

MICROFILMED
SEP 01 1992

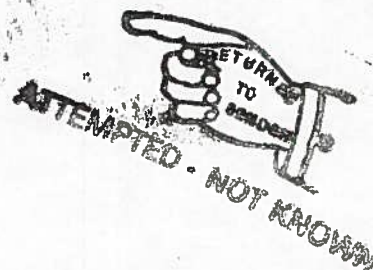
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

63-18957

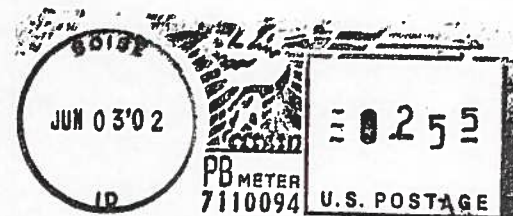
2170 E. Springwood Dr.
Meridian 83642

Sent again 6-14-02



PRESORTED
FIRST CLASS

OWYHEE MOTORCYCLE CLUB
C/O RICK HENSON
PO BOX 733
BOISE ID 83701



RECEIVED

JUN 07 2002

WATER RESOURCES
WESTERN REGION





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 9, 2001

RE: Investigation of Water Right Claims in the Snake River Basin Adjudication, Basin 63

Dear Claimant:

As you may be aware, the Idaho Department of Water Resources (IDWR) is commencing its Snake River Basin Adjudication (SRBA) investigation of water rights in the Boise River Basin (Basin 63). This investigation is a major effort, and IDWR has hired a contractor, Intrepid Engineering Services, to assist us with this task.

The purpose of this letter is to advise you that Intrepid might be contacting you to conduct a field investigation of your water use. This investigation is meant to provide important information to the IDWR Senior Water Resource Agent who will be making a recommendation for your water rights. Accordingly, we request that you provide Intrepid with access to your water diversion system so that their personnel can conduct this field examination. Intrepid will be gathering information on the rate of flow, diversion location and place of use of your water rights, and will be reporting this information to IDWR.

If you have sold your property in the Boise River Basin, we request that you forward this letter to the purchaser, so that the purchaser can report the new name and address to our office. If you are unable to forward this letter, please send any information regarding a new owner to our Western Regional Office located at 2735 Airport Way, Boise, 83705, (208) 334-2190.

The process of adjudicating your water rights is straightforward for most people, resulting in the issuance of decreed water rights on your property. Experience has shown that water users who work with our agency early in the process to ensure that their recordings are correct have a better experience than those who wait until IDWR has filed its findings with the SRBA Court. Thus, we encourage you to work with our staff and with Intrepid to ensure that the results accurately reflect your water uses.

Sincerely,

Jan Shurte
Adjudication Section Supervisor
Western Regional Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

PHILIP E. BATT
GOVERNOR

May 6, 1996

KARL J. DREHER
DIRECTOR

OWYHEE MOTORCYCLE CLUB INC
C/O RICK HENSON
PO BOX 3276
BOISE ID 83703-0276

RECEIVED

MAY 07 1996

WATER RESOURCES
WESTERN REGION

Re: Snake River Basin Adjudication (SRBA)
Notice of Claim No. A63-18957
Change of Address

Dear Claimant,

IDWR has been notified the address presently in our claim records is incorrect. Although we have reached you at the address above, we need you to confirm this is your correct mailing address. Future notices related to your SRBA claim(s) can be sent only to the address on your claim(s) or as otherwise changed by you. The staff of this agency must avoid relying upon the word of others about your mailing address.

If the address above is correct, please sign your name at the bottom of this letter, and return it to this office. Otherwise, please make the proper corrections, sign, and return this letter. Thank you for your help. We hope to assure that you receive future notices about SRBA matters.

If the ownership of the property to which the water right(s) referenced above apply has changed, please call this office toll-free at 1-800/451-4129 to obtain a form to make this required change to the claim record.

Sincerely,

Adjudication Bureau Staff

SO:ss:region

#####

The address is correct as shown above or as otherwise changed.

Claimant

MICROFILMED

OCT 09 1996

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

In Re Snake River Basin Adjudication Case
No. 39576
)
Notice of Filing Director's Report and Supplemental
Director's Report Part II & III, United States' and Tribal
Non-consumptive Claims.

TO:
ALL CLAIMANTS OF RIGHTS TO THE USE OF WATER IN THE SNAKE RIVER BASIN
YOU ARE HEREBY NOTIFIED OF THE FOLLOWING:

THE DIRECTOR'S REPORT PART II & III FOR THE UNITED STATES' AND TRIBAL NON-CONSUMPTIVE CLAIMS HAS BEEN FILED WITH THE DISTRICT COURT. A SUPPLEMENTAL DIRECTOR'S REPORT PART II & III HAS ALSO BEEN FILED WITH THE DISTRICT COURT. THIS NOTICE CONTAINS IMPORTANT INFORMATION ABOUT THE DIRECTOR'S REPORTS, AND DEADLINES AND FURTHER PROCEEDINGS ON THESE WATER RIGHT CLAIMS.

IMPORTANT NOTICE REGARDING YOUR WATER RIGHT

THIS CONTAINS YOUR LEGAL NOTICE OF THE DIRECTOR'S REPORTS OF U.S. AND TRIBAL NON-CONSUMPTIVE CLAIMS IN THE SNAKE RIVER BASIN ADJUDICATION. THESE CLAIMS COULD AFFECT YOUR WATER RIGHT

RECEIVED

MAY 07 1996

**WATER RESOURCES
WESTERN REGION**

**Presorted
First Class Mail
U.S. Postage Paid
Boise, Idaho
Permit No. 1**

RECEIVED

APR 21 1995

Department of Water Resources

**DWYH223 832012010 1194 04/20/95
FURNISHING TIME EXPIRED
:DWYHEE MOTORCYCLE CLUB
PO BOX 3276
BOISE ID 83703-0276
RETURN TO SENDER**

**60175
Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720**

**DWYHEE MOTORCYCLE CLUB INC
C/O RICK HENSON
PO BOX 733
BOISE ID 83701**

**MICROFILMED
OCT 09 1996**

Handwritten: A63-18957
D-C

Handwritten: A63-18957

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-18957

WATER RIGHT NUMBER: 63-18957

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	OWYHEE MOTORCYCLE CLUB INC C/O RICK HENSON PO BOX 733 BOISE, ID 83701 (208)888-7357

Priority Date: 12/31/1958

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.040 CFS	
COMMERCIAL	1/01 to 12/31	0.230 CFS	
	<u>Total Diversion:</u>	0.270 CFS	

Location of Point(s) of Diversion

GROUND WATER	SW1/4SE1/4	Sec. 15, Twp 04N, Rge 02E, B.M.
ADA County		

Place of Use

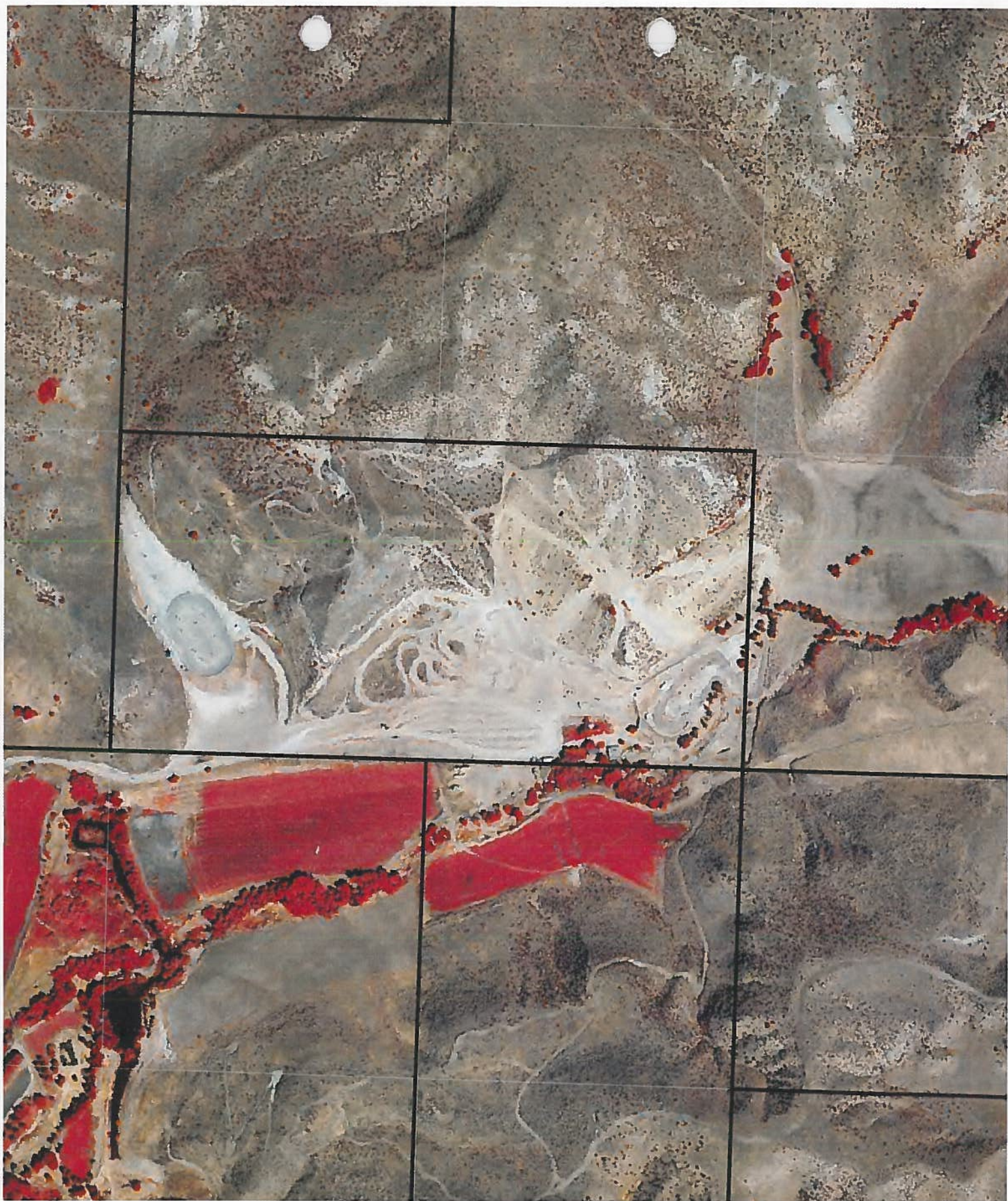
DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02E	15																X	

COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02E	15												X				X	

Conditions of Approval:Remarks:



2000 AERIAL PHOTO OF 63-18957 POU

**Land Records****Characteristics Detail**[Go Back to Property](#)

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- [Image Documents](#)
- [Old interactive map](#)

Commercial**Land****Commercial Characteristics 1 for Parcel "S0615348400"**

Commercial Group Type:	EXCEPTIONS
Year Built:	1964
Remodel Year:	0
Occupancy Date:	No Date Available
Business Name:	OWYHEE MOTORCYCLE CLUB
Number of Floors:	1
Number of Units:	0
Leasable Sq Ft:	0
Ground Floor Sq Ft:	11125
Excess Land Sq Ft:	0
Used Land Acres:	80.0
Used Land Sq Ft:	3484800
Excess Land Acres:	0.0
Total Land Sq Ft:	11125
Total Land Acres:	80.0
Method:	COST

Assessor Links

- [Assessor Main Page](#)
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Commercial**Land****Land Characteristics 1 for Parcel "S0615348400"**

Residential Acres:	0.000
Commercial Acres:	80.000
Other Acres:	0.000
MLS Area:	100 - North Boise
Street:	None
Utility:	Not Available
Water Source:	Not Available
Sewer:	Not Available
Sidewalks:	N
Curb-Gutters:	N
Topography:	Not Available
View:	Not Available
Water Influence:	None
Water Frontage Feet:	0
Corner:	N

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Desktop review/vlm

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT**

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☒ Check fees paid
- ☐ Well logs (if needed)
- ☒ Copy of topo or NAPP
- ☒ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
- ☒ Check POD & POU overlap, see below – include overlapping right for exam
- ☒ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is completeClaim No(s) 63-18957

Owner: _____

Phone No. _____

Current Address: 6600 Carthage Rd, Boise ID 83703-9573☐ No change NAME IS THE SAME☐ NEW OWNER☐ No change Address☒ NEW ADDRESS☐ How long owned property? _____

Accompanied by: _____

PRIORITY DATE

- ☒ No change – Complete evidence submitted or not necessary
- ☒ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: 1958

(If priority date, based on your exam, seems questionable, explain below)

advanced priority date to 1963 (3/1/1963)

Source: _____ Tributary to _____

☒ No Change – SAME SOURCE☐ Source found is different than claimed: _____**POINT OF DIVERSION**☒ No change☐ POD found is different than claimed: _____☐ If different, when did POD change? _____

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID

Description of diverting works

*see Intrepid field exam***OVERLAP REVIEW**Other water rights with the same point of diversion: *none*

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

*/***WATER USES**☒ No change☐ Different Uses*restrict to .16 cfs per Intrepid exam*

Use *dom* From *1-1* To *12-31* Amount *.04* CFS _____ AFA
Use *dom* From *1-1* To *12-31* Amount *.16* CFS *142.4* AFA
Use _____ From _____ To _____ Amount _____ CFS _____ AFA

*.16 total***TOTAL VOLUME – Groundwater only**

- ☐ Incomplete on claim, the total is, Amount *.16* CFS *142.4* AFA
☐ Changes found, the new total is, Amount _____ CFS _____ AFA
☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

*for commercial use.***NON-IRRIGATION USES:**☒ No change☐ Changes Exam found: Domestic # of homes _____ Stock # _____

Types _____ Additional comments: _____

PLACE OF USE:☒ No Change☐ Changes shown below:*claim incomplete - no. acres not claimed.*

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Overlap with other water rights: NO

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

NA

Delivery System Narrative:

see intrepid exam

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size

FLOW MEASUREMENTS: intrepid determined flow rate was .16 cfs

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

✓ Parcel # 50615348400

N12 ✓ for down not to > 13 k gpd

N10 ✓ for down not a det of his b/h

✓ com use is for dust control for a motorcycle club,

X01 ✓ domestic use is for a house, clubhouse & up to 1/2 ac. 1/2 hr.

commercial use: motorcycle club, races - water
used for dust control x 50 races/year. water 1-2 days
before a race. I estimated total of 60 days/year.

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☒ Completed claim checklist
- ☒ Photographs of POD's and POU
- ☒ GPS readings — mistake - cannot input into ArcView
- ☒ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED:

8-15-05

FIELD EXAMINER:

Wick Chulc

Commercial Volume Calculation

$$(.16 \text{ cfs})(446.0)(60)(24) = 103,404 \text{ gpd} \times 60 \text{ days} = 6,204,261 \text{ gpd for dust.}$$
$$= 142.4 \text{ cfs}$$

$$325,050 = 19.$$

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 63-18957

WATER RIGHT NUMBER: 63-18957

Owner Type Name and Address
Current Owner OWYHEE MOTORCYCLE CLUB INC

Priority Date: ~~12/31/1958~~ 1-1-1963
Basis: Beneficial Use
Status: Active

Source Tributary
GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.040 CFS	
COMMERCIAL	1/01 to 12/31	0.230 CFS	.16
<u>Total Diversion:</u>		0.270 CFS	.16

Location of Point(s) of Diversion
GROUND WATER SW1/4SE1/4 Sec. 15, Twp 04N, Rge 02E, B.M.
ADA County

Place of Use
DOMESTIC Within ADA County
T04N R02E S15 SWSE

COMMERCIAL Within ADA County
T04N R02E S15 SESW T04N R02E S15 SWSE

Conditions of Approval:

Remarks:
1. General COMMERCIAL USE IS FOR CLUB HS. & WATERING OF TRACKS DOMESTIC USE
INCLUDES UP TO 1/2 ACRE OF IRRIGATION WITH HOME.
HOME IS COMBINED WITH CLUB HS.

Comments:



IDAHO DEPARTMENT OF WATER RESOURCES

SNAKE RIVER BASIN ADJUDICATION - BASIN 63

RIGHT ID
POD ID
Quad
Claim Type
Easting
Northing
GPSID

Diversion Description

120'D., 8" CAS., SUB. PUMP,P. TO CLUB HS/DOM. HOME/SPR. SYS.

Assumptions

Elevation head.

Invoice

2000-055-01

Phase-0 (No Attention)
Phase-I (Ready to Go to Field)
Phase-II (Site Visit - Data Missin
Phase-III (Complete w/issues)
Phase-IV (Total Complete)

Linked

a Photos\175079a.JPG

Photos

a Photos\175079b.JPG

EPE (ft)

17

Date (M/D/Y)

11/19/01

Time

10.21

Flow Rate (CFS)

0.16

Open Channel Flow

☐ Complete one box from both Area and Calculation sections

Cross Sectional Area

☐ Circular Channel

- ☐ Less than half full
☐ Half full
☐ More than half full
☐ Full

Diameter

Depth

☐ Rectangular Channel

Width

Depth

Flow Calculation

☐ Continuity

Velocity

☐ Orifice

(Use only for head over a pipe flowing full with free discharge)

Depth of Water above orifice centerline

☐ Weir

(Use only for water flowing freely over weir)

Height of water above nappe

Width of weir

☐ Manning

(If used, include photo of representative channel section)

Channel Slope

Channel Description

Concrete lined	.016
Smooth earth	.025
Earth	.033
Rough bed, weeds on sides	.04
Smooth natural stream	.033
Rough natural stream	.1

Pumped System ☒

HP

Pressure Head (psi)

Elevation Head (ft)

Motor Mfg

Motor Serial #

Pump Type

Pump Mfg

Pump Serial#

New Contact Information ☐

New Contact Comments

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RIGHT ID

