

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 COEUR D' ALENE-SPOKANE RIVER
BASIN WATER SYSTEM

AMENDED
NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

CIVIL CASE NUMBER: 49576

Ident. Number 37-20894

Date Received: Fifth Judicial District

Receipt No: County of Twin Falls - State of Idaho

Received By: _____

OCT 20 2010

Please type or print clearly

1. Name of Claimant (s) Lisa Vierling Phone (208) 726-2693

Mailing Address P.O. Box 869 Sun Valley ID ZIP 83353

2. Date of Priority (Only one (1) per claim) 01/01/1900 City State
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Warfield Hot Springs
which is tributary to (b) Warm Springs Creek

4. a. Location of Point of Diversion is: Township 4N, Range 16E, Section 36
NE, 1/4 of NE, 1/4 Govt. Lot _____, BM., County of Blaine

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed
and as enlarged and the depth of each well. Concrete collection box and gravity pipeline.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Heating purposes from 1/1 to 12/31 amount 0.04 or

For Domestic purposes from 1/1 to 12/31 amount 0.04 or

For Recreation purposes from 1/1 to 12/31 amount 0.04 or

For purposes from to amount or

7. Total quantity claimed (a) 0.04 (cfs) and/or (b) (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) 1 household, 1 hot tub

9. Description of place of use:

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

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	17E	31						H											
4N	17E	31						D											
4N	17E	31						R											

Parcel (PIN) no(s).

Total number of acres irrigated N/A

10. In which county (ies) are lands listed above as place of use located? Blaine

11. Do you own the property listed above as place of use? Yes (✓) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

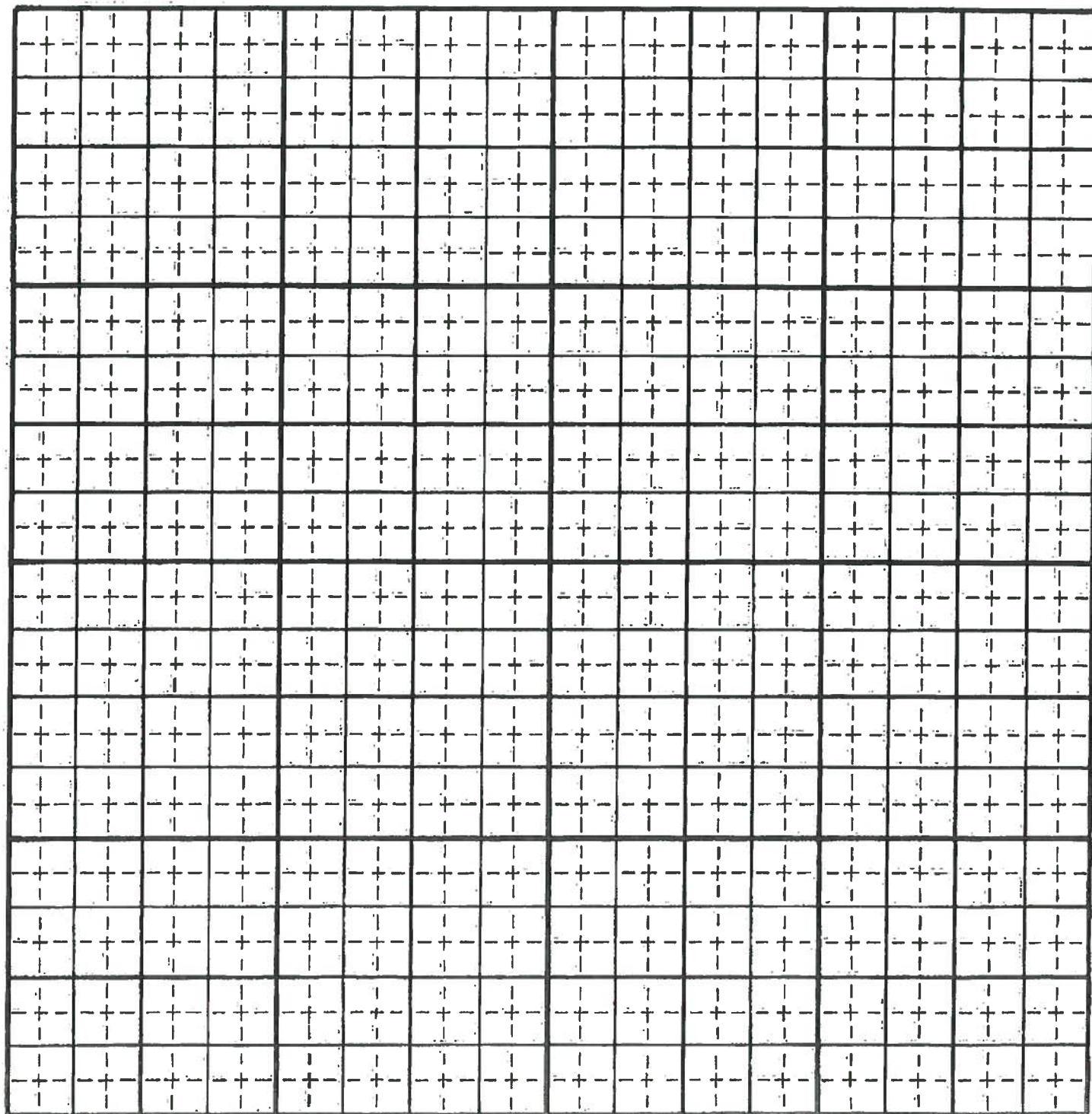
or None ()

13. Remarks:

Last Name Identification No.

Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.

Scale: 2 Inches equals 1 mile



Last Name _____ Identification No. _____

14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Coeur d'Alene-Spokane River Basin Adjudication." (b.) I/We do (☐) do not (☒) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____

Date: 10/20/2010

Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

_____ of _____
Title Organization

that I have signed the foregoing document in the space below as

_____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Travis L. Thompson, will be acting as attorney at law or behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature [Signature] Date 10/20/10

Address P.O. Box 485

Twin Falls, Idaho 83303-0485

Last Name _____ Identification No. _____

Storage pond issues in the Big Wood Drainage

- A. Ponds developed after 1987
 - a. A transfer is required
- B. Ponds pre 1987 but before 1971
 - a. Recognize an unrecorded transfer from irrigation to “aesthetic” storage.
 - i. Pond is located within the historic irrigated place of use.
 - ii. Pond is outside of the historic irrigated place of use
 - iii. A portion of the existing diversion rate must be changed.
 - b. Recognize that the pond is just a part of the delivery system.
 - i. Calculate the 24 hr fill volume.
 - ii. The pond must be a part of the delivery system not just on the ditch.
- C. Ponds pre 1971
 - a. Recognize an unrecorded transfer from irrigation to “aesthetic” storage.
 - i. Pond is located within the historic irrigated place of use.
 - ii. Pond is outside of the historic irrigated place of use
 - iii. A portion of the existing diversion rate must be changed.
 - b. Recognize that the pond is just a part of the delivery system.
 - i. Calculate the 24 hr fill volume.
 - ii. The pond must be a part of the delivery system not just on the ditch.
 - c. Require a beneficial use claim based upon the date of development.

Mandatory permit statute dates;
Groundwater: March 25, 1963
Surface water May 20, 1971

A commercial use requires:

1. Evidence of priority
2. Need to confirm the claimed diversion rate. (A measurement may be necessary.)
3. Annual volume used needs to be determined. (May be determined by daily use * days of use/year) or maybe by business standard volumetric use.

Small Commercial uses where the use falls within the Domestic part B definition.

1. Evidence of priority is not necessary.
2. Diversion rate is limited to 0.04 cfs (18 gpm)
3. Use is limited to 2,500 gal per day. (The use can include some lawn irrigation but will be included within the 2,500-gal/day limitation).

Volume comparison:

$$\frac{2,500 \text{ gal} * 365 \text{ days}}{325,850 \text{ gal/af}} = 2.8 \text{ af} \qquad \frac{2,500 \text{ gal} * 156 \text{ days}}{325,850 \text{ gal/af}} = 1.2 \text{ af}$$

$$\begin{array}{l} \text{(5 days for 52 weeks)} \\ \frac{2,500 \text{ gal} * 260 \text{ days}}{325,850 \text{ gal/af}} = 1.99 \text{ af} \approx 2.0 \text{ af} \end{array}$$

$0.04 \text{ cfs} * 1.98 * 365 \text{ days} = 28.9 \text{ af}$
--

42-111. DOMESTIC PURPOSES DEFINED. (in part)

- (1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase "domestic purposes" or "domestic uses" means:
 - (a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or
 - (b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.
- (2) For purposes of the sections listed in subsection (1) of this section, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection (1)(b) of this section.

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 37-20894
Date Received: 4/2/2003
Receipt No:
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

LISA VIERLING Phone: (208)726-2683

PO BOX 869
SUN VALLEY ID USA 83353

2. Date of Priority: 01/01/1900

3. Source: WARFIELD HOT SPRING Trib. to: WARM SPRINGS CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	16E	36	SE NE NE	BLAINE	

5. Description of diverting works:

CONCRETE COLLECTION BOX AND GRAVITY PIPELINE.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
HEATING	01/01	12/31	0.02	
DOMESTIC	01/01	12/31	0.02	
RECREATION	01/01	12/31	0.02	

7. Total Quantity Appropriated is:
0.02 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

Number of other uses: 1 HOT TUB
Number of homes: 1

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
04N	17E	31	NW NW	HEATING	

NW
NW

NW
NW

RECREATION
DOMESTIC

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

4/2/03, DJ: CLAIM RECEIVED 3/27/03. R#S025628.

15. Basis of Claim: Beneficial Use

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 37-20894

Date Received

Receipt Number

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED
MAR 27 2003
Department of Water Resources
Southern

Please type or print clearly

1. Name of Claimant (s) LISA VIERLING Phone (208) 726-2683

Mailing Address PO BOX 869 SUN VALLEY ID Zip 83353

2. Date of Priority (Only one (1) per claim) 01/01/1900

3. Source of water supply (a) WARFIELD HOT SPRING
which is tributary to (b) WARM SPRINGS CREEK

4. a. Location of existing point of diversion is: Township 04N Range 16E Section 36
SE 1/4 of NE 1/4 of NE 1/4, Govt. Lot, B.M., County of BLAINE

Additional points of diversion if any:

b. If instream flow, beginning point of claimed instream flow is:

Township Range Section , 1/4 of 1/4 of 1/4,

Govt. Lot B.M., County of

ending point is: Township Range Section , 1/4 of 1/4 of

1/4, Govt. Lot B.M., County of

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. CONCRETE COLLECTION BOX AND GRAVITY

PIPELINE

COPY

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For HEATING purposes from 01/01 to 12/31 amount 0.02 cfs or _____

For DOMESTIC purposes from 01/01 to 12/31 amount 0.02 cfs or _____

For RECREATION purposes from 01/01 to 12/31 amount 0.02 cfs or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.02 cfs (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is N/A acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 1 HOUSEHOLD, 1 HOT TUB

10. Description of place of use:

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

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
04N	17E	31						H											
04N	17E	31						D											
04N	17E	31						R											

Total number of acres irrigated N/A

11. In which county (ies) are lands listed above as place of use located? BLAINE

12. Do you own the property listed above as place of use? Yes X No _____

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None (X)

14. Remarks:

COPY

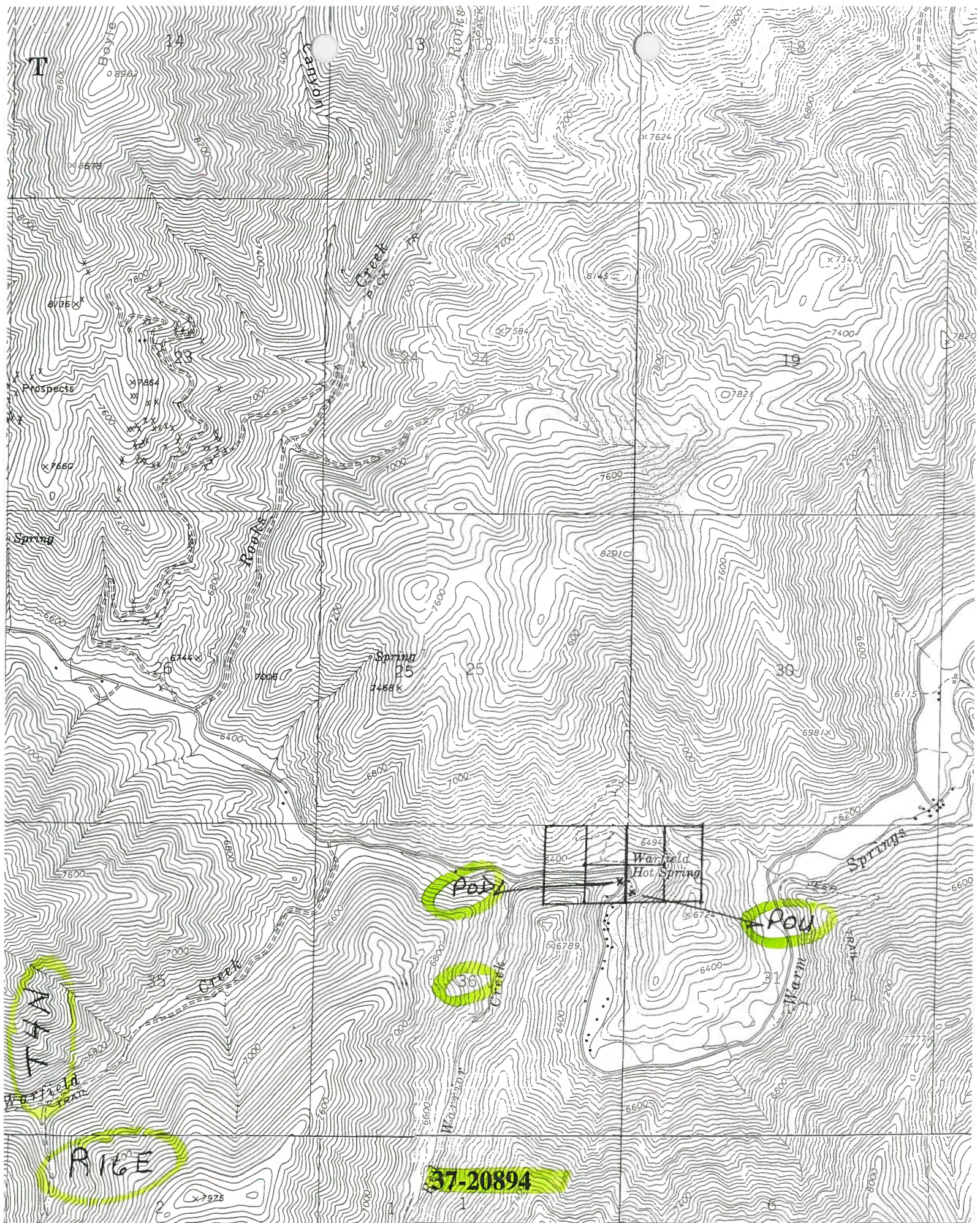
Last Name _____ Ident No. _____

Scale: 2 inches equals 1 mile

[illegible]

COPY

Last Name _____ Ident No. _____



15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)

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

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) _____

Date 3-25-03

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

Title _____

of _____, that I have signed the foregoing

Organization

document in the space below as _____

Title

of _____

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____

Date _____

State of Idaho/or Idaho)
County of Blaine) ss.

Subscribed and sworn to before me this _____

26th

day of

March 2003

Notary Public

Megan Shuk

Residing at

Belleveue, ID

My Commission Expires

March 20, 2009

Please Print Name

17. Notice of Appearance

Notice is hereby given that, TRAVIS L THOMPSON will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature _____

Address _____

233 2nd St. N., Suite D Twin Falls, ID 83301

Date _____

3/27/03

Last Name _____

Ident. Number _____

COPY

01/11/2007

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

RIGHT NUMBER: 37-20894

NAME AND ADDRESS: LISA VIERLING
PO BOX 869
SUN VALLEY ID 83353

SOURCE: WARFIELD HOT SPRING

TRIBUTARY: WARM SPRINGS CREEK

QUANTITY: 0.020 CFS

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

PRIORITY DATE: 07/30/1970

POINT OF DIVERSION:

T04N R17E S31 SWNNWN Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
HEATING	01/01 12/31	0.020 CFS
RECREATION	01/01 12/31	0.020 CFS
DOMESTIC	01/01 12/31	0.020 CFS

PLACE OF USE: HEATING in BLAINE County

T04N R17E S31 NENW

DOMESTIC in BLAINE County

T04N R17E S31 NENW

RECREATION in BLAINE County

T04N R17E S31 NENW

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

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

01/11/2007

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

RIGHT NUMBER: 37-20894

NAME AND ADDRESS: LISA VIERLING
PO BOX 869
SUN VALLEY ID 83353

VERIFIED BY KKC

SOURCE: WARFIELD HOT SPRING

TRIBUTARY: WARM SPRINGS CREEK

QUANTITY: 0.020 CFS

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

PRIORITY DATE: 07/30/1970

POINT OF DIVERSION:

T04N R17E S31 SWNNWN Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
HEATING	01/01 12/31	0.020 CFS
RECREATION	01/01 12/31	0.020 CFS
DOMESTIC	01/01 12/31	0.020 CFS

PLACE OF USE: HEATING in BLAINE County

T04N R17E S31 NENW

DOMESTIC in BLAINE County

T04N R17E S31 NENW

RECREATION in BLAINE County

T04N R17E S31 NENW

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

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

*John A. Rosholt
Albert P. Barker
John K. Simpson
Amy D. Chestnut
Travis L. Thompson*

*Norman M. Semanko
Of Counsel*

**BARKER
ROSHOLT
&
SIMPSON
LLP**

Travis L. Thompson
tltp@idahowaters.com

205 N. Tenth St., Suite 520
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

233 Second Street North, Suite D
Twin Falls, ID 83301
(208) 733-0700 telephone
(208) 735-2444 facsimile

March 27, 2003

VIA HAND DELIVERY

Mr. Doug Jones
Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380

RECEIVED
MAR 27 2003
Department of Water Resources
Southern Region

RE: *Notice of Claim to Water Right by Lisa Vierling*

Dear Doug:

Upon further review my client Lisa Vierling has noticed that no claims have been filed for the water use on what is referred to as the "Couch property" (Tax Lot No. 3649). Please find enclosed a claim for those uses. I just now realize that the legal descriptions for the point of diversion and place of use on this claim may be wrong given the lack of detail in the topographic map. Hopefully your site visit last week (GPS work) will help clear up any inaccuracies. Please let me know if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Enc.

cc: Lisa Vierling / Michael Stonebeck

Timeline
Pace vs Vierling

DATE	Pace	Vierling	Record or Fact
1/1/1900	Claimed Priority 37-11296 0.50 cfs Domestic, Heating, Recreation		
1/1/1900		Claimed Priority 37-13054 0.04 cfs Domestic, Heating, Recreation	
1/1/1900		Claimed Priority 37-20894 0.02 cfs Domestic, Heating, Recreation	
1900		Warfield Hot Springs Homestead Patented by William Warfield	
1900		Original Warfield Home Site on Lot 2 (Restaurant, Laundry, Bath Houses)	
1900		Lot 1 (Hot Bath Houses)	
8/22/1960 or 9/12/1961			DEED Riley to Pace Parcel 1 (Pace Cabin Tax Lot 7684)
8/6/1963			DEED Kelsey to Pace Parcel 2 (Now Subdivision)
Spring – Summer 1970	Built Pipeline Photos		
————— 1979			Miles Decree (Embry)
	Affidavit Jay Pace		
11/7/1983			DEED Pace Inc to Bushell Parcel 2
10/27/1986			Bushell platted Warfield Hot Springs Sub Lots 1 & 2
1/5/1988	8/25/1988 Renter Appeal		DEED Bushell to Garbrech Lot 2, Blk 1 Warfield Hot Springs Subdiv.
7/20/1989			DEED Garbrecht to Vierling Lot 2, Blk 1 Warfield Hot Springs Subdiv.
Summer 1989		Hot Tub Lot 2 Lot 2	
5/17/1990			Agreement among Pace, Shelton and Babcock Pace assigns 1/3 interest in 37-11296 for them to Develop.
8/9/1990			Babcock files Application 37-8691 Shelton files Application 37-8692 Both protested. Shelton’s resolved Both pending.
9/17/1990			Vierling purchased “Couch Property” Tax Lot 3649
1991		Hot Water Domestic Lot 2 (Vierling House)	
1993		————— Couch house re-model	
9/17/2002	Complaint from Speck About Illegal Use of Vierling		
10/10/2002			Show Cause Order

37-20894

MEMORANDUM

DATE: December 22, 2006

TO: Carter Fritschle, Tim Luke, Don Shaff, Doug Jones, Chris Bromley

FROM: Shelley W. Keen

RE: Conditions for Mitigation Rights in B37

See below for some suggested conditions for mitigation scenarios in Basin 37. I wasn't able to craft a one-size-fits-all solution, so there are four proposals. Staff members in the regions are anxious to use whatever we come up with, so let me know by noon today if I need to make changes. Each scenario is described in bold, and the suggested conditions are in italics

A point of diversion change is authorized, but part of another right is to be diverted into the original ditch or canal to maintain the shared conveyance loss.

This right mitigates for the injury to other water users caused by the diversion and use of water under Right 37-20400. To prevent injury to other water right holders, the watermaster shall deliver 0.06 cfs of this right into the Hiawatha Canal where it shall remain undiverted.

If the specified mitigation right is used on any place of use or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights.

A point of diversion change is authorized, but part of the right is to be diverted into the original ditch or canal to maintain the shared conveyance loss.

To mitigate for injury to other water users caused the diversion and use of water under this right, the watermaster shall deliver 0.06 cfs of this right into the Hiawatha Canal where it shall remain undiverted.

Part or all of another right is left in the river to mitigate for the approval of a new permit or a transfer.

This right mitigates for the depletion of water resulting from the diversion and use of water under Right 37-20400. To prevent injury to other water right holders, the right holder shall cease diverting and using 0.22 cfs of this right, which shall remain undiverted in the Big Wood River.

If the specified mitigation right is used on any place of use or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights.

Part of same right is left in the river to mitigate for a change in nature of use or a POD change.

To mitigate for the depletion of water resulting from the diversion and use of water under this right and to prevent injury to other water right holders, the right holder shall cease diverting and using 0.22 cfs of this right, which shall remain undiverted in the Big Wood River.

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis*



Travis L. Thompson
tltp@idahowaters.com

113 Main Ave. W., Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

205 N. Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

July 26, 2005

Mr. Douglas Jones
Idaho Department of Water Resources
Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED
JUL 27 2005
Department of Water Resources
Southern Region

Re: Evidence of Priority Response – Water Right Claim No. 37-20894

Dear Doug:

This letter is being sent on behalf of Lisa Vierling in response to your request for “evidence of priority” sent on April 15, 2005. This letter supplements my June 17, 2005 letter. Please find enclosed the *Affidavit of Lisa Vierling Re: Evidence of Priority for Water Right Claim No. 37-20894* including Exhibit A to the affidavit.

I would be happy to provide additional clarification on these documents if needed. If you have any questions or need additional information, please call me at 733-0700.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Enc.

cc: Lisa Vierling / Michael Stonebeck

**AFFIDAVIT OF LISA VIERLING
RE: EVIDENCE OF PRIORITY FOR
WATER RIGHT CLAIM NO. 37-20894**

RECEIVED
JUL 27 2005
Department of Water Resources
Southern Region

STATE OF IDAHO)
) ss.
County of Blaine)

I, Lisa Vierling, being first duly sworn upon oath, do hereby state as follows:

1. I am over the age of 18 and make the statements below based upon my personal knowledge.
2. I currently reside at 1034 Warm Springs Road, located approximately 12 miles northwest of Ketchum, Idaho.
3. My property consists of what is known as Lot 2, Block 1, Warfield Hot Springs Subdivision, also known locally as the "Crony Cove" parcel, and the adjacent Tax Lot 3649, also formerly known as the "Couch Property."
4. I filed water right claim no. 37-20894 on March 27, 2003 for 0.02 cfs with a January 1, 1900 priority date for heating, domestic, and recreation uses on Tax Lot 3649.
5. I received a copy of a letter from IDWR (Doug Jones) dated April 15, 2005 requesting evidence supporting the priority date. My attorney, Travis Thompson, sent a letter to Doug Jones on June 17, 2005 referencing various affidavits, documents, and photographs that were submitted *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned or Controlled by Lisa Vierling* as evidence supporting the historical use of water on Tax Lot 3649.

6. Recently, Mr. Thompson sent me a copy of a photograph that I had previously provided him that depicts the original cabin and bath house on Tax Lot 3649. See Exhibit A.

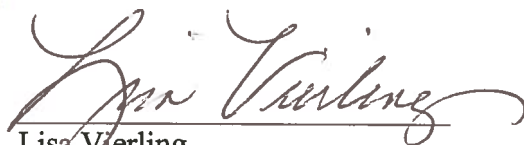
7. The photograph depicts the old Couch cabin (light cabin on the left), the original cabin on the Crony Cove parcel (log cabin in the middle), and the original bath house on the Couch property (on the right).

8. I received the photograph from either Rita Miller or Lillian Couch after I had purchased the Couch property in 1990.

9. I had several conversations with Lillian Couch when she owned the property. Mrs. Couch told me that her family had used the bath house, which received hot springs water from the gravity fed pipeline crossing our property and the Couch property, as well as water for in-house domestic use, ever since the pipeline was installed. The Couchs ran a hose from the pipeline for domestic use in their cabin. I personally witnessed use of the bath house and use from the hose for in-house domestic use when the Couchs owned the property.

10. The bath house pictured in the right of the photograph was still standing when I purchased the Couch property and I personally removed the old tub that was used in the bath house. Today, we still use a replica of the tub on Tax Lot 3649 (Couch property).

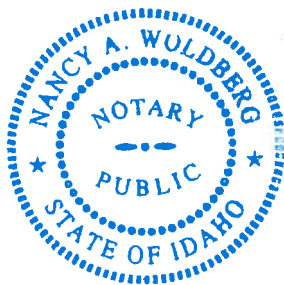
DATED this 22nd day of July, 2005.


Lisa Vierling

STATE OF IDAHO)
) ss.
County of Blaine)

On this 22nd day of July, 2005, before me, a Notary Public for said County and State, personally appeared Lisa Vierling, known or identified to me, to be the person whose name is subscribed to the within instrument, and who acknowledged and swore to me that he 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.



Nancy A. Woldberg
NOTARY PUBLIC FOR IDAHO
Residing at: Parisfield, Idaho
My commission expires: 9-1-05

EXHIBIT “A”



Exhibit A
Attachment to July 27, 2005
Letter & Affidavit from
Barker Rosholt & Simpson
(37-20894)

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis*



Travis L. Thompson
tltp@idahowaters.com

113 Main Ave. W., Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

205 N. Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

June 17, 2005

VIA FACSIMILE & U.S. MAIL

Mr. Douglas Jones
Idaho Department of Water Resources
Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED
JUN 20 2005
Department of Water Resources
Southern Region

Re: Evidence of Priority Response – Water Right Claim No. 37-20894

Dear Doug:

This letter is being sent on behalf of Lisa Vierling in response to your request for “evidence of priority” sent on April 15, 2005. Evidence of the claimed priority date is being provided through documents filed *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned or Controlled by Lisa Vierling*. In that proceeding, the following documents, as well as attached exhibits and photographs, were filed on behalf of Lisa Vierling:

- 1) Response to Show Cause Order
- 2) Affidavit of Travis L. Thompson
- 3) Affidavit of Lisa Vierling
- 4) Affidavit of Michael Stonebeck
- 5) Affidavit of Geoffrey S. Bushell
- 6) Affidavit of Mary Rita Miller
- 7) Second Affidavit of Lisa Vierling

The water right claim (#37-20894) referenced above is related to water use on the “Couch property” or “Tax Lot 3649”. Lisa acquired the property from Lillian Couch in 1990. Historical evidence of water use on the property associated with water right claim no. 37-20894 is provided in the documents (including the attached exhibits and photographs) referenced above. In particular, the affidavits of Lisa Vierling, Geoffrey Bushell, and Mary Rita Miller contain relevant information relating to historical water use on the property dating back to the early

Mr. Douglas Jones (IDWR)
June 17, 2005
Page - 2

1900s, as well as more recent use made by the Couch family during the period they owned the property.

I would be happy to provide additional clarification on these documents if needed. If you have any questions or need additional information, please call me at 733-0700.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. Thompson', with a long horizontal flourish extending to the right.

Travis L. Thompson

cc: Lisa Vierling / Michael Stonebeck

John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis

BARKER
ROSHOLT
&
SIMPSON
LLP

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(208) 344-6034 facsimile
brs@idahowaters.com

FACSIMILE COVER SHEETDATE: 6/17

Recipient's Fax: _____

RE: Claim 37-20894CLIENT Veiling/Storebeck

TO: _____

FROM: _____

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 3

- ☐ Original will not be sent.
☒ Original will be sent by first class mail.
☐ Original will be sent by Federal Express.

MESSAGE: _____

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*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis*



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Travis L. Thompson
tlt@idahowaters.com

June 17, 2005

VIA FACSIMILE & U.S. MAIL

Mr. Douglas Jones
Idaho Department of Water Resources
Southern Region
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

Re: Evidence of Priority Response – Water Right Claim No. 37-20894

Dear Doug:

This letter is being sent on behalf of Lisa Vierling in response to your request for "evidence of priority" sent on April 15, 2005. Evidence of the claimed priority date is being provided through documents filed *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned or Controlled by Lisa Vierling*. In that proceeding, the following documents, as well as attached exhibits and photographs, were filed on behalf of Lisa Vierling:

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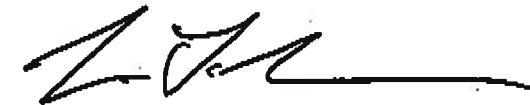
Mr. Douglas Jones (IDWR)
June 17, 2005
Page - 2

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Sincerely,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. Thompson', with a long horizontal line extending to the right.

Travis L. Thompson

cc: Lisa Vierling / Michael Stonebeck



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 17, 2005

J C Pace
10331 E Charter Oak Rd
Scottsdale, AZ 85260-4430

RE: Your Letter Dated 3/11/05

Dear Mr. Pace;

I read your letter before discussing this situation with the regional manager and our adjudication supervisor. They told me that they have been to your property, and are familiar with your situation. Allen Merritt, our regional manager, has written letters to both attorneys involved in this dispute; copies are enclosed for your information. As the 1/24/05 letter states, this matter will not be resolved until the claims of you and Vierling are decreed in the Snake River Basin Adjudication; until then, we do not know what right either party has to the use of this spring. Both claims have the same priority date, and both are based on beneficial use rather than on a previous court decree or on a license issued by IDWR. Only the SRBA process can turn these claims into actual water rights; the claims are not enforceable until this occurs. While we have started to review the claims in the Wood River Valley, it will take considerable time for this to be completed. You will be notified of our findings so that you can comment before they are finalized.

Allen is of the opinion that something may be blocking your pipeline, so your first step might be to see if this has occurred. I understand that the pipeline was blocked to the point of rupturing once before, so this is certainly a possibility. Allen's letter suggests that you install a measuring device near the head of the pipeline in order to determine how much water is actually being diverted into your shared system.

Your letter and photos will be included in our file for these claims, so will be available to whoever does the review work.

Regards,

James E. Stanton
Sr. Water Resource Agent

MAR 15 2005

Dear, Mr. Stanton and Members of the Review Board

Department of Water Resources
Southern Region

As you advised when I met with you in your office on Nov. 3rd. 2004, here is an outline describing the situation surrounding Adjudication of our case No. 37-1129. The continuing disregard of our water rights by our upstream neighbor has reached complete impasse. We have had no use of the resource since the end of October 2004. We ask that you please review this case with all possible dispatch as the level of abuse has now left us without any benefit of the resource which we alone developed.

Essential information concerning Adjudication

1. The Pace Family holds the earliest filing on the water right, which was made Long before Veerling/Stonebeck ownership of any adjacent property, and we are advised by our lawyer Mr. Speck of Speck & Anestead, that no deed on file in Blaine County conveys title to the water right despite any claim made to the contrary.
2. A good deal of the confusion surrounding this water right arises from the fact that there are four separate sources of hot water on what was the original Warfield homestead and all four sources were filed upon as a single spring. This has lead people to refer to different sites as though they were the same. The Pace family developed one of these sources (the only source which had not been in previous use) by installing a concrete box and piping the flow of that particular water source to the family cabin site which is located 1/2 to 3/4 of a mile south of the source. This was accomplished entirely at the expense of the Pace family and no compensation of any kind was ever requested or accepted by the Paces from any other user for that installation.
3. The spring in question (piped to the Pace Cabin) was specifically excluded from the original warranty deed granted to Gilbert and Bushell. That document states that 100% of the flow of the piped spring was retained for use of the Pace Family. Access to the pipeline (not the water in the pipeline) was granted to Gilbert, Bushell and others whose property was crossed by the line. This was suggested by our Attorney of record at the time, Thomas Walker, as a means of insuring the neighbors right to make emergency repairs in our absence and to recognize the neighbor's right to cross the line freely with driveways, gardening activities, etc.
4. A second deed of sale later divided the original property into two parcels., The reserved spring was not reintroduced to the sale at that time, as evidenced by the fact that no additional compensation was requested or received by Pace Inc. All four sources of hot water are located on the Northern parcel which was retained by Mr. Gilbert and subsequently sold to Mr. Stephen Ruther.
5. Mr. Gilbert was present at the signing of the transfer deed and recalls that the Veerling interests were offered a chance to purchase one of the three springs which were not excluded from the original deed but declined the offer. The fact that the pipeline and hot spring in question remain the sole property of the Pace family is recognized by the present owner, Mr. Steven Ruther.

6. There were capped stand with waterman screw-cap valves spaced along the line at the sites of the old cabin, now replaced by the Veerling residence, and on the Couch property now replaced by Veerling Guest Rental, and on the Miller property. It is important to note however, that none of these stand-pipes were equipped with in-line valves or other means of restricting or diverting the flow of water as that function was reserved to a single in-line valve installed at the pipeline owners cabin. It was not until the Veerlings purchased the Couch property and installed unauthorized valve(s) that unfair distribution of water was possible.
7. We do not contest the right of Mary Miller and subsequent owner, Embry to water use from the Pace spring sufficient for one hot tub. Mrs. Miller was encouraged by My Father D.L. Pace to file on the water. He had been mis-advised that additional filings would strengthen his water right without establishing additional claims. In retrospect we should have formed a water company and granted limited use to shareholders.

Veerling/Stonebeck may believe that the clause in the original deed granting access to the pipeline also conferred water rights.

(Following such logic any water line crossing a property other than the owner of the water source, automatically transfers partial ownership in that resource to any property owner crossed. Of course this is not the case, as evidenced by the multitude of private and municipal water distributions which cross over neighboring properties property).

We are willing to provide water sufficient for hot Tubs to our neighbors, as compensation for accommodating the pipeline on their lands but when any party install their own valves and begins heating multiple building and selling the water for commercial purposes, using the heat from the water and leaving us entirely without the use of the resource we consider this unfair.

As of the Last Week of October 2004, there has not been sufficient water at the our Cabin to fill a hot tub and the water that is available has insufficient heat for use. That date coincides exactly with the time Veerling/Stonebeck admit turning on their heating system. Previously they said they were installing a new boiler and promised they would no longer use the hot springs water for heating. Liars! Now they are claiming the loss of heat is due to the use of water by Mr. Ruther who they claim is pumping water from the other three springs and drying up our spring. On-site inspection contradicts this accusation as water in the spring box is backed up above summer level and temperature at the source remains constant. The only way the water in the box can be full is for a restriction lower down the line. Only blockage or an illegal valve on the Veerling/Stonebeck property can cause such a restriction as our valve, the only valve we have ever given permission for, remains fully open.

Clarification of Identity:

We (Pace Family) have been accused of making false statements. This is primarily the result of people speaking about different springs as though

they were the same, or in some instances are the result of outright lies on the part of petitioners.

We do wish to correct one inadvertent false statement. It has been many years since the meetings between Mr. Bushell, Mr. Gilbert and my father, D.L. Pace and in the intervening time I (Jay Pace) had confused their identities. Mr. Bushell is correct when he says he never met at my house. It was Mr. Gilbert and his wife who came to my home in Twin Falls. Mr. Bushell may not remember that I was the young man present at the first meeting at dad's house in Twin Falls. But, Yes, I have met both parties, face to face, although I didn't recall either face and had their identities reversed. I apologize for any added confusion this may have caused.

Mrs. Mary Miller accuses us of being false in regard to the fact that many people used the hot spring during the time we were owners of the property and before. (which spring is she talking about?) She is correct in regard to three of the four springs but not with regard to the specific spring which my father piped and reserved for our family use, (that spring was the source of a free flowing stream of water for many years prior to development by our family). I can produce pictures in evidence if need be. And so what if trespassers did occasionally use any of the springs? The property was clearly posted "No Trespassing", illegal use or theft of a resource does not constitute ownership! The Blaine County Sheriff was called on numerous occasions regarding instances of unlawful trespass taking place at Crony Cove and was well aware of the nuisance factor which hot springs present. The US Forest Service was also well aware of our efforts to maintain the so called Warfield bathhouse, located on a small triangle of property held by the Forest Service at that time but since traded to Ruther. That triangle was surrounded by our property with water-right held by our family. Although we did charge for keys in order to maintain the facility for local residents, no profit was ever made. In fact our family spent thousands of dollars attempting to maintain that facility for the benefit of our neighbors and it was my suggestion which Mr. Gilbert and Mr. Ruther followed to move the bridge thus removing a nuisance from the Forest and reduce incidence of illegal trespass. The Forest Service concurred with this idea and transferred ownership of the triangle to Ruther in exchange for moving the bridge.

What I have learned in connection with the events taking place at the springs came from my father over a long period of time and in the latter years his mental capacity was becoming diminished by dementia to the point that I could not always be certain of his recollections.

I now believe the biggest mistake I have made in regard to this situation was in not trusting my father when he repeatedly and emphatically denied transferring the right to our reserved spring at the time of the second redistribution of property. A meeting with Mr. Gilbert confirmed the fact that dad's recollection of events was correct. Had I believed him, I would have taken immediate legal action against Veerling for illegal tapping of the pipeline and unauthorized greedy use of the water for commercial purposes.

In conclusion let me say that although we have faith that justice will ultimately be rendered by the adjudication process. We must also state that the inability of the Board to process this case in a timely manner has greatly exacerbated the situation, and emboldened Veeriling/Stonebeck to completely exhaust the resource without regard to the rights of others. When my son

Ben, who lives at our cabin year-round, called to complain, Michael Stonebeck said, "I have to take care of my guests and hung up", at an earlier point in the same conversation, he promised he would get more water coming but later called back and denied his ability to release any more water. We know that the day Veerling/Stonebeck turnoff their heating system, there will once again be sufficient water. In the meantime we go without water while they openly advertise hot springs on the internet. This is an area of seasonal use, in which business licenses are not granted for year-round use due to inability of the county to provide emergency and other services to the canyon. So in addition to stealing our resource the business would appear to be illegal. When asked, Michael Stonebeck denied operating a business on the site.

Enclosed please find three photos with explanatory notes:

1. The Water Source, at the time Stonebeck accuses Ruther of pumping down the water source. We have numerous witnesses to each of these conditions.
2. 2. The Veerling Hot Tub full at the time we are without water.
3. 3. The Pace Hot Tub at it's present level.

Also attached is a reprint of the Add for the Croney Cove (spelled as in the advertisement) Bed and Breakfast, featuring the hot spring in question.

Thank You for your attention to this matter.



Jay Pace, for Pace Family

RECEIVED

MAR 15 2005

Department of Water Resources
Southern Region

This is a the hotspring developed for the use of the Pace Family taken this winter during the period in which Michael Stonbeck claims that Steven Ruther is pumping water to his three springs, thus lowering the water level. This is obviously a false charge as this spring remains hot and the water is backed up to the top of the box, which can only be caused by restriction in the pipeline down stream.



RECEIVED

MAR 15 2005

Department of Water Resources
Southern Region

This is a picture of the Pace Hot Tub taken on the same day as the picture showing the spring box full to overflowing. Notice the outlet with the water level too low for any overflow. The water in the pool is only luke warm.





RECEIVED
MAR 15 2005
Department of Water Resources
Southern Region

CRONEY COVE

■ ABOUT CRONEY COVE

■ RATE INFORMATION

Box 288 Sun Valley, Idaho 83353 800.323.3393

email: svacomm@sunvalley.net or lisavierling@yahoo.com

[About the Guest House](#) / [Rate Information](#)

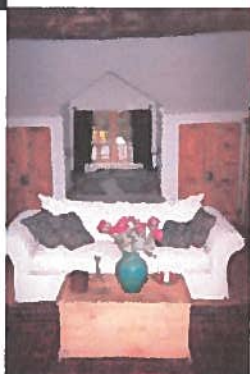
CRONEY COVE



WINTER

Imagine your own home five miles within the Sawtooth National Forest, one of the largest nature preserves in the United States.

Imagine a 1500 square foot Bavarian-style chalet, complete with three fire places (including two located outdoors), heated floors, satellite TV, and antique Bavarian furniture.



HOME

ABOUT CRONEY COVE

RATE INFORMATION



You'll be able to call the Warm Springs River as your own while it flows in front of the property under a covered wooded bridge 50 feet from the front door.



Welcome to Lisa and Michael Stoneback's **Croney Cove**, located on 7 unique acres surrounded by meadows and mountains. It's not uncommon to see elk grazing here.

The two-story house can accommodate four people. There is a queen size bed-sitting room suite on the upper level and a kitchen-dining-sleeping area below. Each has its own full-size bathroom.

This is your own home in the wilderness. However, it's located only a few miles from the old mining town of Ketchum with its authentic old buildings, and Sun Valley, one of the most sophisticated ski resorts in all of North America.

This is a true paradise. Croney Cove offers the benefits of a nature setting — removed from the bustle of everyday life yet close enough to some of the finest stores and restaurants in the West.

The Sun Valley ski area is only 8 miles away with its endless runs on famous Bald Mountain (a bit under 10,000 feet). You can snowshoe, skate-ski, and back-country tour right from the front door. On those full-moon nights, Michael will be delighted to take you on a snowshoe or ski tour.

After a "difficult" day of recreation, you can relax in your own spa—2 geothermal tubs fed by natural thermal springs bubbling out from under the mountains. Or, we'll be happy to arrange for an in-house massage, body wrap, facial, or the perfect meal for that special evening.

If you don't want to ski or skate, you can fly-fish from the front yard.

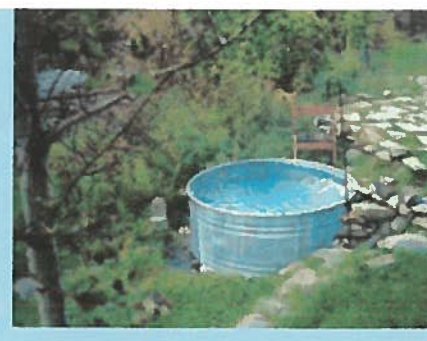
It simply doesn't get any better than this.

Summer

Not interested in winter sports? The summer's don't get any better at Croney Cove. Imagine rich blue skies, warm yet comfortable days, and cool, dry nights—an ideal vacation climate. Imagine flyfishing and grilling the rainbow trout in your own outdoor fire place.

Sun Valley in the summer is everything it is in the winter—only more so: mountain-biking, full-moon hikes, rafting on the Salmon River, mountain tours on horseback, hikes into the mountains with a llama by your side (he does all of the hauling). The number of hikes in the area are countless; they range from leisurely walks to tough ascents of 10,000 foot mountain peaks.

Of course, there is golf and tennis in nearby Ketchum as well as the world-famous Sun Valley ice shows with their Olympic performers. Go skeet shooting and boating—or spend a few nights camping in the wilderness under the guidance of experienced Alpine experts.

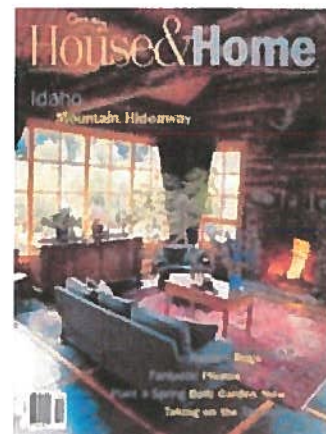


colors. The summer crowds will have receded by September and the skiing fanatics won't arrive until Thanksgiving. This is the time when you will hike through the mountains with hardly any "competition" (not that there really is any to begin with)—just you and your family and the majestic scenery of the Sawtooth Mountains.

This Home and Property has been featured in

- Log Home Book
- House and Home
- Sun Valley Magazine
- Photo shoot locations for:

- L.L. Bean Christmas catalog - past five years
- Dooney & Bourke Leathers
- Conde Nast Travel
- Bon Marche
- Sports Check
- Professional Photographers.



Come and discover what they already know. **Croney Cove is paradise.**

Box 288 Sun Valley, Idaho 83353 800.323.3393

email: svacomm@sunvalley.net or lisavierling@yahoo.com

[Home Page](#) / [Rate Information](#)



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 24, 2005

Travis Thompson
113 Main Ave. W. Suite 303
Twin Falls, ID 83301-6167

RE: Warfield Hot Springs Diversions

Dear Travis:

As I indicated to you last Friday our office has received your letter dated January 17, 2005.

As you know the Warfield Hot Springs Pipeline (also known as Pace Pipeline) was observed by IDWR during a field review in 2003 precipitated by complaints of waterusers in that pipeline regarding use within the pipeline. IDWR's field review served the purpose of investigating the SRBA claims that have been filed by the various waterusers including Vierling (Stonebeck), your client. The status of the SRBA review has not changed since my August 28, 2003 letter to James Speck (Copy enclosed). In the letter I wrote: *"Depending on the finding of the SRBA court regarding the elements of the claims, the resolution of the description of the water rights may result in curtailment or limitation of current uses in the system."* I also wrote that: *"Control and measuring works may ultimately be required at the head of the pipe and for each subsystem."* The resolution of controversy among pipeline users in my opinion has been stalled until the SRBA process is finalized.

Your recent letter points to the potential or alleged impact of development of permit 37-8388 on the user(s) in the Warfield Hot Springs Pipeline. Your letter requests that IDWR conduct an investigation into the cause of the interference with the source at Warfield Hot Springs diversions.

As you know, currently in the scheme of priority pursuant to Section 42-607 of the Idaho Code, beneficial use claims (such as your client's), in times of scarcity of water are held to be subsequent to or first to be curtailed with preference being given to any decreed, permitted or licensed right. Only after your client's rights are decreed in the SRBA will interference be an issue IDWR would investigate. IDWR at this time declines to conduct a study until such time as the water rights to the uses of the water in the Warfield Hot Springs Pipeline are decreed in the SRBA Court. After that time, if the users have installed a measuring device at the head of the pipeline and it is shown that the rights as decreed are not being filled it may be appropriate to investigate further.

As you may know permit 37-8388 is conditioned that a measuring device be installed as part of its diversion works. Assuming that an investigation may be conducted in the future, it is recommended that the pipeline users install a measuring device at the head of the pipeline as well. It is also recommended that measurement of use from both diversions commence and be recorded (by a third party if possible) to aid in any future analysis.

If you have questions please feel free to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Merritt", written in a cursive style.

Allen Merritt, PE
Southern Region Manager

CC: James Speck
Kevin Lakey, Watermaster District 37

TRANSMITTAL COVER SHEET

TO: Jim Speck
Travis Thompson

8/28/2003

TOTAL PAGES SENT: 3
(including cover sheet)

DOCUMENT DESCRIPTION: Reply to letter of Complaint

FROM:

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST, STE 200
TWIN FALLS ID 83301-3380

PHONE: 736-3033

FAX: 736-3037

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SENDER: D. Jones/A. Merritt

COMMENTS: Paper copy claimants & counsels



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 28, 2003

James P. Speck
P.O. Box 987
Ketchum ID 83340

RE: Warfield Hot Springs diversions

Dear Jim,

On September 17, 2002, you submitted a letter of complaint on behalf of your client Jay Pace alleging illegal diversion by Lisa Vierling. The letter alleges that uses by Ms. Vierling commenced in 1989 or later and that Ms. Vierling has no permit, license or decree for those uses. Your letter seeks remedies that include issuance of a Notice of Violation against Ms. Vierling and enforcement of Cease and Desist provisions to prevent diversions.

As you know, Snake River Basin Adjudication claims have been filed for Mr. Pace (37-11296) and Ms. Vierling (37-13054 & 37-20894). A de minimis domestic right (37-13394) has been decreed to Miller (now apparently owned by Embry) in the SRBA, also a user on the pipeline that is contested in this matter. Recommendations have not been made to the court for the beneficial claims by Pace and Vierling. It is anticipated that the recommendations of these adjudication claims will be submitted to the court in 2005.

In response to your letter, IDWR issued an Order to Show Cause to participants in the complaint on October 10, 2002. Documentation corroborating historic uses on the system was sought by the order. The parties, through February 2003, filed a series of responses and supporting affidavits to the Show Cause Order. On March 13, 2003, Douglas Jones and I conducted a field investigation that began at the head of the pipeline and proceeded to the outfall of the pipeline into Warm Springs Creek at Pace's property. During this field visit observations regarding the use of water, and flow and water temperature measurements were made. Measurements were taken at the head of the pipeline and at accessible stub outs along the pipeline.

Based on the evidence submitted to IDWR and observations made during the field visit IDWR believes that there is sufficient information to conclude that there is some color of proof as to the existence of at least one water right for each user in the system. **For this reason IDWR declines to issue a Notice of Violation at this time.**

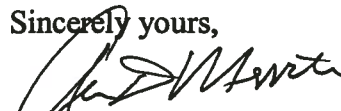
As noted above, the specifics of each element of several claims are still pending recommendations and processing before the SRBA court. Depending on the finding of the SRBA court regarding the elements of the claims, the resolution of the description of the water rights *may* result in curtailment or limitation of current uses in the system.

It was observed during the investigation that all claimants to this spring could address a couple of circumstances through voluntary efforts that may reduce the disputes between users. In an effort to facilitate some type of resolution of this matter prior to the finalization of the claims in the SRBA, IDWR makes the following suggestions to all of the water users of the pipeline:

- First, IDWR recommends avoiding pipeline flow interference by closing (wholly or partly) or widely opening valves along the main pipeline. This can be accomplished by altering plumbing or accessories to maintain positive pressures in the main pipe and in subsystems (e.g. lower the pumps below elevation of the pipeline).
- Second, each user (per claimant not per claim) could self impose a limitation of re-diverting only a total of 13,000 gallons per day, equating to a continuous flow of 0.02 cfs or 9 gallons per minute. This total volume/rate would include flow re-diverted and then returned to the pipeline. Adhering to this limitation in the interim would not prejudice IDWR's recommendation to the court regarding any claims.
- Third, it is recommended that removable screening be installed at the head of the pipe to prevent accidental intake of coarse debris into the pipeline. Maintenance of the pipeline must be conducted to assure continued service to users.

Finally, if controversy among the water users continues, provisions exist in Idaho law for appointment of lateral ditch managers to be paid for by the water users to regulate in the event of continued disputes on a distribution system. Control and measuring works may ultimately be required at the head of the pipe and for each subsystem.

Sincerely yours,



Allen Merritt

Cc: Travis Thompson
All SRBA claims to Warfield Hot Spring Verling, Pace and Miller

JUL-09-2003 WED 03:58 PM SPECK & ANESTAD

FHA NO. 12001200132

Post-It® Fax Note	7671	Date	# of pages
To	Doug & Allen	From	Susan
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

ANESTAD
CORPORATION
NEYS

P. O. Box 987
Ketchum, ID 83340
1-208-726-4421
Fax: 1-208-726-0752

FAX COVER SHEET/MEMO

To: Susan Hamlin Nygard	Fax Copies: Steve Reuther Travis L. Thompson
Fax #: 1-208-327-5446 <i>7866 Gary</i>	Fax #'s: 1-310-205-5380 1-208-344-6034
From: Jean Farnes for James P. Speck	Pages: 5, including this cover page
Date: July 9, 2003	
Subject: Pace/Warfield Hot Springs Water Dispute	Our File No. 1267/020059

COMMENTS:

THE INFORMATION CONTAINED IN THIS FAX TRANSMISSION IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE ABOVE-NAMED RECIPIENT AND MAY BE THE SUBJECT OF ATTORNEY-CLIENT PRIVILEGE. IF THE READER OF THIS MESSAGE IS NOT THE ABOVE-NAMED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISTRIBUTION, DISSEMINATION, COPYING OR OTHER USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED AND NO PRIVILEGE IS WAIVED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE. THANK YOU.

SPECK & AANESTAD

A PROFESSIONAL CORPORATION
ATTORNEYS

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DOUGLAS J. AANESTAD
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TELEPHONE
(208) 724-4421
FACSIMILE
(208) 724-0732

July 9, 2003

VIA FACSIMILE - 208-327-5446
ORIGINAL WILL NOT FOLLOW

Ms. Susan Hamlin Nygard
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720-9000

Re: Ark & Shannon Pace/Warfield Hot Springs Water Dispute
Our File No. 1267/020059

Dear Susan:

I recently obtained copies of the Idaho Department of Water Resources files on Applications for Permit No. 37-8691 in the name of the Babcock Family Partnership and No. 37-8692 in the name of Joseph Shelton. Included in these files was a document entitled WARFIELD HOT SPRINGS (PIPELINE SPRING) DEVELOPMENT SUMMARY prepared by Doug Jones and Allen Merritt (the "Summary"). In the Summary, Allen and Doug purport to make proposed recommendations for the claims to water rights for water delivered by a single historical pipeline diverting water from the Warfield Hot Springs. In this matter I represent Mr. Stephen Reuther, who is the owner of the property on which Warfield Hot Springs arises and thus the property where the point of diversion from each of the contested water right claims is located. Mr. Reuther does not claim any water rights for any portion of the water delivered through the pipeline system. Instead, he has developed a use under Permit No. 37-8388 for the diversion of other hot springs on his property. I also represent Jay and Suzi Pace who are the owners of SRBA Claim No. 37-11296, based on the original, historic beneficial use of water diverted through the pipeline to their property at the end of the pipeline developed prior to the mandatory permit date of May 20, 1971. Given the nature of this dispute I must respond on behalf of my clients to certain aspects of the Summary and previous written arguments put forth by Mr. Travis L. Thompson, attorney for Ms. Lisa Vierling, in his Response to Show Cause Order (the "Response").

First, contrary to the assertions in the Response, there is absolutely no evidence in any of the documents on file in this matter to provide a factual basis for any kind of legal diversion and beneficial use water right for use of water from any of the various hot springs on the property now owned by Mr. Reuther with the single exception of the water right created by the diversion of water through the pipeline in question. There is simply nothing to support a finding that there is any diversion of water from any of the other hot springs for any beneficial use prior to the construction

Ms. Susan Hamlin Nygard
July 9, 2003
Page 2

of the pipeline. Simply soaking in the hot springs by members of the public or even the property owners does not rise to the level of beneficial use of the water necessary to establish a water right.

Second, the place of use of the beneficial use water right created by the diversion through the pipeline under 37-11296 is at the Pace cabin property at the end of the pipeline. There is insufficient evidence to establish that water was diverted out of the pipeline to any other property prior to the mandatory permit date of May 20, 1971. Therefore, when Pace, Inc. sold to Bushell in 1983 the property that would become Lots 1 and 2 of the Warfield Hot Springs Subdivision (now owned by Mr. Reuther and Ms. Vierling, respectively) there were no water rights appurtenant to that property.

Third, the Corporate Warranty Deed from Pace, Inc. to the Bushells includes the following unambiguous provision:

RESERVING TO THE GRANTOR the right to use the flow of hot water in the gravity feed water line that now exists. It is understood that Pace, Inc. and its successors shall not increase or expand on that existing flow. This right is to be appurtenant to, and run with, the following described property . . .

The legal description that follows is the Pace cabin property. I do not believe it could be any clearer that Pace, Inc. reserved and kept appurtenant to the Pace cabin property the entire water right based on the then existing flow in the pipeline. There is absolutely nothing in this Deed that can be construed as a conveyance of any portion of this water right to the Bushells. Instead, Pace, Inc. agreed to not expand or increase the then existing flow and conveyed to the Bushells the right to share the "use, repair and maintenance of the water line referred to above" if they were to choose to somehow expand or increase the flow. This right was specifically limited to the portion of the property south and east of Warm Springs Creek commonly known as the Crony Cove Parcel, which eventually became a part of Lot 2 of Warfield Hot Springs Subdivision now owned by Ms. Vierling. Therefore, contrary to the positions taken in the Summary and the Response, the Corporate Warranty Deed did not convey to the Bushells any portion of the water right represented by the Paces' SRBA claim 37-11296. The Bushells did not acquire any water right to use water from any of the hot springs which they, in turn, could have conveyed to Mr. Garbrecht with title to Lot 2.

Fourth, the Declaration of Geoffrey S. & Linda K. Bushell attached to the Affidavit of Travis L. Thompson was recorded as a condition of the plat approval for the Warfield Hot Springs Subdivision. It specifies that the property owners do not have to allow access to the hot springs by the general public as there are other springs on USFS property upstream. However, the owners of the subdivision lots were required to "respond to any inquiries" from other property owners in the vicinity about access to the hot springs or to pipe water from the hot springs to their property. The latter would, of course, require the other property owner to establish a water right to divert water through a pipeline to their property. In no way does this mean the owners of Lots 1 and 2 had any right to the use of water in the then existing pipeline which could be passed on to the other property owners as claimed in the Response.

Ms. Susan Hamlin Nygard
July 9, 2003
Page 3

Fifth, the "accomplished transfer" statute only applies to changes that were completed prior to the November, 1987 commencement of the SRBA by a person who was either entitled to the use of the water or who owned land to which water was appurtenant by virtue of a prior decree, the constitutional beneficial use method, or an Idaho statute. The Response fails to address the water right or place of use ownership requirement of this statute because it precludes use of the statute by Ms. Vierling. The Pace family never conveyed any portion of their beneficial use water right (37-11296) to anyone else and they continue to own the entire original place of use (the Pace cabin property). Therefore, only the Pace family could take advantage of the accomplished transfer statute to move some portion of this water right to another parcel. As discussed above, it is clear no portion of this water right was conveyed to the Bushells for them to move pursuant to this statute. Furthermore, there is no evidence of any conveyance to Mrs. Couch by the Pace family of any portion of their water right. Any water right appurtenant to that property must be established on its own as a beneficial use right or by permit. Even Mr. Thompson concedes it is "not clear when the use out of the pipeline began on the Couch property." Mere assumptions are not sufficient to establish the commencement of the use which is critical to form the basis for a beneficial use water right.

Sixth, there is simply no "equal standing of users" of the pipeline with respect to water rights as asserted in the Summary. As discussed above, the only property for which Vierling might rightfully assert a beneficial use water right claim is the Couch property, but there is insufficient evidence of the priority date. My clients do not dispute the Miller use of water from the pipeline, but it must also be based upon evidence of the required elements of a beneficial use water right. The accomplished transfer statute cannot be used by Ms. Vierling to claim any portion of the Pace water right. The mere fact that users share a pipeline does not put their water rights on "equal standing."

Seventh, heating is a separate and distinct beneficial use of water from a hot springs source. Adding such a use to an existing recreational or domestic use of the hot springs clearly requires an administratively approved change of use. Furthermore, the measure of beneficial use for heating is the volume of the heated space and the amount of heat actually extracted from the hot water. The Pace family is at the end of the pipeline. Any extraction of heat from the water in the pipeline will adversely impact their ability to use the hot water for the recreation or heating purposes claimed under 37-11296. This is clearly an "injury" to a senior water right. Therefore, "plumbing a second house into an original main pipeline tap and more fully utilizing the heat value of the original appropriation" IS, contrary to the conclusion in the Summary, an illegal expansion which injures my clients' water right. More importantly, Ms. Vierling does not have a valid, beneficial use water right for heating which could even be the subject of an "expansion."

Finally, ALL of the uses of water from the pipeline by Ms. Vierling are illegal. There is no evidence to support a separate, beneficial use water right appurtenant to Lot 2 created by the pipeline diversion. There is no conveyance of any portion of the Pace water right to the Bushells which could form the basis for an accomplished transfer claim by Ms. Vierling as the current owner of Lot 2. With respect to the Couch property now owned by Ms. Vierling, there is insufficient evidence to

Ms. Susan Hamlin Nygard

July 9, 2003

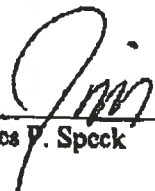
Page 4

support a finding water from the Pace pipeline was put to beneficial use on that land prior to May 20, 1971. There is NO document or evidence of any kind purporting to form the basis for a conveyance by the Pace family to Ms. Couch of any portion of the Pace water right which could, in turn, be the subject of a claim based upon the accomplished transfer statute. I first requested by letter dated September 17, 2002 that the Department to take action pursuant to I.C. §42-351 to stop these illegal uses. The Department should find, based upon the information before it in this matter, that Ms. Vierling's uses of water from the pipeline are without valid water rights and therefore issue a notice of violation. In addition, if the Department intends to now issue its SRBA Director's Reports for the claims to water rights from Warfield Hot Springs using the Pace pipeline diversion, the claims by Ms. Vierling must be disallowed for all of the reasons set forth above. Please give this matter your immediate attention.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 

James F. Speck

JPS/jef

cc: Jay & Suzi Pace
Arck & Shannon Pace
Steve Reuther, by facsimile to: 310-205-5380
Travis L. Thompson by facsimile to: 208-344-6034

\\PAC\DATA\JAVIM\PACE\2003\07\09\Nygard 07-03.wpd

Doug

I got a frantic call from Lise Vierling
@ Warfield Hot Springs.

Home 726-2683
Office 726-3355

She said her husband Mark had talked
to you about a Babcock & Wilcox Shelton
hooking on to their pipeline. She
was all upset at us allowing them to
do this. She asked that I research
the water so I queried AJ & WR

I only find

A37-13054 Vierling on
AJ.

37-08388 ~~WR~~ Gilbert on
WR

I called Lise back & discussed this with her
but she wanted me to talk to you since
she thinks that something else is going on.
She would like you ~~WR~~ or me to call her back
after we talk

AD

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 37-08691

PLACE OF USE: AESTHETIC

Twp Rge Sec	NE				NW				SW				SE				Totals
04N 16E 36	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
				X													

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
04N 16E 36	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
				X													

PLACE OF USE: RECREATION

Twp Rge Sec	NE				NW				SW				SE				Totals
04N 16E 36	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
				X													

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before .
2. Subject to all prior water rights.
3. Source is locally known as Pace Pipeline Spring which is one of several springs that comprise Warfield Hot Spring complex.
4. Domestic use is for 1 home.
5. The domestic use authorized under this right shall not exceed 13,000 gallons per day.
6. Irrigation occurring under this domestic use is limited to 1/2 acre and is authorized only in connection with a home. Prior to use of these low temperature thermal waters for irrigation purposes the water must first be used beneficially for the heat value.
7. Recreation use is a hot tub.
8. Aesthetic use is a decorative pond.
9. Heating use is for existing home. Water temperature is not a guaranteed element of this right and will be affected by existing water users on the pipeline.
10. Use of water for heating, aesthetic and recreation under this right shall be non-consumptive.
11. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.
12. Use of water under this permit may be affected by an agreement dated May 17, 1990 between Dee L. Pace, Joseph W. Shelton, III and William Babcock.

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 37-08691

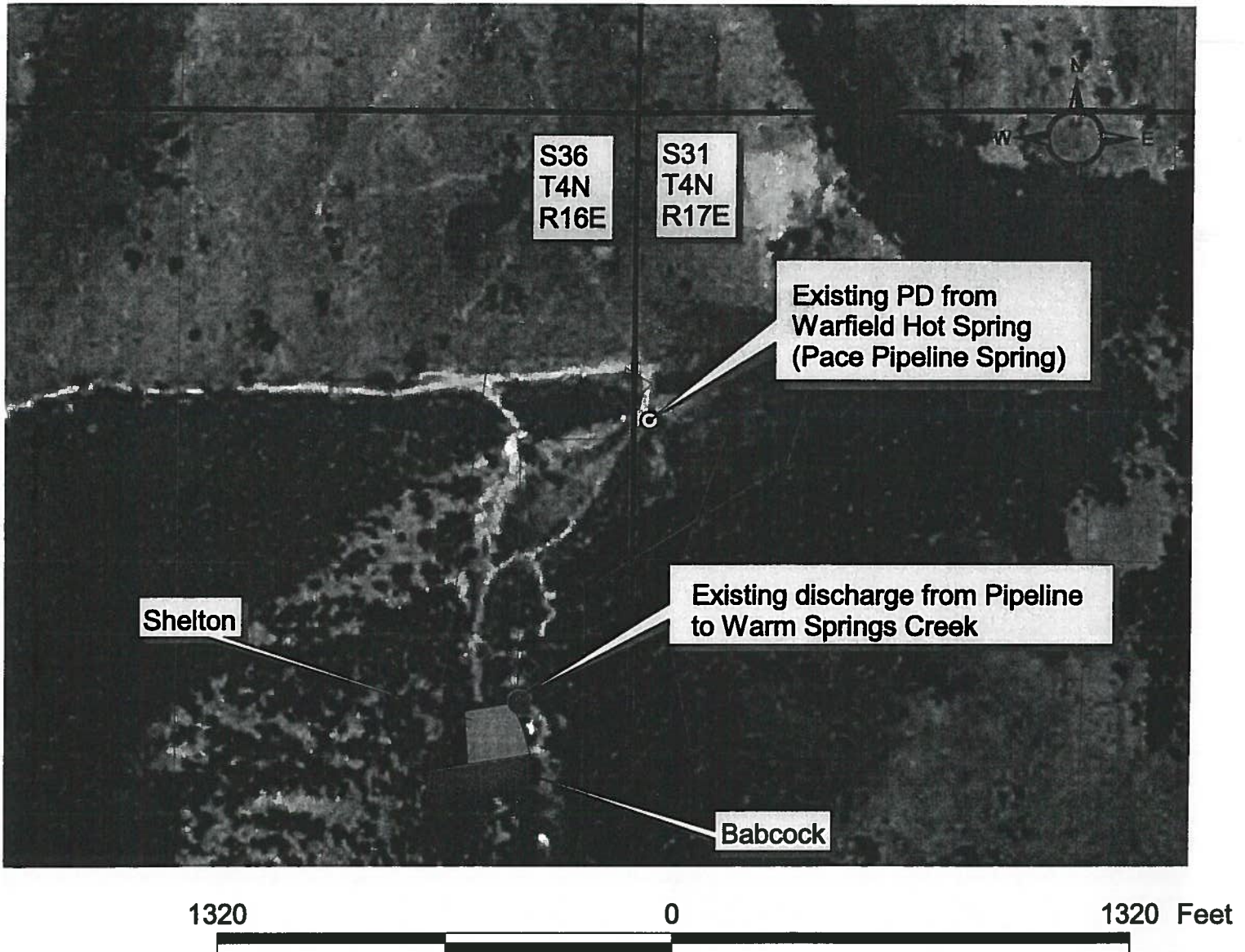
13. This right does not grant any right-of-way or easement across the land of another.
14. This permit does not authorize the modification of the existing point of diversion to the existing pipeline. Use of water is limited to existing outfall from existing pipeline.
15. Place of use and point of diversion are located within HES 389.
16. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
17. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
18. Issuance of this permit does not constitute a Stream Channel Alteration permit that may be necessary to extend the pipeline across Warm Springs Creek.
19. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality standards of the Department of Environmental Quality.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this _____ day of _____, 20_____.

KARL J DREHER, Director

IDAHO DEPARTMENT OF WATER RESOURCES

Recommended PD & PU for Permits 37-8691 & 37-8692



- Pace pipeline spring pd.shp
- 37-8692 pu.shp
- 37-8691 pu.shp
- Corrected section.shp
- GCDB04N17E GCDB
- GCDB04N16E GCDB

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 37-08692

Priority: August 09, 1990

Maximum Diversion Rate: 0.04 CFS

**This is to certify, that JOSEPH W SHELTON
3165 BOEHM ESTATES DR
TWIN FALLS ID 83301**

has applied for a permit to appropriate water from:

Source: WARFIELD HOT SPRING **Tributary:** WARM SPRINGS CREEK

and a permit is **APPROVED** for development of water as follows:

draft
adm 6/17/03

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
RECREATION	01/01 to 12/31	0.04 CFS	
FIRE PROTECTION	01/01 to 12/31	0.04 CFS	
DOMESTIC	01/01 to 12/31	0.04 CFS	
AESTHETIC	01/01 to 12/31	0.04 CFS	
HEATING	01/01 to 12/31	0.04 CFS	

LOCATION OF POINT(S) OF DIVERSION:

WARFIELD HOT SPRING BLAINE County	SW1/4NW1/4NW1/4	Sec. 31, Twp 04N, Rge 17E, B.M.
--------------------------------------	-----------------	---------------------------------

PLACE OF USE: RECREATION

[illegible]

PLACE OF USE: FIRE PROTECTION

[illegible]

PLACE OF USE: DOMESTIC

[illegible]

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 37-08692

PLACE OF USE: AESTHETIC

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N	16E	36				X													

PLACE OF USE: HEATING

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N	16E	36				X													

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before .
2. Subject to all prior water rights.
3. Source is locally known as Pace Pipeline Spring which is one of several springs that comprise Warfield Hot Spring complex.
4. Domestic use is for 1 home.
5. The domestic use authorized under this right shall not exceed 13,000 gallons per day.
6. Irrigation occurring under this domestic use is limited to 1/2 acre and is authorized only in connection with a home. Prior to use of these low temperature thermal waters for irrigation purposes the water must first be used beneficially for the heat value.
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9. Heating use is for existing home. Water temperature is not a guaranteed element of this right and will be affected by existing water users on the pipeline.
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12. Use of water under this permit may be affected by an agreement dated May 17, 1990 between Dee L. Pace, Joseph W. Shelton, III and William Babcock.
13. This right does not grant any right-of-way or easement across the land of another.
14. This permit does not authorize the modification of the existing point of diversion to the existing pipeline. Use of water is limited to existing outfall from existing pipeline.
15. Place of use and point of diversion are located within HES 389.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 37-08692

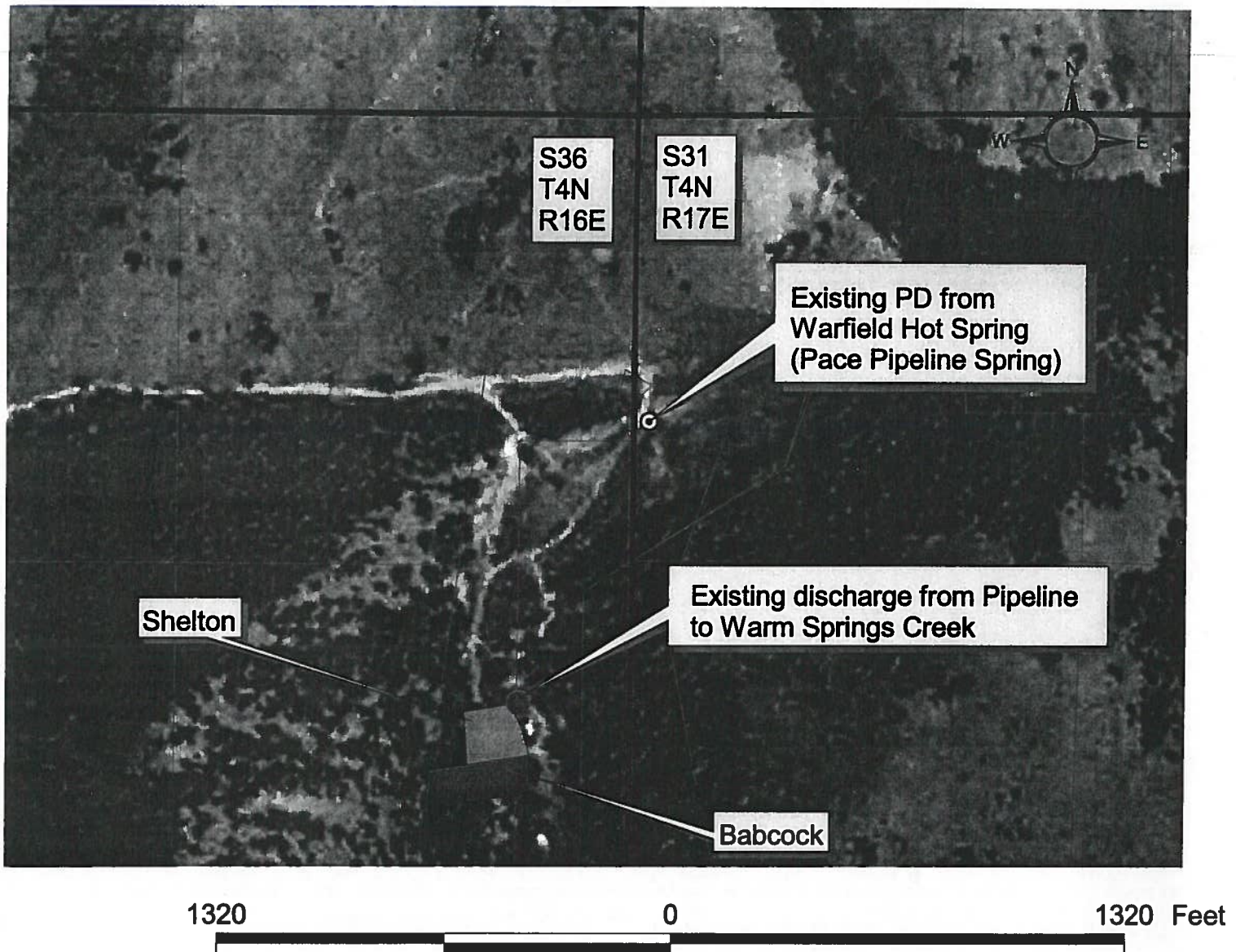
16. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
17. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
18. Issuance of this permit does not constitute a Stream Channel Alteration permit that may be necessary to extend the pipeline across Warm Springs Creek.
19. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality standards of the Department of Environmental Quality.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this _____ day of _____, 20_____.

KARL J DREHER, Director

IDAHO DEPARTMENT OF WATER RESOURCES

Recommended PD & PU for Permits 37-8691 & 37-8692



- Pace pipeline spring pd.shp
- 37-8692 pu.shp
- 37-8691 pu.shp
- Corrected section.shp
- GCDB04N17E GCDB
- GCDB04N16E GCDB



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

APR 30 2003

Department of Water Resources
Southern Region

April 30, 2003

Mr. Allen Merritt
Southern Region
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

Subject: Reuther Property-Warm Springs Creek -Geothermal
Development

Dear Allen:

Enclosed is a brief report on the geothermal development for the Reuther property at Warfield Hot Springs on Warm Springs Creek above Ketchum.

The low temperature geothermal evaluation objective was to develop the resource without impacting existing uses, particularly the discharge allowable to the pipeline serving the neighbors from the 'old' concrete collector.

Please call me if you have any questions.

Sincerely,

Charles E. Brockway, P.E., Ph.D.

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

Enclosure: Geothermal Development Report

cc: Jim Speck

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

Reuther Property
Geothermal Collector System
Analysis and Design
Brockway Engineering P.L.L.C.
April 29, 2003

RECEIVED

APR 30 2003

Department of Water Resources
Bozeman, Idaho

The Reuther Property is located at Warfield Hotsprings on Warm Springs Creek west of Ketchum, Idaho. Specifically, the property is part of subdivided Homestead Entry 389. Low temperature geothermal springs have been historically developed and utilized by different parties. Currently, the only development is from a spring source near the new road to the Reuther residence. An existing spring has been developed by construction of a vertical, 4 ft diameter concrete pipe with a 6 inch PVC pipe conveying water south to owners of lots within the subdivision ('old' collector). Water rights to be diverted from this source are not specific as to the discharge authorized.

The objective of this project was to evaluate the feasibility of low temperature geothermal water development for the new Reuther residence. This entailed evaluation of the source and magnitude of potential development for design of geothermal heating systems and other geothermal water uses associated with the residence. One constraint on the development was maintenance of 'historical flow' in the pipeline serving existing users.

Site evaluation included determination of the source(s) of geothermal water and identification of geology and formations from which geothermal water could be developed. This involved an inventory of the existing sites, strategically located test pits to identify the flow patterns and low temperature geothermal water interactions with Warm Springs Creek.

A pre-construction pump test was performed to determine the feasibility of locating a permanent hot water collector near the south end of the property adjacent to Warm Springs Creek. During this test, water levels in open test pits were monitored to determine the response of the geothermal system to pumping of the test pit. Water levels in the 'old' concrete collector were monitored during the test and no response was observed during the approximately 8 hour test.

Based on the aquifer evaluation and pump test, a permanent concrete collector was designed and installed near the south end of the project. A perforated buried pipe collector was installed approximately parallel to Warm Springs Creek and leading to the concrete collector.

A pumping test was performed on October 21, 2001 on the new collector using a portable pump. Water levels and temperature in the new collector and the 'old' collector were monitored to determine the collector yield and ascertain whether there was any impact of pumping on the 'old' collector from which water flows to the neighbors pipeline. The pumping test was conducted for 6.5 hours with discharges from 103 to 185 gpm and resulting drawdown in the pumped collector from 0.53 to 1.18 feet. There was no change in the water level in the 'old' collector during the test. No temperature change was observed in the pumped water. The data is shown on Data Chart 2 and accompanying spreadsheet.

Based on this data a maximum design discharge for the Reuther geothermal system of 185 gpm was recommended.

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Department of Water Resources
Southern Region

Data

Reuther Property
Geothermal Collector Pump Test

Brockway Engineering Oct. 23, 2001

Elevation of Measuring Point for Collector Water Level 96.02

Elevation of Measuring Point-Old Collector Water Level 98.06

Orifice Dia Cd	Area Orifice ft^2
2.512	0.694 0.034416
3.009	0.776 0.049382

Time	Depth to Water in Collector Ft	Elev. of Water in Collector Ft	Orifice Dia. Inches	Discharge Meas. 4 Inch Pipe Orifice Head Inches	Discharge gpm	Water Temp. Pumped Deg F	Depth to Water-Old Collector Ft
9:20 AM							
9:55 AM	1.62	94.40					0.99
10:40 AM			2.50	18.50	106.8		Start Pump
10:45 AM	1.79	94.23	2.50	18.50	106.8		
10:48 AM	1.84	94.18	2.50	18.00	105.4	115.4	
10:51 AM	1.93	94.09	2.50	17.50	103.9		
10:58 AM			2.50				0.99
11:01 AM	2.00	94.02	2.50	17.25	103.14	113.6	
11:10 AM	2.05	93.97	2.50	17.25	103.14		
11:20 AM	2.10	93.92	2.50	17.00	102.39	113.8	
11:30 AM	2.11	93.91	2.50	17.38	103.51		
11:35 AM			2.50				0.98
11:50 AM	2.13	93.89	2.50	17.25	103.14	114.4	
12:00 PM			2.50				0.98

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Department of Water Resources
Southern Region

Data

12:06 PM	2.14	93.88	2.50	17.50	103.88		Water still flowing in old collector to WS
12:30 PM	2.15	93.87	2.50	17.25	103.1	113.8	
12:32 PM			2.50				0.98
12:52 PM	2.15	93.87	2.50	17.25	103.1	111.5	
1:05 PM	2.15	93.87	2.50				
1:12 PM			2.50	0.00	0.0		Pump off-Change pumps
1:20 PM	2.00	94.02	2.50	28.00	131.4		Begin Pumping
1:22 PM			2.50	28.00	131.4		
1:27 PM	2.16	93.86	2.50	36.00	149.0		
1:29 PM	2.18	93.84	2.50	36.25	149.5		
1:35 PM	2.26	93.76	2.50	36.25	149.5		
1:40 PM			2.50				0.99
1:42 PM			2.50				Water still flowing in old collector to WS
1:44 PM	2.28	93.74	2.50	36.00	149.0		
1:50 PM	2.30	93.72	2.50	36.00	149.0	114.1	
2:12 PM	2.33	93.69	2.50	36.25	149.5	115	
2:30 PM	2.34	93.69	2.50	37.00	151.1	115.2	
2:43 PM			2.50				0.99
3:05 PM	2.35	93.67	2.50	37.25	151.6		
3:10 PM				0.00	0.0		Pump offchange orifice old collector flowing
3:13 PM	2.36	93.66	3.00	21.75	185.8		Max Pump
3:16 PM	2.40	93.62	3.00	22.00	186.9	115.1	
3:20 PM			3.00				0.99 Water flowing from spring to Warm Springs
3:31 PM	2.52	93.50	3.00	21.75	185.8	115.8	
3:58 PM			3.00				0.99
4:00 PM	2.52	93.50	3.00	21.75	185.8	115.9	
4:15 PM	2.58	93.44	3.00	21.75	185.8	115.9	
4:20 PM			3.00				0.98
4:30 PM	2.72	93.30	3.00	21.75	185.8	115.9	
4:45 PM	2.76	93.26	3.00	21.63	185.3		Water still flowing in old collector to WS

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APR 30 2003

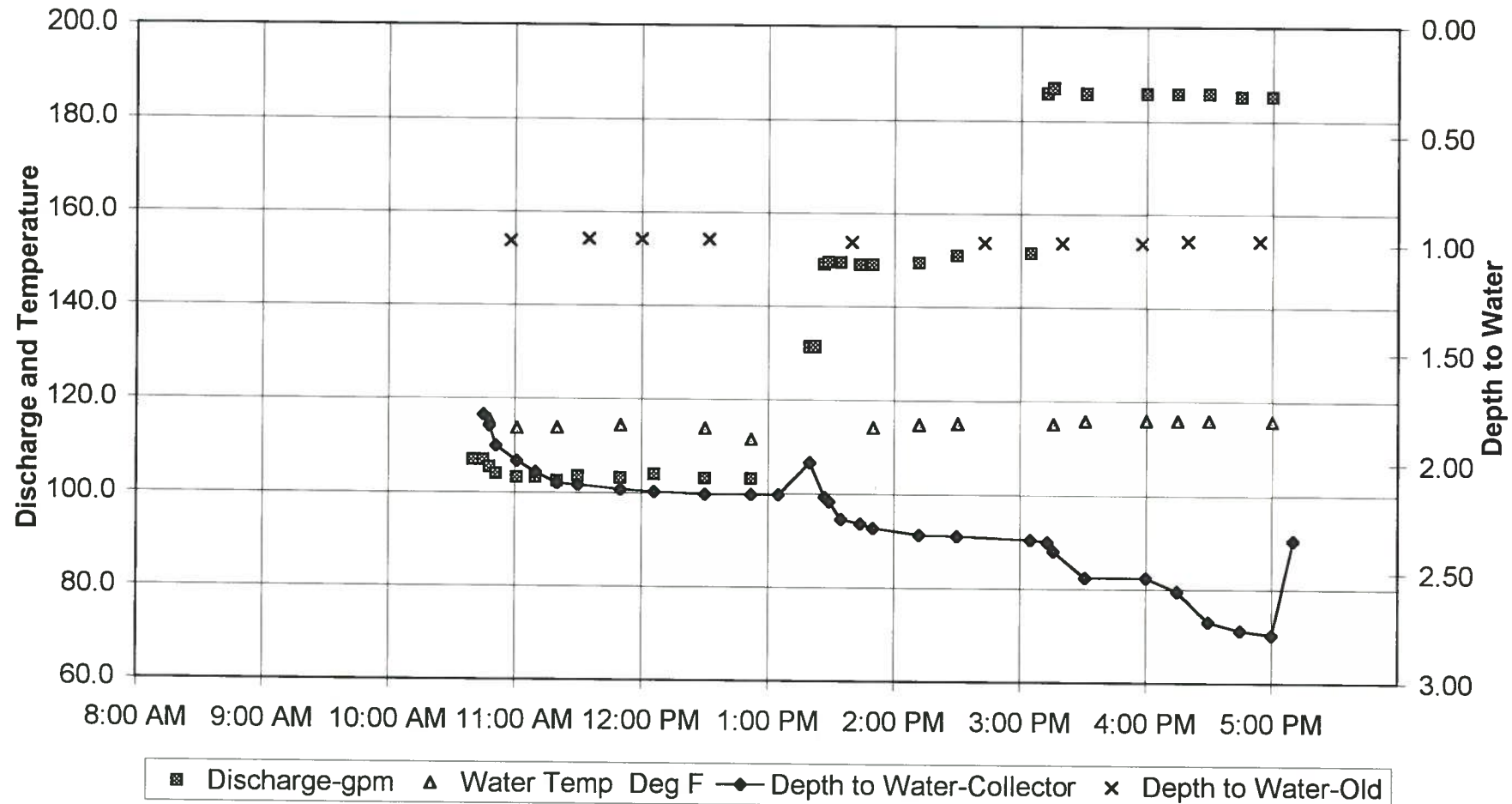
Department of Water Resources
Southern Region

Data

4:54 PM			3.00				0.98 Water flowing from spring to Warm Springs
5:00 PM	2.78	93.24	3.00	21.63	185.3	115.8	
5:01 PM			3.00	0.00	0.0		Pump off
5:10 PM	2.35	93.67	3.00				
5:13 PM			3.00				Left site, CEB

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Department of Water Resources
Southern Region

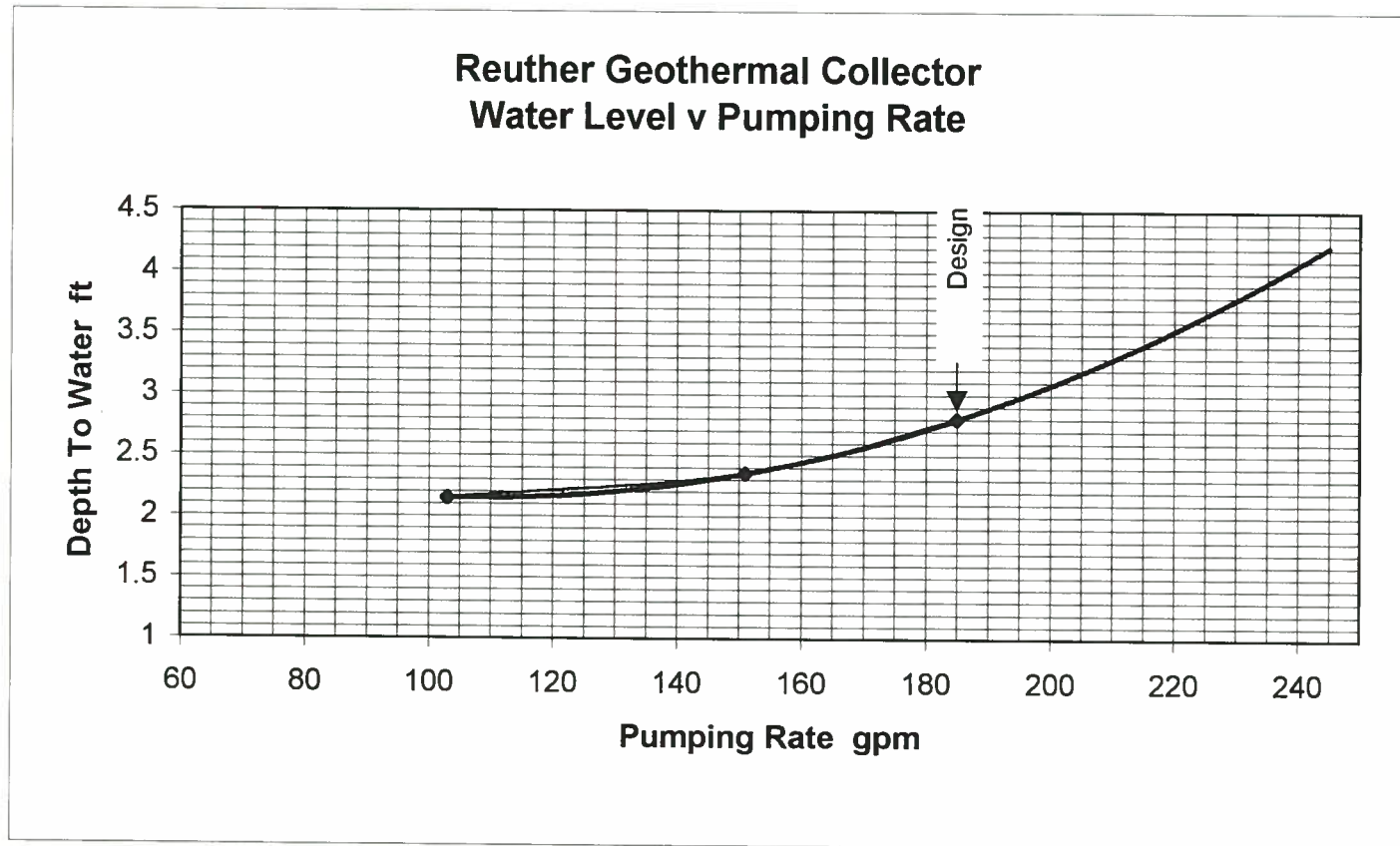
Reuther Geothermal Collector Pump Test-October 23, 2001



Pumping v Water Level

Reuther Geothermal Collector Test
Water Level in Collector vs Pumping Rate

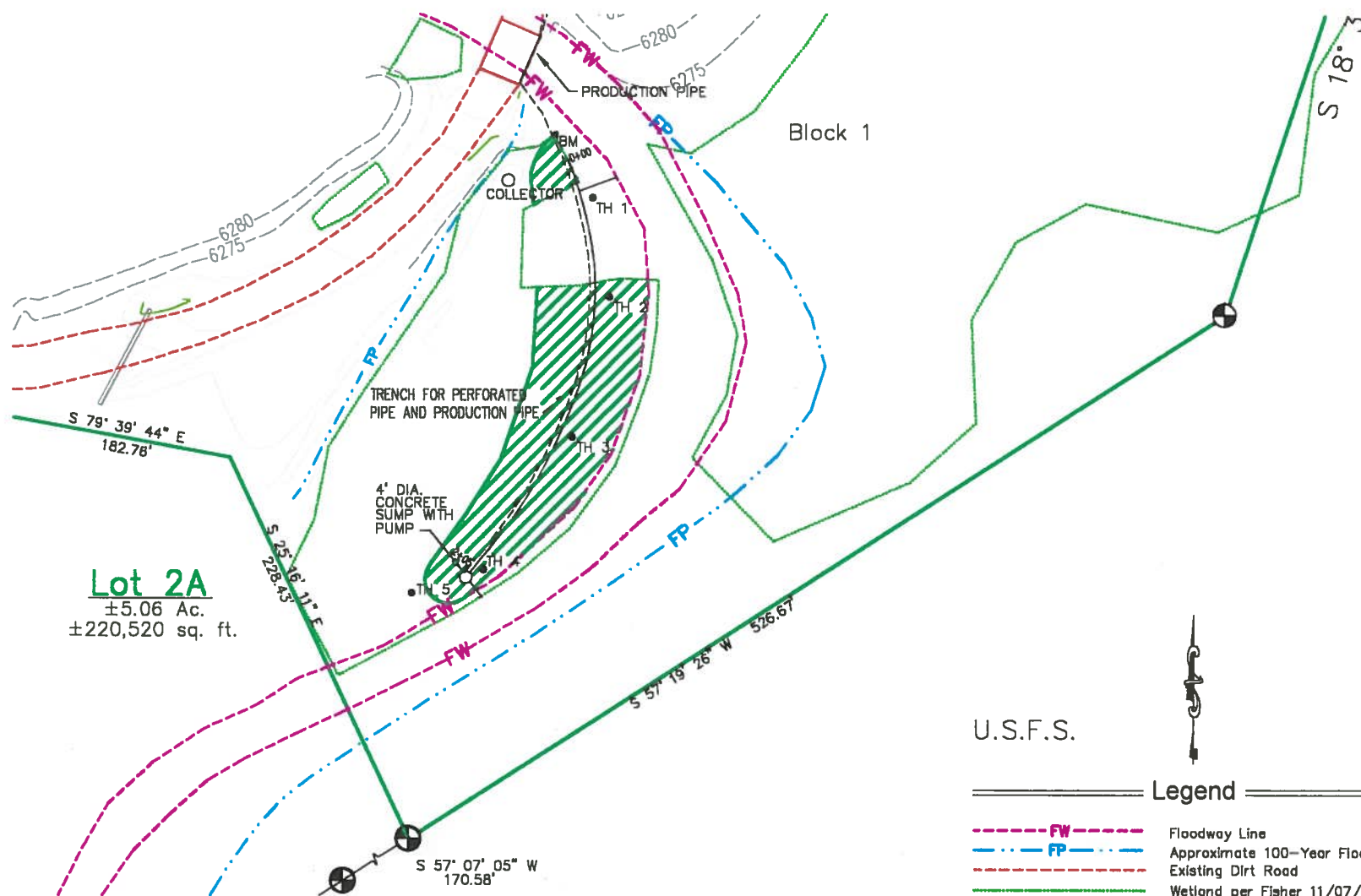
Pumping	Water Level
2.15	103
2.35	151
2.8	185



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APR 30 2003

Department of Water Resources
Southern District



U.S.F.S.

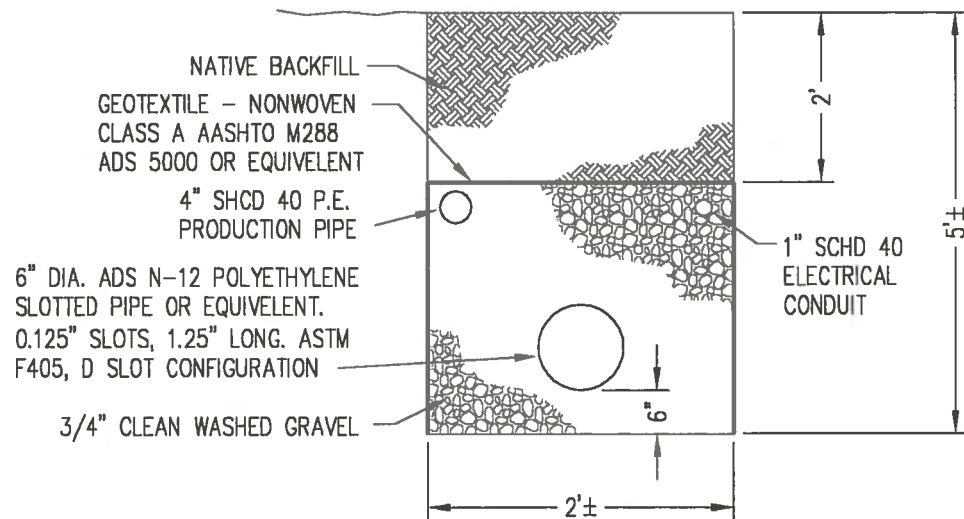
Legend

- **FW** Floodway Line
- **FP** Approximate 100-Year Floodplain Line
- Existing Dirt Road
- Wetland per Fisher 11/07/00
- BENCHMARK - HUB
- ▨ Wetland Area Affected by Water Collector Draw Down.
- ▤ Wetlands Mitigation Area

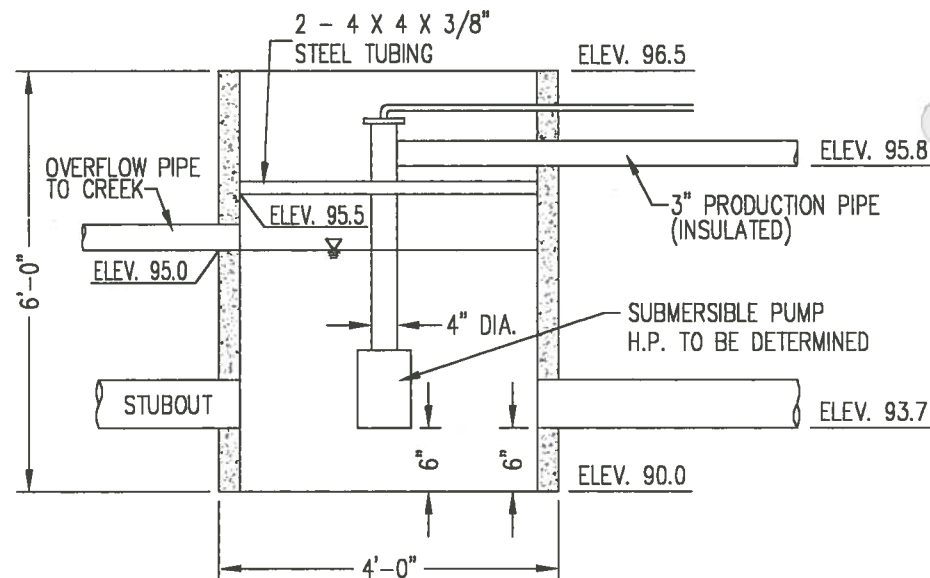
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APR 30 2003

Department of Water Resources
Southern Region



== TYPICAL TRENCH DETAIL ==
N.T.S.



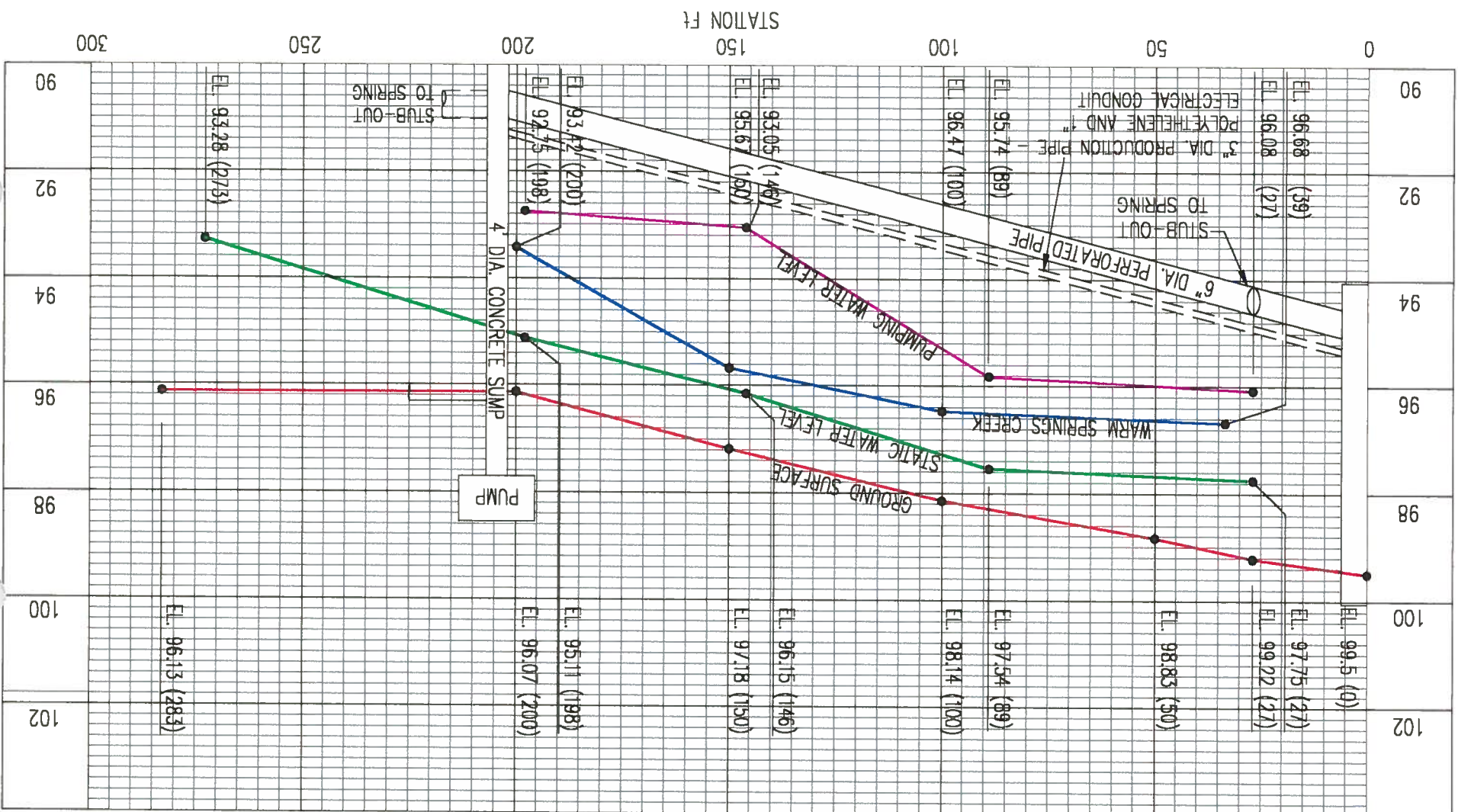
== SUMP DETAIL ==
N.T.S.

RECEIVED

APR 30 2003

Department of Water Resources
Southern Region

ELEVATION Ft



RECEIVED

APR 30 2003

Department of Water Resources
Southern Region

Merritt, Allen

From: Merritt, Allen
Sent: Tuesday, April 29, 2003 9:21 AM
To: 'Jim Speck'; Jones, Doug; 'Travis Thompson'
Cc: Merritt, Allen; jaycpa@hotmai.com; seapace@sunvalley.net; SDRPROD@aol.com
Subject: RE: RE: Warfield Hot Springs flow measurements

Gentlemen:

We do not plan on re-measuring the spring. We are currently evaluating the legal questions with staff attorneys and administrators in preparing the draft recommendations for the claims filed. We will work toward finalizing our preliminary recommendations and share drafts as soon as possible.

We are also working toward resolving the two pending applications for permit being held.

Aside from the water right questions we conclude the system as it presently exists has design flaws that exacerbate the conflict among neighbors. For example...pumps installed above the hydraulic elevation of the pipe should be lowered to eliminate the need to "prime" said pumps. This would eliminate the need for valved flow and interruption of service to downstream users. The issue of trash or debris in pipeline, constricting flow, should be investigated by users. Also closer monitoring of the spring source should be implemented by users to ascertain if Reuther's collection drain affects the pipeline spring. (Installing a staff gauge in spring box and recording levels during a pump test of Reuter's system may resolve this issue.)

All parties may wish to hire a consultant to improve and evaluate the system.

****Note that this message should not be read to infer that all parties claims/applications to water rights will ultimately be approved, recommended or decreed.

Allen & Doug

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

From: Jim Speck [mailto:jimspeck@cox-internet.com]
Sent: Monday, April 28, 2003 5:31 PM
To: 'Jones, Doug'; 'Travis Thompson'
Cc: 'Merritt, Allen'; jaycpa@hotmai.com; seapace@sunvalley.net;
SDRPROD@aol.com
Subject: RE: RE: Warfield Hot Springs flow measurements

Allen -

I must respectfully disagree with Travis on the need for another round of measurements. As he implies, they are not necessary to resolve the current dispute between our clients and will only serve to further delay that resolution, a process that has taken far too long already. I suggest your time is better spent completing your analyses based upon the existing data.

Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jimspeck@cox-internet.com

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

From: Travis Thompson
Sent: Monday, April 28, 2003 12:29 PM
To: Jones, Doug; James P Speck (E-mail)
Cc: Merritt, Allen

Doug, Allen

Michael Stonebeck expressed some concern to me about the flow levels of the spring source both a few days prior and the day the measurements were taken. Apparently the flow levels dropped the week prior to your site visit in March, below what was experienced all winter, and then returned somewhat following your measurements. Accordingly, I would suggest at least one more round of measurements to obtain data on more "normal" spring flows from Warfield Hot Springs. Although it may not be necessary for the present matter, I think another measurement would be worthwhile, particularly given the other two applications for permit that are out there.

Thanks,

Travis Thompson

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

From: Jones, Doug [mailto:DJones@idwr.state.id.us]
Sent: Wednesday, April 23, 2003 4:49 PM
To: James P Speck (E-mail); 'tlt@idahowaters.com'
Cc: Merritt, Allen
Subject: Warfield Hot Springs flow measurements

Gentlemen,

Mr. Speck inquired about the flow rates described in Allen Merritt's letter to Babcock and Shelton. To address this I have attached a spread sheet I compiled after returning to the office. Included on the spreadsheet are the formulas I used for the various data reductions.

During our field work preliminary calculations were made based on certain assumptions. One assumption was that the bucket(s) used were 5.0 gallons. The spreadsheet calculates the specific volume of each of the buckets. It was found that one bucket was about 5.4 gallons and the other was about 5.5 gallons. This affects the flow measurement at each point. The sum of flow for the various points measured was 33.1 gpm.

The flow measurement at the head of the pipe, calculated in the field as about 54 gallons per minute, was likewise subject to certain assumptions and a fundamental uncertainty. If you recall, Jim, I was not confident that the measurement would yield meaningful results because the meter was operated "backwards" in the pipe opening. I addressed this issue by operating the meter in a stream near my office in both directions (pointing upstream -- normal, and then pointing downstream -- "backwards") under several flow velocity conditions. The results were supportive that the meter would yield appropriate results when operated as was done during the measurement at the head of the pipe.

The measurement at the head of the pipe was done as nearly as practicable in the center of the pipe cross section. Numerous velocity measurements were made to be certain that consistent results were obtained. By measuring velocity at the centerline we actually

measured the maximum velocity occurring in the pipe cross section. In order to calculate pipe flow the average velocity is used. It is a well established hydraulic fact that fluid velocity in a pipe is maximum at the center and minimum at the edges. Reference to standard texts on fluid mechanics state that the ratio of Average Velocity to Maximum Velocity is 0.5. However, other factors are also influencing the measurement under the conditions in which it was made (e.g. edge effects, intake shape, measuring device profile). Many of these factors cannot be determined with precision. Allen and I conclude that a more appropriate ratio to use is 0.7. Therefore the 54 gpm maximum is adjusted by .7 to yield a flow rate of about 38 gpm.

In conclusion, given the accuracy constraints of the measurement methods, the estimated velocity ratio assumption, and undocumented "leaky" pipe conditions I have reasonable confidence in the measurement results. I hope this addresses your questions. Please let me know if you need anything else. Allen and I will be proceeding with our analyses and hope to be in touch again soon.

Thanks for your patience and assistance.

Douglas Jones

<<Flow Rate Calc.xls>>



#12308

A37-13054

VICKLING/
STONEBACK

CORPORATE WARRANTY DEED

For Value Received, Pace, Inc., an Idaho corporation, hereinafter referred to as "Grantor", does hereby grant, bargain, sell and convey unto Geoffrey S. Bushell and Linda K. Bushell, husband and wife, whose address is P.O. Box 2798, Sun Valley, ID 33353, all of its right, title and interest in and to the following described real property located in Blaine County, Idaho, to-wit:

A portion of H.E. Survey 389 (Hailey 03144 and 105799), being a portion of Section 36, Township 4 North, Range 16 East, Boise Meridian, and Section 31 in Township 4 North, Range 17 East, Boise Meridian, Blaine County, State of Idaho, more particularly bounded and described as follows:

Beginning at Corner No. 1 of said H.E. Survey, as Corner No. 1, the true point of beginning of this tract, thence South 83°10' East 587.4 feet to Corner No. 2; thence South 18°32' West of 440.22 feet to Corner No. 3; thence South 57°12' West, 528 feet to Corner No. 4; thence South 57°12' West 170.94 feet to Corner No. 5; thence South 0°02' East 238.00 feet to Corner No. 6; thence North 86° West 403.7 feet, more or less, to a point on the Westerly boundary line of said H.E. Survey, being line 12-13 of said original survey, which point is Corner No. 7 of this description, and which point is South 7°18' West 1133.1 feet from Corner No. 13 of said original survey; thence North 7°18' East 1133.1 feet to Corner No. 8 of this description, which point is coincident with Corner No. 13 of said original H.E. Survey; thence South 83°10' East 403.92 feet to said Corner No. 1 point of beginning; EXCEPTING however, that certain tract excepted in the original Patent, more particularly described as follows: Beginning at Corner No. 14 of said original Patent, from which Corner No. 1 above mentioned bears N. 0°04' East 228.36 feet; thence South 58°56' East 57.42 feet to Corner No. 15; thence South 44°13' West 70.82 feet to Corner No. 16; thence South 44°13' West 91.08 feet to Corner No. 17; thence North 12°22' East 166.98 feet to Corner No. 18; thence South 58°56' East 33 feet to place of beginning of said excepted tract.

ALSO EXCEPTING the following tract: A parcel of land within Homestead Entry No. 389 in Section 36, Township 4 North, Range 16 East, Boise Meridian, Blaine County, State of Idaho, and more particularly described by

EXHIBIT A

MAR 05 1989

245698

metes and bounds as follows: Commencing at a stone marking Corner No. 5 of said H.E.S. No. 389; thence South 0°02' East 178.5 feet along the East boundary of said H.E.S. No. 389 to a 1/2" rebar, said rebar marking the true point of beginning; thence South 0°02' East 59.5 feet along the East boundary of H.E.S. No. 389, to a 1/2" rebar; thence North 86°00' West 231.9 feet to a 1/2" rebar on the Easterly bank of Warm Springs Creek; thence North 35°16' East 67.5 feet along the Easterly bank of Warm Springs Creek to a 1/2" rebar; thence South 86°31' East 192.7 feet to a 1/2" rebar, said rebar marking the true point of beginning.

RESERVING TO THE GRANTOR the right to use the flow of hot water in the gravity feed water line that now exists. It is understood that Pace, Inc. and its successors shall not increase or expand on that existing flow. This right is to be appurtenant to, and run with, the following described property:

A portion of W. H. Warfield H.E.S. No. 389 in Section 36, Township 4 North, Range 16 E.B.M., Blaine County, Idaho, described as follows:

Beginning at a point on the East line of said H.E.S. No. 389, said point being 348 feet South of Corner No. 5 of said H.E.S. No. 389,
Thence South along the East line of said H.E.S. No. 389 a distance of 118 feet;
Thence West a distance of 161 feet, more or less, to the center of Warm Springs Creek;
Thence in a Northerly direction along the centerline of Warm Springs Creek a distance of 160 feet, more or less to a point which is North 86°00' West from the point of beginning;
Thence South 86°00' East a distance of 206 feet, more or less, to the point of beginning.

GRANTING, however, the right to share the use, repair and maintenance of the water line referred to above, this right to be appurtenant only to that portion of the property conveyed herein lying South and East of Warm Springs Creek, commonly known as the Crony Cove Parcel, containing approximately two and one-half (2 1/2) acres.

SUBJECT TO:

Reservations contained in Patent from the United States of America to William H. Warfield dated October

25, 1919, recorded December 17, 1919, in Book 99 of Patents, page 259, records of Blaine County, Idaho, reciting: "Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States."

TO HAVE AND TO HOLD the same unto the Grantees, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the Grantees that it is the owner in fee simple of said premises, that they are free from encumbrances except as above described and that it will warrant and defend the same from all lawful claims whatsoever.

Dated this 1st day of November, 1983.

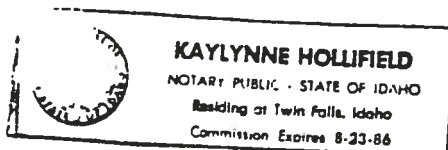
PACE, INC.

By: D. L. Pace
President

STATE OF IDAHO)
County of Twin Falls) ss.

On this 1st day of November, 1983, before me, the undersigned, a notary public in and for said county and state, personally appeared D. L. Pace, known to me to be the President of Pace, Inc., the corporation whose name is subscribed to the within instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the same day and year in this certificate first above written.



Kaylynne Hollifield
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls, Idaho

HYDROFILMED

MAR 01 1989

Merritt, Allen

From: Jones, Doug
Sent: Wednesday, April 23, 2003 4:49 PM
To: James P Speck (E-mail); 'tit@idahowaters.com'
Cc: Merritt, Allen
Subject: Warfield Hot Springs flow measurements

Gentlemen,

Mr. Speck inquired about the flow rates described in Allen Merritt's letter to Babcock and Shelton. To address this I have attached a spread sheet I compiled after returning to the office. Included on the spreadsheet are the formulas I used for the various data reductions.

During our field work preliminary calculations were made based on certain assumptions. One assumption was that the bucket(s) used were 5.0 gallons. The spreadsheet calculates the specific volume of each of the buckets. It was found that one bucket was about 5.4 gallons and the other was about 5.5 gallons. This affects the flow measurement at each point. The sum of flow for the various points measured was 33.1 gpm.

The flow measurement at the head of the pipe, calculated in the field as about 54 gallons per minute, was likewise subject to certain assumptions and a fundamental uncertainty. If you recall, Jim, I was not confident that the measurement would yield meaningful results because the meter was operated "backwards" in the pipe opening. I addressed this issue by operating the meter in a stream near my office in both directions (pointing upstream -- normal, and then pointing downstream -- "backwards") under several flow velocity conditions. The results were supportive that the meter would yield appropriate results when operated as was done during the measurement at the head of the pipe.

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In conclusion, given the accuracy constraints of the measurement methods, the estimated velocity ratio assumption, and undocumented "leaky" pipe conditions I have reasonable confidence in the measurement results. I hope this addresses your questions. Please let me know if you need anything else. Allen and I will be proceeding with our analyses and hope to be in touch again soon.

Thanks for your patience and assistance.

Douglas Jones



Flow Rate Calc.xls

Jones, Doug

From: Merritt, Allen
Sent: Wednesday, April 23, 2003 2:51 PM
To: Jones, Doug
Subject: FW: Pace/Warfield Hot Springs

Doug can you respond

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

From: Jim Speck [mailto:jimspeck@cox-internet.com]
Sent: Wednesday, April 23, 2003 2:50 PM
To: 'Mr. Allen Merritt'
Cc: jaycpace@hotmail.com; seapace@sunvalley.net; SDRPROD@aol.com; 'Mr. Travis L. Thompson'
Subject: Re: Pace/Warfield Hot Springs

Allen -

In reviewing your letter to Shelton and Babcock, I find that my notes show different flow measurements. I dictated them as Doug and you took the measurements, so I'm fairly confident they are correct. The flow into the head of the pipeline was measured at 54 gpm and back to the river at the Pace Cabin to be 28 gpm. Can you explain the difference?

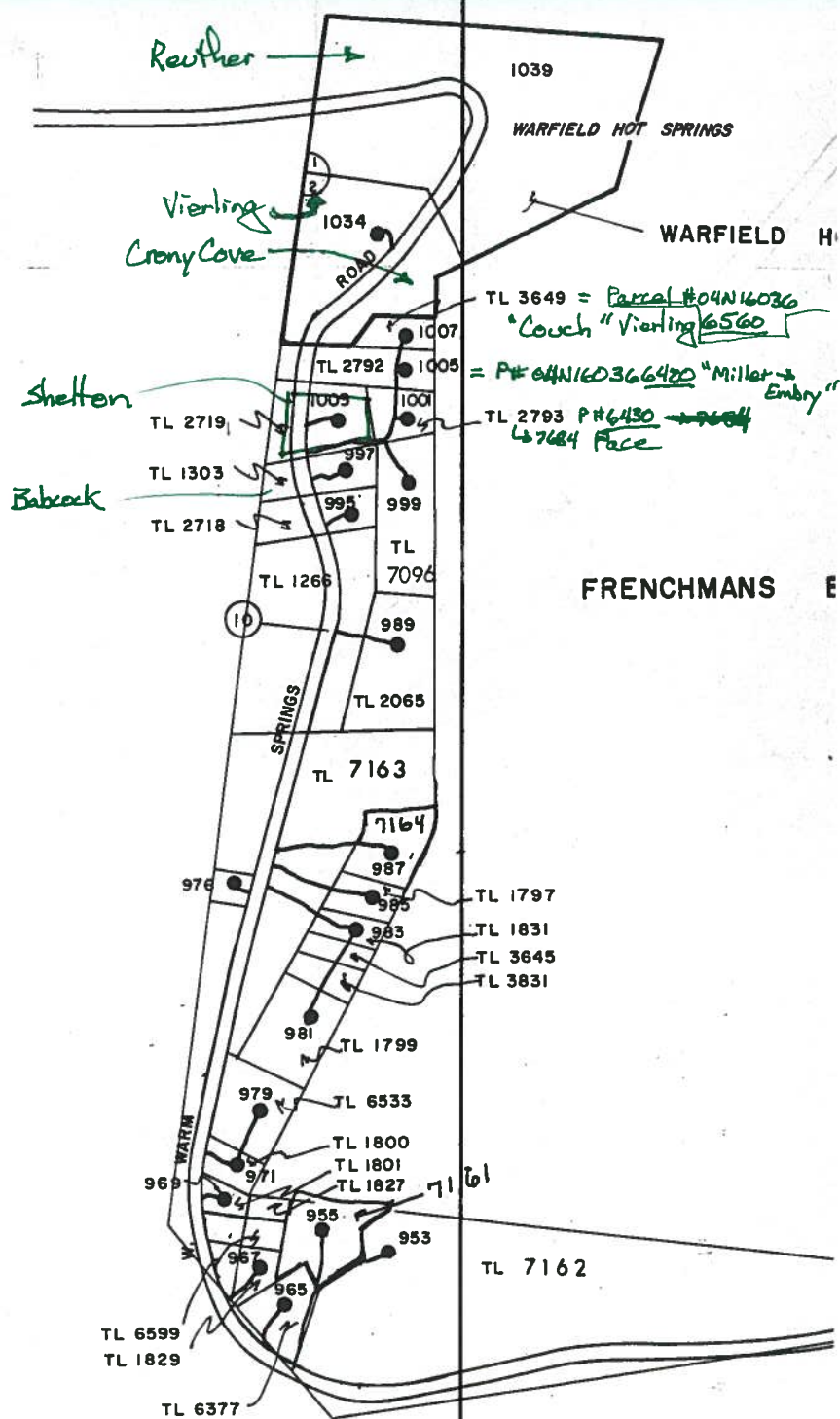
Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jimspeck@cox-internet.com

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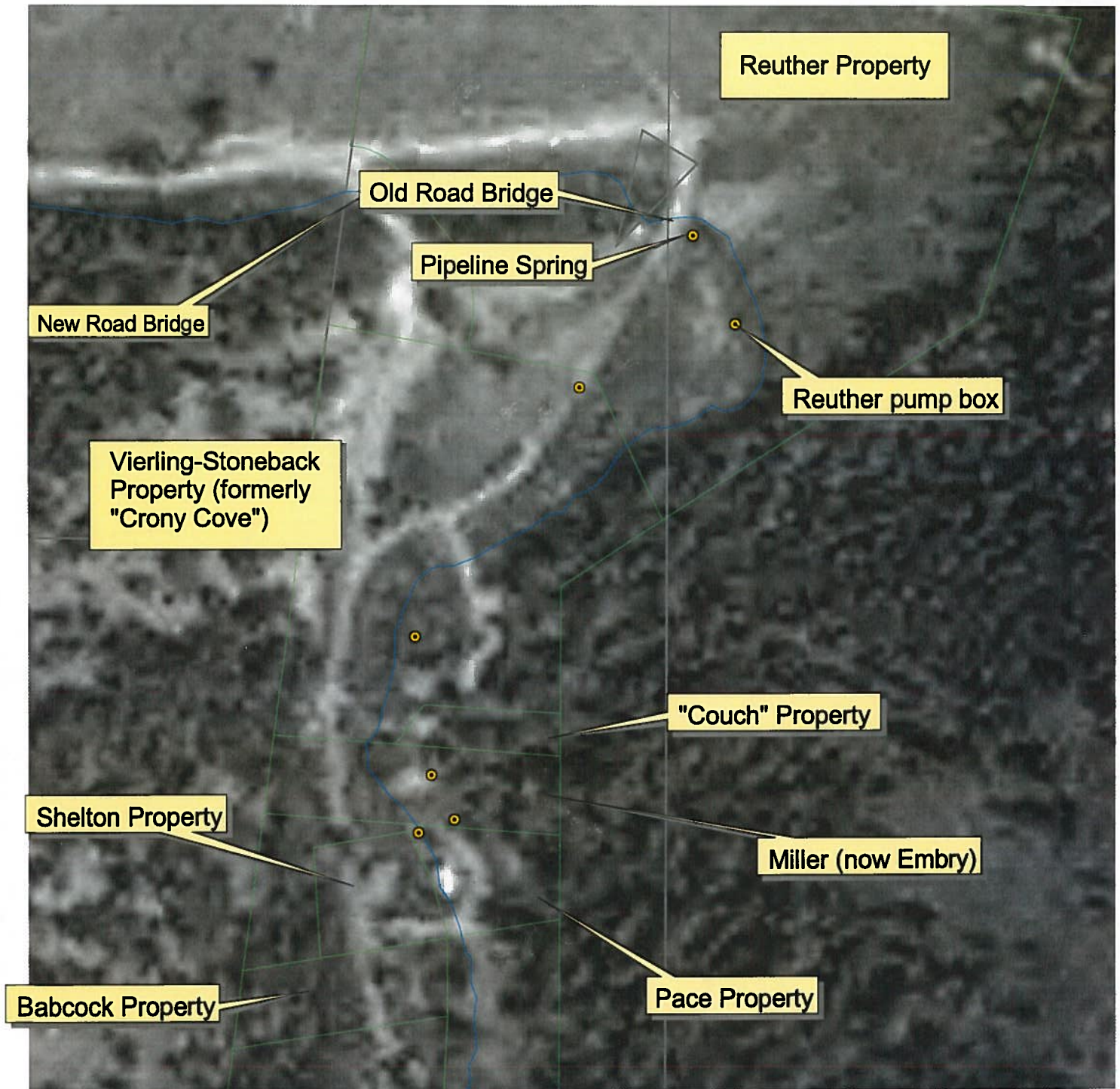
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[illegible]



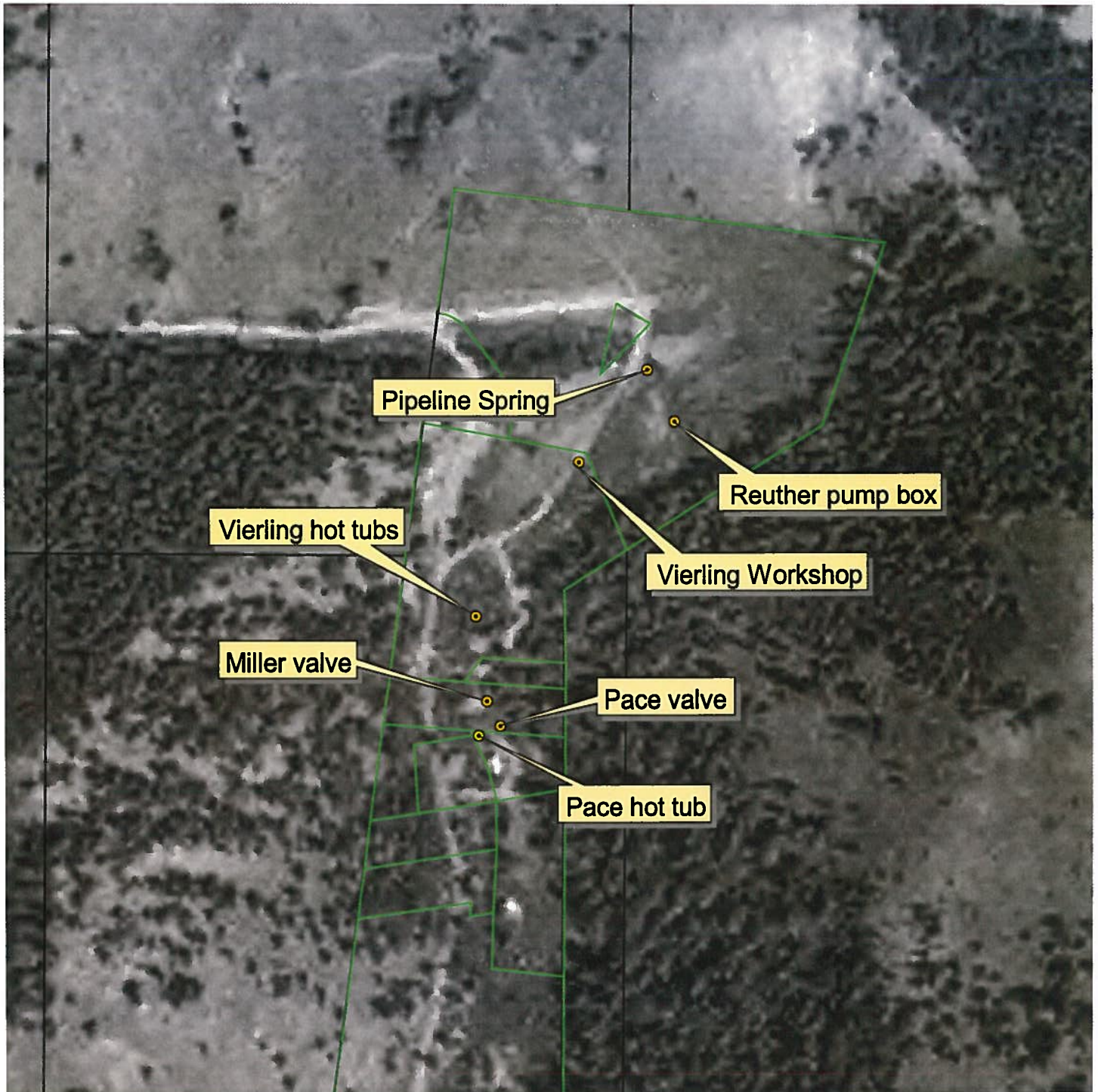
IDAHO DEPT OF WATER RESOURCES

Warfield Hot Springs Area



Vicinity Map

Warfield Hot Springs Area



GPS Point Descriptions

WARFIELD HOT SPRING: Claim vs Proposed Recommendation							
CLAIMS:							
		Owner	Priority	Flow Rate	Source	POD Legal	Uses
37	11296	Pace	1/1/1900	0.5	Spring	SENE S36 4N 16E	Heat, Dom., Rec.
37	13054	Vierling (Crony Cove)	1/1/1900	0.04	Warfield Hot Spring	SWNWNW S31 4N 17E	Heat, Dom., Rec.
37	13394	Miller	1/1/1979	0.04	Artesian Spring	SENE S36 4N 16E	Dom.
37	20894	Vierling (Couch)	1/1/1900	0.02	Warfield Hot Spring	SENE S36 4N 16E	Heat, Dom., Rec.
FOUND:							
				0.085	Warfield Hot Spring	SWNWNW S31 4N 17E	
RECOMMENDATION:							
		Owner	Priority	Flow Rate	Source	POD Legal	Uses
37	11296	Pace	7/31/1970	0.02	Warfield Hot Spring	SWNWNW S31 4N 17E	Heat, Dom., Rec.
37	13054	Vierling (Crony Cove)	7/31/1970	0.02	Warfield Hot Spring	SWNWNW S31 4N 17E	Heat, Dom., Rec.
37	13394	Miller (SRBA Decreed)	1/1/1979	0.02	Warfield Hot Spring	NEEDS TRANSFER OR REPLACEMENT CLAIM	
37	20894	Vierling (Couch)	7/31/1970	0.02	Warfield Hot Spring	SWNWNW S31 4N 17E	Heat, Dom., Rec.
* = Ownership Change Needed							

[illegible]

Merritt, Allen

From: Travis Thompson [tlt@idahowaters.com]
Sent: Wednesday, March 05, 2003 9:47 AM
To: Merritt, Allen; 'Jim Speck'
Cc: Jones, Doug
Subject: RE: Pace/Warfield Hot Springs

Allen,

I have spoken to Michael Stonebeck and Lisa Vierling and 11:00 a.m. on Thursday March 13 works for them for a site visit. As I understand it, you will be making flow and temperature readings at the various diversions made by the parties. My clients have no problem allowing IDWR staff and Mr. Pace onto their property for purposes of this visit. However, they have requested that all other members of the public, including those not specifically involved in this matter, not be allowed to accompany you on this visit. We would appreciate this request being honored. Please call if you have any questions.

Thanks,
Travis Thompson

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

From: Merritt, Allen [mailto:AMerritt@idwr.state.id.us]
Sent: Wednesday, March 05, 2003 8:22 AM
To: 'Jim Speck'; Travis Thompson (E-mail)
Cc: 'Arek & Shannon Pace'; 'Mr. Jay C. Pace'; 'Mr. Steven D. Reuther'; 'Mr. Travis L. Thompson'; Jones, Doug
Subject: RE: Pace/Warfield Hot Springs

Doug Jones and I have tentatively set March 13th aside to do the field inspection. If that works we will plan to be at the site at 11:00am. If we do not hear otherwise by this Friday we will plan to be there as described above.

Thanks

Allen

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

From: Jim Speck [mailto:jimspeck@cox-internet.com]
Sent: Tuesday, March 04, 2003 3:13 PM
To: 'Mr. Allen Merritt'
Cc: 'Arek & Shannon Pace'; 'Mr. Jay C. Pace'; 'Mr. Steven D. Reuther'; 'Mr. Travis L. Thompson'
Subject: Re: Pace/Warfield Hot Springs

Allen -

Now that you have received the last submittal, we ask IDWR to conduct its on-site investigation as soon as possible. The snow cover will not inhibit it in any way, so there is no reason for further delay. Please advise us of possible dates so we can plan accordingly. Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987

John A. Rosholt
Albert P. Barker
John K. Simpson
Amy D. Chestnut
Travis L. Thompson

Norman M. Semanko
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Twin Falls, ID 83301
(208) 733-0700 telephone
(208) 735-2444 facsimile

Travis L. Thompson
tltp@idahowaters.com

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FEB 21 2003

Department of Water Resources
Southern Region

February 21, 2003

VIA HAND DELIVERY

Mr. Allen Merritt (Regional Manager)
Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380

RE: *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned or Controlled by Lisa Vierling*

Dear Allen:

Pursuant to your February 12, 2003 email, please find enclosed the following materials for submittal in the above referenced matter:

1. Affidavit of Geoffrey S. Bushell (including two exhibits)
2. Affidavit of Mary Rita Miller
3. Second Affidavit of Lisa Vierling

Please disregard the characters that appear on page two of the *Second Affidavit of Lisa Vierling* (problem in conversion of electronic document). As for conducting a field review of the water distribution system, my client has indicated that she would be available anytime during the first two weeks of March. However, I would note that conducting a thorough field review may be more accommodating when the snow has receded (I think they still have a considerable amount of snow on the ground). Please call if you have any questions or would like to set a date for a field review.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Mr. Allen Merritt
February 21, 2003
Page - 2

Enc.

cc: Lisa Vierling / Michael Stonebeck
Jim Speck

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FEB 21 2003

Department of Water Resources
Southern Region

Travis L. Thompson, ISB # 6168
BARKER ROSHOLT & SIMPSON LLP
233 2nd St. North, Suite D
Twin Falls, Idaho 83301-6119
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Lisa Vierling

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT	)	
BY JACE PACE ALLEGING ILLEGAL	)	
WATER USE ON LANDS OWNED OR	)	AFFIDAVIT OF
CONTROLLED BY LISA VIERLING	)	GEOFFREY S. BUSHELL
_____	)	

STATE OF IDAHO	)
	) ss.
County of Blaine	)

COMES NOW Geoffrey S. Bushell, being first duly sworn upon oath, and states
as follows:

1. I currently reside at 201 Skiway Drive, in Ketchum, Idaho 83340.
2. I first visited the Warfield property, or what is currently known as Lots 1 and 2, Block 1, Warfield Hot Springs Subdivision (located approximately 12 miles northwest of Ketchum) in 1976. Mr. D.L. Pace owned the property at that time. I was aware that the Warfield Hot Springs were located on the property by personal observation and use of the hot springs, both in a bath house that was located on the property, and a large hot pool constructed near Warm Springs Creek. The hot springs had apparently been featured in a guidebook for hot springs in the area. Both the bath house and what was the location of the large hot pool are depicted in the picture attached to this affidavit as *Exhibit 1*. This picture was taken in the mid-1980s, the bath house is located just left

of the road near the bridge at the top of the picture. The site of the large hot pool is located just to the right of the old hunter's cabin near the creek, right of the road and bridge. This cabin is shown in greater detail in the picture attached to this affidavit as *Exhibit 2*. I gained an understanding of the local history of the area that was locally known as the Warfield property, from Tom Warfield of the Warfield family. He explained the colorful history of the property, including the fact that it was once home to a restaurant, including bath houses and a prostitution establishment, for use by local miners. He showed me a family photo album that contained a number of old pictures taken at the property. It is my understanding of the local history of the property that the hot springs were used for domestic and recreation purposes. I was also aware that two one room cabins, an outhouse, and an old root cellar were located on Lot 2 (was is referred to as the Crony Cove parcel). One of these cabins, along with the original fireplace and foundation from the other is depicted in *Exhibit 1* towards the middle of the picture. The cabin with the fireplace apparently burned down before I purchased the property.

3. The Warfield property, or what currently consists of Lots 1 and 2, was ~~were~~ first offered for sale by D.L. Pace (or Pace, Inc.) in 1981. I became interested in purchasing the property (approximately 17.5 acres) because of the development potential and the interest I had in building a home on the property.

4. I eventually entered into negotiations for the property (Lots 1 and 2) with D.L. Pace and purchased an option for the property in 1981. I exercised the option, which resulted in the purchase of the property in 1983. Pace, Inc. conveyed the property to Linda K. Bushell and myself on November 7, 1983. It was my understanding that the

purchase of the land also included all appurtenances, including any water rights and mineral rights to the property. I was aware of the pipeline that diverted hot water out of Warfield Hot Springs and crossed the property. Apart from the use of the hot water on Lot 1, (or at the source of Warfield Hot Springs, including the bath house and the large hot pool near the creek) I specifically planned to share the use of the water that was being diverted through the pipeline, not only for personal recreation use, but also for future development possibilities. As part of the negotiations, my attorney specifically had the following language added to the corporate warranty deed:

GRANTING, however, the right to share the use, repair and maintenance of the water line referred to above, this right to be appurtenant only to that portion of the property conveyed herein lying South and East of Warm Springs Creek, commonly known as the Crony Cove Parcel, containing approximately two and one-half (2 1/2) acres.

Since I was contemplating developing the property, and I was aware the pipeline crossed what is now Lot 2, I was specifically planning on including hot water use with the sale of that parcel.

5. As indicated by this language, Pace, Inc. specifically granted a part of the water right to use the hot springs water that was being diverted through the pipeline.

6. D.L. Pace (Pace, Inc.) likewise specifically reserved a part of the water right to use hot springs water that was being diverted through the pipeline. However, D.L. Pace (Pace, Inc.) was not allowed to expand or increase the existing flow that was being used on his property.

7. From 1983 until 1987, hot water from the Warfield Hot Springs was used both on Lot 1 and Lot 2 by myself and others for recreation purposes, particularly in the large hot pool located near the creek. Importantly, where the pipeline crossed Lot 2, or

the Crony Cove parcel, an additional pipe and valve formed a "T" to the main pipeline. This line ran in a southwesterly direction toward the creek (depicted generally in the area just south of the cabin and the burned down cabin in *Exhibit 1*). I personally used the water out of this additional pipe and valve on various occasions for recreational use. I would estimate the pipe was a three (3) inch line and had previously been installed specifically to divert water out of the pipeline for recreational use. For my personal information, I measured the flow out of this diversion with an old 50 gallon drum sometime in the mid-1980s. I specifically remember this barrel filling up in approximately 30 seconds.

8. In addition to my use of the hot spring water on Lots 1 and 2, I was also aware that my neighbors located downstream both had valves and diversions located on the main pipeline. In particular, I was aware that my immediate adjacent neighbor (to Lot 2), the Couch family, had what was apparently a garden hose running off the pipeline to their cabin.

9. I recently read the *Affidavit of Jay Pace* (signed November 26, 2002) that was submitted in this matter. Mr. Pace's affidavit contains several false statements.

10. First, in paragraph nine, Mr. Pace claims that I "recently confirmed" to him that the "Corporate Warranty Deed did not grant any right to use any of the existing flow of water in the pipeline leaving the Pace Hot Springs." This statement is blatantly false since I have not spoken to Jay Pace in approximately 20 years. I only became aware of Mr. Pace's statements after his attorney Jim Speck faxed me a copy of the affidavit. Furthermore, as stated above, Pace, Inc. conveyed all water rights when it sold the property in 1983, including specific rights to use the water in the pipeline. I did not

purchase the unique property containing the Warfield Hot Springs just so I could share in the “maintenance” of a pipeline for Pace, Inc.’s benefit without obtaining a right to use the hot water out of that pipeline as well.

11. Second, in paragraph ten, Mr. Pace further claims that “no one in my family has ever granted to the Bushells, the Garbrechts, or Lisa Vierling the right to use any portion of the flow from Pace Hot Springs into the pipeline that existed in 1983 when the Warfield Property was sold to the Bushells.” This statement is also false. As noted above, the right to use hot water out of the hot springs both on Lot 1 and out of the pipeline, particularly for use on Lot 2, was an important part of the negotiations for the sale of the property. Importantly, the clause granting that right associated with Lot 2 was specifically added at my request. It was always my understanding that D.L. Pace (Pace, Inc.) specifically granted a part of the water right out of the pipeline when he sold the property in 1983.

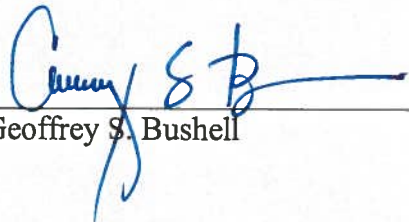
12. I have also recently read the *Second Affidavit of Jay Pace* (signed January 24, 2003) that was submitted in this matter. This affidavit also contains false statements.

13. First, Mr. Pace claims that “[f]rom 1963 until Lot 2 of the Warfield Hot Springs Subdivision was acquired by Lisa Vierling and she began using water from the hot springs, there was no diversion and use of the hot springs water on the Warfield Property. . . . Except for the use by the Millers on their property as described by Vierling in her affidavit and the use by the Couch’s [sic] described below, the only use of hot springs water out of the pipeline was on the Pace Cabin Lot.” As stated above, I personally used the water from Warfield Hot Springs, both on Lot 1 and Lot 2 from 1983

until 1987. I specifically diverted water out of the pipeline and valve located off the main pipeline on Lot 2 for recreational purposes during this time.

14. Finally, it is important to note that Mr. D.L. Pace never questioned the use of the hot water that I was making on the Warfield property, both from the pipeline and at the source of the hot springs, from 1983 until 1987. The use of the water out of the pipeline, and the conveyance of any water rights with the property, was considered part of the deal when I purchased the property from Pace, Inc.

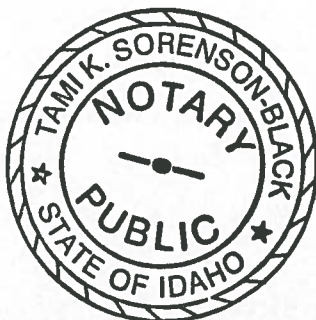
DATED this 19 day of February, 2003.


Geoffrey S. Bushell

STATE OF IDAHO)
)
County of Blaine)

On this 19th day of February, 2003, before me, the undersigned a Notary Public in and for said State, personally appeared GEOFFREY S. BUSHELL, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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




NOTARY PUBLIC FOR IDAHO
Residing at: Notatum
Commission Expires: 7-12-06

EXHIBIT 1



EXHIBIT 2

Exhibit 2



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FEB 21 2003

Department of Water Resources
Southern Region

Travis L. Thompson, ISB #6168
BARKER, ROSHOLT & SIMPSON LLP
233 2nd St. North, Suite D
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Lisa Vierling

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT BY)
JAY PACE ALLEGING ILLEGAL)
WATER USE ON LANDS OWNED)
OR CONTROLLED BY LISA VIERLING)
_____)

AFFIDAVIT OF MARY RITA MILLER

STATE OF IDAHO)
) ss.
County of Twin Falls)

COMES NOW Mary Rita Miller, being first duly sworn upon oath, and states as follows:

1. I currently reside at 318 Third Ave. West located in Wendell, Idaho.
2. My husband and I formerly owned property, including a cabin, near the Pace family property in the area of Warfield Hot Springs located approximately 12 miles northwest of Ketchum, Idaho. The property and cabin are depicted on the photograph attached to the *Affidavit of Geoffrey S. Bushell* as *Exhibit 1*. The cabin is located in the middle of the photograph just upstream of the Pace property. The woodshed, where our hot tub was located, is depicted as a smaller building directly to the right of our cabin. These buildings appear "white" in the photograph and are located just to the right of the creek and upstream from the Pace cabin. My husband's parents, Elmer A. and Irene Miller purchased the property from the Kelly family in 1952. When my husband's parents passed away, my husband Charles E. Miller and myself

inherited the property. We owned the property until 2000. We visited the property regularly almost every weekend during the 1970s and the 1980s.

3. The adjacent property currently owned by Lisa Vierling used to be owned by the Couch family. The Couch family owned the property, including a cabin at least prior to 1952. The Couchs owned the property when my husband's parents purchased their cabin and property in 1952.

4. Dee L. Pace also owned property in the area, including a parcel and a cabin directly adjacent to us. Sometime in the early 1970s, perhaps 1970, Mr. Pace approached us about constructing a pipeline across our property for the purpose of piping hot water from Warfield Hot Springs down to his property located next to ours. In exchange for allowing Mr. Pace to cross our property with the pipeline, we were given the right to use hot water out of the pipe for our personal use. From the time the pipeline was installed, until I recently sold the property, our family used the hot water for recreation and domestic purposes. Inside the woodshed we used an old stockwater tank as a hot tub. As I noted above, the woodshed is depicted in the middle of the photograph attached to the *Affidavit of Geoffrey S. Bushell as Exhibit 1*, just to the right of our cabin (directly upstream or to the left of the Pace property). We used the hot water out of the pipeline regularly during the 1970s and 1980s. We did not enter into a written agreement with Mr. Pace for the use of the hot water because he assured us that his "word" was as good as a written agreement.

5. It is my understanding that the Couch family was given the same use of the hot water in exchange for allowing Mr. Pace to construct the pipeline across their property as well. Although I never personally witnessed the Couch family using the hot water for either recreation or domestic purposes, I did notice the Couchs had a bath house and a stockwater tank for use as a

hot tub on their property. It is my belief they were using hot water out of the pipeline just as we did during the 1970s and 1980s.

6. I recently read the *Second Affidavit of Jay Pace* that was submitted in this matter. Jay Pace claims that "the Couch's [sic] never asked for permission to use the water and simply hooked in." I believe this statement is false since it was Mr. Dee Pace who approached both us and the Couchs and asked for permission to cross our properties with the pipeline. I would not have allowed Mr. Pace to cross our property with a pipeline without obtaining the right to use the hot water. It is my belief this same deal was made with the Couchs. Second, Jay Pace claims that "when my father found out a few days later, he disconnected the pipe they had installed and they did not use it again." I also believe this statement is false since I personally observed the Couchs' bath house and stockwater tank they had on their property. The hot tub and bath house were present at the Couch residence during the 1970s and 1980s.

7. Mr. Dee Pace never questioned our use that we made of the hot water out of the pipeline, and it is my understanding that the Couchs' use was likewise never questioned. It was my understanding that we had the right to use hot water out of the pipeline from the time that it was constructed and placed across our property.

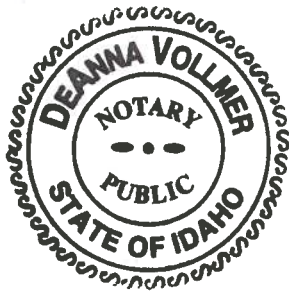
DATED this 2/ day of February, 2003.


Mary Rita Miller

STATE OF IDAHO)
)
County of Twin Falls)

On this 2/5th day of February, 2003 before me, the undersigned a Notary Public in and for said State, personally appeared MARY RITA MILLER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he 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.



Deanna J. Vollmer
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
Commission Expires: 4/15/04

RECEIVED

FEB 21 2003

Department of Water Resources
Southern Region

Travis L. Thompson, ISB #6168
BARKER, ROSHOLT & SIMPSON llp
233 2nd St. North, Suite D
Twin Falls, ID 83301
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Lisa Vierling

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT BY)
JAY PACE ALLEGING ILLEGAL) SECOND AFFIDAVIT OF
WATER USE ON LANDS OWNED) LISA VIERLING
OR CONTROLLED BY LISA VIERLING)
_____)

STATE OF IDAHO)
) ss.
County of Blaine)

COMES NOW Lisa Vierling, being first duly sworn upon oath, and states as follows:

1. I currently reside at 1034 Warm Springs Road, located approximately 12 miles northwest of Ketchum, Idaho.
2. My property currently consists of what is known as Lot 2, Block 1, Warfield Hot Springs Subdivision, also known locally as the "Crony Cove" parcel, and the adjacent Tax Lot 3649, also formerly known as the "Couch property."
3. I have recently read the *Second Affidavit of Jay Pace* that was submitted in the above captioned matter. There are several false statements in this affidavit.
4. First, in paragraph four of his affidavit, Mr. Pace claims that "[f]rom 1963 until Lot 2 of the Warfield Hot Springs Subdivision was acquired by Lisa Vierling and she

began using water from the hot springs, there was no diversion and use of the hot springs water on the Warfield Property.” In the 28 years that I have lived in the Sun Valley area, I personally used and witnessed direct use by the public of the hot springs for recreational purposes on the Warfield Property, including the Forest Service owned hot pools along the road and the pools located on Lot 1. Since acquiring Lot 2 in 1989, I have also witnessed use of the hot springs made by the public on Lot 1, up until the property was recently purchased by Steven Reuther.

5. Second, with respect to hot water use on the Couch property, Mr. Pace alleges in paragraph five that “the Couch’s [sic] never asked for permission to use the water and simply hooked in. When my father found out a few days later, he disconnected the pipe they had installed and they did not use it again. Water was not taken out of the pipeline at the Couch property again until Vierling did so without asking us and certainly without our permission.” Shortly after I purchased Lot 2, or the “Crony Cove” parcel in 1989, I became aware that the Couch family owned the adjacent property. I personally witnessed domestic use of the hot water made by Lillian Couch in her cabin since I often visited her for coffee while she was there. Also, the Couchs made use of the hot water from the pipeline with an old tub they used for a hot bath, located in a bath house. The bath house that the Couchs constructed is depicted in a photograph that is attached to the *Affidavit of Geoffrey S. Bushell as Exhibit 1*. The bath house is located directly to the right of what used to be the Couchs’ cabin. The Couch cabin is the cabin located directly below the old cabin and the foundation and fireplace of the former cabin on Lot 2.

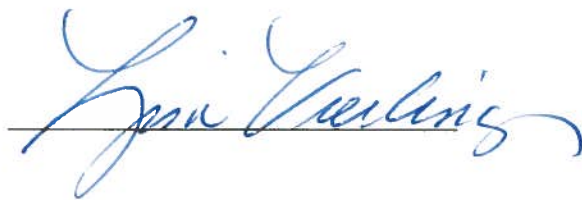
When we first began construction on the guest house on the Couch property there was water hooked up to the kitchen sink in the Couch cabin and a line that diverted water into

the hot tub, both out of the main hot water pipeline. Although we did not rebuild the bath house that the Couchs constructed, we currently have an exact replica of the tub that the Couchs used.

6. I also remember Lillian Couch explaining the situation about the pipeline that crossed their property. She explained that Dee Pace first approached them about constructing a pipeline across their property and that they were given the right to use hot water out of the pipeline in exchange for allowing him to cross their property with the pipeline. Based on my understanding of the hot water rights associated with the Couch property, I have continued that use on the property.

7. Finally, in paragraph five of his affidavit, Mr. Pace also claims that my “assertion that the Couch’s [sic] used water from the pipeline for a hot tub on the Couch property from when the pipeline was installed until she acquired the property is not true.” As explained above, the Couchs used the hot water for both domestic and recreation purposes on their property. I personally witnessed this use from July 1989 up until September 1990 when I purchased the Couch property. From discussions with Lillian Couch it is my understanding that these uses were first made when the pipeline was constructed and continued uninterrupted from that time forward. Mr. Pace’s allegation that no use was made by the Couchs is false.

DATED this 20th day of February, 2003.



Lisa Vierling

STATE OF IDAHO)
)
County of Blaine)

On this 20th day of February, 2003 before me, the undersigned a Notary Public in and for said State, personally appeared LISA VIERLING, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he 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.

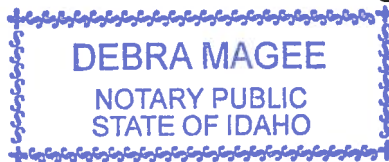
Debra Magee

IDAHO

NOTARY PUBLIC FOR

Residing at: Bellevue, ID

Commission Expires: 12/14/2004



Merritt, Allen

From: Merritt, Allen
Sent: Wednesday, February 12, 2003 10:46 AM
To: 'Travis Thompson'; Jim Speck
Cc: Jones, Doug; Rassier, Phil
Subject: RE: Pace / Vierling Matter

Gentlemen:

As indicated in earlier communications, the department desires to conduct a field review of the subject diversion system. We propose to do this sometime during the first two weeks of March. (We contemplate only one day) I request that you provide dates that you &/or your clients will be available to allow inspection of their property. We will need access to the delivery and distribution system. We contemplate GPS, temperature, and flow measurements along with photographic documentation of the system. (Please note that once the field inspection is complete this may generate additional information requests by the department.)

Regarding the request for additional time to submit information by Travis Thompson, this is granted and extended to February 21.

Allen

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

From: Travis Thompson [mailto:tlr@idahowaters.com]
Sent: Tuesday, February 11, 2003 12:59 PM
To: Jim Speck; amerritt@idwr.state.id.us
Subject: RE: Pace / Vierling Matter

Allen, Jim

I was under the impression that this was still an "informal" matter in front of IDWR and not yet a "contested case." I apologize for the delay, but due to a mediation session this week I cannot submit the additional information I have until sometime next week. Please call if this is a problem. I have no problem foregoing the Mar. 7 deadline for additional responses and believe Feb. 21 would serve as a "final" deadline for all submissions if acceptable.

Travis

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

From: Jim Speck [mailto:jimspeck@cox-internet.com]
Sent: Tuesday, February 11, 2003 12:41 PM
To: amerritt@idwr.state.id.us; 'Travis Thompson'
Cc: jaycp@hotmai.com; seapace@sunvalley.net
Subject: RE: Pace / Vierling Matter

Allen & Travis -

We object to any further delays and ask that the Department immediately take action on the Order to Show Cause once the current deadline expires.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987

Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jimspeck@cox-internet.com

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This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone. Thank you.

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

From: Travis Thompson
Sent: Tuesday, February 11, 2003 11:08 AM
To: amertritt@idwr.state.id.us; jimspeck@cox-internet.com

Allen, Jim

If it is not a problem could we push the response deadline to next Friday (Feb. 21)? I have some additional information to submit and need to meet with some more people on this matter. Unfortunately, I will not be able to finalize it until next week due to an unexpected meeting I have to attend this Thursday and Friday in Boise.

Thanks,
Travis

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE

POST OFFICE BOX 987

KETCHUM, IDAHO 83340

JAMES P. SPECK
jimspeck@cox-internet.com

DOUGLAS J. AANESTAD
aanestad@cox-internet.com

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

RECEIVED
FEB 03 2003
Department of Water Resources
P.O. Box 342700

January 31, 2003

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301

Re: *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned or Controlled by Lisa Vierling*

Dear Allen:

Enclosed is the original Second Affidavit of Jay Pace to replace the copy which was submitted last week for filing. Will you please substitute the original in the Department's file?

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By:


S. Galene Gonzales, Assistant to
James P. Speck

JPS:sgg
enclosures

RECEIVED
FEB 03 2003
Department of Water Resources
Southern Region

a copy is attached as Exhibit 2 to my first Affidavit.

4. From 1963 until Lot 2 of the Warfield Hot Springs Subdivision was acquired by Lisa Vierling and she began using water from the hot springs, there was no diversion and use of the hot springs water on the Warfield Property. None of the bath houses depicted in the photograph provided by Vierling remained except the one on the triangular piece of property owned by the United States Forest Service. This parcel was eventually acquired by the owner of Lot 1 of the Subdivision sometime after 1988 in a land exchange which allowed Warm Springs Road to be relocated over a new bridge. The only structure on the Warfield Property in 1963 was an old wash house which we removed shortly after we purchased the property. People did trespass to simply bathe in the hot springs and the stream, but that was it. Therefore, in 1963 when my father acquired the Warfield Property there were no water rights to divert and use the hot springs water anywhere on the Warfield Property. The only diversion and use came about when my father constructed the pipeline as described in my first Affidavit. Except for the use by the Millers on their property as described by Vierling in her affidavit and the use by the Couch's described below, the only use of hot springs water out of the pipeline was on the Pace Cabin Lot. There was no use on the Warfield Property.

5. Vierling claims my father granted Miller and Couch the right to divert water from the pipeline. This is only partially correct. An outlet was provided from the pipeline at each lot. However, the Couch's never asked for permission to use the water and simply hooked in. When my father found out a few days later, he disconnected the pipe they had installed and they did not use it again. Water was not taken out of the pipeline at the Couch property again until Vierling did so without asking us and certainly without our permission. Vierling's assertion that the Couch's used

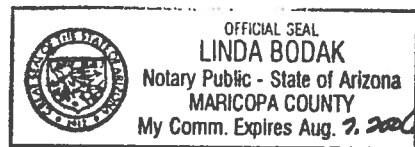
water form the pipeline for a hot tub on the Couch property from when the pipeline was installed until she acquired the property is not true.

DATED this 24 day of January, 2003.

Jay C. Pace
JAY C. PACE

SUBSCRIBED AND SWORN TO before me this 24 day of January, 2003.

Linda Bodak
NOTARY PUBLIC for Arizona
Residing at: Scottsdale, AZ
Comm. Expires: August 7, 2006



SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE

POST OFFICE BOX 987

KETCHUM, IDAHO 83340

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TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

January 27, 2003

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301

RECEIVED
JAN 28 2003
Department of Water Resources
Southern Region

Re: *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned or Controlled by Lisa Vierling*

Dear Allen:

Enclosed you will find two copies of the second Affidavit of Jay Pace for filing in this matter. We will again forward the original Affidavit to substitute in your records as soon as we receive it from Mr. Pace. Please have your office receipt date stamp the copy and return it to me in the self-addressed postage pre-paid envelope included for that purpose.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____

James P. Speck

JPS:jal
closures
cc: Client (w/encl.)
Travis Thompson (w/encl.)

RECEIVED
JAN 28 2003
Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

**IN THE MATTER OF COMPLAINT BY JAY PACE)
ALLEGING ILLEGAL WATER USE ON LANDS)
OWNED OR CONTROLLED BY LISA VIERLING)**

**SECOND AFFIDAVIT OF
JAY PACE**

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.
)

I, JAY C. PACE, being first duly sworn upon oath, depose and state as follows:

1. I am the Trustee of the Jay Clark Pace Family Trust, which is the owner of property known as Tax Lot 7684 in Blaine County, Idaho (the "Pace Cabin Lot"). The Pace Cabin Lot is along Warm Springs Creek downstream from the Warfield Hot Springs.
2. This property was first acquired by my parents, Dee L. Pace and LaVella Pace, by Warranty Deed recorded September 12, 1961 in the records of Blaine County, Idaho as Instrument No. 116070. A copy of this deed is attached as Exhibit 1 to the first Affidavit I submitted in this matter.
3. In 1963, my father purchased property which has since been subdivided into the Warfield Hot Springs Subdivision (the Warfield Property"). The Warranty Deed for this transaction was recorded August 27, 1963 as Instrument No. 119103 in the records of Blaine County, Idaho and

AFFIDAVIT OF JAY C. PACE - 1

a copy is attached as Exhibit 2 to my first Affidavit.

4. From 1963 until Lot 2 of the Warfield Hot Springs Subdivision was acquired by Lisa Vierling and she began using water from the hot springs, there was no diversion and use of the hot springs water on the Warfield Property. None of the bath houses depicted in the photograph provided by Vierling remained except the one on the triangular piece of property owned by the United States Forest Service. This parcel was eventually acquired by the owner of Lot 1 of the Subdivision sometime after 1988 in a land exchange which allowed Warm Springs Road to be relocated over a new bridge. The only structure on the Warfield Property in 1963 was an old wash house which we removed shortly after we purchased the property. People did trespass to simply bathe in the hot springs and the stream, but that was it. Therefore, in 1963 when my father acquired the Warfield Property there were no water rights to divert and use the hot springs water anywhere on the Warfield Property. The only diversion and use came about when my father constructed the pipeline as described in my first Affidavit. Except for the use by the Millers on their property as described by Vierling in her affidavit and the use by the Couch's described below, the only use of hot springs water out of the pipeline was on the Pace Cabin Lot. There was no use on the Warfield Property.

5. Vierling claims my father granted Miller and Couch the right to divert water from the pipeline. This is only partially correct. An outlet was provided from the pipeline at each lot. However, the Couch's never asked for permission to use the water and simply hooked in. When my father found out a few days later, he disconnected the pipe they had installed and they did not use it again. Water was not taken out of the pipeline at the Couch property again until Vierling did so without asking us and certainly without our permission. Vierling's assertion that the Couch's used

water form the pipeline for a hot tub on the Couch property from when the pipeline was installed until she acquired the property is not true.

DATED this 24 day of January, 2003.

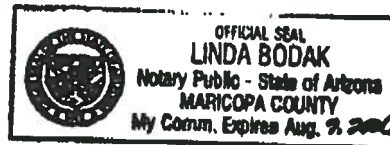
JAY C. PACE
JAY C. PACE

SUBSCRIBED AND SWORN TO before me this 24 day of January, 2003.

Linda Bodak
NOTARY PUBLIC for Arizona

Residing at: Scottsdale, AZ

Comm. Expires: August 7, 2006



Merritt, Allen

From: Merritt, Allen
Sent: Friday, January 24, 2003 4:24 PM
To: 'Travis Thompson'; James Speck (E-mail)
Cc: Jones, Doug
Subject: RE: Pace - Vierling Matter

Pursuant to your request, please provide copies of information recently discovered to our office and also send a copy to Mr. Speck within 21 days. I assume that this might generate another round of responses so please try to finish that up by March 7th. It seems like we are treating this like a contested case but I don't think it has risen to that level yet. I appreciate your prompt attention to these matters. Has either one of you approached the SRBA court in attempting to get this issue on a faster track as suggested in my 10/10/2002 letter?

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

From: Travis Thompson [mailto:tlr@idahowaters.com]
Sent: Friday, January 24, 2003 7:46 AM
To: AMerritt@idwr.state.id.us; jimspeck@cox-internet.com
Subject: Pace - Vierling Matter

Allen, Jim

I just received additional information pertaining to this matter yesterday. I am requesting an additional 14 or 21 days in order to formally submit this information to IDWR.

Thanks,
Travis

Merritt, Allen

From: Merritt, Allen
Sent: Tuesday, December 24, 2002 3:31 PM
To: James Speck (E-mail)
Subject: FW: Pace - Vierling matter

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

From: Merritt, Allen
Sent: Tuesday, December 24, 2002 3:30 PM
To: Travis Thompson (E-mail); James Speck (Business Fax)
Cc: Jones, Doug
Subject: Pace - Vierling matter

In Mr. Speck's letter dated 12/3/2002 he suggests it appropriate that there be given an opportunity for the Paces &/or the Vierlings to respond to the original submittals in this matter. That appears appropriate to me so if you wish please submit any additional information that may be relevant in this matter by January 24, 2003. I have shared the original submittals with Doug Jones with our region's SRBA team. Our office is contemplating a field investigation and will contact the parties prior to our visit.

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

JAMES P. SPECK
jimspeck@cox-internet.com

DOUGLAS J. AANESTAD
aanestad@cox-internet.com

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

December 3, 2002

RECEIVED
DEC 09 2002
Department of Water Resources
Southern Region

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301

Re: *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned or Controlled by Lisa Vierling*

Dear Allen:

Thank you for sending to me the copies of the Response to Show Cause Order and Affidavits submitted to you by Mr. Travis Thompson, attorney for Lisa Vierling. As I explained to you and is readily apparent from Mr. Thompson's letter to you, he neglected to provide me with a copy of those documents.

I believe it is appropriate that the parties now have an opportunity to respond to each other's original submittals. May I suggest a deadline of December 20, 2002 for these additional submittals. If you have any questions or would like to discuss this matter further, please call me.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____

James P. Speck

JPS:sgg
enclosures
cc: Client
Travis Thompson

Post-it® Fax Note

7671

Date	# of pages ▶ 1
To Travis Thompson	From Allen Newitt
Co./Dept.	Co.
Phone #	Phone #
Fax #	Fax #

208-344-6034

DEC 04 2003

TIME : 12/30/2002 11:38
NAME : IDWR SOUTHERN REGION
FAX : 2087363037
TEL : 2087363033

TRANSMISSION VERIFICATION REPORT

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OK
STANDARD
ECM

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE

POST OFFICE BOX 987

KETCHUM, IDAHO 83340

JAMES P. SPECK
jimspeck@cox-internet.com

DOUGLAS J. AANESTAD
aanestad@cox-internet.com

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

December 3, 2002

RECEIVED
DEC 04 2002
Department of Water Resources
Southern Region

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301

**Re: *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned
or Controlled by Lisa Vierling***

Dear Allen:

Enclosed is the original Affidavit of Jay Pace (excluding Exhibits) to replace the copy which was submitted last week for filing. Will you please substitute the original in the Department's file?

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 

S. Galene Gonzales, Assistant to
James P. Speck

JPS:sgg
enclosures

RECEIVED
DEC 04 2002
Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT BY JAY PACE)
ALLEGING ILLEGAL WATER USE ON LANDS)
OWNED OR CONTROLLED BY LISA VIERLING)
_____) AFFIDAVIT OF
JAY PACE

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, JAY C. PACE, being first duly sworn upon oath, depose and state as follows:

1. I am the Trustee of the Jay Clark Pace Family Trust, which is the owner of property known as Tax Lot 7684 in Blaine County, Idaho (the "Pace Cabin Lot"). The Pace Cabin Lot is along Warm Springs Creek downstream from the Warfield Hot Springs.

2. This property was first acquired by my parents, Dee L. Pace and LaVella Pace, by Warranty Deed recorded September 12, 1961 in the records of Blaine County, Idaho as Instrument No. 116070. A copy of this deed is attached hereto as Exhibit 1.

3. In 1963, my father purchased property which has since been subdivided into the Warfield Hot Springs Subdivision (the Warfield Property"). The Warranty Deed for this transaction was recorded August 27, 1963 as Instrument No. 119103 in the records of Blaine County, Idaho and a copy is attached hereto as Exhibit 2.

4. In the spring or early summer of 1970, my father constructed a concrete spring box

to capture the flow of one of the springs on the Warfield property. We now refer to this as the "Pace Hot Springs." He then buried white PVC plastic pipe to deliver water from this spring box to the Pace Cabin located on the Pace Cabin Lot. Attached hereto as Exhibit 3 are copies of two slides from photographs that were taken showing this construction. The dates on the slides are June and July, 1970. Copies of the photographs developed from these slides are attached hereto as Exhibits 4 and 5. Exhibit 4 shows the spring box on the day it was built and the pipeline leading out of the box. Exhibit 5 shows the path of the pipeline which followed the small stream created by the springs which fed back into Warm Springs Creek.

5. The pipeline is six inches in diameter at the beginning and is increased to eight inches in diameter towards the end and at the Pace Cabin where the slope of the pipeline is less.

6. An eight inch line enters the northeast corner of the Pace Cabin; the pipe then reduces to six inches in diameter and supplies water to an indoor hot tub. I know this system was in place in 1970 because our son, Adam, born in April, 1970, was the first child in our family to soak in the indoor hot tub. The eight inch pipeline also tees to the west and provides hot water for an outdoor spa. A schematic diagram showing the location of the pipeline and the uses of the water on the Pace Cabin property is attached hereto as Exhibit 6.

7. A copy of the photograph of the Pace Cabin with a yellow line showing the route of the pipeline is attached as Exhibit 7. A photograph of the outdoor spa is attached as Exhibit 8.

8. By 1983, my father had transferred the Warfield Property into a corporation known as Pace, Inc. By a Corporate Warranty Deed recorded November 17, 1983 as Instrument No. 245698, records of Blaine County, Idaho, Pace, Inc. conveyed the Warfield Property to Geoff S. and Linda K. Bushell. A copy of this Corporate Warranty Deed is attached as Exhibit 9. That deed

specifically reserved to the grantor the right to use the water flowing in the pipeline which has been described above and made that right appurtenant to the Pace Cabin property. It did grant to Bushell the right to share the use of the water line only for a small portion of the Warfield Property lying south and east of Warm Springs Creek and then known as the Crony Cove Parcel. The Crony Cove Parcel subsequently became a part of Lot 2 of Warfield Hot Springs Subdivision which was conveyed by the Bushells to Gary and Marcia Garbrecht in 1988 and then by the Garbrechts to Lisa Vierling in July, 1989. Copies of these Warranty Deeds are attached hereto as Exhibits 10 and 11, respectively.

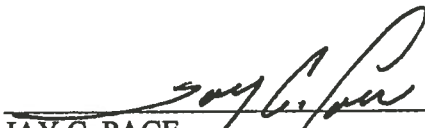
9. Both my father, before he died, and recently Geoff Bushell, have confirmed to me that the Corporate Warranty Deed did not grant any right to use any of the existing flow of water in the pipeline leaving the Pace Hot Springs. Instead, it merely granted to Bushell the right to share the use of the pipeline and then also share in the repair and maintenance of the pipeline, if Bushell were to choose to develop an additional flow of water from the Pace Hot Springs. That was never done and the flow of water from the Pace Hot Springs into the pipeline constructed by my father has never been expanded or enhanced since he sold the Warfield Property to the Bushells.

10. No one in my family has ever granted to the Bushells, the Garbrechts, or Lisa Vierling the right to use any portion of that flow from Pace Hot Springs into the pipeline that existed in 1983 when the Warfield Property was sold to the Bushells. Without any such permission, Vierling has proceeded to install four valves to divert water out of the pipeline, two of the valves to structures located on properties other than the original Crony Cove Parcel. We believe all of these valves were installed subsequent to Vierling's acquisition of the property in 1989.

11. We do not have any records of flow rates or temperatures of the water at the Pace Hot

Springs or at the Pace Cabin. However, until Vierling began to illegally take water out of the pipeline, the flow and temperature of the water were always adequate for the recreational and heating uses at the Pace Cabin property. At present, the temperature of the water at the Pace Cabin Lot is not sufficient for these purposes.

DATED this 26 day of November, 2002.

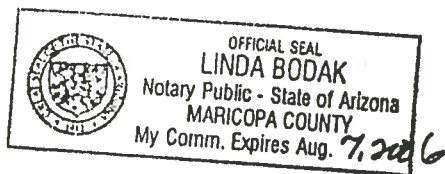


JAY C. PACE

SUBSCRIBED AND SWORN TO before me this 26th day of November, 2002.



NOTARY PUBLIC for Arizona
Residing at: Scottsdale, AZ
Comm. Expires: August 7, 2006



RECEIVED

DEC 02 2002

Department of Water Resources
Southern Region

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE

POST OFFICE BOX 987

KETCHUM, IDAHO 83340

JAMES P. SPECK
jimspeck@cox-internet.com

DOUGLAS J. AANESTAD
aanestad@cox-internet.com

November 27, 2002

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301

**Re: *In the Matter of Complaint by Jay Pace Alleging Illegal Water Use on Lands Owned
or Controlled by Lisa Vierling***

Dear Allen:

Enclosed you will find two copies of the Affidavit of Jay Pace for filing in this matter. We will forward the Affidavit with Mr. Pace's original signature to substitute in your records as soon as we receive it from Mr. Pace. The Affidavit is submitted pursuant to the Order to Show Cause issued by the Department on October 10, 2002. Please have your office receipt date stamp the copy and return it to me in the self-addressed, postage prepaid envelope included for that purpose. Please let me know as soon as possible how the Department intends to proceed with this matter.

Thank you.

Done *Adm* *12/2/02*

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: *James P. Speck /sgg*
James P. Speck

JPS:sgg

enclosures

cc: Client (w/enclosures)

Travis L. Thompson (w/enclosures)

DEC 02 2002

**Department of Water Resources
Southern Region**

**IN THE MATTER OF COMPLAINT BY JAY PACE)
ALLEGING ILLEGAL WATER USE ON LANDS) AFFIDAVIT OF
OWNED OR CONTROLLED BY LISA VIERLING) JAY PACE
_____)**

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

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DATED this 26 day of November, 2002.

JAY C. PACE
JAY C. PACE

SUBSCRIBED AND SWORN TO before me this 26 day of November, 2002.



Linda Bodak
NOTARY PUBLIC for Arizona
Residing at: Scottsdale, AZ
Comm. Expires: August 7, 2006

MAUD J. RILEY TO DEE L. PACE ET UX

THIS INDENTURE, Made this 22nd day of August, 1960, between MAUD J. RILEY, a widow, of Truth or Consequences, County of Sierra, State of New Mexico, the party of the first part, hereinafter called the "Grantor", and DEE L. PACE and LAVELLA PACE, husband and wife, of Twin Falls, County of Twin Falls, State of Idaho, the party of the second part, hereinafter called the "Grantees".

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, in lawful money of the United States of America, to the Grantor in hand paid by the Grantees, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the Grantees, and to the Grantees' heirs and assigns forever, all the following described real estate, situated in Blaine County, State of Idaho:

A portion of W. H. Warfield H.E.S. #389 in Section Thirty-Six (36), Township Four (4) North, Range Sixteen (16) East, Boise Meridian, Blaine County, Idaho, described as follows:

Beginning at a point on the East line of said H.E.S. #389, said point being 348 feet South of corner No. 5 of said H.E.S. #389, thence South along the East line of said H.E.S. #389 a distance of 118 feet, thence West a distance of 151 feet, more or less, to the center of Warm Springs Creek; thence in a northerly direction along the center line of Warm Springs Creek a distance of 150 feet, more or less, to a point which is North 86° 00' West from the point of beginning, thence South 86° 00' East a distance of 206 feet, more or less, to the point of beginning. (This property being a portion of Tax Lot 1300 of the Blaine County Assessor's plate).

Subject to general taxes for 1960.

(05.05 I. R. S.)
(Affixed and
(Cancelled)

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto, belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the Grantor.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with appurtenances, unto the Grantees, and to the Grantees' heirs and assigns forever. And the Grantor, and the Grantor's heirs, the said premises in the quiet and peaceable possession of the Grantees, and the Grantees' heirs and assigns, against the Grantor, and the Grantor's heirs, and against all and every person and person whosoever, lawfully claiming the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the Grantor has subscribed this deed the day and year first above written.

Maud J. Riley

STATE OF NEW MEXICO, }
County of Sierra. } ss.

On this 22nd day of September, 1960, before me, the undersigned, a Notary Public in and for said County and State, personally appeared MAUD J. RILEY, a widow, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she 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.

(SEAL)

W. S. Stuart
Notary Public for the State of New Mexico,
Residing at Truth or Consequences, New Mexico.
My Commission Expires: 7-11-63

Filed for record at the request of Dee L. Pace at 3:00 o'clock P. M., September 12, 1961.

George F. McCoy, Ex-Officio Recorder

By Hazel Barber, Deputy

EXHIBIT 1

GEORGE H. KELSEY ET UX TO D. L. PAGE

For Value Received GEORGE H. KELSEY and DARETHA C. KELSEY, husband and wife, the grantors, do hereby grant, bargain, sell and convey unto D. L. PAGE, Route #2, Twin Falls, Idaho, the grantee, the following described premises in Blaine County Idaho, to wit:

A portion of H. E. Survey 389 (Hailey 03144 and 105799), being a portion of Section 35, Township 4 North, Range 16 East, Boise Meridian, and Section 31, Township 4 North, Range 17 East, Boise Meridian, Blaine County, State of Idaho, more particularly bounded and described as follows:

Beginning at Corner No. 1 of said H. E. Survey, as Corner No. 1, the true point of beginning of this tract, thence South 83° 10' East 587.4 feet to Corner No. 2; thence South 18° 32' West 440.22 feet to Corner No. 3; thence South 57° 12' West 528 feet to Corner No. 4; thence South 57° 12' West 170.94 feet to Corner No. 5; thence South 0° 02' East 238.00 feet to Corner No. 6; thence North 85° West 408.7 feet, more or less, to a point on the Westerly boundary line of said H. E. Survey, being line 12-13 of said original survey, which point is Corner No. 7 of this description, and which point is South 7° 18' West 1133.1 feet from Corner No. 13 of said original survey; thence North 7° 18' East 1133.1 feet to Corner No. 8 of this description, which point is coincident with Corner No. 13 of said original H. E. Survey thence South 83° 10' East 408.92 feet to said Corner No. 1, point of beginning; EXCEPTING, however, that certain tract excepted in the Original Patent, more particularly described as follows: Beginning at Corner No. 14 of said original patent, from which Corner No. 1 above mentioned bears N. 0° 04' East 228.36 feet; thence South 58° 56' East 57.42 feet to Corner No. 15; thence South 44° 13' West 70.82 feet to Corner No. 16; thence South 44° 18' West 91.08 feet to Corner No. 17; thence North 12° 22' East 166.98 feet to Corner No. 18; thence South 58° 56' East 33 feet to place of beginning of said excepted tract.

ALSO EXCEPTING the following tract: A parcel of land within Homestead Entry No. 389 in Section 35, Township 4 North, Range 16 East, Boise Meridian, Blaine County, State of Idaho, and more particularly described by metes and bounds as follows: Commencing at a stone marking Corner No. 5 of said H. E. S. No. 389; thence S. 0° 02' E. 178.5 feet along the East boundary of said H. E. S. No. 389 to a ½" rebar, said rebar marking the true point of beginning; thence S. 0° 02' E. 59.5 feet along the East boundary of H. E. S. No. 389, to a ½" rebar; thence N. 85° 00' W. 231.9 feet to a ½" rebar on the easterly bank of Warm Springs Creek; thence N. 35° 16' E. 87.5 feet along the Easterly bank of Warm Springs Creek to a ½" rebar; thence S. 86° 31' E. 192.7 feet to a ½" rebar, said rebar marking the true point of beginning.

(\$18.50 I.R.S.)
{
Affixed and
Cancelled }

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all incumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: Aug 6th, 1963

George H. Kelsey

Daretha C. Kelsey

STATE OF IDAHO, COUNTY OF Blaine

On this 6th day of Aug., 1963, before me, a notary public in and for said State, personally appeared Daretha C. Kelsey known to me to be the person whose name - - subscribed to the within instrument, and acknowledged to me that - - executed the same.

(SEAL)

Laverne Baldwin
Notary Public
Residing at Boise, Idaho
Comm. Expires
My Commission expires Jan. 17th, 1965

ACKNOWLEDGMENT

STATE OF IDAHO, }
County of Bannock } as

On this 8th day of August, 1963, before me, the undersigned, a Notary Public, in and for said State, personally appeared GEORGE H. KELSEY known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on the day and year in this certificate above written.

(SEAL)

Barbara Haggerty
Notary Public, residing at Pocatello,
Idaho
Commission expires: 5/26/64

EXHIBIT 2

MADE IN U.S.A. U.S. PAT. NO. 3,013,354
26 JUL 70 P 3



MADE IN U.S.A. U.S. PAT. NO. 3,013,354
12 JUN 70 P 5



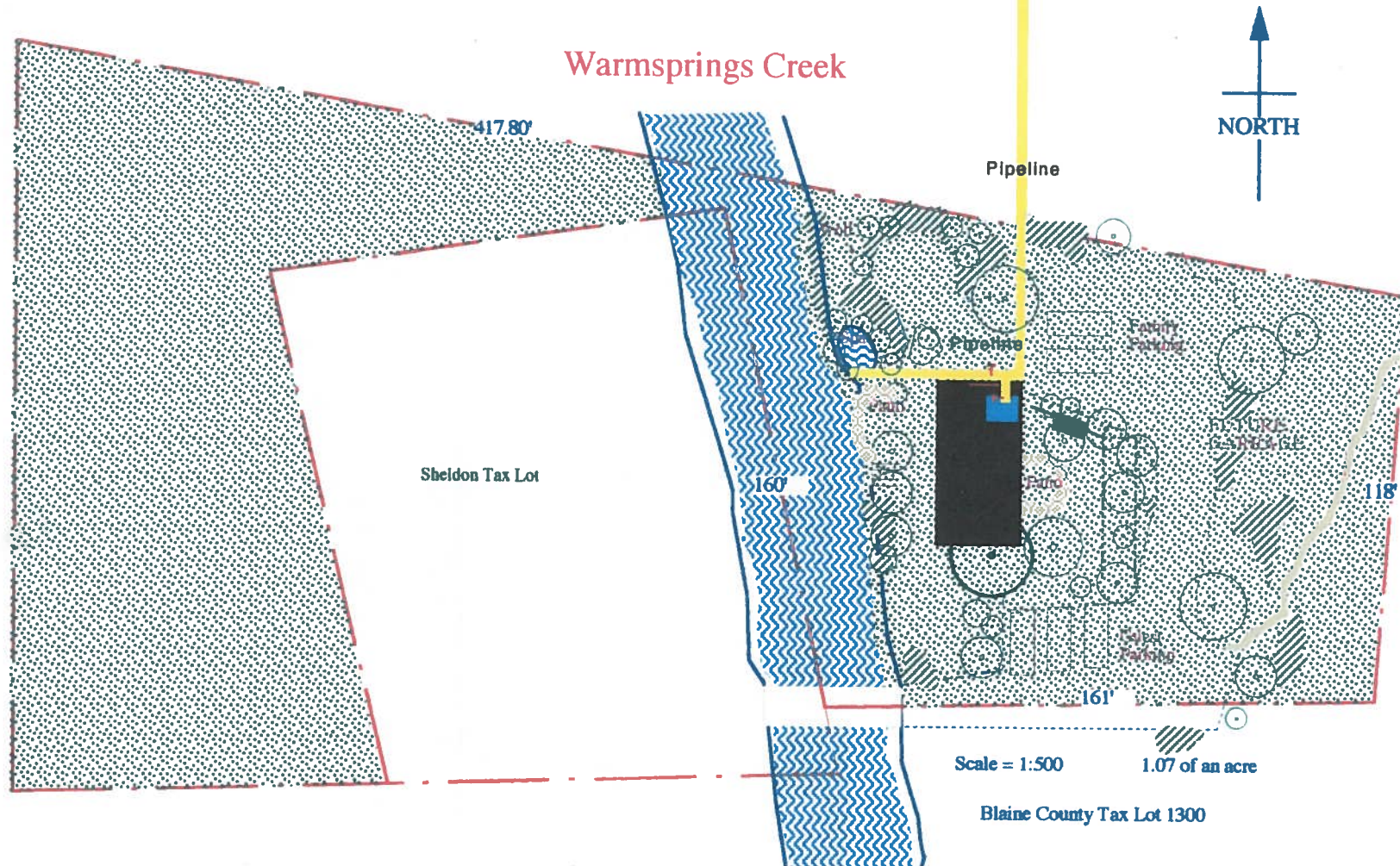


EXHIBIT 4



EXHIBIT 5

A portion of W.H. Warfield H.E.S. #389 in Section 36, Township 4 North, Range 16 E.B.M., Blaine County, Idaho



Jay & Susan Pace Cabin Property

EXHIBIT 6



Pace Cabin

Pace Cabin Looking Toward the East Showing route of pipeline at cabin



Jay Pace - Designer
AZ (480) 451-7066
ID (208) 726-8489

Pace Lodge, 999 W. Warm Springs Road, Ketchum, Idaho

After an early snow

Date: Oct 1, 2000
Scale: Photo

Pace Cabin



This is Benjamans re-built hot pool. It is now possible to control the temperature of the water and the smooth bottom makes cleaning easier. Suzi and Ben selected the new the stones and left planter pockets. This is the first year we monitored the water temperature which fluctuated between 120 degrees early in the season to 110 later in the

EXHIBIT 8



Jay Pace - Designer
AZ (480) 451-7066
ID (208) 726-8489

Pace Lodge, 999 W. Warm Springs Road, Ketchum, Idaho

Benji's revised hot pool

Date:

Scale:

12308

CORPORATE WARRANTY DEED

For Value Received, Pace, Inc., an Idaho corporation, hereinafter referred to as "Grantor", does hereby grant, bargain, sell and convey unto Geoffrey S. Bushell and Linda K. Bushell, husband and wife, whose address is P.O. Box 2798, Sun Valley, ID 33353, all of its right, title and interest in and to the following described real property located in Blaine County, Idaho, to-wit:

A portion of H.E. Survey 389 (Hailey 03144 and 105799), being a portion of Section 36, Township 4 North, Range 16 East, Boise Meridian, and Section 31 in Township 4 North, Range 17 East, Boise Meridian, Blaine County, State of Idaho, more particularly bounded and described as follows:

Beginning at Corner No. 1 of said H.E. Survey, as Corner No. 1, the true point of beginning of this tract, thence South 83°10' East 587.4 feet to Corner No. 2; thence South 18°32' West of 440.22 feet to Corner No. 3; thence South 57°12' West, 528 feet to Corner No. 4; thence South 57°12' West 170.94 feet to Corner No. 5; thence South 0°02' East 238.00 feet to Corner No. 6; thence North 86° West 403.7 feet, more or less, to a point on the Westerly boundary line of said H.E. Survey, being line 12-13 of said original survey, which point is Corner No. 7 of this description, and which point is South 7°18' West 1133.1 feet from Corner No. 13 of said original survey; thence North 7°18' East 1133.1 feet to Corner No. 8 of this description, which point is coincident with Corner No. 13 of said original H.E. Survey; thence South 83°10' East 403.92 feet to said Corner No. 1 point of beginning; EXCEPTING however, that certain tract excepted in the original Patent, more particularly described as follows: Beginning at Corner No. 14 of said original Patent, from which Corner No. 1 above mentioned bears N. 0°04' East 228.36 feet; thence South 58°56' East 57.42 feet to Corner No. 15; thence South 44°13' West 70.82 feet to Corner No. 16; thence South 44°13' West 91.08 feet to Corner No. 17; thence North 12°22' East 166.98 feet to Corner No. 18; thence South 58°56' East 33 feet to place of beginning of said excepted tract.

ALSO EXCEPTING the following tract: A parcel of land within Homestead Entry No. 389 in Section 36, Township 4 North, Range 16 East, Boise Meridian, Blaine County, State of Idaho, and more particularly described by

EXHIBIT A

APR 05 1989

EXHIBIT 9

metes and bounds as follows: Commencing at a stone marking Corner No. 5 of said H.E.S. No. 389; thence South 0°02' East 178.5 feet along the East boundary of said H.E.S. No. 389 to a 1/2" rebar, said rebar marking the true point of beginning; thence South 0°02' East 59.5 feet along the East boundary of H.E.S. No. 389, to a 1/2" rebar; thence North 86°00' West 231.9 feet to a 1/2" rebar on the Easterly bank of Warm Springs Creek; thence North 35°16' East 67.5 feet along the Easterly bank of Warm Springs Creek to a 1/2" rebar; thence South 86°31' East 192.7 feet to a 1/2" rebar, said rebar marking the true point of beginning.

RESERVING TO THE GRANTOR the right to use the flow of hot water in the gravity feed water line that now exists. It is understood that Pace, Inc. and its successors shall not increase or expand on that existing flow. This right is to be appurtenant to, and run with, the following described property:

A portion of W. H. Warfield H.E.S. No. 389 in Section 36, Township 4 North, Range 16 E.B.M., Blaine County, Idaho, described as follows:

Beginning at a point on the East line of said H.E.S. No. 389, said point being 348 feet South of Corner No. 5 of said H.E.S. No. 389,
Thence South along the East line of said H.E.S. No. 389 a distance of 118 feet;
Thence West a distance of 161 feet, more or less, to the center of Warm Springs Creek;
Thence in a Northerly direction along the centerline of Warm Springs Creek a distance of 160 feet, more or less to a point which is North 86°00' West from the point of beginning;
Thence South 86°00' East a distance of 206 feet, more or less, to the point of beginning.

GRANTING, however, the right to share the use, repair and maintenance of the water line referred to above, this right to be appurtenant only to that portion of the property conveyed herein lying South and East of Warm Springs Creek, commonly known as the Crony Cove Parcel, containing approximately two and one-half (2 1/2) acres.

SUBJECT TO:

Reservations contained in Patent from the United States of America to William H. Warfield dated October

25, 1919, recorded December 17, 1919, in Book 99 of Patents, page 259, records of Blaine County, Idaho, reciting: "Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States."

TO HAVE AND TO HOLD the same unto the Grantees, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the Grantees that it is the owner in fee simple of said premises, that they are free from encumbrances except as above described and that it will warrant and defend the same from all lawful claims whatsoever.

Dated this 1st day of November, 1983.

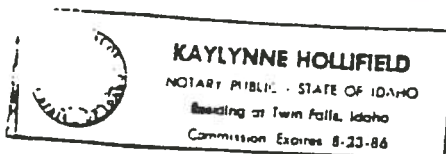
PACE, INC.

By: D. L. Pace
President

STATE OF IDAHO)
County of Twin Falls) ss.

On this 1st day of November, 1983, before me, the undersigned, a notary public in and for said county and state, personally appeared D. L. Pace, known to me to be the President of Pace, Inc., the corporation whose name is subscribed to the within instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the same day and year in this certificate first above written.



Kaylynne Hollifield
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls, Idaho

RECORDED

MAR 01 1989

14823

Courtesy of RAWTOOTH TITLE CO., Inc.

WARRANTY DEED

For Value Received

GEOFFREY S. BUSHELL and LINDA K. BUSHELL, Husband and Wife

Hereinafter called the grantor, hereby grants, bargains, sells and conveys unto

GARY CARBRECHT and MARCIA CARBRECHT, Husband and Wife

whose address is: 11 Skidmore Road, Winter Haven, FL 33880

Hereinafter called the grantee, the following described premises, in Blaine County, Idaho, to-wit:

Lot 2, Block 1, WARFIELD HOT SPRINGS SUBDIVISION, Blaine County, Idaho, according to the official plat thereof recorded January 14, 1987, as Instrument No. 281076, records of Blaine County, Idaho.

Subject to easements, restrictions and encumbrances of record.

291503
Blaine Co
DEPUTY CLERK
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DEPUTY CLERK
JAN 5 PM 4 17
DEPUTY CLERK
JAN 5 PM 4 17

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

Dated:

Geoffrey S. Bushell

Linda K. Bushell

STATE OF IDAHO, COUNTY OF BLAINE

On this 5th day of January, 1988, before me, a notary public in and for said State, personally appeared

Geoffrey S. and Linda K. Bushell

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

Notary Public
Residing at
Comm. Expires

Notary Public
Idaho

STATE OF IDAHO, COUNTY OF

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

at minutes past o'clock on this day of 1988, in my office, and duly recorded in Book of Deeds at page

Ex-Officio Recorder

By Deputy.

Fees &
Mail to:

EXHIBIT 10

WARRANTY DEED

For Value Received

GARY GARRECHT AND MARICA GARRECHT, husband and wife

Hereinafter called the grantor, hereby grant, bargain, sell and convey unto

LISA VIERLING, a single woman

whose address is: P.O. Box 5176, Ketchum, ID 83340

Hereinafter called the grantee, the following described premises, in Blaine County, Idaho, to-wit:

Lot 2, Block 1, WARFIELD HOT SPRINGS SUBDIVISION, Blaine County, Idaho, according to the official plat thereof recorded January 14, 1987, as Instrument No. 281076, records of Blaine County, Idaho.

SUBJECT TO Easements, restrictions and encumbrances of records

BLAINE CO. REQUEST
OF: JUNE 21, 1989
MAY GREEN, CLERK

307808

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

Dated

GARY GARRECHT

MARICA GARRECHT

STATE OF IDAHO, COUNTY OF BLAINE

On this 21st day of JULY, 1989 before me, a Notary Public in and for said State, personally appeared

GARY GARRECHT AND MARICA GARRECHT

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

Notary Public
Blaine County, Idaho
NOTARY PUBLIC STATE OF IDAHO
BY COMMISSION EXPIRES 1991
SIGNED AND SEALED THIS 21st DAY OF JULY, 1989

STATE OF IDAHO, COUNTY OF BLAINE

I hereby certify that this instrument was filed for record at the request of the grantor, and that it is a true and correct copy of the original as the same appears in my office, and duly recorded in Book of Deeds of page

Ex-Office Recorder

Deputy

*John A. Rosholt
Albert P. Barker
John K. Simpson
Amy D. Chestnut
Travis L. Thompson*

*Norman M. Semanko
Of Counsel*



Travis L. Thompson
tlt@idahowaters.com

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(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

233 Second Street North, Suite D
Twin Falls, ID 83301
(208) 733-0700 telephone
(208) 735-2444 facsimile

November 27, 2002

VIA HAND DELIVERY

Mr. Allen Merritt
Regional Manager, Southern Region
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380

RECEIVED

NOV 27 2002

**Department of Water Resources
Southern Region**

RE: Order to Show Cause (Vierling)

Dear Allen:

On behalf of Lisa Vierling I have enclosed the following in response to the Department's *Order to Show Cause* that was issued on October 10, 2002.

- 1) Response to Show Cause Order
- 2) Affidavit of Travis L. Thompson
- 3) Affidavit of Lisa Vierling
- 4) Affidavit of Michael Stoneback

Attached to the affidavits of Lisa Vierling and Michael Stoneback are various documents for your review, including deeds, photographs, and a map and description of the water system on the Vierling property. Should the Department request further information or access to the property for a field visit, please contact me at 336-0700. I appreciate your attention to this matter.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Enc.

Travis L. Thompson, ISB #6168
BARKER, ROSHOLT & SIMPSON LLP
205 N. 10th St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

RECEIVED
NOV 27 2002
Department of Water Resources
Southern Region

Attorneys for Lisa Vierling

**BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO**

IN THE MATTER OF COMPLAINT BY)	
JAY PACE ALLEGING ILLEGAL)	RESPONSE TO SHOW CAUSE
WATER USE ON LANDS OWNED)	ORDER
OR CONTROLLED BY LISA VIERLING)	
_____)	

Respondent LISA VIERLING, by and through counsel of record, BARKER ROSHOLT & SIMPSON LLP, hereby submits this *Response to Show Cause Order* to the order that was issued by the Idaho Department of Water Resources (IDWR) on October 11, 2002.

INTRODUCTION

The facts in this case establish that water rights associated with Ms. Vierling's property were put to beneficial use prior to the mandatory permit system of acquiring water rights enacted in 1971. Appurtenant water rights to the original Warfield homestead were conveyed in proportionate share to what became Lot 2, or the Crony Cove parcel. Additional water rights to use water out of the pipeline constructed by Pace, Inc. were also conveyed specifically to the Crony Cove parcel, as evidenced by the warranty deed from Pace, Inc. to Geoffrey and Linda Bushell in 1983. Furthermore, beneficial use water rights were established out of the pipeline by on the Couch property and were likewise conveyed to Ms. Vierling. Accordingly, Ms. Vierling

has obtained a valid right to divert water from Warfield Hot Springs for domestic, heating, and recreational purposes consistent with Idaho law.

FACTUAL HISTORY

The original Warfield Hot Springs homestead was settled and patented by William Warfield in the early 1900s. *Aff. of Lisa Vierling* p. 2, ¶ 6. This property was used as a domestic residence, as depicted by early photographs. *See Exhibit 4 to Aff. of Lisa Vierling*. Additionally, the property was used as a restaurant, laundry, and hot bath houses for local miners as well. *Aff. of Lisa Vierling* p. 2, ¶ 6.

Mr. D.L. Pace eventually purchased part of this original homestead in 1963. *Id.* p. 3, ¶ 8. Sometime thereafter Mr. Pace installed a gravity fed pipeline that diverted water from the Warfield Hot Springs to a cabin located on another portion of the property. *Id.* The pipeline crossed two private parcels, one owned by Lillian Couch, and the other by Mary Rita Miller. In exchange for allowing Mr. Pace to cross their properties, both the Couchs and Millers obtained the right to use hot water out of the pipeline for beneficial use. *Aff. of Lisa Vierling* p. 3, ¶ 9, and *Exhibit 5*. Mrs. Couch used the water for a hot tub on her property. *Aff. of Lisa Vierling* p. 3, ¶ 9.

Mr. Pace (Pace, Inc.) eventually sold part of the property, including the portion with the point of diversion for the pipeline and what is locally known as the Crony Cove parcel to Geoffrey S. and Linda K. Bushell on November 7, 1983. *See Exhibit 6 to Aff. of Lisa Vierling*. The property remained one parcel until 1986 when the Bushells subdivided it into the Warfield Hot Springs Subdivision. The Bushells sold Lot 1 to Bruce Gilbert and Lot 2 to Gary Garbrecht in 1988.

Ms. Vierling then purchased Lot 2 from Mr. Garbrecht in July 1989, and installed a hot bath that September using water from the pipeline. *Aff. of Lisa Vierling* p. 3, ¶ 11. Ms. Vierling immediately filed a claim in the Snake River Basin Adjudication (SRBA) in August 1989 for the water rights associated with her property. *Id.* p. 2, ¶ 5. Upon the completion of the construction of Ms. Vierling's home in 1991, water was also used from the pipeline for hot water domestic purposes. *Id.* Ms. Vierling also purchased the adjacent property, or what is known as the "Couch property," from Lillian Couch in September 1990. *Id.*, p. 1, ¶ 3. The guest house on the Couch property was completed in 1993. *Id.*, p. 4, ¶ 11. This house is currently used as an occasional rental property where water is also used for hot water domestic purposes and for a hot bath. *Id.* Ms. Vierling has also made use of the hot water through a heat exchange system in her main home where water is then returned to the pipeline. *Id.* Additionally, water is used for heating purposes under the floors at the barn, at a small cabin, and at the guest house. *Aff. of Michael Stoneback* p. 2, ¶ 4, *Exhibit 1*. Recent measurements conducted by Michael Stoneback demonstrate that total combined use of the water for domestic and other purposes does not exceed the claimed flow of .04 cfs. *Aff. of Michael Stoneback* p. 2, ¶ 4.

Ms. Vierling has relied on using the water for domestic, heating, and recreation purposes for approximately the last 13 years. *Aff. of Lisa Vierling*, p. 4, ¶ 13.

LEGAL ARGUMENT

I. BENEFICIAL USE WATER RIGHTS APPURTENANT TO THE CRONY COVE PARCEL WERE TRANSFERRED THROUGH THE SALE OF THE PROPERTY.

A water right is an appurtenance to the land on which it has been used and will pass by conveyance of the land. *Russell v. Irish*, 22 Idaho 194, 198 (1911). Similarly, a division of a tract of land divides the appurtenant water right in the same proportion as it divides the land. *Id.*, *Crow v. Carlson*, 107 Idaho 461, 467 (1984); *Silverstein v. Carlson*, 118 Idaho 456, 460 (1990).

Finally, in the absence of any reservation to the contrary, a deed to land effects a transfer of such water and water rights as are appurtenant to the land when the conveyance is made, where the deed contains the usual “appurtenance” clause. *Koon v. Empey*, 40 Idaho 6, 11 (1924).

In the present matter, unless the deeds state otherwise, it is presumed the various transfers of the original Warfield homestead, including the transfer to Pace, Inc. in 1963, carried with it all water rights that were appurtenant, including those rights for domestic and recreation purposes that were associated with the hot springs and bath houses. As indicated, water from the spring sources of Warfield Hot Springs was used for domestic and recreation purposes at the original Warfield homestead. *Aff. of Lisa Vierling*, p. 2, ¶ 6. Accordingly, those beneficial use water rights would have become appurtenant to all, not just a portion of Pace, Inc.’s property, including what eventually was subdivided into Lots 1 and 2. When Pace, Inc. conveyed certain property to the Bushells in 1983, appurtenant water rights that were acquired on the original Warfield homestead were conveyed by a proportionate amount to the property as well. Nothing in the deed excepts appurtenant water rights from the conveyance. *See Exhibit 6 to Aff. of Lisa Vierling*.

These rights then passed proportionately to Lots 1 and 2 that were purchased by Bruce Gilbert and Gary Garbrecht in 1988. *Aff. of Lisa Vierling*, p. 3, ¶ 10. Finally, the proportionate share of these rights that passed to Lot 2 were then deeded to Ms. Vierling in 1989. The warranty deed specifically states:

TO HAVE AND TO HOLD the said premises [Lot 2], ***with their appurtenances*** unto the said Grantee [Lisa Vierling] and to the Grantee’s heirs and assigns forever.

Exhibit 1 to Aff. of Lisa Vierling (emphasis added).

Clearly, any water rights that were appurtenant to Lot 2 passed by the words of this conveyance to Lisa Vierling in 1989. *Russell v. Irish*, 20 Idaho at 198, *Koon v. Empey*, 40 Idaho at 11. Nothing in the deed from Mr. Garbrecht to Ms. Vierling excepts appurtenant water rights from the property transfer.

Apart from the water rights that were originally put to beneficial use at the Warfield homestead for domestic and associated recreation purposes, it is clear that Pace, Inc. transferred additional water rights specific to the Crony Cove parcel. As noted, Mr. Pace installed the gravity fed pipeline to divert water from Warfield Hot Springs sometime in the late 1960s or early 1970s. *Aff. of Lisa Vierling* at p. 3, ¶ 8. Accordingly, any water rights perfected by Mr. Pace (Pace, Inc.) were appurtenant to the entire property, including the portion that was eventually subdivided into Lots 1 and 2. When Pace, Inc. conveyed certain property to the Bushells in 1983, a proportionate share of the appurtenant water rights that were perfected out of the pipeline diversion was conveyed as well. The warranty deed specifically grants:

GRANTING, however, *the right to share the use*, repair and maintenance *of the water line referred to above, this right to be appurtenant only to* that portion of the property conveyed herein lying South and East of Warm Springs Creek, commonly known as *the Crony Cove Parcel*, containing approximately two and one-half (2 1/2) acres.

Exhibit 6 to Aff. of Lisa Vierling at 2 (emphasis added).

Clearly the deed grants the owner of the “Crony Cove Parcel,” or what is now Lot 2, the “right” to share the use of the pipeline, or the right to the appurtenant use of water that was perfected by Pace, Inc. The language in the deed is consistent with other evidence indicating that a share of this specific water right was conveyed to Lot 2.

First, when Ms. Vierling purchased Lot 2 from Mr. Garbrecht in 1989, the sale was contingent upon having access and use of the hot spring water that was available on the property.

Aff. of Lisa Vierling, p. 2, ¶ 4. The addendum to the Purchase and Sale Agreement executed by Mr. Hankinson (Ms. Vierling closed on the property alone and is the sole owner) and Mr. Garbrecht on June 20, 1989 specifically states:

2. Offer is also contingent upon property's having ample access to existing hot water.

Exhibit 1 to Aff. of Lisa Vierling.

Second, in the *Declaration of Geoffrey S. & Linda K. Bushell* (Blaine County Instrument No. 281077, 01/07/1987), certain conditions and restrictions for the Warfield Hot Springs Subdivision were set forth, including the following:

6. Owners of lots 1 and 2 will respond to any inquiries from other property owners in the Frenchman's Bend area regarding possible access to the hot springs or to pipe hot spring water to downstream locations for their use.

Exhibit 1 to Aff. of Travis L. Thompson.

As recognized by this instrument recorded in Blaine County, owners of Lots 1 and 2 were responsible for responding to inquiries about access to the hot springs and piping hot water for use downstream. Unless owners of Lots 1 and 2 had special "rights" regarding the use of hot water from the pipeline, there would be no need to include such references regarding the inquiries from other lot owners.

Third, Ms. Vierling filed a claim in the SRBA with the southern regional office of the Idaho Department of Water Resources (IDWR) on August 31, 1989. *Aff. of Lisa Vierling* p. 2, ¶ 5, *Exhibit 4*. No one from IDWR's staff mentioned that Ms. Vierling needed to obtain a permit to cover her claimed uses. Presumably had IDWR personnel believed that Ms. Vierling's claim for domestic, heating, and recreation purposes was not covered by existing deeds and the water rights associated with her property, it is likely such personnel would have advised Ms. Vierling of the need to file an application for permit to cover those uses.

Finally, the actions of the Pace family over the years is indicative that a water right was conveyed to the owner of Lot 2, or the Crony Cove parcel. Since Ms. Vierling purchased Lot 2 she immediately began using the hot water out of the pipeline for recreational uses in the fall of 1989. *Aff. of Lisa Vierling* p. 3, ¶ 11. Ms. Vierling also began using the hot water for domestic purposes once her home was completed in 1991. *Id.* Thereafter, Ms. Vierling purchased the Couch property and built a guest house directly over the pipeline in 1993. Since Ms. Vierling began using the water out of the pipeline for domestic, heating, and recreational purposes, none of the Pace family members questioned or complained about the uses that were being made by Ms. Vierling until the fall of 2002. *Aff. of Lisa Vierling* p. 4, ¶ 12. Accordingly, it is consistent that no complaints would have been made based on the understanding of the water rights that were appurtenant to Lot 2 and the Couch property, or the property now owned by Ms. Vierling. If no water rights were conveyed to Lot 2, it is likely that the Pace family would have objected to the uses made by Ms. Vierling at that time.

Accordingly, Ms. Vierling's use of the water for domestic, heating, and recreation purposes on Lot 2, or the Crony Cove parcel, is specifically acknowledged in the documents granting the property to her and her predecessors-in-interest and is confirmed by other evidence surrounding the water use and the property transfers. Since the water rights associated with the original Warfield homestead and Pace, Inc.'s pipeline diversion were perfected prior to 1971, no application for permit is needed to cover Ms. Vierling's claimed uses.

II. THE BENEFICIAL USE WATER RIGHT ON THE COUCH PROPERTY WAS TRANSFERRED BY THE SALE OF THE PROPERTY; AND DEPENDING ON THE DATE OF BENEFICIAL USE, MAY BE RECOGNIZED BY AN ACCOMPLISHED TRANSFER PURSUANT TO I.C. § 42-1425.

Shortly after her purchase of Lot 2, Ms. Vierling also acquired the adjacent tax lot no. 3649 (Couch property) from Lillian Couch in September 1990. *Aff. of Lisa Vierling* p. 1, ¶ 2.

Although it is not clear when the use out of the pipeline began on the Couch property, it is believed such use commenced when the pipeline was installed. *Id.* p. 3, ¶ 9. Based on the valve diversion at the pipeline on the Couch property, it is estimated that up to seven gallons per minute were capable of being diverted for recreation purposes. *Id.* The use of water out of the pipeline was purportedly consideration for Mr. Pace being allowed to cross the Couch and Miller properties with the pipeline. *Id.*, *Exhibit 5*. Since it is likely the use on the Couch property began when the pipeline was installed, and since Mr. Pace's diversion purportedly began prior to 1971, it follows that the use on the Couch property would be confirmed by the "constitutional" or beneficial use method. Similar to the water rights appurtenant to the Crony Cove parcel, water rights on the Couch property are an appurtenance to the land and will pass by conveyance of the land. *Russell v. Irish*, 22 Idaho 194, 198 (1911).

Alternatively, if use of hot water out of the pipeline began on the Couch property after 1971 and presumably before 1987, such a right may be properly characterized as an accomplished transfer of the original use made on the Pace property pursuant to I.C. § 42-1425. Under the statute, such use would be acknowledged since no other water rights were injured, and the change did not result in an enlargement of the original right. The accomplished transfer statute, or what is part of the "amnesty statutes," was found not to violate the constitution by the Idaho Supreme Court in *Fremont Madison Irrigation District v. Ground Water Appropriators, Inc.*, 129 Idaho 454. 458 (1996).

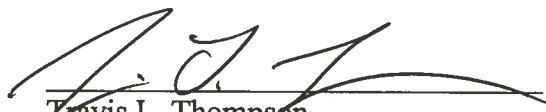
Accordingly, regardless of the basis, the water rights exercised by Ms. Vierling on the Couch property are confirmed by the beneficial use method and did not require an application for permit.

CONCLUSION

Pursuant to the information submitted in and accompanying the *Affidavit of Lisa Vierling* and the *Affidavit of Michael Stoneback*, and as set forth above, Ms. Vierling's use of hot water from Warfield Hot Springs is valid and consistent with Idaho law. Accordingly, IDWR should refrain from issuing a notice of violation.

DATED this 26th day of November, 2002.

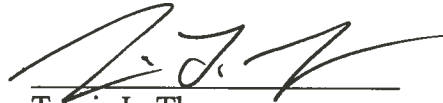
BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on November 27th, 2002, I served a true and correct copy of the foregoing *RESPONSE TO SHOW CAUSE ORDER*, on the following by hand delivery:

Allen Merritt
Regional Manager
Southern Region
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380


Travis L. Thompson

Travis L. Thompson, ISB #6168
BARKER, ROSHOLT & SIMPSON LLP
1221 W. Idaho St., Suite 600
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

RECEIVED

NOV 27 2002

Department of Water Resources
Southern Region

Attorneys for Lisa Vierling

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT BY)
JAY PACE ALLEGING ILLEGAL)
WATER USE ON LANDS OWNED)
OR CONTROLLED BY LISA VIERLING)
_____)

AFFIDAVIT OF TRAVIS L.
THOMPSON

State of Idaho)
) ss.
County of Ada)

TRAVIS L. THOMPSON, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record providing legal representation to Lisa Vierling in the above captioned matter. I am over the age of 18 and have knowledge of the files pertinent to this matter, and I make this affidavit based upon personal knowledge.

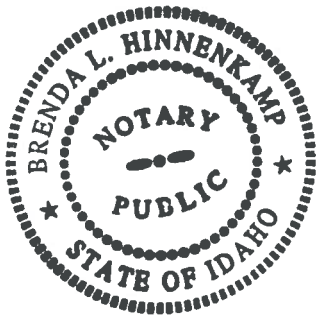
2. Appended hereto as Exhibit 1 is a true and correct copy of the *Declaration of Geoffrey S. & Linda K. Bushell* as recorded in Blaine County, Idaho (instrument no. 281077). The respondent in this matter, Lisa Vierling, provided me with this copy from the county records.

DATED this 26th day of November 2002.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 26 day of November 2002.



Brenda L. Hinnenkamp
Notary Public for Idaho
Residing at: Boise, Idaho
Commission Expires: 9/11/2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of November, 2002, I caused to be served a true and correct copy of the foregoing *AFFIDAVIT OF TRAVIS L. THOMPSON* by hand delivery to the following:

Allen Merritt
Regional Manager
Southern Region
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380


Travis L. Thompson

EXHIBIT 1

This declaration, made on the date hereinafter set forth by Geoffrey S. Bushell and Linda K. Bushell, hereinafter referred to as "Declarant." Whereas, Declarant is the owner of certain property located in Blaine County, State of Idaho, which is more particularly described as follows:

Warfield Hot Springs Subdivision

lots _____ through _____

lots _____ through _____

Now, therefore, Declarant hereby declares that the above shall be held, sold, and conveyed subject to the following notes, restrictions and conditions which shall run with the real property and shall be binding on all parties having any right, title, or interest in the described properties, and to their heirs, successors and assigns. These restrictions and conditions are required as a part of the final plat approved of Warfield Hot Springs Subdivision, given by the Blaine County Board of Commissioners on October 27, 1986, and recorded as Instrument Number _____.

1. This is a Seasonal Use zone, thus road maintenance, plowing, and emergency services (police, fire, ambulance) will be non-existent or minimal.
2. Forest Service regulations for using Warm Springs Road must be followed.
3. County building permits will be required for all construction.
4. Septic tanks and well locations must be approved by the South Central Health District.
5. There shall be no further subdivision of either lot.
6. Owners of lots 1 and 2 will respond to any inquiries from other property owners in the Frenchman's Bend area regarding possible access to the hot springs, or to pipe hot spring water to downstream locations for their use. Access for the general public need not be provided as there are hot springs available upstream on Forest Service land.
7. Use of the alternative building site on lot 2 will require receiving county approval for access, septic tank and well location, and a building envelope in the floodplain.

In witness whereof, the undersigned, being the Declarant herein, hereunto set his/her hand and seal this 22 day of Dec. 86.

ATTEST

Geoffrey S. Bushell Linda K. Bushell
Geoffrey S. Bushell Linda K. Bushell

NOTARY PUBLIC: _____

REVIEWED AND APPROVED BY Edward V. Hughes PLANNING DIRECTOR, ON
THIS 7th DAY OF Jan., 1987.

Travis L. Thompson, ISB #6168
BARKER, ROSHOLT & SIMPSON LLP
1221 W. Idaho St., Suite 600
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

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Department of Water Resources
Southern Region

Attorneys for Lisa Vierling

**BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO**

IN THE MATTER OF COMPLAINT BY)
JAY PACE ALLEGING ILLEGAL) AFFIDAVIT OF LISA VIERLING
WATER USE ON LANDS OWNED)
OR CONTROLLED BY LISA VIERLING)
_____)

STATE OF IDAHO)
) ss.
County of Blaine)

COMES NOW Lisa Vierling, being first duly sworn upon oath, and states as follows:

1. I currently reside at 1034 Warm Springs Road, located approximately 12 miles northwest of Ketchum, Idaho.
2. My property currently consists of what is known as Lot 2, Block 1, Warfield Hot Springs Subdivision, also known locally as the "Crony Cove" parcel, and the adjacent Tax Lot 3649. Gary Garbrecht conveyed the Crony Cove parcel to me by warranty deed on July 20, 1989. *See Exhibit 1.* Although Mark Hankinson was originally involved in purchasing the property with me, I alone closed on the property and remain the sole owner today.
3. Mark Hankinson and I also acquired Tax Lot 3649, or what was known locally as the "Couch property" from Lillian Couch on September 13, 1990. *See Exhibit 2.* I later

acquired Mr. Hankinson's interest in this property in 1997. It is my belief that the Couchs had owned the property since the 1950s.

4. It was my understanding when I purchased the Crony Cove property that I had a right to use water from the hot spring sources commonly known as Warfield Hot Springs. In fact, the purchase of Lot 2, the Crony Cove parcel, was contingent upon having access and use of hot springs water that was available on the property. *See Exhibit 1* (Addendum to Purchase and Sale Agreement dated June 20, 1989).

5. After acquiring the Crony Cove property I immediately filed a claim in the Snake River Basin Adjudication on August 31, 1989. *See Exhibit 3*. I filed this claim with the southern regional office of the Idaho Department of Water Resources (IDWR). From discussions with IDWR personnel at that office, it was never mentioned that I needed to file an application for permit to cover the claimed beneficial uses.

6. Based on my research of local history and the rights appurtenant to my property, I have found the following. It is my understanding that the original homestead was patented to William Warfield in the early 1900s. Attached to my affidavit is a copy of a photograph taken of the original homestead, and a post card depicting a photo of the original cabin. *See Exhibit 4*. The original cabin was renovated and is maintained for personal use on our property. I acquired these photos from John Daly who used to live in the area. It is my understanding the post card photo was part of the invitation regarding the opening of the library's historical department. The original property included all of the lots that were subsequently subdivided and sold to different parties. The original Warfield home site was located on the Crony Cove parcel and was purportedly used as a restaurant and laundry for local miners in the area. Bath houses were also located on the property. A copy of an early photograph depicts several "hot bath houses" that

were apparently using water from Warfield Hot Springs, one bath house was located directly over the point of diversion that currently exists for our pipeline. *See Exhibit 4.*

7. It is my understanding the hot springs on the Warfield property were used for domestic and associated recreational purposes from the time the property was patented.

8. Part of the Warfield property was eventually purchased by Pace, Inc. (Mr. D.L. Pace) in 1963. It is my understanding that Mr. Pace installed the current diversion (culvert box and gravity fed pipeline) sometime in the late 1960s or early 1970s. The diversion is currently located on Lot 1. This pipeline crossed Lot 2, or the Crony Cove property, the Couch property, and finally the Miller property, before reaching the portion of Mr. Pace's property where the Pace cabin is located.

9. It is my understanding that both the Couchs and the Millers allowed Mr. Pace to cross their property with the pipeline in exchange for the right to use hot water from the pipeline. *See Exhibit 5.* The Couchs had used the water for a hot tub on their property since the pipeline was installed, and that use is continued in the same location on my property today. Based on the valve diversion from the pipeline at the Couch property, it is estimated that approximately up to seven gallons per minute were capable of being diverted for recreation purposes.

10. Pace, Inc. eventually sold part of the property, including the property with the point of diversion and the Crony Cove parcel to Geoffrey S. and Linda K. Bushell on November 7, 1983. *See Exhibit 6.* The property remained one parcel until 1986 when the Bushells subdivided it. The Bushells sold Lot 1 to Bruce Gilbert and Lot 2 to Gary Garbrecht in 1988.

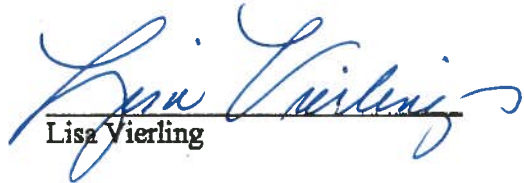
11. After I purchased Lot 2 from Mr. Garbrecht in July 1989, I installed a hot bath that September using water from the pipeline. Upon the completion of the construction of my home in 1991, water was also used from the pipeline for hot water domestic and heating

purposes. The water for heating purposes is run through a heat exchanger and returned to the main pipeline. The guest house on the Couch property was later completed in 1993. This house is currently used as an occasional rental property where water is also used for hot water domestic purposes and for continued use at a hot bath. Please see the map attached to the Affidavit of Michael Stoneback for a complete description of the system.

12. Since using the hot water for domestic and associated recreational purposes, Mr. Pace never questioned or complained of the fact that we were using water out of the pipeline. In fact, whenever Mr. Pace or his family happened to be staying at their cabin, they occasionally informed us about temperature problems in the hot tub on their property. Michael Stoneback and myself have always willingly complied with their requests to do what we could to alleviate any temperature concerns. To the best of my knowledge Mr. Pace never used the water from the pipeline for heating or domestic purposes. Not until this August, when I received a letter from Mr. Speck on behalf of Mr. Pace's son, Jay Pace, did the Pace family ever question my use of the water from the pipeline.

13. I have relied on using the hot water for approximately 13 years. The water serves as the domestic hot water source for my home. I have made several expenditures on repairing and maintaining the pipeline without ever receiving any assistance from the Paces.

DATED this 20 day of November, 2002.


Lisa Vierling

STATE OF IDAHO)
)
County of Blaine)

On this 20th day of November, 2002 before me, the undersigned a Notary Public in and for said State, personally appeared LISA VIERLING, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he 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.





NOTARY PUBLIC FOR IDAHO
Residing at: Bellevue, ID
Commission Expires: 12/14/2004

EXHIBIT 1

REAL ESTATE PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

(This form to be used ONLY by members of the National Association of REALTORS)



This contract stipulates the terms of sale of the property. Read carefully before signing (including information on reverse side). This is a legally binding contract. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY BEFORE SIGNING.

Lisa Vierling, a single woman

Sun Valley, Idaho July 20, 1989

(hereinafter called "Buyer") agrees to purchase, and the undersigned Seller agrees to sell the following described real estate hereinafter referred to as "premises" commonly known as Warfield Hot Springs

City of _____ County of Blaine, Idaho legally described as: Lot 2, Block 1
Warfield Hot Springs Subdivision, Blaine County, Idaho

(A FULL AND COMPLETE LEGAL DESCRIPTION MUST BE INSERTED, ATTACHED OR WRITTEN ON THE REVERSE HEREOF PRIOR TO EXECUTION BY SELLER. Buyer hereby authorizes broker to insert over his signature the correct legal description of the premises if unavailable at the time of signing, or to correct the legal description previously entered if erroneous or incomplete.)

EARNEST MONEY.

(a) Buyer hereby deposits as earnest money and a receipt is hereby acknowledged of Five Thousand and no/100 ----- dollars (\$ 5,000.00) evidenced by: ☐ Cash ☒ Personal Check ☐ Cashiers Check ☐ Note Due ☐ or _____

(b) Earnest Money to be deposited in trust account upon acceptance by all parties and shall be held by ☐ Listing Broker ☐ Selling Broker ☐ Other _____ for the benefit of the parties hereto, and James E. Coyle (Broker) shall hold the completely executed broker's copy of this agreement and is responsible for the closing.

(c) If all conditions have been met by Buyer, Buyer and Seller agree that the earnest money (less credit report fees, and any other Buyer's costs) shall be refunded to Buyer in the event the financing contemplated herein by Buyer is not obtainable.

(d) The parties agree that Sawtooth Title Company shall provide said title policy and preliminary report of commitment and the "closing agent" for this transaction shall be Sawtooth Title Company. If a long-term escrow/collection is involved, then the escrow holder shall be _____

1. TOTAL PURCHASE PRICE IS Two Hundred Ten Thousand and No/100-- DOLLARS (\$ 210,000.00) payable as follows:

a. \$ _____ Cash down, including above Earnest Money (Closing costs are additional).

b. \$ _____ Balance of the purchase price (M.I.P. not included).

2. FINANCING. This agreement is contingent upon Buyer qualifying for:

☐ FHA ☐ VA ☐ Conventional ☐ IHA. Purchase loan balance as noted above for a period of _____ years at _____ % per annum. (If FHA or VA loan is sought, read the applicable provisions on the reverse side hereof.) Buyer shall pay no more than _____ points plus origination fee if any. Seller to pay only the discount points necessary in order to obtain above described financing but not to exceed _____%.

☐ Buyer to ASSUME and ☐ will ☐ will not be required to qualify for an EXISTING LOAN(S) of approximately \$ _____ at no more than _____ % with monthly payments of approximately \$ _____ PITI. This agreement ☐ is ☐ is not contingent upon Lender releasing Seller's liability.

Type of loan _____. Buyer shall apply for such loan or assumption within three (3) banking days after Seller's acceptance of this agreement.

OTHER FINANCING, TERMS & CONDITIONS:

See attached addendum

3. THIS AGREEMENT ☐ is ☒ is not CONTINGENT upon sale and closing of _____ on or before _____ listed with _____

(If a contingency is noted please read applicable conditions in Paragraph # 15 on reverse side. NOTE: Any waiver by the Buyer under this section will be a waiver of ALL contingencies, including financing.)

4. ITEMS SPECIFICALLY INCLUDED IN THIS SALE (if FHA/VA financing is sought see Item # 14 on reverse side): Proposed Bridge Plan for said property

5. ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: N/A

6. COSTS PAID BY: Costs in addition to those listed below may be incurred by Buyer and Seller. Unless otherwise agreed herein, or provided by law or required by lender, Buyer shall purchase Seller's reserve account if loan assumption.

☐ Yes ☐ No. Purchaser's Extended Coverage Title Policy requested. Additional premium paid by _____. See item # 17 on reverse side.

If requested by lender or otherwise stated herein, the below costs will be paid as indicated.

Costs Paid By	Appraisal	Loan Assumpt.	Well Inspect.	Pump/Inspect Septic	City/County Code Inspect. if required	Contract and/or Document Prep.	Closing Agent's Fee	Long Term Escrow Fees	Lender or Code Repairs	Title Ins.
BUYER										
N/A	X	X	X	X	X	X		X	X	
SELLER										X
SHARE EQUALLY							X			

Cost of lender or code repairs not to exceed \$ _____. Discount points to be paid as agreed on line 29 and 30. SELLER UNDERSTANDS that as a result of any city or county inspections HE MAY BE REQUIRED TO MAKE REPAIRS to the property in order to comply with the housing code WHETHER OR NOT A SALE IS COMPLETED UNDER THIS AGREEMENT.

7. POSSESSION. Buyer shall be entitled to possession on ☐ closing ☐ other July 20, 1989. "Closing" means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to Seller. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest and reserves on liens, encumbrances or obligations assumed and utilities shall be pro-rated as of July 20, 1989

8. CLOSING. On or before the closing date, Buyer and Seller shall deposit with the closing agent all funds and instruments necessary to complete the sale. The closing date shall be no later than July 20, 1989. Buyer shall pay for fuel in tank, amount to be determined by the supplier at Seller's expense.

9. ACCEPTANCE. Buyer's offer is made subject to the acceptance of Seller on or before 12:00 o'clock midnight of June 29, 1989. If Seller does not accept this agreement within the time specified, the entire Earnest Money shall be refunded to Buyer on demand. Seller's counter offer (if any) is made subject to the acceptance of Buyer on or before 12:00 o'clock midnight of _____. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

10. IMPORTANT - AGENCY DISCLOSURE. At the time of signing this agreement the agent working with the buyer represented buyer and the agent working with the seller represented seller. Each party signing this document confirms that prior written disclosure of agency was provided to him/her in this transaction. Each party to this transaction has read and understands the contents of the agency disclosure brochure previously received.

Listing Agency: McCann, Daech, Fenton Selling Agency: Elkhorn Realty Company
By: Kathy Wygle Phone: 726-3317 By: John B. Heinrich Phone: 622-7722

Buyer: Lisa Vierling Buyer's Address: _____

Buyer: _____ Buyer's Phone: Residence _____ Business _____

On this date, I/We hereby approve and accept the sale set forth in the above agreement and agree to carry out all the terms thereof on the part of the Seller and the undersigned further agrees to pay a total brokerage fee of _____ to the above named Broker(s) for services. Brokerage fee will be paid in cash unless otherwise agreed in writing.

I/We further acknowledge receipt of a true copy of this agreement signed by both parties.

Seller: _____ Date: _____ Seller's Address: P.O. Box 69, Highway 27S, Lake Halmston

Seller: _____ Date: _____ Seller's Phone: Residence _____ Business FL 33851

A true copy of the foregoing agreement, signed by the Seller and containing the full and complete legal description of the premises, is hereby received on this _____ day of _____, 19 _____.

PROVISIONS CONTAINED ON THE REVERSE OF THIS PAGE SHALL CONSTITUTE PART OF THE AGREEMENT OF THE PARTIES. EACH OF THE PARTIES

REAL ESTATE PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

(This form to be used ONLY by members of the National Association of REALTORS)

This contract stipulates the terms of sale of the property. Read carefully before signing (including information on reverse side). This is a legally binding contract. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY BEFORE SIGNING.

San Valley, Idaho June 29, 1989

Mark Hankinson, a single man

(hereinafter called "Buyer") agrees to purchase, and the undersigned Seller agrees to sell the following described real estate hereinafter referred to as "premises" commonly known as Warfield Hot Springs

City of _____ County of Blaine, Idaho legally described as: Lot 2, Block 1
Warfield Hot Springs Subdivision, Blaine County, Idaho

(A FULL AND COMPLETE LEGAL DESCRIPTION MUST BE INSERTED, ATTACHED OR WRITTEN ON THE REVERSE HEREOF PRIOR TO EXECUTION BY SELLER. Buyer hereby authorizes broker to insert over his signature the correct legal description of the premises if unavailable at the time of signing, or to correct the legal description previously entered if erroneous or incomplete.)

EARNEST MONEY:

(a) Buyer hereby deposits as earnest money and a receipt is hereby acknowledged of Five Thousand and no/100 dollars (\$ 5,000.00) evidenced by: ☐ Cash ☒ Personal Check ☐ Cashiers Check ☐ Note Due ☐ or _____

(b) Earnest Money to be deposited in trust account upon acceptance by all parties and shall be held by ☐ Listing Broker ☒ Selling Broker ☐ Other _____ for the benefit of the parties hereto, and James E. Coyle (Broker)

(c) If all conditions have been met by Buyer, Buyer and Seller agree that the earnest money (less credit report fees, and any other Buyer's costs) shall be refunded to Buyer in the event the financing contemplated herein by Buyer is not obtainable.

(d) The parties agree that Sawtooth Title Company shall provide said title policy and preliminary report of commitment and the "closing agent" for this transaction shall be Sawtooth Title Company. If a long-term escrow/collection is involved, then the escrow holder shall be _____

1. TOTAL PURCHASE PRICE IS Two hundred ten thousand and no/100 DOLLARS (\$ 210,000.00) payable as follows:

a. \$ _____ Cash down, including above Earnest Money (Closing costs are additional).
b. \$ _____ Balance of the purchase price (M.I.P. not included).

2. FINANCING. This agreement is contingent upon Buyer qualifying for: ☐ FHA ☐ VA ☐ Conventional ☐ IHA. Purchase loan balance as noted above for a period of _____ years at _____ % per annum. (If FHA or VA loan is sought, read the applicable provisions on the reverse side hereof.) Buyer shall pay no more than _____ points plus origination fee if any. Seller to pay only the discount points necessary in order to obtain above described financing but not to exceed _____ %.

☐ Buyer to ASSUME and ☐ will ☐ will not be required to qualify for an EXISTING LOAN(S) of approximately \$ _____ at no more than _____ % with monthly payments of approximately \$ _____ P.M.T. This agreement ☐ is ☐ is not contingent upon Lender releasing Seller's liability.

Type of loan _____ Buyer shall apply for such loan or assumption within three (3) banking days after Seller's acceptance of this agreement.

OTHER FINANCING, TERMS & CONDITIONS: See attached addendum

3. THIS AGREEMENT ☐ is ☒ is not CONTINGENT upon sale and closing of _____ on or before _____ listed with _____

(If a contingency is noted please read applicable conditions in Paragraph # 15 on reverse side. NOTE: Any waiver by the Buyer under this section will be a waiver of ALL contingencies, including financing.)

4. ITEMS SPECIFICALLY INCLUDED IN THIS SALE (If FHA/VA financing is sought see Item # 14 on reverse side): Proposed Bridge Plan for said property

5. ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: N/A

6. COSTS PAID BY: Costs in addition to those listed below may be incurred by Buyer and Seller. Unless otherwise agreed herein, or provided by law or required by lender, Buyer shall purchase Seller's reserve account if loan assumption.

☐ Yes ☐ No. Purchaser's Extended Coverage Title Policy requested. Additional premium paid by _____ See Item # 17 on reverse side.

If requested by lender or otherwise stated herein, the below costs will be paid as indicated.

Costs Paid By	Appraisal	Loan Assumpt.	Well Inspect.	Pump/Inspect Septic	City/County Code Inspect. If required	Contract and/or Document Prep.	Closing Agent's Fee	Long Term Escrow Fees	Lender or Code Repairs	Title Ins.
BUYER										
N/A	☒	☒	☒	☒	☒	☒		☒	☒	
SELLER										☒
SHARE EQUALLY							☒			

Cost of lender or code repairs not to exceed \$ _____. Discount points to be paid as agreed on line 28 and 30. SELLER UNDERSTANDS that as a result of any city or county inspections HE MAY BE REQUIRED TO MAKE REPAIRS to the property in order to comply with the housing code WHETHER OR NOT A SALE IS COMPLETED UNDER THIS AGREEMENT.

7. POSSESSION. Buyer shall be entitled to possession on ☐ closing ☐ other August 1, 1989. "Closing" means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to Seller. Taxes and water assessments (using the last available assessment as a basis), rents, insurance premiums, interest and reserves on liens, encumbrances or obligations assumed and utilities shall be pro-rated as of August 1, 1989

8. CLOSING. On or before the closing date, Buyer and Seller shall deposit with the closing agent all funds and instruments necessary to complete the sale. The closing date shall be no later than August 1, 1989 (Mountain Daylight Time) 6/29/89

9. ACCEPTANCE. Buyer's offer is made subject to the acceptance of Seller on or before 12:00 o'clock midnight of _____ If Seller does not accept this agreement within the time specified, the entire Earnest Money shall be refunded to Buyer on demand. Seller's counter offer (if any) is made subject to the acceptance of Buyer on or before 12:00 o'clock midnight of _____ TIME IS OF THE ESSENCE OF THIS AGREEMENT.

10. IMPORTANT - AGENCY DISCLOSURE. At the time of signing this agreement the agent working with the buyer represented buyer and the agent working with the seller represented seller. Each party signing this document confirms that prior written disclosure of agency was provided to him/her in this transaction. Each party to this transaction has read and understands the contents of the agency disclosure brochure previously received.

Listing Agency: McCarty, Deach, Fenton Selling Agency: Elkhorn Realty Company

By: Wendy Phone: 726-3317 By: Heinrich Phone: 622-7722

Buyer: Mark Hankinson Buyer's Address: P.O. Box 5176 Ketchum, Id. 83340

Buyer: _____ Buyer's Phone: Residence _____ Business _____

On this date, I/We hereby approve and accept the sale set forth in the above agreement and agree to carry out all the terms thereof on the part of the Seller and the undersigned further agrees to pay a total Brokerage fee of _____ to the above named Broker(s) for services.

I/We further acknowledge receipt of a true copy of this agreement signed by both parties.

Seller: Mark Hankinson Date: 6/30/89 Seller's Address: _____

Seller: _____ Date: _____ Seller's Phone: Residence _____ Business _____

A true copy of the foregoing agreement, signed by the Seller and containing the full and complete legal description of the premises, is hereby received on this _____

ADDENDUM TO PURCHASE AND SALE AGREEMENT
DATED JUNE 29, 1989
WARFIELD HOT SPRINGS

1. Offer is contingent upon receipt from seller of approved proposed building site plans for east side of Warm Springs Creek.
- ★ 2. Offer is also contingent upon property's having ample access to existing hot water.
3. Above contingencies to be removed by July 14, 1989.
4. Purchaser to execute a note secured by a First Deed of Trust (mortgage) on the property, in favor of the Seller for the balance of \$187,000, due and payable as follows:
\$57,000 plus interest on balance -- February 1, 1990
\$60,000 plus interest on balance -- February 1, 1991
\$70,000 plus interest -- February 1, 1992

Mark Hankinson
Buyer -- Mark Hankinson

6/30/89
Date

[Signature]
Seller

6/30/89
Date

Seller

Date

WARRANTY DEED

For Value Received

GARY GARRECHT AND MARICA GARRECHT, husband and wife

Hereinafter called the grantor, hereby grants, bargains, sells and conveys unto

LISA VIERLING, a single woman

whose address is: P.O. Box 5176, Ketchum, ID 83340

Hereinafter called the grantee, the following described premises, in Blaine County, Idaho, to-wit:

Lot 2, Block 1, WARFIELD HOT SPRINGS SUBDIVISION, Blaine County, Idaho, according to the official plat thereof recorded January 14, 1987, as Instrument No. 281076, records of Blaine County, Idaho.

SUBJECT TO Easements, Restrictions and encumbrances of records

BLAINE CO. REQUEST
OF SPOONSHILL LIME CO. INC.

307808

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

Dated

[Signature]
GARY GARRECHT

[Signature]
MARICA GARRECHT

STATE OF IDAHO, COUNTY OF BLAINE

On this 20th day of JULY, 1989, before me, a notary public in and for said State, personally appeared

GARY GARRECHT AND MARICA GARRECHT

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

Notary Public
CHERRY PUBLIC STATE OF FLORIDA
BY COMMISSION 212, 004, 00, 1992

STATE OF IDAHO, COUNTY OF BLAINE

I hereby certify that this instrument was filed for record at the request of
at 10:00 a.m. on July 20, 1989, in my office, and duly recorded in Book of Deeds at page 307808.

Notary Public
Deputy

EXHIBIT 2

Sawtooth Title Company
P. O. Box 188 * Ketchum, ID 83340
(208) 726-4595

ESCROW NUMBER: 16927

PROPERTY: Homestead Entry No. 389
Blaine County, ID.

Sec. 36 T4N R16E Boise Meridian Blaine County ID

TODAY'S DATE: 9/13/90
CLOSING DATE: 9/17/90

ESCROW CLOSING STATEMENT OF:

Mark Hankinson
Lisa Vierling

OTHER PARTY:
Lillian Couch

ESTIMATED BUYER'S CLOSING STATEMENT

DESCRIPTION	DEBITS	CREDITS
Purchase Price		
Prorate Taxes 1/01/90 to 9/17/90 @ \$66.86/12 mos.	45,000.00	
Earnest Money Deposit		47.44
Note and Deed of Trust Seller		1,000.00
Settlement/Closing Fee Sawtooth Title Company	162.50	25,000.00
Owner's Title Policy Fee Sawtooth Title Company	317.00	
Standard Mortgagee's Policy Sawtooth Title Company	20.00	
Recording fees: Deed \$6.00 Mtg \$6.00 Releases \$28.00	40.00	
Subtotals	45,539.50	26,047.44
Balance Due From Buyer		19,492.06
TOTALS	45,539.50	45,539.50

It is agreed by the undersigned that the foregoing statement is tentative and that it may change if a change in the closing date occurs or if any other unforeseen contingencies arise. In the event changes in the statement become necessary, you are nevertheless authorized to close this escrow. It is understood that we will receive a final statement of account if the above totals are changed.

APPROVED AND ACCEPTED THIS 14th Day of September, 1990.

Sawtooth Title Company

Wanda L. Kinghorn
By: Wanda L. Kinghorn

Mark Hankinson
Mark Hankinson
Lisa Vierling
Lisa Vierling

SCHEDULE A

Order No.	16927	Policy No.	GW 105019
Amount of Insurance	\$25,000.00	Premium	\$20.00
Date of Policy	September 18, 1990 at	2:32	a.m. p.m.

1. Name of Insured:

LILLIAN COUCH

2. The estate or interest in the land which is encumbered by the insured mortgage is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

MARK HANKINSON, a single man and LISA VIERLING, a single woman

4. The insured mortgage and assignments thereof, if any, are described as follows:

A Deed of Trust to secure an original indebtedness of \$25,000.00, recorded September 18, 1990, as Instrument No. 323788, records of Blaine County, Idaho.

Dated: September 13, 1990.

Grantor: Mark Hankinson, a single man and Lisa Vierling, a single woman.

Trustee: Sawtooth Title Company, an Idaho corporation.

Beneficiary: Lillian Couch, a widow.

Maturity Date: September 17, 1992.

5. The land referred to in this policy is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO

SCHEDULE B

Order No. 16927
Policy No. GW 105019

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

PART I

SECTION 1

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims or easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other matters which a correct survey would disclose, and which are not shown by public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water whether or not the matters excepted under (a), (b), or (c) are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material thereto or hereafter furnished, imposed by law and not shown by the public records.
7. The taxes for 1990, a lien but not yet due and payable; and the taxes for all subsequent years.
8. Rights of others in and to the uninterrupted flow of Warm Springs Creek.

DO NOT RECORD
THE FOLLOWING IS A COPY OF PROVISIONS 1 TO 8 INCLUSIVE OF PART A AND PROVISIONS 1 TO 8
INCLUSIVE OF PART B WHICH ARE INCORPORATED BY REFERENCE IN THE DEED OF TRUST APPEARING
ON THE REVERSE SIDE HEREOF

A. To protect the security of this Deed of Trust, Grantor Agrees:

1. To keep said property in good condition and repair, not to remove or demolish any building thereon, to complete or replace promptly and in good and workmanlike manner any building which may be destroyed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished thereon; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit anyone to commit, and consent, suffer or permit any act upon said property in violation of law, to cultivate, dig, quarry, fill, excavate, pile, or do any other act which may be dangerous or use of said property may be injuriously necessary, the specific enumeration herein not excluding the general.
2. To provide, maintain and deliver to Beneficiary the fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or all or portion of the indebtedness may be collected or any part thereof may be assigned to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
3. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear.
4. To pay, at least ten days before delinquency all taxes and assessments affecting said property, when due, all encumbrances, charges and liens with interest, on said property or any part thereof, which appear to be prior or superior liens, all costs, fees and expenses of this Trust. In addition to the payments due in accordance with the terms of this note hereby secured the Grantor shall at the option, and on demand of the Beneficiary, pay each month 1/12 of the unpaid principal interest, assessments, taxes and charges upon the property, notwithstanding in trust for Grantor's use and benefit and for the payment by Beneficiary of any such taxes when due. Grantor's failure so to pay shall constitute a default under this trust.
5. To pay immediately and with out demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, with interest from date of expenditure at eight per cent per annum.
6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may, make or do the same in such manner and to such extent as may seem necessary to protect the security hereof. Beneficiary or Trustee being authorized to enter upon said property for such purposes, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, pay, purchase, collect or compromise any encumbrance, charge or claim, pay necessary expenses, employ counsel and pay his reasonable fees.

B. It is mutually agreed that:

1. Any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of the or other insurance.
2. By accepting payment of any sum secured hereby when its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
3. At any time or from time to time, without liability hereunder and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may, at its option, or any part of said property, consent to the making of any map or plat thereof, join in granting any easement thereon; or join in any extension agreement or any agreement authorizing the use or change hereof.
4. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and return and upon payment of its fees, Trustee shall receive, without warranty, the property then held hereunder. The receipt in any instrument executed under this deed of list of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such conveyance may be described as "the person or persons legally entitled thereto."
5. An additional security, Grantor hereby gives to and covenants upon Beneficiary the right, power and authority, during the continuance of this Trust, to collect the rents, issues and profits of said property, reserving unto Grantor the right, prior to any default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name and for or after the court's order, such rents, issues and profits, including those not due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
6. Upon default by Grantor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of the default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to enter, to be sold the herein described property to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the recorder of each county wherein said real property or some part thereof is situated. Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed, Trustee, with consent of Grantor, shall sell said property at the time and place fixed by him in said notice of sale either as a whole or in separate parcels and in any order as it may determine, at public auction in the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee shall deliver to the purchaser in deed conveying the property so sold, but without any covenant or warranty expressed or implied. The receipt in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, Trustee, or Beneficiary, any purchaser at such sale.
7. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title and reasonably counsel fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at eight per cent per annum; all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.
8. This Deed applies to, issues to the benefit of, and binds all parties hereto, their heirs, assigns, devisees, administrators, executors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, or, if the note has been pledged, the pledgee thereof. In this Deed, whether the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.
9. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.
10. In the event of dissolution or termination of this Trust, the Beneficiary may substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the county in which the property herein described is situated, it shall be deemed evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the original trustee.

THE PROMISSORY NOTE OR NOTES, AND ANY EVIDENCES OF FURTHER AND/OR
ADDITIONAL ADVANCES MUST BE PRESENTED WITH THIS REQUEST

TO

You are hereby authorized and requested to execute a reconveyance hereunder and deliver same to

The undersigned hereby certifies that

the owner and holder of the debt mentioned in said deed of trust and that the same has never been assigned or transferred.

DATE:

ADDRESS:

TELEPHONE:

ESCROW INSTRUCTIONS
TO
SAWTOOTH TITLE COMPANY

Escrow No. 16927

Date September 13, 1990

We the undersigned, hereby instruct Sawtooth Title Company hereinafter referred to as "Closing Agent", when in receipt of all documents and monies as set out herein, to close this transaction according to the following instructions and information:

The parties have entered into a contract for the purchase and sale of subject property entitled Purchase and Sale Agreement and Dated September 7 1990, hereinafter referred to as the "Contract". The closing agent is hereby instructed to close the transaction in accordance with the terms of the Contract as well as these instructions, HOWEVER, in the event the terms of the contract and the terms of these instructions shall conflict, the terms of these instructions shall control.

PROPERTY: Homestead Entry No. 389 Sec. 36 T4N R16E B.M., Blaine County, ID
BUYER: Mark Hankinson, a single man and Lisa Vierling, a single woman

SELLER: Lillian Couch, a widow

TERMS:

Sale Price	\$ <u>45,000.00</u>
EM Deposit	\$ <u>1,000.00</u> Sawtooth Title Company
Cash	\$ _____
Assumption of	\$ _____
Assumption of	\$ _____
New Loan	\$ _____
Contract/DT	\$ <u>25,000.00</u>

(all assumption balances set out above shall be adjusted if necessary to the actual balances upon written verification from lender. If this transaction involves a new loan, these instructions must conform with the instructions from said lender.)

PRO-RATION DATE: September 17, 1990 CLOSING DATE: September 17, 1990
The closing agent is instructed to pro-rate all items to be pro-rated as of the above date with Seller being responsible for all such items up to but not including the date of pro-ration and the Buyer being responsible for such items from and including the date of pro-ration.

The property taxes for 1990 shall be pro-rated on the basis of the 1989 tax assessed. If the amount assessed is not known, taxes shall be pro-rated based on the estimate of \$ _____. The parties hereto acknowledge that there may be a difference between the amount of taxes pro-rated and the actual tax assessment ultimately levied. The parties hereto agree to hold the closing agent harmless for any pro-ration difference and further agree within 3 months of receiving the actual tax notice to adjust the difference between the actual tax and the estimated tax. The closing agent shall not pro-rate any utility charges, unless specifically instructed to do so.

COSTS: The following items shall be paid by BUYER (B), SELLER (S), DIVIDED BETWEEN BUYER AND SELLER EVENLY UNLESS OTHERWISE STATED (U) OR PAID OUTSIDE CLOSING (POC)

Attorney's Fees	<u>B</u> Title Insurance, Owner's Policy
Assumption Fee	<u>B</u> Title Insurance, Loan Policy
Closing Fee	Escrow Set-up Fee
Recording Fees	<u>x</u> WD <u>x</u> DT <u>x</u> Release(s) <u>QCD</u> Other
Real Estate Commission of	<u> </u> % to <u> </u>
Real Estate Commission of	<u> </u> % to <u> </u>

TITLE INSURANCE:

<u>B</u> Std () Ext. Coverage Owners Policy	\$ <u>45,000.00</u>
<u>B</u> Std () Ext. Coverage Loan Policy	\$ <u>25,000.00</u>
<u> </u> Std () Ext. Coverage Purchasers Policy	\$ _____

HAZARD INSURANCE:

 Assume Existing
 Obtain New, From _____ Paid _____

Escrow Instructions
Page 2

When the closing agent has received all properly executed documents and all funds necessary for the completion of this transaction and the title insurer is in a position to issue the type of policy(s) set out above, subject only to exception Nos. 1-8 as set out in their commitment dated September 10, 1990 and their usual printed exceptions. The closing agent is hereby authorized and instructed to record or file all necessary documents and disburse funds deposited in accordance with the amounts shown on the closing statement. Minor adjustments may be made for additional interest due to delay in disbursing beyond the control of the closing agent, for which the responsible party agrees to pay.

In the event this transaction does not close for any reason, the closing agent shall be entitled to reimbursement for any and all costs expended by it and shall be further entitled to an escrow cancellation fee not to exceed one half of the normal fee and the parties hereto agree to be jointly and severally liable for same. Further, any earnest money deposited with the closing agent shall be refunded only upon written instructions from the parties hereto, EXCEPT that, in the event the earnest money has been deposited by the Broker, the closing agent is hereby authorized to refund same to the broker's trust account for his disposition to the parties and in the event the closing agent has incurred expenses in connection herewith, the closing agent shall be entitled to retain so much of the earnest money as it is entitled to hereunder for the reimbursement of said expenses.

The closing agent shall have no responsibility for compliance with any truth-in-lending, usury or consumer protection laws of the United States or The State of Idaho.

The closing agent is directed to comply with the instructions contained in these instructions and the parties hereto agree to indemnify and hold harmless the closing agent from any and all actions or losses related hereto other than failure to comply herewith, including but not limited to any attorney's fees or costs incurred by the closing agent in defending itself in any such action.

THESE CLOSING INSTRUCTIONS CONSTITUTE A LEGALLY BINDING AGREEMENT, IF NOT FULLY UNDERSTOOD, SEEK LEGAL COUNSEL.

ADDITIONAL INSTRUCTIONS:

BUYER:

Mark Hankinson

Lisa Vierling

SELLER:

Lillian Couch

SAWTOOTH TITLE COMPANY

By: Edward A. [Signature]

EXHIBIT 3

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: A37-13054
Date Received: 8/31/1989
Receipt No: S009010
Received By: See

COPY

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: LISA VIERLING 208-788-4888
Address: P.O. BOX 869
SUN VALLEY, ID 83353
OR
Name: MARK HANKINSON 208-726-2219
Address: P.O. BOX 5176
KETCHUM, ID 83340

2. Date of Priority: JAN 01, 1900

3. Source: WARFIELD HOT SPRINGS Trib. to: WARM SPRINGS CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	17E	31	SW	NW	NW		BLAINE

5. Description of diverting works:
CONCRETE COLLECTOR BOX WITH 8" PIPELINE TO P/U.

6. Water is used for the following purposes:

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

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSE & 1 GUEST HOUSE G/SAME R/SAME

MICROFILMED
FEB 26 1993

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
04N	16E	36	NE		NE		DOMEST	
			NE		NE		HEAT	
			NE		NE		REC	
			SE		NE		DOMEST	
			SE		NE		HEAT	
			SE		NE		REC	

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
NONE

14. Remarks:
THIS WATER RIGHT HAS HISTORICALLY BEEN USED FOR THESE USES AT THIS P/U. SEE ALSO THE ATTACHMENTS PERMIT 37-08388 AND THE CORPORATE WARRANTY DEED DESCRIBING THE GRANTED USE AND MAINTANCE OF THE PIPELINE. (AKA PACE, INC.)

15. Basis of Claim: BENEFICIAL USE

COPY

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): *[Signature]* Date: 8-31-89
[Signature] Date: 8-31-89

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 31st day
of August 19 89 *[Signature]*
Notary Public

Seal

Residing at Twin Falls
My Commission Expires Dec 7, 1994

COPY

EXHIBIT 4



Croney Cove Camp, on Warm Sp
home camps in the area.

Photo from Regional History

niles above Ketchum. One of the earliest

courtesy Edith Ellis Hyde Collection.



EXHIBIT 5

October 6, 2002

P.O. Box #367

Wendell, Idaho 83355

Dear Lisa and whom it may concern,

Our family owned thr property adjacent to Dee Pace,s property from 1952 until was sold in the fall of 2000.

When Mr. Pace piped the hot water from the spring to his property, he crossed the property owned by the Couch family and our property, in order to get the water to his cabin. We had a verbal agreement with him for the continued use of the hot water in return for his crossing our land with the pipe. We used the water for several years during the 1970 s and 1980s. When I asked for a written agreement, he assured me that his word was just as good as a written agreement.

Lisa, I hope that this clarifies the situation .

Sincerely,

Mary Rita Miller

EXHIBIT 5
Affidavit of Lisa Vierling

EXHIBIT 6

12308

CORPORATE WARRANTY DEED

For Value Received, Pace, Inc., an Idaho corporation, hereinafter referred to as "Grantor", does hereby grant, bargain, sell and convey unto Geoffrey S. Bushell and Linda K. Bushell, husband and wife, whose address is P.O. Box 2798, Sun Valley, ID 33353, all of its right, title and interest in and to the following described real property located in Blaine County, Idaho, to-wit:

A portion of H.E. Survey 389 (Hailey 03144 and 105799), being a portion of Section 36, Township 4 North, Range 16 East, Boise Meridian, and Section 31 in Township 4 North, Range 17 East, Boise Meridian, Blaine County, State of Idaho, more particularly bounded and described as follows:

Beginning at Corner No. 1 of said H.E. Survey, as Corner No. 1, the true point of beginning of this tract, thence South 83°10' East 587.4 feet to Corner No. 2; thence South 18°12' West of 440.22 feet to Corner No. 3; thence South 57°12' West, 528 feet to Corner No. 4; thence South 57°12' West 170.94 feet to Corner No. 5; thence South 0°02' East 238.00 feet to Corner No. 6; thence North 86° West 403.7 feet, more or less, to a point on the Westerly boundary line of said H.E. Survey, being line 12-13 of said original survey, which point is Corner No. 7 of this description, and which point is South 7°18' West 1133.1 feet from Corner No. 13 of said original survey; thence North 7°18' East 1133.1 feet to Corner No. 8 of this description, which point is coincident with Corner No. 13 of said original H.E. Survey; thence South 83°10' East 403.92 feet to said Corner No. 1 point of beginning; EXCEPTING however, that certain tract excepted in the original Patent, more particularly described as follows: Beginning at Corner No. 14 of said original Patent, from which Corner No. 1 above mentioned bears N. 0°04' East 228.36 feet; thence South 58°56' East 57.42 feet to Corner No. 15; thence South 44°13' West 70.82 feet to Corner No. 16; thence South 44°13' West 91.08 feet to Corner No. 17; thence North 12°22' East 166.98 feet to Corner No. 18; thence South 58°56' East 33 feet to place of beginning of said excepted tract.

ALSO EXCEPTING the following tract: A parcel of land within Homestead Entry No. 389 in Section 36, Township 4 North, Range 16 East, Boise Meridian, Blaine County, State of Idaho, and more particularly described by

EXHIBIT A

MAR 05 1989

245698

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Section 36, Township 4 North, Range 16 East, Boise Meridian, Blaine County, State of Idaho, and more particularly described by

metes and bounds as follows: Commencing at a stone marking Corner No. 5 of said H.E.S. No. 389; thence South 0°02' East 178.5 feet along the East boundary of said H.E.S. No. 389 to a 1/2" rebar, said rebar marking the true point of beginning; thence South 0°02' East 59.5 feet along the East boundary of H.E.S. No. 389, to a 1/2" rebar; thence North 86°00' West 231.9 feet to a 1/2" rebar on the Easterly bank of Warm Springs Creek; thence North 35°16' East 67.5 feet along the Easterly bank of Warm Springs Creek to a 1/2" rebar; thence South 86°31' East 192.7 feet to a 1/2" rebar, said rebar marking the true point of beginning.

RESERVING TO THE GRANTOR the right to use the flow of hot water in the gravity feed water line that now exists. It is understood that Pace, Inc. and its successors shall not increase or expand on that existing flow. This right is to be appurtenant to, and run with, the following described property:

A portion of W. H. Warfield H.E.S. No. 389 in Section 36, Township 4 North, Range 16 E.B.M., Blaine County, Idaho, described as follows:

Beginning at a point on the East line of said H.E.S. No. 389, said point being 348 feet South of Corner No. 5 of said H.E.S. No. 389,
Thence South along the East line of said H.E.S. No. 389 a distance of 118 feet;
Thence West a distance of 161 feet, more or less, to the center of Warm Springs Creek;
Thence in a Northerly direction along the centerline of Warm Springs Creek a distance of 160 feet, more or less to a point which is North 86°00' West from the point of beginning;
Thence South 86°00' East a distance of 206 feet, more or less, to the point of beginning.

GRANTING, however, the right to share the use, repair and maintenance of the water line referred to above, this right to be appurtenant only to that portion of the property conveyed herein lying South and East of Warm Springs Creek, commonly known as the Crony Cove Parcel, containing approximately two and one-half (2 1/2) acres.

SUBJECT TO:

Reservations contained in Patent from the United States of America to William H. Warfield dated October

RECEIVED
MAR 03 1989

25, 1919, recorded December 17, 1919, in Book 99 of Patents, page 259, records of Blaine County, Idaho, reciting: "Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States."

TO HAVE AND TO HOLD the same unto the Grantees, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the Grantees that it is the owner in fee simple of said premises, that they are free from encumbrances except as above described and that it will warrant and defend the same from all lawful claims whatsoever.

Dated this ~~1st~~ day of November, 1983.

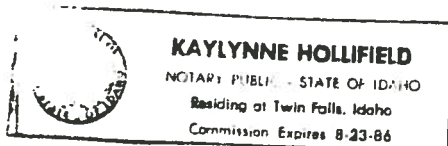
PACE, INC.

By: D. L. Pace
President

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this ~~1st~~ day of November, 1983, before me, the undersigned, a notary public in and for said county and state, personally appeared D. L. Pace, known to me to be the President of Pace, Inc., the corporation whose name is subscribed to the within instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the same day and year in this certificate first above written.



Kaylynne Hollifield
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls, Idaho

RECORDED
MAR 01 1989

Travis L. Thompson, ISB #6168
BARKER, ROSHOLT & SIMPSON LLP
1221 W. Idaho St., Suite 600
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Lisa Vierling

RECEIVED

NOV 27 2002

Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT BY)
JAY PACE ALLEGING ILLEGAL)
WATER USE ON LANDS OWNED)
OR CONTROLLED BY LISA VIERLING)
_____)
AFFIDAVIT OF
MICHAEL STONEBACK

STATE OF IDAHO)
) ss.
County of Blaine)

COMES NOW Michael Stoneback, being first duly sworn upon oath, and states
as follows:

1. I currently reside at 1034 Warm Springs Road, located approximately 12
miles northwest of Ketchum, Idaho.

2. This property currently consists of what is known as Lot 2, Block 1,
Warfield Hot Springs Subdivision, also locally known as the "Crony Cove" parcel, and
the adjacent Tax Lot 3649. I have lived at this property since October 1994.

3. I have personal knowledge of the pipeline that crosses this property and
the various uses associated with it. Since 1994 I have used the water for domestic,
heating, and recreation purposes.

4. The water system on our property consists of various valves and smaller pipes off the main pipeline used for domestic, heating, and recreation purposes. Attached to my affidavit is a map that I created to visually describe the system on our property. *See Exhibit 1.* Over the weekend of November 2, 2002, I made various measurements where the water is not returned to the main pipeline to calculate our diversion rate at the time, and the temperature of the water when it enters and leaves our property. For the quantity measurements I used a five-gallon bucket and my watch. According to my measurements, the water system on our property was diverting approximately 12 gallons per minute that was not returned to the main pipeline. As for temperature, the water in the pipeline entering our property was approximately 120° Fahrenheit and was approximately 117° Fahrenheit when it left the property. This change in temperature includes the difference after the pipeline crosses through Warm Springs Creek.

5. Since I have lived on the property Mr. D.L. Pace never questioned the use Lisa and I have made from the pipeline and was well aware of the fact that we built a guest house over the pipeline. I first met Jay Pace, Mr. D.L. Pace's son, in the summer of 1997. Jay informed me that the hot tub on his property was not hot enough. Earlier that spring the high water in Warm Springs Creek washed out the main pipeline. As a result, the pipeline filled with sand and other debris causing flow problems to the Pace property. I was not able to repair the pipeline until late June 1997. After cleaning out the pipeline I was able to adjust the flow to satisfy Jay's concerns regarding the temperature of his hot tub. After Jay left for the summer his son Benjamin moved in. That winter Ben called to inform me that the hot tub was not hot enough. I adjusted the flow again to alleviate his concerns. I have always responded to the concerns of the Pace family to help alleviate

any temperature concerns for the hot tub on their property. I have even personally observed the system on the Pace property with Jay's son Ben to help him fix what had been a flow problem due to their filter system on the pipeline in the winter of 1997. I have also observed the system on the Pace property with Jay. The system does not enter the home and supply it with hot water for domestic and heating purposes. The only use I am aware of on the Pace property is for the purpose of filling and heating their hot tub. Only recently, when Lisa received a letter in August 2002 from Mr. Speck on Jay's behalf, did the Paces question our use of the hot water from the pipeline.

6. I have personally maintained and repaired the pipeline on four occasions. As mentioned earlier, the high water in Warm Springs Creek caused the line to break in 1997. This break resulted in a great amount of debris and sediment in the pipeline. I personally repaired the pipeline. I have made several expenditures on repairing and maintaining the pipeline without ever receiving any assistance from the Paces.

7. I have relied on using the hot water from the pipeline for approximately 8 years. The water serves as the domestic hot water source for our home.

DATED this 20 day of November, 2002.


Michael Stoneback

STATE OF IDAHO)
)
County of Blaine)

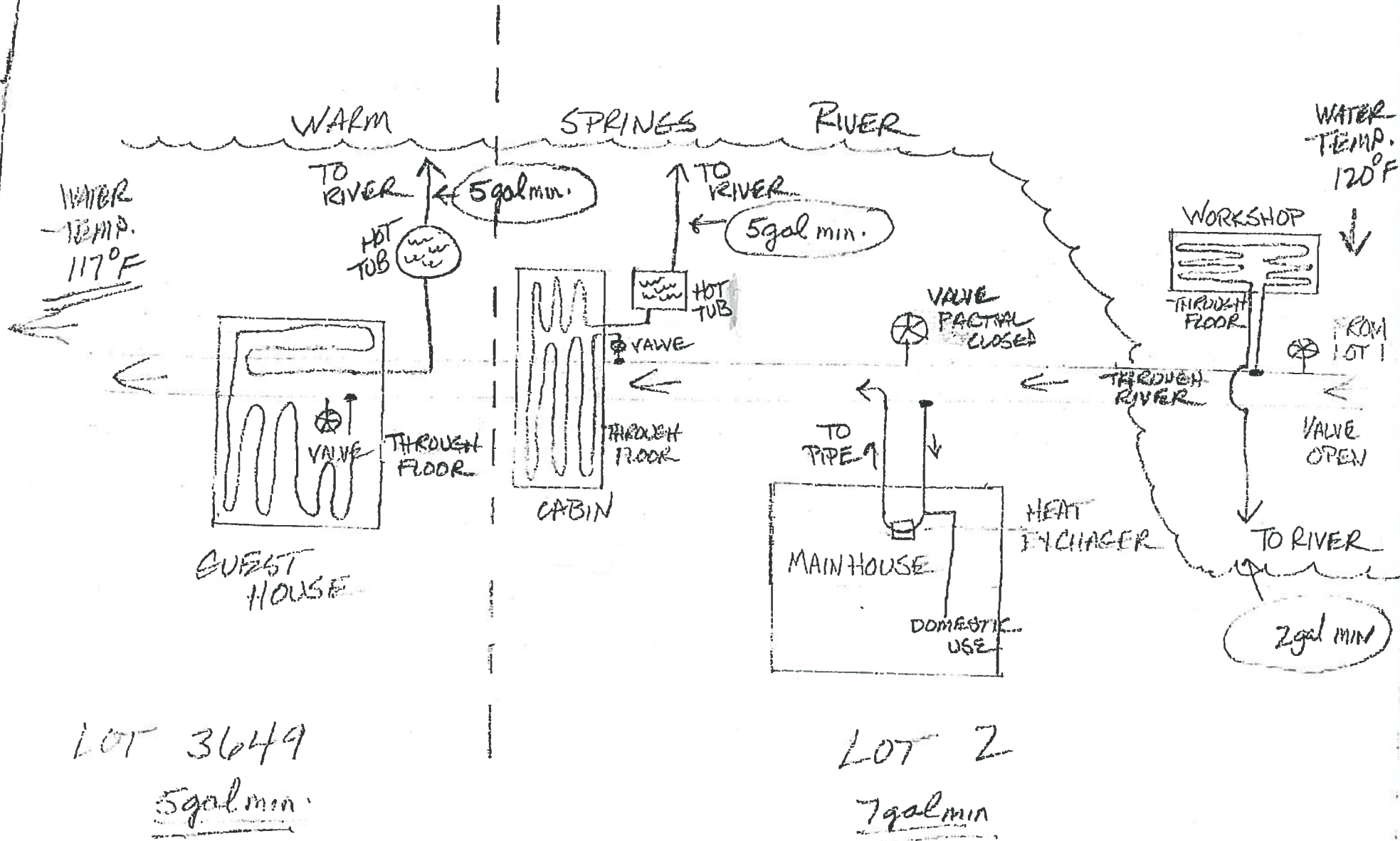
On this 20th day of November, 2002 before me, the undersigned a Notary Public in and for said State, personally appeared MICHAEL STONEBACK, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Debra Magee
NOTARY PUBLIC FOR IDAHO
Residing at: Bellevue, ID
Commission Expires: 12/14/2004

EXHIBIT 1



TO: TRAVIS THOMPSON

FROM MICHAEL STONEBARK

LOT 2

WORKSHOP : HOT WATER IS DIVERTED FROM PIPE THROUGH FLOOR AND DUMPED INTO RIVER AT 2 GAL PER MIN. TEMP. AT WORKSHOP IS 120°F. (CANDY THERMOMETER)

MANHOUSE : HOT WATER IS DIVERTED FROM PIPE THROUGH HEAT EXCHANGER BACK TO PIPE. FROM THAT DIVERSION WE TAKE WATER FOR DOMESTIC USE, (WASHING CLOTHES, DISHES, BATHING).

CABIN : HOT WATER IS DIVERTED FROM PIPE, THROUGH FLOOR TO TUB, TO RIVER AT 5 GAL. PER MIN.

LOT 3649

GUEST HOUSE: HOT WATER IS DIVERTED FROM PIPE, THROUGH FLOOR TO TUB, TO RIVER AT 5 GAL. PER MIN. HOT WATER LEAVES GUESTHOUSE AT 117°F .

- NOTE: ① SUMMER OF 2001, I INSULATED HOT WATER PIPE THAT RUNS THROUGH RIVER. THIS WAS DONE AT OUR OWN EXPENSE AND TIME. THIS HELPED REDUCE HOT LOSS.
- ② THIS MONTH A HEAT EXCHANGER WILL BE INSTALLED ON CLOSED SYSTEM IN MAIN HOUSE. THIS WILL ALSO HELP REDUCE HEAT LOSS THROUGH HEAT EXCHANGER.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 4, 2002

TRAVIS THOMPSON
PO BOX 2139
BOISE ID 83701-2139

JAMES SPECK
PO BOX 987
KETCHUM ID 83340

RE: Warfield Hot Springs

Gentlemen:

The intent of this letter is to inform you that per mutual agreement, the date for the submission of information to the Department as outlined in the Order to Show Cause signed 10/10/02 has been extended to November 27, 2002.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. D. Merritt'.

Allen D. Merritt
Southern Region Manager

cc:
Lisa Vierling
Jay Pace



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 10, 2002

Travis Thompson
PO Box 2139
Boise, ID 83701-2139

James Speck
PO Box 987
Ketchum, ID 83340

RE: Warfield Hot Springs

Gentlemen:

Based on the written complaint our office received about the Vierling water use of Warfield Hot Springs the department has issued the enclosed "Show Cause" order to both Vierling and Pace. Both party's rights stem from beneficial use claims and it is appropriate for the department to compel the parties to document the history of development and other information about their uses. After submission of the information requested further field investigation may be conducted by the department.

Currently our office lacks sufficient information to warrant issuance of a notice of violation for illegal water use.

I have discussed this matter with Phil Rassier and it appears most appropriate that the party's rights be determined in the SRBA process. It is suggested the parties consider filing a motion with the SRBA court to determine these rights out of sequence if expedient action is required unless the information made available to the department clearly documents that one or both of the claimed uses is unauthorized.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CC: Lisa Vierling
Jay Pace

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT BY JAY PACE)
ALLEGING ILLEGAL WATER USE ON LANDS)
OWNED OR CONTROLLED BY LISA VIERLING)
_____)

**ORDER TO
SHOW CAUSE**

The Director of the Department of Water Resources (department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the state of Idaho and the rules promulgated by the department, and being authorized to order the cessation of violations or apparent violations of the provisions of the law relating to the appropriation, distribution and use of water makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On August 31, 1989 Lisa Vierling &/or Mark Hankinson filed a claim in the Snake River Basin Adjudication alleging or claiming a water right for domestic, heating and recreation uses from water diverted from Warfield Hot Springs tributary to Warm Springs Creek for uses on land locally known as Crony Cove. The claim indicates the water uses have a priority of January 1, 1900. The claim has been numbered 37-13054 in the department's records.

2. On September 12, 1988 D. L. Pace filed a claim in the Snake River Basin Adjudication alleging or claiming a water right for domestic purposes of an artesian spring tributary to Warm Springs Creek. The claim indicates the water use has a priority of January 1, 1900. The claim has been numbered 37-11296. This claim has been amended and currently is in the name of Jay Pace and claims the entire flow of the spring (0.50 cfs) for heating, domestic and recreation uses.

3. On September 23, 2002 the department received a written complaint from James Speck, attorney for Jay and Suzi Pace, alleging that the Lisa Vierling water use from Warfield Hot Springs was established in 1989 in violation of the mandatory permit requirement for establishing a surface water appropriation and further demanded that the department pursue a civil enforcement action pursuant to Sections 42-351 and 42-1701(B) of the Idaho Code to protect his client's interest in the use of Warfield Hot Springs water. The complaint included an attached letter dated August 9, 2002 from Mr. Speck to Lisa Vierling indicating the Vierling use is wrongfully interfering with the Pace right by removing all of the heat value of the water before it reaches the Pace property.

4. Review of the claim records for 37-13054 and 37-11296 finds that they do not contain sufficient detailed evidence to evaluate the priority date. In other words no

detailed evidence is found to show when the water was first diverted for the uses being claimed at the rates being claimed. Additionally the claims identify different sources and different legal descriptions of the points of diversion.

CONCLUSIONS OF LAW

1. Section 42-351(1), Idaho Code, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

2. Section 42-201, Idaho Code, provides in part as follows:

All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise.

3. Section 42-1410, Idaho Code, provides in part:

The director shall commence an examination of the water system, the canals and ditches and other works, and the uses being made of water diverted from the water system for water rights acquired under state law. The examination shall continue in a manner and for such a period of time as the director determines is necessary to evaluate the extent and nature of each water right for which a notice of claim under state law has been filed. The director may conduct any fact-finding hearing necessary for a full and adequate disclosure of the facts.

(2) The director and other employees of the department shall have authority to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source and may require the cooperation of the claimant in investigating the claimant's water use. The employee investigating the claimant's use shall make a reasonable effort to contact the claimant to schedule a date and approximate time for the examination. If the well or diversion works are located in a building other than an unlocked structure used solely for housing the well or other diversion works in which there is no reasonable expectation of privacy, the employee shall only enter the building in the absence of a court order after requesting and receiving the permission of the claimant or other occupant. The director may request the district court to issue an order compelling inspection and subpoenas requiring the attendance of any witness or the production of documents in accordance with the Idaho rules of civil procedure.

4. The diversion of the public waters of the state of Idaho not in compliance with existing water rights must be stopped to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. The Director of the department should issue an Order to Show Cause to Lisa Vierling and Jay Pace directing them to within 30 days clearly demonstrate when their water uses were first established and to provide a detailed description of their delivery system and in what amount their water uses consist.

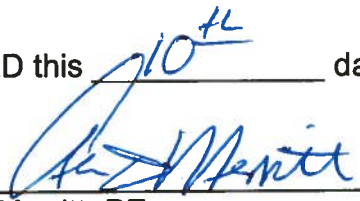
ORDER

IT IS HEREBY ORDERED as follows:

1. Lisa Vierling shall within 30 days of the date of this order demonstrate to the satisfaction of the Director that the water used on the property locally know as Crony Cove has been appropriated consistent with Idaho law by clearly demonstrating when her water uses were first established, by providing a detailed description of her delivery system, dates on which any elements of the delivery system have been modified or added. Additionally Lisa Vierling shall provide copies of records of measurements of flow rates and/or temperatures made within the system or estimates of same and any other documents she wishes the Director to consider pertaining to her water use.

2. Jay Pace shall within 30 days of the date of this order demonstrate to the satisfaction of the Director that the water used on his property in the vicinity of Warfield Hot springs has been appropriated consistent with Idaho law by clearly demonstrating when his water uses were first established, by providing a detailed description of his delivery system, dates on which any elements of the delivery system have been modified or added. Additionally Jay Pace shall provide copies of records of measurements of flow rates and/or temperatures made within the system or estimates of same and any other documents he wishes the Director to consider pertaining to his water use.

DATED this 10th day of October, 2002



Allen Merritt, PE
Southern Region Manager

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of October, 2002 a true and correct copy of the above and foregoing document was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary Baldwin

Secretary

Lisa Vierling
PO Box 869
Sun Valley, ID 83353

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax _____

Travis Thompson
PO Box 2139
Boise, ID 83701-2139

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax x (208) 344-6034

James Speck
PO Box 987
Ketchum, ID 83340

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax x (208) 726-0752

Jay Pace
10331 E Charter Oak Dr
Scottsdale AZ, 85260

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax _____

TRANSMISSION VERIFICATION REPORT

TIME : 10/10/2002 13:00
NAME : IDWR SOUTHERN REGION
FAX : 2087363037
TEL : 2087363033

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

10/10 12:58
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00:01:34
05
OK
STANDARD
ECM

TRANSMISSION VERIFICATION REPORT

TIME : 10/10/2002 12:56
NAME : IDWR SOUTHERN REGION
FAX : 2087363037
TEL : 2087363033

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

10/10 12:55
912083446034-244305
00:01:36
05
OK
STANDARD
ECM

Merritt, Allen

From: Young, Norm
Sent: Wednesday, October 09, 2002 12:28 PM
To: Merritt, Allen
Subject: RE: Warfield Hot Springs conflict

Allen: I hadn't read this email when I responded to your earlier email and draft order. I think this works, but I might add to the last paragraph a phrase such as " unless the information made available to the department clearly documents that one or both of the claimed uses is unauthorized." This phrase is intended to explain why IDWR is sending the show cause order if the resolution will be before the SRBA. Norm

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

From: Merritt, Allen
Sent: Wednesday, October 09, 2002 11:50 AM
To: Young, Norm; Rassier, Phil
Cc: Tuthill, Dave; Jones, Doug
Subject: Warfield Hot Springs conflict

Base on the conversations yesterday and e-mails regarding this matter I have drafted the following: << File: Warfield letter.doc >> << File: Warfield Show Cause.doc >>

I plan on sending these out tomorrow unless we want to re-think this.

Allen

Merritt, Allen

From: Young, Norm
Sent: Wednesday, October 09, 2002 12:22 PM
To: Merritt, Allen
Cc: Rassier, Phil; Tuthill, Dave
Subject: RE: Response to complaint about illegal water use

Allen:

I have reviewed the order to show cause and Shelley's and Dave's comments. The order, modified as suggested, will get the matter started. Based on our discussions yesterday with Phil, it seems like the appropriate course will be for one or both of the parties to ask for expedited review by the SRBA court if they want to get this resolved. Unless the information submitted as a result of this order is so definitive that we can regulate one or both as unauthorized uses, I do not see IDWR starting an administrative action that has the potential of evolving into a judicial matter competing with the ongoing SRBA.

One question about the order as drafted: The claim filed by Speck's clients does not seem to identify the source using the name of "Warfield Hot Spring." Did the complaint filed by Speck allege that his client's use of Warfield Springs water was being injured by Vierling? If not the finding needs to be reworded.

Please final the order and send with your signature. We talked about a cover letter that clarified the purposes for sending the order and the possible uses of the information submitted. I like the idea of letting the parties rebut the information submitted, if that is acceptable legally.

Norm

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

From: Merritt, Allen
Sent: Monday, October 07, 2002 4:12 PM
To: Young, Norm; Tuthill, Dave; Luke, Tim
Cc: Saxton, Glen; Jones, Doug; Rassier, Phil
Subject: Response to complaint about illegal water use

I have drafted a show cause order in response to a complaint about an illegal hot water use. Both the complainant and the person being complained against base there water use on SRBA claims with the same priority. Both have attorneys. At issue may be the heat value and not flow rate. The SRBA claims are confusing and we lack a lot of facts.

<< File: Warfield Show Cause.doc >>

Please critique this.

Thanks

Merritt, Allen

From: Young, Norm
Sent: Tuesday, October 08, 2002 5:25 PM
To: Merritt, Allen
Subject: FW: Response to complaint about illegal water use

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

From: Rassier, Phil
Sent: Tuesday, October 08, 2002 8:18 AM
To: Young, Norm; Homan, John
Subject: FW: Response to complaint about illegal water use

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

From: Keen, Shelley
Sent: Tuesday, October 08, 2002 8:08 AM
To: Rassier, Phil
Subject: RE: Response to complaint about illegal water use

Phil,

Thanks for the chance to comment. Here are my thoughts.

Finding of fact no. 4 seems to raise two issues -- the priority of the uses and the source of the water for the uses. In resolving this dispute, the priority of the water uses is moot if the source is not the same for both claims. I recommend splitting the issues apart into two itemized findings. Could Allen order the claimants to submit what information they have to demonstrate that the "artesian spring" and Warfield Hot Springs are the same source?

The "Order" is vague when compared with conclusion of law no. 5. In items 1 and 2 of the "Order" perhaps Allen could say "... appropriated consistent with Idaho law by clearly demonstrating when their water uses were first established and providing a detailed description of their delivery system and in what amount their water uses consist." I also like the idea of requiring them to show why the amounts are not in excess of what is reasonable (beneficial). If Vierling is diverting more than what is reasonably required, perhaps just diminishing their diversion will satisfy Pace.

Will these claimants have some opportunity to rebut each other's assertions. For instance, if Vierling submits documentation of a use prior to the mandatory permit requirement, will Pace have a chance to prove otherwise? I know they'll have an opportunity in the normal course of the SRBA, but what could be done to expedite that opportunity?

Shelley

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

From: Rassier, Phil
Sent: Monday, October 07, 2002 5:36 PM
To: Keen, Shelley
Cc: Homan, John
Subject: FW: Response to complaint about illegal water use

Shelley,

These are the rights that we met on awhile back. Do you have any comments on Allen's draft order.

Phil

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

From: Merritt, Allen
Sent: Monday, October 07, 2002 4:12 PM

SPECK & AANESTAD

A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

September 17, 2002

JAMES P. SPECK
jimspeck@cox-internet.com

DOUGLAS J. AANESTAD
aanestad@cox-internet.com

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301

RECEIVED

SEP 23 2002

Department of Water Resources
Southern Region

Re: Lisa Vierling - Illegal Diversion of Water from Warfield Hot Springs

Dear Allen:

I represent Jay and Suzi Pace. The Pace family is a longtime resident of the upper Warm Springs area west of Ketchum, Idaho. They have filed a claim in the SRBA (37-112996) for the historic beneficial uses of the hot water from one of the springs which make up the Warfield Hot Springs.

I am enclosing a copy of my August 9, 2002 letter to Ms. Lisa Vierling in which I notified Ms. Vierling that she is illegally diverting water from the hot springs. Since no earlier than 1989, Ms. Vierling has been diverting water out of the hot springs and using it to heat at least three houses and one barn and for recreational use in three hot tubs on her property. She does not have any water permit, license or decree for this use. Instead, she merely has a claim filed in the SRBA for a domestic use which cannot legally or otherwise be based upon any use commencing in 1989 or later in the absence of filing for an appropriate permit from the Department.

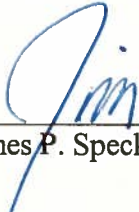
We hereby demand that the Department pursuant to Idaho Code Sections 42-351 and 42-1701(B), issue a written Notice of Violation to Ms. Vierling and pursue a civil enforcement action requiring Ms. Vierling to cease and desist the illegal diversion of water from the Warfield Hot Springs.

Please give this matter your immediate attention. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By:


James P. Speck

JPS:sgg

enclosures

cc: Client (w/enclosures)

Steve Reuther (w/enclosures)

Travis L. Thompson (w/enclosures)

SPECK & AANESTAD

A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

JAMES P. SPECK
jimspeck@cox-internet.com
DOUGLAS J. AANESTAD
aanestad@cox-internet.com

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

RECEIVED

SEP 23 2002

Department of Water Resources
Southern Region

August 9, 2002

Ms. Lisa Vierling
P.O. Box 869
Sun Valley, ID 83353

**Re: Jay and Suzi Pace/Warfield Hot Springs Water
Our File No. 1267/020059**

Dear Lisa:

I represent Jay and Suzi Pace. They have asked me to investigate and determine what rights, if any, you have to use the hot water diverted from the Warfield Hot Springs on the Reuther property through the old pipeline that delivers water from those springs to their property. As you well know, this system was developed by the Pace family to provide water for heating and recreational purposes on their property. This historic use is properly claimed by my clients in the *Snake River Basin Adjudication* (the "SRBA").

In 1983, Pace, Inc. sold to Geoff and Linda Bushell all of the property that the Bushells eventually subdivided into the Warfield Hot Springs Subdivision (the "Subdivision"). In the Corporation Warranty Deed used to convey title to the property (a copy is enclosed), Pace, Inc. reserved the water right described above by the provision that reserves the "entire flow of the existing pipeline". Pace, Inc. did, however, convey to the Bushells the right to "share the use repair and maintenance of the water line." This is not a grant of the right to use the "water". It is not the grant or conveyance of any portion of the water right for use of the hot springs water owned and claimed by Pace, Inc. It is merely a right to use the pipeline to deliver any water right the Bushells or their successors may eventually develop or acquire for the Crony Cove parcel since the pipeline goes right by that parcel. Finally, there is no right to use the pipeline for delivering water to any other portion of the property sold to the Bushells.

You acquired Lot 1 of the Subdivision, which includes the Crony Cove parcel, by a deed dated July 20, 1989 (a copy is enclosed). There was no use of water from the hot springs on your property at any time prior to your development. After May 20, 1971, a water right to use the surface waters of the State of Idaho may only be acquired through the Idaho Department of Water Resources ("IDWR") permit and license process. Neither you nor any of your predecessors in interest to your property have obtained the required permit or licensed water right. Therefore, your use of the hot water from the springs on the Reuther property is an illegal diversion of water. Furthermore, you are wrongfully interfering with my clients' right to use their water right by removing virtually all of the heat value of the water before it reaches the Pace property.

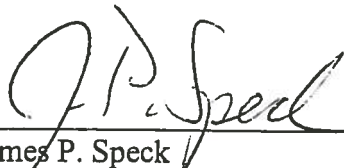
Ms. Lisa Vierling
August 9, 2002
Page 2

My clients request that you cease all use of the hot springs water diverted through their pipeline. They understand you will need some time to convert your heating systems to alternative methods. Therefore, they have authorized me to wait until October 1, 2002 before I request IDWR to require you to cease and desist your illegal use of the hot springs water and take such other action as may be necessary to protect their valuable water right.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By:


James P. Speck

JPS/j

cc: clients

F:\WPDATA\JIM\PACE\CORRESP\ VierlingLtr080202.wpd

12308

CORPORATE WARRANTY DEED

For Value Received, Pace, Inc., an Idaho corporation, hereinafter referred to as "Grantor", does hereby grant, bargain, sell and convey unto Geoffrey S. Bushell and Linda K. Bushell, husband and wife, whose address is P.O. Box 2798, Sun Valley, ID 83353, all of its right, title and interest in and to the following described real property located in Blaine County, Idaho, to-wit:

A portion of H.E. Survey 389 (Hailey 03144 and 105799), being a portion of Section 36, Township 4 North, Range 16 East, Boise Meridian, and Section 31 in Township 4 North, Range 17 East, Boise Meridian, Blaine County, State of Idaho, more particularly bounded and described as follows:

Beginning at Corner No. 1 of said H.E. Survey, as Corner No. 1, the true point of beginning of this tract, thence South 83°10' East 587.4 feet to Corner No. 2; thence South 18°12' West of 440.22 feet to Corner No. 3; thence South 57°12' West, 528 feet to Corner No. 4; thence South 57°12' West 170.94 feet to Corner No. 5; thence South 0°02' East 238.00 feet to Corner No. 6; thence North 86° West 403.7 feet, more or less, to a point on the Westerly boundary line of said H.E. Survey, being line 12-13 of said original survey, which point is Corner No. 7 of this description, and which point is South 7°18' West 1133.1 feet from Corner No. 13 of said original survey; thence North 7°18' East 1133.1 feet to Corner No. 8 of this description, which point is coincident with Corner No. 13 of said original H.E. Survey; thence South 83°10' East 403.92 feet to said Corner No. 1 point of beginning; EXCEPTING however, that certain tract excepted in the original Patent, more particularly described as follows: Beginning at Corner No. 14 of said original Patent, from which Corner No. 1 above mentioned bears N. 0°04' East 228.36 feet; thence South 58°56' East 57.42 feet to Corner No. 15; thence South 44°13' West 70.82 feet to Corner No. 16; thence South 44°13' West 91.08 feet to Corner No. 17; thence North 12°22' East 166.98 feet to Corner No. 18; thence South 58°56' East 33 feet to place of beginning of said excepted tract.

ALSO EXCEPTING the following tract: A parcel of land within Homestead Entry No. 389 in Section 36, Township 4 North, Range 16 East, Boise Meridian, Blaine County, State of Idaho, and more particularly described by

EXHIBIT A

APR 25 1993

245698

metes and bounds as follows: Commencing at a stone marking Corner No. 5 of said H.E.S. No. 389; thence South 0°02' East 178.5 feet along the East boundary of said H.E.S. No. 389 to a 1/2" rebar, said rebar marking the true point of beginning; thence South 0°02' East 59.5 feet along the East boundary of H.E.S. No. 389, to a 1/2" rebar; thence North 86°00' West 231.9 feet to a 1/2" rebar on the Easterly bank of Warm Springs Creek; thence North 35°16' East 67.5 feet along the Easterly bank of Warm Springs Creek to a 1/2" rebar; thence South 86°31' East 192.7 feet to a 1/2" rebar, said rebar marking the true point of beginning.

RESERVING TO THE GRANTOR the right to use the flow of hot water in the gravity feed water line that now exists. It is understood that Pace, Inc. and its successors shall not increase or expand on that existing flow. This right is to be appurtenant to, and run with, the following described property:

A portion of W. H. Warfield H.E.S. No. 389 in Section 36, Township 4 North, Range 16 E.B.M., Blaine County, Idaho, described as follows:

Beginning at a point on the East line of said H.E.S. No. 389, said point being 348 feet South of Corner No. 5 of said H.E.S. No. 389,
Thence South along the East line of said H.E.S. No. 389 a distance of 118 feet;
Thence West a distance of 161 feet, more or less, to the center of Warm Springs Creek;
Thence in a Northerly direction along the centerline of Warm Springs Creek a distance of 160 feet, more or less to a point which is North 86°00' West from the point of beginning;
Thence South 86°00' East a distance of 206 feet, more or less, to the point of beginning.

GRANTING, however, the right to share the use, repair and maintenance of the water line referred to above, this right to be appurtenant only to that portion of the property conveyed herein lying South and East of Warm Springs Creek, commonly known as the Crony Cove Parcel, containing approximately two and one-half (2 1/2) acres.

SUBJECT TO:

Reservations contained in Patent from the United States of America to William H. Warfield dated October

25, 1919, recorded December 17, 1919, in Book 99 of Patents, page 259, records of Blaine County, Idaho, reciting: "Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States."

TO HAVE AND TO HOLD the same unto the Grantees, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the Grantees that it is the owner in fee simple of said premises, that they are free from encumbrances except as above described and that it will warrant and defend the same from all lawful claims whatsoever.

Dated this 1st day of November, 1983.

PACE, INC.

By: D. L. Pace

President

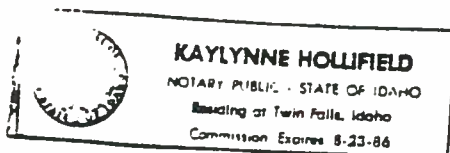
STATE OF IDAHO)

County of Twin Falls)

) ss.

On this 1st day of November, 1983, before me, the undersigned, a notary public in and for said county and state, personally appeared D. L. Pace, known to me to be the President of Pace, Inc., the corporation whose name is subscribed to the within instrument or the person who executed the instrument on behalf of said corporation and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the same day and year in this certificate first above written.



Kaylynne Hollifield
NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls, Idaho
RECORDED
MAR 01 1989

WARRANTY DEED

For Value Received

GARY GARRECHT AND MARICA GARRECHT, husband and wife

Hereinafter called the grantor, hereby grant, bargain, sell and convey unto

LISA VIERLING, a single woman

whose address is: P.O. Box 5176, Ketchum, ID 83340

Hereinafter called the grantee, the following described premises, in _____ County, Idaho, to-wit:

Lot 2, Block 1, WARFIELD HOT SPRINGS SUBDIVISION, Blaine County, Idaho, according to the official plat thereof recorded January 16, 1987, as Instrument No. 281076, records of Blaine County, Idaho.

SUBJECT TO Easements, restrictions and encumbrances of records

BLAINE CO. REQUEST
OF RECORDS DIV. CO. INC.

307808

69 JUL 21 PM 4 16
MARY GREEN, CLERK

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

Dated

GARY GARRECHT

MARICA GARRECHT

STATE OF IDAHO, COUNTY OF _____
On this _____ day of JULY, 1989
before me, a Notary Public in and for said State, personally appeared

GARY GARRECHT AND MARICA GARRECHT

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

Notary Public
By Commission No. _____
My Comm. Expires _____
NOTARY PUBLIC STATE OF IDAHO
SHEILA IRON GENERAL, INC.

STATE OF IDAHO, COUNTY OF _____
I hereby certify that this instrument was filed for record at the request of _____
at _____ o'clock _____
on _____ day of _____
19____ in my office, and duly recorded in Book _____
of Deeds of page _____

By Office Recorder
Deputy