

06/06/2006

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

RIGHT NUMBER: 22-7280B

NAME AND ADDRESS: WILCOX BROTHERS LLC  
C/O TERRY WILCOX  
1110 GOLDEN BEAUTY DR  
REXBURG ID 83440

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.770 CFS

The annual volume allowed to be diverted under this right shall not exceed 727 af per year for the primary service lands and 559 af per year when combined with right no. 22-02223 for the supplemental service lands.

PRIORITY DATE: 06/27/1978

POINT OF DIVERSION:

T05N R40E S11 SESWSW Within MADISON County  
Right 22-7280A is also diverted through the point of diversion described above.

PURPOSE AND  
PERIOD OF USE:

|               | PURPOSE OF USE                   | PERIOD OF USE | QUANTITY                       |
|---------------|----------------------------------|---------------|--------------------------------|
|               | IRRIGATION                       | 04/01 10/31   | 4.770 CFS                      |
| PLACE OF USE: | IRRIGATION Within MADISON County |               |                                |
|               | T05N R40E S02 Lot 4 NWNW         | 30.00         | T05N R40E S02 NESW 9.00        |
|               | T05N R40E S02 NWSW               | 40.00         | T05N R40E S02 SWSW 14.50       |
|               | T05N R40E S02 SESW               | 10.00         | T05N R40E S03 Lot 1 NENE 22.00 |
|               | T05N R40E S03 NESE               | 25.00         | T05N R40E S03 SESE 9.00        |
|               | T05N R40E S10 SENE               | 24.00         | T05N R40E S10 NESE 24.00       |
|               | T05N R40E S10 SESE               | 6.50          | T05N R40E S11 SWNW 40.00       |
|               | T05N R40E S11 SENW               | 25.00         | T05N R40E S11 NESW 27.00       |
|               | T05N R40E S11 NWSW               | 40.00         | T05N R40E S11 SWSW 11.00       |
|               | T05N R40E S11 SESW               | 10.00         |                                |
|               | 367 ACRES TOTAL                  |               |                                |

The place of use described above consists of primary service land and supplemental service land.

Primary Service Lands:

T05N, R40E:

Sec 10, SENE 24.0 ac, NESE 24.0 ac, SESE 6.5 ac;

Sec 11, SWNW 40.0 ac, SENW 25.0 ac, NESW 27.0 ac, NWSW 40.0 ac, SWSW 11.0 ac, SESW 10.0 ac;

Supplimental Service Lands:

T05N, R40E:

Sec 2, Lot 4 (NWNW) 30.0 ac, NESW 9.0 ac, NWSW 40.0 ac, SWSW 14.5 ac, SESW 10.0 ac;

Sec 3, Lot 1 (NENE) 22.0 ac, NESE 25.0 ac, SESE 9.0 ac.

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

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.

**AMENDED DIRECTOR'S REPORT**

**Subcase No. 22-07280B  
(Companion Case No. 94-00012)**

In Re SRBA  
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources  
Karl J. Dreher, Director  
David R. Tuthill, Jr., Adjudication Bureau Chief

March 10, 1999

**AMENDED DIRECTOR'S REPORT**

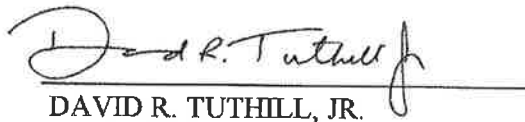
### DESCRIPTIVE SUMMARY

This is an Amended Director's Report submitted by the Director of the Idaho Department of Water Resources.

### DISCUSSION

Pursuant to the *Order on Jurisdiction and Standard of Review, and Setting Additional Deadlines* issued by Special Master Bilyeu on February 23, 1999, the Director submits for filing with the Court, an Amended Director's Report for the aforementioned subcase (see attached print-out).

Respectfully submitted this 10<sup>th</sup> day of March, 1999.

  
DAVID R. TUTHILL, JR.  
Adjudication Bureau Chief

### CERTIFICATE OF SERVICE

I certify that on 3-11, 1999, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

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

☐ Overnight Mail  
☐ Regular Mail  
☐ Hand-Delivered  
☒ Facsimile

2. Copies to:

Gregory W. Moeller  
P.O. Box 250  
Rexburg, ID 83440-0250  
Atty for Catherine Rowan

☐ Overnight Mail  
☒ Regular Mail  
☐ Hand-Delivered  
☐ Facsimile

Steven R. Parrry  
P.O. Box 51630  
Idaho Falls, ID 83405-1630  
Atty for Norman & Robin Riley

☐ Overnight Mail  
☒ Regular Mail  
☐ Hand-Delivered  
☐ Facsimile

Madison County Courthouse  
159 E. Main  
Rexburg, ID 83440

☐ Overnight Mail  
☒ Regular Mail  
☐ Hand-Delivered  
☐ Facsimile

Becky Harway  
Signature of person delivering form



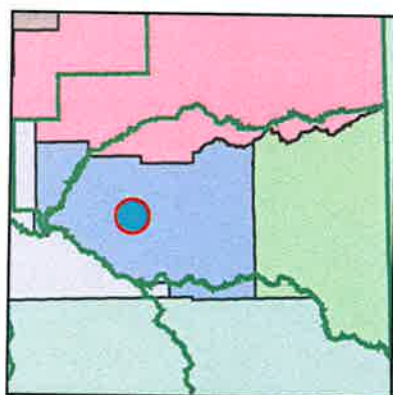
# Idaho Department of Water Resources

SRBA Recommendation:

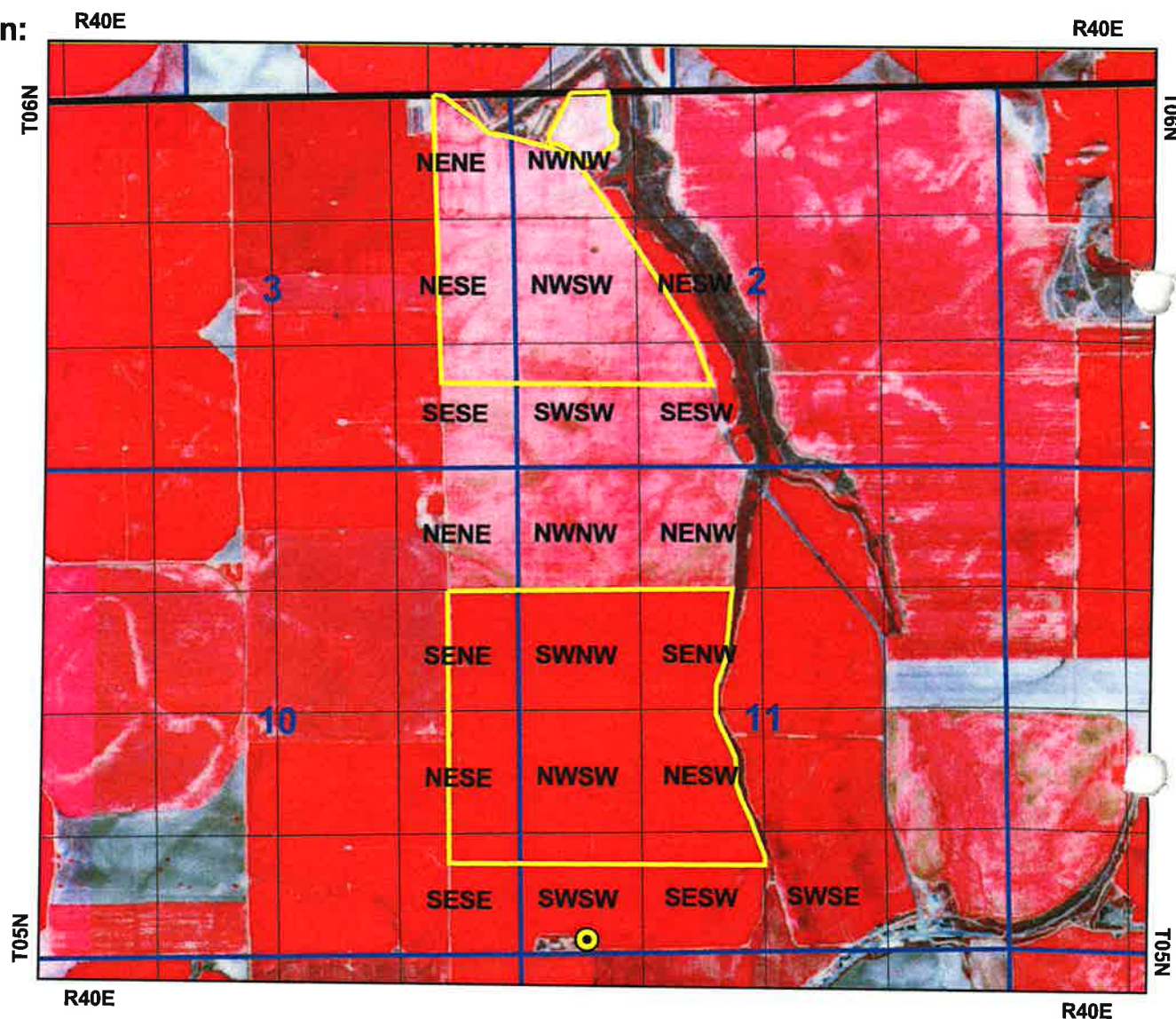
**22-7280B**

## Legend

- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Madison County  
IDWR Basin 22



0 0.8 1.6 Miles

Prepared by K. Wilson  
On Monday, May 8, 2006  
1987/88 Aerial Photography



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: [www.idwr.state.id.us](http://www.idwr.state.id.us)

EASTERN REGION

JAMES E. RISCH  
Governor

KARL J. DREHER  
Director

June 6, 2006

WILCOX BROTHERS LLC  
C/O TERRY WILCOX  
1110 GOLDEN BEAUTY DR  
REXBURG ID 83440

RE: NOTICE(S) OF CHANGE OF WATER RIGHT OWNERSHIP  
NOTICE(S) OF CLAIM TO A WATER RIGHT 22-7280B

Dear Mr. Wilcox:

The request for Change of Water Right Ownership concerning the above-referenced Notice(s) of Claim has been processed and the Department's records updated to reflect you as the new claimant.

The enclosed report shows this change along with listing the elements of the water right being claimed. Please review this report and contact this office if there are corrections or questions.

Respectfully yours,

Jennifer Crabtree

Technical Records Specialist

Enclosure

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

**RECEIVED****APR 27 2006**Department of Water Resources  
Eastern Region

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

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

| Water<br>Right No(s). | Adjudication<br>Claim No(s). | Split | Water<br>Right No(s). | Adjudication<br>Claim No(s). | Split |
|-----------------------|------------------------------|-------|-----------------------|------------------------------|-------|
|                       | 22-07280 B                   |       |                       |                              |       |
|                       |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |

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

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

**OR**

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

3. Name and Address of Former Owner/Claimant(s)

Anderson Nelson Hall Smith P A

4. New Owner/Claimant(s)

Wilcox Bro LLCName Connector (Check one): ☐ and, ☐ or, ☐ and/or

New Mailing Address

1110 Golden Beauty Dr

City, State and ZIP Code

Rexburg ID 83440

New Telephone Number

208 356 7563

5. Date you acquired the property

27 April 2006

Wilcox Brothers, LLC  
1110 GOLDEN BEAUTY DR  
REXBURG, ID 83440

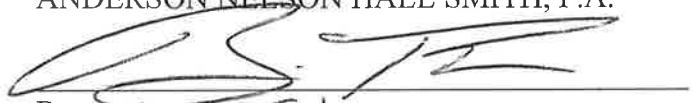
## QUITCLAIM DEED

Anderson Nelson Hall Smith, P.A., an Idaho Professional Corporation, Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever quitclaim unto Wilcox Brothers, LLC, an Idaho Limited Liability Company, Grantee, whose mailing address is 1110 GOLDEN BEAUTY DR, REXBURG, ID 83440 and to Grantee's heirs and assigns forever all right, title and interest which Grantor now has or may hereafter acquire in the following described water rights located in Madison County, Idaho and assigns any interest owned by Grantor in any personal property in any way associated with:

Water Right License No. 22-07280B, Water Right Application or Permit No. 22-7792, Mortgage on Water Rights dated May 5, 1999 and recorded in Madison County, State of Idaho on May 10, 1999 as instrument No. 278514.

IN WITNESS WHEREOF, the Grantor has executed this instrument on this 27 day of April, 2006.

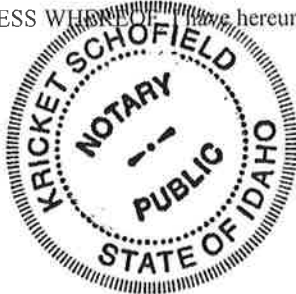
ANDERSON NELSON HALL SMITH, P.A.

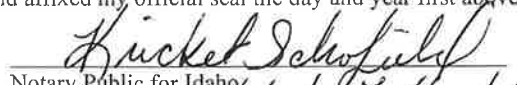
  
By: Brian Tucker  
Its: v.p.

STATE OF IDAHO       )  
                                  ) ss.  
County of Bonneville   )

On this 27 day of April, 2006, before me the undersigned, a Notary Public for Idaho, personally appeared Brian Tucker, known or identified to me to be the Vice President of the corporation that executed the 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 day and year first above written.



  
Notary Public for Idaho  
Residing at: Idaho Falls, Id.  
My Commission Expires: 9-4-2010

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("**Purchase Agreement**") is made as of the date set forth below between WILCOX BROTHERS, LLC or its assign ("**Wilcox**") and ANDERSON NELSON HALL SMITH, P.A. ("**Anderson Nelson**").

### RECITALS

A. On or about May 5, 1999, Norman Riley and Robin Riley (the "**Rileys**") entered into that certain Mortgage on Water Rights, dated May 5, 1999 and recorded in Madison County State of Idaho on May 10, 1999 as Instrument No. 278514 (the "**Mortgage**") granting and conveying to Anderson Nelson a mortgage in the water rights described in the Mortgage, including the water rights pertaining to Water Right License No. 22-07280B (the "**Water Rights**") to secure repayment of the debts described in the Mortgage (the "**Secured Debts**").

B. Pursuant to the Mortgage the Riley's acknowledged and confirmed Anderson Nelson's lien for attorneys fees as such lien is described in the Mortgage (the "**Lien**").

C. There exists a water right application and/or permit identified as Application or Permit No. 22-7792 (the "**Water Application**"). The status of the Water Application is unclear.

D. The Riley's Bankruptcy Plan provided that the Water Rights be surrendered to Anderson Nelson in full satisfaction of the Secured Debts in the bankruptcy proceeding, Case No. 01-40820, filed by the Rileys.

E. Anderson Nelson desires to sell all of its right, title and interest, whatever that may be, in and to the Mortgage, the Secured Debts, Water Rights, the Lien and Water Application to Wilcox and Wilcox desires to purchase the same from Anderson Nelson on the terms and conditions set forth in this Purchase Agreement.

### AGREEMENT

FOR GOOD AND VALUABLE consideration, the receipt and sufficiency of which is hereby acknowledged Wilcox and Anderson Nelson agree as follows:

1. Definitions. The above Recitals and definitions are incorporated into this Purchase Agreement.

2. Purchase and Purchase Price. Wilcox agrees to purchase and Anderson Nelson agrees to sell, assign, transfer and convey all of its right title and interest, whatever it may be, in and to the Mortgage, Lien, Secured Debts, Water Rights, and Water Application (collectively the "**Anderson Nelson Water Assets**"). The total purchase price (the "**Purchase Price**") for the Anderson Nelson Water Assets shall be One Hundred Seventy Thousand Dollars (\$170,000.00). The parties acknowledge and agree that the sale of the Anderson Nelson Water Assets from Anderson Nelson to Wilcox shall be "AS IS" and "WHERE IS" and without any representations or warranties whatsoever, and without any recourse against Anderson Nelson, or any of its principals, officers, or shareholders for any reason. Moreover, Wilcox agrees to indemnify and hold Anderson Nelson, or any of its

principals, officers, or shareholders, harmless from any costs or damages that might arise in connection with any and all claims, demands, litigation, liens, or other actions that might arise related to such water right located on any property. Furthermore, although the Secured Debts would be transferred as well, the parties agree that the only purpose of such transfer is to support the Mortgage or otherwise as may be necessary for Wilcox to secure the Water Rights, and that no claim will be made against the Rileys for any alleged unsatisfied portion of the Secured Debts. Wilcox agrees to take any action necessary with the Idaho Department of Water Resources to transfer the Anderson Nelson Water Right to Wilcox. Also, Wilcox specifically acknowledges that the Anderson Nelson Water Rights do not include any interest in any specific well or well equipment.

3. Payment of the Purchase Price. The Purchase Price shall be paid in full at Closing by certified funds.

4. Closing. Closing ("Closing") of Wilcox's purchase of the Anderson Nelson Water Assets shall occur April 27, 2006.

5. General Provisions. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the party to be bound thereby. If either party brings an action at law or in equity to enforce or interpret this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, court costs and expert witness fees. This Agreement may be executed in counterparts and by facsimile. Those individuals signing below for Wilcox individually represent and warrant that they are duly authorized to sign for Wilcox and that their signatures hereto shall bind Wilcox to this Purchase Agreement. To the extent that the individuals signing below do not have authority to act for Wilcox then they shall be deemed to have signed and acquired the Anderson Nelson Water Right in their individual capacity. Wilcox further acknowledges that Anderson Nelson is acting herein as a seller only and not as legal counsel and that if Anderson Nelson or any attorney employed there by is now representing or has ever represented Wilcox or any of its members, that any conflict of interest that may exist is hereby waived. Wilcox confirms that it has not been represented by Anderson Nelson in this matter and that it acknowledges it has the right to seek independent legal counsel prior to signing this Purchase Agreement.

27, 2006. IN WITNESS WHEREOF the parties have executed this Purchase Agreement as of April

ANDERSON NELSON HALL SMITH, P.A.  
an Idaho professional association

By:   
Its: VP.

WILCOX BROTHERS, LLC  
an Idaho Limited Liability Company

By: Ron Wilcox  
Its: member  
RON Wilcox

By: Terry Wilcox  
Its: member  
Terry Wilcox



State of Idaho

## DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: [www.idwr.state.id.us](http://www.idwr.state.id.us)

EASTERN REGION

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

September 23, 2005

BRIAN TUCKER  
ANDERSON NELSON HALL SMITH  
PO BOX 51630  
IDAHO FALLS ID 83405-1630

RE: NOTICE(S) OF CHANGE OF WATER RIGHT OWNERSHIP  
NOTICE(S) OF CLAIM TO A WATER RIGHT 22-7280B

Dear Mr. Tucker:

The request for Change of Water Right Ownership concerning the above-referenced Notice(s) of Claim has been processed and the Department's records updated to reflect your firm as the new claimant.

The enclosed report shows this change along with listing the elements of the water right being claimed. Please review this report and contact this office if there are corrections or questions.

Respectfully yours,

Jennifer Crabtree  
Technical Records Specialist

Enclosure

PROFILED

SCANNED  
SEP 23 2005

*Anderson Nelson Hall Smith, P.A.*

**ATTORNEYS**

490 MEMORIAL DRIVE  
POST OFFICE BOX 51630  
IDAHO FALLS, IDAHO 83405-1630  
TELEPHONE (208) 522-3001  
FAX (208) 523-7254  
E-MAIL anhs@anhs.net

Douglas R. Nelson  
Blake G. Hall  
Marvin M. Smith\*  
Scott R. Hall  
Joel E. Tingey  
Steven R. Parry\*  
Brian T. Tucker  
Jeffery W. Banks  
Wiley R. Dennert  
Darren S. Robins

W. Joe Anderson  
(1923-2002)

\*Also member of Utah bar

September 8, 2005

Ernest Carlson  
IDWR Eastern Region  
900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718

Re: *Change of Ownership on Water Right No. 22-07280B*

Dear Mr. Carlson:

This firm previously submitted a Notice of Change in Water Right Ownership with a letter from Mr. Steven R. Parry dated October 26, 2004. We were subsequently contacted by Mr. Jones who indicated that he was assisting the Department on issues related to this change in ownership. We recently spoke to Mr. Jones who indicated that some issues had come up with regard to ownership and that the matter had been turned back over to you.

The purpose of this letter is twofold. First, to advise you that I am now handling this matter on behalf of Anderson Nelson Hall Smith, P.A., and to invite your call at anytime if you have questions.

Second, we have begun making arrangements to sell our interest in these water rights and are hoping to complete that transaction this fall. Consequently, if at all possible we were wondering whether the Department would be able to make a determination in the near future. Mr. Jones indicated that it might be necessary to involve the Attorney General's office. Whatever the process, we would appreciate any steps that you might take to assist in expediting a determination. If possible, we would also appreciate some estimate as to how long the Department might require to complete this determination.

I look forward to hearing from you.

Sincerely,



Brian T. Tucker

/ks

L:\srp\2668\IDWRCarlson.LTR.wpd

RECEIVED  
SEP - 9 2005  
Department of Water Resources  
Eastern Region  
SCANNED  
SEP 09 2005

SCANNED  
SEP 09 2005

PROFILED

Claim no. <sup>(Riley)</sup> A22-07280B  
<sup>(Rowan)</sup> A22-07280A

Claimant Contact Log

| Date     | Remarks | Agent initials |
|----------|---------|----------------|
| 1-6-2005 |         | HLW            |

This claim is a split of right 22-07280 which was the subject of a long court fight over ownership of cfs + acres between Katherine Rowan + Norman + Robin Riley.

Judge Daniel Hurlbutt of the SRBA court rendered a Memorandum Decision on Aug 28, 1997. His conclusion on page 12 gives the 2 parties "1/2 interest" each in the "South well".

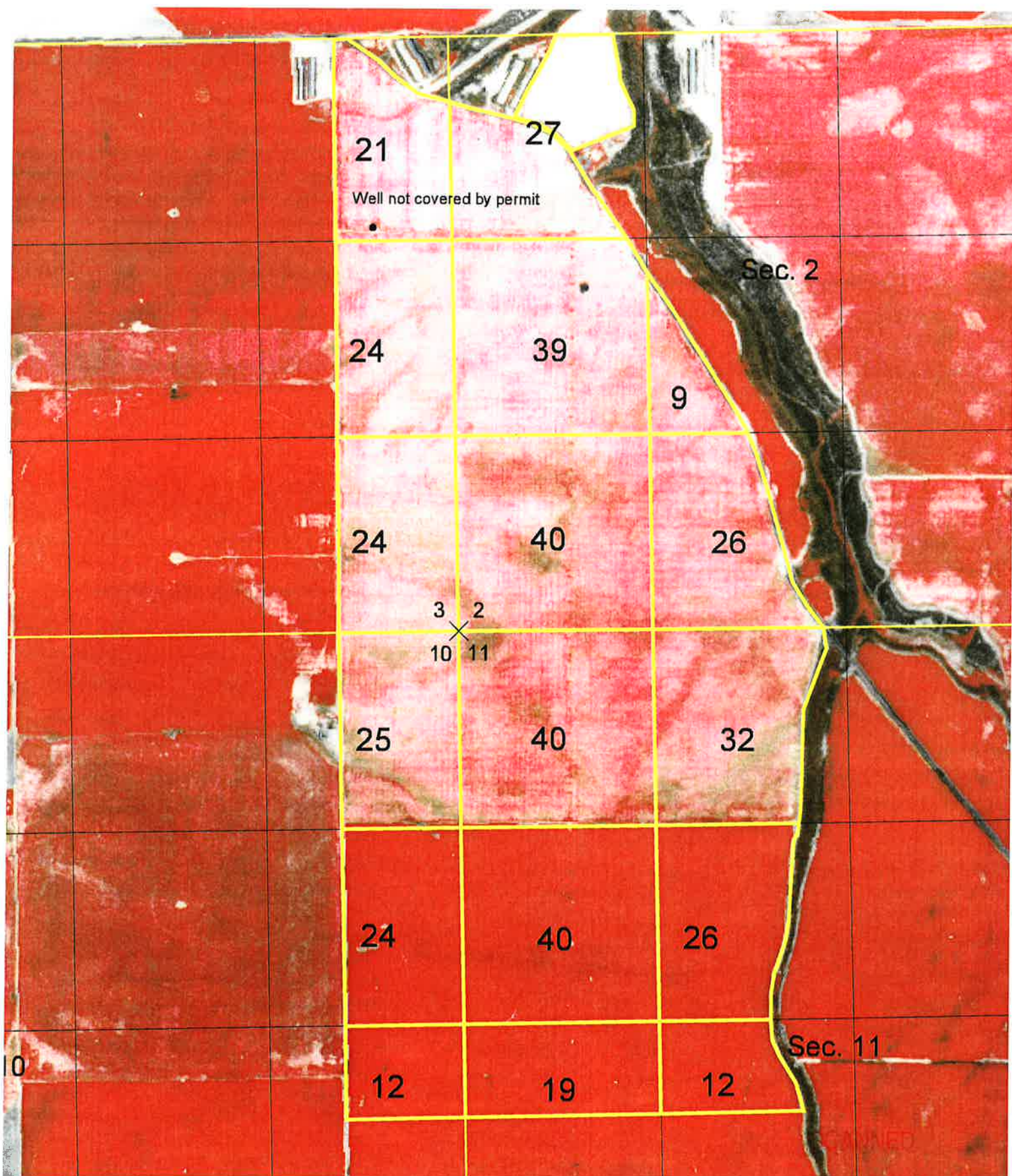
Even though the parties owned different amounts of irrigated acres, each received 367 acres + 4.77 cfs. To accomplish this, the Rowans who actually have less than 367 irrigated acres got a water right credit on ground owned by the Riley's. This same set of principles seem to apply to the Riley's water right (22-07280B).

The terms primary + secondary acres seem to define owned acres (primary) + non-owned acres (secondary) where the water rights sit. See Keith Wilson's map (attached).

Through a bankruptcy proceeding, the Law firm of Anderson Nelson Hall Smith P.A. gained control of the water right 22-07280B but not the place of use upon which it sits.

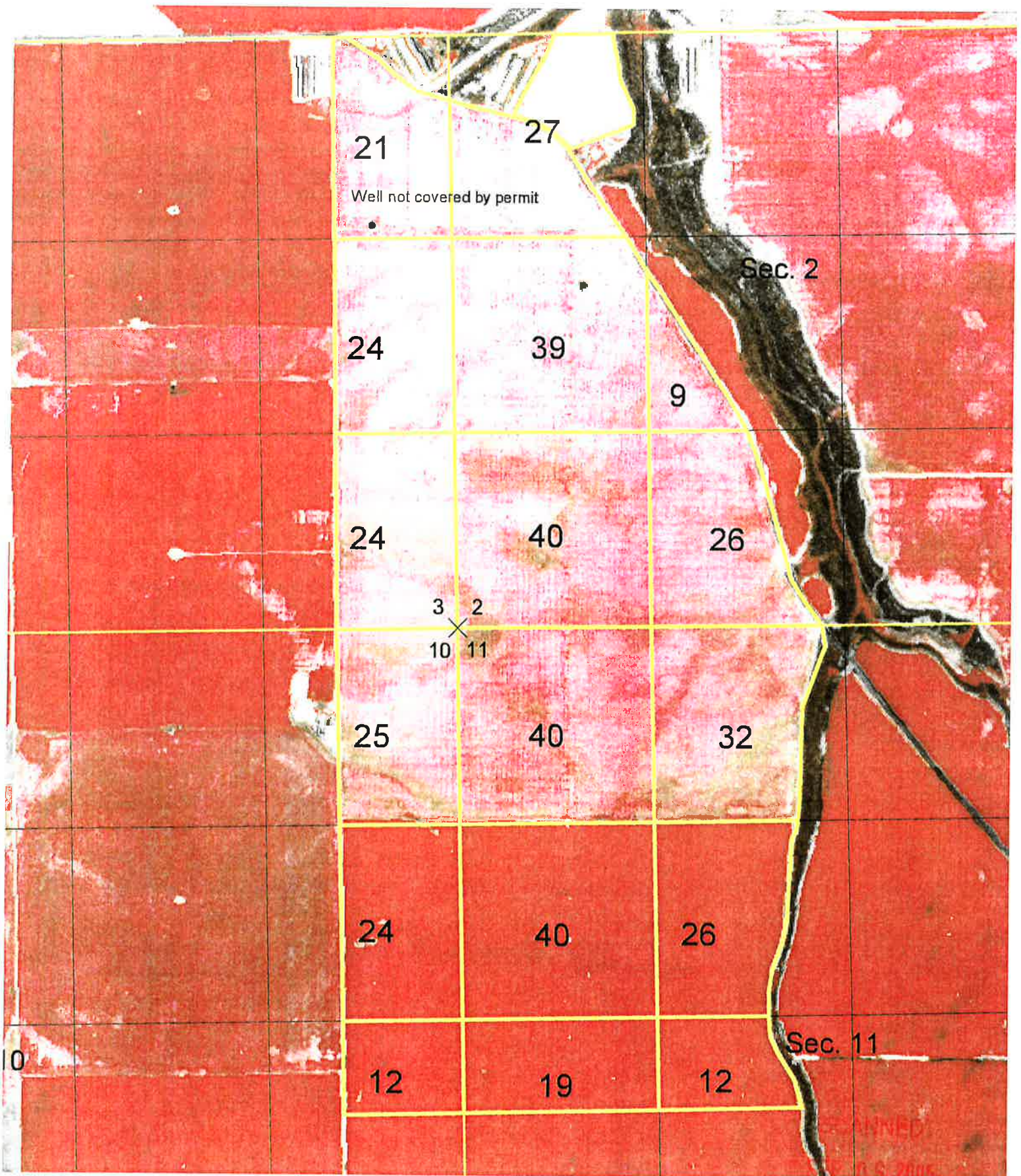
This change of ownership reflects this new water right/  
Claim owner.

# Calculated Irrigated Acres for Riley Property



Total Acres = 440

# Calculated Irrigated Acres for Riley Property



Total Acres = 440

# Adjudication Claim A22-07280B

Sec. 3

Sec. 2

Sec. 10

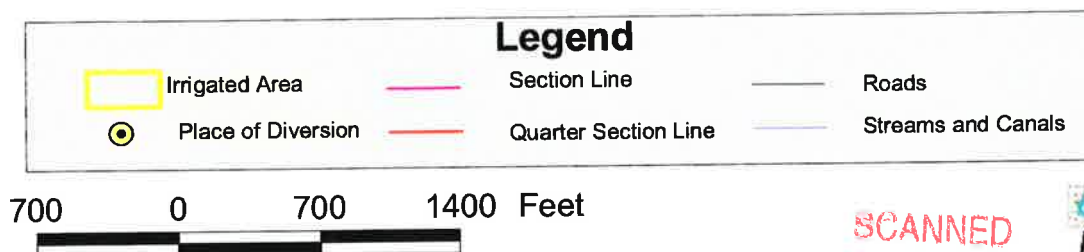
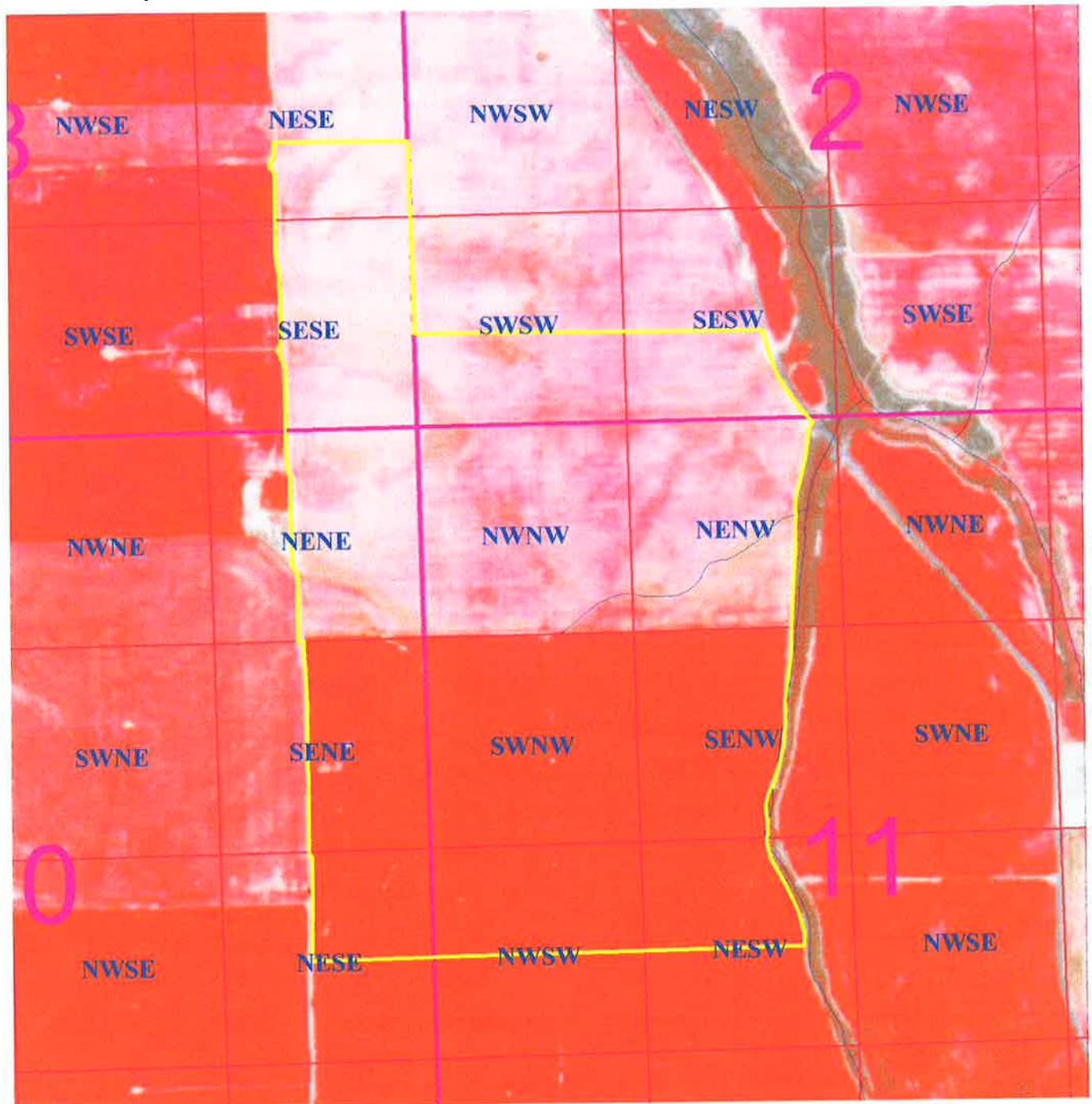
Sec. 11

SCANNED

SEP 09 2005

Water Right Claim Number 22-07280B  
Township , 5N40E

07/10/2001



SCANNED  
SEP 09 2005

SPATIAL  
DYNAMICS

*Anderson Nelson Hall Smith, P.A.*

**ATTORNEYS**

490 MEMORIAL DRIVE  
POST OFFICE BOX 51630  
IDAHO FALLS, IDAHO 83405-1630  
TELEPHONE (208) 522-3001  
FAX (208) 523-7254  
E-MAIL anhs@anhs.net

Douglas R. Nelson  
Blake G. Hall  
Marvin M. Smith\*  
Scott R. Hall  
Joel E. Tingey  
Steven R. Parry\*  
Brian T. Tucker  
Jeffery W. Banks  
Wiley R. Dennert  
W. Joe Anderson  
(1923-2002)

\*Also member of Utah bar

October 26, 2004

IDWR Eastern Region  
900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718

Re: *Change of Ownership on Water Right No. 22-07280B*

Dear Water Agents:

Enclosed is a Notice of Change of Water Right Ownership for Water Right No. 22-07280B. This water right was surrendered by the Rileys to this firm as part of their Amended Plan of Reorganization which was confirmed by the Bankruptcy Court. The Amended Plan and related documents are attached to the Notice.

If you have any questions or need any additional information, please contact me.

Sincerely,

Anderson Nelson Hall Smith, P.A.



Steven R. Parry  
SRP/ks  
Enclosures

cc: Norman and Robin Riley

L:\srp\2668\IDWR2.LTR.wpd

RECEIVED  
OCT 27 2004  
Department of Water Resources  
Eastern Region

SCANNED  
SEP 09 2005

*Anderson Nelson Hall Smith, P.A.*

**ATTORNEYS**

490 MEMORIAL DRIVE  
POST OFFICE BOX 51630  
IDAHO FALLS, IDAHO 83405-1630  
TELEPHONE (208) 522-3001  
FAX (208) 523-7254  
E-MAIL anhs@anhs.net

Douglas R. Nelson  
Blake G. Hall  
Marvin M. Smith\*  
Scott R. Hall  
Joel E. Tingey  
Steven R. Parry\*  
Brian T. Tucker  
Jeffery W. Banks  
Wiley R. Dennert  
W. Joe Anderson  
(1923-2002)

\*Also member of Utah bar

October 22, 2004

IDWR Eastern Region  
900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718

Re: *Change of Ownership on Water Right No. 22-07280B*

Dear Water Agents:

This letter accompanies our Notice of Change in Water Right Ownership and is submitted for the purpose of providing further explanation as to the documents reflecting the change in water right ownership.

Attached hereto as **Exhibit "A"** is a Mortgage on Water Rights dated May 5, 1999, and recorded in Madison County on May 10, 1999 as Instrument No. 278514. A copy of Water Right License No. 22-07280B (the "*Water Right*") is attached thereto and was recorded in Madison County as part of Instrument No. 278514. The *Water Right* was the subject of lengthy litigation ending in an Idaho Supreme Court decision. The attached Mortgage on water rights sets forth that the *Water Right* served as collateral for attorney fees.

Attached here as **Exhibit "B"** is a copy of a map initially prepared by the Department of Water Resources which sets forth the primary and secondary rights associated with the *Water Right*. This map is attached for convenience.

The Rileys filed bankruptcy in the United States Bankruptcy Court, Case No. 01-40820. A copy of the Amended Plan of Reorganization dated May 10, 2002 is attached hereto as **Exhibit "C"**. Section 6.14 of the Amended Plan of Reorganization states therein that the Class 14 claim consists of the amount of the secured claim of Steven Parry and that "the collateral will be surrendered to Steven Parry in full satisfaction of the debt."

The Amended Plan of Reorganization was confirmed by the Bankruptcy Court in its Order Confirming Amended Plan of Reorganization dated July 22, 2002, a copy of which is attached hereto as **Exhibit "D"**.

During the course of the bankruptcy, Anderson Nelson Hall Smith, P.A., obtained an Order Granting Relief from Automatic Stay dated April 8, 2002, which expressly states that Anderson Nelson Hall Smith, P.A., may take "whatever action is deemed necessary to sell and dispose of the water rights associated with the water license 22-07280." A copy of the Order Granting Relief from Automatic Stay is attached hereto as **Exhibit "E"**.

The bankruptcy documents on occasion refer to the debtor as Anderson Nelson Hall Smith, P.A., and on other occasions as Steven Parry. For the purpose of clarifying that the claims and the *Water Right*

SCANNED

SEP 09 2005

October 22, 2004

Page 2

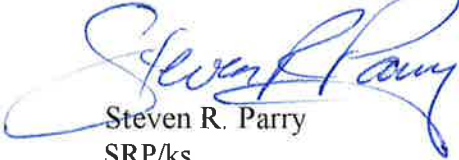
now belong to Anderson Nelson Hall Smith, P.A., Steven Parry has executed a Clarifying Assignment which is attached hereto as **Exhibit "F"**.

As set forth in the Amended Plan of Reorganization as approved by the Bankruptcy Court as set forth herein, the Rileys have surrendered Water Right No. 22-07280B to Steven Parry and/or Anderson Nelson Hall Smith, P.A. With the Clarifying Assignment enclosed, the foregoing documents provide the documentation necessary to change the ownership of the *Water Right* on the Department of Water Resources records to Anderson Nelson Hall Smith, P.A.

If you have any questions or need any additional information, please do not hesitate to call.

Sincerely,

Anderson Nelson Hall Smith, P.A.



Steven R. Parry

SRP/ks

Enclosures

L:\srp\2668\IDWR.LTR.wpd

SCANNED  
SEP 09 2005

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

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

*OK per  
 Candice  
 McHugh  
 attorney  
 9/23/05*

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

| Water<br>Right No(s). | Adjudication<br>Claim No(s). | Split | Water<br>Right No(s). | Adjudication<br>Claim No(s). | Split |
|-----------------------|------------------------------|-------|-----------------------|------------------------------|-------|
| 22-07280B             |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |

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

A. The appropriate **FILING FEE**. See instructions for fee amounts. **WAIVED**

B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

**SEE ATTACHED LETTER OF EXPLANATION**

C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):  
**PLAT OF PROPERTY** or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

**OR**

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

3. Name and Address of Former Owner/Claimant(s) NORMAN RILEY AND ROBIN RILEY  
1623 W 3400 S., REXBURG, IDAHO 83440
4. New Owner/Claimant(s) ANDERSON NELSON HALL SMITH, P.A.  
 Name Connector (Check one): [ ] and, [ ] or, [ ] and/or
- New Mailing Address P.O. BOX 51630  
 City, State and ZIP Code IDAHO FALLS, IDAHO 83405-1630  
 New Telephone Number 208-522-3001
5. Date you acquired the property JULY 22, 2002

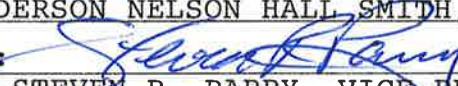
**SCANNED**  
**SEP 09 2005**

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

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

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

7. Signature of New Owner(s) or Claimant(s) ANDERSON NELSON HALL SMITH, P.A.  
(include title if applicable)

BY: STEVEN R. PARRY, VICE PRESIDENT

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

**For Office Use Only**

|                       |            |                     |
|-----------------------|------------|---------------------|
| Received by _____     | Date _____ | Fee _____           |
| Receipted by _____    | Date _____ | Receipt No. _____   |
| Processed by _____ AJ | Date _____ | WR _____ Date _____ |

SCANNED  
SEP 09 2005

Day MAY 10 1998

At 12:00 O'clock        m

MARTIN R. RASMUSSEN

MADISON COUNTY RECORDER

Fee \$ 15.00 Deputy

Recorded At Request of

Anderson Nelson Hall Smith  
PO Box 51639  
Ta Falls,

# MORTGAGE on WATER RIGHTS

FOR VALUE RECEIVED, NORMAN RILEY and ROBIN RILEY, husband and wife, of Madison County, Idaho (the "Mortgagors"), do hereby grant, bargain, sell and convey unto ANDERSON NELSON HALL SMITH, P.A., an Idaho professional association (the "Mortgagee"), the Mortgagors' interest in the following described water rights located in Madison County, Idaho, to wit:

The Water Rights represented by Water Right License No. 22-07280B, a copy of which is attached hereto and incorporated herein by this reference. This mortgage covers all water rights on the Mortgagors' land as well as all water rights on the adjacent land owned by Catherine Rowan. The legal description for the land in question is set forth on the attached License.

This Mortgage is given to secure legal fees incurred by Mortgagors in the past, as well as any future legal fees, and is in addition to any Lien for Attorneys Fees, notice for which was given September 4, 1998 in Madison County Case No. CV-93-00350 and Twin Falls County (SRBA) Case No. 94-00012, In Re: SRBA Case No. 39576. Mortgagors hereby confirm that such attorney fee liens are valid and that this Mortgage is provided as additional security for said legal fees.

In the event this Mortgage is foreclosed upon or otherwise called upon to pay for the secured indebtedness, the Mortgagors specifically consent to the Mortgagee applying for and obtaining a change in point of use of such water rights as well as a change in point of diversion of such other water rights, and any other changes that may be necessary for the Mortgagee to recognize, through sale, use or otherwise, the full value of the mortgaged water rights.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Mortgagee, its successors and assigns forever.

This conveyance is intended as a mortgage to secure the payment of any and all legal fees due from the Mortgagors to the Mortgagee. All such payments are payable on demand, and upon demand shall begin accruing interest at the rate of Twelve percent (12%) per annum. The amount due is not represented by a specific promissory note, but is instead represented by periodic invoices sent from Mortgagee to Mortgagors. Such invoices shall be conclusive as to the amount due and the amount secured hereunder.

**EXHIBIT**  
**"A"**

SCANNED  
SEP 09 2005

ATTACHED TO THE IDWR NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

The Mortgagors covenant and agree with the Mortgagee as follows:

That they are the owners in fee simple of the above described water rights and that they are free from all encumbrances, subject perhaps to a Federal Land Bank Mortgage dated July 16, 1979, and recorded in Madison County as entry No. 179745; provided, however, that the reference to this Mortgage is not an admission as to whether the Mortgagee's attorney fee lien is superior to or inferior to said mortgage. As the fees were incurred when the water rights were in the form of personal property, and as the water rights were developed by and are a result of the litigation giving rise to the attorney fees, the Mortgagors and Mortgagees both assert that the attorney fee lien and this mortgage have priority to the subject water rights as collateral.

That they will pay the indebtedness hereby secured promptly upon demand. That they will pay all taxes, liens and assessments of any nature hereafter levied or imposed, or becoming payable, upon said premises not later than the twentieth day before delinquency.

If the Mortgagors shall fail to pay any such tax or lien, the Mortgagee may pay the same, and all payments by the Mortgagee for any such purpose shall be added to the indebtedness hereby secured, and shall be repayable on demand, with interest at the rate of twelve (12) per cent per annum until paid.

For the purpose of further securing said indebtedness and performance of the covenants herein contained, the Mortgagors shall hereby sell and assign to the Mortgagee any and all rentals accruing, or to accrue on said premises, during the life of this Mortgage.

Now, if the said Mortgagors shall pay or cause to be paid all moneys which are or may become due to Mortgagee and shall otherwise comply with the terms and conditions hereof, this conveyance shall be void; but in case default shall be made in the payment of the indebtedness hereby secured, or any part thereof, principal or interest, or in any of the covenants or agreements herein contained, then the Mortgagee or assigns, at its option, may declare the entire indebtedness hereby secured immediately due and payable, and foreclose this mortgage and cause said mortgaged premises to be sold in the manner provided by law, and out of the moneys arising from such sale retain principal and interest together with any sums advanced as provided herein, with interest as aforesaid, together with the costs and charges of such foreclosure suit and sale, including such sum as the court may adjudge reasonable as an attorney's fee to be allowed the plaintiff, and the overplus, if any there be, pay over to the Mortgagors, their heirs and assigns.

Assignment for Collateral Purposes. As the subject water rights are still in litigation and potentially still have the form of personal property, the parties further agree that this Mortgage shall also operate and a security agreement and an assignment for collateral purposes. Consequently, to the extent that such water rights are personal property, the Mortgagors hereby assign (for collateral purposes only) the water rights to the Mortgagee under the same terms and conditions as set forth above.

This Mortgage shall be construed and interpreted in accordance with the laws of the state of Idaho. This Mortgage shall further be construed and interpreted to the fullest extent possible so as to provide as much collateral as possible to Mortgagee.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagors the day and the year first above written.

May 5, 1999  
Date

Norman Riley  
Norman Riley

May 5, 1999  
Date

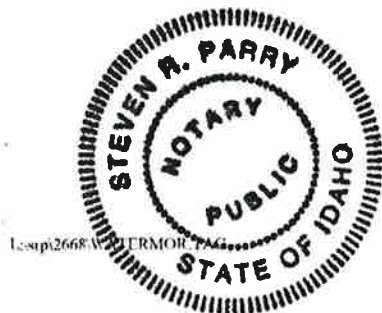
Robin H. Riley  
Robin Riley

STATE OF IDAHO )

: ss.

County of Bonneville )

On this 5<sup>th</sup> day of May, 1999, before me, a Notary Public in and for said State, personally appeared Norman Riley and Robin Riley, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Steven Parry  
Notary Public  
Residing at: Idaho Falls, ID  
Commission expires: 7/1/2003

WILLIAM FORSBERG  
Attorney at Law  
ISB No. 2310  
127 East Main  
Rexburg, Idaho 83440

Telephone (208) 356-7474

Attorney for Debtors

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In Re:

NORMAN N. RILEY and ROBIN H.  
RILEY, dba HOWE FARMS,

Debtors.

Case No. 01-40820 -11

AMENDED PLAN OF  
REORGANIZATION

COMES NOW Norman N. Riley and Robin H. Riley, Debtors in Possession, and propose the following plan of reorganization pursuant to the provisions of Chapter 11 of the Bankruptcy Code. It is important that you read this plan carefully and in conjunction with the attached Court approved Disclosure Statement to evaluate the impact the plan will have upon your claim or equity security interest.

I. DEFINITIONS

1.1 "Allowed Claim" shall mean a Claim (a) in respect of which a proof of claim has been filed with the Court within the applicable period of limitation fixed by rule 3001; or (b) scheduled in the list of creditors prepared and filed with the Court pursuant to Rule 1007(b) and not listed as disputed, contingent or unliquidated as to amount, in either case as to which no objection to the allowance thereof has been interposed within any applicable period of limitation fixed by Rule 3001 or an order of the Court, or as to which any objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari is pending.

Amended Plan of Reorganization

Page 1

EXHIBIT

SCANNED  
SEP 09 2005

34

ac. 1102 ATTACHED TO THE IDWR NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

1.2 "Allowed Secured Claim" shall mean an Allowed Claim secured by a lien, security interest or other charge against or interest in property in which the Debtor has an interest, or which is subject to setoff under Section 553 of the Code, to the extent of the value (determined in accordance with Section 506(a) of the Code) of the interest of the holder of such Allowed Claim in the Debtor's interest in such property or to the extent of the amount subject to such setoff as the case may be.

1.3 "Amended Capital Lease" A replacement lease agreement which incorporates the amount, rate of interest and other terms set forth in the Plan for treatment of the Creditor's Claim(s) and in any stipulation for claim treatment entered into by Debtors and Creditor and approved by the Court. The Amended Capital Lease shall be executed on the Effective Date.

1.4 "Claim" shall mean any right to payment, or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment against the Debtor in existence on or as of the Petition Date, whether or not such right to payment or right to an equitable remedy is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, beneficial, secured or unsecured.

1.5 "Class" shall mean any class into which Allowed Claims or Allowed Interests are classified pursuant to Article II hereof.

1.6 "Code" shall mean the Bankruptcy Code, 11 USC §101 et seq., and any amendments thereof.

1.7 "Confirmation Date" shall mean the date upon which the Order of Confirmation is entered by the Court.

1.8 "Court" shall mean the United States Bankruptcy Court for the District of Idaho, in which the Debtors' Chapter 11 case, pursuant to which the Plan is proposed, is pending, and any court having competent jurisdiction to hear appeals or certiorari proceedings therefrom.

1.9 "Creditor" shall mean any person or entity that has a claim against the Debtors.

1.10 "Creditors Committee" shall mean the Creditors Committee appointed by Order of this Court, and members thereof and any successor or added members.

1.11 "Debtors" shall mean Norman N. Riley and Robin H. Riley, DBA Howe Farms.

1.12 "Effective Date" shall mean the date upon which the Order of Confirmation is no longer subject to appeal or certiorari proceeding, or the date on which no appeal or certiorari proceeding is then pending, and on which date all the conditions to the effectiveness of the Plan expressly set forth in the Plan have been fully satisfied or effectively waived.

1.13 "Indebtedness" as applied to the Debtors shall mean:

(a) all indebtedness or other obligations of the Debtors for borrowed money or for the deferred purchase price of property or services;

(b) all indebtedness of the Debtors, contingent, direct or otherwise, secured (or for which the holder of such indebtedness has an existing right contingent or otherwise to be secured) by any mortgage, pledge, lien, security interest or vendor's interest under any conditional sale or other title retention agreement existing on any property or asset owned or held by the Debtors, whether or not the indebtedness secured thereby shall have been assumed by the Debtors (hereafter "Secured Indebtedness"); or

(c) all indebtedness of others, secured or unsecured, directly or indirectly guaranteed, endorsed, or discounted with recourse by the Debtors, or in respect of which the Debtors are otherwise directly or indirectly liable, including without limitation, indebtedness in effect guaranteed by the purchase, repurchase or otherwise acquire such indebtedness in effect guaranteed by the Debtors through any agreement (contingent or otherwise) to purchase, repurchase or otherwise acquire such indebtedness or any security therefore, or to provide funds for the liability of the obligor of such indebtedness, or to make payment for any products, materials or supplies or for any transportation or services regardless of the nondelivery or nonfurnishing thereof.

1.15 "New Secured Note" Promissory note incorporating the amount, rate of interest and other terms set forth in the Plan for treatment of the Creditor's Claim(s) and in any stipulation for claim treatment entered into by Debtors and Creditor and approved by the Court. The New Secured Note shall be executed on the Effective Date.

1.16 "Order of Confirmation" shall mean the order entered by the Court confirming the Plan in accordance with the provisions of Chapter 11 of the Code, which Order is no longer subject to appeal or certiorari proceeding or as to which no appeal or certiorari proceeding is pending.

1.17 "Person" shall mean an individual, corporation, partnership, joint venture, trust, estate, unincorporated organization, or a government or any agency, or political subdivision thereof.

1.18 "Petition Date" shall mean May 1, 2001, the date on which Debtors filed their Chapter 11 petition with the Court.

1.19 "Plan" shall mean this Chapter 11 Plan, as amended in accordance with the terms hereof or modified in accordance with the Code.

1.20 "Rules" shall mean the Federal Rules of Bankruptcy Procedure, as amended and supplemented by the Local Bankruptcy Rules as adopted by the Court.

1.21 "Secured Creditor" shall mean any creditor who holds a claim against the Debtors secured by a lien, security interest or other encumbrance which has been properly attached and perfected as required by law with respect to property of the estate, or who holds a claim that is subject to setoff under 11 USC §553, to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be.

## II. CLASSIFICATION OF CLAIMS AND INTERESTS

All allowed claims and allowed interests have been placed in the following classes. The Debtors have determined which claims fall into the classes described below. A proof of Claim or interest which asserts a claim or an interest which is properly includable in more than one class is in a class to the extent it qualifies within the description of such class and is in a different class to the extent it qualifies within the description of such different class.

### Priority Claims:

2.1 Class 1: Class 1 consists of all allowed claims against the Debtors entitled to priority

pursuant to 11 USC §503 for which application for allowance is made or a claim filed prior to the effective date of this plan, as the same are allowed, approved and ordered paid by the Court. This class includes the United States Trustee's Office.

**2.2 Class 2:** Class 2 consists of all allowed claims against the Debtors entitled to priority pursuant to 11 USC §507(a) (1), including reimbursement of the expenses of and compensation for services rendered by attorneys, accountants, real estate brokers, and other professional persons employed by the Debtors or the reorganized Debtors. The members of this class include William Forsberg, the attorney for the Debtors and Parry, Roe & Clayton, P.A., C.P.A.s.

**2.3 Class 3:** Class 3 consists of all allowed claims against the Debtors entitled to priority pursuant to 11 USC §507(a) (2), (4), (5), (6) and (7). The Debtors are unaware of any claims in this class.

**2.4 Class 4:** Class 4 consists of all allowed claims against the Debtors entitled to priority pursuant to 11 USC §507(a) (8), consisting of claims of governmental units for taxes in such amounts as may be allowed by the Court. The Internal Revenue Service, Idaho Department of Labor and Idaho State Tax Commission are creditors within this class.

**Secured Claims:**

**2.5 Class 5:** Class 5 shall consist of the allowed secured claims of New Holland Credit Co.

**2.6 Class 6:** Class 6 shall consist of the allowed secured claim of CNH Capital.

**2.7 Class 7:** Class 7 shall consist of the allowed secured claims of Advanta Business Services Corp.

**2.8 Class 8:** Class 8 shall consist of the allowed secured claim of Agricredit Acceptance LLC.

**2.9 Class 9:** Class 9 shall consist of the allowed secured claims of The Allen and Connie Ball Living Trust.

**2.10 Class 10:** Class 10 shall consist of the allowed secured claims of Key Bank, NA.

**2.11 Class 11:** Class 11 shall consist of the allowed secured claims of Bank of America

Mortgage.

**2.12 Class 12:** Class 12 shall consist of the allowed secured claims of General Motors Acceptance Corp.

**2.13 Class 13:** Class 13 shall consist of the allowed secured claims of Waterview Resolution Corp.

**2.14 Class 14:** Class 14 shall consist of the allowed secured claims of Steven Parry.

**2.15 Class 15:** Class 15 shall consist of the allowed secured claims of Northwest Farm Credit Services FLCA.

**2.16 Class 16:** Class 16 shall consist of the allowed secured claims of Tri-River Chemical, Inc.

**2.17 Class 17:** Class 17 shall consist of the allowed unsecured nonpriority claims.

#### **Interests**

**2.18 Class 18:** Class 18 shall consist of the allowed interests in Debtors. The Debtors are not aware of any such interests.

#### **Post-Petition Claims:**

**2.19 Class 19:** Class 19 shall consist of any post-petition claims against Debtors.

### **III. BASIC PLAN FOR DEBT REPAYMENT**

**3.1** The Debtors shall negotiate with the priority creditors who have indicated a willingness to negotiate with the Debtors concerning the payment of a priority claim in accordance with the requirements of the Bankruptcy Code. The balance of the administrative claims shall be paid in accordance with the terms and provisions of the Bankruptcy Code.

**3.2** Debtors propose to pay secured creditors, the amount of their allowed or agreed secured claims according to the terms of this Plan as described in Article II hereinabove and as described hereafter.

**3.3** Debtors propose to liquidate certain of its assets pursuant to Court approved surrenders of real and personal property to the creditors having the secured interest in those assets as well as Court approved sales of other property and to continue to operate the

restructured farm business. The proceeds from the sales of assets will be used to make payments on the allowed claims secured by the property sold.

The balance of the proceeds from such sales, if any, together with revenue from the operation of the farm business will be used by Debtors to make payments on the other secured, administrative, priority, and unsecured without priority claims. All claims will be paid as provided for hereinafter.

In the event it is not feasible to operate the farm, the Debtors propose to use the proceeds from the sale of the farm real estate and equipment to make the payments called for herein.

#### **IV. DESIGNATION AND TREATMENT OF UNIMPAIRED CLASSES**

##### **Unimpaired Classes**

4.1 The following classes are not impaired by the plan: Class 1, Class 2, Class 3, Class 11 and class 15. The foregoing classes are not impaired by this Plan and are, therefore, not required to vote either for acceptance or rejection of this Plan.

##### **Treatment of Unimpaired Classes**

4.2 Priority Claims; Class 1, Class 2 and Class 3: The holders of allowed claims in these classes shall, except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, receive cash in the amount of such allowed claim from the reorganized Debtors as soon as is practical on or after the effective date; or at the option of the reorganized Debtors, the legal, equitable and contractual rights to which such allowed claims entitle the holder thereof shall remain unaltered by the Plan. Any such claim representing a liability incurred in the ordinary course of business by the reorganized Debtors may be paid by the reorganized Debtors in the ordinary course of business.

4.3 Secured Claim, Class 11: Bank of America Mortgage services the mortgage on Norman and Robin Rileys' residence. The monthly payments will be made in accordance with the Note and Deed of Trust from the monthly draw taken by the Debtors.

4.4 Secured Claims, Northwest Farm Credit Services FLCA has elected to pursue foreclosure of its collateral which collateral is valued well in excess of full payment of debtors'

debt. Northwest Farm Credit Services FLCA will have no further claim against Debtors and is therefore unimpaired.

**4.6 Interests in Debtors, Class 18:** There are no interests in Debtors and no distributions will be made to this class.

**4.7 Post-Petition Claims, Class 19:** To the best knowledge and belief of the undersigned, there are no post-petition claims against Debtors. Class 18 shall receive no distributions.

#### **V. TREATMENT OF IMPAIRED CLASSES**

All impaired classes of claims shall receive the distributions set forth in Article VI on account and in complete satisfaction of all such allowed claims. The claims specified herein are impaired pursuant to § 1124 of the Bankruptcy Code. The following classes are impaired by the Plan:

**5.1 Priority Claims: Class 4.**

**5.2 Secured Claims: Class 5 through 10, Class 12 through 16.**

**5.3 Unsecured Nonpriority Claims: Class 17.**

#### **VI. DISTRIBUTIONS**

##### **Priority Claims:**

###### **6.1 Class 1:**

(a) Class 1 consists of all allowed claims against the Debtors entitled to priority pursuant to 11 USC §503 for which application for allowance is made or a claim filed prior to the effective date of this plan, as the same are allowed, approved and ordered paid by the Court. This class includes the United States Trustee's Office.

(b) Class 1 claims shall be paid in full on the Effective Date of the Plan, or within 90 days thereafter, or as agreed between the creditor and Debtors.

###### **6.2 Class 2:**

(a) Class 2 consists of all allowed claims against the Debtors entitled to priority pursuant to 11 USC §507(a) (1), including reimbursement of the expenses of and compensation for services rendered by attorneys, accountants, real estate brokers, and other professional

persons employed by the Debtors or the reorganized Debtors. The members of this class include William Forsberg, the attorney for the Parry, Roe & Clayton, P.A., C.P.A.s, the accountants for the Debtors.

(b) Class 2 claims shall be paid in full on the Effective Date of the Plan, or within 90 days thereafter, or as agreed between a creditor and Debtors on the amount of a claim determined to be enforceable by the Court.

#### **6.3 Class 3:**

(a) Class 3 consists of all allowed claims against the Debtors entitled to priority pursuant to 11 USC §507(a) (2), (4), (5), (6) and (7). The Debtors are unaware of any claims in this class.

(b) These claims, if any, shall be paid in accordance with Article 4.

#### **6.4 Class 4:**

(a) Class 4 consists of all allowed claims against the Debtors entitled to priority pursuant to 11 USC §507(a) (8), consisting of claims of governmental units for taxes in such amounts as may be allowed by the Court. The IRS has filed a priority claim totaling \$16,800.00. The Madison County Treasurer has filed a priority claim for \$17,163.22, part of which is secured by real estate which has been surrendered to Northwest Farm Credit Services FLCA and Tri-River Chemical Co., Inc. which part will not be allowed or paid as a part of Madison County's priority claim. The allowed priority claim of Madison County will be \$5,394.20. The Idaho State Tax Commission has filed a priority claim for \$2,742.10. The Idaho Department of Labor has filed a priority claim for \$40.42. The claims of The IRS and the state Tax Commission are subject to the actual assessment due from the Debtors on their 1999 and 2000 income tax returns.

(b) Class 4 claims will receive on account of such claim deferred cash payments, over a period not exceeding six (6) years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim, the first such payment to be made not later than December 31, 2002 with the remaining payments to be made yearly thereafter.

(c) The reorganized Debtors in their sole discretion, reserve the right to make payments on these claims, or any one of them, prior to culmination of the hereinabove referenced six (6) year period, should the Debtors determine that such earlier payment would be in the best interests of the estate. The reorganized Debtors shall have the right to prepay these creditors as herein provided without penalty. The interest rate for the Madison County Tax Collector, Idaho State Tax Commission and Idaho Department of Labor shall be 8%.

(d) The federal taxes entitled to priority under Section 507(a)(8) of the Bankruptcy Code shall be paid in deferred cash payments in the allowed amount of the claims within six (6) years of the date of assessment under USC § 1129(a)(9)(C). All unpaid priority tax claims shall remain non-dischargeable debts after confirmation. As to the priority claims of the IRS, the Debtor shall remain liable for all unpaid priority tax claims after confirmation. The IRS Claim shall be paid with interest at the proper lawful rate.

The reorganized Debtors shall timely file and pay all post confirmation returns and taxes, including Income Taxes, federal tax deposits and employment and unemployment business tax returns, if applicable. Except as described herein, the IRS shall retain all of its administrative remedies.

The Service is authorized to offset any overpayment made by the Debtors on account of any pre-petition federal taxes and pre-petition accruals thereon, to any pre-petition federal taxes and pre-petition accruals due to the United States, according to 11 U.S.C. 553 and 506(a).

If the Debtors are in default under any of the above provisions of the confirmed Plan, the Service shall give the Debtors thirty (30) days written notice of the default to the Debtors and their attorney by mail or by personal delivery. After thirty (30) days notice of default, if the Debtors have not cured the default, then at the close of the business day on the thirtieth (30th) day, the 11 U.S.C. 362 automatic stay and injunction, under 11 U.S.C. 524, shall terminate and the Service shall be entitled to utilize any and all administrative procedures and any and all other remedies available to it under the Internal Revenue Code.

### **Secured Claims:**

Each creditor, the fair market value of whose collateral exceeds the amount of its Claim will receive a New Secured Note or Amended Capital Lease agreement (collectively, the "New Notes") providing for a principal amount equal to the amount of its debt at the Filing Date plus interest accruing thereon at the rate stated in the Plan. To secure the New Notes, each holder shall retain its lien on the Collateral which secured the respective pre-petition obligation as evidenced by a note, lease or other instrument, together with any replacement lien that creditor may have been granted.

Each creditor, the fair market value of whose collateral is less than the amount of its Claim ("undersecured creditor") shall receive a New Note providing for a principal amount equal to the fair market value of such collateral less any payments received post-petition which shall be applied first to reduce any pre-petition interest outstanding on such debt and second to reduce principal outstanding on such debt. The debt evidenced by the New Note shall bear interest at the rate stated in the Plan. To secure the New Note, the holder shall retain its lien on the Collateral which secured the Original Obligation together with any replacement lien that creditor may have been granted and additional collateral granted as adequate protection.

### **6.5 Class 5:**

(a) Class 5 shall consist of the allowed secured claims of New Holland Credit Co. The amount of the allowed secured claim shall be \$11,188.45, together with 8% interest from the date of filing. The amount of the allowed claim is based upon the balance owed as of the date of filing of a Retail Installment Sales Contract dated 24 July, 1998.

(b) New Holland Credit Co. shall be paid five equal annual payments of \$2,930.16, the first payment due December 1, 2002.

### **6.6 Class 6:**

(a) Class 6 shall consist of the allowed secured claim of CNH Capital. The amount of the allowed secured claim shall be \$16,162.86 together with 8% interest from the date of filing. The amount of the allowed claim is based upon the balance owed as of the date of filing

of a Refinancing Agreement dated 14 April, 1999.

(b) CNH Capital shall be paid five equal annual payments of \$4,232.91 the first payment due December 1, 2002.

**6.7 Class 7:**

(a) Class 7 shall consist of the allowed secured claim of Advanta Business Services Corp. The amount of the allowed secured claim shall be \$10,000.00 together with 10% interest from May 25, 2001. The amount of the allowed claim is based upon the stipulation of Advanta Business Services Corp. and the Debtors dated August 22, 2001.

(b) Advanta Business Services Corp. shall be paid twelve equal semi-annual payments of \$1,773.48, the first payments due February 14, 2002 and August 14, 2002. .

(c) The terms of the *Stipulation RE: Motion for Relief from Automatic Stay/Adequate Protection/Plan Treatment*, between Debtors and Advanta Business Services Corp. dated August 22, 2001, as approved by the Court are hereby incorporated herein.

(d) The pivot secured by the Advanta loan is on property being foreclosed by Northwest Farm Credit Services. In the event the pivot is taken with the foreclosed land, the Debtors will discontinue making payments on the pivot and the purchaser will have to purchase the pivot from Waterview.

**6.8 Class 8:**

(a) Class 8 shall consist of the allowed secured claim of Agricredit Acceptance LLC. The amount of the allowed secured claim shall be \$9,041.97 together with 8% interest from the date of filing.

(b) Agricredit Acceptance LLC shall be paid five equal annual payments of \$2,368.01, the first payment due December 1, 2002.

**6.9 Class 9:**

(a) Class 9 shall consist of the allowed secured claims of the Allen and Connie Ball Living Trust. The amount of the allowed secured claim shall be \$370,000.00 together with 7% interest from the date of filing.

(b) The Allen and Connie Ball Living Trust shall be paid \$30,000 on the effective date of the plan and 20 equal annual payments of \$34,538.37 each shall be made commencing on December 1, 2002 and continuing on the first day of each December thereafter until December 1, 2021, at which time the full, unpaid balance of principal and interest shall be due and payable. Within ten (10) days after confirmation of the Amended Plan, Debtors shall make and deliver to Allen and Connie Ball as Trustees of the Allen Ball and Connie Ball Living Trust, a promissory note in a form acceptable to the Trustees for \$370,000 plus interest accruing thereon at 7% and all amounts due and owing on the Promissory Note shall continue to be secured by that certain Real Estate Mortgage which was recorded in the records of Madison County, Idaho, on January 23, 1996, as Instrument No. 259478.

**6.10 Class 10:**

(a) Class 10 shall consist of the allowed secured claims of Key Bank, NA. The amount of the allowed secured claims is \$57,020.00 based upon the NADA Appraisal Guides for the average retail values of the 1994 pickup truck, \$6,850, and 1997 Bounder Motor Home, \$50,170.00 which are the collateral for these claims. The Key Bank, NA claims shall be amortized at 8% interest.

(b) Key Bank, NA shall be paid seven equal annual payments of \$11,451.02, the first payment due December 1, 2002.

**6.11 Class 11:**

(a) Class 11 shall consist of the allowed secured claim of Bank of America Mortgage. The amount of the allowed secured claim shall be \$18,864.99.

(b) Bank of America Mortgage shall be paid in accordance with the terms of its Note and Deed of Trust.

**6.12 Class 12:**

(a) Class 12 shall consist of the allowed secured claims of General Motors Acceptance Corp. The amount of the allowed secured claim is \$23,385.00 together with 8% interest from the date of filing.

(b) General Motors Acceptance Corp. shall be paid five equal annual payments of \$6,044.82, the first payment due September 30, 2002.

**6.13 Class 13:**

(a) Class 13 shall consist of the allowed secured claim of Waterview Resolution Corp. The amount of the allowed secured claim shall be \$35,000.00 together with 10% interest from May 25, 2001. The amount of the allowed claim is based upon the stipulation of Waterview Resolution Corp. and the Debtors dated August 22, 2001.

(b) Waterview Resolution Corp. shall be paid twelve equal semi-annual payments of \$4,274.75, the first payments due February 14, 2002 and August 14, 2002.

(c) The terms of the *Stipulation RE: Motion for Relief from Automatic Stay/Adequate Protection/Plan Treatment*, between Debtors and Waterview Resolution Corp. dated August 22, 2001, as approved by the Court are hereby incorporated herein.

(d) One of the two pivots secured by the Waterview loan is on property being foreclosed by Northwest Farm Credit Services. In the event the pivot is taken with the foreclosed land, the purchaser will have to purchase the pivot from Waterview and Debtors will make payments on the remaining pivot, only.

**6.14 Class 14:**

(a) Class 14 shall consist of the allowed secured claim of Steven Parry. The amount of the allowed secured claim is \$124,843.15.

(b) The collateral will be surrendered to Steven Parry in full satisfaction of the debt.

**6.15 Class 15:**

(a) Class 15 shall consist of the allowed secured claim of Northwest Farm Credit Services, FLCA. The amount of the allowed secured claim is \$309,723.84.

(b) The collateral has been surrendered to Northwest Farm Credit Services, FLCA in full satisfaction of the debt.

**6.16 Class 16:**

(a) Class 16 shall consist of the Allowed Secured Claim of Tri-River Chemical, Inc. The amount of the Allowed Secured Claim is \$840,961.16. The Allowed Secured Claim is based upon the carryover operating debt of the Debtors to Tri-River Chemical, Inc.

(b) Real estate and irrigation equipment securing the debt will be surrendered to Tri-River Chemical, Inc. in satisfaction of \$493,394.44 the debt. The remaining equipment securing the debt will be surrendered to Tri-River Chemical, Inc. in satisfaction of \$163,831.72 of the debt. Debtors will retain the right to redeem the surrendered real estate and irrigation equipment until December 31, 2002. Redemption shall be for a cash payment equal to the sum of \$493,394.44 together with interest at 8% from the date of confirmation of the plan and payment of all other expenses incurred by Tri-River Chemical, Inc. with respect to the land and irrigation equipment from the date of confirmation of the plan to the date of redemption. Debtors shall remain in possession of the land through the 2002 farming season. In the event the debtors do not redeem the real estate and by December 31, 2002, they will convey all their interest in the real estate to Tri-River Chemical, Inc. by quitclaim deed and all the interest in the irrigation equipment to Tri-River Chemical, Inc. by a bill of sale. Debtors shall remain in possession of the other farm equipment until June 1, 2002 and shall retain the right to redeem said equipment for the payment in cash of the sum of \$163,831.72 on or before July 15, 2002. In the event the Debtors do not redeem the other farm equipment, they shall convey all their interest in the other farm equipment to Tri-River Chemical, Inc. by bill of sale.

(c) Debtors will pay Tri River Chemical the sum of \$183,735.00 together with 8% interest in five equal installments of \$48,425.78, the first such installment due December 31, 2002 and the others due the 31<sup>st</sup> day of December in each succeeding year, the balance, principal and interest, due not later than December 31, 2006.

(d) The balance of the Tri-River Chemical, Inc. Allowed Claim will be paid as a part of Class 17.

**Unsecured Claims:**

**6.17 Class 17:**

(a) Allowed unsecured claims in this class shall receive a distribution of \$70,000.00. These allowed claims shall be paid pro rata from those monies available, after payment of all allowed priority, administrative and secured claims over a ten year period following the Effective Date of the Plan. Excess monies shall be accumulated during the calendar year and payments, without interest, shall be made on the 31st day of December of each year, beginning December 31, 2002. Payments shall continue to be made until the full \$70,000.00, without interest shall have been paid to the allowed unsecured claim holders in Class 17.

This class further includes any claims of those creditors described in Classes 5, through 16 not otherwise provided for in those classes, and in Classes 18 and 19. Debtors classify these claims as allowed unsecured claims. The reorganized Debtors propose to pay the undisputed amount to the creditors and resolve the disputed amounts as described by the Plan.

**Interests:**

**6.18 Class 18:**

(a) Class 18 shall consist of the allowed interests in Debtors. The Debtors are not aware of any such interests.

(b) No distributions shall be made on account of any interest under the Plan. These claims, if allowed, shall be paid in accordance with the claims of Class 18.

**Post-Petition Claims:**

**6.19 Class 19:**

(a) Class 19 shall consist of any post-petition claims against Debtors. The Debtors are not aware of any such claims.

(b) Any such claims, if allowed, shall be paid in accordance with the claims of Class 17.

**VII.**

**PROVISIONS FOR IMPLEMENTATION OF PLAN AND FOR  
MEANS OF EXECUTION OF PLAN**

7.1 Funds necessary for the satisfaction of the creditors' claims shall be generated from the following sources:

- (a) Revenue from the operation of Howe Farms farming business.
- (b) Sale of non-essential assets.

7.2 Unless otherwise provided herein or agreed to between the concerned creditors and Debtors, within 90 days after the effective date, the reorganized Debtors shall pay in full all administrative expenses previously approved by the United States Bankruptcy Court for the District of Idaho.

7.3 Notwithstanding any other provision of this Plan of Reorganization, disputed claims as set forth in the Debtors' Bankruptcy Schedules on file herein and claims which may be contested shall be paid only upon their allowance by the court in conformance with the classification of the allowed amount of such claim as set forth herein.

7.4 All property of the Debtors shall be retained by the reorganized Debtors, except as sales shall hereafter be made, wherein a transfer of any part of the property of the estate to one or more entities, whether organized before or after confirmation of such Plan, may be had.

7.5 After Court approval of the sale of any part of the property of the reorganized Debtors, such sale shall be either: (a) subject to, or (b) free from any lien with the liens to attach to the proceeds thereof. The reorganized Debtors may thereafter, with Court approval make a distribution of a part of the proceeds from the sale of the property of the estate among those having an interest in such property of the estate, or on the allowed unsecured claims.

7.6 Except as proved for in this Plan, any extension of maturity date or change in an interest rate or other term of an outstanding security interest holder shall only be by written agreement between the parties.

7.7 The reorganized Debtors shall retain and may enforce any civil action, claim, or interest against any party whatsoever while the Plan is in effect.

7.8 The reorganized Debtors may elect to contest various claims filed by creditors, or parties in interest, including, but not limited to, administrative, priority, secured and unsecured

claims.

7.9 Debtors reserve the right to apply any excess funds received from the operation of their farm business to payments due the Internal Revenue Service, allowed administrative claims, or allowed secured claims.

7.10 Debtors propose, pursuant to 11 USC §365, to assume the Idaho Department of Lands Lease C-9775, Lease C-8845, and the Idaho Department of Lands Contracts Nos. 25521 and 25522. The contracts are both in default, and according to their terms the Debtors are now in the status of lessors. Payment of this year's lease payments will reinstate the contracts. The debtors intend to reject the lease with Katherine Rowan and attempt to negotiate a new lease.

7.11 Debtors shall be entitled to retain from the operation of the farm up to the sum of \$150,000.00 per year for the purpose of planting and operating the farm prior to making distributions to the creditors in Class 17. Debtors further retain the right to incur secured indebtedness as is necessary and convenient to the operation of the farm business. Debtors may grant a prior secured interest to providers of fertilizer and other chemicals and seed as may be necessary for planting and operation of the farms as long as Plan payments to each of the creditors having a security interest to be subordinated are current.

#### VIII. PROPERTY TO BE DEALT WITH BY THE PLAN

All property of the Debtors is dealt with in the Plan. Secured creditors shall retain their security interest or lien in the property of the Debtors, subject to the provisions of the Bankruptcy Code and this Plan.

#### IX EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Unless specifically rejected herein, or in previous orders of this court, the reorganized Debtors shall have a period of thirty (30) days after the effective date to either assume or reject all executory contracts and unexpired leases. At this time Debtors are unaware of any executory contracts or unexpired leases that have not already been rejected.

#### X. MODIFICATION OF PLAN

10.1 Modifications of the Plan may be proposed in writing by the reorganized Debtors at

any time before confirmation, provided that such Plan, as modified, meets the requirements of 11 U.S.C. 1122 and 1123, and the reorganized Debtors have complied with 11 U.S.C. 1125.

10.2 In addition, the Plan may be modified at any time after confirmation and before its substantial consummation, provided that such Plan, as modified, meets the requirements of §§ 1122 and 1123 of the Code and the Court, after notice and a hearing, confirms such Plan as modified, under § 1129 of the Code, and the circumstances then existing justify such modifications.

10.3 A holder of a claim or interest that has accepted or rejected the Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Court, such holder changes its previous acceptance or rejection.

10.4 Any modification of the Plan will supersede and render null and void the previous provision which was modified.

10.5 The reorganized Debtors may remedy any defects or omissions or reconcile any inconsistencies in this Plan or in the final Order of the Court confirming the Plan in such manner as may be necessary to carry out the purpose and intent of this Plan so long as the interests of claimants or interest holders are not materially or adversely affected.

#### XI. RETENTION OF JURISDICTION

Until this Plan has been fully consummated through the entry of a final decree completely closing the case, the Bankruptcy Court shall retain jurisdiction over all matters necessary to ensure that the purposes and intent of this Plan are carried out, including but not limited to the following:

- (1) Determination of requests for payment of claims entitled to priority under §507(a) (1) of the Code, including compensation of parties entitled thereto.
- (2) In the event an appeal is perfected from the order confirming Plan, the Court shall also retain jurisdiction appropriate to protect the interests of the estate and to enter such orders as are necessary to protect the appeal.
- (3) Hear and determine any objection to a claim or equity security interest when such objection is filed with the Court by the reorganized Debtors.
- (4) Hear and determine all questions and disputes regarding title to the property of the reorganized Debtors or the reorganized Debtors' estate.

(5) Correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the order of confirmation as may be necessary to carry out the purpose and intent of the Plan.

(6) To liquidate damages in connection with any disputed claims.

(7) To adjudicate all claims of a security or ownership interest in any property of the estate or in any proceeds thereof.

(8) To allow and classify claims of any creditor, reexamine claims as provided under the Code, and to hear and determine any objection to a claim or equity security interest when such objection is filed with the Court by the reorganized Debtors.

(9) Issue any order necessary to implement the Plan or order of confirmation, including, without limitation, such declaratory and injunctive orders as are appropriate to protect the reorganized Debtors, the reorganized Debtors' estate, and the reorganized Debtors in their estate from actions of creditors, equity security holders, or other parties in interest.

(10) Hear and determine any dispute relating to the terms or implementation of the Plan or Order of Confirmation, or to the rights or obligations of any party in interest with respect thereto and correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the order of confirmation as may be necessary to carry out the purpose and intent of the Plan.

(11) To hear and determine any modification of the Plan pursuant to § 1127 of the Bankruptcy Code.

(12) To hear and determine any dispute, claim for relief application, adversary proceeding or contested matter pending commenced on or commenced after the confirmation date involving the collection or liquidation of assets of the reorganized Debtors, including, without limitation, any proceeding commenced for the purpose of voiding, recovering or preserving for the benefit of the estate any transfer of property, obligation incurred by the Debtors, lien or setoff.

(13) Hear and determine any matter related to the assumption, assignment, or rejection of an executory contract or unexpired lease of the reorganized Debtors.

(14) Entry of a final decree closing this Chapter 11 case.

Nothing contained herein shall be construed as restricting the reorganized Debtors in the conduct of their business and operation unless the Plan specifically provides to the contrary.

## XII. DISCHARGE

Except as otherwise provided for in the Plan or in the Order of Confirmation, entry of the Order of Confirmation acts as a discharge effective as of the effective date of the Plan, of (i) any and all claims arising or occurring prior to the effective date, and (ii) any and all claims of the

kind specified in §§ 502(g), 502(h), or 502(I) of the Code. Such discharge will be effective under § 1141 of the Code whether or not a Proof of Claim is filed or deemed filed, such claim is allowed, or the holder of such claim has accepted the Plan.

### **XIII. VESTING OF PROPERTY IN REORGANIZED DEBTORS**

**13.1** Upon the effective date of the Plan all property of the estate shall vest in the reorganized Debtors and shall be held and owned by the reorganized Debtors, free and clear of all liens, claims and interests of all creditors or all interest holders in the Debtors or reorganized Debtors, except to the extent provided for in the Plan.

**13.2** Pending execution of the Plan and unless the Court has otherwise expressly ordered, or this Plan otherwise expressly provides, all creditors, will be stayed from proceeding against the Debtors, the reorganized Debtors, the reorganized Debtors' assets, or the assets of the estate.

### **XIV. DISCLOSURE OF IDENTITY AND AFFILIATIONS**

**14.1** After confirmation of the Plan, Norman and Robin Riley shall continue to operate the reorganized Debtors. The continuing operation of the business by the Rileys is consistent with the interests of creditors and with public policy.

**14.2** Norman and Robin Riley shall take a total monthly draw of \$5,000.00.

### **XV. MISCELLANEOUS**

**15.1** The headings in the Plan are for the convenience of reference only and neither constitute a portion of the Plan nor in any manner affect the construction or meaning of the provisions of the Plan.

**15.2** The authority of the reorganized Debtors to agree to modifications, supplements or amendments of or to any agreements or instruments referred to in the Plan or utilized in the reorganized Debtors' business shall be as provided in such agreement or instruments.

**15.3** Except to the extent that the Code or other federal law is applicable, the rights, duties and obligations arising under this Plan shall be governed and construed and enforced in accordance with the laws of the State of Idaho.

**15.4** The rights, duties and obligations of any person named or referred to in this Plan

shall be binding upon and shall inure to the benefit of the successors or assigns of such person.

**15.5** Whenever any payment or distribution to be made under this Plan shall be due on a day other than a business day, such payment or distribution shall instead be made, without interest, on the next following business day.

**15.6** Any notice, pleading, or document, required to be served by law or according to the provisions of this Plan, shall be in writing and shall be served in person or by Certified Mail upon the reorganized Debtors as follows:

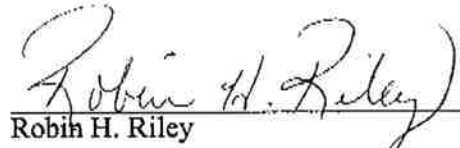
Norman N. and Robin Riley  
1623 West 3400 South  
Rexburg, ID 83440

With a copy to:

William Forsberg  
127 East Main  
Rexburg, ID 83440

DATED this 10<sup>th</sup> day of May, 2002.

  
Norman N. Riley

  
Robin H. Riley

WILLIAM FORSBERG  
Attorney at Law  
ISB 2310  
127 East Main  
Rexburg, Idaho 83440

Telephone (208) 356-7474

Attorney for Debtors

U.S. COURTS

02 JUL 22 AM 9:40

REC'D FILED  
CAMERON S. BURKE  
CLERK IDAHO

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In Re:

NORMAN N. RILEY and ROBIN H.  
RILEY, dba HOWE FARMS,

Debtors.

Case No. 01-40820  
Chapter 11

ORDER CONFIRMING AMENDED PLAN  
OF REORGANIZATION

Debtors' Amended Plan of Reorganization came on for hearing for purposes of confirmation on the 13<sup>th</sup> day of June, 2002. Appearing at the hearing was William Forsberg, attorney for the debtors.

The Debtors filed their Amended Plan of Reorganization on the 10<sup>th</sup> day of May, 2002; the Plan and Amended Plan, Disclosure Statement, Notice of the Confirmation Hearing and Notice of Continued Confirmation Hearing having been mailed to all creditors and other parties in interest as required by Bankruptcy Rule 2002 (b), and after hearing the oral argument of the respective parties; being fully advised in the premises; and, having determined after notice and hearing that:

1. Any and all written objections to confirmation filed with the Court have been resolved and withdrawn or overruled;

2. The provisions of Chapter 11 of the Code have been complied with in every respect and the plan has been proposed in good faith and not by any means forbidden by law;

3. Each class of holders of claims or interests has accepted the debtor's plan, and will receive or retain property which, as of the effective date of the plan, as a value that is not less than the

Order Confirming Amended Plan of Reorganization - Page 1

ATTACHED **TO** THE IDWR NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

SCANNED

SEP 09 2005

EXHIBIT

141

amount such holder would receive or retain if the debtors' estate were liquidated under Chapter 7 of the Code on such date;

4. All payments made or promised to be made by the debtors, or by any person, for services or costs and expenses in, or in connection with, the plan and incident to this case have been fully disclosed to the Court and are reasonable, or, if to be fixed after confirmation of the debtors' amended plan, will be subject to approval of the Court;

5. Confirmation of the debtors' amended plan is not likely to be followed by liquidation or the need for further financial reorganization of debtor's estate, or any successors to the debtors under the amended plan.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Debtors' Amended Plan of Reorganization, dated the 10<sup>th</sup> day of May, 2002 is confirmed and that all parties affected hereby are bound to the provisions of the debtors' Amended Plan of Reorganization.

IT IS FURTHER ORDERED that the United States Trustee's quarterly Fees are an allowed administrative expense that will be paid on the effective date of the Plan, the Debtor will pay, when due, all United States Trustee's quarterly fees incurred from the confirmation date until the case is closed by the Court, converted or dismissed, whichever occurs first. The quarterly fees owed to the United States Trustee shall be paid on the effective date of the confirmed Plan.

IT IS FURTHER ORDERED that as to Class 16, consisting of the secured claim of Tri-River Chemical Company, its treatment under the plan shall be as follows:

(a) Class 16 shall consist of the Allowed Secured Claim of Tri-River Chemical, Inc. The amount of the Allowed Secured Claim is \$840,961.16. The Allowed Secured Claim is based upon the carryover operating debt of the Debtors to Tri-River Chemical, Inc.

(b) Surrender of Collateral and Right to Redeem.

(1) Real estate and irrigation equipment securing the debt will be surrendered to Tri-River Chemical, Inc. in satisfaction of \$493,394.44 the debt. The remaining equipment securing the debt will be surrendered to Tri-River Chemical, Inc. in satisfaction of \$163,831.72 of the debt.

(2) Debtors will retain the right to redeem the surrendered real estate and

irrigation equipment until December 31, 2002. Redemption shall be for a cash payment equal to the sum of \$550,000.00 together with interest at 8% from the date of confirmation of the plan and payment of all other expenses incurred by Tri-River Chemical, Inc. with respect to the land and irrigation equipment from the date of confirmation of the plan to the date of redemption.

(3) Debtors shall remain in possession of the land through the 2002 farming season. Debtors shall pay to Tri-River Chemical, Inc. the sum of \$25.00 per acre for the 140 acres of farm land on which it has a first mortgage position. Such payment shall be due not later than October 31, 2002.

(4) In the event the Debtors do not redeem the real estate and irrigation equipment by December 31, 2002, they will convey all their interest in the real estate to Tri-River Chemical, Inc. by quitclaim deed and all the interest in the irrigation equipment to Tri-River Chemical, Inc. by a bill of sale.

(5) Debtors shall remain in possession of the other farm equipment until July 15, 2002 and shall retain the right to redeem said equipment for the payment in cash of the sum of \$163,831.72 on or before August 15, 2002. In the event the Debtors do not redeem the other farm equipment, they shall convey all their interest in the other farm equipment to Tri-River Chemical, Inc. by bill of sale.

(6) On the effective date of the Plan, Debtors shall execute a bill of sale for the equipment collateral, and a quitclaim deed to the real estate collateral in a form acceptable to Tri-River Chemical, which shall be held by counsel for Tri-River Chemical, to be conveyed to Tri-River Chemical if and only if Debtors fail to redeem said equipment and/or real estate as provided herein.

(c) Payment of UAP Interest in Pre-petition Government Payments, etc.

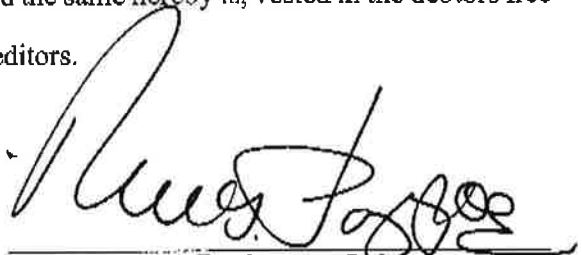
(1) As payment in full of its interest in all government payments for claims under any and all agricultural program entitlements for which the Debtors may be entitled to payment, for all periods prior to the date the petition was filed herein, Debtors will pay Tri River Chemical the sum of \$183,735.00 together with 8% interest in five equal installments of \$48,425.78, the first such installment due December 31, 2002 and the others due the 31<sup>st</sup> day of December in each succeeding year, the balance, principal and interest, due not later than December 31, 2006.

(2) Debtors will grant to Tri-River Chemical, Inc. a security interest in all post confirmation government payments it is entitled to receive on property owned by them. Creditor shall release any such payments to the Debtors as long as the Debtors are current on their obligations under this Plan to the Creditor.

(d) The balance of the Tri-River Chemical, Inc. Allowed Claim will be paid as a part of Class 17.

IT IS FURTHER ORDERED that, except as provided in this Order Confirming Plan of Reorganization, all property of the estate shall be, and the same hereby is, vested in the debtors free and clear of any and all claims or interests of the creditors.

Dated this 22<sup>nd</sup> day of July, 2002.

  
Jim D. Pappas, Bankruptcy Judge

Reviewed and Approved by:

\_\_\_\_\_  
Jeffery G. Howe, Asst. U.S. Trustee

\_\_\_\_\_  
Warren Derbidge

\_\_\_\_\_  
Daniel C. Green

\_\_\_\_\_  
Brian D. Nicholas

SCANNED  
SEP 09 2005

(2) Debtors will grant to Tri-River Chemical, Inc. a security interest in all post confirmation government payments it is entitled to receive on property owned by them. Creditor shall release any such payments to the Debtors as long as the Debtors are current on their obligations under this Plan to the Creditor.

(d) The balance of the Tri-River Chemical, Inc. Allowed Claim will be paid as a part of Class 17.

IT IS FURTHER ORDERED that, except as provided in this Order Confirming Plan of Reorganization, all property of the estate shall be, and the same hereby is, vested in the debtors free and clear of any and all claims or interests of the creditors.

Dated this \_\_\_\_ day of July, 2002.

Jim D. Pappas, Bankruptcy Judge

Reviewed and Approved by:



Jeffery G. Howe, Asst. U.S. Trustee

Warren Derbidge

Daniel C. Green

Brian D. Nicholas

Order Confirming Amended Plan of Reorganization - Page 4

SCANNED

SEP 09 2005

(2) Debtors will grant to Tri-River Chemical, Inc. a security interest in all post confirmation government payments it is entitled to receive on property owned by them. Creditor shall release any such payments to the Debtors as long as the Debtors are current on their obligations under this Plan to the Creditor.

(d) The balance of the Tri-River Chemical, Inc. Allowed Claim will be paid as a part of Class 17.

IT IS FURTHER ORDERED that, except as provided in this Order Confirming Plan of Reorganization, all property of the estate shall be, and the same hereby is, vested in the debtors free and clear of any and all claims or interests of the creditors.

Dated this \_\_\_\_ day of July, 2002.

\_\_\_\_\_  
Jim D. Pappas, Bankruptcy Judge

Reviewed and Approved by:

\_\_\_\_\_  
Jeffery G. Howe, Asst. U.S. Trustee

\_\_\_\_\_  
Warren Derbidge

\_\_\_\_\_  
Daniel C. Green

\_\_\_\_\_  
Brian D. Nicholas

(2) Debtors will grant to Tri-River Chemical, Inc. a security interest in all post confirmation government payments it is entitled to receive on property owned by them. Creditor shall release any such payments to the Debtors as long as the Debtors are current on their obligations under this Plan to the Creditor.

(d) The balance of the Tri-River Chemical, Inc. Allowed Claim will be paid as a part of Class 17.

IT IS FURTHER ORDERED that, except as provided in this Order Confirming Plan of Reorganization, all property of the estate shall be, and the same hereby is, vested in the debtors free and clear of any and all claims or interests of the creditors.

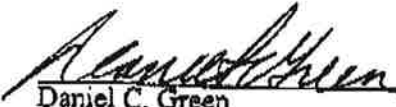
Dated this \_\_\_\_ day of July, 2002.

Jim D. Pappas, Bankruptcy Judge

Reviewed and Approved by:

Jeffery G. Howe, Asst. U.S. Trustee

Warren Derbidge

  
Daniel C. Green

Brian D. Nicholas

SCANNED

SEP 09 2005

(2) Debtors will grant to Tri-River Chemical, Inc. a security interest in all post confirmation government payments it is entitled to receive on property owned by them. Creditor shall release any such payments to the Debtors as long as the Debtors are current on their obligations under this Plan to the Creditor.

(d) The balance of the Tri-River Chemical, Inc. Allowed Claim will be paid as a part of Class 17.

IT IS FURTHER ORDERED that, except as provided in this Order Confirming Plan of Reorganization, all property of the estate shall be, and the same hereby is, vested in the debtors free and clear of any and all claims or interests of the creditors.

Dated this \_\_\_\_ day of July, 2002.

Jim D. Pappas, Bankruptcy Judge

Reviewed and Approved by:

Jeffery G. Howe, Asst. U.S. Trustee

Warren Derbidge

Daniel C. Green

  
Brian D. Nicholas

### CLERK'S CERTIFICATE OF MAILING

The undersigned hereby certifies that a true, correct and complete copy of the Order Confirming Amended Plan of Reorganization were served to the following parties by placing the same in the U.S. Post Office, postage prepaid, this 22nd day of July, 2002.

Daniel Green  
Racine, Olson, Nyc, Cooper  
P.O. Box 1391  
Pocatello, ID 83204-1391

Warren Derbidge  
U.S. Department of Justice  
PO Box 32  
Boise ID 83707

Jeffery Howe  
U. S. Trustee  
P.O. Box 110  
Boise ID 83701

Brian D. Nicholas  
Deputy Attorney General  
P.O. Box 36  
Boise ID 83722-0036

William Forsberg  
Law Firm of Forsberg & Dummar, Chtd.  
127 East Main  
Rexburg, ID 83440

CAMERON S. BURKE, Clerk

  
Deputy Clerk

Steven R. Parry  
Brian T. Tucker  
ANDERSON NELSON HALL SMITH, P.A.  
490 Memorial Drive  
P. O. Box 51630  
Idaho Falls, ID 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254  
Idaho State Bar Numbers 4006 and 5236

U.S. COURTS  
02 APR - 0 AM 9:51  
REC'D  
CLERK OF COURT  
CLERK OF COURT

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In Re:

NORMAN N. AND ROBIN H. RILEY  
519-66-7784 and 519-72-1117

Debtor.

Case No. 01-40820

**ORDER GRANTING RELIEF FROM  
AUTOMATIC STAY**

Based on the stipulation filed by the Debtors, and Anderson Nelson Hall Smith, P.A. stipulating that the information contained in the Affidavit of Steven R. Parry to support its request to lift the stay is true and correct and that there exists good cause for relief from the automatic stay and the Court being fully advised in the premises and good cause appearing therefore;

NOW, THEREFORE, IT IS HEREBY ORDERED, That Anderson Nelson Hall Smith, P.A. be, and is hereby granted relief from the Automatic Stay provided by 11 U.S.C. §362(a) allowing Anderson Nelson Hall Smith, P.A. to take whatever action is deemed necessary to sell and dispose of the water rights associated with water license 22-07280.

Said personal property was pledged as collateral by the Debtors to the obligation the Debtors owe to Anderson Nelson Hall Smith, P.A. Debtors should cooperate in the disposal of the personal property.

IT IS FURTHER ORDERED that the additional ten (10) day stay after an Order Granting Relief From the Automatic Stay imposed by Rule 4001(a)(3) is not applicable to this case pursuant to the parties stipulation.

DATED this APR - 8 2002 day of March, 2002.

ORDER GRANTING RELIEF FROM AUTOMATIC STAY - 1

**EXHIBIT**  
"E"

ATTACHED **TO** THE IDWR NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

SCANNED  
SEP 09 2005

**JIM D. PAPPAS**

JUDGE

**NOTICE OF ENTRY**

I HEREBY CERTIFY That a copy of the foregoing Order was that **APR - 8 2002** **APR - 8 2002** March, 2002, served on every party affected thereby as follows by mailing by U.S. Mail, postage prepaid, or personal delivery, or by placing in the courthouse mail.

William Forsberg  
127 E. Main Street  
Rexburg, ID 83440

Norman and Robin Riley  
1623 W. 3400 S.  
Rexburg, ID 83440

U.S. Trustee  
Post Office Box 1110  
Boise, ID 83701

Brian T. Tucker  
P.O. Box 51630  
Idaho Falls, ID 83405-1630

**Cameron S. Burke**

CLERK

**Tami Williams**

DEPUTY

L:\asp\2668.02\ordergrant.relief.wpd

ORDER GRANTING RELIEF FROM AUTOMATIC STAY - 2

SCANNED  
SEP 09 2005

## CLARIFYING ASSIGNMENT

WHEREAS, certain documents in the bankruptcy matter of Norman N. Riley and Robin H. Riley, d/b/a Howe Farms, Case No. 01-40820 referred on occasion to the claim of Anderson Nelson Hall Smith, P.A., and on occasion to the claim of Steven Parry; and

WHEREAS, Steven Parry is an attorney with the law firm of Anderson Nelson Hall Smith, P.A., and any claims in said bankruptcy associated with Steven Parry are the same as the claims of Anderson Nelson Hall Smith, P.A.; and

WHEREAS, to remove any confusion as to the proper holder of the subject water rights Steven Parry desires by this Clarifying Assignment to confirm that all rights and interests in Water Right No. 22-07280B are owned by Anderson Nelson Hall Smith, P.A.,

NOW, THEREFORE, for the reasons set forth above, and as clarification as to ownership, Steven Parry, an attorney with Anderson Nelson Hall Smith, P.A., hereby confirms that the rights and interests in Water Right No. 22-07280B are and should be held in the name of Anderson Nelson Hall Smith, P.A., and for that purpose hereby assigns any interest that he may have in said water rights to Anderson Nelson Hall Smith, P.A.

Dated this 22nd day of October, 2004.

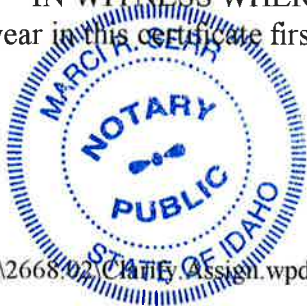
  
STEVEN PARRY

STATE OF IDAHO )

County of Bonneville )

On this 22nd day of October, 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared STEVEN PARRY, 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 WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



L:\srp\2668\02 Clarify Assign.wpd



Notary Public for the State of Idaho

Residing at

My Commission expires:

Idaho Falls Id  
5-8-2008

**EXHIBIT**  
"F"

SCANNED

SEP 09 2005

ATTACHED **10** THE IDWR NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED

SEP 11 1997

Department of Water Resources  
Eastern Region

RECEIVED

SEP 02 1997

Department of Water Resources

*Keith Watson*

1997 AUG 28 PM 3:35

DISTRICT COURT-SRBA  
TWIN FALLS CO., IDAHO  
FILED

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

In Re: SRBA

Case No. 94-00012

Case No. 39576

MEMORANDUM DECISION

NORMAN RILEY and ROBIN  
RILEY, husband and wife,

Plaintiffs,

v.

CATHERINE ROWAN,

Defendant.

I. BACKGROUND

This action contesting ownership of a water right was filed in the Snake River Basin Adjudication (SRBA) by Norman and Robin Riley against Catherine Rowan. This follows the case of *Rowan v. Riley*, Madison County Case CV-93-350, in which the Honorable James C. Herndon, Presiding District Judge, held that he did not have subject matter jurisdiction to resolve the ownership of the water right at issue. The dispute is about a water right license issued in the names of two deceased people. The enabling permit for the license is Water Permit 22-07280. Trial was held followed by briefing by the parties. The following decision constitutes this court's findings of fact and conclusions of law.

SCANNED

SEP 09 2005

## II. FINDINGS OF FACT

### A. THE PARTIES

Plaintiffs, Norman and Robin Riley, husband and wife, (the Rileys) own and farm land in Madison County. Robin Riley is the daughter of James "Jim" Howe. Jim Howe died on March 4, 1992. By agreement with her sisters, Robin Riley is entitled to any farming interest including water from her father's estate. The Rileys claim that Water Permit 22-07280 is a personal property farming interest of Jim Howe's estate which entitles them to ownership of the water license that followed from the permit.

Defendant, Catherine Rowan, is a Utah resident who owns real property in Madison County. Catherine Rowan leases her land to the Rileys for farming purposes. Catherine Rowan was the sister of Jim Howe and is Robin Riley's aunt.

### B. THE LAND

Catherine Rowan and Jim Howe owned a vested remainder in 756 acres of land (the Farm) deeded to them by the Webster-Soule Farm Corporation in 1944. This deed reserved a life estate in their mother, Lucille Howe (Lucille).

From 1969 to the date of Lucille's death in 1983, Jim Howe leased and farmed the land that constituted Lucille's life estate. Therefore, prior to Lucille's death, Jim Howe leased and farmed the land in which he and Catherine Rowan held a future interest. After Lucille's death, the Farm passed to Jim Howe and Catherine Rowan as tenants in common in fee simple absolute.

Between 1983 and 1988, Jim Howe continued to farm all of the land--his one half and Catherine Rowan's half under a lease. Facing bankruptcy in 1987 and 1988, Jim Howe sought loans to be secured by his ownership interest in the Farm. In 1988 Catherine Rowan desired to partition the Farm to avoid personal liability for Jim Howe's debt.

On March 31, 1988, cross deeds were executed dividing the Farm into two halves. Jim Howe was deeded the northern half with all appurtenances and Catherine Rowan was deeded the southern half with all appurtenances. (Exhibits J, K, M, N.)

The disputed water is drawn from a well located on the land deeded to Catherine Rowan. The water from the "south well" was primarily used to irrigate the south half of the Farm and, secondarily, to supplement the irrigation of the north half. The original cross deeds did not grant an interest in the water from the "south well" to Jim Howe for use on his land.

In order to service loans, Jim Howe's lender required him to secure a right to water from the "south well" located on Catherine Rowan's land, as well as an easement to maintain the delivery system to the north lands. Jim Howe sought and Catherine Rowan granted an easement (Corrected Agreement, August 3, 1988, Exhibit P) and a one-half interest in the water from the "south well" (Correction Grant Deed, August 11, 1988, Exhibit R). Jim Howe continued to farm his north land and Catherine Rowan's southern half under a lease.

On December 5, 1991, Jim Howe executed a Bill of Sale of Goods and Chattels (Bill of Sale) to the Rileys. The Bill of Sale lists "any and all water rights including . . . application approved permit #22-7280 which is the water right associated with the well on Catherine Rowan's southern portion of land." Six months after Jim Howe's death in March 1992, the Rileys filed the Bill of Sale in Madison County.

After Jim Howe's death, the Rileys farmed both halves of the original Farm pursuant to a lease with Catherine Rowan for her southern half. In 1995 the working relationship between Catherine Rowan and the Rileys deteriorated to the point that Catherine Rowan wanted to discontinue renting her land to the Rileys. The Rileys have continued to lease Catherine Rowan's land by court order issued in the original Madison County case.

### C. THE WATER LICENSE FOR THE "SOUTH WELL"

On August 28, 1978, Jim Howe applied for a water permit from IDWR under the names of "Lucille W. Howe AND/OR Jim Howe." From what would be called the "south well," IDWR granted the Water Permit 22-07280 allowing the appropriation 10.81 cfs of ground water from the "south well." The permit application also stated that Lucille Howe owned the property that was to be the place of use. Question 9(c) of the permit application states: "If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing." Question 9(c) was not completed by either Jim Howe or Lucille Howe reflecting that Jim and Lucille filed as owners of the land. The permit also required proof of construction of work and application of water to beneficial use to be submitted on or before August 1, 1983.

The well was constructed and Jim Howe timely filed a notice of completed development for Water Permit 22-07280 on February 7, 1983, with IDWR.

On August 23, 1989, IDWR issued a Beneficial Use Field Report for Water Permit 22-07280 listing the owner as "Lucille W. Howe or Jim Howe." The Beneficial Use Field

Report (August 23, 1989, Exhibit 5) confirmed that the conditions specified by the permit six years earlier had been completed.

On August 14, 1988, a Notice of Claim to a Water Right for the "south well," Water Permit 22-07280, was filed in the SRBA in the name of "Lucille W. Howe - Deceased, Jim W. Howe and/or Catherine Rowan."

On November 12, 1992, Robin Riley filed with IDWR a New Property Owner Notice of Change of Water Right Ownership (Notice of Change) listing the Rileys as claimants. The Notice of Change form asked if the change in ownership resulted in a splitting of the water right and the "yes" box was checked, listing Water Permit 22-07280 as having been split.

On November 24, 1992, IDWR sent a letter to Norman Riley indicating that Water Permit 22-07280 had been split into 22-07280A and 22-07280B. On December 2, 1992, IDWR issued Notices of Claim to a Water Right to both the Rileys (Notice of Claim 22-07280B) and to Catherine Rowan (Notice of Claim 22-07280A). The division of the original 10.81 cfs was 4.270 cfs to the Rileys and 6.540 cfs to Catherine Rowan.

On December 4, 1995, IDWR issued Water Right License 22-07280 in the name of Jim Howe and Lucille Howe, both deceased. In a December 6, 1995, letter to the Rileys and Catherine Rowan, IDWR informed them of their right to request a hearing to review the terms and conditions for Water Right License 22-07280 before IDWR pursuant to Idaho Code § 42-1701 A(3). Both parties filed petitions requesting a hearing.

The matter was heard on March 19, 1996, before an IDWR hearing officer. The officer concluded that a revocation of the license was not appropriate at that time. The officer believed that the ownership dispute did not undermine the authority of IDWR to issue the license under Idaho Code § 42-219, despite the fact that IDWR named two deceased persons as owners of the license.

The Rileys filed this *Complaint for Declaratory Judgment Regarding Ownership of Water Rights* in the SRBA.

### III. DECLARATORY JUDGMENT STANDARDS

None of the parties have disputed the propriety of determining the issue of ownership of the water right under Idaho's declaratory judgment statute, Idaho Code § 10-1201, *et seq.* See

also, I.R.C.P. 57. The standard for determining justiciability in a declaratory judgment setting has been set by the United States Supreme Court:

The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be a real and substantial controversy admitting a specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

*Aeta Life Insurance Company v. Haworth*, 300 U.S. 227, 240-41 (1937).

This standard has been adopted by the Idaho Supreme Court, which held that "a declaratory judgment must clarify and settle the legal relations and issues, and afford relief from the uncertainty and controversy which gave rise to the action." *Harris v. Cassia County*, 106 Idaho 513, 516, 681 P.2d 988, 991 (1984). See also, *State v. Rhoades*, 119 Idaho 594, 809 P.2d 455 (1991); *Sweeney v. American National Bank*, 62 Idaho 544, 115 P.2d 109 (1941). Based upon the facts presented at trial, the standard for declaratory judgment has been met. It is found that the SRBA court has jurisdiction over the parties and the subject matter of this declaratory judgment action.

#### IV. THE LEGAL RELATIONSHIPS AND DUTIES BETWEEN PARTIES

A determination of ownership of the water right requires a clear delineation of the property interests, legal relationships, and duties between the parties.

##### A. JIM HOWE 'S AND CATHERINE ROWAN'S PROPERTY INTERESTS IN THE FARM

The first inquiry is to determine Jim Howe's and Catherine Rowan's interests in the Farm when the initial application for the disputed water permit was filed on August 28, 1978. The 1944 deed sets forth Catherine Rowan's and Jim Howe's interests:

[R]emainder over in fee to her children, share and share alike, without restriction, the lands hereinafter describes. Provided, however, that if any of the children of the said Lucille Webster Howe die without issue, then their pro rata share shall pass to their surviving brothers and sisters, share and share alike, in fee. If any of them die leaving issue, then their issue shall share by right of representation in fee.

(Exhibit B.)

The deed reserved a life estate in Lucille Howe. Lucille's children were deeded the Farm in fee simple, contingent upon their dying with issue. Therefore, under the terms of the deed, Jim

Howe and Catherine Rowan possessed a contingent remainder in the Farm at the time Jim filed the water permit application.

Idaho Code §55-111 entitled Suspension of Power of Alienation states:

The absolute power of alienation of real property cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of the lives of the persons in being at the creation of the limitation or condition, and 25 years thereafter . . .; no trust heretofore or hereafter created, either testamentary or inter vivos, shall be declared void, but shall be so construed as to eliminate parts violating the above provisions, and in such a way that the testators or trustors wishes are carried out to the greatest extent permitted by this act.

Here, the deed expressly states that the extent of Lucille's children's interest in the Farm is contingent upon whether or not the child dies with issue. This condition is subject to the limitations provided for by Idaho Code § 55-111. If the contingency provided for by the grantor could exist beyond the statutory period provided by Idaho Code § 55-111, the contingency must be struck.

Any valid limitation or condition within a gift must occur or fail within 25 years of a life in being at the time of creation of the restriction. Idaho Code § 55-111. The gift from the grantor to the "children of Lucille Howe" is a class gift. A class gift is a gift of "aggregate sum to a body of persons uncertain in number at the time of the gift, to be ascertained at a future time, who are all to take in equal or some other definite proportions; share of each being dependant for its ultimate amount upon the ultimate number." *Hepburn v. Winthrop*, 83 F.2d 566, 570, 65 App. D.C. 309 (1936). At the time of the creation of the deed, the ultimate number of Lucille's children with issue was indeterminable. Because there may have been unborn members of the class at the time of creation, the unborn member of the class cannot be considered a life in being for the purposes of Idaho Code § 55-111. At common law, a gift to a single class member in violation of the rule against perpetuities voided the gift for the entire class. See for example, *Betchard v. Iverson*, 212 P.2d 783, 786, 35 Wash. 2d 344 (1949). Because no member of the class of Lucille's children can be used as a measuring life, the only measuring life named within the gift is that of Lucille Howe.

Idaho Code § 55-111 states that the absolute power of alienation cannot be suspended by any limitation or condition for a period longer than the duration of the lives of persons in being

at the time of the creation of the condition and 25 years thereafter. Since, Lucille Howe is necessarily the measuring life, the contingency stated in the deed must be definitively settled within 25 years after Lucille Howe's death to be valid. The gift's contingency that Lucille's children must die with issue in order to take would not necessarily vest within 25 years of Lucille's death. The contingency in the gift is in violation of Idaho Code § 55-111.

Idaho Code § 55-111 provides that "no trust heretofore or hereafter created, whether testamentary or inter vivos, shall be declared void, but shall be so construed as to eliminate parts violating the above provision, and in such a way that the [testators] wishes are carried out to the greatest extent permitted by this act." Therefore, the contingency contained in the deed is severable from the gift. Severing the contingency from the deed results in Catherine Rowan and Jim Howe owning a fully vested and indefeasible future interest in Lucille Howe's life estate at the time Jim Howe applied for Water Permit 22-07280.

**B. THE LEGAL RELATIONSHIP BETWEEN CATHERINE ROWAN AND JIM HOWE  
CREATED BY THE SHARED INTEREST IN THE FARM**

During Lucille's lifetime, legal duties existed between Jim Howe and Catherine Rowan based on their co-ownership of the vested remainder interest in the Farm.

Idaho Code § 55-104 states that "[e]very interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, joint interest, or as community property." In Idaho there is a rebuttable presumption favoring tenants in common, with no right of survivorship. *Powell v. Powell*, 22 Idaho 531 (1912). The record contains no evidence that the interest in the Farm was anything other than a tenancy in common.

Tenants in common are entitled to the use, benefit, and possession of the common property, provided they do not exclude their cotenant from a like use, occupancy, and benefit. *Washington County Irrigation Dst. v. Talboy*, 55 Idaho 391 (1935). The same duty exists between co-remaindermen prior to a present possessory interest. *Givens v. Givens*, 387 S.W.2d 851 (1965); *Clark v. Lindsey*, 25 N.E. 422 (1890). Succinctly stated, the principle is:

Where there are two remaindermen, they, in their relations with each other concerning their respective interests in the property given to them together, may to a certain extent, be governed by the principles of law which govern the rights duties, and liabilities of cotenants generally. For example, where a life estate and remainders in two or more persons have been created in real estate, and the life

tenant is still living, the coremaindermen have fiduciary relationship to each other such that no one of them may impair the rights or interests of his coremaindermen. If one them acquires an outstanding title, he acquires it for all, subject to the duty of others to contribute to the cost of acquiring the title if they wish to take advantage of it.

51 Am. Jur. 2d § 1 (1970) (emphasis added).

Therefore, a fiduciary duty existed between Jim Howe and Catherine Rowan as tenants in common owning a vested remainder interest in the Farm.

**C. CATHERINE ROWAN OWNED AN INTEREST IN THE WATER PERMIT AND THE LICENSE**

When Jim Howe filed the application for a water permit in August 1978, he owed a fiduciary duty to Catherine Rowan to protect her ownership interest in the Farm. Any action taken by Jim Howe to exclude Catherine Rowan as a co-owner of the permit would violate that fiduciary duty.

Plaintiffs attach great importance to the fact that Jim Howe was a lessor of the Farm when he applied for the water permit. *Plaintiff's Post Trial Brief* at 19. They correctly argue that "water may be appropriated for beneficial use on land not owned by the appropriator, and this water right becomes the property of the appropriator." *Plaintiff's Pretrial Brief* at 6. The law shields non-owners of land (lessors) after the lessor completes development of a proposed water right. In such instances, Idaho Code § 42-211 establishes the procedure by which anyone who has filed a permit application may change the place of use.

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place . . . of intended use or make other substantial changes in the method of diversion or proposed use or uses of water, he shall file an application for amendment upon forms to be furnished by the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application. . . .

*Id.* (Emphasis added.)

In August 1978, Jim Howe leased the Farm from Lucille; however, he was also the owner of a vested future interest in the Farm along with Catherine Rowan. He, therefore, held two simultaneous interests in the Farm: a leasehold and a vested future interest in common with

Catherine Rowan.

Idaho water law, as the Plaintiffs have argued, protects a lessor permittee by granting them the shield of a personal property interest in a water permit. *See, e.g., Marshall v. Niagara Springs Orchard Co. Ltd.*, 22 Idaho 144, 125 P. 208 (1912); *Basinger v. Taylor*, 30 Idaho 289, 164 P. 522 (1917); *Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 263 P. 45 (1927); *Hardy v. Higginson*, 123 Idaho 45, 849 P.2d 946 (1993). The law does not allow an owner permittee who leases from his cotenants to use this protection as a sword to divest the cotenants of their water right. To allow Jim Howe to use his leasehold to overcome Catherine Rowan's vested remainder, which she held in common with him, would violate two legal principles. First, it would allow Jim Howe to benefit from the lease, ignoring his ownership interest, by using Idaho water law as a sword against Catherine Rowan. Secondly, it would allow him to breach the fiduciary duty of due care, loyalty, and prudence owed to his vested remainder cotenant, Catherine Rowan. The law does not allow these results.

Further, the facts of the case do not support the result favored by the Plaintiffs. Jim Howe expressly acknowledged that the permit application was intended to benefit the complete set of farm owners, not just himself. When he filed the application in his and Lucille's names, he did not intend to disavow Catherine Rowan's ownership interest nor did he breach his fiduciary duty to her. The application form, Question 9(c), asked: "If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing." Exhibit D. This was left blank indicating that no "arrangement," lease or otherwise, was the basis of Jim Howe's filing. He filed as a co-owner, not as a lessee.

Most significantly, following partition with Catherine Rowan, Jim Howe was required by his lenders to secure an interest in the "south well." Jim Howe and Catherine Rowan entered in the Correction Grant Deed (Exhibit R) reflecting Jim Howe's clear, unambiguous agreement and understanding that the permitted interest in the "south well" was shared with Catherine Rowan. That shared interest, as reflected in the Correction Grant Deed, served as the basis of Jim Howe's securing financing and is consistent with his fiduciary duty to Catherine Rowan.

The evidence in this case demonstrates that the Rileys knew their interest in the permit was shared with Catherine Rowan. Even after having recorded the Bill of Sale from Jim Howe which purported to convey the permit, Robin Riley filed a New Property Owner Notice of Change of

Water Right Ownership with IDWR. (Exhibit 2.) Where the form asks if the change in ownership results in a splitting of the right (into two or more rights), it is marked "yes." Robin Riley was correct in her statement to IDWR. Her position in this action has since changed.

The actions of Jim Howe, his application for the permit, his use of the permitted right to provide water for the Farm, his agreement to partition the Farm with Catherine Rowan, and his later acquisition of a one-half interest in Catherine Rowan's "south well," all reflect that Jim Howe understood and intended that he took an interest in the permit as an co-owner of land with Catherine Rowan, not as a lessor of the land. Any action otherwise would have breached his fiduciary duty to his sister. The only interest Jim Howe had in the permit was as an owner and was identical to that of Catherine Rowan. At Lucille's death, Jim Howe and Catherine Rowan became co-owners of the permit. To rule otherwise would allow Jim Howe, a co-owner, to strip water from his cotenant's Catherine Rowan, one-half of the Farm. Idaho Water law does not permit such a result.

#### **V. WATER PERMIT 22-07280 BECAME A LICENSE BY OPERATION OF LAW DUE TO IDWR'S FAILURE TO MEET ITS STATUTORY DUTY**

The failure of IDWR to perform its statutory duty to issue the license in a reasonable time requires the finding that Water Permit 22-07280 became a license by operation of law.

Following is a chronology of IDWR's action on Water Permit 22-07280:

|                  |                                                                                                                       |
|------------------|-----------------------------------------------------------------------------------------------------------------------|
| August 28, 1978  | Application for Permit filed in the names of Lucille W. Howe and/or Jim W. Howe (Exhibit D). Permit approved by IDWR. |
| February 7, 1983 | Proof of Beneficial Use submitted to IDWR in the name of Jim Howe (Exhibit I).                                        |
| August 23, 1989  | IDWR Beneficial Use Field Report prepared (Exhibit 5).                                                                |
| December 4, 1995 | Water License 22-07280 issued to Jim W. Howe and Lucille W. Howe, both deceased (Exhibit KK).                         |

The record establishes that Jim Howe timely filed proof of beneficial use under Water Permit 22-07280 on February 7, 1983. IDWR then had a statutory duty to examine various aspects of the submission. I.C. § 42-217. The legislatively mandated examination was not issued until August 23, 1989 (IDWR Beneficial Use Field Report - Exhibit 5); over six years after Howe's submission.

IDWR has a duty to timely issue licenses following proper application, permitting, proof of beneficial use, and department examination.

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.

I.C. § 42-219(1) (emphasis added).

In this case, IDWR issued the license on December 4, 1995; 12 years and 10 months after the submission of proof of beneficial use and 6 years and 4 four months after IDWR completed its tardy Beneficial Use Field Report. Where the legislature has placed the duty on IDWR to examine and issue licenses, a delay of 12 years and 10 months constitutes a breach of that duty.

IDWR's breach of duty in issuing the license for this right caused the right to remain in a state of legal limbo. By holding the right in the permitting process, IDWR denied it the statutory recognition and benefits conveyed to licensed rights under Idaho Code § 42-220. IDWR's failure to timely exercise its duty left the permitted water right as a personal property interest, thereby denying it the real property right status to which it was legally entitled. Had IDWR met its duty, the ownership dispute may never have ripened because a license would have issued and become appurtenant to the land. This dispute has spawned lawsuits in Madison County and the SRBA and an administrative proceeding before IDWR. Had IDWR fulfilled its statutory obligation, none of these actions, with their substantial expense, would likely have been filed.

IDWR's breach of its duty to issue licenses in a timely manner takes on constitutional dimensions as well. The Idaho Constitution holds inviolate the right to appropriate water. IDAHO CONST. art. 15 § 3. The lengthy delay in issuing this license denied the water users their constitutional right to appropriate water. By leaving the right in the vulnerable permit status, it is not accorded the statutory recognition of a fully protected water right, as it would be when licensed.

The record in this case reflects that significant delays in issuing licenses is IDWR's usual practice statewide. This inattention to a legislatively mandated duty requires the court to rule that Water Permit 22-07280 is deemed to have become a license on February 7, 1983, the date Jim

Howe submitted proof of beneficial use. IDWR's examination and report issued six years later found the use was lawfully established and the license, issued 12 years and 10 months later, issued on the exact terms of the permit. Therefore, where a license issued is consistent with the terms of the permit application, the permit, and IDWR's examination and where IDWR has breached its duty to timely license the water right, this court deems the license to be effective and in force as of the date proof of beneficial use was submitted.

The effect of this ruling is that the right in dispute became a licensed real property right as of February 7, 1983. At Lucille Howe's death in October 1983, the owners of Water License 22-07280 became James Howe and Catherine Rowan. Therefore, after February 7, 1983, no permit existed as a personal property interest in water belonging to James Howe which could have been sold or bequeathed to the Rileys.

The license, effective February 7, 1983, was a real property interest which was part of the land. Its ownership was transferred by the various deeds between Jim Howe and Catherine Rowan. The current status of the license is governed by the Correction Grant Deed (Exhibit R) conveying a one-half interest in the water from the "south well" to Jim Howe, which has passed to the Rileys.

## VI. CONCLUSION

Catherine Rowan owns a licensed (License 22-07280) one-half interest in the "south well." The Rileys own a licensed (License 22-07280) one-half interest in the "south well."

The gift by deed, reserving a life estate in Lucille W Howe, created a co-tenency between Jim Howe and Catherine Rowan as vested remaindermen. Jim Howe's application for a water permit (22-07280) established in Catherine Rowan an interest in the permitted water. Jim Howe did not breach his fiduciary duty to her by taking action against his cotenant sister to strip her of her rightful interest. Catherine Rowan held the same ownership interest in Water Permit 22-07280 as Jim Howe.

It is also held that Water Permit 22-07280 became a license by operation of law on February 7, 1983. IDWR's failure to carry out its legislatively mandated duty to examine and license water rights following submission of proof of beneficial use requires this result. Therefore, the license became effective prior to Lucille Howe's death. When Lucille died in

October 1983, the property and Water License 22-07280 vested in Jim Howe and Catherine Rowan as cotenants. The license followed the conveyances between Jim Howe and Catherine Rowan resulting in a one-half ownership interest now in Catherine Rowan and the Rileys.

#### VII. ORDER

Based on this decision, **IT IS ORDERED** that the Idaho Department of Water Resources examine Water License 22-07280 and issue separate licenses to Catherine Rowan and Norman and Robin Riley, husband and wife, consistent with the Correction Grant Deed (Exhibit R) and its examination. These licenses shall issue and be filed with this court on or before October 1, 1997.

**IT IS SO ORDERED.**

DATED August 28, 1997.

  
DANIEL C. HURLBUTT, JR.  
Presiding Judge  
Snake River Basin Adjudication

## CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION was mailed on August 28, 1997, with sufficient first-class postage to the following:

Steven R. Parry  
Anderson, Nelson & Hall  
PO Box 51630  
Idaho Falls, ID 83405-1630

Roger D. Ling  
Ling, Nielsen & Robinson  
PO Box 396  
Rupert, ID 83350

Gregory W. Moeller  
Rigby, Thatcher, Andrus, Rigby,  
Kam & Moeller  
PO Box 250  
Rexburg, ID 83440-0250

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

Norm Young  
IDWR  
PO Box 83720  
Boise, ID 83720-0098

Courtesy copy to:

Hon. James C. Herndon  
District Judge, 7th Judicial District  
PO Box 717  
Blackfoot, ID 83221

  
Deputy Clerk

SCANNED

SEP 09 2005

State of Idaho  
Department of Water Resources  
**Water Right License**  
WATER RIGHT NO. 22-07280B

Priority: June 27, 1978

Maximum Diversion Rate:

4.77 CFS

Maximum Diversion Volume:

\*

This is to certify, that NORMAN RILEY  
ROBIN RILEY

1623 W 3400 S

REXBURG ID 83440

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 27, 1978; and has submitted Proof of Beneficial Use on February 7, 1983. An examination indicates that the works have a diversion capacity of 9.530 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

| <u>BENEFICIAL USE</u> | <u>PERIOD OF USE</u> | <u>RATE OF DIVERSION</u> | <u>ANNUAL VOLUME</u> |
|-----------------------|----------------------|--------------------------|----------------------|
| IRRIGATION            | 04/1 to 10/31        | 4.77 CFS                 | *                    |

LOCATION OF POINT(S) OF DIVERSION:

SWSW , Sec. 11, Township 05N, Range 40E  
MADISON County

| <u>PLACE OF USE:</u> | <u>IRRIGATION</u> | <u>PRIMARY SERVICE LAND</u> |      |              |      |              |              |
|----------------------|-------------------|-----------------------------|------|--------------|------|--------------|--------------|
| <u>TWN RGE SEC</u>   |                   | <u>ACRES</u>                |      | <u>ACRES</u> |      | <u>ACRES</u> | <u>TOTAL</u> |
| 05N 40E 10           | SENE              | 24                          | NESE | 24           | SESE | 6.5          | 54.5         |
| 11                   | SENW              | 25                          | SWNW | 40           | NESW | 27           |              |
|                      | NWSW              | 40                          | SWSW | 11           | SESW | 10           | 153          |

Total acres irrigated as primary right: 207.5

| <u>PLACE OF USE:</u> | <u>IRRIGATION</u> | <u>SUPPLEMENTAL SERVICE LAND</u> |      |              |      |              |              |
|----------------------|-------------------|----------------------------------|------|--------------|------|--------------|--------------|
| <u>TWN RGE SEC</u>   |                   | <u>ACRES</u>                     |      | <u>ACRES</u> |      | <u>ACRES</u> | <u>TOTAL</u> |
| 05N 40E 2            | Lot 4(SWNW)       | 30                               | NESW | 9            | NWSW | 40           |              |
|                      | SWSW              | 14.5                             | SESW | 10           |      |              | 103.5        |
| 3                    | Lot 1(SENE)       | 22                               | NESE | 25           | SESE | 9            | 56           |

Total acres irrigated supplemental to Right 22-02223: 159.5

CONDITIONS OF APPROVAL AND REMARKS

- \* 1. The annual volume allowed to be diverted under this right shall not exceed 727.0 af per year for the primary service lands and 559.0 af per year when combined with Right 22-02223 for the supplemental service lands.
2. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
3. The issuance of this right does not grant any right-of-way or easement across the land of another.

MICROFILMED  
DEC 30 1998

SCANNED  
SEP 09 2005

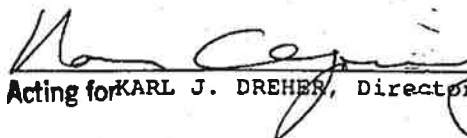
State of Idaho  
Department of Water Resources  
**Water Right License**

WATER RIGHT NO. 22-07280B

CONDITIONS OF APPROVAL AND REMARKS

4. 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 estimate the amount of water diverting using power records and shall annually report the information to the department.
5. Issuance of this license does not designate ownership of the irrigation system, or any part thereof, to any person nor does it in any way designate those who control the irrigation system.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Signed and sealed this 30<sup>TH</sup> day of NOVEMBER, 1978.

  
Acting for KARL J. DREHER, Director

SCANNED  
SEP 09 2005

MICHO

DEC 30 1998

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**BENEFICIAL USE FIELD REPORT**

**A. GENERAL INFORMATION**

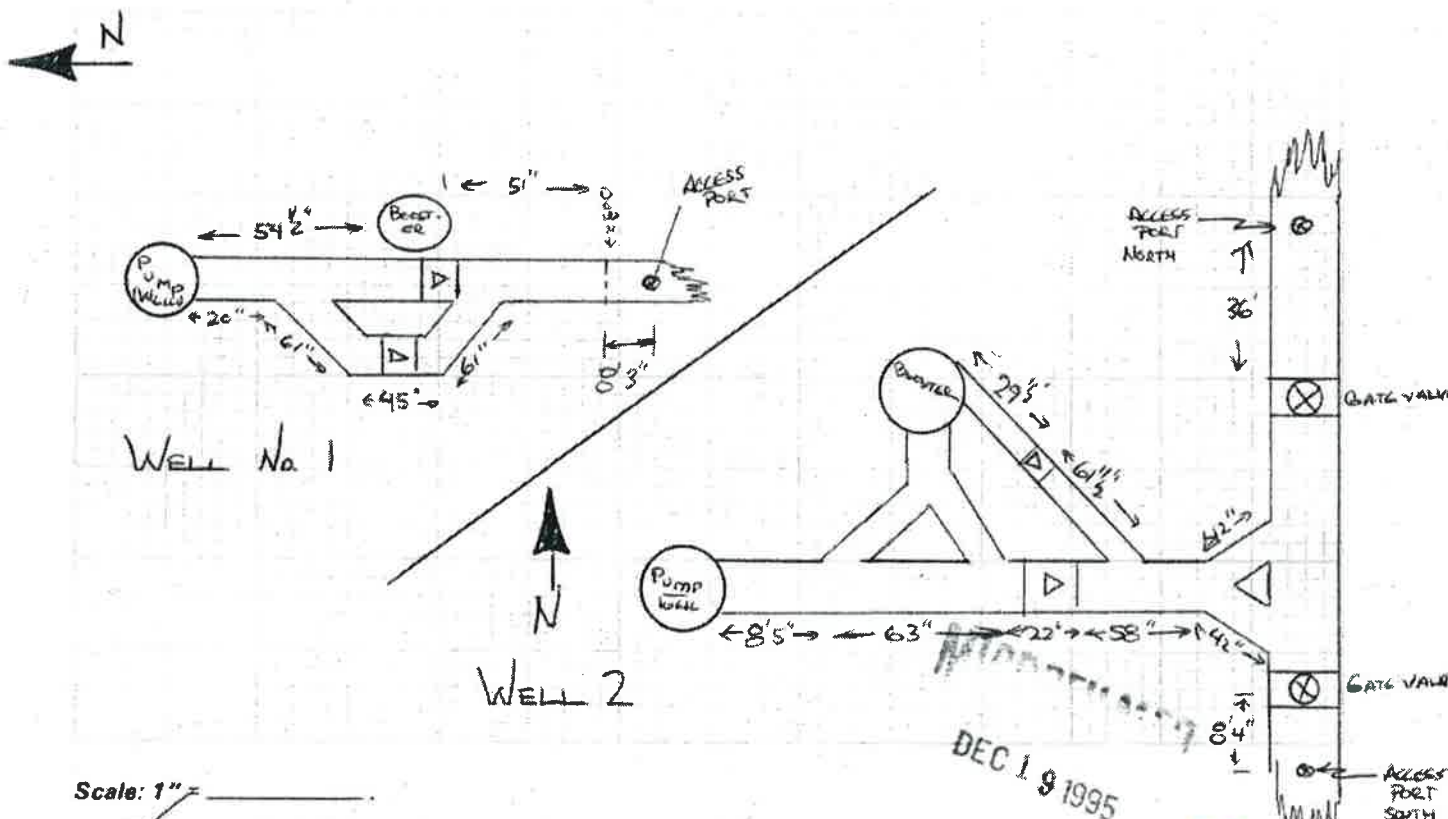
Permit No. 22-7280  
1. Owner: LUCILLE W. OR SIV W. HOWE Phone No. 356-3027  
Current Address: Box 803, REXBURG, ID. 83440  
2. Accompanied by: NORMAN RILEY EXAM. DATE: 29-JUNE-1987  
Address: 1623 W. 3400 S., REXBURG, ID 83440 Phone No. 356-5873  
Relationship to Permit Holder: SON-IN-LAW / OPERATOR  
3. Source: GROUNDWATER tributary to \_\_\_\_\_

**B. OVERLAP REVIEW**

1. Other water rights with same place of use: 22-2223 (PORTION) ☐ Copies Attached  
2. Other water rights with same point of diversion: 22-2223 (WELL No. 1) 3.87 cfs  
☐ Copies Attached ☐ Copies of Field Exam's Attached

**C. SYSTEM DESCRIPTION**

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



2. ☒ Copy of U.S.G.S. Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).  
☒ Photo of Diversion and System Attached (required for all but single household domestic groundwater, and stockwater).  
☒ Aerial Photo Attached (required for irrigation of 10 acres or more).

SEP 09 2005

## RE-EXAMINATION FIELD REPORT

### A. GENERAL INFORMATION

Permit No. 22-07280

### B. MEASUREMENTS:

Date: 16 Nov 1998

Note: Measurements taken with 2 different diameter tapes & thickness mikes

|                          |                             |                             |
|--------------------------|-----------------------------|-----------------------------|
| North Well #1:           | o.d. = 11.850" - 12.050"    | Thickness = 0.110" - 0.113" |
| South Well #2:           |                             |                             |
| North mainline:          |                             |                             |
| o.d. = 14.000" - 14.040" | Thickness = 0.102" - 0.105" |                             |
| South mainline:          |                             |                             |
| o.d. = 15.990" - 16.025" | Thickness = 0.136" - 0.139" |                             |

### C. FLOW CALCULATIONS:

$$i.d. = [o.d.] - [2(T)]$$

i.d. = inside diameter

o.d. = outside diameter

T = wall thickness

$$Q_{cfs} = (i.d.)^2(\sqrt{H})(C) \div 448.8 \text{ gpm/cfs}$$

H = differential pressure inches H<sub>2</sub>O

C = Annubar Constant

C for 12" = 3.99

C for 14"-16" = 4.01

Assumptions:

o.d. = maximum measured outside diameter

T = minimum measured thickness

H = use differential pressure measured original exam (6-29-87)

NORTH #1 WELL:  $i.d. = [12.050] - [2(0.110)] = 11.830$      $H = 12.9'$      $C = 3.99$

$$Q_{cfs} = (11.830)^2(\sqrt{12.9})(3.99) \div 448.8 = 2005.567 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 4.469 \text{ cfs} = 4.47 \text{ cfs}$$

SOUTH #2 WELL:

North Mainline:  $i.d. = [14.040] - [2(0.102)] = 13.836$      $H = 4.9'$      $C = 4.01$

$$Q_{cfs} = (13.836)^2(\sqrt{4.9})(4.01) \div 448.8 = 1699.274 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 3.786 \text{ cfs} = 3.79 \text{ cfs}$$

South Mainline:  $i.d. = [16.025] - [2(0.136)] = 15.753$      $H = 6.7$      $C = 4.01$

$$Q_{cfs} = (15.753)^2(\sqrt{6.7})(4.01) \div 448.8 = 2575.777 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 5.739 \text{ cfs} = 5.74$$

9.53 for S well

TOTAL CALCULATED FLOW RATE:  $Q_{TOTAL} = 4.47 \text{ cfs} + 3.79 \text{ cfs} + 5.74 \text{ cfs} = 14.00 \text{ cfs}$

### D. AUTHENTICATION:

Field Examiner's Name:

KEITH C WILSON

MICROFILMED

DEC 30 1998

SCANNED

SEP 09 2005

RECEIVED

MAR 30 2000

Department of Water Resources

Eastern  
ENIC

2000 MAR 29 PM 2:45

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

SRBA Assigned Case 94-00012

Case No. 39576

NORMAN RILEY and ROBIN  
RILEY, husband and wife,

Plaintiffs,

v.

CATHERINE ROWAN,

Defendant.

ORDER ADOPTING SPECIAL  
MASTER'S REPORT AND  
RECOMMENDATION

On July 20, 1999, Special Master Bilyeu issued a *Special Master's Report and Recommendation* in the above-captioned case, pertaining to water right license numbers 22-07280A and 22-07280B. No party filed a Motion to Alter or Amend the Special Master's findings.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report*, finds them to be consistent with the Supreme Court's decision in *Riley v. Rowan*, 131 Idaho 831, 965 P.2d 191 (1998) and wholly adopts them as its own.

SCANNED

SEP 09 2005

THEREFORE IT IS ORDERED that the ownership and elements of the subject water rights, as found by the Special Master, are hereby binding on the parties to the above-captioned case.<sup>1</sup>

Recommendations for water right license numbers 22-07280A and 22-07280B will be included in the Director's Report for Irrigation and Other Water Rights for Basin 22 when it is filed with the Court. At that time, the objection period for 22-07280A and 22-07280B will commence. Although the parties to the above-captioned case (and their successors) are bound by the *Special Master's Report and Recommendation*, other parties to the SRBA will be afforded the opportunity to file objections at that time.

IT IS SO ORDERED:

DATED: MARCH 29 2000.



BARRY WOOD

Administrative District Judge and  
Presiding Judge of the  
Snake River Basin Adjudication

<sup>1</sup> The Idaho Supreme Court's decision in *Riley* holds that the Rileys and Rowan were each entitled to a one-half interest in water license no. 22-07280. IDWR, in attempting to comply with the directive, was unable to affect an exact one-half division of all the elements of the license. The result is that a portion of the place of use for the license issued to Rowan is on the Rileys' property, and a portion of the place of use for the license issued to the Rileys is on Rowan's property. Although the Rileys and Rowan are bound by the Supreme Court's decision, other parties to the SRBA, as well as the SRBA Court, are not. At issue in *Riley* was the interpretation of a private agreement between the Rileys' predecessor in title and Rowan. Because other parties to the adjudication are not bound by the private agreement, then neither IDWR or the SRBA Court are bound by the private agreement as it relates to other claimants. Claimants cannot circumvent the application of Idaho's permit and adjudication statutes simply by entering into a private agreement.

## CERTIFICATE OF MAILING

I hereby certify that true and correct copies of **ORDER ADOPTING SPECIAL MASTER'S REPORT AND RECOMMENDATION** were mailed on March 29, 2000, with sufficient first-class postage to the following:

IDWR Document Depository  
PO Box 83720  
Boise, ID 83270-0098

Gregory Moeller  
Rigby Thatcher Andrus Rigby  
Kam & Moeller  
PO Box 250  
Rexburg, ID 83440-0250

Steven Parry  
Anderson Nelson Hall & Smith  
PO Box 51630  
Idaho Falls, ID 83405-1620

  
Deputy Clerk of the Court

APR 08 1999

Department of Water Resources

Easter

FMC

1999 APR -6 PM 3:42

DISTRICT COURT-SRBA  
TWIN FALLS CO. IDAHO  
FILEDIN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Rowan # Riley

In Re SRBA

Companion Case: 94-00012

Case No. 39576

ORDER SETTING MANDATORY  
SETTLEMENT CONFERENCE,  
EXHIBIT AND WITNESS  
DISCLOSURE, AND HEARING

A status conference was held April 6, 1999. The parties agreed to attend a mandatory settlement conference, and to disclose exhibit and witness lists. The Court orders a **Mandatory Settlement Conference** for water rights 22-07280A and 22-07280B. The Settlement Conference shall proceed before a Settlement Moderator for the purpose of helping the parties work on settling their differences before hearing.

IT IS ORDERED that this case shall proceed with a Settlement Conference before Settlement Moderator Fritz X. Haemmerle. Parties and their attorney of record must be personally present at the settlement conference. No one may attend by proxy or by telephone. Each party is required to be present with the individual(s) possessing full settlement authority on every aspect of this case. **Failure to attend or attendance without settlement authority may result in sanctions by the court.**

The following deadlines shall apply to this case:

|         |         |                                     |
|---------|---------|-------------------------------------|
| 5/12/99 | 9:00 am | Settlement Conference               |
|         |         | Location: Madison County Courthouse |
|         |         | 134 East Main                       |
|         |         | Rexburg, Idaho                      |

|         |         |                                        |
|---------|---------|----------------------------------------|
| 5/12/99 | 9:00 am | Disclosure of Intent to Call Witnesses |
|---------|---------|----------------------------------------|

SCANNED

SEP 09 2005

5/14/99 5:00 pm Deadline to: Exchange Exhibit and Witness Lists, File with the Court, and provide copies to IDWR.

5/21/99 10:00 am Hearing  
Location: Madison County Courthouse  
134 East Main  
Rexburg, Idaho

DATED April 6, 1999.

  
BRIGETTE BILYEU  
Special Master  
Snake River Basin Adjudication

#### CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER SETTING MANDATORY SETTLEMENT CONFERENCE, EXHIBIT AND WITNESS DISCLOSURE, AND HEARING was mailed on April 6, 1999, with sufficient first-class postage prepaid to the following:

Director of IDWR  
PO Box 83720  
Boise, ID 83720-0098

Gregory Moeller  
Rigby Thatcher Andrus Rigby  
Kam & Moeller  
Po Box 250  
Rexburg, ID 83440-0250

Steven Parry  
Anderson Nelson Hall Smith  
PO Box 51630  
Idaho Falls, ID 83405-1630

  
Deputy Clerk

5/14/99 5:00 pm Deadline to: Exchange Exhibit and Witness Lists, File with the Court, and provide copies to IDWR.

5/21/99 10:00 am Hearing  
Location: Madison County Courthouse  
134 East Main  
Rexburg, Idaho

DATED April 6, 1999.

  
BRIGETTE BILYEU  
Special Master  
Snake River Basin Adjudication

#### CERTIFICATE OF MAILING

I certify that a true and correct copy of ORDER SETTING MANDATORY SETTLEMENT CONFERENCE, EXHIBIT AND WITNESS DISCLOSURE, AND HEARING was mailed on April 6, 1999, with sufficient first-class postage prepaid to the following:

Director of IDWR  
PO Box 83720  
Boise, ID 83720-0098

Gregory Moeller  
Rigby Thatcher Andrus Rigby  
Kam & Moeller  
Po Box 250  
Rexburg, ID 83440-0250

Steven Parry  
Anderson Nelson Hall Smith  
PO Box 51630  
Idaho Falls, ID 83405-1630

  
Deputy Clerk



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098

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

Eastern Region - FYI  
Marcia Page has adj.  
file

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

December 12, 1997

NORMAN AND ROBIN RILEY (First Class Mail)  
1623 W 3400 S  
REXBURG ID 83440

RECEIVED

DEC 22 1997

Department of Water Resources  
Eastern Region

CATHERINE ROWAN (First Class Mail)  
843 THREE FOUNTAINS DR  
SALT LAKE CITY, UT 84107

RE: Water Right Nos. 22-07280A & 22-07280B -- CERTIFICATE OF SERVICE

Dear Interested Parties:

Pursuant to the SRBA District Court's *Order Denying Stay and Amendment to Court's Order to IDWR Re: Issuance of License* dated September 30, 1997, I have enclosed Director's Reports pursuant to Idaho Code §42-1411 recommending the elements of right nos. 22-07280A & 22-07280B in the SRBA. I have also enclosed for your review color copies of IDWR's Geographic Information System analysis of the irrigated acreage for the rights in question.

Pursuant to the Court's *Order* you have 30 days in which to file objections to either or both of the water rights recommended in these reports. Therefore, objections must be filed by **January 14, 1998**. You have 14 days from the end of the objection period to file responses to any objections to the Director's Reports. Therefore, responses must be filed by **January 28, 1998**.

If you have any questions about these recommendations, please feel free to contact me at (208) 327-7929.

Sincerely,

David R. Tuthill, Jr., P.E.  
Chief, Adjudication Bureau

Enclosures: SRBA Director's Reports for Water Rights Nos. 22-07280A and 22-07280B  
Color Copies of GIS Shape Files of Irrigated Parcels for Rowan and Riley

c: Gregory W. Moeller, Steven R. Parry  
Honorable Daniel C. Hurlbutt

SCANNED

SEP 09 2005

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES  
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: DEC-12-1997  
PAGE: A-2

RIGHTS FROM: SOURCE: GROUNDWATER

RIGHT NUMBER: 22-07280B

NAME & ADDRESS: NORMAN RILEY  
ROBIN RILEY  
1623 W 3400S  
REXBURG ID 83440

SOURCE: GROUNDWATER

QUANTITY: 4.59 CFS

USE OF THIS RIGHT WITH RIGHT NO. 22-02223 IS LIMITED TO A  
TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 1540 AF.

PRIORITY DATE: 06/27/1978

POINT OF DIVERSION: T05N R40E S11 SWSW Within MADISON County

|                |                |                   |          |
|----------------|----------------|-------------------|----------|
| PURPOSE AND    |                |                   |          |
| PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE     | QUANTITY |
|                | IRRIGATION     | Irrigation Season | 4.59 CFS |

|               |                 |                       |          |         |         |
|---------------|-----------------|-----------------------|----------|---------|---------|
| PLACE OF USE: | IRRIGATION      | Within MADISON County |          |         |         |
|               | T05N R40E S02   | Lot 4                 | (SWNW)27 | NESW 9  | NWSW 39 |
|               |                 |                       | SESW 26  |         | SWSW 40 |
|               | S03             | Lot 1                 | (SENE)21 | NESE 24 | SESE 24 |
|               | S10             |                       | NENE 25  | SENE 24 | NESE 12 |
|               | S11             |                       | NENW 32  | NWNW 40 | SWNW 40 |
|               |                 |                       | NESW 12  | NWSW 19 | SENE 26 |
|               | 440 ACRES TOTAL |                       |          |         |         |

USE OF THIS RIGHT WITH RIGHT NO. 22-02223 IS LIMITED TO THE  
IRRIGATION OF A COMBINED TOTAL OF 440 ACRES IN A SINGLE  
IRRIGATION SEASON.

EXPLANATORY MATERIAL: BASIS OF CLAIM - LICENSE

SCANNED  
SEP 09 2005

RECEIVED

MAR 29 1999

Department of Water Resources

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

In Re SRBA )

Case No. 39576 )

**A.** Subcase 22-07280 B

(Insert water right number)

**STANDARD FORM 1  
OBJECTION**

Please fill in the following information:

**B.** NAME AND ADDRESS OF PERSON OBJECTING

Name: Catherine Rowan

Address: 843 Three Fountains Drive  
Salt Lake City, UT 84107

Daytime Phone: (801) 255-4566

Name & Address of Attorney, if any:

Gregory W. Moeller

P. O. Box 250

Rexburg, ID 83440

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

Name: Norman Riley and Robin Riley

Address: 1623 W. 3400 S.

Rexburg, ID 83440

SCANNED

SEP 09 2005

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

1. ☐ **Name and Address**

Should be: \_\_\_\_\_

2. ☐ **Source**

Should be: \_\_\_\_\_

3. ☒ **Quantity**

Should be: 5.41 CFS

4. ☐ **Priority Date**

Should be: \_\_\_\_\_

5. ☐ **Point(s) of Diversion**

Should be: \_\_\_\_\_

6. ☐ **Instream Flow Description**

Should be: \_\_\_\_\_

7. ☐ **Purpose(s) of Use**

Should be: \_\_\_\_\_

8. ☐ **Period of Year**

Should be: \_\_\_\_\_

9. ☒ **Place of Use**

Adjusted along with Subcase No. 22-07280 A to treat all 367 acres as Rowans "Primary Service Lands." See preliminary Licenses dated December 12, 1997

Should be: \_\_\_\_\_

11. I object because:

☐ This water right should not exist.

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

**E. REASONS SUPPORTING OBJECTION(S):** \_\_\_\_\_

Please see attached statement (Attachment "A") and Re-Examination Field Report, dated 11/16/98 (Attachment "B").

SCANNED

SEP 09 2005

**F.**

**VERIFICATION (Must be Completed)**

State of Idaho )  
 )ss.  
County of Madison )

Gregory W. Moeller, duly sworn, upon oath, deposes and says:  
(Name of person filing objection)

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

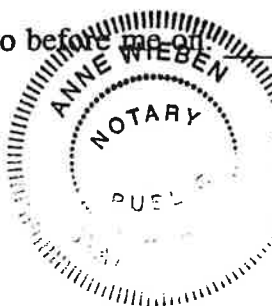
(Signature of person filing objection)

G. W. Moeller

(Attorney signing in representative capacity)

Subscribed and sworn to before me on

March 26, 1999



Anne Wieben

Notary Public for Idaho

Residing at: Rexburg, Idaho

My Commission Expires: 7-27-2001

SCANNED  
SEP 09 2005

## INSTRUCTIONS FOR MAILING

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

**G.**

### CERTIFICATE OF MAILING

I certify that on March 26, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

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

Name: Catherine Rowan  
Address: 843 Three Fountains Drive  
Salt Lake City, UT 84107

3. Copies to:

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

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

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

  
\_\_\_\_\_  
Signature of Objector or attorney  
mailing on Objector's behalf

SCANNED  
SEP 09 2005

**F.**

**VERIFICATION (Must be Completed)**

State of Idaho )  
 )ss.  
County of Madison )

Gregory W. Moeller, duly sworn, upon oath, deposes and says:  
(Name of person filing objection)

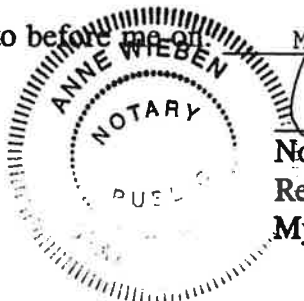
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

*Gregory W. Moeller*  
(Attorney signing in representative capacity)

Subscribed and sworn to before me on

March 26, 1999



*Anne Wieben*  
Notary Public for Idaho  
Residing at: Rexburg, Idaho  
My Commission Expires: 7-27-2001

## ATTACHMENT "A"

There are two wells involved in this dispute. The North Well (Water Right No. 22-02223) is located on Riley's property. Rowan concedes that she has no rights to this well. The center of the controversy is the South Well (subject to Water Right Nos. 22-07280A and 22-07280B) which is located on Rowan's property. Historically, approximately 575 acres have been watered from the South Well. However, 160 acres were left off the application for permit originally filed in 1978. The 160 acres were part of the 1988 property division and are now covered by Permit No. 22-00792, in the name of Catherine Rowan. These 160 acres are located at the extreme southern tip of Rowan's property, and apparently were not considered in the District Court's decision nor in the new licenses issued by IDWR.

Ignoring the 160 acres, historically Rowan has irrigated 294 acres from the South Well. Rileys have historically irrigated 121 acres from the South Well and an additional 319 acres from the North Well (Water Right No. 22-02223). So in essence, what the SRBA District Court asked IDWR to do, was to give Catherine one-half of the water from the South Well to irrigate her 294 acres and the Rileys one-half of the water to irrigate their 121 acres, plus water to supplement the North Well.

When the Department issued its preliminary licenses on December 12, 1997 (Exhibits "B(1)" and "B(2)") the Department essentially did just that. The Department determined the rate of flow to be 9.18 CFS, an amount that both parties agree is substantially too low. Then the Department split the flow and granted Catherine Rowan the right to irrigate her 294 acres with an annual volume of 1029 acre feet. Rileys were allowed to irrigate 440 acres (121 from the South

Well and 319 from the North Well) with an annual volume of 1540 acre feet, to be used in conjunction with Water Right 22-02223 (the North Well). Although there were some substantial issues related to quantity, Rowan believed the essential division was fair and accomplished what the parties intended.

It is worth noting that the trial testimony established that when the farm was divided in 1988, the intent was clearly to leave **both** parties with sufficient water to irrigate their ground. The preliminary licenses issued by the Department did just that by dividing the flow evenly and applying it to the waters historically irrigated from that well.

Following Rowan's prevailing on appeal, the Department was again asked to issue licenses. However, this time the Department changed its tact. The November 30, 1998 licenses (Exhibits C(1) and C(2)) did increase the amount of flow to 9.53 CFS, essentially giving both parties 4.77 CFS. However, rather than merely dividing the flow and allowing it to be applied to the historically irrigated acreage, the Department went further. The Department apparently felt that the annual volume of water should also be divided equally. As a result of this analysis, Rowan was given 207.5 acres of a primary right, with an annual volume of 727 acre feet. Rowan was also given the right to irrigate 159.5 acres supplemental to the North Well (Water Right No. 22-00223). As IDWR was well aware, Rowan has no rights in the North Well and cannot use this supplemental right. It is essentially worthless to her. Rileys were given the exact same right, 207.5 primary acres with an annual volume of 727 acre feet and 159.5 supplemental acres, related to their rights in the North Well.

While Rowan has no use for the supplemental acreage, Rileys obviously do. As argued before the Court, IDWR, in attempting to exactly split this right, has created a grossly fair and

inequitable division which results in Rowan receiving less than she needs and Rileys receiving more than they can use on their land. For example, the Rileys are given 207.5 acres of a primary rights, while they have historically only irrigated 121 acres from the South Well. Meanwhile, Rowan is given 207.5 primary acres, while she has historically irrigated 294 acres from this well, in addition to the 160 acres, which is covered by Permit No. 22-00792.

As a result of the Department's decision, Rowan will lose the right to irrigate approximately 87 acres, which have always been irrigated. When a final resolution is reached as to the status of the south 160 acres, (Permit No. 22-00792) the Department could take an additional 80 acres away from Catherine, leaving her once fully irrigated farm, with 167 acres of dry farm.

Such a result was clearly not intended by Judge Hurlbutt's "Memorandum Decision" of August 28, 1997. For example, in that decision Judge Hurlbutt stated:

At Lucille's death, Jim Howe and Catherine Rowan became co-owners of the permit. To rule otherwise would allow Jim Howe, a co-owner, to strip water from his co-tenant's, Catherine Rowan, one-half of the farm. Idaho Water Law does not permit such a result.

Memorandum Decision, p. 10

By effectively holding that the license was appurtenant to Catherine Rowan's ground, and could not be conveyed or removed without her permission, Judge Hurlbutt is clearly indicating that all of Catherine's ground would be irrigated. Judge Hurlbutt's decision clearly does not support a result that would leave Rileys with more water than they can use on this ground and Rowan with less than she needs.

In adopting the findings in the Court's Memorandum Decision, the Idaho Supreme Court stated as follows:

The District Court held that the only interest Jim Howe had in the permit was identical to that of Rowan; thus at the time of Lucille Howe's death, Jim Howe and Rowan became co-owners of the permit. The evidence indicated that Jim Howe "acknowledged that the permit application was intended to benefit the **complete set of farm owners**, not just himself. When he filed the application in his and Lucille's names, he did not intend to disavow Catherine Rowan's ownership interest." Furthermore, both the application for the permit and notice of claim were filed when Jim Howe was acting as manager of the farm and did not create a separate interest in the water permit to the exclusion of Rowan. The District Court determined that following the parties' decision to partition the property, Jim Howe and Rowan entered into an agreement in which it was "Jim Howe's clear, and ambiguous agreement and understanding that the permitted interest in the 'south well' was shared with Catherine Rowan. . . ."

Riley v. Rowan, Idaho Supreme Court 1998 Opinion No. 96 (Emphasis added).

The December 12, 1997 licenses allowed a flow of 9.18 CFS. Interestingly, the November 30, 1998 licenses increased that amount substantially to 9.53 CFS. This is still far less than both parties believe they are entitled to. Rowan believes, and assumes that Rileys concur, there is substantial evidence justifying a flow rate of at least 9.72 CFS, with higher amounts ranging from 10.81 CFS to over 13 CFS being possible. During settlement negotiations between Rowan, Rileys and IDWR, IDWR produced records substantiating flow rates between 10.81 CFS and 13.0 CFS.

It is worth repeating that as a result of these new licenses, (Exhibits C(1) and C(2)) Rowan gets 87 less acres than she needs. This is not cured by giving her the right to water an additional 159.5 supplemental acres on a North Well to which she has no rights. On the other had, the Rileys get the right to water 86 more acres than they need from the South Well, plus the 159.5 supplemental acres.

## RE-EXAMINATION FIELD REPORT

## A. GENERAL INFORMATION

Permit No. 22-07280

## B. MEASUREMENTS:

Date: 16 Nov 1998

Note: Measurements taken with 2 different diameter tapes &amp; thickness mikes

North Well #1: o.d. = 11.850" - 12.050" Thickness = 0.110" - 0.113"

South Well #2:

North mainline:

o.d. = 14.000" - 14.040" Thickness = 0.102" - 0.105"

South mainline:

o.d. = 15.990" - 16.025" Thickness = 0.136" - 0.139"

## C. FLOW CALCULATIONS:

i.d. = [o.d.] - [2(T)]

i.d. = inside diameter

o.d. = outside diameter

T = wall thickness

 $Q_{cfs} = (i.d.)^2(\sqrt{H})(C) \div 448.8 \text{ gpm/cfs}$ H = differential pressure inches H<sub>2</sub>O

C = Annubar Constant

C for 12" = 3.99

C for 14"-16" = 4.01

Assumptions:

o.d. = maximum measured outside diameter

T = minimum measured thickness

H = use differential pressure measured original exam (6-29-87)

NORTH #1 WELL: i.d. = [12.050] - [2(0.110)] = 11.830 H = 12.9' C = 3.99

$$Q_{cfs} = (11.830)^2(\sqrt{12.9})(3.99) \div 448.8 = 2005.567 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 4.469 \text{ cfs} = 4.47 \text{ cfs}$$

SOUTH #2 WELL:

North Mainline: i.d. = [14.040] - [2(0.102)] = 13.836" H = 4.9' C = 4.01

$$Q_{cfs} = (13.836)^2(\sqrt{4.9})(4.01) \div 448.8 = 1699.274 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 3.786 \text{ cfs} = 3.79 \text{ cfs}$$

South Mainline: i.d. = [16.025] - [2(0.136)] = 15.753" H = 6.7' C = 4.01

$$Q_{cfs} = (15.753)^2(\sqrt{6.7})(4.01) \div 448.8 = 2575.777 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 5.739 \text{ cfs} = 5.74$$

TOTAL CALCULATED FLOW RATE:  $Q_{TOTAL} = 4.47 \text{ cfs} + 3.79 \text{ cfs} + 5.74 \text{ cfs} = 14.00 \text{ cfs}$ 

## D. AUTHENTICATION:

Field Examiner's Name:

KEITH C WILSON

SCANNED

SEP 09 2005

# 1

**THEORETICAL PUMP FLOW CALCULATIONS**Formula:  $Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$ SYSTEM: NORTH**Assumptions:**Hp = Name plate Horsepower = Water Hp = 300Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 370 ft.

Well log used is for this well

psi = 0 psi (Between well pump & booster pump)

$$Q_{cfs} = \left[ \frac{300}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[ \frac{370}{Lift} + \left( \frac{0}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[ \frac{1850.94}{\phantom{000}} \right] \div \left[ \frac{370}{\phantom{000}} \right]$$

$$Q_{cfs} = \underline{5.00} \text{ cfs}$$

SYSTEM: SOUTH**Assumptions:**Hp = Name plate Horsepower = Water Hp = 500Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 350 ft.

Well log used is for this well

psi = 0 psi (Between well pump & booster pump)

$$Q_{cfs} = \left[ \frac{500}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[ \frac{350}{Lift} + \left( \frac{0}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[ \frac{3084.90}{\phantom{000}} \right] \div \left[ \frac{350}{\phantom{000}} \right]$$

$$Q_{cfs} = \underline{8.81} \text{ cfs}$$

**TOTAL SYSTEM**

$$\text{CAPACITY } Q = \underline{5.00 \text{ cfs} + 8.81 \text{ cfs} = 13.81 \text{ cfs}}$$

SCANNED

SEP 09 2005

PERMIT NO. 22-7280

#2

**THEORETICAL PUMP FLOW CALCULATIONS**Formula:  $Q_{dfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$ SYSTEM: NORTH**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp =  $300 + 100 = 400$ Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 370 ft.

Well log used is for this well

psi = 58 psi (Measured after booster pump)

$$Q_{dfs} = \left[ \frac{400}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[ \frac{370}{Lift} + \left( \frac{58}{psi} \times 2.308 \right) \right]$$

$$Q_{dfs} = \left[ \frac{2467.92}{\phantom{000}} \right] \div \left[ \frac{503.86}{\phantom{000}} \right]$$

4.90 cfs

$$Q_{dfs} = \underline{4.897} \text{ cfs}$$

SYSTEM: SOUTH**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp =  $500 + 350 = 850$ Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 350 ft.

Well log used is for this well

psi = 59 psi

(After booster pump &amp; Avg psi of N &amp; S Mainlines)

$$Q_{dfs} = \left[ \frac{850}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[ \frac{350}{Lift} + \left( \frac{59}{psi} \times 2.308 \right) \right]$$

$$Q_{dfs} = \left[ \frac{5244.33}{\phantom{000}} \right] \div \left[ \frac{486.17}{\phantom{000}} \right] = 10.786$$

$$Q_{dfs} = \underline{10.79} \text{ cfs}$$

**TOTAL SYSTEM**

$$\text{CAPACITY } Q = \underline{4.90 \text{ cfs} + 10.79 \text{ cfs} = 15.69 \text{ cfs}}$$

SCANNED

PERMIT NO. 22-7280

SEP 09 2005

#3

**THEORETICAL PUMP FLOW CALCULATIONS**Formula:  $Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$ SYSTEM: NORTH**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp = 300 + 100 = 400 hpEff = Efficiency (pump & motor) = 70%

Lift: Static Level + 50' Draw down

Dynamic water level = 420 ft.

Well log used is for this well

psi = 58 psi (Measured after booster pump)

$$Q_{cfs} = \left[ \frac{400}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[ \frac{420}{Lift} + \left( \frac{58}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[ \frac{2467.92}{ } \right] \div \left[ \frac{553.86}{ } \right] = 4.455$$

$$Q_{cfs} = \underline{4.46} \text{ cfs}$$

SYSTEM: SOUTH**Assumptions:**Hp = Nameplate Hp (Well + Booster) = Water Hp = 500 + 350 = 850 hpEff = Efficiency (pump & motor) = 70%

Lift: Static Level + 50' Draw down

Dynamic water level = 400 ft.

Well log used is for this well

psi = 59 psi

(After booster pump &amp; Avg psi of N &amp; S Mainlines)

$$Q_{cfs} = \left[ \frac{850}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[ \frac{400}{Lift} + \left( \frac{59}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[ \frac{5244.33}{ } \right] \div \left[ \frac{536.17}{ } \right] =$$

$$Q_{cfs} = \underline{9.78} \text{ cfs}$$

**TOTAL SYSTEM**

$$\text{CAPACITY } Q = \underline{4.46 \text{ cfs} + 9.78 \text{ cfs} = 14.24 \text{ cfs}}$$

SCANNED

SEP 09 2005

PERMIT NO. 22-7280

RECEIVED

MAR 29 1999

RILEY

Department of Water Resources

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

In Re SRBA

Case No. 39576

A. Subcase 22-07280R  
(Insert water right number)

STANDARD FORM 1

OBJECTION

Attached to Case No. CV-94-00012

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Robin Riley

Address: 1623 W. 3400 S.

Rexburg, Idaho 83440

Daytime Phone: (208) 356-5873

Name & Address of Attorney, if any:

Steven R. Parry

P.O. Box 51630

Idaho Falls, Idaho 83405-1630

(208) 522-3001

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

Name: Norman Riley / Robin Riley

Address: 1623 W. 3400 S.

Rexburg, Idaho 83440

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

1. ☐ Name and Address  
Should be: \_\_\_\_\_
2. ☐ Source  
Should be: \_\_\_\_\_
3. ☒ Quantity  
Should be: 5.31 CFS (4.77 + .54)
4. ☐ Priority Date  
Should be: \_\_\_\_\_
5. ☒ Point(s) of Diversion  
Should be: The point of diversion for the additional .54 CFS should be T05N R40E S3 SENE
6. ☐ Instream Flow Description  
Should be: \_\_\_\_\_
7. ☐ Purpose(s) of Use  
Should be: \_\_\_\_\_
8. ☐ Period of Year  
Should be: \_\_\_\_\_
9. ☒ Place of Use  
Should be: Same as listed plus (See Exhibit A)

11. I object because:

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

E. REASONS SUPPORTING OBJECTION(S): The reasons supporting these

objections are set forth in Riley's Brief dated February 16, 1999, filed in Subcase No. 94-00012 with Special Master Bilyeu, that Brief being incorporated herein by this reference. For convenience, a copy of pages 9-13 of the Brief are attached as Exhibit B.

SEP 09 2005

F.

## VERIFICATION (Must be Completed)

State of IDAHO)  
)ss.County of BONNEVILLE)STEVEN R. PARKY, duly sworn, upon oath, deposes and says:  
(Name of person filing objection)

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

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 24, 1999Kicket Schofield  
Notary Public for Idaho  
Residing at: Idaho Falls  
My Commission Expires: 9-4-2004SCANNED  
SEP 09 2005

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

G.

I certify that on March 25, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
~~PO Box 2707~~  
Twin Falls, ID 83301-2707

Via Fed Express

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

Name:

Address:

Norman + Robin Riley  
1623 West 3400 South  
Rexburg, Idaho 83440

3. Copies to:

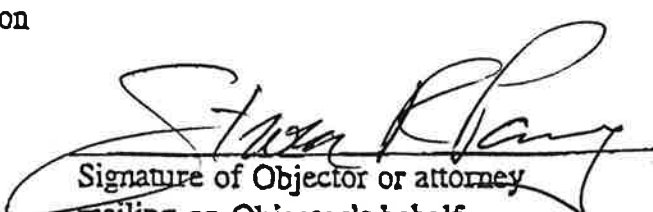
IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

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

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

SCANNED

SEP 09 2005

  
Signature of Objector or attorney  
mailing on Objector's behalf

**TO STANDARD FORM 1 OBJECTION**

SCANNED  
SEP 09 2005

EXHIBIT B  
TO STANDARD FORM 1 OBJECTION

authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence; or (e) are arbitrary, capricious, or an abuse of discretion. [Citations omitted.]

*Id.* at 577. Whether the standard of review is set forth under the Administrative Procedures Act (see jurisdictional discussion above) or otherwise, the fact is that the SRBA must not lightly overturn the decisions of the Department. As set forth in the background section above, the licenses under consideration are the result of years of review and consideration by the Courts and the Department, and the Department has internally reviewed these issues at the highest levels. The Department has been assisted at hearings and otherwise by the Attorney General's office and has expended a considerable amount of time on the issues associated with this case. Hence their decisions should be presumed correct.

The main complaint to be heard from Rowan relates to the Annual Diversion rate and the allocation of primary service land acres and supplemental service land. These issues have been considered and carefully analyzed by the Department, and therefore should not be overturned by the SRBA without a compelling reason. The Department's analysis is clearly set forth in its November 30, 1998 letter to the parties, a copy of which was sent to the SRBA.

### III. ELEMENTS OF WATER LICENSES

The Rileys are generally in agreement with the Department's actions in issuing the licenses. However, from the beginning of this case, the Rileys have maintained that the ownership of the water permit must first be determined, and then the owner or owners thereof should have the right to seek amendments to the permit before it is licensed or in connection with its license. The need for such amendments is made clear by the beneficial use field report (See SRBA Trial Exhibit 5) which actually recommended at Section I.2 thereof that the underlying permit be amended to reflect the actual place of use and the additional point of diversion. All the Rileys desire is a chance to seek appropriate amendments to their portion of the water right as discussed below. Because any other permit holder would be afforded this right, the denial of this right would deny the Rileys of important property without due process of law. The key issues now before the SRBA are each addressed below.

**A. ANNUAL DIVERSION.**

The Department has properly divided the water rights evenly between the parties by focusing on the various aspects of the water right that are valuable. After years of litigation and one trip to the Idaho Supreme Court, the answer is clear that Rowan owns 50% of the subject water right and the Rileys own 50% of the subject water right. As the Rileys have long maintained, the only way that can happen is if the Rileys own water rights on land which they have leased from Rowan. The question before the SRBA is simply "What does half mean?"

The parties were given every opportunity and encouragement by the Department to come to an agreement dividing the water rights in a way that would work best for them both, but Rowan simply wants more than half. The Rileys have come too far and spent too much to give up any part of their half of the water right. With the parties at an impasse, the Department did the only logical thing it could do, and that is to divide every aspect of the water right in half. At the prior hearing, Rowan's attorney appeared to have conceded that the Department had "mathematically" divided the right in half, but claimed that subjective factors should be considered. The parties by agreement could certainly consider subjective factors favorable to their respective positions, but barring their mutual consent "half" should mean "half," nothing more and nothing less.

Clearly the most valuable aspect of the water right are the maximum diversion rate and the annual diversion volume, with the first representing the speed at which the water comes out of the spigot and the later representing the size of the bucket to hold the water. The maximum diversion rate has clearly been divided equally with each party receiving 4.77 CFS. Likewise, by equally dividing the Primary Service acres and the Supplemental Service acres, the Department has given each party an equally sized bucket. In making that allocation, the most useful element is the Primary Service acres as the Supplemental Service acres are of little value to either party. Certainly the supplemental water rights given to Rowan on Rileys' land are of little value to her unless she can move them or sell them to the Rileys. However, the fact is, that with modern irrigation methods, the supplemental rights owned by the Rileys on their own ground are of little value to them as well as their primary rights on that ground are sufficient to water that ground. The licenses as issued by

the Department carefully gave each party the same size bucket and consequently the Rileys own some primary water rights as tenants on property owned by Rowan. That is the natural result of an even split of the water right and the result which the Rileys have long anticipated and predicted if the ownership was indeed 50/50.

The Department divided the water right evenly between the parties and the SRBA should not alter that division. The Department followed the order of the SRBA as confirmed by the Idaho Supreme Court and that portion of the licenses should stand.

**B. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL WATER.**

The beneficial use field report (SRBA Trial Exhibit 5) proved that the North well owned by the Rileys was actually producing 4.41 CFS, or .54 CFS more than the 3.87 CFS authorized by a separate license owned by the Rileys on that North Well (SRBA Trial Exhibit C). As mentioned above, the field report recommended an amendment to the water permit to take this additional water production into account. This was possible because the water permit (SRBA Trial Exhibit D) was for 10.81 CFS which was more than the South Well could actually produce. This additional .54 CFS of water was produced by the North Well which is clearly owned by the Rileys who were farming the ground. As such, the Rileys should have the right to amend their license so as to take this water into account, and if necessary the water should be applied to the 160 acres South of the railroad which the Rileys were leasing from Rowan.

**C. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL ACRES.**

The beneficial use filed report (SRBA Trial Exhibit 5, See Map #1) showed that approximately 160 acres South of the railroad tracks was being irrigated by the Rileys. As such, the Rileys should be able to move some of their water down to this 160 acres. Whether the Rileys "spread" their water to all or part of this 160 acres by way of a permit amendment or by an expansion claim off their North water license, Rowan has no claim to have spread water to these acres. While Rowan owned the ground which was leased to the Rileys or their predecessor, there is a railroad track separating the property from the other parcel and that railroad strip is owned by the railroad. The Rileys, and formerly their predecessor, have sole ownership of the railroad easement and paid for the easement, the pipe, and the installation thereof to put the water under the railroad tracks. The mainline

used to spread this water on the 160 acres is above ground and clearly belongs to the Rileys. It would be outrageous for any court to say that Rowan applied her water through the labor and effort of the Rileys as her tenants, across land owned by another, through pipe owned by the Rileys and on an easement owned by the Rileys, to above-ground mainline and through sprinklers owned by the Rileys.

If the SRBA does not resolve the issue with the 160 acres now, a clear mechanism needs to be established for its resolution. Without notice to the Rileys, Rowan pursued and obtained Water Permit No. 22-07792 (SRBA Trial Exhibit MM). This Permit was issued January 30, 1997, with a proposed priority date of September 4, 1996, and was tied to Right 22-07280. When the Rileys discovered what had taken place during the pendency of this matter without any notice to them, they raised strong objection with the Department and issued its Order Designating a Preliminary Order dated March 12, 1997, a copy of which is attached as Exhibit A. This procedure allowed the Rileys to file their Petition for Reconsideration In Re: Permit 22-07792 dated March 24, 1997, a copy of which is attached as Exhibit B. That Petition was placed on hold before the Department and remains this day on hold before the Department.

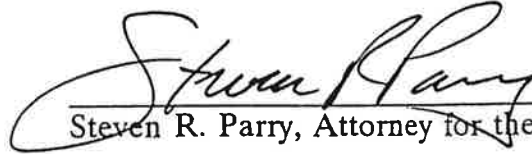
The issues associated with the 160 acres obviously need to be resolved in connection with the resolution of the other issues. Both parties will likely desire amendments to include the 160 acres, but the facts remain that only the Rileys actually applied water to that ground, and they did it through their pipe running through their easement. Rowan expended no money and made no effort to develop the water on the 160 acres and therefore only the Rileys should be allowed to expand their water to those acres. Therefore, the Rileys specifically request that the Department be ordered to entertain their amendment in this regard or that some other procedure be established to resolve the issues relating to the 160 acres.

#### IV. CONCLUSION

Based upon the foregoing discussion, the Rileys request the Special Master to recommend a partial decree consistent with the licenses issued by the Department, except that the Rileys license should first be amended to add the additional .54 CFS being produced by the North Well and to add all or part of the 160 acres that was watered by the

Rileys. These two revisions are consistent with the recommendations set forth in the beneficial use field report. If no recommendation is made with regard to the 160 acres, then the Rileys request that a procedure be established to resolve that issue as well.

RESPECTFULLY SUBMITTED this 16th day of February, 1999.

  
Steven R. Parry, Attorney for the Rileys

RECEIVED

MAR 29 1999

Department of Water Resources

*Anderson Nelson Hall Smith, P.A.*  
**ATTORNEYS**

490 MEMORIAL DRIVE  
POST OFFICE BOX 51630  
IDAHO FALLS, IDAHO 83405-1630  
TELEPHONE (208) 522-3001  
FAX (208) 523-7254  
E-MAIL anhs@ida.net

W. Joe Anderson  
Douglas R. Nelson  
Blake G. Hall  
Marvin M. Smith\*  
Scott R. Hall  
Joel E. Tingey  
Steven R. Parry\*  
Brian T. Tucker

Of Counsel  
John M. Sharp\*

Eugene L. Bush  
(1928-1986)

\*Also member of Utah bar

March 24, 1999

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

Re: *Rowan v. Riley*  
Case No.: CV-94-00012

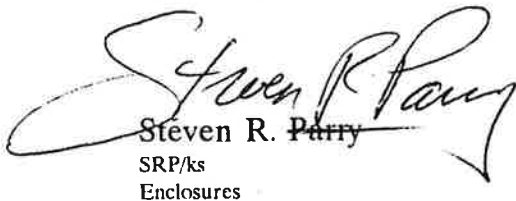
Dear Clerk:

Enclosed are a Standard Form 1 Objection filed on behalf of Norman Riley and one filed on behalf of Robin Riley. Pursuant to the instructions for filing, my understanding was that both Norman and Robin needed to file a separate objection. Inasmuch as the water right is their community property, I felt that filing two objections was prudent. However, the objections are identical.

Although not required by the objection form itself, we recognize that this objection is being filed in the context of ongoing litigation and therefore we have provided a curtesy copy of this objection to Greg Moeller who is Catherine Rowan's attorney.

If you need any additional information or have any questions pertaining to the Standard Form 1 Objection, please do not hesitate to call. Thank you for your assistance in this matter.

Sincerely,



Steven R. Parry  
SRP/ks  
Enclosures

cc: Gregory W. Moeller  
Norman and Robin Riley

L:\SRP\266\SRBACL\ER.LTR

SCANNED

SEP 09 2005

COPY

RECEIVED

MAR 29 1999

RILEY

Department of Water Resources

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

In Re SRBA

Case No. 39576

Subcase 22-07280B  
(Insert water right number)

STANDARD FORM 1  
OBJECTION

Attached to Case No. CV-94-00012

Please fill in the following information:

**B. NAME AND ADDRESS OF PERSON OBJECTING**

Name: Norman Riley  
Address: 1623 W. 3400 S.  
Rexburg, Idaho 83440  
Daytime Phone: (208) 356-5873

Name & Address of Attorney, if any:

Steven R. Parry  
P.O. Box 51630  
Idaho Falls, Idaho 83405-1630  
(208) 522-3001

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

Name: Norman Riley / Robin Riley  
Address: 1623 W. 3400 S.  
Rexburg, Idaho 83440

SCANNED

SEP 09 2005

COPY

12081302121 P. 03  
D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address

Should be: \_\_\_\_\_

2. ☐ Source

Should be: \_\_\_\_\_

3. ☒ Quantity

Should be: 5.31 CFS (4.77 + .54)

4. ☐ Priority Date

Should be: \_\_\_\_\_

5. ☒ Point(s) of Diversion

Should be: The point of diversion for the additional .54 CFS  
should be T05N R40E S3 SENE

6. ☐ Instream Flow Description

Should be: \_\_\_\_\_

7. ☐ Purpose(s) of Use

Should be: \_\_\_\_\_

8. ☐ Period of Year

Should be: \_\_\_\_\_

9. ☒ Place of Use

Should be: Same as listed plus (See Exhibit A)

11. I object because:

☐ This water right should not exist.

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

E. REASONS SUPPORTING OBJECTION(S): The reasons supporting these

objections are set forth in Riley's Brief dated February 16, 1999, filed in  
Subcase No. 94-00012 with Special Master Bilyeu, that Brief being incorporated  
herein by this reference. For convenience, a copy of pages 9-13 of the Brief are  
attached as Exhibit B.

SEP 09 2005

F.

## VERIFICATION (Must be Completed)

State of IDAHO)  
County of BONNEVILLE)ss.

STEVEN R. PARKY, duly sworn, upon oath, deposes and says:  
(Name of person filing objection)

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

(Signature of person filing objection)

[Signature]  
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

March 24 1999



Notary Public for

Residing at:

My Commission Expires:

Idaho

Idaho Falls

9-4-2004

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

G.

I certify that on March 25, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
~~PO Box 2707~~  
Twin Falls, ID 83301-2707

VIA FED EXPRESS

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

Name:

Address:

Norman + Robin Rila  
11623 WEST 3400 SOUTH  
Reberburg, Idaho 83440

3. Copies to:

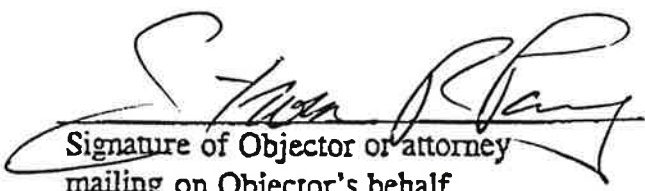
IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

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

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

SCANNED

SEP 09 2005

  
Signature of Objector or attorney  
mailing on Objector's behalf

# EXHIBIT A

## TO STANDARD FORM 1 OBJECTION

| <u>TWN</u>                       | <u>RGE</u> | <u>SEC</u> | <u>ACRES</u> | <u>ACRES</u> | <u>ACRES</u> | <u>TOTAL</u> |
|----------------------------------|------------|------------|--------------|--------------|--------------|--------------|
| 05N                              | 40E        | 14         | SWNW 0.3     | SEnw 2.0     | NESW 25.0    |              |
|                                  |            |            | NWSW 23.0    | SWSW 34.0    | SESW 39.0    |              |
|                                  |            |            | SWSE 10.0    |              |              | 133.3        |
|                                  | 15         |            | NESE 0.2     | SESE 3.0     |              | 3.2          |
|                                  | 23         |            | NWNE 2.0     | NENW 9.0     | NWNW 3.0     | 14.0         |
| Total number of acres irrigated: |            |            |              |              |              | 150.05       |

SCANNED

SEP 09 2005

authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence; or (e) are arbitrary, capricious, or an abuse of discretion. [Citations omitted.] *Id.* at 577. Whether the standard of review is set forth under the Administrative Procedures Act (see jurisdictional discussion above) or otherwise, the fact is that the SRBA must not lightly overturn the decisions of the Department. As set forth in the background section above, the licenses under consideration are the result of years of review and consideration by the Courts and the Department, and the Department has internally reviewed these issues at the highest levels. The Department has been assisted at hearings and otherwise by the Attorney General's office and has expended a considerable amount of time on the issues associated with this case. Hence their decisions should be presumed correct.

The main complaint to be heard from Rowan relates to the Annual Diversion rate and the allocation of primary service land acres and supplemental service land. These issues have been considered and carefully analyzed by the Department, and therefore should not be overturned by the SRBA without a compelling reason. The Department's analysis is clearly set forth in its November 30, 1998 letter to the parties, a copy of which was sent to the SRBA.

### III. ELEMENTS OF WATER LICENSES

The Rileys are generally in agreement with the Department's actions in issuing the licenses. However, from the beginning of this case, the Rileys have maintained that the ownership of the water permit must first be determined, and then the owner or owners thereof should have the right to seek amendments to the permit before it is licensed or in connection with its license. The need for such amendments is made clear by the beneficial use field report (See SRBA Trial Exhibit 5) which actually recommended at Section I.2 thereof that the underlying permit be amended to reflect the actual place of use and the additional point of diversion. All the Rileys desire is a chance to seek appropriate amendments to their portion of the water right as discussed below. Because any other permit holder would be afforded this right, the denial of this right would deny the Rileys of important property without due process of law. The key issues now before the SRBA are each addressed below.

the Department carefully gave each party the same size bucket and consequently the Rileys own some primary water rights as tenants on property owned by Rowan. That is the natural result of an even split of the water right and the result which the Rileys have long anticipated and predicted if the ownership was indeed 50/50.

The Department divided the water right evenly between the parties and the SRBA should not alter that division. The Department followed the order of the SRBA as confirmed by the Idaho Supreme Court and that portion of the licenses should stand.

**B. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL WATER.**

The beneficial use field report (SRBA Trial Exhibit 5) proved that the North well owned by the Rileys was actually producing 4.41 CFS, or .54 CFS more than the 3.87 CFS authorized by a separate license owned by the Rileys on that North Well (SRBA Trial Exhibit C). As mentioned above, the field report recommended an amendment to the water permit to take this additional water production into account. This was possible because the water permit (SRBA Trial Exhibit D) was for 10.81 CFS which was more than the South Well could actually produce. This additional .54 CFS of water was produced by the North Well which is clearly owned by the Rileys who were farming the ground. As such, the Rileys should have the right to amend their license so as to take this water into account, and if necessary the water should be applied to the 160 acres South of the railroad which the Rileys were leasing from Rowan.

**C. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL ACRES.**

The beneficial use filed report (SRBA Trial Exhibit 5, See Map #1) showed that approximately 160 acres South of the railroad tracks was being irrigated by the Rileys. As such, the Rileys should be able to move some of their water down to this 160 acres. Whether the Rileys "spread" their water to all or part of this 160 acres by way of a permit amendment or by an expansion claim off their North water license, Rowan has no claim to have spread water to these acres. While Rowan owned the ground which was leased to the Rileys or their predecessor, there is a railroad track separating the property from the other parcel and that railroad strip is owned by the railroad. The Rileys, and formerly their predecessor, have sole ownership of the railroad easement and paid for the easement, the pipe, and the installation thereof to put the water under the railroad tracks. The mainline

used to spread this water on the 160 acres is above ground and clearly belongs to the Rileys. It would be outrageous for any court to say that Rowan applied her water through the labor and effort of the Rileys as her tenants, across land owned by another, through pipe owned by the Rileys and on an easement owned by the Rileys, to above-ground mainline and through sprinklers owned by the Rileys.

If the SRBA does not resolve the issue with the 160 acres now, a clear mechanism needs to be established for its resolution. Without notice to the Rileys, Rowan pursued and obtained Water Permit No. 22-07792 (SRBA Trial Exhibit MM). This Permit was issued January 30, 1997, with a proposed priority date of September 4, 1996, and was tied to Right 22-07280. When the Rileys discovered what had taken place during the pendency of this matter without any notice to them, they raised strong objection with the Department and issued its Order Designating a Preliminary Order dated March 12, 1997, a copy of which is attached as Exhibit A. This procedure allowed the Rileys to file their Petition for Reconsideration In Re: Permit 22-07792 dated March 24, 1997, a copy of which is attached as Exhibit B. That Petition was placed on hold before the Department and remains this day on hold before the Department.

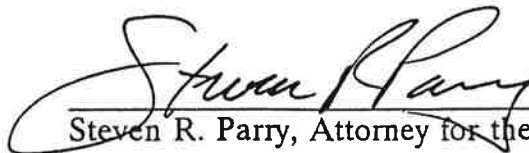
The issues associated with the 160 acres obviously need to be resolved in connection with the resolution of the other issues. Both parties will likely desire amendments to include the 160 acres, but the facts remain that only the Rileys actually applied water to that ground, and they did it through their pipe running through their easement. Rowan expended no money and made no effort to develop the water on the 160 acres and therefore only the Rileys should be allowed to expand their water to those acres. Therefore, the Rileys specifically request that the Department be ordered to entertain their amendment in this regard or that some other procedure be established to resolve the issues relating to the 160 acres.

#### IV. CONCLUSION

Based upon the foregoing discussion, the Rileys request the Special Master to recommend a partial decree consistent with the licenses issued by the Department, except that the Rileys license should first be amended to add the additional .54 CFS being produced by the North Well and to add all or part of the 160 acres that was watered by the

Rileys. These two revisions are consistent with the recommendations set forth in the beneficial use field report. If no recommendation is made with regard to the 160 acres, then the Rileys request that a procedure be established to resolve that issue as well.

RESPECTFULLY SUBMITTED this 16th day of February, 1999.

  
Steven R. Parry, Attorney for the Rileys



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

NOVEMBER 24, 1992

CECIL D. ANDRUS  
GOVERNOR  
R. KEITH HIGGINSON  
DIRECTOR

NORMAN RILEY  
1623 W 3400 S  
REXBURG ID 83440

RE: CHANGE IN OWNERSHIP FOR A22-07280, A22-02223, AND  
A22-12251

Dear Mr. Riley:

The request for Change in Ownership concerning the Notices of Claim in the above reference (A22-02223 and A22-12251) has been processed and the names changed to show you as the current owner. A22-07280 was split into two separate portions.

Enclosed are "copies" of A22-02223 and A22-12251 for your records. Also enclosed is A22-07280B for a portion of water right A22-07280.

Jim Howe has died and Mrs. Rowan requested the water rights be in her name (they were formerly in both names).

Since you purchased 205 acres of land from Catherine H. Rowan, the above mentioned water right, A22-07280, has been split into A22-07280A and A22-07280B. A22-07280B gives you 3.020 cfs for 205 acres and A22-07280A with 7.790 cfs on 529 acres is the remaining portion belonging to Mrs. Rowan.

Review the forms and if there are other corrections or questions, feel free to contact this office (525-7161).

If there are no questions or corrections, please keep these Notices for your records.

Respectfully submitted,

*Jo Thompson*

Dave Carlson  
Water Rights Agent, Adjudication

DC:jt

Enclosure

cc: Catherine Rowan/copy letter/A22-07280A

SCANNED

SEP 09 2005

MICROFILMED

DEC 09 1992

Form 42-1409(7)



# NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type  
(see instructions on back of page)

DATE OF CLOSING: \_\_\_\_\_

LEGAL DESCRIPTION OF PROPERTY: Township \_\_\_\_\_ Range \_\_\_\_\_  
Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4, Govt. Lot \_\_\_\_\_, BM.  
Lot \_\_\_\_\_, Block \_\_\_\_\_, Subdivision/Townsite \_\_\_\_\_.  
If you have additional legal descriptions, please attach separate sheet.

- [ ] Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)
- [ ] Water Right Number(s)  
Assigned by IDWR: A22-07280, A22-02223, A22-12251
- [ ] Name and Address of Former  
Owner/Claimant(s)(Seller): Jim W. Howe (deceased)  
P.O. Box 803 (formerly 240 Mohawk Av.)  
REXBURG, ID 83440
- [ ] New Owner/Claimant  
(Purchaser): → NORMAN OR ROBIN RILEY
- [ ] New Mailing Address: 1623 W. 3900 S.  
REXBURG, ID 83440
- [ ] New Telephone Number: (208) 356-5873
- [ ] Does the change in ownership result in a splitting of the water right owned/claimed? X yes no  
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:  
No on the others → A22-07280
- [ ] Attach proof of  
ownership, describe  
proof attached: \_\_\_\_\_  
(proof of ownership must describe either the property conveyed or include the claim number. Proof  
of ownership is not required if this form is signed by the former owner/claimant.)
- [ ] Signature of New  
Owner/Claimant(s) Robin Howe Riley Date 11-12-92  
Date \_\_\_\_\_
- [ ] Signature of Former  
Owner/Claimant(s): \_\_\_\_\_ Date \_\_\_\_\_  
Date \_\_\_\_\_

(Signature of former claimant(s) is not required if proof of  
ownership is attached.)

FOR IDWR USE ONLY:  
Initial Review and Data-Entry  
Date: \_\_\_\_\_ By: \_\_\_\_\_  
Further Action Needed:  
Further Action Taken  
Date: \_\_\_\_\_ By: \_\_\_\_\_  
Final Review and Data-Entry  
Date: \_\_\_\_\_ By: \_\_\_\_\_  
Claim Numbers of Split, if any:

SCANNED  
SEP 09 2005

MICROFILMED  
DEC 09 1992

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

M-17756

First American Title Company

Rowan deed  
to Jim

CORRECTION GRANT DEED

FOR VALUE RECEIVED, KATHERINE ANNE HOWE, a/k/a Catherine Rowan, of 843 Three Fountains Drive, Salt Lake City, Utah 84107, does hereby grant, bargain, sell, and convey unto JAMES HOWE, of Rexburg, Idaho 83440, the following described real property in Madison County, State of Idaho, to-wit:

A tract of land which is situated in Secs. 2, 3, 10, and 11, in Twp. 5 N., Rge. 40 E., Boise Mer.:

Beginning at the Northwest corner of said Section 2, and running thence S.89°57'E. 1331 feet, to the Northeast corner of lot 4 of said Section 2; thence S.0°02'E. 599.75 feet, along the sixteenth line, to the Northeasterly corner of the property owned or formerly owned by Wess Howe; thence long the boundaries of said property the following two (2) courses; (1) S.69°58'25"W. 541.60 feet; thence (2) S.32°16'56"E. 953.83 feet, to said sixteenth line; thence S.0°02'E. 118.67 feet along said line, to its intersection with the west side of a county road; thence along said west side the following three courses; (1) S.32°15'E. 1483.2 feet; thence (2) S.0°10'E. 735 feet; thence (3) S.39°03'E. 671.2 feet; thence S.23°10'W. 258.6 feet; thence S.14°45'W. 251.9 feet; thence S. 0°44' 262.8 feet; thence S.2°48'W. 240.9 feet; thence S. 7°50'W. 200 feet; thence S.11°29'W. 286.6 feet; thence S. 10°17'W. 154.2 feet; thence S.7°08'W. 260 feet; thence S.12°50'W. 200.8 feet; thence S. 19°00'W. 153 feet; thence S. 9°07'W. 100 feet; thence S. 2°23'E. 247.1 feet; thence S. 23°40'30"E. 495.5 feet (deed shows N.28°50'W. 484.5 feet) thence S.2°57'E. 65.8 feet; thence N. 89°57'W. 3156.6 feet; thence N. 0°01'14"W. (deed shows North 7281.2 feet to the north line of said Section 3; thence S.39°49'E. 737.3 feet along the section line, to the point of beginning, containing 452.9 acres more or less.

TOGETHER With any and all improvements and appurtenances thereto; rents, issues and profits thereof; and reversions and remainders. Grantor does hereby grant and convey to Grantee an individual one-half interest and right to any water from the south main well which is located on Grantor's property.

Grantor does hereby grant and convey to Grantee and Undivided one-half interest and right to any water from the south main well which is located on Grantor's property.

SEP 09 2015

MICROFILMED

DEC 09 1992

This deed is given to correct the legal description in that certain Correction Grant Deed, dated August 3, 1988, by and between the same parties, recorded on August 3, 1988, as Instrument No. 226424 in the records of Madison County, Idaho.

DATED This 10<sup>th</sup> day of August, 1988.

*Katherine Anne Howe*  
Katherine Anne Howe  
a/k/a Catherine Rowan

STATE OF UTAH, )  
ss.  
County of Salt Lake. )

On this 10 day of August, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Katherine Anne Howe, a/k/a Catherine Rowan, known to me to be the person, whose name is subscribed to the within 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.

*Paul C. G. [Signature]*  
Notary Public for Utah  
Residing at: Salt Lake  
My Commission Expires: 11/1/89

State of Idaho  
County of Madison, ss 226533  
I hereby certify that the within instrument was  
filed for record on AUG 11 1988  
at 11:45A  
226533  
600

*Salaput*  
First American Title Company  
Katherine Anne Howe  
11/1/89 303

CORRECTION GRANT DEED -2-

RECORDED  
DEC 09 1992  
SEP 09 2005

*Easement to well*

8/2/88

CORRECTED AGREEMENT

THIS AGREEMENT made and entered into this 2<sup>ND</sup> day of August, 1988, by and between CATHERINE ROWAN, of 843 Three Fountains Drive, Salt Lake City, Utah, 84107, hereinafter referred to as "Grantor" and JAMES HOWE, of Rexburg, Idaho 83440, hereinafter referred to as "Grantee".

WHEREAS, the Grantor owns certain property adjacent to Grantee's property, said property being described below and hereinafter referred to as "the Grantor's property", to-wit:

A tract of land situated in Sections 10, 11, 14 and 15, Township 5 North, Range 40 East of the Boise Meridian, Madison County, Idaho, described as follows:

Beginning at a point that is N. 89°45'W. 787.3 feet along the Section line, and S.01°01'14"E. 6138.7 feet, from the Northeast corner of Section 3, of said Township and Range, and running thence S.0°01'14"E. 7814.7 feet to the Northerly right-of-way line of the Union Pacific Railroad; thence N.43°57'E. 2290.55 feet along said right-of-way line; thence North 2960.65 feet to a point that is S.30°38'E. 19.4 feet and West 769.5 feet from the Northwest corner of said Section 14; thence W.1649.5 feet to the Southwest corner of the property described in Instrument No. 224270, as recorded in Madison County, Idaho; thence along the boundaries of said property the following three (3) courses, (1) N.22°20'E. 420 feet; thence (2) N.9°10'W. 120 feet; thence (3) N.24°02'47"E. 244.23 feet to the North corner of said property; thence North 291.6 feet; thence N.19°05'W. 200 feet; thence N.23°56'W. 200.6 feet; thence N.26°14'W. 130.8 feet; thence N.17°20'W. 370.3 feet; thence N.2°57'W. 195.2 feet; thence N.89°57'W. 3156.6 feet to the point of beginning, containing 296.3 acres, more or less.

WHEREAS, the Grantor desires to grant to the Grantee an easement across the Grantor's property for the joint use of a well and accessories thereto located on the Grantor's property, together with a non-exclusive ingress and egress to

SCANNED

SEP 09 2005

RECORDED  
DEC 19 1988

repair, inspect, or maintain said well, pump, related facilities thereto, and pipelines which carry water from the well to the Grantee's property across the Grantor's property.

NOW THEREFORE, in consideration \$10 in hand paid and for other good and valuable consideration and the mutual covenants and promises herein contained, the parties agree as follows:

1. Grantor does hereby grant unto Grantee a perpetual right and easement across the Grantor's property for the purposes set forth above. Location of said easement on the Grantor's property is as follows:

A 20' wide roadway easement described as follows:

Beginning at a point that is S .30°38' E. 19.4 feet and West 749.50 feet from the Northwest corner of Sec. 14, Twp. 5 N., Rge. 40 E., Boise Mer. and running thence East 20 feet; thence South 2960.65 feet to the Northerly right-of-way line of the Union Pacific Railroad; thence S. 43°57' E. 28.82 feet along said right-of-way line; thence North 2981.40 feet to the point of beginning.

2. Grantee agrees to pay all costs of repair, maintenance and operation of said easement.

3. Said easement shall run from the lands herein above described and shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the respective parties.

IN WITNESS WHEREOF the parties have hereunto signed this agreement the day and year first above written.

GRANTOR

  
Catherine Rowan

AGREEMENT -2-

SEP 09 2005

STA

COM

und

app

nam

me

aff

fir

STA

Cov

und

app

sub

he

AG

MICROFILMED  
SEP 14 1995

GRANTEE

James Howe  
James Howe

STATE OF UTAH, )  
ss. )  
County of Salt Lake. )

On this 3rd day of August, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared Catherine Rowan, known to me to be the person whose name is subscribed to the within 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.

Linda M. Cupp  
Notary Public for Utah  
Residing at: 312, 16th  
My Commission Expires: 8-9-91

STATE OF IDAHO, )  
ss. )  
County of Madison. )

On this 2nd day of August, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared James Howe, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

AGREEMENT -3-

SCANNED

SEP 14 2005

MICROFILMED

DEC 05 2002

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 Rexburg  
 My Commission Expires 6-15-93

*[Signature]*

State of Idaho  
 County of Madison,  
 I hereby certify that the within instrument was  
 filed  
 at 3:47 P.M. and  
 recorded on film  
 2265561  
 by LARIE B. MOORE, Recorder  
 Deputy  
 At the request of  
 TPCA  
 AGREEMENT - 4-

State of Idaho  
 County of Madison,  
 I hereby certify that the within instrument was  
 filed  
 at 4:42 P.M. and  
 recorded on film  
 226425  
 by LARIE B. MOORE, Recorder  
 Deputy  
 At the request of  
 JAMES H. HARRIS  
 MICROFILMED

SCANNED  
 SEP 09 2001  
 MICROFILMED  
 DEC 19 2001

SCANNED  
SEP 09 2005

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: A22-07280B  
Date Received: 10/20/1988  
Receipt No: X777777  
Received By:

PROFILED

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: NORMAN RILEY  
Address: 1623 W 3400 S  
REXBURG ID

208-356-5873

83440

OR

Name: ROBIN RILEY  
Address: 1623 W 3400 S  
REXBURG ID

208-356-5873

83440

2. Date of Priority: JUN 27, 1978

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County  |
|----------|-------|---------|--------|--------|--------|-----|---------|
| 05N      | 40E   | 11      | SW     | SW     | SW     |     | MADISON |

5. Description of diverting works:

WELL, 500HP PMP 505'-12" COL. SETTING, 16"-12GA. DIS. STEEL PIPE

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) | A.F.A. |
|------------|-------|-------|--------|------|--------|
| IRRIGATION | 04/15 | 10/15 | 4.270  |      |        |

7. Total Quantity Appropriated is:

4.270 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is 1468.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 of | Lot | Use | Acres |
|----------|-------|---------|--------|--------|-----|-----|-------|
| 05N      | 40E   | 2       | SW     | SW     |     | IRR | 16.0  |

A22-07280B

Page 1

Date: 12/02/92

MICROFILMED  
DEC 09 1992



10. Place of Use: Continued

| Township | Range | Section | 1/4 of        | 1/4 | Lot | Use | Acres |
|----------|-------|---------|---------------|-----|-----|-----|-------|
| 05N      | 40E   | 2       | SE            | SW  |     | IRR | 13.0  |
|          |       |         | Section Acres |     |     |     | 29.0  |
|          |       | 3       | NE            | SE  |     | IRR | 9.0   |
|          |       |         | SE            | SE  |     | IRR | 24.0  |
|          |       |         | Section Acres |     |     |     | 33.0  |
|          |       | 10      | NE            | NE  |     | IRR | 24.0  |
|          |       |         | SE            | NE  |     | IRR | 24.0  |
|          |       |         | NE            | SE  |     | IRR | 12.0  |
|          |       |         | Section Acres |     |     |     | 60.0  |
|          |       | 11      | NE            | NW  |     | IRR | 35.0  |
|          |       |         | NW            | NW  |     | IRR | 40.0  |
|          |       |         | SW            | NW  |     | IRR | 40.0  |
|          |       |         | SE            | NW  |     | IRR | 24.0  |
|          |       |         | NE            | SW  |     | IRR | 9.0   |
|          |       |         | NW            | SW  |     | IRR | 20.0  |
|          |       |         | Section Acres |     |     |     | 168.0 |
|          |       |         | Total Acres   |     |     |     | 290.0 |

11. Place of use in counties: MADISON

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

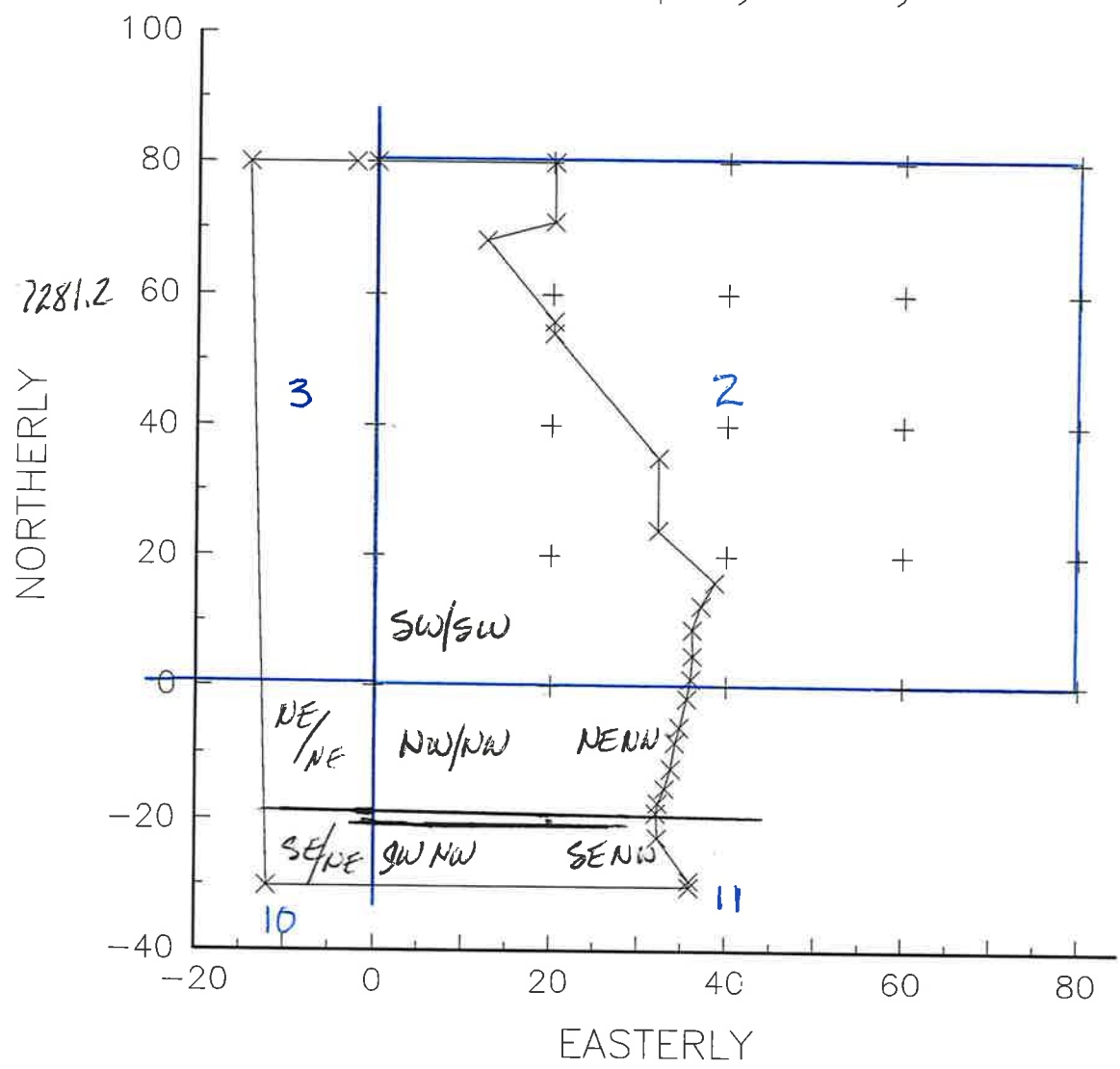
13. Other Water Rights Used:  
LICENSE NO. 22-2223

14. Remarks:

THE PLACE OF USE LISTED ABOVE DIFFERS FROM THE PERMITTED ACREAGE REFLECTS ACTUAL PRACTICE WHICH STARTED WHEN WE BEGAN USING THE WELL. THIS WAS CONFIRMED BY DEPARTMENT PERSONEL WHEN THEY COMPLETED THE LICENSING FIELD EXAM.  
PAID #E003351

15. Basis of Claim: LICENSE

# TYPICAL SECTION Property Overlay



1320 1/4

72808  
205  
329

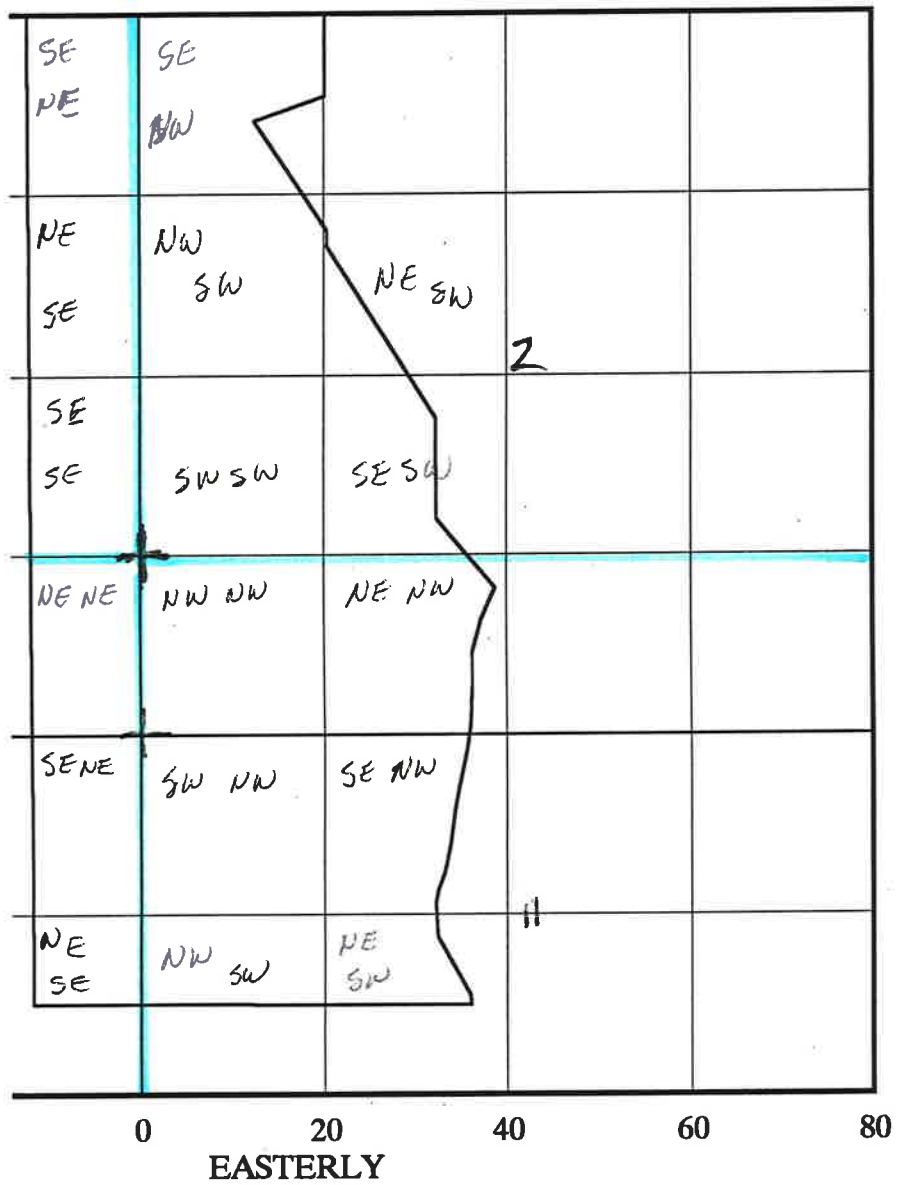
SCANNED

SEP 09 2005

MICROFILMED  
DEC 09 1992

## \_PLOT – MEETS & BOUNDS

## DISTANCE IS IN CHAINS



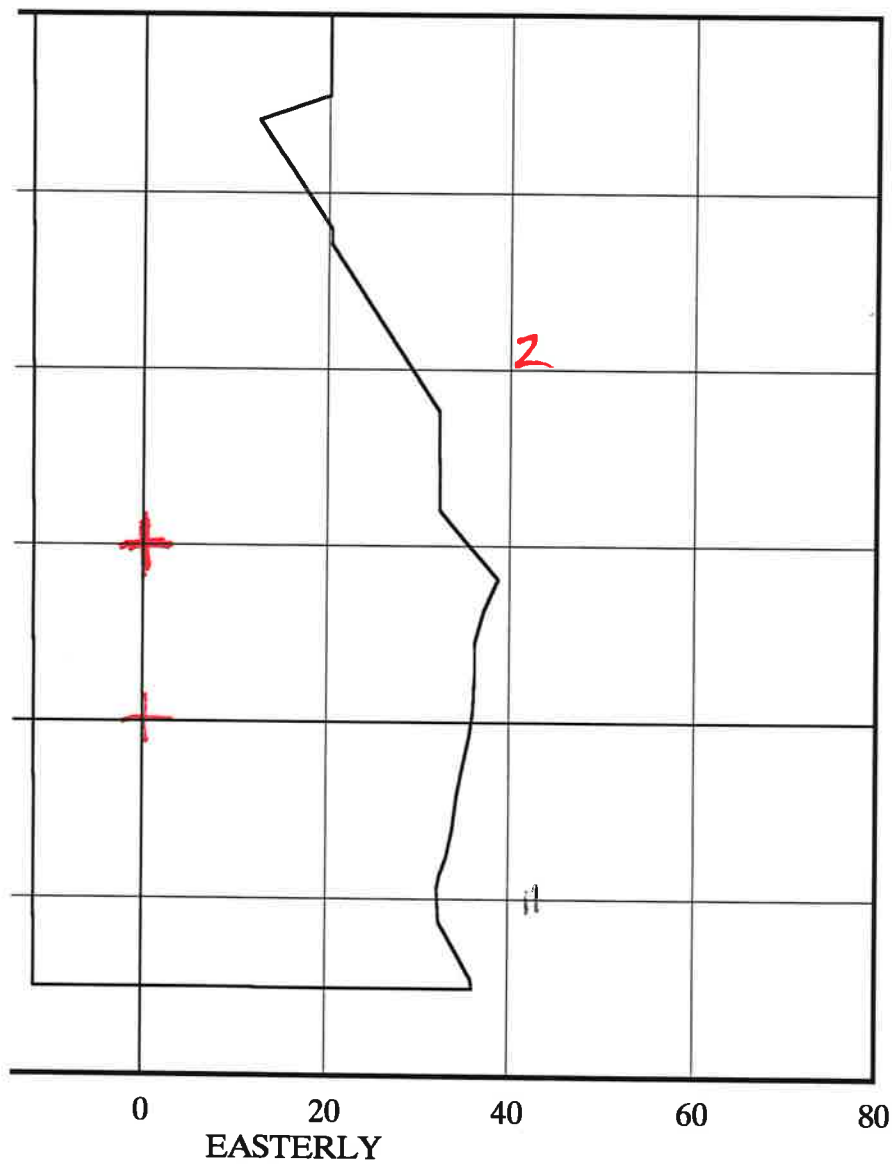
SCANNED  
SEP 09 2005

MICROFILMED  
DEC 09 1992

10

# \_ PLOT – MEETS & BOUNDS

DISTANCE IS IN CHAINS



SCANNED  
SEP 09 2005

MICROFILMED  
DEC 09 1992