

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

RIGHT NUMBER: 22-13723A
NAME AND ADDRESS: JERALD GEE
2364 E HWY 33
SUGAR CITY ID 83448

KERRY GEE
2364 E HWY 33
SUGAR CITY ID 83448

AK
DK

SOURCE: GROUND WATER
QUANTITY: 0.180 CFS
60.00 AFY

TRIBUTARY:

PRIORITY DATE: 10/10/1974

POINT OF
DIVERSION:

T05N R45E S5 NESESE Within TETON County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	04/15 10/15	0.180 CFS 60.00 AFY
PLACE OF USE:	<u>IRRIGATION in TETON County</u>		
	T05N R45E S05 SESE 34.00		
	34 ACRES TOTAL		

This right is limited to the irrigation of 20 acres within the place of use described above in a single irrigation season.

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

This water right is subject to a private agreement entered into between Kerry Gee & Kathleen Gee and Wells Fargo Bank, NA dated March 30, 2012 and recorded as Instrument No. 221561 in Teton County.

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

This right is a split from right 22-13723.

CERTIFICATE OF MAILING

I certify that on _____, 2012, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
P. O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

2. Copies to:

KERRY GEE
Represented by:
HYRUM D. ERICKSON
25 N. 2ND E.
P.O. BOX 250
REXBURG, ID 83440-0250

WELLS FARGO BANK, N.A.
Represented by:
C. TIMOTHY HOPKINS
428 PARK AVE.
P.O. BOX 51219
IDAHO FALLS, ID 83405-1219

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

Signature of person or attorney

In Re SRBA	)	Subcase No. 22-13723A
	)	<i>Split from 22-13723</i>
	)	
Case No. 39576	)	STANDARD FORM 5
	)	
	)	STIPULATED ELEMENTS OF A
	)	WATER RIGHT

1

IDWR Concurrence:

Denise Kidman 4-9-12
Denise Kidman Date
Water Resource Agent

Andrea L. Courtney 4/5/12
Andrea L. Courtney Date
Deputy Attorney General
Attorney for IDWR



Idaho Department of Water Resources

Adjudication Recommendation

22-13723A

(IRRIGATION)

R45E

NWSE

NESE

● Point of Diversion

Place of Use

State Outline

Townships

PLS Sections

Quarter Quarters

T05N

SWSE

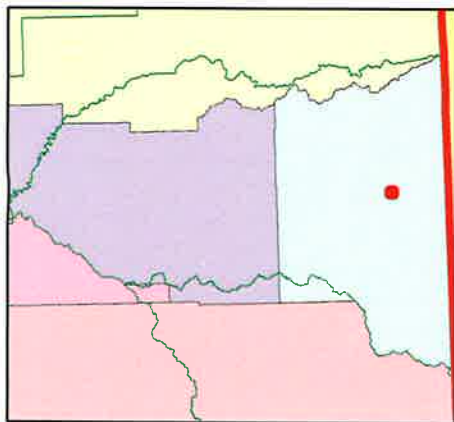
SESE

5

4

8

9



Teton County
IDWR Basin 22

Prepared by Kidman, Denise
On May 01, 2012
2009 Aerial Photography

0 0.075 0.15 0.3 Miles

WATER RIGHT SETTLEMENT AGREEMENT

Come now, **KERRY GEE** and **KATHLEEN GEE**, husband and wife, of 2364 E. Highway 33, Sugar City, Idaho, 83448, hereinafter "Gee", and **WELLS FARGO BANK, N.A.**, a national banking association, with a mailing address of MAC C7300-079, 1700 Lincoln Street, 7th Floor, Denver, CO 80203,

WHEREAS,

- A. On or about March 8, 2007, Gee sold a parcel of property in Teton County, Idaho, to BC Properties;
- B. The deed to that property was recorded in Teton County as instrument number 185905;
- C. Gee retained ownership of a parcel adjacent to the parcel sold to BC Properties;
- D. Prior to the sale, both parcels had been serviced by water rights identified as water right numbers 22-568B and 22-7105;
- E. The parties dispute whether the water rights appurtenant to the parcel purchased by BC Properties were included in the sale or were retained by Gee;
- F. Gee filed a lawsuit in the Seventh Judicial District of the State of Idaho, County of Teton, numbered CV-2007-311, to determine the ownership of the water rights, which lawsuit was dismissed on the stipulation of the parties with the option of refiling;
- G. Gee objected to BC Properties claim of water rights in the Snake River Basin Adjudication (SRBA). That matter is ongoing in the following SRBA subcases:
 - H. 22-568B split to 22-13720 and 22-13721 (surface water)
 - I. 22-7105 split to 22-13722 and 22-13723 (ground water);
- J. Gee has received permission to subdivide the Southeast quarter of the Southeast quarter of Section 5, Township 5 North, Range 45 East, Boise Meridian. Some roads have been put in place and lots are currently for sale in the quarter/quarter Section;
- K. Wells Fargo Bank, N.A., judicially foreclosed on the property owned by BC Properties in Teton County Case No. CV-11-41 and now holds title to the BC Properties property.
- L. The parties now desire to resolve their dispute;

NOW THEREFORE, it is hereby stipulated and agreed by and among the parties as follows:

This instrument filed
as an accommodation only.
It has not been examined
as to its execution, insurability
or effect on title.

PROFILED

SCANNED
MAY 02 2012



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 - L. The parties now desire to resolve their dispute;
- NOW THEREFORE, it is hereby stipulated and agreed by and among the parties as follows:

This instrument filed
as an accommodation only.
It has not been examined
as to it's execution, insurability
or effect on title.

1. The parties agree that Gee will receive the entire surface water right formerly identified as 22-368B, which includes the rights now identified as 22-13720 and 22-13721, and that the elements will be as they existed prior to the Administrative Proceeding purporting to split the water right in May 2007, which are as follows:

- i. Quantity - 3.2 CFS
- ii. Priority date - 5/25/1898
- iii. Source - South Leigh Creek, tributary to Teton River
- iv. Point of Diversion - SWSE/Sec. 33/Township 06N/Range 45E/TETON County, delivered by the Gale-Moffatt Ditch
- v. Purpose of Use - Irrigation
- vi. Period of Use - 4/15 to 10/15
- vii. Place of Use
Sec. 05/Township 05N/Range 45E/TETON County
NWSE - 40 acres
SESE - 34 acres
NESE - 32 acres
SWSE - 36 acres
SESW - 37 acres
Total acres 179

2. Regarding the ground water rights, the parties agree that there will be three distinct ground water rights:

- a. Water right number 22-13722 will be owned by Gee and will have the following elements:
 - i. Quantity - 1.6 CFS/526 AFY
 - ii. Priority date - 10/10/1974
 - iii. Point of Diversion - NESESE/Sec. 05/Township 05N/Range 45E/TETON County
 - iv. Purpose of Use - Irrigation
 - v. Period of Use - 4/15 to 10/15

vi. Place of Use

Sec. 05/Township 05N/Range 45E/TETON County

SESW - 37 acres

NWSE - 40 acres

SESE - 34 acres

NESE - 32 acres

SWSE - 36 acres

Total of 179 acres

vii. Acreage Limit

This right will be limited to the irrigation of 175.5 acres within the place of use described above in a single irrigation season.

b.

Water right number 22-13723 will be owned by Wells Fargo Bank, N.A. and will have the following elements:

i. Quantity - 48 CPS/158 APY

ii. Priority date - 10/10/1974

iii. Point of Diversion - NESESE/Sec. 05/Township 05N/Range 45E/TETON County

iv. Purpose of Use - Irrigation

v. Period of Use - 4/15 to 10/15

vi. Place of Use

Sec. 05/Township 05N/Range 45E/TETON County

NWSW - 39 acres

SWSW - 35 acres

Total of 74 acres

vii. Acreage Limit

This right will be limited to the irrigation of 52.5 acres within the place of use described above in a single irrigation season.

c.

Water right number 22-13723A will be owned by Geo. Gee will own and have sole use of this water right until seven lots have been purchased in

the subdivision of the Southeast quarter of the Southeast quarter of Section 5, Township 5 North, Range 45 East, Boise Meridian. When the seventh lot is purchased in that subdivision, Gee will provide to Wells Fargo Bank, N.A., or its successor in interest, a deed substantially similar to the draft deed attached hereto as Exhibit A. Gee will have no further interest in the water right and Wells Fargo Bank, N.A., or its successor in interest, will be solely responsible for transferring the place of use or point of diversion of the water right. When Gee sells the lots, or any other portion of the Southeast quarter of the Southeast quarter, Gee will reserve ownership of water right 22-13723A to himself. Water right 22-13723A will have the following elements:

- i. Quantity - .18 CFS/60 AFY
- ii. Priority date - 10/10/1974
- iii. Point of Diversion - NESESE/Sec. 05/Township 05N/Range 45E/TETON County
- iv. Purpose of Use - Irrigation
- v. Period of Use - 4/15 to 10/15
- vi. Place of Use
Sec. 05/Township 05N/Range 45E/TETON County
SESE - 34 acres
Total of 34 acres
- vii. Acreage Limit

This right will be limited to the irrigation of 20 acres within the place of use described above in a single irrigation season.

3. The parties agree that neither Wells Fargo Bank, N.A., nor its successor(s) in interest, will have the right to use the well located on Gee's property currently listed as the point of diversion for the ground water rights. The parties anticipate that in order to use its ground water right, Wells Fargo Bank, N.A., or its successor(s) in interest, will be required to install a well on its property. Wells Fargo Bank, N.A., or its successor(s) in interest, will

- be solely responsible for obtaining any necessary permits, transfers, or other changes in its water rights to change the point of diversion.
4. In consideration of the terms and conditions of this Settlement Agreement, and other valuable consideration, the parties mutually release, acquit, and forever discharge each other, each other's agents and representatives, from any and all claims, demand, actions, obligations, and any rights pursuant to and alleged in Teton County Case no. CV-2007-311.
 5. Each party shall and does hereby agree to pay their own attorneys fees and costs incurred in this matter.
 6. The parties agree that they and their representatives will work together to effectuate this agreement.
 7. The parties agree that the above settlement is contingent on its approval by the Idaho Department of Water Resources. If the Department determines that the described water rights cannot be recommended as described above, in particular if the separation of the rights will result in an "unstacking" that reduces the number of irrigable acres, this Settlement Agreement will be voidable upon reasonable notice by either party that they do not intend to be bound by the Settlement Agreement.
 8. This Settlement Agreement contains the entire agreement between the parties with regard to the matters set forth in it and shall be binding upon and ensure to the benefit of the executors, administrators, heirs, successors and assigns of each.

DATED This 3rd day of March, 2012.

Kerry Gee
Kerry Gee

Kathleen Gee
Kathleen Gee

Harrison Erickson for
Jerry R. Rigby
Counsel for Kerry & Kathleen Gee

[Signature]
Wells Fargo Bank, N.A.
By: [Signature]
Title: officer

[Signature]
C. Timothy Hopkins
Counsel for Wells Fargo Bank N.A.

Exhibit A

DEED TO A WATER RIGHT

THIS INDENTURE, Made this ____ day of _____, 20__, between Kerry Gee and Kathleen Gee, husband and wife, whose address is 2364 E. Highway 33, Sugar City, in Madison County, Idaho 83448, the parties of the first part, and Wells Fargo Bank, N.A., a national banking association, with a mailing address of MAC C7300-079, 1700 Lincoln Street, 7th Floor, Denver, CO 80203, the party of the second part,

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of One and No/100 Dollars, lawful money of the United States of America, and other valuable consideration, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and by these presents, does grant, bargain, sell, convey, and confirm unto the said party of the second part, and its assigns forever, that certain water right, more particularly described as follows:

<u>Right No.</u>	<u>Priority</u>	<u>Quantity</u> <u>(cfs/ac-ft)</u>	<u>Purpose</u> <u>of use</u>	<u>Period of Use</u>
22-13723A	10/10/1974	.18 CFS/60 APY	Irrigation	4/15 to 10/15

SOURCE: Ground water

POINT OF DIVERSION: NESESE/Sec. 05/Township 05N/Range 45E/TETON County

PLACE OF USE: Sec. 05/Township 05N/Range 45E/TETON County SESE - 34 acres

ACREAGE LIMIT: This right will be limited to the irrigation of 20 acres within the place of use described above in a single irrigation season.

TOGETHER WITH all rights appertaining thereto,

TO HAVE AND TO HOLD, all and singular, the said water right, unto the said party of the second part, and to its assigns forever.

IN WITNESS WHEREOF, The said parties of the first part, have, as aforesaid, hereunto set their hands and seals the day and year first above written.

Kerry Gee

Kathleen Gee

STATE OF IDAHO,)
 ss.
County of Madison.)

On this ____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared Kerry Gee and Kathleen Gee, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residing at:
My Commission Expires: