

02/17/2004

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

RIGHT NUMBER: 23-11241

NAME AND ADDRESS: FOSTER LAND & CATTLE CO  
PO BOX 308  
RIGBY ID 83442

SOURCE: ANTELOPE CREEK

TRIBUTARY: SOUTH FORK SNAKE RIVER

QUANTITY: 42.100 CFS

USE OF THIS RIGHT WITH RIGHT NO. 23-11239 IS LIMITED TO A TOTAL  
COMBINED DIVERSION RATE OF 42.10 CFS.

PRIORITY DATE: 06/01/1890

POINT OF DIVERSION:  
T02N R42E S5 NESESE Within BONNEVILLE County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| IRRIGATION            | 04/15 10/31          | 42.100 CFS      |

PLACE OF USE: IRRIGATION Within BONNEVILLE County

|                          |      |                          |      |
|--------------------------|------|--------------------------|------|
| T02N R42E S04 Lot 1 NENE | 10.0 | T02N R42E S04 Lot 2 NWNE | 39.0 |
| T02N R42E S04 SWNE       | 40.0 | T02N R42E S04 SENE       | 38.0 |
| T02N R42E S04 Lot 3 NENW | 41.0 | T02N R42E S04 Lot 4 NWNW | 39.0 |
| T02N R42E S04 SWNW       | 40.0 | T02N R42E S04 SENW       | 40.0 |
| T02N R42E S04 NESW       | 40.0 | T02N R42E S04 NWSW       | 40.0 |
| T02N R42E S04 SWSW       | 40.0 | T02N R42E S04 SESW       | 40.0 |
| T02N R42E S04 NWSE       | 40.0 | T02N R42E S04 SWSE       | 40.0 |
| T02N R42E S05 SENE       | 21.0 | T02N R42E S05 NESE       | 19.0 |
| T02N R42E S05 SESE       | 5.6  | T02N R42E S08 NENE       | 19.0 |
| T02N R42E S08 NWNE       | 2.1  | T02N R42E S08 SWNE       | 20.0 |
| T02N R42E S08 SENE       | 1.0  | T02N R42E S09 NENW       | 40.0 |
| T02N R42E S09 NWNW       | 24.0 | T03N R42E S33 NESW       | 13.0 |
| T03N R42E S33 SESW       | 39.0 | T03N R42E S33 SWSE       | 11.0 |

741.7 ACRES TOTAL

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT  
TO SECTION 42-1425, IDAHO CODE.

RIGHT NO. 23-11239 IS ALSO DIVERTED THROUGH POINT OF DIVERSION  
DESCRIBED ABOVE.

03/29/2004

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

RIGHT NUMBER: 23-11239  
NAME AND ADDRESS: FOSTER LAND & CATTLE CO  
PO BOX 308  
RIGBY ID 83442  
SOURCE: ANTELOPE CREEK TRIBUTARY: SOUTH FORK SNAKE RIVER  
QUANTITY: 16.730 CFS  
USE OF THIS RIGHT WITH RIGHT NO. 23-11241 IS LIMITED TO A TOTAL  
COMBINED DIVERSION RATE OF 41.78 CFS.  
PRIORITY DATE: 06/01/1890  
POINT OF DIVERSION:

T02N R42E S5 NESESE Within BONNEVILLE County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| IRRIGATION            | 04/15 10/31          | 16.730 CFS      |

PLACE OF USE: IRRIGATION Within BONNEVILLE County

|                          |      |                          |      |
|--------------------------|------|--------------------------|------|
| T02N R42E S04 Lot 1 NENE | 10.0 | T02N R42E S04 Lot 2 NWNE | 39.0 |
| T02N R42E S04 SWNE       | 40.0 | T02N R42E S04 SENE       | 38.0 |
| T02N R42E S04 Lot 3 NENW | 41.0 | T02N R42E S04 Lot 4 NWNW | 39.0 |
| T02N R42E S04 SWNW       | 40.0 | T02N R42E S04 SENW       | 40.0 |
| T02N R42E S04 NESW       | 40.0 | T02N R42E S04 NWSW       | 40.0 |
| T02N R42E S04 SWSW       | 40.0 | T02N R42E S04 SESW       | 40.0 |
| T02N R42E S04 NWSE       | 40.0 | T02N R42E S04 SWSE       | 40.0 |
| T02N R42E S05 SENE       | 21.0 | T02N R42E S05 NESE       | 19.0 |
| T02N R42E S05 SESE       | 5.6  | T02N R42E S08 NENE       | 29.0 |
| T02N R42E S08 NWNE       | 2.6  | T02N R42E S08 SWNE       | 26.0 |
| T02N R42E S08 SENE       | 40.0 | T02N R42E S09 NWNE       | 7.3  |
| T02N R42E S09 NENW       | 40.0 | T02N R42E S09 NWNW       | 40.0 |
| T02N R42E S09 SWNW       | 40.0 | T02N R42E S09 NWSW       | 36.0 |
| T03N R42E S33 NESW       | 13.0 | T03N R42E S33 SESW       | 39.0 |
| T03N R42E S33 SWSE       | 11.0 |                          |      |

896.5 ACRES TOTAL

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.

EXPLANATORY MATERIAL: Decreed

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT NO. 23-11241 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

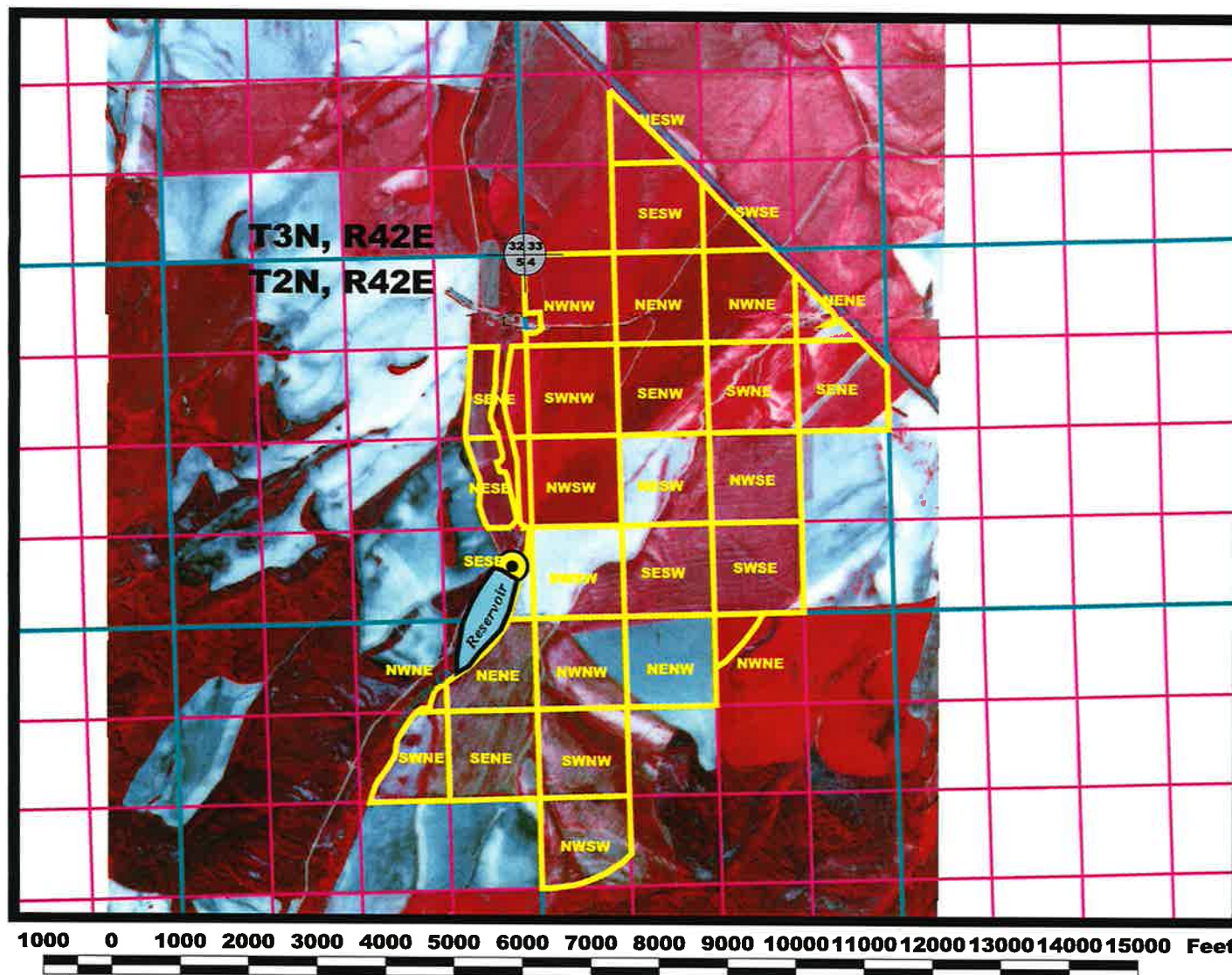


JUL 22 2004

# State of Idaho

## Department of Water Resources

Eastern Region



### Water Right(s):

23-11239

23-11241

Place of Use: (parts of)  
T3N, R42E Sec. 33  
T2N, R42E Secs. 4, 5, 7, 8

Point(s) of Diversion:  
T2N, R42E Sec. 5 NESESE

### LEGEND

- Point of Diversion
- SESE Place of Use
- Section
- Quarter-Quarter



GIS Place of Use Illustration  
1987/1988 NAPP Photography  
Prepared by: A. Ruberry  
Date: March 2004

## IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 23-84

WATER RIGHT NUMBER: 23-84

| <u>Owner Type</u> | <u>Name and Address</u> |
|-------------------|-------------------------|
| Original Owner    | HAROLD H FREEMAN        |
|                   | RIRIE, ID               |
| Original Owner    | MARY J FREEMAN          |
|                   | , ID                    |
| Original Owner    | FOSTER LAND & CATTLE CO |
|                   | PO BOX 308              |
|                   | RIGBY, ID 83442         |
|                   | (208)243-6936           |

SEE-23-11240 FOR  
DOCUMENTS OF SALE  
AND SPLIT.

Priority Date: 06/01/1890

Basis: Decreed

Status: **Parent: see 23-11241 and 23-11242**

| <u>Source</u>  | <u>Tributary</u>       |
|----------------|------------------------|
| ANTELOPE CREEK | SOUTH FORK SNAKE RIVER |

| <u>Beneficial Use</u> | <u>From To</u>          | <u>Diversion Rate</u> | <u>Annual Volume</u> |
|-----------------------|-------------------------|-----------------------|----------------------|
| IRRIGATION            | 4/01 to 11/01           | 50.000 CFS            |                      |
|                       | <u>Total Diversion:</u> | 50.000 CFS            |                      |

Location of Point(s) of Diversion

|                   |                 |         |          |               |
|-------------------|-----------------|---------|----------|---------------|
| ANTELOPE CREEK    | NE1/4SE1/4SE1/4 | Sec. 5, | Twp 02N, | Rge 42E, B.M. |
| BONNEVILLE County |                 |         |          |               |

Place of UseIRRIGATION Within BONNEVILLE County

|               |      |        |               |      |      |
|---------------|------|--------|---------------|------|------|
| T02N R42E S04 | NENE | 16.0   | T02N R42E S04 | NWNE | 39.0 |
| T02N R42E S04 | SWNE | 40.0   | T02N R42E S04 | SENE | 38.0 |
| T02N R42E S04 | NENW | 40.0   | T02N R42E S04 | NWNW | 33.0 |
| T02N R42E S04 | SWNW | 40.0   | T02N R42E S04 | SENE | 40.0 |
| T02N R42E S04 | NESW | 40.0   | T02N R42E S04 | NWSW | 40.0 |
| T02N R42E S04 | SWSW | 40.0   | T02N R42E S04 | SESW | 40.0 |
| T02N R42E S04 | NWSE | 40.0   | T02N R42E S04 | SWSE | 40.0 |
| T02N R42E S05 | NENE | 14.0 ✓ | T02N R42E S05 | SENE | 31.0 |
| T02N R42E S05 | NESE | 28.0   | T02N R42E S05 | SESE | 7.0  |
| T02N R42E S08 | NENE | 31.0   | T02N R42E S08 | NWNE | 3.0  |
| T02N R42E S08 | SWNE | 27.0   | T02N R42E S08 | SENE | 40.0 |
| T02N R42E S09 | NENW | 40.0   | T02N R42E S09 | NWNW | 40.0 |
| T02N R42E S09 | SWNW | 40.0   | T02N R42E S09 | NWSW | 40.0 |

$$\frac{50 \text{ cfs}}{1109 \text{ ac}} = 0.045 \text{ cfs/ac}$$

SCANNED  
JUL 22 2004

## IDAHO DEPARTMENT OF WATER RESOURCES

## Adjudication Claim Report 23-84

|               |      |       |               |      |       |
|---------------|------|-------|---------------|------|-------|
| T03N R42E S32 | NESE | 35.0✓ | T03N R42E S32 | SESE | 32.0✓ |
| T03N R42E S33 | SWNW | 20.0✓ | T03N R42E S33 | NESW | 19.0  |
| T03N R42E S33 | NWSW | 40.0✓ | T03N R42E S33 | SWSW | 40.0✓ |
| T03N R42E S33 | SESW | 39.0  | T03N R42E S33 | SWSE | 17.0  |

Total Acres: 1109

SEC 32 SENE NOT  
CLAIMED, BUT FARMED.

CØ5

Conditions of Approval:Remarks:

1. General THIS FLOW INDICATED IN THIS WATER RIGHT INCLUDES 20.00 CFS FROM A23-00083. SEE ATTACHED COPY OF FREEMAN VS. LAMBERT. THIS RIGHT IS A FLOOD RIGHT.
2. General SPLIT BY CHANGE OF OWNERSHIP RIGHT: SEE RIGHT NOS. 23-11241 AND 23-11242.

Comments:Element Reviewed/Verified Dates:

| <u>Element</u> | <u>Last Reviewed Date</u> | <u>Reviewer</u> | <u>Last Verified Date</u> | <u>Verifier</u> | <u>Status</u> |
|----------------|---------------------------|-----------------|---------------------------|-----------------|---------------|
|----------------|---------------------------|-----------------|---------------------------|-----------------|---------------|

Verification Log:

| <u>Element</u> | <u>Date Time Stamp</u> | <u>Reviewer</u> | <u>Log text</u> |
|----------------|------------------------|-----------------|-----------------|
|----------------|------------------------|-----------------|-----------------|

23-00084

SPLIT BY SEENOTES OF  
C/O 10/17/03 SPLIT IN CVR (PAPER).

HAMILTON  
23-11242

PDU BY GIS = 175<sup>?</sup> AC @ 0.045 cfs/AC = 79<sup>1</sup> cfs

PDU: T2N R42E SEC. 5 (PT.) NESE

T3N R42E SEC. 32 (PT.) SENE. E<sup>2</sup>SE

SEC. 33 (PT.) W<sup>2</sup>SW, SWNW

PDU: NESESE SEC. 5 T2N R42E

50<sup>0</sup> cfs  
- 79<sup>1</sup> - HAMILTON  
42<sup>09</sup> - FOSTER

## Contacts Data Entry Form

Water Right No. 23-00084

| Owner Type | Full Name | Address | City | State | Zip | Phone |
|------------|-----------|---------|------|-------|-----|-------|
|------------|-----------|---------|------|-------|-----|-------|

Current Owner Rosfor Land & Cattle Co.

Name connector: and \_\_\_\_\_, or \_\_\_\_\_, and/or \_\_\_\_\_

Current Owner \_\_\_\_\_

Current Owner \_\_\_\_\_

Representing Attorney: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Accompanied By: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Relationship to Claimant: \_\_\_\_\_

Date of Field Exam: \_\_\_\_\_ Time: \_\_\_\_\_

Directions to Property (if different from above) and/or update owner information:

DISCUSS UNDER H.H. FREEMAN vs G.D. LAMBERT 1944 DECREE 23-G,  
TO H.H. FREEMAN AS 50% (INCLUDES 20% OF 23-B3).

SUB CLAIM FILE 23-B3 FOR NOTES ETC

RIGHT SPLIT BY %. SENT BACK TO HAMILTON REQUESTING  
A SANDY PLATMAP.

RE: Nick Olson DAM + SYSTEM WENT INTO  
OPERATION 1984

SEE 23-84 FOR REMINDER OF NOTES

Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

Water Right No(s). A 23 000 84



photo  
of DAA  
+ P.O.D.

GPS DATA:

Tag # A.O 009526 Location: ON STEM OF HEAD GATE

Well Data:

MOTOR

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Hp: \_\_\_\_\_

SN: \_\_\_\_\_

PUMP

Make: \_\_\_\_\_ Model: \_\_\_\_\_ Disch: \_\_\_\_\_

SN: \_\_\_\_\_

NOTES:

Water Flows From Small Dam INTO  
AN IRRIGATION Ditch Flow Approximately  $\frac{1}{4}$   
mile. TO A pump. which Irrigates South  
 $\frac{1}{2}$  OF POU. From This Ditch AT THE pump  
water Flows into a 16" pipe + Flows APPROX  
 $\frac{1}{2}$  mile TO 2nd pump which Irrigates North  $\frac{1}{2}$  pou.

Field Exam Date: 16 Jan 2004 Agent: Nick Biser

### VIII

That the plaintiffs' lands described in paragraph "III" of the findings of fact and hereinafter described are arid in character and require for the successful growing of crops thereon by irrigation an amount of water equal to one cubic foot per second for each 50 acres of land.

### IX

That the plaintiff, Harold H. Freeman and Mary J. Freeman, his wife, have the right to the use of, and there is hereby decreed to them, with a priority date of June 1st, 1890, the use of all of the normal flow water of Antelope Creek and all its tributaries, but subject, nevertheless, to the decrees herein set out in paragraphs V and VI, to the amount of 20 cubic feet per second, and there is further decreed to them of the spring run-off or flood waters of said Antelope Creek and its tributaries the use of 50 cubic feet per second, which latter amount shall include the aforesaid 20 cubic feet per second of normal flow of water. The said water so decreed to be diverted from Antelope Creek at various points on said channel, the upper stream point of diversion being located in the Southeast Quarter of Section 5, Township 2 North, Range 42 East Boise Meridian, and the other points of diversion at various points down the stream. Said water being for use upon the following described land situated in Bonneville County, State of Idaho;

Lots 3 and 4, the Southwest Quarter of the Northwest Quarter ( $SW\frac{1}{4}NW\frac{1}{4}$ ), and the Northwest Quarter of the Southwest Quarter ( $NW\frac{1}{4}SW\frac{1}{4}$ ) of Section 4; Lot 1 and the Southeast Quarter of the Northeast Quarter ( $SE\frac{1}{4}NE\frac{1}{4}$ ) of Section 5; all being in Township 2 North; and East Half of the Southeast Quarter ( $E\frac{1}{2}SE\frac{1}{4}$ ) of Section 32; the Southwest Quarter of the Northwest Quarter ( $SW\frac{1}{4}NW\frac{1}{4}$ ), the West Half of the Southwest Quarter ( $W\frac{1}{2}SW\frac{1}{4}$ ), and the Southeast Quarter of the Southwest Quarter ( $SE\frac{1}{4}SW\frac{1}{4}$ ) of Section 32; all being in Township 3 North; and all of said property being in Range 42 East Boise Meridian; together with all ditch and water rights thereunto belonging or appertaining.

The Northeast Quarter, the Southeast Quarter of the Northwest Quarter ( $NE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ ), the Northeast Quarter of the Southwest Quarter ( $NE\frac{1}{4}SW\frac{1}{4}$ ) of Section 4; the West Half of the Northeast Quarter ( $W\frac{1}{2}NE\frac{1}{4}$ ), and the Northeast Quarter of the Southeast Quarter ( $NE\frac{1}{4}SE\frac{1}{4}$ ) of Section 5; all being in Township 2 North; the West Half of the Southwest Quarter ( $W\frac{1}{2}SW\frac{1}{4}$ ), of Section 27; the South Half of the South Half ( $S\frac{1}{2}S\frac{1}{2}$ ), of Section 28; the Northeast Quarter of the Southwest Quarter ( $NE\frac{1}{4}SW\frac{1}{4}$ ), and the Southeast Quarter ( $SE\frac{1}{4}$ ) of Section 33; the West Half of the Northwest Quarter ( $W\frac{1}{2}NW\frac{1}{4}$ ), and the Southwest Quarter ( $SW\frac{1}{4}$ ), of Section 34; all being in Township 3 North; and all of said property being in Range 42 East Boise Meridian. Together with all ditch water rights belonging thereto or appertaining thereto.

### X

That the plaintiffs, Harold H. Freeman and Mary J. Freeman, his wife, are entitled to have the channels of Antelope Creek and all

23-0083

23-0084

EXCEPT FROM  
FREEMAN vs LAMBERT  
7/26/1944  
DECREES 2369

T3N, R42E  
T2N, R42E

32 33  
5 4

NESW  
SESW  
SWSE  
NWNW  
NENW  
NWNE  
NENE  
SENE  
SWNW  
SENW  
SWNE  
SENE  
NESE  
NWSW  
NESW  
NWSE  
SESE  
SWSW  
SESW  
SWSE  
NWNW  
NENW  
NWNE  
SWNE  
SENE

Reservoir

8

9

10 December 2004

Hamilton Land Development, LLC  
Attn Clayton Hamilton  
4860 West 13400 South  
Riverton UT 84065

Re: Change of Ownership Memorandum - attached

Dear Clayton:

Attached you will find the Memorandum (to the files: 22-1123, 11240, 11241, and 11242) which recaps our discussion today regarding the changes of ownership for additional portions of the referenced water rights.

Please keep this letter and memo for your files should there be some question in the future. And, again, I advise a short conference with your attorney regarding this matter. If I can be of further assistance please call.

Respectfully submitted,

Allen B. Ruberry  
Sr. Water Resource Agent  
Adjudication Bureau

Cc; files

## MEMORANDUM

10 December 2004

To: The file of 23-11239, 11240, 11241, and 11242

From: A. Ruberry

**Subject: Future Changes of Ownership involving 22-11239 and 11241**

Today, Clayton Hamilton visited this office to discuss filing additional changes of ownership for the land transaction(s) completed this year and the land transactions to be completed over the next five years. The referenced land transactions are between Foster Land and Cattle Co. and The Foster Co., the "GRANTOR", and Hamilton Land Development, LLC, the "GRANTEE".

I advised Mr Hamilton that in the end the result would be the same, meaning that all the water rights portions split off would total the original rights, except that they would have some twelve rights instead of just four (current splits were done to satisfy a lender). In addition, I advised that the cost would be \$100 for each portion split off each year, further, that from an administrative perspective, for IDWR and them, it would be bothersome. Therefore, with the above considered, I further advised Mr. Hamilton to wait until the final land transaction was completed, which should be about 2010, then, file one Notice of Change of Ownership for the outstanding rights. I also, advised Mr. Hamilton to discuss this matter with his legal counsel.

It was further explained: there is a statute that requires submitting a change of ownership "promptly" or a fine could be levied. The purpose of this memo is to declare the intent of Mr. Hamilton wanting to file the Change(s) of Ownership today, but being advised **NOT** to do so due to the above.

Attachments:

1. Grant Deed; Foster, et al and Hamilton Land Dev, LLC, w/ Exhibit "A"
2. Amendment to Water Rights and Irrig. System Use Agreement (part 1.)
3. Amendment to Water Rights and Irrig. System Use Agreement (part 2.) with Water Rights and Irrigation Systems Use Agreement.

CC: Hamilton Land Development, LLC  
ATTN Clayton Hamilton  
4860 West 13400 South  
Riverton, Utah 84065

Foster Land and Cattle Co  
PO Box 308  
Rigby, ID 83442

02/17/2004

**NOTICE OF ERROR  
REPLY**

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

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

**YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:**

Water right number: 23-11241

FOSTER LAND & CATTLE CO

PO BOX 308

RIGBY ID 83442

Telephone Number: (208)243-6936

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

*correct place of use per photo*

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

       I AGREE with this proposed recommendation: no changes need to be made.

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

*[Handwritten Signature]*

Please print your name: \_\_\_\_\_

IDWR Regional Office,

*3/29/04 Connections made 200 notes in  
23-11239*

*[Handwritten Signature]*