

11/14/2008

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

RIGHT NUMBER: 23-11F

NAME AND ADDRESS: THE DANIEL W RICHARDS AND JUDY K RICHARDS FAMILY TRUST
8311 HAVEN AVE STE 200
RANCHO CUCAMONGA CA 91730

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.890 CFS

PRIORITY DATE: 08/15/1893

POINT OF DIVERSION:

T01N R44E S21 SESWSW Lot 3 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	0.890 CFS

PLACE OF USE: IRRIGATION in BONNEVILLE County

T01N R44E S21	NESW	12.00	T01N R44E S21	NWSW	1.10
T01N R44E S21 Lot 3 SWSW		5.50	T01N R44E S21 Lot 2 SESW		10.00

28.6 ACRES TOTAL

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

A measuring device (not totalizing) must be provided at the point where Palisades Creek discharges into Snake River and at the Palisades Canal diversion. The rate of flow diverted under this right shall at no time exceed the rate of flow of Palisades Creek where it discharges into Snake River, nor shall it exceed the rate of flow available at the Palisades Canal diversion located at T01N R44E S26 SWSWSE.

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

Use of this right is combined with water from The Palisade Irrigation Co.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 1.

The right holder shall maintain a totalizing measuring device of a type approved by the Department as a part of the diverting works.

The following rights are diverted through point of diversion described above: 1-10554, 1-10555, 23-11F and 23-11284.



Idaho Department of Water Resources

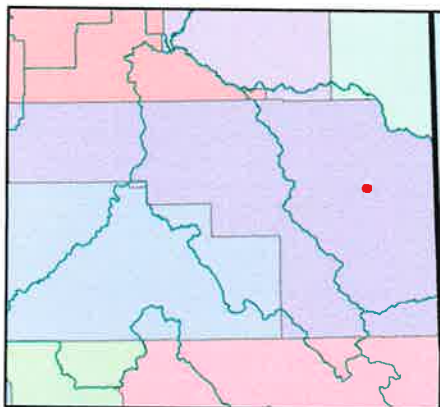
SRBA Recommendation

23-11F

(IRRIGATION)

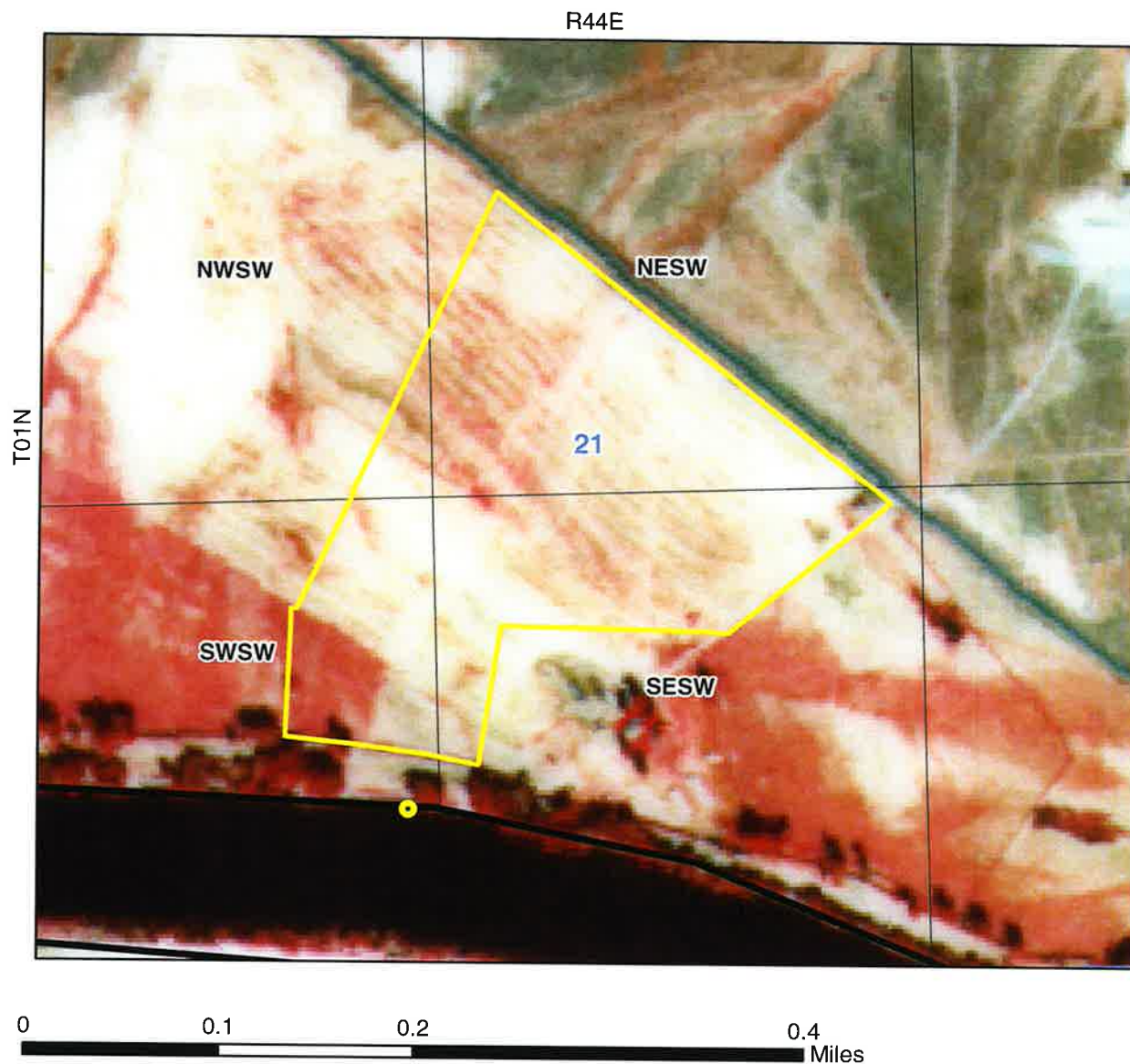
Legend

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



**Bonneville County
IDWR Basin 23**

Prepared by Michael Holliday
On November 14, 2008
1987/88 Aerial Photography





Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

a
RECEIVED

Z3-11F

NOV 07 2008
DEPARTMENT OF
WATER RESOURCES

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com
E-MAIL rharris@holdenlegal.com

November 5, 2008

Monica Van Bussum
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: Additional Filing Fee for Daniel & Judy Richards Family Trust Claim.

Dear Monica:

Pursuant to our discussion, enclosed is our check in the amount of \$100.00 for the additional filing fee for the SRBA Claims for the Daniel & Judy Richards Family Trust. We appreciate you bringing this to our attention. Please let us know if there is anything additionally that needs to be done.

Best Regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosure

G:\WPDATA\RLH\Inactive\13974 Richards, Daniel W\Monica Van Bussum ltr 110508.wpd:cdv

SCANNED

NOV 12 2008

Established in 1896



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

September 22, 2008

ROBERT L HARRIS
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS ID 83405

RE: Snake River Basin Adjudication (SRBA)
Notice of Claim to a Water Right #23-11F
Your Client: The Daniel W. Richards and Judy F. Richards Family
Trust

Dear Mr. Harris:

The Notice of Claim to a Water Right you filed for your client referenced above was received from the SRBA Court recently.

The identification number of your water right has been changed from #23-11 to 23-11F. Nothing else on your client's water right has been changed. Please use the new number in future inquiries or correspondence you may have with our Department.

In addition, a filing fee of \$100.00 is required for IDWR to recognize claim 23-11F as a valid claim. Please write your client's claim number on your check and mail it to this office in the envelope provided.

Upon receipt of the filing fees your client's Notice of Claim will be investigated and reported to the Court in a future supplemental Director's Report. Please contact me at 208/287-4916 if you have any questions.

Sincerely,

Craig L. Saxton
Water Rights Supervisor
Adjudication Bureau

CLS:ss:region

SCANNED

SEP 23 2008

Saxton, Craig

From: Van Bussum, Monica
Sent: Monday, September 15, 2008 12:39 PM
To: Saxton, Craig
Subject: FW: 23-11 late claim

I'm going to return this motion to you in a sec.

From: Van Bussum, Monica
Sent: Thursday, August 21, 2008 3:39 PM
To: Saxton, Craig
Subject: 23-11 late claim

Hi! The motion and order granting it are in your inbox. There are a couple of things to note. Sally gave this to me and I told her I would check it out and then give it to her to make the file.

The deal is Michael Holliday has been taking claims for splits of 23-11. We did not get anything on this one until after it was granted - no idea why. Anyway, it still has the number 23-11 on it, but it should be 23-11F because that is the next suffix in line. Is there any way we can force a suffix for this one since Eastern has been taking splits of these and adding suffixes this year.

So, long story short, this is a granted late claim where the file has not been made yet. We need to assign it a number, make a file for it and send a letter to the claimants saying we need fees. After we have received fees and the claim is good to go, then we need to send it to Michael Holliday for review.

Thanks!

Mon

9/15/2008

BONNEVILLE COUNTY RECORDER
1081895 JUN 26 02 PM 4 03
WARRANTY DEED

1081895

Order No. 3030204226

FOR VALUE RECEIVED

Melissa Epperson, an unmarried person

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

The Daniel W. Richards and Judy K. Richards Family Trust, dated February 28, 1996

whose current address is

8311 Haven Ave Ste 200 Rancho Cucamonga, CA 91730
the grantee(s), the following described premises, in Bonneville County, Idaho, TO WIT:

Tract III:

Lot 12 in Block 2 of River Dory Estates, Division No. 1, an addition to the City of Irwin, according to the official plat thereof, recorded on August 2, 1995 as Instrument No. 903366, filed in Official Records of Bonneville County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 5/06/2002

Melissa Epperson
Melissa Epperson

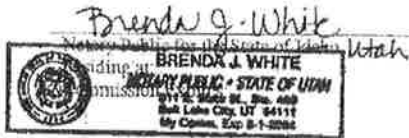
State of Idaho Utah)

County of Bonneville Salt Lake)

On this 20, May 2002, before me, a Notary Public in and for said state, personally appeared Melissa Epperson

known or identified to me to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

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



INSTRUMENT NO.	1081895
DATE	6-26-02
INSTR. CODE	203
IMAGED PGS	36
FEE	
STATE OF IDAHO	
COUNTY OF BONNEVILLE	OK
I hereby certify that the within instrument was recorded.	
Recorded by	
County Recorder	
<i>M. Sellings</i>	Deputy
Request of	

COANNED

AUG 7 9 2008

RE-RECORDED TO REMOVE TRACT 3

1079417 MAY 29 '02 AM 8:56

WARRANTY DEED

Order No. 1030204226

BONNEVILLE COUNTY RECORDER
1081894 JUN 26 '02 PM 4:03

FOR VALUE RECEIVED

Snake River Estates, LLC

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

The Daniel W. Richards and Judy K. Richards Family Trust, dated February 28, 1996 by Daniel W. Richards and Judy K. Richards, trustees

whose current address is

8311 Haven Ave Ste 200 Rancho Cucamonga, CA 91730

the grantee(s), the following described premises, in Bonneville County, Idaho, TO WIT:

Exhibit "A"

Tract I:

Lot 1 in Block 1 of River Dory Estates, Division No. 1, to the City of Irwin, according to the official plat thereof, recorded on August 2, 1995 as Instrument No. 903366, filed in Official Records of Bonneville County, Idaho.

LESS AND EXCEPTING the following described property.

Beginning at the West corner of Lot 1 in Block 1 of River Dory Estates, Division No. 1, an addition to the City of Irwin, Bonneville County, Idaho; running thence South 57°01'18" East along the Lot line 81.01 feet to a point of curve with a radius of 122.10 feet and a chord that bears South 60°14'38" East 13.73 feet; thence to the left along said curve 13.73 feet through a central angle of 06°26'29"; thence North 26°59'01" East 379.98 feet to the Northeasterly line of said Lot 1; thence North 50°13'30" West along said Northeasterly line 9.83 feet to the North corner of said Lot 1; thence South 39°46'30" West along the Lot line 382.52 feet to the POINT OF BEGINNING.

SUBJECT TO: existing easements of record.

Tract II:

Lot 13 in Block 2 of River Dory Estates, Division No. 1, an addition to the City of Irwin, according to the official plat thereof, recorded on August 2, 1995 as Instrument No. 903366, filed in Official Records of Bonneville County, Idaho.

Tract III:

~~Lot 12 in Block 2 of River Dory Estates, Division No. 1, an addition to the City of Irwin, according to the official plat thereof, recorded on August 2, 1995 as Instrument No. 903366, filed in Official Records of Bonneville County, Idaho.~~

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever

Dated: 5/06/2002

Snake River Estates, LLC

By:

[Signature]

1079417

INSTRUMENT NO.	1079417
DATE	5-29-02
INST. CODE	208
IMAGED PGS	2
FEE	6.50
STATE OF IDAHO COUNTY OF BONNEVILLE	
I hereby certify that the within Instrument was recorded.	
Ronald Longmore, County Recorder	
By	<i>[Signature]</i> Deputy
Request of	ATEC

INSTRUMENT NO.	1081894
DATE	6-26-02
INST. CODE	205
IMAGED PGS	3
FEE	6.50
STATE OF IDAHO COUNTY OF BONNEVILLE	
I hereby certify that the within Instrument was recorded.	
Ronald Longmore, County Recorder	
By	<i>[Signature]</i> Deputy
Attest: Nicole Escrow Corp. 451 N. 1000 E., Box 50812 Pocatello, ID 83405-0512 Idaho Pats. ID 83405-0542	

COANNED

JUN 7 10:2003

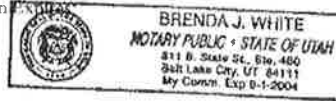
State of Utah

County of Salt Lake

On this 14 day of May, 2002, before me, a Notary Public in and for said state, personally appeared Lynn Dixon known or identified to me to be the Managing Member in the Limited Liability Company known as Snake River Estates, LLC who executed the foregoing instrument, and acknowledged to me that he executed the same in said LLC name.

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

Brenda J. White
Notary Public for the State of Utah
Residing at:
Commission Expires



SCANNED

AUG 25 2003

102 184

ALLIANCE TITLE & ESCROW
451 PARK AVE., P.O. BOX 80542
IDAHO FALLS, ID. 83405-0542

WARRANTY DEED

1025184 JUN21'00 PM 4 25

BONNEVILLE COUNTY RECORDER

Order No. 3030000753 - YL

FOR VALUE RECEIVED

TRACT I: Myrlin Ogden, a married person dealing with his sole and separate property
AND HAZEL MARIE OGDEN, HIS SPOUSE

TRACT II: Myrlin d. Ogden and Hazel Marie Ogden, husband and wife as Trustees of the Ogden Family Trust

TRACT III: Myrlin D. Ogden and Hazel Marie Ogden, not individually but as Trustees of The Myrlin D. Ogden and Hazel Marie Ogden Family Trust created January 19, 1988, amended April 4, 1989, October 1, 1991, and October 22, 1991

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

The Daniel W. Richards and Judy K. Richards Family Trust, dated February 28, 1996

whose current address is

8311 Haven Ave Ste 200 Rancho Cucamonga, CA 91730

the grantee(s), the following described premises, in Bonneville County, Idaho, TO WIT:

TRACT I:

Lot 14 in Block 2 of River Dory Estates, Division No. 1, to the City of Irwin, according to the recorded plat thereof.

TRACT II:

From the West Quarter Corner of Section 21, Township 1 North, Range 44 East, Boise Meridian, Bonneville County, Idaho, run South 00°05' East 1320.0 feet and East 462.94 feet to the true point of beginning; running thence South 18°42'09" East 63.35 feet, thence South 56°40'41" East 515.00 feet, thence South 87°42'42" East 1190.18 feet, thence North 52°54'31" East 554.33 feet, thence North 50°18'08" West 87.87 feet, thence West 2014.43 feet to the true point of beginning.

LESS:

Beginning at the West ¼ corner of Section 21, Township 1 North, Range 44 East of the Boise Meridian, Bonneville County, Idaho; running thence S 00°05'00" East along the Section line 1320.00 feet; thence East 462.94 feet to the True Point of Beginning; running thence S 18°42'09" East 63.35 feet; thence S 56°40'41" East 515.00 feet; thence S 87°42'42" East 5.60 feet to the West line of Grassy Bank Subdivision, Division No. 1, to the City of Irwin, Bonneville County, Idaho; thence N 04°04'52" East 30.015 feet to the North Boundary of said Subdivision; thence S 87°42'42" East along said North Boundary 300.69 feet; thence N 03°39'50" East 325.87 feet; thence West 779.65 feet to the true point of beginning.

TRACT III:

Beginning at the Northeast Corner of Lot 1, Block 1, Grassy Bank Subdivision, Division No. 1, to the City of Irwin, Bonneville County, Idaho, said Point of Beginning being on the South Right-of-way line of Grassy Bank Road; running thence S 10°08'08" West along said Lot line 480.98 feet to the Mean High water line of the Snake River; thence N 77°01'58" West along said High Water line 37.05 feet; thence N 03°39'50" East 469.75 feet to the South Right-of-way line; thence S 87°42'42" East 90.80 feet to the point of beginning.

And all of Lot 2 in Grassy Bank Subdivision, Division No. 1, to the City of Irwin, according to the official plat thereof, filed in the official records of Bonneville County, Idaho.

TRACT IV:

An easement to locate, maintain and repair an irrigation pump located on hereinafter described property (the "Weiss Property"), together with the water lines and power lines running from such irrigation pump. Such irrigation pump shall be located adjacent to the Snake River and within ten feet of the West boundary of the Weiss Property. The Weiss Property is particularly described as follows, to-wit:

Beginning at the West Quarter Corner of Section 21, Township 1 North, Range 44 East of the Boise Meridian, Bonneville County, Idaho: running thence South 00°05'00" East along the Section line 1320.00 feet; thence East 462.94 feet; thence South 18°42'09" East 63.35 feet; thence South 56°40'41" East 515.00 feet; thence South 87°42'42" East 620.00 feet to the true point of beginning; running thence South 87°42'42" East 570.18 feet; thence South 01°58'33" West 654.94 feet more or less to the Northerly bank of the Snake River; thence North 78°15'09" West along said bank 658.06 feet; thence North 10°08'08" East 551.25 feet to the true point of beginning.

SCANNED

11/29/2008

TRACT V:

A roadway and utility easement 60 feet in width, the centerline of which is described as follows:

Beginning at the West Quarter Corner of Section 21, Township 1 North, Range 44 East of the Boise Meridian, Bonneville County, Idaho, running thence South 00°05'00" East along the Section line 3320.00 feet; thence East 462.94 feet; thence South 18°42'09" East 63.35 feet; thence South 56°40'41" East 515.00 feet; thence South 87°42'42" East 620.00 feet to the TRUE POINT OF BEGINNING; running thence South 87°42'42" East 570.18 feet; thence North 52°49'05" East 550.01 feet more or less to the Southerly right-of-way line of U.S. Highway No. 26.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 6/16/2000

Myrlin D. Ogden
Myrlin D. Ogden
Myrlin D. Ogden, Trustee

Myrlin D. Ogden, Trustee of the Ogden Family Trust

Myrlin D. Ogden, Trustee

Myrlin D. Ogden, not individually but as Trustee of the Myrlin D. Ogden and Hazel Marie Ogden Family Trust created January 19, 1988, amended April 4, 1989, October 1, 1991 and October 22, 1991

Hazel Marie Ogden
Hazel Marie Ogden
Hazel Marie Ogden Trustee

Hazel Marie Ogden, Trustee of the Ogden Family Trust

Hazel Marie Ogden Trustee

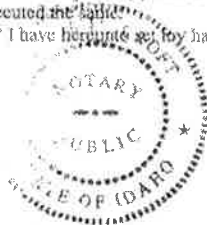
Hazel Marie Ogden, not individually but as Trustee of the Myrlin D. Ogden and Hazel Marie Ogden Family Trust created January 19, 1988, amended April 4, 1989, October 1, 1991 and October 22, 1991

State of Idaho

County of Bonneville

On this 21st June, 2000 before me, a Notary Public in and for said state, personally appeared Myrlin D. Ogden and Hazel Marie Ogden

known or identified to me to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.
IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Danette M. Coyle
Notary Public for the State of Idaho
Residing at:
Commission Expires:

State of Idaho County of Bonneville

On this 21st day of June, 2000 before me, a Notary Public in and for said state, personally appeared Myrlin D. Ogden and Hazel Marie Ogden, known or identified to me to be the persons whose names are subscribed to the foregoing instrument as trustees of Ogden Family Trust, and acknowledged to me that they executed the same as Trustees.

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

SCANNED

JUN 20 2000



Alvin M. Croft
 Notary Public for the State of
 Residing at:
 Commission Expires:

State of Idaho Residing in Bonneville County
 Commission Exp 2-27-04

County of Bonneville } ss.

On this 21st day of June, 2000, before me, a Notary Public in and for said state, personally appeared Myrlin D. Ogden and Hazel Marie Ogden, known or identified to me to be the persons whose names are subscribed to the foregoing instrument as trustees of THE MYRLIN D. OGDEN AND HAZEL MARIE OGDEN FAMILY TRUST CREATED JANUARY 19, 1988, AMENDED APRIL 4, 1989, OCTOBER 1, 1991, AND OCTOBER 22, 1991 AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME AS TRUSTEES. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Residing in Bonneville County
 Commission Exp 2-27-04

Alvin M. Croft
 Notary Public for the State of
 Residing at:
 Commission Expires:

INSTRUMENT NO.	<u>1025189</u>
DATE	<u>6-21-00</u>
INST. CODE	<u>205</u>
CHARGED P&S	<u>3</u>
FEE	<u>9-</u>
STATE OF IDAHO COUNTY OF BONNEVILLE } ss	
I hereby certify that the within instrument was recorded.	
Ronald Longmore, County Recorder	
<u>Rand</u> <u>Atee</u>	

SCANNED

JUN 28 2000

AUG 19 2008

By

Clerk

Deputy Clerk

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

In Re SRBA

Subcase: 23-00011

Case No. 39576

ORDER GRANTING MOTION TO FILE
LATE NOTICE OF CLAIM

On November 14, 2006, The Daniel W. Richards Family Trust, by and through counsel, Robert L. Harris, filed a *Motion to File Late Notice of Claim* for the above-captioned water right. Hearing was held on the *Motion* on December 19, 2006. No party appeared in opposition to the *Motion to File Late Notice of Claim*, however, following the hearing the Court referred this matter to a special master to make findings consistent with the I.R.C.P. 55(s) standard. On August 7, 2008, Special Master Brigitte Bilyeu issued a *Special Master's Report and Recommendation on Motion to File Late Claim* recommending the late claim be granted. No party appeared in opposition to the motion in conjunction with the proceedings before the special master. Although the time for filing a *Motion to Alter or Amend* to the *Special Master's Report and Recommendation* has not expired, the Court can find no reason to delay the issuance of this *Order* and will forward the late claim to IDWR for investigation and reporting.

THEREFORE, IT IS ORDERED, that the *Motion to File a Late Notice of Claim* for the above-captioned water right is **granted**.

The original Notice of Claim, as well as any attached filing fees, and a copy of this *Order* will be forwarded to the Idaho Department of Water Resources for further action. Following investigation by the Idaho Department of Water Resources, recommendation for the claim will

be reported in the next *Late Claims Director's Report* which is issued on an annual basis. This modifies the provisions of *SRBA Administrative Order 1* 4d(2)(h).

IT IS SO ORDERED.

Dated August 19, 2008.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM was mailed on August 19, 2008, with sufficient first-class postage to the following:

DIAMOND K, INC
LYNN DIXON
SNAKE RIVER ESTATES LLC
THE DANIEL W RICHARDS & JUDY K

Represented by:
ROBERT L HARRIS
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

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

ORDER

Page 1 8/19/08

FILE COPY FOR 00087

Deputy Clerk

AUG 26 2008

STATEMENT

I. INTRODUCTION

For purposes of this particular Amended Notice of Claim, it is important to understand both the water rights history of Water Right No. 23-11 and the SRBA history of this water right. The water right history is set forth below in Section II. The SRBA history is set forth in Section III, and is followed in Section IV by explanation of why this late claim should be allowed. Lastly, to the extent this late claim is allowed, Section V. explains the values claimed by the Daniel W. Richards & Judy K. Richards Family Trust (hereinafter, the "Trust") for a portion of Water Right No. 23-11.

II. WATER RIGHTS HISTORY

In the Rexburg Decree, 1,150 inches of water was decreed to the Baker & Dixon Ditch Company ("Baker & Dixon") for water out of Palisades Creek with a priority date of August 15, 1893. See Exhibit 1. The place of use for each individual within the Baker & Dixon was also included in the Rexburg Decree, and is set forth in Exhibit 2. A map of these properties shaded and labeled on a Metsker's Map from approximately 1940 is included as Exhibit 3. Exhibit No. 4 is an earlier version of a Metsker's Map with the same properties shaded and labeled. Names that appear on both of the 1940 Metsker's Map and the earlier Metsker's Map are important in the discussion below. For purposes of Trust's claim, the David H. Burton property (the property formerly owned by Mary E. Neilson, who was listed in the Rexburg Decree) depicted on Exhibits 3 and 4 are the most relevant.

Attached as Exhibits 5 through 8 are copies of relevant portions of different yearly versions of what is commonly known as the "Water District 01 Decree Book" (it has sometimes been referred to as the "Green Book"). For years in District 01, this book was used by the District 01 watermaster in administering water rights in priority. Exhibit 5 is from the 1949 version of the Decree Book; Exhibit 6 from 1956; Exhibit 7 from 1961; and Exhibit 8 from 1976. For our purposes, the most important of these is Exhibit 8. This particular copy was taken from the SRBA Claim file of Water Right No. 23-10279. As shown on this exhibit, water rights for nine (9) individuals were grouped under the single water right number of 23-11. For purposes of Trust's claim, it presently owns

portions of the property formerly owned by Dave Burton. As shown on Exhibit 8, the Dave Burton portion of Water Right No. 23-11 are clearly set forth: 7.2 cfs for Dave Burton.

III. SRBA History

A claim for all portions of Water Right No. 23-11 (22.9 cfs) in addition to Water Right No. 23-10 (5.4 cfs, held in the name of Lucille Baker), both of which have the same priority date, was filed under claim no. 23-11235. The water rights were claimed by a company known as "The Palisade Irrigation Co. Inc." (hereafter "Palisade"). This claim is attached as Exhibit 9.

Palisade is somewhat of a hybrid delivery/canal company. In Idaho, there are typically two classes of delivery or canal companies. In the first type of entity, the company itself owns the water rights and individual shareholders are entitled to a portion of the company's water rights. In this type of entity, the company would be responsible for issues pertaining to its water rights, such as filing claims in the SRBA.

The second type of entity is perhaps best referred to as a "mutual ditch association", or a "carrying company". In this type of entity, the company only owns the ditches, pipes and other infrastructure for water delivery. The water delivered through the ditches are delivered pursuant to individual water rights. In other words, the individual members, not the company itself, own the water rights. In this type of entity, the individual members would be responsible for issues pertaining to its water rights, such as filing claims in the SRBA.

As stated above, Palisade is somewhat of a hybrid entity. Palisade delivers both private rights through its system (similar to a carrying company), and also delivers water diverted pursuant to rights held by the company to its individual shareholders. Both the individual rights and the company rights were delivered through the Palisade Canal.

At some point, it was apparently determined that as to Water Right Nos. 23-10 and 23-11, Palisade would claim all of the water historically delivered through the canal, which would include both the company rights and the individual rights. As a practical matter, such an approach makes sense because both the individual rights and the company rights were treated the same by the company. Further, such an approach seemed prudent when considering the fact that nine (9) individuals used portions of Water Right 23-11. With these claims, however, the company made it

clear that it was making the claims on behalf of its members, including the Trust. For example, on claim 23-10279, the company's claims contain the following language: "This notice of claim is filed by the corporation on behalf of its members of the Palisade Irrigation Company, Inc. whose duty it is to manage and distribute water rights belonging to its various shareholders."

It appears from the record that Idaho Department of Water Resources (IDWR) was not certain as to how it would treat these rights in the adjudication. For example, Exhibit 10 is from IDWR's files on water right 23-11235 (an IDWR Field Exam Form), and it contains the following statement: "There is a question of how the original decreed rts: 23-10 and 11 are held. Are the rights owned privately or are they 100% owned by TPIC. Or, is 23-11 split with the split portions to private owners."

It appears that IDWR eventually decided that 23-11 should not be decreed as a single right, but should be split amongst private owners. See Exhibit 11. In short, the claim should not have been filed by Palisade. The claims should have been filed by individual owners.

IV. REASONS FOR ALLOWING Trust'S LATE AMENDED CLAIM.

The crux of Trust's late claim is simply that it was never notified by IDWR or anyone else that Claim 23-11235 for Water Right No. 23-11 was disallowed. The Trust was under the impression that Palisade had taken care of the adjudication claims for his water rights for the reasons set forth above. It has recently come to his attention that IDWR disallowed the original claim, which would have included his individual claim. The Trust did not receive any notification from IDWR or any communication from the company as to the Department's decision to disallow the original claim. From the record, it appears that only Palisade received a Notice of Error document from IDWR. See Exhibit 12. The Trust did not receive such a Notice of Error document, or any communication concerning disallowal of 23-11235.

It is unclear why Palisade never notified the Trust, but there are some potential reasons. For example, on the disallowed claim document for Water Right No. 23-11235, it states that 23-11235 was "recommended as right nos. 23-11234 and 23-11A." This language is misleading. Based on this language, it is easy to see why Palisade did not state anything on the Notice of Error document it received from IDWR. This language could easily be construed to mean that the 28.3 cfs claimed

by the company was recommended as 23-11234 and 23-11A. In actuality, 23-11A is for 1.8 cfs, and 23-11234 is for 2.43 cfs, for a total of 4.42 cfs, an amount much less than the 28.3 cfs originally claimed. Palisade could have very easily determined that the water rights were taken care of, and the totality of its original claim recommended. This did not turn out to be the case.

The Trust is obviously very concerned about his water rights, as were other water right owners who were his neighbors. One of the Trust's neighbors, Lynn Dixon, contacted IDWR on many occasions to determine the status of his rights. For example, attached as Exhibit 13 is a letter from Jim Rush of Rocky Mountain Environmental (this letter was obtained from the SRBA claim file for Water Right 23-61) wherein Mr. Rush indicated that IDWR had intended to hold a meeting to discuss Trust's water rights sometime in November or December of 2003. When Mr. Dixon became aware the Department's decision to disallow the claim, he contacted Mr. Daniel Richards of the Trust and informed him of the decision and recommended hiring an attorney to work through this issues. In addition, it seems that the original claim filed by Palisade containing language that the claims were filed on behalf of the members would have put IDWR on notice that the intent of the claim was to protect the interests of its members.

In addition, prior to 2006, water deliveries continued under the pre-adjudication records of Water District 01. Therefore, neither the company nor the members would have had an opportunity to understand the practical implications of the adjudication recommendations on actual water delivery and would not have been prompted by reductions in delivery to object. Once water amounts were reduced this year, it became evident to the Trust that there were problems with its water rights. In short, Trust has not unreasonably delayed filing its amended late claim.

It does appear that in most instances IDWR disallowed Palisade claims to private water rights, and instead recommended company claims of company owned rights and recommending private rights claimed by individual shareholders. However, there are some exceptions, specifically with Water Right No. 23-54 and 23-50D. Claim No. 23-54 was originally filed by the company, but through a change of ownership was recommended as a private right. Claim No. 23-50D appears to have originally been claimed as a private right and eventually was conveyed and recommended to the company.

It appears that 12.66 cfs out of the 28.3 cfs originally claimed by the company have been recommended to individuals. See Exhibit 14. Also, it appears that at least some of the individuals were notified of IDWR's decision not to recommend 23-11 to Palisade, but to recommend it to the individuals. For example, Exhibit 15 is a printout from IDWR's files for Water Right No. 23-11314, a water right owned by Richard I. Clayton. This document was received by IDWR on April 12, 2004. It seems that Mr. Clayton was notified of IDWR's decision, and thereafter filed his claim. It is also important to note from Mr. Clayton's Adjudication Claim Backfile a page that is marked as Exhibit 16. This Water Rights Split History Analysis clearly shows that most of 23-11 remained unclaimed.

Exhibit 17, a claim filed by Jo Ann Weeks, similarly shows a claim filed by her on February 2, 2004. It is unclear why others, including the Trust, were not notified that individuals needed to file claims for their water rights. Had Trust been notified, he would have immediately filed the necessary documents with the SRBA Court.

V. EXPLANATION OF AMOUNTS CLAIMED

To the extent the SRBA court allows the Trust's late claims, the documents in Exhibit 18 explain the amounts claimed by the Trust. The Trust owns a number of subdivision lots on the former Dave Burton property. Exhibit 18 shows each lot and the associated acres. There is some discrepancy as to who owns each lot based on Bonneville County's Records. However, all of the lots should be in the name of the Trust, and not held individually by Daniel W. Richards. Exhibit 19 contains a letter from Idaho Title & Trust and the relevant associated deeds showing that, based on the deeds, all properties are owned by the Trust, and not owned individually by Daniel W. Richards. It appears that the County's records are not entirely correct. We should also note that the listed owner "FT Richards" for lot RPD3280001001A refers to the Trust (FT is an abbreviation for "Family Trust").

Exhibit 20 is the final exhibit, and it shows the place of use of the water rights held in the name of Palisade. The property owned by Trust is included within its place of use.

It should be noted that Trust has used water diverted under 23-11 for pond and aesthetic purposes, which are not presently listed as a beneficial use under 23-11, and intends to file transfer documents once any issues with the SRBA court are sorted out.

Lastly, we expect that other landowners in a situation similar to Trust may likewise file late Amended Notices of Claim given the amount of 23-11 that remains unclaimed.

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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 23-11
Date Received _____
Receipt Number _____

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

1. Name of Claimant(s) The Daniel W. Richards and Judy K. Richards Family Trust Phone 909-980-6868

Mailing Address 8311 Haven Ave., Ste. 200, Rancho Cucamonga, CA Zip 91730

2. Date of Priority (Only (1) per claim) August 15, 1893

3. Source of water supply (a) Palisades Creek

which is tributary to (b) Snake River

4.a. Location of existing point of diversion is:
Township 01N Range 44E Section 26, SW 1/4 of SW 1/4 of SE 1/4, Govt. Lot _____,
County of Bonneville

Additional points of diversion if any: _____

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

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Concrete headgate to canals and ditches. Water is delivered through the Palisade Canal.

6. Water is claimed for the following purposes: _____ (Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from April 1 to November 1 amount 1.302 cfs or _____

7. Total quantity claimed (a) 1.302 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) n/a

SCANNED

AUG 20 2008

- [illegible]

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

12. Do you own the property listed above as place of use? Yes X No ____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
23-50D, 23-50E, 23-104 or None ()

15. Basis of Claim (Check one) Beneficial Use _____ Posted Notice _____ Permit _____ Decree X License _____
If applicable provide IDWR Water Right Number 23-11
Court District Court of the Sixth Judicial District of Fremont County, Idaho Case Number _____
Decree Date December 15, 1910 Plaintiff vs Defendant Rexburg Irrigation Co. et al. v. Teton Irr. Co. et al

- Date _____

Subscribed and sworn (or affirmed) before me this ____ day of _____, 2006 .

AUG 20 2008

CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California

County of San Bernardino } ss.

☒ See Attached Document (Notary to cross out lines 1-6 below)

☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

1
2
3
4
5
6

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

7TH day of November, 2006, by
Date Month Year

(1) Daniel W. Richards
Name of Signer

☒ Personally known to me

☐ ~~Proved to me on the basis of satisfactory evidence to be the person who appeared before me (-) (-)~~

(and

(2) N/A
Name of Signer

☐ ~~Personally known to me~~

☐ ~~Proved to me on the basis of satisfactory evidence to be the person who appeared before me (-)~~



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Amended Notice of Claim to WATER RIGHT
Title or Type of Document: CIVIL CASE 39576 - (23-11)

Document Date: DATED 11/1/06 Number of Pages: 3

Signer(s) Other Than Named Above: NONE

RIGHT THUMBPRINT
OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT
OF SIGNER #2
Top of thumb here

SCANNED

AUG 7 0 2008

17. Notice of Appearance:

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

Signature Robert L. Harris
Address P.O. Box 50130, Idaho Falls, ID 83405
Date Nov. 13, 2006

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