

04/14/2004

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

RIGHT NUMBER: 25-4312

NAME AND ADDRESS: HOWARD TAYLOR & SONS INC
PO BOX 51780
IDAHO FALLS ID 83403

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.100 CFS
6.000 AFY

PRIORITY DATE: 09/01/1942

POINT OF DIVERSION:

T01N R37E S10 SESE Within BONNEVILLE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.040 CFS
COMMERCIAL	01/01 12/31	0.100 CFS 6.00 AFY

PLACE OF USE: DOMESTIC Within BONNEVILLE County

T01N R37E S10 SESE

COMMERCIAL Within BONNEVILLE County

T01N R37E S10 SESE

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: Beneficial Use



DELOG RM
4/14/04

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED

APR 14 2004

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, 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 Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
	<u>25-0432</u>				
	<u>25-4312</u>				

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) are 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)

Heyrend

4. New Owner/Claimant(s)

Howard Taylor & Sons IncName Connector (Check one): ☐ and, ☐ or, ☐ and/or

New Mailing Address

PO Box 51780

City, State and ZIP Code

Idaho Falls, ID 83405

New Telephone Number

(208) 522-7770

5. Date you acquired the property

13 Dec 2002SCANNED
AUG 20 2004

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**INSTRUCTIONS FOR FILING
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP**

This form has been prepared to assist all claimants and owners of water rights to comply with the requirements of Sections 42-248 and 42-1409(6), Idaho Code. All claimants and owners of water rights are required to notify the Department of Water Resources (IDWR) of any change in mailing address or change in ownership of all or part of a water right. In addition, all purchasers of water rights within a pending general adjudication area must inquire whether a notice of claim has been filed and, if not, shall file a notice of claim if necessary.

Separate brochures are available from IDWR describing the adjudication of water rights and the requirement to notify IDWR of changes in ownership. Please contact your nearest IDWR office, or call 1-800-451-4129, if you would like more information or need help completing this form. Please attach additional sheets to the form if you require additional space to describe or explain any of the items on the form.

1. If there are water rights associated with the property, the seller should be able to provide you with the water right or adjudication claim number(s). Please enter the number(s) at Item 1. Corresponding water right and adjudication claim numbers should be listed next to each other on the form. You may have purchased only a portion of the water right(s) held by the seller. If so, the water right(s) held by the seller may need to be "split" to provide you your share of each right. Indicate if a split is required by checking in the space provided next to each water right.

If you receive water from a municipal provider, an irrigation district or other water delivery organization, where the water rights are held by the organization, please do not use this form to record a change. You may need to contact the water delivery organization to determine if any action is necessary.

If you or the seller believes there are water rights for the property but the numbers are unknown, you may wish to contact IDWR for assistance in identifying the water rights for the property in question. If adjudication claims for the rights are required and have not been filed, IDWR will so advise you.

2. The information described at Item 2 is required, since IDWR cannot process the requested change without documentation of ownership. The preferred types of documentation are shown; contact IDWR if you have difficulty obtaining this information. Do not obtain a new survey for purposes of this form before contacting IDWR.
3. Please provide the name and address of the former owner/claimant(s) of the water right(s) at Item 3.
4. The name, mailing address, and telephone numbers of the new owner/claimant(s) is entered at Item 4. Please indicate the relationship between multiple owners by using the connector "and", "or", or "and/or." If an "and" is used, all parties must sign this form. If an "and/or" or "or" is used, all parties may sign; however, only one of the named parties is required to sign.
5. At Item 5, please provide the date the property in question was acquired. This may be the date of "closing" in the case of a real estate transaction or the date of court order for other types of ownership changes.
6. You may have purchased only a portion of the water right(s) held by the seller. If this 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. For each water right requiring a split between owners, fill in the appropriate spaces in the box(es) at Item 6. Copy the page as many times as necessary to fully describe each water right after the change. Include documentation as necessary to describe nonstandard agreements or arrangements regarding division of the water right(s). If the water right(s) will not be split, skip Item 6 and go to Item 7.
7. The new owner(s) must sign the form in the space(s) provided at Item 7. If an "and" connector is used at Item 4, all parties must sign this form. If an "and/or" or "or" connector is used, all parties may sign; however, only one of the named parties is required to sign. If someone other than the owner signs the notice, evidence of authority to sign for the owner must be attached. If the new owner is a corporation or other organization, the person signing the notice must be an officer of the corporation or otherwise have authority to sign for the organization and must include their title with the signature.
8. The filing fee is \$25 per water right, except for those water rights which will be divided as a result of the change in ownership. The filing fee for division of a water right is \$100 per water right to be divided. When complete, you should retain a copy and return the original of the form to the IDWR office nearest you:

Folder No.506-96

ASSIGNMENT

JOLENE K. DAVENPORT, an individual to be addressed at 2786 Galway Court, Idaho Falls, Idaho 83404 ("Assignor"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Railroad"), or their predecessors in interest, have heretofore entered into an agreement dated August 16, 1996, bearing Railroad's Audit Number 188424 (hereinafter "Basic Agreement") covering the use of the Railroad's land for a potato cellar, warehouse building, a water well and purposes therto, all located at/near Cotton, Bingham County, Idaho.

Effective as of December 30, 2002, the Assignor does hereby sell, assign, transfer and set over, unto HOWARD TAYLOR & SONS, INC. an Idaho corporation to be addressed at P. O. Box 51780, Idaho Falls, Idaho 83405 ("Assignee") all of Assignor's right, title and interest in and to the Basic Agreement including any supplement or amendment thereto (if any).

The Assignee hereby accepts the above assignment and agrees to be bound by and to perform and observe fully and faithfully all of the covenants, stipulations and conditions contained in the Basic Agreement and any supplement or amendment thereto (if any) to be performed and observed by the Assignor and assumes all liabilities and obligations mentioned in the Basic Agreement and any supplement or amendment thereto (if any) to be assumed by the Assignor.

The Railroad, in consideration of the covenants and agreements of the Assignor and the Assignee herein contained, gives its consent to the aforesaid assignment; PROVIDED, however, that such consent shall not be deemed or construed to authorize any further assignment of the Basic Agreement, whether voluntary, by operation of law, or otherwise, without the prior consent in writing of the Railroad; and PROVIDED, FURTHER, that, as between the Assignor and the Railroad, neither said assignment nor anything herein contained shall be construed as releasing the Assignor, in the event of default by the Assignee, from the obligation to perform all of the covenants contained in the Basic Agreement or any supplement or amendment thereto (if any) to be performed by the Assignor, or from any of the liabilities assumed by the Assignor under said agreement (s).

The Assignee, when returning this agreement signed by the Assignor and Assignee, shall pay to Railroad an administrative handling charge of \$1,000.00.

Executed this _____ day of _____, 2002.

Witness:

UNION PACIFIC RAILROAD COMPANY

By _____
Director-Real Estate

Witness:

JOLENE K. DAVENPORT

X *Donna F. Casper*

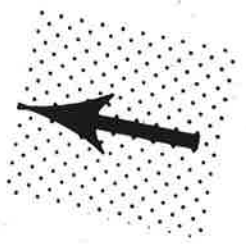
X *Jolene K. Davenport*
Assignor

Witness:

HOWARD TAYLOR & SONS, INC.

X *Donna F. Casper*

X *2 Kent Tyl* (VP)
Assignee





December 11, 2002

Folder: 506-96

Jolene K. Davenport
2786 Galway Court
Idaho Falls, Idaho 83404

Dear Ms. Davenport:

RE: Assignment for Kent Taylor taking over your lease agreement, Audit No. 188424,
Covering the use of the Union Pacific Railroad land at/near Cotton, Bingham County,
Idaho.

Pursuant to your letter dated December 6, 2002 requesting that your lease be terminated due to you selling the improvements to Mr. Kent Taylor, attached are three (3) originals of the above-referenced Assignment document for review and signature. Also, please handle with Kent Taylor for his signing of the 3 original documents also.

In the enclosed envelope, please return the following:

1. **ALL COPIES** of the executed Assignment.
2. **CHECK, with Folder Number 506-96 written on the top**, payable to Union Pacific Railroad Company in the amount of One Thousand Dollars (\$1,000.00) for administrative handling and processing charge.

If you have any questions regarding this Assignment, please contact me at (402) 997-3532.

Sincerely yours,

A handwritten signature in black ink that reads "Jan R Bornholdt".

JAN R BORNHOLDT
Manager - Real Estate

Real Estate

UNION PACIFIC RAILROAD
1800 Farnham Street, Omaha, NE 68102
fx. (402) 997-3601

LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on the 16th day of August, 1996 between Union Pacific Railroad Company, a Utah corporation ("Lessor"), and JOLENE K. DAVENPORT, an individual, whose address is 2786 Galway Court, Idaho Falls, ID 83404 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article I. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises"), at Cotton, Idaho, as shown on the print dated April 8, 1996 marked Exhibit A, hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for potato cellar, warehouse, water well and purposes incidental thereto, only, and for no other purpose.

Article II. TERM.

The term of this Lease shall commence on March 28, 1996, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article III. RENT.

A. Effective July 13, 1996, Lessee shall pay to Lessor, in advance, rent of Two Thousand Three Hundred Seventy-Five Dollars (\$2,375.00) per annum. The rent shall be increased by Three percent (3%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the rent. In the event Lessor does redetermine the rent, Lessor shall notify Lessee of such change.

Article IV. SPECIAL PROVISION - WATER WELL (EXISTING).

Subject to the terms and conditions of this Lease, Lessee may use and maintain Lessor's existing water well, provided that:

- 1) It is expressly understood and agreed that Lessor is not a public, municipal or community water supply system. Lessor makes no representations or warranties with respect to the quality or fitness for any particular purpose of the water in Lessor's water facility. Without limitation of the provisions of Sections 11 and 12 of Exhibit B to this Lease, Lessee assumes the risk of any and all impurities and harmful substances which may be contained in water taken from Lessor's water facility, and Lessee agrees that the release and indemnity set forth in Section 12 of Exhibit B of this Lease shall apply to Lessee's connection to Lessor's water facility and the use of any water taken from Lessor's water facility.

Date: SEP 25 1996

through Less's connection thereto, regardless of any negligence (including, without limitation, sole, active and direct negligence), misconduct or strict liability of any Indemnified Party.

- 2) The water needs of Lessor shall at all times have preference over the water needs of Lessee. Lessee acknowledges that Lessor is not guaranteed a continuous or uninterrupted supply of water, the water may at any time cease or diminish, and Lessee shall have no claim whatsoever against Lessor if the water supply ceases or diminishes for any reason whatsoever, including, without limitation, due to Lessor's negligence or failure to maintain Lessor's water facility.
- 3) Lessee shall not waste water taken from Lessor's water facility.
- 4) The cost of maintenance, repair, renewal or replacement shall be at the expense of Lessee.
- 5) Upon termination howsoever of this Lease, Lessee, at its sole cost and expense, shall either remove the well or cap the well in a manner satisfactory to Lessor.

Article V. SPECIAL PROVISION - CANCELLATION.

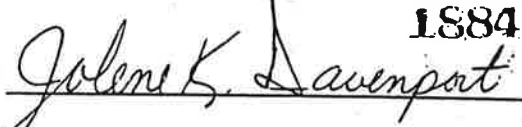
Effective upon commencement of the term of this Lease, the Lease dated August 1, 1986, identified as Audit No. PLD-561, together with any and all supplements and amendments, is cancelled and superseded by this Lease, except for any rights, obligations or liabilities arising under such prior lease before cancellation, including any consent to conditional assignment, chattel agreement, or consent to sublease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

UNION PACIFIC RAILROAD
COMPANY

JOLENE K. DAVENPORT

By: 
Director - Real Estate

By: 
Title: Individual

188424

Note: New Lease - Cancels Lease Audit No. PLD-561, folder No. 794-61.

[illegible]

2388-17

2389-95: F.F. Potato Cellar 52' R/L 2389-91

2390 + 63 Water Well (A)
Rt. 86.5'

2391+02.0 F.F. Potato Cellar 52.4 RI.

2391+824 & Xing Sign 54.8 RL 2391+
2392+002 & Private 32 Pk. Rd. Xing
Clover Club Potato & Produce & Heyrend
Produce Co.'s CD4-172

2392+68 @ Private Road Xing, Heyrend
Produce Co., CA 44172
2392+95 F.F. Concr. Celler 30'-80', 514' Rt

2393-437

Trk No 2 23013. long

Tr. N=1 Pl. Sw. to Pl. Sw-400g.

2390

S.F. 1/4 Sec. 10

2389+80 Power Pole Lt

2391+64 Telephone cable xing M.S.T.&T.C
2391+71 Xing Sign 33.6' Lt.

2393 + 20 X-Best ZK.5TF
2393 + 30 Power Pole Lt.

EXHIBIT B

188424

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS AND PRIOR RIGHTS.

- A) Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.
- B) Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.
- C) This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Section 3. PAYMENT OF RENT.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

- A) Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.
- B) If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

- A) Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard and all water flow shall be directed away from the tracks of the Lessor.
- B) Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.
- C) If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.
- D) Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

- A) Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.
- B) In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

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C) If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D) Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.

E) In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F) For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

Section 8. UTILITIES.

A) Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B) All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A) No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B) All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C) Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.
D) Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

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Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A) As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.
B) The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.
C) Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.
D) No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A) Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.
B) Notwithstanding the term of this Lease set forth in Article II.A., Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A).

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A) Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B) If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

158424

Lessee shall telephone Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Contracts & Real Estate Department, Room 1100, 1416 Dodge Street, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A) Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.
B) Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III.A, this Lease may be amended only by a written instrument signed by Lessor and Lessee.

A25-04312 Summary 8/23/03

1) Ownership: New owner is

Howard Taylor & Sons
PO Box 51780
Idaho Falls
208 522 7770

Owner Kent Taylor has Δ ownership form.

2) POB and POD appear to be correct

GPS location 654, 94³/₅ E 269,362 N
GPS file 10. 4312

North distance may be off +/- 20 meters
(well is inside basement, from outside
the building it may be hard to tell
where it is).

4) Priority date seems reasonable, see Affidavit.

5) ^{claimed} 1 CFS is slightly higher than theoretical
w/ claimed pump & higher than current
pump. However claimed cfs is not
unreasonable

A25-04312 summary p2 8/23/03

6) Volume: Assume fresh-pack operation was 6 months x 5 days/week x 12 hrs = 1440 hrs

assume claimed 0.10 cfs @ 50% of the time

$$1440 \text{ hrs} \times 3600 \text{ seconds/hr} \times 0.10 \text{ ft}^3/\text{s} \times 0.50$$

$$= 259,200 \text{ ft}^3 = 6.0 \text{ acre feet}$$

assume theoretical 0.06 cfs @ 90% of the time

$$1440 \text{ hrs} \times 3600 \text{ seconds/hr} \times 0.06 \text{ ft}^3/\text{s} \times 0.9$$

$$= 272,160 \text{ ft}^3 = 6.25 \text{ acre ft}$$

7) Photos - well controller, well.

8) Comment: Owner has questions re: cfs rate. See copy of letter.

Byrce A. Coutor

August 23, 2003

Kent Taylor
Howard Taylor and Sons
PO Box 51780
Idaho Falls ID 83402

Re: CFS rate of claim A25-04312

Dear Mr. Taylor:

Thank you for arranging for me to look at the well at the old Heyrend fresh pack shed. When we visited, you expressed concerns about the diversion rate of 0.10 on the claim.

The controller on the current pump indicates the pump is only a one horsepower pump, but the claim indicates originally the pump was a three horsepower. Theoretical calculations indicate that the current capacity of the pump is about 0.02 cfs and the original capacity was about 0.06. It is likely that the claimed diversion rate is not unreasonable. It is adequate for the current use at the facility.

If you are able to document a different diversion rate, please contact Michael Holliday at Idaho Department of Water Resources. He can help you amend the claim and include the documentation for verification. Another option, if you later need more water at the facility, is to transfer another water right to that well.

I'm sorry that I wasn't able to find any evidence to support a higher diversion rate. Please call me if you have questions.

Sincerely,

Bryce A. Contor

Water Resources
Field Services
208 663 4667

A25-04312

Theoretical Calculation - current will pump

1) Total dynamic head

~~126~~ 11 ft 160 feet from reservoir

pen- by Percraft Products well

drawdown negligible for small Q

friction 10 feet

discharge ~~2~~ 40 psi x 0.31 = 92.4 ft

~~2 = 263 feet 228~~

2) $N_{\text{sample}} \cdot \text{horsepower} = 1 \text{ hp}$

3) Motor HP = motor hp x efficiency
 $= 1 \times 0.60 = 0.60$

4) $Q_{PM} = \frac{W_{PM} \times H_P \times 3960}{T_{DH}} = \frac{0.60 \times 3960}{253} = 9.5 \text{ gpm}$

Theoretical Calculation - original well pump
per claim, original well pump was 3hp.

original $\phi \approx 3 \times 0.02 \text{ g/s} = 0.06 \text{ g/s}$

A25-13250 | A31-04312 8/22/03

Current Owner Howard Taylor } Sons
Mr. Taylor (Kent) has a
address forms. P.O. Box 51780 IF
522-7770

~~Photo 1) 2) 3) nameplate - A25-13250 well,~~

~~Nameplate (10 hp. on motor controller)
A7B type BCT 1~~

~~GPS 654,846 E 260,215 N Waypoint 13250~~

Franklin
Eleen
in Heyrend (4312) 280-1084915 1 hp.
230 V.

GPS estimated @ 15' East of well Waypoint 4312
654,940 E 260,362 N
654,945 E 260,362 N corrected

George Heyrend Contact log 523-1277

8/19/03 8:45 AM - disconnected -
- nothing in phone book -

August 18, 2003

George Heyrend
165 West 16th Street
Idaho Falls, ID 83401

Re: Water Right Adjudication Claim(s) A25-04312

Dear Water User:

Idaho Department of Water Resources (IDWR) is reviewing claims to water rights in the Snake River Basin Adjudication in your area. Water Resources Field Services has been retained to do field inspections to aid the Department in making correct recommendations to the court. In the next weeks and months I will be contacting you to make an appointment to look at your diversion works and uses of water.

If possible, I would like to include in the file a copy of the agreement with Union Pacific Railroad that describes the land lease for the well on railroad property.

I look forward to helping make sure your water right recommendation is correct. Please contact me if there is a particular time that would be convenient for you. You may call in the evenings, or leave a message on the answering machine.

Sincerely,

Bryce A. Contor

SCANNED

AS 1-10-10

IN THE MATTER OF:

THE CLAIM OF
GEORGE HEYREND

AFFIDAVIT

25-4312

State of Idaho
County of BONNEVILLE

GEORGE HEYREND

being first duly sworn,

deposes and says: 1. That I am the owner of Heyrend Produce Company,
with the company warehouse located at the Cotton Railroad Station, in
Bonneville County, and more specifically, located in the SE1/4 of Sec. 10,
T. 1N, R. 37E, Boise Meridian.

2. That I have worked at the warehouse located at the
above described location since September 1, 1942, and have personal
knowledge that a well was being used inside the warehouse at the time of
my employment there.

3. That the well has, since September 1, 1942, been
used continuously for commercial processing of potatoes, and for domestic use
until the date of this affidavit.

George Heyrend
(Signature)

Subscribed and sworn to before me this 6th day of May, 1946

John L. Husted
(Notary Public)

Residing at Idaho Falls:
My Commission Expires undetermined:

MICROFILMED
NOV 10 1957

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 25-4312
Date Received: 8/15/1989
Receipt No: M003894
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

HOWARD TAYLOR & SONS INC Phone: (208)522-7770

PO BOX 51780
IDAHO FALLS ID USA 83403

2. Date of Priority: 09/01/1942

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
01N	37E	10	SE SE	BONNEVILLE	

5. Description of diverting works:

3HP SUBMERSIBLE PUMP AND LINES FOR COMMERCIAL AND DOMESTIC USE.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
COMMERCIAL	1/01	12/31	0.1	
DOMESTIC	1/01	12/31	0.04	

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

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
01N	37E	10				
			SE	SE	DOMESTIC COMMERCIAL	

11. Place of use in counties: BONNEVILLE

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

13. Other Water Rights Used:

14. Remarks:

THE LAND ON WHICH THIS WELL IS LOCATED IS OWNED BY OREGON SHORT LINE RAILROAD CO. AND IS LEASED BY UNION PACIFIC RAILROAD. THE CLAIMANT LEASES THE LAND FROM OREGON SHORT LINE AND UNION PACIFIC UNDER A LONG TERM LEASE.

15. Basis of Claim: Statutory Claim

16. Signature(s)

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

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am _____ of
Title

_____, that I have signed the foregoing

Organization
document in the space below as _____ of

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

Signature of Authorized Agent

Title and Organization

Date

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this

of _____ 20__

Notary Public

Residing at _____

My commission Expires _____

SCANNED

JUL 26 1989

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: A25-04312
Date Received: 8/15/1989
Receipt No: M003894
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GEORGE HEYREND
Address: 165 WEST 16TH STREET
IDAHO FALLS, ID

208-523-1277

83401-0000

2. Date of Priority: SEP 01, 1942

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4	of	1/4	of	1/4	Lot	County
01N	37E	10			SE		SE		BONNEVILLE

5. Description of diverting works:
3HP SUBMERSIBLE PUMP AND LINES FOR COMMERCIAL AND DOMESTIC USE.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
COMMERCIAL	01/01	12/31	0.100		
DOMESTIC	01/01	12/31	0.040		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
WATER USED TO WASH/PROCESS POTATOES AND FOR DOMESTIC PURPOSES.

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
01N	37E	10			SE	SE	DOMEST COMMER	

A25-04312

Page 1

Date: 08/15/89

MICROFILMED
NOV 10 1992



11. Place of use in counties: BONNEVILLE

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

13. Other Water Rights Used:
NONE

14. Remarks:
THE LAND ON WHICH THIS WELL IS LOCATED IS OWNED BY OREGON
SHORT LINE RAILROAD CO. AND IS LEASED BY UNION PACIFIC
RAILROAD. THE CLAIMANT LEASES THE LAND FROM OREGON
SHORT LINE AND UNION PACIFIC UNDER A LONG TERM LEASE.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

MICROFILMED
NOV 10 1992

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: A25-04312
Date Received: 8/15/1989
Receipt No: 1003894
Received By: BAS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GEORGE HEYREND 208-523-1277
Address: 165 WEST 16TH STREET
IDAHO FALLS, ID 83401-0000
2. Date of Priority: SEP 01, 1942
3. Source: GROUNDWATER Trib. to:
4. Point of Diversion:
- | Township | Range | Section | 1/4 of 1/4 of 1/4 | Lot | County |
|----------|-------|---------|-------------------|-----|------------|
| 01N | 37E | 10 | SE SE | | BONNEVILLE |
5. Description of diverting works:
3HP SUBMERSIBLE PUMP AND LINES FOR COMMERCIAL AND DOMESTIC USE.
6. Water is used for the following purposes:
- | Purpose | From | To | C.F.S | (or) | A.F.A. |
|------------|-------|-------|-------|------|--------|
| COMMERCIAL | 01/01 | 12/31 | 0.100 | | |
| DOMESTIC | 01/01 | 12/31 | 0.040 | | |
7. Total Quantity Appropriated is:
0.100 C.F.S. (and/or) A.F.A.
8. Total consumptive use is Acre Feet Per Annum.
9. Non-irrigation uses:
WATER USED TO WASH/PROCESS POTATOES AND FOR DOMESTIC PURPOSES.
10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
01N	37E	10	SE SE		DOMEST COMMER	

A25-04312

Page 1

Date: 08/15/89

MICROFILMED
NOV 11 1992

11. Place of use in counties: BONNEVILLE

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

13. Other Water Rights Used:
NONE

14. Remarks:

THE LAND ON WHICH THIS WELL IS LOCATED IS OWNED BY OREGON
SHORT LINE RAILROAD CO. AND IS LEASED BY UNION PACIFIC
RAILROAD. THE CLAIMANT LEASES THE LAND FROM OREGON
SHORT LINE AND UNION PACIFIC UNDER A LONG TERM LEASE.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

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

Number of attachments: 0

For Individuals:

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

Signature of Claimant(s): George Eyrund

Date: Aug 15 1989

Date: _____

State of Idaho)

County of Bonneville)

SS.

Subscribed and sworn (or affirmed) before me this 15 day

of August 19 89

Bruce A. Schild
Notary Public

Seal

Residing at BRUCE A. SCHILD, NOTARY PUBLIC

My Commission Expires

RESIDING AT BOISE, IDAHO

MY COMMISSION EXPIRES APRIL 11, 1995