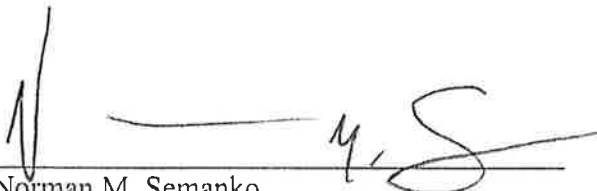


3. Attached hereto and marked Exhibit A is a true and correct copy of a letter from the Idaho Department of Water Resources to the claimant in this matter, dated November 9, 2018, regarding the potential unauthorized storage and use of water by the claimant.

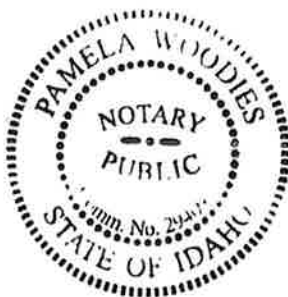
4. In the attached letter, IDWR maintains that the claimant has the right to divert 14.5 cfs to storage. This is despite the fact that the total diversion rate for water right no. 67-2097A is only 6.54 cfs and the current decree does not include a diversion to storage rate of 14.5 cfs.

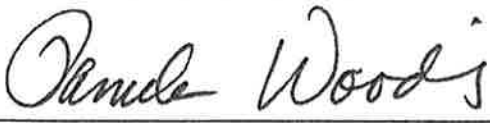
Further, your affiant sayeth naught.


Norman M. Semanko

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me this 13th day of June, 2019.




Pamela Woodies
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires February 25, 2022

CERTIFICATE OF SERVICE

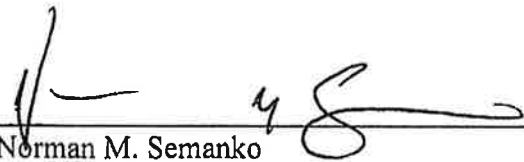
I hereby certify that on this 13th day of June, 2019, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

- ☒ U.S. First Class Mail, Postage Prepaid
- ☐ U.S. Certified Mail, Postage Prepaid
- ☐ Federal Express
- ☐ Hand Delivery
- ☐ Electronic Mail
- ☐ Facsimile

CHRIS M. BROMLEY
MCHUGH BROMLEY PLLC
380 S. 4TH STREET, STE. 103
BOISE, ID 83702

- ☒ U.S. First Class Mail, Postage Prepaid
- ☐ Federal Express
- ☐ Hand Delivery
- ☒ Electronic Mail cbromley@mchughbromley.com
- ☐ Facsimile



Norman M. Semanko

EXHIBIT A



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 9, 2018

DOUBLE C & J LAND CO INC
CO JOHN HOFF
990 JENKINS CREEK RD
WEISER ID 83672

**Re: Notice of Intent to Investigate — Potential Unauthorized Diversion or Storage of Water
(Case No. E2018-1350)**

Dear Mr. Hoff:

The Idaho Department of Water Resources (Department) received a complaint on September 27, 2018 regarding water storage in the Jenkins Creek drainage. The complaint generally alleges that you have illegally diverted, stored, and used water in connection with Monroe Reservoir and Jenkins Creek Reservoir. Specifically, the complaint alleges 1) you have stored Jenkins Creek water without a valid water right; and 2) you have operated Monroe Reservoir and Jenkins Creek Reservoir together to accomplish multiple fills of Jenkins Creek Reservoir without authorization to do so. The purpose of this letter is to discuss the Department's preliminary findings regarding these allegations and give you the opportunity to respond to the complaint and the Department's findings.

Regarding the first allegation, the Department finds no water right that authorizes storage of Jenkins Creek in Monroe Reservoir. Water right no. 67-2044 authorizes you to divert up to 320 acre-feet (af) of Monroe Creek water for irrigation storage purposes each year beginning November 15 until March 15. The Monroe Creek water diverted under 67-2044 may be stored and held in Monroe Reservoir¹ year-round. Right 67-2044 does not authorize diversion or storage of Jenkins Creek water. Although Monroe Reservoir is constructed on the Jenkins Creek Channel, the Department has not identified a valid water right or other authorization allowing you to divert and capture Jenkins Creek water into Monroe Reservoir.

The Department's preliminary conclusion is that you must operate Monroe Reservoir at all times in a manner that passes any inflows in excess of the amount you are injecting into Jenkins Creek from Monroe Creek pursuant to water right 67-2044. Note that, during a discussion with the Department on October 18 and 19, 2018, you stated that your Monroe Creek diversion is in disrepair and you are not able to divert Monroe Creek water pursuant to water right no. 67-2044. Yet, you also described that you close the outlet structure and store water in Monroe Reservoir during the non-irrigation season. This practice suggests you routinely store Jenkins Creek water in Monroe Reservoir.

Because you are not able to divert Monroe Creek water and you have no authorization to store Jenkins Creek water, you must immediately open the discharge structure in the Monroe Dam outlet and pass all water until you repair your delivery system and begin delivering water from Monroe Creek into the reservoir pursuant to water right 67-2044.

¹ The face of the right does not define a storage place of use, so it does not appear to require the water be stored in Monroe Reservoir, but it also does not prohibit it.

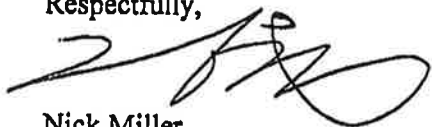
If you believe you have a water right or other authorization to impound Jenkins Creek water in Monroe Reservoir, or if you believe you operate Monroe Dam in a manner that does not store Jenkins Creek water, please provide the Department with a written explanation.

At this time, the Department finds that the second allegation in the complaint does not cause an immediate concern. The complaint suggests that you continuously divert water into Jenkins Reservoir to replace water lost to a significant leak in the Jenkins Creek Reservoir Dam and that your existing water rights do not authorize that activity. The Department has reviewed your water rights and records from the Department's Safety of Dams Program (Dam Safety) regarding Jenkins Creek Reservoir. Your water rights authorize you to store up to 690 af of Jenkins Creek water annually and to divert at a rate of up to 14.5 cfs to storage and an additional 9.06 cfs for direct irrigation. Dam Safety records report that Jenkins Creek Reservoir has a capacity of approximately 175 af. Additionally, Dam Safety's *Jenkins Creek Dam Leak Assessment* estimated an annual loss rate of approximately 80 af. The Department concludes that once you fill Jenkins Creek Reservoir (175 af), your water rights authorize you to completely "refill" the reservoir several times throughout the year. The large storage volume (relative to the size of the reservoir) and diversion rate available under your rights suggest the reported refills are not inconsistent with your water rights. As a result, the Department is not requesting any action from you regarding this second allegation.

Your response to the first allegation is necessary to determine if a formal enforcement action can be avoided. Please respond to the first allegation and the Department's analysis by November 23, 2018. Your response should include a description of how you operate or intend to operate Monroe Reservoir to avoid storing Jenkins Creek water, or a description of what authority you believe you have to store Jenkins Creek Water in Monroe Reservoir.

You may contact me directly at 208-334-2190, email at nick.miller@idwr.idaho.gov or you can mail your reply to me at the address above. I appreciate your help in clarifying the issues above.

Respectfully,



Nick Miller
Manager, IDWR Western Region

cc: Norman Semanko
Cherie Palmer-Department State office, Enforcement