

06/18/2010

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

RIGHT NUMBER: 27-12180

NAME AND ADDRESS: GEMCO LIMITED PARTNERSHIP
PO BOX 4026
POCATELLO ID 83201

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.760 CFS
19.000 AFY

PRIORITY DATE: 09/30/1905

POINT OF DIVERSION:

T02S R35E S35 NESW Within BINGHAM County

T02S R35E S35 NESW Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
INDUSTRIAL	01/01 12/31	0.760 CFS 18.40 AFY
COMMERCIAL	01/01 12/31	0.040 CFS 0.60 AFY

Industrial use is for production of liquid fertilizer.
Commercial use is for an office.

PLACE OF USE:

INDUSTRIAL in BINGHAM County

T02S R35E S35	SENE	T02S R35E S35	NESW
T02S R35E S35	NWSW		

COMMERCIAL in BINGHAM County

T02S R35E S35	NESW
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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.

The remainder of this water use was forfeited for non-use from 1949 to 2007.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

10/17/2011

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

RIGHT NUMBER: 27-12180

NAME AND ADDRESS: GEMCO LIMITED PARTNERSHIP
PO BOX 4026
POCATELLO ID 83201

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.760 CFS
27.10 AFY ~~19.000 AFY~~

PRIORITY DATE: 09/30/1905

POINT OF
DIVERSION:

T02S R35E S35 NESW Within BINGHAM County
T02S R35E S35 NESW Within BINGHAM County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
INDUSTRIAL	01/01 12/31	0.760 CFS ~~18.40 AFY~~ <u>26.50 AFY</u>
COMMERCIAL	01/01 12/31	0.040 CFS 0.60 AFY
Industrial use is for production of liquid fertilizer.		
Commercial use is for an office.		

PLACE OF USE: INDUSTRIAL in BINGHAM County

T02S R35E S35	SESW	T02S R35E S35	NESW
T02S R35E S35	NWSW		

COMMERCIAL in BINGHAM County

T02S R35E S35	NESW
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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.

The remainder of this water use was forfeited for non-use from 1949 to 2007.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Robert L. Harris, Esq. (ISB # 7018)
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Idaho Falls, Idaho 83405
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Facsimile: (208) 523-9518

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

Case No. 39576

Subcase Nos.: 27-12180

**AFFIDAVIT OF
PATRICK MCGRANE**

STATE OF IDAHO)
) ss.
County of Bingham)

I, Patrick McGrane, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

And being so sworn I depose and say:

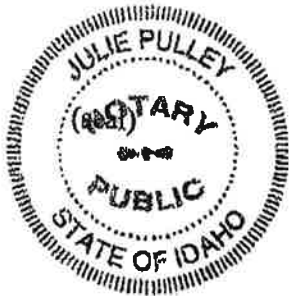
1. I was born on February 2, 1957. I am over the age of eighteen (18) and competent to testify as to the matters contained herein.
2. My current home address is 177 N. 695 W., Blackfoot, Idaho 83221.
3. I am the current manager of Crop Production Services, a company that manufactures liquid fertilizer. Our facility is located at 1701 Northwest Main St. in Blackfoot, Idaho, 83221.

4. The facility that Crop Production Services is located at in Blackfoot was previously owned and/or operated by a number of other liquid fertilizer companies. When I began working at the facility in 1986, the facility was owned by Pacifex, which was a subsidiary of ConAgra. The facility was then purchased by investors in the 1990s, and eventually was purchased by Agrium three years ago.
5. Since 1986, I have worked at the Crop Production Services facility, and held positions ranging from a laborer to manager. During that time period, I became familiar with the mixing of liquid fertilizer.
6. To the best of my recollection, in the late 1980s, I recall production at the Pacifex facility of approximately 80,000 tons (160,000,000 pounds) of liquid fertilizer per year. The liquid fertilizer consisted of approximately 45% water, and therefore, of the 160,000,000 lbs of liquid fertilizer, 72,000,000 pounds would consist of water. At a weight of 8.34 pounds per gallon of water, this would equate to approximately 8,633,000 gallons of water, or 26.5 acre-feet per year for production of liquid fertilizer.
7. As stated in an affidavit I submitted previously that was dated July 1, 2008, our plant now currently uses, on average, approximately just over 6,000,000 gallons per year for liquid fertilizer production, but has the capacity to produce more, and did do so when Pacifex began preparing liquid fertilizer shortly after I began working for them.

DATED this 23 day of August, 2011.


Patrick McGrane

SUBSCRIBED AND SWORN TO before me this 23 day of August, 2011.



Julie Pulley
Notary Public for Idaho
Residing at Blackfoot, Idaho
My Commission Expires: 3/17/2015

G:\WPDATA\RLH\15175 James A. Davidson, Pat. McGrane.wpd nqiv

☒ more than 1 pod? ✓ need map showing pods or GPS pts

what happens to permit 27-7510 ✓

☒ nature of use? ✓ commercial or domestic? 1.6 AF

☒ volume? -

1905 600 tons / day cap. 950 gpm (1.14 gal/lb.)

1911 800 " " " "

1920 " " " "

1905 total production (50,000 tons per arrington p 65)
1940 PEAK " (14,850 " " " p 185)
104,206 " " " p 186

1984 75 HP pump removed (THEORETICALS DIFFER)

1984-current 18.4 AFA

closed > 1948
disassembled in 1952
storage warehouse in 1954 } from appendix, arrington, 1966

- see comments in 27-7510

☒ sugar factory or fertilizer production? EXP OR NATURE OF USE

.76 340 gpm $18.4 + .6 = 19$ AFA

remainder of this water use forfeited
1949-2007

WELL #2 PRIMARY WELL TODAY
20 HP 340 GPM @ 170 TDH

WELL #1 PRIMARY WELL IN 1987 (Now # Backup)

inside well =
outside well =
Pod Detention

space 425 gpm outside well

1984 75 HP removed from #2 (outside)
— fire suppression

30,000 gal in 90 min

60 psi on pump lift?

54' 46' 45' 53' 61' 105' $\bar{x} = 61'$
nearby wells SWL

THEORETICAL PUMP FLOW CALCULATIONS

Formula:

$$Q_{cfs} = [(Hp) (8.814) (Eff)] \div [Lift + (psi \times 2.308)]$$

Hp = Horsepower = 20 + 5

Eff = Efficiency = 70% (Usually 70%)

Lift: (Static Water Level + Assumed Draw down)

Static Water Level = 61 ft.

Assumed Draw down = + ft.

Lift =

*estimate based
on nearby wells*

OR

Measured Dynamic Water Level = ft.

psi = Operating Pressure = 60 psi *observed*

$$Q_{cfs} = \left[\frac{25}{Hp} \times 8.814 \times \frac{0.7}{Eff} \right] \div \left[\frac{61}{Lift} + \left(\frac{60}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = [\text{ }] \div [\text{ }]$$

$$Q_{cfs} = \underline{0.77} \text{ cfs}$$

30,000 gal tank fills in ~ 90 minutes = 0.74 cfs

McGRANE AFFIDAVIT SAID 340 GPM = 0.76 cfs

PERMIT NO.

27-12180

Field exam 4/21/2010 notes:

Met with Dale, Rich, and Kirk Kirkham, and their attorney, Rob Harris on the property claimed as the place of use. The claimants confirmed the extent of the POU, saying that the map included with permit application 27-7510 was accurate.

I gathered gps locations for the claimed wells and took photos.

The Kirkhams discussed the history of the use of the wells as they could, but seemed to have difficulty recalling exactly how the water was used between the time they purchased the property in 1984 and the time that proof of beneficial use was filed for permit 27-7510 in July 1992. I believe that this may have been difficult for them because, while they were the owners of the property, they were not the operators of the water system. They leased the property to a fertilizer company, so the employees involved in the operations at the facility would probably be better qualified to provide data to support the claimed water uses. Therefore I suggested that once they got their facts straight, they file an affidavit explaining the use of water between the time they purchased the property and July 1992.

There have been some changes to the water system since the factory was purchased by the Kirkhams. The current water use for the fertilizer operation is via a 20 HP submersible pump in the "outside well." (The outside well is now housed inside a shed with some pressure tanks). At the time of the field exam, the pressure on the pump was 60 psi. The water is pumped to a 30,000 gallon tank for use in the process. Kirk indicated that it takes about 90 minutes to fill the tank, according to the operator.

The Kirkhams said that when the factory was purchased in 1984, there was a 75 HP pump in place on the "outside well." They said it was hooked up for the purpose of fire protection. When asked about the use of the outside well after 1984, Kirk said that the current system (a 20 HP pressurized system) has been in place and used since 1985. After discovering the theoretical capacity of the pump, he said that the well was pumped open discharge to water tanks for use.

The pump that was sitting on the "inside well" is no longer there and it is no longer inside. The file for permit 27-7510 shows a 5 HP pump, but Kirk said he thought it was a 15 HP pump. Unfortunately, that pump and the 75 HP pump was recently sold for scrap.

There are some apparent inconsistencies between the testimony of the claimants and files 27-7510 and 27-12180, primarily in regards to historic diversion rate. Additional data is needed in order to determine rate.







Claim No(s). 27-12180

Claim No(s). 27-12180

[illegible]



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

July 2, 2009

ROBERT L HARRIS
PO BOX 50130
IDAHO FALLS ID 83405-0130

RE: Snake River Basin Adjudication (SRBA)
Notice of Claim to a Water Right #27-12180
Your Client: Gemco Limited Partnership

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. I have enclosed receipt #C088909 for the fees your firm paid. Please retain the receipt for your records.

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

Enclosure:

Receipt Referenced Above

SCANNED

JUL - 1 2009

50
300
LATE 52.5
402.5

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 27-12180

Date Received: 7/1/2008

Receipt No:

Received By:

CO 88909

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

GEMCO LIMITED PARTNERSHIP Phone: 208-232-6886

PO BOX 4026
POCATELLO ID USA 83201

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

AUG - 6 2008

By _____ Clerk
_____ Clerk

2. Date of Priority: 03/12/1903

3. Source: GROUND WATER , GROUND WATER Trib. to: ,

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
02S	35E	35	NE SW	BINGHAM	
02S	35E	35	NE SW	BINGHAM	

5. Description of diverting works:

two wells/pump to sugar factory

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
INDUSTRIAL	01/01	12/31	3	
COMMERCIAL	01/01	12/31	0.04	

7. Total Quantity Appropriated is:
3 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
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02S

35E 35

NE
NE

SW
SW

INDUSTRIAL
COMMERCIAL

11. Place of use in counties: BINGHAM

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

13. Other Water Rights Used:

14. Remarks:

commercial use is for a office in a sugar factory.
industrial use is for a sugar factory

15. Basis of Claim: Beneficial Use

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 RICHARD D. KIRKHAM of
Title
GEMCO LIMITED PARTNERSHIP, that I have signed the foregoing
Organization
document in the space below as PARTNER / AUTHORIZED AGENT of
Title
GEMCO LIMITED PARTNERSHIP and that the statements contained in the
Organization
foregoing document are true and correct. Richard D Kirkham
Signature of Authorized Agent
PARTNER / AUTHORIZED AGENT
Title and Organization

July 1, 2008
Date

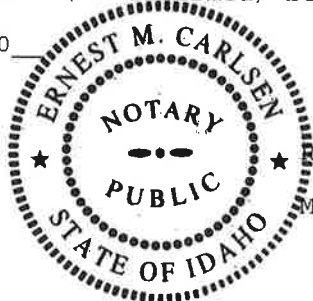
State of Idaho

County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this

of _____ 20

July 1, 2008
Ernest M. Carlsen



Notary Public

Residing at Idaho Falls ID

My commission Expires 8-14-2009

DOCUMENTAION ON CLAIM OF WATER RIGHT

July 1, 2008

HISTORY OF FACTS

Gemco Limited Partnership is the owner of Real Property in Blackfoot, Bingham County, Idaho, legally described in Exhibit 1, and hereinafter referred to as the "Property" and claims a historic right to ground water at that location.

Gemco Limited Partnership is currently in possession of a Permit to Appropriate Water under Permit No. 27-07510. In filing for this permit, which was granted March 26, 1990, the partners erroneously believed that they were establishing their claim to a water right.

Gemco Limited Partnership discovered this error when they filed an application for a transfer of the water right from the Department of Water Resources on June 3, 2008.

Gemco Limited Partnership now desires to file a Late Adjudication Claim in order to establish their water right claim and to further establish the correct priority date for that water as March 12, 1903.

Gemco Limited Partnership provides the following evidence, arguments, and proofs of their claim as herein set forth and attested to herein by the Partners.

EVIDENCE

HISTORICAL EVIDENCE INDICATES THAT SIGNIFICANT GROUND-WATER USAGE AT THE PROPERTY DATES BACK TO 1903.

Historically the Property was the site of a significant beet sugar factory built in 1903 & 1904. The original owner of the plant was the Snake River Sugar Company, Ltd. Construction of the plant was completed in November 1904.¹ The plant was 240 feet long, 65 feet wide, and 60 feet high.² Constructed by the Kilby Manufacturing Company, the plant had an original capacity of 600 tons of beets per day.³ The plant capacity was increased in 1911 to 800 tons per day.⁴ In terms of water usage, this is a particularly significant fact since the ratio of water needed to produce a pound of sugar is a minimum of 1.14 gallons per pound of sugar produced.⁵ Thus a factory rated for 600 tons of production per day would need a water source capable of producing a minimum of 1,368,000 gallons of water per 24-hour period.⁶ This equals 950 gallons of water per minute or the equivalent of 2.1166 CFS.⁷ No viable factory rated for such production would ever be built without first proving the water resource that is so fundamental to its success therefore a water source equal to or exceeding 3 CFS is a reasonable conclusion.

Sugar beet factories of the early 1900s were water intensive operations. For example, the factory in Lehi, Utah, constructed in 1891 and 1892 was a 300-ton per day factory. That is exactly one half the capacity of the Blackfoot factory. The Lehi plant was served by eight wells that ranged from 65 to 135 feet deep and had a collective capacity of 500 gallons of water per minute.⁸ A reliable, high volume water source is simply paramount for the success of sugar plant technology of that era.⁹

The water for a beet sugar factory had to be pure water since it was used to process food-grade sugar that was sold throughout the world. Pure water, such as can only be extracted from high-quality wells, is essential in the production process. A brief description of the process bears out this fact. Beets are first conveyed from sheds through a flume that flowed in a current of warm water. From the flume the beets are carried to a washer in the factory then raised by a 16-foot "beet wheel" to a cutter. The cutter slices the beets into "cossettes" or strips that look something like French fries. The slices are then dropped into large wrought-iron diffusers each with a capacity of two and one half tons. Here they are cooked for the extraction of their sugar. This process was done in hot water where the sugar was soaked out of the cossettes. The cooking of the strips was a continuous process of filling the cells with pure soft water that was extracted from the wells at the plant and continued until the sugar was exhausted from the pulp.¹⁰

In addition to the creation of the "thin juice" from which sugar is made by combining pulp and water, there are other related processes occurring in the plant that also use significant amounts of water. For example, water is needed for washing, producing steam, fluming (transporting beets via water), preparing the cossettes or beet strips, and many other sundry processes requiring water.¹¹ No sugar factory would ever be built without first determining that ample supplies of water are available. Additionally the water supply must be available in the drier months of the year since sugar is produced immediately following harvest in the fall of the year. Processing must be done while the sugar in the beet is prime, thus processing began at the first harvest and continued around the clock until all the beets were processed.

The Blackfoot Property was acquired by the Idaho Sugar Company from rival Snake River Valley Sugar Company, which dissolved in January 1908.¹² The Idaho Sugar Company eventually merged with the Utah Sugar Company and formed the Utah-Idaho Sugar Company who continued to operate the Blackfoot plant and maintained a fire protection system connected to the wells that served the property until the property was sold to the current owners in 1984.

PRODUCTION RECORDS PROVE WATER

According to Leonard Arrington's definitive history of beet sugar production published in 1966, the Blackfoot Sugar Plant processed an estimated 50,000 tons of beets for the 1905 season.¹³ The water required to produce that tonnage that year would have been approximately 114,000,000 gallons.¹⁴ Assuming a 90-day production run for beets that year, the water requirement for 1905 would have been 880 gallons per minute¹⁵.

Production records in later years indicate that the plant capacity only increased with time.

In 1920, the upgraded plant processed 800 tons of sugar beets per day according to Burnham's Manual of Mid-Western Securities.¹⁶ Other sources, including The History Of Bingham County, also indicate that production continued to increase with the years. The Bingham History features a section in its pages on the Blackfoot Sugar Factory and captions a 1930s era photograph of the plant with the following sentence, "U&I Sugar Company – 1400 tons per day"¹⁷. Increased production required and ever expanding dependency on a reliable and voluminous water source such as the Blackfoot Sugar Plant was fortunate enough to have secured in 1903.

where we are through the loyalty of the local grocers and the people of Blackfoot." (Employed 15 people)

After the death of the founder, C. P. Smith and son Lowell, the business was sold in 1955 to Benjamin F. Teagarden. Frank and Ralph still reside in Blackfoot. Frank recently told his daughter, Lorraine, that if he had his life to live over, he would still go into the bakery business.

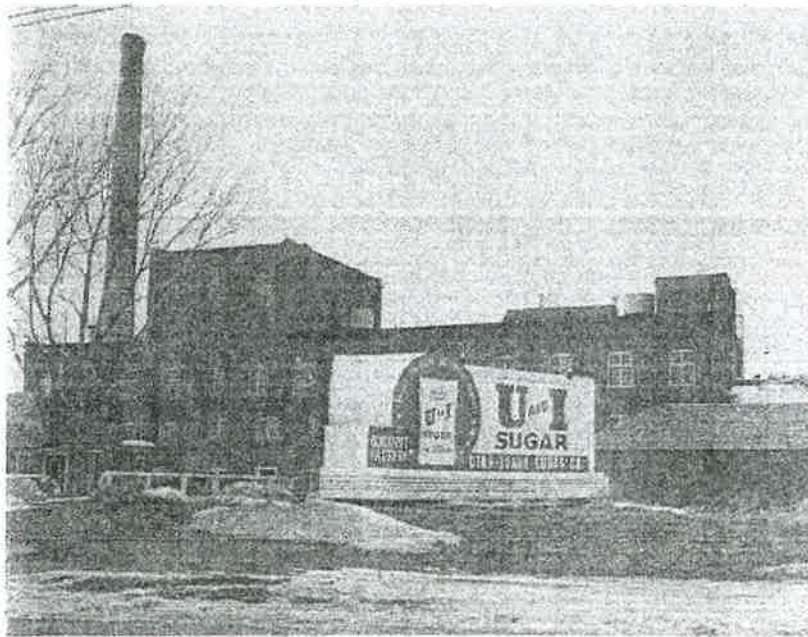
Frank Smith died May 20, 1983.

SUGAR FACTORY

The Blackfoot Sugar Factory was used in France before it was purchased and shipped to Blackfoot. The

factory, Groveland grew the first beets in the Snake River Valley.

Gottfred Malm related that when the smokestack was built and finished that men working at the top of the stack came down bringing all the equipment with them. These men weren't aware that one man was left up at the top inside the stack. This man was left without equipment to descend, so he removed his homemade knit wool socks, unraveled them, tied the yarn together, lowered one end to the ground where a rope was tied to the yarn which the stranded man pulled up the stack. He secured the rope at the top and lowered himself to the ground.



U & I Sugar Factory – capacity 1400 tons per day

sugar factory construction began in 1904 but was not finished and was sold to Idaho Sugar Company in 1905. Several companies merged into the Utah-Idaho Sugar Company.

The Sugar industry had just started. Beets were loosened in the ground by a blade that was pulled along the side of each row. Next they were pulled and topped by hand with a beet knife and put in piles, then loaded by hand into a wagon pulled by horses and hauled to the beet dumps or receiving stations and then on to the factory.

John "Jack" Peterson made a hydraulic press so he could bend the iron to make the bands for the sugar factory smokestack which had started to crack, no big cracks, but they figured it might fall down, so the bands were put on to hold it together. He tells about the brick layer of the "stack" doing a hand stand on the corner when he finished. The smokestack stood 75 years before it gave way to elements and use, finally crashing to the ground. It was 210 feet.

Joe Jelle, a bricklayer and his partner were involved

ORIGINAL WELLS AND PUMPS PROVIDE FURTHER EVIDENCE FOR CLAIM

In all likelihood, the original pumps used at the sugar factory were steam driven pumps since steam was the standard water-pump technology at the turn of the century. While those first motors and pumps are long gone, some interesting pumping relics still remain as evidence of the tremendous amount of water that was extracted at the Blackfoot Plant.

In 1984, Dale Kirkham removed the vertical turbine pump and motor from Well #2 that lifted water 90 feet to the surface for production use. The motor that was mounted on the pump is rated at 75 horsepower¹⁸. The pump itself was removed from the motor and eventually sold as scrap, but the Fairbanks Morse electric motor that drove the pump is still in possession of the Owner. This older electric motor, likely dating back to the 1940s, indicates the pumping capacity of the Well #2. According to Tana Root of Layne Pump Corporation, a 75 hp motor with no pressure is capable of delivering up to 2600 gallons of water per minute.¹⁹ This illustrates the tremendous potential of the well and the water source.



In addition to the Well #2, there is another active well on the property. Well #1 is also a high capacity well that served as the primary water source for many years for the fertilizer plant that has occupied the property since 1984. Additionally, Dale Kirkham recollects still a 3rd well located approximately 70' north of Well #2 that was

decommissioned when a portion of the building collapsed on the well during demolition in 1984. These wells were all original to the sugar factory and as far as can be ascertained all the wells on the Property date back to the time of the sugar plant's construction in 1903.

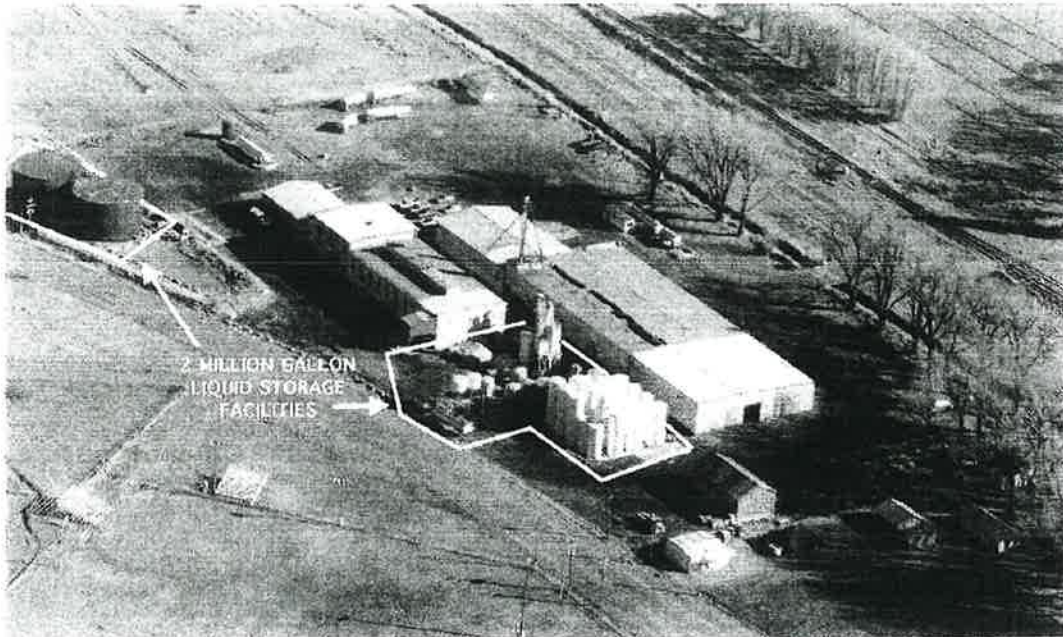
WATER USED FOR THE PRODUCTION OF LIQUID FERTILIZER.

On February 14, 1984 the UI Group (Formerly the Utah Idaho Sugar Company) sold the plant to Dale and Bodell Kirkham. Later the couple became the General Partners of Gemco Limited Partnership, the current owner of record, and transferred the Property into the partnership²¹. At the time of acquisition in 1984 Kirkham recognized the water as a major asset of the property. He realized that the water would make it possible to attract another manufacturer to the property who could rely on the resource and use the it to great advantage.

This proved to be precisely the case. Immediately after the acquisition, much of the plant was dismantled and sold as scrap and the buildings were converted to warehouse storage for fertilizer products²¹. Within weeks of the Kirkhams taking possession on the Property, negotiations began with the fertilizer producer and distributor Pacifex, a subsidiary of ConAgra Inc. Eight months after the purchase the parties entered into a formal lease agreement that was signed September 19, 1984.²² The Blackfoot Morning News writing about the company reported that Pacifex had "moved its plant from Power County west of Pocatello to the Blackfoot location after the firm's Owner became convinced that Blackfoot would be a better location for the business because it was more centrally located to southeastern Idaho's largest farming area."²³ The article specifically mentions a "deep well on the property" and goes on to say that "Pacifex buys raw product from most of the major fertilizer manufacturers and turns it into liquid for sale to fertilizer dealers."²⁴

Pacifex began converting dry fertilizer is converted into liquid fertilizer immediately after setting up their operations by combining raw materials in a manufacturing process with water extracted from the wells on the property. In the process heat is combined with the raw materials to suspend them in solution.

Pat McGrane, Operations Manger for UAP, (Formerly Pacifex) has worked at the Blackfoot fertilizer plant since February 10, 1986. On July 1, 2008, Mr. McGrane signed an affidavit attesting to his first hand knowledge of two of the wells on the Property that have been used by the fertilizer company to produce liquid fertilizer since the plant went into production in 1984 wherein the operation was required to extract tremendous amounts of water to be held on premises in one of the several million gallon storage tanks now located on the property (See Exhibit 3, "Affidavit #1").



THE CURRENT WELL PUMP PRODUCES 340 GALLONS OF WATER PER MINUTE

Today the UAP Fertilizer Company, the current tenant, occupies the former Sugar Factory property and buildings. UAP uses two of the original wells that were drilled in the early 1900s by the sugar factory for its main production of liquid fertilizer. The primary water source for operations today comes from Well #2. Well #1 is kept as a backup water source and served as the primary water source for the fertilizer company for many years. It is believed that other wells also existed on property prior to UAP's occupancy in 1984.²⁵

According to McGrane, the casing of Well #2 is 12 inches in circumference and has a depth of 120'. The fertilizer plant currently extracts water from Well #2 through a 6" draw pipe that extends down into the well. The draw pipe is attached to a 20 horsepower pump that sits at a depth of 90 feet. This pump is capable of producing 340 gallons per minute @ 170 TDH.²⁶ Well #2 produces more than enough water to meet the needs of the fertilizer company's current annual production, which is estimated at more than 6,000,000 gallons of water per year.²⁷ The fact that the well has the capacity to produce this proven volume of water over 100 years after it was drilled helps to validate the property owners claim and the well's potential to the minimum limits of the current pump now in place.

THE OWNERS BELIEVED THAT THEIR 1990 FILING WITH THE DEPARTMENT OF WATER RESOURCES WAS FOR A WATER CLAIM

In the early 1990s issues surrounding ground-water rights came to the attention of the Owner. The Owner asked personnel at the Department of Water Resources what they needed to do to protect their water claims on various properties in South East Idaho that they own that have wells serving the property. The guidance that was given at the time was that it was necessary for the owner to register all water diversions in Idaho with the Department of Water Resources. The Owners believed at that time that the paper work they filed met the requirements to establish their various claims. (See application for permit - Exhibit 4). Altogether the owner filed paperwork on 14 diversions in Southeast Idaho, including the Blackfoot Property. About this same time owners Kirk and Dale Kirkham had a meeting in the Idaho Falls with Craig L. Saxton of the department of Water Resources. Mr. Saxton helped the them fill out all the forms required by the Department, and the required fees were paid.

The following is a brief description of the various communications that have taken place between the Owner and the Department of Water Resources since 1990:

1. Records in the Owner's possession show that On March 26, 1990, an Application for Permit was filed (see Exhibit 4). The Application was acknowledged in a letter from the DWR (See Exhibit 5) and the process of advertising began. No protests to the application came forward so on July 9, 1990 a Permit to Appropriate Water was issued for the Property (See Exhibit 6).
2. On May 31, 1992 the DWR sent the Owner a letter under the heading "PROOF DUE NOTICE" together with a form for the Owner to fill out and return entitled "PROOF OF BENEFICIAL USE". This form was filed and signed by Kirk Kirkham on June 15, 1992, on which he referenced in that the well was drilled in 1903 and that the use being applied for was for commercial purposes. A fee of \$175 was returned with the form (See Exhibit 7).
3. On July 8, 1992 the DWR acknowledged the receipt of the form and the fee (See Exhibit 8). On July 11, 1990 the DWR sent a "PERMIT APPROVAL NOTICE" to the Owner from the Statehouse in Boise (See Exhibit 9). On July 13, 1992 the Owner also received another letter from the DWR in Boise entitled "PROOF ACKNOWLEDGEMENT LETTER" wherein the Owner was notified that the next step in the process for developing the water right was for the department "to conduct a field examination to determine and confirm the use being made of the water." (Exhibit 10)
4. Although the paper trail in the Owner's possession ends at this point, Kirk Kirkham remembers that the field examination of Blackfoot and other properties did take place. Mr. Kirkham's recollection is that following the examinations in 2001 the DWR asked the Owner to submit historical proof of beneficial use such as a well driller's log. The Owner searched through all the historical records available at that time but could not provide a well driller's log as requested by the field examiner and it wasn't learned until April of 2008 that driller's logs were not kept in 1903 and therefore it would be impossible to provide such historical

documentation²⁸. In response to that request on June 11, 2001 the Owner submitted historical affidavits and claims for several diversions including the Blackfoot Property. The result was that some diversions received the requested priority dates while others were denied, including Blackfoot. The following is a summary regarding the 14 applications filed that year: 9 have a partial decree, 1 has a license, and Blackfoot remains still in the permit stage.

5. On June 1, 2008 Rich Kirkham applied with the DWR for a transfer of the water right to change the nature of the use from "Commercial" to "Industrial." The Application was denied on June 3, 2008 because "Water right 27-07510 is still in the permit stage" and that they "cannot process a transfer on a permit. This is only allowed if the water right is either a license or decree." (Exhibit 11)
6. On June 3, 2008, Rich placed a phone call to Gene Hanson of the Department of Water resources seeking assistance and clarification about the options for the Blackfoot water situation. Gene advised us to bring our historical evidence to his office and file a Late Ajudication Claim.
7. On July 1, 2008 Rich Kirkham, Kirk Kirkham, and Dale Kirkham met with Dave Carlsen at his office at the Department of Water Resources. Dave reviewed this case material and assisted us in preparing a motion to file a late notice of claim, case 39576, subcase 27-12180.

PETITION

THEREFORE, given the above stated evidence and claims, the Owner respectfully requests that the Court recognize this water claim and ask that the court decree the same and/or grant the appropriate a licenses for 3.0 CFS water right with a priority date of 1903.

Signed Dale B Kirkham
Dale B. Kirkham
General Partner
Gemco Limited Partnership

Signed _____
Richard D. Kirkham
Partner
Gemco Limited Partnership

Signed _____
Dale B. Kirkham, Jr.
Partner
Gemco Limited Partnership

END NOTES & DOCUMENTATION

¹ See "Minutes of Meetings of Snake River Valley Sugar Company, Limited, March 30, 1904 to January 24, 1908," MSS, Utah-Idaho Sugar Company Archives and "Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

² Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

³ Ibid, p. 66

⁴ Ibid, Appendix B, p. 185-186, also see Exhibit 15.

⁵ Based on formulas provided in Technology of Beet Sugar Manufacture: A Textbook Describing the Theory and Practice of the Process of Manufacture of Beet Sugar, p.11, Great Western Sugar Company, First Edition, Denver 1920, see on-line edition at: http://books.google.com/books?id=w3JBAAAAIAAJ&pg=PA157&lpg=PA157&dq=ratio+water+to+manufacture+sugar&source=web&ots=-eM6NyGETO&sig=Z-ydMFuejrmMlyda3dA4K7Pnt_s&hl=en&sa=X&oi=book_result&resnum=4&ct=result#PPP11,M1 Also see Exhibit 2.

⁶ The following formula is used to make this calculation: 600 tons = 1,200,000 pounds. At a ratio of 1.14 gallons to 1 pound of sugar (See Endnote 4) the approximate amount water needed to process 1.2 million pounds of beets is 1,368,000 gallons.

⁷ See CFS Conversion Calculator hosted by Western-Water at http://www.western-water.com/GPM_formulas.htm

⁸ See "Minutes of Meetings of Snake River Valley Sugar Company, Limited, March 30, 1904 to January 24, 1908", p. 10, 28-29

⁹ Early factory operations are described in *Salt Lake Tribune*, October 8, 1891; *Scientific American*, LXV (December 5, 1891; and Webb MSS, passim).

¹⁰ Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966, by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

¹¹ See processes described in Technology of Beet Sugar Manufacture: A Textbook Describing the Theory and Practice of the Process of Manufacture of Beet Sugar

¹² See "Razing rekindles sweet memories" by Emily Hone, Post-Register, circa 1984

¹³ Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

¹³ Ibid, p. 66-67.

¹⁴ Using the formula of 1.14 gallons of water per pound of sugar, 50,000 tons of production would require 114,000,000

¹⁵ $114,000,000 / 90 \text{ days} = 1,266,666 \text{ gallons per day} / 24 = 52,777 \text{ gallons per hour} / 60 \text{ minutes} = 880 \text{ gallons per minute}$.

¹⁶ Burnham's Manual of Mid-Western Securities, copyright and published in 1921 by John Burnham & Company Inc., 41 South La Salle Street, Chicago, p. 520-521. This reference sites the tonnage produced by all U&I plants that year including the Blackfoot Plant.s

¹⁷ History of Bingham County, p.120

¹⁸ The Fairbanks-Morse Pump removed from Well #2 is still in the possession of the owners and they have submitted photos of the unit (see Exhibit 14). The identification plate of the unit bears the following information: 75 HP, 440/220 volts, 3-phase,

Type:QSZV, Frame:GH505V, No:425.046, Delta Connection, 1470 RPM@ 50 Cycles, 1760 RPM @ ? Cycles. The unit is described as being approximately 3' in height and 2.5' in diameter.

¹⁹ See Exhibit 16, copy of email from Layne Pump Co., indicating the mathematical potential for a 75 hp motor when mounted to a vertical turbine pump.

²⁰ At that time Dale and Bodell Kirkham were also the majority stockholders for Dale's Auto Supply Co., Inc.

²¹ See "Pocatello businessman buys sugar factory", by Dan Myers of The News, The Morning News, Blackfoot, Idaho, February 23, 1984.

²² See "Lease Agreement" dated September 19, 1984, Gemco Limited Partnership Archives.

²³ See "Blackfoot landmark revived", by Emily Hone, The Post-Register, Idaho Falls, Idaho, Sunday, March 8, 1987.

²⁴ Ibid

²⁵ Dale Kirkham recalls at least one other well located approximately 70' north of Well #2 that was decommissioned when a portion of the building collapsed on the well during demolition in 1984.

²⁶ See pump data sheet. TDH is a pressure designation meaning Top Dead Head.

²⁷ According to McGrane, one of the products manufactured at the plant is called "1034." In 2007 the company produced 17,000 tons of this product, which required 1.5 million gallons of water. McGrane says this one product represents about 25% to 30% of the company's total products that use water as a main ingredient in 2007.

²⁸ Bob Cushman of Cushman Well Drilling informed Kirk Kirkham in a phone conversation in April 2008 that such well drilling records were neither kept nor required in 1903.

EXHIBIT 1
LEGAL DESCRIPTION

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA
STANDARD COVERAGE POLICY

3-9127

SCHEDULE A

AMOUNT

EFFECTIVE DATE

March 14, 1984

at 2:17 p.m.

INSURED

DALE B. KIRKHAM and BODELL S. KIRKHAM

1. The title to the fee simple estate or interest in the land described below is at the date hereof vested in:
DALE B. KIRKHAM and BODELL S. KIRKHAM, as husband and wife
2. The land referred to in this policy is described as follows:

A portion of the $\frac{1}{4}$ of Section 35, Township 2 South, Range 35, East of the Boise Meridian, Blingham County, Idaho, described as:

Beginning at a point on the North and South center line of Section 35, Township 2 South, Range 35, E.B.M., which point is 3353 feet North and 2618.45 feet East of the SW corner of said Section 35, thence S $61^{\circ}41'$ W 430.5 feet; thence N $37^{\circ}14'$ W 180.3 feet; thence S $86^{\circ}13'$ W 82 feet; thence S $48^{\circ}27'$ W 472.87 feet; thence N $57^{\circ}54'$ W 87.4 feet; thence S $40^{\circ}11'$ W 475.4 feet; thence S $59^{\circ}35'$ W 260.7 feet; thence S $32^{\circ}21'$ W 159.3 feet; thence S $19^{\circ}12'$ E 249.5 feet; thence S $31^{\circ}45'$ W 183.5 feet; thence N $58^{\circ}15'$ W 73.5 feet; thence S $31^{\circ}45'$ W 156.6 feet; thence S $58^{\circ}15'$ E 73.5 feet; thence S $31^{\circ}45'$ W 139.6 feet; thence S $1^{\circ}35'$ W 392.5 feet; to a point said point being a corner post situate 1 foot South of a point designated by a concrete boundary marker, said marker being 1353.09 feet North and 822.68 feet East of the SW corner of said Section 35, thence East to the NW boundary line of Yellowstone Highway; thence Northeasterly along the West line of said highway approximately 2500 feet more or less to the point of Beginning.

EXCEPTING THEREFROM THE FOLLOWING PARCELS:

PARCEL 1:

Beginning at a point situate 1395.58 feet North and 1074.83 feet East of the Southwest Corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N $51^{\circ}06'$ W 143.8 feet; thence S $38^{\circ}54'$ W 79 feet; thence S $11^{\circ}30'$ W 28.4 feet; thence S $41^{\circ}30'$ E 58.4 feet; thence S $89^{\circ}55'$ E 94.2 feet along a steel pipe post and woven wire fence; thence N $38^{\circ}54'$ E 55 feet along a woven wire fence to the point of beginning.

(continued on page 2)

AMERICAN LAND TITLE COMPANY, INC.

Countersigned:

Issued at:

Blackfoot, Idaho

Authorized Officer or Agent

Page 1 of Sched. A Pol No. 74-00-009848

WPA FORM JS-SCHEDULE A-1 (REVISED 1-75)
0350-074-2030(1)

ORIGINAL

STANDARD COVERAGE POLICY-1129

SCANNED
JUL - 1 2009

Lawyers Title Insurance Corporation

A Stock Company

Home Office - Richmond, Virginia

SCHEDULE A

PARCEL II:

Beginning at a point situate 1452.38 feet North and 1120.67 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 73 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 73 feet along a woven wire fence to the point of beginning.

PARCEL III:

Beginning at a point situate 1510.74 feet North and 1167.77 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 75 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 75 feet along a woven wire fence to the point of beginning.

PARCEL IV:

Beginning at a point situate 1588.56 feet North and 1230.57 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 100.0 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 100.0 feet along a woven wire fence to point of beginning.

PARCEL V:

Beginning at a point situate 1667.93 feet North and 1294.62 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 102 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 102 feet along a woven wire fence to point of beginning.

PARCEL VI:

Beginning at a point 1354.09 feet North and 822.6 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M., Bingham County, Idaho, and running thence N 1°35' E 392.5 feet; thence N 31°45' E 479.7 feet; thence N 20°09' E 514.8 feet; thence N 59°35' E 49.2 feet; thence N 40°11' E 30 feet; thence Southeasterly along a 30 foot radius curve to a point S 10°50' E 34.4 feet from the previous course; thence S 20°09' W 557.9 feet; thence S 31°45' W 464.1 feet; thence S 1°35' W 179 feet; thence S 09°07' E 128 feet to a steel corner post; thence S 11°30' W 28.4 feet; thence S 41°30' E 58.4 feet; thence S 89°55' E 30.0 feet; thence S 81°47' E 104 feet to the Intersection of the West line of State Highway 91-191 and the North line of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 35, thence S 38°54' W along the West line of said state highway 88 feet; thence N 58°38' W 155 feet; thence N 88°39' W 65.5 feet to the point of beginning.

PARCEL VII:

Beginning at a point 1 foot South of a concrete boundary marker which is situated 1354.09 feet North and 822.6 feet East of the Southwest corner of said Section 35, thence N 1°35' E along a wire fence 76.0 feet; thence S 39°41' E 99.9 feet; thence N 89°39' W along a steel post and woven wire fence 65.5 feet to the point of beginning.

A

2

009848

Schedule.....Page.....No.

036-B-499-0000

ORIGINAL

Form 195A

SCANNED

JUL - 7 2009

EXHIBIT 2

Technology of Beet Sugar Manufacture: A Textbook Describing



SECTION B

Dry Substance and Brix.—In section A of this chapter "Per Cent Dry Substance" was defined as the "Percentage of solid matter in a solution", and it was stated that the "Brix" of a pure sugar solution was the same as the "Per Cent Dry Substance", while when dealing with impure sugar solutions the "Brix" represented only the approximate "Per Cent Dry Substance".

The determination of the "Brix" of a solution is very simple and is made by immersing a *Brix Hydrometer in the solution to be tested and reading off the "Brix" at that point where the surface of the liquid comes in contact with the scale of the hydrometer. (Note—The solution being tested must be of the temperature for which the hydrometer was standardized or a temperature correction applied.) On the other hand, the determination of the "Per Cent Dry Substance" is a rather slow and complicated matter and "Brix" instead of "Per Cent Dry Substance" is used for all practical control and for a good many calculations.

An understanding of the meaning of "Dry Substance" or "Brix" permits the making of many technical calculations regarding the quantity of water needed to be evaporated in order to raise a solution from one density to another, regarding how much juice a pump on any service must handle, etc., etc. As an example:

How much water must be evaporated from 10,000 pounds of thin juice at 12° Brix to raise it to a thick juice at 65° Brix?

In concentrating a juice from one density to another only water is evaporated and there is the same quantity of dry substance in the thick juice as was originally present in the thin juice.

Thus, the 10,000 pounds of thin juice at 12° Brix contains $10,000 \times \frac{12}{100} = 1200$ pounds of dry substance, and there must be contained in the thick juice at 65° Brix the same quantity of dry substance as in the thin juice, or 1200 pounds of dry substance, and since it is 65° Brix the weight of the thick juice must be $1200 \times \frac{100}{65} = 1846$ pounds, and the water evaporated is, 10,000 pounds (weight of thin juice) minus 1846 (weight of thick juice) = 8154 pounds.

*A Brix hydrometer is scaled to indicate the percentage of sugar in a pure sugar solution. It derives its name from one of the early investigators who determined the specific gravity values of sugar solutions on which the scale is based.

SCANNED

JUL - 1 2009

EXHIBIT 3

AFFIDAVIT

I, Pat McGrane, do hereby affirm and attest the following facts:

1. I have personal knowledge of at least two historic wells located at 1701 N. West Main, Blackfoot, Idaho, the current site of my employer, UAP, and the former location of the Blackfoot Sugar Factory.
2. I have been employed at this location since February 10, 1986.
3. I have personally been involved with or have been responsible for the production and storage of liquid fertilizer produced at this location during my time of employment, the water for which was extracted from the wells on the property.
4. I have personally been involved with or have been responsible for the maintenance and operations of the wells during my time of employment.
5. I have personal knowledge that one of these wells (referred to as Well #2) has the following characteristics:
 - a. The well casing of Well #2 is 12" in circumference
 - b. The well has a depth of 120'.
 - c. The fertilizer plant currently extracts water from Well #2 through a 6" draw pipe that drops down into the well casing.
 - d. The draw pipe is attached to a 50 horsepower pump that sits at a depth of 90 feet.
 - e. This pump is capable of producing 340 gallons of water per minute @ 170 GDH.
 - f. Well #2 produces more than enough water to meet the needs of the fertilizer company's current annual production, which in 2007 is estimated at 6,000,000 gallons of water per year.

I do solemnly attest that these facts are true to the best of my knowledge, and I sign my name as witness to the same on this the 1 day of July, 2008.

Signed

Address:

Notary

On this the 1 day of July, 2008, before me personally appeared Pat McGrane, known to me (or satisfactorily proven) to be the person whose name is subscribed to this Affidavit and acknowledged that he executed the same.

In witness whereof I hereunto set my hand and official seal.

Kathy Kirkham

Kathy, Kirkham - Notary Public

KATHY KIRKHAM
NOTARY PUBLIC
STATE OF IDAHO

Commission expires: March 13, 2012. Notary Address is 2055 Garrett Way, Building 1, Suite 2, Pocatello, Idaho 83201

SCANNED

JUL - 1 2009

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

- Name of applicant Dale B. Kirkham or Dale B. Kirkham Jr. Phone 232-6886
Post office address P.O. Box 4026 Pocatello, Id. 83201
- Source of water supply GROUNDWATER which is a tributary of _____
- Location of point of diversion is _____ $\frac{1}{4}$ of NE $\frac{1}{4}$ of SW $\frac{1}{4}$ Govt. Lot _____
Sec. 35 Township 2 S Range 35 E B.M. Bingham County; additional
points of diversion if any: _____
- Water will be used for the following purposes:
Amount 3.0 for Commercial purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Total quantity to be appropriated is (a) 3.0 cubic feet per second and/or (b) _____ acre feet per annum
- Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Two wells one for offree use
Second well to storage tanks for mixing fertilizer
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is 16" inches; proposed depth of well is 510' feet.
d. Is ground water with a temperature of greater than 90°F being sought? No
- Time required for the completion of the works and application of the water to the proposed beneficial use is
5 years (minimum 1 year).

Post-It™ brand fax transmittal memo 7671 # of pages 4

To <u>Kirk Kirkham</u>	From <u>Jo</u>
Co. _____	Co. _____
Dept. _____	Phone # _____
Fax # _____	Fax # _____

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households. _____
- e. Other; describe fully. Commercial - office use

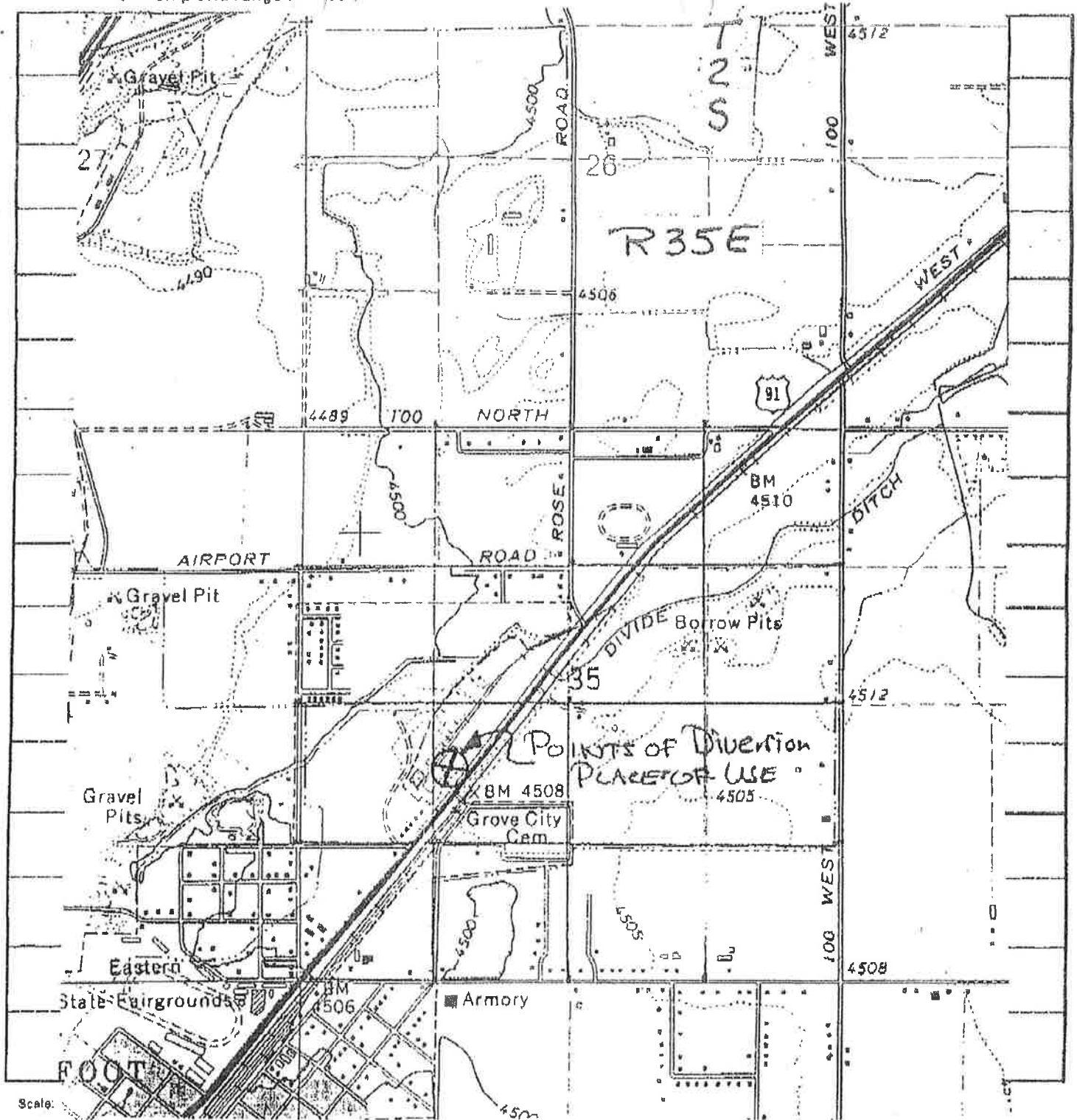
- Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Total number of acres to be irrigated

11. a. Who owns the property at the point of diversion? Applicant
 b. Who owns the land to be irrigated or place of use? "
 c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks:

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Dale B. Kuhn
(Applicant)

MAR-14-'97 THU 08:19 10:

TEL NO:

#252 P04

Assisted by *A. Kew*
Received by _____

Date *3/26/90* Time *1500hr*

Preliminary check by _____

SCANNED

APR - 1 2009

Assisted by Kew
 Received by _____ Date 3/26/90 Time 1500h Preliminary check by _____
 Fee \$ 85.00 Receipted by Kew # E012536 Date 26 Mar 1990
 Publication prepared by RB Date 5-17-24-90 Published in Morning News
 Publication approved Co Date 6-14-90

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 _____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

EXHIBIT 5



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

10-May-1990

Dale B. Kirkham

Pocatello, ID 83201

RE: Application for Permit No. 27-7510, 29-7939, 29-7941,
29-7942

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the Morning News on MAY 17 & 24, 1990. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

SCANNED

401 - 1-2009

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 27-07510

Proposed Priority: March 26, 1990 Maximum Diversion Rate: 3.00 CFS
This is to certify, that DALE B. KIRKHAM

DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO, ID 83201

has applied for a permit to appropriate water from: GROUNDWATER
and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
-----------------------	----------------------	--------------------------

COMMERCIAL	01/01 to 12/31	3.00 CFS
------------	----------------	----------

LOCATION OF POINT(S) OF DIVERSION: NESW Sec. 35, Township 02S, Range 35E
BINGHAM County

PLACE OF USE: COMMERCIAL

TWN RGE SEC

02S 35E 35 NESW

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1992.
2. Subject to all prior water rights.
3. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
4. The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
5. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
7. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.
8. Commercial use is for an office.

PAGE 2

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 27-07510

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this

9th day of July, 19 90.

for

A. Glen Saxton
R. Keith Higginson, Director

SCANNED

JUL - 1 2010



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNORR. KEITH HIGGINSON
DIRECTOR

May 31, 1992

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO ID 83201

PROOF DUE NOTICE

RE: PERMIT NO. 27-07510

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before August 1, 1992. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Karen L. Gustafson
Karen L. Gustafson
Secretary/Records Manager

Enclosures

25 35E Sec 35
comp. office
Blackfoot

SCANNED

JUL - 1 2009

EXHIBIT 7 H-1
check 55548

OFFICE USE ONLY
Amt. of Fee \$
Date
Receipt No.
Receipt by

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 27-07510 Telephone No. 237-6886
2. Name(s) of Permit Holder(s): Dale B. Kirtland on PB Kirtland
3. Mailing Address: Box 2000, Pocatello
4. Source of Water: groundwater

If GROUNDWATER, Well Driller's Name: _____ Date Drilled: 1903

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

Irrigation _____ (No. of acres) Other commercial

6. Total rate and/or volume for which proof is submitted 30 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? _____ Yes _____ No Installed? _____ Yes _____ No
OR

Flow Measurement Port: Required? _____ Yes _____ No Installed? _____ Yes _____ No

8. Fee Enclosed: \$ 125.00 (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

Pat McGarry 1-800-899-8511
Name Telephone No.

Sagan, Idaho - Blackfoot Idaho
Address

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

6-15-92 Dale B. Kirtland
Date Signature (and title, if on behalf of a company or organization)

SCANNED

JUL - 1 2009

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resource

Receipt No: _____

Date: _____
Time: _____

Received
From: _____

Type of Payment	Program A cct	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
	Total	_____

J. Lyarbrown

SCANNED

JUL - 1 2009



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 8, 1992

Dale B. Kirkham and Dale B. Kirkham Jr.
P.O. Box 4026
Pocatello, ID 83201

Re: Permit No. 27-07510

Dear Permit Holder:

The Department is in receipt of the proof of beneficial use and fee for the above referenced permit.

The license exam fee for 3.00 cfs is \$150. Since you submitted \$175, you are entitled to a \$25 refund. I have begun the process to refund the \$25 and it will arrive under separate cover.

I will continue to process the proof of beneficial use. If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

Karen L. Gustafson

Karen L. Gustafson
Secretary/Records Manager

C: Fiscal

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Statehouse
Boise, Idaho 83720
(208) 327-7900
July 11, 1990

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO, ID 83201

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 27-07510

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

You should be aware that the groundwater you propose to divert is located within a drainage basin where surface waters are regulated during the months of low flow. It is possible that diversion of groundwater may have an adverse impact on these surface water flows. Information available to us at this time does not warrant refusing to issue permits in your area, but we do caution that diversions of groundwater are not allowed to deplete flows available for surface water users with earlier priority dates. Siting your well as far from surface sources as possible and casing out upper water producing zones may reduce the potential of interference.

Section 42-235, Idaho Code, requires that a "drilling permit" must be obtained from the department for all wells constructed after July 1, 1987. A drilling permit is a separate permit that must be issued in addition to your permit to appropriate water. Commencement of well construction or diversion of water under your permit to appropriate water is prohibited unless a drilling permit is obtained.

Please note the requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you

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JUL - 1 1990

commence construction, no later than one year from the date the permit was approved.

We have enclosed a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

Sincerely,



GARY SPACKMAN, Supervisor
Water Right Permits Section

GS: SC
Enclosures

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JUL - 1 2009



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 13, 1992

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO ID 83201

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 27-07510

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls at (208) 525-7161.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Gustafson". The signature is written in dark ink and is positioned above the typed name.

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region

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JUL - 1 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

June 3, 2008

GEMCO LIMITED PARTNERSHIP
PO BOX 4026
POCATELLO, IDAHO 83205

RE: Application for Transfer

Dear Applicant (s):

The Department of Water Resources has received your application for transfer. After preliminary review of the application, it has been determined that we are unable to process it at this time. We are returning your application and the filing fee. The reason for this action is described below.

-Water right 27-07510 is still in the permit stage and we can not process a transfer on a permit. This is only allowed if the water right is either a license or decree.

Please feel free to contact this office if you have any questions.

Sincerely,

Denise Kidman
Water Resource Agent

Enclosures

SCANNED

JUL - 1 2008



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 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

August 3, 2007

DALE B KIRKHAM, DALE B KIRKHAM JR
PO BOX 4026
POCATELLO ID 83201

Re: Notice Regarding Participation in a Ground Water District as a Nonmember for Mitigation Purposes Only, Surface Water Coalition Delivery Call, Water District Nos. 34, 110, 120, and 130.

Affected Right No(s): 27-7510

Dear Water Right Holder:

This letter provides notice pursuant to 2006 Idaho Session Laws 1089 that you may need to join a ground water district solely for mitigation purposes to ensure that the above referenced ground water rights are included in a 2007 mitigation or replacement water plan (herein referred to as mitigation plan) approved by the Idaho Department of Water Resources (Department).

Recipients of this notice have fifteen (15) days to petition to join a ground water district for mitigation of the above referenced ground water right(s) or provide evidence that the right(s) is included in one of several Department accepted mitigation plans provided by the Idaho Ground Water Appropriators (IGWA) and its member ground water districts, the Idaho Dairy Association (IDA), or the Water Mitigation Coalition (WMC). Petitions to join a ground water district should be filed with the ground water district located nearest the lands to which your right(s) is appurtenant.

A warning letter was sent to you on May 10, 2007 notifying you that the right(s) identified above would likely be curtailed in 2007 as a result of the delivery call made by members of the Surface Water Coalition, comprised of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. Fortunately, curtailment of junior ground water rights was avoided this year as a result of the mitigation plans provided by IGWA, IDA and WMC. Your water right(s) may not be covered by one of these mitigation plans.

The above referenced right(s) may not currently be included in a ground water district because it is either located outside the boundaries of a ground water district or is used for non-irrigation purposes. Other recipients of this notice include members of the Jefferson-Clark Ground Water District and the Carey Valley Ground Water District, both organized in November, 2006. IGWA has advised the Department that these ground water districts are not yet IGWA members. These two ground water districts therefore are not covered by IGWA's 2007 mitigation plan. If you are a member of one of these ground water districts you will need to work with the district to assure that the above right(s) are included or covered by the IGWA mitigation plan.

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JUL - 1 2007

August 3, 2007

Page 2

The Director of the Department may take any appropriate action within his authority to assure that recipients of this letter and the right or rights identified herein are covered by an approved mitigation plan. If your right(s) identified in this notice have already been included in a ground water district for mitigation purposes or is included in another approved mitigation plan, then please contact the water district watermaster directly or have the ground water district or other mitigating entity contact the watermaster with verification regarding inclusion of your rights. Generally, a petition for annexation or inclusion of rights in the ground water district for mitigation purposes is acceptable.

Maps and contact information for ground water districts can be found on the IDWR website at: http://www.idwr.idaho.gov/water/districts/other_water_districts.htm. Information pertinent to all orders and correspondence concerning the Surface Water Coalition delivery call can be found on the IDWR website at: <http://www.idwr.idaho.gov/Calls/Surface%20Coalition%20Call/default.htm>. The delivery call was made under the Department's Rules for Conjunctive Management of Surface and Ground Water Sources (IDAPA 37.03.11). This notice has been sent pursuant to the Director's Order of May 2, 2005 issued in response to the Surface Water Coalition delivery call and Legislative House Bill No. 737, 2006 Idaho Session Laws 1089, adopted by the Idaho Legislature in 2006.

Sincerely,



David R. Tuthill, Jr.
Director

Copies:

- Idaho Ground Water Appropriators, Inc. -- Lynn Tominaga
- Aberdeen-American Falls Ground Water District
- Bingham Ground Water District
- Bonneville-Jefferson Ground Water District
- Magic Valley Ground Water District
- North Snake Ground Water District
- Jefferson-Clark Ground Water District
- Carey Valley Ground Water District
- Randall C. Budge -- Racine Olson Chartered
- Michael C. Creamer -- Givens Pursley LLP
- John K. Simpson -- Barker Rosholt & Simpson, LLP
- Josephine Beeman -- Beeman & Associates
- Lyle Swank -- IDWR Eastern Region and Water District No. 110
- Allen Merritt -- IDWR Southern Region
- Earnest Carlsen -- Water District No. 120
- Cindy Yenter -- Water District No. 130
- Bob Schaeffer -- Water District No. 34

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JUL - 4 2008

Assessment Notice

Bingham Groundwater District

208-684-9634

KIRKHAM, JR., DALE B
PO BOX 4026

Patron # 614

POCATELLO, ID 83201

November 20, 2007

NOTICE IS HEREBY GIVEN that the charges for the year 2008 assessments will be levied, pursuant to Title 42, Chapter 52, Idaho Code, at the rate of \$35.00 per cubic foot per second (CFS) for assessment and \$315.00 per cubic foot per second (CFS) for mitigation. Year round users of water will have an alternate fee for assessment and mitigation that includes the (regular rate x 1.73) for stock (STO-04), industrial (IND-07), cooling (COO-25), municipal (MUN-40), and domestic (DOM-43) per CFS. For commercial use an alternate fee for assessment and mitigation includes the (regular rate x 7.3) per CFS that each member is authorized pursuant to its ground water rights. A minimum of \$25.00 will be assessed per assessment.

PURSUANT TO IDAHO LAW, the assessment is due and payable on or before December 31, 2007, after which date unpaid assessments become a lien against the lands to which the water rights used to determine assessments are appurtenant. Delinquent assessments shall bear interest and, in addition, shall be subject to a penalty in the amount of \$15.00 per delinquent assessment.

Water Right Number(s):	Year	Type	Point of Diversion	Diversion Rate: (CFS)	Cost Per CFS:	Assessment	Interest	Penalty	Due	
27-07510	2008	Assessment	COM	02S 35E 35 NESW	3	\$ 35.00	766.50	0.00	0.00	766.50
						Total for Assessment				\$766.50
27-07510	2008	Mitigation	COM	02S 35E 35 NESW	3	\$ 315.00	6898.50	0.00	0.00	6898.50
						Total for Mitigation				\$6,898.50
						Assessment	Interest	Penalty	Total Due	
Total For Year:				2008		\$7,665.00	\$0.00	\$0.00	\$7,665.00	

Total DUE: \$7,665.00

Please detach and mail with payment in the pre-addressed, stamped envelope.

KIRKHAM, JR., DALE B
PO BOX 4026**Bingham Groundwater District**

P.O. Box 1268

POCATELLO, ID 83201

Blackfoot, ID 83221-1268

Total DUE: \$7,665.00

IF THE PROPERTY HAS BEEN SOLD OR TRANSFERED YOU MUST INFORM BINGHAM GROUND WATER DISTRICT AND IDAHO DEPARTMENT OF WATER RESOURCES IN IDAHO FALLS.

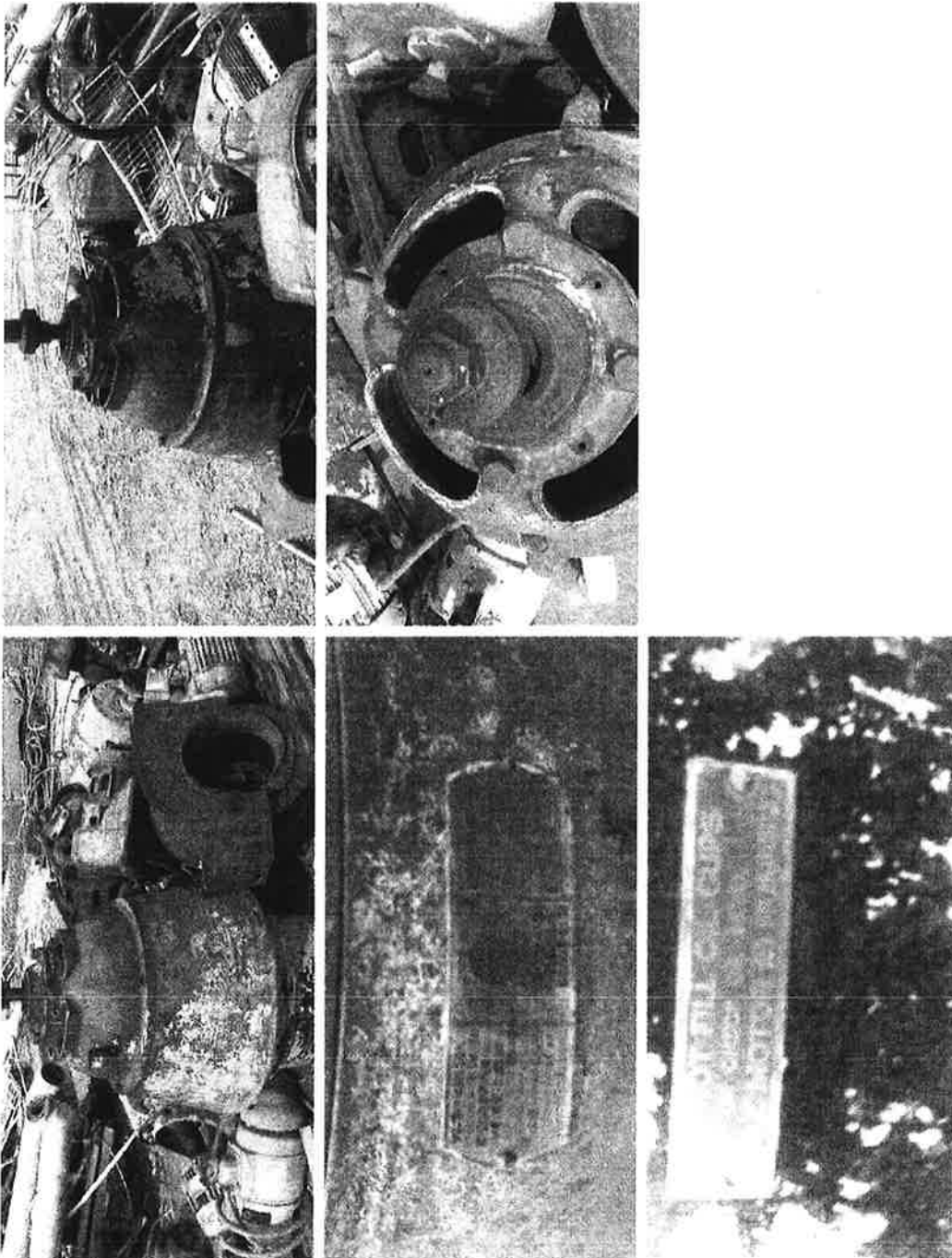
614

SCANNED

JUL - 1 2008

EXHIBIT 14

PHOTOS OF 75HP FAIRBANKS-MORSE PUMP REMOVED FROM WELL #2 IN
1984. STILL IN POSSESSION OF THE OWNER



SCANNED

JUL - 1 2009



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44-17003

sugar was produced by the factory that year. Within three years (*i.e.*, in 1906) 503 farmers planted 5,174 acres of beets, harvested 84,228 tons, and the factory produced 207,615 hundred-pound bags of sugar. A railway spur from the factory to Bear River City constructed in 1916 facilitated the delivery of beets. The daily slicing capacity varied between 600 and 1,000 tons until 1922 when a rate of 1200 tons was reached. This was gradually increased until 1935, when the rated capacity was 1600 tons. In 1966 the rated capacity is 2,500 tons per day. In 1965, 458 farmers in the Garland district planted 10,745 acres of beets with a yield of 173,283 tons. Total production of the factory in 1965 was 901,211 hundred-pound bags of sugar.

Idaho Falls Factory, 1903-1966

The Idaho Falls, Idaho, factory was erected in 1903 by E. H. Dyer & Company for the Idaho Sugar Company. Cost of the factory, which is at Lincoln, a short distance east of Idaho Falls, was approximately \$500,000. The original capacity was 600 tons. During the first season 628 growers planted 5,274 acres and harvested 36,600 tons of beets. The factory produced 72,304 hundred-pound bags of sugar. Within three years the factory was processing double this figure. Because of the improved relative advantages of growing sugarbeets in preference to other crops the Idaho Falls factory had a particularly big year in 1933 when 500,025 bags of sugar were produced. The capacity of the factory remained at 900 tons until 1922, when it was increased to 1,200 tons per day. The daily slicing capacity is now rated at 4,000 tons. In 1965, 631 farmers in the Idaho Falls district planted 39,594 acres of sugarbeets and harvested 528,187 tons. The plant produced 1,425,997 bags of sugar in 1965.

During the 62 years which the Idaho Falls factory has been in operation, farmers in the district have produced 7,148,780 tons of sugarbeets, and from these the factory has extracted 25,643,968 hundred-pound bags of sugar. Utah-Idaho Sugar has expended in excess of \$100 million in the district for beets, labor, and materials.

Sugar City Factory, 1904-1947

Erected at Sugar City, Idaho, in 1904 by E. H. Dyer & Company for the Fremont County Sugar Company, the original capacity was 700 tons. This was soon enlarged to 900 tons per day; in 1922 the capacity was further increased to 1,200, and still later to 1,700 tons per day. During its initial campaign the Sugar City plant handled 33,272 tons of beets and produced 62,526 hundred-pound bags of sugar. Within two years (*i.e.*, in 1906) it was producing 200,335 bags of sugar. As with the

Idaho Falls factory the Sugar City factory experienced a particularly heavy campaign during the depression year of 1933 when it produced 432,160 hundred-pound bags of sugar. That proved to be the peak year of its operation. Because of labor shortages and acreage limitations under the Sugar Act, the factory did not operate in 1940 and 1941, but operated during the peak war year of 1942 when 205,562 bags of sugar were produced. That was the final year of operation. With the improvement of country roads and farm transportation facilities, and the lack of a local labor supply, it became more economical to process beets at large, efficient, centralized plants and for that reason the Sugar City factory was closed. In 1945 the batteries were installed in the Gunnison plant at Centerfield. Sugarbeets produced in the Sugar City district were then processed in the Idaho Falls factory. The final dismantling occurred in 1947.

During the 37 years which the Sugar City factory was in operation, farmers in the district produced 2,107,898 tons of sugarbeets, and from these the factory extracted 8,100,481 100-pound bags of sugar. U and I and its predecessors expended an estimated \$25 million in the district for beets, labor, and supplies.

The Sugar City factory is the only factory besides the Lehi factory which constructed an auxiliary cutting plant. This was located on the Egin Bench at Parker, Idaho, some six miles distant. This cutting station operated satisfactorily for several years, but was dismantled in 1915 when certain machinery was moved to the Garland plant.

Blackfoot Factory, 1904-1952

In 1904 a French plant which had been erected at Binghamton, New York, was moved to Blackfoot, Idaho, under the sponsorship of Snake River Valley Sugar Company, Limited. Manager was F. Adair Monroe. The capacity of this plant was 600 tons per day; it was increased to 800 tons in 1911. The company had difficulty securing adequate contracts from growers in the region, and in 1905 the plant was acquired by The Idaho Sugar Company (successor to Idaho Sugar Company and Fremont County Sugar Company). The original cost of the plant and facilities was approximately \$750,000. During the 1905 campaign the factory processed 14,850 tons of beets and manufactured 28,076 bags of sugar. In 1906 the factory produced 102,005 bags of sugar. The factory was closed in 1910 because of Curly Top and again in 1922, 1926, and 1927. The factory was marginal in the sense that the beet acreage was seldom enough to enable the plant to reach capacity operations. Having achieved a production in 1915 of 218,895 bags of sugar, the factory did not reach this figure again until 1933. The peak year

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JUL - 1 2000

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APPENDIX B

was 1940 when the factory processed 104,206 tons of beets and manufactured 368,007 bags of sugar. After closing down in 1945, the factory was reopened for brief campaigns in 1946 and 1947. The factory was closed after the 1948 campaign and dismantled in 1952. In 39 years of operation, the Blackfoot factory produced 587,544,900 pounds of sugar. In 1954 the site was converted into a company-owned sugar storage warehouse. The beets from the district are now processed in the Idaho Falls plant.

Nampa Factory, 1906-1916

Constructed by E. H. Dyer & Company in 1905-1906 for Western Idaho Sugar Company, the Nampa, Idaho, factory had an original capacity of 600 tons. Located in the center of a sagebrush area the district was plagued from the very beginning by Curly Top disease. During the first year 5,428 acres were planted for a yield of 43,050 tons of beets. The factory produced 106,305 bags of sugar. The production of sugar was only slightly higher in 1907, although the acreage had jumped to 8,935. By 1908 production had dropped to 88,735 bags of sugar. The factory did not operate in 1909, and operated for only a short period in 1910 when 12,207 bags of sugar were produced. In four years of operation (1906-1908, 1910), the Nampa plant manufactured 32,609,100 pounds of sugar. The factory was idle from 1911 to 1916, when the machinery was moved to Spanish Fork, Utah.

Elsinore Factory, 1911-1942

E. H. Dyer & Company constructed the Elsinore, Utah, factory for Utah-Idaho Sugar Company in 1911. Cost of the factory was \$620,000. The original capacity was 500 tons, which was built up to 650 tons by 1916 and to 900 tons by 1925. During its first campaign 628 growers planted 5,754 acres of sugar beets, produced a tonnage of 47,375 tons of beets, and the factory manufactured 107,150 hundred-pound bags of sugar. The peak year of the factory was 1916 when 813 farmers planted 5,229 acres and harvested 71,261 tons, from which the factory manufactured 169,780 hundredweight of sugar. During most of its years a paying enterprise, the Elsinore factory was "done in" by Curly Top. It was not operated in 1926. When reopened in 1927 it produced only 44,560 bags of sugar and in the next year only 32,473 bags of sugar. The factory was closed in 1928 and the beets from the district were processed in the Gunnison or Spanish Fork factories. Some of the materials and machinery were sold in 1942 and the plant was then dismantled. During World War II the warehouse was converted into a potato-drying plant. Under a government contract dried potatoes were made into a flour for shipment to Europe.

APPENDIX B

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During the 17 years which the factory operated, Elsinore produced 1,881,289 one hundred-pound bags of sugar.

Fallon Factory, 1911-1917

When the historic Watsonville, California, factory, constructed by Spreckels with German machinery in 1888, ceased operation in 1899, it remained idle until acquired by Henry Hinze. Hinze, who occasionally speculated in beet sugar factories, hoped that the newly-opened Truckee-Carson Reclamation project in western Nevada might serve as a center for the production of sugarbeets. Under the auspices of the Nevada Sugar Company a 500-ton factory was built at Fallon in 1911. Because of Curly Top and the failure of the company to educate the local farmers in the art of growing sugarbeets, the factory was not a success. The farmers also had difficulty with irrigation because the land was not level. The beets either drowned or were scorched. The factory operated for short campaigns in 1911 and 1912, and then remained idle until 1916 when overtures were made to Utah-Idaho Sugar to buy the factory. After careful investigation U and I decided to operate the factory for one or two years on a lease basis to determine whether it would be a profitable acquisition. Although the farmers contracted for 3,760 acres of beets the crop was less than 20,000 tons. U and I was unable to obtain sufficient beet contracts to justify operating for another year and the ownership reverted to the original interests. The factory remained idle from 1918 to 1921, when it was purchased by Michigan capitalists organized as the Lahontan Valley Sugar Company. This group operated it for one unsuccessful season. In 1923 the factory was purchased by the Consolidated Independent Sugar Company of Utah, which operated factories at Hooper, Utah, and Rigby, Idaho. When this farmers' cooperative failed, the plant was sold, in 1925, to the Northwestern Sugar Refining Company, owned by Fred Hinze and A. W. Black of Bay City, Michigan. They planned to move it to a California district. Failing in this, they sold it in 1926 to some Nevada capitalists (Fallon Sugar Company) who secured contracts and operated it in 1927. The campaign was not profitable and the Michigan bondholders once again assumed control. In 1934 the machinery was junked and shipped to Japan.

Payson Factory, 1913-1940

When the Strawberry Valley Reclamation Project was completed in 1913 U and I had hopes that the irrigated acreage would be expanded sufficiently to justify the erection of an additional factory. E. H. Dyer & Company constructed the 500-ton Payson, Utah, factory for Utah-Idaho

EXHIBIT 16

From: "Tawna Root" <trout@laynepump.com>
Subject: **RE: photos of vertical turbine?**
Date: July 2, 2008 3:04:25 PM MDT
To: "Rich Kirkham" <rich@richkirkham.com>

Okay, here is today's lesson
 $\text{Gpm} \times \text{TDH} \text{ divided by } 3960 \text{ divided by efficiency } (.80) = \text{bhp}$

So $\text{bhp} \times 3960 \times .80 \text{ divided by gpm} = \text{tdh}$

And $\text{bhp} \times 3960 \times .80 \text{ divided by tdh} = \text{gpm}$

$\text{Tdh} = \text{lift} + \text{loss} + (\text{psi} \times 2.31)$

Therefore $50 \text{ hp} \times 3960 \times .80 \text{ divided by } 300 \text{ gpm} = 528 \text{ tdh}$
 $528 \text{ less lift of } 90' = 436 \text{ divided by } 2.31 = 188$
psi at pump

Without knowing what the pump was, you could do 2600 gpm with no pressure or 100 gpm with 1000 psi with a 75 hp motor. I am told your motor dates back to probably late 40's or early 50's. (before my time and nothing I have ever seen before) If you can find the head which I didn't see in any of your pictures, you might find a serial number. I was told to try Golden West irrigation in Idaho Falls and anyone else up there that might have been open in the 40's. Then track by owners of the property in the 40's. Call me if you have any questions.

-----Original Message-----

From: Rich Kirkham [<mailto:rich@richkirkham.com>]
Sent: Wednesday, July 02, 2008 10:42 AM
To: trout@laynepump.com
Subject: photos of vertical turbine?

I thought of another question. Do you have any idea how many gallons a minute a pump/motor like this might be able to deliver? The tag on the unit says it is 75HP. The well it sat on is 120' deep. The casing is 12". The current pump that is in the well is rated at 50 HP and sits on a 6" draw pipe and sits at a depth of 90 feet. It delivers 300 gallons per minute.

Even an educated guess or a range would be helpful.

Thanks

Rich

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JUL - 4 2008

RECEIVED

JUN 30 2009

DEPARTMENT OF
WATER RESOURCES



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

Case No. 39576

) Subcase: 27-12180
)
) ORDER GRANTING MOTION TO FILE
) LATE NOTICE OF CLAIM
)
)
)
)
)
)

On August 6, 2008, Gemco Limited Partnership, by and through counsel, Robert L. Harris, filed a *Motion to File Late Notice of Claim* for the above-captioned water right. A hearing on the *Motion to File Late Notice of Claim* was held on November 18, 2008. No party appeared in opposition to the *Motion*. However, following a review of the file and after hearing comments in open court, the Court referred this matter to a special master to make findings consistent with the I.R.C.P. 55(c) standard.

On May 7, 2009, Special Master Brigitte Bilyeu issued a *Special Master's Report and Recommendation on Motion to File Late Notice of Claim* recommending that the late claim be granted. Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report and Recommendation* and wholly adopts them as its own

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. This modifies the provisions of *SRBA Administrative Order 1* 4d(2)(h).

IT IS SO ORDERED.

Dated June 29, 2009.


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 June 29, 2009, with sufficient first-class postage to the following:

GEMCO LIMITED PARTNERSHIP
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



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

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

Tel: (208) 523-0600
Fax: (208) 523-9518
www.holdenlegal.com

E-MAIL rharris@holdenlegal.com

August 5, 2008

Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707

COPY

Hearing: 11-18-08

RE: Motion to File Late Notice of Claim, Subcase No. 27-12180.

Dear Clerk:

Enclosed please find a Motion to File Late Notice of Claim and one copy. Please file the original, date stamp the copy and return it to this office in the self-addressed, stamped envelope provided for your convenience.

Thank you for your kind assistance with this matter. If you have any questions, please feel free to contact this office at your convenience.

Best Regards,

Robert L. Harris

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

Enclosures

c: Gemco Limited Partnership

G:\WPDATA\IRLH\Gemco\SRBA ltr 080508.wpd:cdv

Established in 1896

SCANNED

AUG 07 2008

COPY

Shops made! cc
Hearing: 11-18-08

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 Fees Correct:)
Claim is Complete)
Case 39576 C. S.)
8-26-08)
_____)

Subcase 27-12180
(Insert water right number)

STANDARD FORM 4

MOTION TO FILE:
☒ LATE NOTICE OF CLAIM
☐ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☐ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is GEMCO LIMITED PARTNERSHIP, RICHARD KIRKHAM

My address is P.O. BOX 4026, POCATELLO

My phone number is: Work 208-232-6886 ^{cell} Home 208-251-2222

I am an attorney representing _____

My name is _____

My address is _____

My phone number is _____

MOTION TO FILE A LATE NOTICE OF CLAIM

A *Motion to File a Late Notice of Claim* will require a hearing before the Presiding Judge.

☒ I did not file a Notice of claim to the use of water in the SRBA because:

WE MISTAKENLY APPLIED FOR A PERMIT INSTEAD
OF A CLAIM IN 1990. WE BELIEVED WE WERE
SUPPOSED TO FILE FOR A PERMIT.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☒ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

SEE ATTACHED.

I have attached:

- ☒ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.
- ☐ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 402.50.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.

2. Fill in the following information:

This motion will be heard on TUES. Jan. 18, 2008 ^{PLH} 1:30
(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A *Motion to File an Amended Notice of Claim* may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☐ I must amend my Notice of Claim to the use of water in the SRBA because:



I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

HISTORICAL RECORDS, FACTORY CALCULATION, AFFIDAVITS,
LEGAL DESCRIPTION, COPIES OF PERMIT APPLICATIONS &
COPIES OF CORRESPONDANCE WITH IDWR.

I have attached:

☐ An amended Notice of Claim (available from IDWR).

☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of IDAHO

County of BANNOCK

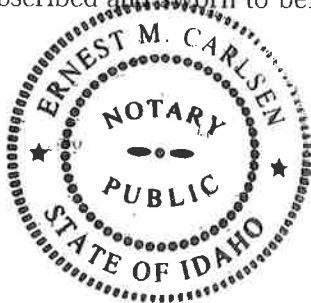
RICHARD D. KIRKHAM FOR GEMCO LIMITED PARTNERSHIP, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Richard D. Kirkham
Signature of person filing motion

Robert L. Harris
Attorney signing in representative capacity

Subscribed and sworn to before me on July 1, 2008
(Insert Date)



Ernest M. Carlsen
Notary Public for RDWR
Residing at: Idaho Falls ID
My Commission expires: 8-14-2009

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on _____, 199____, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)


Signature of person or attorney mailing the form

50
300
LATE 52.5
402.5

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 27-12180
Date Received: 7/1/2008
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY

1. Name of Claimant(s)

GEMCO LIMITED PARTNERSHIP Phone: 208-232-6886

PO BOX 4026
POCATELLO ID USA 83201

2. Date of Priority: 03/12/1903

3. Source: GROUND WATER , GROUND WATER Trib. to: ,

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
02S	35E	35	NE SW	BINGHAM	
02S	35E	35	NE SW	BINGHAM	

5. Description of diverting works:

two wells/pump to sugar factory

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
INDUSTRIAL	01/01	12/31	3	
COMMERCIAL	01/01	12/31	0.04	

7. Total Quantity Appropriated is:
3 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
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02S

35E 35

NE
NE

SW
SW

INDUSTRIAL
COMMERCIAL

11. Place of use in counties: BINGHAM

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

13. Other Water Rights Used:

14. Remarks:

commercial use is for a office in a sugar factory.
industrial use is for a sugar factory

15. Basis of Claim: Beneficial Use

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:

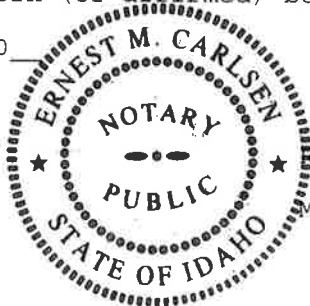
I do solemnly swear or affirm that I am RICHARD D. KIRKHAM of
Title
GENCO LIMITED PARTNERSHIP, that I have signed the foregoing
Organization
document in the space below as PARTNER / AUTHORIZED AGENT of
Title
GENCO LIMITED PARTNERSHIP and that the statements contained in the
Organization
foregoing document are true and correct.
Signature of Authorized Agent Richard A Kirkham
PARTNER / AUTHORIZED AGENT
Title and Organization

July 1, 2008
Date

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this _____
of _____ 20_____

July 1, 2008
Ernest M Carlson



Notary Public

Residing at Alpha Falls RD

My commission Expires 8-14-2009

DOCUMENTAION ON CLAIM OF WATER RIGHT

July 1, 2008

HISTORY OF FACTS

Gemco Limited Partnership is the owner of Real Property in Blackfoot, Bingham County, Idaho, legally described in Exhibit 1, and hereinafter referred to as the "Property" and claims a historic right to ground water at that location.

Gemco Limited Partnership is currently in possession of a Permit to Appropriate Water under Permit No. 27-07510. In filing for this permit, which was granted March 26, 1990, the partners erroneously believed that they were establishing their claim to a water right.

Gemco Limited Partnership discovered this error when they filed an application for a transfer of the water right from the Department of Water Resources on June 3, 2008.

Gemco Limited Partnership now desires to file a Late Adjudication Claim in order to establish their water right claim and to further establish the correct priority date for that water as March 12, 1903.

Gemco Limited Partnership provides the following evidence, arguments, and proofs of their claim as herein set forth and attested to herein by the Partners.

EVIDENCE

HISTORICAL EVIDENCE INDICATES THAT SIGNIFICANT GROUND-WATER USAGE AT THE PROPERTY DATES BACK TO 1903.

Historically the Property was the site of a significant beet sugar factory built in 1903 & 1904. The original owner of the plant was the Snake River Sugar Company, Ltd. Construction of the plant was completed in November 1904.¹ The plant was 240 feet long, 65 feet wide, and 60 feet high.² Constructed by the Kilby Manufacturing Company, the plant had an original capacity of 600 tons of beets per day.³ The plant capacity was increased in 1911 to 800 tons per day.⁴ In terms of water usage, this is a particularly significant fact since the ratio of water needed to produce a pound of sugar is a minimum of 1.14 gallons per pound of sugar produced.⁵ Thus a factory rated for 600 tons of production per day would need a water source capable of producing a minimum of 1,368,000 gallons of water per 24-hour period.⁶ This equals 950 gallons of water per minute or the equivalent of 2.1166 CFS.⁷ No viable factory rated for such production would ever be built without first proving the water resource that is so fundamental to its success therefore a water source equal to or exceeding 3 CFS is a reasonable conclusion.

Sugar beet factories of the early 1900s were water intensive operations. For example, the factory in Lehi, Utah, constructed in 1891 and 1892 was a 300-ton per day factory. That is exactly one half the capacity of the Blackfoot factory. The Lehi plant was served by eight wells that ranged from 65 to 135 feet deep and had a collective capacity of 500 gallons of water per minute.⁸ A reliable, high volume water source is simply paramount for the success of sugar plant technology of that era.⁹

The water for a beet sugar factory had to be pure water since it was used to process food-grade sugar that was sold throughout the world. Pure water, such as can only be extracted from high-quality wells, is essential in the production process. A brief description of the process bears out this fact. Beets are first conveyed from sheds through a flume that flowed in a current of warm water. From the flume the beets are carried to a washer in the factory then raised by a 16-foot "beet wheel" to a cutter. The cutter slices the beets into "cosettes" or strips that look something like French fries. The slices are then dropped into large wrought-iron diffusers each with a capacity of two and one half tons. Here they are cooked for the extraction of their sugar. This process was done in hot water where the sugar was soaked out of the cosettes. The cooking of the strips was a continuous process of filling the cells with pure soft water that was extracted from the wells at the plant and continued until the sugar was exhausted from the pulp.¹⁰

In addition to the creation of the "thin juice" from which sugar is made by combining pulp and water, there are other related processes occurring in the plant that also use significant amounts of water. For example, water is needed for washing, producing steam, fluming (transporting beets via water), preparing the cosettes or beet strips, and many other sundry processes requiring water.¹¹ No sugar factory would ever be built without first determining that ample supplies of water are available. Additionally the water supply must be available in the drier months of the year since sugar is produced immediately following harvest in the fall of the year. Processing must be done while the sugar in the beet is prime, thus processing began at the first harvest and continued around the clock until all the beets were processed.

The Blackfoot Property was acquired by the Idaho Sugar Company from rival Snake River Valley Sugar Company, which dissolved in January 1908.¹² The Idaho Sugar Company eventually merged with the Utah Sugar Company and formed the Utah-Idaho Sugar Company who continued to operate the Blackfoot plant and maintained a fire protection system connected to the wells that served the property until the property was sold to the current owners in 1984.

PRODUCTION RECORDS PROVE WATER

According to Leonard Arrington's definitive history of beet sugar production published in 1966, the Blackfoot Sugar Plant processed an estimated 50,000 tons of beets for the 1905 season.¹³ The water required to produce that tonnage that year would have been approximately 114,000,000 gallons.¹⁴ Assuming a 90-day production run for beets that year, the water requirement for 1905 would have been 880 gallons per minute¹⁵.

Production records in later years indicate that the plant capacity only increased with time.

In 1920, the upgraded plant processed 800 tons of sugar beets per day according to Burnham's Manual of Mid-Western Securities.¹⁶ Other sources, including The History Of Bingham County, also indicate that production continued to increase with the years. The Bingham History features a section in its pages on the Blackfoot Sugar Factory and captions a 1930s era photograph of the plant with the following sentence, "U&I Sugar Company – 1400 tons per day"¹⁷. Increased production required and ever expanding dependency on a reliable and voluminous water source such as the Blackfoot Sugar Plant was fortunate enough to have secured in 1903.

where we are through the loyalty of the local grocers and the people of Blackfoot." (Employed 15 people)

After the death of the founder, C. F. Smith and son Lowell, the business was sold in 1955 to Benjamin F. Teagarden. Frank and Ralph still reside in Blackfoot. Frank recently told his daughter, Lorraine, that if he had his life to live over, he would still go into the bakery business.

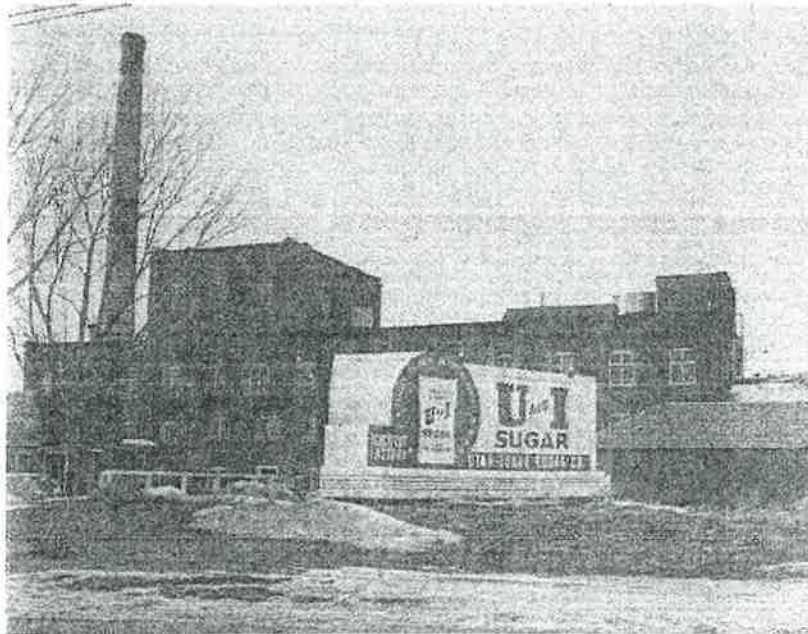
Frank Smith died May 20, 1983.

SUGAR FACTORY

The Blackfoot Sugar Factory was used in France before it was purchased and shipped to Blackfoot. The

story. Groveland grew the first beets in the Snake River Valley.

Groveland Mann related that when the smokestack was built and finished that men working at the top of the stack came down bringing all the equipment with them. These men weren't aware that one man was still up at the top inside the stack. This man was left without equipment to descend, so he removed his homemade knit wool socks, unraveled them, tied the yarn together, lowered one end to the ground where a rope was tied to the yarn which the stranded man pulled up the stack. He secured the rope at the top and lowered himself to the ground.



U & I Sugar Factory - capacity 1400 tons per day

sugar factory construction began in 1904 but was not finished and was sold to Idaho Sugar Company in 1908. Several companies merged into the Utah-Idaho Sugar Company.

The Sugar industry had just started. Beets were loosened in the ground by a blade that was pulled along the side of each row. Next they were pulled and topped by hand with a beet knife and put in piles, then loaded by hand into a wagon pulled by horses and hauled to the beet dump or beeting stations and then on to the factory.

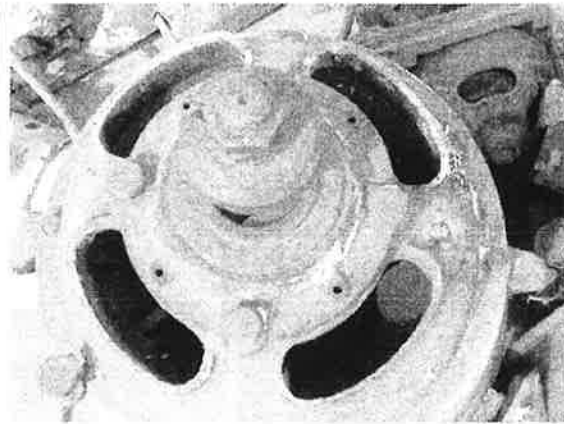
John "Jack" Peterson made a hydraulic press so he could bend the iron to make the bands for the sugar factory smokestack which had started to crack, no big cracks, but they figured it might fall down, so the bands were put on to hold it together. He tells about the brick layer of the "stack" doing a hand stand on the cornice when he finished. The smokestack stood 75 years before it gave way to elements and age, finally crumbling to the ground. It was 218 feet.

Joe Jellie, a bricklayer and his partner were working

ORIGINAL WELLS AND PUMPS PROVIDE FURTHER EVIDENCE FOR CLAIM

In all likelihood, the original pumps used at the sugar factory were steam driven pumps since steam was the standard water-pump technology at the turn of the century. While those first motors and pumps are long gone, some interesting pumping relics still remain as evidence of the tremendous amount of water that was extracted at the Blackfoot Plant.

In 1984, Dale Kirkham removed the vertical turbine pump and motor from Well #2 that lifted water 90 feet to the surface for production use. The motor that was mounted on the pump is rated at 75 horsepower¹⁸. The pump itself was removed from the motor and eventually sold as scrap, but the Fairbanks Morse electric motor that drove the pump is still in possession of the Owner. This older electric motor, likely dating back to the 1940s, indicates the pumping capacity of the Well #2. According to Tana Root of Layne Pump Corporation, a 75 hp motor with no pressure is capable of delivering up to 2600 gallons of water per minute.¹⁹ This illustrates the tremendous potential of the well and the water source.



In addition to the Well #2, there is another active well on the property. Well #1 is also a high capacity well that served as the primary water source for many years for the fertilizer plant that has occupied the property since 1984. Additionally, Dale Kirkham recalls still a 3rd well located approximately 70' north of Well #2 that was

decommissioned when a portion of the building collapsed on the well during demolition in 1984. These wells were all original to the sugar factory and as far as can be ascertained all the wells on the Property date back to the time of the sugar plant's construction in 1903.

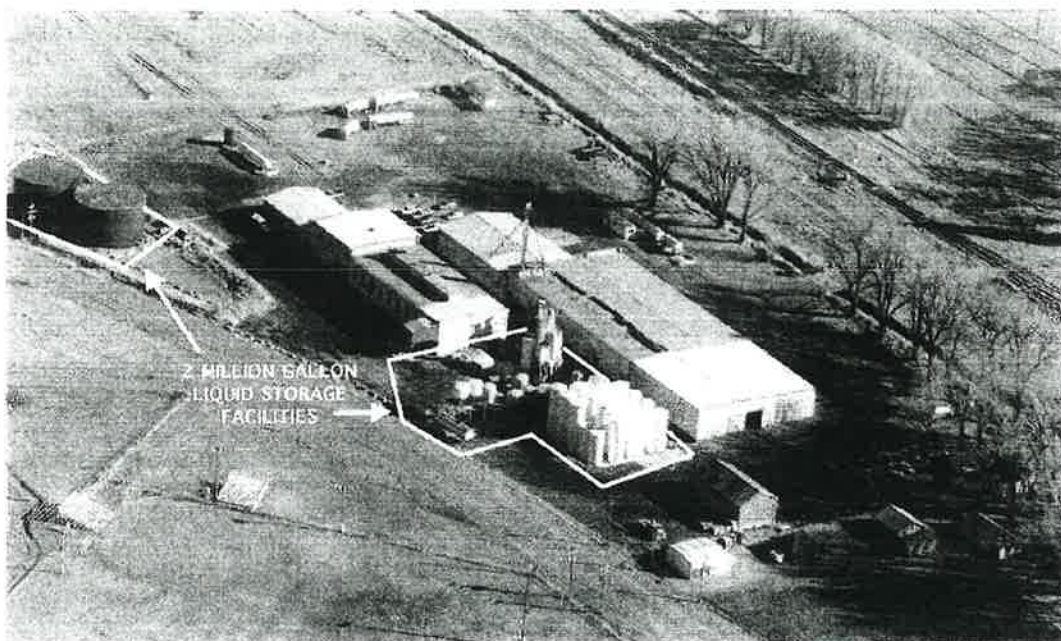
WATER USED FOR THE PRODUCTION OF LIQUID FERTILIZER.

On February 14, 1984 the UI Group (Formerly the Utah Idaho Sugar Company) sold the plant to Dale and Bodell Kirkham. Later the couple became the General Partners of Gemco Limited Partnership, the current owner of record, and transferred the Property into the partnership²⁰. At the time of acquisition in 1984 Kirkham recognized the water as a major asset of the property. He realized that the water would make it possible to attract another manufacturer to the property who could rely on the resource and use (he it) to great advantage.

This proved to be precisely the case. Immediately after the acquisition, much of the plant was dismantled and sold as scrap and the buildings were converted to warehouse storage for fertilizer products²¹. Within weeks of the Kirkhams taking possession on the Property, negotiations began with the fertilizer producer and distributor Pacifex, a subsidiary of ConAgra Inc. Eight months after the purchase the parties entered into a formal lease agreement that was signed September 19, 1984.²² The Blackfoot Morning News writing about the company reported that Pacifex had "moved its plant from Power County west of Pocatello to the Blackfoot location after the firm's Owner became convinced that Blackfoot would be a better location for the business because it was more centrally located to southeastern Idaho's largest farming area."²³ The article specifically mentions a "deep well on the property" and goes on to say that "Pacifex buys raw product from most of the major fertilizer manufacturers and turns it into liquid for sale to fertilizer dealers."²⁴

Pacifex began converting dry fertilizer is converted into liquid fertilizer immediately after setting up their operations by combining raw materials in a manufacturing process with water extracted from the wells on the property. In the process heat is combined with the raw materials to suspend them in solution.

Pat McGrane, Operations Manger for UAP, (Formerly Pacifex) has worked at the Blackfoot fertilizer plant since February 10, 1986. On July 1, 2008, Mr. McGrane signed an affidavit attesting to his first hand knowledge of two of the wells on the Property that have been used by the fertilizer company to produce liquid fertilizer since the plant went into production in 1984 wherein the operation was required to extract tremendous amounts of water to be held on premises in one of the several million gallon storage tanks now located on the property (See Exhibit 3, "Affidavit #1").



THE CURRENT WELL PUMP PRODUCES 340 GALLONS OF WATER PER MINUTE

Today the UAP Fertilizer Company, the current tenant, occupies the former Sugar Factory property and buildings. UAP uses two of the original wells that were drilled in the early 1900s by the sugar factory for its main production of liquid fertilizer. The primary water source for operations today comes from Well #2. Well #1 is kept as a backup water source and served as the primary water source for the fertilizer company for many years. It is believed that other wells also existed on property prior to UAP's occupancy in 1984.²⁵

According to McGrane, the casing of Well #2 is 12 inches in circumference and has a depth of 120'. The fertilizer plant currently extracts water from Well #2 through a 6" draw pipe that extends down into the well. The draw pipe is attached to a 20 horsepower pump that sits at a depth of 90 feet. This pump is capable of producing 340 gallons per minute @ 170 TDH.²⁶ Well #2 produces more than enough water to meet the needs of the fertilizer company's current annual production, which is estimated at more than 6,000,000 gallons of water per year.²⁷ The fact that the well has the capacity to produce this proven volume of water over 100 years after it was drilled helps to validate the property owners claim and the well's potential to the minimum limits of the current pump now in place.

THE OWNERS BELIEVED THAT THEIR 1990 FILING WITH THE DEPARTMENT OF WATER RESOURCES WAS FOR A WATER CLAIM

In the early 1990s issues surrounding ground-water rights came to the attention of the Owner. The Owner asked personnel at the Department of Water Resources what they needed to do to protect their water claims on various properties in South East Idaho that they own that have wells serving the property. The guidance that was given at the time was that it was necessary for the owner to register all water diversions in Idaho with the Department of Water Resources. The Owners believed at that time that the paper work they filed met the requirements to establish their various claims. (See application for permit - Exhibit 4). Altogether the owner filed paperwork on 14 diversions in Southeast Idaho, including the Blackfoot Property. About this same time owners Kirk and Dale Kirkham had a meeting in the Idaho Falls with Craig L. Saxton of the department of Water Resources. Mr. Saxton helped the them fill out all the forms required by the Department, and the required fees were paid.

The following is a brief description of the various communications that have taken place between the Owner and the Department of Water Resources since 1990:

1. Records in the Owner's possession show that On March 26, 1990, an Application for Permit was filed (see Exhibit 4). The Application was acknowledged in a letter from the DWR (See Exhibit 5) and the process of advertising began. No protests to the application came forward so on July 9, 1990 a Permit to Appropriate Water was issued for the Property (See Exhibit 6).
2. On May 31, 1992 the DWR sent the Owner a letter under the heading "PROOF DUE NOTICE" together with a form for the Owner to fill out and return entitled "PROOF OF BENEFICIAL USE". This form was filed and signed by Kirk Kirkham on June 15, 1992, on which he referenced in that the well was drilled in 1903 and that the use being applied for was for commercial purposes. A fee of \$175 was returned with the form (See Exhibit 7).
3. On July 8, 1992 the DWR acknowledged the receipt of the form and the fee (See Exhibit 8). On July 11, 1990 the DWR sent a "PERMIT APPROVAL NOTICE" to the Owner from the Statehouse in Boise (See Exhibit 9). On July 13, 1992 the Owner also received another letter from the DWR in Boise entitled "PROOF ACKNOWLEDGEMENT LETTER" wherein the Owner was notified that the next step in the process for developing the water right was for the department "to conduct a field examination to determine and confirm the use being made of the water." (Exhibit 10)
4. Although the paper trail in the Owner's possession ends at this point, Kirk Kirkham remembers that the field examination of Blackfoot and other properties did take place. Mr. Kirkham's recollection is that following the examinations in 2001 the DWR asked the Owner to submit historical proof of beneficial use such as a well driller's log. The Owner searched through all the historical records available at that time but could not provide a well driller's log as requested by the field examiner and it wasn't learned until April of 2008 that driller's logs were not kept in 1903 and therefore it would be impossible to provide such historical

documentation²⁸. In response to that request on June 11, 2001 the Owner submitted historical affidavits and claims for several diversions including the Blackfoot Property. The result was that some diversions received the requested priority dates while others were denied, including Blackfoot. The following is a summary regarding the 14 applications filed that year: 9 have a partial decree, 1 has a license, and Blackfoot remains still in the permit stage.

5. On June 1, 2008 Rich Kirkham applied with the DWR for a transfer of the water right to change the nature of the use from "Commercial" to "Industrial." The Application was denied on June 3, 2008 because "Water right 27-07510 is still in the permit stage" and that they "cannot process a transfer on a permit. This is only allowed if the water right is either a license or decree." (Exhibit 11)
6. On June 3, 2008, Rich placed a phone call to Gene Hanson of the Department of Water resources seeking assistance and clarification about the options for the Blackfoot water situation. Gene advised us to bring our historical evidence to his office and file a Late Adjudication Claim.
7. On July 1, 2008 Rich Kirkham, Kirk Kirkham, and Dale Kirkham met with Dave Carlsen at his office at the Department of Water Resources. Dave reviewed this case material and assisted us in preparing a motion to file a late notice of claim, case 39576, subcase 27-12180.

PETITION

THEREFORE, given the above stated evidence and claims, the Owner respectfully requests that the Court recognize this water claim and ask that the court decree the same and/or grant the appropriate a licenses for 3.0 CFS water right with a priority date of 1903.

Signed

Dale B. Kirkham

Dale B. Kirkham
General Partner
Gemco Limited Partnership

Signed

Richard D. Kirkham
Partner
Gemco Limited Partnership

Signed

Dale B. Kirkham, Jr.
Partner
Gemco Limited Partnership

END NOTES & DOCUMENTATION

¹ See "Minutes of Meetings of Snake River Valley Sugar Company, Limited, March 30, 1904 to January 24, 1908," MSS, Utah-Idaho Sugar Company Archives and "Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

² Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

³ Ibid, p. 66

⁴ Ibid, Appendix B, p. 185-186, also see Exhibit 15.

⁵ Based on formulas provided in Technology of Beet Sugar Manufacture: A Textbook Describing the Theory and Practice of the Process of Manufacture of Beet Sugar, p. 11, Great Western Sugar Company, First Edition, Denver 1920, see on-line edition at: http://books.google.com/books?id=w3JBAAAAIAAJ&pg=PA157&lpg=PA157&dq=rati+o+water+to+manufacture+sugar&source=web&ots=-eM6NvGETO&sig=Z-ydMFuejrmMlyda3dA4K7Pnt_s&hl=en&sa=X&oi=book_result&resnum=4&ct=result#PPPI1_M1 Also see Exhibit 2.

⁶ The following formula is used to make this calculation: 600 tons = 1,200,000 pounds. At a ratio of 1.14 gallons to 1 pound of sugar (See Endnote 4) the approximate amount water needed to process 1.2 million pounds of beets is 1,368,000 gallons.

⁷ See CFS Conversion Calculator hosted by Western-Water at http://www.western-water.com/GPM_formulas.htm

⁸ See "Minutes of Meetings of Snake River Valley Sugar Company, Limited, March 30, 1904 to January 24, 1908", p. 10, 28-29

⁹ Early factory operations are described in *Salt Lake Tribune*, October 8, 1891; *Scientific American*, LXV (December 5, 1891; and Webb MSS, passim).

¹⁰ Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966, by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

¹¹ See processes described in Technology of Beet Sugar Manufacture: A Textbook Describing the Theory and Practice of the Process of Manufacture of Beet Sugar

¹² See "Razing rekindles sweet memories" by Emily Hone, Post-Register, circa 1984

¹³ Beet Sugar in the West – A History of the Utah-Idaho Sugar Company, 1891-1966", by Leonard J. Arrington, University of Washington Press, Seattle and London, 1966, p. 65

¹³ Ibid, p. 66-67.

¹⁴ Using the formula of 1.14 gallons of water per pound of sugar, 50,000 tons of production would require 114,000,000

¹⁵ $114,000,000 / 90 \text{ days} = 1,266,666 \text{ gallons per day} / 24 = 52,777 \text{ gallons per hour} / 60 \text{ minutes} = 880 \text{ gallons per minute}$.

¹⁶ Burnham's Manual of Mid-Western Securities, copyright and published in 1921 by John Burnham & Company Inc., 41 South La Salle Street, Chicago, p. 520-521. This reference sites the tonnage produced by all U&I plants that year including the Blackfoot Plant.s

¹⁷ History of Bingham County, p.120

¹⁸ The Fairbanks-Morse Pump removed from Well #2 is still in the possession of the owners and they have submitted photos of the unit (see Exhibit 14). The identification plate of the unit bears the following information: 75 HP, 440/220 volts, 3-phase.

Type:QSZV, Frame:GH505V, No:425.046, Delta Connection, 1470 RPM@ 50 Cycles, 1760 RPM @ ? Cycles. The unit is described as being approximately 3' in height and 2.5' in diameter.

¹⁹ See Exhibit 16, copy of email from Layne Pump Co., indicating the mathematical potential for a 75 hp motor when mounted to a vertical turbine pump.

²⁰ At that time Dale and Bodell Kirkham were also the majority stockholders for Dale's Auto Supply Co., Inc.

²¹ See "Pocatello businessman buys sugar factory", by Dan Myers of The News, The Morning News, Blackfoot, Idaho, February 23, 1984.

²² See "Lease Agreement" dated September 19, 1984, Gemco Limited Partnership Archives.

²³ See "Blackfoot landmark revived", by Emily Hone, The Post-Register, Idaho Falls, Idaho, Sunday, March 8, 1987.

²⁴ Ibid

²⁵ Dale Kirkham recalls at least one other well located approximately 70' north of Well #2 that was decommissioned when a portion of the building collapsed on the well during demolition in 1984.

²⁶ See pump data sheet. TDH is a pressure designation meaning Top Dead Head.

²⁷ According to McGrane, one of the products manufactured at the plant is called "1034." In 2007 the company produced 17,000 tons of this product, which required 1.5 million gallons of water. McGrane says this one product represents about 25% to 30% of the company's total products that use water as a main ingredient in 2007.

²⁸ Bob Cushman of Cushman Well Drilling informed Kirk Kirkham in a phone conversation in April 2008 that such well drilling records were neither kept nor required in 1903.

EXHIBIT 1
LEGAL DESCRIPTION

Lawyers Title Insurance Corporation

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA
STANDARD COVERAGE POLICY

3-9127

SCHEDULE A

AMOUNT

EFFECTIVE DATE

March 14, 1984
at 2:17 p.m.

INSURED

DALE B. KIRKHAM and BODELL S. KIRKHAM

1. The title to the fee simple estate or interest in the land described below is at the date hereof vested in:
DALE B. KIRKHAM and BODELL S. KIRKHAM, as husband and wife
2. The land referred to in this policy is described as follows:

A portion of the $W\frac{1}{4}$ of Section 35, Township 2 South, Range 35, East of the Boise Meridian, Bingham County, Idaho, described as:

Beginning at a point on the North and South center line of Section 35, Township 2 South, Range 35, E.B.M., which point is 3353 feet North and 2618.45 feet East of the SW corner of said Section 35, thence S $61^{\circ}41'$ W 430.5 feet; thence N $37^{\circ}14'$ W 180.3 feet; thence S $86^{\circ}13'$ W 82 feet; thence S $48^{\circ}27'$ W 472.87 feet; thence N $57^{\circ}54'$ W 87.4 feet; thence S $40^{\circ}11'$ W 475.4 feet; thence S $59^{\circ}35'$ W 260.7 feet; thence S $32^{\circ}21'$ W 159.3 feet; thence S $19^{\circ}12'$ E 249.5 feet; thence S $31^{\circ}45'$ W 183.5 feet; thence N $58^{\circ}15'$ W 73.5 feet; thence S $31^{\circ}45'$ W 156.6 feet; thence S $58^{\circ}15'$ E 73.5 feet; thence S $31^{\circ}45'$ W 139.6 feet; thence S $1^{\circ}35'$ W 392.5 feet; to a point said point being a corner post situate 1 foot South of a point designated by a concrete boundary marker, said marker being 1353.09 feet North and 822.68 feet East of the SW corner of said Section 35, thence East to the NW boundary line of Yellowstone Highway; thence Northeasterly along the West line of said highway approximately 2500 feet more or less to the point of Beginning.

EXCEPTING THEREFROM THE FOLLOWING PARCELS:

PARCEL 1:

Beginning at a point situate 1395.58 feet North and 1074.83 feet East of the Southwest Corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N $51^{\circ}06'$ W 143.8 feet; thence S $38^{\circ}54'$ W 79 feet; thence S $11^{\circ}30'$ W 28.4 feet; thence S $41^{\circ}30'$ E 58.4 feet; thence S $89^{\circ}55'$ E 94.2 feet along a steel pipe post and woven wire fence; thence N $38^{\circ}54'$ E 55 feet along a woven wire fence to the point of beginning.

(continued on page 2)

AMERICAN LAND TITLE COMPANY, INC.

Countersigned:

Issued at: Blackfoot, Idaho

Page 1 of Sched. A Pol No. 74-00-009848

FILE 4226-14 SCHEDULES 5-10-100-11-1
025-074-00101-1

ORIGINAL

STANDARD COVERAGE POLICY-11-17

SCANNED

AUG 07 2008

Lawyers Title Insurance Corporation

A Stock Company

Home Office - Richmond, Virginia

SCHEDULE A

PARCEL II:

Beginning at a point situate 1452.38 feet North and 1120.67 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 73 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 73 feet along a woven wire fence to the point of beginning.

PARCEL III:

Beginning at a point situate 1510.74 feet North and 1167.77 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 75 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 75 feet along a woven wire fence to the point of beginning.

PARCEL IV:

Beginning at a point situate 1588.56 feet North and 1230.57 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 100.0 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 100.0 feet along a woven wire fence to point of beginning.

PARCEL V:

Beginning at a point situate 1667.93 feet North and 1294.62 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M.; thence N 51°06' W 143.8 feet; thence S 38°54' W 102 feet; thence S 51°06' E 143.8 feet; thence N 38°54' E 102 feet along a woven wire fence to point of beginning.

PARCEL VI:

Beginning at a point 1354.09 feet North and 822.6 feet East of the Southwest corner of Section 35, Township 2 South, Range 35, E.B.M., Bingham County, Idaho, and running thence N 1°35' E 392.5 feet; thence N 31°45' E 479.7 feet; thence N 20°09' E 514.8 feet; thence N 59°35' E 49.2 feet; thence N 40°11' E 30 feet; thence Southeasterly along a 30 foot radius curve to a point S 10°50' E 34.4 feet from the previous course; thence S 20°09' W 557.9 feet; thence S 31°45' W 464.1 feet; thence S 1°35' W 179 feet thence S 09°07' E 128 feet to a steel corner post; thence S 11°30' W 28.4 feet; thence S 41°30' E 58.4 feet; thence S 89°55' E 30.0 feet; thence S 81°47' E 104 feet to the intersection of the West line of State Highway 91-191 and the North line of the SW¼ of the SW¼ of Section 35, thence S 38°54' W along the West line of said state highway 88 feet; thence N 58°38' W 155 feet; thence N 88°39' W 65.5 feet to the point of beginning.

PARCEL VII:

Beginning at a point 1 foot South of a concrete boundary marker which is situated 1354.09 feet North and 822.6 feet East of the Southwest corner of said Section 35, thence N 1°35' E along a wire fence 76.0 feet; thence S 39°41' E 99.9 feet; thence N 89°39' W along a steel post and woven wire fence 65.5 feet to the point of beginning.

A

2

009848

Schedule.....Page.....No.

035-0-089-0900

ORIGINAL

100-0-089-0900

SCANNED

AUG 07 2008

EXHIBIT 2

Technology of Beet Sugar Manufacture: A Textbook Describing



SECTION B

Dry Substance and Brix.—In section A of this chapter "Per Cent Dry Substance" was defined as the "Percentage of solid matter in a solution", and it was stated that the "Brix" of a pure sugar solution was the same as the "Per Cent Dry Substance", while when dealing with impure sugar solutions the "Brix" represented only the approximate "Per Cent Dry Substance".

The determination of the "Brix" of a solution is very simple and is made by immersing a *Brix Hydrometer in the solution to be tested and reading off the "Brix" at that point where the surface of the liquid comes in contact with the scale of the hydrometer. (Note—The solution being tested must be of the temperature for which the hydrometer was standardized or a temperature correction applied.) On the other hand, the determination of the "Per Cent Dry Substance" is a rather slow and complicated matter and "Brix" instead of "Per Cent Dry Substance" is used for all practical control and for a good many calculations.

An understanding of the meaning of "Dry Substance" or "Brix" permits the making of many technical calculations regarding the quantity of water needed to be evaporated in order to raise a solution from one density to another, regarding how much juice a pump on any service must handle, etc., etc. As an example:

How much water must be evaporated from 10,000 pounds of thin juice at 12° Brix to raise it to a thick juice at 65° Brix?

In concentrating a juice from one density to another only water is evaporated and there is the same quantity of dry substance in the thick juice as was originally present in the thin juice.

Thus, the 10,000 pounds of thin juice at 12° Brix contains $10,000 \times \frac{12}{100} = 1200$ pounds of dry substance, and there must be contained in the thick juice at 65° Brix the same quantity of dry substance as in the thin juice, or 1200 pounds of dry substance, and since it is 65° Brix the weight of the thick juice must be $1200 \times \frac{100}{65} = 1846$ pounds, and the water evaporated is, 10,000 pounds (weight of thin juice) minus 1846 (weight of thick juice) = 8154 pounds.

*A Brix hydrometer is scaled to indicate the percentage of sugar in a pure sugar solution. It derives its name from one of the early investigators who determined the specific gravity values of sugar solutions on which the scale is based.

EXHIBIT 3

AFFIDAVIT

I, Pat McGrane, do hereby affirm and attest the following facts:

1. I have personal knowledge of at least two historic wells located at 1701 N. West Main, Blackfoot, Idaho, the current site of my employer, UAP, and the former location of the Blackfoot Sugar Factory.
2. I have been employed at this location since February 10, 1986.
3. I have personally been involved with or have been responsible for the production and storage of liquid fertilizer produced at this location during my time of employment, the water for which was extracted from the wells on the property.
4. I have personally been involved with or have been responsible for the maintenance and operations of the wells during my time of employment.
5. I have personal knowledge that one of these wells (referred to as Well #2) has the following characteristics:
 - a. The well casing of Well #2 is 12" in circumference
 - b. The well has a depth of 120'.
 - c. The fertilizer plant currently extracts water from Well #2 through a 6" draw pipe that drops down into the well casing.
 - d. The draw pipe is attached to a 50 horsepower pump that sits at a depth of 90 feet.
 - e. This pump is capable of producing 340 gallons of water per minute @ 170 GDH.
 - f. Well #2 produces more than enough water to meet the needs of the fertilizer company's current annual production, which in 2007 is estimated at 6,000,000 gallons of water per year.

I do solemnly attest that these facts are true to the best of my knowledge, and I sign my name as witness to the same on this the 1 day of July, 2008.

Signed

Address:

Notary

On this the 1 day of July, 2008, before me personally appeared Pat McGrane, known to me (or satisfactorily proven) to be the person whose name is subscribed to this Affidavit and acknowledged that he executed the same.

In witness whereof I hereunto set my hand and official seal.

Kathy Kirkham

Kathy, Kirkham - Notary Public

KATHY KIRKHAM
NOTARY PUBLIC
STATE OF IDAHO

Commission expires: March 13, 2012. Notary Address is 2055 Garrett Way, Building 1, Suite 2, Pocatello, Idaho 83201

SCANNED

AUG 07 2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

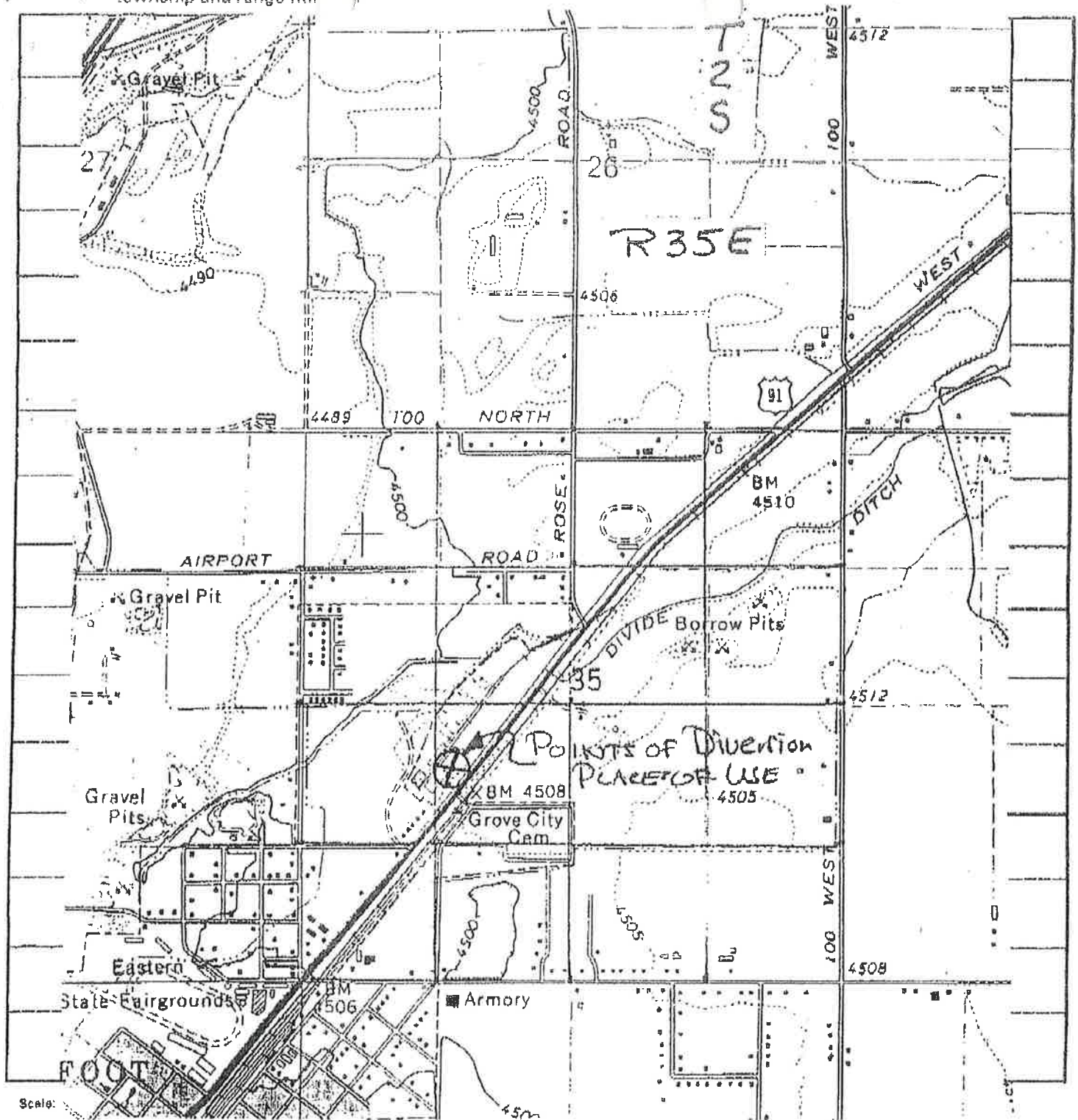
- Name of applicant Dale B. Kirkham or Dale B. Kirkham Jr. Phone 232-6886
Post office address P.O. Box 4026 Pocatello, Id, 83201
- Source of water supply GROUNDWATER which is a tributary of _____
- Location of point of diversion is _____ 1/4 of NE 1/4 of SW 1/4, Govt. Lot _____
Sec. 35 Township 2 S Range 35 E B.M. Bingham County; additional
points of diversion if any: _____
- Water will be used for the following purposes:
Amount 3.0 for Commercial purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- Total quantity to be appropriated is (a) 3.0 cubic feet per second and/or (b) _____ acre feet per annum
- Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Two wells one for office use
Second well to storage tanks for mixing fertilizer
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is 16" inches; proposed depth of well is 510' feet.
d. Is ground water with a temperature of greater than 90°F being sought? NO
- Time required for the completion of the works and application of the water to the proposed beneficial use is
5 years (minimum 1 year).

Post-It™ brand fax transmittal memo 7671 # of pages 4

To <u>Kirk Kirkham</u>	From <u>JD</u>
Co. _____	Co. _____
Dept. _____	Phone # _____
Fax # _____	Fax # _____

AUG 07 2008

13. Map of proposed project show clearly the proposed point of diversion, place of use, section number, township and range number.



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Dele B. Kuhn
(Applicant)

MAR-14-'97 THU 08:19 ID:

TEL NO:

H252 P04

Assisted by *Dele B. Kuhn*
Received by _____

Date *3/26/90* Time *1500h*

Preliminary check by _____
Dele B. Kuhn

SCANNED

AUG 07 2008

Registered by Kew

Received by

Date

3/26/90

Time

1500h

Prelimin.

check by

Fee \$ 85.00

Received by

Kew

E012536

Date

26 Mar 1990

Publication prepared by

RB

Date

5-17-24-90

Published in

Morning News

Publication approved

Kew

Date

6-14-90

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before

_____, 19 _____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

SCANNED

AUG 07 2008



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

10-May-1990

Dale B. Kirkham

Pocatello, ID 83201

RE: Application for Permit No. 27-7510, 29-7939, 29-7941,
29-7942

Dear Water Right Applicant:

The Department of Water Resources acknowledges receipt of your water right permit. This office is currently in the process of advertising the application in the Morning News on MAY 17 & 24, 1990. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our state office in about five weeks. State office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

HAROLD W. JONES
Water Rights Supervisor

SCANNED

AUG 8 7 2000

State of Idaho
Department of Water Resources**Permit To Appropriate Water**

NO. 27-07510

Proposed Priority: March 26, 1990 Maximum Diversion Rate: 3.00 CFS

This is to certify, that DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO, ID 83201has applied for a permit to appropriate water from: GROUNDWATER
and a permit is APPROVED for development of water as follows:BENEFICIAL USEPERIOD OF USERATE OF DIVERSION

COMMERCIAL

01/01 to 12/31

3.00 CFS

LOCATION OF POINT(S) OF DIVERSION:NESW Sec. 35, Township 02S, Range 35E
BINGHAM CountyPLACE OF USE: COMMERCIALTWN RGE SEC

02S 35E 35

NESW

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1992.
2. Subject to all prior water rights.
3. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
4. The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
5. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
7. Water used under this permit if discharged into a natural channel or subsurface system shall meet Idaho Water Quality Standards.
8. Commercial use is for an office.

SCANNED

AUG 07 2008

PAGE 2

State of Idaho
Department of Water Resources**Permit To Appropriate Water**

NO. 27-07510

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this

9th day of July, 19 90.

for

R. Keith Higginson
R. Keith Higginson, Director

SCANNED

AUG 07 2008

EXHIBIT 7(-1)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 31, 1992

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO ID 83201

PROOF DUE NOTICE

RE: PERMIT NO. 27-07510

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before August 1, 1992. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Karen L. Gustafson

Karen L. Gustafson
Secretary/Records Manager

Enclosures

SCANNED

AUG 07 2008

EXHIBIT 7
check 55548 H-1

OFFICE USE ONLY
Amt. of Fee \$
Date
Receipt No.
Receipt by

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1. Permit No. 27-07510 Telephone No. 237-6886
2. Name(s) of Permit Holder(s): Dale B. Kirkham on PB Kirkham
3. Mailing Address: Box 2000, Blackfoot
4. Source of Water: groundwater

If GROUNDWATER, Well Driller's Name: _____ Date Drilled: 1903

OPTIONAL:

Pump horsepower: _____ Pressure (psi): _____ Dynamic pumping level (ft.): _____

5. Extent of Use (as authorized by the permit):

Domestic _____ (No. of households) Stockwater _____ (No. and type of stock)

Irrigation _____ (No. of acres) Other commercial

6. Total rate and/or volume for which proof is submitted 30 cfs OR _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? _____ Yes _____ No Installed? _____ Yes _____ No

OR

Flow Measurement Port: Required? _____ Yes _____ No Installed? _____ Yes _____ No

8. Fee Enclosed: \$ 175.00 (See License Fee Schedule on back of Instruction Sheet)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name Pat McGarry Telephone No. 1-800-999-8511

Address Egan Valley - Blackfoot Idaho

10. The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

Date 6-15-92 Signature (and title, if on behalf of a company or organization) Dale B. Kirkham

SCANNED

AUG 07 2008

SCANNED
AUG 07 2008



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 8, 1992

Dale B. Kirkham and Dale B. Kirkham Jr.
P.O. Box 4026
Pocatello, ID 83201

Re: Permit No. 27-07510

Dear Permit Holder:

The Department is in receipt of the proof of beneficial use and fee for the above referenced permit.

The license exam fee for 3.00 cfs is \$150. Since you submitted \$175, you are entitled to a \$25 refund. I have begun the process to refund the \$25 and it will arrive under separate cover.

I will continue to process the proof of beneficial use. If you have any questions or if I can be of any further assistance, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Gustafson".

Karen L. Gustafson
Secretary/Records Manager

C: Fiscal

SCANNED

AUG 07 2008

S T A T E O F I D A H O

DEPARTMENT OF WATER RESOURCES

Statehouse
Boise, Idaho 83720
(208) 327-7900
July 11, 1990

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO, ID 83201

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 27-07510

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

You should be aware that the groundwater you propose to divert is located within a drainage basin where surface waters are regulated during the months of low flow. It is possible that diversion of groundwater may have an adverse impact on these surface water flows. Information available to us at this time does not warrant refusing to issue permits in your area, but we do caution that diversions of groundwater are not allowed to deplete flows available for surface water users with earlier priority dates. Siting your well as far from surface sources as possible and casing out upper water producing zones may reduce the potential of interference.

Section 42-235, Idaho Code, requires that a "drilling permit" must be obtained from the department for all wells constructed after July 1, 1987. A drilling permit is a separate permit that must be issued in addition to your permit to appropriate water. Commencement of well construction or diversion of water under your permit to appropriate water is prohibited unless a drilling permit is obtained.

Please note the requirement that as a permit holder you must commence the excavation or construction of diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The enclosed blue card must be completed and returned to this office as soon as you

commence construction, no later than one year from the date the permit was approved.

We have enclosed a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit into a license.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

GARY SPACKMAN, Supervisor
Water Right Permits Section

GS: SC
Enclosures

SCANNED

AUG 07 2008



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 13, 1992

DALE B. KIRKHAM
DALE B. KIRKHAM, JR.
P.O. BOX 4026
POCATELLO ID 83201

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 27-07510

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls at (208)525-7161.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Gustafson".

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region

SCANNED

AUG 07 2008



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

June 3, 2008

GEMCO LIMITED PARTNERSHIP
PO BOX 4026
POCATELLO, IDAHO 83205

RE: Application for Transfer

Dear Applicant (s):

The Department of Water Resources has received your application for transfer. After preliminary review of the application, it has been determined that we are unable to process it at this time. We are returning your application and the filing fee. The reason for this action is described below.

-Water right 27-07510 is still in the permit stage and we can not process a transfer on a permit. This is only allowed if the water right is either a license or decree.

Please feel free to contact this office if you have any questions.

Sincerely,

Denise Kidman
Water Resource Agent

Enclosures

SCANNED

AUG 07 2008



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 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

August 3, 2007

DALE B KIRKHAM, DALE B KIRKHAM JR
PO BOX 4026
POCATELLO ID 83201

Re: Notice Regarding Participation in a Ground Water District as a Nonmember for Mitigation Purposes Only, Surface Water Coalition Delivery Call, Water District Nos. 34, 110, 120, and 130.

Affected Right No(s): 27-7510

Dear Water Right Holder:

This letter provides notice pursuant to 2006 Idaho Session Laws 1089 that you may need to join a ground water district solely for mitigation purposes to ensure that the above referenced ground water rights are included in a 2007 mitigation or replacement water plan (herein referred to as mitigation plan) approved by the Idaho Department of Water Resources (Department).

Recipients of this notice have fifteen (15) days to petition to join a ground water district for mitigation of the above referenced ground water right(s) or provide evidence that the right(s) is included in one of several Department accepted mitigation plans provided by the Idaho Ground Water Appropriators (IGWA) and its member ground water districts, the Idaho Dairy Association (IDA), or the Water Mitigation Coalition (WMC). Petitions to join a ground water district should be filed with the ground water district located nearest the lands to which your right(s) is appurtenant.

A warning letter was sent to you on May 10, 2007 notifying you that the right(s) identified above would likely be curtailed in 2007 as a result of the delivery call made by members of the Surface Water Coalition, comprised of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. Fortunately, curtailment of junior ground water rights was avoided this year as a result of the mitigation plans provided by IGWA, IDA and WMC. Your water right(s) may not be covered by one of these mitigation plans.

The above referenced right(s) may not currently be included in a ground water district because it is either located outside the boundaries of a ground water district or is used for non-irrigation purposes. Other recipients of this notice include members of the Jefferson-Clark Ground Water District and the Carey Valley Ground Water District, both organized in November, 2006. IGWA has advised the Department that these ground water districts are not yet IGWA members. These two ground water districts therefore are not covered by IGWA's 2007 mitigation plan. If you are a member of one of these ground water districts you will need to work with the district to assure that the above right(s) are included or covered by the IGWA mitigation plan.

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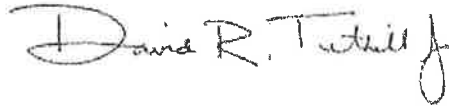
August 3, 2007

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The Director of the Department may take any appropriate action within his authority to assure that recipients of this letter and the right or rights identified herein are covered by an approved mitigation plan. If your right(s) identified in this notice have already been included in a ground water district for mitigation purposes or is included in another approved mitigation plan, then please contact the water district watermaster directly or have the ground water district or other mitigating entity contact the watermaster with verification regarding inclusion of your rights. Generally, a petition for annexation or inclusion of rights in the ground water district for mitigation purposes is acceptable.

Maps and contact information for ground water districts can be found on the IDWR website at: http://www.idwr.idaho.gov/water/districts/other_water_districts.htm. Information pertinent to all orders and correspondence concerning the Surface Water Coalition delivery call can be found on the IDWR website at: <http://www.idwr.idaho.gov/Calls/Surface%20Coalition%20Call/default.htm>. The delivery call was made under the Department's Rules for Conjunctive Management of Surface and Ground Water Sources (IDAPA 37.03.11). This notice has been sent pursuant to the Director's Order of May 2, 2005 issued in response to the Surface Water Coalition delivery call and Legislative House Bill No. 737, 2006 Idaho Session Laws 1089, adopted by the Idaho Legislature in 2006.

Sincerely,



David R. Tuthill, Jr.
Director

Copies:

- Idaho Ground Water Appropriators, Inc. -- Lynn Tominaga
- Aberdeen-American Falls Ground Water District
- Bingham Ground Water District
- Bonneville-Jefferson Ground Water District
- Magic Valley Ground Water District
- North Snake Ground Water District
- Jefferson-Clark Ground Water District
- Carey Valley Ground Water District
- Randall C. Budge -- Racine Olson Chartered
- Michael C. Creamer -- Givens Pursley LLP
- John K. Simpson -- Barker Rosholt & Simpson, LLP
- Josephine Beeman -- Beeman & Associates
- Lyle Swank -- IDWR Eastern Region and Water District No. 110
- Allen Merritt -- IDWR Southern Region
- Earnest Carlsen -- Water District No. 120
- Cindy Yenter -- Water District No. 130
- Bob Schaeffer -- Water District No. 34

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Assessment Notice
Bingham Groundwater District
 208-684-9634

KIRKHAM, JR., DALE B
 PO BOX 4026

Patron # 614

POCATELLO, ID 83201

November 20, 2007

NOTICE IS HEREBY GIVEN that the charges for the year 2008 assessments will be levied, pursuant to Title 42, Chapter 52, Idaho Code, at the rate of \$35.00 per cubic foot per second (CFS) for assessment and \$315.00 per cubic foot per second (CFS) for mitigation. Year round users of water will have an alternate fee for assessment and mitigation that includes the (regular rate x 1.73) for stock (STO-04), industrial (IND-07), cooling (COO-25), municipal (MUN-40), and domestic (DOM-43) per CFS. For commercial use an alternate fee for assessment and mitigation includes the (regular rate x 7.3) per CFS that each member is authorized pursuant to its ground water rights. A minimum of \$25.00 will be assessed per assessment.

PURSUANT TO IDAHO LAW, the assessment is due and payable on or before December 31, 2007, after which date unpaid assessments become a lien against the lands to which the water rights used to determine assessments are appurtenant. Delinquent assessments shall bear interest and, in addition, shall be subject to a penalty in the amount of \$15.00 per delinquent assessment.

Water Right Number(s):	Year	Type	Point of Diversion	Diversion Rate: (CFS)	Cost Per CFS:	Assessment	Interest	Penalty	Due	
27-07510	2008	Assessment	COM	02S 35E 35 N1SW	3	\$ 35.00	766.50	0.00	0.00	766.50
Total for						Assessment				\$766.50
27-07510	2008	Mitigation	COM	02S 35E 35 N1SW	3	\$ 315.00	6898.50	0.00	0.00	6898.50
Total for						Mitigation				\$6,898.50
						Assessment	Interest	Penalty		Total Due
Total For Year:				2008		\$7,665.00	\$0.00	\$0.00		\$7,665.00

Total DUE: \$7,665.00

Please detach and mail with payment in the pre-addressed, stamped envelope.

KIRKHAM, JR., DALE B
 PO BOX 4026

Bingham Groundwater District

P.O. Box 1268

POCATELLO, ID 83201

Blackfoot, ID 83221-1268

Total DUE: \$7,665.00

IF THE PROPERTY HAS BEEN SOLD OR TRANSFERED YOU MUST INFORM BINGHAM GROUND WATER DISTRICT AND IDAHO DEPARTMENT OF WATER RESOURCES IN IDAHO FALLS.

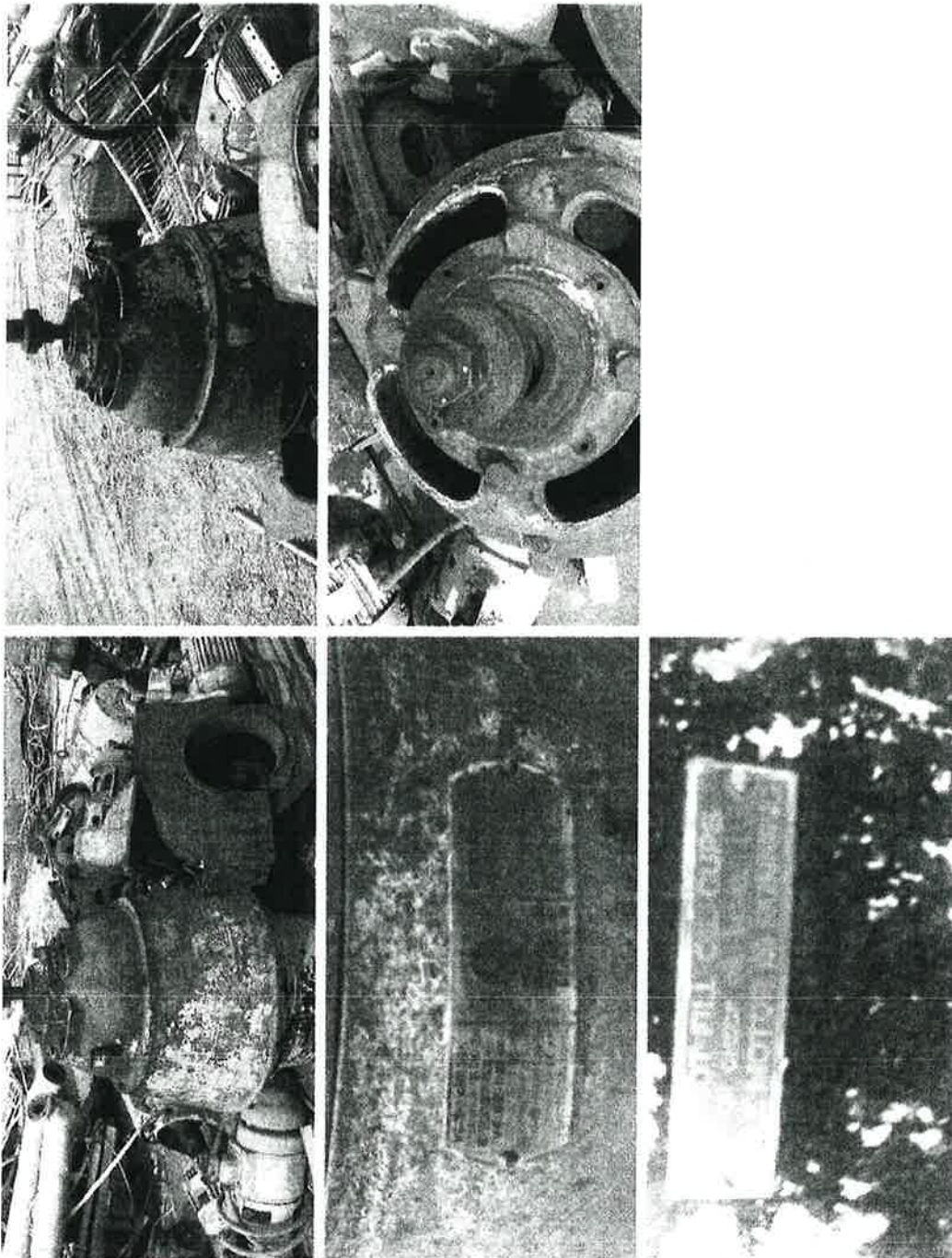
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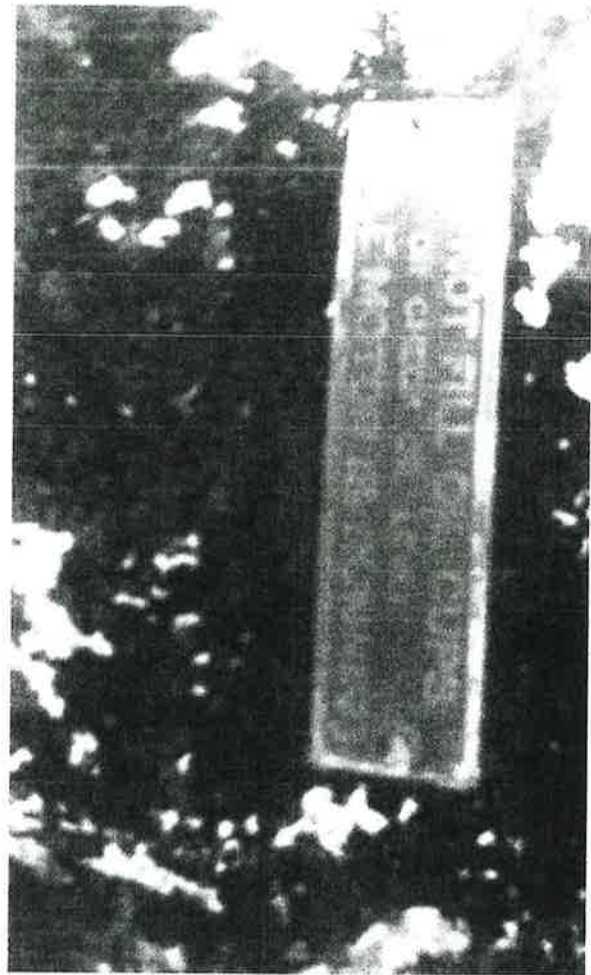
EXHIBIT 14

PHOTOS OF 75HP FAIRBANKS-MORSE PUMP REMOVED FROM WELL #2 IN
1984. STILL IN POSSESSION OF THE OWNER



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sugar was produced by the factory that year. Within three years (*i.e.*, in 1906) 503 farmers planted 5,174 acres of beets, harvested 84,228 tons, and the factory produced 207,615 hundred-pound bags of sugar. A railway spur from the factory to Bear River City constructed in 1916 facilitated the delivery of beets. The daily slicing capacity varied between 600 and 1,000 tons until 1922 when a rate of 1200 tons was reached. This was gradually increased until 1935, when the rated capacity was 1600 tons. In 1966 the rated capacity is 2,500 tons per day. In 1965, 458 farmers in the Garland district planted 10,745 acres of beets with a yield of 173,283 tons. Total production of the factory in 1965 was 901,211 hundred-pound bags of sugar.

Idaho Falls Factory, 1903-1966

The Idaho Falls, Idaho, factory was erected in 1903 by E. H. Dyer & Company for the Idaho Sugar Company. Cost of the factory, which is at Lincoln, a short distance east of Idaho Falls, was approximately \$500,000. The original capacity was 600 tons. During the first season 628 growers planted 5,274 acres and harvested 36,600 tons of beets. The factory produced 72,304 hundred-pound bags of sugar. Within three years the factory was processing double this figure. Because of the improved relative advantages of growing sugarbeets in preference to other crops the Idaho Falls factory had a particularly big year in 1933 when 500,025 bags of sugar were produced. The capacity of the factory remained at 900 tons until 1922, when it was increased to 1,200 tons per day. The daily slicing capacity is now rated at 4,000 tons. In 1965, 631 farmers in the Idaho Falls district planted 39,594 acres of sugarbeets and harvested 528,187 tons. The plant produced 1,425,997 bags of sugar in 1965.

During the 62 years which the Idaho Falls factory has been in operation, farmers in the district have produced 7,148,780 tons of sugarbeets, and from these the factory has extracted 25,643,968 hundred-pound bags of sugar. Utah-Idaho Sugar has expended in excess of \$100 million in the district for beets, labor, and materials.

Sugar City Factory, 1904-1947

Erected at Sugar City, Idaho, in 1904 by E. H. Dyer & Company for the Fremont County Sugar Company, the original capacity was 700 tons. This was soon enlarged to 900 tons per day; in 1922 the capacity was further increased to 1,200, and still later to 1,700 tons per day. During its initial campaign the Sugar City plant handled 33,272 tons of beets and produced 62,526 hundred-pound bags of sugar. Within two years (*i.e.*, in 1906) it was producing 200,335 bags of sugar. As with the

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Idaho Falls factory the Sugar City factory experienced a particularly heavy campaign during the depression year of 1933 when it produced 432,160 hundred-pound bags of sugar. That proved to be the peak year of its operation. Because of labor shortages and acreage limitations under the Sugar Act, the factory did not operate in 1940 and 1941, but operated during the peak war year of 1942 when 205,562 bags of sugar were produced. That was the final year of operation. With the improvement of country roads and farm transportation facilities, and the lack of a local labor supply, it became more economical to process beets at large, efficient, centralized plants and for that reason the Sugar City factory was closed. In 1945 the batteries were installed in the Gunnison plant at Centerfield. Sugarbeets produced in the Sugar City district were then processed in the Idaho Falls factory. The final dismantling occurred in 1947.

During the 37 years which the Sugar City factory was in operation, farmers in the district produced 2,107,898 tons of sugarbeets, and from these the factory extracted 8,100,481 100-pound bags of sugar. U and I and its predecessors expended an estimated \$25 million in the district for beets, labor, and supplies.

The Sugar City factory is the only factory besides the Lehi factory which constructed an auxiliary cutting plant. This was located on the Egin Bench at Parker, Idaho, some six miles distant. This cutting station operated satisfactorily for several years, but was dismantled in 1915 when certain machinery was moved to the Garland plant.

Blackfoot Factory, 1904-1952

In 1904 a French plant which had been erected at Binghamton, New York, was moved to Blackfoot, Idaho, under the sponsorship of Snake River Valley Sugar Company, Limited. Manager was F. Adair Monroe. The capacity of this plant was 600 tons per day; it was increased to 800 tons in 1911. The company had difficulty securing adequate contracts from growers in the region, and in 1905 the plant was acquired by The Idaho Sugar Company (successor to Idaho Sugar Company and Fremont County Sugar Company). The original cost of the plant and facilities was approximately \$750,000. During the 1905 campaign the factory processed 14,850 tons of beets and manufactured 28,076 bags of sugar. In 1906 the factory produced 102,005 bags of sugar. The factory was closed in 1910 because of Curly Top and again in 1922, 1926, and 1927. The factory was marginal in the sense that the beet acreage was seldom enough to enable the plant to reach capacity operations. Having achieved a production in 1915 of 218,895 bags of sugar, the factory did not reach this figure again until 1933. The peak year

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was 1940 when the factory processed 104,206 tons of beets and manufactured 368,007 bags of sugar. After closing down in 1945, the factory was reopened for brief campaigns in 1946 and 1947. The factory was closed after the 1948 campaign and dismantled in 1952. In 39 years of operation, the Blackfoot factory produced 587,544,900 pounds of sugar. In 1954 the site was converted into a company-owned sugar storage warehouse. The beets from the district are now processed in the Idaho Falls plant.

Nampa Factory, 1906-1916

Constructed by E. H. Dyer & Company in 1905-1906 for Western Idaho Sugar Company, the Nampa, Idaho, factory had an original capacity of 600 tons. Located in the center of a sagebrush area the district was plagued from the very beginning by Curly Top disease. During the first year 5,428 acres were planted for a yield of 43,050 tons of beets. The factory produced 106,305 bags of sugar. The production of sugar was only slightly higher in 1907, although the acreage had jumped to 8,935. By 1908 production had dropped to 88,735 bags of sugar. The factory did not operate in 1909, and operated for only a short period in 1910 when 12,207 bags of sugar were produced. In four years of operation (1906-1908, 1910), the Nampa plant manufactured 32,609,100 pounds of sugar. The factory was idle from 1911 to 1916, when the machinery was moved to Spanish Fork, Utah.

Elsinore Factory, 1911-1942

E. H. Dyer & Company constructed the Elsinore, Utah, factory for Utah-Idaho Sugar Company in 1911. Cost of the factory was \$620,000. The original capacity was 500 tons, which was built up to 650 tons by 1916 and to 900 tons by 1925. During its first campaign 628 growers planted 5,754 acres of sugar beets, produced a tonnage of 47,375 tons of beets, and the factory manufactured 107,150 hundred-pound bags of sugar. The peak year of the factory was 1916 when 813 farmers planted 5,229 acres and harvested 71,261 tons, from which the factory manufactured 169,780 hundredweight of sugar. During most of its years a paying enterprise, the Elsinore factory was "done in" by Curly Top. It was not operated in 1926. When reopened in 1927 it produced only 44,560 bags of sugar and in the next year only 32,473 bags of sugar. The factory was closed in 1928 and the beets from the district were processed in the Gunnison or Spanish Fork factories. Some of the materials and machinery were sold in 1942 and the plant was then dismantled. During World War II the warehouse was converted into a potato-drying plant. Under a government contract dried potatoes were made into a flour for shipment to Europe.

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During the 17 years which the factory operated, Elsinore produced 1,881,289 one hundred-pound bags of sugar.

Fallon Factory, 1911-1917

When the historic Watsonville, California, factory, constructed by Spreckels with German machinery in 1888, ceased operation in 1899, it remained idle until acquired by Henry Hinze. Hinze, who occasionally speculated in beet sugar factories, hoped that the newly-opened Truckee-Carson Reclamation project in western Nevada might serve as a center for the production of sugarbeets. Under the auspices of the Nevada Sugar Company a 500-ton factory was built at Fallon in 1911. Because of Curly Top and the failure of the company to educate the local farmers in the art of growing sugarbeets, the factory was not a success. The farmers also had difficulty with irrigation because the land was not level. The beets either drowned or were scorched. The factory operated for short campaigns in 1911 and 1912, and then remained idle until 1916 when overtures were made to Utah-Idaho Sugar to buy the factory. After careful investigation U and I decided to operate the factory for one or two years on a lease basis to determine whether it would be a profitable acquisition. Although the farmers contracted for 3,760 acres of beets the crop was less than 20,000 tons. U and I was unable to obtain sufficient beet contracts to justify operating for another year and the ownership reverted to the original interests. The factory remained idle from 1918 to 1921, when it was purchased by Michigan capitalists organized as the Lahontan Valley Sugar Company. This group operated it for one unsuccessful season. In 1923 the factory was purchased by the Consolidated Independent Sugar Company of Utah, which operated factories at Hooper, Utah, and Rigby, Idaho. When this farmers' cooperative failed, the plant was sold, in 1925, to the Northwestern Sugar Refining Company, owned by Fred Hinze and A. W. Black of Bay City, Michigan. They planned to move it to a California district. Failing in this, they sold it in 1926 to some Nevada capitalists (Fallon Sugar Company) who secured contracts and operated it in 1927. The campaign was not profitable and the Michigan bondholders once again assumed control. In 1934 the machinery was junked and shipped to Japan.

Payson Factory, 1913-1940

When the Strawberry Valley Reclamation Project was completed in 1913 U and I had hopes that the irrigated acreage would be expanded sufficiently to justify the erection of an additional factory. E. H. Dyer & Company constructed the 500-ton Payson, Utah, factory for Utah-Idaho

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From: "Tawna Root" <troot@laynepump.com>
 Subject: **RE: photos of vertical turbine?**
 Date: July 2, 2008 3:04:25 PM MDT
 To: "Rich Kirkham" <rich@richkirkham.com>

Okay, here is today's lesson
 $\text{Gpm} \times \text{TDH} \text{ divided by } 3960 \text{ divided by efficiency } (.80) = \text{bhp}$

So $\text{bhp} \times 3960 \times .80 \text{ divided by gpm} = \text{tdh}$

And $\text{bhp} \times 3960 \times .80 \text{ divided by tdh} = \text{gpm}$

$\text{Tdh} = \text{lift} + \text{loss} + (\text{psi} \times 2.31)$

Therefore $50 \text{ hp} \times 3960 \times .80 \text{ divided by } 300 \text{ gpm} = 528 \text{ tdh}$
 $528 \text{ less lift of } 90' = 436 \text{ divided by } 2.31 = 188$
 psi at pump

Without knowing what the pump was, you could do 2600 gpm with no pressure or 100 gpm with 1000 psi with a 75 hp motor. I am told your motor dates back to probably late 40's or early 50's. (before my time and nothing I have ever seen before) If you can find the head which I didn't see in any of your pictures, you might find a serial number. I was told to try Golden West irrigation in Idaho Falls and anyone else up there that might have been open in the 40's. Then track by owners of the property in the 40's. Call me if you have any questions.

-----Original Message-----

From: Rich Kirkham [<mailto:rich@richkirkham.com>]
 Sent: Wednesday, July 02, 2008 10:42 AM
 To: troot@laynepump.com
 Subject: photos of vertical turbine?

I thought of another question. Do you have any idea how many gallons a minute a pump/motor like this might be able to deliver? The tag on the unit says it is 75HP. The well it sat on is 120' deep. The casing is 12". The current pump that is in the well is rated at 50 HP and sits on a 6" draw pipe and sits at a depth of 90 feet. It delivers 300 gallons per minute.

Even an educated guess or a range would be helpful.

Thanks

Rich

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