

02/19/2002

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

RIGHT NUMBER: 29-13085

NAME AND ADDRESS: JAMES L BURNHAM
330 SKYLINE DR
POCATELLO ID 83204

ARLENE BURNHAM
330 SKYLINE DR
POCATELLO ID 83204

SOURCE: SPRING

TRIBUTARY: MARSH CREEK

QUANTITY: 0.03 CFS

PRIORITY DATE: 12/31/1919

POINT OF DIVERSION:

T10S R37E S17 SENWNW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/01 10/31	0.010 CFS
STOCKWATER	1/01 12/31	0.020 CFS

PLACE OF USE:

IRRIGATION Within BANNOCK County

T10S R37E S17 SWNW 0.2

STOCKWATER Within BANNOCK County

T10S R37E S17 SWNW

0.2 ACRES TOTAL

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

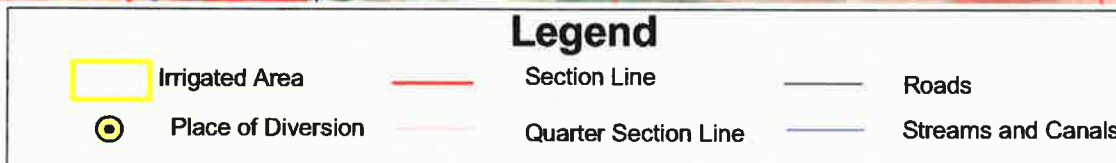
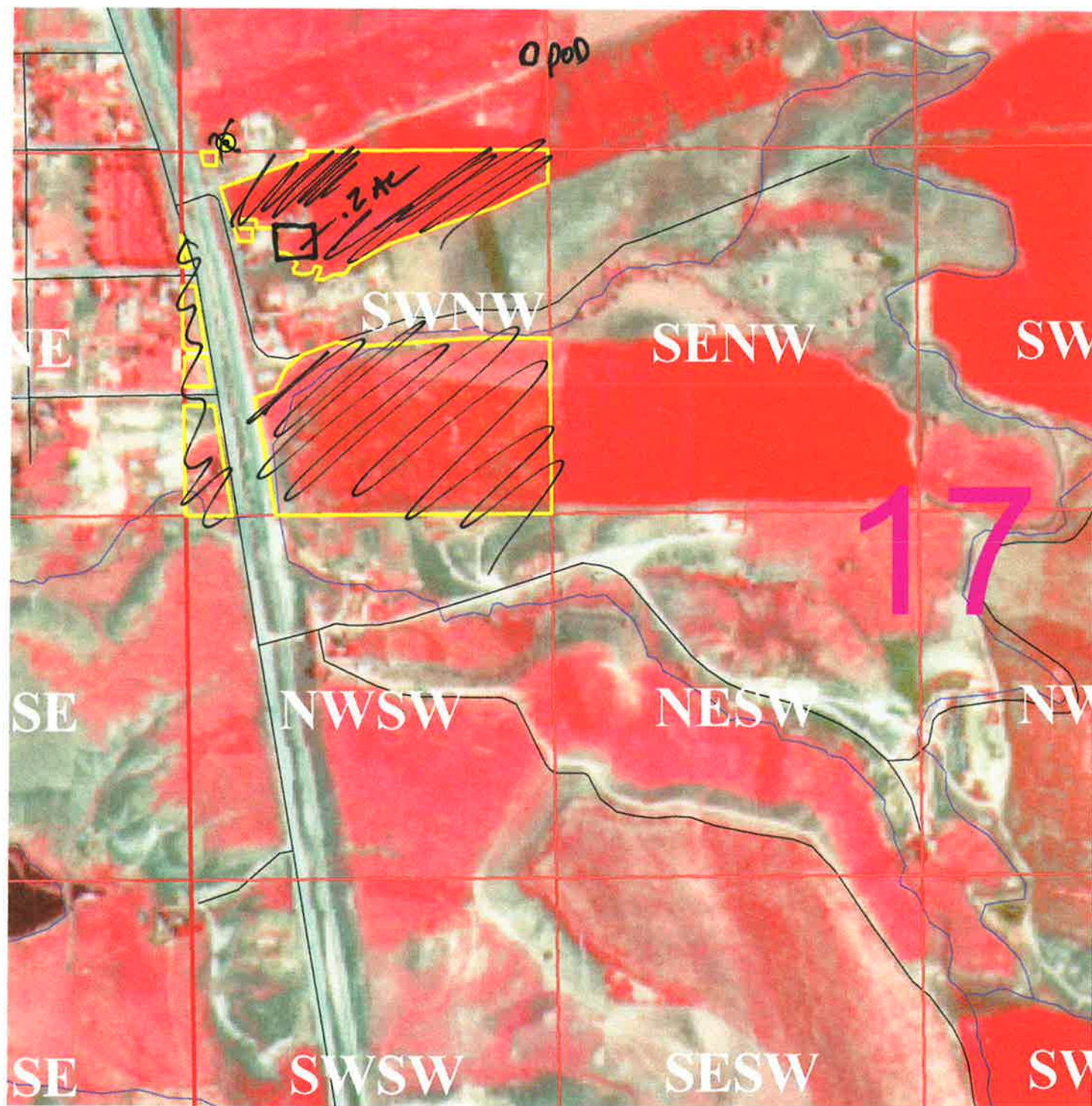
EXPLANATORY MATERIAL: Beneficial Use

RIGHT NO. 29-13087 IS ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE.

Water Right Claim Number A29-13085

09/05/2000

Township , 10S37E



1000 0 1000 2000 Feet

N
11/5/01

09/08/2003

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

RIGHT NUMBER: 29-13085

NAME AND ADDRESS: JAMES L BURNHAM
PO BOX 111
455 EAST ST
ARIMO ID 83214

ARLENE BURNHAM
PO BOX 111
455 EAST ST
POCATELLO ID 83204

SOURCE: SPRING

TRIBUTARY: MARSH CREEK

QUANTITY: 0.030 CFS

PRIORITY DATE: 12/31/1919

POINT OF
DIVERSION: T10S R37E S17 SENWNW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/01 10/31	0.010 CFS
STOCKWATER	1/01 12/31	0.020 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T10S R37E S17 SWNW 0.2

STOCKWATER Within BANNOCK County

T10S R37E S17 SWNW

0.2 ACRES TOTAL

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO
LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

RIGHT NO. 29-13087 IS ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE.

Sept 4, 2003

Dept of Water Resources
Adjudication Bureau
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

SEP 10 2003

Department of Water Resources

Dear Sir - Right number: 29-13085

Please change our address from:

James L Burnham
330 Skyline Dr
Pocatello Idaho 83204

to

James L Burnham
P.O. Box 111
455 East St.
Arimo, Idaho 83214

Thank you,
James L Burnham

Previously changed by E.O.

SCANNED

SEP 11 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 12, 2003

JAMES L & ARLENE BURNHAM
PO BOX 111
455 EAST ST
ARIMO ID 83214

RE: Notice of Change of Address for 29-13085 and Notice of
Completed Administrative Proceeding (NCAP)

Dear Mr. & Mrs. Burnham:

On September 8, 2003, the Idaho Department of Water Resources (IDWR) received a change of address for the above referenced water right(s). Based on this change, IDWR water right records for the Snake River Basin Adjudication (SRBA) have been updated.

Furthermore, as directed by the SRBA Court, this office mailed a copy of the updated water right record(s) to each party listed on the enclosed NCAP. The intent of this mailing is to ensure each party has a current record of water right(s) as recorded in the SRBA.

Please feel free to contact me if you have any questions concerning this matter.

Respectfully,

Kristen Forsgren
Office Specialist 1

Enclosure

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)

Water Rights: 29-13085

Case No. 39576)

NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING

IDWR has completed the following Administrative proceeding:

☒ Address change

☐ Substitution of Party

☐ I.C. § 42-222 transfer

☐ point of diversion

☐ place of use

☐ period of use

☐ nature of use

☐ split of water right

☐ change in ownership

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: 9 Sept 2003.

Ernest Calvan

Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on 9-12-03, 2003, I mailed the original and copies of this form to the following persons, postage prepaid by regular mail and addressed as follows:

1. Original to:

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

2. One copy to:

Claimant/Seller for Substitution of Party or attorney of record:
N/A

3. One copy to:

Claimant/Purchaser for Substitution of Party, or attorney of record:
JAMES L & ARLENE BURNHAM
PO BOX 111
455 EAST ST
ARIMO ID 83214

4. One copy to:

Each party in the subcase, or attorney of record
N/A

5. One copy each to:

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

6. One Copy to:

United States Dept of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724



Signature of person or attorney mailing the form

Sept 4, 2003

Idaho Department of Water Resources
Eastern Region

900 W. Skyline Dr. Suite A
Idaho Falls, Idaho 83402-1713

Right number # 29/3085

Dear Sir -

Please change our address from
James L Burnham
330 Skyline Dr
Pocatello, Ida 83204

to
James L Burnham
P.O. Box 111
455 East St.
Arimo, Idaho 83214

Thank you -
James L Burnham

RECEIVED

SEP 08 2003

Department of Water Resources
Eastern Region

RECEIVED

SEP 08 2003

Department of Water Resources
Eastern Region

**NOTICE OF ERROR
REPLY**

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: April 21, 2003

Water right number: 29-13085

JAMES L BURNHAM
330 SKYLINE DR
POCATELLO ID 83204
Telephone Number: (208)233-0887

ARLENE BURNHAM
330 SKYLINE DR
POCATELLO ID 83204
Telephone Number: (208)233-0887

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

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

The original was 1/6 To Smith (Burnham)
1/6 To Shirley Leonard
2/3 To Rippons.

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

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

DATE: 3/3/03

SIGNATURE: James L Burnham

Please print your name: James L. Burnham

IDWR Regional Office, 900 N Skyline Dr Ste A, Idaho Falls, ID 83402, 2085257161

7 8
18 17

T10S R37E

City of Arimo

POD
Spring

J. BURNHAM
29-13085

0.25

S. KENT
29-13087

1.0

SWNW

29-13085 BU

I. Appears to be an Address Question:

II. Advance Priority Date to December 31, 1919. See Statement or priority attached.

11/05/01 Visited Property (POD) and Sources/POD. Met Mrs. Burroughs. She showed me the 0.25 ac. tree lands - 1/4 by 3/4. Behind House?

Confusion. Picked wrong POD and measure?

No F&S measurement done - 1" P.O.S

Spring Sources & Pod by Pipeline with Records to 1"





IDAHO DEPARTMENT OF WATER RESOURCES

SNAKE RIVER BASIN ADJUDICATION - BASIN 29



RIGHT ID
POD ID
Quad
Claim Type
Easting
Northing
GPSID

Diversion Description

Same Pod as POD ID 442553. No other visible signs of additional POD in the area.

Spring but to pipeline to Addis

Assumptions

Same POD as POD ID 442553.

No!

Invoice #

Phase-0 (No Attention)
Phase-I (Ready to Go to Field)
Phase-II (Site Visit - Data Missin)
Phase-III (Complete w/issues)
Phase-IV (Total Complete)

Linked
Photos

EPE (ft) Date (M/D/Y) Time Flow Rate (CFS)

Open Channel Flow

☐ Complete one box from both Area and Calculation sections

Cross Sectional Area

☐ Circular Channel

- ☐ Less than half full
- ☐ Half full
- ☐ More than half full
- ☐ Full

Diameter

Depth

☐ Rectangular Channel

Width

Depth

Flow Calculation

☐ Continuity Velocity

☐ Orifice

(Use only for head over a pipe flowing full with free discharge)

Depth of Water above orifice centerline

☐ Weir

(Use only for water flowing freely over weir)

Height of water above nappe

Width of weir

☐ Manning (If used, include photo of representative channel section)

Channel Slope

Channel Description	Concrete lined	.016
	Smooth earth	.025
	Earth	.033
	Rough bed, weeds on sides	.04
	Smooth natural stream	.033
	Rough natural stream	.1

Pumped System

☐

HP

Pressure Head (psi)

Elevation Head (ft)

Motor Mfg

Motor Serial #

Pump Type

Pump Mfg

Pump Serial#

New Contact Information

☐

New Contact Comments

ABR

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A. L. MERRILL (1886-1961)
R. D. MERRILL (1893-1972)
WESLEY F. MERRILL (RETIRED)
DAVE R. GALLAFENT
STEPHEN S. DUNN
D. RUSSELL WIGHT
DAVID C. NYE*
KENT L. HAWKINS*
THOMAS W. CLARK
THOMAS J. LYONS
BRENDON C. TAYLOR
*ALSO ADMITTED IN UTAH

MERRILL & MERRILL
CHARTERED
COUNSELORS AND ATTORNEYS AT LAW
109 NORTH ARTHUR - 5TH FLOOR
P.O. BOX 991
POCATELLO, ID 83204-0991

TELEPHONE
208-232-2286
TELEFAX
208-232-2499
E-MAIL
MMLAW@MERRILLANDMERRILL.COM

August 28, 2001

Candice McHugh
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Water Right Numbers A29-13087; A29-13085; & A29-02217

Dear Ms. McHugh:

This letter is written relating to the claims made by Sidney K. Kent and Melanie F. Kent and James L. Burnham and Arlene Burnham in the spring that is located on the real property owned by Wilson and Merle Tippets. I have enclosed a copy of the Agreement regarding the use of the spring water between the predecessors in interest to the Tippets and the adjacent landowners for your review. I have enclosed a copy of the Deed of Conveyance from Merle and Wilson Tippets to the City of Arimo dated May 14, 1947 and a copy of the Warranty Deed from the City of Arimo returning the subject property to Wilson and Merle Tippets dated September 9, 1978.

It is the position of Wilson and Merle Tippets that James and Arlene Burnham do not have any valid right to the use of the spring water as they are not descendants or heirs of the original parties to the Agreement and do not have any valid basis for their claim of water right in the spring water. As to Sidney and Melanie Kent, it appears that they may be descendants or heirs of one of the original signatories to the enclosed Agreement. However, the Kent's water rights should certainly be limited to the use set forth in the Agreement and should not be allowed to be expanded.

Please consider the enclosed documents as part of your review of the subject water rights of the various parties. Furthermore, if you desire to have additional information from Wilson and Merle Tippets, please do not hesitate to contact them directly or myself.

Very truly yours,

MERRILL & MERRILL, CHARTERED

Thomas J. Lyons

Thomas J. Lyons
TJL/mb/3563
Enclosures

c: Dave Carlson
Allen Ruberry
Wilson and Merle Tippets

COF

RECEIVED
AUG 29 2001
Department of Water Resources
Eastern Region

An Agreement

Made and entered into by and between James H. Tippetts, Arimo, Idaho, party of the first part, and John Worley and Joseph O. Smith, Arimo, Idaho, Parties of the second part, this 8th day of April in the year 1921 at Arimo, Bannock County, Idaho

Witnesseth, that the said parties do mutually agree and covenant as follows: The Party of the first part does hereby sell to the parties of the second part one certain interest in an unnamed spring on his farm on the East side of the C.S.L.R.R. at Arimo, Idaho, or rather sufficient water from said spring for the domestic use of the said second parties, including the necessary water for lawns and the watering of their horses and cattle and other animals; provided, however, that in case either of the second parties shall build more homes, that the said party or parties of the second part shall then pay the party of the first part an additional consideration for such additional water desired. Said water enters one certain pipe line from a cement box at the head of spring and enters into a wooden pipe line which is owned jointly between the said parties as follows: Two thirds of this wooden pipe line belongs to the party of the first part and one third of the wooden pipe belongs to the parties of the second part equally. The total consideration which the parties of the second part are to pay to the party of the first part for the water specified and for their share of right-of-way for pipe line shall be Five hundred and no/100 Dollars to be paid by the second parties equally in the amount of \$250.00 each. The parties of the second part having made the above payment in full to the party of the first part and he hereby acknowledges receipt in full for the above amounts as specified.

At point where the second parties divert their water from the wooden pipe line they are to carry their share of water in a two inch pipe for a distance of twney ✓ two feet and from this two inch paipse they are to ~~reduce their line to a one-inch~~ pipe. The parties of the second part are and shall enjoy enough water through this pipe line as needed for their needs as specified above and are to have priority rights over all other parties which may hereafter purchase water from the party of the first part, excepting that for his residence the party of the first part shall have prior right but this right shall be confined to his large residence in which he now resides and to this only. These rights shall exist between the said parties to this agreement as long as this spring exists and shall be binding on their heirs, executors, administrators and assigns.

In case of water decreasing in spring below an amount sufficient to care for the needs of the respective parties to this agreement as above specified and sufficient for the uses as specified then the said parties shall develop the spring and the said parties shall all pay the expense of such developement according to their respective interests as above shown.

Repairs of the wooden pipe line and maintenance of cement box shall be borne by the said parties as follows: ~~two~~ two thirds by the party of the first part and one third by the parties of the second part and the said one third shall be borne equally by the two parties of the second part.

It is further provided and agreed that the pipe line which runs from the wooden pipe line and which is the pipe line that carries the water to the home of Joseph O. Smith and John Worley shall belong to these said parties in the proportion of one half to each individual/ ^{that is as far as Smith's house,} and that in consideration of the fact that John Worley paid for one -half of the cost of labor and pipe for the line from the wooden pipe line to Joseph O. Smith's house that the said John Worley shall have right of way forever not only for the pipe which carries the water as far as Smith's house but also have right of way for the line from Smith's house to John Worley's house forever and the same shall be enjoyed by the heirs, assigns and administrators of the respective parties forever.

James H. Tippetts

Party of the first part

John Worley
Joseph O. Smith

Parties of the second part

Subscribed and sworn to before me this 26th day of April in the year 1921 at my office at Arimo, Bannock County, Idaho.

[Signature]

Notary Public,
Arimo, Idaho

638

2-1
WARRANTY DEED

608220

This instrument is executed on the 9 day of Sept, 1978, by the City of Arimo, an Idaho municipal corporation, herein termed the Grantor, in favor of Wilson D. Tippetts and Merle C. Tippetts, herein termed the Grantees. Grantees' address is Arimo, Idaho 83214.

Grantor, acknowledging receipt of valuable and sufficient consideration from the Grantees, hereby grants, bargains, sells and conveys unto the Grantees and their heirs or assigns forever, all of the following described real property situated in Bannock County, Idaho:

Parcel No. 3. Commencing at the N $\frac{1}{4}$ corner of Section 17, Township 10 South of Range 37, East of the Boise meridian, running thence South 579.44 feet, thence South 71°17' West 1229.38 feet from the True Point of Beginning; thence South 71°17' West 353.86 feet, thence North 130 feet, thence North 71°17' East 353.86 feet, thence South 130.00 feet more or less to the Point of Beginning, and containing 1.0 acres of land and being within the boundaries of the NW $\frac{1}{4}$ of Section 17, Township 10 South. Range 37, East Boise meridian.

Grantor further grants, bargains, sells and conveys, all appurtenances, including attendant water rights, belonging to the real property described above; any reversions, remainders, rents, issues or profits thereof; and all estate, right, title and interest to said property, at law as well as in equity.

To have and to hold said premises with their appurtenances unto said Grantees, their heirs or assigns forever. The Grantor hereby covenants that it is the owner in fee simple of the premises; that said premises are free from all encumbrances except of public record; and that the Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand on the date specified above.

CORPORATE SEAL

Steven Christensen
Steven Christensen
Mayor, City of Arimo

Attest: Harvey Cole
Harvey Cole
City Clerk

630

608220

STATE OF IDAHO

County of

)
) ss.

2-2

On this 9 day of Sept, 1978, before me, a Notary Public for said county and state, personally appeared Steven Christensen and Harvey Cole, Mayor and City Clerk of the City of Arimo, known to me as the persons whose signatures appear on the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date specified above in this certificate.

NOTARY SEAL

Therese Lynn
Notary Public, State of Idaho
Residing at *Arimo, Ida*

608220

NO. 608220
RECORDED AT REQUEST OF

Wilson D. Tippets

SEP 11 3 25 PM '78

325

2.00

INSTRUMENT NO. 258086

QUITCLAIM DEED

THIS INSTRUMENT, Made this 22nd day of December, in the year of our Lord, One Thousand Nine Hundred and Forty-seven, between CHARLES FINK and POLLY FINK, husband and wife, of Arimo, County of Bannock, State of Idaho, parties of the first part, and VILLAGE OF ARIMO, a municipal corporation organized under the laws of the State of Idaho, party of the second part,

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of One Dollar and other valuable consideration to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents, demise, release and forever, quitclaim unto the said party of the second part, and to its successors and assigns, all right, claim to, or interest in any and all water which arises or which may hereafter arise from a spring located on a tract of land described as follows; to-wit:

Commencing at the North quarter corner of Section 17, Township 10 South of Range 37, East of the Boise Meridian, running thence South 578.44 feet, thence South 71°17' West 1229.38 feet for the true point of beginning; thence South 71°17' West 353.86 feet, thence North 133.00 feet, thence North 71°17' East 353.86 feet, thence South 133.00 feet more or less to the point of beginning, and containing 1.0 acres of land, and being within the boundaries of the Northwest quarter of Section 17, Township 10 South, Range 37, East Boise Meridian.

(U.S.I.R. 35½ Attached and Cancelled.)

It being the distinct intention of this instrument to quitclaim and release to the grantees any and all claims which the undersigned may have, or may have asserted, in and to the waters arising upon the aforesaid lands.

TO HAVE AND TO HOLD, All and singular the said waters and the whole thereof unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year in this instrument first above written.

STATE OF IDAHO)

Charles Fink

COUNTY OF BANNOCK)

Polly Fink

On this 22 day of December, 1947, before me, the undersigned, Notary Public in and for said State, personally appeared CHARLES FINK and POLLY FINK, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and they acknowledged to me that they executed the same.

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

(SEAL)

HENRY J. NELSON
NOTARY PUBLIC
Residing at Arimo, Idaho

RECORDED FEB 25 1948 1:07 PM, in Book 100 of Deeds, page 629, RECORDS OF BANNOCK COUNTY STATE OF IDAHO, At request of Joe Stinger, Arimo, Idaho

Anna Keadle, Recorder

Fee \$1.00

INSTRUMENT NO. 258087

DEED OF CONVEYANCE

THIS INSTRUMENT, Made this 14 day of May, in the year of our Lord One Thousand Nine Hundred and Forty-seven, between WILSON D. PIPFETS and MERLE C. PIPFETS, of Arimo, County of Bannock, State of Idaho, parties of the first part, and VILLAGE OF ARIMO, a municipal corporation under the laws of the State of Idaho, as party of the second part,

WITNESSETH:

That said parties of the first part, for and in consideration of the sum of Two Thousand and No/100 Dollars (\$2000.00), lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey and confirm, unto the said party of the second part, and to its successors and assigns forever, all of that certain lot, piece, or parcel of land situate, lying and being in the County of Bannock, State of Idaho, bounded and more particularly described as follows, to-wit:

Commencing at the North quarter corner of Section 17, Township 10 South of Range 37, East of the Boise Meridian, running thence South 578.44 feet, thence South 71°17' West 1229.38 feet, for the true point of beginning; thence South 71°17' West 353.86 feet, thence North 133.00 feet, thence North 71°17' East 353.86 feet, thence South 133.00 feet more or less to the point of beginning, and containing 1.0 acres of land and being within the boundaries of the Northwest quarter of Section 17, Township 10 South, Range 37, East Boise Meridian.

Together also with all waters of every kind and character arising within said land hereby conveyed and flowing therefrom and particularly all water rights acquired by the grantors pursuant to a permit No. 14747 heretofore

issued to James H. Tippets by the Department of Reclamation of the State of Idaho and the right to use said waters, which permit was thereafter transferred to the undersigned.

(U.S.I.R. 82.20 Attached and Cancelled.)

It is the distinct intention of this deed to transfer and convey to the grantee not only the lands above described but particularly all water from a spring arising thereon, which water is to be used for municipal purposes by said grantee.

TO HAVE AND TO HOLD, All and singular the tenements, hereditaments and appurtenances thereunto belonging to said property hereby conveyed or in anywise appurtenant thereto.

TO HAVE AND TO HOLD, all and singular the said conveyed property, together with the appurtenances, unto the said party of the second part, and its successors and assigns forever; and the parties of the first part and their heirs and assigns warrant said premises and water rights hereby conveyed in the quiet and peaceable possession of the said party of the second part and its successors and assigns forever.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year first above written.

(SEAL)

Wilson D. Tippets

STATE OF IDAHO)
) ss.
COUNTY OF BANNOCK)

Merle C. Tippets

On this 14 day of May, in the year 1947, before me, the undersigned Notary Public in and for the State of Idaho, personally appeared WILSON D. TIPPETS, and MERLE C. TIPPETS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument and they acknowledged to me that they executed the same.

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

(SEAL)

Henry J. Nelson
NOTARY PUBLIC
Residing at Arimo, Idaho

RECORDED FEB 25 1948, 1:05 PM, in Book 100 of Deeds, page 629, RECORDS OF BANNOCK COUNTY STATE OF IDAHO, At request of Joe Stinner, Arimo, Idaho.

Anna Keefe, Recorder

Fee \$1.40

INSTRUMENT NO. 256098

RIGHT OF WAY DEED AND QUITCLAIM

THIS INDENTURE, Made this 14 day of May in the year of our Lord One Thousand Nine Hundred Forty-seven, between CLINTON E. SMITH and ALMEDA A. SMITH, husband and wife, of Arimo, County of Bannock, State of Idaho, parties of the first part, and VILLAGE OF ARIMO, a municipal corporation under the laws of the State of Idaho, party of the second part,

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of One Dollar and other valuable consideration to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, do by these presents, demise, release and forever quitclaim unto the said party of the second part and to its successors and assigns forever, an easement or right of way over and across the lands of the grantors in the Northwest Quarter of Section 17, Township 10 South, Range 37 East Boise Meridian, which said easement or right of way hereby conveyed is more particularly described as follows, to wit:

Commencing at the Northwest corner of Section 17, Township 10 South Range 37, East Boise Meridian, thence South 578.44 feet, thence South 71° 17' East 1229.38 feet, for the true point of beginning, thence South 16° 43' East 20.00 feet, thence South 71° 17' East 1365.46 feet to the intersection with the easterly right of way of public road, thence North 10° 00' West 20.23 feet along the easterly right of way of public road, thence North 71° 17' East 1365.29 feet more or less to point of beginning, containing 0.63 acres of land.

With the full and absolute right to use said lands above described for the conveyance of water along and through the same, by pipe-line or otherwise, and with the full and absolute right to at all times construct, and maintain all conduits or any other means of transportation of said waters and to go in and upon said lands to construct or link said conduits or transportation system and to thereafter and forever maintain the same.

(U.S.I.R. .55/ Attached and Cancelled.)

And the grantees do further hereby and for the consideration hereinbefore recited forever release and quitclaim unto the said party of the second part, and to its successors and assigns forever, any and all claims in and to all waters of that certain spring located upon that tract of land described as;

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Eastern District Office
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RETURN SERVICE REQUESTED

RTS

2
0

29-13085

BURNHAM, JAMES L
BURNHAM, ARLENE
330 SKYLINE DR
POCATELLO, ID 83401

BURN330 T832042006 1401 04 05/04/01
BURNHAM RETURN TO SENDER
TEMPORARILY AWAY
RETURN TO SENDER

A. L. MERRILL (1886-1961)
R. D. MERRILL (1893-1972)
WESLEY F. MERRILL (RETIRED)
DAVE R. GALLAFENT
STEPHEN S. DUNN
D. RUSSELL WIGHT
DAVID C. NYE
KENT L. HAWKINS
THOMAS W. CLARK
THOMAS J. LYONS
BRENDON C. TAYLOR
*ALSO ADMITTED IN UTAH

MERRILL & MERRILL
CHARTERED
COUNSELORS AND ATTORNEYS AT LAW
109 NORTH ARTHUR - 5TH FLOOR
P.O. BOX 991
POCATELLO, ID 83204-0991

TELEPHONE
208-232-2286
TELEFAX
208-232-2499
E-MAIL
MMLAW@MERRILLANDMERRILL.COM

August 28, 2001

RECEIVED

AUG 30 2001

Candice McHugh
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Department of Water Resources

Re: Water Right Numbers A29-13087; A29-13085; & A29-02217

Kent Burnham Tippetts
⇒ COPIES IN
THIS FILE.
[Signature]

Dear Ms. McHugh:

This letter is written relating to the claims made by Sidney K. Kent and Melanie F. Kent and James L. Burnham and Arlene Burnham in the spring that is located on the real property owned by Wilson and Merle Tippetts. I have enclosed a copy of the Agreement regarding the use of the spring water between the predecessors in interest to the Tippetts and the adjacent landowners for your review. I have enclosed a copy of the Deed of Conveyance from Merle and Wilson Tippetts to the City of Arimo dated May 14, 1947 and a copy of the Warranty Deed from the City of Arimo returning the subject property to Wilson and Merle Tippetts dated September 9, 1978.

It is the position of Wilson and Merle Tippetts that James and Arlene Burnham do not have any valid right to the use of the spring water as they are not descendants or heirs of the original parties to the Agreement and do not have any valid basis for their claim of water right in the spring water. As to Sidney and Melanie Kent, it appears that they may be descendants or heirs of one of the original signatories to the enclosed Agreement. However, the Kent's water rights should certainly be limited to the use set forth in the Agreement and should not be allowed to be expanded.

Please consider the enclosed documents as part of your review of the subject water rights of the various parties. Furthermore, if you desire to have additional information from Wilson and Merle Tippetts, please do not hesitate to contact them directly or myself.

Very truly yours,

MERRILL & MERRILL, CHARTERED

Thomas J. Lyons
Thomas J. Lyons
TJL/mb/3563
Enclosures

c: Dave Carlson
Allen Ruberry
Wilson and Merle Tippetts

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 29-13085

WATER RIGHT NUMBER: 29-13085

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JAMES L BURNHAM 330 SKYLINE DR POCATELLO, ID 83204 (208)233-0887
Current Owner	ARLENE BURNHAM 330 SKYLINE DR POCATELLO, ID 83204 (208)233-0887

Priority Date: 04/01/1919

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING	MARSH CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	0.010 CFS	
STOCKWATER	1/01 to 12/31	0.020 CFS	
<u>Total Diversion:</u>		0.030 CFS	

Location of Point(s) of Diversion

SPRING	SE1/4NW1/4NW1/4	Sec. 17, Twp 10S, Rge 37E, B.M.
BANNOCK County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	37E	17							.2										.2

Total Acres: 0.2

STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	37E	17							X										

Total Acres: 0

Conditions of Approval:

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 29-13085

Remarks:

1. General STOCKWATER, 55 CATTLE

Comments:

Dates and Other Information:

Claim Received Date: 5/11/1998
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector: AND
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

MEMORANDUM

To: 29-13085 ✓
29-13087
FRI Bryce Center
Date: 7/18/01

Re: Tibbitts attorney

Mr. & Mrs. Tibbitts own the land on which
the sewer for these claims is located.
They believe the claims should be
disallowed.

Their attorney is Tom Lyons 232-2286

BAC

MEMORANDUM

To: 29-13085, 29-13087

cc: Wilson D. Tibbitts
355 East Street
Arimo, Idaho 83214

Fr: Bryce Contor *Bryce A. Contor*

Date: 6/21/2001

Re: Phone conversation memo.

Today Mrs. Wilson Tibbitts called regarding these two claims. She is very concerned. The source of water claimed is a spring located on the Tibbitts property.

The history is that in 1919 Mr. Wilson's parents developed a spring on their property. Sometime later they made an agreement allowing Joseph Smith and John Worley to each use one miner's inch of water from the spring. The agreement clearly spelled out that the use of water was only for Smith and Worley and their heirs. It also had conditions describing the use Smith and Worley were entitled to, and had provisions for payment to Tibbitts if the uses were to change. Smiths and Worleys, along with Tibbitts, continued to use the water for many years.

At one point the City of Arimo threatened to condemn the water right if Tibbitts did not sell, and the water was owned by the city for a period of time. On September 9, 1978, the city sold the water back to Tibbitts. Tibbitts have been using the spring ever since, for household uses and 10 acres of irrigation. Mrs. Tibbitts has conferred with Dave Carlson and believes that the Tibbitts claims are in order.

Smith also used water after 1978. Claimant Kent (29-13087) is a grandson (great grandson?) of Smith.

Claimant Burnham (29-13085) purchased his property on 4/11/1995, and moved in a few years later. I'm not certain whether this was part of the Smith property or the Worley property, but Burnham is not a descendent of any of the parties to the original agreement. There has been considerable friction with Burnham over the use of the spring and over an easement for access to the spring and to the Arimo Ditch. The easement has been used for years not only by Tibbitts but by the City of Arimo and other users of water from the Arimo Ditch. Apparently the easement issue was settled in court.

Mrs. Tibbitts is concerned that these claims will injure her own rights to the spring. I told Mrs. Tibbitts that if the agreement authorizes either Kent or Burnham to continue using water, it was appropriate for them to file claims, to preserve the intent of the agreement. I wasn't certain whether Mrs. Tibbitts felt that Kent's use was authorized, but she clearly believes Burnham's use is not authorized.

I asked Mrs. Tibbitts to send us a copy of the agreement, with a letter requesting that the copy be put in file 29-13085 and 29-13087. I also told her that when the Directors Report is submitted to the court in one or two years, the "Objection Period" will begin. At that time, Mr. and Mrs. Tibbitts can file an objection against those two claims and have an opportunity to present the agreement to the court and explain why the rights should not be allowed.

MAY 18 2001

Oct 20, 2000

Idaho Dept of Water Resources
900 N. Skyline Dr
Idaho Falls, Idaho 83401

RECEIVED
OCT 23 2000
Department of Water Resources
Eastern Region

Dear Sir -

I was in the office on 5-11-98 to file for the adjudication and I think I failed to leave the enclosed document with the person who waited on me.

Please put this document with our filings.

James L Burnham
330 Skyline Dr
Pocatello Ida 83204
and/or
Arlene Burnham
330 Skyline Dr
Pocatello Ida 83204

Ident number A29-13085
Civil Case number 39576

Gregory J. Taylor was the person who entered the other information on the computer.

Thanks
Arlene Burnham

RECEIVED

OCT 23 2000

Department of Water Resources
Eastern Region

To whom it may concern

Feb. 18, 1998

My name is Alton G Smith. My birth date is Dec. 1, 1930. My Father is Clinton E Smith and his birth date is July 9, 1905. My Grandfather was Joseph O Smith his birth date was May 22, 1875.

This is to certify that I and my Grandfather had use of water from a spring, we called "Arimo Spring" that flows from the property of Wilson & Merle Toppetts in Arimo.

This water flows through a plastic pipe of about 2" or 2.5" Diameter and the water flows year round. It terminates at a faucet located on the property now owned by Clifford and Melane Kent and another faucet on the property now owned by James L & Arlene Burnham.

My understanding is that my grandfather (Joseph O Smith) and Mr Tippetts (Wilson Tippetts) father and Less Preslar piped the water to the three houses in about 1919 to have running water in there homes. I rember the water tanks back of the wood stoves. And when Arimo put in the city water system the spring water was taken out of the houses and the spring water was used for watering live stock and gardens and lawns.

When the old pipes rusted out I put in the plastic pipes to the out side taps. Clinton E Smith got the Preslar home now owned by Clifford and Melanie Kent. James L and Arlene Burnham now owns the property that gradpa Smith and I had.

I used faucet to water livestock and a smal pasture and garden area. Total flow was about 15 gallons per minuete and 5 gallen per min. At my place.

This is a true and accurat accounting to the best of my knowledge.

Signature *[Signature]* Date *2/23/98*
address *410 E 2nd St Soda Springs*
Phone no. *547-4473* *83274*

Notarie signature *[Signature]*
Expiration date of notary *7/17/2001*
Date *2/23/98*

Log for claim A29-13085

Spatial Dynamics PJM

9/5/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
10s37e	17	SWNW	0.2	24	Indiscernible
Totals:			0.2	24	

AJ5809NP
No. A29-13085

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/22/00
PAGE: 252

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	JAMES L BURNHAM	04/01/1919	IRRIGATION	04-01 10-31	0.010 CFS	
C	ARLENE BURNHAM		STOCKWATER	01-01 12-31	0.020 CFS	
	330 SKYLINE DR					
	POCATELLO ID 83204					
	(208) 233-0887			TOTAL DIVERSION:	0.030 CFS	

Water Source: SPRING

Tributary to: MARSH CREEK

Stage: BENEFICIAL USE

Point(s) of Diversion:

T10S R37E S17

SENWNW

BANNOCK County

Place of use Legal Description for: IRRIGATION

				NE				NW				SW				SE					
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	SUM
10S	37E	17	:								.2									:	0.2
																				TOTAL ACRES	0.2

Place of use Legal Description for: STOCKWATER

				NE				NW				SW				SE				
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:
10S	37E	17	:								S									:

POU County: BANNOCK

Other Rights: ARIMO IRRIGATION

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A29-02217 A29-13087

Other Water Rights Listing Overlapping Place(s) of Use:
A29-00051 A29-11277 A29-13087

Remarks: GEN STOCKWATER, 55 CATTLE

Dates: Exam Made Date:

Verified Date:

Objection Filed Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

Audit: 05/11/98 GTAYLOR

To whom it may concern

Feb. 18, 1998

My name is Alton G Smith. My birth date is Dec. 1, 1930. My Father is Clinton E Smith and his birth date is July 9, 1905. My Grandfather was Joseph O Smith his birth date was May 22, 1875.

This is to certify that I and my Grandfather had use of water from a spring, we called "Arimo Spring" that flows from the property of Wilson & Merle Toppetts in Arimo.

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My understanding is that my grandfather (Joseph O Smith) and Mr Tippetts (Wilson Tippetts) father and Less Preslar piped the water to the three houses in about 1919 to have running water in there homes. I remember the water tanks back of the wood stoves. And when Arimo put in the city water system the spring water was taken out of the houses and the spring water was used for watering live stock and gardens and lawns.

When the old pipes rusted out I put in the plastic pipes to the out side taps. Clinton E Smith got the Preslar home now owned by Clifford and Melanie Kent. James L and Arlene Burnham now owns the property that grandpa Smith and I had.

I used faucet to water livestock and a small pasture and garden area. Total flow was about 15 gallons per minute and 5 gallon per min. At my place.

This is a true and accurate accounting to the best of my knowledge.

Signature Alton G Smith Date 2/23/98
address 810 E 2nd St Arimo 83276
Phone no. 547-4173

Notary signature

Expiration date of notary

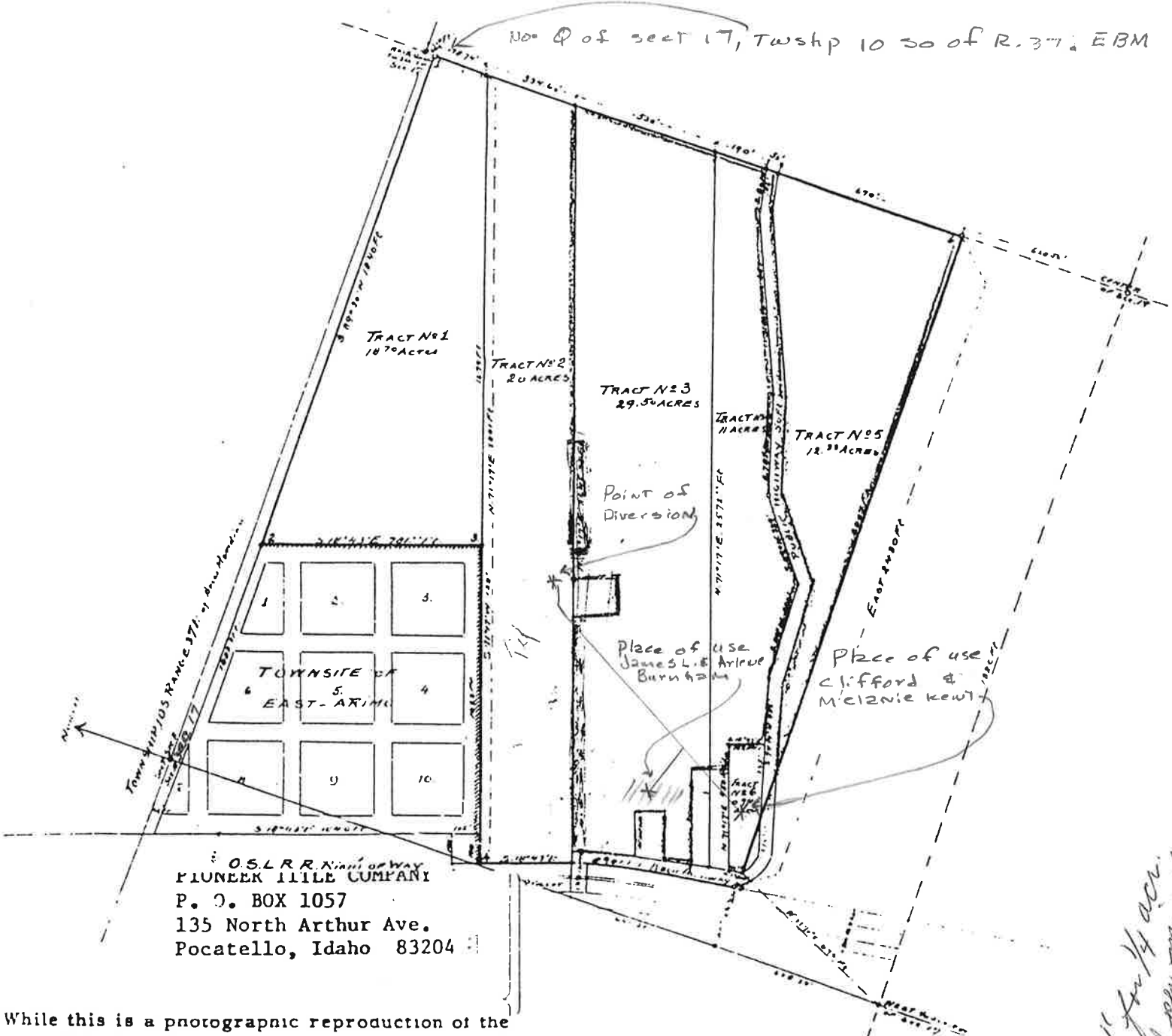
Date

7/17/2001

2/23/98

MAP
OF
ACREAGE-TRACTS
adjacent to
TOWNSITE OF EAST-ARIMO

Scale 1 INCH = 518.29 FT.



While this is a photographic reproduction of the recorded plat, the Company assumes no liability for variations, if any, with a re-survey.

Burnham

Burnham

011-1/2" for 1/4 ac.
205 gal per min for stock

MAY 18 2001

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: A29-13085

Date Received: 5/11/1998

Receipt No: EO 24103Received By: HA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JAMES L BURNHAM 208-233-0887
Address: 330 SKYLINE DR
POCATELLO ID 83204

AND/OR

Name: ARLENE BURNHAM 208-233-0887
Address: 330 SKYLINE DR
POCATELLO ID 83204

2. Date of Priority: APR 1, 1919 *See Affidavit 2/19/98*
3. Source: SPRING Trib. to: MARSH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
10S	37E	17	SE	NW	NW		BANNOCK

5. Description of diverting works:
SPRING BOX WITH 2-2.5" PIPE TO PLACE OF USE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	10/31	0.010		
STOCKWATER	01/01	12/31	0.020		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

A2913085



10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	37E	17	SW	NW		IRR	0.2
			SW	NW		STOCK	

Section Acres 0.2

Total Acres 0.2

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:
ARIMO IRRIGATION

14. Remarks:
STOCKWATER, 55 CATTLE

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 Individuals:

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

Signature of Claimant(s): Delene Burnham Date: 5-11-98

Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 11th day
of May 19 98

Gregory J. Taylor
Notary Public

Seal



Residing at Idaho Falls, ID.

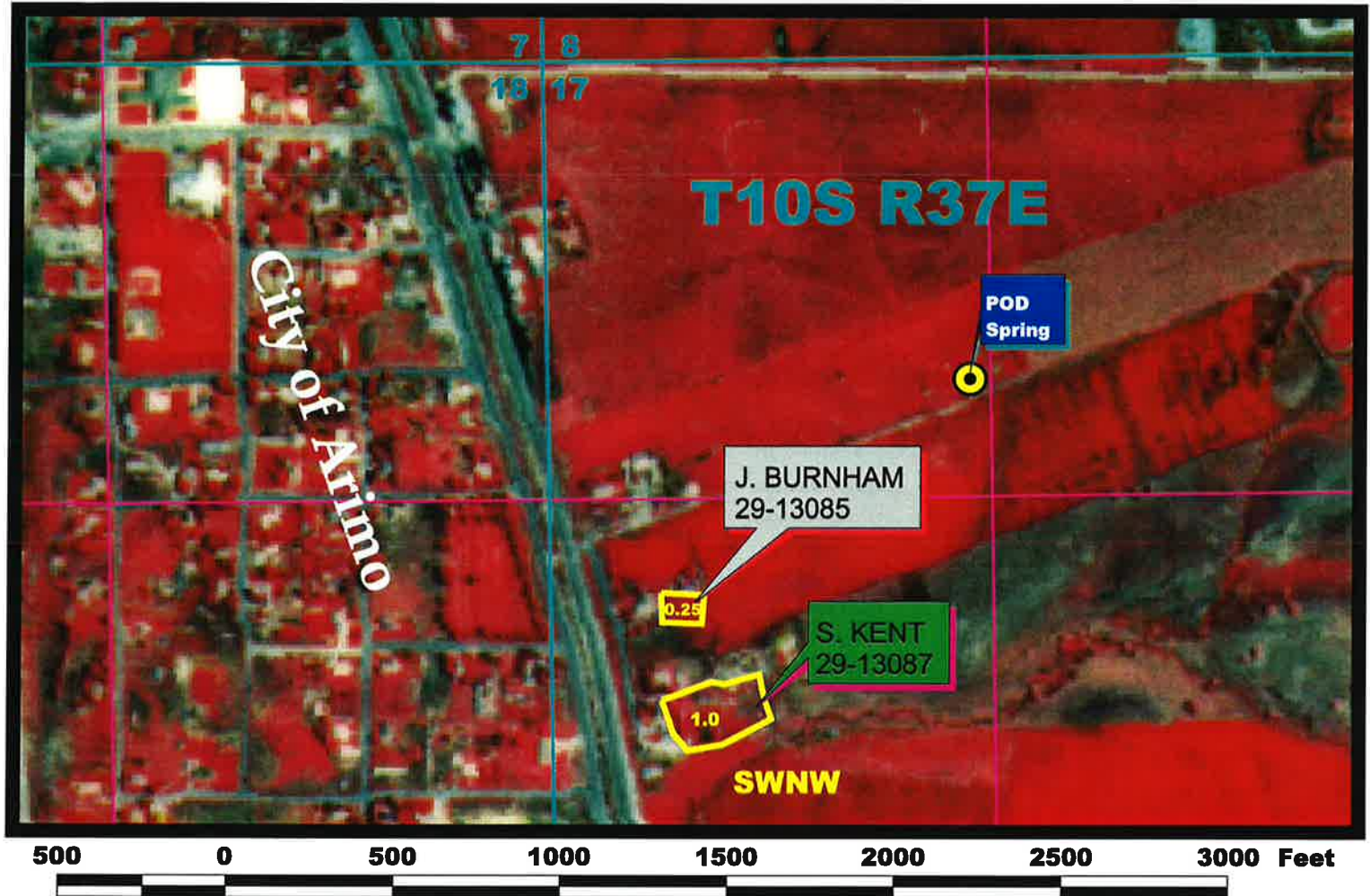
My Commission Expires 4/28/2004



STATE OF IDAHO

Department of Water Resources
Eastern Region

Water Right(s): 29-13085 29-13087



LEGEND

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

Place of Use: T10S, R37E
(part of) Sec. 17 SWNW

Point(s) of Diversion: T10S, R37E
Sec. 17 SENWNW



GIS Place of Use Illustration
1987/1988 NAPP photography
Prepared by: A. Ruberry
Date: February 2002

