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May 24, 2011

Nick Spencer
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED
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DEPARTMENT OF
WATER RESOURCES

RE: *Injury Analysis for Water Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-7037 & 34-10925.*

Dear Mr. Spencer:

On behalf of my clients, Dough Schureman, Jim Heulsman and the Estate of Tyler Felton, I am providing the Department information regarding the injury analysis pursuant to the SRBA Court's *Order Denying Motion for Summary Judgment* and Idaho Code § 42-1425. Additional information will be provided by Dr. Charles G. Brockway.

A separate group of individuals that also divert water rights near the Island Wells are represented by Jim Speck. In conversations with Mr. Speck, I am informed that he agrees with the discussions herein.

Attached to this letter is a copy of the following documents:

1. Attachment A: *Objector's Response to Claimant's Motion for Summary Judgment*;
2. Attachment B: *Affidavit of Paul L. Arrington*;
3. Attachment C: *Affidavit of Darrell E. McDonald*;
4. Attachment D: Email communication; and
5. Attachment E: *Order Denying Motion for Summary Judgment*.

We would urge the Department to review these documents.

Pursuant to Idaho Code § 42-1425, the SRBA Court has remanded this matter to the Department to conduct an injury analysis relating to an alleged accomplished transfer of the above water rights. According to the Claimants,¹ prior to 1987, water originally diverted out of the so-called "Airport Wells" – located near Arco, Idaho – was transferred to two new points of diversion – the so-called "Island Wells." These Island Wells are located approximately 7-8 miles north of the Airport Wells. My clients own wells near the Island Wells that will be impacted by increased diversions from the Island Wells. Since no formal transfer proceeding was initiated to change these points of diversion, the Claimants are relying on the accomplished transfer statute to validate this transfer.

Water right 37-7037 is a licensed right authorizing a diversion rate of 12 cfs from the Island Wells. According to the current recommendation, an additional 12.5 cfs (or 24.5 cfs total) will be diverted from the Island Wells. In other words, the recommendation recognizes an accomplished transfer of 12.5 cfs from the Airport Wells to the Island Wells. This injury analysis should address the increased diversion of up to 12.5 cfs from the Island Wells.

In enacting the accomplished transfer statute, the Legislature recognized that "prior to the commencement of the [SRBA], many persons entitled to the use of water or owning land to which water has been made appurtenant ... changed the place of use, point of diversion, nature or purpose of use, or period of use of their water rights without compliance" with section 42-222 (the transfer statute). I.C. § 42-1425(1)(a). The Legislature recognized that the denial of these claims for failure to comply with 42-222 "would cause significant undue financial impact to a claimant and the local economy." *Id.* § 42-1425(1)(b). As such, in order to "avoid the harsh economic impacts that would result from a denial of the claim," *id.*, the Legislature enacted the accomplished transfer statute. Under this statute, a water user could claim a water right as an accomplished transfer and thereby avoid the strict procedural requirements of section 42-108 and 42-222, *id.* at § 42-1425.

However, the Legislature provided a mechanism to protect those that would be injured by the alleged accomplished transfer. I.C. § 42-1425(2)(a). This remand is that mechanism.

As discussed below, and in the attached documents, the Claimants' alleged accomplished transfer will injure my clients.

Any Post-1987 Transfer of the Points of Diversion Is Not Authorized Under the Accomplished Transfer Statute and will Cause Injury to my Clients

As the plain language of the accomplished transfer statute makes clear, only those pre-1987 changes are protected by the safe harbor provisions of the code. I.C. § 42-1425. It follows, therefore, that any attempt to characterize a post-1987 diversion as an accomplished transfer is not lawful. Any such violations of the law will injure my clients.

¹ The owner of the water rights is currently identified as Charles B. and Fern Isom. We are informed that the property and water rights have since been purchased by Mike Telford.

As discussed in the attached *Objector's Response to Claimants' Motion for Summary Judgment*, the evidence does not support the Claimants' accomplished transfer theories. Specifically, pages 3-6 and 8-13 of the response, including the information in the supporting affidavits, discuss the lack of factual support for the alleged accomplished transfer. In email communications with Nick Spencer, we have been informed that the only information reviewed in making the current recommendations is the information in the backfile. As discussed in the response, however, that information is insufficient to support an accomplished transfer theory.

To the extent that the Claimants' are seeking to divert up to 12.5 cfs more from the Island Wells based on post-1987 diversions, my clients will be injured. Furthermore, it is unquestioned that such diversion would be unlawful absent a transfer proceeding under 42-222.

The Subordination Provision Included on the Water Rights Does Not Protect Against Injury

In an apparent attempt to address injury, the Department included a subordination provisions on the recommendations that provides:

Pursuant to a call, in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SWNWSE and T04N R25E S3 NESENEW has a priority date of May 18, 1982.

As discussed on pages 9-11 of the response brief, this remark will not protect my clients from the injury that will result from diverting up to an additional 12.5 cfs from the Island Wells.

If the Department determines that such a remark is necessary, the date should be amended to at least 1985 – if not later. *See Arrington Aff. Ex. G* (indicating that the second well was not even hooked up until sometime after February 1, 1985).

Increasing the Volume Rate will Injure my Clients

In addition to the diverting up to an additional 12.5 cfs from the Island Wells, the recommendation has increased the combined volume limitations on the water rights from 6930 af, as licensed, to 8441.5 af. According to representation made at the settlement conference, this increase was due to the increased conveyance loss associated with diverting water from the Island Wells. As such, it is appropriate to consider in the Department's injury analysis.

On pages 13-15 of the response, we discussed that the increase of the licensed volume limitation is not authorized in the SRBA Court. In addition, increasing the total volume of water that can be diverted from the Island Wells will increase the impact on my clients' diversions by further reducing the available water supply.

Enlargement Rights Are Not Subject to an Accomplished Transfer

Water right 34-10925 is an enlargement right. According to section 42-1425(2)(b), "this section is not applicable to any claim based upon an enlargement of use." As such, any accomplished transfer recognized by the Department must not include water right 34-10925.

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Conclusion

As discussed above and in the attached documents, the Claimants' alleged accomplished transfer will injure my clients. The additional information to be provided by Dr. Brockway will provide additional information in support of this conclusion.

Yours truly,

A handwritten signature in black ink, appearing to be 'Paul L. Arrington', written over a horizontal line.

Paul L. Arrington

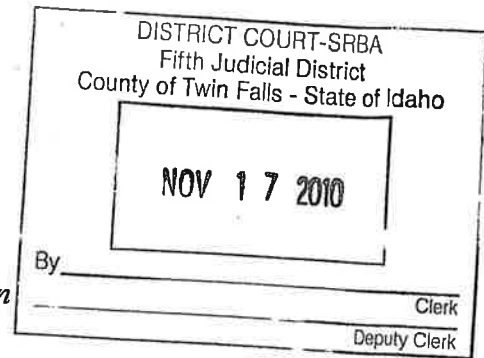
PLA/jf

cc: Rob Harris
Jim Speck
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Attachment A

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Attorneys for Doug Schureman, Tyler Felton & Jim Hueslman



**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 No. 34-2459, 34-2460, 34-2461,
34-2462, 34-10925

**OBJECTOR'S RESPONSE TO
CLAIMANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Doug Schureman, Tyler Felton¹ and Jim Hueslman (collectively, referred to as "Schureman"), by and through their attorneys Barker Rosholt & Simpson, LLP, and hereby submit this response to the Claimants' *Motion for Summary Judgment*, filed with this Court on November 4, 2010. As discussed herein, there are material issues of fact that are in dispute, therefore, summary judgment should be denied.

INTRODUCTION

Through the above claims, the Claimants, Isom Acres Limited Partnership, Charles Isom and Don Isom (collectively, "Isom"), seek to create a water right where none existed and to collaterally attack their prior licenses. They would have this Court enter a partial decree based

¹ Mr. Felton passed away in early 2010. Objectors are in the process of substituting the estate as a party.

on an accomplished transfer theory that would allow the diversion of as much as 24.5 cfs (1225 inches) from the so-called "island wells" even though there is no evidence that they had any authority to convey any water from the island wells to their place of use prior to 1995. The authority to convey this water is vital to Isom's claim because the points of diversion (the island wells) are 8 miles from the place of use. The only way to convey the water from the island wells to the place of use is through the Big Lost River Irrigation District's ("BLRID") conveyance system. Absent permission to convey the water, Isom would have not ability to beneficial use the water at the place of use.

Schureman filed an objection to the water rights alleging injury associated with the accomplished transfer. Remand is required by the accomplished transfer statute. There is no discretion. Isom's citation to a decision refusing to remand to address the ownership of a water right is unpersuasive. Indeed, this Special Master has recognized the nondiscretionary nature of the remand provision and should apply it in this case.

Isom seeks to collaterally attack his licenses – an action expressly prohibited by this Court. Whereas the prior licenses included a combined volume limitation of 3.5 acre feet per acre and 6930 acre feet per year, Isom advocates a volume limitation of 8441.5 acre feet per year – or 4.26 acre feet per acre. The law does not allow such an action in the SRBA Court.

Isom's sole factual support for his motion is a 1995 agreement, an affidavit from Charles Isom and the license for water right 37-7037. Yet, none of these are sufficient to demonstrate an absence of material facts. The 1995 agreement is facially insufficient to demonstrate an accomplished transfer which must have taken place prior to November 19, 1987. None of the agreements prior to 1995 listed the island wells as authorized points of diversion for conveyance

through the BLRID's system. As such, there was no evidence of authority to convey this groundwater through the Munsey Canal prior to 1995.

However, even if there was some authority to divert water through the system, the evidence shows that, at most, the amount of ground water diverted through the system prior to 1987 was 12 cfs (600 inches).

Ironically, the Claimants now try to hide behind the very decree they argued should be set aside. They claim that Schureman should be estopped from asserting its objection because many of the elements remain unchanged from the prior decree. Isom provides no legal support for this novel theory. Indeed, the law expressly provides that Schureman may file an objection to the director's report and the factual circumstances are different. That notwithstanding, the factual issues are not the same.

In the end, Isom has failed to demonstrate the necessary lack of disputed material facts. As such, summary judgment should be denied.

STATEMENT OF FACTS

This matter involves a recommendation by the Director for the above water rights that adds two points of diversion – commonly referred to as the “island wells.” The legal description of these island wells is as follows:

NESENW, S3, T4N, R26E
SWNWSW, S34, T5N, R26E

These rights were originally partially decreed on December 16, 1997 without these points of diversion. The prior decrees only listed points of diversion near the place of use – commonly referred to as the “airport wells.”

Isom moved the Court for an order setting aside the partial decrees so that the island wells could be included. On September 4, 2009, this Court issued its *Order on Motion to Set*

Aside Partial Decree, setting a deadline for filing amended claims, an amended Director's report and objections. That *Order* did not set any limitations on the ability of parties to the SRBA to participate in these proceedings. The Amended Director Reports for the above water rights were issued on December 8, 2009. Schureman filed a timely *Objection*.

The history of the island wells is very important to these proceedings. Indeed, Isom's entire case rests on his ability to demonstrate the *authority* and *ability* to deliver water from the island wells to his place of use prior to 1987.

As to the authority to deliver the water, Isom relies on a 1995 *Water Pumping and Transport Agreement* entered between the previous owner (Crater Farms, Inc.) and the BLRID. *Harris 2nd Aff.* Ex. G. The use of BLRID conveyance systems to deliver water to the Isom place of use began in the 1970's.² Agreements in 1974, 1978, 1979 and 1980 show that the previous owners of the Isom property entered into agreements with BLRID to convey as much as 1000 inches through the Munsey Canal. *Arrington Aff.* Exs. A-D. Each of these agreements identifies the same two points of diversion from which ground water was authorized to be diverted into the Munsey Canal. *Id.* These authorized points of diversion are listed as follows:

E ½ SW, S23, T3N, R26
SESW, NESE, S33, T5, R26

Id. These points of diversion are not the island wells. Schureman is unaware of any pre-1987 agreement with BLRID to convey water diverted from the island wells.

As to the ability to divert water, Isom relies on the license exam for licensed water right 34-7037. *Harris 2nd Aff.* Exs. C & D. There are two island wells drilled in association with the licensed water right 34-7037. *Harris 2nd Aff.* Ex. D. The first well was drilled in August, 1976. *Arrington Aff.* Ex. E at 3-4. The second island well was drilled in May, 1982. *Id.* at 4. A field

² At that time, the property was owned by Crater Farms. However, for ease of reference, the property will be referred to as the Isom property.

exam and licensing report were completed in August, 1985. *Arrington Aff.* Ex. F.³ According to the report, although the system had a capacity of 24.66 cfs, *id* at 7 (12.62 cfs from one well and 12.04 cfs from the other), the actual flow measurement was only 15.26 cfs, *id.* at 12 (7.23 cfs from one well and 8.03 cfs from the other).⁴

The licensing process for 34-7037 included numerous objections by local water users. *See Arrington Aff.* Ex. G (request for extension of time to submit proof of beneficial use due to “pending resolution of protests”); *see also generally, Id.* Ex. E (discussing the procedural history). The then-Director of the Idaho Department of Water Resources (“IDWR”), A. Kenneth Dunn, issued an *Order Adopting Proposed Memorandum* on May 19, 1986, with specific limitations to address the injury claims. *Arrington Aff.* Ex. E. As it relates to the island wells, the Director provided:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on ***each diversion to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.***

Id. at 5 (emphasis added). In other words, the Director ordered that diversions from the island wells would be limited to 12 cfs (600 inches) – the diversion rate of water right 37-7037. *Harris 2nd Aff.* Ex. D.

As originally drafted and executed, the 1995 agreement allowed for the diversion of 600 inches (12 cfs). *Harris 2nd Aff.* Ex. G. On January 12, 1998, the BLRID acting office manager, Rita M. Lundy, sent Crater Farms, a letter indicating that, although the agreement allowed for the conveyance of 600 inches, the BLRID had approved a diversion of 1000 inches based on the existence of water right 34-7138. *Arrington Aff.* Ex. H. She indicated that the agreement would

³ The beneficial use exam and licensing report consist of 40 numbered pages (i.e. Page __ of 40). References to page numbers in this brief will be to those page numbers (i.e. page 7 refers to “Page 7 of 40”).

⁴ Isom references the diversion capacity of 24.66 cfs but overlooks the flow measurements of 15.26 cfs. *Isom Br.* at 4.

be amended to recognize this water rights. *Id.*⁵ Importantly, water right 34-7138 is a surface water right and is not diverted through the island wells. *Harris 2nd Aff.* Ex. F.

Water rights 34-7037 and 34-7138 were each licensed in 1994 with specific volume limitation remarks. *See Harris 2nd Aff.* Exs. D & F. Both licenses state that, “when combined **with all other rights**,” they “shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.” *Id.* (emphasis added). In addition, they both include the following remark:

The combined annual volume of water under this right [34-7037] and the Right Nos. 34-24 59/2460/2461/2462/7138/10925 shall not exceed 6930.0 acre feet.

Id. The Director’s report, however, recommended these water rights with an annual volume of 8441.5 acre feet – approximately 4.26 acre feet per acre. There is no information in the back file or otherwise known to Schureman to support this increased volume limitation.

STANDARD OF REVIEW

Summary judgment shall be rendered when “the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). Disputed facts are to be construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10, 175 P.3d 172 (2007).

⁵ The copy of the 1995 agreement provided by Isom is not the amended page referenced in this letter. *See Harris 2nd Aff.* Ex. G. Schureman has been unable to locate this amended first page.

ARGUMENT

I. Schureman is Not Barred by Res Judicata from Filing Objections to the Amended Director's Reports.

Isom asserts that Schureman's objections are barred by *res judicata* by the previous partial decrees. *Isom Br.* at 7-8. He claims that, since some of the elements objected to by Schureman were identical to those contained in the partial decree, *res judicata* bars any action by this Court on these elements. *Id.* Yet, this Court specifically ruled that objections could be filed in the *Order on Motion to Set Aside Partial Decree*. Furthermore, Idaho law provides Schureman with an opportunity to file an objection to the Director's report. I.C. § 42-1412. Nothing in this Court's *Order on Motion to Set Aside Partial Decree* or in the statute that limits Schureman's ability to participate in these proceedings. Isom sought to have the prior decrees set aside. He cannot now hide from the consequences of that decision.

Notwithstanding the legal flaw in Isom's argument, the issues simply are not the same. Indeed, the prior Director's report and decrees did not include the island wells as points of diversion. Rather, they only included the airport wells – which Isom admits are 8 miles away from the island wells. *Isom Br.* at 9. The prior proceedings did not question whether or not Isom could divert 24.5 cfs from the island wells. There was no accomplished transfer implicated in the prior proceedings. In short, no questions relating to the island wells were even addressed in the prior proceedings. As such, Schureman did not have any need, let alone an opportunity, to address the concerns raised by the new Director's reports. Accordingly, *res judicata* simply does not apply.

II. The Accomplished Transfer Statute Requires a Remand – the Decision is Not Discretionary.

Isom accuses Schureman of trying to “circumvent the SRBA process” in seeking a remand pursuant to Idaho Code § 42-1425. *Isom Br.* at 14-15.⁶ To support his theory, Isom relies exclusively on a decision in Basin 74 where Special Master Dolan denied a request for remand. *Id.* Isom fails to acknowledge, however, that that issue dealt with the ownership of certain water rights.⁷

To the contrary, the language of section 42-1425 is clear. Indeed, this Special Master has held that the remand provisions are not discretionary. In enacting the accomplished transfer statute, the Legislature recognized that “prior to the commencement of the [SRBA], many persons entitled to the use of water or owning land to which water has been made appurtenant ... changed the place of use, point of diversion, nature or purpose of use, or period of use of their water rights without compliance” with section 42-222 (the transfer statute). I.C. § 42-1425(1)(a). The Legislature recognized that the denial of these claims for failure to comply with 42-222 “would cause significant undue financial impact to a claimant and the local economy.” *Id.* § 42-1425(1)(b). As such, in order to “avoid the harsh economic impacts that would result from a denial of the claim,” *id.*, the Legislature enacted the accomplished transfer statute. Under this

⁶ Isom tries to confuse the matter by questioning whether Schureman’s injury allegations relate to a delivery call or the accomplished transfer statute. *Isom Br.* at 14. To clear up Isom’s confusion, this matter involves the adjudication of water rights for which an accomplished transfer is been claimed.

⁷ Those subcases involved competing claims to the same water rights (Group A and Group B). The Director’s reports recommended the water rights in the names of members of Group A under the theory that an accomplished transfer had occurred when the properties were all owned by the same individual. That property was subdivided and is currently owned by members of Group A and Group B. The accomplished transfer moved the water from property owned by Group B to property owned by Group A. Group B filed objections to the Director’s report, asserting that the accomplished transfer never occurred and that the water should be appurtenant to the original place of use – property owned Group B. They asserted that the water rights claimed and recommended to Group A should not exist. The motion for remand under section 42-1425 was denied, therefore, because the issue was one of ownership – not of injury resulting from an accomplished transfer.

statute, a water user could claim a water right as an accomplished transfer and thereby avoid the strict procedural requirements of section 42-108 and 42-222, *id.* at § 42-1425.

The waiver of these requirements, however, is not unlimited. As the statute makes clear, the waiver only exists to the extent that no one objects to the accomplished transfer. Indeed, “all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived *in accordance with the following procedures*: (a) *If an objection is filed* to a claim for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, the district court shall remand.” *Id.* § 42-1425(2) (emphasis added). This Special Master affirmed the mandatory nature of the accomplished transfer statute hearing requirements in her *Order on Summary Judgment* (water rights 29-271 *et seq.*). There, the Court recognized that “However duplicative a formal remand may be, it is provided for when an objection is filed relating to I.C. § 42-1425.”

In this case, an accomplished transfer has been claimed. Schureman filed an objection to the point of diversion. As such, the law demands a remand and summary judgment should be denied.

III. The Remark on the Amended Director’s Reports Does Not Address Injury Caused by the Claimed Accomplished Transfer.

Isom alleges that even if there is injury, the following remark placed on each amended Director’s report addresses that injury:

Pursuant to a call, in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SWNWSE and T04N R25E S3 NESENW has a priority date of May 18, 1982.

Isom Br. at 15. According to Isom, this remark will give Schuremen “the protection they desire.” *Id.*

Isom’s argument is wrong and demonstrates a misunderstanding of the procedure for a ground water call. Unlike surface water administration with its attendant “shut and fasten”

obligations, I.C. §§ 42-602 & -607, the Ground Water Act prohibits the administration of ground water rights unless and until the Director has determined a reasonable pumping level. I.C. § 42-226; *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 585 (1973) (“A senior appropriator is only entitled to be protected to the extent of the ‘reasonable ground water pumping levels’ as established by the IDWR”). As such, for ground water rights subject to the Ground Water Act, administration will not occur until a reasonable pumping level has been established and reached. Accordingly, those diverting under junior ground water rights are free to deplete the source while those diverting under senior ground water rights must continue to suffer the consequences of depletions that require deeper wells or even eliminate the water supply.

The *Affidavit of Darrell E. McDonald* and *Affidavit of Norma K. Soward*, filed in support of their *Motion to File Late Objection or Alternatively to Participate*, demonstrate the concerns of injury shared by Schureman. Both explain how their ground water diversions have been impacted by diminishing water supplies and that they have been forced to drill deeper wells and/or install stronger pumps to divert their decreed water supplies. Based on their experiences, they fear that increased diversions by Isom will force them to drill even deeper to acquire water.

To Schureman’s knowledge, no reasonable pumping level has been established for the area including the island wells. Under the law, therefore, Schureman will have no recourse when Isom’s diversions deplete the water supply. Accordingly, an assurance that diversions from the Island Wells will be limited to a priority of 1982, alone, is no protection at all. *See also McDonald Aff.* ¶ 9 (explaining that the subordination provision is really no protection because it will force McDonald to enter a call every year and rely on the watermaster to administer the ground water. “If and when this can be done, the negative impact on the local water table and

thus by ability to divert the full amount of my water rights will have occurred); *Sowards Aff.* ¶ 10 (same).

IV. Isom Has Not Shown Any Authority to Divert Water from the Island Wells for Conveyance Through the BLRID System Prior to 1987.

Isom asserts that he has a right to deliver water from the island wells to his place of use using the BLRID conveyance system prior to 1987. His only support for this contention is a 1995 conveyance agreement with BLRID and the *Isom Affidavit*. Yet, the 1995 agreement does not evidence any pre-1987 deliveries through the BLRID system. Furthermore, the *Isom Affidavit* only provides Mr. Isom's "understanding" of how water was delivered prior to 1987 – there is no firsthand knowledge. As such, this evidence does not support Isom's claim.

Importantly, none of the pre-1987 conveyance agreements include the island wells as authorized points of diversion. *Arrington Aff.* At Exs. A-D. These agreements identify the points of diversion from which BLRID authorized the diversion of ground water to be conveyed to the Isom place of use. *Id.* The island wells were not included in the four agreements during the 1970's and 1980's. *Id.* In fact, it was not until the 1995 agreement that the island wells were identified as authorized points of diversion for delivery through the BLRID system. *Harris 2nd Aff.* at Ex. G. Since Isom cannot show that he had the authority to deliver water from the island wells prior to 1987, he cannot sustain a motion for summary judgment.

V. If Isom Did Have Authority to Delivery Water Through the BLRID System Prior to 1987, It Was Only For 600 Inches (12 cfs) from the Island Wells.

Even if, *arguendo*, Isom did have authority to deliver water from the island wells to his place of use through the BLRID system, the evidence demonstrates that he only had the authority to deliver 600 inches of ground water.

The only evidence of diversions prior to 1987 comes from the field exam and license report conducted in 1985. *Arrington Aff.* Ex. F. According to that exam, while the system had a capacity of 24.66 cfs, *id.* at 7, the flows were measured at 15.26 cfs, *id.* at 12.⁸

On May 19, 1986, the Director issued an order that further limited the diversion of water from the island wells. *Arrington Aff.* Ex. E. In response to protests filed against a request to amend the permit application for 34-7037 to add the second island well, the Director ordered that:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on each diversion ***to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.***

Id. at 5 (emphasis added). There is no evidence that this *Order* was ever challenged by Isom or his predecessor in interest or that the 12 cfs (600 inch) limitation was ever lifted to allow for additional diversions from the island wells.

The 1995 agreement provides further evidence that the water delivered through the BLRID system was limited to 600 inches (12 cfs) from the island wells. As originally drafted, the 1995 agreement only identified water right 37-7037 and limited diversions to 600 inches (12 cfs). *Harris 2nd Aff.* Ex. G. Although this rate was subsequently increased to 1000 inches (20 cfs), there is no evidence that Isom had conveyed that much water through the BLRID system prior to 1987. *Isom Br.* at 14.

In a 1998 letter from BLRID, Crater Farms was informed that the agreement would be amended to allow conveyance of 1000 inches by specifically referencing water right 34-7138. *Arrington Aff.* Ex. H (“To correct this I have re-typed the first page of this transport agreement noting that you have another license #34-7138 for 16 CFS or another 800 inches”). Importantly,

⁸ In light of the flow measurements, *Arrington Aff.* Ex. F at 12, Isom’s claim that “the accomplished transfer happened based on the physical capacity of the diversion system,” *Isom Br.* at 13, is wrong. Even though the capacity may have been 24.66 cfs, the actual measured diversions were 15.26 cfs. *Arrington Aff.* Ex. F at 7 & 12.

water right 34-7138 is a surface water right – it is not diverted through the island wells. *Harris 2nd Aff.* Ex. F. As such, it is clear that the transport of 1000 inches included, at most, 600 inches of ground water, with the remainder being made up of surface water.

Contrary to Isom's allegation that the historical practice was to divert the entire 24.5 cfs from the island wells, *Isom Br.* at 13-14, the evidence demonstrates that, at most, 12 cfs (600 inches) of island well water was delivered through the BLRID system. As such, summary judgment should be denied.

VI. The Volume Limitations Must be Consistent with the Licenses.

Isom contends that he should be permitted to divert a larger volume of water in order to make up for conveyance losses. *Isom Br.* at 9-10. Water rights 34-7037 and 34-7138 were both licensed with the following remark:

The combined annual volume of water under this right [34-7037] and the Right Nos. 34-2459/2460/2461/2462/7138/10925 shall not exceed 6930.0 acre feet.

Harris 2nd Aff. Exs. D & F. Isom admits that “it is undisputed that IDWR licensed the above subcases such that in combination, they are allowed 3.5 acre-feet per acre – based on an IDWR standard – for a total of 6930 acre-feet.” *Isom Br.* at 9.

Notwithstanding this provision, and Isom's admission, the above water rights were recommended with the following volume limitation remark, which Isom alleges is “appropriate:”

The rights listed below are limited to a total combined annual diversion volume of 8441.5 af. Combined Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-7037, 34-7138 and 34-10925.

The volume recommended is 1511.5 acre feet larger than the volume recognized on the licenses and allows for 4.26 acre feet per acre.

“The law of the case in the SRBA is that a party may not subsequently challenge elements or conditions decided in a license.” *Order on Motion to Dismiss Objections & Request*

for Attorney Fees, Subcase Nos. 37-494, *et al* (The Valley Club), at 5 (Oct. 10, 2008); *see also*, e.g., *Memorandum Decision & Order on Motions for Summary Judgment*, (Subcase Nos. 63-2529, *et al.*) (June 11, 2009) (attempt to challenge licensed diversion volume “constitutes an impermissible collateral attack on the prior administrative proceedings”); *Memorandum Decision and Order on Challenge*; *Order on State's Motion to Dismiss Claimant's Notice of Challenge* (Subcase No. 36-8099) (2000) (IDWR license becomes final when the time to appeal it has expired); *Response to United States Motion for Status Conference*, (Subcase No. 03-10022) (2000) (scope of what can be litigated in SRBA is limited and does not include collateral attacks on previously perfected water rights); *Memorandum Decisions & Order On Challenge, Order On State of Idaho's Motion to Dismiss Claimants Notice of Challenge*, (Subcase No. 36-8099) (2000) (collateral attack on IDWR license is not permissible when a party has failed to exhaust administrative remedies); *Order on Challenge of “Facility Volume” Issue & Additional Evidence Issues*, (Subcase Nos. 37-2708, *et al.*) (1999) (the SRBA Court disfavors collateral attacks on licenses).

Even though he admits that the rights were licensed with a total diversion rate of 6930 acre feet, *Isom Br.* at 10, Isom asserts that the increased volume is a “reasonable amount” to account for “the over 8-mile trip the Isom water must make through the BLRID system.” *Isom Br.* at 9-10. As such, they claim that it was an appropriate exercise by the Director to increase the volume. *Id.* Yet, they cannot overcome the weight of the prior license.

The prior licenses specifically limit the annual volume to 6930 acre-feet per year – or 3.5 acre-feet per acre. In fact, the licenses state that, “when combined **with all other rights**,” they “shall provide **no more than** .02 cfs per acre nor more than 3.5 afa per acre for the lands above.” *Harris 2nd Aff.* Exs. D & F (emphasis added).

The Director understood that this water would travel a long way to the place of use. *Harris* 2nd Aff. Ex. D. Indeed, the license references the BLRID conveyance system through which the water was delivered. *Id.* This is the so-called “8-mile trip” that Isom uses to justify the enhanced volume limitations. *Isom Br.* at 9. Notwithstanding potential conveyance losses, the Director licensed the rights for 3.5 acre-feet per acre. That decision was not challenged by Isom, or his predecessor in interest, and cannot be challenged now in the SRBA.

Isom misunderstands the law when he alleges that Schureman must present “evidence that the additional amount of acre-feet is unjustified under the circumstances.” *Isom Br.* at 9. To the contrary, the law is clear. Isom cannot collaterally attack the licenses. Since the licenses only provide an annual diversion volume of 6930 acre feet, and limit the per acre diversion to “3.5 afa,” any attempt to increase the volumes cannot stand. As such, summary judgment should be denied.

CONCLUSION

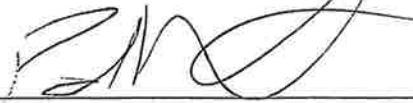
The increased diversions from the island wells will injure neighboring ground water users. Since an objection was filed to the accomplished transfer, remand is necessary – the law demands as much. That notwithstanding, the facts simply do not support Isom’s contentions. There is no evidence that Isom had any authority to convey water through the BLRID system prior to 1987. If, *arguendo*, Isom can show that water was conveyed through the BLRID system, it was, at most, only 600 inches. Finally, Isom cannot collaterally attack a license in the SRBA. As such, the increased diversion volumes must be rejected.

In the end, the outstanding questions of material facts prevent summary judgment. As such, Isom’s motion should be denied.

///

DATED this 17th day of November, 2010.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. Thompson', is written over a horizontal line.

Travis L. Thompson

Paul L. Arrington

Attorneys for Objectors

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2010, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-44449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort St., MSC 033
Boise, Idaho 83724

Robert L. Harris
P.O. Box 50130
Idaho Falls, ID 83405

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318-0248

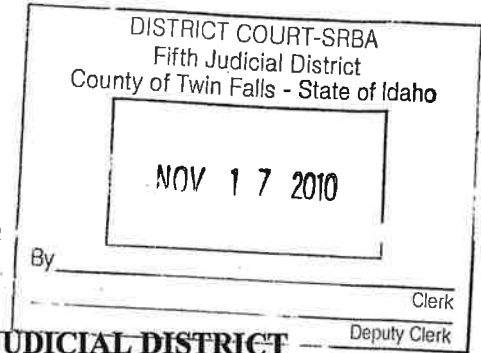


Paul L. Arrington

Attachment B

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 103
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Doug Schureman, Tyler Felton & Jim Hueslman



**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 No. 34-2459, 34-2460, 34-2461,
34-2462, 34-10925

**AFFIDAVIT OF PAUL L.
ARRINGTON**

PAUL L. ARRINGTON, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 and state the following based upon my personal knowledge. I am an attorney representing DOUG SCHUREMAN, TYLER FELTON AND JIM HUELSMAN in the above captioned matter.

2. Attached hereto, as Exhibit A, is a true and correct copy of an *Agreement*, dated June 14, 1974, between Crater Farms, Inc. (Ron Lowe) and the Big Lost River Irrigation District ("BLRID");

3. Attached hereto, as Exhibit B, is a true and correct copy of a *Waterways Transport Agreement*, dated May 12, 1978, between Crater Farms, Inc. (Willard O. Bell) and the BLRID;

4. Attached hereto, as Exhibit C, is a true and correct copy of a *Waterways Transport Agreement*, dated June 5, 1979, between Crater Farms, Inc. (Willard O. Bell) and the BLRID;

5. Attached hereto, as Exhibit D, is a true and correct copy of a *Pumping Agreement*, dated May 6, 1980, between Crater Farms, Inc. (Willard O. Bell) and the BLRID;

6. Attached hereto, as Exhibit E, is a true and correct copy of an *Order Adopting Proposed Memorandum*, dated May 19, 1986, as contained in the backfile for water right 37-7037, on the IDWR website;

7. Attached hereto, as Exhibit F, is a true and correct copy of the *Beneficial Use Field Report* for water right 37-7037, as contained in the backfile for water right for water right 37-7037, on the IDWR website;

8. Attached hereto, as Exhibit G, is a true and correct copy of the *Request for Extension of Time*, dated September 1, 1985, as contained in the backfile for water right for water right 37-7037, on the IDWR website;

9. Attached hereto, as Exhibit H, is a true and correct copy of a letter, dated January 12, 1998, from Rita M. Lundy, Acting Office Manager for BLRID, to Crater Farms (Willard O. Bell).

///

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///

///

///

///

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 17th day of November, 2010.

Paul L. Arrington

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 17th day of November, 2010, before me, a Notary Public for said County and State, personally appeared PAUL L. ARRINGTON, known or identified to me the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same



Jessica Nielsen
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
My commission expires: 4/3/12

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2010, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

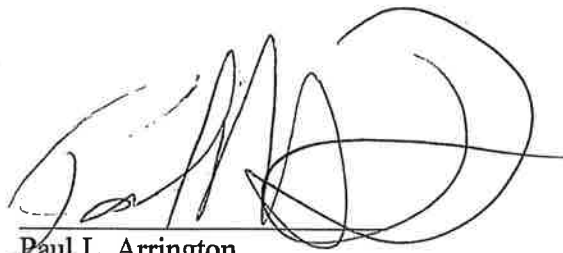
IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-44449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort St., MSC 033
Boise, Idaho 83724

Robert L. Harris
P.O. Box 50130
Idaho Falls, ID 83405

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318-0248



Paul L. Arrington

Exhibit A

1978

AGREEMENT

THIS AGREEMENT, made and Entered into this 14 day of June 1974, by and between Ray Lowe ~~and~~ Craker Farms, Inc. of Arco, Butte County, State of Idaho, and THE BIG LOST RIVER IRRIGATION DISTRICT, and Irrigation District duly organized under the laws of the State of Idaho. With its principal office in Mackay, Custer County, State of Idaho.

WITNESSETH:

WHEREAS, _____ is the owner of certain rights to well waters with a point of diversion in the $\frac{1}{2}$ Section 14, All section 15 $\frac{1}{2}$ Sec. 22 NW $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 23 Township 3 N. Range 26 EBM also Section 33, Twp 5 Rge 26 SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ (enter property description)

in the amount of approximately 1000 miners inches of capacity

and desires to transport said waters through an existing canal of District for use at a point other than the point of diversion:

WHEREAS, the District is the owner of a canal known as the Mackay Canal, being a part of the facilities of the District for the transmission of decreed and storage waters within the boundaries of said District; and,

WHEREAS, Craker Farms desires to transport said waters described above through the said Mackay Canal to the end of said canal at the boundaries of the District, and thereafter beyond said boundary onto land owned by Craker Farms outside the boundary lines of the District, to the end that said waters would be used on lands described as the

$\frac{1}{2}$ Sec. 14, All Section 15, $\frac{1}{2}$ Sec. 22 NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ Section 23, twp 3 n. Range 26
(enter property description)

NOW, THEREFORE, it is mutually agreed as follows:

1. Ray Lowe may transport the well waters with the point of diversion at Arco Diversion in the amount of approximately 600 miners inches capacity, in and through the said Mackay Canal owned by the District, subject to the terms and conditions of this agreement.

2. Crocker Farms shall construct and maintain at their own expense, any additional ditch, structures, or other improvements, other than the existing Muncie Canal, that might be required to make the waters available to the land of Crocker Farms.

3. The right of Crocker Farms as set forth above is subordinated to all existing and prior rights for the transportation of waters of the District in and through said Muncie Canal, and the right granted herein is granted only as long as there is sufficient additional capacity in Muncie Canal beyond the needs and uses of District to carry said waters of Crocker Farms. The determination of the availability of additional capacity in Muncie Canal shall be the sole determination of District.

4. Crocker Farms shall pay a proportionate part of the annual operation and maintenance cost of the Muncie Canal as a toll charge, said amount to be set by District on the same basis as other toll charges made concerning like rights; Reese Farms shall notify District of the number of acres that have been irrigated by Crocker Farms with said waters each year.

5. That no water rights, transmission rights, or ditch rights, in the Muncie Canal shall accrue to Crocker Farms by reason of this Agreement, the rights of said Crocker Farms being contained only in the terms of this Agreement.

6. This Agreement shall remain in full force and effect until the 15 day of Jan, 1975, and may be renewed from year to year by mutual written consent of the parties.

IN WITNESS WHEREOF, the individual parties have hereunto set their hands the day and year first above written and the District has caused these presents to be executed by its President and Secretary.

re-newed for 1976

approved: Vernon E. Warner, Pres.

THE BIG LOST RIVER IRRIGATION DISTRICT

ATTEST:

By Vernon E. Warner
President

James A. Babcock
Secretary

(SEAL)

Renewed for 1975
Crocker Farms
Reese Farms

Approved Vernon E. Warner

approved for 1977 Vernon E. Warner
Vernon E. Warner, Pres.

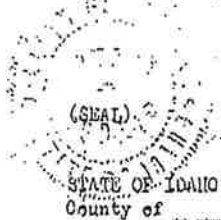
Crocker Farms
Reese Farms

STATE OF IDAHO

County of Butte } ss.

ON THIS 20th day of June, 1974, before me,
the undersigned, a Notary Public in and for said county and state, personally
appeared, Ronald M. Sauer and , known to me to
be the person(s) whose names are subscribed to the within instrument, and
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.



William A. Carter
NOTARY PUBLIC for State of Idaho
Residence Arco Idaho

STATE OF IDAHO } ss.
County of

ON THIS 2nd day of July, 1974, before me the
undersigned, a Notary Public in and for said County and State, personally
appeared Umar S. Warner and James L. Roberts, known to me to
be the President and Secretary respectively, of the Corporation that executed
the foregoing instrument, and acknowledged to me that such Corporation 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.



William A. Carter
NOTARY PUBLIC for the State of Idaho
Residence: Arco Idaho

Exhibit B

WATERWAYS TRANSPORT AGREEMENT

THIS AGREEMENT, made and entered into this 12th day of May 1977, by and between Willard O. Bell ~~and~~ Crater Farms, Inc. of Arco, Butte County, State of Idaho, and THE BIG LOST RIVER IRRIGATION DISTRICT, and Irrigation District duly organized under the laws of the State of Idaho, with its principal office in Mackay, Custer County, State of Idaho.

WITNESSETH Crater Farms

WHEREAS, Willard O. Bell is the owner of certain rights to well waters with a point of diversion in the $\frac{W}{2}$ Section 14, All Section 15 $\frac{NW}{4}$, Sec. 22, $\frac{NW}{4}$, $\frac{SE}{4}$, $\frac{SW}{4}$ of the $\frac{NE}{4}$ (enter property description here) $\frac{E}{2}$ $\frac{SW}{4}$, Sec. 23, Twp. 3 N., R. 26 E. Also Sec. 33, Twp. 5, R. 26 $\frac{SE}{4}$ $\frac{SW}{4}$, $\frac{NE}{4}$ $\frac{SE}{4}$

in the amount of approximately 1000 miners inches of capacity and desires to transport said waters through an existing canal of District for use at a point other than the point of diversion:

WHEREAS, the District is the owner of a canal known as the Munsey Canal, being a part of the facilities of the District for the transmission of decreed and storage waters within the boundaries of said district, and,

Crater Farms
WHEREAS, Willard O. Bell desires to transport said waters described above through said Munsey Canal to the end of said canal at the boundaries of the District, and thereafter beyond said boundary onto land owned by Willard O. Bell, Crater Farms outside the boundary lines of the district, to the end that said waters would be used on lands described as the $\frac{W}{2}$, Sec. 14, all Sec. 15, $\frac{NW}{4}$ Sec. 22, $\frac{NW}{4}$, $\frac{SE}{4}$ $\frac{SW}{4}$ $\frac{NE}{4}$ $\frac{E}{2}$ $\frac{SW}{4}$, Sec. 23, Twp. 3 N. R. 26.
(enter property description)

NOW, THEREFORE, it is mutually agreed as follows:

1. Willard O. Bell may transport the well waters with the point of diversion at Arco Diversion in the amount of approximately 600 miners inches capacity, in and through the said Munsey canal owned by the District, subject to the terms and conditions of this agreement.

page two

2. Willard O. Bell, Crater Farms shall construct and maintain at their own expense, any additional ditch, structures, or other improvements, other than the existing Munsey Canal, that might be required to make the waters available to the land of Willard O. Bell, Crater Farms.

3. The right of Crater Farms
Willard O. Bell, as set forth above is subordinated to all existing and prior rights for the transportation of waters of the District in and through said Munsey Canal, and the right granted herein is granted only as long as there is sufficient additional capacity in Munsey Canal beyond the needs and uses of District to carry said waters of Willard O. Bell, Crater Farms. The determination of the availability of additional capacity in Munsey Canal shall be the sole determination of District.

4. Willard O. Bell, Crater Farms shall pay a proportionate part of the annual operation, and maintenance/assessment and overhead of the District as a toll charge, said amount to be set by District on the same basis as other toll charges made concerning like rights; Willard O. Bell shall notify District of the number of acres that have been irrigated by Crater Farms with said waters each year.

5. That no water rights, transmission rights, or ditch rights, in the Munsey Canal shall accrue to Willard O. Bell, Crater Farms, Inc by reason of this agreement, the rights of said Willard O. Bell, Crater Farms, Inc. being contained only in the terms of this Agreement.

6. This agreement shall remain in full force and effect until the 1st day of January, 1978, and may be renewed from year to year by mutual written consent of the parties.

IN WITNESS WHEREOF, the individual parties have hereunto set their hands the day and year first above written and the District has caused these presents to be executed by its President and Secretary.

Crater Farms Inc
Willard O. Bell, Inc.

THE BIG LOST RIVER IRRIGATION DISTRICT

by J. Boyle
President

ATTEST:

Secretary

OFFICIAL

SEAL

STATE OF IDAHO)
COUNTY OF Custer)

ON THIS 6 day of June, 1978, before me,
the undersigned, a Notary Public in and for said county and state, personally
appeared Willard O. Bell and _____
known to me to be the person(s) whose name(s) are subscribed to the within
instrument, and acknowledged to me that they (he) 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.

S E A L

Rita M. Lundquist
NOTARY PUBLIC for STATE OF IDAHO

residing at Mackay Idaho

STATE OF IDAHO)
COUNTY OF Custer)

ON THIS 6 day of June, 1978, before me the
undersigned, a Notary Public in and for said County and State, personally
appeared J. Doyle Jensen and Richard C. Rathwell
known to me to be the President and Secretary respectively, of the corporation
that executed the foregoing instrument, and acknowledged to me that such
Corporation 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.

S E A L

Rita M. Lundquist
NOTARY PUBLIC for STATE OF IDAHO

residing at Mackay, Idaho

Exhibit C

WATERWAYS TRANSPORT AGREEMENT

THIS AGREEMENT, made and entered into this 5 day of June 1979, by and between Crater Farms and Arco, Butte County, State of Idaho, and THE BIG LOST RIVER IRRIGATION DISTRICT, and Irrigation District duly organized under the laws of the State of Idaho, with its principal office in Mackay, Custer County, State of Idaho.

WITNESSETH:

WHEREAS, Crater Farms is the owner of certain rights to well waters with a point of diversion in the E $\frac{1}{2}$ SW $\frac{1}{4}$ SEC. 23 Twp 3 N R 26 also Sec. 33 Twp 5/26 SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$
(enter property description here)

in the amount of approximately 1000 miners inches of capacity and desires to transport said waters through an existing canal of District for use at a point other than the point of diversion:

WHEREAS, the District is the owner of a canal known as the Munsey Canal, being a part of the facilities of the District for the transmission of decreed and storage waters within the boundaries of said district, and,

WHEREAS, Crater Farms desires to transport said waters described above through said Munsey Canal to the end of said canal at the boundaries of the District, and thereafter beyond said boundary onto land owned by Crater farms outside the boundary lines of the district, to the end that said waters would be used on lands described as the

W $\frac{1}{2}$ Sec. 14, all sec. 15 N $\frac{1}{2}$ sec. 22 NW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$

(enter property description) E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 23 t 3/26

NOW, THEREFORE, it is mutually agreed as follows:

1. Crater farms may transport the well waters with the point of diversion at Arco diversion in the amount of approximately 600 miners inches capacity, in and through the said Munsey canal owned by the District, subject to the terms and conditions of this agreement.

WATERWAYS TRANSPORT AGREEMENT

Page two

2. Crater farms shall construct and maintain at their own expense any additional ditch, structures, or other improvements, other than the existing Munsey Canals that might be required to make the waters available to the land of crater farms.
3. The right of crater farms as set forth above is subordinated to all existing and prior rights for the transportation of waters of the District in and through said Munsey Canal, and the right granted herein is granted only as long as there is sufficient additional capacity in Munsey Canal beyond the needs and uses of District to carry said waters of crater. The determination of the availability of additional capacity in Munsey Canal shall be the sole determination of District.
4. Crater farms Shall pay a proportionate part of the annual overhead assessment, operation and maintenance costs of the District Canal as a toll charge, said amount to be set by District on the same basis as other toll charges made concerning like rights; crater farms shall notify District of the number of acres that have been irrigated by crater farms with said waters each year.
5. That no water rights, transmission rights, or ditch rights, in the Munsey Canal shall accrue to crater farms by reason of this agreement, the rights of said crater being contained only in the terms of this agreement.
6. This agreement shall remain in full force and effect until the 5th day of june 1980, and may be re-nued from year to year by mutual written consent of the parties.

IN WITNESS WHEREOF, the individual parties have hereunto set their hands the day and year first above written and the District has caused these presents to be executed by its President and Secretary.

ATTEST:

By Deanna E. Hanner
Secretary-treasurer date

Crater farms Inc
by Richard O. Bellus 6/5/79
requestor date

J. L. Oyle
President date
The Big Lost River Irrigation District

O F F I C I A L

S E A L

STATE OF IDAHO)

COUNTY OF Custer)

ON THIS 5th day of June, 1977, before me,
the undersigned, a Notary Public in and for said county and state, personally
appeared William O. Bell and _____
known to me to be the person(s) whose name(s) are subscribed to the within
instrument, and acknowledged to me that they (he) 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.

S E A L

Rita M. Lundberg
NOTARY PUBLIC for STATE OF IDAHO

residing at Mackay Idaho

STATE OF IDAHO)

COUNTY OF Custer)

ON THIS 5th day of June, 1977, before me the
undersigned, a Notary Public in and for said County and State, personally
appeared J. Doyle Jensen and Harmon Warner
known to me to be the President and Secretary respectively, of the corporation
that executed the foregoing instrument, and acknowledged to me that such
Corporation 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.

S E A L

Rita M. Lundberg
NOTARY PUBLIC for STATE OF IDAHO

residing at Mackay, Idaho

PUMPING AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of May
19 80, by and between Willard O. Bell for Crater farms, Inc.

County, State of Idaho, and THE BIG LOST RIVER
IRRIGATION DISTRICT (District), duly organized under the laws of the State of
Idaho, with its principal office in Mackay, Custer County, Idaho

WITNESSETH:

WHEREAS, Willard O. Bell desires to pump 1000
miner's inches of pump water into the District water system and receive 800
miner's inches of water from the District system through the Munsey** Canal,
with its point of diversion at (legal description): ** island, eastsid
E $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 23 Twp 3N Rge 26 sec. 33 Twp 5 N. Rge 26 SE $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ arco to munsey

and,

WHEREAS, the District is the owner of the Munsey Canal, being a
part of the facilities of the District.

NOW, THEREFORE, it is mutually agreed:

1. Willard O. Bell covenants and warrants that
Willard O. Bell has full right and title to pump said water
from a well located on noted above of Section , Twp
No., Range , EBM, and agrees to pump such water and discharge the
same at their expense into the Munsey Canal of the District system
at the following designated point (legal description):
W $\frac{1}{2}$ sec. 14, all of sec. 15, N $\frac{1}{2}$ sec. 22
NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ sec. 23 Twp 3 Rge 26

2. Willard O. Bell WILL PROVIDE AND MAINTAIN AT THEIR
OWN EXPENSE A SUITABLE MEASURING DEVICE OF A TYPE APPROVED BY THE DEPARTMENT
OF WATER RESOURCES OF THE STATE OF IDAHO FOR EACH LOCATION TO MEASURE THE
PUMP WATER DELIVERED TO THE DISTRICT AND TO MEASURE THE WATER RECEIVED BY THEM
AT THE POINT OF DELIVERY AND ALSO AT THE POINT OF DIVERSION.

3. Willard O. Bell will provide and maintain at their
own expense suitable methods, structures, drops and protective works to prevent
erosion of the ditch or canal at the point where the pump water enters the
District system.

Pumping Agreement- Page 1

4. Water shall be delivered to Willard O. Bell only during such time as Willard O. Bell is actually delivering pump water to the District system and water is available at the desired point of diversion specified above, and a user or users including Willard O. Bell then entitled to that much water from the District system can use such pumped water as part of the water right to which such user or users may be entitled.

5. If the amount of pump water delivered to the District by Willard O. Bell is at any time less than the amount to be delivered Willard O. Bell as specified hereinabove, the water delivered to Willard O. Bell shall be reduced proportionately.

6. Willard O. Bell acknowledges that the usual rate of shrink in the canal or ditch between such point of diversion and the desired point of delivery is variable % and that wetting the ditch and periodic fluctuations each add to the amount of shrinkage at various times and agree to bear a proportionate amount of all shrinkage loss.

7. Willard O. Bell covenants and warrants that they own an adequate ditch right and/or right of transportation in the canal and ditches through which this water shall be delivered.

8. Willard O. Bell agrees to promptly pay the ditchrider charges and assessments for the water delivered and any additional charges or expenses incurred by the District for measuring and recording the water delivered to the District by Willard O. Bell as provided hereunder.

9. If the water received from the District under this exchange is placed on land not otherwise assessed as irrigable land for the operation and maintenance fund of the District, Willard O. Bell agrees that it may be so assessed for such year and to promptly pay such assessment (including toll) at the same time as ordinary operation and maintenance assessments and tolls are usually payable, and upon failure to so pay, Willard O. Bell agrees to pay all costs of collection by the District, including reasonable attorney's fees.

10. Time is of the essence and this agreement may be terminated by the District at its option immediately upon ten (10) days notice after failure or default in performance of any of the terms, conditions or covenants hereof.

11. Willard O. Bell agrees to hold the District harmless from any damage or claims for damages by reason of this arrangement and agrees that neither the District nor any of its directors, officers, agents or employees shall be responsible in damages for any failure of water delivery occasioned by any circumstances not reasonably within the control of the District.

12. If Willard O. Bell is not receiving water described above, Willard O. Bell agrees to give to the District written notice thereof at the office in Mackay, Idaho not later than the end of the next business day and shall not make any claims for damages unless such notice shall have so been given.

13. Willard O. Bell agrees that proper maintenance of ditches and canals requires that the water be turned out of the same periodically and may periodically dry up each and every canal involved in this agreement.

14. The term of this agreement shall be for twenty(20) years beginning on the 1 day of May, 1980, and terminating on the 1st day of May, 1999. No water rights, transmission rights, ditch rights or canal rights, other than those already held and mentioned above shall accrue by virtue of this agreement. The rights of Willard O. Bell are only those as are contained in this agreement.

15. Willard O. Bell agrees that no assignment or other transfer of this agreement may be made except as hereafter provided.

In the event Willard O. Bell desires to assign this agreement to the Federal Land Bank as security for a farm loan, the District hereby agrees to give its written consent upon ten(10) days written notice of said assignment. In the event said assignment is consented to by the District, however, Willard O. Bell agrees to continue to remain responsible and obligated under all the terms, covenants and conditions of this agreement.

16. This document constitutes the full agreement of the parties hereto and any amendments or changes shall be invalid unless written.

MEASURING DEVICES APPROVED:

Watermaster or deputy watermaster/
dated

Oratio Family Inc
W. Willard O. Bell, pres.
Signature of Applicant

BIG LOST RIVER IRRIGATION DISTRICT

By *J. Taylor Jensen* 5/6/80
President dated

PUMPING AGREEMENT - Page 3

Exhibit E

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
AMENDMENT OF PERMIT NO. 34-7037
IN THE NAME CRATER FARMS, INC.

) ORDER ADOPTING
)
) PROPOSED MEMORANDUM
)

WHEREAS, A. Kenneth Dunn, Director of the Department of Water Resources having issued and served a copy on the parties on March 17, 1986, a Proposed Memorandum Decision and Order in the above-captioned matter, pursuant to Idaho Code, 67-5211; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exceptions to that Proposed Memorandum Decision and Order have been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order be adopted and issued as the Final Decision and Order.

Dated this 19th day of May, 1986.


A. KENNETH DUNN
Director

MICROFILMED

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
AMENDMENT NO. 34-7037

CRATER FARMS, INC.

Applicant,

LARMEN D. ANDERSEN, ET AL

Protestants.

SOURCE: GROUNDWATER

COUNTY: BUTTE

PROPOSED MEMORANDUM DECISION AND ORDER
APPROVING APPLICATION FOR AMENDMENT OF PERMIT NO. 34-7037

BY HEARING OFFICER BOBBY D. FLEENOR

Crater Farms, Inc. (Applicant) having filed with the Department of Water Resources an application to amend the point of diversion of Permit No. 34-7037; protests having been received; and a hearing having been held, the Department finds and concludes as follows:

FINDINGS OF FACT

Background of Permit

1. Crater Farms, Inc. originally filed with the Department of Water Resources on May 4, 1973, for a permit to appropriate 12.00 cubic feet per second of water from a groundwater source for the irrigation of 1,720 acres of land. In this original application, the applicant requested two points of diversion; one in the NE1/4SW1/4, and one in the NW1/4SW1/4, Sec. 2, Twp. 3N, Rge. 26E B.M. The land to be irrigated was described as Sec. 15, W1/2, Sec. 14, N1/2, Sec. 22, SW1/4NE1/4, NW1/4, E1/2SW1/4, SE1/4 Sec. 23, all in Twp. 3N, Rge. 26E B.M., Butte County. After the requisite advertising and processing period,

MICROFILMED

Crater Farms, Inc. was granted Permit No. 34-7037 on June 18, 1973.

2. On March 12, 1974, Crater Farms requested an amendment of Permit No. 34-7037 which would allow them additional points of diversions in the SE1/4SE1/4, Sec. 22, and SW1/4SE1/4, Sec. 23, in Twp. 4N, Rge. 26E. Water from the well proposed in Sec. 23 would be pumped into the Arco Canal within the SW1/4SE1/4, Sec. 23, Twp. 4N, Rge. 26E, and exchanged for water diverted from the Big Lost River through the Munsey ditch at a point within the NW1/4NW1/4, Sec. 26, Twp. 4N, Rge. 26E. Water from the well proposed in Sec. 22 would be comingled with Big Lost River water and also diverted at the Munsey Ditch. This proposed amendment of Permit No. 34-7037 was approved by the Director of the Department of Water Resources on April 26, 1974.

3. A second request for amendment was received from Crater Farms on April 5, 1976. Through this application Crater Farms requested a change in their permit to provide for an additional well to be located in the NW1/4SW1/4, Sec. 34, Twp. 5N, Rge. 26E, and the elimination of the well previously proposed in the SW1/4SE1/4, Sec. 23, Twp. 4N, Rge. 26E. In addition, the place of use was reduced to 1,680 acres by the elimination of 40 acres contained within the SW1/4NE1/4, Sec. 23, Twp. 3N, Rge. 26E. No protests against the approval of this amendment were received and on May 14, 1976, these changes proposed for Permit No. 34-7037 were approved by the Director of the Department of Water Resources.

Substance of Amendment and Protests

4. A third request to amend Permit No. 34-7037 was received from Crater Farms on January 20, 1981. This application for amendment proposes to add a well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E as a point of diversion. Notice of this change was advertised in the Arco Advertiser on February 12 and 19, 1981. Protests against the approval of this application were received from

Seth E. Beal, Joe Smith, Larman D. Andersen, Elden Reynolds, Albert Babcock, M. G. Babcock, David B. Bleak, Gerald Stewart, Richard E. Reynolds, Craig Stewart, Richard Taylor, Larry Reynolds, Jay F. Pearson, and Rueben H. Babcock all of Moore, Idaho. A hearing in the matter was held in Arco, Idaho, on April 22, 1981. All protestants appeared at this hearing except Seth E. Beal, whose protest is therefore set aside. At this hearing the protestants argued that the additional well would result in the diversion of more water than originally permitted and that the water rights of others in the area, both groundwater and surface water, would be adversely effected by the proposed change.

5. Evidence and information considered in this matter includes the following:

- a) Application for Permit No. 34-7037
- b) Application for Amendment approved April 26, 1974
- c) Application for Amendment approved May 14, 1976
- d) Application for Amendment received by the department on January 20, 1981.
- e) Protests received to approval of the Application for Amendment received on January 20, 1981.
- f) The hearing tape of testimony received on April 22, 1981.
- g) The well driller's report of the 224 foot deep well drilled by Pete Cope Drilling Co., Inc. in NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E B.M.
- h) U.S.G.S. open-file Report 70-93, 109 p. E.G. Crosthwaite, C. A. Thomas and K. L. Dyer; 1970, Water Resources in the Big Lost River Basin, South-Central Idaho.

Additional Findings

6. A well drilled for Crater Farms under this permit in the NW1/4-

SW1/4, Sec. 34, Twp. 5N, Rge. 26E, in August of 1976, had a static water level of nine (9) feet and a total depth of 171 feet. The driller's log for this well shows perforations in the well casing between 35 and 165 feet.

7. The additional well proposed under this application would be located about 1/2 mile south of and closer to the place of use than the well described in Finding No. 1. The well would be nine miles due north of the place of use and would require the use of the East Side and Munsey Ditches to transport the water to its proposed place of use. This well is also located further from the Big Lost River than the existing well in Finding No. 1.

8. Available data indicate a relatively unrestricted interchange between surface and groundwater. In the area of the proposed well this interchange primarily takes place with the water table perched above a clay layer which is normally encountered between 25 and 50 feet below land surface.

9. Well driller logs in the area of the proposed well indicate water is normally encountered between 5 and 50 feet before penetrating a clay confining layer. Below this layer additional water bearing strata has been encountered within 150 feet of the land surface.

10. The well proposed in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E was constructed in May 1982.

11. The well log for the well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E shows that the surface seal depth is twenty (20) feet, that the well casing has been perforated from 35'5" to 134'6" below land surface and that the clay confining layer is in between 30 and 34 feet below land surface.

CONCLUSIONS OF LAW

1. By casing out the water encountered above the first confining layer, groundwater pumped will not effect the flows of the Big Lost River to a measurable extent.

2. The well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E as presently constructed intercepts water above the first confining layer and does not minimize the effect on surface water flows.

3. The department may approve the amendment with certain conditions in order to prevent the diversion and use of more water than originally permitted and to prevent injury to other water users.

ORDER

IT IS, THEREFORE, HEREBY ORDERED and Application for Amendment No. 34-7037 is APPROVED subject to the following conditions:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on each diversion to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.

2. Diversion and use of water from the well in the NE1/4NW1/4, Sec. 3, Twp. 4N, Rge. 26E is subject to the control of the Watermaster of Water District 34 and shall be considered together with the surface water priorities of the Big Lost River.

3. Upon reconstruction of the well under a plan with prior department approval, or upon a showing satisfactory to the Department that minimal hydraulic connection exists between the well and surface water flows, the Director may waive condition No. 2.

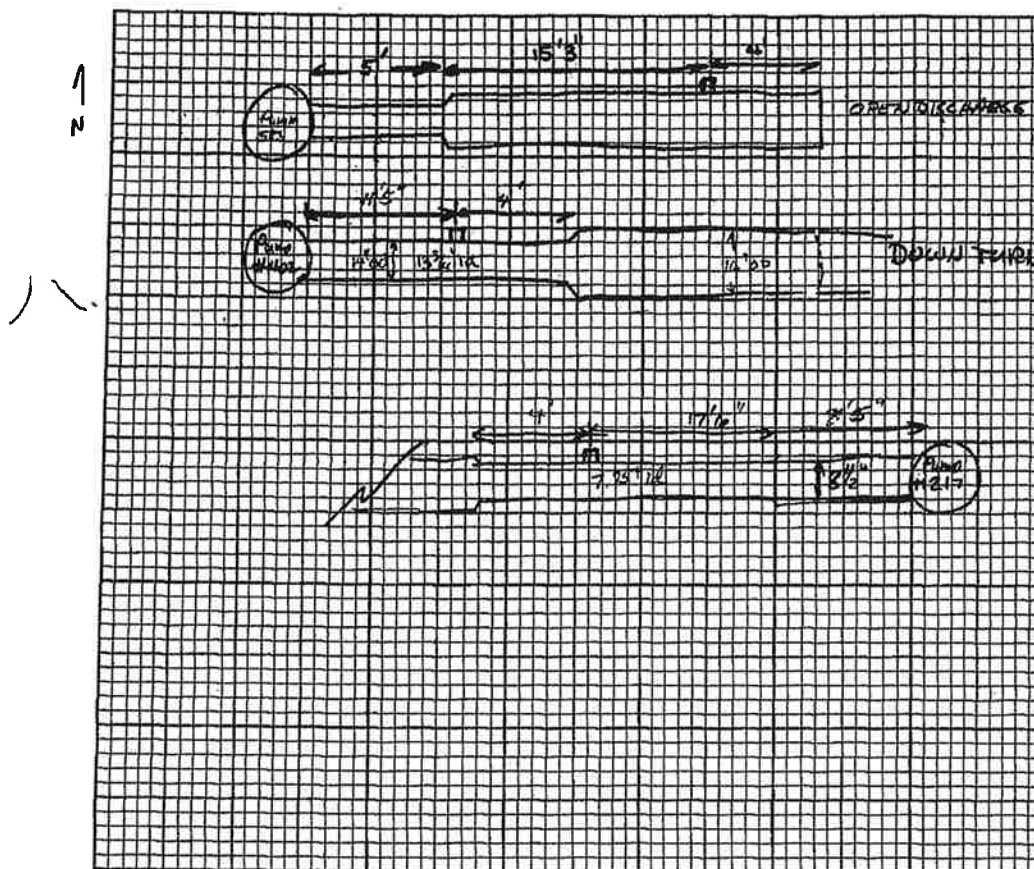
4. The permit holder shall comply with the original conditions of permit approval.

Dated this 17 day of March, 1986.


BOBBY D. FLEENOR
Hearing Officer

Exhibit F

12. **Diversion and Delivery System Diagram:** Indicate all major components and distances between components. Indicate ditch size/pipe i.d. as applicable. Indicate on systems with measurement port the distance between the port and the nearest component/pipe bend/restriction both upstream and downstream, and the inside pipe diameter at the measurement port. On multiple diversion systems indicate how diversion systems are connected.



13. ☐ Photo of Diversion & System Attached

☐ Aerial Photo of Place of Use Attached or Map of Irrigated Acreage Attached

14. Remarks Wells # 583/402 open discharge to Island Ditch to East Side Ditch to Big Lost River to Munsey ditch to Reducement 580/618 and 4/301 to private ditches with Reducement to Linear Systems wheel & hand lines.

15. Recommended Amendments

☒ Change P.D. as reflected above

☐ Add P.D. as reflected above

☐ None

☐ Change P.U. as reflected above

☒ Add P.U. as reflected above

☐ Other

16. Examiner's/Consultant's Signature

Keith C. Wilson

Date 8 Aug 1985

Consultant's License Number

IDWR Director's Authorization to Conduct

Beneficial Use Examination

Date

CONSULTANT SEAL

Permit No. ~~34-7130~~
Phone No. 527-8903

1. Owner: CRATER FARMS INC Phone No. 527-8903
Current Address: P.O. Box 91 Aven Id 83213
2. Accompanied by: Willard Bell EXAM. DATE: 8 Aug 85
Address: SAME Phone No. 257-8903
Relationship to Permit Holder: OWNER
3. Source: Groundwater / Big Lost River tributary to N/A / Snake
GROUNDWATER REDIVERSIONS

Well/Diversion* No.	Motor Make	HP	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
REDW 588	GE 1775	75	TKJ602119	Winthrecht	12"
REDW 618 ^{no # on picture}	GE 1765	50	RKJ309012	Worthington	UTP 57306
REDW #4	GE 1180	100	CKJ327163	Johnston	PG14366
Redw # 301	US 1200	100	C1008158	Johnston	1H14112
SEE PAGE # 2					

*Code with points of diversion, system diagram & photos on reverse side. Disregard if only one.

5. System Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)
- Rodiv # 588 Munier Ditch to Private ditch
- Rodiv # 618 " " " " "
- Rodiv # 1/3101 " " " Mainline to private ditch or irrigation system w/c lateral with sprinklers

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Flame	Parshall	Thompson Pipe + Steel	-	-	36"	
Weir	Cipolletti	-	-	-	4'	
FLAME	Parshall	Thompson Pipe + Steel	-	-	30"	

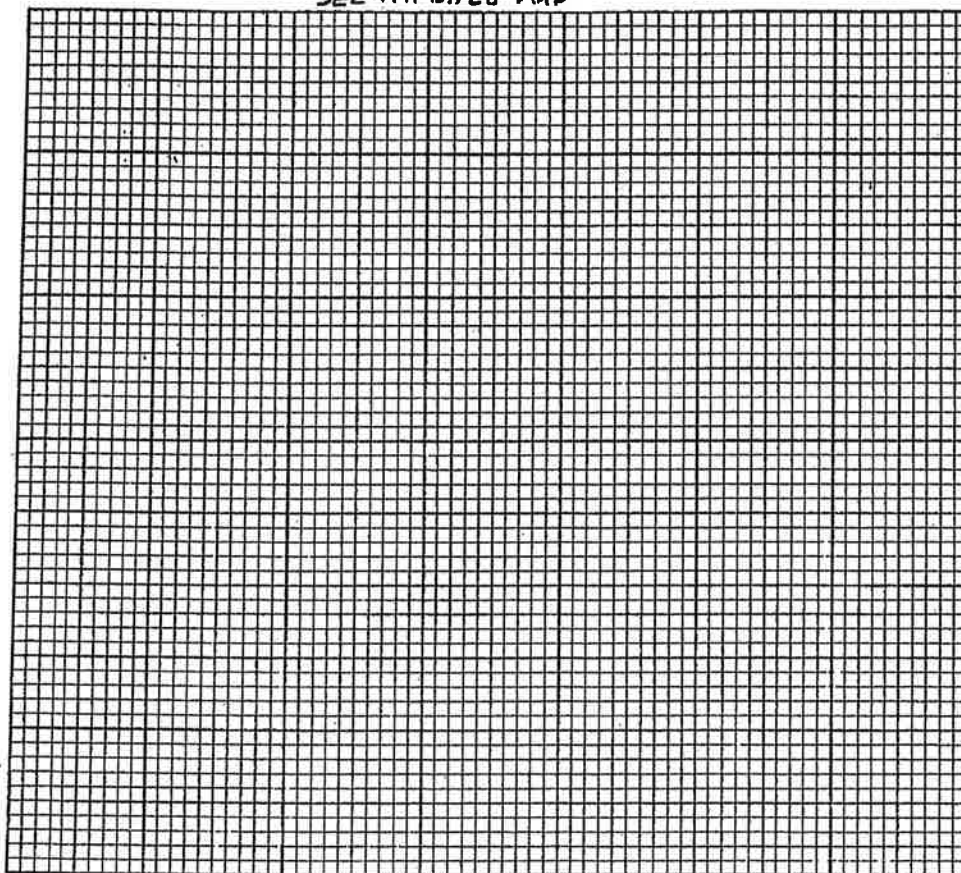
- | | | |
|-----------------|--|--|
| 7. Measurements | 1.09' over 36" Parshall flume | ☐ Additional data/computation sheets attached |
| | = 13.7 cfs | |
| | 1.34' over 4' Cipolletti weir upstream of Rediversion #4 | 301 20.82 |
| | NO over 30" Parshall flume below Rediversion #4 | 301 10.00 |
| | 0.1 cfs | CAPACITY 10.82 |

- | 8. Point(s) of Interest | | | | | | | Indicate Method of Determination | | |
|-------------------------|----|----|----|------|------|------|--|--------|---------|
| Ident # | % | % | % | Sec. | Twp. | Rge. | Survey Information from ~~Survey~~ Corner | County | Remarks |
| # 588 | NW | SE | SE | 2 | 3N | 26E | | Butte | |
| # 618 | NW | SE | SE | 2 | 3N | 26E | | Butte | |
| # 4 | SW | SW | NW | 13 | 3N | 26E | S 5 1/2 1074 | Butte | |
| # 301 | SW | SW | NW | 13 | 3N | 26E | | Butte | |
| Ditch | NW | NW | NW | 26 | 4N | 26E | MUNSEY DITCH FROM BK. LOST RIVER | BUTTE | |

- | Place(s) of Use: | | Irrigation - give acres served by system at time of exam.
Indicate Method of Determination | | | | | | | | | | | | | | | | | | |
|------------------|------|---|--------|-------|-------|-------|--------|-------|-------|-------|--------|-------|-------|-------|--------|-------|-------|-------|-------------|-----------|
| Twp. | Rge. | Sec. | NE 1/4 | | | | NW 1/4 | | | | SW 1/4 | | | | SE 1/4 | | | | Totals | |
| | | | NE1/4 | NW1/4 | SW1/4 | SE1/4 | NE1/4 | NW1/4 | SW1/4 | SE1/4 | NE1/4 | NW1/4 | SW1/4 | SE1/4 | NE1/4 | NW1/4 | SW1/4 | SE1/4 | | |
| 3N | 26E | 14 | | | | | 39 | 36 | 40 | 40 | 40 | 40 | 40 | 40 | | | | | 315 | |
| | | 15 | | 39 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 639 |
| | | 16 | | 39 | 39 | 40 | 40 | | | | | | | | | 40 | 40 | 39 | 39 | 316 |
| | | 22 | | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | | | | | | | | | 320 |
| | | 23 | | | | | | 40 | 40 | 40 | 40 | 40 | | | | 33 | 39 | 40 | 40 | 342 |
| | | | | | | | | | | | | | | | | | | | Total Acres | 1666.1982 |

12. **Diversion and Delivery System Diagram:** Indicate all major components and distances between components. Indicate ditch size/pipe I.D. as applicable. Indicate on systems with measurement port the distance between the port and the nearest component/pipe bend/restriction both upstream and downstream, and the inside pipe diameter at the measurement port. On multiple diversion systems indicate how diversion systems are connected.

SEE ATTACHED MAP



13. ☒ Photo of Diversion & System Attached

- ☒ Aerial Photo of Place of Use Attached or Map of Irrigated Acreage Attached

14. Remarks PERIOD OF USE IS FOR High Water only.
R29

15. Recommended Amendments

☒ Change P.D. as reflected above

☐ Add P.D. as reflected above

☐ None

☐ Change P.U. as reflected above

☒ Add P.U. as reflected above

☐ Other

16. Examiner's/Consultant's Signature Keith C. Wilson

Date 11 JAN 1988

Consultant's License Number _____

IDWR Director's Authorization to Conduct

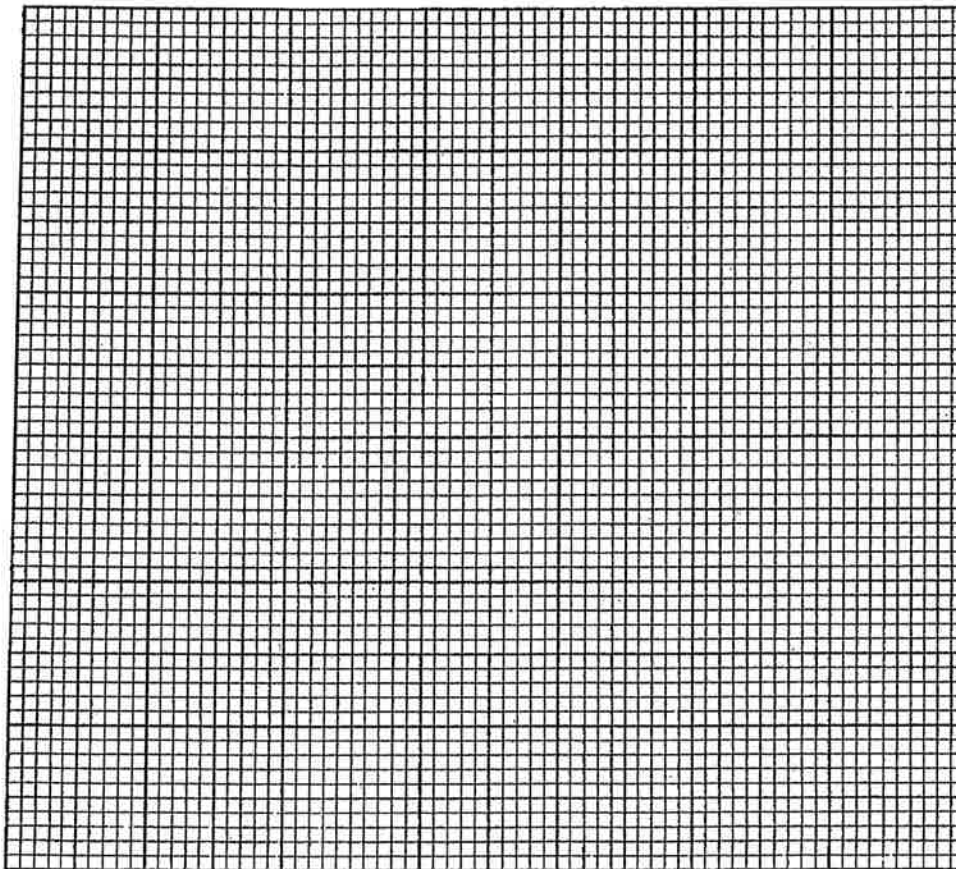
Beneficial Use Examination _____

Date _____

CONSULTANT SEAL

SEP 21 1984

12. **Diversion and Delivery System Diagram:** Indicate all major components and distances between components. Indicate ditch size/pipe i.d. as applicable. Indicate on systems with measurement port the distance between the port and the nearest component/pipe bend/restriction both upstream and downstream, and the inside pipe diameter at the measurement port. On multiple diversion systems indicate how diversion systems are connected.



13. ☐ Photo of Diversion & System Attached

☐ Aerial Photo of Place of Use Attached
or Map of Irrigated Acreage Attached

14. Remarks SEE FIRST PAGE

15. Recommended Amendments

☒ Change P.D. as reflected above

☐ Add P.D. as reflected above

☐ None

☐ Change P.U. as reflected above

☒ Add P.U. as reflected above

☐ Other

16. Examiner's/Consultant's Signature Keith C. Wilson

Date 11 Jan 1988

Consultant's License Number _____

IDWR Director's Authorization to Conduct

Beneficial Use Examination _____

Date

CONSULTANT SEAL

SEP 01 1984

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
LICENSING REPORT

34-7037
Permit No.

PAGE 7 OF 40

1. Measurement Calculations

a) Field Measurement Calculations (Include theoretical capacities and system capacity)

$$Q = \left[\frac{C(d)^2 \sqrt{\text{INCHES}}}{448.8} \right] K$$

$$K = 1.067$$

$$C = 3.99 \text{ for } 12" \text{ annubar}$$

$$= 4.01 \text{ for } 13.25" \text{ annubar}$$

$$Q_{402} = \left[\frac{4.01(13.75)^2 \sqrt{49}}{448.8} \right] 1.067 = 12.62 \text{ cfs}$$

$$Q_{583} = \left[\frac{3.99(12.5)^2 \sqrt{66}}{448.8} \right] 1.067 = \frac{12.04 \text{ cfs}}{24.66 \text{ cfs}}$$

Q LIMITED BY PERMIT TO 12.0 cfs

b) Volume Calculations for Irrigation:

$$V_{in} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 1720 \times 3 \text{ af} = 5160 \text{ af}$$

$$V_{on} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = \frac{2(1.9835)(214)}{1} = 5093.6$$

$$V = \text{Smaller of } V_{in} \text{ and } V_{on} = 5093.6$$

c) Volume Calculations for Other Uses:

2. Overlap Review

a) Other water rights with same place of use: GROUNDWATER 34-2459/2460/2461/2462

Big Lost River 34-7138

b) Other water rights with same point of diversion: NONE: SEE PAGE 9 of 40

c) Analysis:

SEE PAGE 9 of 40

SEP 21 1994

SEP 21 1994

OVERLAP ANALYSIS:

CONSIDER WELLS #217 & #182 (PUMP DIRECTLY INTO PRIVATE DITCH), THAT ARE NOT REGULATED BY THE WATER MASTER, AS THE SOURCE FOR THE FOLLOWING LICENSES:

34-2459 @ 4.17 cfs/ 238 ac
34-2460 @ 4.17 cfs/ 238 ac
34-2461 @ 2.08 cfs/ 119 ac
34-2462 @ 2.08 cfs/ 119 ac

TO ELIMINATE HAVING TO HAVE THE WATERMASTER REGULATE WELLS #217 & #182 (THAT PUMP INTO A PRIVATE DITCH) THE FOLLOWING SHOULD BE CONSIDERED:

1. THE POINTS OF DIVERSION FOR THIS RIGHT 34-7037 SHOULD BE LIMITED TO WELLS #402 / #583.
2. GROUNDWATER WELLS #402 & #583 SHOULD BE CONSIDERED A SEPARATE SOURCE.
3. GROUNDWATER WELLS #402 & #583 SHOULD BE UNDER WATERMASTER CONTROL.

IF P/D'S #402 & #583 ARE CONSIDERED AS A SEPARATE SOURCE THERE WOULD BE NO POINT OF DIVERSION OVERLAP, AND THE ONLY CONSIDERATION NECESSARY WOULD BE TO LIMIT IRRIGATION TO 0.02 CFS/ACRE ON 1720 ACRES WITHIN THE 1982 ACRES OF THE PERMISSIBLE PLACE OF USE.

RECOMMENDATIONS:

1. P/D'S FOR 34-7037 LIMITED TO WELLS #402 / #583.
#402 - SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SEC 34, T05N, R26E
#583 - NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SEC 03, T04N, R26E
2. P/D'S #402 & #583 ARE TO BE CONSIDERED A SEPARATE SOURCE.
3. P/D'S #402 & #583 ARE TO BE UNDER WATERMASTER CONTROL.
4. P/U 1720 ACRES WITHIN 1982 ACRES OF PERMISSIBLE P/U


KEITH C. WILSON

9 Sept 1991

SEP 21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

34-7037
PAGE 10 OF 40

A. GENERAL INFORMATION

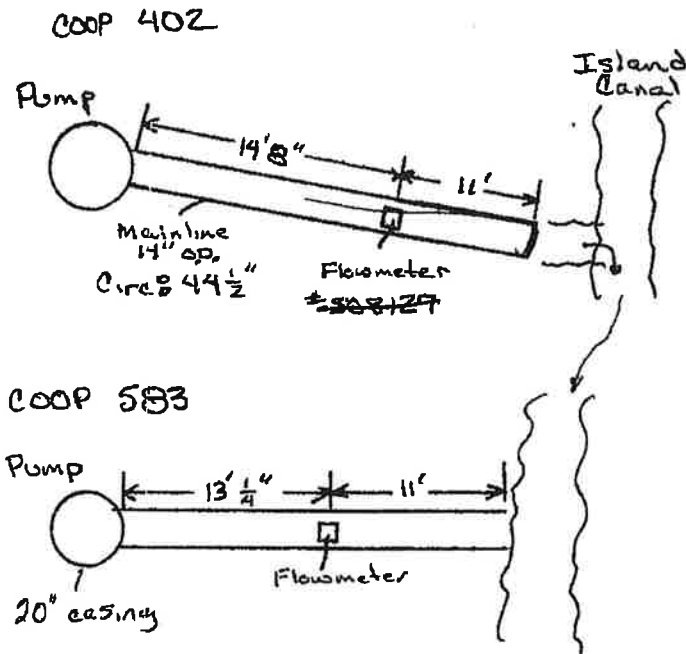
1 Owner W. Crater Farms Permit No 34-7037
Current Address: P.O. Box 91 Phone No 527-8903
2. Accompanied by Willard Bell EXAM. DATE 7/5/90
Address. Same Phone No _____
Relationship to Permit Holder _____
3 Source: Groundwater tributary to _____

B OVERLAP REVIEW

- 1 Other water rights with same place of use _____
_____ ☐ Copies Attached
2 Other water rights with same point of diversion _____
_____ ☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

- 1 Diversion System Diagram: Indicate all major components and distances between components. Indicate weir size/ditch size/pipe id as applicable ☐ Alternative diagram attached



Scale: 1" = _____

SEP 21 1994

2. ☐ Copy of U S G.S. Quadrangle Attached ☐ Aerial Photo Attached
Showing location(s) of point(s) of diversion and (required for irrigation of 10 acres or more)
place(s) of use (required)
☐ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater)

3 Narrative: Description (As operating at time of measurement Indicate pressure, number of sprinklers, etc.)

See Exam 8 Aug 85

☐ See Remarks on page 4 for continuation

4. Also see attached System description

Well or Diversion Identification No. *	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
COOP 402	General Elect	125	E435261712 ~~5K10770133~~	Aurora	V77-71337
COOP 583	General Elect.	100	CWJ3162860	Berkeley	8200408

*Code to correspond with No. on map and aerial photo

5 Point(s) of Diversion: SEE Original Exam 8 Aug 1985 also attached system description

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks

6 Place(s) of Use: See Exam 8 Aug 1985 Indicate Method of Determination

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Do not use this space

SL 11-1-85

Do not use this space

34-7037

PAGE 12 OF 40

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. Measurements:

3250 gpm $0.01 \times 10^5 \text{ gal} / 18.48 \text{ sec}$ (COOP 402)
in-mainline flow meter
COOP 583 3600 gpm $0.01 \times 10^5 \text{ gal} / 16.64 \text{ sec}$

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method $Q_{402} = (0.01 \times 10^5 \text{ gal} / 18.48 \text{ sec}) (60 \text{ sec} / \text{min}) = 3246.8 \text{ gpm} = 7.23 \text{ cfs}$
 $Q_{583} = (0.01 \times 10^5 \text{ gal} / 16.64 \text{ sec}) (60 \text{ sec} / \text{min}) = 3605.8 \text{ gpm} = 8.03 \text{ cfs}$

2. Alternate Method for Checking Purposes.

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure. _____ psi x 2.31 = _____ ft (1); Dynamic pumping level _____ ft (2)

Total Head: (1) + (2) = _____ (3) . Flow rate _____ cfs (4)

Water HP (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N / _____ T = _____ (6)

Meter Input HP. (6) x 1.34 = _____ (7)

Panel Input KW _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)

Panel Input HP. (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation

$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____

$V_{DR} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____

$V = \text{Smaller of } V_{IR} \text{ and } V_{DR} =$ _____

2. Volume Calculations for Other Uses

SEP 21 1994

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

1 Recommended Amounts

2. Recommended Amendments

- ## J. AUTHENTICATION

Signature

Certification Date

Field Report Preparation Date

CONSULTANT SEAL

- K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

34-7037

PAGE 14 OF 40

Permit No. 34-7037

System Description (continued)

4.

WELLS	Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	Well # 583	G.E.	100	CWJ316286	Berkeley	# 8200408
	Well # 402	G.E.	125	EAT526171	Aurora	V 77-71337
	Well # 182	G.E.	200	EDJ515138	Layne-Bowler	# 44660
	Well # 217	U.S. Motors	125	C2954-03-273	Johnston	10" discharge
REDIVERSIONS	- RE-DIVERSIONS -					
	Munsey Ditch	-	-	-	-	-
	# 588	G.E.	75	TVJ 602119	Winthroath	12" discharge
	# 618	G.E.	50	RKJ 309012	Worthington	VTP-57306
	# 4	G.E.	100	CKJ 327163	Johnston	PG-14366
	# 301	U.S. Motors	100	C 1008138	Johnston	# 1 H 14112
	# 2	Westinghouse	250	76A65060	Johnston	10" discharge
	# 592	Yaskawa	100	0078316901	Worthington	# 14 HH 220
	# 1	Westinghouse	250	676A650604	Johnston	JY 14102
	Pond # 465	U.S. Motors	100	R9981-01-210 R2113073	Johnston	

*Code to correspond with No. on map and aerial photo

5. Point(s) of Diversion:

WELLS	Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
	# 583		NE	SE	NW	3	4N	26E	Butte	U.S.G.S. Map / on site inspection
	# 402		SE	NW	SW	34	5N	26E	Butte	"
	# 182			NE	SW	2	3N	26E	Butte	"
	# 217			SE	NW	2	3N	26E	Butte	"
REDIVERSIONS	- RE-DIVERSIONS -									
	MUNSEY DITCH		NW	NW	NW	26	4N	26E	Butte	USGS Map / ON SITE INSPECTION
	# 588		NW	SE	SE	2	3N	26E	Butte	"
	# 618		NW	SE	SE	2	3N	26E	Butte	"
	# 4		SW	SW	NW	13	3N	26E	Butte	"
	# 301		SW	SW	NW	13	3N	26E	Butte	"
	# 2		SE	SE	NE	15	3N	26E	Butte	"
	# 592		SE	SE	NE	15	3N	26E	Butte	"
	# 1		SE	NE	NE	22	3N	26E	Butte	"
	# 465		SE	NW	SW	23	3N	26E	Butte	"

Do not use this space

SEP 21 1994



Note: To convert to gallons per minute, multiply figures shown by 448.8. To convert to Miners' Inches multiply figures shown by: 38.4 for Colorado, 40 for California, Arizona, Montana, and Oregon; 50 for New Mexico, Nebraska, Utah, Idaho and Washington.

34-7037

PAGE 15 OF 40

Parshall Flume

GAGE READING		DISCHARGE IN CUBIC FEET PER SECOND FOR VARIOUS THROAT WIDTHS																		GAGE READING	
Feet	Inches	3 Inch	6 Inch	9 Inch	1 Foot	1 1/2 Feet	2 Feet	2 1/2 Feet	3 Feet	4 Feet	5 Feet	6 Feet	7 Feet	8 Feet	10 Feet	12 Feet	15 Feet	20 Feet	Feet	Inches	
.66	7 1/2	.522	1.07	1.63	2.13	3.17	4.20	5.23	6.26	8.31	10.34	12.38	14.40	16.41	20.23	24.05	29.74	38.22	.66	7 1/2	
.67	7 7/8	.534	1.10	1.66	2.18	3.24	4.30	5.36	6.41	8.51	10.59	12.68	14.75	16.81	20.75	24.63	30.46	40.18	.67	7 7/8	
.68	8	.546	1.12	1.70	2.23	3.32	4.40	5.48	6.56	8.71	10.85	12.98	15.10	17.22	21.24	25.22	31.19	41.14	.68	8	
.69	8 1/4	.558	1.15	1.74	2.28	3.39	4.50	5.61	6.71	8.91	11.10	13.28	15.46	17.63	21.75	25.82	31.93	42.11	.69	8 1/4	
.70	8 1/2	.571	1.17	1.78	2.33	3.47	4.60	5.74	6.88	9.11	11.36	13.59	15.82	18.04	22.25	26.42	32.87	43.09	.70	8 1/2	
.71	8 1/2	.584	1.20	1.82	2.38	3.54	4.70	5.88	7.02	9.32	11.62	13.90	16.18	18.45	22.75	27.03	33.42	44.08	.71	8 1/2	
.72	8 3/8	.597	1.23	1.86	2.43	3.62	4.81	5.99	7.17	9.59	11.88	14.22	16.55	18.87	23.28	27.64	34.18	45.08	.72	8 3/8	
.73	8 3/4	.610	1.26	1.90	2.48	3.70	4.91	6.12	7.33	9.74	12.14	14.53	16.92	19.29	23.80	28.26	34.94	46.09	.73	8 3/4	
.74	8 3/4	.623	1.28	1.94	2.53	3.78	5.02	6.25	7.49	9.93	12.40	14.85	17.29	19.71	24.32	28.88	35.71	47.10	.74	8 3/4	
.75	9	.636	1.31	1.98	2.58	3.85	5.12	6.39	7.65	10.16	12.67	15.17	17.66	20.14	24.85	29.50	36.48	48.12	.75	9	
.76	9 1/8	.649	1.34	2.02	2.63	3.93	5.23	6.52	7.81	10.38	12.94	15.49	18.04	20.57	25.38	30.14	37.26	49.15	.76	9 1/8	
.77	9 1/4	.662	1.36	2.06	2.68	4.01	5.34	6.63	7.97	10.60	13.21	15.82	18.42	21.01	25.92	30.77	38.03	50.19	.77	9 1/4	
.78	9 1/2	.675	1.39	2.10	2.74	4.09	5.44	6.79	8.13	10.81	13.49	16.15	18.81	21.48	26.46	31.42	38.85	51.24	.78	9 1/2	
.79	9 1/2	.689	1.42	2.14	2.83	4.18	5.55	6.92	8.30	11.03	13.76	16.48	19.20	21.81	27.00	32.08	39.65	52.29	.79	9 1/2	
.80	9 3/8	.702	1.45	2.18	2.85	4.28	5.66	7.08	8.48	11.25	14.04	16.81	19.59	22.36	27.55	32.72	40.46	53.36	.80	9 3/8	
.81	9 3/4	.716	1.48	2.22	2.90	4.34	5.77	7.20	8.63	11.48	14.32	17.15	19.99	22.81	28.11	33.37	41.26	54.43	.81	9 3/4	
.82	9 1/2	.730	1.50	2.27	2.96	4.42	5.88	7.34	8.79	11.70	14.60	17.48	20.39	23.26	28.67	34.03	42.09	55.51	.82	9 1/2	
.83	9 1/2	.744	1.53	2.31	3.02	4.51	6.00	7.48	8.96	11.92	14.88	17.83	20.79	23.72	29.22	34.70	42.91	56.59	.83	9 1/2	
.84	10 1/8	.757	1.56	2.35	3.07	4.59	6.11	7.62	9.13	12.15	15.17	18.17	21.18	24.18	29.79	35.37	43.74	57.69	.84	10 1/8	
.85	10 1/4	.771	1.59	2.39	3.12	4.67	6.22	7.76	9.30	12.38	15.46	18.52	21.58	24.64	30.36	36.04	44.57	58.79	.85	10 1/4	
.86	10 1/2	.786	1.62	2.44	3.18	4.76	6.33	7.91	9.48	12.61	15.75	18.87	21.99	25.11	30.93	36.73	45.42	59.90	.86	10 1/2	
.87	10 3/8	.800	1.65	2.48	3.24	4.84	6.44	8.05	9.65	12.84	16.04	19.22	22.40	25.58	31.51	37.41	46.27	61.02	.87	10 3/8	
.88	10 1/2	.814	1.68	2.52	3.29	4.92	6.58	8.19	9.82	13.07	16.33	19.57	22.82	26.06	32.09	38.10	47.12	62.14	.88	10 1/2	
.89	10 1/2	.828	1.71	2.57	3.35	5.02	6.68	8.34	10.00	13.31	16.62	19.99	23.24	26.54	32.68	38.80	47.99	63.28	.89	10 1/2	
.90	10 1/2	.843	1.74	2.61	3.41	5.11	6.80	8.49	10.17	13.55	16.92	20.29	23.66	27.02	33.27	39.50	48.84	64.42	.90	10 1/2	
.91	10 1/2	.858	1.77	2.66	3.46	5.19	6.92	8.63	10.35	13.79	17.22	20.65	24.08	27.50	33.85	40.20	49.71	65.57	.91	10 1/2	
.92	11 1/8	.872	1.81	2.70	3.52	5.28	7.03	8.78	10.53	14.03	17.52	21.01	24.50	27.99	34.46	40.91	50.59	66.73	.92	11 1/8	
.93	11 1/4	.887	1.84	2.75	3.58	5.37	7.15	8.93	10.71	14.27	17.82	21.38	24.93	28.48	35.06	41.63	51.47	67.89	.93	11 1/4	
.94	11 1/4	.902	1.87	2.79	3.64	5.46	7.27	9.08	10.89	14.51	18.13	21.75	25.36	28.97	35.67	42.35	52.36	69.07	.94	11 1/4	
.95	11 3/8	.916	1.90	2.84	3.70	5.55	7.39	9.23	11.07	14.76	18.44	22.12	25.79	29.47	36.27	43.07	53.25	70.24	.95	11 3/8	
.96	11 1/2	.931	1.93	2.88	3.76	5.64	7.51	9.38	11.28	15.00	18.75	22.49	26.22	29.97	36.89	43.80	54.18	71.43	.96	11 1/2	
.97	11 3/4	.946	1.97	2.93	3.82	5.73	7.63	9.54	11.44	15.25	19.06	22.86	26.66	30.48	37.50	44.52	55.08	72.82	.97	11 3/4	
.98	11 3/4	.961	2.00	2.98	3.88	5.82	7.75	9.69	11.63	15.50	19.37	23.24	27.10	30.98	38.12	45.28	55.97	73.89	.98	11 3/4	
.99	11 3/4	.977	2.03	3.02	3.94	5.91	7.88	9.85	11.82	15.75	19.68	23.62	27.53	31.49	38.75	46.01	56.88	75.04	.99	11 3/4	
1.00	12	.992	2.06	3.07	4.00	6.00	8.00	10.00	12.00	16.00	20.00	24.00	28.00	32.00	39.38	46.75	57.81	76.25	1.00	12	
1.01	12 1/8	1.01	2.09	3.12	4.06	6.09	8.12	10.16	12.19	16.25	20.32	24.38	28.45	32.52	40.01	47.56	58.73	77.47	1.01	12 1/8	
1.02	12 1/4	1.02	2.12	3.17	4.12	6.18	8.25	10.31	12.38	16.51	20.64	24.77	28.90	33.04	40.54	48.26	59.67	78.71	1.02	12 1/4	
1.03	12 1/4	1.04	2.16	3.21	4.18	6.28	8.38	10.47	12.57	16.76	20.96	25.16	29.36	33.56	41.28	49.01	60.61	79.94	1.03	12 1/4	
1.04	12 1/2	1.05	2.19	3.26	4.25	6.38	8.50	10.63	12.76	17.02	21.28	25.55	29.82	34.08	41.92	49.77	61.55	81.18	1.04	12 1/2	
1.05	12 3/8	1.07	2.22	3.31	4.31	6.47	8.63	10.79	12.95	17.28	21.61	25.94	30.28	34.61	42.57	50.55	62.50	82.44	1.05	12 3/8	
1.06	12 3/4	1.09	2.26	3.36	4.37	6.57	8.76	10.95	13.15	17.54	21.94	26.34	30.74	35.14	43.23	51.32	63.46	83.71	1.06	12 3/4	
1.07	12 3/4	1.10	2.29	3.40	4.43	6.66	8.88	11.10	13.34	17.80	22.27	26.74	31.20	35.68	43.88	52.09	64.42	84.97	1.07	12 3/4	
1.08	12 3/4	1.12	2.32	3.45	4.50	6.76	9.01	11.27	13.54	18.07	22.60	27.13	31.67	36.22	44.53	52.87	65.38	86.24	1.08	12 3/4	
1.09	13 1/8	1.13	2.36	3.50	4.56	6.85	9.14	11.44	13.74	18.34	22.93	27.53	32.14	36.78	45.19	53.68	66.35	87.52	1.09	13 1/8	
1.10	13 1/8	1.15	2.40	3.55	4.62	6.95	9.27	11.60	13.93	18.60	23.28	27.94	32.62	37.30	45.86	54.45	67.33	88.81	1.10	13 1/8	
1.11	13 1/2	1.17	2.43	3.60	4.68	7.04	9.40	11.77	14.13	18.86	23.60	28.35	33.10	37.84	46.54	55.26	68.33	90.13	1.11	13 1/2	
1.12	13 1/2	1.19	2.46	3.65	4.75	7.14	9.54	11.93	14.33	19.13	23.94	28.76	33.58	38.39	47.21	56.05	69.31	91.42	1.12	13 1/2	
1.13	13 3/4	1.20	2.50	3.70	4.82	7.24	9.67	12.10	14.53	19.40	24.28	29.17	34.06	38.94	47.88	56.85	70.30	92.72	1.13	13 3/4	
1.14	13 3/4	1.23	2.53	3.75	4.88	7.34	9.80	12.27	14.73	19.67	24.62	29.58	34.54	39.50	48.55	57.64	71.28	94.02	1.14	13 3/4	
1.15	14	1.27	2.57	3.80	4.94	7.44	9.94	12.43	14.94	19.94	24.96	30.00	35.02	40.06	49.26	58.48	72.32	95.39	1.15	14	
1.16	14 1/8	1.29	2.60	3.85	5.01	7.54	10.07	12.60	15.14	20.22	25.31	30.41	35.51	40.62	49.93	59.28	73.30	96.88	1.16	14 1/8	
1.17	14 1/4	1.31	2.64	3.90	5.08	7.64	10.20	12.77	15.34	20.50	25.68	30.83	36.00	41.18	50.66	60.12	74.34	98.08	1.17	14 1/4	
1.18	14 1/4	1.34	2.68	3.95	5.15	7.75	10.34	12.94	15.55	20.78	26.01	31.25	36.50	41.75	51.31	60.92	75.33	99.35	1.18	14 1/4	
1.19	14 1/2	1.37	2.71	4.01	5.21	7.85	10.48	13.12	15.76	21.05	26.36	31.68	37.00	42.32	52.01	61.78	76.37	100.73	1.19	14	

21 1994

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METER NO. 0914

RANGE 10-80

DATE TESTED 7-19-1985

HWS

091473

APPLIED PRESSURE			METER READING	FLOW ERROR (%)	FLOW CORRECTION FACTOR
UPSACLE	DOWNSCALE	AVERAGE			
14.00	13.50	13.75	10	-0.147	1.173
19.75	19.68	19.72	16	-0.099	1.110
23.50	23.40	23.25	20	-0.072	1.078
29.56	29.37	29.46	26	-0.060	1.064
33.75	34.0	33.88	30	-0.059	1.063
41.0	41.0	41.0	36	-0.063	1.067

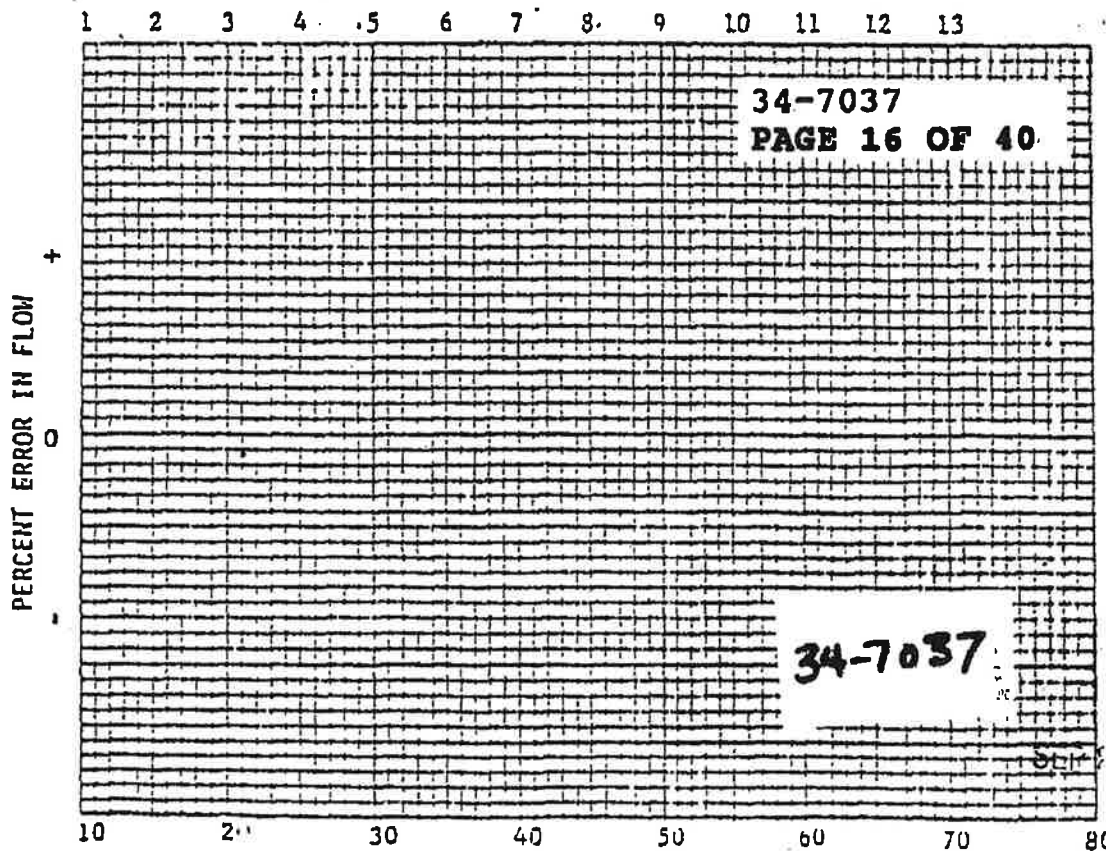


Exhibit G

For Office Use Only
Fee Received <u>15.00</u>
Date <u>4/6/83</u>
Receipt # <u>2457</u>

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit
proof of beneficial use on a water right permit

CRATER FARMS INC. of P.O. Box 91 ARCO ID
(Name) (Address)

State of ID , deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Water of
the State of Idaho No 34-7037

That under the terms and conditions of said permit, work thereunder was required to be completed on or before
JUNE 1 , 19 83

That he has heretofore performed the following work described under said permit:

(This must be filled out if no work has been completed put none.)

System is entirely completed, except one pump has not been
installed due to lack of approval of app for amendment.

unneeded work

Costing \$ 1,000,000

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:

App for amendment was rec'd in IDWR offices on Jan 20, 1981.
It has still not been approved pending resolution of protests. This
extension request is based on the litigation clause of Section
42-204.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations
under said permit to September 1 , 19 85.

(1 yr minimum, 5 yrs maximum)

June, 1983 + 27 months =

Delay due to "litigation" has been
Jan 81 - Mar 83 27 months to date

NOTE
AS OF JULY 1, 1980,
THERE IS A \$15.00
CHARGE FOR REQUESTS
FOR EXTENSION OF
TIME

Crater Farms Inc.
by William O. Bell, pres
(Signature)*

*IF OTHER THAN HOLDER, Power of Attorney must be supplied

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

OK *over*

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within
which to submit the proof of beneficial use is extended to September 1, 1985.

Signed this 14th day of February , 19 85

MICROFILMED

J. Glen Saxton
Chief, Operations Bureau

Exhibit H

Big Lost River Irrigation District
P.O. Box 205
Mackay, Idaho 83251

January 12, 1998

Mr. Willard O. Bell
Crater Farms
P.O. Box 91
Arco, Id. 82131

Dear Willard :

You may wish to come to the next regular Board meeting because of the following:
In reviewing your 20 year transport agreement, prior to filing, I noticed that the IDWR license was for only 600 inches, whereas the Board approved 1000 inches on that document. To correct this I have re-typed the first page of this transport agreement noting that you have another license #-34-07138 for 16 CFS or another 800 inches. Although the original pumping agreement for this water was not found, I did find the first page, copy attached (which I know was approved in 1980). The corrected copy will be presented to the Board of Directors at the next regular meeting for approval on the 3rd of February starting at 1 P.M.

Would you please review this corrected first page and advise if it meets with your approval ?

In the minutes of 1981 you were given permission to use the agreement for the Island, eastside, Arco and the Munsey Canal, whereas the Transport Agreement only lists the Island and Munsey. Did you wish to have the other canals included now also ?

Yours truly,

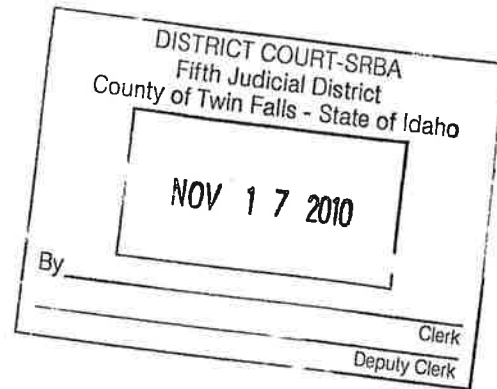
Rita M. Lundy
Acting Office Mgr.

CC: Lynn Rothwell, Chairman

Attachment C

Attorney Name & Address:

James P. Speck, ISB#2067
Speck & Aanestad
A Professional Corporation
120 East Avenue
P. O. Box 987
Ketchum, Idaho 83340
(208) 726-4421
FAX: (208) 726-0752



Attorneys for Darrell E. McDonald and Norman K. Sowards

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

In Re SRBA	)	Subcase Nos. 34-2459, 34-2460, 34-2461,
	)	34-2462, and 34-10925
Case No. 39576	)	
	)	AFFIDAVIT OF DARRELL E.
	)	MCDONALD
	)	

STATE OF IDAHO)
 :SS
County of Butte)

I, DARRELL E. MCDONALD, being over the age of eighteen years, make this affidavit based on personal information.

1. I own property south of Arco, Idaho. Appurtenant to that property are water rights diverted from a well located north of Arco between two large wells commonly referred to as the "Island Wells" owned by Charles Isom. My water rights are delivered to my property through the Big Lost River Irrigation District canal system. I understand Mr. Isom now wants to make these wells additional points of diversion for five of his water rights which presently are pumped only from wells down north of the Arco airport(the "Airport Wells") to irrigate his ranch south of the airport. I also understand those five rights were previously decreed in the SRBA for a total combined diversion rate of 12.5 cfs. In 1998, Mr. Isom purchased all of these wells, the water rights and the

farm land south of the airport from Crater Farms, Inc. My father-in-law, Willard Bell, was one of the owners and president of Crater Farms, Inc.

2. I have three groundwater irrigation rights, 34-2480A, 34-7028 and 34-7234, which are pumped from a well located between the Island Wells. The relative location of these wells is depicted on **Exhibit A** attached to this Affidavit. Copies of the Partial Decrees for my water rights are attached as **Exhibits B, C and D**. The combined diversion rate for these three water rights is limited to 6.6 cfs.

3. I leased the land irrigated by these water rights and the well from Spencer Toone during the 1990's, and from Ethan Ford from 2001 through 2003, and then purchased all of it in 2004 from Ethan Ford. I did not retain an attorney to assist me with the water rights related to my property. My water rights were decreed in the SRBA in December, 1997 to Spencer Toone, the owner before Ethan Ford. I do not subscribe to the court's docket sheet. In fact, I didn't know it existed until a week or so ago.

4. In January 2009, Don Isom asked my wife, Nancy, to call her mother and ask her to give him permission to get the power records for the Island Wells from the time when Nancy's father, Willard Bell, was the owner. He told us they wanted to pump from the Island Wells if the Airport Wells went down. At the time I thought the water rights for the Airport Wells were approximately 300 - 350 inches. Don did not tell me they were for 625 inches and that they had already filed in the SRBA to make this change. I assumed notice of the actual change would be advertised in our local paper like any other change in a water right, so I wasn't that concerned at that time. I had no idea, and Don certainly did not tell me in January 2009, that Mr. Isom was attempting to acquire the right to legally more than double the amount of water that he pumps from the Island Wells into the Island Canal and takes completely out of our valley until Doug Schureman told me about this in September, 2010. I then discussed this with Norm Sowards, another land and well owner in the vicinity of the Island Wells. Norm was out of town and planned to return toward the end of October, so we agreed to talk to an attorney about this when he got back.

5. I then contacted Mr. James P. Speck in late October to assist Norm and me in opposing the change in Mr. Isom's water rights. However, we were not able to meet with Mr. Speck to discuss these matters until November 5, 2010.

6. My well was drilled in 1979. A copy of the Well Driller's Report is attached as **Exhibit E**. The pump test performed by the well driller showed the well delivered about 8.3 cfs from approximately 60 ft. deep. In 1980, the licensing field exam for 34-7234 found the well had a capacity of 6.66 cfs. Copies of the relevant pages from the report are attached as **Exhibit F**.

7. In 2004 I had the pump pulled and cleaned, lowered the bowls and increased the horsepower, all at an expense of almost \$26,000, to compensate for the dropping water table.

8. I understand that the changes requested by Mr. Isom to his water rights would allow him to pump 24.5 cfs from the two Island Wells at any and all times throughout the irrigation season. It would also allow him to pump a total of 8,441.5 acre feet from these two wells to irrigate 1,980 acres more than 9 miles South of my wells, which is approximately 4.3 acre feet per acre irrigated. This is far in excess of the volume amounts for other ground water rights in the vicinity of the Island Wells, including mine.

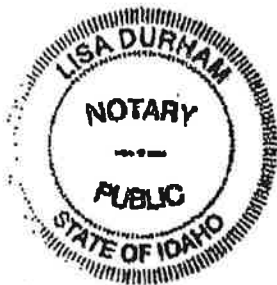
9. I have reviewed printouts from online records of the discharge of the two Island Wells into the Big Lost River Irrigation District canal system for the period of 2003 through 2009. The maximum amount for any single year was 4,784 acre-feet, which is only 57% of the amount of water Mr. Isom seeks permission to divert from these wells.

10. I am aware of the condition proposed to be added to Mr. Isom's water rights that gives the additional diversions from the Island Wells above the 12 cfs allowed under 34-7037 a 1982 priority date. My water rights described above are senior to 1982. To protect and be sure I get the full amount of my water rights I will have to make a priority call and rely on the Watermaster to somehow get the Island Wells' output limited to 12 cfs. If and when this can be done, the negative impact on the local water table and thus my ability to divert the full amount of my water rights will have occurred. Based on my experience farming my land using my ground water rights, I do not believe the water table will recover in time to avoid injury to my water rights. Furthermore, the time required for the completion of the enforcement of such a water delivery call will likely result in some serious damage to my crops due to my inability to divert and deliver the full amount of my above described senior ground water rights.

11. All of the water pumped from the Island Wells is removed from the portion of the aquifer from which I pump water for my water rights described above. If Mr. Isom is granted the

right to legally pump from the Island Wells at more than twice the rate he can pump under his existing water rights. I firmly believe that I will soon be forced to drill deeper to attempt to regain the ability to divert the amounts of water to which I am entitled under my senior water rights at great expense to me.

DATED this 17 day of November, 2010.



Darrell E. McDonald
DARRELL E. MCDONALD

SUBSCRIBED AND SWORN to before me this 17th day of November, 2010.

Lisa Durham
Notary Public for Idaho
Residing at: Arco, ID
Comm. Expires: 7-30-16

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2010, I served a true and correct copy of the foregoing on the following persons in the manner designated below:

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

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

The United States Department of Justice
Environmental and Natural Resources
Division
550 West Fort Street
Box 33
Boise, ID 83724

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Idaho Department of Water Resources
Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Mr. Paul Arrington
Barker, Rosholt & Simpson, LLP
113 Main Ave. West, Suite 303
P.O. Box 485
Twin Falls ID 83303-0485

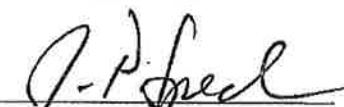
- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid

Mr. Robert L. Harris
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Dr., Suite 200
Idaho Falls, ID 83405

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid

W. Kent Fletcher
Fletcher Law Office
P.O. Box 248
Burley, ID 83318

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid


JAMES P. SPECK

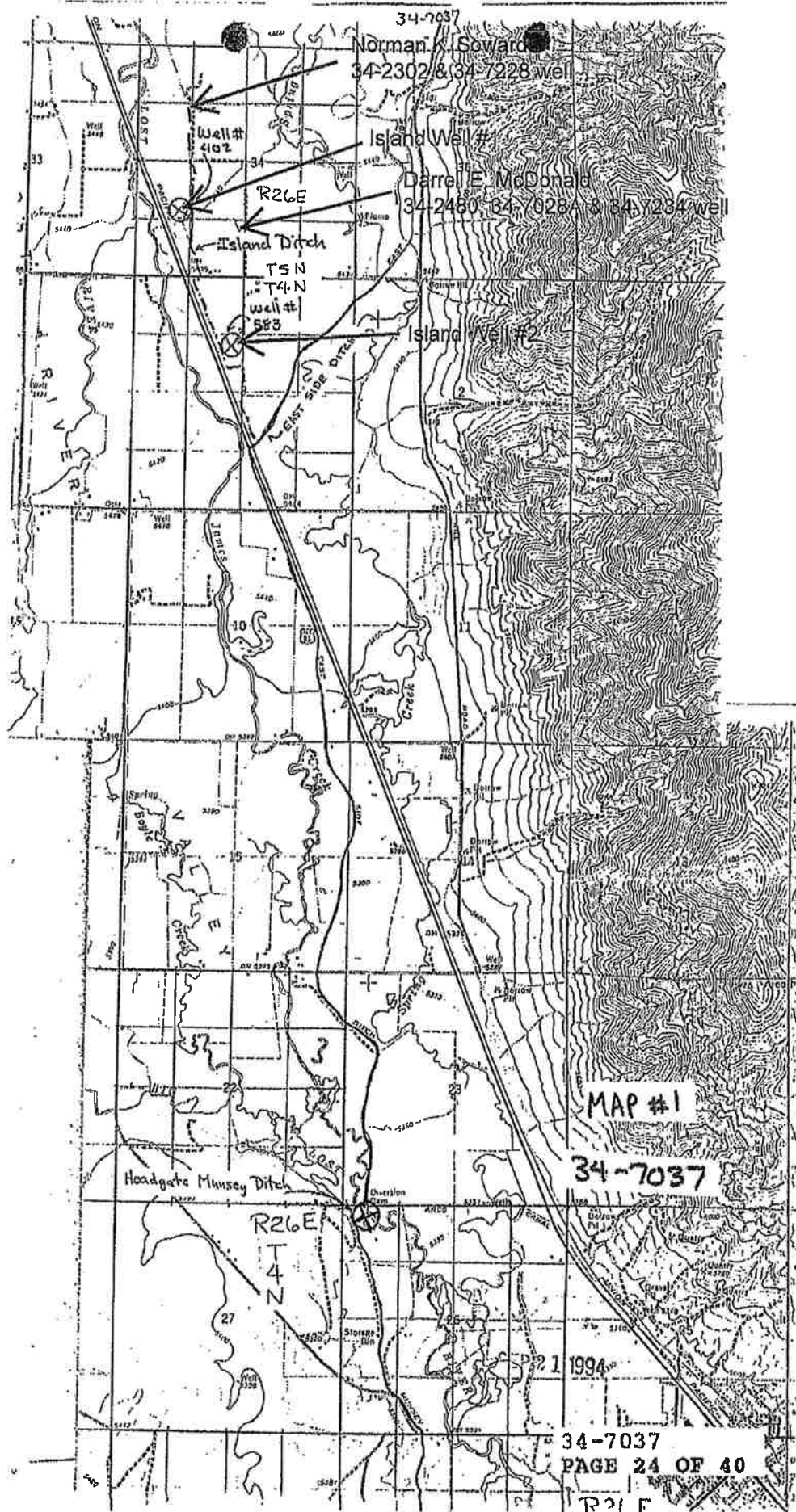


EXHIBIT A

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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 34-02480A

NAME & ADDRESS: SPENCER W TOONE
ELEANOR TOONE
585 LILAC ST
BLACKFOOT ID 83221

SOURCE: GROUNDWATER

POINT OF INJECTION INTO AND POINT OF REDIVERSION FROM THE BIG
LOST RIVER.

QUANTITY: 0.79 CFS

THIS RIGHT AND RIGHT NOS. 34-07028A AND 34-07234 ARE LIMITED
TO A TOTAL COMBINED DIVERSION RATE OF 6.60 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 1071 AF.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 9.58 CFS.
COMBINED RIGHT NOS.: 34-00196D, 34-10100, 34-02491B, 34-00195C,
34-07028A AND 34-07234.

PRIORITY DATE: 05/01/1986

POINT OF DIVERSION: T05N R26E S34 NESESW Within BUTTE County
T04N R26E S26 NWNWNW (INJECTION)
NWNWNW (REDIVERSION)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	0.79 CFS

PLACE OF USE:	IRRIGATION	Within BUTTE County		
	T03N R27E S10	S05E 39	N05W 29	N05W 38
		S05W 40	N05E 39	S05W 39
	224 ACRES TOTAL			

USE OF THIS RIGHT WITH RIGHT NO. 34-07028A IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 224 ACRES IN A SINGLE
IRRIGATION SEASON.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 306 ACRES IN A SINGLE
IRRIGATION SEASON.
COMBINED RIGHT NOS.: 34-00196D, 34-10100, 34-02491B, 34-00195C,
34-07028A AND 34-07234.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-02480A

PAGE 1
NOV-26-1997

EXHIBIT B

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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 34-07028A

NAME & ADDRESS: SPENCER W TOONE
ELEANOR TOONE
585 LILAC ST
BLACKFOOT ID 83221

SOURCE: GROUNDWATER

POINT OF INJECTION INTO AND POINT OF REDIVERSION FROM THE BIG
LOST RIVER.

QUANTITY: 4.3 CFS

THIS RIGHT AND RIGHT NOS. 34-02480A AND 34-07234 ARE LIMITED
TO A TOTAL COMBINED DIVERSION RATE OF 6.60 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 1071 AF.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 9.58 CFS.
COMBINED RIGHT NOS.: 34-001960, 34-10100, 34-02491B, 34-00195C,
34-02480A AND 34-07234.

PRIORITY DATE: 08/01/1972

POINT OF DIVERSION: T05N R26E S34 NESESW Within BUTTE County
T04N R26E S26 NWNWNW (INJECTION)
NWNWNW (REDIVERSION)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	4.3 CFS

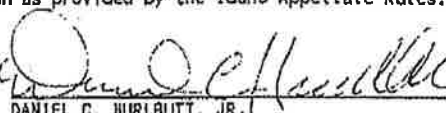
PLACE OF USE:	IRRIGATION	Within BUTTE County			
	T03N R27E S10	SWNE 39	NENW 29	NWNW 38	SWNW 39
		SENW 40	NWSE 39		
	224 ACRES TOTAL				

USE OF THIS RIGHT WITH RIGHT NO. 34-02480A IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 224 ACRES IN A SINGLE
IRRIGATION SEASON.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 306 ACRES IN A SINGLE
IRRIGATION SEASON.
COMBINED RIGHT NOS.: 34-001960, 34-10100, 34-02491B, 34-00195C,
34-02480A AND 34-07234.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 34-07028A

PAGE 1
NOV-26-1997

EXHIBIT C

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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 34-07234

NAME & ADDRESS: SPENCER W TOONE
ELEANOR TOONE
585 LILAC ST
BLACKFOOT ID 83221

SOURCE: GROUNDWATER

POINT OF INJECTION INTO AND POINT OF REDIVERSION FROM THE BIG
LOST RIVER.

QUANTITY: 1.66 CFS

THIS RIGHT AND RIGHT NOS. 34-07028A AND 34-02480A ARE LIMITED
TO A TOTAL COMBINED DIVERSION RATE OF 6.60 CFS AND TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 1,071 AF.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 9.58 CFS.

COMBINED RIGHT NOS.: 34-00196D, 34-10100, 34-02491B, 34-00195C,
34-07028A AND 34-02480A.

PRIORITY DATE: 08/15/1979

POINT OF DIVERSION: T05N R26E S34 NESESW Within BUTTE County
T04N R26E S26 NWNWNW (INJECTION)
NWNWNW (REDIVERSION)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	1.66 CFS

PLACE OF USE:	IRRIGATION	Within BUTTE County
	T03N R27E S10	NENW 9 NESW 40 NWSW 33
	82 ACRES TOTAL	

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 306 ACRES IN A SINGLE
IRRIGATION SEASON.

COMBINED RIGHT NOS.: 34-00196D, 34-10100, 34-02491B, 34-00195C,
34-07028A AND 34-02480A.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

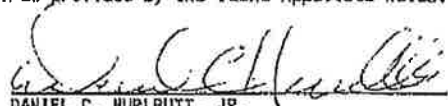

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

EXHIBIT D

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

EXHIBIT

State of Idaho
DEPARTMENT OF WATER RESOURCES
FIELD REPORT34-7234
Permit No.

CONTACT WITH PERMIT HOLDER

	DATE	INITIALS	REMARKS
☐ Appointment letter mailed:			
☐ Telephone call made: (List Telephone No. used)			
Appointment scheduled for: (Date, time, location)			

EXAMINATION

Date 13 August 1980 Accompanied by SPENCER TOONE Total Q measured 6.6 cfs * SEE REMARKS
 If source is surface water, estimate total flow of source _____
 Methods of measurement Orifice Meets Permit requirements? Yes

Measurement calculations:
 83 Acres x 3.0 AFA/Ac
 = 249 AFA
 ORIFICE: see attached sheet
 9.84" orifice
 12" diameter mainline
 40.2" head
6.6 cfs 83Ac x .02 cfs/Ac = 1.66 cfs
 ALLOW
 1.66 cfs x 1.9835 x 214 d
 = 704.6 AFA

WELL/DIVERSION* NO.	HP	MOTOR MAKE	MOTOR SERIAL NO.	PUMP MAKE	PUMP SERIAL NO.	MEASURING DEVICE TYPE	CONDITION OF MEAS. DEV.	REMARKS
P.D.	75	Newman	51222108	(Johnston)	none	9.84" orifice	good	
PRD #1 a	60	G.E.	251017393	Egner Counter	3-06711	Mcrometer 74 8 406	"	
" b	50	US Electric Motors	21606	"	3-06719	Mcrometer 74 8 407	"	

System Description Newman motor and (Johnston) pump divert from a groundwater source into the Island Ditch, to the East Side Ditch, to the Arco Canal, and then to PRD #1 a, b, to an 8" buried mainline to balllines, wheelines, and one circle pivot.

*Code with map on reverse side. Disregard code if only one.

RECOMMENDED AMOUNTS

USE	Irrigation requirement = <u>3.0</u> AFA/Acre		FROM	TO
	Q (cfs)	V (afa)		
Irrigation	<u>1.66 cfs</u> ✓	<u>249</u> ✓	<u>1 APRIL</u>	<u>1 NOV</u>
Total	<u>1.66 cfs</u> ✓	<u>249</u> ✓	"	"

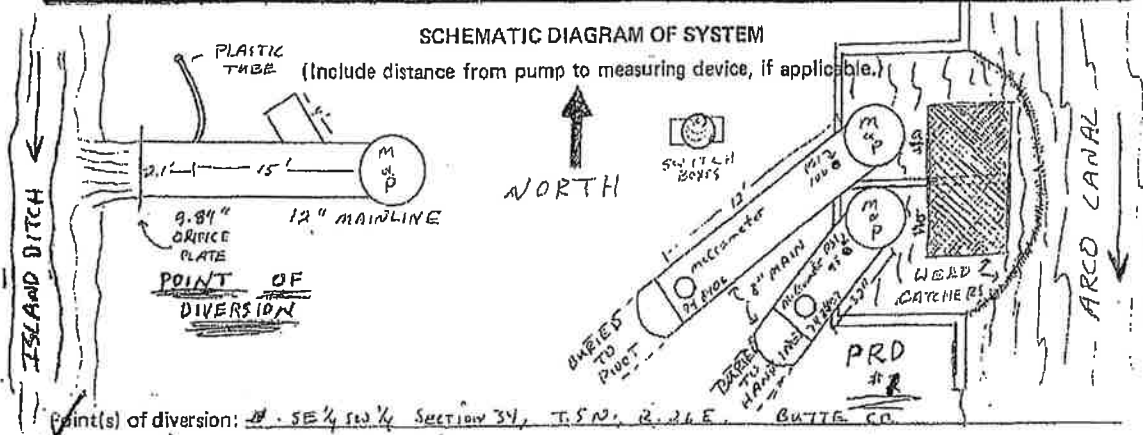
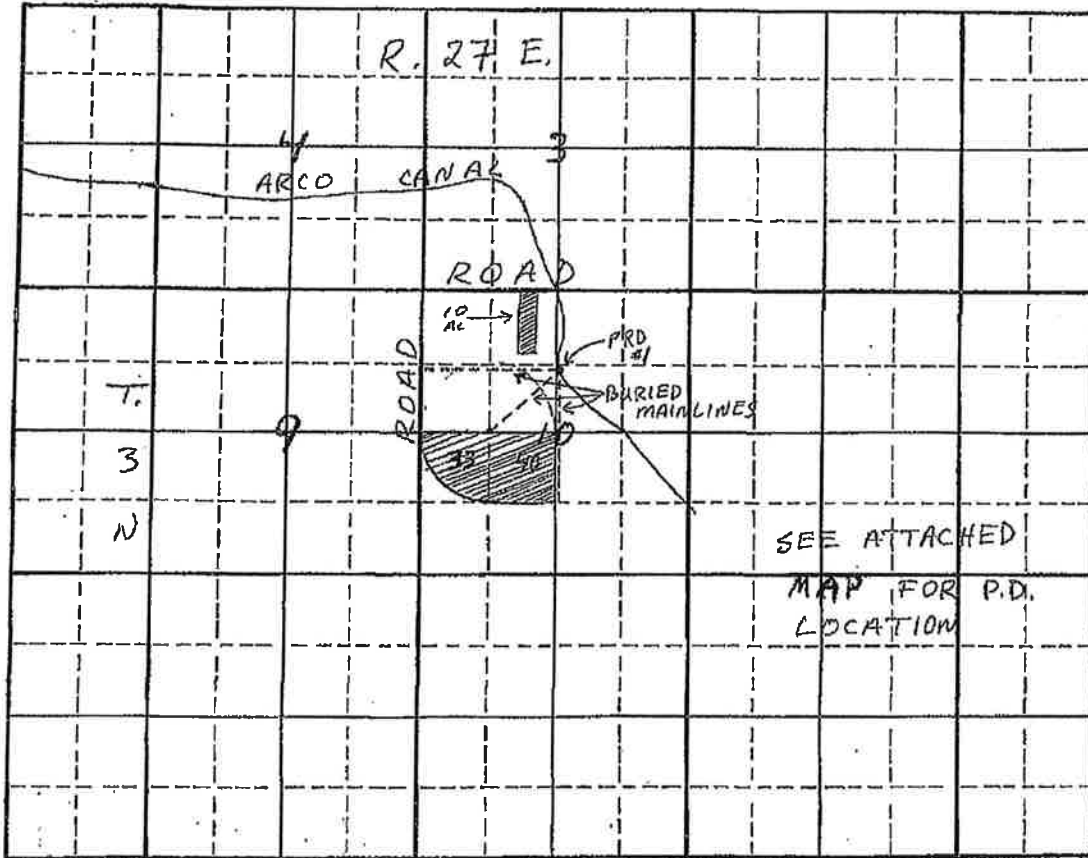
Remarks no conflicting rights. P.D. is shared with no. 34-7028. Capacity Big Lost River Irrigation District charges variable delivery fees, with a minimum of 25¢/in (per telecon. 4/Ruth Lundy, 12/80).
PRD #1 is located in the SW 1/4 NE 1/4, Section 10, T.3N, R.27E, BUTTE.
conditioned such that when no. 34-7234 is combined with no. 34-7028,
no more than 5.28 cfs can be diverted at P.D. (shared P.D.).
See attached orifice calculation.
See attached map of point of diversion location.

EXHIBIT F

See Overlap Review

1/16/80

MAP (Attach Aerial Photo)



Place(s) of Use

TWP.	RGE.	SEC.	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
3N	27E	10					10				40	33							83

Recommended Amendments:

- ☐ Change P.D. as reflected above
☐ Change P.U. as reflected above

- ☐ Add P.D. as reflected above
☐ Add P.U. as reflected above

☒ None
☐ Other

Examiner's Signature

Checked by

Approved by

Date 2-26-81

Date

Date 12/4/81

TOTAL 83

2884

34-7234

JK 2-26-87

Male to Female	3" Orifice		4" Orifice		5" Orifice		6" Orifice		7" Orifice		8" Orifice		9" Orifice		10" Orifice		12" Orifice		14" Orifice		16" Orifice		18" Orifice		20" Orifice		22" Orifice		24" Orifice		26" Orifice		28" Orifice		30" Orifice	
	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet	Flow GPM	Head Feet
31.5	230	353	201	312	173	255	141	207	123	180	107	158	92	135	82	121	72	105	65	95	55	82	45	68	35	52	28	42	25	38	22	34	18	27	15	22
32.5	237	354	202	313	174	256	142	208	124	181	108	159	93	136	83	122	73	106	66	96	56	83	46	69	36	53	29	43	26	39	23	35	19	28	16	23
33.5	239	355	203	314	175	257	143	209	125	182	109	160	94	137	84	123	74	107	67	97	57	84	47	70	37	54	30	44	27	40	24	36	20	29	17	24
34.5	240	356	204	315	176	258	144	210	126	183	110	161	95	138	85	124	75	108	68	98	58	85	48	71	38	55	31	45	28	41	25	37	21	30	18	25
35.5	241	357	205	316	177	259	145	211	127	184	111	162	96	139	86	125	76	109	69	99	59	86	49	72	39	56	32	46	29	42	26	38	22	31	19	26
36.5	242	358	206	317	178	260	146	212	128	185	112	163	97	140	87	126	77	110	70	100	60	87	50	73	40	57	33	47	30	43	27	39	23	32	20	27
37.5	243	359	207	318	179	261	147	213	129	186	113	164	98	141	88	127	78	111	71	101	61	88	51	74	41	58	34	48	31	44	28	40	24	33	21	28
38.5	244	360	208	319	180	262	148	214	130	187	114	165	99	142	89	128	79	112	72	102	62	89	52	75	42	59	35	49	32	45	29	41	25	34	22	29
39.5	245	361	209	320	181	263	149	215	131	188	115	166	100	143	90	129	80	113	73	103	63	90	53	76	43	60	36	50	33	46	30	42	26	35	23	30
40.5	246	362	210	321	182	264	150	216	132	189	116	167	101	144	91	130	81	114	74	104	64	91	54	77	44	61	37	51	34	47	31	43	27	36	24	31
41.5	247	363	211	322	183	265	151	217	133	190	117	168	102	145	92	131	82	115	75	105	65	92	55	78	45	62	38	52	35	48	32	44	28	37	25	32
42.5	248	364	212	323	184	266	152	218	134	191	118	169	103	146	93	132	83	116	76	106	66	93	56	79	46	63	39	53	36	49	33	45	29	38	26	33
43.5	249	365	213	324	185	267	153	219	135	192	119	170	104	147	94	133	84	117	77	107	67	94	57	80	47	64	40	54	37	50	34	46	30	39	27	34
44.5	250	366	214	325	186	268	154	220	136	193	120	171	105	148	95	134	85	118	78	108	68	95	58	81	48	65	41	55	38	51	35	47	31	40	28	35
45.5	251	367	215	326	187	269	155	221	137	194	121	172	106	149	96	135	86	119	79	109	69	96	59	82	49	66	42	56	39	52	36	48	32	41	29	36
46.5	252	368	216	327	188	270	156	222	138	195	122	173	107	150	97	136	87	120	80	110	70	97	60	83	50	67	43	57	40	53	37	49	33	42	30	37
47.5	253	369	217	328	189	271	157	223	139	196	123	174	108	151	98	137	88	121	81	111	71	98	61	84	51	68	44	58	41	54	38	50	34	43	31	38
48.5	254	370	218	329	190	272	158	224	140	197	124	175	109	152	99	138	89	122	82	112	72	99	62	85	52	69	45	59	42	55	39	51	35	44	32	39
49.5	255	371	219	330	191	273	159	225	141	198	125	176	110	153	100	139	90	123	83	113	73	100	63	86	53	70	46	60	43	56	40	52	36	45	33	40
50.5	256	372	220	331	192	274	160	226	142	199	126	177	111	154	101	140	91	124	84	114	74	101	64	87	54	71	47	61	44	57	41	53	37	46	34	41
51.5	257	373	221	332	193	275	161	227	143	200	127	178	112	155	102	141	92	125	85	115	75	102	65	88	55	72	48	62	45	58	42	54	38	47	35	42
52.5	258	374	222	333	194	276	162	228	144	201	128	179	113	156	103	142	93	126	86	116	76	103	66	89	56	73	49	63	46	59	43	55	39	48	36	43
53.5	259	375	223	334	195	277	163	229	145	202	129	180	114	157	104	143	94	127	87	117	77	104	67	90	57	74	50	64	47	60	44	56	40	49	37	44
54.5	260	376	224	335	196	278	164	230	146	203	130	181	115	158	105	144	95	128	88	118	78	105	68	91	58	75	51	65	48	61	45	57	41	50	38	45
55.5	261	377	225	336	197	279	165	231	147	204	131	182	116	159	106	145	96	129	89	119	79	106	69	92	59	76	52	66	49	62	46	58	42	51	39	46
56.5	262	378	226	337	198	280	166	232	148	205	132	183	117	160	107	146	97	130	90	120	80	107	70	93	60	77	53	67	50	63	47	59	43	52	40	47
57.5	263	379	227	338	199	281	167	233	149	206	133	184	118	161	108	147	98	131	91	121	81	108	71	94	61	78	54	68	51	64	48	60	44	53	41	48
58.5	264	380	228	339	200	282	168	234	150	207	134	185	119	162	109	148	99	132	92	122	82	109	72	95	62	79	55	69	52	65	49	61	45	54	42	49
59.5	265	381	229	340	201	283	169	235	151	208	135	186	120	163	110	149	100	133	93	123	83	110	73	96	63	80	56	70	53	66	50	62	46	55	43	50
60.5	266	382	230	341	202	284	170	236	152	209	136	187	121	164	111	150	101	134	94	124	84	111	74	97	64	81	57	71	54	67	51	63	47	56	44	51
61.5	267	383	231	342	203	285	171	237	153	210	137	188	122	165	112	151	102	135	95	125	85	112	75	98	65	82	58	72	55	68	52	64	48	57	45	52
62.5	268	384	232	343	204	286	172	238	154	211	138	189	123	166	113	152	103	136	96	126	86	113	76	99	66	83	59	73	56	69	53	65	49	58	46	53
63.5	269	385	233	344	205	287	173	239	155	212	139	190	124	167	114	153	104	137	97	127	87	114	77	100	67	84	60	74	57	70	54	66	50	59	47	54
64.5	270	386	234	345	206	288	174	240	156	213	140	191	125	168	115	154	105	138	98	128	88	115	78	101	68	85	61	75	58	71	55	67	51	60	48	55
65.5	271	387	235	346	207	289	175	241	157	214	141	192	126	169	116	155	106	139	99	129	89	116	79	102	69	86	62	76	59	72	56	68	52	61	49	56
66.5	272	388	236	347	208	290	176	242	158	215	142	193	127	170	117	156	107	140	100	130	90	117	80	103	70	87	63	77	60	73	57	69	53	62	50	57
67.5	273	389	237	348	209	291	177	243	159	216	143	194	128	171	118	157	108	141	101	131	91	118	81	104	71	88	64	78	61	74	58	70	54	63	51	58
68.5	274	390	238	349	210	292	178	244	160	217	144	195	129																							

Attachment D

Paul Arrington

From: Spencer, Nick [Nick.Spencer@idwr.idaho.gov]
Sent: Friday, April 15, 2011 3:15 PM
To: Jim Speck
Cc: Fritschle, Carter; Paul Arrington; Rob Harris
Subject: FW: 34-2459 (Isom)

Hi Jim. It looks like there isn't any additional information beyond what has already been scanned. NBS

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

From: Holliday, Michael
Sent: Friday, April 15, 2011 2:34 PM
To: Spencer, Nick
Cc: Fritschle, Carter
Subject: RE: 34-2459 (Isom)

hi nick.

sorry for the delay on this. ernie was in my office a couple days ago, and I asked him if there was additional info, other than what is now located in the files, which served as the basis of his recommendation. he said he didn't recall any other info. he said that the basis was the isom affidavit and the letter from dave shaw.

I went thru the paper files and found nothing more than what has already been scanned.
michael

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

From: Spencer, Nick
Sent: Friday, April 15, 2011 11:03 AM
To: Holliday, Michael
Cc: Fritschle, Carter
Subject: FW: 34-2459 (Isom)

Hi Michael. When you looked for this stuff were you able to find any files or other items that hadn't already been scanned? NBS

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

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Friday, April 15, 2011 10:40 AM
To: Spencer, Nick
Cc: Fritschle, Carter; Holliday, Michael; 'Paul Arrington'; rharris@holdenlegal.com
Subject: RE: 34-2459 (Isom)

Nick,

Any progress on this request? Enjoy your weekend.

Jim

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

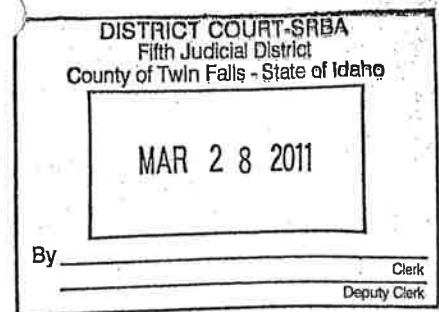
From: Spencer, Nick
Sent: Monday, April 11, 2011 1:06 PM
To: Jim Speck

Cc: Fritschle, Carter; Holliday, Michael

Hi Jim. Carter and Michael are looking for what we have. Michael is the one with the access to the original paper claim files, but he has been involved in preparation for a settlement conference this afternoon, and won't be able to see what he can find until after that is finished.

We'll let you know as soon as we can. NBS

Attachment E



**SUBCASE NOS.: 34-2459, 34-2460,
34-2461, 34-2462, AND 34-10925**

The legal descriptions for the Island Wells were not included in the amended claims. Consequently, the *Director's Reports* did not include the Island Wells as points of diversion for water rights 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925. No objections were filed, and *Partial Decrees* were issued in 1997. The *Partial Decrees* only included points of diversion at the Airport Wells. Isom's *Motion to Set Aside Partial Decrees* and subsequent *Amended Claims* asserted that the Island Wells are valid points of diversion based on an accomplished transfer. Isom asserted that the Island Wells were historically used as alternative points of diversion when the Airport Wells did not produce sufficient water.

The Court allowed reopening of the *Partial Decrees*. IDWR examined the *Amended Claims* and the facts related to the Island Wells. IDWR issued *Amended Director's Reports* in December 2009. The *Amended Director's Reports* recommended adding points of diversion at the Island Wells. The *Amended Director's Reports* included a condition to protect existing water rights from injury:

Pursuant to a call, in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SENWSW and T04N R25E S3 NESENW has a priority date of May 18, 1982.

After the *Amended Director's Reports* were issued, *Objections* were filed by Schureman on quantity, volume, point of diversion, and place of use elements. Isom filed a *Motion for Summary Judgment* arguing that no genuine issues of material fact remain on the volume and acreage elements. It is undisputed that genuine issues of material fact remain as to the points of diversion.

III. STANDARD OF REVIEW

Summary judgment is appropriate under I.R.C.P. 56(c) only when the pleadings, depositions, admissions, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

IV. ANALYSIS

Isom argued that there are no genuine issues of material fact as to volume and acreage since these elements were previously determined in the *Partial Decrees*. Isom asserted that *Objections* to volume and acreage are barred by claim preclusion or issue preclusion.

A. Claim Preclusion and Issue Preclusion do not Bar *Objections*

The combined volume limitation and total acreage for place of use were not objected to prior to entry of the *Partial Decrees*. The volume limitation and total acreage remained unchanged in the *Amended Director's Reports*. After the *Amended Director's Reports* were issued, however,

Schureman filed *Objections* to those elements.

Isom argued that Schureman's *Objections* fail as a matter of law because volume and acreage were determined in the ***Partial Decrees***. Isom reasoned that either claim preclusion (*res judicata*) or issue preclusion (collateral estoppel) bar Schureman's *Objections*.

Claim preclusion (*res judicata*) only bars a subsequent action if three requirements are met: 1) the same parties; 2) the same claim; and 3) a final judgment. *Andrus v. Nicholson*, 145 Idaho 774, 777-78 (2008). Issue preclusion (collateral estoppel) bars a subsequent action if five requirements are met: 1) the party against whom the decision is asserted had a full and fair opportunity to litigate the issue; 2) the issue decided in the prior litigation was identical to the issue presented in the present action; 3) the issue asked to be precluded was actually decided in the prior litigation; 4) there was a final judgment on the merits; and 5) the party against whom the issue is asserted was a party or in privity with a party to the litigation. *Waller v. State, Dept. of Health and Welfare*, 146 Idaho 234, 192 P.3d 1058 (2008).

1. Claim Preclusion (*Res Judicata*) Does Not Bar Objections

The facts here do not bar these *Objections* under claim preclusion (*res judicata*). The first requirement is that the ***Partial Decrees*** involved the same parties. All parties to these subcases are parties to the SRBA. Thus the prior decision involved the same parties. Although the ***Partial Decrees*** contained a Rule 54(b) certification, the judgments were final only if the *Motions to Set Aside* are denied. However, the *Amended Claims* do not constitute the same claims as the original claims. The *Amended Claims* seek to add the Island Wells which is a significant change to the use of these water rights. Adding the Island Wells could impact the other elements.

In order for this Court to bar Schureman's *Objections* based on claim preclusion, the *Amended Claims* would have to have virtually no impact on the elements to which an *Objection* was filed. That is not the case here. Isom asked to include the Island Wells, but seeks to bar Schureman's *Objection* on volume and total acreage. However, the additional points of diversion significantly change the claims. The addition of the Island Wells may raise concerns on other elements where none existed before. For example, a water user might not object to volume or acreage on wells that are not in close proximity to his water use. However, a water user might object to the same volume and acreage on wells in proximity to his use. It follows that the *Amended Claims* are not the same as the original claims. Thus, the court finds that Schureman is not barred by claim preclusion from filing *Objections*. The *Amended Claims* raise new concerns which were not at issue

before. It follows that Schureman is not barred by claim preclusion.

2. Issue Preclusion (Collateral Estoppel)

The facts do not bar these *Objections* under issue preclusion. The issues involved in the original *Partial Decree* are not identical to the current issues. The original claims did not assert the Island Wells as points of diversion. Thus, the change in points of diversion raises new issues which are not identical to the issues brought in the original claims. The change in issues denied the parties a full and fair opportunity to litigate the issue. The parties against whom the *Partial Decrees* are asserted did not have a full and fair opportunity to litigate the issues. Consequently, the Objectors did not have a fair opportunity to litigate the elements of volume or acreage as they relate to the Island Wells. In addition, the issues of volume and acreage determined in the *Partial Decrees* are not identical to a determination of volume and acreage with the addition of the Island Wells. While parties may not oppose the volume pumped from the decreed Airport Wells, there may be opposition to volume and acreage for water pumped from the Island Wells. Finally, it follows that the issues sought to be precluded (volume and acreage) were not decided in the *Partial Decrees*.

Volume and acreage elements were not a concern when the points of diversion were only at the Airport Wells. But volume and acreage raise different concerns when the Island Wells are possible points of diversion. Consequently, this Special Master concludes that the *Objections* are not barred by issue preclusion.

B. Licenses Do Not Bar Objections

Water rights 34-7037 and 34-7138 were previously licensed with a place of use of 1980 acres. Isom argued, therefore, that the licenses determined volume and, thus, bar Schureman's *Objections*. However, the licenses did not decide the volume limit now sought by Isom. The licenses allowed 3.5 acre feet per acre for a total of 6,930 acre feet. The *Amended Director's Report* increased the total acre-feet limit to 8,441.5 acre feet. Isom said the increased volume merely accounts for conveyance losses over the eight miles the water must travel. Isom's position does not show that no genuine issues of material fact remain. Isom seeks not merely to rest on the licenses. Isom seeks additional volume to account for the conveyance loss from the new points of diversion. The licenses did not determine an additional volume for conveyance loss. The *Objections* question whether the additional points of diversion are justified and, if so, what additional volume should be added for conveyance loss. Since the licenses did not address the additional volume, and since the additional volume directly relates to the additional points of diversion, genuine issues of material fact

remain. Summary judgment is **denied**.

C. Use of Island Wells Prior to 1987

In order to establish a valid accomplished transfer, a claimant must show the change occurred prior to 1987. Thus, Isom must show use of the Island Wells prior to 1987. I.C. § 42-1425. Genuine issues of material fact remain as to the use of the Island Wells prior to 1987.

A license exam for water right 34-7037 shows that both Island Wells were drilled prior to 1987. The first well was drilled in August 1976. The second well was drilled in May 1982. *Affidavit of Rob Harris*, Exhibits D & E. IDWR concluded a field exam and licensing report in August 1985. *Affidavit of Paul Arrington*, Exhibit F.

Power records show only a small amount of power was used in conjunction with the Island Wells between 1984 and 1987. Records of Big Lost River Electric show no groundwater was pumped in 1984. Only a small amount was pumped in 1986. More power was used in 1987. (Feb. 12, 2009, letter from Dave Shaw to IDWR)

Crater Farms Inc. and BLRID entered agreements in 1974, 1978, 1979, and 1980 to convey water through the Munsey Canal. *Affidavit of Paul Arrington*, Exhibit A-D. However, the agreements in the 1970s and 1980s refer to the legal description for the Airport Wells.

Although affidavit evidence shows that both Island Wells were drilled prior to 1987, evidence of power use prior to 1987 shows little use of these wells. Additionally, it is unclear whether the Island Wells were used to the extent of becoming alternative points of diversion prior to 1987. Genuine issues of material fact remain as to the Island Wells use prior to 1987 and whether the use was extensive enough to assert they were alternate points of diversion.

D. Injury Analysis Required

Schureman alleged that if an accomplished transfer to the Island Wells occurred, the use injured existing users, in violation of I.C. § 42-1425.

Schureman requested a remand during the summary judgment briefing. Both Schureman and Isom quoted this Special Master's previous decision in subcase 29-271 (City of Pocatello). In the *Order on Summary Judgment* the court discussed remand relating to accomplished transfers:

However duplicative a formal remand may be, it is provided for when an objection is filed relating to I.C. § 42-1425. Here, an objection was filed that relates to the accomplished transfer portion of the claim. To the extent Pocatello seeks a formal remand to IDWR, the motion is **granted**. These subcases are "remanded" to IDWR, with the Special Master retaining concurrent jurisdiction. The remand will consist of additional information or evidence being presented to IDWR. After IDWR considers

the additional information, its conclusions may be reported in an *Amended Director's Report* or a *Supplemental 706 Report*. The *Amended Director's Report* or *Supplemental 706 Report* should contain explanatory material stating the basis for its recommendation and should address injury to existing water rights. To be clear, the remand is not intended to be a separate administrative transfer proceeding, but is to be part of the record for this case.

Order on Summary Judgment (Subcases 29-271 *et. al.*) (Aug. 18, 2006)

In those subcases, the request for remand was honored by allowing the parties to provide IDWR with information about possible injury. However, the remand request was never allowed as a shield to summary judgment. The same analysis applies here. This court would allow a "remand" to IDWR on the issue of injury relating to the claimed accomplished transfer. If such a request is made, the "remand" would not necessarily require IDWR to hold a formal administrative hearing. The "remand" would allow the parties to present evidence or information to IDWR relating to the accomplished transfer and the injury to existing water rights. IDWR could then consider the information and report its conclusions as to injury in an amended director's report or a supplemental 706 Report. The conclusions reached by IDWR would be part of the record for these subcases. If the matter goes to trial, IDWR would be asked to explain the basis for its conclusions as to injury when it is called as a witness.

However, motions for summary judgment must succeed or fail on their own merits. A party would not defeat a motion for summary judgment by merely requesting a "remand" to IDWR. Here, the remand request is insufficient to defeat summary judgment. The *Amended Director's Report* clearly shows that IDWR considered the injury issue. That is so because the *Amended Director's Report* contained language indicating that an injury analysis was made. IDWR added language in the *Amended Director's Report* which attempted to protect existing water rights:

Pursuant to a call in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SENWSW and T04N R25E S3 NESENW has a priority date of May 18, 1982.

On the other hand, this language does not provide a shield for Isom. Although the proposed language could offer protection to existing water rights, there are genuine issues of material fact as to whether the language is sufficient to protect against the injury alleged by Schureman.

Isom argued that the language protects against injury as a matter of law. Isom cited a prior decision in Basin 34 which dealt with an accomplished transfer. ***Master's Report and Recommendation*** (Subcases 34-256 *et. al.*) (February 19, 1999) In that group of subcases, senior

water users filed *Objections* to the *Director's Reports* for groundwater rights in the Lost River Valley which involved accomplished transfers. The senior water users asked the court to reject changes in the place of use for rights which were transferred to an area known as Era Flat. The senior water users asserted that the water rights injured existing water rights. The *Master's Report and Recommendation* agreed with the *Director's Report* allowing the change in place of use. However, the decision was made after a trial on the merits. The decision was not made on summary judgment.

These subcases present a very different scenario. This litigation is not in the trial phase; it is in the summary judgment phase. Thus, the court must determine whether genuine issues of material fact exist as to injury. Norman K Sowards owns groundwater rights which are pumped from a well just north of the Island Wells. *Affidavit of Norman Sowards*. During the 1994 irrigation season, Mr. Sowards states his wells became inadequate for irrigation once nearby wells were brought on line. As a result Mr. Sowards says he had to drill deeper wells and install a larger pump.

Darrell McDonald owns water rights which are pumped from a well located between the two Island Wells. *Affidavit of Darrell E McDonald*. Mr. McDonald states that the bowls for his pump had to be lowered and the horsepower increased for his pump during 2004. The improvements were required to compensate for the dropping water table. The *Affidavit* also asserted that water pumped from the Island Wells is removed from the portion of the aquifer which impacts Mr. McDonald. Mr. McDonald asserts that he faces injuries not protected by IDWR's proposed language. He asserts that the accomplished transfer would allow additional pumping which would require him to drill deeper to utilize his water rights. In addition, the *Objections* assert that "the accomplished transfer of these water rights to add two new wells will injure water rights in the area of the new wells." Genuine issues of material fact remain as to injury.

V. CONCLUSION

Isom seeks to add two points of diversion to water rights which were partially decreed in 1997. A *Motion for Summary Judgment* was filed which argued that the volume and acreage for these water rights should be determined as a matter of law. Isom reasoned that the 1997 *Partial Decrees* determined both volume and acreage. Thus, Isom urged the Court to cut off Schureman's *Objections* on volume and acreage. Isom conceded that genuine issues of fact remain as to the addition on the Island Wells, but asserted that claim preclusion or issue preclusion should bar the relitigation of volume and acreage.

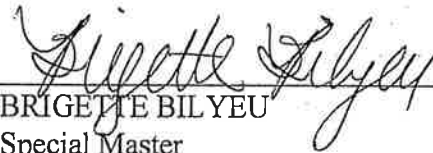
The Court finds that neither claim preclusion nor issue preclusion bars *Objections* as to

volume or acreage. Although Isom views these elements as isolated from the point of diversion elements, the Court finds the elements to be intertwined. Consequently, claim preclusion fails because the proposed change to point of diversion changes the entire water right claim. Accordingly, the *Amended Claims* for these rights do not constitute the same claims as those originally filed. Claim preclusion fails.

Issue preclusion fails because the issues raised in the *Partial Decrees* are different than those asserted in the *Amended Claims*. The addition of the Island Wells raises new issues of fact and law. The parties against whom Isom seeks to assert the *Partial Decrees'* determination of volume and acreage did not have a full and fair opportunity to litigate the issues. Thus, issue preclusion fails.

The licenses did not determine the volume limit now sought by Isom which seeks additional volume to transport the water over eight miles. Genuine issues of material fact remain. Finally, the question of whether the language proposed by IDWR is sufficient to protect existing users from injury raises genuine issues of material fact. Consequently, summary judgment is **denied**.

DATED: March 28, 2011.


BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION FOR SUMMARY JUDGMENT was mailed on March 28, 2011, with sufficient first-class postage to the following:

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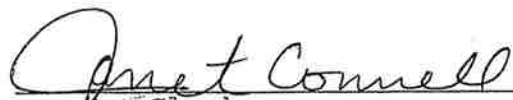
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