

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

RECEIVED

JAN 24 2007

CIVIL CASE NUMBER: 39576

DEPARTMENT OF
WATER RESOURCES

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

Ident Number 37-4375
Date Received 1-24-07
Receipt Number CO83134

37-22241 *24* 5/4/09

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s): Kathryn Gardner and/or Mary Ellen Drashner
Phone: 208-788-2568
Mailing Address: P. O. Box 1200
Hailey, ID 83333

2. Date of Priority: April 1, 1912

3. Source of water supply (a) Cold Springs
which is tributary to (b) sinks

4. a. Location of point of diversion is:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>1/4</u>	<u>1/4</u>	<u>1/4</u>	<u>Lot</u>	<u>County</u>
4N	18E	30	NW	NE	SE		Blaine

Additional points of diversion if any:

5. Description of existing diversion works: Ditch from springs to ponds.

COPY

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APR 17 2007

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APR 19 2007
DEPT. OF WATER RESOURCES
SOUTHERN REGION

6. Water is claimed for following purposes:

<u>Purpose</u>	<u>From</u>	<u>To</u>	<u>Amount</u>
Aesthetics	January 1	December 31	18 AF

7. Total Quantity Claimed: 18 AF

8. Non-irrigation uses: Aesthetics

9. Place of use:

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>TOTALS</u>
4N	18E	30																	A

TOTALS

10. Place of use is located in Blaine County.

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

12. Describe any other water rights used at the same place and for the same purposes as described above?
None.

13. **Remarks:** The original place of use for the pond was on property sold in 1998 to St. Luke's Wood River Medical Center for a new hospital and medical office building. All water rights appurtenant to that land were specifically reserved in the deed of conveyance (see Attachment 1). The pond was removed during the course of construction of the new medical facilities and Claimants intend to file for a transfer to move the right to adjacent property which they own.

Last Name: Gardner and Drashner
Cold Springs Aesthetic Claim.wpd

Ident No. _____
1/17/07

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MAP OF PROJECT

(Show clearly the point of diversion, place of use, section number, township and range number)

Scale: 2 inches equals 1 mile

SEE ATTACHMENT 2

Last Name: Gardner and Drashner

Cold Springs Aesthetic Claim.wpd

Ident No. _____

1/17/07

SCANNED

APR 17 2007

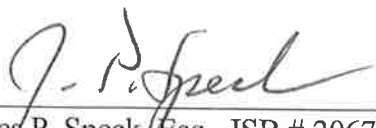
Plaintiff v. Defendant:

APR 17 2007

16. Notice of Appearance:

Notice is hereby given that I, James P. Speck, will be acting as attorney at law of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to the address listed below.

Signature: _____


James P. Speck, Esq., ISB # 2067
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
Telephone (208) 726-4421
Facsimile (208) 726-0752

Date: Jan. 21, 2007.

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

(Space above line for Recorder's use)

WARRANTY DEED

FOR VALUE RECEIVED, KATHRYN GARDNER, a married woman as her sole and separate property, who acquired title as KATHRYN ALLRED, and MARY ELLEN DRASHNER, a widow, who acquired title as MARY ELLEN ALLRED, whose address is 12 Heron Lane, Bellevue, Idaho, 83313 ("Grantor" whether one or more), hereby grants, bargains, sells and conveys unto ST. LUKE'S MEDICAL CENTER/WOOD RIVER, LTD., an Idaho corporation, whose address is 190 East Bannock, Boise, Idaho, 83712 ("Grantee", whether one or more), that certain real property situated in Blaine County, Idaho and described in Exhibit A attached hereto and incorporated herein by this reference;

EXCEPTING AND RESERVING THEREFROM any and all water rights appurtenant thereto, including, but not limited to, water right 37-04375, also claimed by Grantor in Twin Falls County District Court Civil No. 39576, In Re Adjudication of Rights to the Use of Water from the Snake River Basin Water System, as Claim No. A37-04375.

SUBJECT TO taxes, easements and rights-of-way established or of record, restrictions and encumbrances of record, rights reserved in federal patents, state or railroad deeds, building and use restrictions, building and zoning ordinances and regulations of any governmental unit, and all matters shown on any survey of record for such property.

TO HAVE AND TO HOLD, the said real property, with its appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said real property, that said real property is free from all encumbrances except as above-described, and that the Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, Grantor has executed this Warranty Deed as of the dates set forth below.

"GRANTOR"

DATE: 4-24-98


KATHRYN GARDNER

SCANNED

ATTACHMENT 1

APR 17 2007

DATE: 4/24/98

Mary Ellen Drashner
MARY ELLEN DRASHNER

STATE OF IDAHO)
) ss.
County of Blaine)

On this 24th day of April, 1998, before me, the undersigned notary public in and for said state, personally appeared KATHRYN GARDNER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

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

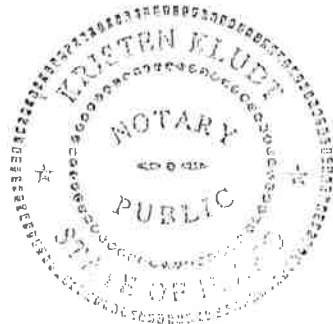


Kristen Kludt
Notary Public for Idaho
Residing at: Ketchum
Comm. Expires 2-06-2001

STATE OF IDAHO)
) ss.
County of Blaine)

On this 24th day of April, 1998, before me, the undersigned notary public in and for said state, personally appeared MARY ELLEN DRASHNER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

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



Expiration Date: 2/6/2001
Residing: Ketchum, Idaho

Kristen Kludt
Notary Public for Idaho
Residing at: Ketchum
Comm. Expires 2-06-2001

SCANNED

APR 17 2007

EXHIBIT A

ORDER NO. 22349
LEGAL DESCRIPTION

TOWNSHIP 4 NORTH, RANGE 18 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO.

SECTION 30: A parcel of land lying within a portion of the SE $\frac{1}{4}$ of said Section 30, being more particularly described as follows:

COMMENCING at the BLM brass cap marking the Southeast corner of said Section 30, proceed

N. 89° 33' 30" W., 1326.85 feet along the line between said Section 30 and Section 31 to an Iron Pipe marking the East 1/16 corner common to Sections 30 and 31; thence

N. 01° 10' 54" E., 925.05 feet along the line between the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 30 to a 5/8" rebar by PLS 7048 marking the Southwesterly corner of the described "Parcel A" on survey which point is the TRUE POINT OF BEGINNING; thence continuingN. 01° 10' 54" E., 415.45 feet along the line between the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 30 to an aluminum cap on a 5/8" rebar by PLS 7048 marking the Southwest 1/16 corner of said Section 30; thence continuingN. 01° 10' 54" E., 773.47 feet along the line between the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 30 to a 5/8" rebar by PLS 7048 marking the intersection of said 1/16 line and the Easterly boundary of the 100 foot wide stock drive right-of-way; thence

N. 16° 58' 26" E., 372.35 feet along the Easterly boundary of said stock drive right-of-way to a 5/8" rebar by PLS 7048 marking the P.I. of said stock drive at Station 468+00.50 feet right; thence

N. 53° 40' 26" E., 347.45 feet along the Southeasterly boundary of said stock drive to its intersection with the East-West center of Section line of said Section 30, which point is marked with a 5/8" rebar by PLS 7048; thence

N. 89° 50' 31" E., 201.56 feet along said East-West center of Section line of said Section 30 to its intersection with a curve that is 50 feet westerly of the centerline of the former OSLRR right-of-way at Station 3529+10.15, 50 feet left, which point is marked with a 5/8" rebar by PLS 7048; thence

26.35 feet along a curve to the right with a central angle of 00° 48' 42", a radius of 1860.08 feet, and a chord of 26.35 feet that bears S. 04° 40' 13" W., being 50 feet Westerly on the Centerline of said former OSLRR at PC Station 3528+83.8, 50 feet left which point is marked by a 5/8" rebar by PLS 7048; thence

S. 05° 04' 34" W., 1536.88 feet along a line 50 feet Westerly of the centerline of said former OSLRR right-of-way which is defined by ITD aluminum caps on non-magnetic 5/8" rebar at Station 3527+87.4, 100 feet left and Station 3504+22.6, 100 feet left; to its intersection with the Northwestern right-of-way of Idaho State Highway No. 75 at Station 136+77.1, 33 feet right, which point is marked by a 5/8" rebar by PLS 7048; thence

S. 46° 13' 50" W., 108.42 feet along the Northwestern right-of-way of said Highway No. 75 to a 5/8" rebar by PLS 7048 marking the PC at Station 137+85.5, 33 feet right; thence

162.25 feet along a curve to the left with a central angle of 06° 20' 36", a radius of 1465.50 feet, and a chord of 162.16 feet that bears S. 43° 03' 32" W., along the Westerly right-of-way of said Highway No. 75 to a 5/8" rebar by PLS 7048 at Station 139+47.7, 33 feet right; thence

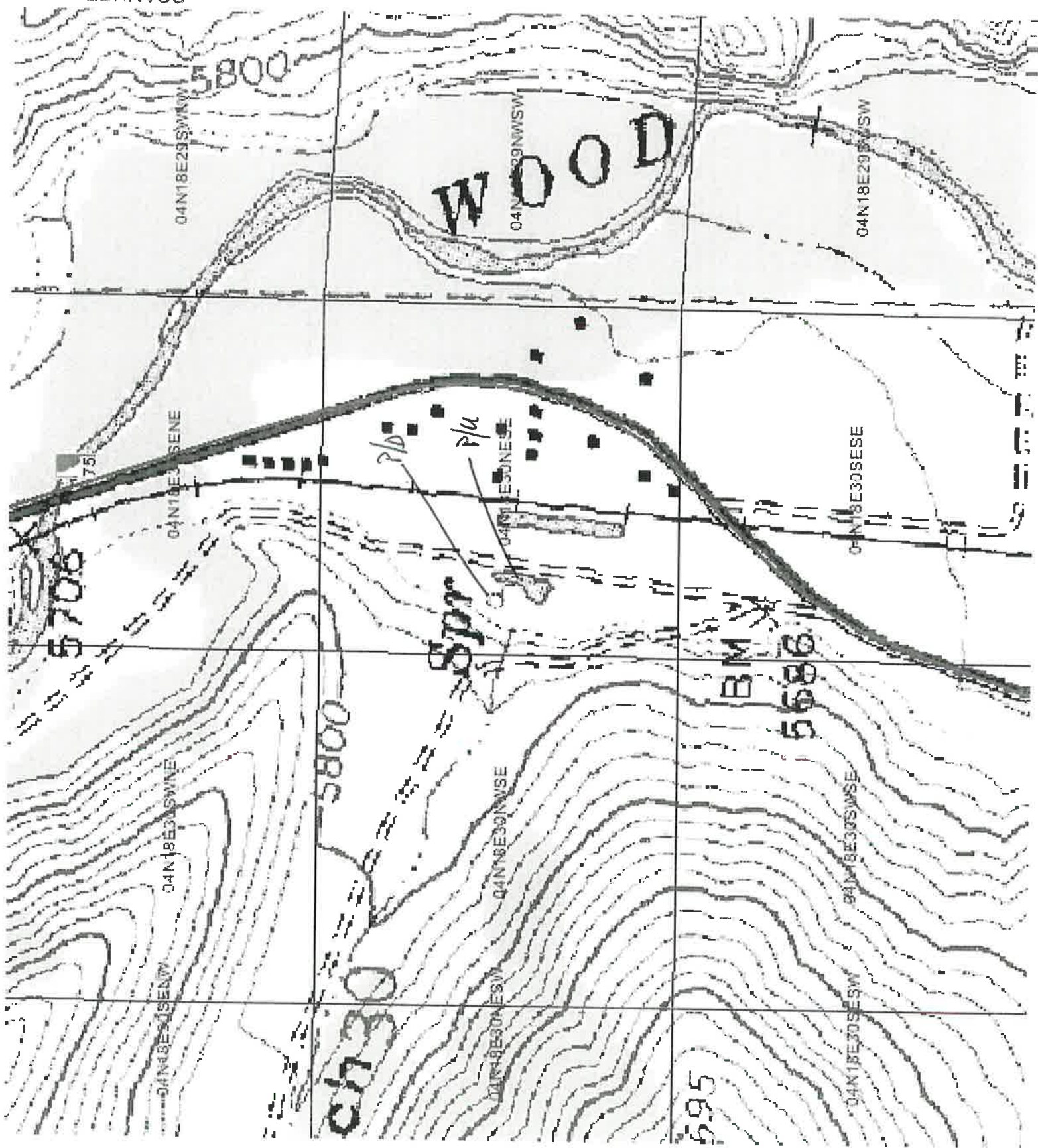
S. 89° 53' 09" W., 287.56 feet along a line going through the old railroad tie gatepost to the TRUE POINT OF BEGINNING.

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APR 17 2007

APR 17 2007

SCANNED



SPECK & AANESTAD

A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

JAMES P. SPECK
jimspeck@cox-internet.com
DOUGLAS J. AANESTAD
aanestad@cox-internet.com

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

January 23, 2007

Ms. Cynthia Bridge Clark
Idaho Department of Water Resources
322 E. Front St.
Boise ID 83720-0098

**Re: Kathryn Gardner and Mary Ellen Drashner -
37-4375 and new Claim
Our File No.: 578/020103**

Dear Cynthia:

As we discussed, I am enclosing the original and one copy of the Notice of Error Reply for 37-4375. As soon as my clients' return from their trip, we will put together an affidavit to support the elements of this beneficial use water right. Please receipt date stamp the copy of the Notice of Error and return it to me.

I have also enclosed the original and copy of a Notice of Claim for the aesthetic use of water in a pond which was constructed on the property. Also enclosed are two checks, one to cover the \$100 filing fee and another to cover the \$100 late fee. I request that the latter be waived and, if you agree, please return one of the checks to me together with the receipt date stamped copy of that claim.

Please call me if you have any questions. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____

James P. Speck

JPS:jal
Enclosures
cc: Client

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APR 17 2007

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

CIVIL CASE NUMBER: 39576

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

Ident Number 37-22241
Date Received 1-24-07
Receipt Number C083134

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s): Kathryn Gardner and/or Mary Ellen Drashner
Phone: 208-788-2568
Mailing Address: P. O. Box 1200
Hailey, ID 83333
2. Date of Priority: April 1, 1912
3. Source of water supply (a) Cold Springs
which is tributary to (b) sinks
4. a. Location of point of diversion is:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>¼</u>	<u>¼</u>	<u>¼</u>	<u>Lot</u>	<u>County</u>
4N	18E	30	NW	NE	SE		Blaine

Additional points of diversion if any:

5. Description of existing diversion works: Ditch from springs to ponds.

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OCT 29 2007

6. Water is claimed for following purposes:

<u>Purpose</u>	<u>From</u>	<u>To</u>	<u>Amount</u>
Aesthetics	January 1	December 31	18 AF

7. Total Quantity Claimed: 18 AF

8. Non-irrigation uses: Aesthetics

9. Place of use:

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>TOTALS</u>
4N	18E	30																	A

TOTALS

10. Place of use is located in Blaine County.

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

12. Describe any other water rights used at the same place and for the same purposes as described above?
None.

13. Remarks: The original place of use for the pond was on property sold in 1998 to St. Luke's Wood River Medical Center for a new hospital and medical office building. All water rights appurtenant to that land were specifically reserved in the deed of conveyance (see Attachment 1). The pond was removed during the course of construction of the new medical facilities and Claimants intend to file for a transfer to move the right to adjacent property which they own.

Last Name: Gardner and Drashner
Cold Springs Aesthetic Claim.wpd

Ident No. _____
1/17/07

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OCT 29 2007

MAP OF PROJECT

(Show clearly the point of diversion, place of use, section number, township and range number)

Scale: 2 inches equals 1 mile

SEE ATTACHMENT 2

Last Name: Gardner and Drashner
Cold Springs Aesthetic Claim.wpd

Ident No. _____
1/17/07

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14. Basis of Claim: Beneficial use

IDWR Water Right Number:

Court:

Case Number:

Decree Date:

Plaintiff v. Defendant:

15. Signature(s)

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

[For individuals] I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

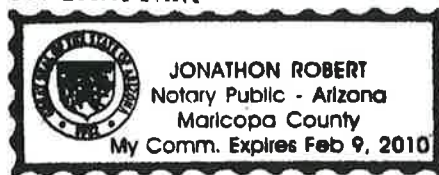
Signature of Claimant(s)

Kathryn Gardner
KATHRYN GARDNER

Date 1-18-2007

State of Arizona)
) ss.

County of Maricopa)



Subscribed and sworn before me this 18 day of January, 2007.

Jonathon Robert
Notary Public for Phoenix
Residing at Phoenix, Arizona
Commission Expires 02/09/10

Last Name: Gardner and Drashner
Cold Springs Acute Claim wpt

Ident No. _____
1/17/07

SCANNED
OCT 29 2007

16. Notice of Appearance:

Notice is hereby given that I, James P. Speck, will be acting as attorney at law of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to the address listed below.

Signature: _____



James P. Speck, Esq., ISB # 2067
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
Telephone (208) 726-4421
Facsimile (208) 726-0752

Date: Jan. 21, 2007.

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

(Space above line for Recorder's use)

WARRANTY DEED

FOR VALUE RECEIVED, KATHRYN GARDNER, a married woman as her sole and separate property, who acquired title as KATHRYN ALLRED, and MARY ELLEN DRASHNER, a widow, who acquired title as MARY ELLEN ALLRED, whose address is 12 Heron Lane, Bellevue, Idaho, 83313 ("Grantor" whether one or more), hereby grants, bargains, sells and conveys unto ST. LUKE'S MEDICAL CENTER/WOOD RIVER, LTD., an Idaho corporation, whose address is 190 East Bannock, Boise, Idaho, 83712 ("Grantee", whether one or more), that certain real property situated in Blaine County, Idaho and described in Exhibit A attached hereto and incorporated herein by this reference;

EXCEPTING AND RESERVING THEREFROM any and all water rights appurtenant thereto, including, but not limited to, water right 37-04375, also claimed by Grantor in Twin Falls County District Court Civil No. 39576, In Re Adjudication of Rights to the Use of Water from the Snake River Basin Water System, as Claim No. A37-04375.

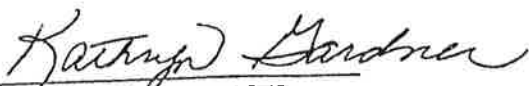
SUBJECT TO taxes, easements and rights-of-way established or of record, restrictions and encumbrances of record, rights reserved in federal patents, state or railroad deeds, building and use restrictions, building and zoning ordinances and regulations of any governmental unit, and all matters shown on any survey of record for such property.

TO HAVE AND TO HOLD, the said real property, with its appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said real property, that said real property is free from all encumbrances except as above-described, and that the Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, Grantor has executed this Warranty Deed as of the dates set forth below.

"GRANTOR"

DATE: 4-24-98


KATHRYN GARDNER

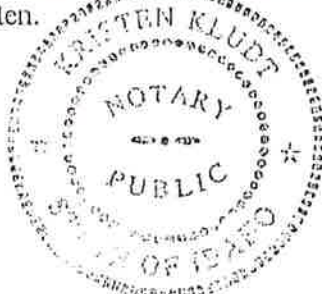
DATE: 4/24/98

MARY ELLEN DRASHNER

STATE OF IDAHO)
) ss.
County of Blaine)

On this 24th day of April, 1998, before me, the undersigned notary public in and for said state, personally appeared KATHRYN GARDNER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

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

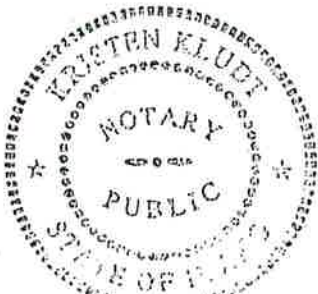


Justin A. Lusk
Notary Public for Idaho
Residing at: *Ketchum*
Comm. Expires *2-01-2011*

STATE OF IDAHO) Expiration Date: 2/6/2001
) Residing: Ketchum, Idaho
) ss.
County of Blaine)

On this 24th day of April, 1998, before me, the undersigned notary public in and for said state, personally appeared MARY ELLEN DRASHNER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

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



Expiration Date: 2/6/2001
Residing: Ketchikan, Idaho

Notary Public for Idaho
Residing at: Ketchum
Comm. Expires 2-01-2001

SCANNED
OCT 29 2007

EXHIBIT A

ORDER NO. 22349
LEGAL DESCRIPTION

TOWNSHIP 4 NORTH, RANGE 18 EAST, BOISE MERIDIAN, BLAINE COUNTY, IDAHO.

SECTION 30: A parcel of land lying within a portion of the SE $\frac{1}{4}$ of said Section 30, being more particularly described as follows:

COMMENCING at the BLM brass cap marking the Southeast corner of said Section 30, proceed

N. 89° 33' 30" W., 1326.85 feet along the line between said Section 30 and Section 31 to an Iron Pipe marking the East 1/16 corner common to Sections 30 and 31; thence

N. 01° 10' 54" E., 925.05 feet along the line between the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 30 to a 5/8" rebar by PLS 7048 marking the Southwesterly corner of the described "Parcel A" on survey which point is the TRUE POINT OF BEGINNING; thence continuingN. 01° 10' 54" E., 415.45 feet along the line between the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 30 to an aluminum cap on a 5/8" rebar by PLS 7048 marking the Southwest 1/16 corner of said Section 30; thence continuingN. 01° 10' 54" E., 773.47 feet along the line between the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 30 to a 5/8" rebar by PLS 7048 marking the intersection of said 1/16 line and the Easterly boundary of the 100 foot wide stock drive right-of-way; thence N. 16° 58' 25" E., 372.35 feet along the Easterly boundary of said stock drive right-of-way to a 5/8" rebar by PLS 7048 marking the P.I. of said stock drive at Station 488+00.50 feet right; thence

N. 53° 40' 25" E., 347.45 feet along the Southeasterly boundary of said stock drive to it's intersection with the East-West center of Section line of said Section 30, which point is marked with a 5/8" rebar by PLS 7048; thence

N. 89° 50' 31" E., 201.56 feet along said East-West center of Section line of said Section 30 to it's intersection with a curve that is 50 feet westerly of the centerline of the former OSLRR right-of-way at Station 3529+10.15, 50 feet left, which point is marked with a 5/8" rebar by PLS 7048; thence

26.35 feet along a curve to the right with a central angle of 00° 48' 42", a radius of 1880.08 feet, and a chord of 26.35 feet that bears S. 04° 40' 13" W., being 50 feet Westerly on the Centerline of said former OSLRR at PC Station 3528+83.8, 50 feet left which point is marked by a 5/8" rebar by PLS 7048; thence

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S. 46° 13' 50" W., 108.42 feet along the Northwesternly right-of-way of said Highway No. 75 to a 5/8" rebar by PLS 7048 marking the PC at Station 137+85.5, 33 feet right; thence

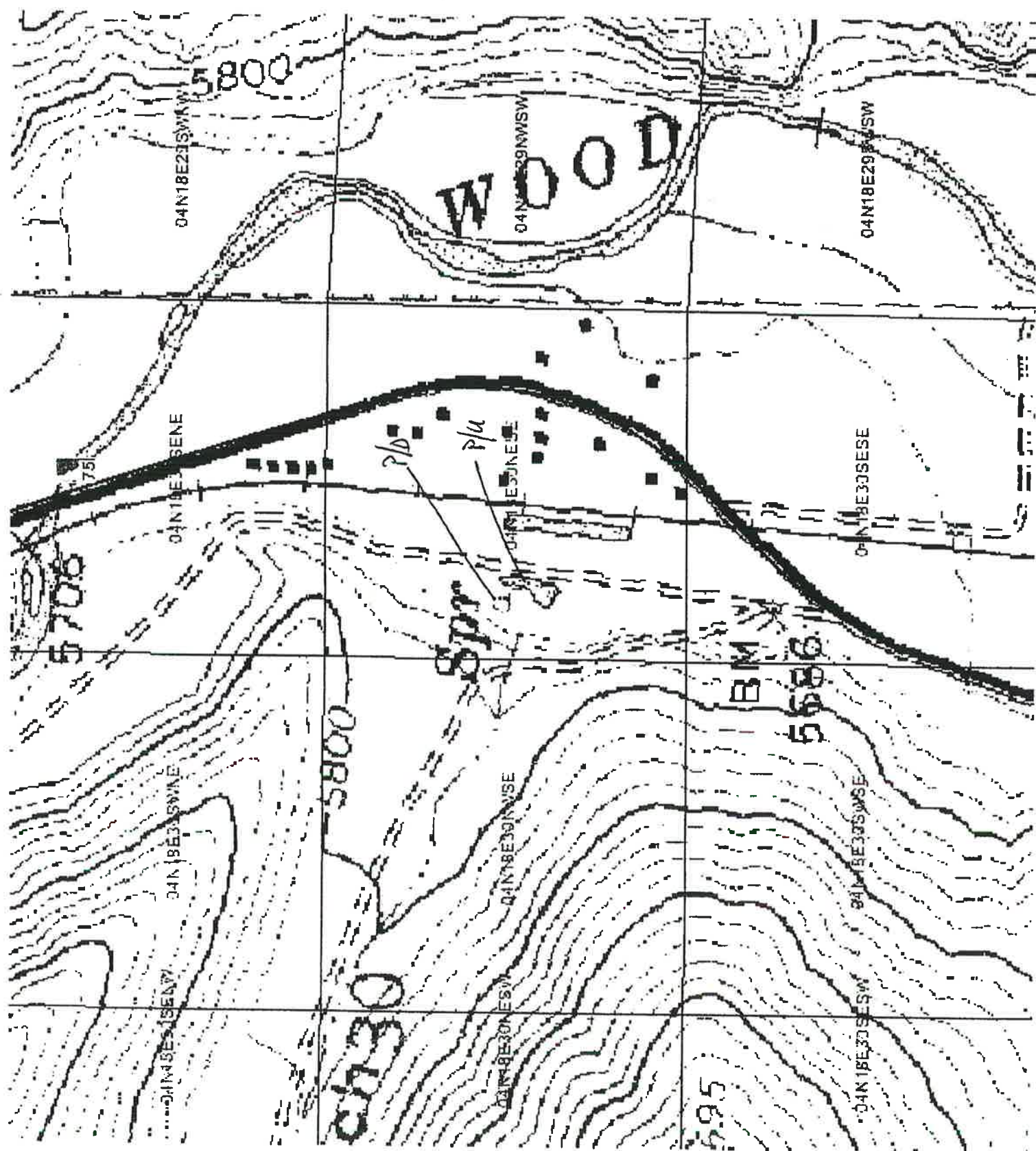
162.25 feet along a curve to the left with a central angle of 06° 20' 38", a radius of 1485.50 feet, and a chord of 162.18 feet that bears S. 43° 03' 32" W., along the Westerly right-of-way of said Highway No. 75 to a 5/8" rebar by PLS 7048 at Station 139+47.7, 33 feet right; thence

S. 89° 53' 09" W., 287.58 feet along a line going through the old railroad tie gatepost to the TRUE POINT OF BEGINNING.

SCANNED

OCT 29 2007

ATTACHMENT 2



05/28/2009

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

RIGHT NUMBER: 37-22241

NAME AND ADDRESS: KATHRYN ALLRED GARDNER
PO BOX 1200
HAILEY ID 83333

MARY ELLEN DRASHNER
PO BOX 1200
HAILEY ID 83333

SOURCE: COLD SPRING GULCH

TRIBUTARY: SINKS

QUANTITY: 0.600 AFY

PRIORITY DATE: 04/01/1912

POINT OF DIVERSION:

T04N R18E S30 NWNESE Within BLAINE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

AESTHETIC

01/01 12/31

0.60 AFY

PLACE OF USE: AESTHETIC in BLAINE County

T04N R18E S30

NESE

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Aesthetic use for 0.2 acre surface area by 3 ft average depth pond.

James P. Speck, ISB No. 2067
Speck & Aanestad, A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, Idaho 83340
Telephone: (208) 726-4421
Facsimile: (208) 726-0752
Attorneys for Claimants, Mary Ellen Drashner and Kathryn Allred Gardner

RECEIVED

OCT 16 2008

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

)
) Subcase No. 37-4375

)
) AFFIDAVIT OF ROBERT GARDNER
)
)
)
)

STATE OF IDAHO)

:ss

County of Blaine)

ROBERT GARDNER, being first duly sworn upon his oath, declares as follows:

1. I was born in 1939 and have been a resident of Blaine County, Idaho all of my life.
2. In 1961, I married Kathryn Gardner. Prior to then I had helped her father, Howard Allred, to irrigate the property Kathryn and her sister, Mary Ellen, had inherited from their grandfather located at the mouth of the Cold Springs Canyon in Blaine County, Idaho. I was told that Kathryn's grandfather had used this property as a staging area and grazing for his band of sheep which he used to run from his ranch in Gannett, Idaho. Although Kathryn's family no longer raised sheep, they continued to irrigate the property to keep it green and allow it to be used for grazing by other bands of sheep which traveled through the county in the spring and fall.

3. After Kathryn's father passed away I continued to irrigate the property for the same

AFFIDAVIT OF ROBERT GARDNER - 1
aff robt gardner.wpd

purposes up until the time it was sold to St. Luke's Wood River Medical Center in April, 1998. The property was flood irrigated when I first helped Kathryn's father in the 1950's and I continued that method of irrigation until the property was sold. A series of small ditches was located all across the property. I would direct water into a ditch by simply piling up dirt using or using canvas dams and a shovel. Water came from several springs on the property as well as out of the large pond. The springs and pond are marked on the aerial photo attached as Exhibit A. The pond was fed by water from the springs and I estimate it was approximately one (1) acre in surface area and averaged about three (3) to four (4) feet in depth. The land that was consistently irrigated during all of this time is outlined in black on the photo and I estimate its area as approximately twenty-five (25) acres. I have been a rancher and farmer all of my life and I estimate that the amount of water I was diverting from the springs and pond through the ditches was approximately 25 to 40 inches. This amount of water was required to raise the pasture grass and keep the property green using those flood irrigation methods.

4. The statements in this affidavit are based upon my own personal knowledge and observations and conversations I had with my father-in-law.

DATED this 14 day of October, 2008.

Robert Gardner
ROBERT GARDNER

SUBSCRIBED AND SWORN TO before me this 14 day of October, 2008.

J. P. Greer
NOTARY PUBLIC FOR IDAHO

Residing at: Blaine, Idaho

Comm. Expires: 1/29/2011



CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of October, 2008, I served a true and correct copy of the within and foregoing document upon the attorney named below in the manner noted:

Albert P. Barker
Shelley M. Davis
Barker, Rosholt & Simpson LLP
P.O. Box 2139
Boise, ID 83701-2139

*Attorneys for Tom O'Gara, John Stevenson, Bill
Molyneux, Pete Van Der Meulen, Grace Eakin,
Gerald Bashaw and Pepin Corso-Harris*

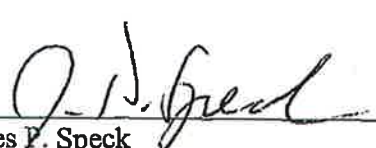
- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Craig Hobdey
Hobdey & Hobdey
P.O. Box 176
Gooding, ID 83330
Attorneys for Big Wood Canal Company

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

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720

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


James P. Speck

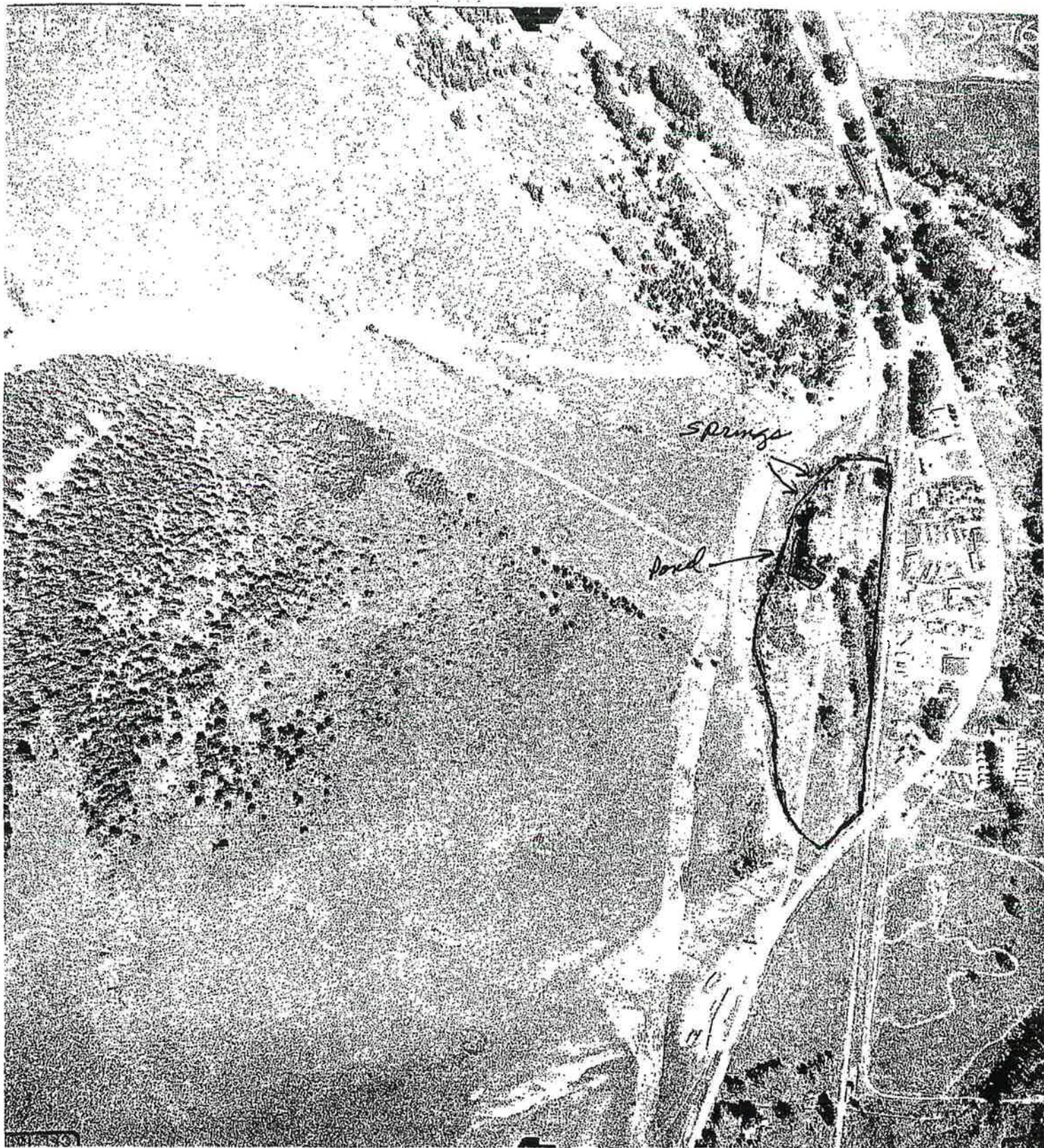


EXHIBIT A

RECEIVED

OCT 16 2008

DEPARTMENT OF
WATER RESOURCES

James P. Speck, ISB No. 2067
Speck & Aanestad, A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, Idaho 83340
Telephone: (208) 726-4421
Facsimile: (208) 726-0752
Attorneys for Claimants, Mary Ellen Drashner and Kathryn Allred Gardner

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. 37-4375
AFFIDAVIT OF KATHRYN ALLRED
GARDNER)

STATE OF IDAHO)
County of Blaine)

KATHRYN ALLRED GARDNER, being first duly sworn upon her oath, declares as follows:

1. I was born in 1941 and have been a resident of Blaine County, Idaho my entire life.
2. In 1913, my grandfather, Reuben G. Price, acquired property at the mouth of Cold Springs Canyon in Blaine County, Idaho. Attached as Exhibit A is a copy of the Warranty Deed used to convey title to this property to my grandfather.
3. I first remember visiting this property with my grandfather in about 1946. My grandfather told me he used the property as a staging and pasture area for his sheep when he took them from his ranch in Gannett, Idaho to summer range in the north and then back again in the fall.

AFFIDAVIT OF KATHRYN ALLRED GARDNER - 1
aff kathryn gardner.wpd

My mother, Mary Allred, told me her father had done this ever since he acquired the Cold Springs property.

4. Attached as Exhibit B is a copy of a June 15, 1971 aerial photograph of this land which I obtained from the Idaho Department of Transportation. I have noted the location of a large pond on the property where we used to hang out on visits while I was in grade school. The pond is also shown on the USGS topographic map for this area based on 1966 aerial photography and field checked in 1967. Attached as Exhibit C is a copy of the relevant portion of that map on which the pond has been labeled. The pond remained approximately the same size through all of the years that I observed it. My estimate is that it was approximately one (1) acre in surface area and averaged approximately three (3) feet in depth. A two story house used to be located just north of the pond. I recall sheep and some horses grazing on the land but all of the horses later died when they were fed some poisoned grain!

5. My father had the pond stocked with fish and occasionally he would catch a few for dinner. We sometimes poled our way around the pond with a long pole on a couple of homemade rafts. Each fall it was a family tradition to harvest elderberries and chokecherries for syrup and jelly. The bushes were very productive due to the amount of water they received from the pond and springs. We also picked apples from a nearby tree and the springs produced watercress all year long that was the best! We truly enjoyed the pond and its surroundings.

6. I recall seeing small ditches running through most of the property and water from springs and the pond running through the ditches. I was told at the time that the water was used to grow the grass on the property as pasture for the sheep and horses. My sister recalls that potatoes were also grown on the property.

7. My grandfather passed away in 1955 and he left the property to my sister, Mary Ellen Drashner, and me. My father, Howard Allred, continued the flood irrigation practice on the property to keep the pasture grass growing. I observed him using a shovel to move the water around through the various ditches. Although my family no longer raised sheep, we allowed owners of other bands to graze their sheep on the property as they went through heading north in the spring and south again in the fall. My husband, Robert Gardner, used to help my father with the irrigation and he continued to do so after my father passed away. This practice continued right up until the property was sold to St. Luke's Wood River Medical Center in April, 1998.

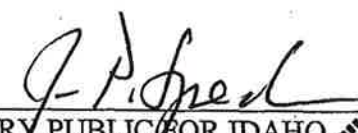
8. My husband, Robert Gardner, outlined in black on Exhibit B the area that I recall being irrigated for pasture grass. I believe it is approximately twenty-five acres in size.

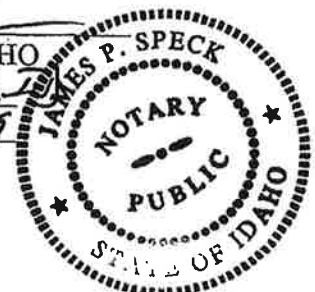
9. The statements made in this affidavit are based upon my own personal knowledge and observations and conversations I had with my grandfather, mother and father, all of whom have now passed away.

DATED this 14 day of October, 2008.


KATHRYN ALLRED GARDNER

SUBSCRIBED AND SWORN TO before me this 14 day of October, 2008.


NOTARY PUBLIC FOR IDAHO
Residing at: Blaine County, ID
Comm. Expires: 1/29/2009



37-22241

As this in a natural stream? Aesthetic use in natural stream is not a new right.

Related to 37-4375 (reported in B37 Part 3), which was disallowed for no eop.

- see letter from MUB in file
- see e-mail from C. Saxton in file

76/319
6/2/1913

WARRANTY DEED RECORD

WARRANTY DEED

Lillie D. Johnson and

Millidge W. Johnson

TO

Reuben G. Price.

STATE OF IDAHO,

County of Blaine,

Filed for record at the request of

R. G. Price

11 o'clock A.M., June 2,

1913

Reuben G. Price
County Clerk

THIS INDENTURE, Made this 5th day of July
in the year of our Lord one thousand nine hundred and nine
BETWEEN Lillie D. Johnson, and Millidge W. Johnson,
her husband of Blaine County, Idaho,

the part is of the first part, and
Reuben G. Price of the same place

WITNESSETH, That the said part is of the second part,
in and paid by the said part of the first part, for and in consideration of the
sum of One Dollar and other consideration, ~~EXHIBIT~~
he ~~va~~ granted, bargained, sold, received, released, alienated and confirmed, and by these presents
do grant, bargain, sell, release, alienate and confirm unto the said part of the
second part, and to his heirs and assigns forever, all the following
described ~~is~~ ~~part~~ ~~s~~ or parcel ~~s~~ of land, situated in the County of Blaine and State of Idaho,
known and described as follows, to-wit:

The Southeast quarter of the Northeast quarter and the
East half of the Southeast quarter, of Section thirty
(30)

The Southwest quarter of the Northeast quarter, the
Southeast quarter of the Northwest quarter and the
Northeast quarter of the Southwest quarter of Section

(31) thirty-one,

The Southwest quarter of the Northwest quarter and the Northwest quarter of the
Southwest quarter of Section twenty-nine (29)

All in Township Four (4) North of Range eighteen east of the Boise Meridian,

Together with all water and water rights ditches and canals in anywise appertaining
to said above described lands.

Saxton, Craig

From: Jim Speck [jim@speckandaanestad.com]
Sent: Wednesday, February 27, 2008 11:42 AM
To: Saxton, Craig
Cc: ranchrobert@cox.net; rkgardner@scskylan.net; 'Julie Cord'
Subject: RE: SRBA claim 37-22241 (Gardner/Drashner): Objection to 37-4375

Craig,

The initial hearings for Basin 37 Part 3 subcases will not take place until mid-September at the earliest according to Special master Bilyeu. Therefore, it makes the most sense to leave 37-22241 for the fall supplemental report. We are gathering appropriate evidence and will get that to IDWR as soon as possible. Let me know if you have additional questions. Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

CONFIDENTIAL COMMUNICATION

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

From: Saxton, Craig
Sent: Tuesday, February 19, 2008 11:30 AM
To: jim@speckandaanestad.com

Dear Mr. Speck,

I see that you represent Kathryn Gardner and Mary Ellen Drashner (37-4375 and 37-22241).

I have been reviewing claim 37-22241 and see that you have been contacted regarding the need for additional evidence of priority. I was going to send you a reminder letter but then saw that an objection has been filed on the recommendation for 37-4375 because it was disallowed due to insufficient evidence of priority.

Since it looks like 37-4375 and 37-22241 pretty much are from the same system, I thought maybe in your search for evidence of priority for commercial and irrigation (37-4375) use, you might come across evidence for the aesthetic (37-22241) use as well.

Deal Panel Volume 4
EOP. Could Merge
w/ 37-4375 depending
on priority date
supported for each use
C. Saxton 1967
2-13-08

see
are
the

The Spring 2008 supplemental (Late Claim) Directors Report is tentatively scheduled to be submitted to the SRBA court on March 18, 2008. I spoke with Nick Spencer and asked if initial hearings were set for 37-4375 as I thought we might want to coordinate when we submit 37-22241 to the court so it coincides with the initial hearing for 37-4375. Nick said that the initial hearing hasn't been set for 37-4375 and that perhaps I could ask you what you would like me to do.

Would you like me to include 37-22241 in the March 18, 2008 supplemental directors report? Without evidence of priority within the next few weeks, I will have to recommend 37-22241 as disallowed to the SRBA court.

Or, I could hold 37-22241 out of the March 18th report and allow you more time to come up with priority evidence for both 37-4375 and 37-22241. The next supplemental report would be submitted in the fall of 2008 (about 6 months down the road).

When you have a chance, let me know your thoughts on this if you don't mind. Feel free to give me a call if you have questions.

Respectfully submitted,

Craig L. Saxton

Water Right Supervisor

Adjudication Bureau

HYPERLINK "mailto:craig.saxton@idwr.idaho.gov" craig.saxton@idwr.idaho.gov

208-287-4916

No virus found in this incoming message.

Checked by AVG Free Edition.

Version: 7.5.516 / Virus Database: 269.20.8/1287 - Release Date: 2/19/2008
10:55 AM

37-22241

Where is original claim?

receipt \$100	1/29/2007
claim scanned	10/29/2007
letter sent	11/1/2007

renumbered?
audit trail?

Fee - should there have been a variable fee for aesthetic?

~~18 AF 12/12/2007 \$4.97~~ = \$4.97

related to 37-4375, which was disallowed for lack of evidence of priority - received 2 notices requesting eop

Sent eop letter for both 12/12/2007

37-4375, 37-22241

- same priority date
- same ground
- "transfer" of water in deed - deed attached to objection for 37-4375 but deed only states ~~trans~~ transfer of WR 37-4375 & mentions no ponds
- 2 ponds on quad

How much did they pay for 37-4375? LMM Doug 12/12/2007

file barcoded to Southern Box 2/6/2007
- Doug e-mail 12/12 - they can't find file

Can we merge 37-4375 & 37-22241 & include aesthetic as incidental w/ 13,000 gpd limiting condition?

Need aesthetic storage, not aesthetic on 37-22241.

E-mail amended claim to Jim Speck & have him sign.
have his clients sign. 208.726.4421

Action plan per meeting w/ Carter 12/19/2007 - wait to see what comes from EOP letter, then tell them they've claimed aesthetic w/ 18 AF & it looks like they should claim aesthetic storage & have them amend claim - some eop for ponds to 9956 in stat claim but per Carter need more



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

December 12, 2007

KATHRYN GARDNER
MARY ELLEN DRASHNER
PO BOX 1200
HAILEY ID 83333

SCANNED
DEC 12 2007

37-22241 AND 37-4375
Re: Evidence of Priority Date

Dear Claimants:

I recently received SRBA claim 37-22241 review and noticed you filed an objection to the recommendation for SRBA claim 37-4375 and I believe the two claims are related, so I would like to address both in this letter.

The claims indicate your water usage is based on "Beneficial Use." Water rights of this type are established by the historic use of water, dating back to when water was first used for the purpose claimed. The date of first use, known as the priority date, has not been confirmed for either claim. SRBA claim 37-4375 was recommended as disallowed in the Fall 2007 report because of lack of evidence for the priority date. You were contacted on April 15, 2005, and December 18, 2006, regarding confirmation of the priority date for claim 37-4375. We also have no evidence establishing the priority date for claim 37-22241. **Proof must be provided by the claimant supporting the priority date claimed and the historic use of the water.**

Enclosed you will find a pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. A map of the general area stated in your claim is also enclosed. Please outline the location of lands irrigated claimed under 37-4375, as well as the location of any points of diversion, if possible. Note the historic location of the pond(s) for aesthetic use claimed under 37-22241. Submit the completed map along with your evidence of priority. This will assist me in making a more accurate recommendation of your claim(s) and possibly in the resolution of your objection.

PLEASE NOTE: If no evidence is submitted, IDWR will recommend the SRBA Court decree both claims be disallowed. The deed you submitted with your objection for 37-4375 provides evidence of land ownership, but does not mention a specific water right and is not sufficient to establish a priority date.

If you have questions not covered by this letter or the enclosed pamphlet, please contact me at (208) 287-4907.

Sincerely,

Monica P. Van Bussum
Sr. Water Resource Agent
Adjudication Bureau

Cc: James P Speck, Speck & Aanestad
Enclosures



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

November 1, 2007

DAVID R. TUTHILL, JR.
Director

JAMES P SPECK
SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

RE: Snake River Basin Adjudication (SRBA)
Notice of Claim to a Water Right #37-22241
Your Clients: Kathryn Gardner / Mary Ellen Drashner

Dear Mr. Speck:

The Notice of Claim to a Water Right you filed for your clients referenced above was received from the SRBA Court. I have enclosed receipt #C083134 for the fees you paid. Please retain the receipt for your records.

Please contact me at 208/287-4916 if you have any questions.

Sincerely,

Craig L. Saxton
Water Rights Supervisor
Adjudication Bureau

CLS:ss:region

Enclosure:

Receipt Referenced Above

SCANNED

NOV - 1 2007

STAFF TIME LOG

LATE CLAIMS

Claim No(s). 37-22241

[illegible]