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DEC 18 2019
DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF LICENSE NO.)
63-11610 IN THE NAME OF) **PETITION FOR RECONSIDERATION**
JRS PROPERTIES III LP)
_____)

On September 11, 2019, the Idaho Department of Water Resources ("IDWR") issued License No. 63-11610 to JRS Properties III LP ("Claimant"). On September 13, 2019, IDWR issued a letter of issuance of License 63-11610 on the claimant. The United States of America, Department of Interior, Bureau of Land Management ("BLM") respectfully files this Petition for Reconsideration regarding issuance of License No. 63-11610 pursuant to the IDWR rules of procedure, IDAPA 37.01.01.730.02.

On July 15, 1991, IDWR received an Application for Permit filed by Golden Development Co. for irrigation use. The Application was assigned to JR Simplot Self Declaration of Revocable Trust (February 6, 1995). On September 6, 2019 an Application for Amendment and also an Assignment of Permit to JR Properties III, L. P. (current owner) was filed. The Amended Application made several changes, but BLM is only concerned with the following new irrigation Place of Use ("POU") described as T02N, R03E, S05, Lot 4 (NWNW), 0.2 acres.

Recently issued License 63-11610 is for Irrigation (0.91 cfs/ 204.0 AF over 45.4 acres. cfs), and has a new legal land description Place of Use ("POU") which entirely describes federal land (T02N, R03E, S05, Lot 4, (NWNW)). The Application for Permit, the publications, and the Permit issued by IDWR (January 28, 1992) did not include T02N, R03E, S05, Lot 4 (NWNW). The Application for Amendment of Permit changes (September 6, 2019) were not advertised, nor made available through IDWR's *New Water Right Application* page. On September 13, 2019, IDWR issued a License which included T02N, R03E, S05, Lot 4 (NWNW). The legal land description T02N, R03E, S05, Lot 4 (NWNW) is entirely owned by the BLM. Attached hereto as Exhibit A is a true and correct copy of BLM Master Title Plat ("MTP") which is the official record of the United States titled in land. JRS PROPERTIES III LP is not authorized to conduct agricultural activities, nor irrigate federal land described in T02N, R03E, S05, Lot 4 (NWNW).

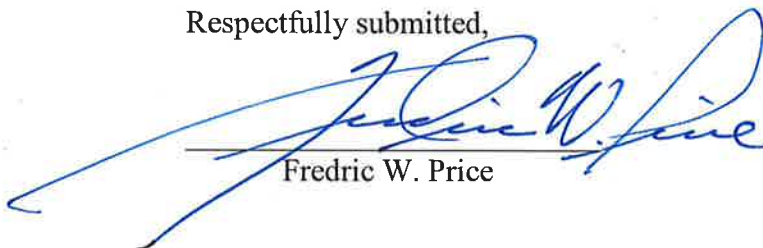
The recently issued license is the first opportunity BLM has had to respond to the amendment that added federal land to the POU. The applicant is not authorized to irrigate federal lands. The introduction of a different or additional legal land descriptions is a substantial amendment requiring re-advertising, otherwise neighbors have to protest all applications adjacent to their property in case their land gets added by an unadvertised amendment. BLM is adversely affected by the licensing of the Amended Application for Permit due to trespass.

BLM respectfully requests that IDWR remove the POU describing federal land (T02N, R03E, S05, Lot 4 (NWNW)) from License 63-11610 POU under the irrigation use element of the license because the Claimant is not authorized for irrigation use on BLM land in T02N, R03E, S05, Lot 4 (NWNW). JRS PROPERTIES III LP does not have legal access from the point of diversion to the place of use. There was no opportunity to protest prior to licensing.

Under state law a water right cannot be established in trespass (see *In Re General*

Determination of Rights to Use of Surface and Ground Waters of Payette River, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Reed v. Morton*, 480 F.2d 634 (9th Cir. 1973); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2s 1314 (1936); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); and *King v. Chamberlin*, 20 Idaho 504, 118 P. 1099 (1911)).

Respectfully submitted,


Fredric W. Price

Subscribed and sworn to before me this 18th day of December, 2019.
Witnessed by my hand and official seal.




Sandra McCrea
Notary Public in and for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: June 9, 2023

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on December 18, 2019, 2019 I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION; LICENSE NO. 63-11610** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Shelly Keen, Bureau Chief, Water Allocation Bureau
IDWR, State Office
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to:

Nick Miller, P. E., Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83702-5082

JRS Properties III LP
c/o Vic Conrad, Land, Water & Asset Recovery
P. O. Box 27
Boise, Idaho 83707

James Tarter, Natural Resource Specialist
U.S., Department of the Interior
Bureau of Land Management
Boise District Office
3948 South Development Avenue
Boise, Idaho 83705-5339



Signature of Person Serving Documents

Exhibit A

TOWNSHIP 2 NORTH RANGE 3 EAST OF THE BOISE MERIDIAN, IDAHO

ADA COUNTY 001
BOISE DISTRICT RES-3

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES
AND ACQUIRED LANDS

MT PLAT

INDEX TO SEGREGATED TRACTS			
TRACT NO.	R.	E.	SECTION
1	1	1	36-00-00-00
2	1	1	36-00-00-00
3	1	1	36-00-00-00
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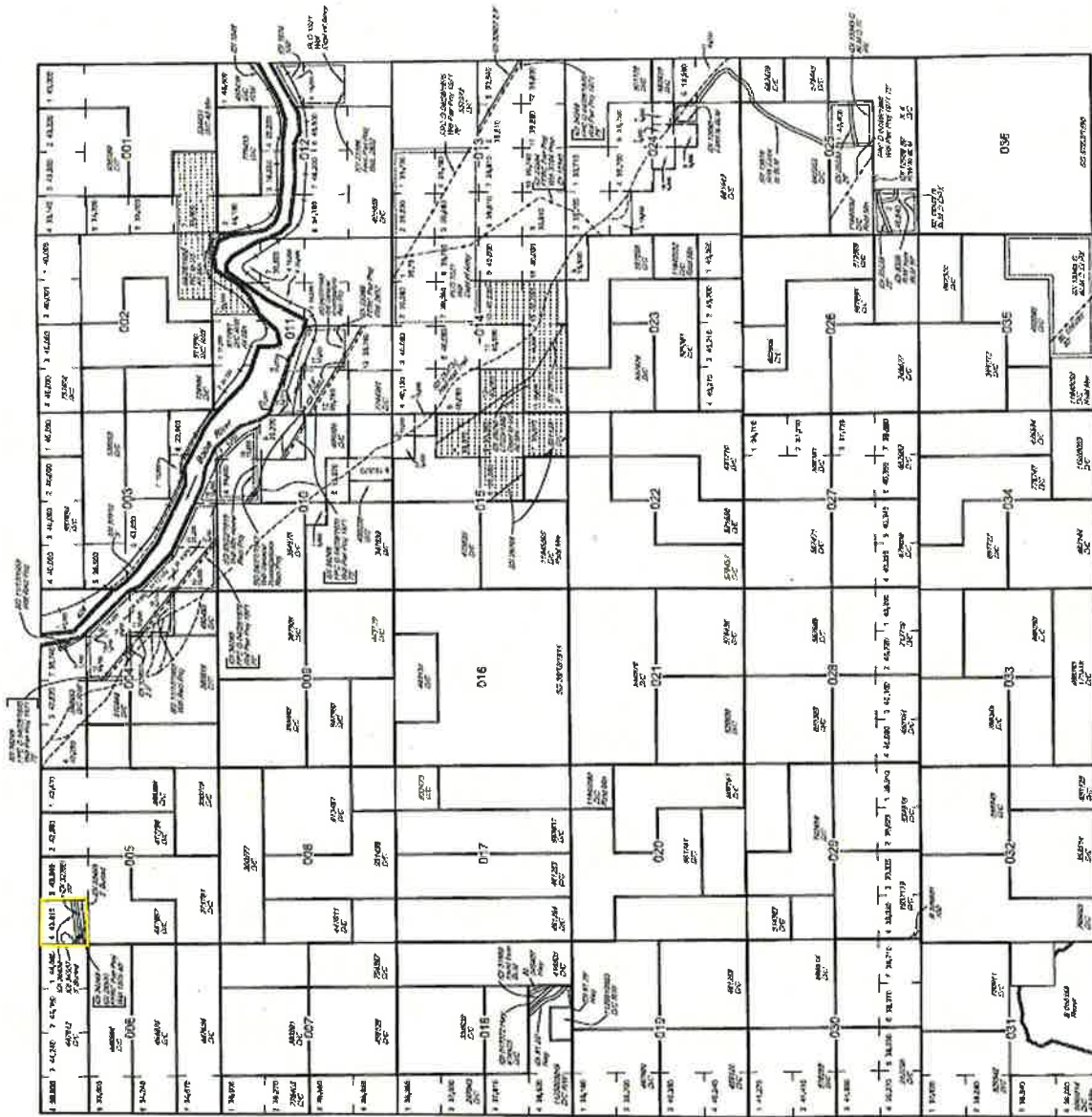
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ADA COUNTY 001
BOISE DISTRICT RES-3



U.S. Bureau of Land Management - Idaho State Office
1301 S. Myrtle Street, Boise, Idaho 83725
(208) 333-7000

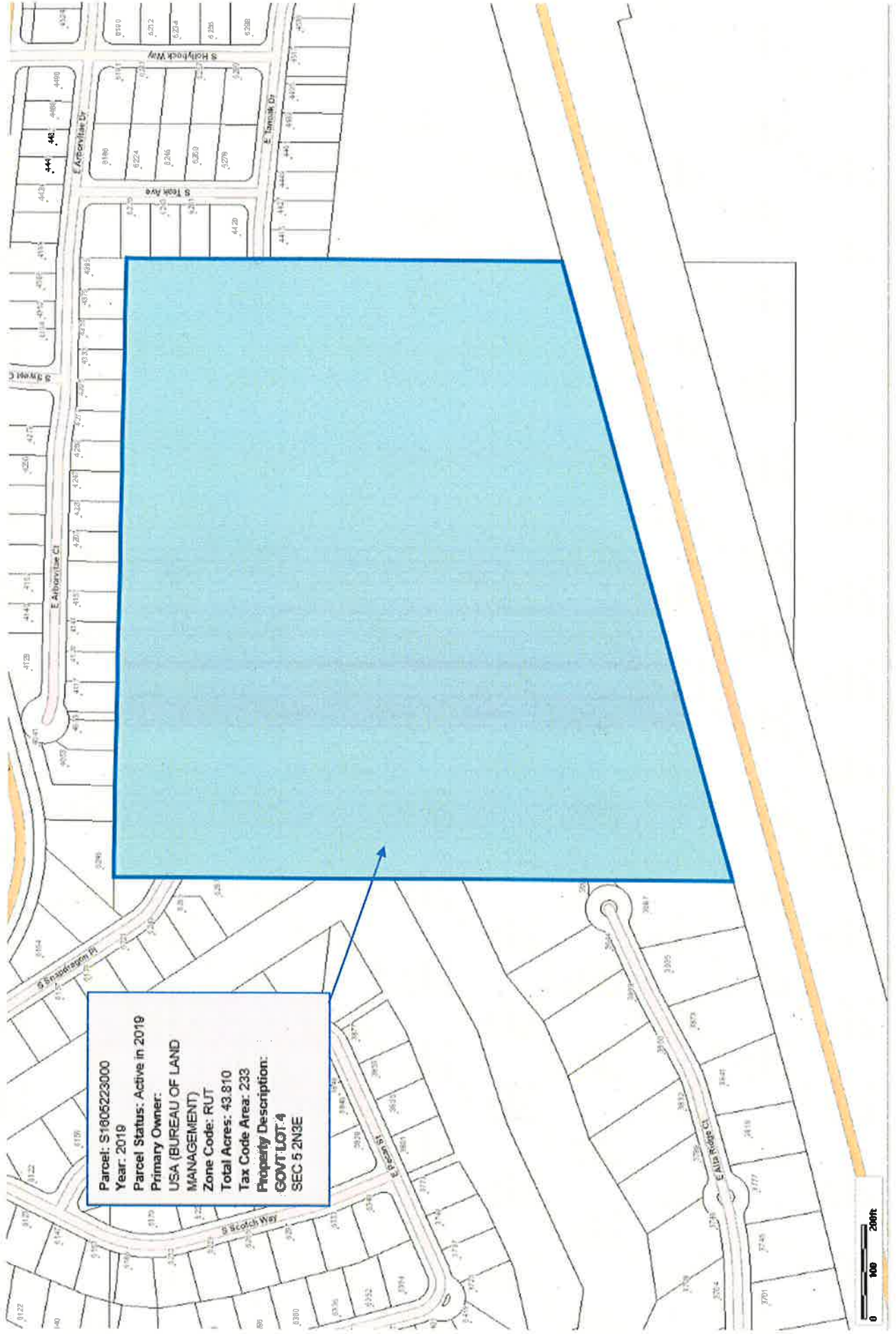


FOR CURRENT EFFECTIVE DISPOSAL OR LIST OF
UNREGISTERED LANDS REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

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CONVEYED BY	AD 2007-01-01
LAST REGISTERED	AD 2007-01-01
DATE OF	AD 2007-01-01
REGISTERED	AD 2007-01-01
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NOTE:
THIS PLAT
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REPRODUCTION
OF THE
ORIGINAL
PLAT
AND
IS NOT
A
GUARANTEE
OF
THE
ACCURACY
OF
THE
INFORMATION
CONTAINED
HEREIN.

63-11610, JRS Properties.
T02N, R03E, S05, Lot 4 (NWNW), BLM land



63-11610, JRS Properties.

T02N, R03E, S05, Lot 4 (NWNW), BLM land



