



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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

June 30, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Lee Peterson
Box T
Shoshone, ID 83352

RECEIVED
JUL 05 2000
Department of Water Resources
Southern Region

RE: TELEPHONE CONVERSATION - APPLICATIONS SUBMITTED TO THE
WATER SUPPLY BANK BY SPRING CREEK RANCH

Dear Lee:

This letter with enclosures is a follow-up to our telephone conversation on June 20, 2000, in connection with applications submitted to the Water Supply Bank by Judith W. Davis on behalf of Spring Creek Ranch in Bellevue, Idaho.

Enclosed for your information is a copy of my June 20, 2000, letter to her which returned the applications together with a Preliminary Order of the department issued on May 6, 1994 in connection with certain water rights which were found to have been forfeited through more than five (5) years continuous non-use.

If I can provide additional information or if you have questions, please feel free to contact me or the department.

Sincerely,



L. GLEN SAXTON
Hearing Officer

Encl: 2

cc: IDWR - Region

37-00191

37-00191

Ab-



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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

June 21, 2000

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED

JUN 20 2000

Department of Water Resources
Southern Region

Wood River Ranch
c/o William Yager
P.O. Box 479
Bellevue, ID 83313

RE: APPLICATIONS TO RENT WATER FROM THE WATER SUPPLY BANK

Dear Mr. Yager:

Returned are the two (2) applications to rent water right nos. 37-0577BH and 37-0577BK from the Water Supply Bank ("bank") operated by the Idaho Water Resource Board. The two water rights you seek to rent have been offered for lease to the bank but have not been accepted into the bank due to questions about past use and validity of the rights. Enclosed is a copy of my June 20, 2000 letter which returned the applications of J D Spring Creek Ranch to lease the rights to the bank.

Please feel free to check with the department from time to time to determine if there are other rights in the bank available to rent. If you have questions, please feel free to contact me.

Sincerely,

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

Encl: 3

e. IDWR - Region



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 6, 1994

RE: In the matter of Applications for Extension of Time to Avoid
Forfeiture of a Water Right for files 37-00648A&B, 37-00577H,
37-00483 and 37-00191 in the Name of Davis Investment Company.

Dear Interested Party:

The accompanying order is a "preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

37-00191

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district

court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

A handwritten signature in cursive script, reading "L. Glen Saxton".

L. GLEN SAXTON
Chief, Water Allocation Bureau

Enclosure

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6TH day of May, 1994, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER to the following:

Davis Investment Company
P.O. Box 92978
Long Beach, CA 90809

Gary Slette
Rosholt, Robertson and Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906


JULIE L. YARBROUGH
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS)
FOR EXTENSION OF TIME TO AVOID)
FORFEITURE OF A WATER RIGHT FOR)
FILES 37-00648A&B, 37-00577H,)
37-00483, 37-00191 IN THE NAME)
OF DAVIS INVESTMENT COMPANY)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of four (4) Applications for Extension of Time to Avoid Forfeiture of a Water Right and the department having investigated prior use of the rights, the Director of the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On September 16, 1993, Davis Investment Company (applicant) filed four (4) Applications for Extension of Time to Avoid Forfeiture of a Water Right for the above captioned water rights.

2. Water right no. 37-00648A&B is recorded with the department as follows:

Source: Big Wood River
Priority: April 30, 1889
Rate of div: 8.58 cfs
Point of div: SW1/4NW1/4 Section 20, T3N, R18E,BM.
Place of use: 176 acres in parts of Sections 14 and 15, T2N, R18E,BM.

3. Water right no. 37-00577H is recorded with the department as follows:

Source: Big Wood River
Priority: March 24, 1883
Rate of div: 6.96 cfs
Point of div: SW1/4NW1/4 Section 20, T3N, R18E,BM.
Place of use: 409 acres in parts of Sections 10, 14, 15 and 23, T2N, R18E,BM.

4. Water right no. 37-00483 is recorded with the department as follows:

Source: Big Wood River
Priority: August 1, 1902

Rate of div: 3.0 cfs
Point of div: SW1/4NW1/4 Section 20, T3N, R18E,BM.
Place of use: 99 acres in parts of Section 23, T2N, R18E,BM.

5. Water right no. 37-00191 is recorded with the department as follows:

Source: Big Wood River
Priority: April 30, 1889
Rate of div: 2.86 cfs
Point of div: SW1/4NW1/4 Section 20, T3N, R18E,BM.
Place of use: 37 acres in part of Section 10, T2N, R18E,BM.

6. The four applications each state that if the extension of time to avoid forfeiture is approved, the applicant will submit applications to transfer the water rights to new places of use within ninety (90) days of approval.

7. Each of the four applications state that the date when the water was last applied to beneficial use is unknown.

8. The department investigated past use of the water rights and on September 30, 1993, conducted a field inspection of the authorized place of use. In its investigation, the department also checked records in the Blaine County Courthouse and reviewed aerial photographs showing the place of use.

9. The water rights were diverted through the Hiawatha Canal which heads on the Big Wood River about four (4) miles north of Hailey, Idaho and were conveyed through the canal to the place of use which is approximately 1.0 to 1.5 miles southeast of Hailey.

10. Part of the delivery system from the Hiawatha canal upstream from the place of use of the four water rights was removed approximately in 1974 as a part of the activity to construct a high school and the Woodside subdivision. Subsequent to 1974, a delivery system to convey the rights to the place of use was not reconstructed.

11. The department has no evidence to show that the rights have been diverted and beneficially applied to the authorized place of use since 1974.

CONCLUSIONS OF LAW

1. Idaho law provides that a water right shall be forfeited by a failure for the term of five years to apply it to the beneficial use for which it was appropriated and thereafter the right to use of the water shall revert to the state and be again subject to appropriation. I.C. Section 42-222(2) (1990); *Sears v. Berryman*, 101 Idaho 384, 389, 647 P.2d 1256 (1982).

2. Section 42-222(2), Idaho Code, provides that an

application for an extension of time to avoid forfeiture shall be made before the end of a term of five years in which the water was not applied to the beneficial use for which it was appropriated.

3. In order to approve an application for an extension of time to avoid forfeiture under Section 42-222(2), Idaho Code, the director must be able to determine that other rights will not be injured by granting the extension.

4. The director of the department has jurisdiction to determine the question of forfeiture in acting upon an application for extension of time to avoid forfeiture. Such is required as a preliminary step to performance of his statutory duty in determining whether or not a resumption of the right would injure other rights. See *Jenkins v. State*, Dept. of Water Resources, 103 Idaho 384, 389, 647 P.2d 1256 (1982).

5. Water rights 37-00648A&B, 37-00577H, 37-00483 and 37-00191 have not been applied to beneficial use for more than a continuous five (5) year period prior to the filing of an applications for extension of time to avoid forfeiture.

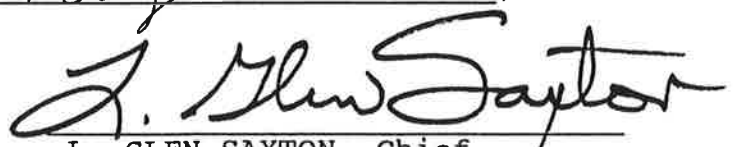
6. The department should deny the four (4) Applications for Extension of Time to Avoid Forfeiture of a Water Right filed by the applicant and should find that the rights have been forfeited thorough non-use.

ORDER

IT IS THEREFORE, hereby ORDERED that Applications for Extension of Time to Avoid Forfeiture of Water rights 37-00648A&B, 37-00577H, 37-00483 and 37-00191 are hereby DENIED.

IT IS FURTHER hereby ORDERED that the water rights represented by Water Right Identification Numbers 37-00648A&B, 37-00577H, 37-00483 and 37-00191 are found to be FORFEITED through non-use.

Signed this 6th day of May, 1994.


L. GLEN SAXTON, Chief
Water Allocation Bureau
Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 10, 1994

RECEIVED

JAN 11 1994

Department of Water Resources
Southern Region Office

Rosholt, Robertson, Tucker
c/o Gary Slette
P.O. Box 1906
Twin Falls, ID 83303-1906

RE: APPLICATIONS FOR EXTENSION OF TIME TO AVOID FORFEITURE OF
WATER RIGHTS 37-00648A AND 37-00648B (SRBA A37-11489), 37-
00577H (SRBA A37-11483), 37-00483 (SRBA A37-00483), 37-00191
(SRBA A37-00191) IN THE NAME OF DAVIS INVESTMENT CO.

Dear Mr. Slette:

Our Twin Falls office has forwarded the above referenced applications to this office for review and final action. In order to adequately review the applications, the applicant needs to provide the information requested in item no. 9. on each of the four (4) applications. This question requests the date when the water was last applied to a beneficial use under the respective water rights.

Please provide the requested information within thirty (30) days. Failure to timely respond with the requested information will be cause for the director to deny the extension requests.

If you have questions, please feel free to contact the department.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region

37-00191

Water Right No. 37-00191

SRBA A37-00191

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Application for Extension of Time to Avoid Forfeiture
of a Water Right

Section 42-222 of the Idaho Code provides that a water right shall be lost and forfeited and the water revert to the state upon the failure of a water user to apply the water to beneficial use for a period of five (5) years. The Director may allow an additional five (5) year period of non-use without forfeiture upon a showing of reasonable cause.

Complete fully the following application and submit it to the Department of Water Resources, Statehouse, Boise, Idaho, 83720, with the statutory fee of \$30.00 if the application involves 0.2 cfs or 20 acre feet or \$50.00 if in excess of these amounts.

1. Name of water right holder Davis Investment Company
Post office address P.O. Box 92978 Long Beach CA 90809
2. The right was obtained or is evidenced by:
a. Decree to W.T. Drake in Case of S. C. Frost, Et Al
(Name)
vs. Alturas Water Co. Et Al, Dated 12-13-1909 in Fourth District
(Name of Court)
Court, County of Lincoln, Fully describe decree _____
- b. License No. _____ issued by the Department of Water Resources.
- c. Claim No. _____ on file with the Department of Water Resources.
3. Source of water Big Wood River tributary to Malad River
(Name of stream or source)
4. Date of priority of right 04-30-1889
5. Amount of water a. 2.86 c.f.s. and/or
b. _____ acre feet/annum
6. Water is used for irrigation from 04/01 to 11/01
from _____ to _____
from _____ to _____
(Purpose) (Month-Day) (Month-Day)
7. Location of point of diversion is SW 1/4 NW 1/4 of Section 20
Township 3N, Range 18E, B.M., in Blaine County;
Additional points of diversion, if any, _____

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
<u>2N</u>	<u>18E</u>	<u>10</u>												<u>6</u>		<u>31</u>			<u>37</u>

Total number of acres irrigated 37

37-00191

9. Give last date when water was applied to beneficial use Unknown
Length of extension of time requested 5 years, or until _____ (Date)
10. Explain fully your reasons for requesting an extension of time within which to resume the use of your water right and reasons for non-use Please See Attached

I hereby assert that no one will be injured by such extension. The information contained in this application is true to the best of my knowledge.

Subscribed and sworn to before me this 13th day of September, 19 93

My commission expires 4-21-96 Residing at Twin Falls, ID

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby _____ said application subject to the following conditions or reasons.

Witness my hand this _____ day of _____, 19 _____.

(Director)

For Department Use Only

Received by J.F. Stanton Date 9-18-93 Time 10:40am Preliminary check by mts
Fee \$ 50.00 Receipted by J.F. Stanton Date 9-17-93 Publication prepared by MB
Published in Wood River Journal Dates 12/15 + 12/22/93
Publication approved by _____ Date _____ Protests filed by: _____
Copies of protests forwarded by _____ Hearing held by _____ Date _____
Recommended for // Approval // Denial by _____

10.

Applicant acquired this water right from the subdivider of the place of use ("POU"). It was applicant's intention to transfer the water right to other land owned by the Applicant near Timmerman Hill. Prior to attempts to transfer this right, Applicant had successfully transferred another portion of the W.T. Riley right to his Timmerman Hill property. When he attempted to transfer this right, a dispute arose with the City of Hailey which delayed the transfer, but the dispute was ultimately settled. Applications were then submitted to the IDWR for the transfer of this water right, but administrative considerations arose which resulted in a delay in acting upon the transfer applications, which delay lasted three to four years, and was beyond the control of the Applicant. It was ultimately determined that the transfer would not be approved by the IDWR due to transmission losses in a downstream transfer. (For further information regarding that decision, please contact Gary Spackman.) Applicant proposes to submit new transfer applications for new POU's which are upstream, or in the vicinity of, the original POU. If this extension is approved, Applicant will submit such applications within ninety (90) days of the approval.

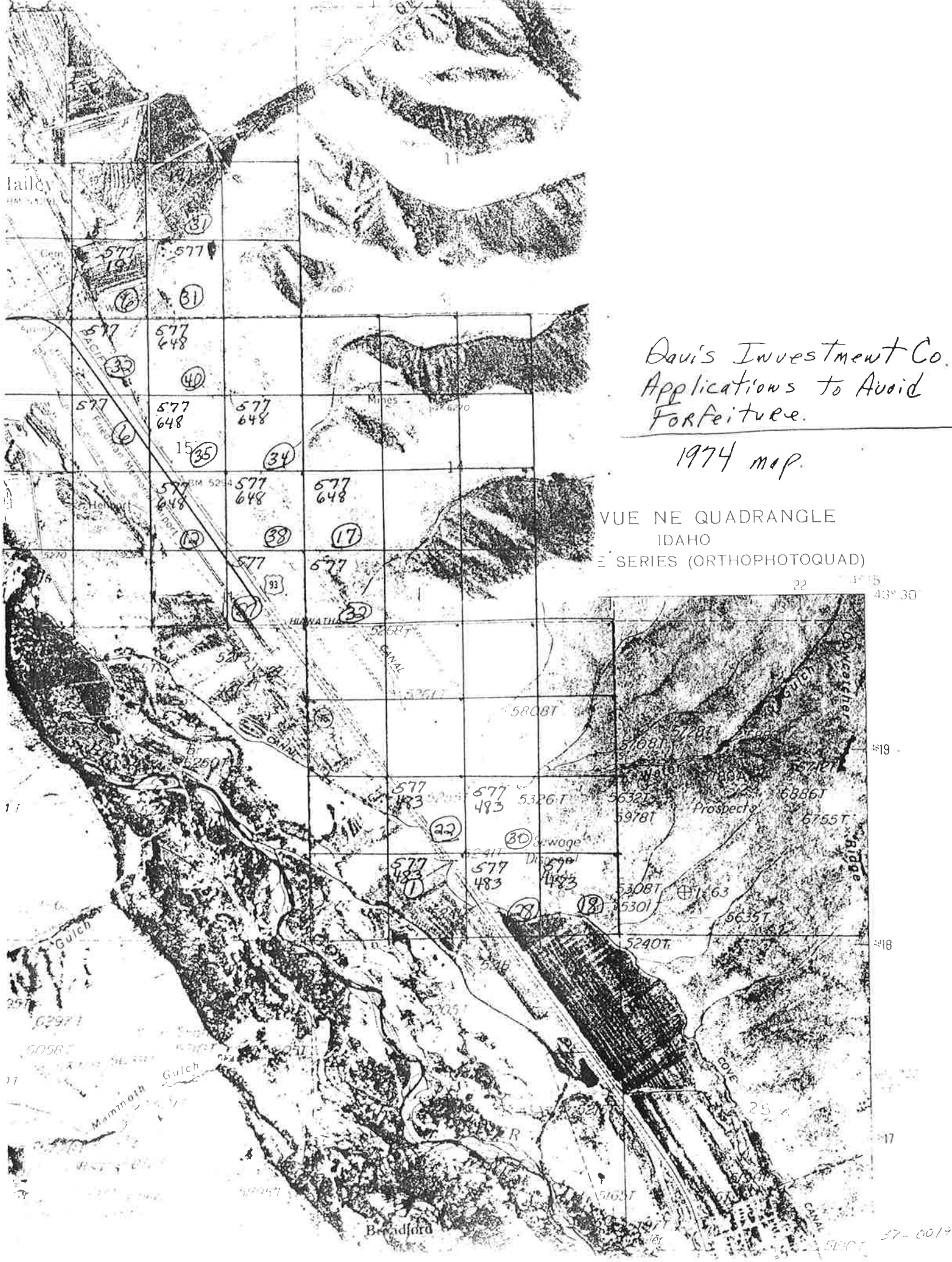
09089301.GDS

Hailey

Davis Investment Co.
Applications to Avoid
Forfeiture.

1974 map.

VUE NE QUADRANGLE
IDAHO
E SERIES (ORTHO PHOTOQUAD)



AMENDED QUITCLAIM DEED

ORIGINAL QUITCLAIM DEED NO. 298978

FOR VALUE RECEIVED, Sprenger, Grubb & Associates, Inc., an Idaho corporation does hereby convey, release, remise and forever quit claim unto Davis Investment Company, a California Corporation whose address is P.O. Box 92978, Long Beach, California 90809, all of its right, title and interest in and to the following-described premises, to-wit:

All water and water rights appurtenant to lands owned by Grantor in Sections 10, 15, 22 and 23, Township 2 North, Range 18 East, B.M., consisting of but not limited to the following decreed water rights from Big Wood River:

348.2 inches with date of priority of March 24, 1883; 37-0577, W.T. Riley (ptn)

143 inches with date of priority of April 30, 1889; 37-0191, W.T. Drake

279 inches with date of priority of April 30, 1889; Southerland & Weber

428 inches with date of priority of April 30, 1889; 37-0648

150 inches with date of priority of August 1, 1902; 37-0483, Annie I. Miller

together with their appurtenances.

DATED this 27 day of May, 1993.

SPRENGER, GRUBB & ASSOCIATES, INC.

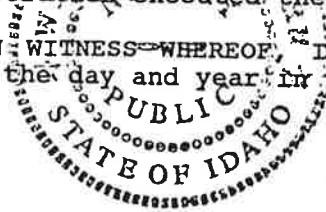
By C.A. Grubb
C.A. Grubb, President

STATE OF IDAHO)

County of Blaine) ss.

On this 27th day of May, 1993, before me, a Notary Public, in and for the County of Blaine and State of Idaho, personally appeared C.A. Grubb, known or identified to me to be the President of Sprenger, Grubb & Associates, Inc., 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.



C. Leland L. Krueger
NOTARY PUBLIC FOR IDAHO
Residing at: Wacey
My commission expires: 1-5-96

05259301.GDS

BLAINE CO. REQUEST

OF Rasholt, Robertson

AMENDED QUITCLAIM DEED - 1

1993 JUN 16 A 11:47

NARY GREEN, CLERK
FELS \$3.00 MP

353781

Amend Deed