

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

RECEIVED
OCT 01 2018
**DEPARTMENT OF
WATER RESOURCES**

CONSENT ORDER AND AGREEMENT

In the Matter of Notice of Violation ("NOV") No. E2017-1235 dated August 1, 2018, issued to Eckhardt Family LLLP and James Eckhardt (collectively "Eckhardt") by the Idaho Department of Water Resources ("Department").

BACKGROUND

- 1) On October 23, 2014, the Department received a complaint alleging that Eckhardt was diverting and storing water without valid water rights.
- 2) On November 21, 2014, the Department conducted a field inspection of lands owned by Eckhardt. The Department found that Eckhardt was diverting and storing water in six (6) ponds without the required water right authorization. The Department subsequently sent correspondence to Eckhardt requiring Eckhardt to breach the dams associated with the six (6) ponds or apply for the appropriate authorization from the Department.
- 3) Eckhardt filed Applications for Permit to Appropriate the Public Waters of the State of Idaho ("applications for permit") to authorize the six (6) ponds. The applications for permit were withdrawn before hearing. Permits for the six (6) ponds were not acquired.
- 4) On August 25, 2017, the Department received a second complaint renewing the allegations set forth in the October 24, 2014 complaint.
- 5) The Department conducted a field inspection of lands owned by Eckhardt on September 26, 2017. The Department found that Eckhardt was diverting and storing water from natural watercourses without a valid water right. The diversions identified were twelve (12) ponds and five (5) spring developments. The spring developments are composed of five (5) spring boxes that divert water to several stockwater troughs. The twelve (12) ponds are described in Exhibits 1 and 2, and the five (5) spring developments are described in Exhibits 3 and 4. The foregoing exhibits are attached hereto and are fully incorporated into this Consent Order and Agreement. The Department conducted two follow-up field inspections of certain ponds on March 19, 2018, and April 27, 2018.
- 6) On November 3, 2017, the Department sent correspondence to Eckhardt requiring Eckhardt to provide a written response that proposed both a plan and a timeline to address the twelve (12) ponds and five (5) spring developments. The correspondence informed Eckhardt that the Department required that all structures impounding water without a water right have outlet works or conduits installed and fully opened, or impoundments breached to ensure that water is allowed to freely flow downstream.
- 7) On January 2, 2018, the Department received a response from Eckhardt, which requested an informal meeting with Department staff to discuss and attempt to resolve this matter. An informal meeting was held on June 1, 2018.

EXHIBIT

366

- 8) On June 8, 2018, the Department sent correspondence to Eckhardt, memorializing an agreement made at the June 1, 2018 meeting that Eckhardt would provide a written plan and timeline to address the twelve (12) ponds and five (5) spring developments as was required in the November 3, 2017 letter.
- 9) On July 2, 2018, the Department received a letter from Eckhardt stating that Eckhardt would file deferred *de minimis* stock water claims in the Snake River Basin Adjudication ("SRBA") to address the twelve (12) ponds and five (5) spring developments.
- 10) On July 10, 2018, the Department sent correspondence to Eckhardt stating that the plan proposed by Eckhardt in the July 2, 2018 letter would not adequately address the twelve (12) ponds and five (5) spring developments in a timely manner because, based on the information that had been provided to the Department, no valid water right existed for the identified diversions. The July 10, 2018 letter also informed Eckhardt that the Department would proceed with a formal enforcement action and that the Department would consider any additional information provided by Eckhardt. The Department received additional information from Eckhardt on July 23, 2018.
- 11) On August 1, 2018, the Department issued an NOV to Eckhardt for diverting and storing water without valid water rights. In the NOV, the Department concluded that Eckhardt: 1) is illegally diverting up to 0.10 cubic feet per second ("cfs") from five (5) spring boxes to several stock troughs; and 2) is illegally diverting and storing 6.7 acre-feet of water in twelve (12) ponds without a water right.
- 12) On August 24, 2018, the Department held a compliance conference as requested by counsel for Eckhardt.
- 13) On September 12, 2018, Eckhardt filed applications for permit for each of the twelve (12) ponds referenced in the August 1, 2018 NOV. Eckhardt also filed a transfer application for two (2) of the ponds.

APPLICABLE LAW

- 1) Idaho Code § 42-351(1) states that it is unlawful to divert or use water from a natural watercourse or from a groundwater source without having obtained a valid water right or to divert or use water not in conformance with a valid water right.
- 2) Idaho Code § 42-351(3) authorizes the Department to initiate an administrative enforcement action for the illegal diversion or use of water in accordance with Idaho Code § 42-1701B.
- 3) Idaho Code § 42-1701B authorizes the Department to issue an NOV and seek civil penalties and other redress for violations of Idaho Code § 42-351 and to execute a consent order formalizing an agreement between the Department and the alleged violator to remedy any damage caused by the violation and to ensure future compliance.
- 4) For violations of Idaho Code § 42-351, the Department may seek civil penalties in the amount of fifty dollars (\$50.00) per two tenths (0.2) of an acre-foot of water diverted to storage pursuant to Idaho Code § 42-1701B(6).

- 5) For violations of Idaho Code § 42-351, the Department may seek civil penalties in the amount of fifty dollars (\$50.00) per one tenth (0.1) cfs of water or part thereof diverted per calendar day for non-irrigation uses pursuant to Idaho Code § 42-1701B(6).

TERMS OF AGREEMENT AND ORDER

- 1) Eckhardt agrees to breach or modify all twelve (12) ponds identified in the NOV and described in Exhibit 1 and 2 as follows:
 - a) On or before December 31, 2018, the ponds identified as Pond 3, 4, and 11 shall be breached or modified such that no water can be captured or stored and water is allowed to freely flow downstream without obstruction.
 - b) On or before August 31, 2019, the remaining nine (9) ponds shall be breached or modified such that no water can be captured or stored and water is allowed to freely flow downstream without obstruction unless water right authorization has been obtained prior to that date.
 - c) In order to comply with the above deadlines, Eckhardt must submit photographic evidence to the Department within the specified deadline that clearly demonstrates that the ponds have been breached or modified in compliance with this term. The Department may conduct field inspections of Eckhardt property to confirm compliance with this term.
- 2) Once a pond is breached or modified, Eckhardt will not divert or store water at the pond until authorization is granted from the Department for the diversion and storage of water at that location.
- 3) On or before October 15, 2018, Eckhardt agrees to take one or both of the following actions to obtain authorization for the five (5) spring developments described in Exhibits 3 and 4: (1) file deferred *de minimis* stockwater claims with the SRBA Court; and/or (2) file applications for permits with the Department. If a water right is decreed in the SRBA to Eckhardt that requires a subsequent application for transfer to resolve this NOV, Eckhardt will file the application with the Department within ninety (90) days of the water right being decreed. Eckhardt agrees to pursue the claims and/or applications diligently in order to secure water right authorization for the five (5) spring developments as soon as possible.
- 4) If Eckhardt fails to make diligent efforts, is unable to secure water right authorization for any of the five (5) spring developments, or otherwise fails to comply with term no. 3, upon notice from the Department, Eckhardt shall immediately decommission any spring boxes that remain unauthorized. In order to decommission a spring box Eckhardt shall install a plug in the sidewall of the cement spring box to prevent water entering the spring box and dismantle the distribution lines that run from the spring box to each stockwater trough.
- 5) Eckhardt agrees to pay a penalty of \$1,675 for diverting and storing water in twelve (12) ponds without authorization. The total penalty of \$1,675 shall be remitted to the Department by October 1, 2018.
- 6) The Department agrees to suspend the civil penalty of \$18,250 associated with the spring developments. However, Eckhardt agrees that if Eckhardt fails to comply with the terms of agreement established in this Consent Order, the suspended civil penalty (\$18,250) will become due and payable upon specific notification by the Department.

Dated this 2nd day of October, 2018

Cherie Palmer
CHERIE PALMER
Water Compliance Bureau

CONSENT

Eckhardt acknowledges in general the facts set forth herein and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Eckhardt waives any right to contest this Order and consents to the issue hereof.

Dated this one day of oct., 2018

James Eckhardt
JAMES ECKHARDT as an individual and as owner and
operator of ECKHARDT FAMILY LLLP

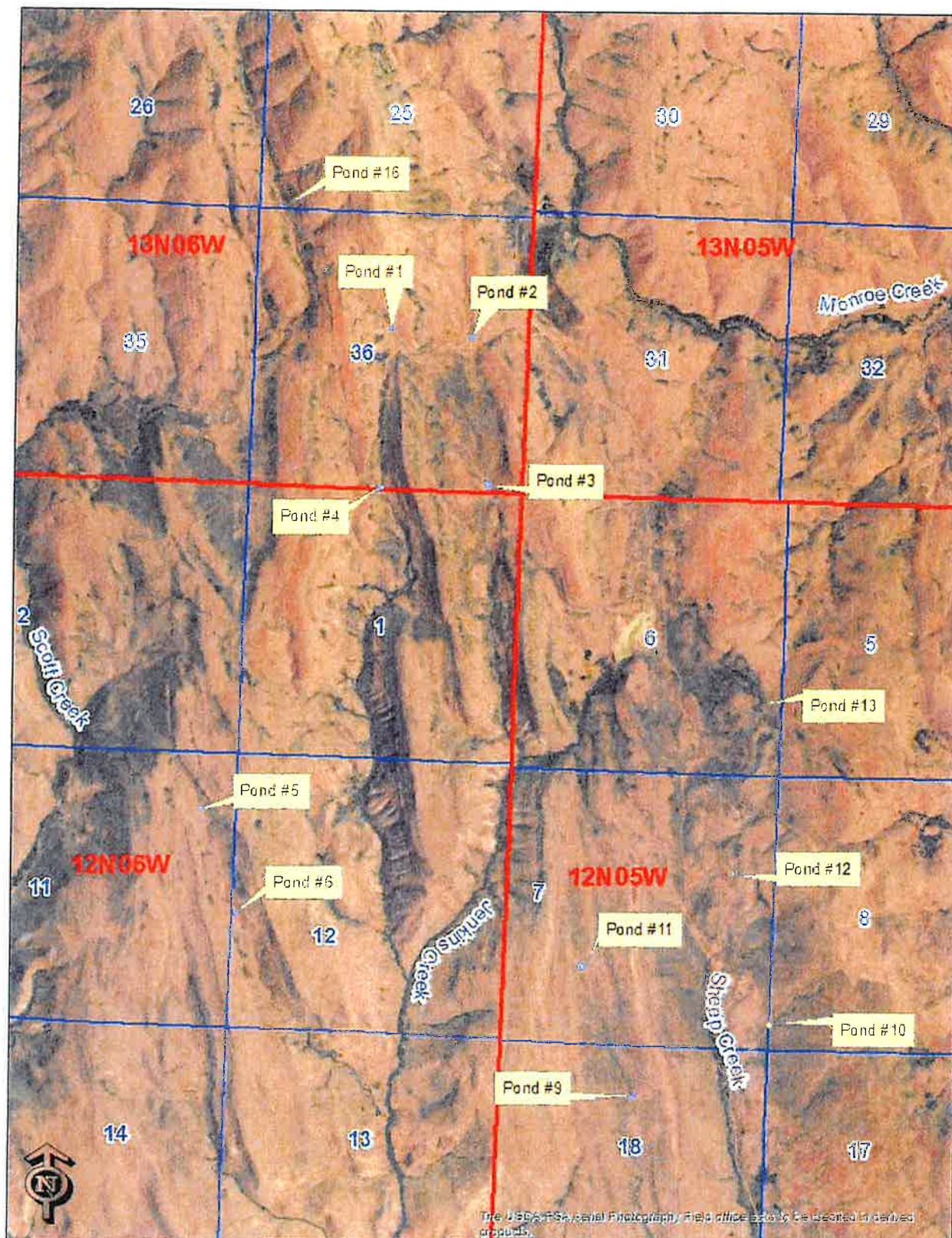
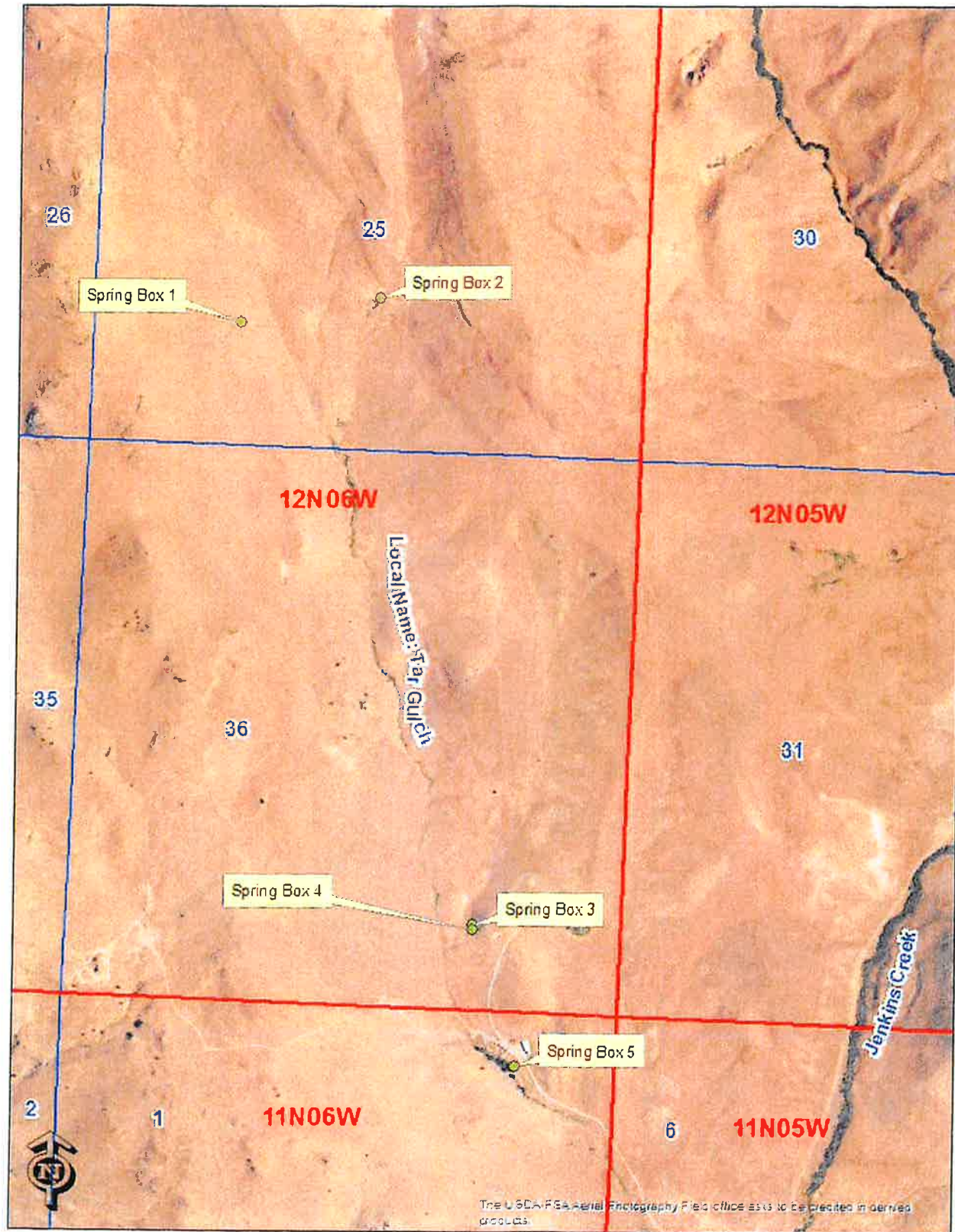


Exhibit 1

Department Identification No.	Source of Water	Tributary	Legal Description (Township, Range, Section, Quarter-Quarter)	Capacity (acre-feet)
Pond 1	Jenkins Creek	Snake River	13N 06W 36 SE¼NW¼	0.4
Pond 2	Jenkins Creek	Snake River	13N 06W 36 SE¼NE¼	0.4
Pond 3	Unnamed Stream	Jenkins Creek	13N 06W 36 SE¼SE¼	0.5
Pond 4	Unnamed Stream	Jenkins Creek	13N 06W 36 SE¼SW¼ and 12N 06W 01 Government Lot 3 NE¼NW¼	1.5
Pond 5	Unnamed Stream	Jenkins Creek	12N 06W 11 NE¼NE¼	0.4
Pond 6	Unnamed Stream	Jenkins Creek	12N 06W 12 NW¼SW¼	0.4
Pond 9	Unnamed Stream	Jenkins Creek	12N 05W 18 NW¼NE¼	0.4
Pond 10	Unnamed Stream	Sheep Creek	12N 05W 07 SE¼SE¼	0.3
Pond 11	Unnamed Stream	Jenkins Creek	12N 05W 07 NE¼SW¼	0.9
Pond 12	Unnamed Stream	Sheep Creek	12N 05W 07 SE¼NE¼	0.2
Pond 13	Unnamed Stream	Monroe Creek	12N 05W 06 NE¼SE¼	0.2
Pond 16	Unnamed Stream	Scott Creek	13N 06W 25 SW¼SW¼	0.9
Total				6.7

Exhibit 3

Department Identification No.	Legal Description (Township, Range, Section, Quarter-Quarter)
Spring Box 1	12N 06W 25 SE¼SW¼
Spring Box 2	12N 06W 25 NW¼SE¼
Spring Box 3	12N 06W 36 SW¼SE¼
Spring Box 4	12N 06W 36 SW¼SE¼
Spring Box 5	11N 06W 01 Government Lot 1 NE¼NE¼



Idaho Department of Water Resources Receipt
Receipt ID: C105724

Payment Amount	\$1,675.00	Date Received	10/1/2018	Region	STATE
Payment Type	Check	Check Number	3059		
Payer	MOORE, DEREK C / MOORE, CHERI R				
Comments	ENFORCEMENT PENALTY / NOTICE OF VIOLATION E2017-1235				

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$1,675.00	WATER RIGHTS PENALTY	55506	0229	22		1315



Signature Line (Department Representative)