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DEPARTMENT OF
WATER RESOURCES

Fredric W. Price
Water Rights Specialist
U.S.D.I., Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657
(208) 373-3831 phone
(208) 373-3839 fax
fwprice@blm.gov

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

IN THE MATTER OF LICENSE NO.)
61-07664 IN THE NAME OF MILDRED M.) **PETITION FOR RECONSIDERATION**
NORSTEBON AND STANLEY G.)
NORSTEBON)

On June 5, 2018 the Idaho Department of Water Resources ("IDWR") issued License No. 57-07626 to Mildred M. and Stanley G. Norstebon ("Claimants"). Certificate of Service is dated June 7, 2018. The United States of America, Department of Interior, Bureau of Land Management ("BLM") respectfully files this Petition for Reconsideration regarding issuance of License No. 61-07664 pursuant to the IDWR rules of procedure, IDAPA 37.01.01.730.02.a.

On May 1, 1991, IDWR received an Application for Permit filed by the claimants. The application was published for irrigation use and stockwater use in T02S, R06E, S06, NESW and Lot 6 (NWSW) (published August 7, 1991 and August 14, 1991). Permit to Appropriate Water was issued by IDWR on October 1, 1991 and did not include T02S, R06E, S07, NENE under the place of use. Proof of Beneficial Use was submitted timely (November 27, 1991). IDWR performed a Beneficial Use Field Report (December 24, 1998).

This Petition for Reconsideration is being filed to request removal of T02S, R06E, S07, NENE, under the Place of Use element from recently issued License 61-07664; as this is an

unadvertised enlargement from the original Approved Permit issued October 1, 1991. This place of use was not part of the original application nor was any amendment prior to licensing advertised. There was no opportunity to protest the new legal land description because the amendment was made at Licensing. The amendment was not advertised and therefore proper notice was not given to water users. This is the first opportunity BLM has had to protest the added legal land description T02S, R06E, S07, NENE. The point of diversion ("POD") and place of use ("POU") describe private land, however the means of conveyance (i.e. pipeline) between the POD and POU crosses federal land within T02S, R06E, S07, Lot 1 (NWNW), NWNE, and NENW. The Norstebon's do not have legal access across federal land pursuant to a right-of-way ("ROW") for the construction of a pipeline on federal land, nor to transport water across federal land.

Attached hereto as Exhibit 1 is a true and correct copy of BLM Master Title Plat ("MTP") which is an official business record of the United States. The MTP is the United States' official Record of Title. It is the graphic display of township survey data, and is drafted from information abstracted, compiled, and composed from the latest approved U.S. Government Survey Plats, survey notes, and protraction diagrams. It describes the locations of United States property, aliquot parcels, and government surveyed "lots".

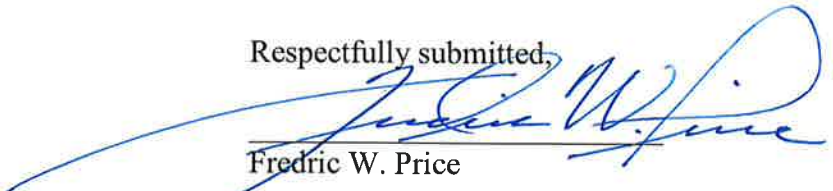
After reviewing documents on IDWR's website, the route of the pipeline can be determined. According to the MTP the pipeline crosses federal land managed by the Bureau of Land Management within T02S, R06E, S07, Lot 1 (NWNW), NWNE, and NENW. Attached hereto as Exhibit 2 is a map prepared for illustrative purposes by BLM showing the features of this license relative to federal land.

BLM is adversely affected by the licensing of the Amended Application for Permit due to

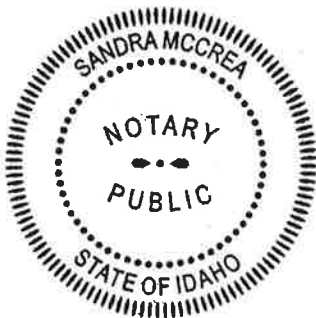
trespass. BLM respectfully requests that IDWR issue an Amended License removing the place of use described in the T02S, R06E, S07, NENE as there is no authorization to construct a pipeline or transport water across federal land in order to serve this place of use. The Norstebons do not have legal access from the point of diversion to the place of use. There was no opportunity to protest the amendment 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 21st day of June, 2018.
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: 06-09-2023

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on June 21, 2018 I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION; LICENSE NO. 61-07664** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Jeff Peppersack, Bureau Chief, Water Allocations Bureau
Idaho Department of Water Resources
State Office
Water Management Division
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Copies to:

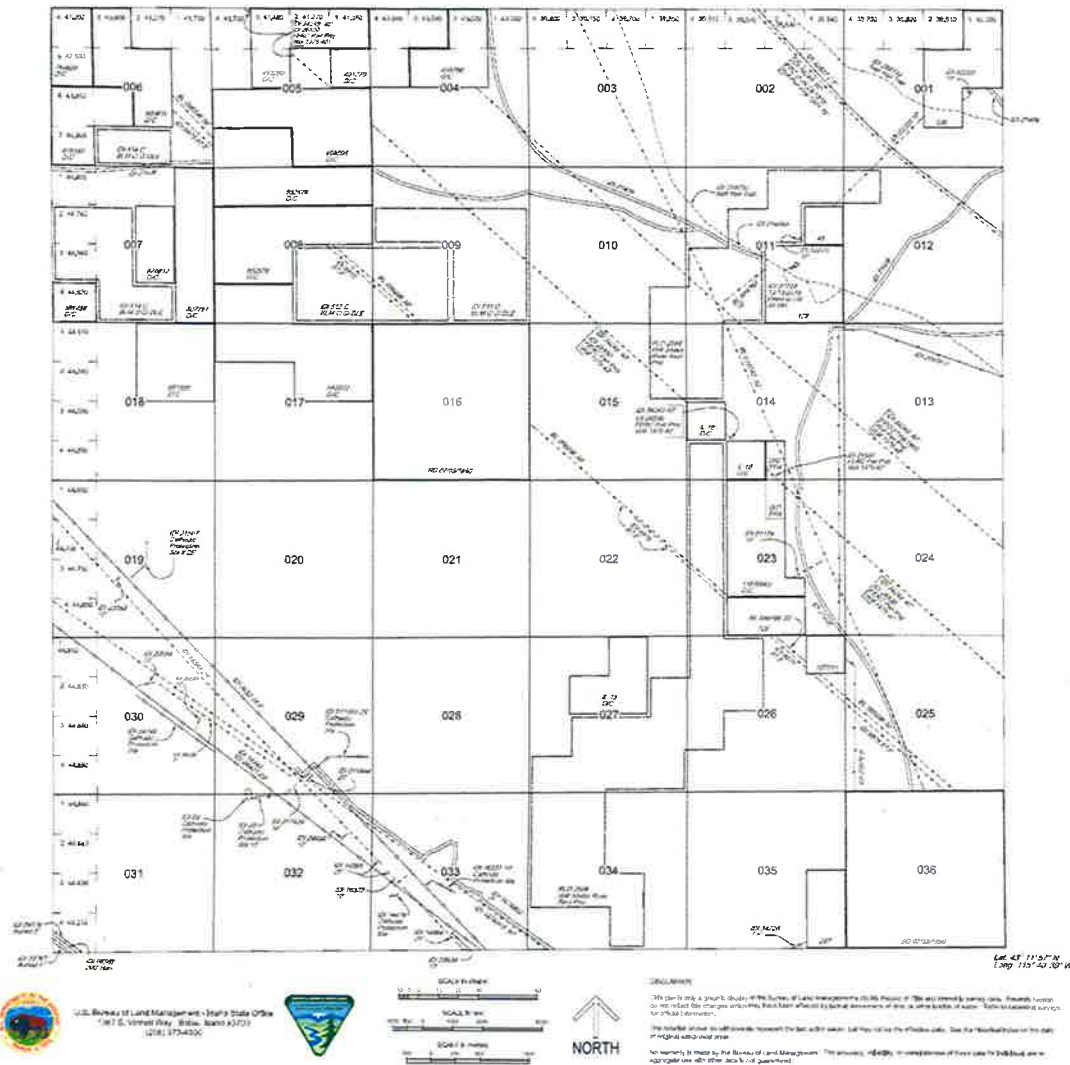
Stanley and Mildred Norstebon
14158 NE Memory Lane
Mountain Home, Idaho 83647-5281

Allen Tarter, Natural Resource Specialist
Jeff Mork, Compliance Specialist
U.S.D.I., BLM
Boise District Office
3948 Development Avenue
Boise, Idaho 83705-5339



Signature of Person Serving Documents

ELMORE COUNTY 039
 2006 DISTRICT 2007

MT PLAT[illegible]

CV 25073-2 Next Best Offer

ĐƯỢC SỬ DỤNG

FOIA ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LANDS REFER TO INDEX OF
INTELLIGENCE DOCUMENTS

[illegible]

Table 1 T. 2 H. 5	Table 2 T. 2 H. 5
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LICENSE NO. 61-07664

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EXHIBIT 1

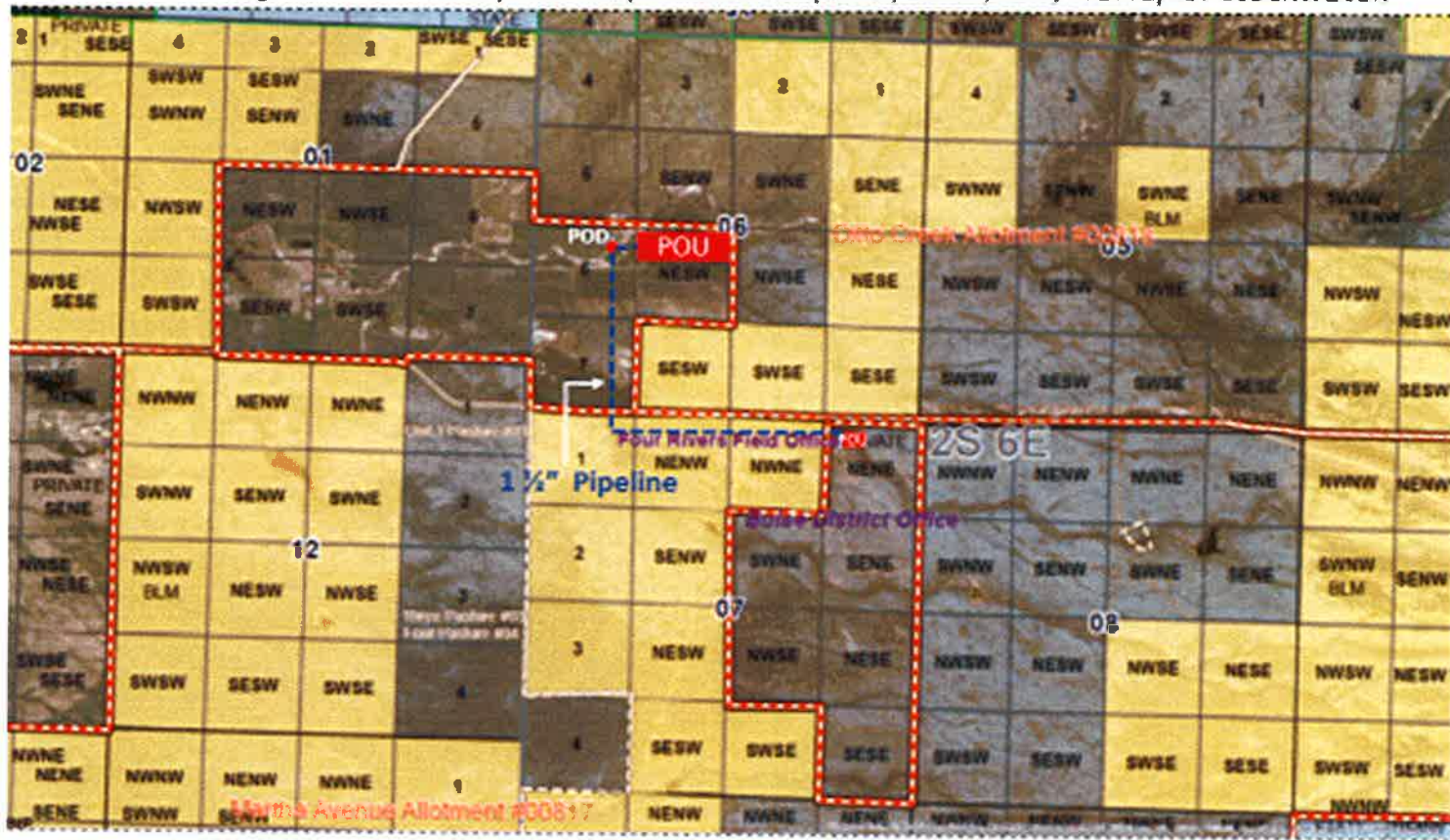
61-07664 (Mildred M. and Stanley G. Norstebon)

Recently issued license indicates 1 1/2" pipeline crossing BLM.

No BLM ROW or Range Improvement exists.

Pipeline crossing BLM fills small pond on private land (T02S, R06E, S07, NENE) for stockwater.

EXHIBIT 2



LICENSE NO. 61-07664

PETITION FOR RECONSIDERATION