

RECEIVED
MAY 08 2018
DEPARTMENT OF
WATER RESOURCES

IN THE MATTER OF LICENSE NO.)
37-08686 IN THE NAME OF) **PETITION FOR RECONSIDERATION**
HEATHERLANDS HOMEOWNERS)
ASSOCIATION, INC.)

Application for Permit was filed with IDWR on September 28, 1990 by GMMK Group B. The application was amended March 3, 1995 (first amendment) and publicized May 3, 1995 and May 10, 1995. A Permit to Appropriate Water was issued September 22, 1995 with deadline to submit proof of beneficial use October 1, 1996. The application lapsed October 30, 1996 due to no proof filed. Proof of Beneficial Use was submitted November 18, 1996 and the Permit was re-instated and the priority date advanced. Amended Application (Second Amendment) was filed April 16, 2018.

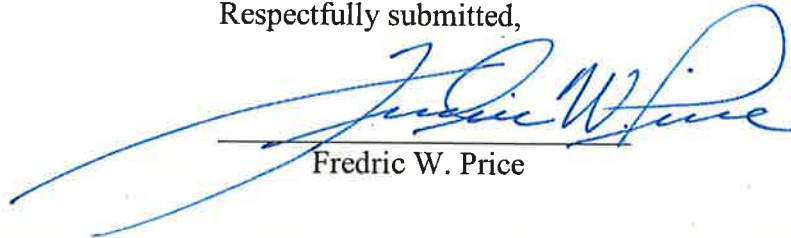
Recently issued License 37-08686 is for Fire Protection (0.56 cfs), Domestic (0.23 cfs/ 12.6 AF), and Irrigation purposes (0.07cfs/ 8.8 AF) and has a new legal land description Place of Use ("POU") which entirely describes federal land (T03N, R18E, S17, SWNE) under the Domestic, Fire Protection, and Irrigation elements which was not listed previously in the permit nor advertised (1985). The new POU on federal land was first listed on the recently amended application (Amended April 16, 2018) and the second amendment changes were never advertised. 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 for domestic or irrigation use on federal land. The introduction of a different or additional legal land description is a substantial amendment requiring readvertising, otherwise neighbors have to protest all applications adjacent to their property in case their land gets added by an unadvertised amendment.

BLM respectfully requests that IDWR remove the POU describing federal land (T03N, R18E, S17, SWNE) from License 37-08220 POU under the domestic, fire protection, and irrigation elements of the license because the Claimant is not authorized for domestic, fire protection, or irrigation uses on BLM land in T03N, R18E, S17, SWNE. Dependent Resurvey Township 3 North, Range 18 East, Sec. 8, 9, and 17 (filed March 21, 2012) and associated survey notes confirms no private buildings are located in the SWNE of S17, and that the fenceline is completely located within private lands.

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 7th day of May, 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: June 9, 2023

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on May 7, 2018 I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION; LICENSE NO. 37-08686** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Gary Spackman, Director
IDWR, State Office
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to:

Corey Skinner, P. E., Regional Manager
Idaho Department of Water Resources
Southern Regional Office
650 Addison Ave West, Suite 500
Twin Falls, ID 83301-5858

Heatherlands Homeowners Association, Inc.
P. O. Box 3901
Ketchum, Idaho 83340-3901

Speck & Aanestad, PC
c/o James P. Speck
P.O. Box 987
Ketchum, Idaho 83340-0998
Representing: Heatherlands Homeowners Association, Inc.

Kasey C. Prestwich, Realty Specialist
U.S.D.I., BLM
Shoshone Field Office
400 West F Street
Shoshone, ID 83352

Steven R. Davis, Hydrologist
U.S.D.I., BLM
Burley Field Office
15 East 200 South
Burley, ID 83318



Signature of Person Serving Documents

Petition for Reconsideration

License 37-08686 (Heatherlands Homeowners Association, Inc.)

Remove T03N, R18E, S17E, SWNE which entirely describes BLM land.



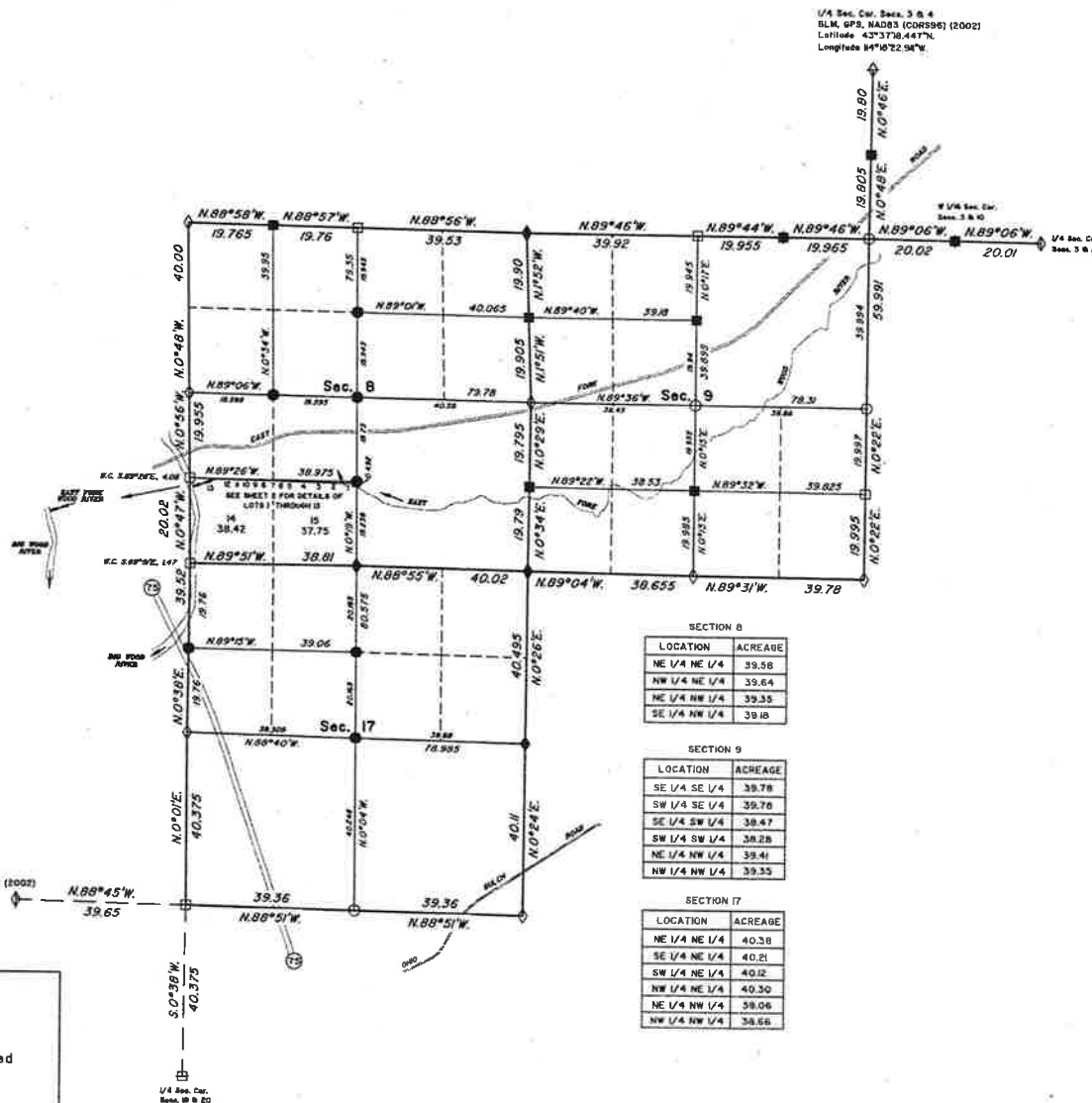
TOWNSHIP 3 NORTH, RANGE 18 EAST, OF THE BOISE MERIDIAN, IDAHO
DEPENDENT RESURVEY, SUBDIVISION, AND METES-AND-BOUNDS SURVEY



1/4 Sec. Cor. Secs. 10 & 19
BLM, GPS, NAD83 (COR296) (2002)
Latitude 43°35'02.22"N
Longitude 84°02'20.782"W

CORNER SYMBOL LEGEND

- ◇ BLM/GLO corner
- ◆ BLM/GLO corner remonumented
- Local corner
- Local corner, remonumented
- Corner determined, not monumented
- Corner determined and monumented



LOCATION	ACREAGE
NE 1/4 NE 1/4	39.58
NW 1/4 NE 1/4	39.64
NE 1/4 NW 1/4	39.35
SE 1/4 NW 1/4	39.10

LOCATION	ACREAGE
SE 1/4 SE 1/4	39.78
SW 1/4 SE 1/4	39.78
SE 1/4 SW 1/4	39.47
SW 1/4 SW 1/4	39.28
NE 1/4 NW 1/4	39.41
NW 1/4 NW 1/4	39.35

LOCATION	ACREAGE
NE 1/4 NE 1/4	40.38
SE 1/4 NE 1/4	40.21
SW 1/4 NE 1/4	40.02
NW 1/4 NE 1/4	40.30
NE 1/4 NW 1/4	39.06
NW 1/4 NW 1/4	38.66

A history of surveys is contained in the field notes.

This plot, in two sheets, represents the dependent resurvey of a portion of the subdivision lines, designed to restore the corners in their true original locations according to the best available evidence, and the subdivision of sections 8, 9, and 17, and the metes-and-bounds survey of lots 1 through 13, in section 8, T. 3 N., R. 18 E., Boise Meridian, Idaho.

For those lines not depicting bearings and distances, refer to the plot approved January 23, 1883.

Except as depicted hereon, the lottings and areas are as shown on the plot approved January 23, 1883.

Survey executed by Buck Burnikel, Cadastral Surveyor, beginning September 28, 2009 and completed August 16, 2011, pursuant to special instructions dated September 28, 2009, for Group No. 1310, Idaho.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Boise, Idaho

March 21, 2012

This plot is strictly conformable to the approved field notes and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Stanley J. French
Chief Cadastral Surveyor for Idaho

BLAINE COUNTY 013
TWO FALLS DISTRICT SEC 3



MT PLAT

[illegible]

See Cadastral Plan approved 7/31/2012 for official
of the A.C. City legal and status.

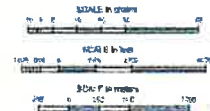
FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LAND REFER TO INDEX OF
ANSCCELLANEOUS DOCUMENTS

FILE NAME: ECONOMIC REFORM DOCUMENT	
CONVERTED FROM: STAFFWORK	BY: ET
LAST UPDATED: 10/1/2012	BY: LHM
SAC/OCN:	SAC/OCN:
POSTED TO PUBLIC MESSAGE:	October 11, 2012
BY:	
PUBLIC LAW ENFORCEMENT SYSTEM PLUS:	
IS IN DOW ACQUISITION:	04/28/2008
OFFICIAL:	NA
PROJECT TO COORDINATE SYSTEM: C70 FOR 11N, AND 11B	
NOTES:	
SEE PLATS	

2nd ed.
 T 7 N
 N. 10 E



U.S. Bureau of Land Management - Idaho State Office
1247 S. Vinland Way, Suite 837W
(208) 373-4000



DISCLAIMER:

This graphic is only a graphic display of the Bureau of Labor Management's (BLM) Percent of Time spent working survey data. Percentages herein do not reflect true changes which may have taken effect by lateral movements of labor or other sources of labor. For a complete overview for all BLM Members.

The accuracy, reliability, or completeness of these data for individual use or aggregation with other data is not guaranteed.

SUNDANCE SUBDIVISION



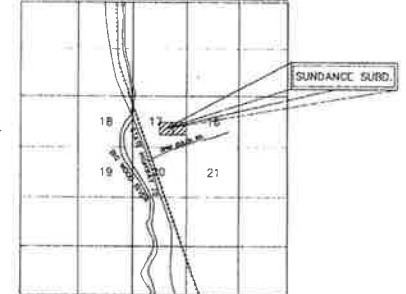
SCALE
1" = 100'

LOCATED IN
NW⁴, SE⁴, & NE⁴, SE⁴, SECTION 17
TOWNSHIP 3N., RANGE 18 E.
BOISE MERIDIAN,
BLAINE COUNTY, IDAHO
1990

LEGEND

SUBDIVISION BOUNDARY LINE
LOT LINES
ROADWAY CENTERLINE
BUILDING ENVELOPE LINE
EASEMENT LINE
SET 5/8" x 30" REBAR AND CAP
SET 1/2" x 24" REBAR AND CAP
BUILDING CENTROID
BLUE AVALANCHE ZONE
RED AVALANCHE ZONE

VICINITY SKETCH



CURVE DATA

CURVE	DELTA	RADIUS	ARC	CHORD	TAN.	L.C.B.
1	30°25'15"	257.90	136.93	135.33	70.12	N 20°47'23" W
2	45°00'00"	127.32	100.00	97.45	52.74	N 13°30'00" W
3	21°00'00"	813.70	298.24	296.57	150.81	N 19°30'00" E
4	29°57'33"	303.21	158.55	156.75	81.13	N 14°58'46" E
5	29°33'30"	227.80	117.57	116.27	60.13	N 21°13'15" W
6	45°00'00"	157.32	123.56	120.41	65.16	N 13°30'00" W
7	35°09'00"	843.70	58.69	58.68	28.36	N 10°59'34" E
8	17°00'52"	843.70	250.54	249.62	126.20	N 21°29'34" F
9	28°57'32"	273.22	142.86	141.24	73.10	N 15°01'14" F
10	61°25'41"	25.00	76.80	25.54	14.85	N 30°40'24" W
11	84°48'44"	90.00	133.22	121.39	82.20	N 18°58'52" W
12	33°17'05"	90.00	52.28	51.55	26.90	N 40°04'03" E
13	33°18'52"	90.00	52.36	51.62	26.94	N 13°22'31" E
14	90°00'00"	90.00	141.37	127.28	90.00	S 44°57'33" E
15	61°25'28"	90.00	96.48	91.93	53.46	N 30°45'27" E
16	61°25'41"	75.00	26.80	25.54	14.85	N 30°45'18" E
17	14°58'46"	333.22	87.12	86.87	43.81	N 07°31'49" E
17A	14°58'46"	333.22	87.12	86.87	43.81	N 22°30'37" E
18	01°27'44"	783.70	23.00	23.00	10.00	N 28°18'09" E
19	19°32'20"	783.70	267.26	265.96	134.84	S 18°46'10" W
20	45°00'00"	97.32	76.43	74.49	40.31	N 13°30'00" W
21	04°39'29"	287.80	23.40	23.40	11.71	N 53°40'57" W
22	25°45'50"	287.80	128.46	128.37	65.64	N 18°27'40" W