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MAY 08 2018

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF LICENSE NO.)
37-08220 IN THE NAME OF) **PETITION FOR RECONSIDERATION**
HEATHERLANDS HOMEOWNERS)
ASSOCIATION, INC.)

On April 19, 2018, the Idaho Department of Water Resources ("IDWR") issued License No. 37-08220 to Heatherlands Homeowners Association, Inc. ("Claimant"). On April 24, 2018, IDWR issued a letter of issuance of License 37-08220 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. 37-08220 pursuant to the IDWR rules of procedure, IDAPA 37.01.01.730.02.

Application for Permit was filed with IDWR on June 18, 1985 and publicized November 27, 1985 and December 5, 1985. The application was amended February 10, 1986 (first amendment) and publicized March 6, 1986 and March 13, 1986. A Permit to Appropriate Water was issued May 16, 1990 with deadline to submit proof of beneficial use June 1, 1991. A Request for Extension of Time for Proof of Beneficial Use was submitted on June 7, 1991 with the deadline for Proof extended to June 1, 1994. The application lapsed June 7, 1994 due to no proof filed. Proof of Beneficial Use was submitted September 12, 1994 and the Permit was re-

instated September 13, 1994 and the priority date advanced. Amended Application (Second Amendment) was filed April 16, 2018.

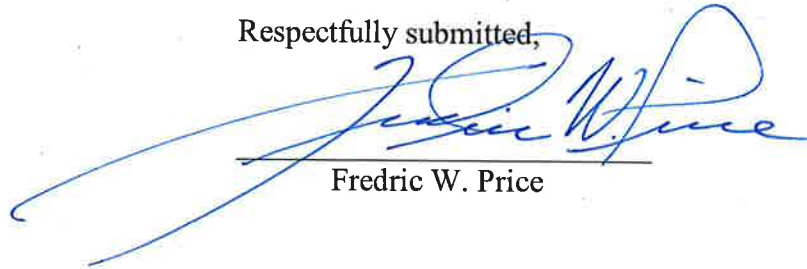
Recently issued License 37-08220 is for Fire Protection (1.11 cfs), Domestic (0.94 cfs/ 96.0 AF), and Irrigation purposes (0.77 cfs/ 134.8 AF) and has a new legal land description Place of Use ("POU") which entirely describes federal land (T03N, R18E, S17, SWNE) under the Domestic and Fire Protection element which was not listed previously in the permit nor advertised (1985 and 1986). 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 use or fire protection on federal land. The introduction of a different or additional legal land descriptions 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 and fire protection element of the license because the Claimant is not authorized for domestic or fire protection 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.

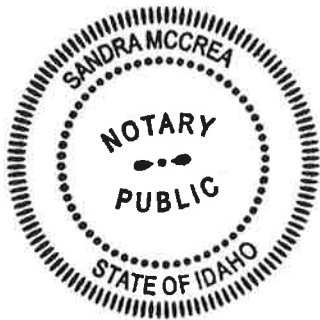
Under state law a water right cannot be established in trespass (see *In Re General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Reed v.*

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. 37-08220** 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, Ste 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

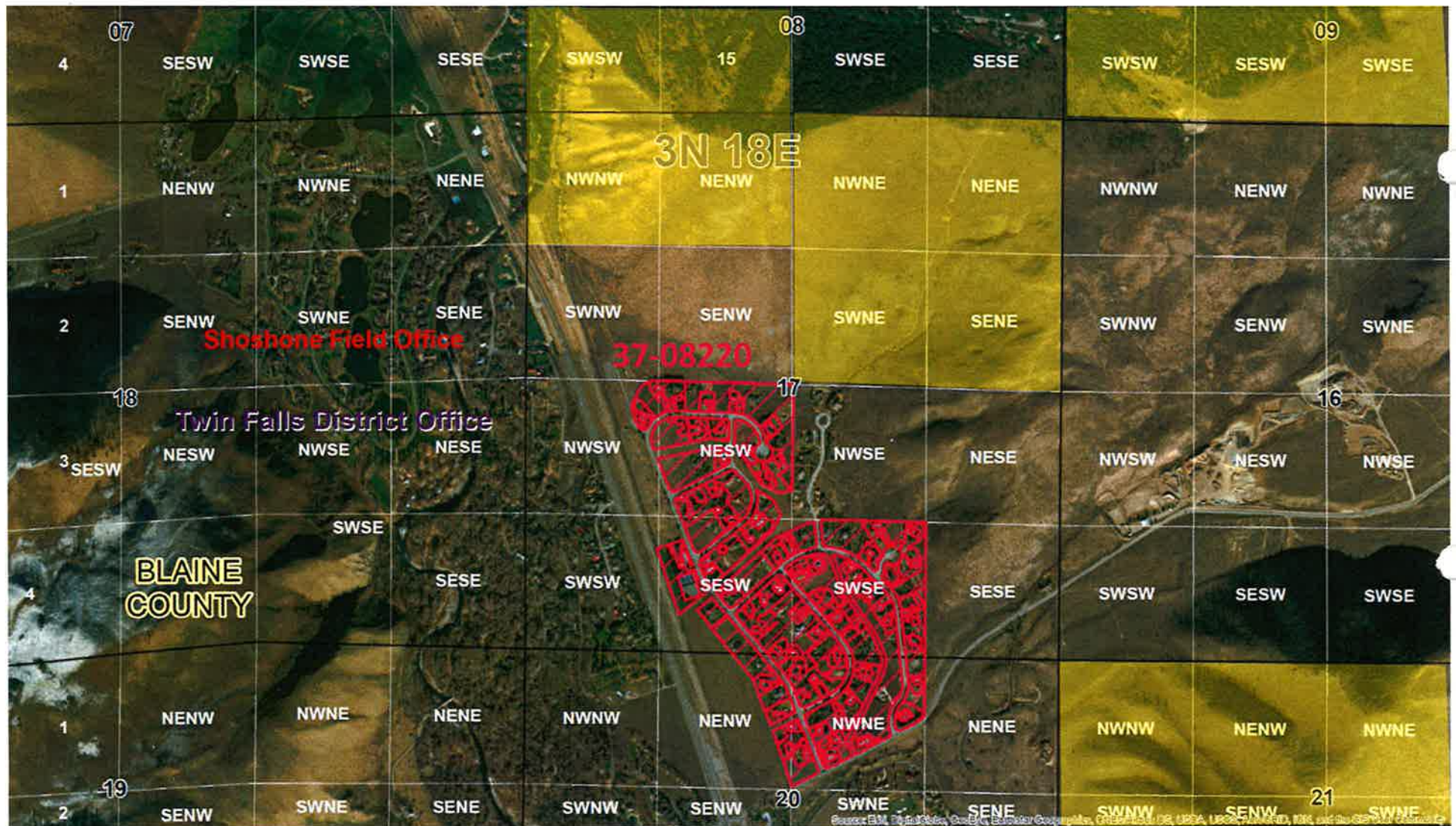
Steven R. Davis, Hydrologist
U.S.D.I., BLM
Burley Field Office
15 East 200 South
Burley, ID 83318


Signature of Person Serving Documents

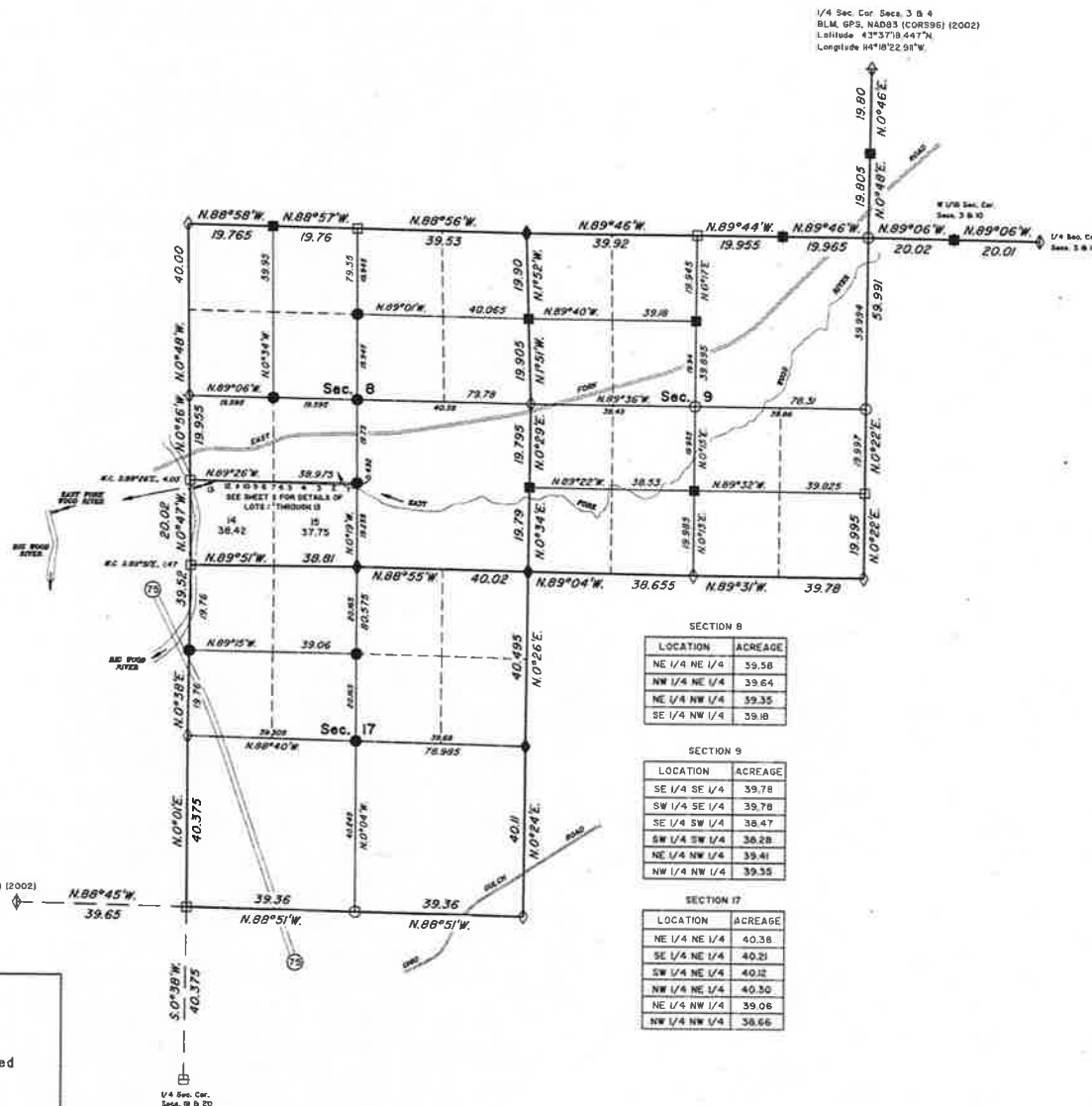
Petition for Reconsideration

License 37-08220 (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



A history of surveys is contained in the field notes.

This plat, in two sheets, represents the dependent resurvey of a portion of the subdivisional 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 plat approved January 23, 1883.

Except as depicted hereon, the lottings and areas are as shown on the plat 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.

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	39.18

SECTION 9	
LOCATION	ACREAGE
SE 1/4 SE 1/4	39.78
SW 1/4 SE 1/4	39.78
SE 1/4 SW 1/4	38.47
SW 1/4 SW 1/4	38.28
NE 1/4 NW 1/4	39.41
NW 1/4 NW 1/4	39.35

SECTION 17	
LOCATION	ACREAGE
NE 1/4 NE 1/4	40.38
SE 1/4 NE 1/4	40.21
SW 1/4 NE 1/4	40.12
NW 1/4 NE 1/4	40.30
NE 1/4 NW 1/4	39.06
NW 1/4 NW 1/4	38.66

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Boise, Idaho March 21, 2012

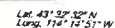
This plot is strictly conformable to the approved field notes and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Stanley J. French
Chief Cadastral Surveyor for Idaho

Vol. R525
PAS. 1-56

BLAINE COUNTY 013
TWIN FALLS DISTRICT SEC 3



DISCUSSION

This plot is only a graphic display of the Bureau of Land Management's (BLM) Record of Title and Township survey data. Records herein do not reflect title changes which may have been affected by (a) lateral movements of dikes or other bodies of water; (b) tidal or glacial surveys; or (c) official information.

The notation σ often or otherwise represents the last action taken, but may not be the effective call. See the historical index for the dates.

No warranty is made by the Bureau of Land Management. The accuracy, reliability, or completeness of these data for individual use or aggregate use with other data is not guaranteed.

MT PLAT

[illegible]

101 07862 Dec 167 (Act of Cong 07/23/1955) completed
05/22/1960. All PD surface done by BLM

IDI G53944 Over rd US excludes 4.15 acres in
Sec 17 NW1/4W

DOI 4119 Exempt to US (Use for SD)
M&S within Secs 17, 20, 28, 29, 32, 33

IDI 24.750 Læ
Sæ 15:

See Caddisral Plat approved 03/21/2012 for official
acres affecting legal subdivisions.
Secn 8 9 17

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

FILE #:	02AG00NCR10000000ag	
COUNTED BY:	BTJ/SMM	BY: BT
LAST UPDATED:	10/31/2012	BY: LHM
GACC #1:		GACC #2:
POSTED TO PUBLIC RECORDS:	October 31, 2012	
	BY:	
PUBLIC LAW ENFORCEMENT SYSTEM (PLES):		
B.M. CATCH ACQUIRED:	06-26-2008	
QTR#:	N/A	
PRODUCED COORDINATE SYSTEM:	S/N ZONE 11N, NAD 1983	
NOTES:		
USE PLATS:		

Bobo Mar,
T 3 N
R 18 E



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1287 S. Vinnell Way Boise, Idaho 83709
(208) 373-4000

