

Fredric W. Price
Water Rights Specialist
U.S.D.I., Bureau of Land Management
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RECEIVED

DEC 18 2017

DEPARTMENT OF
WATER RESOURCES

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WATER RESOURCES

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

IN THE MATTER OF LICENSE NO.)
57-07626 IN THE NAME OF WARDS) **PETITION FOR RECONSIDERATION**
GREENHOUSES)
_____)

On November 29, 2017 the Idaho Department of Water Resources ("IDWR") issued License No. 57-07626 to Wards Greenhouses ("Claimant"). Certificate of Service is dated December 04, 2017. The United States of America, Department of Interior, Bureau of Land Management ("BLM") respectfully files this Petition for Reconsideration regarding issuance of License No. 57-07626 pursuant to the IDWR rules of procedure, IDAPA 37.01.01.740.02.

On May 13, 1996, IDWR received an Application for Permit filed by Don Barnhill, trustee, for Wintercamp Ranch Trust. On November 1, 1996, the application was re-assigned to Wards Greenhouses. On November 20, 2017, David Ward on behalf of Wards Greenhouses, filed an Application for Amendment for Licensing Purposes ("Permit Amendment") with IDWR just nine days prior to issuance of the License on November 29, 2017. The Permit Amendment sought to change the Quantity, Point of Diversion ("POD"), and Place of Use ("POU") elements.

Under the Quantity element, the Permit Amendment downgraded the diversion rate from to 0.83 cfs, but also added 48.0 AF for a pond that was not included on the original permit. This

appears to be more water than what was originally approved by IDWR in Permit 57-07626.

Under the POU element, the POU was changed from T05S, R01E, S10, NESW, NWSW, and SWSW (Private QQs) to T05S, R01E, S10 SWNE (BLM) and SENW (Private), which were both previously unclaimed. The new legal land description of T05S, R01E, S10, SWNE is entirely owned by the BLM. Attached hereto as Exhibit A is a true and correct copy of BLM Master Title Plat ("MTP") which is the official record of United States title in land. Wards Greenhouses is not authorized to conduct commercial use or transport water across BLM land. There was no opportunity to review the Permit Amendment for protest purposes because the amendment was not advertised and therefore there was no notice given to water.

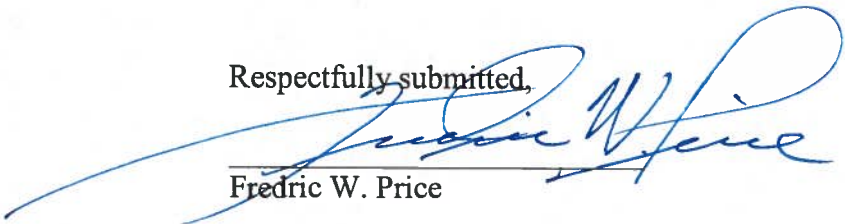
BLM is adversely affected by the licensing of the Amended Application for Permit. BLM respectfully requests that IDWR issue an Amended License removing the POU described in the T05S, R01E, S10 SWNE (BLM) as there is no authorization to conduct commercial use upon nor to transport water across federal land.

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)).

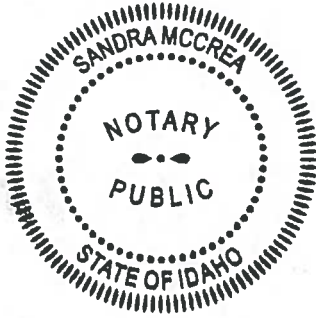
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Respectfully submitted,


Fredric W. Price

Subscribed and sworn to before me this 18th day of December, 2017.
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 December 18, 2017 I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION; LICENSE NO. 57-07626** 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:

Wards Greenhouses, Inc.
1722 Banks Lowman
Garden Valley, Idaho 83622
Attn: David J. Ward, President

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

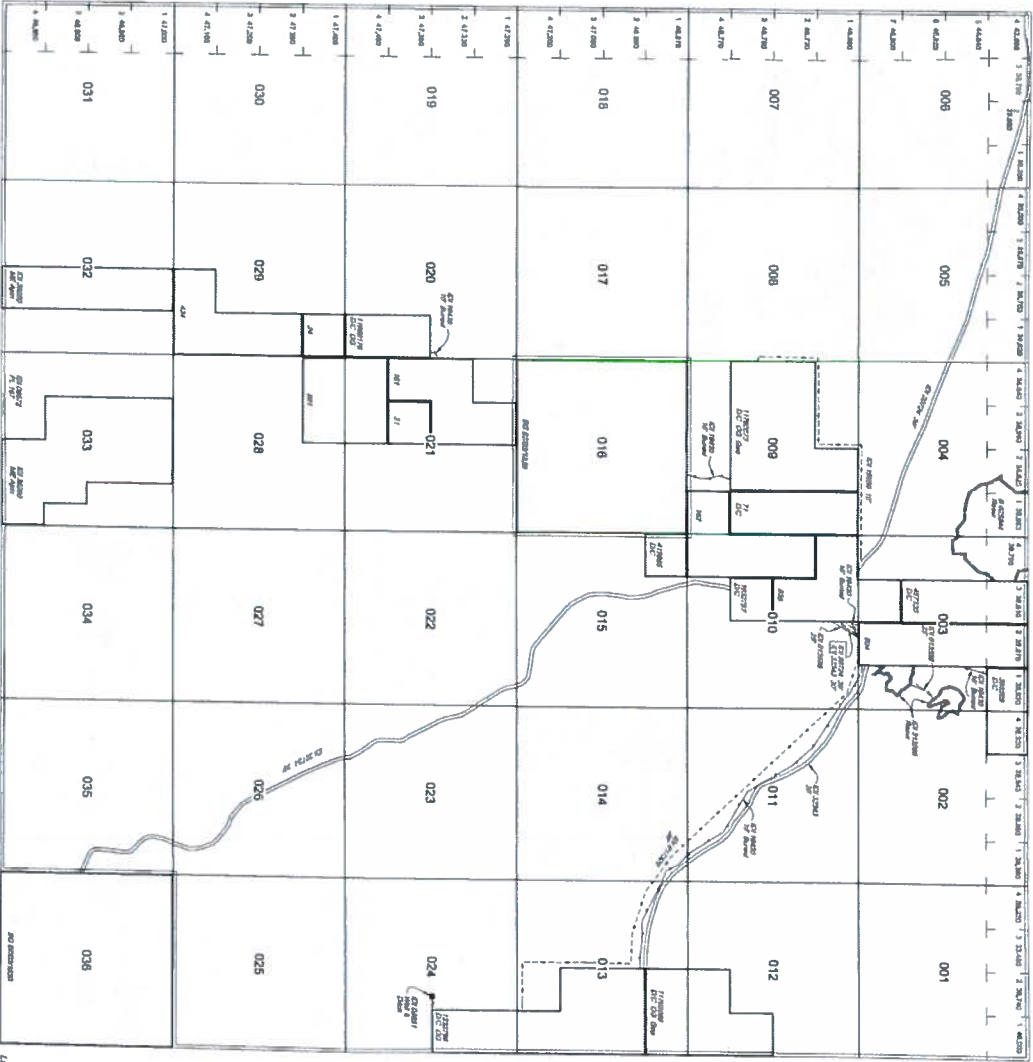


Signature of Person Serving Documents

PETITION FOR RECONSIDERATION

LICENSE NO. 57-07626

TOWNSHIP 5 SOUTH RANGE 1 EAST OF THE BOISE MERIDIAN, IDAHO OWYHEE COUNTY 073 RANGE 0073-0073



U.S. Bureau of Land Management, Idaho State Office
1387 E. Vernal Way, Boise, Idaho 83729
(208) 373-4000



SCALE: 1 inch = 1 mile
1 inch = 3200 feet
1 inch = 1600 feet
1 inch = 800 feet
1 inch = 400 feet
1 inch = 200 feet
1 inch = 100 feet
1 inch = 50 feet
1 inch = 25 feet
1 inch = 12.5 feet
1 inch = 6.25 feet
1 inch = 3.125 feet
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