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RECEIVED
JUN 30 2017
Department of Water Resources
Eastern Region

Attorney for Applicants/Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT
TRANSFER APPLICATION NO. 81039 IN
THE NAME OF WALLACE AND PERMIT
NOS. 78-12439 IN THE NAME OF
KALINOWSKI AND 78-12447 IN THE
NAME OF HENLEY AND APPLICATION
NO. 78-12445 IN THE NAME OF
WALLACE

**KALINOWSKI AND HENLEYS
CLOSING ARGUMENT**

COME NOW, the Applicants/Protestants, Edward Kalinowski and James and Sandra Henley, by and through their counsel of record, Shelley M. Davis, of the law firm Barker Rosholt & Simpson LLP, and pursuant to the instructions of the hearing officer at the hearing held on June 14, 2017, hereby submit this Closing Argument. This matter came before the hearing officer for hearing on four consolidated applications: the Wallaces transfer application no. 81039 and application for permit no. 78-12445; Kalinowski application for permit no. 78-12439; and the Henley's application for permit no. 12447. For the reasons set forth below, the substantial record in these consolidates cases demonstrates that the Wallace's applications must be denied and the Kalinowski and Henley applications must be approved.

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SUMMARY OF PERTINENT TESTIMONY AND EVIDENCE

1. Application for Transfer No. 81039:

A substantial amount of the evidence submitted by the Wallaces attempted to demonstrate that their transfer application no. 81039 should be approved. However, a review of the evidence demonstrates that the springs that they now claim as the point of diversion for their transfer application, located on the lands of Dr. Kalinowski and the Henleys, have never been claimed or appropriated by the Wallaces or any other water user. The evidence submitted is irreconcilable with the claimed points of diversion in the transfer application.

Exhibit 2 is an IDWR water right form, which contains no water right number, nor is it signed or dated. It is authenticated by a notary in Adams County, but its source is a mystery. A review of the IDWR backfiles for water right nos. 78-10067, which is the claimed base water right for which the transfer of point of diversion is sought, does not contain Exhibit 2. Exhibits 3 and 4 are receipts for water right claim applications for two waters rights numbered 78-4076 and 78-4077. The water right backfiles for both of those claims also does not contain the Exhibit 2 form. What is also of significance, the claim form at Exhibit 2 locates a single point of diversion only in the 40-acre tract identified as the "NW1/4 SW1/4 Sec. 9, Twp. 19 N, Rge. 2E B.M., County of Adams." *See* Ex. 2. Notable also, the map on the back of the form indicates that the point of diversion is located in the SE1/4 NW1/4 SW1/4 of Sec. 9, Twp. 19 N, Rge. 2E, Adams County, which is the location claimed in the original claim for water for water right no. 78-10067. The form also claims the source as "groundwater" and describes the diverting works as a "well, gravity pipeline." *Id.* No spring is mentioned in the claim form, and the priority date listed on the form is January 1, 1955.

Exhibits 3 and 4 consist of receipts, dated January 5, 1977 for water right no. 78-4076, and January 27, 1977 for water right no. 78-4077. The water right numbered 78-4076 listed its source as "unnamed spring tributary to Three Mile Creek" and sought a priority date of "20 April 1950." Like the form identified as Exhibit 2, the point of diversion is only listed as the 40-acre tract "NW1/4 SW1/4 Sec. 9, Twp. 19 N, Rge. 2E B.M., County of Adams." The map indicating the location of the single spring claimed shows the location slightly higher in the same quarter section as it did in the Exhibit 1 form, but potentially it is intended to be the same spring. The claim for water right no. 78-4077 is for "Three Mile Creek/Flood waters in spring" and indicated that the means of diversion were "2 ditches approximately 1/4 mile to land served, then by pipe ranging from 7" down to 3" upon irrigated lands – all gravity flow[,] and claimed a priority date of May 1, 1898. Both of these files are inactive in the IDWR records because the water rights were decreed disallowed as they were not claimed in the SRBA. (See Attachment A, Claims for water right nos. 78-4076 and 78-4077).

Exhibit 5, submitted by the Wallaces, is a December 3, 1981 letter to Charles Wallace from IDWR in which the IDWR employee states "[i]f the two springs mentioned in your letter are all the water you use you need not re-record these rights." However, no water right number is mentioned in the letter, and no previously filed claim by the Wallaces on record at IDWR as of 1981 included a claim for two springs.

In May, 1988, after a letter was sent to Charles Wallace from IDWR indicating that claims needed to be filed in the Snake River Basin Adjudication, Leonard and Sheryl Wallace filed a claim for water right no. 78-10067. In it, for the first time the Wallaces claimed a water right for two springs located in T19N R2E Sec 9, SE1/4 NW1/4 SW1/4, and T19N R2E Sec 9, SW1/4 NW1/4 SW1/4. The priority date claimed was September 1, 1970, and the description of

the diversion works was “two developed springs with pipeline to place of use.” Ex. 7. The locations of the points of diversion appears to be consistent with at least one point of diversion originally claimed for disallowed water right no. 78-4076. In December, 2006, IDWR sent a letter to the Wallaces requesting that they submit evidence of priority, because “[t]his claim has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water.” *See* Attachment 2, 12/7/06 letter from IDWR. In response to the request, on December 14, 2006, the Wallaces submitted a prepared statement that the water claimed under water right no. 78-10067 “has been used every day & year since 1970[,]” which was then signed by Everett and Tessie Osborn. Ex. 7. Five days later, on December 19, 2006, the Department prepared its preliminary recommendation and recommended .16 cfs of appropriation for domestic and irrigation purposes on the claimed 4 acre place of use, and for the claimed points of diversion in T19N R2E Sec9, SE1/4 NW1/4 SW1/4, and T19N R2E Sec 9, SW1/4 NW1/4 SW1/4. *Id.* The recommendation and the map generated indicating the points of diversion and place of use were then sent to the Wallaces. The points of diversion recommended in 2006, while matching the claimed points of diversion, are not in the place now claimed by the Wallaces to be the correct points of diversion. No objection was ever filed by the Wallaces or any other party to the SRBA, and water right no. 78-10067 was partially decreed on November 6, 2007. *See* Ex. 17.

Further complicating the representations of the Wallaces is the March 27, 2017, letter from the Wallaces rejecting a settlement offer from the Henleys and Dr. Kalinowski. *See* Ex. 19. In the letter the Wallaces represent that the Henley spring was dug in 1964 and was piped into Leonard Wallace’s home. They then state that they “haven’t really had any problems with the Henley’s spring because the only thing showing on the property is a vent tube for the spring

there is no access to the water on his property.” (sic), *see* Ex. 19. They also represent in the letter that they “have water rights for both springs dated 1977.” None of the prior claims by the Wallaces indicated a priority date of 1977.

Testimony in the record indicates that the Wallaces sold their property to the Walters in 1970. In 1988, when the claim for water right no. 78-10067 was filed, the Wallaces did not own the property where the place of use or points of diversion were claimed. At some point between 1970 and 1995, the property that is identified as the place of use for water right no. 78-10067 was conveyed to HJP Partners, and on March 30, 1995, the property was conveyed to Mr. Charles Wallace via a quitclaim deed. *See* Ex. 23. The land now appears to be owned by Leonard and Sheryl Wallace. *See* Ex. 1. In the intervening and subsequent years, the remainder of the property was developed into Timber Ridge Subdivision. The plat maps for the Timber Ridge Subdivision indicate springs located on property not owned by the Wallaces, but rather now owned by Dr. Kalinowski and the Henleys, with water line easements and a ditch easement indicated on the plats. *See* Ex. 105. Testimony on the record indicates that these springs and water lines were placed on the plats, after being surveyed, based on the representations of the Wallaces that the springs and ditch belonged to them. *Alter* Testimony. The testimony also confirms that no one, while developing the plats for the subdivision, researched whether there was any legal basis to substantiate the claim that the Wallaces own the springs located on the Kalinowski and Henleys properties. *Alter* testimony. It is undisputed on the record, that the Wallaces are not members of the Timber Ridge Subdivision or subject to its Protective Covenants, Conditions or Restrictions.

On July 12, 2016, the Wallaces filed transfer application no. 81039. In it they are attempting to move the claimed and decreed points of diversion from the points decreed in water

right no. 78-10067 to the unappropriated springs on the Kalinowski and Henley properties. *See* Ex. 15. The Wallaces acknowledge in the application that they do not own the property where the points of diversion are located, but indicated that the “arrangement enabling applicant to access the property for the diversion system” is a “County easement for both springs.” *See* Ex. 16. On August 8, 2016, a Notice of Change of Ownership was filed to transfer water right no. 78-10067 from Leonard and Sheryl Wallace to Michael and Eulla Wallace, which is still pending approval as a result of this contested case. *Id.* Mrs. Wallace testified that the Wallaces did not have written permission to appropriate the springs, nor did they have written permission or any other form of legal authority, to access the springs on the Henleys’ and Kalinowski properties.

On August 3, 2016, the Henleys protested the Wallaces’ transfer application and on August 5, 2016, Dr. Kalinowski protested the application. Both protests contain a map of the subdivision that indicates that the waterline easements that cross both properties are “not used.” Dr. Kalinowski testified that the plat was provided to him, among other materials, when he purchased his property in 2008. Furthermore, when they filed their applications to appropriate the springs, and other water sources per the Henleys application, both were informed by IDWR that the springs remained unappropriated at the time of their filings.

On June 9, 2017, while Mr. Henley was clearing brush on his property, he noticed across the creek from his property an aged pipe with a small amount of running water that appears to be an overflow pipe from a developed spring. *See* Ex. 110, and testimony of Henley and Kalinowski. He and Dr. Kalinowski performed further investigation, including taking compass rose readings of the heading of the pipe, which indicated that the location of the spring or springs attached to the pipe was located in the vicinity of the originally claimed points of diversion for water right no. 78-10067.

2. Application No. 78-12445 – Wallaces:

On July 12, 2016, the Wallaces filed application no. 78-12445. Application no. 78-12445 seeks to appropriate 0.15 cfs of water Seawell Creek, to be diverted through a ditch that crosses the Kalinowski and Henleys properties, as well as the Wallace property, to deliver water to the Osborn Ranch and through newly approved transfers, to properties now owned by the Schaetzel Birch Trust. It further claims that the “arrangement enabling the applicant to make this filing” was an “Historical easement, verbal agreement.” There is no evidence in the record to support any claim of an easement, nor to support the claim that a verbal agreement allows the Wallaces to divert the water through lands owned by others, and through a ditch owned by others. Under examination, Mrs. Wallace admitted that no permission had been sought from the Henleys, Dr. Kalinowski, the Walters, the Osborns or the Schaetzel Birch Trust to use the ditch to convey the water they claimed.

The Wallaces further represent that they are “Proposing to use same system as 78-250, 78-251, 78-252, 78-4130 to bring Seawell Creek to property. This system has previously existed through inactive water right 78-249 but was not claim (sic) in the SRBA.” A review of the records for those rights demonstrate that all of the rights, except 78-249, were transferred to the Walters upon the sale of the property from the Wallaces. Water right no. 78-249, initially claimed for .044 cfs of water, was combined by decree with water right no. 78-250, which is decreed in the name of the Walters. Upon examination, Mrs. Wallace admitted that she was unaware whether there was additional water available for appropriation in the system. She also represented that no authority had been sought or received from the Idaho Department of Fish and Game and the Idaho Department of Environmental Quality, which is required for the approval of water right applications in Basin 78.

3. Application for Permit No. 78-12439 – Kalinowski:

Dr. Kalinowski filed water right claim no. 78-12439 on May 2, 2016, seeking to appropriate 0.12 cfs of water from the spring entirely situated on property that he purchased in 2008. He intends to use it for stockwater and irrigation purposes, supporting up to 5 head of cattle, and a fruit orchard and garden on his property. When he purchased the property in 2008, it was advertised with a spring existing on the property, and a search of the title records for the property did not disclose any water rights belonging to any other person, nor were there any private easements recorded across his property. Kalinowski testimony, *see* also attachment to protest to transfer application no. 81039.

The spring exists on the property and there are no prior claims to appropriate the spring water. Both the Idaho Department of Fish and Game and the Idaho Department of Environmental Quality have provided comments to IDWR that they do not oppose the application, with IDF&G commenting “[t]his is for a small natural spring that has not had a previous water right.” No other permission is required for Dr. Kalinowski’s application to be granted as he owns the land at both the point of diversion and place of use.

4. Application for Permit No. 78-12447 – Henleys:

On July 12, 2016, the Henleys filed application no. 78-12447 seeking to appropriate 0.11 cfs of water from two unnamed springs on their property, and one unnamed stream, for stockwater and irrigation purposes. *See* Ex. 102. The Henleys purchased their property in 1998 when they were only the fourth house in the subdivision, and Mr. Henley served as the first president of the Timber Ridge Subdivision Homeowners’ Association. Henley testimony. Prior to purchasing the property, with the assistance of legal counsel, the Henleys determined there were no existing water rights in the name of any other person on the water sources on their

property, nor were there any private recorded easements providing a third party authority to access any water sources on their property. *Id.*, also *see* Henleys protest to transfer application no. 81039.

Both springs exist entirely on property owned by the Henleys. *See* Ex. 102. The unnamed stream that crosses the property has no other water rights of record that would prevent the Henleys from making the claimed appropriation. Both the Idaho Department of Fish and Game and Idaho Department of Environmental Quality have provided comments to IDWR that they do not oppose the application, with IDF&G stating the “application is for two small natural springs and an unnamed creek that has not had a previous water right.” No additional permission is necessary for the Henleys to make this appropriation since the springs are both located on land entirely owned by the Henleys and the unnamed stream has no prior claims that would be affected by the appropriation. Therefore, the Henleys own the land at both the point of diversion and place of use.

LEGAL ANALYSIS

I. Transfer Application No. 81039 Must Be Denied:

The record in this action is clear that the only points of diversion that have ever been claimed by the Wallaces on any prior application for a water right, whether of record with the Department or otherwise, are not located on the lands owned by Dr. Kalinowski and the Henleys. Dating back to the earliest filings of record with IDWR, the disallowed claims for water rights 78-4076 and 78-4077 filed in 1977, the single claimed spring in water right no. 78-4076 was located in T19N R2E Sec9, SE1/4 NW1/4 SW1/4 which coincides with one of the claimed points of diversion for water right no. 78-10076. *See* Attachment A, and Ex. 7. Application for water right no. 78-10067 filed in 1988 very clearly claimed points of diversion in T19N R2E Sec 9,

SE1/4 NW1/4 SW1/4 and T19N R2E Sec 9, SW1/4 NW1/4 SW1/4. *See* Ex. 7. In 2006, the Wallaces were provided multiple documents for review from IDWR and the SRBA court indicating that the points of diversion were as claimed, and no attempt was made by the Wallaces to correct the points of diversion. *See* Ex. 17. The Wallaces cannot now transfer the points of diversion to lands they do not own, many years after the property where the Wallaces now seek to move the points of diversion for water right no. 78-10067 was sold to subsequent purchasers.

At the time that the claim was made for water right no. 78-10067, in 1988, the Wallaces owned neither the land that was claimed as the point of diversion, nor the place of use. The lands were sold to the Walters in 1970, and the land that is claimed as the place of use was not transferred back to the Wallaces until 1995. Eulla Wallace testimony, and Ex. 23. The Wallaces do not own the land that they now seek to transfer the points of diversion to under transfer no. 81039. *See* Ex. 7, Ex. 15. No water right may be initiated in trespass. *Lemmon v. Hardy*, 95 Idaho 778, 780, 519 P.2d 1168, 1170 (1974). "The rule as to trespass and water rights in Idaho appears to be that a water right initiated on the unsurveyed public domain is valid, but a water right initiated by trespass on private property is invalid." *Id.* Further, "filing an application for a water permit with no possessory right in the land designated as the place of use amounted to speculation in and of itself." *Id.* at 781, 519 at 1171.

The transfer application must also be denied because the Wallaces transfer would injure the rights claimed by the Henleys and Kalinowski. It is undisputed in the record that the two springs at issue in the transfer application were unappropriated waters at the time Dr. Kalinowski and the Henleys filed water right application nos. 78-12439 and 78-12447. "An applicant's interest in an application for permit to appropriate water is personal property." IDAPA 37.03.08.035.02.d. Dr. Kalinowski filed his application for water right no. 78-12439 on May 2,

2016, more than two months before the transfer application was filed. The Henleys filed their application for water right no. 78-12447 on July 12, 2016, the same day that the transfer application was filed. Approving the transfer application would injure the water right claims of Dr. Kalinowski and the Henleys, and deprive them of the only sources of irrigation water on their respective properties, in violation of Idaho Code § 42-222(1).

Furthermore, the springs that are the subject of the transfer application, as well as the applications of Dr. Kalinowski and the Henleys, are private waters pursuant to Idaho Code § 42-212. The record is clear that the location of the springs where they reach the surface are located entirely on lands owned by the Henleys and Dr. Kalinowski. I.C. § 42-212 declares that “[t]he Idaho Department of Water Resources is hereby prohibited from issuing or granting permits to divert or appropriate the waters of any....spring in this state, which is located or situated wholly or entirely upon lands of a person....except to the person...owning said land, or with his or its written permission, executed and acknowledged as required for the conveyance of real estate.” *Id.*, (emphasis added). The Wallaces concede that they do not have such written and recorded acknowledgement from the Henleys or Dr. Kalinowski, and the record does not disclose that any such written document has ever existed from any prior owner of the properties. Therefore, the Department is prohibited from granting the transfer application. Furthermore, there is no written permission establishing any current or past right-of-way across the Kalinowski and Henley properties to access the private springs, in violation of I.C. § 42-213, and for this additional reason transfer application no. 81039 must be denied.

The Wallaces’ statements that the springs are their only source of domestic water is no longer accurate. Testimony in the record demonstrates that in April, 2017, Michael and Eulla Wallaces’ home was connected to a well water source after the spring water serving their

residence apparently became contaminated. Mrs. Wallace testimony, Ex. 20. The well water was of such a significant pressure, that it required the Wallaces to reinforce certain plumbing in their residence. *Id.* Therefore, there is no just reason why the transfer application should not be denied.

II. Application no. 78-12445 Must Also Be Denied:

The Wallaces application for water right no. 78-12445 seeks to appropriate 0.15 cfs of water from Seawell Creek to be delivered through the ditch that crosses the Kalinowski property, the Henley property, and the Wallace property, for delivery of surface water to properties below the Wallace property. The basis of the claim was to revive water right no. 78-249 which the Wallaces stated was lost because it was not claimed in the SRBA. A review of the backfile for that right, however, indicates that it was decreed as combined with water right no. 78-250, which is owned by the Walters. Additionally, water right no. 78-249 only allowed 0.044 cfs of water for irrigation purposes, substantially less than that claimed by the Wallaces in their application for water right no. 78-12445.

Under examination, Mrs. Wallace admitted that they had done no analysis to determine whether there was additional water available to be appropriated from Seawell Creek. Therefore, the Wallaces failed to carry their burden to demonstrate that this appropriation will not reduce the quantity of water under existing rights, and that the water supply is sufficient for the purpose for which it is intended to be used, in violation of I.C. § 42-203A(5)(a) and (b). Mrs. Wallace also testified that she was unaware whether there were any water rights reserved to the Wallaces when the lands were sold to the Walters in 1970. A review of the records of IDWR demonstrates that no such reservation took place, because all of the water rights that were potentially appurtenant to the lands sold to the Walters have been claimed and decreed in the name of the

Walters. Mrs. Wallace also admitted that the Wallaces had not sought any permission or authority from the current ditch owners to transport this new appropriation in the event that it were granted. She further admitted that the Wallaces had not sought the review and comment of the Idaho Department of Fish and Game and the Idaho Department of Environmental Quality on the application, which is required for Basin 78.

The Wallaces have failed to meet their burden that there is water available to be appropriated under the right. They have additionally failed to provide the necessary permission to transport the right, and further have failed to consult with the necessary agencies. As a result, water right claim no. 78-12445 must be denied.

III. Water Right Claim Nos. 78-12439 and 78-12447 Must be Granted:

It is undisputed that the spring on Dr. Kalinowski's property, as well as the two springs and unnamed stream on the Henley's property is unappropriated water under the law of the State of Idaho. No prior valid claim to the water sources has ever been filed before the claims submitted by Dr. Kalinowski and the Henleys, and as such, the water is available to be appropriated by the respective claimants. Id. Const., Art. XV, § 3. The appropriation will not injure or interfere with any other water rights, because the springs are private waters, occurring on the land of the claimants, and there are no other water rights on the unnamed stream on the Henley property.

The Wallaces' claim that issuing the Kalinowski and Henley rights will interfere with their water rights is incorrect. There has been no valid appropriation by the Wallaces of the springs in question, as the record abundantly demonstrates. Whatever development of the springs was done by the Wallaces, was not done with the authority of law. Simply taking dominion of

the springs in September, 1970, without having any legal basis, and without then or now owning the land on which the springs emanate, does not satisfy Idaho laws of water right appropriation.

The Henleys and Dr. Kalinowski have also demonstrated that the water is available for appropriation, and will not injure or interfere with any other valid rights. The Idaho Department of Fish and Game and the Idaho Department of Environmental Quality have both issued comments for both water right claim nos. 78-12439 and 78-12447, stating that there are no objections or concerns to the rights being issued. All other elements that this hearing officer must take into consideration, were stipulated to on the record. For these reasons, water right claim nos. 78-12439 and 78-12447 must both be granted.

CONCLUSION

For the foregoing reasons, Dr. Kalinowski and James and Sandra Henley, hereby request that this hearing officer deny transfer application no. 81039 and water right application no. 78-12445, and grant water right application nos. 78-12439 and 78-12447.

DATED this 30th day of June, 2017.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'S. Davis', is written over a horizontal line.

Shelley M. Davis
Attorney for Applicants/Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2017, I caused a true and correct copy of the foregoing **KALINOWSKI AND HENLEYS CLOSING ARGUMENT** to be filed with or served upon the following parties by the indicated methods:

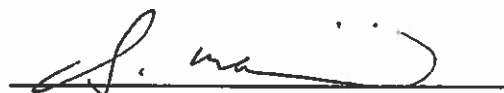
Served on:

Mike and Eulla Wallace
3288 Wallace Lane
New Meadows, ID 83654

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☒ Email

James Cefalo
Hearing Officer
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

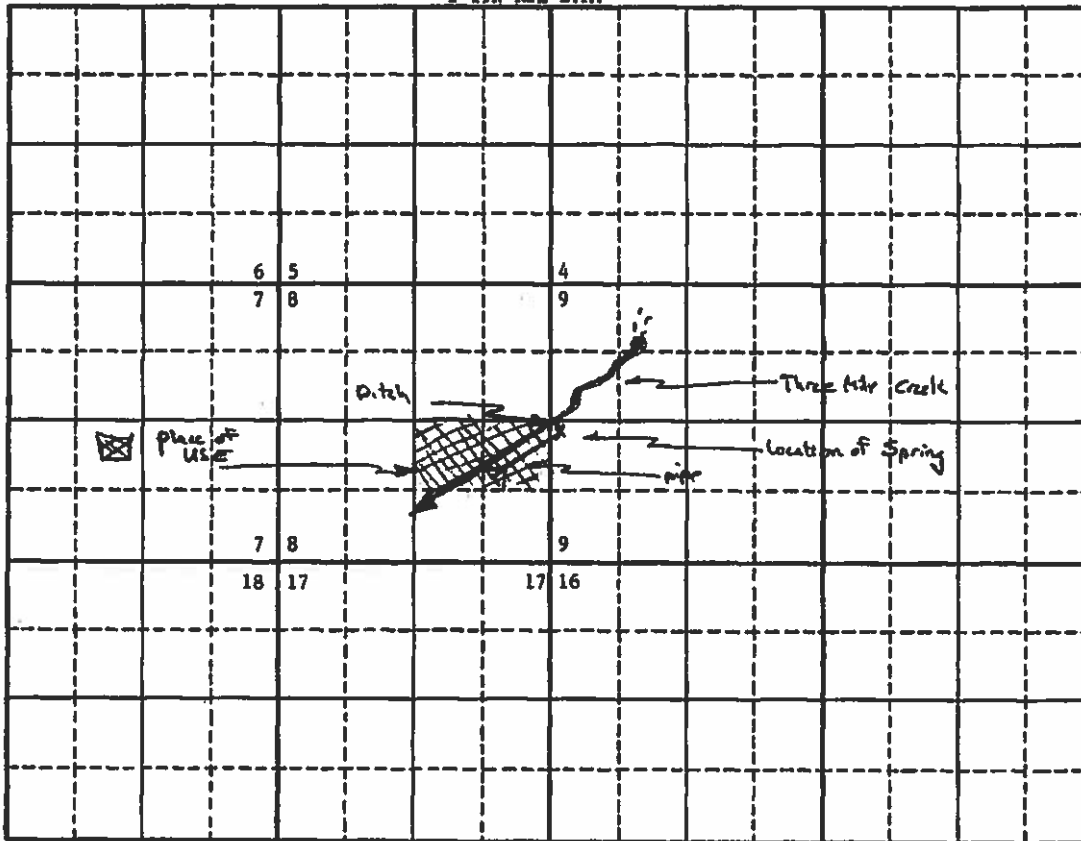
☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☒ Email


Shelley M. Davis
Attorney for Protestants/Applicants

ATTACHMENT A

(8) Remarks _____

T 19N R2E B.M.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
 County of Valley)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Sworn to before me this 4th day of January, 1977
Charles Wallace
 (Claimant)

Kathleen Ann Kellen
 Notary Public
 Residing at McCall

My commission expires is indefinite

For Department Use Only

Received by _____	Date <u>1-5-77</u>	Exception filed by: _____	Forwarded to _____	Date _____
Prelim. check by <u>PWH</u>	Date <u>1-5-77</u>		claimant by: _____	
\$10.00 fee received by <u>ad</u>	Date <u>1-5-77</u>	<u>6158</u>		
Approved for publication by <u>ad</u>	Date <u>1-24-77</u>			
Published in <u>Adams County News</u>				
Dates <u>Jan 15 & 20, 1977</u>				

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Section 42-225a, Idaho Code

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. The filing of this claim does not confirm the water right but will serve for information purposes only. It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that Charles Wallace & Sons, Inc.

(name of claimant)

of Box 31, New Meadows, Id. 83654, claims a right to the diversion and beneficial use of
(mailing address)

the public water of the State of Idaho

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Three Mile Creek/Flood
waters in spring tributary to Little Salmon River

- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount <u>3 cfs</u>	Use <u>Irrigation</u>	Period of Use: From <u>20 April</u> To <u>Varies</u>	(See #8, Remarks)
Amount _____	Use _____	Period of Use: From _____ To _____	
Amount _____	Use _____	Period of Use: From _____ To _____	
(cfs, gpm or a/f)	(dom., irri., stock, etc.)	(both dates inclusive)	

- (3) Total quantity of water claimed: 3 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.

- (4) Priority claimed: (the date water was first applied to beneficial use) May 1, 1898

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

- (5) A) Point of diversion: (give location of point where water is diverted from its source)

SW ¼ NW ¼, Sec. 9 Twp. 19N Rgs. 2E B. M. County of Adams

Additional points of diversion:

- B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. 2 ditches approximately 1/4 mile to land served, then by pipe ranging from 7" down to 3" upon irrigated
lands - all gravity flow

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

Total No. of acres 280

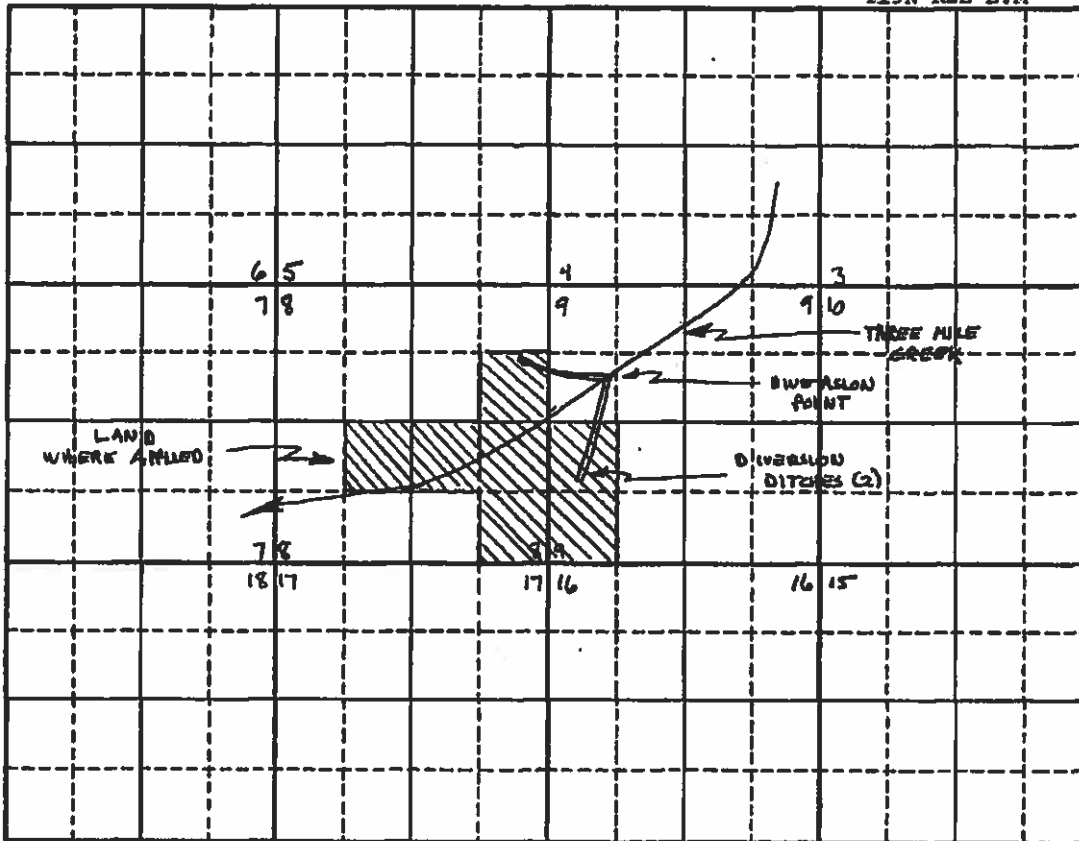
- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible: _____

- (7) If you are claiming water as a member of an organization, list name of organization: As President of
Charles Wallace & Sons, Inc.

MICROFILMED

- (8) Remarks Use originated with predecessor in interest, Ellis D. Wallace. Actual period of use varies depending on when Sewell Creek waters open up for diversion via E.D. Wallace Creek to Three Mile Creek - ranges from one to two months.

T19N R2E B.M



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of Valley)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Charles Wallace
(Claimant)

Sworn to before me this 22 day of February, 19 77.

James C. Palmer
Notary Public

Residing at McCall, Idaho

My commission expires _____

For Department Use Only

Received by <u>sf</u>	Date <u>1-27-77</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>665</u>	Date <u>1-27-77</u>		claimant by:	
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ATTACHMENT B



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

December 7, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

LEONARD M &/OR SHERYL K WALLACE
PO BOX 126
NEW MEADOWS ID 83654

Re: Claim to a Water Right No. 78-10067

Dear Claimants:

In May of 1988, you submitted the above referenced claim in the Snake River Basin Adjudication. Enclosed is a computer generated print-out of the claim for your reference only; this print-out is **NOT** to be returned or re-filed. You have indicated, when this claim was filed, that the water right was based on a "Beneficial Use" of the water. Water rights of this type are established by the historical use of water for a beneficial purpose, dating back to the time the water was first used, this date being the "Priority Date" as shown on the enclosed print-out. This claim has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is required to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water. Any other claims you may have filed, that are not listed above, do not require evidence of priority be submitted at this time.

Enclosed is a pamphlet entitled "Evidence of Priority" which describes why evidence of the priority date is necessary along with examples of types of evidence that can be submitted to fulfill this requirement. If no evidence is submitted, or we do not hear from you within the time limit below, the priority date, as claimed, may not be recommended to the Court for decree. This could jeopardize the water use under this right, if water availability problems arise in the future. It is our goal to decree the historical water rights within the Snake River Basin as accurately as possible.

The required evidence supporting the priority date must be submitted by **December 14, 2006**, referencing all documents with the corresponding claim number. If you have any questions not covered by this letter, or the enclosed pamphlet, please feel free to call me at 287-4953.

Sincerely,

Kay Walker
Sr. Water Resource Agent

Enclosures

Cefalo, James

From: Shelley Davis <smd@idahowaters.com>
Sent: Friday, June 30, 2017 11:02 AM
To: Cefalo, James; Cox, Sharla; Mike & Sissy Wallace
Cc: Shelley Davis
Subject: Wallace/Kalinowski/Henley Contested Case
Attachments: Closing Argument Final.pdf

Good Morning,

Attached please find the Closing Argument of the Henley's and Dr. Kalinowski, in the consolidated contested case held in water right transfer application no. 81039, and water right claim nos. 78-12445, 78-12439 and 78-12447.

Best Regards,

Shelley M. Davis
Barker Rosholt & Simpson LLP
1010 W. Jefferson St., Ste. 102
Boise, ID 83702
(208) 336-0700

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