



**Holden Kidwell
Hahn & Crapo P.L.L.C.**
LAW OFFICES

RECEIVED
MAR 03 2017

Department of Water Resources
Eastern Region

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February 28, 2017

VIA EMAIL AND REGULAR MAIL

Idaho Department of Water Resources
Attn: James Cefalo
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718
james.cefalo@idwr.idaho.gov

RE: Response to Preliminary Order Correcting Splits of Water Rights (In the Matter of Ownership Change Splits for Water Rights 35-8037A and 35-8573) Owned By Walker Land & Cattle LLC.

Dear James:

This letter is a response to the above-referenced order issued on December 5, 2016 (the "Order"). The Order split Water Right Nos. 35-8037A and 35-8573 as follows:

WALKER WATER RIGHTS SPLIT									
Status	Water Right No.	Name on Water Right	Priority Date	Source	Individual Diversion Rate (cfs)	Volume Diversion Limitation (Acre-foot per year)	Individual Acres Authorized for Irrigation	Combined Acres Authorized for Irrigation (PPU)	Point of Diversion
Before Split	35-8037A	Somelapines a Great Nelson Land and Cattle Company LLC	May 12, 1983	Ground water	2.23	632	158		NWSENE, Sec. 28, 34, 30E
After Split	35-13437	Walker Land & Cattle LLC	May 12, 1983	Ground water	0.88	160	40		NWSENE, Sec. 28, 34, 30E
After Split	35-13438	Walker Land & Cattle LLC	May 12, 1983	Ground water	1.87	472	118		
				TOTALS	2.23	632	198		
Before Split	35-8573	Ronald L. Walker	May 12, 1983	Ground water	3.87	None	270	218	NWSENE, Sec. 28, 34, 30E
After Split	35-13439	Walker Land & Cattle LLC	May 12, 1983	Ground water	2.39	None	180	180	NWSENE, Sec. 28, 34, 30E
After Split	35-13440	Walker Land & Cattle LLC	May 12, 1983	Ground water	1.86	None	110	138	
				TOTALS	3.87		279	218	

We have determined that there was no need to petition for reconsideration or take other measures because the split portions of Water Right Nos. 35-8037A and 35-8573 should all still remain in the name of Walker Land & Cattle LLC.¹ As described below, there is important background information not included in the *Order*. The *Order* presupposes that there will eventually be a *Notice of Change of Water Right Ownership* from Wright Brothers Co., the owner of the underlying property identified as the place of use of portions of Water Right Nos. 35-8037A and 35-8573.² A review of relevant water right documents and recorded deeds leads to the proper conclusion that Wright Brothers Co. is not entitled to any portion of either Water Right No. 35-8037A or Water Right No. 35-8573.

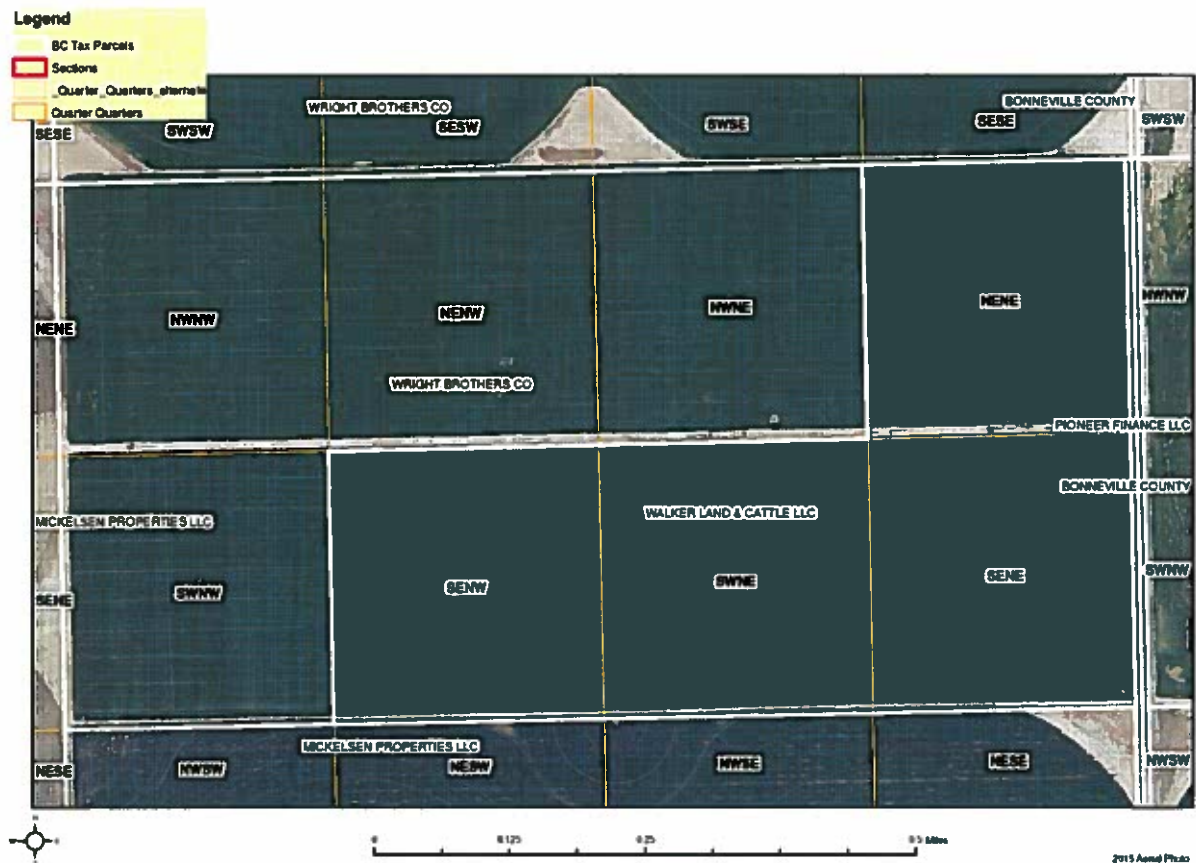
As described herein, under no circumstances should the Department's records be updated to reflect that Wright Brothers Co. owns any portion of the Water Right Nos. 35-8037A and 35-8573 and/or their split portions (their "children" rights) identified as Water Right Nos. 35-13437, 35-13438, 35-13439, and 35-13440. We request that this letter be scanned and included in the Department's water right backfiles for Water Right Nos. 35-8037A and 35-8573 and their split portions identified as Water Right Nos. 35-13437, 35-13438, 35-13439, and 35-13440.

Currently, Wright Brothers Co. (hereinafter, simply "Wright") and Walker Land & Cattle LLC (hereinafter, simply "Walker") own portions of the N1/2 of Section 29, Township 03N., Range 36E.B.M. Here is a map of the current land ownership, which shows that each entity owns an "L" shaped parcel consisting of 160 acres:

¹ Additionally, with additional information associated with an ownership change, the Department could simply issue a new order amending the water right ownership, just as the Department did in this matter.

² "Wright has not yet filed any paperwork to update the ownership of water rights 35-13437 or 35-13439. Therefore, all water rights still list Walker as the current owner. It is not clear from the deeds available to the Department at this time whether Wright owns water rights 35-13437 or 35-13439." *Order* at 5 (underlining in original).

WALKER LAND & CATTLE PROPERTY



We requested a "Lot Book Guarantee" from Alliance Title & Escrow Corporation for the Wright parcel. This guarantee is obtained for the purpose of identifying the last recorded instrument which transferred title to the Wright property:

Name of Assured: Holden, Kidwell, Hahn & Crapo

The Assurances referred to on the face page are:

That, according to the Company's property records relative to the following described real property (but without examination of those Company records maintained and indexed by name):

West half of the Northwest quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$); Northeast quarter of the Northwest quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) and the Northwest quarter of the Northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 29, Township 3 North, Range 36 East of the Boise Meridian, Bonneville County, Idaho.

A. The last recorded instrument purporting to transfer title to said real property is:

Dated: April 1, 1954
Grantor: Stewart A Wright and Gertrude H Wright, his wife
Grantee: Wright Brothers Company
Recorded: October 13, 1982
Instrument No.: 631407

The identified deed in the Lot Book Guarantee—Instrument No. 631407 (which is dated April 1, 1954 but was recorded on October 13, 1982)—identifies the Wright "L" shaped parcel, which has been occupied by Wright (apparently under a Contract of Sale) since April 1, 1954 (the date of the deed) until the deed was recorded transferring ownership. This deed, in relevant part, provides:

631407
6-3-1982
QUIT-CLAIM DEED
STEWART A. WRIGHT and GERTRUDE H. WRIGHT, his wife, Grantors of
Salt Lake City, County of Salt Lake, State of Utah, hereby QUIT-CLAIM to
WRIGHT BROTHERS COMPANY, a corporation organized and existing under the laws of
the State of Idaho, for the sum of Ten (\$10.00) Dollars and other good and
valuable consideration, the following described tract of land in Bonneville
County, State of Idaho:
East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$) of Section
Eight (8); West Half of Southeast Quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$) of Sec-
tion Nine (9); East Half of East Half (E $\frac{1}{2}$ E $\frac{1}{2}$) of Section
Seventeen (17); Southeast Quarter (SE $\frac{1}{4}$) of Section Nineteen
(19); South Half (S $\frac{1}{2}$) of Section Twenty (20); West Half of
Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$); Northeast Quarter of Northwest
Quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) and Northwest Quarter of Northeast Quarter
(NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty-nine (29), all in Township Three
(3) North, Range Thirty-six (36) East Boise Meridian.
Witness the hand of said Grantors this 1st day of April, A.D.,
one thousand nine hundred and fifty-four.
Signed in the presence of
Stewart A. Wright
Gertrude H. Wright

Having established that Wright has occupied and owned the property since 1954, it is important to review the detail of the development of each water right (35-8037A and 35-8573) and the conveyance of the underlying property contained within the place of use of each water right is important to review. Except for the Wright deed set forth on the preceding page, all of these documents are contained in IDWR's water right backfile for each identified water right in the event you wish to verify them.

There are two important legal principles to consider with this letter, the first one of which is briefly described in the *Order* at page 5.³ More specifically:

Unless they are expressly reserved in the deed or it is clearly shown that the parties intended that the grantor would reserve them, appurtenant water rights pass with the land even though they are not mentioned in the deed and the deed does not mention 'appurtenances.'

Bagley v. Thomason, 149 Idaho 799, 241 P.3d 972 (2010) (citing *Joyce Livestock Co. v. United States*, 144 Idaho 1, 56 P.3d 502 (2007) (bolding added).

As was held in *Hunt v. Bremer*, 47 Idaho 490, 493, 276 P. 964, 965 (1929), "A division of a tract of land to which water is appurtenant, without segregating or reserving the water right, works a division of such water right in proportion as the land is divided," citing *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911).

Crow v. Carlson, 107 Idaho 461, 467, 690 P.2d 916, 922 (1984).

Secondly, a water right may be appropriated for use on property not owned by the water right holder as long as the law is followed in appropriating the water right, the result of which is separate ownership of the water right and the underlying property:

"One who has appropriated water and beneficially used it has a right to the use of the water independent of his ownership of the land." *Sanderson v. Salmon River Canal Co.*, 34 Idaho 145, 160, 199 P. 999, 1003 (1921). Idaho has long recognized that an appropriator can obtain a water right in waters located on federal land. *Keiler v. McDonald*, 37 Idaho 573, 218 P. 365 (1923); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Sarret v. Hunter*, 32 Idaho 536, 185 P. 1072 (1919); *Le Quime v. Chambers*, 15 Idaho 405, 98 P. 415 (1908); *Hillman v. Hardwick*, 3 Idaho 255,

³ "If a deed conveying a portion of the subject property does not describe how appurtenant water rights are to be divided, the Department will split the water rights in proportion to the number of water right irrigated acres associated with each parcel." *Order* at 5.

28 P. 438 (1891). The appropriator simply must follow Idaho law in obtaining that water right.

Joyce Livestock Co. v. United States, 144 Idaho 1, 7, 156 P.3d 502, 508 (2007). With these principles in mind, it is necessary to review the documents associated with the two parent water rights.

Water Right No. 35-8037A

Water Right No. 35-8037A received this partial decree in the SRBA on April 5, 2002:

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS			
In Re SRBA	}	PARTIAL DECREE PURSUANT TO	2002 APR -5 PM 3:57
Case No. 39576	}	I.R.C.P. 54(b) FOR	DISTRICT COURT-SRBA
	}	Water Right 35-08037A	TWIN FALLS CO., IDAHO
			FILED
NAME AND ADDRESS:	SOMETIMES A GREAT MOTION C/O E BRUCE STANGER 5167 E 49 N IDAHO FALLS, ID 83401		
SOURCE:	GROUNDWATER		
QUANTITY:	2.23 CFS 632.00 AFT		
PRIORITY DATE:	05/12/1983		
POINT OF DIVERSION:	TWIN RIVER S29 WUSHWE Within Bonneville County		
PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	2.23 CFS 632.00 AFT
PLACE OF USE:	Irrigation	Within Bonneville County	
	TWIN RIVER S29	WUSHWE 39.0	WUSHWE 40.0
		SWNE 40.0	SENE 39.0
	158.0 Acres Total		
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:			
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).			

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

The place of use of 35-8037A is 158 out of the 160 acres in the NE1/4 of Section 29, Township 03N., Range 36E.B.M. This water right was decreed to Sometimes a Great Notion Land and Cattle Company (c/o Bruce Stanger) (hereinafter, "Notion"). This "A" portion of 35-8037—when it was in the permit phase—was assigned to the place of use of the above-described NE1/4 in 1989 when these 160 acres were owned by Notion. This is evidenced by a statement in the SRBA claim for this water right:

14. Remarks: CHANGE OF POINT OF DIVERSION OCCURRED IN 1989.
SEE ADDITIONAL PERMITS FOR THIS NEW POINT OF DIVERSION.

The license for this water right was issued on December 9, 1991, and contains the same place of use as the partial decree.

Within months after Notion received its partial decree for 35-8037A, 120 of the 160 acres (the NENE, SENE, and SWNE) to which 35-8037A is appurtenant was conveyed from Notion to Double Arrow Ranch Limited Liability Company as evidenced by Instrument No. 1083550 recorded in Bonneville County, Idaho, a portion of which is set forth here:

SPECIAL WARRANTY DEED

1083550
BONNEVILLE COUNTY RECORDER
1083550 JUL1502 PM 453

THIS INDENTURE, made this 11th day of July, 2002, between ERNEST BRUCE STANGER (also known as E. Bruce Stanger or Ernest B. Stanger, a married person dealing with his sole and separate property), MICHAEL RICHARD STANGER (also known as Michael R. Stanger, a single person), and KIMBERLY EDITH STANGER KVAMME (also known as Kimberly S. Kvamme or Kimberly Stanger Kvamme, a single person), doing business as SOMETIMES A GREAT NOTION LAND AND CATTLE COMPANY (a partnership consisting of those three individuals as partners), the Grantors, and DOUBLE ARROW RANCH LIMITED LIABILITY COMPANY, an Idaho Limited Liability Company, the Grantee, whose address is c/o Edith M. Stanger of 115 North Morningside Drive, Idaho Falls, Idaho 83402,

WITNESSETH:

Certified to be a true and correct
copy of original
By: *[Signature]*

That the Grantors, for and in consideration of the sum of Ten and No/100s Dollars (\$10.00), and other good and valuable consideration, do by these presents grant, convey, and assign unto the Grantee all of the following described real estate situated in the County of Bonneville, State of Idaho, to-wit:

The East half of the Northeast quarter (E½NE¼) less the East 33 feet thereof decreed to Bonneville County, the Southwest quarter of the Northeast quarter (SW¼NE¼), and the Southeast quarter of the Northwest quarter (SE¼NW¼), Section 29, Township 3 North, Range 36 East, Boise Meridian, Bonneville County, State of Idaho.

Together with a portion of the water rights associated with License Nos. 35-08037A and 35-08573 proportionate to the acreages.

Immediately after Instrument No. 1083550 was recorded, the same property was immediately conveyed to Walker Land & Cattle Company with the recording of Instrument No. 1083551 on the same day (July 15, 2002):

RECEIVED

SEP - 4 2002 BONNEVILLE COUNTY RECORDER

1083551

Department of Water Resources 1083551 JUL 15 2002 PM 4:53

WARRANTY DEED

For Valuable Consideration Received, DOUBLE ARROW RANCH LIMITED LIABILITY COMPANY, an Idaho Limited Liability Company, the Grantor, does hereby grant, bargain, sell and convey unto WALKER LAND & CATTLE COMPANY, a general partnership, the Grantees, whose current address is

P.O. Box 124, Menan, Idaho 83434

the following described real estate situated in Bonneville County, State of Idaho, to-wit:

The East half of the Northeast quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) less the East 33 feet thereof deeded to Bonneville County, the Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), and the Southeast quarter of the Northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Section 29, Township 3 North, Range 36 East, Boise Meridian, Bonneville County, State of Idaho.

Together with a portion of the water rights associated with License Nos. 35-08037A and 35-08573 proportionate to the acreages.

Both deeds specifically referenced 35-8037A being conveyed along with the underlying property (even though in order to convey the water rights, it was not necessary to expressly identify them), and this water right is appurtenant to the NENE, SENE, and SWNE of Section 29. Therefore, this deed conveyed three-fourths of Water Right No. 35-8037A to Walker.

The remaining one-quarter of 35-8037A was eventually conveyed to Walker ten years later (in 2012). This remaining one-fourth portion was assigned the identification number of 35-13437 by the Department. Notion conveyed title to 35-13437 associated with the NWNE of Section 29 to Walker as evidenced by this deed:

Instrument # 1434387
IDAHO FALLS, BONNEVILLE, IDAHO
2012-12-17 12:27:57 PM No. of Pages: 3
Recorded for: ALLIANCE TITLE - IDAHO FALLS O
RONALD LONGMORE Fee: \$18.00
Ex-Office Recorder Deputy DWoodl
Instrument: DEED QUIT-CLAIM
Electronically Recorded by Simplicity

QUITCLAIM DEED

FOR VALUE RECEIVED, Sometimes A Great Notion Land & Cattle Company, a general partnership, of 5387 E 49th N, Idaho Falls, Idaho, 83401, "Grantor" does hereby remise, release and forever QUITCLAIM unto, Walker Land & Cattle, LLC, whose mailing address is 1070 Riverwalk Drive, Suite 200, Idaho Falls, Idaho, 83402, its interest held, in and to the following described water right in the state of Idaho:

Water Right Number

35-13437

<u>Place of Use</u>	<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Acres</u>	<u>County</u>
NW1/4 NE1/4	T3N	R36 EBM	29	40	Bonneville, ID

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining.

While it is true that the NWNE of Section 29 was and is currently owned by Wright, 35-13437 was owned by Notion because the SBRA partial decree identified the owner of 35-8037A (the parent right to 35-13437) as Notion. Therefore, this was a situation where the ownership of the water right was different than the ownership of the underlying property. We understand that Notion was authorized to irrigate the NWNE even though it was owned by Wright. Again, 35-8037A was licensed to Notion in 1991 when Wright owned the property, and Wright did not file any competing claim for a portion of 35-8037A in the SRBA.

In short, it is undisputed and that Notion did not own the portion of 35-8037A appurtenant to the NWNE. A review of the relevant deeds leads to the conclusion that Walker owns the entirety of 35-8037A, which is now identified as two children water rights (Water Right Nos. 35-13437 and 35-13438). Because the ownership of these rights appears to be beyond dispute, there is no need for the Department to recombine these rights. The rights should remain separately numbered, but with the clear understanding that both are owned by Walker. Any attempt by Wright, or any other entity, to claim ownership of these rights through submission of a *Notice of Change of Water Right Ownership* to the Department should be refused.

Water Right No. 35-8573

The development of Water Right No. 35-8573 is somewhat more detailed. Because proof of beneficial use of this water right was after the commencement date of the SRBA, it was not necessary for Walker to submit a claim in the SRBA for this water right. Therefore, the extent of the water right is evidenced by the documents associated with the permitting and licensing of this water right.

The application for permit for 35-8573 was submitted on May 2, 1985 by Roland L. Walker (Rollie Walker's father), as evidenced by the application itself:

Form 202
3/78

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT**

Ident. No. 35-8573

To appropriate the public waters of the State of Idaho

CONDITIONAL
APPROVAL

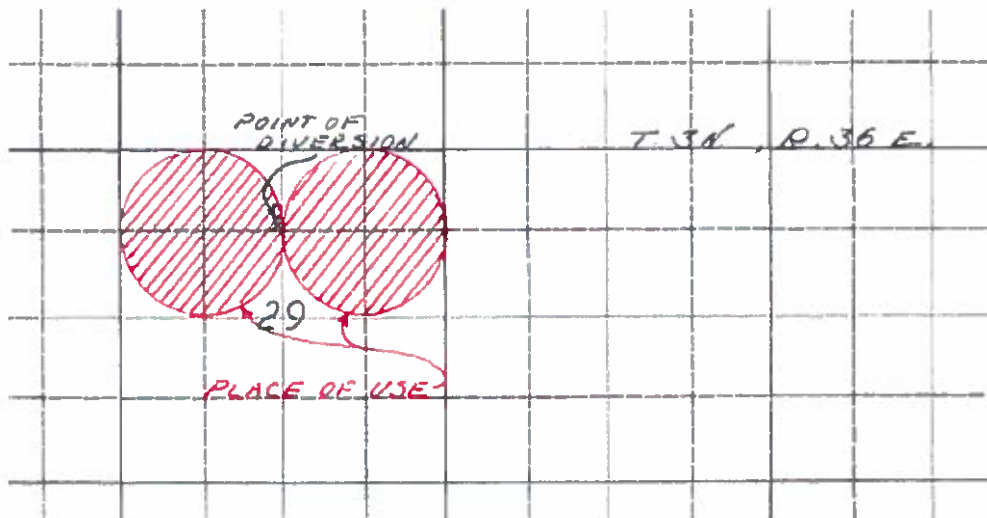
1. Name of applicant Roland L. Walker Phone 754-4696
Post office address Box 129; Menan, Idaho 83434

2. Source of water supply Groundwater which is a tributary of _____

3. Location of point of diversion is NE % of NW % of Section 29 Township 3 N
Range 36 E B.M. Bonneville County, additional points of diversion if any: _____

4. Water will be used for the following purposes: _____

The place of use map associated with the application depicted the following place of use with initial plans to install two center pivots:



As you can see, the place of use covered the entire N1/2 of Section 29, Township 3N, Range 36E.B.M., which included the Wright property. The application requested the right to develop 270 authorized irrigated acres.

At the time the application was submitted, Notion owned its "L" shaped piece, and Wright did as well. Under Item #9 of the application document, Walker made it clear that he was authorized to develop the water right as a condition of an oral lease:

-
9. a. Who owns the property at the point of diversion Wright Bros. Co. and Great Notion Cattle Co.
b. Who owns the land to be irrigated or place of use same
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing Condition of oral lease.
-

As described above, a person can develop a water right on property he or she does not own as long as the law is followed. Mr. Walker followed the law when he followed the permitting process and paid for installation of diversion and irrigation equipment as he developed the water right. No protests to the application were filed, and there is nothing of record indicating that either Notion or Wright objected to development of the water right. A permit was eventually issued on September 29, 1990:

State of Idaho
Department of Water Resources
Permit To Appropriate Water
NO. 35-08573

Proposed Priority: May 2, 1985 Maximum Diversion Rate: 5.40 CFS
This is to certify, that **ROLAND L. WALKER**
P.O. BOX 129
NEZAN, ID 83434

has applied for a permit to appropriate water from: **GROUNDBWATER**
and a permit is **APPROVED** for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	04/01 to 11/01	5.40 CFS

LOCATION OF POINT(S) OF DIVERSION: NE2W Sec. 29, Township 03N, Range 36E
BONNEVILLE County

PLACE OF USE: IRRIGATION

<u>TWP</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N	36E	29	NE2W 33.8	NE2E 33.8	SE2E 33.8		
			SE2W 33.8	NE2W 33.8	NE2W 33.8		
			SE2W 33.8	SE2W 33.8			270.4
Total number of acres irrigated:							270.4

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before October 1, 1992.
2. Subject to all prior water rights.
3. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
4. Any license issued by IDWR pursuant to the permit or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
5. Diversion and use of water under this permit is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
6. The Director retains jurisdiction of the permit and/or subsequent license issued to change, add or remove any requirement as determined to be appropriate.
7. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
8. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
9. The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

MICROFILMED
SEP 23 1990

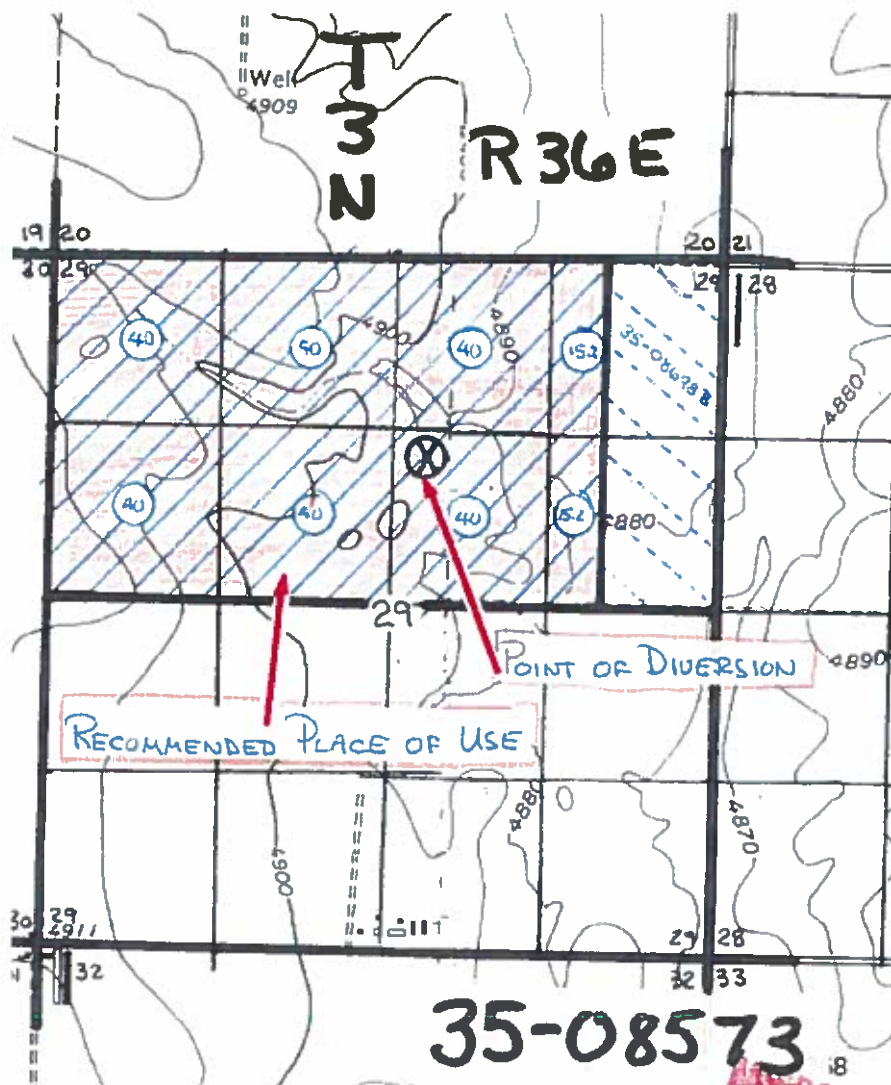
State of Idaho
Department of Water Resources
Permit To Appropriate Water
NO. 35-08573

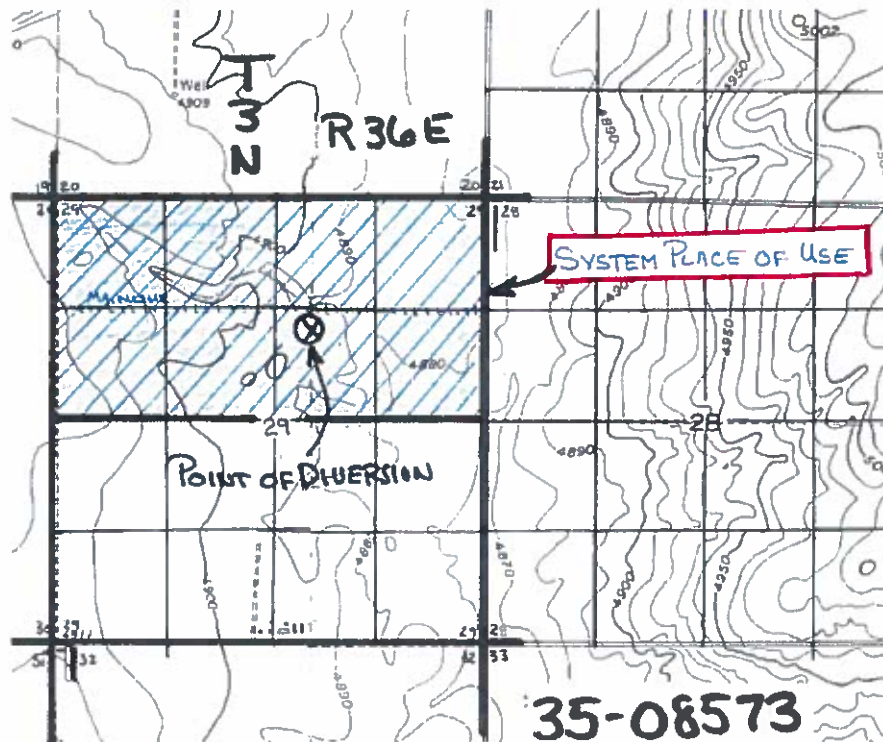
CONDITIONS/REMARKS:

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this
20th day of September, 1990.

for 
R. Keith Higginson, Director

The field exam and associated documents for 35-8573 explain the development of this water right. After Proof of Beneficial Use was submitted, Keith Wilson of the Department accompanied Blair Walker (Roland's son) on the field exam. Keith discovered that the water delivery system had the ability to deliver water to virtually the entire N1/2 of Section 29 (except for 2 acres on the east side of the N1/2 covered by a Bonneville County road). The field exam maps are reproduced here:





After an *Application for Amendment for Licensing Purposes* was prepared by the Department for Mr. Walker's signature, and the associated filing fee paid, the license for 35-8573 was issued:

State of Idaho Department of Water Resources				
WATER RIGHT LICENSE				
WATER RIGHT NO.		33-08573		
Priority: May 2, 1985	Maximum Diversion Rate:	3.87 CFS		
This is to certify, that ROLAND L WALKER PO BOX 129 MERAM ID 83434 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated May 2, 1985; and has submitted Proof of Beneficial Use on August 28, 1992. An examination indicates that the works have a diversion capacity of 6.100 cfs of water from a GROUNDWATER source, and a water right has been established as follows:				
BENEFICIAL USE	PERIOD OF USE	DATE OF DIVERSION	ANNUAL VOLUME	
IRRIGATION	04/01 to 10/31	3.87 CFS		
LOCATION OF POINT(S) OF DIVERSION:		SWNE , Sec. 29, Township 03N, Range 36E BONNEVILLE County		
PLACE OF USE: IRRIGATION	ACRES	ACRES	ACRES	TOTAL
TWN RGE SEC				
03N 36E 29	NENE 39 ✓	NONE 40	SWNE 40 ✓	
	SENE 39 ✓	NENW 40	NWNW 40	
	SNW 40	SENE 40 ✓		318
Total number of acres irrigated:				318
CONDITIONS OF APPROVAL AND REMARKS				
1. This water right is appurtenant to the described place of use. 2. This right is subject to all prior water rights and may be forfeited by five years of non-use. 3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law. 4. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest. 5. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.				
JUN 27 1996				

PAGE 2

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 35-08573

CONDITIONS OF APPROVAL AND REMARKS

6. Right 35-08037A is also diverted at the point of diversion described above.
7. This right is limited to the irrigation of 270 acres within the place of use described above in a single irrigation season.
8. Use of this right with Right 35-08037A is limited to a total combined annual diversion volume of 1272.0 af and to the irrigation of a combined total of 318 acres in a single irrigation season.
9. This right when combined with Right 35-08037A and all other rights shall provide no more than .02 cfs per acre nor more than 4.0 af/a per acre for the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 24th day of MAY, 1976.

Acting for KARL J. BREHEN Director

The license confirmed that the water right was owned by Mr. Walker, even though it was authorized to irrigate 270 acres within a 318-acre permissible place of use.

Based on the contents of the *Order*, the language in the deeds conveying the Notion property to Walker may have confused the matter because it states that Notion was conveying to Walker "a portion of the water right associated with License Nos. 35-08037A and 35-08573 proportionate to the acreages." Notion did not own 35-8573, so it could not convey it. However, given the long-standing relationship between Notion and Walker, this statement simply confirmed that Notion had no right, title, or interest in 35-8573 and that Walker was to obtain whatever portion of 35-8037A was associated with the property Notion conveyed to Walker.

As to the portion of 35-8573 associated with the Wright property, that water right portion was never owned by Wright. It was developed and owned by Roland L. Walker, and there is no deed conveying Mr. Walker's interest in 35-8573 (or any portion of 35-8573) to Wright.

Summary

The *Order* states:

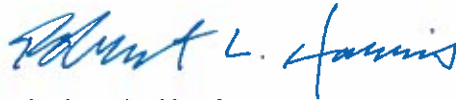
Wright has not yet filed any paperwork to update the ownership of water rights 35-13437 or 35-13439. Therefore, all water rights still list Walker as the current

owner. It is not clear from the deeds available to the Department at this time whether Wright owns water rights 35-13437 and 35-13439.

Order at 5 (underlining in original). Based on the above discussion of the relevant water right documents and deeds, it is clear that Wright does not own any portion of Water Right Nos. 35-8037A and 35-8573 and/or their split portions identified as Water Right Nos. 35-13437, 35-13438, 35-13439, and 35-13440. Under no circumstances should the Department's records be updated to reflect that Wright Brothers Co. owns any portion of the Water Right Nos. 35-8037A and 35-8573 and/or their split portions identified as Water Right Nos. 35-13437, 35-13438, 35-13439, and 35-13440. If any such submission is made, we request that the submission be refused.

Thank you for your consideration of this letter. If you wish to discuss the matter further, please do not hesitate to call me.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.