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AUG 20 2014

DEPT OF WATER RESOURCES
SOUTHERN REGION

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AUG 14 2014

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF LICENSE NO.)
36-08800 IN THE NAME OF DEAN AND) **PETITION FOR RECONSIDERATION**
DOROTHY HOWARD)
_____)

On July 31, 2014, the Idaho Department of Water Resources ("IDWR") issued License No. 36-08800 to Dean and Dorothy Howard ("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. 36-08800 pursuant to the IDWR rules of procedure, IDAPA 37.01.01.740.02.

On December 06, 1999 an Application for Permit was filed with the IDWR to irrigate 12.7 acres located in T09S, R20E, S29, NWSE (BLM). In the Application for Permit, the Claimant stated that the land irrigated under this right is authorized under the Sikes Act Lease with the Idaho Department of Fish and Game and the BLM, and that this lease was up for renewal. The Cooperative Wildlife Habitat-Farming Development Agreement ("Agreement") expired on 12-30-2004 and has not been renewed.

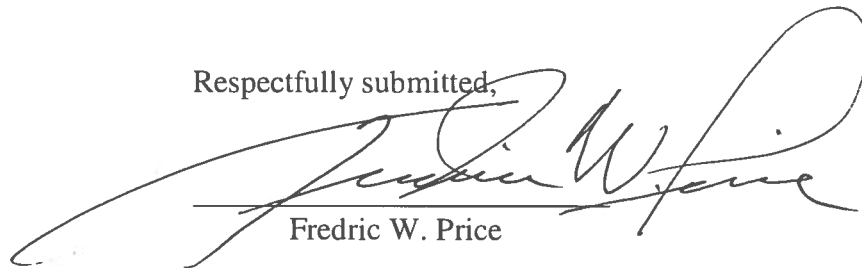
BLM respectfully requests that IDWR withdraw its granting of the License because the Claimant is not authorized to farm the 12.7 acres on BLM land in T09S, R20E, S29, NWSE.

Under state law a water right cannot be established in trespass (see *In Re General*

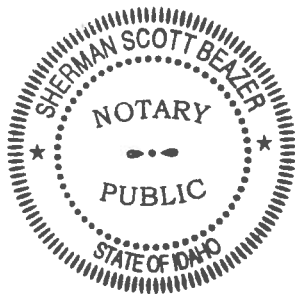
ORIGINAL

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 14th day of August, 2014.
Witnessed by my hand and official seal.




Sherman Scott Beazer
Notary Public in and for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 12-10-2015

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on August 14, 2014 I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION; LICENSE NO. 36-08800** 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

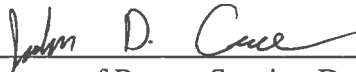
Copies to:

Idaho Department of Water Resources
Southern Regional Office
650 Addison Ave W, Ste 500
Twin Falls, ID 83301-5858

Becky J. Rudolph
803 South 1975 East
Hazelton, ID 83335

Gary J. Wright, Wildlife Biologist
Kasey C. Prestwich, Realty Specialist
U.S.D.I., BLM
Shoshone Field Office
400 W 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