

Law Offices

RIGBY, ANDRUS & RIGBY
Chartered

Ray W. Rigby
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam (1954-2001)
Hyrum D. Erickson
Robert H. Wood

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone: (208) 356-3633
Facsimile: (208) 356-0768

FAX Transmission Sheet

Date: 12/27/12

To: IDWR - ATTENTION: SHARLA

Fax No: 525-7177

From: Hyrum Erickson

Sent By: DeAnn

Subject: License # 22-7474

You should receive 23 page(s) including this cover sheet.

COMMENTS:

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Jerry R. Rigby (ISB No. 2470)
 Hyrum Erickson (ISB No. 7688)
 of RIGBY, ANDRUS
 & RIGBY, Chartered
 Attorneys at Law
 25 North Second East
 Rexburg, Idaho 83440
 Telephone: 208 356-3633

Attorneys for Jay Ronald Peterson

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF LICENSE NO. 22-7474)
)
) **PETITION FOR RECONSIDERATION**
)
)

COME NOW Jay Ronald Peterson and Judy Anne Peterson, husband and wife, and petition the department to reconsider its *Final Order Adding Clarifying Language to Assist the Department in Administration of Water Entitled to Qualified Subordination (Appendix B list)*, dated December 14, 2012, because water right no. 22-7474 should have been placed on the Appendix A list as it meets the requirements for unqualified subordination. This petition is supported by the portions of the water right back file attached as Exhibit A, the maps generated by the department's online resources attached as Exhibit B, and the letter from Jay Peterson dated December 21, 2012, attached as Exhibit C.

BACKGROUND

The department's *Final Order Adding Clarifying Language to Assist the Department in Administration of Water Entitled to Qualified Subordination (Appendix B list)* (hereinafter the

Order) describes the requirements for unqualified subordination of the hydropower rights pursuant to the Swan Falls Settlement as follows: 1) an application or claim filed prior to June 30, 1985, and 2) beneficial use or substantial investment prior to October 25, 1984. Order, Findings of Fact ¶ 12. In its Order, the department found that water diverted pursuant to water right no. 22-7474 was not put to beneficial use prior to October 25, 1984 and that the water right holder did not make a substantial investment prior to October 25, 1984. Order, Conclusions of Law ¶ 3.

ARGUMENT

1. Water right no. 22-7474 was put to beneficial use prior to October 25, 1984.

Water right no. 22-7474 is a ground water license that includes irrigation, stockwater, and domestic uses. It also includes two distinct points of diversion as shown on the maps attached as Exhibit B and created using the departments online resources.

The well located in the SWSE is an 8" well. This well was installed by the Petersons in the aftermath of the Teton Dam Flood in 1976 and has been providing water which Petersons have put to beneficial use since that time.

The well identified as in the NWSE is a 16" well that was drilled in the 1940's by a previous owner of the land, who irrigated from it prior to the Peterson's purchase of the property. It is listed on the water right report as being located in the NWSE, but on maps it appears to be directly on the line between the NWSE and the NESE. It was not used for some time after the Petersons purchased the property, but it now functions and serves as an additional point of diversion for water right number 22-7474.

Jay Peterson's letter dated December 21, 2012, makes clear that water from the 8" well

has been diverted and put to beneficial use since 1976. The Petersons had the 8" well installed as part of the repair and recovery work done in response to the Teton Dam Flood in June of 1976. That the 8" well was in place in 1976 and diverting water that is now identified as water right no. 22-7474 is also supported by the department's backfile. The backfile to 22-7474 includes two documents filed by the Petersons in August of 1983. An *Application for Permit* seeking a permit to pump from the 16" well and a *Claim to a Water Right* seeking to receive a water right for the water from the 8" well. *Backfile* pg. 61-66. The claim and application indicate that the 8" well was in place at the time of application and had been in place since 1976. This is also consistent with the Petersons' response to the department's *Trust Water Information Questionnaire* completed May 15, 1990, and the department's memo to the file dated May 25, 1990. *Backfile* pp. 49, 51-52.

Because the department's backfile and the letter of Jay Peterson demonstrate that water right no. 22-7474 was being put to beneficial use prior to October 25, 1984, the department should reconsider its conclusion that it was not, and as a result, should include water right no. 22-7474 as benefitting from unqualified subordination.

2. Petersons expended in excesses of \$15,000 in development of water right no. 22-7474 prior to October 25, 1984.

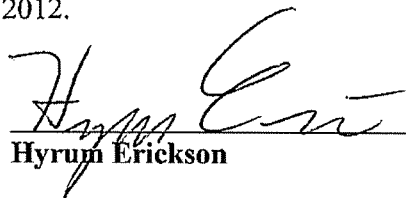
The requirement that water users put water to beneficial use or have made a "substantial investment" is an alternative – the water user is required to show one, but not both of the requirements. However, in the event that the department concludes that both are required or that Petersons have not shown that the water was put to beneficial use, they have also made the required substantial investment. The 1180 Contract defines substantial investment as an

expenditure of \$15,000 or 25% of the total projected cost. The letter from Jay Peterson dated December 21, 2012, states that in 1976 they had paid about \$28,500 for the well drilling, 10 HP pump, pump house, and power line to power the pump. This is well beyond the required \$15,000.

CONCLUSION

The department erred when it concluded that water right no. 22-7474 had not been put to beneficial use prior to October 25, 1984. Its own records indicate that this is not the case. Because it is undisputed that the Petersons filed an application for water right no. 22-7474 prior to June 30, 1985, and because the department's files and the letter from Jay Peterson show that water was beneficially used prior to October 25, 1984, the department should reconsider its final order and conclude that water right no. 22-7474 is entitled to unqualified subordination pursuant to the Swan Falls Agreement.

DATED This 27th day of December, 2012.


Hyrum Erickson

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of December, 2012, I served a copy of the foregoing
Petition for Reconsideration by depositing a true and correct copy via facsimile to the
following:

Idaho Department of Water Resources
Attn: Sharla Cox
900 N. Skyline, Ste. A
Idaho Falls, ID 83402
208-525-7177

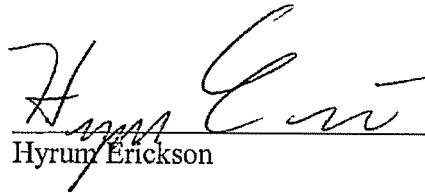

Hyrum Erickson



EXHIBIT “A”

MEMORANDUM

TO: FILE/APPLICATION NO. 22-7474

FROM: TIM LUKE

RE: SWAN FALLS PROCESSING

DATE: 5-25-90

=====

The applicant has returned the trust water questionnaire and has noted that the groundwater source under this application is a supplemental source to surface water. It appears that applicant has developed two wells, one 8 inch well which has supplied supplemental water to 30 to 60 acres and a 16 inch well which has not yet been hooked up to a power source and thus has not been used for any beneficial use. Applicant further states that 130 of the 140 acres under the application will be irrigated upon completion of the entire project, which includes domestic use for 30 homes.

The IDWR remote sensing data and overlap report shows that 137 of 140 acres are classified as irrigated in 1986. One decreed right and one statutory claim under Farmers Friend Canal Co. are listed as appurtenant to the same land.

This supplemental filing will constitute a trust water diversion, but the acreage under the filing will not be counted as trust water acreage since it was developed prior to 1984 with existing water rights.

MICROFILMED

JUL 19 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRUST WATER INFORMATION QUESTIONNAIRE

RECEIVED
MAY 24 1990

Department of Water Resources

Application No. 22-7474

INSTRUCTIONS: IF YOU ARE NOT INTERESTED IN HAVING THE APPLICATION PROCESSED, PLEASE COMPLETE AND RETURN THE ENCLOSED WITHDRAWAL FORM.

IF YOU WISH TO HAVE THE APPLICATION PROCESSED, PLEASE ANSWER THE FOLLOWING QUESTIONS AS THOROUGHLY AS POSSIBLE. FAILURE TO RETURN EITHER THE WITHDRAWAL FORM OR QUESTIONNAIRE IS CAUSE FOR THE DEPARTMENT TO VOID THE APPLICATION.

- 1a. Are you the current owner of the land or place of use described under this application? Yes ☒ No ☐
b. If you are not the property owner, please describe the arrangement enabling you to develop the proposed project.

- 2a. Has the source of water listed on this application been used to irrigate any of the land described under this same application prior to October 1, 1984? Yes ☒ No ☐
b. If yes, please describe the extent of development and number of acres irrigated. (Note: Uses developed after October, 1984 are considered trust water diversions and may be subject to certain restrictions and/or conditions. You may be asked to verify uses established prior to October, 1984.)

130 acres

Trust
Affid.

3. If you answered NO to ques #2a, please state the number of acres you have irrigated with this source after October 1, 1984.

4. If you have not irrigated lands under this application, please state the number of acres you plan to complete. 130 acres

5. If the permit is a supplemental filing please identify other water rights which are used on the same land.

105 Shares Farmers Friend Canal + 8" well 120 ft depth 10 HP Pump

Use the reverse side of this form if you wish to add any comments. You may mark changes on the enclosed application to designate any proposed amendments. (Note: Proposed changes which result in an expansion of use will not be considered by the department.)

I hereby assert that the responses provided above are true to the best of my knowledge. I understand that any intentional misrepresentations may result in voiding of the application.

Applicant Jay R. Peterson JUL 19 1990 Date May 15, 1990

We have placed the power source 50% of the way to the 16" well head and plan to complete the power source and install a 10-20 HP pump as a back-up source of water to our surface water source.

We have been providing water to 7 home dwellings for the last 8 years and water 30 head of cattle and irrigating 30-60 acres with water from 8" inch well.
↓ over

We have also cleaned out the 16" well at a cost of \$1000.00. This particular well dates back to the 1940's. It would be a shame to have it terminated.

MICROFILMED

JUL 19 1990

Form 202
3/78

Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

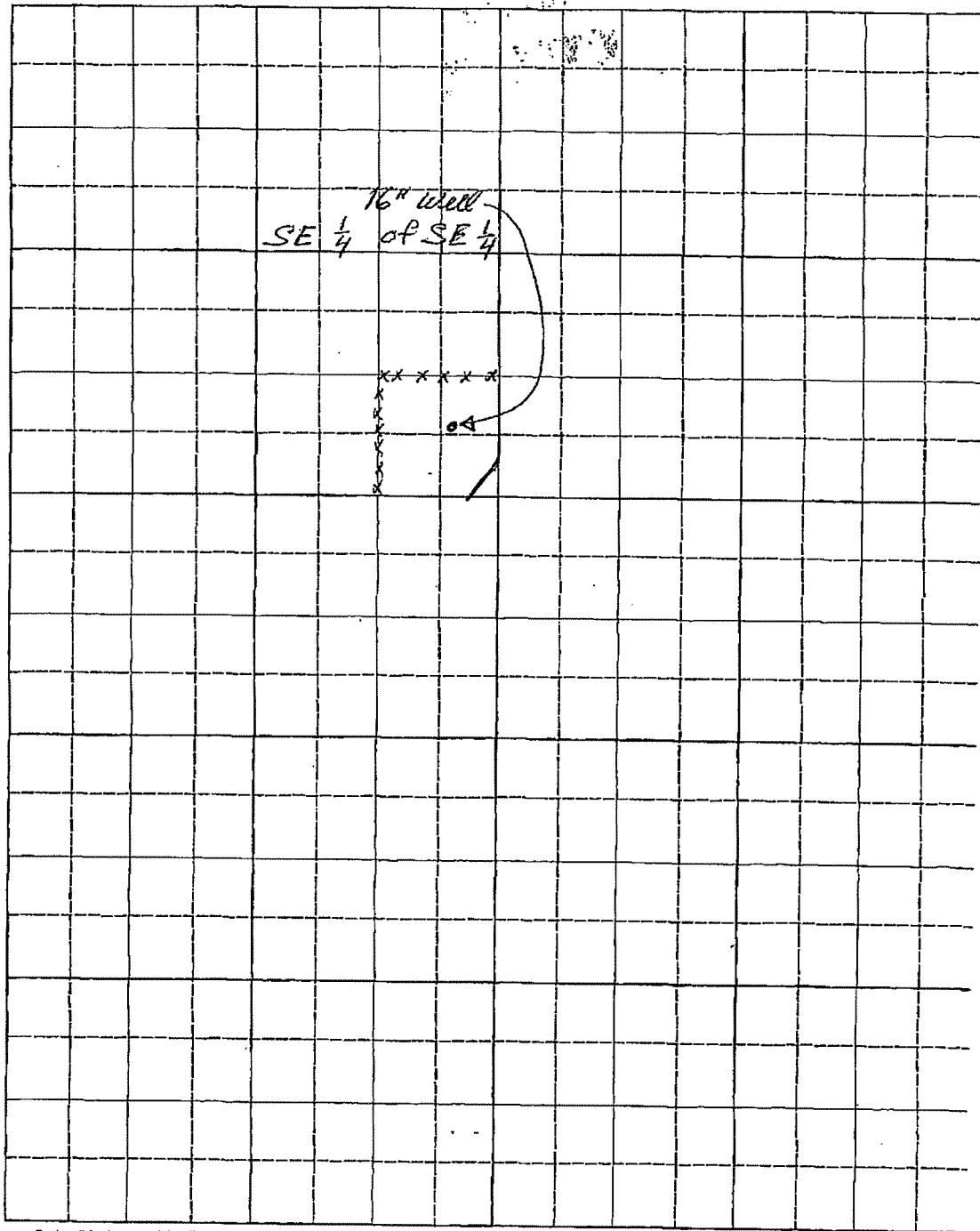
- VOID*
1. Name of applicant Jay Ronald & Judy Anne Peterson Phone 458-4487
 Post office address Rt #1 Box 30-A St. Anthony Idaho 83445
2. Source of water supply 16" Well which is a tributary of _____
3. Location of point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 22 Township 7N
 Range 40E B.M. Fremont County, additional points of diversion if any: _____
4. Water will be used for the following purposes:
 Amount 2.80 200-300 for irrigation purposes from June to Aug (both dates inclusive)
(cfs or acre-feet per annum)
 Amount 100-200 for domestic purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
 a. _____ cubic feet per second and/or b. _____ acre-feet per annum.
6. Proposed diverting works:
 a. Description of ditches, flumes, pumps, headgates, etc. The water from 16" well described will be used as a back-up well and as an extra source of irrigation for our farm.
 b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____
 Period of year when water will be diverted to storage _____ to _____ inclusive.
(Month/Day) (Month/Day)
 c. Proposed well diameter is 16" inches; proposed depth of well is 220 feet.
7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years (minimum 1 year - maximum 5 years).
8. Description of proposed uses:
 a. If water is not for irrigation:
 (1) Give the place of use of water: SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section: 22 Township 7N
 Range 40E B.M.
 (2) Amount of power to be generated: _____ horsepower under _____ feet of head.
 (3) List number of each kind of livestock to be watered. 14 head of cattle

 (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____
 (5) If water is to be used for other purposes describe: We may use the 16" well as a pick-up to handle increased demands on our commercial development.

MICROFILMED

JUL 19 1990

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as hereinafter set forth.

MICROFILMED

JUL 19 1990

Jay R. Peterson
(Applicant)

Received by CW Date 8-29-83 Time 3:30p
Preliminary check by _____ Fee \$ 30.00
Receipted by BP Date 8/29/83 # 29648
Publication prepared by _____ Date _____
Published in _____
Publication dates _____
Publication approved _____ Date _____
Protests filed by: _____

Copies of protests forwarded by _____
Hearing held by _____ Date _____
Recommended for approval denial by _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. Other:

RECORDED

JUL 19 1990

Form No. 243
9/81

Claim No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that

Jay Ronald + Judy Anne Peterson

(Name of Claimant)

RT 1* Box 30-A

(Mailing Address)

St. Anthony Idaho 83445

(Zip Code)

Telephone No. 458-4487

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use) 1976

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 is that a claim may be filed on single family domestic use from a ground water source.

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

8" domestic well

tributary to _____

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

Quantity	(cfs, af)	Per. Use	(Domestic, Irrigation, Stock, Etc.)	Period of Use From	To
200 gal min		Use	Farms irrigation	June	August
11		Use	Stock	Oct.	April
11		Use	Domestic	Jan. 1	Dec. 31
11		Use	Commercial	Jan. 1	Dec. 31

(4) TOTAL QUANTITY USED. we will start pumping our well to commercial use in the fall of 1983 - spring of 84

(5) A) Point of diversion: (Location of point where water is diverted from its source) overnight + mobile home
SE 1/4 Sec. 22 Twp. 7N Rge. 40E B.M., County of Fremont

Additional points of diversion: 8" well described above is pumped by 10 HP.

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. Describe any changes in the system and give the date of the change.

(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.

T	R	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTAL
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7N	40E	SE 1/4 22													40	40	40	20	140

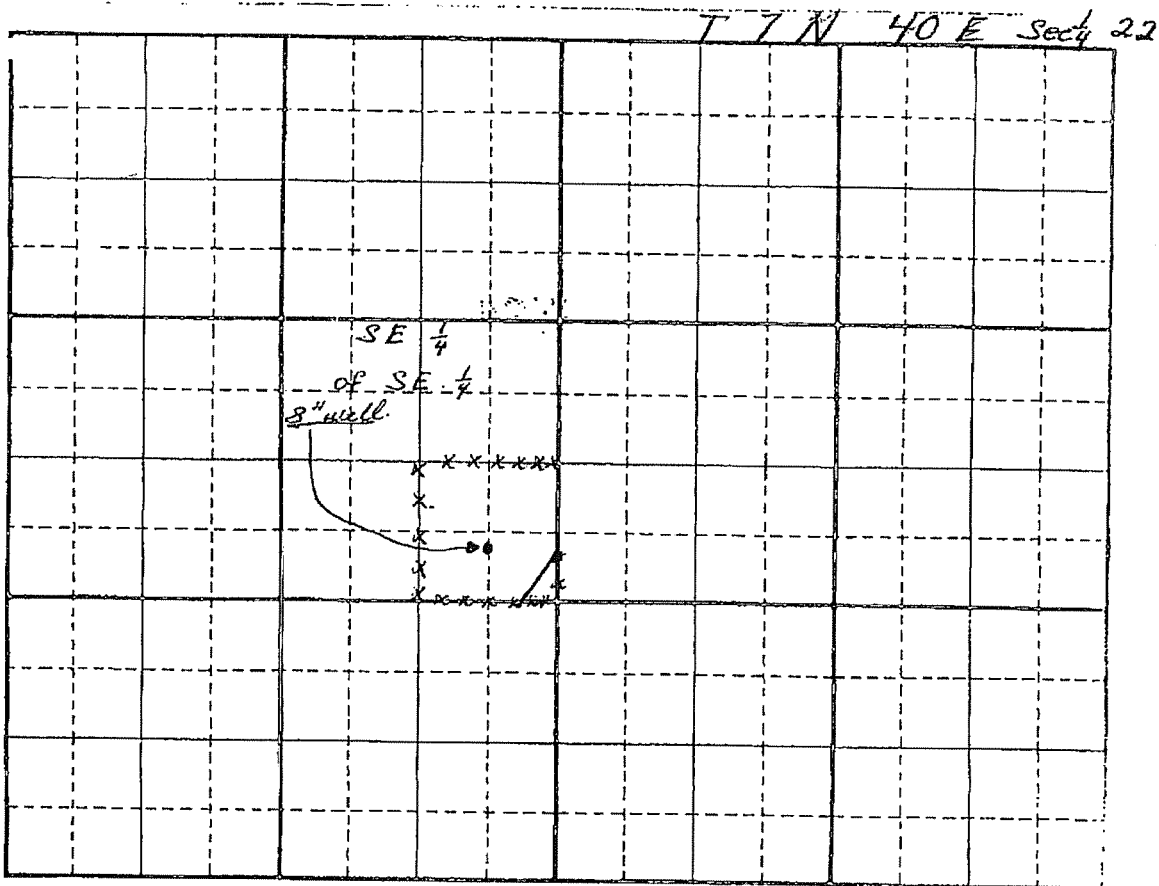
No. of acres 140

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: The 8" well described above is used in a sub-division for a seasonal watering system. The sub-division includes 8660 acres of land. This same well will be used to supply water to mobile home park and overnight camping.

NOTE: Include here the type and number of stock watered: 14 head of cattle

(7) If you are claiming water as a member of an organization, list name of organization: _____

(B) Remarks



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

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.

Jay R. Peterson
(Claimant)

Sworn to before me this _____ day of _____, 19____.

Notary Public
Residing at

NOTARIZED

JUL 19 1990

My commission expires _____

FOR DEPARTMENT USE ONLY

Received by CW Date 8/29/83 Exception filed by:
 Prelim. check by _____ Date _____
 \$30.00 fee received by BP Date 8/29/83 #29647
 Published in _____
 Dates _____

Forwarded to
claimant by: _____ Date: _____



EXHIBIT “B”

State of Idaho
Department of Water Resources

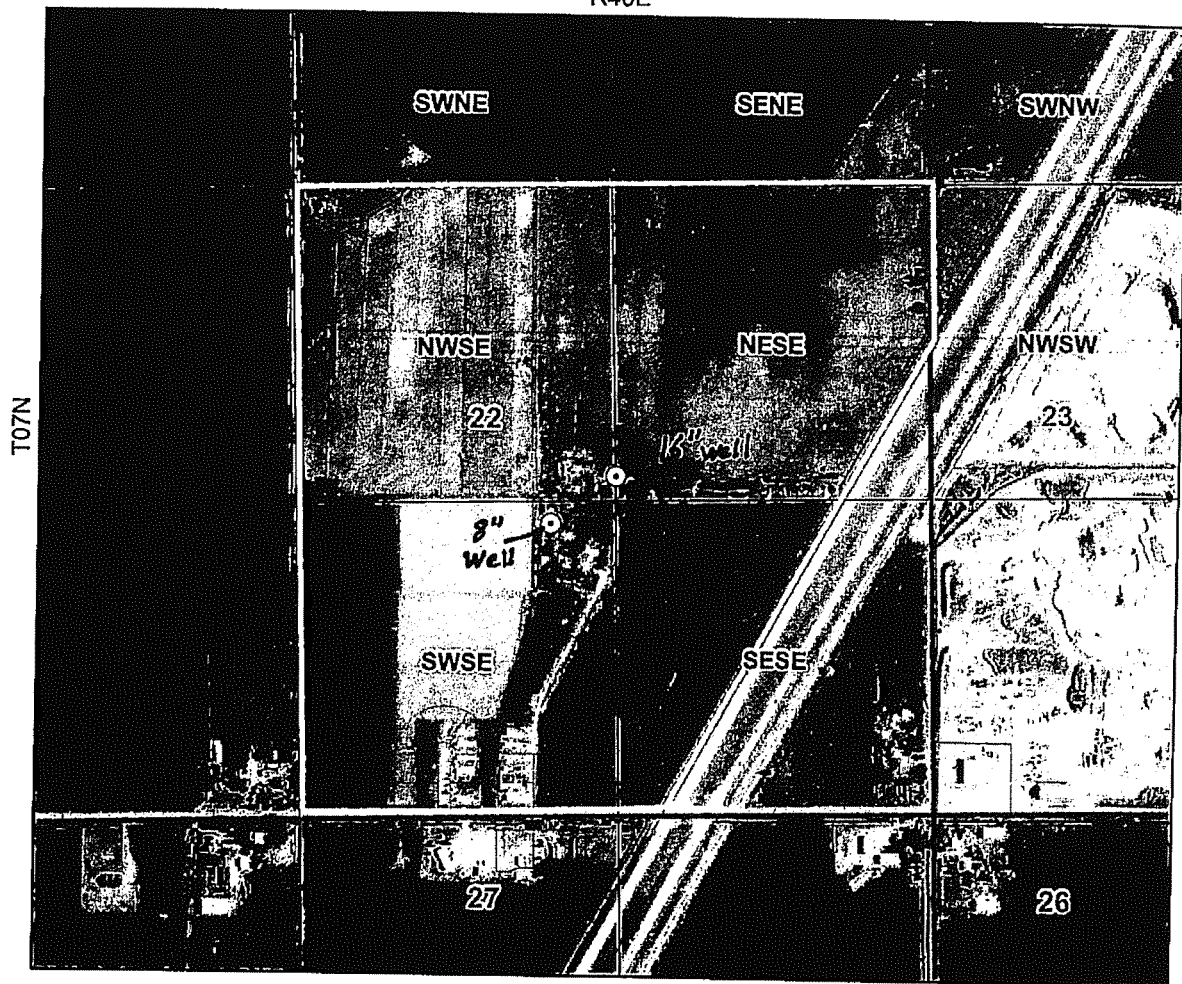
Water Right

22-7474

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

R40E



○ Point of Diversion

Place Of Use Boundary

- Townships
- PLS Sections
- Quarter Quarters
- Taxlots

0 0.075 0.15 0.3 Miles



State of Idaho
Department of Water Resources

Water Right
22-7474

STOCKWATER

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

R40E



- Point of Diversion
- Place Of Use Boundary
- ▬ Townships
- ▬ PLS Sections
- ▬ Quarter Quarters
- ▬ Taxlots

0 0.075 0.15 0.3 Miles

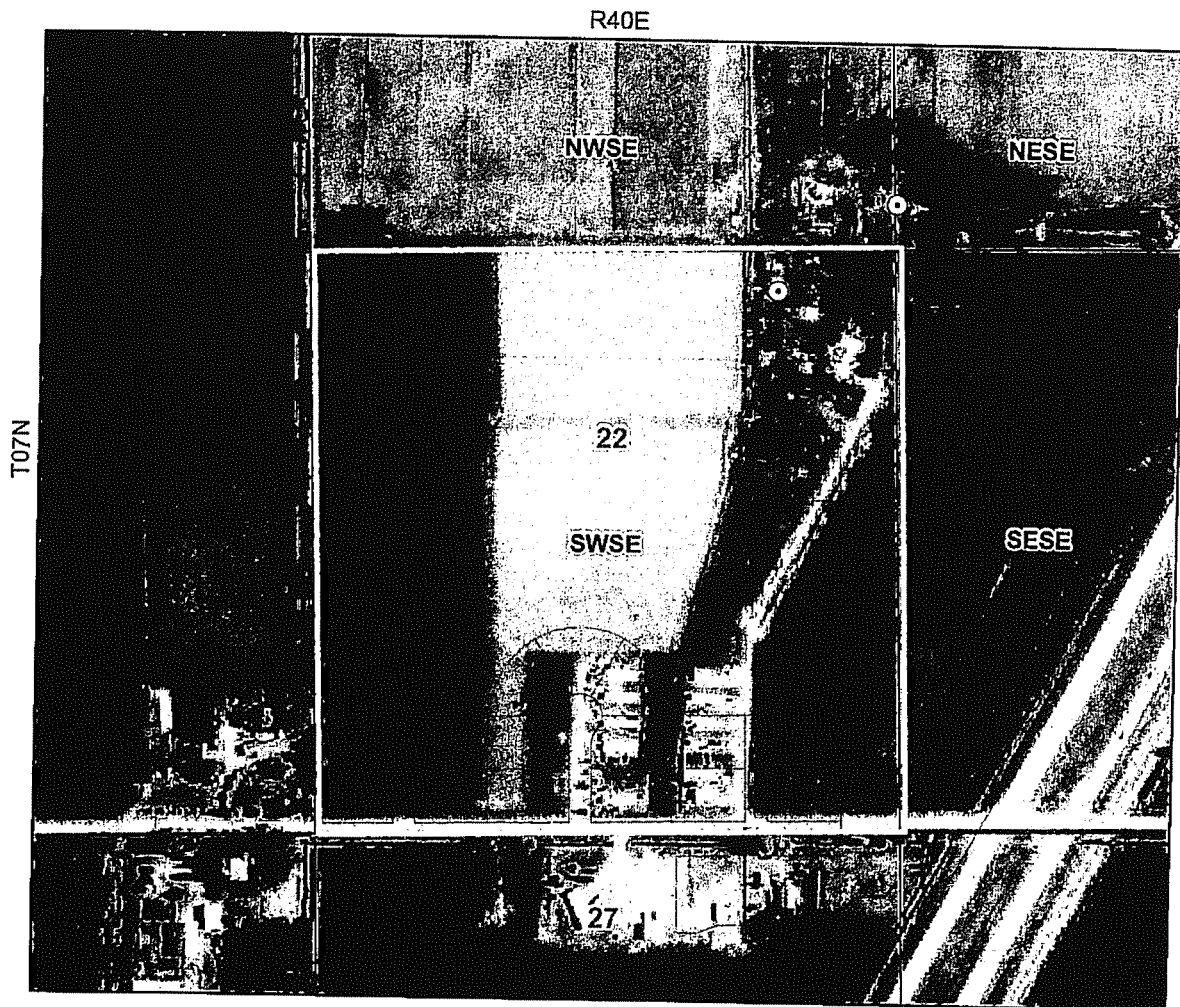


State of Idaho
Department of Water Resources

Water Right
22-7474

DOMESTIC

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



⊙ Point of Diversion

Place Of Use Boundary

- Townships
- PLS Sections
- Quarter Quarters
- Taxlots

0 0.05 0.1 0.2 Miles





EXHIBIT “C”

December 21, 2012

State of Idaho Department
of Water Resources

My family and I were crushed when we received written notice that our water rights to pump from our two irrigation wells will be placed in category "B" which means to us that our rights to pump water could be shut-down during dry years. This means 13 families would be forced to go without water and our crops would burn up and our cattle would be sold. We hope that we will never be forced into such a devastating consequence as described in the foregoing statement.

In June of 1976 the Teton Dam failed sending millions of gallons of flood water across the upper Snake River Plain destroying homes and farm land and businesses. Our farm was covered with 6 to 8 feet of water which destroyed our home, farmland and cattle. **(Section 1.)** Aug. 3- 6, 1976 Hopkins Well Drilling Co. drilled a domestic and irrigation well 8" in diameter and 160' in depth on our property. The cost was about \$5000 for the well and about \$2500 for a 10 HP pump. Next we built a pump house 20' X 40' with a cement floor 8' feet in the ground, cement walls and an A-frame roof equipped with 10 pressure tanks for \$12,000. Finally, Utah Power brought in an overhead line to supply power to our 10 HPP. The cost was over \$10,000. The total cost of section one was about \$28,500. **(Section 2)** In 1978 my wife and I and our two oldest children and a new baby moved our Hud trailer from Rexburg to our farm location. We continued to make improvements to our irrigation system. They consisted of purchasing a 1/2 mile of sprinkler pipe (66 risers) and 2000 ft of surface mainline pipe. The costs was about \$20,000 to \$22,000. We used this sprinkler system to water our crops. We still use these pipes today to water our farm along with our center pivot. During 1983 we filed for a water permit on our small well and our larger well. We were granted a license to pump from both wells on **August 29, 1983**. The 10 HPP 108 gal per minute and the 25 HPP 339.9 gal per minute or a total 1.2 cfs. In 1976 after the flood we paid to have the large irrigation well cleaned out the cost was about \$1000. **(Section 3)** During 1980 to 84 we

developed our mobile park. We installed over 3100 feet of 4" water line pipe from our pump house through out the park for 12 parking spaces. We also ran the pipe from the pump house to our home in 1980 and out to the large well. The cost was about \$12000 to \$15000. There was additional expense to our mobile park which probably should not be counted as a water expense. They did involve the building of field drains and installing seven septic tanks. **(section 4)** During the 1980's we purchased a 25 HPP for the large well and hired Hills Construction to install a buried main line with risers. The length was about 1800 to 2000 ft. The total cost of the pump and well was about \$20,000 to \$25,000. **(Section 5)** During 2004 we purchased a Valley Center Pivot from Golden West in Rexburg, Id. consisting of seven towers and a 25 HPP surface pump the cost was \$55,529. In conclusion the total expenditure for irrigation improvements on our farm when adding sections 1, 2, 3 & 4 the amount is \$134,029.00. I hope this information will be helpful in helping you to make a decision.

Jay R Peterson
2169 E 200 N
St. Anthony, Id. 83445
208-881-8843