

MEMORANDUM

DATE: August 6, 2012

TO: Jonie Barg, Technical Records Specialist

FROM: Garrick Baxter, Deputy Attorney General



RE: Change of Ownership 73-7003 (Split into 73-12121 & 73-12122)

You have asked that I research and recommend a path forward regarding issues that have arisen for the above referenced water rights.

History of License:

The Department issued the license for water right no. 73-7003 to Jack B. Furey on Feb. 20, 1974. The license authorized the diversion of 1.44 cfs (333 afa) from Spring Gulch Creek to irrigate 111 acres under a March 6, 1968 priority date.

First Ownership Change:

On May 27, 1998, the Department received a Notice of Change of Water Right Ownership ("ownership change") notifying the Department of a change the ownership of water right no. 73-7003 from Jack B. Furey to Doug J. and/or Janiel S. Parkinson. No deed or other document indicating a transfer of the ownership of the property appears in the Department's records. However, the ownership change was processed and the Department's records were updated to reflect the Parkinsons as the owners of all of water right no. 73-7003.

Second Ownership Change:

On April 19, 2007, the Department received an ownership change for water right no. 73-7003 notifying the Department of a change to part of the ownership of water right no. 73-7003 from Doug and Janiel Parkinson to Darren Carraway and/or Judd Whitworth. The second change of ownership was accompanied by a warranty deed dated May 30, 2006 conveying certain parcels of land from D&J Holdings, LLC to Judd A. Whitworth and Darren and Hillary Carraway. The specific number of acres conveyed are not expressly spelled out in the deed; the parcels of land being conveyed in the deed are described in metes and bounds.

The Department processed the change of ownership by splitting water right no. 73-7003 into two water rights: 73-12121 and 73-12122. Water right no. 73-12121 was issued in the name of Darren Carraway, Hillary Carraway and Judd A. Whitworth for 0.92 cfs (248.5 afa) for 71 acres. Water right no. 73-12122 was left in the name of Doug J. and Janiel S. Parkinson for .52 cfs (141 afa) for 40 acres. The 40 acres were in the NWSW.

Effect of Second Ownership Change on SRBA Recommendations:

On June 6, 2007, the Department issued a Notice of Completed Administrative Proceeding ("NCAP") to the Snake River Basin Adjudication ("SRBA") district court, informing the court of

the split in the ownership. The NCAP reflected the above described split.

Partial decrees were issued for the two water rights by the SRBA district court on June 9, 2009. The partial decrees were consistent with the NCAP. Darren & Hillary Carraway and Judd A. Whitworth were decreed 0.92 cfs (248.5 afa) for 71 acres under water right no. 73-12121. Doug J. and Janiel S. Parkinson were decreed the rest of the original license, 52 cfs (141 afa) for 40 acres, under water no. 73-12122.

Third Ownership Change:

On February 21, 2012, the Department received another ownership change. The ownership change sought to notify the Department of the change of ownership of water right no. 73-12121 from Darren Carraway, Hillary Carraway and Judd Whitworth to Chris Drakos. The change of ownership was accompanied a chain of deeds. A review of the deeds calls the earlier changes of ownership and the partial decrees issued by the SRBA district court into question. The effect of the deeds is described further below.

Problem with First Ownership Change:

The oldest deed provided with the chain of deeds is a warranty deed dating back to 1998, evidencing the original conveyance from Jack B. Furey to Doug. J. and Janiel S. Parkinson. Significantly, you have informed me that when the metes and bounds land list from the warranty deed is plotted, it shows that the Parkinsons did not buy all the land that was licensed under water right no. 73-7003. It appears that they bought only about 95.5 acres, leaving Jack Furey with 15.5 of the originally licensed 111 acres. Thus, it appears that when the first ownership change was processed back in 1998, the Department should have split the water right instead of transferring the entire water right to the Parkinsons.

Problem with Second Ownership Change:

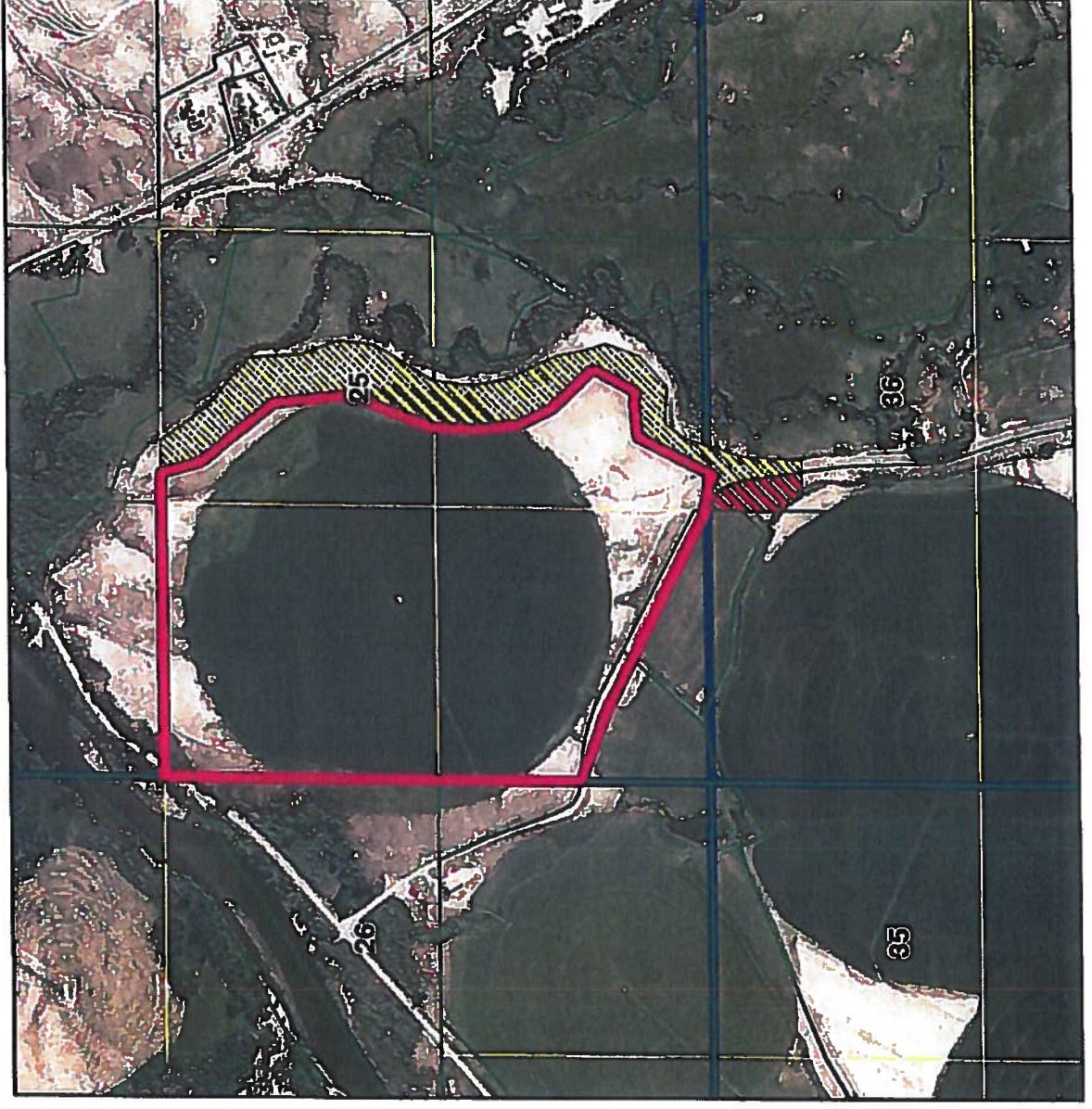
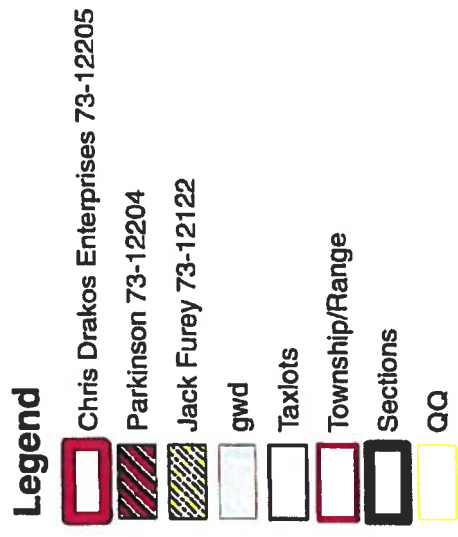
The chain of deeds submitted with the third ownership change also includes an amended deed for the conveyance from D&J Holdings, LLC to Judd A. Whitworth and Darren and Hillary Carraway. The revised deed now includes a conveyance to Judd and the Carraways of the 40 acres in NWSW. This is significant because these are the 40 acres that were identified by the Department as being withheld in the second ownership change and thus recommended and decreed to the Parkinsons.

Resolution:

The water rights have been decreed by the SRBA district court and thus the ownership determination is binding on the Department. The Department can split water right no. 73-12121, but it can only put in Chris Drakos's name those acres that were both decreed to the Carraways and Whitworth and are currently owned by Chris Drakos. Moreover, the Department is not in a position to modify the Parkinson's partial decree for water right no. 73-12122. If Drakos or any of the interested parties wish to have the decrees changed, I recommend they approach the SRBA district court and seek to have the partial decrees set aside and corrected consistent with the underlying deeds. You have provided me with a chart and maps showing how you believe the water rights should have been split based on the deeds you now have before you. I am including this information in my memo as the parties may wish to take this into consideration when discussing how the water rights were intended to be divided.

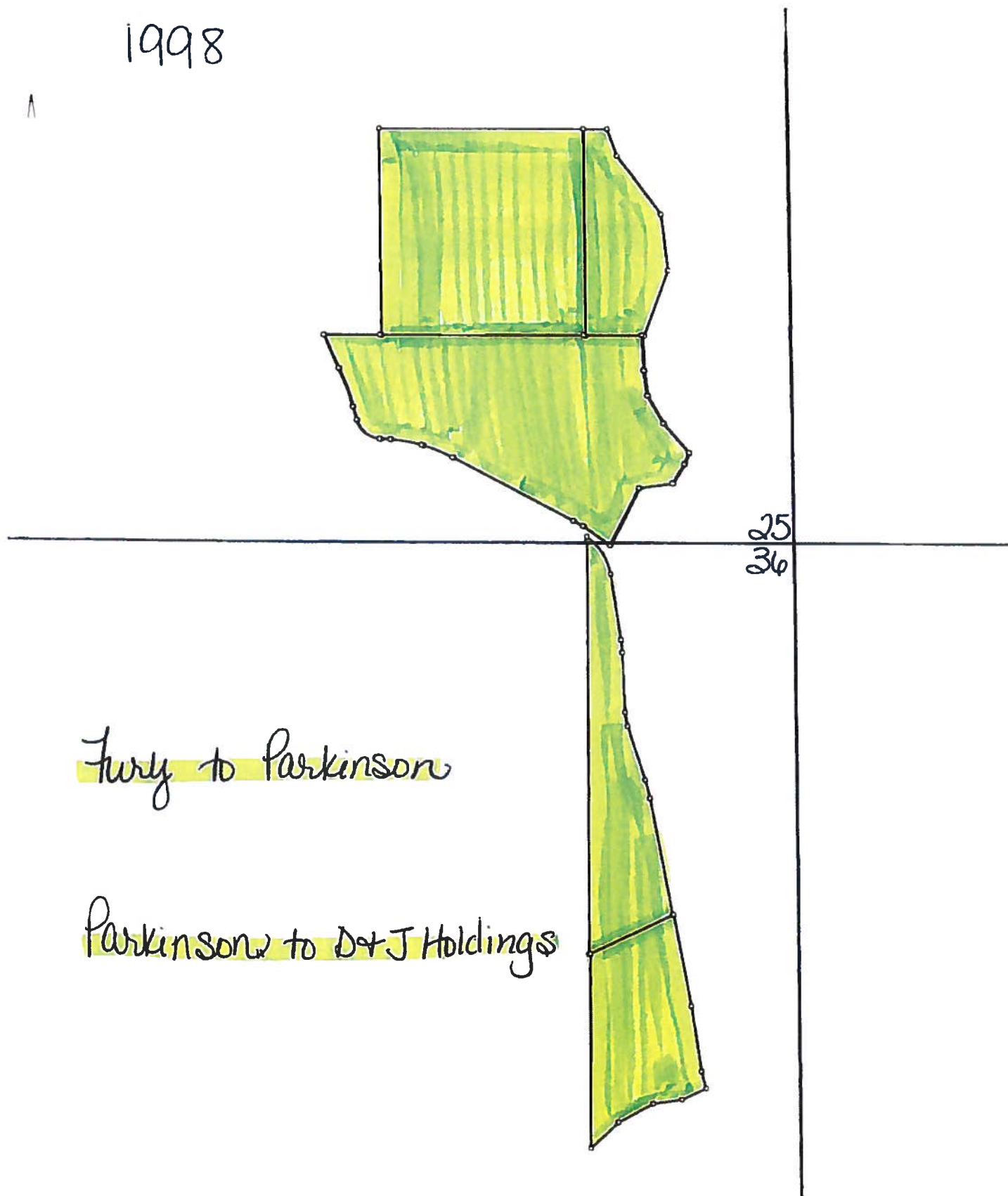
	Current Owner	Acres	CFS	Annual Volume
	Jack Furey	15.5	0.2	46.5
	Doug Parkinson	1.5	.02	4.5
	Chris Drakos Enterprises	94	1.22	282
Total		111.0	1.44	333.0

Idaho Department of Water Resources



Layout Created by:
Jonie Barg
Date:
July 26, 2012

1998



Fury to Parkinson

Parkinson to D+J Holdings

Title:

Date: 02-21-2012

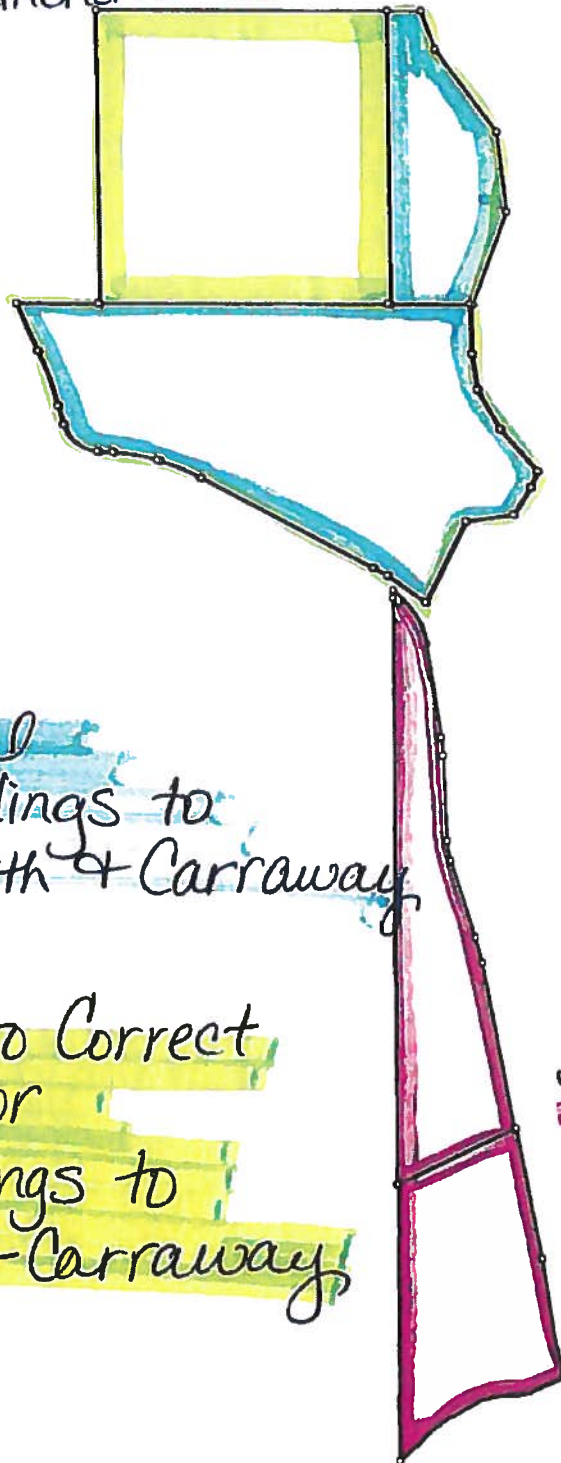
Scale: 1 inch = 800 feet

File: chris drakos.des

2007
including Amendments

234086

234791
234849
235852



Original
D+J Holdings to
Whitworth & Carraway

Affidavit to Correct
Legal for
D+J Holdings to
Whitworth & Carraway

~~Retained by~~
Parkinson

Title:

Date: 02-21-2012

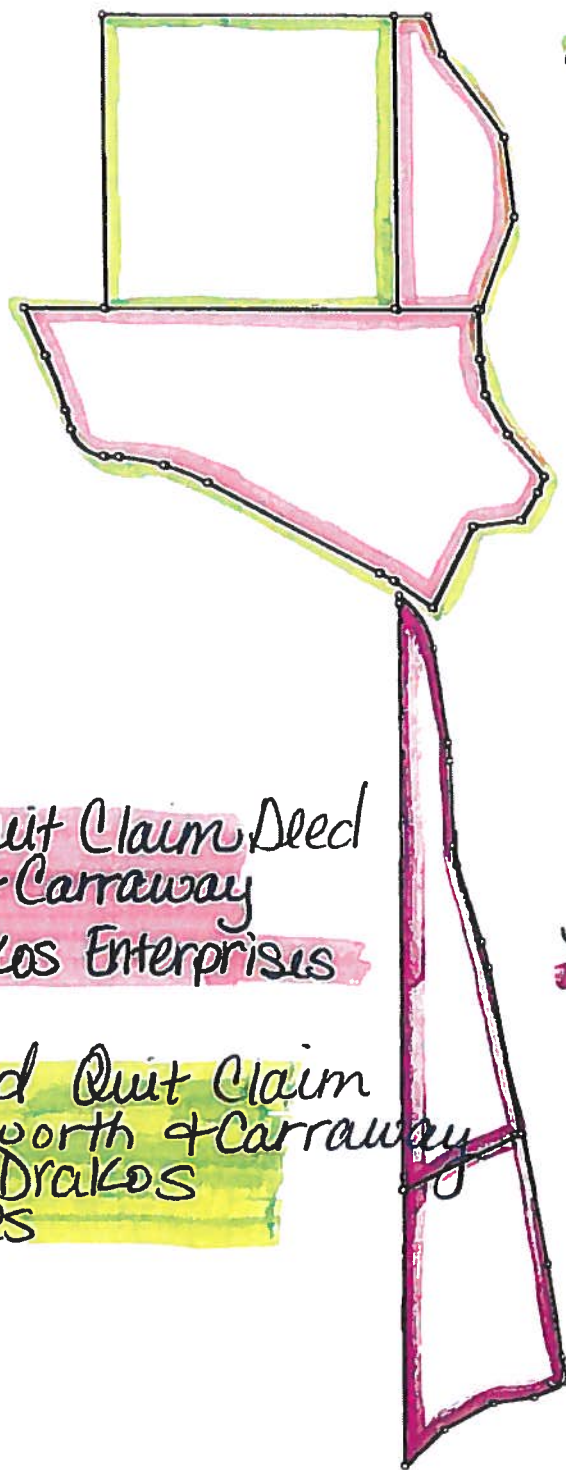
Scale: 1 inch = 800 feet

File: chris drakos.des

2012 Including
Amendments

240574

245855



Original Quit Claim Deed
Whitworth & Carraway
to Chris Drakos Enterprises

Recorded Quit Claim
Deed Whitworth & Carraway
to Chris Drakos
Enterprises

Retained by
Parkinson

Title:

Date: 02-21-2012

Scale: 1 inch = 800 feet

File: chris drakos.des

Final

A



Lurey
Parkinson
Drakos

Title:		Date: 02-21-2012
Scale: 1 inch = 800 feet	File: chris drakos.des	